

DON'T TREAD ON ME! GREENHOUSE GASES MUST NEVER CHOKE AMERICAN FREEDOM*

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INTRODUCTION

This Article examines: (1) the core American belief in freedom and the relationship between dutiful citizen and responsible government; (2) greenhouse gas policymaking dictated by the Environmental Protection Agency (EPA) and the ubiquitous state of global economic conflict; and (3) the fact that the United States will best serve her most vulnerable citizens not through elitist dictates, but by open debate.

We must seek consistency in purpose and application of environmental law and policy. Driving an initiative through public policy to achieve a single end is impossible without affecting the *polis*¹ with unintended consequences. The interrelationships between competing interests inherently impact the community as a whole.

Prior to being elected, President Obama pledged, "If I am President, I will immediately direct the full resources of the federal government and the full energy of the private sector

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1. "[A] city-state in ancient Greece, esp. as considered in its ideal form for philosophical purposes." THE NEW OXFORD AMERICAN DICTIONARY 1320 (2001).

to a single, overarching goal—in ten years, we will eliminate the need for oil from the entire Middle East and Venezuela.”² This noble goal would provide Americans with great economic freedom. However, the administration’s proposed environmental policies are in direct conflict with implementing this goal.³ In particular, already targeted action items by the EPA include greatly reduced emission standards for ozone, particulate matter, and new greenhouse gas permit requirements and limits.⁴ All being stakeholders, Americans are obligated to directly participate in this conversation on these pressing issues.⁵

I. WHAT SORT OF PEOPLE DO THEY THINK WE ARE?

On December 26, 1941, British Prime Minister Winston Churchill visited Washington and spoke to a joint session of Congress welcoming our country into the “Grand Alliance” in the struggle against the sinister forces of fascism. Churchill received his loudest applause when he paused to ask the rhetorical question, “What sort of people do they think we are?”⁶

2. Barack Obama, President Elect, Obama’s Speech in Lansing, Michigan, N.Y. TIMES, Aug. 4, 2008, <http://www.nytimes.com/2008/08/04/us/politics/04text-obama.html>.

3. Prevention of Significant Deterioration and Title V Greenhouse Gases Tailoring Rules, 74 Fed. Reg. 55,292 (proposed Oct. 27, 2009) (to be codified at C.F.R. pt. 51, 52, 70, et al.).

4. Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan, 75 Fed. Reg. 53,883-92 (proposed Sept. 2, 2010) (to be codified 40 C.F.R. pt. 52). See generally Jon Basil Utley, *Job-Killing Environmentalists*, REASON, Nov. 10, 2010, <http://reason.com/archives/2010/11/10/job-killing-environmentalists>; Ed Crooks, *US Energy Policy after the Republican Victories: Compromise or Conflict?*, FIN. TIMES, Nov. 4, 2010, <http://blogs.ft.com/energy-source/2010/11/04/us-energy-policy-after-the-republican-victories-compromise-or-conflict/#>.

5. See MAKE GENTLE THE LIFE OF THIS WORLD: THE VISION OF ROBERT F. KENNEDY 12 (Maxwell Taylor Kennedy ed., 1998) (“The essence of the American Revolution—the principle on which this country was founded—is that direct participation in political activity is what makes a free society.”).

6. WINSTON S. CHURCHILL, *THE SECOND WORLD WAR: THE GRAND ALLIANCE* 671 (1951). Only a couple weeks prior, until around noon in Washington, D.C., on December 7, 1941, the United States was officially neutral in the “Second Great European War.” The Empire of Japan changed all that when she attacked every American army and naval facility in the Pacific she could get her planes and ships to that day. The battles of December 7th were complete victories for Japanese air and naval forces. See *ENCYCLOPEDIA OF WORLD WAR II: A POLITICAL, SOCIAL, AND MILITARY HISTORY*, VOLUME I: A–C at 16 (Spencer C. Tucker et al. eds., 2005).

We are a republic. Our unique experience as a republic has been repeatedly tested through internal and external tensions which have shaped the raw materials we began with in 1776 into the form it is now.⁷ What is the power of this statement? Simply put, a republican form of government as ours has never been successful in the history of the world.⁸ Neither the Greeks nor the Romans were able to sustain their republican dreams.⁹ France is now organized under its Fifth Republic.¹⁰ Germany and Italy only became unified nation-states in 1870, and we know what happened to the Weimar Republic in Germany in the 1930's and Italy's constitutional monarchy in the 1920's.¹¹ The United Kingdom, a constitutional monarchy, suffered a civil war before Parliament assumed the dominant governmental position in the 1630's. However, its success actually resulted in their only true republic, which then fell into dictatorship and ultimate restoration of the monarchy.¹² The British Parliament has maintained its dominance in governmental control through representative democratic means since 1688 primarily due to its power of the purse.¹³ Its attempts to be more democratic

Churchill had been openly courting American intervention in the European War, with limited success, since assuming his position as Prime Minister in May 1940. CHURCHILL, *supra*, at 606-07. In this titanic duel between European democracies and totalitarian regimes, in hindsight, it would seem our moral choice was already predestined. However, at the time, the question was *could* a democracy, or a coalition of democracies, successfully overcome the professional war machines of totalitarian regimes? In the end, only Britain in Europe was to stand the test of war, and with direct American mobilization, western democracy was preserved. See ENCYCLOPEDIA OF WORLD WAR II, *supra*, at 16-17.

7. See ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* xviii (2000). The evolutionary changes in the United States have moved us from a simple confederacy of states with minimal central authority in 1776; to a Constitutionally protected republic wherein only propertied white gentry held the franchise and slavery was legal; to expanded voting rights for all white males; to the emancipation of slaves and vote extension to black males; to one wherein females finally received the right to vote. *Id.*

8. See CARL J. RICHARD, *GREEKS AND ROMANS BEARING GIFTS: HOW THE ANCIENTS INSPIRED THE FOUNDING FATHERS* 179 (2008).

9. *Id.*

10. DOROTHY PICKLES, *THE FIFTH FRENCH REPUBLIC* 33 (1960).

11. ELEANOR L. TURK, *THE HISTORY OF GERMANY* 110-11 (1999) (discussing the fall of the Weimar Republic to Hitler's Nazi party in 1933); CHARLES L. KILLINGER, *THE HISTORY OF ITALY* 142-45 (2002) (discussing the rise of fascism in Italy under the rule of Mussolini beginning in 1922).

12. J.N. LARNED, *A HISTORY OF ENGLAND* 389, 484-86 (1900).

13. *Id.* at 615.

have been as evolutionary as the United States in its incremental extension of the vote.¹⁴

Therefore, we must never idly respond when economic or policy challenges might corrupt or drive our democratic institutions into the shadows of socialism, which then may devolve into totalitarianism. President Ronald Reagan stated in his first inaugural address,

We are a nation that has a government—not the other way around. And this makes us special among the nations of the earth. Our government has no power except that granted it by the people. It is time to check and reverse the growth of government, which shows signs of having grown beyond the consent of the governed.¹⁵

Whether one agrees or disagrees with his conservatism, Reagan understood that Americans are a sort of people who live by a moral compass.¹⁶ We cannot exist as a nation without standing *for* something and without faithfully performing our duty to our neighbors. During the Cold War, both President Kennedy and then Vice-President Nixon firmly believed success was not possible without showing that freedom is more than the mere rejection of tyranny.¹⁷ They believed our democratic ideal must be demonstrably shown to the world as superior and not as empty rhetoric.¹⁸

14. See KEYSSAR, *supra* note 7 and accompanying text.

15. GREAT AMERICAN SPEECHES 295 (Gregory R. Suriano ed., 1993).

16. See generally TOM FREILING, REAGAN'S GOD AND COUNTRY: A PRESIDENT'S MORAL COMPASS: HIS BELIEFS ON GOD, RELIGIOUS FREEDOM, THE SANCTITY OF LIFE AND MORE (Regal Books 2004) (2000).

17. LET THE WORD GO FORTH: THE SPEECHES, STATEMENTS AND WRITINGS OF JOHN F. KENNEDY 325 (Theodore C. Sorensen ed., 1988); JAMES C. HUMES, NIXON'S TEN COMMANDMENTS OF LEADERSHIP AND NEGOTIATION: HIS GUIDING PRINCIPLES OF STATECRAFT 162-63 (First Touchstone ed. 1998).

18. In June 1963, during his European trip, when in West Germany, President John F. Kennedy spoke on the interdependence of nations in our ever shrinking world. He pledged to defend the liberty of all Europe and to press forward those convictions so all may be free some day. He also illustrated American strength must be fortified with a soulful conviction if we were to meet the challenge. He stated, "For we know now that freedom is more than the rejection of tyranny—that prosperity is more than an escape from want—that partnership is more than a sharing of power. These are, above all, great human adventures. They must have meaning and conviction and purpose . . ." LET THE WORD GO FORTH, *supra* note 17, at 324-26. Nixon argued that in order for America to overcome the Communist threat, we could not merely present ourselves as the "anti-communist" alternative, but had to prove the superiority of our democratic ideal. He believed raw power, or strength, without faith is sterile. HUMES, *supra* note 17.

We are a nation of God.¹⁹ It is inherent in our American republican ideal.²⁰ Certainly, it is not, and never was, the same God for all citizens, but we are a nation of faith with our own individual vision of God.²¹ For some, it is a nihilistic vision of nothingness, and it is that "God" in which they believe. In our republic, citizens maintain those freedoms of conscience to believe how they choose. For even those who believe in nothingness have a faith, and they too work to preserve our democratic ideal of freedom, liberty, and opportunity.²²

Through many cycles, the French Revolution birthed the First Republic of France. In one of the republic's most radical phases, Maximilien de Robespierre, head of the committee that ran the government at the time, eliminated all references to God and the Church in an effort to strengthen the republic.²³ These efforts backfired, and in the ensuing anarchy Robespierre met the guillotine.²⁴ Faith in God and its impact upon our Founding Fathers establishing our republic are already well documented, but this faith also tells us that which Robespierre failed to understand even up the steps to the guillotine, OUR REPUBLIC IS NOT OUR GOD.

The connection between individual citizens and governmental controls and our states' political relationships to the Federal government has radically changed since our country's inception.²⁵ However, the essential political compact

19. LET THE WORD GO FORTH, *supra* note 17, at 15. President Kennedy closed his inaugural address by stating, "let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own." *Id.*

20. *Id.* at 136.

21. JOHN J. DIJULIO, JR., GODLY REPUBLIC: A CENTRIST BLUEPRINT FOR AMERICA'S FAITH-BASED FUTURE 4-6 (2007).

22. *See id.* at 5-6.

23. W. SCOTT HAINE, THE HISTORY OF FRANCE 84-85 (2000).

24. *Id.* at 85-86.

25. JOHN MCCARDELL, THE IDEA OF A SOUTHERN NATION: SOUTHERN NATIONALISTS AND SOUTHERN NATIONALISM, 1830-1860, at 21 (1979). Until 1913, in most states, United States Senators were selected by state legislatures as proscribed by our Constitution until it was amended by the Seventeenth Amendment calling for direct election by the voters. U.S. CONST. amend XVII. This was only one of several factors shifting political power from state houses to Washington. Other examples of local political power were:

Businessmen wishing to begin a railroad had to deal with the state legislature. State universities, which began to spring up in the early

between the citizen, who is *the* determinative factor in how he is to be governed, and our government has not changed. It is the public servant, regardless of his office, who must answer to the citizens, and not the citizens who must serve the public official.

II. HOW DID THE SUPREME COURT ACTUALLY RULE? IT DEPENDS ON THE OVAL INTERPRETATION . . .

How will our public servants answer the call of American citizens in the current and future enactment of environmental policy? The lack of full public participation has never been more evident than in current unilateral agency practices and actions regarding greenhouse gases ("GHG").

Specifically, on December 7, 2009, the sixty-eighth anniversary of Pearl Harbor Day, the EPA announced its GHG "endangerment finding" declaring under Section 202(a) of the Clean Air Act that "greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare."²⁶ The EPA claimed it issued its policy finding as an administrative requirement according to the United States Supreme Court²⁷ decision in *Massachusetts v. EPA*.²⁸ However, the Supreme Court did *not* require such a finding. In fact, the Court held:

If EPA makes a finding of endangerment, the Clean Air Act requires the Agency to regulate emissions of the deleterious pollutant from new motor vehicles. . . . EPA no doubt has significant latitude as to the manner, tim-

nineteenth century, relied upon the state government for financial support. Military defense was provided not by a national army but by a state militia. Taxes were levied not by Congress but by the state legislatures.

Id.

26. Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66,497 (Dec. 15, 2009) (to be codified at 40 C.F.R. ch. I).

27. See Steven Musfson & David A. Fahrenthold, *EPA is Preparing to Regulate Emissions in Congress's Stead*, WASH. POST, Dec. 8, 2009, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/07/AR2009120701645.html>. "At the same time, however, EPA regulation is no one's preferred outcome—not even the EPA's. Jackson said her agency and other administration officials would still prefer if Congress acted before they did." *Id.*

28. 549 U.S. 497 (2007).

ing, content, and coordination of its regulations with those of other agencies. But once EPA has responded to a petition for rulemaking, its reasons for action or inaction must conform to the authorizing statute. Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do. To the extent that this constrains agency discretion to pursue other priorities of the Administrator or the President, this is the congressional design.

EPA has refused to comply with this clear statutory command. Instead, it has offered a laundry list of reasons not to regulate. . . .

. . . .

. . . If the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming, EPA must say so. . . . The statutory question is whether sufficient information exists to make an endangerment finding.

In short, EPA has offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change. Its action was therefore "arbitrary, capricious, . . . or otherwise not in accordance with law." We need not and do not reach the question whether on remand EPA must make an endangerment finding, or whether policy concerns can inform EPA's actions in the event that it makes such a finding. We hold only that EPA must ground its reasons for action or inaction in the statute.²⁹

In his dissent, Chief Justice Roberts, joined by three other Justices challenged the granting of standing to petitioner. "This Court's standing jurisprudence simply recognizes that redress of grievances of the sort at issue here 'is the function of Congress and the Chief Executive,' not the federal courts."³⁰ "The constitutional role of the courts . . . is to decide concrete cases—not to serve as a convenient forum for policy debates."³¹ Justice Scalia, in his own dissent, goes fur-

29. *Id.* at 533–35 (citations omitted).

30. *Id.* at 535 (Roberts, C.J., dissenting).

31. *Id.* at 547 (Roberts, C.J., dissenting). Chief Justice Roberts further emphasized the policy nature of this case:

ther, asking the five Justice majority, "Where does the CAA say that the EPA Administrator is required to come to a decision on this question whenever a rulemaking petition is filed? The Court points to no such provision because none exists."³² Also, in contrast to a plurality of the Supreme Court's narrow, albeit confusing, statutory limitation to the "waters of the United States" definition in *Rapanos v. United States*,³³ the Court in *Massachusetts v. EPA* interpreted the Clean Air Act's statutory definition of air pollutant as "sweeping," "includ[ing] 'any air pollution agent or combination of such agents, including any physical, chemical . . . substance or

Global warming may be a "crisis," even "the most pressing environmental problem of our time." Indeed, it may ultimately affect nearly everyone on the planet in some potentially adverse way, and it may be that governments have done too little to address it. It is not a problem, however, that has escaped the attention of policymakers in the Executive and Legislative Branches of our Government, who continue to consider regulatory, legislative, and treaty-based means of addressing global climate change.

Apparently dissatisfied with the pace of progress on this issue in the elected branches, petitioners have come to the courts claiming broad-ranging injury, and attempting to tie that injury to the Government's alleged failure to comply with a rather narrow statutory provision.

Id. at 535 (Roberts, C.J., dissenting) (citation omitted).

32. *Id.* at 550 (Scalia, J., dissenting).

Instead, the Court invents a multiple-choice question that the EPA Administrator must answer when a petition for rulemaking is filed. The Administrator must exercise his judgment in one of three ways: (a) by concluding that the pollutant *does* cause, or contribute to, air pollution that endangers public welfare (in which case EPA is required to regulate); (b) by concluding that the pollutant *does not* cause, or contribute to, air pollution that endangers public welfare (in which case EPA is *not* required to regulate); or (c) by "provid[ing] some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether" greenhouse gases endanger public welfare, (in which case EPA is *not* required to regulate).

I am willing to assume, for the sake of argument, that the Administrator's discretion in this regard is not entirely unbounded The Court, however, with no basis in text or precedent, rejects all of EPA's stated "policy judgments" as not "amount[ing] to a reasoned justification," effectively narrowing the universe of potential reasonable bases to a single one: Judgment can be delayed *only* if the Administrator concludes that "the scientific uncertainty is [too] profound." The Administrator is precluded from concluding *for other reasons* "that it would . . . be better not to regulate at this time." Such other reasons—perfectly valid reasons—were set forth in the Agency's statement.

Id. at 550–51 (Scalia, J., dissenting) (alterations in original) (citations omitted).

33. *Rapanos v. United States*, 547 U.S. 715, 730–31 (2006) (plurality opinion).

matter which is emitted into or otherwise enters ambient air”³⁴ Thus, the Court found that the EPA had not only jurisdictional authority for a GHG endangerment finding but a duty to respond to the petitioner.³⁵ The current administration, already bent on systematic climate change policy, saw their legal justification and took their political opportunity. According to some, the EPA has been wielding this threatening action as a club held over the heads of Congress.³⁶ According to reporter Kim Strassel, an EPA source said, “If [Congress doesn’t] pass this legislation,’ the EPA is going to have to ‘regulate in a command-and-control way, which will probably generate even more uncertainty.”³⁷

In publicly defending this rule, the EPA Administrator has made appeals in an attempt to still fears which were certain to arise due to the unpredictability that this action would cause in the commercial world.³⁸ “‘These are reasonable, common-sense steps,’ EPA Administrator Lisa P. Jackson said, adding that they would protect the environment ‘without placing an undue burden on the businesses that make up the better part of our economy.’”³⁹ It was not long before the initial salvos of bitter opposition from business, industry, and policy leaders from critical energy sector states began.⁴⁰

Louisiana Governor Bobby Jindal also objected to the proposed GHG “tailoring rule” to the Prevention of Significant Deterioration (PSD) and Title V CAA programs.⁴¹ Governor Jindal urged the EPA that “[a]ny consideration of such a comprehensive regulatory scheme belongs in a thoroughly vetted legislative process. There is no doubt that this change will

34. 549 U.S. at 528–29 (alteration in original) (citing 42 U.S.C. § 7602(g) (2006)).

35. *See id.* at 533–35.

36. Kimberley A. Strassel, *The EPA's Carbon Bomb Fizzles*, WALL ST. J., Dec. 11, 2009, at A19, available at <http://online.wsj.com/article/SB10001424052748703514404574588120572016720.html>.

37. *Id.* (alteration in original).

38. Musfson & Fahrenthold, *supra* note 27.

39. *Id.*

40. Jeffrey Ball & Charles Forelle, *Business Fumes Over Carbon Dioxide Rule*, WALL ST. J., Dec. 7, 2009, at A1, available at <http://online.wsj.com/article/SB126013960013179181.html>.

41. Letter from Bobby Jindal, Gov., La., to Lisa Jackson, Adm'r, EPA, (December 28, 2009) (on file with La. Dep't of Env'tl. Quality and Regent J.L. & Pub. Pol'y).

certainly have profound negative economic impacts on the state of Louisiana, as well as the entire country.”⁴² Despite a clear need to proceed with the utmost caution in this important area, the EPA has recently proposed a series of rulemaking and other policy actions addressing GHG emissions, “which together will likely have dramatic and far-reaching negative impacts on the state of Louisiana and other states in our nation.”⁴³ This new National Ambient Air Quality (NAAQ) announcement, lowering permissible output to 60–70-ppb,⁴⁴ comes on the heels of a recent reduction of the standard from 85-ppb to 75-ppb in March 2008.⁴⁵ Amy Wold reports that according to Dan Borné, President of the Louisiana Chemical Association, “Ozone standards keep changing even before the previous one is finalized The industry wants consistency ‘We feel like we’re in a shooting gallery where the target is constantly changing.’”⁴⁶

Eventually, the people of this country will be forced to pay for this, and they have a right to be asked by their elected representatives if this path is indeed theirs, or whether it is merely one of bureaucratic elitist masters.

III. VIGILANCE IN DEFENSE OF LIBERTY BEGINS IN YOUR TOWN SQUARE

In today’s environment of global market insecurity, we have little room to experiment with environmental policy due to the potential disintegration of industrial and commercial interests within the United States, which would provide aid to our geo-political rivals, especially those in China and India.⁴⁷ Currently, the American chemical industry perceives

42. *Id.*

43. Letter from Harold G. Leggett, Sec’y, La. Dep’t of Env’tl. Quality to Lisa Jackson, Adm’r, EPA (Dec. 15, 2009) (on file with La. Dep’t of Env’tl. Quality and Regent J.L. & Pub. Pol’y).

44. Parts per billion.

45. Amy Wold, *New Ozone Standards to Challenge BR Area*, ADVOC., Jan. 8, 2010, at 8A, available at <http://www.2theadvocate.com/news/80971187.html?showAll=y&c=Y>.

46. *Id.*

47. See PATRICK J. BUCHANAN, *WHERE THE RIGHT WENT WRONG* 160 (2004). American protectionism of our economic engine during the late 19th century and early 20th century accompanied some of the highest industrial growth in our nation’s history. “In 1950, a third of our labor force was in manufacturing, and ours

its economic survival to be in the cross hairs of the administration's new initiatives causing a possible imbalance with global competition.⁴⁸ In raw numbers the Heritage Foundation has figured that Louisiana, an oil and petrochemical heavy state, "could lose \$1.9 billion in gross revenue and 6,577 nonfarm jobs by 2025" due to proposed Washington cap and trade programs.⁴⁹

The ever evolving EPA regulations beg the question whether any economic recovery will find itself swallowed whole inside the belly of the whale of government imposed tax burdens designed to socially re-engineer our practices on greenhouse gases. President Theodore Roosevelt pointed out that "[i]f we are forced to the alternative of choosing either a system under which most of us prosper somewhat, though a few of us prosper too much, or else a system under which no one prospers enough, of course we will choose the former."⁵⁰ Churchill also spoke boldly about his belief in the primacy of maintaining a level playing field for his people in the global marketplace:

It will take very strong arguments to convince me that our people should be deprived of the use of their motor vehicles, while other countries enjoy abundant supplies of petrol, largely bought with the money which we have presented to them, and for a large part of which we still remain debtors to America.⁵¹

was the most self-sufficient republic the world had ever seen. Now only 11 percent of U.S. workers are in manufacturing, which is in a death spiral, and it is not a natural death." *Id.* at 160.

48. See David Jacobs & Olivia Watkins, *Balancing Act*, GREATER BATON ROUGE BUS. REP. (May 4, 2009), <http://www.businessreport.com/news/2009/may/04/balancing-act-edv11/> ("Chemical manufacturing's final battle will come against the Obama administration, which proposes billions in taxes. 'We're in direct head-to-head competition with the Far East in terms of chemical manufacturing,' [Dan] Borné [President of the Louisiana Chemical Association] says. Additional taxes could make Louisiana manufacturers less competitive globally, and plants might start relocating outside of the U.S.").

49. See David Jacobs, *Shell Game*, GREATER BATON ROUGE BUS. REP. (June 1, 2009), <http://www.businessreport.com/news/2009/jun/01/shell-game-indt1/>.

50. President Theodore Roosevelt, Address at the Music Hall in Cincinnati, Ohio: Dealing with the Big Corporations (Sept. 20, 1902), in *GREAT AMERICAN SPEECHES* 123, 124–25 (Gregory R. Suriano ed., 1993).

51. Winston Churchill, Address at the Forum Cinema in Devonport: Our Socialist Masters (Feb. 9, 1950), in *NEVER GIVE IN!: THE BEST OF WINSTON CHURCHILL'S SPEECHES* 453, 461 (Winston S. Churchill ed., 2003).

Why does America remain a great nation among the world? Surely, not our children's test scores, our crime rate, nor our near ten percent unemployment rate.⁵² No, it is in our democratic processes and institutions to which we ascribe that we owe our coveted status in the world.⁵³

As policy makers, we are the servants of the people, not their elitist masters. Time Magazine's 2009 Heroes of the Environment included Obama's EPA Administrator Lisa Jackson and Carol Browner.⁵⁴ It seems premature for the Fourth Estate to anoint these leaders as "All-Americans" prior to taking the field for the big game. If attempting to shape the conscience of the American people by deifying the administration and holding up their agenda as Holy Writ, the efforts of the image-makers will fall short.

Roosevelt understood the relationship between the parts of the American economic system, even when seeking the imposition of federal regulatory authority over corporations:

We are neither the friend of the rich man as such nor the friend of the poor man as such; we are the friend of the honest man, rich or poor; and we intend that all men, rich and poor alike, shall obey the law alike and receive its protection alike.⁵⁵

In this executive role of policy development, we have the opportunity to proceed with balance. By utilizing self-restraint, we can make great cumulative strides in reducing pollution without eroding our economic greatness.⁵⁶

The level playing field in the arena of environmental policy fundamentally means constructing and administering a system which provides businesses similar opportunities to

52. Press Release, Bureau of Labor Statistics, The Employment Situation (Feb. 4, 2011), available at <http://www.bls.gov/news.release/pdf/empst.pdf>.

53. See generally Winston Churchill, Address at the Forum Cinema in Devonport: Shabby Moneylenders! (Oct. 28, 1947), in NEVER GIVE IN!, *supra* note 51, at 445, 445-46 ("They have become today the greatest State and power in the world, speaking our own language, cherishing our common law, and pursuing, like our great Dominions, in broad principle, the same ideals.").

54. Simon Robinson, *Heroes of the Environment 2009*, TIME, Sept. 22, 2009, http://www.time.com/time/specials/packages/article/0,28804,1924149_1924152_1924197,00.html.

55. Roosevelt, *supra* note 50, at 126.

56. See, e.g., TIP O'NEILL & GARY HYMEL, ALL POLITICS IS LOCAL AND OTHER RULES OF THE GAME 95 (1994) ("The temptation, particularly for a new president, is to try and get it done too much too soon.").

operate with economically feasible environmental controls. It means businesses have confidence that their compact with the government will be enforced consistently on every business similarly situated so that no one may obtain a competitive advantage. Successful enforcement of this system must send the message that it does not pay to pollute and is more cost-effective to comply with the rules and regulations.⁵⁷ American business savors the opportunity to compete on this field wherein its competitors will also be accountable and the market will determine success and defeat.⁵⁸

If anyone in the EPA or state enforcement agencies were seriously questioned, the answer should firmly be—we have enough rules and administrative fiats, both the left and right be damned! Simply, support firm, decisive civil and criminal enforcement of *existing* rules, and program integrity will be buttressed, and the level playing field will become a reality. The creation of new reams of rules is not imperative to solving any outstanding environmental, criminal, or civil enforcement crises facing our country today.⁵⁹ Instead of new rules which inherently breed unpredictability, and thus in-

57. See Charles Duhigg, *Clean Water Laws are Neglected, at a Cost in Suffering*, N.Y. TIMES, Sept. 13, 2009, at A1, available at http://www.nytimes.com/2009/09/13/us/13water.html?_r=1. EPA and state civil enforcement during the Bush Administration produced dismal numbers according to a recent New York Times article. These numbers would surprise no one familiar with the concerns heard in the hallways at EPA, and the slew of resignations seen around the country from frustrated career EPA staffers who felt thwarted by new initiatives that produced less "enforcement" and more "consent" devices. *Id.*

58. Cf. PAUL F. DIETZEL, *CALL ME COACH: A LIFE IN COLLEGE FOOTBALL* 67 (2008) ("General Douglas MacArthur . . . said that in football, a boy becomes a man by experiencing the exhilarating awareness of physical hardness. It has been my experience that it takes courage to be an athlete. On an athletic field, each person is judged on personal merit rather than on social standing. On the football field, no one is rich and everyone is broke . . .").

59. See Ronald Reagan, Address at the National Association of Manufacturers Annual Dinner: Free Enterprise (Dec. 8, 1972), in *AMERICAN RHETORIC: FROM ROOSEVELT TO REAGAN* 289, 300 (Halford Ross Ryan ed., 2d ed. 1987) ("If about 90 per cent of the laws that are passed by Congress and the state legislatures each year were lost on the way to the printer, and if all the people in the bureaus went fishing, I don't think they would be missed for quite a while. But realize your strength, because if you did not go to work, I am sure the country would feel it and grind to a halt in about 24 hours."); see also DIETZEL, *supra* note 58, at 69 ("It is best not to have a volume of rules, but the ones you have must be consistently and fairly enforced.").

stability in commercial planning and development of capital, let us instead go to work and invest in the public good.⁶⁰

The demurring of our nation's sovereignty to global environmental aspirations *does* affect our economic independence when those countries will not enact nor enforce standards we would impose upon our own commercial interests.⁶¹ The expenditure of capital to build a new or modernize an existing industrial facility may run from the millions to the hundreds of millions of dollars.⁶² This economic development will be halted by the major commercial interests in our country—as we strive to improve the environmental quality standards for America. In doing so, we cannot allow other countries to provide their industry with an unfair competitive advantage on a global stage and discredit our own industry.⁶³ Reality must awaken us from this smog-induced haze as these efforts will be exposed as merely composing unverifiable, unilateral, and bankrupting environmental policies whose sour notes will ostracize capital for the next dozen years.

The commitment to freedom in our American society must begin in our homes and then grow to our communities, towns, cities, and states. We must then communicate this spirit to our government in Washington while maintaining a high moral ground in delivering this message.⁶⁴ Modern conservatives have been the harbingers of this approach by separating their concept of liberty from liberal governmental officials' belief that,

government can do whatever *needs* to be done; note, too, the implicit but necessary assumption that it is the gov-

60. See Reagan, *supra* note 59, at 300–01; see also BUCHANAN, *supra* note 47, at 172–73 (Buchanan would call these programs economic treason as he deems it an incipit myth that the global economy can ever be played on a level playing field).

61. See BUCHANAN, *supra* note 47, at 172–73.

62. See, e.g., James Dornbrook, *Ford move may Portend Investment in Kansas City Assembly Plant*, KAN. CITY BUS. J., Nov. 1, 2010, <http://www.bizjournals.com/kansascity/news/2010/11/01/ford-move-may-portend-investment-in.html>.

63. Cf. HUMES, *supra* note 17, at 158 (“The reputation of loyalty, whether to a political ally, a friend, or a business client, is credit in the bank. The failure to sustain that loyalty diminishes the credibility of a country or company.”).

64. See RICHARD M. NIXON, *SIX CRISES* 76 (1979) (“But while we should not underestimate the danger, we also must not resort to Communist methods to fight Communism. We would then become little better than the Communists themselves—playing their game, by their rules. We must not be so blinded by the threat of Communism that we can no longer see the principles of freedom.”).

ernment itself that determines *what* needs to be done. . . .
[This is] the first principle of totalitarianism: that the State is competent to do all things and is limited in what it actually does only by the will of those who control the State.⁶⁵

This consolidation of consensus, from the town square in Apple Valley all the way to Pennsylvania Avenue, will ensure broad support for policy and be a bulwark against state coercion enacted without the consent of the people.

65. BARRY GOLDWATER, *THE CONSCIENCE OF A CONSERVATIVE* 9–10 (1990).