

# COMMENTARY

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The Rehnquist Center Conference presented a unique opportunity to begin to reframe the way in which scholars and policy makers think about climate change policy options. It is no secret that the preponderance of scholarly and media accounts on climate change in recent decades have framed climate change as a matter of international governance, focusing on national compliance with some form of an international climate regime. But more than ten years after the signing of the Kyoto Protocol, climate change has emerged as a challenge of local, state, and regional governance as well as the set of relationships across governmental levels. The active and expanding involvement of multiple levels of government presents many challenges and opportunities for thinking about how best to frame and develop climate policy in coming years, whether here in Arizona, in other statehouses, in Washington, D.C., or on the international stage.<sup>1</sup>

In this regard, California is an excellent case-in-point of what happens in a federal system when one state develops a level of policy making capacity and commitment that not only greatly exceeds that of the federal government, but also that of many other states and nations. In recent years, California has attempted to put into operation virtually every imaginable carbon-related policy except for a carbon tax. This includes not only the 2006 Global Warming Solutions Act but also an across-the-board effort to implement a wide range of policies that would further reduce that state's greenhouse gas emissions. These include a range of renewable energy and energy efficiency programs, a low-carbon fuel standard, the much-discussed legislation designed to reduce carbon emissions from mobile sources, and a lead role in developing the Western Climate Initiative which is

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1. See generally BARRY G. RABE, STATEHOUSE AND GREENHOUSE: THE EMERGING POLITICS OF AMERICAN CLIMATE CHANGE POLICY (2004); CHANGING CLIMATES IN NORTH AMERICAN POLITICS: INSTITUTION, POLICY MAKING AND MULTILEVEL GOVERNANCE (Stacy D. VanDeveer & Henrik Selin eds., 2008).

designed to move toward common climate policies among a series of Western states, Canadian provinces, and Mexican states.<sup>2</sup>

Some of the most intriguing features of the California experiment are the managerial challenges that must be addressed to secure successful implementation. The California strategies presume that there will be considerable cooperation across a range of departments and boards in the California government; including the California Environmental Protection Agency, the California Resources Board, the California Public Utilities Commission, the California Energy Commission, and many others. Indeed, a study of the work being attempted in Sacramento finds almost all of California's state government engaged—and a good deal of local government as well.<sup>3</sup> Units of government, entities that may not want to share information more cooperatively and may even have long-standing rivalries for resources and turf, must find ways to work together if these policies are to prove successful.<sup>4</sup>

Of course, the coordination required to deal with climate change will be a challenge for any jurisdiction, sub-national or national, but has received little scholarly attention. Scholars and policy makers have tended to assume that if elected officials possess the political will to enact climate legislation, then it will self-implement, especially if policies are based on market approaches such as emissions trading. But the day after policy enactment, at whatever governmental level, implementation begins. This will entail huge challenges of governance given the technical and managerial complexities of policies designed to reduce greenhouse gas emissions, something to which scholars have devoted little attention amid broad debates over the merits of alternative types of policies. Indeed, California is only beginning to confront that challenge after a flurry of legislative activity in recent years, leaving many questions about its ability to deliver on the emission reduction targets set forth in various statutes.<sup>5</sup>

At the same time, it will be essential to consider what happens in a federal system when not every state at the federal level meets California's standards or level of commitment. In federalism debates there is often talk about state leaders and laggards, an idea that certainly applies in this case. But individual states are not just leaders and laggards; they are spread all over the place on this issue, both in terms of emissions trajectory and policy commitment. Between 1990 and 2003, for example, emissions trends varied from a decline 5% in Delaware to an increase of 43% in Arizona. In turn, a number of states took no steps to enact climate policy or develop internal capacity in this area, whereas others passed multiple laws and began to assemble a managerial infrastructure to guide implementation. No two states are quite alike in this regard and, of course, any future federal policy will

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2. See generally CAL. AIR RES. BD., CLIMATE CHANGE DRAFT SCOPING PLAN: A FRAMEWORK FOR CHANGE (Discussion Draft June 2008).

3. See generally Barry G. Rabe, *Governing the Climate from Sacramento*, in UNLOCKING THE POWER OF NETWORKS (Donald Kettl & Stephen Goldsmith eds., 2008) [hereinafter *Governing the Climate*].

4. See generally STEPHEN GOLDSMITH & WILLIAM D. EGGERS, GOVERNING BY NETWORK (2004).

5. See generally *Governing the Climate*, supra note 3.

need to account for this variability, both in addressing treatment of differential emissions trends and policy capacity.<sup>6</sup>

One interesting example involves the State of Michigan. This state has been among the more successful states in stabilizing greenhouse gas emissions, but the success is not attributable to public policy. Michigan has taken none of the steps of states such as California and Arizona, among others, to unilaterally attempt to reduce its emissions. Nonetheless, Michigan's greenhouse gas emissions have increased only 4% between 1990 and 2005, one of the best records of any state and even better than that of California. However, almost all of this is attributable to the collapse of the manufacturing sector in the last several years, a pattern that follows the experience of Eastern Europe during the late 1980s and early 1990s. Michigan is not the only state that has followed this pattern. Obviously, other states will want to avoid this model in reducing greenhouse gas emissions.

Each state quite literally presents its own mixture of emissions trends and internal commitment and capacity to reduce future emissions, as is the case for other federal systems such as Canada and India and multi-level systems such as the European Union. Turning to New York or South Carolina, there is incredible variability in terms of the competence, capacity, commitment, and emissions records that those jurisdictions will bring to any kind of federal policy strategy or any regional agreement. Such variability presents some interesting challenges, particularly if Congress and other federal institutions are serious about expanding their role and either working with, or overriding, early state efforts in this area.

All of this leads to a classic question of federalism: What happens when the great conversation ultimately takes place, not just in halls like this one, but between state leaders and leaders of federal government? What occurs when our political institutions begin to fit all of this together in a significant way, particularly given the very broken nature of the core federal institutions expected to play leadership roles?<sup>7</sup>

It concerns me how frequently I hear the argument that everything will be taken care of after the 2008 election. Our next president, whomever that might be, is committed to sign a carbon cap-and-trade bill. It will be market based, it will self-implement, and everything will work out. I hesitate to agree, based on my completion of a 2007 study in conjunction with the Brookings Institution and the Brademas Center at New York University called "Can Congress Govern the Climate?"<sup>8</sup> This gave me the occasion to revisit all 175 hearings on climate change held by either the U.S. House or Senate between 1975 and 2007. The hearings suggest that the types of serious conversations among academics and policy

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6. Barry G. Rabe, *States on Steroids: The Intergovernmental Odyssey of American Climate Policy*, 25 REV. POL'Y RES. 105, 108 (2008) [hereinafter *States on Steroids*].

7. See generally THOMAS E. MANN & NORMAN J. ORNSTEIN, *THE BROKEN BRANCH* (2006).

8. See generally Barry G. Rabe, *Can Congress Govern the Climate?* (N.Y.U. Research Brief 2007), available at <http://www3.brookings.edu/views/papers/rabe/20070330.pdf>.

makers today have simply not yet taken place in Congress, much less occurred between Congress and the various sub-national governments that have actually accumulated some real experience in trying to implement climate policy. Our national institutions rarely converge to enact or revise major legislation and so it is imperative to design those laws as effectively as possible. It is not at all clear that a badly fragmented Congress has the capacity to design such legislation.<sup>9</sup>

In turn, imagine what might happen if any version of the Lieberman-Warner Climate Security Act, or any other cap-and-trade bill, was enacted and signed into law by a President. Are the existing institutions of the federal government, including executive agencies, ready to implement such a policy? Think about the U.S. Environmental Protection Agency (EPA). It is not much bigger now than when it was created in 1970, and it has essentially been required to do very little with the issue of climate change for nearly a decade.<sup>10</sup> EPA cannot do nearly as much on this issue in terms of creative policy making as its counterparts in Sacramento, Albany, Saint Paul, and other state capitals because it has not been able to actively engage states, nor to think about lessons, best practices, and future partnerships, the essence of good governance. Some internal planning and analysis has begun but this has occurred despite resistance from the Bush Administration and amid tremendous tension between agency leadership and the Congress in 2007 and 2008.

Indeed, the text usually found somewhere in the middle of various federal cap-and-trade bills indicates that EPA will be designated as the lead agency. But it is then required, just like its counterparts in California, to work transparently and cooperatively with dozens of other federal agencies and departments. This includes collaboration with the Department of Energy, the Department of Agriculture, the Department of Homeland Security, and the Department of Interior, just for starters, without even thinking about collaboration with various states.

A few months ago, I charted all of this on a chalkboard in a graduate class, discussing what the implementation plan would entail for a carbon cap-and-trade bill, either California's version or one of the federal versions. One student responded, "this looks like the Department of Homeland Security." That, of course, is a sobering thought and yet there are some parallels in attempting to stitch together all sorts of governmental units, which must suddenly learn new tasks and work cooperatively with one another.

Is this an impossible task? No. But does serious attention have to be paid? Absolutely. And among all the debate over the particulars of emissions trading schemes, I do not think we have even begun to think about institutional design or organizational arrangements. On the hopeful side, I would argue this is an area where there are incredible sets of lessons that can be learned from state experience. What has worked to reduce greenhouse gas emissions, in a cost-effective matter,

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9. See CHRISTOPHER MCGRORY KLYZA & DAVID SOUSA, *AMERICAN ENVIRONMENTAL POLICY, 1990–2006*, at ch. 3 (2008).

10. See Walter A. Rosenbaum, *Improving Environmental Regulation at the EPA: The Challenge in Balancing Politics, Policy, and Science*, in *ENVIRONMENTAL POLICY: NEW DIRECTIONS FOR THE TWENTY-FIRST CENTURY* 169–92 (Norman J. Vig & Michael E. Kraft eds., 2006).

for at least some states? In turn, what state policies have not come anywhere near hitting their target, or their goal, or level of reduction? How does one best secure cooperation across agencies and departments that have little or no history of working together? Can we learn from this real and ever-expanding body of experience? It strikes me that the opportunities for intergovernmental policy learning are just extraordinary, especially before Congress makes any final decisions in this arena and some future EPA administrator faces one of the greatest managerial challenges imaginable.<sup>11</sup>

Finally, what about the public and the citizenry? What does the public want? We are all familiar with certain national level surveys and international surveys that have been done in recent years. In general, these tend to point toward growing public belief that climate change is real and that serious policy responses are in order. But how might this translate into policy?

Findings from a very recent survey of more than one thousand Michigan citizens may prove telling.<sup>12</sup> What do Michigan citizens think about these issues? And where should policy go? The consensus: Is climate a problem? Yes. Is it a serious problem? Yes, across almost every demographic group in the state of Michigan. Is it a federal responsibility? Yes. Is it a state responsibility? Yes. But, beyond that point, the consensus begins to break down.

The climate policy tools that received overwhelming support, at a level in excess of 80% of respondents, are likely representative of many other states as well. Overwhelming percentages of Michigan citizens, cutting across most demographic categories, support three policy tools. These include: expanded development of ethanol; renewable portfolio standards that mandate increases in renewable electricity sources; and, perhaps most surprising in the state synonymous with vehicle manufacturing, mandatory increases in vehicular fuel efficiency. At the same time, when the survey explored any strategy that directly would impose costs, such as a gasoline tax, an electricity surcharge, or a carbon tax, citizen support plunges to 5–10%. This means that the public wants to see policy enacted that might address climate change, but is not supportive of policies that would impose direct costs upon them. Instead, the most popular policies are those that have raised the most concerns among policy analysts in terms of their likely impact and cost-effectiveness.

In the great middle of these dichotomous survey responses fell cap-and-trade policies, with almost even divides between supporters and opponents. While questions remain about whether citizens really understand what a cap-and-trade system entails, the study showed considerable opposition even upon presentation of the question in numerous ways. In fact, opposition was most intense from Republicans and union members, as well as a sizable cohort of younger respondents.<sup>13</sup>

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11. *States on Steroids*, *supra* note 6, at 125–26.

12. See Barry Rabe & Christopher Borick, CLOSUP Policy Report, No. 11, Survey of Michigan Residents on the Issue of Global Warming and Climate Pol'y Options, 1–12 (Feb. 2008).

13. *Id.* at 9–10.

So there is a public aspect and dimension to this as well. It is one thing to come together, to do something popular that tries to minimize costs and maximize benefits. I argue that we are seeing a great deal of that at the state level and it provides a test of how this might play nationally or even internationally.

But even the more popular policies are likely to impose costs, even if hidden in subsidies or higher costs of various goods like electricity or automobiles. How interested is the citizenry in such policy, especially at this precarious moment for our economy? If we could deliver an American climate policy that perfectly matched majoritarian sentiment, what would that look like and how effective would it be?

The challenge, of course, is how to be candid about the realities of cost imposition, or cost sharing, and begin to explain some of these policies, at the same time we develop the institutions and managerial skills that will be necessary to assure effective implementation. Although it is not necessary for all American citizens to become policy wonks, and to understand the finer points of these initiatives, it would be helpful to build a level of discernment and support so that when sacrifices have to be made, and when the adjustments have to occur, that necessary preparedness is there. Hopefully, that conversation will begin shortly. Ideally, it will take advantage of the body of state-level experience that could be used to move the discussion over climate change from abstraction to something based in real experience.