

Earth 2020

An Insider's Guide to a Rapidly
Changing Planet



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Politics and Law

Elizabeth May

I was in tenth grade on 22 April, 1970. The announcement of a full day of actions and teach-ins reached me — if memory serves — some months earlier. United States Senator Gaylord Nelson launched the call, mirroring the grassroots tactic of the campus teach-ins against the Vietnam War. In that time before the internet, I must have heard about Earth Day through my membership in Friends of the Earth and the Sierra Club. I had time to plan a door-to-door canvas of the community, recruiting other high school friends and obtaining permission to miss school (unlike the Swedish activist Greta Thunberg, who initiated a global school strike movement for climate action). I had time to write up an information sheet about the environmental threats of the day — over-fertilization of water ways from phosphates in detergents (eutrophication), nuclear bomb tests, air pollution and water contamination. No such thing as printing documents at home in those days. I typed up the facts and asked my father, who had an office and a secretary, if he could get 500 photocopies printed for me. I had to pay for them from my allowance.

Some things about that first Earth Day have been lost to the mists of time. The essence was counter-culture, yet the establishment and corporate world readily embraced the event in an attempt to greenwash themselves. US Republican President Richard Nixon issued a proclamation endorsing the day's event, planting a commemorative tree on the White

House South Lawn. Coca-Cola and the chemical manufacturing giant DuPont also signed up to celebrate the Earth. Over the past half-century, Earth Day has become a ritualized, ‘safe’ event, layered with hypocrisy and opportunism. Yet, this event still persists in raising awareness and action, and its first celebration, in 1970, was a landmark in many ways.

For one thing, Earth Day 1970 launched the United Nations into planning the first international conference on the threats to our environment — the 1972 Stockholm Conference on the Human Environment. It also propelled many governments to create — for the first time — Departments of Environment. The US Environmental Protection Agency (EPA) was set up within months of Earth Day on July 9, 1970, and similar government agencies were soon established in industrial countries around the world, charged with creating and enforcing new environmental legislation. Sweeping new amendments to the US Clean Air Act and Clean Water Act came in effect in 1970, and 1972. At the same time, the world’s first environmentally-focused political party, the Popular Movement for the Environment (PME), was founded in 1972 in the Swiss canton of Neuchâtel. Less than a decade later, the PME’s Daniel Brélaz, a mathematician by training, became a member of the Swiss national parliament. These were heady days for the burgeoning environmental movement.

Looking back over the five decades of environmental law and policy since Earth Day 1970, what stands out? There are two threads to follow in the emerging challenge of environmental governance: the global North–South divide (1970–1990) and the emergence of global corporate rule (1990 onwards). The latter is particularly important, as it threatens to undo hard-won progress in preserving Earth’s natural systems.

For the first two decades after Earth Day, all industrialized countries started down the path of controlling pollution with a focus on science-based regulations and policy. Issues confronted in this period were largely solved at local and regional scales: eutrophication, acid rain, local air quality, visible water pollution from factories and sewers, and so on. These problems were both created and solved within the national context of wealthy industrialized countries. There was no need for diplomacy or multi-lateral negotiation.¹ Nor was there an apparent need to recognize the uneven burdens and responsibilities of global environmental degradation.

The vast majority of developing countries were absent from the 1972 UN Stockholm Conference. They collectively and deliberately boycotted what was decried as the wealthy countries' agenda. The only prominent developing country leader to attend was Indian Prime Minister Indira Gandhi. Virtually all of the other developing country governments slammed the conference. Pollution was not seen as a priority for nations unable to feed their people.

A major global effort to bridge this apparent North–South divide took the form of the World Commission on Environment and Development. The commission was chaired by the sitting Prime Minister of Norway, Gro Harlem Brundtland, and its membership included retired heads of government and leading figures from both the industrialized and developing world. Its 1987 report, *Our Common Future* (also known as the Brundtland Report),² attempted to overcome the pollution versus poverty argument by embracing a new concept of sustainable development. This idea was grounded in a fundamental principal of equity, both in the present and for future generations. The report's authors called for human society to take actions in three key areas — environment, development and militarism. They also called for a major UN Summit to take place on the twentieth anniversary of the UN Stockholm Conference. By 1989, the UN General Assembly voted to hold a major Summit in June 1992, where Environment and Development would be the focus. Population was set aside for the next major gathering for Women's Issues in Beijing, and militarism was dropped altogether.

Around the time of the Brundtland Report, the old North–South divide surfaced in the negotiations to protect the ozone layer. At that time, in the late 1980s, science was increasingly demonstrating the massive danger from chlorofluorocarbons (CFCs), a group of 'miracle compounds' used in a variety of household products from aerosol cans to refrigerators. Initially believed to be benign and indestructible, it became clear that CFCs were breaking down in the stratosphere, releasing reactive chlorine atoms that gobbled up molecules of ozone.³ Stratospheric ozone plays a critical role in screening out the sun's most harmful ultraviolet rays, and the loss of this protective layer was a cause for significant concern. The massive ozone hole that developed over Antarctica became emblematic of this threat, and helped spur the world to action.

As industrialized countries mobilized to develop a protocol leading to an effective ban on ozone-depleting substances, the developing world expressed concern that, once again, this was an issue for the rich countries of the world. In the Global South, rotting food was a bigger issue than thinning ozone, and developing countries wanted to expand their use of CFCs, particularly a class of these compounds known as freons for refrigeration. Even more uncomfortable was the reality that the skin cancer threat was highest for the pale Caucasian inhabitants of industrialized countries in North America and Europe.

The CFC negotiations were very difficult and protracted. The solution eventually emerged in September, 1987, during negotiations in Montreal. The key breakthrough was the acceptance that industrialized and developing countries had to be treated differently, under a novel principle of ‘common but differentiated responsibilities’ (CBDR). This new principle allowed all developing and industrialized countries to sign on to legally binding requirements. The industrialized countries committed to immediately begin reductions of ozone-depleting substances to 50%, while developing countries could increase their use by 15%. All parties to the convention agreed to base their actions on science and modify their targets as the science required. Critically, they also agreed to enforce the targets through trade sanctions. Within a few years, both industrialized and developing countries were on board for the total elimination of ozone depleting substances. To this day, the Montreal Protocol remains one of the greatest success stories of the environmental movement.⁴

Five years later, in 1992, the United Nations convened the Rio Earth Summit, with the goal of burying the North–South divide. Along with most developing nations, Brazil had boycotted the 1972 UN Stockholm Conference. But now, Rio hosted what was to that date the world’s largest global summit. Every government on Earth attended — with Fidel Castro and George H. W. Bush Sr. sharing the same stage. The so-called ‘Rio Bargain’ led to the creation of major treaties aimed at protecting the environment, alongside targets to eliminate poverty and increase well-being in the Global South.

The Rio Earth Summit was viewed as a huge success. The commitment to transfer wealth and technology from North to South was bundled in non-binding commitments under the so-called Agenda 21.⁵ In contrast, the commitments to preserve biodiversity

and avert the climate crisis were subject to binding treaties (the Biodiversity Convention,⁶ and the UN Framework Convention on Climate Change, UNFCCC).⁷ On the surface, these binding agreements represented milestones in international environmental cooperation. But they lacked enforcement mechanisms, and this would prove to be a fatal flaw.

The 1990s dawned one year after the Berlin Wall crumbled in 1989. Soon after, the USSR disintegrated and the Cold War ended. All our hopes were directed toward the long-awaited peace dividend. In most industrialized countries, the largest part of government budgets had been squandered on one of the world's largest polluters — the military. Activists had pressed for years for military budgets to shrink and to redirect finances to the elimination of poverty. Now was the chance. Canadian scientist and environmental champion Dr. David Suzuki dubbed the 1990s the 'turnaround decade'. And why not? A major UN Summit had delivered plans to focus on environmental protection and poverty reduction, while at the same time, the Cold War and its massive waste of resources on the military was over.

Unfortunately, the heady optimism of the Rio Earth Summit was blunted almost immediately. In July, 1992, the most powerful industrialized nations convened at the G-7 Summit in Munich. The discussion of this group virtually ignored the Rio Earth Summit and its commitments to the developing world. The Munich G-7 communiqué did reference the work of the Rio Earth Summit, but the thrust of the commitment shifted to multi-lateral trade negotiations and economic growth.⁸

Perhaps more than any other development, it was the creation of the World Trade Organization (WTO) that ushered in a new world economic order and turned the 1990s from the 'turnaround decade' to the 'could-have-been decade'. The WTO was built on the post-war framework of the General Agreement on Tariffs and Trade (GATT), greatly expanding the scope of international trade and shifting the framework to increased corporate rights. While the GATT had focused on reducing barriers to trade of goods, the web of agreements in the Uruguay Round of WTO negotiations dealt with far more than goods. It set out global rules for intellectual property, services and a shift to corporate rights in trade agreements.

The North American Free Trade Agreement (NAFTA) also came into force in this period, further entrenching corporate rights in trade negotiations. For example, Chapter 11 of NAFTA created — for the first time — the right for foreign corporations to seek damages when government action (including environmental regulation) reduced their expectation of profits. Compensation could, for instance, be based on government actions to restrict the production and storage of toxic chemicals near drinking water. In the language of NAFTA, such government efforts were ‘tantamount to expropriation’.⁹

As the relative power of transnational corporations increased under the protection of NAFTA, the rights of the nation state for environmental protection and other social benefits declined. Indeed, the WTO committee on Trade and the Environment was tasked not with examining potentially harmful environmental effects of trade, but with identifying environmental treaties that posed barriers to international trade. This approach set the stage for the emasculation of environmental treaties as global corporate rule spread through an expanding web of investor-state agreements.

What is astonishing is the degree to which the ascendancy of the WTO was accepted without question. The GATT, upon which the WTO was built, had never set out such sweeping powers for corporate profit rights to trump governmental jurisdiction. Indeed, Article XX of the GATT¹⁰ created provisions to support government policy measures deemed necessary to protect human, animal or plant life, or the conservation of finite natural resources. These provisions still exist, but they have been all but ignored by the WTO.

In 1997, shortly after the WTO was established, the Kyoto Protocol was negotiated in Japan to protect climate stability.¹¹ Ten years earlier, the successful Montreal Protocol had used trade sanctions as an enforcement mechanism. In Kyoto, however, the trade ministers of industrialized countries instructed the environment ministers that trade sanctions were not an option. Even Canada, which had led the way in the fight against CFCs, significantly changed its stance. The Canadian Environment Minister, Christine Stewart, went to Kyoto with a clear message that her country would not sign the agreement if trade sanctions were included. This sentiment was echoed by many other wealthy nations, with the result that the Kyoto Protocol was left with no effective enforcement mechanism. Like the 1992 UN Biodiversity Convention, and the UNFCCC, Kyoto had no teeth.

Far too often, journalists and observers examining the failure of humanity to respond to the climate crisis overlook the rise of corporate power as a dominant factor. Other excuses — scientific uncertainty, high costs or uncertain benefits — are given weight. But what really happened was clear to those of us who were eye witnesses. As noted by the late Jim MacNeill, chief author of the Brundtland Report, the 1992 Earth Summit in Rio marked the beginning of the ‘carbon club’. Large transnational fossil fuel giants saw the threat. They knew it was existential. The threat they registered was not the fact that their product threatened human life on earth; it was a threat to their industry and its profits.

As Naomi Klein wrote in her 2014 book *This Changes Everything*, the climate crisis has experienced the problem of ‘bad timing’.¹² Just as the world began to see compelling evidence of human impacts on the climate system, the rise of the WTO and the growing international reach of corporate power acted to limit meaningful action to address climate change. Some of the major fossil fuel giants began spending hundreds of millions of dollars to mislead the public. Their strategy — taken from the playbook of the big tobacco lobby — was (and is) to create doubt about science.¹³ And they have been successful. As a result, we failed to take appropriate action when we had the chance to avoid the climate emergency we now experience. But we still have the chance to avert the worst. The worst is nearly unthinkable — so we push it to the back of our minds. The worst is crossing a point of no return, where human-caused greenhouse gas emissions trigger unstoppable, self-accelerating global warming.

My own transition in the last part of this chronology has been from an activist in non-partisan civil society to an actor on the stage of partisan politics. While all those working to preserve a healthy biosphere — activists, academics, industry leaders or elected politicians — play an important role, my own path has led me to seek desperately needed change through involvement in Green Party politics.

From their early humble beginnings in the 1970s, Green Parties now exist in nearly ninety countries around the world. These parties have exerted significant political influence as members of coalition governments, most notably in Germany, where they have been instrumental in the phase out of nuclear power. Green Parties come in many flavors, but they all adhere to fundamental values, including environmentalism, social

justice and non-violence. Greens recognize the need to simultaneously address the two large trends underpinning the deterioration of Earth's natural systems — the North–South divide and global corporate rule. We believe that achieving the seventeen UN Sustainable Development Goals will ensure both climate action and social justice.¹⁴

As we strive for a truly sustainable future, we must deconstruct global corporate rule and put the global survival ahead of corporate greed. It is time to put large fossil fuel companies on notice. Governments around the world must be prepared to revoke the corporate charter of any company that threatens the integrity of a habitable biosphere. We can and should create a World Trade and Climate Organization to ensure both prosperity and survival.

We have had fifty years of experience in environmental law and policy. And from that we know that we are failing our own children and the myriad of other species with which we co-inhabit this planet. Yet solutions are available. We already have the tools we need to confront the climate emergency. The very same tools that work for liberalization of trade and the protection of intellectual property can work to deliver global climate action, ensure sustainable economic development and eliminate poverty.

Why not?

Endnotes

1. See also 'Climate Negotiation' by Rosemary Lyster in this volume.
2. World Commission on Environment and Development, *Our Common Future*, Oxford: Oxford University Press, 1987, <http://www.un-documents.net/our-common-future.pdf>
3. See also 'Air' by Jon Abbatt in this volume.
4. Available at <https://ozone.unep.org/treaties/montreal-protocol-substances-deplete-ozone-layer/text>
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7. Available at <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change>
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11. Available at <https://unfccc.int/resource/docs/convkp/kpeng.pdf>
12. N. Klein, *This Changes Everything: Capitalism vs the Climate*, New York: Simon & Schuster, 2014. See especially 'Part one: Bad timing', 26–164
13. See also 'Media' by Candis Callison in this volume.
14. Available at <https://sustainabledevelopment.un.org/?menu=1300>

