

Jonathan Adler is guest-posting over at the Atlantic on conservative approaches to environmental law. In general, I can only support someone who [is valiantly trying to make arguments about why conservatives should support efforts to address climate change, and developing climate change policies that are consistent with conservative and libertarian principles](#). But I want to address another argument that Jonathan made in his introductory post, an argument that I've seen regularly repeated among not just conservatives but also economists.

The argument is that market-based mechanisms for addressing environmental problems (e.g., taxes, tradeable permits, property rights) are not just preferable because they might be more economically efficient than other regulatory tools, but [also because they are less vulnerable to what economists often call "rent-seeking."](#) Rent-seeking describes efforts by various interest groups to use government powers to extract economic benefits – these are usually seen as problematic because they are both economically inefficient and because they often have undesirable consequences in terms of wealth distribution. One example of rent-seeking that many economists point to are farm subsidies: These subsidies use taxpayer money (therefore money that is extracted from the public as a whole) to pay money to farmers, including agribusiness entities that are richer than the average household. The subsidies distort economic decisionmaking by farmers and are often regressive in their income outcomes. Related are minimum price supports for farm products (milk is the most significant current example). Again, farmers get more money, but in this case consumers (again, including lots of poor people who pay a higher percentage of their income for food) pay the burden.

Conservative commentators have long asserted that there are many examples of inefficient rent-seeking in environmental law – like regulatory provisions that put a disproportionate burden on new facilities, while letting old facilities pollute at much higher levels (these regulations act as barriers to entry that protect incumbent firms). Jonathan's post summarizes the classic argument that these kinds of regulatory systems are far more vulnerable to rent-seeking than market-based systems.

Rent-seeking is a result of the public nature of the decisionmaking process, in which the government compels all citizens to comply with the laws, pay taxes, etc. It is the compulsory nature of law that allows rent-seeking to occur. But market-based mechanisms – whether they be taxes, property rights, or tradeable permits – are also public decisions as well. You don't have a choice to pay your taxes; you don't have a choice about whether to comply with property rights.

So the question is: Why should we assume that the establishment of a property rights

system or a tax system would be any less vulnerable to rent-seeking than the establishment of a regulatory system like we have under the Clean Air Act? You might argue that tax or property systems or tradeable permit systems are simpler, and therefore makes rent-seeking harder to pursue because it faces more public scrutiny. But Waxman-Markey was a tradeable permit system, and it was hardly simple; nor is our tax code a model of simplicity either. Moreover, it's unclear to me why public scrutiny would make rent-seeking less likely - farm subsidies are pretty direct and open, and they've lasted for decades.

Another possibility might be that tax and property systems just need to be set up once, and require less administrative processes. Less ongoing decisionmaking therefore creates fewer opportunities for rent-seeking. There might be more to this perhaps - but consider the large bureaucracy that we need to run our tax code (Treasury letter rulings, IRS enforcement systems), or the fact that there is a large bureaucracy that is needed to interpret, adjust and apply a property system to a changing world: courts. (At least, that was true under the common law system; today legislatures do more and more of that work.) And there's no reason to think that courts are somehow immune from rent-seeking.

You could, of course, try to make your tax and property systems very rigid, so that they don't have major changes that open the door to rent-seeking. Strict takings doctrines that make changes to property systems unattractive (because they require compensation to all parties who are adversely affected) can do this. But that may be the last thing we need when environmental problems are dynamic (because of changes in economics, technology, and ecology) and suffused with large amounts of uncertainty (meaning that we might want to adjust our policy over time as we learn more about the nature of the environmental problem). Even worse, if everyone knows that the tax or property system you're setting up will be rigid and last for a long, long time, that means that the economic stakes for that initial decisionmaking process will be very, very high - creating an incentive for even more rent-seeking efforts at that initial stage. In other words, by eliminating later changes to the environmental policy system, you might just increase the rent-seeking frenzy around the initial creation of the system.

None of this means that market-based mechanisms can't be less vulnerable to rent-seeking in particular circumstances, but my hunch is that this varies a lot more depending on the specific political and economic context ([as Jonathan himself states in a later post](#)).