The other day I posted about Australia's repeal of its carbon tax. Australia is not the only country that is going through some retrenchment in environmental law. In Canada, the government made some substantial alterations to the requirements for environmental review for government projects (reducing the scope of the requirement and limiting it to certain major projects); it also reduced the coverage of federal protection for fisheries and fish habitat. On the other hand, here in the United States, despite the best efforts of the Republican-led House, the Obama Administration has been pressing ahead with efforts to regulate greenhouse gases under the Clean Air Act.

One question is whether the political system that a country has makes it harder to enact environmental laws, but also harder to repeal them. In a presidential system like the United States, where the President and Congress are separately elected, and both must consent to any legislation, it can be very difficult to get legislation passed. (As the past few years have proven.) In a parliamentary system like in Australia or Canada, the election to the legislature also (generally) determines the chief executive. Thus, there is really only one barrier to enacting legislation – getting a majority in the legislature. (It can get a little more complicated where you have two separately elected houses of the legislature, like in Australia.)

There have been a number of criticisms of the U.S. system as being too rigid to allow for meaningful legislation to be passed, including environmental legislation such as greenhouse gas taxes or regulation. On the other hand, it is very difficult in the U.S. system to repeal legislation. Thus, as long as President Obama (or someone else who supports EPA's efforts to regulate greenhouse gases under the Clean Air Act) is in the White House, even Republican majorities in both the Senate and the House will be unable to stop EPA's regulatory actions. But in Australia or Canada, it can just take one election to the legislature to completely shift the political landscape, and produce a sea change in environmental legislation.

So the real question is whether we value stability in environmental law over the ability to enact new legislation frequently. My tentative answer – one that I am still considering and working out – is yes. First, to the extent that environmental harms are irreversible, we want long-term commitments – even a short period of legal backsliding can cause harms that cannot be repaired. Second, to the extent that environmental harms are the product of focusing on short-term payoffs over long-term benefits, then we might want environmental laws that provide long-term commitments and are resistant to short-term political pressures (see here and here for arguments to that effect). Third, to the extent that we are using environmental

laws to build up political interest groups that can produce further change in the future (such as climate change policy), then we might want laws that are seen as long-term commitments resistant to change – that will spur long-term investment by private interests and change the interest group landscape.

One strong argument for making new legislation fairly easy to enact is that this allows for responding to changes in circumstances – such as new emerging environmental harms. But there can be ways to draft environmental laws that allow for flexibility to deal with new harms: For instance, the Clean Air Act has provisions that allow for the identification and regulation of new pollutants, which is what is being relied upon to regulate greenhouse gases. Of course, these efforts at flexibility won't be perfect.

On balance, I tentatively think the arguments for making environmental law hard to repeal outweigh the arguments for making it hard to enact. But that is only my tentative conclusion for the moment.