

In 1965, scientists sent LBJ a [memo](#) mentioning the risks of climate change. Imagine if history had been a little different. Suppose it had been this memo and a follow-up [report](#), rather than Rachel Carson's attack on pesticides, that sparked the environmental movement. How would environmental law look different and how might we be thinking about it differently?

First of all, we would have had a very different understanding of the air pollution problem. We thought that the key to reducing air pollution was to require better pollution control devices. Instead, we would have understood that the root problem was the burning of fossil fuels in the first place. Conventional pollution controls would have been seen as transition measures until the shift to clean energy, so the Clean Air Act would have been written differently. We would have started pumping money into renewable energy research. We would have known that we needed to build new transmission lines. And we would have created incentives for clean energy sources. Environmentalists would have been more open to thinking about existing zero-carbon power from nuclear.

We would also have understood the link between energy law and environmental law much earlier. Energy conservation would have been seen as a key environmental strategy, and we would have understood that that real solution to urban air pollution control was changing the energy mix away from fossil fuels in general and coal in particular. We would not have been surprised to see state governments, with their direct involvement in approving new power generation, taking a leading role in this area.

Similarly, we would have understood that the problem wasn't just cars producing smog but urban designs and transportation systems that produced a car-based society.

Other parts of environmental law might also have looked different. We might have thought more about the need to preserve carbon sinks like forests and soil, and we would have focused a little more on habitat conservation and a little less on saving individual species. Knowing that we would be unable to completely avoid higher carbon levels, we would also have realized that the idea of protecting "untouched nature" was a mirage, and that we really needed to think more broadly about biodiversity and ecosystem reliance.

The point that I'm trying to make is not about alternative history but about our ways of conceptualizing environmental law. Environmental law is not all about climate change, but climate change is the central issue today. Understanding that should lead us to reconceptualize the field as a whole.

