

Defending the Planet: A Columbia Law Podcast **Episode 1: “The Biden Reset”**

[00:00:05] **Jedediah S. Purdy** The U.S. is pretty much unique in having generated a partisan divide over climate change.

[00:00:15] **Catherine McCabe** This administration is clearly committed to lead the way in doing what we can do to reduce global warming.

[00:00:24] **Jedediah S. Purdy** It needs to be easier to act collectively. There are dangers, but the dangers of not acting now significantly exceed the dangers of acting.

[00:00:34] **Michael B. Gerrard** This is *Defending the Planet* from Columbia Law School. I’m your host, Michael Gerrard. I’m a professor at Columbia Law School, where I teach courses on environmental and energy law and serve as faculty director of the Sabin Center for Climate Change Law.

[00:00:51] **Michael B. Gerrard** Each week, I’ll be joined by guests who are experts in the field, including several of my colleagues at Columbia. In this series, we’ll be talking about combating the climate crisis through one of the most important and effective sets of tools at our disposal: the law.

[00:01:14] **Michael B. Gerrard** Mere hours after taking the oath of office, President Biden sat down at the Resolute Desk to sign executive orders. With the stroke of a pen, he moved to put the U.S. back into the Paris Climate Agreement and to kill the Keystone XL pipeline. A week later, he signed orders that revoked many of President Trump’s climate policies while launching an aggressive regulatory agenda of his own. Biden has made climate policy a centerpiece of his approach to governance. His goals include cutting U.S. greenhouse gas emissions in half by 2030, achieving zero carbon electricity by 2035, and achieving net zero emissions economy-wide by 2050. He wants to vault the U.S. back into a position of international leadership on climate issues. But are these goals realistic with a Congress that hasn’t passed major environmental legislation since 1990 and with a Senate that is now evenly split? How badly is the fight against climate change harmed by our partisan divide? And are the nation’s legal framework and its social order equipped to take on a challenge of this magnitude?

[00:02:26] **Michael B. Gerrard** I’m excited to dive into these questions with my guests Catherine McCabe and Jed Purdy on today’s episode of *Defending the Planet*.

[00:02:35] **Michael B. Gerrard** Columbia Law alumna Catherine McCabe held high-level positions in the U.S. Department of Justice at the U.S. Environmental Protection Agency and then became commissioner of the New Jersey Department of Environmental Protection, where she led initiatives to reduce greenhouse gas emissions, build resilience to climate change, revitalize water infrastructure, and promote environmental justice. Jed Purdy teaches and writes about environmental property and constitutional law, as well as legal and political theory at Columbia Law School. His most recent book, *This Land Is Our Land The Struggle for a New Commonwealth*, explores how environmental politics has been closely connected with issues of distribution and justice. Welcome, Jed and Catherine.

[00:03:22] **Jedediah S. Purdy** Thanks, Michael.

[00:03:23] **Catherine McCabe** Thank you, Michael.

[00:03:25] **Michael B. Gerrard** Catherine, can you give us an overview of how U.S. climate policy has changed in the transition from President Trump to President Biden and what actions the Biden administration is taking on climate change?

[00:03:38] **Catherine McCabe** Yes, Michael, I am thrilled to say that we have gone from moving in reverse, pretty steadily in reverse during the prior administration, to fast forward. And this administration is moving out, as you recited, as quickly as possible, to reestablish the United States commitment to reducing greenhouse gas emissions and to taking a leadership role as we ought in the world to get other nations to join us in that commitment. The president wisely began by rejoining the Paris Agreement. This administration is very, very clearly committed to raising once again the U.S. role and the dedication of our federal government to trust the science and to lead the way in doing what we can do to reduce global warming and the greenhouse gas emissions that we need to as quickly as possible. The president, as we all know, and the administration have proposed an incredibly ambitious infrastructure initiative to support the electrification of the transportation sector, which is critical. He has also proposed to spend a fair amount of money on capping abandoned gas wells to eliminate methane emissions because methane is a very important and fast-acting global warming gas.

[00:05:05] **Michael B. Gerrard** And of course, this is not all just EPA. It's got a lot—lots of agencies around the government are acting, right?

[00:05:10] **Catherine McCabe** That's right. So when you talk about capping methane emissions, for example, a lot of that is private in the private sector from oil and gas production. But there's a lot that occurs on federal land and the Department of the Interior has a lot of control over what happens there. So even without this funding proposal, to step it up and provide hundreds of thousands of jobs for workers in the oil and gas field, there's a lot that they can do on the regulatory basis in the agencies of EPA and Department of Interior and many others. Department of Energy is also really important married with the president's funding proposal for new clean technology research. There's a lot that they're already able to move out on, even if this ambitious funding proposal for infrastructure does not make it fully through the Congress.

[00:06:07] **Michael B. Gerrard** So Congress hasn't passed a major environmental law since 1990. They've been paralyzed since then. When did that paralysis start and what caused it?

[00:06:17] **Catherine McCabe** I believe it began in 1994 and that was the midterm election for the Clinton administration that flipped the House of Representatives to Republican control led by Speaker Newt Gingrich. And he set a tone—he and his leadership set a tone that was far more partisan than what we had previously seen specifically on environmental issues. And I do believe that not only the substance of what the Congress could get done, but the tone and the ability of how people could work together changed dramatically after that.

[00:06:54] **Michael B. Gerrard** So let me now turn to Jed: What effect is this flipping back and forth have on the role on the role of the U.S. in the international community when it comes to climate change?

[00:07:04] **Jedediah S. Purdy** I think it creates a fundamental challenge to the ability of the U.S. to make the sorts of commitments that are really necessary for a country to lead effectively in the development of international regimes, particularly ones as new and as basic in their scope and goals as climate policy. The U.S. is pretty much unique in having generated a partisan divide over climate change, not just at the level of how we ought to approach it and so forth, but its reality as a challenge. So I think the fact that the U.S. will almost predictably move from the kind of posture we had in the last four years to the sort of posture that Biden administration has, has thankfully taken presents allies with a conundrum. It's very hard to get as far as you would like on any global project without the U.S., which remains a *sui generis* superpower, even after the changes of the last couple of decades.

[00:08:23] **Michael B. Gerrard** The U.S. Republican Party is the only major party in the world which has climate denial as a core element of their platform.

[00:08:29] **Jedediah S. Purdy** Yeah, just so, so our domestic political pathologies present a very serious roadblock in the creation of world order around this issue. So to some extent, the burden of climate action in the U.S. moves from government to other areas of governance or social organization, where the U.S. is also central, like financial regulation, accounting standards, investment patterns. And I think U.S.-based or predominantly American-centered enterprises and industries are going to play an important role as finance shifts in a way that facilitates a green pattern of investment. But in the absence of consistent government collaboration, that's much harder.

[00:09:31] **Michael B. Gerrard** You sometimes talk about industrial policy. Can you explain what you mean by industrial policy and what role it plays here?

[00:09:38] **Jedediah S. Purdy** Crudely [it] involves the government setting a direction of travel, setting an agenda for innovation and sectoral success like which industries flourish in providing the kinds of means from direct investment to regulatory support that they need to become internationally competitive and and stable and successful here. The climate infrastructure investment package is—is called the American Jobs Plan, and a significant portion of the sweet spot the Biden administration hopes to hit is the

regeneration of American manufacturing, the creation of good jobs here alongside a significant move toward decarbonization. And that means making the U.S. competitive. And, and it also means preference for domestic production of government purchases for all of the materials of an infrastructure transformation.

[00:10:50] **Michael B. Gerrard** Jed, do you think that President Biden's infrastructure bill, if it goes forward, will have a political impact?

[00:10:56] **Jedediah S. Purdy** It's hard for me to say yes or no with confidence, but it's clear that a huge part of the gamble is to show that an active, creative investing state can make lives better in a bunch of respects by creating better built environment, which sounds sort of abstract, but we're talking about, you know, cheaper electricity, better roads, better bridges, faster, more convenient transport—and also produce the kinds of jobs people want and need. It's quite heartening that the Biden people came in with a sense that they had a limited time in which to reverse the cynicism, even nihilism about government, and the kind of looting, sort of pillaging, and mocking spirit that the last administration brought to it and show that, in fact, it can do what we need and can do it well. And it's with that gamble in mind, as well as the planet's needs in mind, that they're going big in this way. Whether it will succeed, I think only time will tell.

[00:12:06] **Michael B. Gerrard** Why do you think that climate denial has become such a core part of the current Republican Party's philosophy?

[00:12:18] **Jedediah S. Purdy** Well. I wish I had a clean answer. Increasingly it seems of a piece with a larger pattern of the denial of inconvenient facts, it seems to be characteristic of the way that party is organizing itself to a degree that's become really frightening. I hardly need to say, but I thought for a long time, that the really existential threat to the basic operation of a democracy is the widespread denial of the political facts that elections create. That is the denial that the votes are what the votes are. And the fact that we're in that position now is quite alarming. So, climate denial is of a piece, it seems to me, with that sort of denialist political culture,

[00:13:18] **Michael B. Gerrard** so we have climate denial, election denial, virus denial, vaccine rejection, all of which have profoundly tragic consequences.

[00:13:27] **Jedediah S. Purdy** Yes, totally. I would I would add that if you're a certain kind of go-it-alone nationalist and you think that walls are somehow both the solution to our problems and the emblem of sovereignty, then a problem that can't be contained within national borders is not the kind of problem that you want to have at the center of politics for the rest of your life. So, I think there's a very basic conflict between the disposition of Trumpist nationalism and the global reality of climate change. And right now in the Republican Party the Trumpist disposition is winning.

[00:14:11] **Michael B. Gerrard** And climate change, of course, is also a problem that can't be solved without strong government action, strong regulation of corporations, which also runs against these ideologies.

[00:14:22] **Jedediah S. Purdy** Absolutely. Absolutely.

[00:14:24] **Michael B. Gerrard** So, Catherine, what are your thoughts on why denialism is at the heart of the Republican agenda?

[00:14:31] **Catherine McCabe** Well, I could think of three. One is really very human. Climate change is scary. It is really scary. And what do people do when they're scared? People want to put their total faith in a leader that they think they can trust to get them to the place of safety. Well, we all know that that place of safety, of course, if you believe in science, is in dealing with climate change. But if you deny it, it is exactly like the first stage of grief that Elisabeth Kubler-Ross introduced us to so many years ago: The first stage of grief is denial. I think that partly explains why the people are so wanting to follow Trump and other leaders who are into the climate denial and propounding climate denial. But why do they do that? So that brings me to my second reason. The Republican platform has always been more conservative when it comes to regulation in the sense of wanting less regulation by the government and that got married together with the idea, false in many people's opinion, that the environmental regulations themselves caused loss of jobs. That is actually not true. The—we know that the reasons for that are really more global trade and the export of what used to be U.S. jobs to places like Asia and Mexico. Those reasons notwithstanding, people believed a lot of the leaders in the GOP that were saying that it's the regulation that's causing the problem with the economy that is making these jobs that you were dependent on go away. Why do the Republican leaders stay not only stuck on this "regulation causes loss of jobs," but then expand that to be anti-climate change? Well, who loses with the climate change initiatives? That's reason number three, the oil and gas industry. The oil and gas industry, but also the power industry, as we have known it in the U.S., you know formerly dominated by coal. Now, I think coal is not the dominant factor, but it was replaced by natural gas, also a fossil fuel, so we made things a little better with that transition, but not a lot. And who is supporting the Republican politicians? And who has the most powerful lobby in Congress? It is those sectors that ultimately are supported by the oil and gas. So I think for all of those reasons, people's basic fears which lead them to denial and the general pattern of anti-environment now encompassing anti-climate change or anti-environmental regulation, I should say, now encompassing anti-climate change measures and the continuing power of that industry has put a fair stranglehold on the GOP.

[00:17:39] **Michael B. Gerrard** How far can Biden go without action by Congress and what can't he do without Congress?

[00:17:45] **Catherine McCabe** Well, there's a fair amount that he cannot do without Congress. And probably one of the most important things is appropriate money. It takes our Congress to do that. And his infrastructure proposal is something that is entirely up to Congress. His proposal is both modest and bold because his goals are extremely bold that he has set for reducing greenhouse gas emissions. But the funding proposals that he has put to Congress, while they seem very bold because the numbers are so large by themselves, even if passed by the Congress, would not be enough to accomplish the goals that the president has set out for us, which are so necessary to really make a difference in whether the world overheats, essentially. And I think that what he can do is issue a lot of regulations, which they're already doing under existing laws by the Clean Air Act. But there'll be some limitations on those. You also have to look at the role of the litigation that we see occurring and that we know will continue to

occur and a lot of it landing in the Supreme Court eventually where Congress and interested industries usually will be challenging what regulations are put out by the Biden administration to try to take action. Using the power of federal control of the land and the natural resources to do things like limiting emissions from oil and gas production on federal lands or banning drilling in sensitive places will be difficult to challenge—they will be challenged, but they're unlikely to slow him down—so he'll probably be fairly successful with that. And although that is a significant contribution by itself, it's not enough. And of course, he has the power to use his bully pulpit, which is probably the most important tool and one that he is using, I think, extremely well. I think the boldness of the vision that he has laid out and what seems like a big infrastructure plan is really meant to lead the way, which is what he can do. To lead the way that industry will need to follow. As you mentioned in the beginning of the broadcast, Michael, we haven't seen environmental statutes be modified since 1990 and this precedes any debates about climate change. We have not been able in this country to get back to the place that we had in the 1970s and 80s of bipartisan agreement that we all live in the same environment and it's our home and we need to protect it and we need to do that together. That's not where we are. That's the place we need to get back to.

[00:20:28] **Michael B. Gerrard** Litigation certainly plays an important role and we'll have a whole episode on this podcast series devoted to litigation. Three additional things I would say that the president cannot do without Congress are to impose a price on carbon like a carbon tax. Now, Biden hasn't said whether he wants that one way or the other, but he would need Congress to do that. Congress would be needed to impose a clean power standard to require the electric utilities to get their electricity from clean sources. And only Congress can take away most of the subsidies for fossil fuels and add to additional subsidies for renewables.

[00:21:07] **Catherine McCabe** Which I believe, Michael, is an important part that those tax subsidies of President Biden's infrastructure proposal, so it goes around into seeing how much will the Congress give them.

[00:21:17] **Michael B. Gerrard** That's right, the infrastructure proposal calls for both more subsidies for clean energy and for a clean power standard. We'll see what happens. Catherine, you headed a state environmental agency. How much could the states do on their own or with each other?

[00:21:34] **Catherine McCabe** Well, the states can do a lot and they have done a lot. At least those states willing to take a forward role, which I would estimate to be maybe 20. And they must continue to play a major role in doing things like promoting the transportation sector, electrification—the states can't set the federal standards. They couldn't set the gas mileage standards. They can't set the emission control standards, but they can do a lot. The states have also played a big role and can continue, must continue, to do that in supporting renewable energy. And we've seen even Republican states, because they've got the wind resources, going all out to support the wind energy. The states are also incredibly important for the building sector. Most of us still use natural gas to to run our stoves and our furnaces. And these are, I believe, one of the largest sources of emissions in the country. I know in New Jersey, the, that sector was responsible for, say, 25 to 30 percent of the state's greenhouse gas emissions. And

I think nationally, it is a similar picture. It may be up to one third of the total. Reducing greenhouse gas emissions from buildings can be done by converting buildings to renewable energy, and ultimately, that is going to take an expansion of things like the support, the grants, and the tax credits that the states have been giving to promote solar. The states and the local governments, of course, control the building codes, and that is a way that they can use their state and local power to actually require and accelerate the transition to buildings that are more carbon-free energy based. And then finally, of course, there's adaptation. Climate change is already occurring. We all know that. And the land use control that the states have is incredibly critical to be preparing the people to adapt to the climate change that we're already seeing with sea level rise along our coastlines, with more flooding inland and low lying locations where many of our urban populations are, that is uniquely going to be within the state and local governments' control.

[00:23:58] **Michael B. Gerrard** New York City has adopted a very important law called Local Law 97, which is aiming to convert the heating of buildings, which, as you say, is a major source of greenhouse gases away from natural gas and oil to electricity. It's going to be a major struggle over the next several years to comply with that. And it's not at all clear who exactly is going to pay for it. But there's no question that the cities play a major role there.

[00:24:25] **Michael B. Gerrard** Jed, do you think that the difficulty in achieving climate legislation is a reflection of what happens to be the politics of the moment, or do you think it reveals something deeper about the U.S. Constitution and political system? Do you think this paralysis is transitory or is it long lasting? And do you see a way to overcome it?

[00:24:47] **Jedediah S. Purdy** I do think that there's a bad fit between our constitutional structure, which is designed to make legislation hard to pass in the absence of very strong consensus in the country or among the political classes, in the absence of supermajorities, because it creates a lot of veto points, and the problems of the 21st century require a more active and ambitious form of governance— they just do. It needs to be easier to act collectively. There are dangers, but the dangers of not acting now significantly exceed the dangers of acting.

[00:25:29] **Michael B. Gerrard** So, for example, if we had more than 50 Democratic senators and had the ability to overcome the 60 vote filibuster rule, that could make an enormous difference.

[00:25:39] **Jedediah S. Purdy** Totally. You can even think more radically about a Senate that might be willing sometime down the road under different circumstances to adjust the weight of votes or otherwise adjust procedures to make it harder for states that represent a relatively small minority of the country's population to hold up legislation supported by representatives of a more substantial majority of the country's population. But that's a different politics than we have now and that you could imagine that, that it is the sort of thing that can be done without a constitutional amendment to try to right some of the imbalances that have emerged in the system.

[00:26:16] **Michael B. Gerrard** If you were president with a congressional majority, what one thing would you do that you think would have the greatest impact in the fight against climate change?

[00:26:25] **Catherine McCabe** I would pass President Biden's infrastructure proposal and do it very quickly, and that would make a huge difference towards jumpstarting this country to be focused together on a vigorous effort from both the government and the private sector, which we're trying to support and push towards changing the way that we run our economy to put us on that path that we need to be on if we're going to be successful in reducing our greenhouse gas emissions and leading the rest of the world, as we should, given our contribution to the existing greenhouse gases in the atmosphere, to a future that will prevent us from a disastrous global warming.

[00:27:11] **Jedediah S. Purdy** If I really had the capacity [!] would pass an even bigger green infrastructure bill, something on the scale of some of the Green New Deal proposals from the primary. But I think for exactly the same reason that Catherine chooses this priority, that you need a piece of legislation that won't just shift a few cycles of spending, but will both create the physical innovation and financial infrastructure to set us on a different trajectory, but also shift political constituencies and produce its own support for a next wave and a next wave of facing down the challenges that climate change is going to continue to throw up—in the same kind of way that the original New Deal produced constituencies that supported versions of its changes for decades. I think that one of the most politically intelligent things about the ambitious infrastructure bill is that if it succeeds, it creates its own new patterns of political support, at least enough to make a lasting difference. And I think the theme of this whole conversation has been that you need both to find ways to make policy that does the right things and to find ways to make policy that makes the right politics.

[00:28:41] **Michael B. Gerrard** Jed and Catherine, thank you so much for joining us.

[00:28:43] **Catherine McCabe** My pleasure.

[00:28:44] **Jedediah S. Purdy** No, it's really, really nice to be with you both.

[00:28:47] **Michael B. Gerrard** My guests today were Jed Purdy and Catherine McCabe. I hope you'll join us on *Defending the Planet*. Make sure to follow us wherever you get your podcasts. Thanks so much for listening. *Defending the Planet* is brought to you by Columbia Law School and is produced by the Office of Communications, Marketing, and Public Affairs at Columbia Law School. Our executive producer is Michael Patullo. Julie Godsoe, Nancy Goldfarb, and Carrie Midland producers. Editing and engineering by Jake Rosati. Writing by Martha Moore and Dan Shaw. Production coordination by Zoe Attridge. Special thanks to Michael Burger and the Sabin Center for Climate Change Law. If you like what you hear, please leave us a review on your podcast platform. The more reviews we have, the more people will get to listen. If you're interested in learning more about the law and climate change, visit us at Law Dot Columbia Dot Edu or follow us on Facebook, Twitter, and Instagram. You can also follow the Sabin Center on Twitter @sabincenter.