

TRANSCRIPT

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Guest: Dan Bodansky

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Dan Bodansky: I hope that the [Paris Agreement's](#) enough, but I certainly wouldn't want to bet on it, so I think we also need to be thinking about if it's not enough, what are the other options that we could potentially try to use?

Robert Stavins: Welcome to [Environmental Insights](#), a podcast from the [Harvard Environmental Economics Program](#). I'm your host, [Rob Stavins](#), a professor here at the [Harvard Kennedy School](#) and director of the Environmental Economics Program. With the [27th Conference of the Parties or COP27 of the United Nations Framework Convention on Climate Change](#) having concluded less than two months ago in Sharm El Sheikh, Egypt, this is a good time for us to step back and reflect on the history and the evolution of these annual climate negotiations, which began with COP1 in Berlin in March of 1995, which was following on the UN Climate Conference in Rio de Janeiro in 1992. To do this, there's no one I know better positioned to provide such perspective than [Daniel Bodansky](#), the Regents' Professor of Law at the [Sandra Day O'Connor College of Law](#) at [Arizona State University](#). Welcome, Dan, to Environmental Insights.

Dan Bodansky: It's a pleasure to be here.

Robert Stavins: So in a few minutes, I'm eager to hear your reflections on the history and evolution of the International Climate Talks, and if we have time, your assessment of what happened at this year's climate talks and associated festivities at COP27. But first our listeners will be interested to learn how you came to be where you are. So where did you grow up?

Dan Bodansky: I grew up in Seattle, Washington.

Robert Stavins: And that means primary and high school there?

Dan Bodansky: Yeah, primary and high school. I mean up until college.

Robert Stavins: Up until college, in which case you moved pretty far east, about as far east as you could go, is that right?

Dan Bodansky: That's right. I went to Harvard for undergraduate and then I actually went even further east to Cambridge University for graduate school and history and philosophy of science

Robert Stavins: At Harvard, what was your concentration?

Dan Bodansky: Social studies.

Robert Stavins: Social studies, which is a very interesting interdisciplinary or multidisciplinary concentration. So that involves what? Political science, sociology, economics, maybe anthropology?

Dan Bodansky: Fair amount of sociology, some economics. And then I actually was particularly interested in philosophy and philosophy of the social sciences, so that's when I went on to graduate school on that subject

Robert Stavins: At Cambridge. And then you finished there in 1981 and you went back across the ocean to what many people would call the leading law school in the United States, if not the world, Yale Law School. Is that right?

Dan Bodansky: That's right. I came back in '81 and was there three years? Graduated in '84.

Robert Stavins: And what did you sort of focus on if to whatever degree you were allowed to focus in law school?

Dan Bodansky: Yale is actually unusual in that you do have a lot of flexibility. I was interested in international issues, so I gravitated towards international law. So I took basic international law and a few other courses including human rights law. There actually wasn't a course when I was there on international environmental law, so I was not able to take that subject. But I did take some other international subjects, and then I worked one summer in law school at the State Department in the Legal Advisor's Office.

Robert Stavins: And then your first position out of law school was what?

Dan Bodansky: Well, I clerked for a year for a federal judge, and then went from there back to the State Department to work as an attorney at the Legal Advisor's Office at the State Department.

Robert Stavins: Your clerking was at the US Court of Appeals, is that right?

Dan Bodansky: That's right. I was on the Fifth Circuit in Dallas, Texas.

Robert Stavins: And then as you said, from there, you went next to?

Dan Bodansky: Then I went into academia and I was at University of Washington for my first position. I was there for, well, 12 years altogether, but two of the years I was on leave. I served as the Climate Change Coordinator of the State Department, so I took a leave of absence during the Clinton Administration.

Robert Stavins: So that was 1999 to 2001 approximately.

Dan Bodansky: Yeah, so that was in the aftermath of the [Kyoto Protocol](#). They were negotiating the rules for how Kyoto would work, so I was involved with that process.

Robert Stavins: So tell me those years that you were working on the climate negotiating team at the Department of State, I'm sure there were many stories you could tell, but I'm interested to hear one high point and one low point.

Dan Bodansky: Well, I would say the high point and the low point are closely related. The high point was at the end of the COP6 in The Hague, that was where the negotiations were supposed to wrap up on the Kyoto Protocol rule book. We were not actually going to join the Kyoto Protocol. We hadn't joined it at the time, but the hope was that if the rules came out the right way, maybe that would make possible the US joining the Kyoto Protocol. So the negotiations were very tortuous, but at the last night I was delegated along with my colleagues to work out a deal with the European Union, which was our major negotiating partner and adversary really.

And we actually did work out a deal. So that was, I would say, a high point when we thought we actually had a deal for how the Kyoto Protocol rulebook would work. But then when it went back to the EU ministers, we were negotiating with France, who was the EU president at the time, and Germany and England, UK. And when it went back to the EU larger group, it was rejected, so that was the low point when the entire negotiation fell apart and The Hague Conference actually ended in failure with no outcome actually.

Robert Stavins: You know, it's interesting that you mentioned that the EU was both a partner and also an adversary because as I recall, in the lead up to the negotiations on the Kyoto Protocol itself, the US as long as with the set of countries then I think called the "umbrella set of countries," which was the US, Japan, New Zealand and others, were strongly in favor of having an element in the Protocol which would be emissions trading, which turned out of course to be Article 17. And the EU was the major opposition to that and then of course it turned out, that the part of the world that put in place a major CO₂ emissions trading system subsequently was in fact the European Union.

Dan Bodansky: Yeah, so they really flipped on that. I would say the way we described the outcome of Kyoto when I was working on the Kyoto Protocol rulebook was EU targets/US architecture because the Kyoto Protocol had stronger emission reduction targets than the US wanted. The US went to Kyoto hoping to get a stabilization target, a zero percent reduction target from 1990 levels, and we came out with a minus seven target. So, it was a much stricter, harder target to meet than we wanted, but we did get in a lot of the architectural elements that we wanted in Kyoto, primarily emissions trading, and then also the ability to use removals from land use and land use change to count towards meeting the target. But then the EU actually flipped on trading, and so they ultimately, as you said, implemented the largest trading system in the world.

Robert Stavins: It's interesting you mentioned that the US wanted a less ambitious target than what eventually was negotiated. That target for the US, which numerically looks like it's less ambitious than what the EU took on, as I've written about in several places, because of the base year of 1990 and the economic growth and hence increase in energy use and increase in carbon emissions that had taken place during the decade of the 1990s, that was actually a much more ambitious target than the US took on than what the European Union took on given German reunification and then also what took place with the Thatcher Government with British coal.

Dan Bodansky: That's right. A lot of it has to do with how the target is characterized. So a minus eight target, which was the EU target, sounds like a stronger target than the minus seven target of the US. But when you look at it compared to 1990 levels actually in terms of sort of the economic burden of trying to meet the target, the US target we argued was stronger. Of course, the EU objected to that characterization, so that was one of the many points of contention between the two sides.

Robert Stavins: Yeah. Eventually the US sort of worked this out many years later by not using a 1990-year baseline, but using a 2005 baseline, in which case it's a much better picture for the US.

Dan Bodansky: That's right. So I mean, one of the big differences between Kyoto Protocol and Paris was the Kyoto Protocol took this one-size-fits-all approach, so everybody had a 1990... Well, pretty much everyone had a 1990 base year. There were some exceptions, economies in transition, but basically a 1990 base year. But the [Paris Agreement](#) allows much more flexibility and in many things, including definition of the base year.

Robert Stavins: Now, let's just finish up your chronology of employment as it were. So you were at the State Department involved in the climate negotiations, and then after a couple of years doing that, you went back into academia, is that right?

Dan Bodansky: Yeah, I was just on a leave of absence from the University of Washington. So I originally took a one-year leave of absence to see the negotiations through to The Hague Conference, and then I had to make a decision in fall of 2000 whether to extend my leave of absence and stay or not. And it kind of depended for me a lot on the election, whether Gore was going to be elected or not. I took a roll of the dice and bet that Gore was going to be elected and re-upped for another year. And so I stayed on what ultimately became through the transition from the Clinton to the Bush Administration.

Robert Stavins: So you were betrayed by a Supreme Court decision.

Dan Bodansky: I had an intense interest in the outcome of that, a very personal interest in the outcome. So actually it was quite interesting. I was actually the senior most person left because I had what was called a Schedule B appointment, an expert

appointment rather than a Schedule C or political appointment. So a lot of my colleagues, and all of the people who were my supervisors above me, including Frank Loy, who was the Under Secretary, they had to leave on January 20th. But I actually stayed because I was an expert appointment, so I sort of went through the transition, briefed a lot of the incoming cabinet members on climate change. And for a long time or for a few months at least, it seemed pretty hopeful because Bush had campaigned on a 4P promise, which included carbon as one of the pollutants. 4P is four pollutants.

So we had a hope that this would be like a Nixon going to China moment when Bush would actually support something on climate change. And because he was a Republican, he could maybe bring around the Republican conference to support some, not Kyoto exactly, but perhaps some revision of Kyoto. There were some early hopeful signs. Christine Whitman, who was the EPA Administrator, some of the other cabinet members seemed to be supportive of that approach. So we hoped that that would be the outcome but then actually there was attempt by various constituencies in the US that were opposed to Kyoto to try to circumvent that, and they complained to the... got Chuck Hagel, who was senator then from Nebraska to write a letter to the White House complaining about Clinton holdovers subverting the Bush Administration's policy. I was actually one of the named Clinton holdovers, so I was outed in a sense.

Then there was a cabinet level process to come up with the new policy for the Bush Administration, which I actually stayed through, but then when they came out with their policy in June, I really didn't want to have to go back and defend the policy internationally so I resigned a little bit early. I was supposed to stay through August and go back in the fall, but I left early and actually found refuge at the [Resources for the Future](#) and spent the summer working there as a fellow writing about the process that I'd gone through in the last couple years.

Robert Stavins: And indeed, in terms of Bush Administration, George W. Bush Administration, domestic legislation, the four pollutant bill turned out to be a three pollutant bill.

Dan Bodansky: Yeah, that's right. So he basically went back on the campaign promise of 4Ps and eliminated carbon dioxide. They announced, I think it was in February 2000, that they were not going to join the Kyoto Protocol, that they weren't going to pursue anything new, at least initially. I think Condoleezza Rice pronounced the Kyoto Protocol dead, which wasn't actually true because it didn't depend on US ratification, so we just pulled out of Kyoto process altogether. And then there was about a five-month period when the administration was trying to come up with its new policy, which was a cabinet level process led by Dick Cheney, who was then vice president. But they came out with their policy in June, which I thought was a pretty weak policy. There was a follow-on meeting to COP6, what we call a COP6 and a half to try to sort of salvage a deal on the Kyoto Protocol rulebook. And that was going to be held in July 2001, and so I really didn't want

to have to go to that resumed COP6, which was held in Bonn and defend the administration's policy. So I just resigned and went back into my academic work.

Robert Stavins: And then Christie Todd Whitman left the administration around that same time, right?

Dan Bodansky: I don't remember exactly when she did leave, but-

Robert Stavins: I think it was a response to the same set of developments with regards to climate that caused her to leave, as I recall. In any event, so you go back into academia. Is that directly to Arizona State or-

Dan Bodansky: No, I went back to University of Washington. I was on a leave of absence from University of Washington, so I went back there. I was there for a year and then actually was offered the Woodruff Chair of International Law at Georgia, which has a long and distinguished history going back to Dean Rusk, who was at Georgia, and went to University of Georgia Law School after being Secretary of State. So, I went to Georgia for eight years, was there until 2010, and then I went from there to Arizona State University where I am currently.

Robert Stavins: So now I should anticipate that you're going to be Secretary of State in a future administration.

Dan Bodansky: It doesn't look likely at this point.

Robert Stavins: So let's turn to your work in the world of legal scholarship. I recognize that this is an unfair question. It's asking you to identify your favorite child, but what is the one bit, the one article of your published research that you are most proud of?

Dan Bodansky: Well, I think the thing I'm most proud of is the book I wrote on international environmental law called the [*Art & Craft of International Environmental Law*](#). So, it was published in 2010, and I actually... I now have a co-author for the second edition. We just submitted our manuscript to Oxford University Press for the second edition, which is going to be coming out next year.

Robert Stavins: And is that a case book?

Dan Bodansky: No, no, it's a broad overview of international environmental law. So it's supposed to be an introductory work for the broad public, but it's quite more theoretical an approach. So, it doesn't go through doctrinally what international law says about water or what it says about air pollution. It tries to look at it more thematically in terms of what are the causes of environmental problems, policy responses, different sources of international law, how international law is implemented, enforced, or not enforced, as the case may be. So it tries to take a broad perspective. So, it has a lot on actually on economics. It has a fair amount of international relations theory and then a fair amount on law, obviously.

Robert Stavins: So even a non-lawyer like myself could understand and benefit from reading it, it sound like?

Dan Bodansky: Yeah, it's intended for actually people exactly like you, Rob. So people who are involved in the international environmental law process but are not actually international environmental lawyers to give them a broad introduction to how to think about international environmental problems.

Robert Stavins: And when would we anticipate that this will be published and available?

Dan Bodansky: Well, we just submitted our manuscript last month to OUP, Oxford University Press, and so I'm hopeful that it'll come out probably over the summer.

Robert Stavins: Oh, wonderful. That's great. So let's turn to the climate negotiations, which you described in a [recent essay](#), which I found very interesting. You described them as the forever negotiations. Can you tell us briefly what makes the climate talks different from other multilateral environmental negotiations?

Dan Bodansky: So most in multilateral environmental negotiations start with what I call a constitutional phase where they develop the basic structure of governance, what kinds of institutions are established, what basic objectives there are for the regime. And then after that first constitutional phase, it moves into a more regulatory phase. So there's a treaty dealing with trade and endangered species. So the issues with, after establishing the broad framework, it would become a negotiation on which species to protect, which ones are endangered, or which chemicals to control under the Montreal Protocol that deplete the ozone layer. But in the climate negotiations, really the basic structure of governance has just been continually under debate for the last 30 years. So, the UN Framework Convention establishes some basic institutions, but then how it was going to work was first negotiated in Kyoto. Then there was not sufficient support for the Kyoto structure of having illegally binding emission targets. So then they moved to much more bottom up structure starting in Copenhagen and then in the [Paris Agreement](#).

So the [Paris Agreement](#), the hope was would finally had arrived at an architecture for dealing with the climate change issue that would actually sort of stick and everybody would agree on it and now we can move on to the questions of implementing that structure. But I'd say even after Paris, there continued to be a lot of constitutional kind of issues that are still on the table. For example, how to deal with the issue of loss and damage from climate change, what the goal should be with respect to adaptation, how climate finance should be addressed. So, there's just been inability to really come up with a structure that everybody is on board with sufficiently, that we can move from negotiations more to an implementation phase. And I think that's because the climate change issue is just a much, much bigger issue in terms of its implications for a country's economy, for the entire way it's organized domestically because virtually everything contributes to climate change.

Virtually everything is affected by climate change. So it has just a much, much, much bigger impact on a country's domestic policies.

Virtually every policy of a country domestically has something to do with climate change, and so countries are very jealous of their domestic sovereignty and so they're much more wary about agreeing to things internationally that might curb their ability to decide on their own economic policies, their own urban policies, their own agricultural policies, their own transportation policies. I think this is unique to the climate issue. Ozone, for example, which has been dealt with much more successfully internationally, just as a much smaller economic footprint than climate change does.

Robert Stavins: So thinking about what you just said, if we go back to the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, there were of course two conventions that came out of that, the one that we've been talking about, the United Nations Framework Convention on Climate Change, but there was also a [Biodiversity Convention](#) that came out of it. And just this past year, not very long ago, there were major negotiations, but what's striking about that is that they got vastly less press attention, vastly less public attention. Is that because they're less important, they're less costly. Why do you think it is?

Dan Bodansky: Well, I think the biodiversity issue is also extremely important and also has broad implications, but I don't think it's attracted nearly the same kind of attention internationally. Again, I think because it doesn't affect as many different parts of countries policies that climate change does, for example, urban development policy, transportation policy, those are not nearly as directly affected by biodiversity as they are by climate change. So I think climate change, whether rightly or wrongly, has gotten just a lot more press attention over the years and a lot more political attention over the years.

The US actually never joined the [Biodiversity Convention](#), and that has not really attracted a huge amount of attention in the US. When the Trump Administration pulled out of Paris, by contrast, that got a huge amount of attention. And then the Biden Administration's decision to go back into the Paris Agreement again got lots of attention. So I think climate change just looms larger, I think it has bigger implications. The potential effects of climate change on the world are much, much greater than the kinds of issues addressed right now by biodiversity. At least that's my view. But I don't really study the Biodiversity Convention as closely, so I'm not nearly as familiar with the ins and outs of that process.

Robert Stavins: But can I ask you one thing about it that you actually just brought up? You said namely that the US never ratified the Biodiversity Convention, but the US did ratify, I think the Senate ratified by a voice vote, the Framework Convention on Climate Change during the George H.W. Bush Administration, and then that President Bush signed it on behalf of the United States. Why was the Biodiversity Convention so much more politically difficult to be ratified? Do you know?

Dan Bodansky: So climate change has become such a political issue that I think it's easy to forget that there is actually a fair amount of bipartisan support early on on the issue. George H.W. Bush ran for president back in 1988 as the environment president was going to deal with the greenhouse effect with the White House effect, and he was supportive of the negotiations of the Framework Convention. We were one of the very first countries in the world to ratify the Framework Convention on Climate Change, and that was after a voice vote, so essentially unanimous consent by the Senate to join the UN Framework Convention. I think now the UN Framework Convention probably wouldn't even be able to be approved by the Senate, much less by a voice vote. In fact, there was some discussion during the Trump Administration of pulling out of the Framework Convention itself. So climate change has become way more partisan than it was back in 1992 and that's been very unfortunate obviously.

Robert Stavins: I'm asking you why the difference with the biodiversity?

Dan Bodansky: So, the biodiversity didn't get as much attention. We weren't as focused on it, but I think there were some significant industry opposition to it because of the provisions dealing with intellectual property protection. So biodiversity is used to develop pharmaceuticals so there's issues about how biodiversity is used and whether or not who gets the intellectual property rights for developing things, products that use biodiversity as part of the inputs.

Robert Stavins: So reflecting back, you're in a wonderful position to really reflect back on this long history. Many people that are younger than us, they're aware of the last five years or maybe the last six months of what's been going on, the international negotiations on climate change, but you've seen it over almost the entire period that it's been taking place. Broadly speaking, does this make you optimistic or pessimistic on the progress that's been made and the future and what it holds?

Dan Bodansky: Well, I guess I would hope that it makes me realistic. I think there has been progress that's been made, so I don't think it's appropriate to be entirely cynical about the process that nothing's happened. I think there has been developments. I think the Paris Agreement is a major breakthrough, but I guess it tempers my optimism going forward. I think that there has been progress, but it's not nearly enough. I guess I'm doubtful that the Paris Agreement will be able to deliver on its expectation or hope of limiting climate change to 1.5 degrees. So I think there has been progress, so I'm not giving up on the process by any means. I think it's the best we have internationally. It's the best we can hope for, but I think it has limits. And so that's why I'm actually quite interested in some of the other kinds of policies that might be able to be used to address climate change, including things like carbon dioxide removal, trying to reflect sunlight from the earth, because I think we may ultimately need them to avert catastrophic climate change. I hope that the Paris Agreement's enough, but I certainly wouldn't want to bet on it. So, I think we also need to be thinking about if it's not enough, what are the other options that we could potentially try to use?

Robert Stavins: But thinking of those other options, not in technological terms, but in institutional and legal and political terms, the alternatives that some people would talk about to the UNFCCC and the Paris Agreement would be climate clubs perhaps arising as a result of the European carbon border adjustment mechanism responses from other countries, et cetera. Do you have a position on climate clubs as an alternative to the UNFCCC process, including the Paris Agreement?

Dan Bodansky: Well, I guess I would hope that they could compliment the process rather than be full alternative to it. I think they can play a role. So I think if countries want to go further than other countries, then carbon border tax adjustments can be important in trying to protect their position to prevent carbon leakage to countries with weaker standards. But I think ultimately the carbon clubs aren't going to be enough because the biggest emitter right now is China. India's emissions growth is rapidly increasing. I guess I question whether climate clubs are really going to be able to change China's policies on climate. So, I think they can allow countries in Europe potentially, the US to go further and pledge deeper reductions, but I think we also need a broader global process as well, and that's the Paris Agreement.

Robert Stavins: So once again, the voice of a realist. Bring your realistic thinking to one final question, and that is, I'd love to know what your reactions are to something we've seen sort of starting in 2019, and again in this past year after a hiatus for COVID, which is the rise of youth movements of climate activism. Not just Greta Thunberg, but more broadly than that, you probably see it among students at Arizona. I certainly see it among students at Harvard, and we see it at the annual climate negotiations. In many cases, it's mainly been in Europe and the United States. What's your reaction to those youth movements?

Dan Bodansky: Well, I think they can play an important role. So ultimately what happens internationally depends on what's possible domestically within countries and so we need to be changing the political dynamic within countries like the US, Europe, also hopefully countries like China and India. And so the youth movement I think can help change that political dynamic within countries. I think they highlight the intergenerational aspect of climate change. They sort of serve as a conscience for the negotiations. So, I think they play an important role. I'm not sure they're going to be able to, by themselves, dramatically change the situation, but I think they can be very helpful in trying to motivate countries to do more. One of the functions of the climate conferences like the one that wrapped up in Sharm El-Sheikh in November is to sort of focus attention on the issue, put pressure on countries and leaders to do more to deal with the question. And so I think the youth movement is an important part of that equation of trying to motivate countries to do more both at the international level and then also within the domestic political scene.

Robert Stavins: So, that's a good point on which to bring to a close our conversation. So thank you very much, Dan, for taking time to join me today.

Dan Bodansky: Thank you. It's been a pleasure.

Robert Stavins: So, my guest today has been [Daniel Bodansky](#), the Regents' Professor of Law at the [Sandra Day O'Connor College of Law](#) at [Arizona State University](#). Please join us again for the next episode of [Environmental Insights: Conversations on Policy and Practice](#) from the [Harvard Environmental Economics Program](#). I'm your host, [Rob Stavins](#). Thanks for listening.

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