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001. report	The Kyoto Protocol (89 pages)	04/01/1999	P1/b(1)

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
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P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

White House —

q & a ?

President Clinton: Taking Action To Help
California With High Electricity Prices
August 23, 2000

President Clinton today directed Federal agencies to provide assistance to low income households and small businesses in Southern California. The wholesale price of electricity has risen steeply in parts of the country this summer, hitting California's low-income households and small businesses particularly hard. California's hot weather, its limited generation and transmission capacity, and growing demand have combined to significantly increase the price of electricity. Higher prices have been passed on to retail consumers, including low-income households and small businesses, in certain parts of California where the retail price of electricity is unregulated because of requirements established by the state's electricity restructuring legislation. Earlier this week, the California Public Utilities Commission took steps to ease the burden on these consumers by adopting a plan to stabilize their electricity bills.

PRESIDENT CLINTON TODAY ANNOUNCED SEVERAL STEPS TO HELP CALIFORNIA RESPOND TO HIGH ELECTRICITY PRICES:

-- Secretary of Energy Bill Richardson today requested that the Federal Energy Regulatory Commission expedite its national investigation of the operation of bulk power markets so that state and Federal regulators and policymakers can have the information they need to protect consumers in a timely fashion.

-- President Clinton today directed the Department of Health and Human Services to release $2.6 million in Low Income Home Energy Assistance Program (LIHEAP) emergency funds for low-income households in Southern California. This release doubles the funds that the affected region in Southern California currently receives under the LIHEAP program, helping low-income Californians who have faced substantially higher electricity rates this summer.

-- President Clinton also directed the Small Business Administration to urge its lending partners in Southern California to use SBA credit programs, particularly the 7(a) program, and technical assistance to help small businesses in San Diego and Orange Counties hurt by high electricity prices. SBA's existing range of loan programs is flexible enough to help businesses whose costs have increased because of high electricity bills.

PRESIDENT CLINTON ONCE AGAIN CALLED ON CONGRESS TO PASS COMPREHENSIVE ELECTRICITY RESTRUCTURING LEGISLATION: The President urged Congress to work with the Department of Energy and other Federal agencies to enact comprehensive electricity restructuring legislation, which can promote greater investment in generation and transmission facilities and enhance regional planning, reliability and the efficiency of the interstate transmission grid, each of which is needed to ensure the availability of affordable and environmentally responsible electricity to power America into the 21st century.

TODAY'S ACTION BUILDS ON EFFORTS ANNOUNCED BY THE PRESIDENT EARLIER THIS MONTH TO HELP CALIFORNIA MEET ITS ELECTRICITY NEEDS THIS SUMMER. Earlier this month, in order to help reduce the risk of power outages as a result of electricity shortages in California, the President directed that managers of all Federal buildings in California take steps to reduce consumption of power to the maximum extent practicable consistent with the health and welfare of employees, and that Federal agencies coordinate with other state and local government agencies to minimize the use of electricity in all government buildings in California.

President Clinton also directed earlier this month that all federal agencies take steps to help California maximize available electricity. The Federal government is one of the largest electricity consumers in California representing approximately 2% of all electricity use.

# # #

David W. Beier
07/31/2000 08:57:36 AM

Record Type: Record

To: Gene B. Sperling/OPD/EOP@EOP, Martin N. Baily/CEA/EOP@EOP

cc: Jacob J. Lew/OMB/EOP@EOP

Subject: Power in California

The California utility price situation is getting more and more volatile. The leading proponents of electricity restructuring are now calling for an end (at least temporary) to the plan they authored. These changes will, in the long run, have implications for our debate here.

---------------------- Forwarded by David W. Beier/OVP/EOP on 07/31/2000 08:56 AM ---------------------------

Ronald Minsk 07/31/2000 01:15

Record Type: Record

To: David W. Beier/OVP/EOP@EOP

cc: Melissa M. Goldstein/OVP/EOP@EOP

Subject: Power in California

When California deregulated wholesale sale of electricity, it applied to FERC for the right to cap wholesale rates for in state transactions, a right the FERC granted. There is currently a $500 per megawatt hour cap for in-state transactions for power that is sold on the day it is needed. There is no cap on power that comes into California from outside the state. That power is sold at market rates.

The pricing process is complicated by the fact that the price cap for power bought one day in advance is $2,000. That means that purchasers have an incentive to not buy power a day in advance, because its price is capped at a lower rate on the day that it is needed ($500). However, at the capped rate, in-state providers are not selling the power and then purchasers have to purchase power from out-of-state at even higher uncapped rates.

Governor Davis has asked FERC for permission to cap purchases from out-of-state. FERC apparently issued an order last week to investigate the issue, but is unlikely to address the issue before September. That is the only authority that the Federal government has to regulate the rates for those transactions.

Separately, but related, in Tuesday there is a vote to lower the in--state cap to $250. DOE has a vote because the Western Area Power Administration has a rotating seat on the decision making board because it owns transmission lines in California. DOE had a meeting last week where it was agreed that DOE should vote to not lower the cap. The concern is that too low a cap will lead to shortages, and the too low a cap will be a disincentive to the building of badly needed new generation capacity in the state. The recommendation is going to Richardson for a decision on Monday. The vote is Tuesday, mid-afternoon, East Coast time.

	March 11-12					June 24-25					August 19-20				
Name	Mile	Push-ups	Pull-ups	Crunches	Bench Press	Mile	Push-ups	Pull-ups	Crunches	Bench Press	Mile	Push-ups	Pull-ups	Crunches	Bench Press
Art Duncan	9:30	25	2	25	110	9:10	35	3	50	135					
Avi Adler	6:35	25	5	42	160										
Bill Herp	injur/13:00	25	3	50	120	3.6 bike 10:00 (goal is 4 in 10:00)	30	5	no report	no report					
Brett Messing															
Ernest Johnson	7:25	50	6	100	180										
Mike Hird															
Rob Urbach	5:48	50	15	100	186.5x10	5:44	50	16	100	215					
Roger Ballentine	injured	50	10	100	175										
Steve Keyes	7:10	30	2	43	110										
Steve Mayer	7:20	50	15	100	260	6:45	60	15	100	265					
John Tipton	6:53	26	1	60	145	6:28	38	4	100	155					

THE WHITE HOUSE

Office of the Vice President

For Immediate Release
Monday July 31, 2000

Contact:
(202) 456-

VICE PRESIDENT GORE ANNOUNCES ADMINISTRATION ACTIONS TO MITIGATE RISK OF POWER OUTAGES FOLLOWING FAILURE OF CONGRESS TO PASS CRITICAL ELECTRICITY RESTRUCTURING LEGISLATION

For the past two years, Congress has failed to pass critical comprehensive electricity restructuring legislation that would provide for mandatory reliability rules and an open nationwide transmission grid -- elements necessary to supporting a robust competitive marketplace and promoting efficient investment in generation and transmission facilities while at the same time saving consumers $20 billion a year by 2010. By failing to act, Congress truly has missed a significant opportunity.

Thankfully, the Administration has not relied solely on Congress to address the risks of power shortages or interruptions. The Department of Energy has already taken numerous steps, including developing guidelines for reduced power use by Federal agencies during emergency conditions and reestablishing an Office of Energy Emergencies to help prepare for and coordinate responses to energy emergencies.

In the absence of Congressional leadership, however, the Federal Departments and Agencies must continually improve our efforts to mitigate the risk of future power shortages. Therefore, President Clinton directed the Department of Energy today to convene an interagency Emergency Readiness Team to anticipate power emergencies and to coordinate a Federal response. He also directed all Departments and Agencies to take additional steps to reduce the risk of power outages during periods of power supply shortages.

We yet again call on Congress to implement the Administration's energy policies when it returns in September. Passage of the Administration's energy investments plans and tax incentives, electricity restructuring proposal, reauthorization of the Strategic Petroleum Reserve, and authorization of a home heating oil reserve are important steps towards a balanced energy policy, in which a broad range of traditional and alternative sources of energy and an enhanced electricity infrastructure provide a secure energy future.

President Clinton Directs Departments and Agencies to Take Steps to Mitigate the Risk of Power Outages
July 31, 2000

Increased demand for electricity during summer heat waves can make it a challenge to keep lights on and air conditioners running. Currently, electric power is tight in certain regions of the country; some have even faced rolling blackouts. These conditions can put the health, safety, and welfare of consumers at risk and can cause businesses to lose millions of dollars.

This Administration has promoted public policies that would provide access to adequate, reliable, and affordable electricity. For over two years, we have called on Congress to pass comprehensive electricity restructuring legislation that would enhance the reliability of the grid, and Congress has failed to respond. Thankfully, the Administration has not counted solely on Congress to address these problems.

Secretary Richardson Met With Utility Executives: Last week, Secretary Richardson met with electric utility executives, the Chairman of the Federal Energy Regulatory Commission, and a representative of state energy officials to discuss ways government and industry can work together to enhance the reliability of the nation's electricity grid. They agreed to a set of principles that recognize that the electricity industry and its reliability institutions hold primary responsibility for providing reliable electric service, and that it remains important for the economy of the nation and the health and welfare of our citizens for the industry to continue to provide highly reliable service.

Comprehensive Electricity Restructuring Promotes Both Reliability and Consumer Savings: This Administration has repeatedly called on Congress to enact comprehensive electricity restructuring legislation to enhance the reliability of the electric grid by providing for mandatory reliability rules and an open nationwide transmission grid -- which will in turn support a robust competitive marketplace and promote efficient investment in generation and transmission facilities and energy efficiency efforts. The Administration's proposed legislation would also reduce electricity prices, clean the environment, encourage innovation in providing electricity, and enhance energy security by enabling us to operate our economy on less fuel. The legislation would:

- Save America's families $20 billion annually, $232 per year for a typical family of four;
- Enhance the reliability of service by establishing rules for the transition to competitive markets, increasing the efficiency of the interstate transmission system, and requiring all participants in electric transactions on the grid to comply with mandatory reliability standards developed by the industry itself; and,
- Improve the environment, through market mechanisms and policies that promote investments in energy efficiency, renewable energy, distributed power and combined heat and power technologies.

Cleaning Up After Congress: The Administration recognizes the utility industry's responsibility in providing adequate, reliable and affordable power to consumers. However, in the absence of Congressional leadership, the Federal Departments and Agencies must continually improve our efforts to prepare for possible power shortages.

Secretary of Energy Bill Richardson asked a team of experts last year to assess the ability of electric utilities to provide reliable electric service. Subsequently, the Department of Energy itself identified regions at particular risk of facing electricity shortages. Long before problems had actually emerged, the Secretary held meetings around the country with local power suppliers, consumers, and local government officials to engage in a dialogue about the risks of power outages. Earlier this year:

- Secretary Richardson participated in electricity reliability summits in Chicago, Hartford, Newark, New Orleans, Sacramento, Houston, Seattle, Akron, Tallahassee, Phoenix and Richmond. These summits have served both to educate the public about electricity reliability issues and to help initiate a dialogue on the subject among industry stakeholders.
- Secretary Richardson formed a Power Outage Study Team consisting of experts from DOE, our national laboratories and academia to review the problems that led to power outages during the Summer of 1999 and to provide recommendations to avoid future outages. The Team's final report was submitted in March.
- DOE distributed to every Federal agency guidelines for reducing Federal electricity use during periods of high demand.
- The General Services Administration (GSA) developed a nationwide plan for GSA managed Federal buildings to reduce electricity demand when needed.
- The Environmental Protection Agency (EPA) developed a plan for its regional offices that emphasizes voluntary demand reduction measures and other strategies for government, business and the home to approach potential power shortages.
- DOE conducted emergency exercises in Washington D.C., Reno, and Newport to promote state/Federal coordination during periods of power supply emergencies.
- The Federal Energy Regulatory Commission (FERC) took steps to facilitate electricity industry actions that increase available supply and reduce power demand.
- [WHO DEVELOPED THEM] DOE??? developed a series of public service announcements that offer advice to consumers on how they can save money on electric bills and reduce the risk of power shortages at the same time.
- DOE accelerated the development of government standards to move more efficient air conditioners into the marketplace.

Additional Power Shortage Mitigation Actions: In addition to these steps, President Clinton directed today that:

- The Secretary of Energy convene a Federal government Emergency Readiness Team including representatives of the Federal Emergency Management Agency (FEMA), DOE, DOD, HHS, DOI, OMB, EPA, and the National Weather Service to coordinate available Federal information in anticipation of heat and power emergencies and to quickly disseminate that information to other Federal agencies, state and local governments and utilities.
    - ✓ The team will immediately inventory available Federal information that is critical to planning for heat and power emergencies. FEMA will distribute that information to all Federal, state and local emergency managers.
    - ✓ The team will develop Best Practices models that address outages and heat emergencies and distribute them to Federal agencies, emergency managers and local jurisdictions.
    - ✓ The team will identify at risk areas and enhance interaction between local emergency

response teams and weather forecasting offices. The team will also work with the national Governors Association and other governments.

  - ✓ FEMA will determine which states have heat emergency plans and encourage their immediate establishment in states lacking such plans.
  - ✓ The team will notify state governors and local officials in areas where blackouts or brownouts may occur and encourage the establishment of emergency heat relief centers where they do not exist.

- All Federal agencies implement the DOE agency power reduction plan. The President also requested that the agencies incorporate in their plans an option to reduce demand in advance of a power shortage if asked to do so by the local utility or the Federal Emergency Readiness Team.
- All generators in Federal buildings be inspected and tested by GSA or the appropriate agency to maximize their ability to substitute for grid power or provide power to the grid where they are grid connected.
- DOE establish pilot programs: 1) authorizing and enabling the use of backup generators at Federal facilities to reduce demand from the grid during peak usage periods, and 2) participating in utility programs to reduce non-essential power consumption during peak usage periods in exchange for payments from the utilities.
- The Secretary of Energy to work with the Federal Energy Regulatory Commission to examine steps that can be taken, in the absence of legislation, to ensure, to the extent possible: 1) the development of binding and non-discriminatory reliability standards by industry-membership organizations in an open and fair process, and 2) possible funding mechanisms for these standard-development activities.

July ??, 2000

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Potential Electricity Shortages and Heat Emergencies

Increased demand for electricity during summer heat waves can make it a challenge for utilities to keep lights on and air conditioners running. Currently, the supply of electric power is tight in regions of the country, which has already caused rolling blackouts in some areas. These conditions put both consumers and businesses at risk.

My Administration has promoted policies to provide consumers with access to adequate, reliable, and affordable electricity. For over two years, we have called on Congress to enact comprehensive electricity restructuring legislation that would, among other things, provide for mandatory reliability rules and an open nationwide transmission grid that will support a robust competitive marketplace and promote efficient investment in generation and transmission facilities. Congress has failed to respond. Unfortunately, it appears that passage of comprehensive legislation this year is now unlikely— a major missed opportunity. Thankfully, we have not counted solely on Congress to address these problems.

Secretary of Energy Bill Richardson asked a team of experts last year to assess the ability of electric utilities to provide reliable electric service. Subsequently, the Department of Energy itself identified regions at particular risk of facing electricity shortages. Long before problems had actually emerged, the Secretary held meetings around the country with local power suppliers, consumers, and local government officials to engage in a dialogue about the risks of power outages.

In addition, Secretary Richardson directed his staff to develop guidelines for reduced power use by Federal agencies during emergency conditions. Those guidelines were circulated to all Federal agencies earlier this summer. The Secretary also reestablished an Office of Energy Emergencies in the Department this Spring, to help prepare for and coordinate responses to possible energy emergencies.

Several other Federal agencies are contributing to these mitigation efforts. The National Weather Service is now able to provide long-range heat and severe weather forecasts to more local communities. The Federal Emergency Management Agency has surveyed local communities for heat emergency plans and worked to coordinate disaster relief plans. In addition, the Federal Energy Regulatory Commission, an independent agency, has enabled the electricity industry to take faster action to enhance reliability in periods of potential electricity shortages.

In the absence of Congressional leadership, however, we must go further. The Federal Departments and Agencies must continually improve our ability to mitigate the harmful effects of possible power shortages.

Therefore, I am directing:

- The Department of Energy to convene an interagency Emergency Readiness Team which includes the participation of the Federal Emergency Management Agency, the Department of Defense, the Department of Health and Human Services, the Department of Commerce, the Department of the Interior, the Environmental Protection Agency and the Office of Management and Budget to coordinate available information and a Federal response in anticipation of power emergencies.

  - ✓ The team will immediately inventory available Federal information that is critical to planning for power emergencies. FEMA will distribute that information to all Federal, state and local emergency managers.

  - ✓ The team will work with the National Weather Service to identify in advance weather conditions that could cause periods of peak electricity demand and to make appropriate notifications as a result of that information.

  - ✓ The team will develop and distribute Best Practices guidelines and uniform business principles to help the utility industry reduce the risk of power outages.

  - ✓ The team will enhance interaction and information sharing between state and local emergency response teams and local weather forecasting offices.

  - ✓ The team will notify state governors and local officials in areas where blackouts or brownouts may occur and encourage the establishment of emergency heat relief centers where they are lacking.

  - ✓ Within 5 days, FEMA will determine which states have heat emergency plans and encourage their immediate establishment in those without such plans.

- The Secretary of Energy to work with state utility commissions to promote the development of tariffs that encourage reduced consumption during periods of peak electricity demand.

- Each Department and Agency to implement the DOE prepared plan of action for emergency electricity reduction measures at Federal facilities during periods of power supply shortages.

- OMB and HHS to take steps to accelerate the distribution of Low Income Home Energy Assistance in appropriate circumstances.

- Each Department and Agency (or the General Services Administration, as appropriate) to inspect and test all backup generators as soon as possible.

- DOE to establish pilot programs: 1) authorizing and enabling the use of backup generators at Federal facilities to reduce demand from the grid during **[peak usage periods/power shortage emergencies]**, and 2) participating in utility programs to reduce non-essential power consumption during peak usage periods in exchange for payments from the utilities.

- The Secretary of Energy to examine factors that may contribute to price volatility in electricity markets during times of peak demand.

- The Secretary of Energy to work with the Federal Energy Regulatory Commission to examine steps that can be taken in the absence of legislation to ensure, to the extent possible: 1) the development of binding and non-discriminatory reliability standards by industry membership organizations in an open and fair process, and 2) possible funding mechanisms to assist in establishing such standards from become a limping animal, disabled by the Congressional axe. But *Command Performance* is possibly more interesting as a personal bildungsroman than as a history of a crippled government agency—a tale of what befalls a liberal American idealist at the close of the twentieth century.

In the last year of her administration, Alexander finally got an audience with the President and an opportunity to explain three things—that the arts need federal support, that they are not elitist ("I mentioned the Delta Cultural Center in his own state of Arkansas as an example"), and that the NEA would no longer fund controversial art. "That sounds good," replied the President. "They've got to understand the public won't pay for that." The Arts Chairman writes that she felt a wave of "idealism" at this point, and began longing for a President who would "embrace the full spectrum of tastes, one that included all kinds of art." But she realized that she was in the real world, the world of compromise: "watering things down to make them the most palatable for the most people; being manipulative when need be to get elected; and being diplomatic which meant not saying what is really on your mind." She wrote these words about Bill Clinton, but she may as well be referring to herself and the way she became absorbed by the system.

Command Performance ends with the disastrous Supreme Court decision on the NEA Four, ruling that the Congress did indeed have the right to impose content restrictions on NEA grantees. It was only the most recent in a string of defeats for the cause of a subsidized and uncensored American art. Alexander, who began with such fervent hopes, and such eagerness to serve her country and her constituency, returns to the professional stage, her hair grey and twenty pounds heavier, persuaded that "the system is so corrupt that it may never be fixed." It is a sad and dispiriting note on which to end four years of dedicated service, and none of her passionate testimonials to the abiding power of artistic expression can disguise or mitigate a sense of failed national purpose. ■

The Golden Age

By JACKSON LEARS

American Moderns: Bohemian New York and the Creation of a New Century by Christine Stansell

(Henry Holt, 420 pp., $30)

DURING THE 1970S, on brick-and-board bookshelves in shabby-genteel apartments throughout the land, a careful observer might still have found a slender, unassuming paperback called *Living Poor With Style*. The title embodied the waning worldview of the 1960s counterculture, its fusion of aesthetics and politics, pleasure and poverty. Embedded in that ethos was the assumption that choosing economic marginality could be a way of choosing freedom. However silly or self-righteous the countercultural stance could become, it at least recognized that pleasure must not be confused with high-level consumption. The pursuit of a satisfying life required escape from the hamster-cage of earning and spending. And this notion, for all its insistence upon its newness, linked the counterculture of the 1960s to a bohemian tradition that stretched back at least to the turn of the century, and that coexisted fruitfully with anarchist and socialist criticisms of capitalism.

Autre temps, autre moeurs. It has become fashionable these days to emphasize, even to celebrate, the assimilation of bohemian ideals to capitalist realities. The "bourgeois bohemian" is becoming a stock figure in social criticism, or what passes for it. Trendy boutiques and lame attempts at politically correct purchasing have become the stuff of neo-conservative satire. The implicit message of such gloating is always the same: bohemia has disappeared into up-market fashion. And one would be hard pressed to deny that this new pop-sociological cliché has a basis in reality. Gentrified real estate prices and a resurgent mythology of wealth have made it nearly impossible to live poor with style, or to associate poverty with anything but failure; and the idea that one would actually choose poverty, or material austerity, has become virtually unthinkable.

Still, the complacent dismissal of bohemia suffers from several defects. It displays the common media myopia regarding the existence of any American with less than a six-figure income. Bohemian enclaves may well be sprouting in various unfashionable places; but if they are, they would almost certainly be rendered invisible by the euphoric haze of our current cultural climate, wherein the creation of wealth seems the only barometer of social good. At the same time, the current conventional wisdom reduces bohemianism to a set of aesthetic gestures: living poor with style becomes merely living with style (retro, techno, pomo, whatever). This definition ignores the centrality of voluntary poverty to the bohemian impulse, and deprives it of any political significance, and promotes a tendency to read contemporary conditions back into the past. The result is all too often a flat, monochromatic picture of twentieth-century American cultural history, in which the conflict between bourgeois and bohemian is reduced to a meaningless *pas de deux*, and a voracious consumer ethos swallows all who attempt to dissent from it.

ONTO THIS GRAY canvas Christine Stansell splashes some color. One reason to welcome her superb book is that she has restored the larger meanings of American bohemianism, by focusing on a place and a time in which the cultural avant-garde was also vigorously and undeniably political. The place is Greenwich Village; the time is the turn-of-the-century to World War I. For an exhilarating decade or so, young men and women flocked from the provinces to the cluttered, noisy streets of lower Manhattan—crowding into cafés, rubbing shoulders with immigrant anarchists and socialists, tossing back whiskeys, chattering of revolutionary change. Some became prominent figures in public life: Max Eastman, the energetic, good-looking editor of *The Masses* who discovered early on (as many men have since discovered) that displaying his feminist credentials was a good way to attract emancipated women; Emma Goldman, the crusading anarchist and advocate of free love who could (her admirers claimed) transform your life with a single speech; Mabel Dodge,

JACKSON LEARS teaches history at Rutgers University and is writing a book on chance and luck in American culture.

the socialite whose salon mingled poets, painters, and labor radicals.

At their most frivolous, the Village bohemians were easily parodied poseurs: "tin pot revolutionaries and sophomoric advanced thinkers," Mencken called them. At their most ambitious and serious, the Village bohemians yearned to fuse art and politics in a transforming critique of bourgeois civilization—its injustice, its hypocrisy, its stifling of the soul. As Stansell demonstrates, the bohemians staked out positions that would constitute a peculiarly American version of modernism, and would make their slice of Manhattan into a staging area for the major cultural changes of the subsequent decades.

During those days before the first World War, before socialism was tainted by communism and liberalism was tainted by chauvinism, there was a heady atmosphere of expectation enveloping everyone from trade-unionists to philosophers. "The revolutionary pot seems to be boiling," a labor organizer said in 1912. "The day of transformation is at hand." George Santayana was less fervent but equally engaged. "The present age is a critical one and interesting to live in," he wrote in 1913. "The civilization characteristic of Christendom has not yet disappeared, yet another civilization has begun to take its place." To a wide variety of observers it seemed indeed that "human character" (as Virginia Woolf famously put it), had changed fundamentally "on or about December 1910," and would never be the same. Human character, and the character of American life.

This may be the reason that American historians have long looked to the prewar avant-garde to discover everything that they liked (or disliked) about the culture to follow: a freer (or a more promiscuous) attitude toward sexuality; a more sympathetic (or a more sentimental) relationship between intellectuals and the working class; a more open and honest (or a more cloying and narcissistic) preoccupation with the inner life. Stansell provides a nuanced account of those changes, but also something more. She restores some freshness to the Village idea of personal politics—a notion that has come to seem seem stale in an era of ritual public confessions and presidents who feel our pain.

Stansell rightly recognizes the courage involved in the bohemians' effort to blend personal life and political life, to bring democracy into the domain of intimate relations, and to infuse policy debate with a new sense of emotional vitality—even as she acknowledges the confusion wrought by the project, the constant risk of reducing intimacy to a power struggle and politics to a self-dramatizing spectacle. Unlike any male historian before her, moreover, Stansell captures the complexity of the reasons for the radicals' failure: not only wartime repression and disillusionment, but also the persistence of male domination in the guise of liberation.

THE RESULT IS a subtle and finely grained portrait of the Village bohemians. Stansell's book is forcefully and sometimes elegantly written, closely observed, and carefully argued. It evokes the utopian hopes of pre-war bohemianism, the multiplying strains and tensions, the catastrophic collapse. It captures also the flash of the distinctive personalities—Eastman, Goldman, Dodge, and others too: John Reed, the boyish bard of revolution; Margaret Anderson, the witty and venturesome editor of the *Little Review* (which published the first excerpts from *Ulysses*); and Randolph Bourne, the hunchback dwarf whose essays attacking intellectuals' support for World War I constitute an incandescent body of cultural criticism, perhaps the most brilliant political polemics ever penned by an American hand. *American Moderns* makes clear that, along with the posturing, there was real bravery involved in the bohemian project.

Stansell's identification with her subjects sometimes obscures understanding. Like them, she tends to caricature Victorian culture as a rigid, repressive monolith—a straw man the moderns could set on fire with their "vivacious, bold, and honest talk." Victorian talk, by comparison, was dominated by "the mannered conversation of the patrician drawing room and arty salon as well as the barren commonplaces of the middle class parlor." For such a view, the old culture was brittle and tottering, held together only by "moribund, prettified conventions" that the moderns aimed to shatter en route to "a more profound experience of human relations in talking, in writing, in sexual expression." Occasionally Stansell falls victim to the same dualism that was promoted by her protagonists, as when she asks: "Who, then, was better equipped to talk to and for America—a fading patriciate of old men holed up in their gentlemen's clubs or a group of people, arrivistes of many sorts, gathered out of the crevices and far places of the country?"

The contrast between inauthentic Victorians and authentic moderns accurately captures the bohemians' sense of suffocation and longings for release, but as a historical analysis it is inadequate. It distorts the experience of many Victorians themselves. For the young moderns' yearnings were prefigured by those of their parents' generation. Inspired by ideals of "self-culture" and "enthusiasm," writers from Whitman to William James exalted intense experience in their lives and in their work. They were no more satisfied with stultifying convention than their successors were. Contrary to the assertions of the bohemians, energy, wit, and even sexual pleasure were available before 1900. Victorian literature—including the allegedly timid William Dean Howells, let alone Henry James—was pervaded by erotic undertones that were all the more powerful for being indirect.

Not only were the Victorians more capable of enjoying sex than the younger generation imagined (this is a recurring mistake, made by nearly every cohort of rebellious youth in twentieth-century American history), but the old fuddy-duddies could deftly deploy their own rhetoric of authenticity. Sincerity and passion were benchmark Victorian values. Indeed, as Stansell herself observes, the moderns often had more in common with the Victorians than they were willing to admit. Goldman's allegiance to the Victorian enterprise of self-culture, along with her old-fashioned faith in the power of the word, energized her extraordinary lectures and sustained her infectious passion for public controversy. She and her bohemian contemporaries still tended to view culture as uplift (albeit toward revolutionary ends), and they recoiled from the vulgar entertainments of ordinary folk.

But if Stansell accepts too quickly the familiar picture of honest young moderns assaulting the hypocritical fathers, she is very good at re-configuring another primal scene of rebellion: the move from the provinces to the big city, made famous by Theodore Dreiser and other young hayseeds in flight from the supposed idiocy of rural life. The typical bohemians, according to the journalist Hutchins Hapgood, were "bored with some small place in the Middle West... filled with restless ambition to lead their own lives." Stansell complicates this cliché, pointing out that many small places in the Middle West were not as constricting as Hapgood imagined. They had their own bohemian tea rooms and literary salons, where earnest young idealists discussed the latest advanced ideas in socialism, syndicalism, and sexual freedom. Places such as Davenport, Iowa, where the cultural critic Floyd Dell was raised, possessed their own "serious and varied culture," as Stansell points out. They were not mere provincial backwaters.

COURTESY METROPOLITAN BOOKS

Emma Goldman addressing a rally, Union Square, 1916

And yet there was undeniably something different about the city, and about New York in particular. It was not just the saloons and the intense conversations, the noise and the clutter and the critical mass of energy. It was something else, something that Bourne called "Trans-national America." New York was full of immigrants—Irish and Italians and especially Russian and East European Jews. The Village bohemians created a cultural space in which WASP anti-Semitism moderated into tolerance and eventually into the affirmation of otherness.

Outsiders became insiders. In the bohemian imagination, Jews were gradually transformed from picturesque dreamers to admirable comrades and ultimately to embodiments of the vitality that avant-garde intellectuals feared was lacking in themselves. Of the Russian Jews in a novel by Anna Strunsky Walling, Max Eastman wrote: "They burn with hot fire. Their being is self-justified. They live and are sources of life.... As for me, I loaf, and smoulder, and dodge life, and tinker with trivialities." This sort of outburst recalls similar laments from earlier generations: Jane Addams and Henry Adams (among others) were equally frustrated by their feelings of isolation from direct experience. And it links Eastman and his contemporaries with an American modernist reflex that Christopher Lasch aptly named "the anti-intellectualism of the intellectuals."

Anti-intellectual reverence for "life" was by no means confined to American modernists. Oswald Spengler envied "everyone who *lives*," by which he meant everyone who experienced life directly and unself-consciously. Unlike the truly alive, he complained, "I have only brooded, and whenever I was really offered the possibility of living I drew back and let it pass, only to regret it bitterly as soon as it was too late." Such sentiments, combined with cultural pessimism and anti-Semitism, provided a breeding ground for Nazi ideology; Spengler's broodings, like Ezra Pound's or Filippo Marinetti's, revealed how modernism could slide into fascism.

THE OPENNESS AND the optimism of the American modernists kept that dark transformation from occurring on this side of the Atlantic. Here the recoil against Victorian moralism meant that magazines such as *The Masses* would try to become (in Stansell's words) "a collage of offerings rather than a lecture." Unlike the affluent educated professionals who read the fledgling *New Republic*, *The Masses*' audience was composed of ambitious working people—upwardly mobile, self-taught shopkeepers and immigrants. "Labor people came to it," recalled the feminist Mary Heaton Vorse, "people who were interested in life."

The fascination with "life" took more benign turns when it was combined with the conviction articulated by William James that "real culture lives by sympathies and admirations, not by dislikes and disdains." James was onto something. Yet how could artists vivify culture with "sympathies and admirations" if they felt out of step with their place and time? The classic solution was to write or to paint for the ages, to make art that was rooted in particular social circumstances (as all art is) but that somehow transcended the conditions of its creation, using historically specific idioms to address universal concerns.

The Village bohemians, by contrast, felt no need to transcend their moment and their milieu. The culture that they aimed to create was dependent on their belief in the promise of modern American life, as it seemed to be surfacing in the streets around them. The young critic Kenneth Burke put their faith dogmatically: "The artist does not run counter to his age; rather, he refines the propensities of his age, formulating their aesthetic equivalents." This formula worked well if the artist believed that he was on the cutting edge of revolutionary progress, but it broke down when "the propensities of his age" were not so hopeful. Stansell elucidates the problem in her discussion of John Reed. His *Insurgent Mexico*, which appeared in 1914, presented a struggle for power that was sanitized, romanticized, and for men only; it was a tourist's account of revolution, "spiced up with a liberal interpretation of peasant wrongs" and calculated to appeal to elite readers such as Reed's Harvard classmate Walter Lippmann, who praised the book effusively from his perch at *The New Republic*. Yet when Reed tried to report on World War I, Stansell observes, "he was unable to use the usual tricks to transform intractably brutal material."

What Burke and other Village optimists failed to confront was the possibility that history had no clear direction—that even the noblest intentions could be thwarted from within, that even the ablest mind could be divided against itself. As Stansell says, the American modernists radiated "confidence, discovery, self-delight"; and had little use for "fine distinctions, irony, and refusal." Which is to say, they had no tragic sense. This was what separated the pre-war American modernists from the most profound of their European contemporaries, as well as from the best of their American predecessors and successors. The difference may help to explain why Melville, Hemingway, and Faulkner acquired an international reading public, and figures such as Eastman and Hapgood continue to seem provincial.

THIS AMERICAN OPTIMISM was nowhere clearer than in the bohemians' effort to join personal revolution to political revolution. Emma Goldman's career epitomized the endeavor. In Stansell's words, she was "the oracle pointing in the direction of untested possibilities," addressing herself to anyone on the verge of departing one situation—"a marriage, a job, an identity, a town"—to try out a new one. A nice Jewish girl from Rochester, she had an Emersonian and evangelical style that spoke more of the chautauqua than the *shtetl*. Under Goldman's influence, anarchism acquired an American cast, re-focusing its energies from collective identity to individual self-expression, and attracting many young recruits away from the plodding predictabilities of socialism. As Margaret Anderson said, socialism was merely "an explanation," but anarchism was "an announcement." The former had the aura of bureaucratic rationality, the latter had the lure of high drama.

The effort to infuse politics with personal drama reveals many weaknesses in retrospect, as Stansell acknowledges. Consider Mabel Dodge's salon, where young radicals flocked to feel the energy of Big Bill Haywood, head of the Industrial Workers of the World and an icon of labor authenticity: this may have been the birthplace of radical chic. Or consider the appeal of Goldman herself, whose electric presence (as Stansell perceptively observes) allowed Dodge to put herself into "imaginative proximity with blood in the streets." Occasionally that imaginative exercise promoted the stupid romanticizing of revolutionary violence that would haunt the more dogmatic precincts of the American Left.

But only occasionally. A more common difficulty with bohemian politics was subtler and less drastic. Just as the boring old socialists had warned, the attempt to make public life into a vehicle for private transformation often ended by severing cultural change from political change, free speech from class struggle. The cause of free speech attracted many liberal fellow-travellers to radical causes, but the stakes were higher for the radicals than for the liberals. Goldman's lectures drew vigilantes who vowed that "we will strip her naked; we will tear out her guts." For her, free speech involved a guarantee of physical safety; for most liberals, it was a question of unencumbered cultural consumption, and freedom from the censorship imposed by cloddish ordinary folk—"ignorant postal clerks, clergymen of archaic convictions, and lower-court judges of the tobacco-chewing, common-saloon type," as the *Little Review* characterized its opponents in the censorship fight. As Stansell concludes, "the bohemians laid the groundwork for a liberal metropolitan elite committed as much to matters of cultural taste and innovation as to social reform." Thus the split that so often surfaces in contemporary politics, between permissive elites and repressive masses, can be traced to the turn of the century.

Even as bohemian politics became tinged with avant-garde snobbery, the Villagers' obsession with "vital contact" threatened to transform public debate into therapeutic soul-searching. Stansell recognizes this possibility, but she effectively defends the bohemians against charges of self-absorption. Ever since Byron set sail for Missolonghi, the politics of solidarity has always involved a certain amount of self-valorization. Who can blame the bohemians, Stansell asks, for wanting "a vivid, neo-Romantic life, risktaking, adventurous, open to multitudinous human connections," and for finding that life in the working class fight for economic justice? To be sure, cross-class alliances could sometimes involve little more than lachrymose empathy for the downtrodden, but they could also create something more: "exchanges between writers, lawyers, and poor people all laid out the terms for a powerful twentieth century coalition politics of the left, even if that politics has now all but disappeared."

Here as elsewhere, Stansell implicitly acknowledges what she is up against. We have become so benumbed by the colossal failures of the Left, so inured to the endless media caricatures of countercultural politics, that it is difficult to credit the prewar radicals' hopes. Yet there was (and there is) no reason why personal politics had to become "merely personal," as so many critics have charged. Indeed, that "merely" suggests how commonly conventional politics have served as a refuge from the terrors of the inner life. There was no reason—at least in principle—why inner life and outer life could not cohere, no reason why democratic political beliefs could not also result in democratic personal relations.

Randolph Bourne, c. 1916

That was the hope that inspired the bohemians' most daring departures from Victorian norms. "Sexual modernism" was a set of values that have since become therapeutic platitudes: the rejection of possessiveness and jealousy in erotic relationships; the recognition, indeed the celebration, of female sexual desire; the re-founding of marriage on the basis of "truth-telling and equality" rather than religious ritual; the insistence on openness and honesty between partners in all matters, including extramarital affairs; the ideal of marriage as intense companionship, involving shared work and play both inside and outside the home. Taken together, Stansell suggests, these ideas constituted nothing less than "the invention of heterosexuality"—not as a biological fact, of course, but as an extraordinarily demanding discourse of intimacy, a set of expectations that have survived, in diluted form, down to our own time.

Yet the undiluted version was deeply problematic, particularly when it came to sanctioning promiscuity. Stansell is at her best in showing shrewdly how the brave new creed cracked and crumbled (if it did not dissolve) under the strain of actual experience. The marriage of Hutchins Hapgood and Neith Boyce offers her most telling example. Both were writers; both claimed allegiance to the ideals of free love. But Hapgood was the more established of the two, and his journalistic assignments took him among the working class, where he quickly began exploring the sexual subtext of "vital contact." In letters home he detailed his affairs to his wife, assuring her of the benefits for the marriage of his "meeting and knowing other women." He specialized, as Stansell wryly notes, in "turning adultery into a feminist gesture."

Boyce tried gamely to keep up, professionally and sexually. She had an occasional affair, but she was never as excited by disclosing them as her husband appears to have been, and she never really reconciled herself to his compulsive copulating. Meanwhile she bore him four children, who left her little time to write; servants were in ever shorter supply, and the burdens of domesticity were increasing just as feminists began rejecting domesticity in favor of work in the world. In bohemian circles, child-rearing provided no sense of social worth. Then as now, children were a problem for women with ambition. Male "feminists," despite their proclaimed commitments to shared child care, always seemed to have too many pre-existing professional commitments to shoulder any substantial part of the domestic burden. This was certainly the case with Hapgood, who becomes an increasingly repellent character as his story unfolds. He ends in bathetic selfennoblement, composing a book called *The Story of a Lover*, a litany of complaint about the psychic wounds supposedly inflicted on him by Boyce.

For women, then, bohemian ideology created as many problems as it solved. There was, as Stansell observes, a "willed equality" in sexual modernism; it offered women a seductive model of sexual agency that left them little room to address their actual needs and difficulties. Their sexual desires were celebrated, but their other desires—for loyalty, respect, encouragement, companionate parenthood—were ignored. The noble dream of a gentler masculinity became little more than "a liberal version of swagger, reworking feminist ideals and fantasies of a sexually egalitarian life into a different set of male imperatives." Ironically, Stansell concludes, the American moderns produced "a distinctly modern relationship, in which an outward show of equality obscured a deeper reconfiguration of male privilege and female acquiescence." This was not the modernity that the feminists had fondly imagined.

If bohemian marriage displayed the limits of the ideology of modern love, the coming of World War I revealed the weaknesses in the marriage of culture and politics. The ideals of free speech were put under intense strain, and soon collapsed altogether in liberal circles. John Dewey, who is periodically exhumed and re-canonized by liberals in search of a usable past, remained silent about the suppression of civil liberties—even on his own campus at Columbia, where several pacifist professors were fired. Goldman and other anti-war radicals were imprisoned and eventually deported, but not before she had made a rousing defense of her patriotism to a jury of middle-class businessmen: "I for one cannot believe that love of one's country must needs consist in blindness to its social faults, in deafness to its social discords, in inarticulation of its social wrongs."

Nobody was interested in making such distinctions. War fever brought the death of ambiguity, which had been the fountainhead of bohemians' hopes for a new cultural space, a new "Trans-National America." And perhaps the person best positioned to write the obituary was Randolph Bourne—the intense romantic idealist, the passionate believer in the regenerative power of friendship, youth, and life. All the bohemian dreams were distilled to their essence in Bourne. Yet his deformed face and figure kept him largely on the sidelines of the sexual circus. Yearning for intimacy, he also recognized the pitfalls of a politics based solely on enhancing it. Stansell persuasively argues that Bourne was one of the only bohemians to recognize the dilemma of cultural politics: "if a modern cultural politics of the left could lay the basis for a particular democracy, it might also come to serve as a substitute for that democracy, a substitute that lacked the strength to withstand political reprisals."

A graduate of Columbia, a devotee of Dewey, Bourne made his way as a freelancer, trying with only limited success to sustain working relationships with *The Atlantic Monthly* and *The New Republic*, finding a home eventually at the upstart *Seven Arts*. When Dewey defended America's entry into the war, Bourne was incensed at what he believed was a betrayal of pragmatism. The man whose philosophy was supposed to provide us unprecedented power to intervene intelligently in the course of history was instead preaching "adjustment" to "the logic of events." Bourne traced this reversal to certain key weaknesses in the pragmatic attitude itself. "If your ideal is to be adjustment to the situation, in radiant co-operation with reality, then your success is likely to be just that and no more," he memorably declared. "You never transcend anything."

Dewey's acquiescence in the war was only a symptom of its larger impact on "responsible" intellectuals. "Their thought becomes little more than a description and justification of what is going on," said Bourne. They had all embraced "realism." "This realistic boast is so loud and sonorous that one wonders whether realism is always a stern and intelligent grappling with realities. May it not be sometimes a mere surrender to the actual, an abdication of the ideal through a sheer fatigue from intellectual suspense?" he asked. The bohemian quest for contact with "real life" had become the liberal intellectuals' capitulation to the realities of the war.

Bourne was damned if he was going to surrender to the actual or abdicate the ideal. His anti-war writings made him a target of the newly created F.B.I. Even on summer outings to the Connecticut shore he was followed by government agents, whom he believed had been put on his trail by Dewey. Penniless, isolated, hounded by spies, he died a victim of the influenza epidemic in 1918. Even in his desperate last months, he still wore his trademark black cape, transforming his deformity into mystery, living poor with style to the end.

One wonders what Bourne would have made of the assimilated bohemian ideals in the consumer culture of the 1920s—a period when, as Malcolm Cowley wrote, "*self-expression* and *paganism* encouraged a demand for all sorts of products—modern furniture, beach pajamas, cosmetics, colored bathrooms with toilet paper to match." Probably Bourne would have reminded his readers of the larger, mostly lost meanings of bohemia, which he embodied, as Stansell writes, in "his respect for culture and the needs of the imagination, his refusal to subordinate the individual to the state, his emphasis on economic co-operation and a disbelief in liberal guarantees of rights as ends in themselves."

Bourne epitomized the enduring aspects of the bohemian ideal. Whether they have endured to our own time is an open question. According to Stansell, Bourne himself believed that "America, for all its fits and starts of memory, never quite forgets those who hold the country to its grandest, most encompassing possibilities." Maybe. But as Hemingway's Jake Barnes remarked a few years after Bourne's death, isn't it pretty to think so? ■

Let Them Talk

By Richard A. Posner

Troubling Confessions: Speaking Guilt in Law and Literature by Peter Brooks

(University of Chicago Press, 207 pp., $24)

Confession, the acknowledgment of guilt, is a practice encouraged by police, priests, psychoanalysts, talk-show hosts, and the critics of President Clinton. Peter Brooks hopes by looking across the full range of the practice to increase our understanding of it. His emphasis is on the use of confessions in modern American courts to establish criminal guilt. Even when not procured by gross forms of coercion (which the law forbids), confessions sometimes are false—as in the Salem witch trials and their modern counterpart, the "recovered memory" prosecutions of alleged child abusers—and thus, being devastating evidence of guilt, lead to the conviction of the innocent. And even when true, Brooks continues, the confession signifies a "tyranny of transparency" that implies "the abolition of all zones of privacy around the individual, the claim that the individual's conscience must be legible to all, that there can be no zones of obscurity." The use of the confession by the criminal law is thus problematic—and yet confessions are too useful a tool of criminal justice to give up. All that Brooks will recommend is "greater skepticism about their reliability, and a reduced dependency on their role in crime detection."

Brooks is not a lawyer, but he handles legal materials with aplomb, and he writes with equal authority about the other domains of human activity in which the confession figures largely. His range is impressive. One might have wished, if only to give him a slightly larger audience, that Brooks wore his learning a little more lightly, sparing us reference to "speech acts" (a term used obsessively in the book) and Russian formalism and Emile Benveniste's reflections on "language in the situation of discourse," and also such sentences as "He effectively evacuates the issue of 'voluntariness' in our usual acceptation of the term." But these blemishes are rare; the book is for the most part entirely lucid.

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Brooks's tone is judicious throughout. It is hard to quarrel with so mild a recommendation as that we be properly skeptical of the reliability of confessions, and that we avoid overdependence on the confession as a tool for convicting criminals, which is all, really, that Brooks—who eschews any intention of "formulat[ing] policy recommendations in the field of criminal justice"—is urging. But let me try. There are two separate issues. The first is the reliability of confessions, and the second is the undesirability of creating a confessional culture (Brooks's "tyranny of transparency").

About the first, Brooks presents no evidence that a significant number of people are being convicted on the basis of false confessions. The "recovered memory" issue is special, because it involves confessions to "crimes" committed many years earlier. The unreliability of distant memory is not an issue in any other class of confessions. Although Brooks is right to point out the subtle and not-so-subtle methods by which the police induce suspects to confess, he presents no evidence that any of these methods is close enough to the rack to induce people to confess to crimes they have not committed.

The more interesting question is whether, even though confessions are reliable evidence of guilt, we should be uneasy about them because extracting from the criminal's own mouth the evidence used to convict him is morally distasteful. There are two closely related points here. First, since confessing to a crime is a self-destructive act, there is a suspicion that confessions, even when truthful, are not voluntary; that the state in accepting the confession is not treating the suspect as an autonomous human being. Second, the use of confessions encourages what is already a cultural drift toward making our inner selves public, and this is also inconsistent with autonomy, and conceivably with liberty and creativity as well. If we are transparent to each other, we become like the cells of a single organism; we have no private space for making our own plans and charting our own destinies.

It is in relation to these points that the role of the confession in domains other than the law becomes important for Brooks. The confession has an important place in religious practice, notably in Roman Catholicism; but there it is rewarded by absolution, whereas confession of crime is "rewarded" by conviction. The same reward structure as in the religious case obtains when the psychoanalytic patient bares all to his analyst, or the talk-show guest to his host and the audience. "Everything in the culture," Brooks observes, "presses toward speech." He is concerned that suspects questioned by the police feel this cultural pressure to speak, not fully realizing that there will be no absolution, but only punishment. So the decision to confess is less than fully voluntary; and, by the same token, people lose the sense that they have a right to keep their thoughts private.

It will help in evaluating these claims to consider more carefully why people ever do confess to misconduct. The answer in the case of the Catholic confessional is simple. The church offers its members an attractive deal: confess and be forgiven for thoughts or conduct that might otherwise be punished with damnation. Notice that the priest's interrogation, unlike a police interrogation, is not part of an investigation designed to discover crime or to obtain evidence against the criminal. Everything to which the parishioner

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FROM: State/L/OES – Sue Biniaz

RE: Compliance Papers for 2/22 Meeting

TO: Addressees

FROM: State/L/OES - Sue Biniaz

RE: Compliance

- For purposes of the meeting on February 22nd on compliance, below is a short summary of where things stand and key issues for policymakers.

- While the Protocol contains many U.S.-inspired provisions related to compliance, it calls for elaboration of the rest of the compliance regíme, including the procedure(s) for determining non-compliance and most consequences for non-compliance.

- Consistent with the U.S. view, COP 4 established a group to elaborate the compliance regime on the same timetable as other issues, such as flexibility mechanisms. (We circulated a statement on compliance at COP 4, for those who are interested.)

- Compliance issues are fairly complicated; in addition to raising major policy questions (such as consequences for exceeding the target), they involve lots of technical points and interlinkages among provisions. It has been clear from the international discussions that we have thought about the issues far more than most countries.

- The umbrella group had its first substantive discussion about compliance in January. We agreed to make individual submissions, drawing on common points. (A summary of that compliance discussion is available, for those who are interested.)

- Attached is the draft U.S. submission, which incorporates the views of the mini-interagency group that has been thinking about compliance (as well as numerous points of outside groups) ; it is being circulated for full interagency comment.

  -- The submission lays out U.S. views on many aspects of the compliance regime; it also provides analysis on some of the more complicated points.

  -- Regarding the issue of the consequence for exceeding the target, it says that there should be one (a point disputed by some countries in the umbrella group) and that "it should be designed so as to promote the environmental effectiveness of the Protocol (for example, by restoring excess tonnes to the system)". It does not take a position on exactly what the consequence should be.

- Key policy issues that will need to be addressed during the elaboration of the compliance regime include:

-- How much needs to be finished by COP 6. We have said, and the COP 4 decision seems to endorse the view, that the regime, including consequences, needs to be completed along with everything else. Our reasoning has been that we need to be able to present the Senate with the full picture. At the umbrella group meeting, some countries (including Canada) seemed to be taking the view that we do not really need to decide on all aspects of the regime, including consequences for exceeding the target; these could be decided later. Once views of more governments become clear, there may be a need to weigh in on this issue.

-- What the consequence for exceeding the target should be. Our position at Kyoto (after our "borrowing" proposal was unsuccessful) was that the excess tons should be subtracted from the subsequent commitment period, with a penalty. That position did not make it into Article 18, partly because of the lateness and partly because of substantive objections. Various other proposals are coming in from environmental groups.

-- To what extent we should be seeking "parallelism" in terms of non-compliance consequences among Parties that bubble, trade, or do not use any mechanism. An example of the type of issue that arises is whether it is worse, from a non-compliance point of view, for a Party to exceed its target because it over-sold (through trading) than because it over-emitted. If we support parallelism, we need to ensure that we do not, through the rules for mechanisms, place ourselves at a disadvantage vis-à-vis, for example, the EU.

Compliance-Related Issues under the Protocol: Submission of the United States

Introduction

- The United States made an initial statement regarding compliance at COP 4 in Buenos Aires. That statement, which is attached:

  -- stressed the importance of the compliance regime for effective implementation of the Protocol;
  -- noted existing compliance-related aspects of the Protocol;
  -- identified compliance-related areas still to be elaborated; and
  -- raised various issues associated with the elaboration of such areas.

- This submission seeks to build on the previous U.S. submission. At the outset, it includes some general comments on the Protocol's compliance regime. It then includes a more specific discussion focusing on compliance aspects of Annex I targets.

General

- The Protocol's compliance regime needs to be developed with the following objectives in mind:

  -- transparency (which is likely to foster compliance, as well as Party and public confidence in the system);

  -- credibility (while we should primarily be striving to create a "compliance system" rather than a "non-compliance" system, Parties and the public need to know that, in the final analysis, there will be appropriate consequences for non-compliance; further, credibility will be bolstered if it is clear that the system is depoliticized and cannot be "gamed;" and

  -- reasonable certainty (there needs to be a certain level of automaticity to the system, so that Parties know which actions/inactions will lead to which results and so that parallel infractions will be treated in a parallel manner; on the other hand, the system somehow needs to take account of particular circumstances).

- It is important to look at the various kinds of obligations under the Protocol (e.g., quantitative/qualitative, individual/collective, annual/continuous/end of commitment period) in considering how compliance by Parties should be reviewed.

- In several aspects, the substantive provisions of the Protocol need to be elaborated, e.g., mechanisms, national estimation of emissions, reporting. It will be important to think about the future compliance regime when elaborating such provisions. (For example, it does not appear that the current guidelines for Annex I communications would form a solid basis for assessing compliance.) It would be desirable, from a compliance point of view, if negotiators charged with elaborating substantive provisions would:

  -- make clear what is a rule (and therefore a requirement) and what is guidance (and therefore not a requirement for compliance purposes); and

  -- structure any rules in such a way that compliance therewith can be ascertained with reasonable ease.

- Whether through one procedure or more than one procedure, the compliance regime should incorporate not only enforcement features but also facilitative/help desk features (recognizing that compliance may in some cases be affected by the capacity of Parties, e.g., technical expertise, to meet their obligations).

- In developing the Protocol's compliance regime, it is important to bear in mind that we are not starting from scratch. For example, Article 8 already sets forth numerous aspects of a review process applicable to Annex I Parties. In addition, the Framework Convention ~~has established~~ established the principles of transparency and public access in its procedures for reporting and review. Extension of these principles to the procedures and mechanisms under the Protocol (e.g., reports from the Parties, reports from the experts groups to the Parties, etc.) could serve as a valuable compliance tool.

- Non-compliance consequences will likely vary depending upon the nature of the obligation that has been violated, as well as the degree, frequency, etc., of the non-compliance.

- Achieving compliance with the Protocol's obligations will largely depend upon domestic enforcement by various Parties of their laws implementing the Protocol. The international non-compliance regime should create incentives for Parties to have strong domestic enforcement, but that regime will not be directly involved in domestic enforcement. This being so, it seems desirable for Annex I Parties (whether under Article 5 or 7 or elsewhere) to report on the domestic enforcement regime(s) applicable to domestic laws implementing Protocol obligations, particularly Article 3.

<u>Compliance with Quantified Emission Limitation and Reduction Commitments ("Targets")</u>

- Particular attention is warranted regarding Article 3 of the Protocol, along with Articles 5 and 7, which are the means by which an Annex I Party demonstrates its compliance with Article 3.

- In order to develop a system capable of assessing compliance with quantified emission limitation and reduction commitments ("targets"), it is instructive to identify the various pieces of the Protocol that are relevant to such an assessment.

- When the Protocol is "reverse engineered," it appears that calculating compliance with targets is akin to a mathematical formula, with emissions during the commitment period on one side of the equation and assigned amount on the other.

- The attached chart demonstrates the various components of the formula that would need to be calculated and reviewed in order to assess whether an Annex I Party had complied with its target.

- On the left side of the equation is "emissions," which refers to emissions during the commitment period. It should be noted that the Protocol is not based on actual emissions, but rather on estimation of emissions based on agreed methodologies. The way a Party demonstrates its emissions is by using the estimation methodologies under Article 5 and then reporting its results under Article 7.

- On the right side of the equation is "assigned amount." Emissions on the left side must be less than or equal to assigned amount.

- Assigned amount is calculated by beginning with original assigned amount, i.e., 5 years times the percentage for that Party inscribed in Annex B times its baseline emissions (Article 3.7). The baseline can vary in several ways, depending upon whether a Party is a country with an economy in transition (Article 3.5), has chosen 1995 for three gases (Article 3.8), and/or qualifies for including net land-use change (Article 3.7).

- Original assigned amount can then be modified in several ways:

  -- It might increase or decrease depending upon sink-related changes during the commitment period (Articles 3.3 and 3.4).

  -- It might increase or decrease depending upon the acquisition or transfer of joint implementation reduction units (Articles 6, 3.10, and 3.11).

  -- It might increase or decrease depending upon the acquisition or transfer of units of assigned amount under emissions trading (Articles 17, 3.10, and 3.11).

  -- It might increase depending upon the acquisition of CDM reductions (Articles 12 and 3.12).

  -- It might increase or decrease depending upon banking (increasing if tonnes have been carried over from a previous commitment period, decreasing if tonnes are being carried over into the next commitment period) (Article 3.13).

- Breaking the target formula into its component parts illustrates a number of points and raises several issues concerning the compliance regime, including with respect to substantive rules, procedure, and consequences for non-compliance.

- In terms of the substantive rules that make up the formula, many are already contained in the Protocol. At the same time, many elements of the formula are in the process of being elaborated, including, e.g., Articles 5 and 7, and the Kyoto mechanisms. It will be important, as noted above generally, to elaborate these provisions bearing in mind their relationship to the target formula and the need for compliance therewith to be ascertainable (for example, clarity as to what is mandatory versus advisory, ability of a third party to assess whether a Party has followed a particular rule).

  -- To take the example of Articles 5 and 7, ongoing confidence in the quality and accuracy of a Party's emissions estimation and reporting will be essential for assessing compliance with Article 3 obligations at the end of a commitment period. Therefore, in elaborating requirements under these Articles, Parties must consider not only the minimum technical requirements necessary to ensure a high standard of inventory quality, but also what should constitute non-compliance with the requirements and how potential non-compliance could be identified (e.g., what indicators might be found through the review process). Finally, Parties should consider at what level failure to comply with measurement and reporting requirements begins to undermine confidence in emission estimates and, therefore, hinders the verification of targets.

- In terms of designing the procedure to assess compliance with the various elements of the target formula, several points are worth noting:

  -- As noted above, the Protocol (Article 8) already includes a role for expert review teams in reviewing implementation of commitments by Annex I Parties. Article 8 authorizes expert review teams to conduct a thorough review of implementation and to flag implementation questions. Based on our experience under the Convention, key questions are how to improve the process generally and, more specifically, how to tailor it so that it can effectively apply to review of legally binding targets. In this regard, the process should provide more focus on development and reporting of greenhouse gas inventories. The process would also be improved by establishing an automatic link to a follow-up procedure in cases where a review team has identified a question of implementation.

  -- Given that the expert review process does not extend to determining or responding to non-compliance, there will be a need for an additional procedure(s). Numerous issues arise in connection with devising such a procedure:

There is the question of whether the procedure should automatically review each Party's compliance with its target obligation after each commitment period or, alternatively, whether compliance should only be reviewed when an issue has been affirmatively raised. It appears that the non-compliance procedure does not need to automatically review each Party's compliance with its target obligation. If there is confidence in a Party's measurement and reporting (which should be known from annual review of inventories and assigned amounts, as well as from period in-depth reviews), then the only step that is required at the end of a commitment period is a final evaluation to ascertain whether total reported emissions are less than or equal to adjusted assigned amount. This evaluation should occur automatically as part of the annual review and accounting of assigned amounts by expert review teams. Referral to a further procedure would only appear to be necessary if there is no confidence in a Party's measurement and reporting or if (taking into account the need for a true-up period) the annual review indicates that emissions exceed assigned amount.

There is also the question of the composition/expertise of any review body. As illustrated above through the target formula, compliance issues might arise under any one of the formula elements. On the left side of the equation, for example, there might be an issue concerning whether a Party has followed required methodologies; on the right side, for example, there might be issues concerning a Party's baseline emissions or whether the rules for a particular mechanism have been followed. The procedure needs to be capable of reviewing all such issues.

The nature of the procedure also needs to be related to the consequences that might flow from a determination of non-compliance. The more "binding" and serious the potential consequences, the more the procedure must afford "due process."

- In terms of <u>consequences</u> for non-compliance, again several points are worth considering:

  -- The target formula appears to contain three different kinds of elements: (1) elements that are obligations in and of themselves (such as reporting under Article 7); (2) elements that are pure accounting elements and not actually written as obligations themselves (such as sinks under Article 3.3); and (3) elements that are accounting elements but derive from mechanisms governed by obligations (such as CDM, trading, etc.). Non-compliance with an element that is an obligation might carry its own consequence (such as related to joint implementation under Article 6.1.c), apart from any consequence that such non-compliance may play regarding compliance with the target obligation. Concerning pure accounting elements, there cannot, strictly speaking, be "non-compliance" with such an element; rather, the value of that element in the formula would simply be adjusted to make it accurate (unless, perhaps, inaccuracies were chronic). Regarding elements that derive from mechanisms governed by obligations, to the extent a problem with such an element were due to non-compliance with the rules governing the related mechanism, additional consequences, beyond appropriate adjustment of the element's value, might be appropriate.

-- Different kinds of inconsistencies could merit different treatment:

> Some kinds of inconsistencies (such as being a day late in reporting or a minor technical error of no substantive import) should be considered de minimus, not rising to the level of a Protocol violation.
>
> Some kinds of inconsistencies, while not strictly speaking de minimus (such as missing a category of emissions in a communication), might be easily cured if the Party is given the opportunity.
>
> At the other end of the spectrum, some kinds of inconsistencies (such as an inconsistency with Article 5 or 7 not in either of the above categories) might constitute a violation of that Article and/or non-fulfilment of a participation requirement for a Kyoto mechanism (see, e.g., Article 6.1.c on JI); it might also contribute to a violation of the target obligation.

-- Meeting targets will be an inexact science, in the sense that no Party's emissions will exactly equal its assigned amount. In this regard, we should build in a short grace period after the end of the commitment period (the analogue of a domestic "true-up" period), during which Parties can seek to remove overages.

-- Consequences for exceeding the target after an assumed true-up period should be designed so as to promote the environmental effectiveness of the Protocol (for example, by restoring excess tonnes to the system

CALCULATING COMPLIANCE WITH ASSIGNED AMOUNTS (TARGETS)*

ACTUAL EMISSIONS must be < or = to ASSIGNED AMOUNT

demonstrated through measurement of emissions (Art.5) and reporting (Art.7)

[5 x % in Annex B x baseline emissions] ± sinks during commitment period (Art. 3.3 + 3.4) ± JI units (Art.6) ± trading units (Art.17) + CDM reductions (Art.12) ± banking (Art. 3.13)

(if from previous period)

(if carrying over into next period)

based on 1990 (Art. 3.7) or other year f EITs (Art. 3.5/3.6) or 1995 f 3 gases (Art. 3.8)

+ 1990 net LUC if qualify under Art 3.7

* The formula would apply to Parties using an Article 4 bubble as a group unless the group exceeded its aggregate assigned amount.

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