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### Regulation and Regulatory Processes

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# Regulation and Regulatory Processes

*Edited by*

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**ASHGATE**

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# Contents

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<i>Acknowledgements</i>	vii
<i>Series Preface</i>	ix
<i>Introduction by Cary Coglianese and Robert A. Kagan</i>	xi

## **PART I REGULATORY POLICY MAKING**

1 Mathew D. McCubbins, Roger G. Noll and Barry R. Weingast (1987), 'Administrative Procedures as Instruments of Political Control', <i>Journal of Law, Economics and Organization</i> , <b>3</b> , pp. 243–77.	3
2 Stuart Shapiro (2002), 'Speed Bumps and Roadblocks: Procedural Controls and Regulatory Change', <i>Journal of Public Administration Research and Theory</i> , <b>1</b> , pp. 29–58.	39
3 Lyle A. Scruggs (1999), 'Institutions and Environmental Performance in Seventeen Western Democracies', <i>British Journal of Political Science</i> , <b>29</b> , pp. 1–31.	69
4 David Vogel (2003), 'The Hare and the Tortoise Revisited: The New Politics of Consumer and Environmental Regulation in Europe', <i>British Journal of Political Science</i> , <b>33</b> , pp. 557–80.	101

## **PART II REGULATORY ENFORCEMENT**

5 John T. Scholz (1984), 'Cooperation, Deterrence, and the Ecology of Regulatory Enforcement', <i>Law and Society Review</i> , <b>18</b> , pp. 179–224.	127
6 Peter J. May and Søren Winter (2000), 'Reconsidering Styles of Regulatory Enforcement: Patterns in Danish Agro-Environmental Inspection', <i>Law and Policy</i> , <b>22</b> , pp. 143–73.	173
7 John T. Scholz and Feng Heng Wei (1986), 'Regulatory Enforcement in a Federalist System', <i>American Political Science Review</i> , <b>80</b> , pp. 1249–70.	205

## **PART III RESPONSES TO REGULATION**

8 John Braithwaite and Toni Makkai (1991), 'Testing an Expected Utility Model of Corporate Deterrence', <i>Law and Society Review</i> , <b>25</b> , pp. 7–40.	229
9 Wayne B. Gray and John T. Scholz (1993), 'Does Regulatory Enforcement Work? A Panel Analysis of OSHA Enforcement', <i>Law and Society Review</i> , <b>27</b> , pp. 177–213.	263

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- 10 Kazumasu Aoki and John W. Cioffi (1999), 'Poles Apart: Industrial Waste Management Regulation and Enforcement in the United States and Japan', *Law and Policy*, **21**, pp. 213–45. 301
- 11 Robert A. Kagan, Neil Gunningham and Dorothy Thornton (2003), 'Explaining Corporate Environmental Performance: How Does Regulation Matter?', *Law and Society Review*, **37**, pp. 51–90. 335

#### **PART IV NEW DIRECTIONS IN REGULATORY DESIGN**

- 12 Gjaltp Hupples and Robert A. Kagan (1989), 'Market-Oriented Regulation of Environmental Problems in the Netherlands', *Law and Policy*, **11**, pp. 215–39. 377
- 13 Robert N. Stavins (1998), 'What Can We Learn from the Grand Policy Experiment? Lessons from SO<sub>2</sub> Allowance Trading', *Journal of Economic Perspectives*, **12**, pp. 69–88. 403
- 14 Cary Coglianese and David Lazer (2003), 'Management-Based Regulation: Prescribing Private Management to Achieve Public Goals', *Law and Society Review*, **37**, pp. 691–730. 423
- 15 Peter J. May (2003), 'Performance-Based Regulation and Regulatory Regimes: The Saga of Leaky Buildings', *Law and Policy*, **25**, pp. 381–401. 463
- Name Index* 485

# Introduction

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Regulation is nearly as old as law itself. Like law in general, regulation consists of rules backed up with consequences, but it is law specifically aimed at preventing misconduct by businesses and other organizations, and enforced primarily by specialized government agencies. Although governments have regulated economic activity since ancient times, the regulatory state grew enormously in most economically advanced democracies in the twentieth century, spurred by rapid technological and economic change and political demands for protection against monopolistic power and the risks of industrial activity.

Over the past 50 years, regulatory agencies and the rules they promulgate have become prominent components of contemporary legal systems, often eclipsing legislative and judicial rules in their economic and social effects. In most countries, regulatory inspectors now constitute a vast white-collar police force, enforcing regulations that address risks from nearly every facet of economic activity, including rules on workplace safety, financial security, air and water pollution, fire and accident prevention, earthquake protection, health and elder care delivery, food and drug quality, and proper maintenance of airplanes, elevators, school buses and railroad tracks.

Appropriately, sociolegal scholars have increasingly turned their attention to regulatory processes in an attempt to discern how regulations actually operate and what impact they have on business and society. The study of regulation by sociologists, political scientists, economists, and others has tended to focus on four main areas. First, social scientists have sought to understand and explain the process by which regulations are created, scrutinizing the political and institutional variables affecting policymaking decisions within regulatory agencies. Second, researchers have studied the behaviour of government inspectors and the processes of regulatory enforcement. Third, social scientists have studied the effects of regulations and their enforcement on business behaviour – both the positive and negative, intended and unintended responses. Finally, researchers have theorized about and, increasingly, have empirically analysed new models of regulation, such as market-based, performance-based, and management-based regulation.

The essays in this volume have been selected to showcase the key issues addressed within the scholarly literature in each of these four areas, as well as to convey the research methods they have employed and the findings and generalizations they have produced. In this Introduction, we highlight the major themes and findings from the broader research literature represented by the work reprinted in this volume.

## **Regulatory Policy Making**

Even as it has become widely accepted that it is socially beneficial to allow private businesses to make their own economic decisions in light of competitive and customer pressures, it is also widely accepted that certain types of business behaviour can be detrimental to society.

Government intervention is needed when high transaction costs prevent markets from adhering to the underlying assumptions of perfect competition (Coase, 1960; Zerbe and McCurdy, 1999). Society needs regulation specifically to correct for failures of the private marketplace, such as the accumulation of market power in the form of monopolies, the lack of information needed by market actors to make fully informed decisions, and the frequent negative side-effects or externalities of business activity (Stokey and Zeckhauser, 1980; Breyer, 1982; Sunstein, 1990; Viscusi *et al.*, 2000).

Although the standard theory of market failure provides a well-accepted normative justification for regulation, it only goes so far in providing a positive or empirical account of how and why regulations get made. Social scientists have shown that policy making and implementation generally fails to follow a rational order that accords with how we might think policy *should* be made and implemented (Lindblom, 1959; Kingdon, 1984; Pressman and Wildavsky, 1984). The same can be said of regulatory policymaking. Despite the occasional exception (Levine and Forrence, 1990), for at least the last half-century scholars have argued that regulatory policymaking often departs from the normative logic of market failure and instead reflects the push and pull of interest group politics (Wilson, 1980, 1989).

Perhaps the clearest example of this kind of departure arises when regulatory authorities have been captured by the industries they are supposed to regulate, serving business interests rather than the overall interests of society (Huntington, 1952; Bernstein, 1955; Lowi, 1969). Some scholars have argued that regulatory programs respond to organized business interests by using the coercive power of government to impose barriers to entry on low-cost or foreign competitors (Stigler, 1971; Peltzman 1976). Examples of regulatory regimes that serve as barriers to entry, or otherwise advance the interests of regulated industry, include professional licensing, certain ratemaking regulatory regimes, and regulations that privilege existing firms over newer ones (Kolko, 1965; Ackerman and Hassler, 1981; Abbott, 1988; Stavins, 2006).

Furthermore, governments do not automatically enact new regulations in response to public problems, such as oil spills, industrial accidents, or financial scandals (Kingdon, 1984). A problem may be a necessary condition for the enactment of new regulation, but its existence is by no means sufficient to explain the adoption of new rules (Elliott *et al.*, 1985). When the benefits of new regulations are spread out over thousands or millions of individuals, affected individuals face challenges in organizing to advance their interests (Olson, 1968). Since the costs of new regulatory programs are usually concentrated on a relatively small number of business enterprises that can bring political pressure to bear to thwart or modify regulatory proposals, industry's interests are likely to be better reflected in regulatory policy at the margin than are the greater aggregate interests of diffuse and unorganized social beneficiaries of regulation (Wilson, 1980).

Not all regulatory developments, though, can be explained as advancing the interests of regulated industry (Schneiberg and Bartley, 2001). The movement to deregulate major industries in the 1970s and 1980s clearly draws regulatory capture into question, for this never would have occurred if legacy firms possessed an iron grip on the policy process and used regulation to restrict entry to competitors (Derthick and Quirk, 1985). Similarly, the great expanse of consumer protection, environmental, worker safety and civil rights regulation enacted in the latter part of the twentieth century belies any simplistic belief in unwavering industry power (Kamieniecki, 2006). Much regulation today imposes extensive costs on

industry, often precisely to deliver broad and diffuse benefits to individuals across society (Vogel, 1989).

In the last half century, policy entrepreneurs have prodded governments around the world to enact scores of regulatory laws that do not appear to be primarily driven by industry's rent-seeking behaviour. Even if rent-seeking remains an important aspect of regulatory politics, the degree to which the rent-seekers succeed clearly varies. The explosive growth of regulation has been the product of intensifying political *demands* for regulation together with governmental *responsiveness* to those demands (Kagan, 1994; Braithwaite and Drahos, 2000). On the demand side, powerful political movements, such as the labour, environmental, and civil rights movements, have certainly been instrumental in the growth of regulation (McCann, 1986; Coglianese, 2001). In addition, better-educated and more affluent publics have simply become increasingly intolerant of risks and injustices that less affluent publics tend more readily to accept (Friedman, 1985; Inglehart, 1997).

On the responsiveness side, the increasing competitiveness of electoral democracy may result in a more ready supply of policy proposals from political candidates and parties eager to satisfy voters' desire for greater protection from harm, mistreatment and economic insecurity (Bardach and Kagan, 1982). Even competition across regulatory jurisdictions, which might be expected to lead jurisdictions consistently to race to the bottom in terms of regulatory stringency, has been found sometimes to prompt nations with less stringent regulations to emulate the laws of nations with tougher regulations (Revesz, 1992; Vogel, 1995; Vogel and Kagan, 2004). The ease of exchanging information in an increasingly global economy, as well as the trend towards greater integration of the world's economic and financial systems, also contributes to tendencies towards diffusion and convergence of regulatory policies (Shapiro, 1993; Lazer, 2005; but see Haines, 2005).

The ascendancy of the regulatory state over the past half-century has led social scientists to investigate how governments make regulatory policy. In doing so, they have explored both political and institutional factors that affect the decisions of regulatory officials. For example, in advanced economies like that of the United States, responsibility for regulatory policy making often rests with the bureaucracy, within which unelected officials in hundreds of regulatory agencies make key decisions affecting business and society. The delegation of authority to the bureaucracy creates a well-known principal-agent problem because agencies may generate policies that differ from the preferences of the elected officials that established them (Niskanen, 1971). As a legal matter, of course, bureaucratic agencies do make regulatory policy under the authority of legislation, which has sometimes been said to serve as a 'transmission belt' connecting bureaucracies to the legislature (Stewart, 1975). However, as an empirical matter, the concept of a legislative 'transmission belt' does not adequately explain agency policymaking. Regulatory agencies do still retain considerable discretion and autonomy (Eisner and Meier, 1990; Spence, 1997), if for no other reason than that statutory language is itself often vague and gives agencies a considerable degree of discretion (Lowi, 1969).

Scholars have focused much attention on efforts by the electoral branches of government in the United States to influence, if not control, bureaucratic behaviour. Two major schools of thought have developed, one that emphasizes 'presidential dominance', the other 'congressional dominance'. Presidents can seek to control agency policymaking by appointing the heads of the agencies and approving the submission of agency budgets to Congress (Moe,



1987; E. Kagan, 2001). Congress can call hearings and conduct investigations, but still more significantly the legislature can use appropriations to reward or punish agencies (McCubbins and Schwartz, 1984; Weingast, 1984). Over the years, researchers in the United States have found evidence that both presidents and Congress do influence the work of regulatory agencies (for example, Moe, 1982; Weingast and Moran, 1983; Wood, 1988; Wood and Waterman, 1991; Ringquist, 1995), although most of these studies focus on agencies' adjudication or enforcement decisions rather than on decisions about making new policies (Spence, 1997).

The essay by Mathew D. McCubbins, Roger G. Noll and Barry R. Weingast reprinted as Chapter 1 in this volume, turns attention to what has become known as the procedural control of agency policy making. McCubbins, Noll and Weingast theorize that Congress designs administrative procedures pre-emptively in an attempt to solve the principal-agent problem. Although the field of administrative law has long acknowledged the importance of regulatory procedures (for example, Breyer, 1982; Strauss, 1992), social scientists have more recently adopted a 'new institutionalist' orientation according to which they view policymaking and organizational structures as important variables in explaining policy outcomes (Moe, 1990). McCubbins, Noll and Weingast's contribution has been to show how the transparency required by congressionally imposed procedures helps political principals in the legislature keep tabs on regulatory agencies. They argue that the requirements for public comment mandated by the Administrative Procedure Act of 1946 help ensure ongoing participation by the same interest group coalition that supported Congress's legislative delegation to the agency in the first place. In this way, administrative procedure allows the coalition in the legislature to rely on interest groups as monitors and proxies, thereby overcoming the legislature's informational disadvantage and helping to 'stack the deck' in administrative proceedings in favour of the preferences of the winning legislative coalition (McCubbins, Noll and Weingast, Chapter 1, and 1989).

The path charted by McCubbins', Noll's and Weingast has been influential, with other scholars seeking to model the effects of administrative procedure on regulatory decision-making (Bawn, 1995; de Figueiredo *et al.*, 1999; Epstein and O'Halloran, 1999). Efforts to test empirically the procedural control thesis have found some support in that procedural requirements for specified types of policy analysis may tilt the policy balance towards the values advanced by the analysis (Potoski and Woods, 2001). However, researchers have so far found relatively little support for the prediction that procedures 'stack the deck' in favour of the beneficiaries of new regulation (Balla, 1998; Spence, 1999; Potoski and Woods, 2001). For example, in a study of the implementation of legislation designed to increase Medicare reimbursement fees for primary care physicians, Balla (1998) found that the health care financing administration was more responsive in its rule-making to comments submitted by medical specialists than to those submitted by primary care doctors, the legislature's intended beneficiaries.

Even if rule-making procedures for public participation do not always 'stack the deck', this does not mean that these or other procedures make no difference whatsoever. An abundant research literature, both from the domain of administrative law and new institutionalism, continues to examine the importance of regulatory procedure and oversight mechanisms (Morgan, 1999; Kerwin, 2003). Increasingly, scholars have attempted to scrutinize empirically the effects of administrative procedures, asking whether specific procedures improve the regulatory process in the manner intended by institutional designers. As reviewed by Coglianese

(2002), the emerging literature that evaluates administrative procedures include studies of mandates for economic analysis of new rules (for example, Hahn, 1996; Morgenstern, 1997; Croley, 2003), opportunities for judicial oversight (for example, Mashaw, 1994; Schuck and Elliott, 1990), and experiments with consensus-based decision-making such as negotiated rule-making (for example, Harrington, 1994; Coglianese, 1997; Balla and Wright, 2003).

Of course, regulatory procedures may also sometimes have unintended or undesirable effects. Procedures that provide for oversight, for example, may contribute to an unwanted ‘ossification’ of the regulatory process (Mendeloff, 1988; McGarity, 1992). Whether oversight is performed by the courts or by a centralized review body such as the Office of Management and Budget, it adds another procedural layer and may prompt regulatory officials to act defensively, taking more time to build a case that will withstand the review process (R.A. Kagan, 2001). Facing additional burdens imposed by review procedures, some agencies have allegedly retreated from rule-making altogether (Mashaw and Harfst, 1991) or found alternative ways accomplishing regulatory goals without developing new rules (Hamilton and Schroeder, 1994).

Stuart Shapiro, in an essay reprinted here as Chapter 2, set out to test the extent to which regulatory procedures impede regulators from adopting regulations. To determine whether procedural stringency affects either substantive stringency or the frequency of regulatory change, Shapiro examined a carefully matched set of eight state systems of day care regulation – a regulatory domain largely unaffected by federal control. Exploiting the natural experiment made possible by a comparison of states with intricate rule-making procedures with otherwise similar states that have more streamlined procedures (Teske, 1994), Shapiro found no systematic difference in the pace or stringency of regulation across the two groups. What he did find, though, was that the key factor affecting regulatory policy was the overall political climate within the state, such as whether the legislature or governorship was controlled by Democrats versus Republicans.

Studying regulatory outcomes cross-nationally, other social scientists have similarly considered the extent to which policy structures or styles affect regulatory policy outcomes, especially compared with the effect of political factors, such as interests, ideologies and party control. National governments vary considerably in the way they incorporate affected interests into policy decision-making. As Robert A. Kagan (2001) and others have observed, the United States exhibits a more pluralistic policy structure than found in other countries, with competing interest groups vying for influence in an open and adversarial process (Lundqvist, 1980; Kelman, 1981; Badaracco, 1985; Brickman *et al.*, 1985; Rose-Ackerman, 1995). In contrast with American pluralism, corporatist policymaking in European countries, especially in Scandinavia, has often taken the form of formal and structured collaboration between peak industry associations, labour and government (Schmitter and Lehbruch, 1979; Williamson, 1989).

Do these differences in policy structures lead to differences in regulatory outcomes? This question has been most widely studied in the context of environmental regulation (Crepaz, 1995; Jahn, 1998; Scruggs, this volume, Chapter 3, 2001; Neumayer, 2003). Lyle A. Scruggs, in an essay reprinted here as Chapter 3, found that OECD nations that have employed such ‘corporatist’ regulatory structures tended to achieve larger relative environmental improvements in the 1980s and 1990s, based on an index of several indicators. Scruggs failed to observe any explanatory power from electoral variables or political party control.

In contrast, a subsequent analysis of a similar group of countries by Neumayer (2003) found the opposite: namely that corporatist structures do not explain variation in air pollution levels across countries, but that lower pollution levels are associated with the strength of green and left-libertarian political parties.

Whatever effect corporatist policy structures have on environmental and other types of regulatory policy, these policy structures themselves can change over time. Some have suggested that the corporatist structures in Scandinavia and the Netherlands, for example, have begun to become more conflict-ridden and pluralistic (Christiansen and Rommetvedt, 1999). Furthermore, policies and policy outcomes themselves can change, even if basic differences in policy structures remain. In Chapter 4, David Vogel argues that the substantive differences between European and American environmental regulation have started to disappear over the past 15 years, as European regulatory policy has grown increasingly precautionary in its approach to risk. A subsequent analysis of a random sample of risks by Hammitt *et al.* (2005) confirms a slight degree of movement towards greater precaution in Europe; however, Hammitt *et al.* (2005) also show that the treatment of risk is highly diverse in both jurisdictions – with the US still more precautionary than Europe in its policies about some risks, but with Europe more precautionary for others.

### **Regulatory Enforcement**

The ultimate impact of any regulatory policy depends not only on how that policy has been drafted and designed, but also on how enforcement officials take actions to implement those policies at the ‘street-level’ (Lipsky, 1980; Pressman and Wildavsky, 1984). The style and strategy of regulatory enforcement has attracted considerable attention from social scientists seeking to explain the behaviour of regulatory enforcement personnel.

Two contrasting models shape discussion of the enforcement or implementation of regulation (Bardach and Kagan, 1982; Hawkins, 1984; Reiss, 1984). One model treats regulatory enforcement mainly as a *legal process* and, according to it, regulations are viewed as authoritative legal norms whose violation demands punishment. The other model treats enforcement more as a *social process*, one aimed at stimulating cooperative government-business problem-solving and which calls for remedial responses to violations. In countries throughout the world, some advocacy groups and politicians insist that governments should zealously pursue a legalistic approach, while business groups and many regulatory officials insist that a more cooperative approach is more desirable and effective overall.

The legalistic model reflects the historical weight of criminal law in shaping society’s response to deviant behaviour, even though the task of enforcing regulatory statutes is usually given to specialized administrative agencies rather than to traditional criminal law enforcement bodies. That is because regulatory programs are designed primarily to prevent rather than to punish harm, and prevention often demands specialized technical knowledge. Also, unlike most criminal laws, regulations tend not to seek to prohibit all harmful outcomes (say, pollution or worker risks) but only harm that rises above levels that are demonstrably and unacceptably high. In other words, regulations do not usually seek to eliminate all sources of pollution or all dangers in a workplace, but only ‘unreasonable’ pollution or hazards. Determining exactly which behaviours are likely to result in *unreasonable* hazards, or precisely what should be

done to prevent them, can require case-by-case administrative judgments based on particular technical factors.

Philip Selznick (1969, pp. 14–16) once wrote that the primary purpose of administration is not to determine ‘the legal coordinates of a situation’ in light of pre-established legal rules, but rather ‘to get the work of society done’, to refashion ‘human or other resources so that a particular outcome will be achieved’. Effective regulatory enforcement, in this perspective, requires dialogue between regulators and officials in each regulatory facility. It requires whatever blend of rules and exhortation, threat and education, toughness and compromise will best induce particular regulated enterprises to cooperate. Even offering rewards may be effective at securing compliance (Grabosky, 1995; Braithwaite, 2002b). According to this view, in order to induce change in businesses’ behaviour, regulatory officials must be granted considerable discretion in implementing general regulatory standards.

On the other hand, some regulatory violations – such as intentional fraud, lying to law enforcement and other governmental officials, and reckless disregard for the health and safety of others – are clearly criminal in nature. There are also always a considerable number of regulated entities, or harried sub-unit supervisors, who are inclined to cut corners on compliance to save time and money. Thus, in the hands of gullible, overly-busy, or politically-influenced regulatory officials, a regulatory agency too wedded to a cooperative enforcement style can degenerate into dangerous laxity (Gunningham, 1987) or unfairness (Yeung, 2004), or can overlook the root causes of regulatory problems in their zeal to mediate disputes in a way that satisfies all the affected parties (Silbey, 1984). Regulatory advocacy groups and many enforcement officials therefore argue that, in order to deter opportunism or heedlessness on the part of regulated businesses, regulatory field offices should have little discretion to use their own, potentially corruptible judgment. Effective regulation, on this view, requires specific legal rules, strictly enforced.

Both legalistic and cooperative enforcement styles are reflected in actual regulatory practice. As Peter J. May and Søren Winter make clear in their essay reprinted here as Chapter 6, regulatory practices are arrayed between the poles of legalistic enforcement and discretionary judgement, between inspectors who are quick to use the threat of legal sanctions and those who are more inclined to emphasize education and persuasion. Much sociolegal research on regulatory enforcement seeks to understand the causes and consequences of this variation between these two major enforcement styles, as well as to understand how these styles may interact with, or even complement, each other.

Although some agencies continue to approach enforcement legalistically, sociolegal research finds that *criminal* prosecution of regulatory violations is relatively infrequent (Hawkins, 1984; Spence, 2001). Many regulatory violations involve failure to file timely and fully accurate reports, or failure to take certain precautionary measures, and hence, unlike most traditional crimes, do not result in any immediate, tangible harm to others. Moreover, due to the complexity of regulatory rule-systems, many violations stem not from wilful disregard or reckless behaviour, but from ignorance of a particular requirement or from disregard of company compliance policy by lower-level employees (Kagan and Scholz, 1984; Vandenberg, 2003). In both kinds of case, plus others in which violations do not lead to significant harms, prosecutors and judges are often reluctant to subject a businessperson or firm to the moral obloquy and harsh sanctions of the criminal law (Hawkins, 2002). Moreover, in practical terms, criminal prosecution, with its high burden of proof, can tie up agency

officials in extended, labour-intensive investigations and court hearings, while risking a legal defeat (Coffee, 1981, pp. 400–407; Hawkins, 1989).

Consequently, many regulatory agencies claim that they strive for a flexible enforcement style: legalistic and punitive when needed, but accommodative and helpful in others, depending on the reliability of the regulated enterprise and the seriousness of the risks or harms created by particular violations (Hawkins, 1984; May and Winter, Chapter 6). Academic analyses generally support this approach. In his essay reprinted as Chapter 5 in this volume, John T. Scholz models the regulatory enforcement as an iterative prisoner's dilemma. If the regulator seeks punitive legal sanctions for every detected violation, the regulated company might be expected to mount as strong a legal defence as possible – frustrating the goal of immediate reduction of the risks that the rules were designed to minimize. On the other hand, if the regulator withholds prosecution in return for the regulated firm's promise to cure the violation promptly, the firm might just keep stalling, especially since the legal threat has diminished. With these tradeoffs confronting regulators, Scholz concludes that the best outcome for society, over time, will result from a dynamic enforcement strategy, according to which regulators withhold penal action and even agree to accept 'substantial compliance' rather than demand literal compliance with all legal rules – as long as the regulated firm provides credible commitments to remedy the most serious violations quickly. At the same time, however, the regulator must develop a reputation for imposing prompt and costly legal sanctions whenever the regulated entity prevaricates or delays. Scholz labels this the 'tit for tat' enforcement strategy since the regulator meets a regulated entity's non-cooperation with punishment, while responding with forbearance to cooperation, accepting something short of full compliance in some cases (see also Bardach and Kagan, 1982; Hawkins, 1984).

John Braithwaite, drawing on extensive empirical research on regulation, agrees that cooperation is cheaper and better than punishment, as long as the threat of punishment lies behind the invitation to cooperate (Ayres and Braithwaite, 1992; Braithwaite, 2002a). Yet he also emphasizes that, in order to make that threat credible, regulators must have at their disposal legal sanctions that are less severe, quicker and cheaper than criminal prosecution, and hence more likely to be used. The most effective regulators can plausibly threaten to meet a regulated enterprise's non-cooperation by successively moving up a 'pyramid of sanctions' – beginning with a legal citation or warning letter (the most common action, at the bottom of the pyramid), then, if non-cooperation persists, escalating first to intensified surveillance, then administratively-imposed fines, then larger court-imposed civil penalties – and as a last resort (or in the very worst cases) to criminal penalties or delicensure. When an agency possesses and is not afraid to use the full range of responses, Braithwaite observes, regulatory enforcement can expeditiously and effectively proceed at the lower layers of the pyramid.

A significant body of empirical research has analysed *why* some regulatory agencies and individual regulators turn to legalistic enforcement more often than others. Cross-nationally, regulatory agencies in the United States have often been found to employ a more legalistic enforcement style (and impose harsher legal sanctions) than their counterparts in other economically advanced democracies (Kelman, 1981; Braithwaite, 1985; Vogel, 1986; Verweij, 2000). This pattern is illustrated in Kagan and Axelrad (2000) which provides a series of cross-national studies of multinational corporations' engagement with regulatory officials and shows that American regulators tend to be more rule-bound and punitive.

The American tendency towards more legalistic enforcement has been attributed to its political culture, which is particularly mistrustful of both governmental and corporate power (Vogel, 1986; R.A. Kagan, 2001). In the United States, both the political left and the political right worry that regulatory agencies will be captured or corrupted by their ideological opponents. Both sides, therefore, seek to control regulatory authority through detailed rules, formal legal procedures, judicial review and periodic legislative scrutiny – usually triggered by complaints of underenforcement or overenforcement (R.A. Kagan, 2001). For regulatory agency officials, adhering to the rules and demonstrating a strong enforcement record provides a relatively safe harbor in the ongoing political storms (Bardach and Kagan, 1982; R.A. Kagan, 2001). This enforcement pattern does not appear as strong in nations with parliamentary governments, cohesive political parties, robust national bureaucracies, and strong national trade associations. (Scruggs, Chapter 3; Kagan, R.A., 2001).

Enforcement style also tends to vary *within* individual countries – from one regulatory agency to another, across regional field offices of the same agency, and even among individual inspectors in the same program (Scholz and Wei, Chapter 7; Braithwaite *et al.*, 1987; Feinstein, 1989; Hutter, 1989; Nielsen, 2006). In Chapter 6, May and Winter helpfully distinguish the various styles of regulatory inspectors in terms of both the formalism of their interactions and their use of coercion, showing that these two dimensions illuminate the variation in inspection styles they observed.

Sociolegal scholars have linked variation in enforcement styles to factors such as statutory design, characteristics of regulated entities and the background political environment (Kagan, 1994). Regulators tend to employ a more cooperative approach when they deal with larger enterprises that have professional compliance staffs and a reputational stake in being seen as good corporate citizens. They pursue more of a legalistic approach when dealing with smaller firms that are less visible to the public, more financially hard-pressed and hence more tempted to evade the law (Shover *et al.*, 1984). Regulators also face more pressures to adopt an aggressive, sanction-oriented enforcement style in the aftermath of a serious accident or problem that is attributed to regulatory laxity, or in the wake of a journalistic exposé of ineffective enforcement (Kagan, 1994).

In addition, political factors such as the ideology of the government in power, have been shown to influence regulatory enforcement style. As the costs imposed by the regulatory state have grown, conservative political parties often promise to reduce regulatory burdens on the business sector, while left-of-centre parties typically promise to make regulation more stringent and effective. Once elected, political party leaders can affect agencies' policies and enforcement methods by choosing whom to appoint to leadership positions in an agency; by expanding or contracting agency staffing and resources; by high-publicity legislative oversight hearings; and sometimes by quietly telling regulatory officials how they would like regulatory issues of urgent political concern to be handled (Kagan, 1994, p. 401). In Chapter 7 John T. Scholz and Feng Heng Wei demonstrate that workplace safety officials in American states with Democratic governors and Democrat-controlled legislatures imposed more frequent and larger penalties than did officials in Republican states. Fines imposed by OSHA, the US federal workplace safety agency, declined in the early 1980s after President Reagan, newly elected after denouncing 'excessive government regulation', appointed a new agency head (see Chapter 7, this volume). Conversely, in 1982 and 1983, aggressive oversight hearings by congressional Democrats forced President Reagan's administration to reverse course:

after an initial decline, federal environmental clean-up orders and criminal prosecutions for regulatory offenses quickly increased to levels that exceeded those that prevailed during the preceding Democratic administration (Wood, 1988; Wood and Waterman, 1991). Sociolegal studies in Western Europe have similarly found that enforcement and implementation can be affected by political party dominance and political leaders' concerns (Hutter, 1989; Niemeijer, 1989). In many democracies, political protest and legal action by citizen groups have become almost as important as electoral politics in shaping regulatory agency enforcement activity, and sometimes more so (Gunningham *et al.*, 2004).

## Responses to Regulation

Governments make and enforce rules in order to change business behaviour and thereby achieve improved outcomes in the world (Parker, 2000). Sociolegal scholars, accordingly, have sought to assess regulation's effects on both businesses' compliance with rules and the attainment of the objectives underlying those rules. They have also sought to explain why some regulated entities readily comply – and even sometimes go beyond compliance – while others resist or comply only reluctantly.

Consistent with the theory of regulatory capture, some scholars have viewed the enactment of regulations as little more than 'symbolic politics', since politicians typically have been more eager to announce new regulatory programs than to fund them adequately (Edelman, 1964). The collapse of many important fisheries, for example, is testimony to the repeated failures of regulatory regimes ostensibly designed to restrict the number of fishing boats and the size of the catch (Stone, 1997). Partly due to political pressures, American officials charged with regulating the savings and loan industry in the 1980s disastrously failed to prevent large numbers of too risky loans, leading to the collapse of many lenders (Rubin, 2000); unfortunately, a similar regulatory failure occurred in Japan (Millhaupt and Miller, 2000). Even when the social problems motivating regulation diminish in scope or severity, we cannot always be certain that *regulation* has caused things to improve, as underlying shifts in the economy or advances in technology may well bring about improvements too. For example, Michael Greenstone (2004) has carefully analysed the impact of the Clean Air Act of 1970 on sulphur dioxide emissions in the United States, finding that regulation played at most only a minor role in the nearly 80 per cent decline in sulphur dioxide pollution.

Although many regulatory programmes do reflect 'symbolic politics' to a certain extent, and although many governmental agencies do lack the resources and political backing to enforce their rules adequately (Gunningham, 1987), the notion that political machinations usually reduce regulatory legislation to ineffectiveness is far from always the case. Many programmes have brought about remarkable changes. To mention just a few examples, regulation has markedly improved the safety of banking, dairy products, electrical systems in housing, pharmaceuticals and motor vehicles. It has sharply reduced death rates in coal mines (Lewis-Beck and Alford, 1980; Braithwaite, 1985). It has compelled manufacturers and municipalities to spend billions of dollars on waste-water and hazardous waste treatment, diminishing many forms of pollution even in an era of rapid industrial and population growth (Easterbrook, 1999; Scruggs, Chapter 3). In the United States, regulation has spurred the elimination of cigarette-smoking from thousands of workplaces and restaurants (Kagan and Skolnick, 1993). Partly by supplementing public enforcement with private causes of action,

regulation has helped increase employment opportunities and earnings for African-Americans in the United States (Burstein and Edwards, 1994).

In explaining businesses' compliance with these and other regulatory regimes, sociolegal scholars have sought to untangle the relative influence of deterrence (that is, the fear of legal sanctions and related adverse publicity) versus social norms (that is, the felt duty to comply with the law or achieve the goals of the regulation) (Thornton *et al.*, 2005). Based on detailed records of inspections of, and compliance by, nursing homes in Australia, John Braithwaite and Toni Makkai (Chapter 8), indicate that variation in compliance is not explained by standard deterrence theory – that is, simply the fear of inspections and sanctions – but rather is best explained by the degree to which chief nurses and their staffs have a strong sense of duty to comply with regulatory norms. May (2004) found that residential construction company officials, in describing their motives to comply with building code provisions, ranked their general duty to comply with the law, as well as their desire to maintain a reputation for quality, as much more important than fear of regulatory fines. Summarizing a number of studies, Vandenberg (2003, p. 127) concludes that notwithstanding 'the small risks of inspections and the small size of sanctions, compliance rates [for environmental requirements] are widely regarded to be higher than predicted by the standard deterrence model' (see also Weil, 1996).

Although many firms have developed a 'culture of compliance' that does not depend directly on the fear of punishment, such an internalized culture is neither universal nor invariant. Regulatory violations remain far from rare (Rechtschaffen, 2004). In some industries, a culture of compliance arises only when regulatory agencies have established a credible enforcement record (Gunningham *et al.*, 2005). For some regulations, compliance is not cheap, and so firms are reluctant to invest in compliance measures absent assurance that competitors who do not comply will be caught and punished (Thornton *et al.*, 2005). Reflecting on his experience as head of the US Office of Price Administration during the Second World War, Chester Bowles (1971, p. 25) famously quipped that about 20 per cent of regulated firms will readily comply with any regulation, 5 per cent will actively resist complying, and the remaining 75 per cent will go along provided they believe that the recalcitrant 5 per cent will be caught and punished.

As exemplified by the study of OSHA enforcement described in the essay by Wayne B. Gray and John T. Scholz (Chapter 9), sociolegal research has repeatedly revealed that, in some regulatory contexts, the experience of being inspected and sanctioned for non-compliance does result in increases in compliance and the achievement of regulatory objectives (Helland, 1998; Mendeloff and Gray, 2004; Gray and Shadbegian, 2005; Shimshack and Ward, 2005). Likewise, the 'visibility' of regulatory violations to regulatory officials or potential complainants – as enhanced by the frequency of inspections or by regulations that compel firms to make data concerning their regulatory performance readily available to the public – has been associated with higher levels of compliance.

Business commitment to regulatory compliance, it has been shown, is also affected by social pressures, such as the presence of citizen watchdog organizations which have the capacity to draw the attention of news media or regulatory officials to a firm's regulatory violations. Kazumasu Aoki and John W. Cioffi (Chapter 10) find that a multinational corporation's Japanese facility had a stronger record of complying with manufacturing waste disposal regulations than did a parallel facility in the United States, even though governmental inspections in Japan were less frequent and legally threatening. One reason, they suggest, is



that social pressures for compliance were much greater in Japan, partly as a result of horrible episodes of toxic environmental pollution in the 1970s.

In economically advanced democracies, many business managers regard the risk of informal social sanctions as far more salient and economically threatening than even the risk of regulatory penalties. These informal sanctions operate by adversely affecting a firm's reputation and can be triggered by negative publicity about the company's products, practices, or pollution – and also, of course, by any formal legal penalties or enforcement actions taken against the firm. Research shows that many firms today will exceed their regulatory obligations simply to provide themselves with a margin of error to protect themselves from the repercussions of perceived irresponsible conduct (Mehta and Hawkins, 1998; Prakash, 2000; Gunningham *et al.*, 2003).

Gunningham, Kagan and Thornton's (2003) cross-national study of the regulatory behaviour of pulp and paper mills confirms these tendencies, as summarized by the essay by Robert Kagan, Neil Gunningham and Dorothy Thornton reprinted as Chapter 11 in this volume. The authors find that business managers speak of having to comply with their facilities' 'social license' – as well as their regulatory licence. Indeed, social pressures were the dominant factor in explaining why many pulp mills invested in costly 'beyond compliance' measures, such as those which reduced unpleasant odours that affected their neighbors. Echoing some related findings in Aoki and Cioffi (Chapter 10), Gunningham, Kagan and Thornton also find that each company's overall management style was a significant factor in explaining variation in corporate regulatory performance.

The same authors emphasize one further relevant point. Whereas normative pressures to comply and a firm's management culture are important in explaining variation in corporate regulatory compliance at any given point in time, business firms in market economies are also subject to fierce economic competition. Their economic licence – which demands cost containment and the maintenance of positive earnings – tends to exert downward pressure on expenditures for both compliance and 'beyond compliance' measures. As a result, governmental regulations, backed by a credible threat of enforcement, are still usually necessary to induce firms to make very large investments when it is necessary to make significant improvements in the achievement of regulatory goals.

### **New Directions in Regulatory Design**

In recent decades, political demands for greater economic efficiency, intensified by the competitive pressures unleashed by the increasing globalization of trade, have induced governments sometimes to 'privatize' or 'deregulate' government-owned monopolies or oligopolies that provide transportation, telecommunications, electric power and water, and other services (Feigenbaum *et al.*, 1998). These same pressures, combined with business complaints about regulatory inflexibility, have also led to the search for alternatives to, or modifications of, traditional 'command and control' regulation, by which is generally meant governmental prescription of the implementation of uniform precautionary measures or control technologies for all firms in an industry. Alternatives to traditional governmental regulation seek to make regulation more flexible, giving regulated entities more discretion to identify and ameliorate sources of harm (Richards, 2000).

At the far end of the spectrum of discretion, *self-regulation* delegates rule-making and enforcement functions entirely to regulated firms, their trade associations or private standard setting organizations (Cheit, 1990; Priest, 1997; Haufler, 2002; Nash, 2002; Parker 2002). Extensive systems of self-regulation can be found in sectors such as financial securities (Jackson, 2001), nuclear power (Rees, 1994), forest products (Meidinger, 2003) and chemical manufacturing (Rees, 1997). Professional societies and engineering organizations have established countless private codes and standards – such as ‘generally accepted accounting practices’, hospital accreditation regimes and standards for appropriate insulation and wiring for electrical appliances (Cheit, 1990).

Self-regulatory systems sometimes arise to protect the collective interests of an industrial sector in the wake of a major disaster caused by an individual member in the sector – such as occurred following the major accidents at the Three Mile Island nuclear reactor in Pennsylvania or the Union Carbide chemical plant in India (Rees, 1994, 1997; Nash, 2002). More generally, businesses have an interest in adopting systems of self-regulation whenever doing so can stave off more costly forms of governmental regulation (Lyon and Maxwell, 2004; Johnston, 2006). When self-regulation succeeds in doing so, it sometimes amounts to little more than a sophisticated form of regulatory capture, a symbolic gesture that appears to have addressed a social problem but in reality has not (Howard *et al.*, 2000; King and Lenox, 2000). On the other hand, although self-regulation certainly can provide political cover to an industry, research indicates that at least certain kinds of voluntary business effort can result in demonstrable social improvements (Potoski and Prakash, 2005). Businesses can be motivated to achieve even somewhat costly changes on their own if they face sufficient market pressures to act in a socially responsible manner (Reinhardt, 2000; Gunningham *et al.*, 2003; Hay *et al.*, 2005; Vogel, 2005) or if the threat of impending regulatory action is sufficiently credible (Segerson and Miceli, 1998).

At the same time that self-regulation and privatization have decentralized regulatory authority for some markets and risks, businesses and policymakers also have tried to make traditional government regulation more flexible and efficient. Ironically, the replacement of government monopolies and regulated cartels with competitive private firms has actually spawned an increased need for governmental controls to address concerns about prices, access to service, service quality and the inevitable externalities generated by competitive firms (Vogel, 1996; Gómez-Ibáñez, 2003). But, even so, governments still face a choice between regulations that tightly constrain the behaviour of firms, requiring them to act in a manner that the regulator deems best for achieving a given regulatory objective (but which may not be the best or most cost-effective option for all firms), or regulations that allow firms some degree of leeway in deciding how to achieve the overall objective. Sometimes this leeway comes about when regulatory enforcement officials adopt a flexible enforcement style. Even in regulatory programmes generally viewed as ‘command and control’, for example, regulators can ‘delegate the details’ to regulated entities in permitting or licensing proceedings by requiring them to develop, submit and then follow pollution prevention or risk reduction plans that they themselves tailor to their own particular enterprise (see, for example, Dwyer *et al.*, 2000; Gunningham *et al.*, 2003, pp. 46–47, 51, 77).

More visible efforts to enhance flexibility arise when regulatory agencies grant formal exemptions from highly prescriptive regulations to certain regulated facilities, usually those that already have a good compliance record and demonstrate some kind of equivalent or even

superior performance. In the early 1980s, for example, the American EPA initiated a ‘bubble’ programme under which a manufacturing plant could modify the restrictions imposed in its detailed source-by-source air pollution permits as long as it could find ways of ensuring that its overall emissions (into an imaginary plant-wide ‘bubble’) did not increase (Levin, 1982; Hahn and Hester, 1989). Later, in the 1990s, drawing in part on a pilot study at an Amoco refinery in Yorktown, Virginia, the American EPA established a formal exemption process called Project XL which provided for facility-specific contracts negotiated among firms, the agency and environmental advocacy groups that granted the facility flexibility in return for superior environmental progress and high levels of transparency (Caballero, 1998; Blackman and Mazurek, 2001; Marcus *et al.*, 2002).

At the state level, California’s Occupational Safety and Health Agency had earlier established a programme under which enforcement officials granted more flexibility to construction firms which had established collaborative worker–management safety programmes that identified and reduced accident rates (Rees, 1988). Other countries have adopted similar programmes that rely on negotiated contracts with regulated entities. Sweden has had a workplace safety regime that provides special training and legal powers to worker safety representatives, facilitating a non-legalistic, site-specific style of regulation (Kelman, 1981). In the Netherlands, government regulators have negotiated ‘environmental covenants’ with industry associations, committing all firms in the association to collaborate in specifying and achieving regulatory goals (Hazard and Orts, 2000).

In addition to efforts to negotiate exemptions or site-specific regulatory covenants, both legislatures and regulatory agencies have sought to build flexibility into the binding rules that governments impose on firms. A principal way of providing flexibility has been to impose performance goals on firms – instead of mandating specific means to achieve those goals. The advantages of these so-called performance standards have been widely noted (Breyer, 1982; Viscusi, 1983; Coglianese *et al.*, 2003). By specifying an end state to achieve, performance standards give regulated firms the ability to choose both the most effective and least costly means of reducing harm. Performance standards also provide firms with an opportunity to innovate, seeking out better or lower-cost strategies to meet the performance target.

Some have suggested that an even better approach is for governments simply to tax businesses for the generation of harms, at levels that are equivalent to the costs those harms impose on society (Pigou, 1932). These kinds of regulatory tax scheme are intended primarily to change firm behaviour, not necessarily to raise revenue. In theory, taxes will maximize regulatory efficiency by ensuring that firms achieve the cheapest and most optimal reduction in harms. As attractive as they may be in theory, however, regulatory taxes have been only infrequently adopted in practice. Gjalt Hupples and Robert A. Kagan (Chapter 12), offer an empirical account of one of the few attempts to use taxes as a regulatory tool. They examine two tax schemes adopted in the Netherlands that were designed to reduce pollution. They found that a tax on the discharge of environmental harmful industrial effluents, enacted in the 1970s and enforced by well-regarded local water authorities, sharply reduced pollution. In contrast, they found that a second tax programme, designed to reduce water pollution from the agricultural use of manure, was far less effective, largely because of the difficulty of monitoring compliance in a decentralized industry of many small producers. Hupples and Kagan conclude that technical measurement and monitoring difficulties and low organizational capacity constrain the effectiveness of regulatory taxes.

Like taxes, tradable permit systems are another market-based alternative to conventional regulation (see, for example, Dales, 1968; Tietenberg, 1985). With tradable permits, the government makes an initial allocation of permits based on an overall level of harm deemed acceptable, but then allows businesses to trade these permits with each other. The approach is actually similar to performance standards, but instead of requiring every firm or facility to meet the same level of performance, firms can trade permits with each other and thereby vary their level depending on the specific control costs they face. Firms also have an incentive to improve their performance below their permitted levels, so that they can sell the excess credits.

The United States successfully adopted a permit trading system in the 1980s to accompany a mandated phase-down in the use of lead additives in gasoline (Nussbaum, 1991; Nichols, 1997; Newell and Rogers, 2004). Subsequently, it adopted still more prominent permit trading programme in the 1990s to encourage utilities to develop their own plans for cutting sulphur dioxide emissions, a major source of acid rain (Stewart, 2001, pp. 103–12). In Chapter 13 of this volume, Robert N. Stavins summarizes the lessons of the American experience with sulphur dioxide emissions trading, a regulatory programme which met targeted emissions reductions at a significant cost savings due to the fact that firms with lower control costs could reduce more and sell their excess permits to firms with higher control costs. Like Huppel and Kagan in their study of regulatory taxes, Stavins concluded that the successful adoption and implementation of this trading system depended ultimately on institutional and political factors, such as the establishment of a market clearinghouse for permits, thereby lowering transaction costs associated with trading, and the development of affordable and effective monitoring methods.

In situations where monitoring is difficult or costly, regulators have sometimes imposed rules requiring firms to identify risks posed by their own operations and develop their own set of internal policies and monitoring procedures. For example, food-processing facilities in nearly every developed country must now comply with a regulatory approach known as HACCP, an acronym which stands for Hazard Analysis and Critical Control Point (May, 2002). Under HACCP regulations, food processors must identify all possible points in the production process where food contamination can occur, develop measures for preventing contamination at these critical control points, and establish internal procedures for monitoring and documenting employee compliance with these measures. Sometimes described as ‘enforced’ or ‘mandated’ self-regulation (Bardach and Kagan, 1982; Braithwaite, 1982; Rees, 1988; Hutter, 2001), regulations like HACCP aim directly at the conduct and quality of a business’s management, seeking to make it more systematic and preventive. As Cary Coglianese and David Lazer show in Chapter 14, such management-based regulation may be most useful both when monitoring is difficult and when firms have sufficiently heterogeneous operations that there exists no uniform means of reducing the targeted harm. Yet precisely because management-based regulation may be used in situations where monitoring can be difficult, this regulatory approach can present significant oversight challenges. When governments have shifted to HACCP or other management-based approaches, for example, they have often needed to re-tool their inspection personnel so that they can go beyond filling out checklists and try to assess the quality or adequacy of firms’ planning. Getting small businesses to understand and take management-based regulation seriously can also require governments to invest resources in compliance assistance programmes (Fairman and Yapp, 2005).

As another alternative to conventional regulation, governments have sometimes required enterprises simply to report or publicize the risks associated with their products or processes, thus providing government, consumers and communities with information relevant to firms' social performance. Information disclosure has long been the major thrust of regulatory systems governing securities markets and other aspects of corporate finance (see, for example, Stigler, 1964; Benston, 1973; Simon, 1989). Such disclosure strategies are also found increasingly in a variety of areas of social regulation (Graham, 2002; Jin and Leslie, 2003). For example, the US Congress in 1986 established a Toxic Release Inventory (TRI) that requires certain companies to measure and publicly disclose the levels of toxic chemicals in their air and water emissions (Hamilton, 2005). That reporting obligation alone, some researchers have reported, stimulated manufacturers to reduce their on-site inventories and releases of hazardous materials (Konar and Cohen, 1997; Fung and O'Rourke, 2000) – an outcome consistent with the view that business firms can be concerned about compliance with their 'social licence' as well as with specific regulatory requirements (Kleindorfer and Orts, 1998; Gunningham *et al.*, 2003; Vogel, 2005).

Although much research has been supportive of flexibility-enhancing regulatory innovations like information disclosure, performance standards, market-based incentives and management-based regulation, the research literature also points to some of the potential limitations of these approaches. As with any approach to law and policy, the newer approaches to regulation can be implemented ineffectually, failing to achieve regulatory goals or even creating unintended side-effects. Peter J. May's analysis in Chapter 15 of this volume provides a noteworthy example of some of the potential problems that can arise when governments give more discretion to regulated firms. Examining the effects of a performance-based approach to building codes adopted in New Zealand, May found that many builders used the discretion they were granted to experiment with cheaper, less suitable building materials and techniques. Even though these alternatives apparently satisfied the specific performance standards for structural integrity, they failed to provide adequate protection from wet weather – an aspect of overall performance not clearly addressed by the standards – and consequently parts of many new buildings throughout the country experienced problems with mildew and deterioration. The implication for newer approaches to regulation seems clear. At the same time that these approaches temper the rigidity that can accompany conventional regulatory strategies, they present particular needs for effective monitoring and enforcement since they are being used, inherently, in contexts where firms' private interests do not comport completely with the overall demands society places on business.

### **About this Volume**

The essays reproduced in the following pages of this volume, all of which have been published elsewhere, have been selected not only for their clarity and insight, but also because they cover a wide range of topics that have been central to sociolegal research on regulation. Many other studies of equal merit, and even perhaps some of greater merit, have not been included. We were constrained to include only essays published in academic journals. Hence we excluded excellent essays that were published in books, as well as chapters of excellent monographs. Furthermore, in the interest of providing as many diverse readings as possible,

we were compelled to exclude some excellent but longer essays, including lengthy law journal articles.

Even with the broad methodological and substantive diversity reflected in the essays reproduced in this volume, those that we have selected still do not adequately represent the entire range of social scientific approaches to the study of regulation, or the entire range of social control processes that might be considered spheres of 'regulation'. All branches of law – criminal law, contract law, tort law, traffic law and so on – have some regulatory function, for they are designed to deter behaviours that have been politically defined as harmful or anti-social, and thereby to encourage socially responsible behaviour. But in conventional legal discourse, which we used in our selection criteria for this volume, the term 'regulation' has been reserved for bodies of law that are elaborated through the promulgation of specialized rules, enforced by government agencies and aimed at the behaviour of business firms, other large organizations, and professional service providers. Whereas criminal and civil law typically are enforced via prosecutions and lawsuits against alleged violators, brought *after* a harmful act or omission has occurred, regulation is primarily prophylactic in purpose, designed to prevent harmful actions before they occur. Furthermore, unlike civil law enforcement, where the initial costs are borne by injured parties who must gather evidence and hire lawyers, in regulatory programmes (as in the enforcement of criminal law by police departments) the government shoulders the cost of investigation and prosecution of complaints.

Programmes of governmental regulation are often superimposed on pre-existing forms of private ordering. The first line of defence against dangerous products and unfair practices is generally the incentive system created by the marketplace. The threat of developing a bad reputation and losing business motivates many enterprises to establish quality control systems of various kinds. Contract and tort law provide a second line of defence. By enabling victims of broken promises or negligent behaviour to threaten enterprises with legal penalties, they create incentives for responsible behaviour, inducing many companies and trade organizations to create systems of self-regulation (Rees, 1994; Gunningham and Rees, 1997). The essays reprinted in this volume, however, focus on legally binding programmes, authorized by statutory laws and enforced primarily by governmental agencies.

Even within the sphere of governmental laws and regulatory programmes, the essays in this volume – nor those that could be fitted into any single compendium – are not fully representative of all the important research on regulation. We have tended to select empirical essays rather than primarily theoretical works, thus excluding some classic and significant essays by economists (for example, Coase, 1960; Becker, 1976). The essays in this volume are also primarily about social or protective regulation, rather than economic regulation aimed at controlling prices, market entry, or competition.

There are still further limitations. This collection emphasizes essays of relatively *contemporary* regulatory processes, thus excluding much valuable research by historians of regulation (for example, McGraw, 1984; Andrews, 1999; Morag-Levine, 2003). The essays also generally focus tightly on one particular regulatory programme – in one country, or at most two or three countries – thus excluding major books and essays that examine the factors that have driven and shaped the spread of regulation across many countries (for example, Braithwaite and Drahos, 2000). Furthermore, because the general thrust of sociolegal research has been on domestic regulation in economically advanced democracies, this volume pays

little attention to the international regulatory regimes nor to national regulatory processes in developing countries.

Notwithstanding these limitations, this volume does still contain a highly diverse and illustrative collection of the last generation's worth of leading research on regulation and regulatory processes. Taken together, the work reprinted in this collection maps out the key lines of inquiry in sociolegal studies of regulation, shows the contours of the answers that have emerged to date and raises new and yet unanswered questions. It is our hope that the reader of this collection will conclude, as we do, that the sociolegal study of regulation holds both exciting intellectual challenges and enormous implications for social justice and welfare. In bringing together this varied work in a single collection, we seek to stimulate, entice, and prepare still others to join in the next generation's worth of study on one of the most significant legal developments in our global society.

Cary Coglianese and Robert A. Kagan

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