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## Preface

In *The Morality of Law*, Lon Fuller wrote that “the capacity to devise institutions and procedures adequate to its problems is perhaps the chief mark of a civilized society.”<sup>1</sup> Under this standard, the United States could be judged as being highly civilized when it comes to protecting the environment. It has created an elaborate set of laws for responding to a range of problems. Most are administered by a highly capable and technically sophisticated national regulatory agency. Often these capacities are matched by those of the states; most states are as capable as and some are more innovative than the federal government. Although they are not perfect, there are ample procedures for participation and for conducting and evaluating scientific analysis. In response, American industry has created an impressive institutional capacity for complying with this array of laws and for doing much more.

The argument made here, however, is that the United States has been slipping in its capacity to devise institutions and procedures that are adequate to a new era of environmental problem solving. What worked reasonably well in the past will not work so well in the future. It is true there is more than ample evidence that to a large degree a regulatory approach has worked, especially for the problems it originally was designed to address. The air, water, and land are much better off than they would have been without the extensive system of environmental controls this country has put into place since 1970. That proposition is taken as being almost indisputable in this book. However, nothing lasts forever, in public policy as in life in general. The times are changing, and regulation should change with them. Regulation as we know it is due, not just for a tune-up but for a more basic overhaul that will make

it more relevant and effective in a new era of environmental problem solving.

The theme of this book is that it is time for a transition from an old to a new regulation. The “old” regulation was very much a product of its times. It reflected a mid-twentieth-century belief in government’s ability to solve complex problems and displayed a recognition that industry would not act to reduce air and water pollution without a substantial kick in the pants from government. When the federal government did respond to the growing concern about environmental quality in the 1970s, it drew from a well-established set of strategies and tools that were entirely consistent with our experience and political culture. It relied heavily on bureaucratic, top-down intervention through a system of rules. It assumed that only government coercion would lead to the needed changes in industry behavior. Formal, adversarial relationships were built into the system to ensure that government would be insulated from industry influence. Given the times and the state of mind in both government and industry, this was not a bad model for a first stage of environmental problem solving.

At its core, this response was similar to actions taken and institutions created in most other industrial democracies. It was not based on any particular understanding of a business perspective or the internal dynamics of firms. In this sense, the old regulation was based on a series of fairly crude assumptions about what motivated behavior and how to change it. It assumed that the interests of society in environmental protection and those of industry in realizing profits were at odds. Although entirely understandable as a place to start, these assumptions now appear to be increasingly outdated.

The “new” regulation will build upon the foundations of the old, but will recognize the changes that are occurring in environmental problems, the economy, and society more generally. This new regulation will differ from the old in several respects. It will be based more on performance than on a narrow definition of compliance. It will allow regulated firms, especially the better performers, more flexibility in determining how to achieve environmental goals. It will aim to complement the way that business decisions are made in the private sector rather than just imposing more legal obligations on firms. It will recognize the internal dynamics

of decision making within firms and, most important, take into account differences in the willingness and capabilities of different firms to meet their environmental obligations. The new regulation will go beyond the conventional rules-and-deterrence approach and rely on a more diverse set of policy instruments and strategies, including market incentives and information about performance. The new regulation will not replace what exists now, but would modify it in many ways.

As the discussion here documents, some initial steps in this transition to a new regulation are already under way. My purpose is to bring together a great deal of thinking and experience and, in doing so, set out a view of where we should be going as we try to move this transition along. It will not be an easy transition, to be sure, given the state of the environmental debate and of national politics in general. The notion that there should be a different kind of regulation typically has been lost in the political debates over whether there should be more or less regulation along lines of the old model. Environmental politics at the national level are as polarized as most other areas of domestic policy, if not more. Still, over time, the U.S. policy system has shown that it can change. The idea here is that learning why we need to change, what changes already are occurring, and in what directions we should be going will help in moving toward a new regulation.

Many people have helped to make this a better book than it otherwise might have been. Bob Durant, Peter May, and Aseem Prakash offered valuable comments on the entire manuscript, as did three anonymous referees with the MIT Press. Students in my course on strategic management for sustainability at the Johns Hopkins University's Washington Center have helped me test many of the ideas and arguments over the past few years. I am also indebted to the people from the Greening of Industry Network who first made me aware of the changes that are occurring and the need for public policy to change with it. I want to thank Clay Morgan, senior acquisitions editor for environmental studies at the MIT Press, for his interest in this book and his guidance in bringing it to publication. Thanks also to senior editor Katherine Almeida of the MIT Press for her skill and patience in improving the quality of the manuscript. Thanks also to Joanne, Matthew, and Jacob Fiorino for their support and encouragement while I was thinking about and writing this book.

I want to acknowledge with sadness two former professors who died in 2005. Larry E. Esterly of Youngstown State University was not only an outstanding teacher but also a mentor throughout my undergraduate years. My interest in and commitment to the study of political science is largely a result of his influence. He taught me about intellectual discipline and lucid analysis. For four decades, Francis E. Rourke of the Johns Hopkins University was a model of astute, graceful, and self-effacing scholarship and teaching to his students. The clarity of his writing and thinking and the quality of his insights into American bureaucracy and public policy influenced many students who have since taught, written about, or practiced in the field, including myself. These teachers are a loss not only to their family, friends, and students but also to the political science community generally.

This book is aimed principally at students, practitioners, and scholars who want to learn more about environmental regulation and how it should be changing. For students, it should be especially useful in courses on environmental policy, regulation, organizational change and innovation, and public policy generally. It is designed to be used by either undergraduate or graduate students. For practitioners, the goal is to provide an accessible and reasonably concise guide to the core characteristics of environmental regulation in the United States and the need to adapt it to a new phase of environmental problem solving. It should be especially useful to those working in regulatory agencies at all levels of government or who deal with regulatory issues in some other role or setting. For scholars, the aim is to bring together a wide range of important and timely research, thought, and experience into one volume. The book offers a critique of the current regulatory system and sets out a conceptual basis for thinking about how to change it in the context of a new era of governance. The hope is that each of these audiences will benefit from reading this book.