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REGULATION AND REGULATORY PROCESSES

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ASHGATE

Published by
Ashgate Publishing Limited
Gower House
Croft Road
Aldershot
Hampshire GU11 3HR
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington, VT 05401-4405
USA

Ashgate website: http://www.ashgate.com

British Library Cataloguing in Publication Data
Regulation and regulatory processes. – (The international library of essays in law and society)
1. Delegated legislation 2. Sociological jurisprudence
I. Coglianese, Cary II. Kagan, Robert A.
348'.026

Library of Congress Control Number: 2007923516

ISBN 978–0–7546–2518–6

Printed in Great Britain by TJ International Ltd, Padstow, Cornwall

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Acknowledgements

The editors and publishers wish to thank the following for permission to use copyright material.

Blackwell Publishers for the essays: Peter J. May and Søren Winter (2000), 'Reconsidering Styles of Regulatory Enforcement: Patterns in Danish Agro-Environmental Inspection', *Law and Policy*, **22**, pp. 143–73. Copyright © 2000 Blackwell Publishers Limited; 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. Copyright © 1999 Blackwell Publishers Limited; Gjalt Huppes and Robert A. Kagan (1989), 'Market-Oriented Regulation of Environmental Problems in the Netherlands', *Law and Policy*, **11**, pp. 215–39. Copyright © Basil Blackwell 1989; Peter J. May (2003), 'Performance-Based Regulation and Regulatory Regimes: The Saga of Leaky Buildings', *Law and Policy*, **25**, pp. 381–401. Copyright © 2003 Blackwell Publishing Limited; John Braithwaite and Toni Makkai (1991), 'Testing an Expected Utility Model of Corporate Deterrence', *Law and Society Review*, **25**, pp. 7–40. Copyright © 1991 Law and Society Association; 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. Copyright © 2003 Law and Society Association; Cary Coglianese and David Lazer (2003), 'Management-Based Regulation: Prescribing Private Management to Achieve Public Goals', *Law and Society Review*, **37**, pp. 691–730. Copyright © 2003 Law and Society Association; John T. Scholz (1984), 'Cooperation, Deterrence, and the Ecology of Regulatory Enforcement', *Law and Society Review*, **18**, pp. 179–224. Copyright © 2003 Law and Society Association; Wayne B. Gray and John T. Scholz (1993), 'Does Regulatory Enforcement Work? A Panel Analysis of OSHA Enforcement', *Law and Society Review*, **27**, pp. 177–213. Copyright © 1993 Law and Society Association.

Cambridge University Press for the essays: Lyle A. Scruggs (1999), 'Institutions and Environmental Performance in Seventeen Western Democracies', *British Journal of Political Science*, **29**, pp. 1–31. Copyright © 1999 Cambridge University Press; David Vogel (2003), 'The Hare and the Tortoise Revisited: The New Politics of Consumer and Environmental Regulation in Europe', *British Journal of Political Science*, **33**, pp. 557–80. Copyright © 2003 Cambridge University Press; John T. Scholz and Feng Heng Wei (1986), 'Regulatory Enforcement in a Federalist System', *American Political Science Review*, **80**, pp. 1249–70. Copyright © 1986 Cambridge University Press.

Oxford University Press for the essays: Mathew D. McCubbins, Roger G. Noll and Barry R. Weingast (1987), 'Administrative Procedures as Instruments of Political Control', *Journal of Law, Economics and Organization*, **3**, pp. 243–77. Copyright © 1987 Yale University; Stuart Shapiro (2002), 'Speed Bumps and Roadblocks: Procedural Controls and Regulatory Change', *Journal of Public Administration Research and Theory*, **1**, pp. 29–58.

Series Preface

The International Library of Essays in Law and Society is designed to provide a broad overview of this important field of interdisciplinary inquiry. Titles in the series will provide access to the best existing scholarship on a wide variety of subjects integral to the understanding of how legal institutions work in and through social arrangements. They collect and synthesize research published in the leading journals of the law and society field. Taken together, these volumes show the richness and complexity of inquiry into law's social life.

Each volume is edited by a recognized expert who has selected a range of scholarship designed to illustrate the most important questions, theoretical approaches, and methods in her/his area of expertise. Each has written an introductory essay which both outlines those questions, approaches, and methods and provides a distinctive analysis of the scholarship presented in the book. Each was asked to identify approximately 20 pieces of work for inclusion in their volume. This has necessitated hard choices since law and society inquiry is vibrant and flourishing.

The International Library of Essays in Law and Society brings together scholars representing different disciplinary traditions and working in different cultural contexts. Since law and society is itself an international field of inquiry it is appropriate that the editors of the volumes in this series come from many different nations and academic contexts. The work of the editors both charts a tradition and opens up new questions. It is my hope that this work will provide a valuable resource for longtime practitioners of law and society scholarship and newcomers to the field.

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Introduction

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 Lehmbruch, 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; Vandenbergh, 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: