FOUNDATIONS OF ENVIRONMENTAL LAW AND POLICY

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PREFACE

This book is designed to introduce students to the major theoretical approaches in the field of environmental law and policy. It can be used as a companion volume to the case materials used in a survey course on environmental law, or as a textbook for law school seminars on environmental law and policy, and for undergraduate and graduate seminars on environmental policy in a variety of disciplines, including government, public policy, forestry, and resources management. The book can also be used for self-study.

The readings are organized in a manner that is quite different from that of traditional environmental law case books. Except for some brief introductory materials, such case books generally devote the bulk of their attention to the major federal environmental law statutes, and discuss theoretical issues, such as the design of regulatory tools for environmental policy, primarily as they relate to problems that arise under these statutes. Thus, for example, marketable permit schemes are introduced in the section on the acid rain provisions of the Clean Air Act; effluent fees are presented in the chapter of the Clean Water Act in connection with taxation approaches in Germany; and the possibility of transmitting incentives through liability rules is raised in the chapter on Superfund. Such an organization, while readily understandable given the way that the field of environmental law developed, is poorly suited for a rigorous analysis of the range of policy instruments and of the factors affecting the choice among these instruments in particular environmental contexts. Similarly. theoretical issues relating to risk assessment, risk management, and federalism are treated in a disjointed manner. This reader, by contrast, attempts to provide a comprehensive treatment of these matters.

This book begins with eight foundational chapters dealing with issues that are central to the design of environmental policy. The next two chapters deal with case studies concerning the Clean Air Act and Superfund. which apply the foundational principles previously developed. The final two chapters deal with the problems of environmental regulation in an international community. The selections have been extensively edited to facilitate accessibility. Each chapter has an introduction that highlights the most important contributions of the readings for the purpose of efficiently directing the attention of students. The chapters end with an extensive set of notes and questions, designed to provide a deeper understanding of the readings, as well as to introduce and critique a broader set of perspectives.

In my four-credit environmental law survey course, I spend the first four and a half weeks on the eight foundational chapters (supplemented by a few relevant cases, such as *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980), and *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991)), Then, I use a case book for the discussion of the individual statutes (supplemented by the two chapters dealing with the Clean Air Act and Superfund). I end the course with one week on the two chapters dealing with international issues. I find that the perspectives acquired from foundational chapters of this reader make it possible to study the statutes at both a deeper level and a quicker pace.

In the case of a seminar, this reader can constitute the main text. Each of the twelve chapters is well suited for a two-hour discussion. For law school seminars, some of the chapters can perhaps be supplemented with one illustrative case or regulatory problem.

Vicki Been gave me important comments on an earlier draft; I also benefited from several conversations with Lewis Komhauser. I am grateful for the able secretarial assistance of Evelyn Palmquist at the New York University School of Law, my home institution; Isabelle Girardi at the Graduate Institute for International Studies in Geneva, Switzerland, where I was a visiting professor during 1994 and 1995; and Thompson Potter at Harvard University Law School, where I am a visiting professor during 1995 and 1996. I am also indebted to the reference librarians at the New York University School of Law, who went well beyond the call of duty in locating the several hundred articles and books that I consulted in choosing the selections in this reader.

I dedicate this book to my children. Joshua, who at age four has made me think more deeply about the case for vegetarianism by repeatedly inquiring at the dinner table whether I am eating dead sheep or dead cow. and Sarah, who, since age one has taken weekly trips to a recycling center with her day care group.

R.L.R.

Cambridge, Mass.
June 1996

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