

repeatedly hears a similar recitation: “Most of the old people, they starve during the war. . . . Now you mostly have the youth, born since the early seventies. They don’t know. We did not have time to sit and talk to the old people, and now they are mostly gone.” (p. 211) Oral traditions left with the elders, enervating the stories passed down through families of their migration and settlement in Liberia. But, with great poise, Mr. Huffman brings to light as many stories as he can obtain, dodging cultural differences and blending his observations with an attempt to objectively find the story of Isaac Ross’ slaves. Some of these stories come from letters sent by freed slaves back to their former owner in Mississippi; some are from recorded documents; and others are gathered firsthand from slave descendants in Liberia.

In total, *Mississippi in Africa* is an easy two-day read that serves as a great introduction to a story that most have forgotten, one which remains relevant today in a world of superpowers and continued juxtaposition between the Northern and Southern Hemispheres. While it is not a complete discussion of any of the socio-political or legal concerns, *Mississippi in Africa* provides an intriguing history that should encourage any reader to dig deeper into the issues presented.

David Brandon McGinty, Esq.
Managing Director, Law In Print, LLC

Winston Harrington, Richard D. Mortgenstern, & Thomas Sterner (eds.), *Choosing Environmental Policy: Comparing Instruments and Outcomes in the United States and Europe*, Washington, D.C.: Resources for the Future (2004). Paperback; pp. xii + 270.

The debate over the relative merits of the traditional “command and control” (CAC) approach and the allegedly more progressive economic incentive (EI) approach to environmental regulation has been prominent in American politics for the last two decades. The current Administration is clearly a proponent of increased use of economic incentives and reduced CAC regulation by the federal government. In the last few years, for example, the EPA has proposed a water pollutant trading program under the Clean Water Act, and the Bush Administration has repeatedly championed increased use of “cap and trade” economic incentive programs to reduce air emissions, including air emissions of mercury.

But is the choice of environmental policy instrument really a black-and-white choice? In other words, can regulators safely assume that CAC regimes are inherently more expensive for regulated entities and more administratively and informationally demanding to implement than economic incentive schemes, or that economic incentive instruments are inherently more efficient than more traditional regulatory approaches? The editors of *Choosing Environmental*

Policy set out to test these and eight other hypotheses about environmental instrument choice by pairing empirical analyses of national regulatory schemes – one from the United States, one from Europe – that seek to achieve the same environmental objective. Independent of national origin, one of the regulatory programs in each pair is primarily a traditional “command and control” regime, while the other is based primarily on economic incentives – “primarily,” because one of the more interesting acknowledgments of the book as a whole is the increasing blending of these two approaches in both the United States and Europe. The specific issues addressed in the paired studies range from the classic regulatory schemes for sulfur dioxide and NO_x air pollution emissions to the more obscure regulation of trichloroethylene; the other issues addressed include industrial water pollution; CFC emissions; and leaded gasoline phase-outs.

Choosing Environmental Policy sets out to assess the effectiveness, measured in terms of both economic efficiency and success in achieving a stated environmental goal, of these various regulatory instrument choices. As the editors emphasize in the book’s introduction, the analytical chapters “focus on the means of national-level pollution abatement policy: the actual performance of environmental regulations, measured after the fact; and the issue of ‘instrument choice’ – that is, the mechanism used to achieve the environmental objective.”¹

Choosing Environmental Policy begins by laying out twelve sets of hypotheses about environmental instrument choice, including hypotheses related to: static efficiency, information requirements; dynamic efficiency; effectiveness; regulate burden; administrative burden; hotspots and spikes; monitoring requirements; tax interaction effects; effects on altruism; adaptability; and cost revelation. The conclusion then assesses these hypotheses in light of the case studies presented. Pro-economic-incentive readers are likely to read too much into the editors’ conclusions that the case studies “do lend support to the textbook proposition that economic incentives are more cost-effective than command-and-control approaches to pollution control”² and, in response to a hypothesis that “[r]egulatory policies achieve their objectives faster and with greater certainty than incentive policies,” that “[t]he evidence on the comparative effectiveness of the different instruments is mixed.”³ In particular, such readers are likely to overlook the intriguing analysis of regulatee burden, in which the authors originally posited that “[r]egulated firms are more likely to opposed EI regulations than CAC instruments because they fear that they will face higher costs” and then concluded both that “[e]xperience on both sides of the Atlantic suggests that no government ever put this hypothesis to the test” and that governments that enacted economic-incentive-based regulatory

¹ Winston Harrington, Richard D. Morgenstern, & Thomas Sterner, eds., *Choosing Environmental Policy: Comparing Instruments and Outcomes in the United States and Europe 1* (Washington, D.C.: Resources for the Future, 2004).

² *Id.* at 251.

³ *Id.* at 254.

regimes found ways to allow regulated industries to pass any costs on to consumers.⁴ Moreover, the editors conclude that “the evidence suggests that innovation occurs under both regulatory and economic incentive regimes”⁵ and that the evidence is mixed regarding the assumption that CAC regimes automatically impose higher administrative costs. The evidence also tended to support the hypothesis that CAC regimes are better able to avoid hotspots and spikes in pollution.

In other words, *Choosing Environmental Policy* fairly effectively refutes the notion that, even in pure economic terms, regulators face fairly clear options when choosing between CAC and EI approaches to environmental regulation. Moreover, although *Choosing Environmental Policy* focuses on economic efficiency, the authors of the various chapters are also somewhat sensitive to political differences among the countries that make certain instrument choices possible or impossible in different nations – considerations that the regulators themselves must take into account. For example, one of the starkest contrasts in regulatory choices comes in the two chapters addressing the phase-out of leaded gasoline. In the United States, Congress and the EPA chose to target automobile manufacturers as the objects of government regulation, whereas many European countries chose to target automobile consumers, including through the use of tax differentials on leaded and unleaded gasoline. The authors of the European lead phase-out chapter note explicitly that “[m]any Europeans . . . were opposed to legislation requiring installation of catalytic converters in new cars; such regulation was viewed as giving an advantage to U.S. car manufacturers exporting to Europe.”⁶ The authors of the parallel chapter on the United States are less explicit, but any American reader should appreciate instinctively that additional taxes on gasoline are politically unpopular in the United States. Indeed, as the editors emphasize in their conclusion, the EPA “has no authority to levy no taxes,” and “[e]nvironmental taxes have also been vehemently opposed by the industries that would be subject to the tax.”⁷

Choosing Environmental Policy effectively challenges the perhaps popular – and certainly political – perception that economic incentives are always, or even usually, “better” instruments for achieving national environmental policy goals than traditional CAC. Instead, by the end of the volume, the reader is left with the distinct impression that national-level environmental regulation functions best when national governments remain flexible in their regulatory approaches and able to adapt such approaches to changing circumstances regarding the particular environmental goal – perhaps even adjusting strategies as the nation approaches the original goal set. As the editors conclude, “[t]he most important common characteristic in U.S. and European environmental policies is that countries employ a mix of traditional regulatory approaches and economic incentives. This is true not only for the nation’s total portfolio of environmental

⁴ *Id.* at 255-56.

⁵ *Id.* at 254.

⁶ *Id.* at 203.

⁷ *Id.* at 248.

policies but also, more surprisingly, for each nation's approach to individual problems."⁸ Indeed,

The extent to which our cases found mixed EI and CAC approaches seems greater than can be accounted for by theoretical and historical reasons alone. Based on our cases, it seems that incentive and regulatory instruments have different advantages and drawbacks, they distribute costs and benefits differently, they appeal to different constituencies, and these differences are recognized by both regulators and politicians. This recognition makes it attractive to employ a strategy of mixed approaches. A mix has the potential to maximize both efficiency and effectiveness, to appeal to multiple constituencies, and to avoid some of the pitfalls of both obtuse bureaucratic regulation and unbridled market incentives.⁹

While the editors legitimately and helpfully arrive at this conclusion, however, the reader will occasionally wonder if the authors of the individual chapters distort the regulatory regimes they examine. For example, readers familiar with the United States' Clean Water Act, which is generally presented as a quintessential example of a CAC regulatory regime, may be surprised that Winston Harrington's chapter on industrial water pollution regulation in the United States is subtitled "Direct Regulation or Market Incentive?" This chapter ends with an unusual focus on indirect dischargers – that is, dischargers who choose to discharge into a publicly owned treatment works (POTW) or sewage treatment system rather than discharging wastes directly into streams or other waterways. Under the Clean Water Act, such indirect dischargers are subject to far less governmental regulation than direct dischargers, who must get a permit. However, unlike direct dischargers, indirect dischargers are subject to fee assessments from the POTW itself, introducing an element of economic incentive. Harrington justifies his focus on indirect dischargers by noting that "[e]vidence suggests that over the past 25 years, there has been a gradual shift away from direct discharge by major industrial dischargers and toward indirect discharge,"¹⁰ then builds this trend evidence into an argument that economic incentives are in fact playing a larger role in water quality regulation in the United States. The possibility is intriguing, but most readers would have appreciated, I suspect, more documentation that the regulatory focus of the Act is in fact shifting and hence that the various fee and surcharge structures that POTWs employ are in fact significant water quality incentive mechanisms.

A similarly unusual focus arises in Richard G. Newell's and Kristian Rogers' chapter on the leaded gasoline phase-out in the United States, which emphasizes the lead trading and banking schemes that the EPA employed from 1982 until 1987 rather than the command-and-control regime that governed the leaded gasoline phase-out from 1975 on. While it is interesting for readers familiar with the command-and-control regime to read about the roles of these economic incentives in the United States' phase-out of leaded gasoline, the effect of this chapter's analysis is to downplay into insignificance the command-and-control

⁸ *Id.* at 240.

⁹ *Id.* at 241.

¹⁰ *Id.* at 83.

regime itself, an unnecessary distortion of the complete regulatory package and its economic effects.

As is typical with multi-author volumes, the chapters vary somewhat in the assumptions they make regarding the level of the reader's familiarity with the regulatory scheme being discussed. In general, however, the authors of the European chapters do a more thorough job of explaining the regulatory scheme at issue and its background, in part because these chapters address environmental regulations in several European countries. As a result, *Choosing Environmental Policy* is probably both easier for American readers to digest and more educational for American than European readers, unless the European reader already has a certain familiarity with United States federal environmental law.

Given its empirical nature, moreover, *Choosing Environmental Policy* rarely offers normative suggestions for improving environmental policy overall, even when such suggestions emerge almost emphatically to any attentive reader. Most notably, the reader is left with the distinct impression that required pre-regulatory cost-benefit analyses are themselves important tools of regulatory policy that allow governments to more objectively assess the actual effectiveness and efficiency of their instrument choices. Throughout *Choosing Environmental Policy*, the empirical analyses of the European regulatory schemes suffer from the lack of ex ante economic analyses and projections, while long-existing regulatory and Executive Order requirements in the United States meant that such ex ante analyses of American regulatory choices were usually available to the chapter authors. The comparisons of what the regulators thought would occur and what actually happened, when possible, often illuminate side effects, inaccurate assumptions, and unintended consequences of environmental regulatory instrument choice that are themselves worth another volume of study. Nevertheless, *Choosing Environmental Policy* offers a needed perspective on the CAC/EI dialectic in environmental regulation. While the book offers readers (and regulators) few definitive conclusions, it sheds new light on the multi-level complexity of the economics of environmental protection schemes. In an era when – in the United States, at least – politicians continually seem to search for easy answers to complex problems, *Choosing Environmental Policy* provides a potential corrective to the “one size fits all” mentality regarding pollution regulation.

Robin Kundis Craig*

* Professor of Law and Grimes Fellow, Indiana University School of Law – Indianapolis. J.D. 1996, Lewis & Clark School of Law; Ph.D. 1993, University of California; M.A. 1986, The Johns Hopkins University; B.A. 1985, Pomona College.