

# Preface

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Environmental law has played an important role in economic thinking about law, indeed in economic thinking generally. Pollution and congestion were central examples of externalities in important contributions to economics by Pigou, Knight and, of course, Coase; Coase's essay 'The problem of social cost', a key document in the economic analysis of law, is about external costs and uses examples from the English common law of nuisance. These great economists and the early work of the lawyer-economists that followed them focused on the law of nuisance at a time when statutory regulation of pollution and other externalities was far less extensive than it has become. The exploration of the basic economics of externalities and the basic common law doctrines and institutions for dealing with externalities constitute a 'first generation' of economic analysis of environmental law.

The present book of essays illustrates the 'second generation' of economic analysis of environmental law. The fundamental economic issues, and the common law, are no longer the focus. The lessons of the 'first generation' have been absorbed and transcended. The focus has shifted to the level of application, which is the level at which the economist and the lawyer-economist can best hope to influence policy. The essays take up issues of public choice, statutory detail, liability rules (strict liability versus negligence), and remedies (both civil and criminal) with specific reference to insolvency and agency problems. The basic economic framework is assumed, and the discussion proceeds to the concrete methods of implementing the economic approach. The authors are all well-regarded experts, and their essays exhibit a high degree of theoretical rigour. Although international in scope, the focus is on the United States, and the Superfund statute, which regulates clean-up of toxic waste sites, receives particular attention consistent with its importance especially in the litigation of environmental disputes.

US public policy today (and, to a lesser extent, that of other countries – but the gap is narrowing) is highly receptive to economic analysis. Just as populism has receded as a point of resistance to an economic approach to antitrust policy, so hostility to 'commodification', and the belief that to discuss environmental values in economic terms is inevitably to disparage and depreciate those values,

have receded in the environmental area. The opportunity for economic analysis to influence policy is therefore very great, as we have seen already in the adoption of the 'bubble' concept and in tradable-emissions schemes for sulphur dioxide. These are ingenious economic approaches to problems of environmental regulation that would have been unthinkable a generation ago. We are making progress – and the essays in this volume will do much to assure that progress continues.

## NOTE

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