Midway through its second year, the Trump administration, with great
fanfare, rolled out a plan recommending a reorganization of the fed-
eral government.1 The administration touted the reform plan as “a
cornerstone” for making “the Federal Government more responsive
and accountable to the American people.”2 An official at the Office of
Management and Budget (OMB), who helped draft the plan, called it an
audacious rallying cry for small government.3 The President pronounced
that it was the latest step in his administration’s efforts to “improve and
streamline the Federal Government,” which included reducing its footprint
and “repealing a historic number of regulations.”4

The Trump reorganization plan is just the latest in a long line of simi-
lar efforts to urge alterations in the structure of administrative gover-
nance. As the plan notes, beginning with President Harding, “Nearly
every new administration has sought to enhance and streamline the
Government bureaucracy to better align with policy and efficiency pri-
orities.”5 Some of these efforts, like Trump’s plan, have been fueled by a
desire to reduce the scope of regulation and the bureaucracy needed to
implement it. The post–World War II Hoover Commission, for example,
aimed to constrain the post–New Deal expanded administrative state
through a series of proposed organization changes.6 Ronald Reagan’s
creation of the Office of Information and Regulatory Affairs within the
OMB to provide centralized oversight of the issuance of regulations by
other agencies7 also had a deregulatory tenor.8 The Clinton adminis-
tration’s National Partnership for Reinventing Government, while not
driven by a desire to deregulate, nevertheless sought to reorganize the
federal bureaucracy to achieve greater regulatory efficiency and effec-
tiveness by reducing the number and size of agencies.9

A common thread in these and many other restructuring initiatives
appears to be a fundamental absence of a thorough and accurate un-
derstanding of the various different components and dimensions of
intergovernmental relationships. Modern regulatory problems, in particular, transcend conventional jurisdictional boundaries and raise unprecedented levels of complexity. The Government Accountability Office (GAO), in the wake of the Trump reorganization plan, deemed governmental reform and reorganization “a major endeavor” and “an immensely complex activity.” Governments and agencies routinely manage problems that intersect with those of other institutions, requiring them to regularly interact with each other. While a robust literature has developed examining government agencies and various aspects of their organization, few have comprehensively analyzed the structures and relationships among government institutions. To be sure, for centuries observers have explored important aspects of government institutional relationships, especially in the context of federalism. We suggest, however, that these discussions have focused on particular elements of the problem, such as whether authority should be centralized or overlapping, without providing a systematic framework for characterizing, understanding, and assessing the full array of intergovernmental relations.

A. A Novel Framework

We proceed on the premise that institutional structures can significantly influence the fate of regulatory programs. As James Q. Wilson has put it, “Organization matters, even in government agencies.” And organizational systems are key determinants of bureaucratic success or failure. Many governance challenges arise from the way government institutions exercising regulatory or management authority relate to one another. Our book advances a novel framework for assessing how governmental authority may be structured and restructured that can generate critical insights in characterizing, assessing and formulating proposals like the Trump reorganization initiative.

We believe that our approach to incorporating analysis of government organization into reform of policy-making institutions and structures is unique. Others, of course, have explored government institutional relationships. We suggest, however, that most of the efforts of those who have addressed such relationships, including the legal process school of the 1950s, proponents of the “structure and process thesis,” and scholars of public administration, have largely focused on particular
elements of the problem without providing a systematic framework for characterizing, understanding, and assessing intergovernmental relations.

Our framework offers two fundamental insights. First, it asserts that differentiating among three dimensions of authority—centralization, overlap, and coordination—is key to identifying the tradeoffs of organizational alternatives. Second, it posits that allocations of authority could and often should account for the different functions that government performs (e.g., information distribution, standard setting, planning, and enforcement). Reliance on this two-pronged framework has the potential to clarify previously obscured tradeoffs and configurations and ultimately improve the performance of government.

The kind of analytical infrastructure that our book provides is sorely needed. In its absence, inadequately understood relationships among regulatory institutions have prompted, and are likely to continue to produce, poorly designed attempts to create new regulatory programs or restructure existing ones that underperform. Past approaches to designing and assessing intergovernmental relationships have failed to appreciate, in particular, the full array of alternatives for organizing government to address human problems. These failures have contributed to mismatches between the perceived defects of existing structures and the allocations of authority chosen to replace them. We identify recurring flaws in how regulatory authority is understood and therefore distributed. We also recommend ways of thinking about government organization that should enable policymakers to structure authority to better promote public values such as effectiveness,18 efficiency,19 a fair distribution of the benefits and burdens of regulation,20 and accountability.21

B. Illustrative Examples

To demonstrate the need for our analytical framework, we have selected an emergent proposal and a multi-decade organizational reshuffling as introductory examples. The first is the Trump administration’s 2018 reorganization plan, written in response to an executive order whose goal is to “improve the efficiency, effectiveness, and accountability of the executive branch” through a government reorganization that eliminates unnecessary agencies, components, and programs.22 The
plan purports to be the outcome of a carefully conceived “Reorganization Alignment Framework” that draws on public and private sector “organizational change and strategic transformation thought leaders.” It states that achieving greater efficiency, effectiveness, and accountability “requires a range of transformational approaches to support reorganization” and purports to outline “a range of additional priorities and tools.”

Like many of the federal reorganization plans that preceded it, the Trump plan belies these claims in several ways. First, it provides no citations, evidence, or even careful analysis to support its specific reorganization recommendations. Some legislators criticized the administration for failing to explain the analysis that shaped the plan, with one senator calling it “woefully short on details.” Second, the plan largely ignores certain dimensions of authority (such as independence) and conflates them, ignoring that choices about the extent of centralization, overlap, and coordination each present a variety of different policy advantages and disadvantages. Third, it does not consider in any depth whether restructuring would benefit from varying the allocation of authority by function. The Trump plan thus represents yet another reorganization proposal that ignores, confuses, and conflates the different justifications, dimensions, and functions of authority.

The plan offers what essentially amounts to a default, unsubstantiated response to virtually all restructuring challenges instead of carefully assessing reorganization options both for different functions and along each of the three dimensions we identify. Even Republican legislators reacted adversely to some of the recommendations for centralization, expressing fears that they would create “bloated” and “unwieldy” bureaucracies. Proposals such as those that would merge the Departments of Education and Labor were met with bipartisan opposition. Indeed, in anticipation of the Trump plan, Congress, with bipartisan support, included explicit prohibitions in appropriations legislation on the expenditure of any funds to implement reorganizations like those proposed in the plan.

Some of the potential adverse consequences of the kind of misguided or incomplete analysis that characterizes the Trump plan are reflected in our second introductory example, which involves a litany of reform efforts relating to the federal government’s disaster response authority.
Until 1971, emergency management authority was centralized in the Office of Emergency Planning.33 In that year, President Nixon decentralized that Office’s authority by dividing it among multiple federal agencies.34 In 1979, however, in response to critiques about inadequate coordination,35 President Carter centralized disaster management authorities in the newly established Federal Emergency Management Agency (FEMA).36 Ensuing critiques asserting poor coordination and mismanaged responses to high-profile disasters37 prompted a reorganization of FEMA in 1993 that divided authority into three directorates, one each for preparedness, damage mitigation, and response and recovery.38 Prompted by the terrorist attacks of 9/11 and criticisms that only a single agency could “connect all the dots” implicated in major disasters,39 a fourth reorganization in 2003 consolidated FEMA into the new Department of Homeland Security (DHS).40 Incident response authority, however, was separated and centralized in a new Preparedness Directorate within DHS.41 In 2005, critiques of this bifurcation of disaster planning and response,42 as well as of FEMA’s abysmal performance during Hurricane Katrina,43 prompted a fifth reorganization back toward decentralization.44

What is striking in this pattern of action and reaction is that most or all of the analyses involved seemed to profess concern about inadequate coordination. But instead of enhancing agency coordination authority and responsibility, policymakers generally embarked on a restructuring that moved in the opposite direction from the last one, along the centralization–decentralization dimension. Criticism of the centralization of disaster response authority in DHS,45 coupled with FEMA’s miserable performance following Katrina and other disasters,46 suggests that decentralized but coordinated authority may hold more promise than an indirect effort to spur coordination through recalibration of the degree of centralization. Policymakers should at least have considered the tradeoffs involved in decreasing centralization but increasing coordination, as well as what forms of coordination might be more appropriate, neither of which they did in any systematic way.47

Moreover, in each of these reorganizations, little effort was spent considering the tradeoffs of adjusting authority over separate governmental functions (such as planning or implementation) implicated in disaster response. Few have appreciated that centralization or coordination may
be more beneficial for some regulatory functions than others. It might be preferable, for example, to centralize functions for which economies of scale are most likely to be achieved (such as scientific research) or in which uniform treatment of participants in disaster management is important (such as planning the allocation of federal funding or facilities for disaster response), while retaining decentralized authority for functions (such as information analysis) for which these advantages are likely to be less important than assuring diverse regulatory approaches or the application of local or particularized expertise. Similarly, although coordinated disaster response planning and implementation generally is desirable for achieving efficient resource allocation and minimizing conflicting responses by different governmental actors, there may be instances in which the transactions costs of coordination outweigh the advantages. In the rare instances when policymakers have differentiated structures according to function, they appear to have made curious choices (such as separating disaster management planning and implementation authority) and have made little effort to think through their implications.

As further illustrated through the six detailed case studies in this book, plan recommendations based on weak evidence and conflated dimensions often produce reorganizations—such as the efforts to redefine the relationships between FEMA and other components of the executive branch—that do not address identified structural problems or that otherwise miss more effective alternatives. Experience in the wake of the Homeland Security Act provides a cautionary tale, suggesting that policymakers who give short shrift to institutional design do so at their (and the public’s) peril. As legislators consider whether to endorse the Trump reorganization plan or move forward with other reorganization initiatives, it is critical that they devote careful attention to the appropriate allocation of authority along multiple dimensions and consider whether functional differentiation provides the best opportunity to promote policy objectives.

C. Purposes

This book urges reliance on a transformational framework for facilitating the adoption of structural changes that mitigate rather than
contribute to problematic allocations of authority. More specifically, the book has at least five purposes.

1. A Unifying Taxonomy

The book’s first goal is taxonomic, or semantic. We believe that a significant source of difficulty for designing regulatory structures that are well suited to addressing social problems effectively (and for understanding why existing programs are not working effectively) is the lack of a common taxonomy. To mitigate the tendency to talk past others when debating regulatory structural reforms, chapters 1 and 2 provide a lexicon for thinking about the design of government that is clearer and more comprehensive than the terminology used in most academics’ and policymakers’ discussions. We distinguish between two ways to allocate authority to government institutions: by substance and by function. We also identify three dimensions of authority that establish the manner in which government institutions relate to one another. This terminology is meant to provide a common vocabulary for describing, critiquing, and, if appropriate, reforming allocations of regulatory or management authority. If people use the term functional jurisdiction to mean different things, for example, efforts to understand and discuss allocations of authority are likely to generate misunderstandings and crossed signals. Similarly, assessments of whether allocations reflect too much or not enough overlapping authority are not likely to be helpful if policymakers understand overlap to mean different things. Our typology can help foster meaningful discussion of the value of allocations of authority. In other contexts, the introduction of new vocabularies has contributed to legal and policy development. Legal realism, for example, has “influenced legal doctrine enormously,” as Nourse and Shaffer have written, by shifting from common law–based to sociologically based vocabularies.49

2. Descriptive Insights

A second, related goal might be characterized as descriptive. The book explores the application of our allocation framework in various contexts, particularly through six case studies, three of which explore the value of differentiating allocations of authority along functional lines, and three
of which consider the implications of conflating two or more dimensions. By so doing, we develop explanatory insights about the nature of interjurisdictional relations that we think demonstrate the value of the book’s taxonomy.

3. Some Normative Postulates

The third goal, which follows from the first two, is more normative. In the absence of a common framework for evaluating available structural options, those who create and evaluate regulatory programs may miss the options that have the best chance of succeeding. It is likely that some institutional arrangements will be better suited to achieving identified regulatory or management goals than others. Although we offer a few generalized postulates about circumstances in which particular distributions of authority are likely to be attractive, we have neither the capacity for nor the interest in “essentializing” interjurisdictional relations—to develop a singular, universal set of rules that detail optimal, fixed allocations of authority. Allocational and structural choices will largely be context-specific. At the same time, by looking generically and comparatively at interagency relationships, we believe we are able to draw insights about the effects of such relationships on agency performance that may have been missed by narrower agency, program, or case-specific evaluations conducted by policymakers and scholars. A critical question that our framework seeks to illuminate is whether a proposed reallocation is reasonably designed to address the problem or problems that spurred the reorganization initiative—that is, whether there is an appropriate ends-means fit.

Although we are convinced that our approach to analyzing interagency relationships is valuable regardless of one’s perspective on the value of regulation, we openly acknowledge that we are not free of our own substantive precommitments, developed in the course of our individual and joint work on environmental and natural resource management issues. These precommitments, which lean in a progressive direction, include maximizing market cost internalization to promote the equitable distribution of social benefits and burdens, as well as a greater emphasis on addressing the risks resulting from under-regulation than from over-regulation. Accordingly, our preliminary
judgments about appropriate allocations will often tend to favor precau-
tionary and proactive regulatory approaches\textsuperscript{52} and approaches that seek
to minimize regulatory capture (that is, improper influence or control
by regulated entities over agencies tasked with overseeing them).\textsuperscript{53} We
also place a high value on participatory governance, though which way
that preference cuts is likely to be context-driven. Decentralized deci-
sion making, for example, may provide greater opportunities for public
participation, especially if authority is exercised at lower levels of gov-
ernment, but policymakers at that level may be more prone to capture.\textsuperscript{54}
That risk of capture may in turn support overlapping authority, espe-
cially for functions such as standard setting and enforcement, despite
the duplication and inefficiencies it may create. Finally, given our con-
cerns about capture and the risk of under-regulation that may arise from
agency shirking and free-riding, we are inclined to put greater stock in
coordination mechanisms than to foster independence as a means of
promoting interagency competition.\textsuperscript{55}

These precommitments certainly will not be shared by all of this
book’s readers, and even if they are, they will not always point to the
same structural arrangements. By appreciating the potential relation-
ships among agencies and the tradeoffs of particular allocation choices,
scholars in political science, public administration, legislation, and
administrative law, as well as—perhaps more importantly—legislative
and executive policymakers, can compare and contrast the full range
of available options, regardless of any normative preferences they may
have. That kind of analysis, which at present we regard as often incom-
plete, can improve government programs.

4. Cultivating Empiricism

A fourth purpose of the book is to set the stage for the future accumula-
tion of empirical evidence about which institutional arrangements work
and why others fail. Naturally, we do not write on a clean slate. The legal
realists’ attacks in the 1920s and 1930s on legal formalism sought to, as
Calabresi has written, “reshap[e] legal decision making in accordance
with the emerging empirical sciences” and to afford “keener attention to
actual institutional and social practices.”\textsuperscript{56} These efforts were hampered,
however, by the realists’ “inability to develop any kind of theoretical
framework for making their empirical findings relevant to normative legal scholarship.”

Our book takes a page from the realists by urging greater reliance on empirical analysis in institutional design. We seek to fill some of the gaps in previous scholarship by focusing on regulatory reorganization and by offering the kind of comprehensive theoretical framework the critics have found missing in the early realist scholarship. Perhaps because a comprehensive taxonomy of government functions and dimensions of the kind we introduce has been lacking, assessments of past regulatory performance typically have not fully characterized or understood the full extent of agency structures and relationships. In chapters 3 through 8, we provide case studies in which we apply the framework introduced in chapters 1 and 2 to illustrate how an appreciation of the dynamics of intergovernmental relationships using our mode of analysis might have averted problems or improved outcomes. Our hope is that scholars and policy analysts will assess regulatory institutions using this new taxonomy and thus develop useful evidence based on practical experience about the tradeoffs of organizational alternatives in a range of contexts.

5. Promoting Adaptive Governance

A fifth and final goal is experimentalist: to advocate that policymakers integrate such analyses systematically into the design, assessment, and periodic redesign of regulatory institutions through more widespread use of adaptive governance. As we explore more fully in the conclusion, we hope that scholars will rely on what we believe is a novel method of analyzing agency relationships to assess regulatory allocations. Furthermore, policy analysts and policymakers should not only use our framework in crafting allocations but also systematically integrate the assessment of allocations into the regulatory process itself. Instituting such an infrastructure would allow policymakers to learn from both successful and unsuccessful ventures and use the resulting insights to engender further reforms.

Our focus on adaptive governance builds, and aims to improve on, past calls for periodic review of the operation of government. The philosophical pragmatism of the early twentieth century was grounded in “an ongoing experimental search for a durable conception of the public
Charles Lindblom’s version of policy making, based on “muddling through,” envisioned government reliance on “incremental steps that permit administrators to adjust decisions over time.” Liindblom’s critics, however, bemoaned the lack of analytical rigor in this approach, warning that proponents would miss the “big picture,” engage in counterproductive strategies, and miss opportunities to promote desired policies most effectively. More recently, new governance scholars have embraced a form of “democratic experimentalism.” But that effort also differs from ours in that it has focused in part on replacing traditional regulatory methods with a more dynamic approach informed by enhanced stakeholder participation, rather than on the interagency relationships that are our concern here.

The approach we recommend builds on these appeals for iterative policy making based on empirical evaluation of the ways to improve regulatory programs but does so by urging its application to resolve questions about the best ways to structure administrative government. As Nourse and Shaffer have noted, “empiricism requires experimentalism [. . .] to ground itself in the experience of how law works, and to upend assumptions that turn out to be wrong [. . .]. Experimental methods inform other empirical approaches, help test theory, and provide new, more reliable information that builds from ground level experience to reevaluate theory.”

We think it is critically important that policymakers engage in ongoing evaluation of agency performance and provide opportunities to adjust allocations of authority in response to changed circumstances or new information. For one thing, reorganized agencies may fail in ways that differ from those that prompted reorganization. In the wake of 9/11, for example, the federal government’s capacity to respond to natural disasters appears to have been impaired when FEMA was folded into DHS, a larger entity whose priority was terrorism prevention, not disaster response. A well-designed administrative regime should be capable of identifying and responding to such pathologies. Our functional and dimensional approach can assist in understanding why previous reforms created unintended consequences and in identifying appropriate solutions. The learning infrastructure that we propose in the conclusion is a critical step for embedding adaptive governance into the administrative state.
D. Audience

The primary intended audience for this book is policymakers—in particular, legislators and their policy staff, the institutional actors with the most direct influence over the choice of regulatory allocation. Yet any policymaker, including executive officials, could use this framework for assessing organizational choices, as could scholars or entities (such as GAO or the Congressional Research Service) whose responsibilities include evaluating governmental performance or organization. Even courts might find this framework useful. A court might use it in determining how a legislature intended to allocate authority based on an evaluation of which allocation choice best promotes identified statutory goals. It might be more likely to recognize authority as overlapping (such as through floor but not field preemption, for example) if evidence of legislative intent identifies the need for a redundant regulatory safety net as a core purpose of an allocation.

We understand that policymakers may not approach decisions about allocations of authority with a primary focus on which design would best achieve particular normative goals. We are not naïve enough to believe that such decisions are driven wholly, or even principally, by rational debate over the advantages and disadvantages of alternative design options. We also do not assume that policymakers are well intentioned at promoting effective regulation or that politics is irrelevant or unimportant. Political realities often pose significant obstacles to regulatory reform, even if there is a consensus that existing regimes are not working well. For one thing, congressional committee members may oppose efforts to eliminate or reduce the power of an agency over which they have jurisdiction.67 Political partisanship may also prevent reform.68 Although political economy is not our focus, we do acknowledge the existence of political and other practical obstacles to institutional reform and refer to them in several of the book’s case studies.

We nonetheless believe that organizational choices matter, that structural choices can dictate the effectiveness of regulatory allocations of authority and that if policymakers seriously consider the impact of these choices, using a framework like the one we advance here, the performance of regulatory programs is likely to benefit. The legitimacy of US administrative law is fundamentally linked to the legislative delega-
tion of authority to administrative agencies to advance effective governance,\(^69\) as well as to the requirement that regulators provide reasons for policy choices or decisions related to that delegation.\(^70\) The framework for understanding the allocations of authority we introduce seeks to build on this premise to catalyze the democratic process by fostering debate, reason giving, and deliberation as a basis for allocations of authority by policymakers. It thereby endeavors to shift the emphasis for making decisions about agency organization and relationships, at least incrementally, away from political considerations and toward policy justifications.

This book’s purposes are ultimately directed at mitigating the political difficulties of achieving sensible regulatory reform, in several ways. First, a common taxonomy can help policymakers and other analysts appreciate what is at stake in reform efforts and, by helping to structure the debate, guide more attention to allocation considerations. Second, the analytical framework we provide may help policymakers identify structural options that spur fewer political roadblocks, while at the same time creating the prospects for successful reform. Third, the empirical evidence that this book may help generate could contribute to convincing policymakers that even reforms that some entrenched interests object to are worthwhile pursuits in light of evaluations of past reform efforts. Fourth, if the practice of analyzing regulatory design options in the systematic way we recommend is institutionalized as its advantages become clear, the upshot may make political considerations that pay little heed to the comparative substantive merits of available options less salient.

We also recognize that this kind of institutionalization will not be accomplished without pushback from those who stand to lose politically from particular reforms suggested by our analysis. Yet, in spite of political pressures to entrench the status quo, reforms—sometimes dramatic ones—do occur, and with considerable frequency. The creation of the Environmental Protection Agency (EPA) and the Department of Energy in the 1970s, the creation of DHS after 9/11, and the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act (known as the Dodd-Frank Act or simply Dodd-Frank) in 2010 are all examples of reallocations of authority that proceeded in the face of pressures to retain the status quo, even if the reforms ultimately adopted were not unaffected by those pressures.
E. A Few Caveats

We should make clear that we are not arguing that institutional design choices of the kind we promote here are sufficient to guarantee regulatory success. First, admittedly limited empirical evidence exists at this time to assess the value of our approach. Structural changes that work well in some contexts may be less helpful in others. Second, as we emphasize throughout the book, organizational choices affect regulatory values, and relevant values may conflict. A structural design solution that promotes efficiency, for example, may appear to be unfair. A move to enhance effectiveness may impair accountability. Alternative allocations may advance fairness at the expense of efficiency, or advance accountability at the expense of effectiveness. Our analytical framework can clarify the manner in which allocation choices will affect regulatory values, but policymakers will have to prioritize values in the event of conflict.

Third, how authority is allocated among regulatory institutions is likely only one factor that shapes the efficacy of government programs. Even a well-structured allocation may not succeed if the scope or tools of authority that are allocated to the implementing institutions are deficient, if government personnel are hostile or indifferent to the programs they implement, or if legislators fail to provide sufficient resources to allow effective administration. Although some configurations of authority may be capable of combating shirking by regulators or minimizing inefficient use of limited resources, we do not attempt to comprehensively address those sources of regulatory failure, which are covered well elsewhere. Nevertheless, we believe that poorly designed programs are likely to create significant barriers to success. Our aim here is to provide a framework for minimizing those barriers.

Two additional provisos are appropriate. To begin with, this book does not purport to be a comprehensive study of all aspects of regulatory design. We have chosen to focus on the capacity of changes in the structure of intra- and interagency relationships to improve government performance. As such, we do not engage the debate over whether policymakers should rely on private rather than public law to address social problems or should rely more heavily on market-based mechanisms when implementing regulatory problems. Moreover, as we have
written elsewhere, we are aware that institutional design choices will be significantly shaped by the adaptive capacity of the background legal system in which they operate. For example, constitutional provisions relating to separation of powers and federalism may constrain realistic organizational options in the United States. The thrust of this book, however, is to help policymakers choose, from among the constitutionally permissible options, those that are best suited to promoting substantive policy goals. We have directed our attention to the relationship between regulatory institutions, which we regard as vital to the success of government but also as, to date, insufficiently explored.

In addition, it is worth acknowledging that the focus of the book is primarily on administrative structures within the federal government of the United States, and on the relationship of federal to state-level structures. Nonetheless, we believe that our framework is useful for evaluating regulatory structures in other jurisdictions or at other scales of government. Indeed, we touch on the relevance of international law to organizational choices (for example, the discussion of climate change geoengineering in chapter 9) and hope that our framework will spur comparative evaluation of government organization in other nations.

F. Road Map

The book proceeds in nine chapters. Chapter 1 distinguishes between substantive and functional allocations of decision-making authority. The former involves defining an agency’s jurisdiction on the basis of the subject matter it is authorized to regulate or manage. The latter entails defining an agency’s responsibilities, or tasks, in functional terms. Different agencies, for example, may be in charge of planning, standard setting, or enforcement, even if their authorities relate to a common subject matter. We believe that the possibility of adjusting authority along functional lines is underappreciated. Our book points out how doing so—for example, by creating overlapping authority for some functions but not others—may provide the advantages of that (or some other) dimension of authority while minimizing its disadvantages.

Chapter 2 describes the three dimensions along which policymakers may allocate substantive or functional regulatory authority. Authority may be centralized or decentralized, it may be distinct or overlapping,
and it may be coordinated or independent. Although we describe these dimensions in terms of their polar opposites, each represents a spectrum of possibilities. Notwithstanding the well-trodden nature of at least one of these dimensions (centralization–decentralization, around which longstanding federalism debates revolve), policymakers and scholars routinely ignore one or more of these dimensions when considering how to allocate authority. Even those who explore more than one dimension habitually confuse and conflate them. That kind of misstep is highly problematic because it can result in the identification of a structural problem along one dimension but the adoption of a solution along an entirely different dimension, thereby thwarting effective regulation. It can also prevent accurate assessment of how the three dimensions interact with one another in a particular context. Chapter 2 therefore seeks to provide a common lexicon to facilitate informed organizational choices that reduce the risk of program failure.

The remainder of the book demonstrates the value of thinking about government organization in terms of the substantive–functional divide and along three different but interrelated dimensions of regulatory authority. Chapters 3 through 8 present detailed case studies drawn from disparate areas of government regulation or management that include food safety, pollution control, natural resource management, financial regulation, and protection of national security. The first three of those chapters explore how differentiating government authority based on function may enhance regulatory effectiveness. Chapter 3 addresses functional differentiation along the centralization–decentralization dimension, using food safety regulation as an example of policymakers’ failure to appreciate the value of centralizing certain functions but not others. Chapter 4 focuses on the overlap–distinctness dimension, using EPA’s regulation of polluting activities to illustrate the value of providing greater overlap for some regulatory functions than for others. Chapter 5 compares Congress’s more effective use of certain functional distinctions along the coordination–independence dimension under the Endangered Species Act with those under the National Environmental Policy Act. Each case study illustrates how attending to functional jurisdiction more accurately characterizes the relationship among governmental institutions and reveals opportunities for harnessing the advantages of each pole of a dimension while minimizing its disadvantages.
The second group of case studies illustrates how dimensional conflation can lead to suboptimal regulatory programs. Chapter 6 explains how conflation of the overlap–distinctness and centralization–decentralization dimensions has contributed to an ineffective regulation of securities and futures that has never been adequately addressed, including most recently in the Dodd-Frank Act. Chapter 7 evaluates the ill effects of conflating the coordination–independence and centralization–decentralization dimensions, using changes in the allocation of the authority to gather and assess intelligence information in the wake of 9/11 to highlight the value of a crisp delineation of these dimensions of authority. Finally, chapter 8 deals with conflation of the coordination–independence and overlap–distinctness dimensions. It relies on regulation of the safety and soundness of depository institutions to suggest that if Congress had appreciated the differences between those two dimensions, it may have produced more effective regulatory structures than it adopted in Dodd-Frank.

In each case study, we show how the failure of policymakers to appreciate the impact of situating authority along each dimension, or of differentiating allocations on a functional rather than substantive basis, may undermine structural reform efforts. These chapters explain how an evaluation conforming to our analytical framework could have identified alternative allocations of authority with greater promise for achieving prescribed policy goals, avoided the adoption of unresponsive solutions, or reduced political resistance to allocational reforms. Application of this framework would also have allowed policymakers to weigh more clearly the policy tradeoffs of alternative allocation choices. Although the optimal allocations of authority will inevitably be contextual, we are able to draw on the case studies to develop at least a tentative set of postulates that may assist in future reorganizational initiatives. We emphasize, however, that while the book is meant to provide a working road map to guide such efforts, it does not purport to provide a grand equation capable of calculating a prescribed solution for each and every puzzle of reorganization.

Chapter 9 provides an opportunity to apply our analytical framework in a more integrated fashion. Whereas the six case study chapters all (necessarily but somewhat artificially) focus on exploring a particular aspect of functional or dimensional allocations of authority, this chapter
more holistically illustrates the advantages of a dimensional and functional analysis. We use global climate change—an area in which both the need for and shape of government intervention remain contested—as a capstone analysis of our approach to thinking about the distribution of government power. The chapter considers how allocations of authority may influence the effectiveness of regulation in three discrete but related areas of climate change governance: mitigation (greenhouse gas emission reduction), adaptation (managing climate change effects), and geoengineering (large-scale climate manipulation). Because each governance area presents different challenges, disparate allocations of authority, both in relation to function and along the three dimensions, are likely to be appropriate. Chapter 9 also explores more fully a point noted in earlier chapters: that situating authority along a single dimension may alleviate or exacerbate the ill effects of structural choices along another dimension. Thus, the best solution may be to situate authority at a point along one dimension that in isolation fails to maximize its advantages, but that allows positioning along another dimension to compensate for any adverse consequences of failing to push further toward one end of the first dimension.

Government is not perfect and never will be. But by structuring government institutions carefully, policymakers can create mechanisms for addressing social problems that are positioned to work well in ways that are consistent with important social values. We wrote this book to provide a framework that relies on past experience to evaluate regulatory problems, and to suggest solutions that have the potential to alleviate regulatory failures, even if it is impossible to eliminate them. Scholars and policy analysts can use this framework to evaluate which approaches have worked and which have not. And policymakers can and should integrate a more adaptive governance framework to craft, evaluate, and adjust policies over time to better achieve regulatory or management goals. This book explains how to do so.