Law 932: Selected Problems in Administrative Law: Regulatory Reform

3 Credits

Time-1:20-3:20pm Mondays

Instructors: David M. Trubek and Louise G. Trubek

This seminar explores new approaches to regulation and their implications for law, policy, and public administration. Critics of government regulation and the administrative state from the left and right have called for alternatives to conventional top-down, command and control regulatory systems. New approaches involving devolution, public-private partnerships, negotiated regulation, network creation, coordinated data collection, benchmarking, monitoring, feedback, and revisable standards are being tried out. This type of “new governance” changes the way law is created and administered. It restructures relationships among markets, government and the professions and re-opens the age-old issue of how best to maintain social and environmental values in a market economy.

The new governance movement has led to regulatory reform in the US and elsewhere. In the US there have been experiments at federal, state, and country levels. In Europe, reform has occurred at the level of sub-national regions, individual nation-states, and the European Union.

The seminar will examine selected reform experiences. We will ask what is “new governance”, whether it is really new, how these approaches work in practice, why they are getting attention today, and what critics have said about the risks involved in these changes. The seminar will pay special attention to the relationship between new governance and traditional legal tools, asking whether the new approaches are complimentary to traditional regulation or in competition with them. We will also look at what these changes mean for the role of lawyers.

The seminar will be linked to a workshop to be organized by the Wisconsin Project on Governance and Regulation (WISGAR) (http://www.law.wisc.edu/ils/wisgar/). The workshop will bring practitioners and regulators together to explore recent developments in regulatory reform in the area of environmental protection.

Students will be expected to select an area of regulatory reform for detailed study and will be expected to present their findings at the end of the semester. Students may study reforms in Wisconsin, other US states, the federal government, or Europe and may work individually or in teams.

The seminar is open to law students and graduate students in other schools and colleges. In addition to writing papers of 20 pages or longer, students will be expected to write several short response papers dealing with the readings assigned for class sessions and attend the workshop.

David M. Trubek is Voss-Bascom Professor of Law and Senior Fellow of the UW Center for World Affairs and the Global Economy. Louise G. Trubek is Clinical Professor of Law and directs the Health Law Project. They are co-directors of WISGAR.
September 11 – Introduction


September 18 – New Governance in Action: U.S.


Environmental Law News Materials from State Bar of Wisconsin

See Green Tier website: http://dnr.wi.gov/org/caer/cea/environmental/


September 25 – New Governance in Action: European Union


Scott, Joanne and Jane Holder (2006) “Law and ‘New’ Environmental Governance in the European Union” in de Búrca and Scott (Eds.): Law and New Approaches to Governance in the EU and the US (Hart)

October 2 – No Class
October 9 – Analytics: What are the elements of New Governance?


October 16 – Geneology: Why is it emerging now?

(review Lobel paper from 10/9 readings)


October 23 – New Governance and Legal Regulation


October 30 – The role of lawyers in New Governance


November 6 – Critiques of New Governance

(review Heydebrand paper from 10/16 readings)


November 13 – Multi-state Working Group: The new governance of new governance?

Guest speaker: Jeffrey Smoller, President, MSWG / Wis. Department of Natural Resources

Selected MSWG Website materials (also see: www.mswg.org for further information)

MSWG “Path to Washington” chart


November 20 – No class, work on paper presentation

November 27 – Student presentations

December 4 – Student presentations