

Baldy Faculty Seminar Series Legal Studies – Fall 2007

All interested faculty, law and graduate students are invited to attend our discussion.



Colin Scott

University College Dublin, School of Law

Legitimacy in Regulatory Governance

Commentators: Errol Meidinger (UB Law)
Nancy Reichman (University of Denver, Sociology)

Friday, November 30, 2007

509 O'Brian Hall

12:30 – 2:00 pm

RSVP for lunch at noon to ekausner@buffalo.edu

Legitimacy is vital to contemporary regulation, not just because no one wants to be governed by a regime which is illegitimate, but also because of the link between legitimacy and effectiveness. Colin Scott starts from an observation that regulatory governance frequently deviates from classic regulatory agency models with much diffusion of responsibility and capacities amongst state agencies and to non-governmental and supranational organizations. An easy response to observations of fragmentation is to suggest that all actors with regulatory power should be subjected to a one-size fits all legitimacy regime extended from the public accountability regime based on process traditionally associated with agencies. His argument is that different kinds of actors within regulatory regimes have different default legitimacy regimes. Thus for firms default legitimacy regimes are based on the outcomes of competition in markets – for flow of capital, share of customers and recruitment and retention of employees. For community organizations legitimacy is based on intentions rather than process or outcomes and reinforced through mutual monitoring and social sanctions. In many regimes legitimacy is a product of hybridity between the different legitimacy templates. In any case in which we find that regulatory processes lack some element of legitimacy then the idea of there being three legitimacy templates gives a range of mechanisms through which some purposive intervention can be made to correct the legitimacy deficit.

Colin Scott is Professor of EU Regulation and Governance at UCD School of Law, Vice Principal for Research and Innovation, UCD College of Business and Law, Professor of Law, College of Europe, Bruges and a Research Associate of the ESRC Centre for Analysis of Risk and Regulation at the London School of Economics. He is a co-editor of *Law and Policy*. His main research interests lie in the field of regulatory governance. Past studies include regulation of telecommunications and regulation of public sector bureaucracies. Current projects include a comparative study of risk management in public liability regimes in Scotland and Ireland and a study of trends in central government organization in Ireland. He is currently completing the manuscript of a theoretical book provisionally titled *Governance Beyond the Regulatory State*.

Copies of the paper available in the Baldy Center and the Law School Faculty Lounge