Rethinking Federal Regulation
Course # 677

Duke in DC Fall 2010
Professors Jim Cox and Lawrence Baxter
Thursdays 11:00 am – 1:15 pm; September 9 – December 2 2010
2 credits

Venue:
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street NW
Washington, DC 2004

Course Credits, Objectives, Readings and Syllabus

Credits

(Duke students only—UNC Law credits are structured and applied separately
Duke students please note: the drop/add deadline for registration is August 31)

9 credits for fulfilling the externship, which requires 450 hours of fieldwork and bi-
weekly reflection papers (to be submitted in a timely manner to Dean Kim Bart
(Duke students)

2 credits for complete class attendance and presentation

1-3 credits for end of term paper, awarded according to length and submission of a
final draft. Students may add credits (3 maximum) after August 31, but not reduce
credits.

All credits are awarded on a complete/incomplete basis. No grades will be assigned.

Students must make their election on end of term paper credits and inform the
Registrar and instructors. Duke students should ensure that they are properly
registered with the Registrar and Dean Bart for all the correct credits.

UNC students should check with Professor Savasta-Kennedy.
Objectives

This course provides an historical, public policy and theoretical context to allow you to reflect on your externship experiences from a larger perspective. We will review important legal and environmental elements that shape and provide context for the policy making process at the federal level, and provide tools to evaluate critically important features of the federal policy making process, including:

• our system of separated powers and how this system attempts to balance the interactions between the Congress, executive branch, and regulatory agencies, on the one hand, and private economic activity on the other;
• trends in regulatory philosophy and the mood for change at this time;
• the dynamics of interaction between Congress, federal government agencies, and industry in setting and enforcing constraints on economic activity;
• the impact of lobbying organizations on matters before Congress and administrative agencies or executive branch officials;
• the nature of administrative rule making and enforcement of rules and regulations, and how these processes are influenced by the laws Congress enacts and the oversight function of congressional committees;
• some of the sources of regulatory dysfunction and their impact on the current economic crisis as well as possible mechanisms to address perceived dysfunction; and
• competing models for regulation, e.g., enforcement versus prudential, rules versus principles; self regulation, etc.

Students will synthesize their job-related and in-class educational experiences through the preparation of an end of term paper, the draft of which each student will present to the class as part of a team during the second half of the course (see below).

Course Materials

Required Text:

The required text for the course is—

GOVERNMENT AND MARKETS: TOWARD A NEW THEORY OF REGULATION

Supplementary Materials:

These will all be made available on Blackboard or via direct internet links. We will also be considering possible guest speakers, probably toward the end of the semester. And you will note that we have left time late in the seminar for your presentations.
Team Presentations

By the end of September class participants will be organized into teams of three and these teams will present their preliminary observations on the regulatory process during the latter sessions (November 4, 11 & 18). In fulfilling this task, each student is expected to draw from his/her own research paper for insights on the topic and work with team members on how to best to incorporate the insights into the team's presentation. Each group presentation will be strictly limited to 35 minutes. Students are encouraged to select teammates. We will also assist your efforts to create teams to ensure that everyone is assigned to a team. Similar or compatible interests in the regulatory process and its reform will clearly help a team in presenting a common approach, but the specific regulatory area in which a student is interested (or be externing) need not be the same.

End of Term Papers

After their presentations each student should prepare the final draft of their independent paper and submit this draft by Friday December 17 at the latest.

Reading Assignments & Syllabus

**Required Background Reading**

1. *Cass Sunstein Wants to Nudge Us*, available online at [http://www.nytimes.com/2010/05/16/magazine/16Sunstein-t.html?_r=1&pagewanted=all](http://www.nytimes.com/2010/05/16/magazine/16Sunstein-t.html?_r=1&pagewanted=all)

**Classes 1-2 (September 9)**

**Regulation in Broader Perspective**

1. Balleisen & Moss Ch. 1 (Stiglitz, *Government Failure vs. Market Failure: Principles of Regulation*);

**Classes 3-4 (September 16)**
Economics & Regulation


**Classes 5-6 (September 23)**
The Rise and Fall of Public Choice Theory

1. Balleisen & Moss Ch. 3 (Furner, *From ‘State Interference’ to the ‘Return of the Market’*);

2. Balleisen & Moss, Ch.7 (Leight, *Public Choice: A Critical Reassessment*)

**Classes 7-8 (September 30)**
Ebb and Flow: Evolving Views

1. Balleisen & Moss Ch. 8 (Moss & Oey, *The Paranoid Style in the Study of American Politics*);

2. Balleisen & Moss Ch. 9 (Benkler, *Law, Policy, and Cooperation*)

**Classes 9-10 (October 7)**
Players in the regulatory process: Congress; President; Courts; Separation of Powers; federalism, role of politics and law


**Classes 11-12 (October 21, fall break October 14)**
New Perspectives

1. Balleisen & Moss Ch. 6 (Wittman, *The End of Special Interest Theory and the Beginning of a More Positive View of Democratic Politics*);
2. Balleisen & Moss Ch. 8 (Moss & Oey, The Paranoid Style in the Study of American Politics)

**Classes 13-14 (October 28)**

Deregulation and its Legacy

1. Balleisen & Moss Ch. 15 (Freyer, Deregulation Theories in a Litigious Society: American Antitrust and Tort);

2. Balleisen & Moss Ch. 16 (Esiner, Markets in the Shadow of the States: An Appraisal of Deregulation)

**Classes 15-20 (November 4, 11, 18)**

Case Studies to be selected for papers by students & student presentations

Students should begin thinking now about what they would like to write and present. Something linked to their externships would be ideal but not essential. Professors Cox and Baxter can help with some links to initial material.

**Classes 21-22 (December 2)**

Remaining student presentations

Final Review: Review of papers, internships, etc.