

ASSIGNMENT FOR CLASS 1, JANUARY 12, 2004 AND MATERIALS FOR CLASSES 1 & 2

Before Class 1, be sure to read the first two items in the required readings for classes 1 and 2 (see list of readings below):

- Administrative Law and Global Governance: Research Project Outline
- Outline of Multi-Jurisdictional Regulatory Issues

Read additional items if you can, and do all of the required readings before class 2.

The 'Administrative Law and Global Governance' gives an overview of the intellectual project which animates the entire Colloquium this semester. The Research Project Outline identifies approaches and specific questions to be explored in papers by visiting speakers presented this semester and in student research papers. Having read that, please consider the following broader issues.

1. Mapping the Field. Our assumption in organizing a colloquium on 'Administrative Law and Global Governance' is that it is possible to map a distinctive field of international administrative-type governance activity susceptible to common administrative law approaches. But is there really such a distinctive field? If so, what kinds of global governance activity fall within it, and what kinds do not? In national law, the field of administrative law typically focuses on administrative action that is distinguished from legislative action of the legislature, from judicial action by independent courts, and from core executive decision-making (e.g. on military operations) in which discretionary action is largely unreviewable. Administrative action is taken by district administrative entities that exercise subsidiary law-making, law-enforcing, and law-implementing authorities delegated to them by the legislative and the central executive. These administrative borders are typically required to follow specified procedures for making decisions that are legally binding.

Typically, the decisions of these administrative entities are also ultimately subject to judicial review of their legality in the courts. Can these distinctions and functionally separated structures be transposed to transnational and global governance? If not, what other distinctions can be used to separate action by international or transnational actors that are or should be subject to administrative law from other elements of global governance? If such distinctions cannot be drawn, can we instead define the field by listing the tools of administrative law (including procedural requirements for administrative decisions and review of these decisions by a separate tribunal or reviewing body) and identifying areas of global governance in which they are or could be deployed?

2. Relationships between Administrative Law and Institutionalization.

National administrative law has tended to develop as a reaction to the development of new institutions – the main aim has been to control or channel or allocate power that institutions already have. Does this same pattern hold in highly institutionalized international governance e.g. the European Union, or the World Trade Organization? (Some argue in these cases that growing institutional power and reach is a problem, not a resource to be enhanced by administrative law.) In areas of global governance where institutions are weak or fragmentary, does administrative law play first-order roles (i.e. is it an end, not simply a means)?

3. Relationships between Administrative Law and Different Types of Regulatory Regimes, Regulatory Programs, and Regulatory Instruments.

As you will see in the materials that follow, two basic institutional types of global regulatory regimes have emerged, treaty-based regimes that generate norms that are legally binding on participating states (who are in turn supposed to implement and enforce those norms through regulatory measures aimed at non-state actors), and more informal regulatory networks formed by national regulatory officials who discuss and coordinate their separate domestic regulatory policies. Other types of regimes are emerging, including “partnerships” of NGOs, business, and international organizations and domestic governments to secure social and environmental values and promote economic development; the use of economic incentive systems to promote environmental and worker protection and other social goals, such as tradable pollution permits and the use by NGOs of information and product labels to influence consumer purchasing; and harmonization of regulatory norms through corporate codes of social responsibility and quasi-autonomous organizations such as the International Standards Organization. These different regimes also tend to rely on different types of regulatory instruments. Further, as illustrated by the Outline of Multi-Jurisdictional Regulatory issues, there are many different subject areas or regulation. Throughout the Colloquium we will be considering how these variables relate to the possibility and role of global administrative law

4. Normative Aims of Global Administrative Law.

What are the different normative objectives that global administrative law might be designed to pursue? Does it aim to perform the function of (re-)establishing and (re-)regulating public control over governance, substituting for functions that within national markets and polities are performed by state institutions? Does it instead aim simply to make markets more efficient, and thereby to increase aggregate welfare? Does it aim to confer legitimacy on otherwise suspect institutions, by increasing participation, accountability, legality, and control mechanisms? What is the relation between administrative law and democracy? What are likely to be the consequences in practice of the

development of global administrative law (who gains, who loses)? What forces or factors favor its development, and which impede it?

5. Normative Controversies in the Development of Global

Administrative Law. The 'Administrative Law and Global Governance' Research Project Outline notes three plausible normative objections to the proposal to develop global administrative law (see last two pages, items 20, 21 and 22.) Do you share these objections? What other objections might be raised?

REQUIRED READINGS FOR CLASSES 1 AND 2

Please read as many of the following items before the first class on Jan. 12 but in any event before the second class in Jan. 26. Materials indicated by * are in hard copy and can be picked up from suite 411 copy room. The rest of the material can be accessed via the links on this web site.

1. Kingsbury, Benedict, Richard Stewart, and Nico Krisch, [*Administrative Law and Global Governance: Research Project Outline*](#), June 2003
2. [*Outline of Multi-Jurisdictional Regulatory Issues*](#)
3. Keohane, Robert O., [*Governance in a Partially Globalized World*](#) , American Political Science Review 95 (2001), 1-13
4. Abbott, Kenneth W. et al, [*The Concept of Legalization*](#), International Organization 54, 3, Summer 2000, pp. 401-419
5. *Howse, Robert, *Transatlantic Regulatory Cooperation and the Problem of Democracy* , Transatlantic Regulatory Cooperation (Bermann, G.A. et al., eds.), Oxford , New York : Oxford University Press, 2000, 469-480
6. Slaughter, Anne-Marie, [*The Accountability of Government Networks*](#) , 8 Indiana Journal of Global Legal Studies 8 , 347 (2001)
7. Tarullo, Daniel K., [*Law and Governance in a Global Economy*](#), American Society of International Law Proceedings, March 24-27, 1999
8. Public Citizen Website materials, Global Trade Watch, www.publiccitizen.org/publications/release.cfm?ID=7264

In addition, Professor Stewart's paper on *U.S. Administrative Law: A Resource for Global Administrative Law*, which will be the focus of discussion in Class 2, will be available at the end of the week of Jan. 12.

OPTIONAL READINGS (for those who want to investigate the issues further, including in connection with papers)

1. *Rosenau, James N ., *Governance in the 21st Century* , 1 Global Governance 13- 43 (1995)

2. Shapiro, Sidney A., [*International Trade Agreements , Regulatory Protection, and Public Accountability*](#) , 54 Administrative Law Review 435 (2002)
3. *Halliday, Fred, *Global Governance: Prospects and Problems*, Citizenship Studies 4 (2000), no. 1
4. Wirth, David A., [*Public Participation in International Processes: Environmental Case Studies at the National and International Levels*](#), Colorado Journal of International Environmental Law and Policy, Winter, 1996
5. Carmody, Chi, [*Beyond the Proposals: Public Participation in International Economic Law*](#), American University Law Review, 2000