

ABSTRACT

Orly Lobel

Interlocking Regulatory and Industrial Relations: The Governance of Workplace Safety

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Abstract by Nicolas A. Reyes

In *Interlocking Regulatory And Industrial Relations: The Governance of Workplace Safety*, Orly Lobel advocates a paradigm shift in the manner in which the Occupational Safety and Health Administration (OSHA) develops workplace policies. Rather than subscribe to the traditional emphasis on adversarialism in administrative law, the author advances a new concept of administrative governance. The author explains that this concept integrates public and private efforts to promote responsible policy. The author's concept incorporates cooperation as the core characteristic of regulatory relations. In sum, this article argues third-way avenues for developing risk prevention policies should complement the traditional command-and-control and market-based regulatory strategies.

The article begins by charging that OSHA has failed to lower workplace injury rates because of political weaknesses, a flawed legislative mandate and a lack of resources. The article presents two arguments to support its stance. First, under-regulation is the result of over-regulation. Too many top-down rules that cannot match the diverse and changing realities of occupational risk cause the regulatory process to be met with resistance. Second, under-enforcement is the result of over-enforcement. The top-down approach that universally and unvaryingly enforces the same standards for all market actors fails to precipitate improved safety.

In the face of failures to improve workplace safety under traditional paradigms, the author advances three principal points for the integration of third-way avenues for risk prevention policy.

First, the article explains that the use of third-way governance-based policy techniques is necessary in the field of occupational risk prevention.

Second, the article offers normative and methodological parameters to implement the shift away from the command-and control approach to occupational safety. To successfully introduce third-way avenues for risk prevention policies, the author advocates the use of exit and voice concepts. Exit refers to the ongoing availability of opt-out options from a cooperative relationship in circumstances when new governance becomes a front for unfair, irresponsible practices. Voice refers to mechanisms that permit workers to experience meaningful participation in structuring their work environment.

Third, this article asserts that central doctrines of administrative procedure and labor law impede legal innovation and stall reforms.