

Administrative Law
Political Science/Public Affairs 419
Fall 2019
MW 4:00-5:15
Education Sciences 228

Professor Information:

Professor Ryan Owens
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Office Hours: Mondays 9:30-10:45

Teaching Assistant:

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Class Description: This class examines the role that federal administrative agencies play in the U.S. political and legal system. The course is about the law and politics of administration. We will investigate the institutional context and ideological character of administrative law and agency practices. We will examine classic debates over the origins of regulation, competing legal philosophies about democratic administrative regulation, political struggles to control the bureaucracy, and how agencies use adjudication and rulemaking to effectuate their policies.

Requirements and Grades

Readings. Each week, I will assign a number of required readings. All assigned journal articles (and some cases) that do not appear in the textbook are available on the course website at Canvas. There is one required book for the course, with nearly all our cases contained within it.

- Kristin E. Hickman and Richard J. Pierce, Jr. 2014. *Federal Administrative Law: Cases and Materials*. Foundation Press. Second Edition.

Grading. I will base your grade on two midterm exams, class attendance, and a final exam. The midterm exams will both be held in class. **Each** counts for **25%** of your overall grade.

The final exam counts for **40%** of your grade and is cumulative. Attendance counts for **10%** of your grade. If you perform well, your grade will reflect it. I do not grade on a curve.

The grade scale is as follows:

93-100 (A)
88-92 (AB)
83-87 (B)
78-82 (BC)
70-77 (C)
60-69 (D)
< 60 (Fail)

Exams. We will have three exams. The first midterm will cover material from the first day of class to the last full lecture before the midterm. The second midterm covers the material between the first midterm and the second midterm. The final exam will be cumulative.

The format of these exams will be a mix of multiple choice questions, short answers, and essays.

If you do not take the exam on its scheduled date (and do not arrange another time with me), you will receive a grade of 0. Do not ask to take the test at another time unless you have very important reasons to miss it (e.g., taking a vacation does not count).

If you believe we wrongly graded your test and want to challenge that grade, you must wait 24 hours to contact the TA. After that 24 hour period, if you still believe the grade is incorrect, you must email the TA a thorough explanation (at least one long paragraph) *why* you believe the grade is wrong and what you think is correct. We will exercise reasonable discretion when determining whether to make an adjustment.

Class Attendance. I expect you to come prepared to all classes and discussion sections. This means that you have read the material assigned and can discuss it. I interact with my classes and expect students to be present and able to talk about the reading material for the day's class. Unprepared classes are boring to teach and boring to sit through. So please come prepared. If discussion becomes lopsided, with only a few people speaking, I will randomly call on people.

Similarly, at the end of five classes (chosen randomly by me), I will hand out index cards to all those in attendance. On them, you will write your name and a brief question from the topic of the day's lecture or discussion. More specifically, you will write a question that remains unanswered in your mind or is otherwise unclear regarding the day's topic. I will review these cards to determine what topics require follow up on my part. If you are in class each time I circulate index cards, you will get full credit for attendance. If you are never in class during those times, you will receive a 0 for attendance.

Class Behavior. We all want to learn while in class, so do not speak out of turn or otherwise cause disruptions in class. Be respectful to your fellow students. If you fail to do so, university guidelines require me to take action. For more information, please see

<http://www.students.wisc.edu/rights/>. I want you to talk in class—but not while I'm talking or at other inappropriate times.

Laptops. I do not allow laptops in class. They are distracting to other students and entice you to read non-class related material during lecture. If you have a documented medical need that requires you to use a laptop, let me know. Otherwise, please put them away. Failure to do so amounts to a disruption.

Academic Integrity. I hold all students to the university's academic integrity standards. For more information on those, please see: <http://students.wisc.edu/saja/integrity.html>.

Students Requiring Need-Based Accommodations. Students who need accommodations on the basis of disability should schedule an office appointment with me within the first three weeks of the semester. Please schedule this office appointment by email. To maintain the confidentiality of your request, please do not approach me before or after class to discuss your accommodation needs. The McBurney Disability Resource Center (263-2741) provides resources for students with disabilities (<http://www.mcburney.wisc.edu/>). You will need to provide documentation of disability to them in order to receive official university services and accommodations. *Do not wait until before an exam to contact me about this matter, as I will be unable to assist you.*

Course Learning Outcomes. At the conclusion of the semester, students will be knowledgeable about administrative law and some of of the Court's most interesting cases. More broadly:

- Each student will be able to converse freely about administrative law.
- Each student will learn how to read and critically analyze Supreme Court opinions.
- Each student will understand how the administrative state operates.
- Each student will learn how to write and speak compelling legal arguments based in law.
- Each student will learn how to debate legal concepts in a civil and logical manner.

Credit Hours. This class is a three-credit course for those who do not take the discussion section and four-credits for those who do. Students achieve three credits for this course because the class meets for two, 75-minute class periods each week over the fall semester and carries the expectation that students will work on course learning activities (reading, writing, studying, etc) for about 3 hours out of the classroom for every class period. The syllabus includes more information about meeting times and expectations for student work. Students achieve three credits for this course because it yields an expectation of a total of 180 hours of student engagement with the course learning activities (at least 45 hours per credit), which include regularly scheduled discussion sections, reading, writing, and other student work as described in the syllabus.

Introduction to Law and Regulatory Politics

September 4: Class Intro

- Hand out syllabus
- Discuss Class Expectations

Section: No sections this week.

September 9: The Study of Admin Law

- What is an Agency?
- Why do we have agencies?
 - Peter Schuck. 2004. *Foundations of Administrative Law*. Chapter 1.

September 11: The Study of Admin Law (cont'd)

- History of Administrative Law
 - Skowronek (1982). "The New State and American Political Development."

Section:

- Jerry Mashaw. 2006. Recovering American Administrative Law: Federalist Foundations. 1787-1801. *Yale Law Journal* 115(6): 1256-1292. [Through section IIc]
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Congress, the President, and Agencies

September 16: The Non-Delegation Doctrine (Ch. 2)

- *Panama Refining Co. v. Ryan* (1935)
- *A.L.A. Schechter Poultry Corp. v. US* (1935)

September 18: The Non-Delegation Doctrine (Cont'd)

- *Gundy v. United States* (2019)
- Listen to oral argument

Section:

- Stephen Wermiel, *SCOTUS for law students: Non-delegation doctrine returns after long hiatus*, SCOTUSblog (Dec. 4, 2014, 8:00 PM)
 - <http://www.scotusblog.com/2014/12/scotus-for-law-students-non-delegation-doctrine-returns-after-long-hiatus/>
- Matthew Cavedon & Jonathan Skrmetti *Party Like It's 1935?*

September 23: Congressional Control: The One House Veto

- *INS v. Chadha* (1983)

September 25: Consequences of Agency Selection

- David E. Lewis. 2007. "Testing Pendleton's Premise: Do Political Appointees Make Worse Bureaucrats?" *Journal of Politics*. 69(4): 1073-1088.

Section:

- Mat McCubbins, Roger Noll, and Barry Weingast. 1987. "Administrative Procedures as Instruments of Political Control." *Journal of Law, Economics, and Organization* 3(2): 243-277.

September 30: The Power to Appoint (Ch. 2)

- *Buckley v. Valeo* (1976)
- *Morrison v. Olson* (1988)

October 2: The Power to Appoint (Cont'd) and Review

- *Lucia v. SEC* (2018)
- Ryan C. Black, Anthony J. Madonna, Ryan J. Owens, and Michael S. Lynch. 2007. "Adding Recess Appointments to the President's 'Tool Chest' of Unilateral Powers." *Political Research Quarterly*. 60(4): 645-654.

Section:

- Review Petitioner and Respondent briefs in *Aurelius Investment, LLC v. Puerto Rico* (18-1475)
- Review

October 7: Midterm 1

October 9: The Power to Remove (Ch. 3)

- *Myers v. US* (1926)
- *Humphrey's Executor v. US* (1935)

Section:

- *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010)
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October 14: Other Presidential Powers to Control Agencies (Ch. 3)

- *Younstown Sheet & Tube Co. v. Sawyer* (1952)
- Pages 211-224

October 16: Creation of Agencies

- William G. Howell and David E. Lewis. 2002. "Agencies by Presidential Design." *Journal of Politics*. 64(4): 1095-1114.

Section:

- Dan Walters. Presidential Control of Agencies
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Adjudication

October 21: When Due Process Applies (Ch. 4)

- *Londoner v. Denver* (1908)
- *Bi-Metallic Investment Co. v. State Board of Equalization* (1915)
- *Goldberg v. Kelly* (1970)

October 23: Procedures Required by Due Process (Ch. 4)

- *Mathews v. Eldridge* (1976)
- *Cleveland Board of Education v. Loudermill* (1985)
- *Kerry v. Din* (2015)

Section:

- *Wisconsin v. Constantineau* (1971)
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Rules and Rulemaking

October 28: Why Rulemaking?

- *National Petroleum Refiners Association v. FTC* (CADC 1974)
- Administrative Procedure Act

October 30: The Relationship Between Rules and Adjudications (Ch. 5)

- *Heckler v. Campbell* (1983)
- *Bowen v. Yuckert* (1987)

Section:

- *SEC v. Chenery*
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November 4: In Class Review

November 6: Midterm 2

Section:

- Review
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November 11: APA Rulemaking

- *Vermont Yankee Nuclear Power Company v. NRDC* (1978)
- *Shell Oil Co. v. EPA* (CADC, 1991)
- *Cleveland Board of Education v. Loudermill* (1985)

November 13: Participation in Rulemaking

- Jim Rossi. 1997. "Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decision making." *Northwestern Law Review*. 92(1): 173-250.

Section:

- Neal D. Woods. 2009. "Promoting Participation? An Examination of Rulemaking Notification and Access Procedures." *Public Administration Review* 69(3): 518-530.
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November 18: Arbitrary and Capricious Review (Ch. 5)

- *FCC v. Fox Television Stations, Inc.* (2009)

Statutory Interpretation In Administrative Law

November 20: Chevron Deference (Ch. 6)

- *Chevron USA, Inc. v. NRDC* (1984)
- *Encino Motors v. Navarro* (2016)

Section:

- *Skidmore v. Swift & Co.* (1944)
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November 25: The Mead Counter-Revolution and Review (Ch. 6)

- *United States v. Mead Corp.* (2001)

November 27: Auer Deference

- *Kisor v. Wilkie* (2019)

Section: No sections this week.

Judicial Review

December 2: Standing

- *Lujan v. Defenders of Wildlife* (1992)
- *Spokeo v. Robins* (2016)

December 4: Reviewability

- *Citizens to Preserve Overton Park, Inc. v. Volpe* (1971)
- *Heckler v. Chaney* (1985)

Section:

- *MA v. EPA* (2007)
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December 9: Review

****FINAL EXAM: December 19, 5:05-7:05****

****Location to be determined****