

THE POLITICS of ADMINISTRATIVE LAW

V53.0354/ V62.0354
Spring 2006

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Description

Although in public discourse we tend to hear more about conflicts concerning judicial decision making, we daily interact with people who interpret, make and in some cases are even governed by administrative law. We are also increasingly finding that traditional administrative law issues involve constitutional claims, such as hiring and firing of government employees, the provision of social welfare benefits, implementation of deregulation policies, licensing nuclear waste dumps, etc. This course is about the law of administration and the politics of regulation it constitutes. Administrative law is a body of law governing the ways state institutions and regulatory agencies make, implement and enforce policy.

This course examines the legal ideology of administrative doctrine and processes. In particular, we focus on the political, social and economic disputes that shape and are shaped by administrative law. We study classic debates such as, the historical origins of regulation, the legal philosophy of administrative regulation, the relationship between courts, legislatures and agencies, and we examine the political, economic and social context that affects regulatory politics.

Assignments

Reading assignments are listed below in topical order. Specific dates for preparation will be announced in class and posted on the Blackboard syllabus, under Course Documents. In order to get the most out of this, you must read all of the assigned materials *before* each class and be prepared (with notes, briefs on cases and questions) to discuss issues raised by the readings and lectures.

Evaluations will be based on the following:

1. The quality of your participation in class discussion is important and will be factor in determining your course grade. It will count for 10% of your grade;
2. You may choose between taking an in class mid-term exam, or writing a 13-15 page research paper. You will select a question to research from a list of questions we will post on Blackboard in the 5th week of classes. This first assignment count for 40% of your grade; and
3. There will be a comprehensive, in class final exam (50%).

ASSIGNED READINGS

Lief H. Carter and Christine B. Harrington (2000) *Administrative Law and Politics: Cases and Comments*. 3d edition. Addison Wesleyan Longman.

[BB] Material located on Blackboard

[C] Material handed out in class

“Selected Bibliography” on Blackboard

Course Outline

PART I: The Political Economy of Administrative Regulation

1. Introduction to the Study of Law and Regulatory Politics (Jan. 17 & 19)

Carter and Harrington, Chapter 1

2. Corporate Capitalism and the Interventionist State

A. Political Economy and Administrative Law (Jan. 24 & 26)

Gabriel Kolko (1976) "The Foundations of the Political Economy 1875-1920," in *Main Currents in Modern American History*. [C]

Stephen Skowronek (1982) “The New State and American Political Development,” in *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920*. [C]

James Weinstein (1968) *The Corporate Ideal in the Liberal State, 1900-1918*, Introduction, Chapters 1-3 [C]

B. Lawyers and Administrative Law Practice (Jan 31)

Carter and Harrington, pp. 31-38

3. Administrative Law in the Positive State: Due Process as a Policy Response (Feb. 2 & 7)

Carter and Harrington, pp. 39-64
Morgan v. U.S. (1938)

Reich, "The New Property" [BB]
Goldberg v. Kelly (1970)
Mathews v. Eldridge (1976)

4. Crisis of Classical Legal Theory & the Rise of Administrative Law

A. Legal Formalism and the Public Right Doctrine (Feb. 9, 14 & 16)

Carter and Harrington, pp. 68-98
Munn v. Illinois (1877)
Lochner v. New York (1905)

Karl Klare, "Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941" [BB]
NLRB v. Jones & Laughlin Steel Corp. (1937)

B. Administrative Legitimacy: the Delegation Doctrine (Feb. 21)

Carter and Harrington, pp. 98-113

C. Pluralism and the Administrative State (Feb. 23 & 28)

Michael McCann (1986) *Taking Rights Seriously: Perspectives on Public Interest Liberalism*. [C]
Laura Hatcher (2005) "Neo-Conservative Regulatory Jurisprudence" [BB]

D. Neoliberal Regulatory Regimes Domestic and Global (March 2 & 7)

Dolan v. City of Tigard (1994)
New London case (2005) [BB]

Metalclad Corp. v. Mexico (2000), NAFTA Tribunal [BB]
Shapiro, Martin (2001) "Administrative Law Unbounded: Reflections on
Government and Governance," 8 *Indiana Journal of Global Legal Studies*
369-377. [BB]

Mid-Term Exam or Paper: March 9th

PART II: LEGAL DEVICES OF THE MODERN STATE

1. Statutory Authority and Separation of Powers (March 11)

Carter and Harrington, Appendix and Chapter 4
Administrative Procedure Act, 1946
INS v. Chadha (1983)

SPRING BREAK: March 14 & 16

2. The Role of Courts in Statutory Interpretation (March 21)

Industrial Union Department, AFL-CIO v. American Petroleum Institute (1980)
American Textile Manufacturers' Institute v. Donovan (1981)
Chevron v. Natural Resource Defense Council, Inc. (1984)
Post-Chevron case [BB]

3. Agency Information and Investigation (March 23 & 28)

Carter and Harrington, Chapter 5
Wyman v. James (1971)
Marshall v. Barlow's Inc. (1978)
INS v. Lopez-Mendoza (1984)

Dow Chemical Co. v. U.S. (1986)
US DOJ v. Reporters Committee for Freedom of the Press (1989)
NSA warrantless domestic eavesdropping [BB]

4. Informality and Formality in Administrative Law (March 30)

Carter and Harrington, Chapter 6

Bi-Metallic Investment Co. v. State Bd of Equalization of Colorado (1915)

Bd of Curators of the University of MO et al. v. Horowitz (1978)

Film: *Well Founded Fear* <http://www.pbs.org/pov/pov1999/wellfoundedfear> (April 4)

5. Elements of a Formal Hearing (April 6)

Carter and Harrington, Chapter 7

Walters v. National Association of Radiation Survivors (1985)

Ventura v. Shalala (1995) USCA, D.C., Cir.

6. Ambiguities in Rulemaking Procedures (April 11 & 13)

Carter and Harrington, Chapter 8

Natural Resource Defense Council v. Vermont Yankee Nuclear Power Corp. (1976)

USCA, D.C., Cir.

Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc. (1978)

Motor Vehicle Manufacturers Assn. v. State Farm Mutual Automobile Ins. Co. (1983)

Center for Law and Education, et al. v. Department of Education, US Dist. Ct.
for the District of Columbia (2002) [BB]

7. Scope of Judicial Review (April 18)

Carter and Harrington, Chapter 10, pp. ____

Citizens to Preserve Overton Park v. Volpe (1971)

Heckler v. Chaney (1985)

8. Liability of the State and Official Legal Wrongs (April 20)

Carter and Harrington, Chapter 11

Indian Towing Co., Inc. v. U.S. (1955)

Allen v. U.S. (1987) USCA, 10th Cir.

DeShaney v. Winnebago County Department of Social Services (1989)

Final Exam: see CAS Final Exam Schedule