

Political Science 363

Administrative Law

Spring 2005

Instructor: Professor Lynda Dodd
Office: 125 HRN
Office Hours: M & W, 2-3pm
and by appointment

Class Location: 109 HRN
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I. Description and Objectives

Administrative law refers to the legal doctrines structuring and guiding the formation, power, and behavior of administrative agencies. This course offers an introductory survey of the key questions in the field:

- (1.) How and why are legislative, judicial, and administrative powers delegated to administrative agencies?
- (2.) How do and how should agencies exercise their delegated powers? What is the distinction between rule-making and adjudication? Are less formal processes preferable?
- (3.) What are the forms of oversight of administrative agencies? What are the differences and comparative strengths of the three major forms: legislative, executive, and judicial?
- (4.) What remedies are available if agencies or their officials violate the law?

II. Course Text and Readings

Books required for the course are available at the Miami University Bookstore:

- John M. Scheb and John M. Scheb II, Law and the Administrative Process (“S & S”)
- Thomas O. Sargentich, Administrative Law Anthology (“A”)

III. Course Requirements and Grading

- There is an early midterm examination, which is worth 40% of your course grade. The midterm examination is closed book, and includes short answer identification questions, 1-2 essay questions, and a hypothetical. I will provide you with a study guide to help you prepare for the exam.
- The closed book, self-scheduled final examination is worth 40% of your course grade. The examination will follow the same format as the midterm examination. I will provide you with a study guide to help you prepare for the exam.
- Class participation is worth 20% of your course grade, which will include attendance, class participation, and occasional quizzes. In order to improve the quality of class discussion, the class will be divided into four groups, and on a rotating basis one of the groups will be responsible for contributing to the class discussion of the essays included on the syllabus for debate.

Group #1: A-G

Group #2: H-L

Group #3: M-R

Group #4: S-Z

IV. Schedule of Assignments and Readings

Jan. 12: Introduction to Administrative Law

- Ch. 1 (S & S)

Jan. 19: The Constitutional Framework for Administrative Law

- Ch. 2 (S & S) The Evolution of the Administrative State

- Theodore J. Lowi, *Two Roads to Serfdom: Liberalism, Conservatism and Administrative Power*, 36 AM. U. L. REV. 295 (1987) (A, p. 3)

- Ch. 3 (S & S) The Constitutional Sources of Power and Constraint

- *Lorillard Tobacco Company v. Reilly*
- *Whitman v. American Trucking Association*
- *State ex rel. Taylor v. Johnson*
- *Nollan v. California Coastal Commission*

Jan. 26: The Statutory Framework of the Administrative Process

- Ch. 4 (S & S)

- *Bob Jones University v. United States*
- *FDA v. Brown and Williamson Tobacco Co.*
- *DOJ v. Reporters' Committee*
- *FCC v. ITT World Communications, Inc.*
- *Eco, Incorporated v. City of Elkhorn*
- *Minnesota Medical Association v. Minnesota Department of Public Welfare*

Group #1: Debating the Freedom of Information Act

- Antonin Scalia, *The Freedom of Information Act Has No Clothes*, REGULATION 15 (March/April 1982) (A, p. 210)

- Patricia M. Wald, *The Freedom of Information Act: A Short Case Study in the Perils and Paybacks of Legislating Democratic Values*, 33 EMORY L.J. 649 (1984) (A, p. 211)

- Robert G. Vaughn, *Federal Information Policy and Administrative Law*, in HANDBOOK ON REGULATION AND ADMINISTRATIVE LAW 467 (David Rosenbloom & Richard Schwartz eds., 1994) (A, p. 216)

Feb. 2: Investigations and Enforcement

- Ch. 5 (S & S)

- *Camara v. Municipal Court*

- *Colonnade Corporation v. United States*
- *Marshall v. Barlow's, Inc.*
- *Dow Chemical Company v. United States*
- *Gilpin v. Montana Board of Nursing*
- *Austin v. United States*

Feb. 2: Rulemaking

- Ch. 6 (S & S)

- *Vermont Yankee Nuclear Power Corp. v. NRDC*
- *Detroit Base Coalition for the Human Rights of the Handicapped v. DSS*
- *State v. Peters*

Group #2: Debating Exemptions to Notice-and-Comment Rulemaking

- Robert A. Anthony, *Interpretive Rules, Policy Statements, Guidances, Manuals, and the Like - Should Federal Agencies Use Them to Bind the Public?*, 41 DUKE L.J. 1311 (1992) (A, p. 131)
- Peter L. Strauss, *The Rulemaking Continuum*, 41 DUKE L.J. 1463 (1992) (A, p. 137)
- Michael Asimow, *Nonlegislative Rulemaking and Regulatory Reform*, 1985 DUKE L.J. 381 (1985) (A, p.142)

Feb. 9: Adjudication & Alternative Dispute Resolution

- Ch. 7 (S & S)

- *U.S. v. Florida East Coast Ry. Co.*
- *Goldberg v. Kelly*
- *Perry v. Sniderman*
- *Mathews v. Eldridge*
- *Cleveland Board of Education v. Loudermill*
- *Van Morfit v. University of South Florida*

Group #3: Debating Procedural Due Process

- Edward L. Rubin, *Due Process and the Administrative State*, 72 CAL. L. REV. 1044 (1984) (A, p. 82)
- Jerry L. Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value*, 44 U. CHI. L. REV. 28 (1976) (A, p. 97)
- Cynthia R. Farina, *Conceiving Due Process*, 3 YALE J. L. & FEM. 189 (1991) (A, p.108)

Group #4: Debating Alternative Dispute Resolution

- Philip J. Harter, *Negotiating Regulations: A Cure for Malaise*, 71 GEO. L.J. 1 (1982) (A, p.151)
- William Funk, *When Smoke Gets in Your Eyes: Regulatory Negotiation and the Public Interest - EPA's Woodstove Standards*, 18 ENVTL. L. 55 (1987) (A, p.153)
- Philip J. Harter, *Points on a Continuum: Dispute Resolution Procedures and the Administrative Process*, 1 ADMIN. L.J. 141 (1987) (A, p.159)
- Owen M. Fiss, *Against Settlement*, 93 YALE L.J. 1073 (1984) (A, p.161)

Feb. 16-23: Political Control of Agencies: Congress

- Ch. 8, pp. 302-312 (S & S)

- *INS v. Chadha*

Group #1: Debating the Legislative Veto

- Harold H. Bruff and Ernest Gellhorn, *Congressional Control of Administrative Regulation: A Study of Legislative Vetoes*, 90 HARV. L. REV. 1369 (1977) (A, p. 228)
- E. Donald Elliott, *INS v. Chadha: The Administrative Constitution, the Constitution, and the Legislative Veto*, 1983 SUP. CT. REV. 125 (A, p. 234)
- Stephen Breyer, *The Legislative Veto After Chadha*, 72 GEO. L. J. 785 (1984) (A, p.241)

Group #2: Debating Legislative Oversight

- James B. Pearson, *Oversight: A Vital Yet Neglected Congressional Function*, 23 KAN. L. REV. 277 (1975) (A, p. 246)
- Peter M. Shane, *Legal Disagreement and Negotiation in a Government of Laws: The Case of Executive Privilege Claims Against Congress*, 71 MINN. L. REV. 461 (1987) (A, p. 247)

Group #3: Debating the Delegation Doctrine

- Richard B. Stewart, *Beyond Delegation Doctrine*, 36 AM. U. L. REV. 323 (1987) (A, p. 9)
- Thomas O. Sargentich, *The Delegation Debate and Competing Ideals of the Administrative Process*, 36 AM. U. L. REV. 419 (1987) (A, p.14)
- Jerry L. Mashaw, *Prodelegation: Why Administrators Should Make Political Decisions*, 1 J. LAW, ECON. & ORG. 81 (1985) (A, p. 20)

March 2: Political Control of Agencies: The President

- Ch. 8, pp. 314-323
 - *Wiener v. United States*
 - *Bowsher v. Synar*

Group #4: Debating the Supervision of Agency Rulemaking by the President

- Harold H. Bruff, *Presidential Management of Agency Rulemaking*, 57 GEO. WASH. L. REV. 533 (1989) (A, p. 263)
- Alan B. Morrison, *OMB Interference with Agency Rulemaking: The Wrong Way to Write a Regulation*, 99 HARV. L. REV. 1059 (1986) (A, p. 269)
- Peter L. Strauss and Cass R. Sunstein, *The Role of the President and OMB in Informal Rulemaking*, 38 ADMIN. L. REV. 181 (1986) (A, p. 271)

- Charles Tiefer, *The Quayle Council: "No Fingerprints" on Regulation*, in *THE SEMI-SOVEREIGN PRESIDENCY: THE BUSH ADMINISTRATION'S STRATEGY FOR GOVERNING WITHOUT CONGRESS* 61 (1994) (A, p. 274)

Group #1: Debating the President's Appointment and Removal Powers

- Geoffrey P. Miller, *Independent Agencies*, 1986 SUP. CT. REV. 41 (A, p. 282)

- Peter M. Shane, *Independent Policy making and Presidential Power: A Constitutional Analysis*, 57 GEO. WASH. L. REV. 596 (1989) (A, p. 296)

- Peter L. Strauss, *The Place of Agencies in Government: Separation of Powers and the Fourth Branch*, 84 COLUM. L. REV. 573 (1984) (A, p. 300)

March 9: Midterm Examination

**March 23-
April 6: Judicial Review of Agency Actions**

- Ch. 9 (S & S)

Group #2: Debating "Hard Look" Reviews of Agency Actions

- *Citizens to Preserve Overton Park v. Volpe*

- *Motor Vehicle Manufacturers Assoc. v. State Farm*

- *Heckler v. Cheney*

- Merrick B. Garland, *Deregulation and Judicial Review*, 98 HARV. L. REV. 505 (1985) (A, p.185)

- Stephen Breyer, *Judicial Review of Questions of Law and Policy*, 38 ADMIN. L. REV. 363 (1986) (A, p. 195)

- Sidney A. Shapiro and Richard E. Levy, *Heightened Scrutiny of the Fourth Branch: Separation of Powers and the Requirement of Adequate Reasons for Agency Decisions*, 1987 DUKE L.J. 387 (A, p. 200)

Group #3: Debating the Standing to Sue Doctrine

- *Lujan v. National Wildlife Foundation*

- Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881 (1983) (A, p. 347)
- Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article*, 91 MICH. L. REV. 163 (1992) (A, p. 349)
- William A. Fletcher, *The Structure of Standing*, 98 YALE L.J. 221 (1988) (A, p. 360)
- Gene R. Nichol, Jr., *Rethinking Standing*, 72 CAL. L. REV. 68 (1984) (A, p. 363)

Group #4: Debating Judicial Deference to Agency Interpretations

- *Chevron U.S.A. v. NRDC*

- Richard J. Pierce, Jr., *Chevron and its Aftermath: Judicial Review of Agency Interpretations of Statutory Provisions*, 41 VAND. L. REV. 301 (1988) (A, p. 56)
- Thomas W. Merrill, *Judicial Deference to Executive Precedent*, 101 YALE L.J. 969 (1992) (A, p. 59)
- Antonin Scalia, *Judicial Deference to Administrative Interpretations of Law*, 1989 DUKE L.J. 511 (A, p. 69)
- Cynthia R. Farina, *Statutory Interpretation and the Balance of Power in the Administrative State*, 89 COLUM. L. REV. 452 (1989) (A, p. 71)

Entire Class: Debating the Role of Courts in Administrative Law

- Keith Werhan, *The Neoclassical Revival in Administrative Law*, 44 ADMIN. L. REV. 567 (1992) (A, p. 383)
- R. Shep Melnick, *Administrative Law and Bureaucratic Reality*, 44 ADMIN. L. REV. 245 (1992) (A, p. 392)

April 13: The Rights of Public Employees

- Ch. 10 (S & S)
 - *Kenner Police Dept. v. Kenner Mun. Fire & Police Civil Service Board*
 - *Johnson v. Transportation Agency*
 - *Rankin v. Mcpherson*

- *Shelton v. Univ. of Medicine & Dentistry of New Jersey*
- *National Treasury Employees Union v. Von Raab*

April 20: Government Liability

- Ch. 11 (S & S)
- *United States v. Gaubert*
- *DeShaney v. Winnebago County*
- *Bivens v. Six Unknown Federal Narcotics Agents*
- *Butz v. Economou*
- *Mann v. State*

April 27: Assessing the Future of Administrative Law

- Ch. 12 (S & S)
- Mark Seidenfeld, *A Civic Republican Justification for the Bureaucratic State*, 105 HARV. L. REV. 1511 (1992) (A, p. 404)
- Gerald E. Frug, *The Ideology of Bureaucracy in American Law*, 97 HARV. L. REV. 1276 (1984) (A, p. 412)
- Thomas O. Sargentich, *The Reform of the American Administrative Process: The Contemporary Debate*, 1984 WIS. L. REV. 385 (A, p. 432)