

The Legal Environment of Public Administration

Public Policy and Management 802

Autumn, 2009

Instructor: David Landsbergen, J.D., Ph.D.

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Sections:

802	802N
Time: Thursday, 1:30 - 3:48 p.m.	Time: Thursday, 5:30 - 7:48 p.m.
Location: Page Hall 040	Location: Page Hall 010
Call Number: 21077	Call Number: 21078
Credits: 4	Credits: 4

BACKGROUND

Influenced by recent technological achievements, popular wisdom describes our century as the "Information Age". But one of the most significant events of our age, the growth and specialization of those incredibly complex technologies called "organizations," is often overlooked. Essential to the success of all social systems, bureaucracies appear in Western, Eastern, and Third World countries and in the public, private and nonprofit sectors.

Within the United States, an individual's contact with the bureaucracy starts from the moment that an individual is born. Until his death, almost every significant aspect of his life will be touched by some agency or bureau. This historical trend towards an increasing scope of bureaucratic activity can be illustrated by simple figures on the growth of bureaucracy. Between the year 1821 and 1979, the bureaucracy grew from approximately .007 to 2.7 million employees. In the period 1931 to 1941 alone, federal employment jumped from .6 million to 1.4 million.

Public and private bureaucracy have grown and displaced other forms of organization because of their emphasis on efficiently organizing human effort. This emphasis on efficiency and economy, however, is in tension with other core values of the American democratic tradition, including free speech, equal protection, and “fundamental fairness”. Synthesizing American democratic values with the necessities of a bureaucratic government (and private and non-profit organizations) will be one of THE ongoing challenges for modern society. Law is one of the most important ways in which we reconcile these competing values.

COURSE GOALS AND OBJECTIVES

The goal of this course is to provide public managers with the necessary tools to work with the law. Every day there is new law, yet public managers are often passively involved in its creation, interpretation, and implementation. As professionals with deep expertise and experience in their fields, public managers are especially well positioned to help our society realize the values enshrined in the Ohio and U.S. Constitutions and express those values through the implementation of the law. More specifically, the course objectives are to provide the student with:

- 1) The jargon, concepts, and reasoning skills necessary to work with the law and the legal profession;
- 2) A basic understanding of how the American public law system operates so that the student can use that knowledge to achieve their individual and collective goals;
- 3) A conceptual basis for not only responding to the mandates of the law but how to do so in keeping with the dictates of good management practice and the necessity of operating within a political environment.

REQUIRED READINGS

The required textbook is: Donald D. Barry and Howard R. Whitcomb. *The Legal Foundations of Public Administration* (Third Edition). Rowman & Littlefield Publishers, Inc. Cloth 0-7425-4380-3 / 978-0-7425-4380-5. (Cited as “B&W”).

The textbook has been ordered through the SBX bookstore.

<http://www.sbx-osu.com/>

All other required readings will be provided through the course website on CARMEN.

<http://www.carmen.osu.edu/>

OPTIONAL READINGS

Students in the PPM program are expected to have a basic familiarity with the American system of government. Students may want to refresh their basic knowledge of the creation and operation of the Constitution, the Bill of Rights, and the role of the Judiciary. Lowi & Ginsburg's *American Government: Freedom and Power* is on closed reserve in Thompson Library. You can borrow the book for up to two hours. There are additional copies located within the library system, which is not on closed reserve.

GRADING

Assigned Course Grade

The final letter grade assigned will be based upon the traditional 10-point breakdown for each letter grade. Hence, a B+ is assigned where the earned points fall into the 86-89 range and a B, where the points fall in the 84-86 range.

Points	Grade
90 - 100	A
80 - 89	B
70 - 79	C
60 - 69	D

Grade Components

Students can score a possible 100 points towards their letter grade.

Component	Points	Date
1. Mid-Term Exam	40	October 29
2. Final Exam	45	December 7 (Day) December 10 (Eve.)
3. Class Participation	15	
Total Possible Points	100	

All students are expected to take the examinations on the dates assigned. Any exceptions must be discussed with the instructor in advance of the examination. In the unlikely event of an emergency, please call or email as soon as it is convenient to do so and we can make alternative arrangements.

Class Participation

Participation is extremely important to your success and the success of this class. We will use a modified form of the “Socratic method” in which I will repeatedly ask questions of individuals to reveal the arguments and issues that are central to a legal case or reading. If people do not volunteer to ask / answer questions, I will randomly call upon students.

Class participation can create a slight “adrenaline rush”, but it is also the best way for you to “get into” the course material. Listening to the instructor speak is one level of understanding – we can all recognize English words; but making yourself speak in class requires you to wrestle with the ideas. Even if you are not called upon, the chance that you will be called upon will engender a heightened awareness of what the key “lines of argument” are, and will ultimately benefit you with a much deeper understanding of the readings and important concepts.

I will be using a seating chart to identify people I have not yet met. In a large classroom, it is possible that I may not always see you raise your hand. Please let me know if I am not calling on you. The goal is to give everyone a chance to participate and earn an “A” for class participation.

Possible Points	Criteria
15-13	Student frequently participates in class
12-10	Student periodically participates in class
10-8	Student is prepared to answer questions and participated in class
8-6	Student attends classes but never participates
6-0	Student infrequently attends class

You can contribute to the class discussion in many ways: 1) by being prepared to answer questions posed during class discussion; 2) asking a question to clarify a point made during class discussion, 3) challenging an idea or argument; 4) volunteering a similar personal experience to a case or concept discussed in class; or 5) participating in our course discussion boards. It is possible to score an “A” on class participation by mostly participating through the course discussion boards.

If you are not prepared for class or decide that you do not have an interest in participating, please do not engage in electronic communications during the class session. It is distracting to both your fellow students and to me.

Examinations

Most of the course grade will be determined by your midterm and final examination grades. The examinations are closed book and cumulative.

There are sample midterm and final examinations posted on the course website, including the grading template and my comments on how people performed on specific questions.

The final examination has the same format as the midterm, so if the midterm takes you by surprise, there should be no surprises on the final.

If you cannot take an examination at the scheduled time, please inform me as soon as possible.

Each of you will be given the option of handwriting the examination or taking the examination on the computer. I will ask for “your vote” once the class list is determined.

ACADEMIC MISCONDUCT

In accordance with Faculty Rule 3335-5-487, I am required to report all instances of alleged academic misconduct to the department chairperson and the Committee on Academic Misconduct (<http://oaa.osu.edu/coam/home.html>).

Academic misconduct is grounds for failing the course and may be grounds for further sanctions. Academic misconduct includes, but is not limited to, giving or receiving information during an examination. If you have any questions or concerns, please discuss them with me.

Unfortunately, I have had to take students before the Committee for violations of the Code of Student Conduct that have had very negative consequences for those students. Please do not cheat.

For additional information, see the Code of Student Conduct:

http://studentaffairs.osu.edu/pdfs/csc_12-31-07.pdf (This is a PDF file.)

CLASS SCHEDULE

September 24

1. Welcome and Introduction

- A. Introduction to Class - Course Goals and Objectives
- B. Making Law – Class Exercise
- C. Briefing a Case
- D. Introduction to Public Administration and Law
 - i. Public versus Private law
 - ii. Why are we here? What are we supposed to do?
 - 1) The Politics and Administration Dichotomy
 - 2) Stewards of the Constitution
- E. Course Details
 - i. Required Readings
 - ii. Course Website
 - iii. Grading
 - iv. Examinations
 - v. Class Participation
 - vi. Podcasts – How to Access Them and Use Them (See hand out on course web page.)

Read: 1. City of Columbus, *Comprehensive Electronic Communications Policy*
2. Landsbergen, *How to Brief a Case*

Class Exercise:

The City of Columbus is considering the use of social media, like Facebook, Twitter, YouTube, and Blogs. Having read the *Comprehensive Electronic Communications Policy*, what specific wording changes should be made?

Additional details of the class exercise can be found on the course website.

October 1

2. Law and How To Use Law

- A. Hierarchy and Relationship of Federal and State laws
 - i. Constitutional Law
 - ii. Statutory
 - iii. Common Law
 - iv. Administrative Law
 - 1) Judicial Review
 - 2) Rulemaking
 - 3) Adjudication
 - 4) “Information Laws”
- B. Black Letter Law and the Gray Areas of the Law
- C. A Roadmap for Public Managers on How to Use Public Law

Read: Landsbergen and Orosz, *The Gray Zone*

Cases: Wood (Available on course website)

October 8

3. Constitutional Law - Broad Ideas and Tools

- A. The Three Schools of Public Administration
- B. Separation of Powers - Strict vs. Blended
- C. Due Process
 - i. Substantive Due Process
 - ii. Procedural Due Process
- D. The Bill of Rights (as it relates to Administrative Law)
- E. Equal Protection
- F. Scope of Review

Read: Heffron and McFeeley, *Constitutional Law for Public Administration*

Cases: Wyatt, Sherbert, Pickering (all of these cases are on the website)

October 15

4. Delegation of Power and Discretion

- A. Discretion - The Ultimate Issue
- B. The Delegation Doctrine
- C. Flow of Power and Accountability
- D. Legal Standards
- E. Alternatives to the Nondelegation Doctrine
 - i. Judicial Narrowing
 - ii. Requiring Agencies to Develop Own Standards
 - iii. Legislative Veto

Read: *Barry and Whitcomb* (hereinafter “B&W”), Chapter 3

Cases: Panama, Schechter, Industrial Union (website), Kent, Chadha

Skip: Whitman, Mistretta

October 22

5. Administrative Law - Judicial Review

- A. Preclusion of Judicial Review
- B. “Committed to Agency Discretion by Law”
- C. Exhaustion of Administrative Remedies and Standing
- D. Scope of Judicial Review

Read: B&W, Chapter 4

Cases: Johnson (website), Overton Park, Heckler (website), Hearst

Skip: Bowen, Lincoln, Porter, Bennett, Universal Camera

October 29

6. Midterm Examination

Scan: Sample Midterm Examination and Grading Template (website)

Note: The grading template for this year’s midterm will be posted on the course website once all exams have been administered and graded.

November 5

7. Administrative Law – Rulemaking / Review Midterm

- A. Kinds of Rules
- B. Federal Formal Rulemaking
- C. Federal Informal Rulemaking
- D. Additional Procedures to APA Requirements
- E. Rulemaking in Ohio

Read: B&W, Chapter 6

Cases: Florida, Vermont Yankee, MVMA

Skip: Picciotto

Scan: Grading Template (will be posted on course website after all exams have been administered and graded)

November 12

8. Immunities and Liability of Government Agents and Agencies

- A. Tort law
- B.. Remedies - An Introduction
- C. Sovereign Immunity
- D. The Federal Tort Claims Act
- E. Liability of Administrative Agents and Agencies
- F. Qualified and Absolute Immunity (Revisited)

Read: B&W, Chapter 9

Cases: Dalehite, Stump, Bivins AND reread Wood

Skip: Richardson

November 19

9. Information and Control

A. The Ability of the Government to Obtain Information from You

- i. Tools by Which Government Can Gain Information
 - 1) Reports and Hearings
 - 2) Subpoenas
 - 3) Warrants
- ii. Constitutional Protection from Agency Information Gatherings
 - 1) Fourth Amendment
 - 2) Fifth Amendment
 - 3) Fourteenth Amendment

Read: B&W, Chapter 5

Cases: FTC, Oklahoma Press, Camara

Skip: Euge, Marshall, Burger, Donovan

B. Your Ability to Obtain Information from the Government

- i. Federal Freedom of Information Act, Ohio Open Records Act
- ii. Federal Government in the Sunshine Act, Ohio Open Meeting
- iii. Federal Privacy Act, Various Ohio Privacy Statutes

Read: B&W, Chapter 10

Cases: Mink, Wilson (website)

Skip: United States Department of Defense

November 26

10. Thanksgiving – No Class

December 3

11. Administrative Law - Right to Be Heard and Adjudicatory Policy Making

- A. Adjudication vs. Rulemaking - What is the difference?
- B. Adjudication vs. Rulemaking - Which is more appropriate?
- C. Adjudicatory Policy Making?
- D. Mathews test: When and how much process is due?

Read: B&W, Chapter 7

Cases: Goldberg, Mathews, Hodel, Goss, Ingraham (website)

Skip: James Daniel Good, Chenery

Final Examination

Day Class - Monday, December 7, from 1:30 - 3:18 (Same classroom)

Evening Class – Thursday, December 10, from 5:30 – 7:18 (Same classroom)

Please let me know if you would rather take the examination as a written version and you will be able to take the exam in the JGSPA computer lab.

REASONABLE ACCOMMODATION POLICY

Students with disabilities that have been certified by the Office for Disability Services will be appropriately accommodated, and should inform the instructor as soon as possible of their needs. The Office for Disability Services is located in 150 Pomerene Hall, 1760 Neil Avenue; telephone 292-3307; TDD 292-0901.

<http://www.ods.ohio-state.edu/>