Administrative Law  
Professor Jones, Winter 2014  
Class Schedule: 5:30 - 7:20 p.m. Tuesday and Thursday,  
Classroom: William H. Gates Hall, Room 118  
Office Hours: By Appointment, Email: jonesr4@uw.edu  
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Course Description

There is no more fundamental public law course than Administrative Law. This course introduces you to the modern administrative state.

Administrative agencies play an important public role. Administrative agencies interpret statutes, promulgate regulations, and adjudicate disputes, thereby affecting vast areas of American life, from civil rights enforcement to environmental protection, from telecommunications to national security, from sentencing to immigration, and beyond. This course is an introduction to the law of the administrative state – the rules governing what agencies do, the procedures they must follow, and how they can be held to account.

This course focuses on federal administrative agencies, their constitutional and statutory structure, and their role in setting public policy across a wide range of domains. Topics will include the constitutional basis for, and limits on, governance by agencies; mechanisms for control of agencies by the political branches; the features of agency rulemaking and adjudication; and the nature and scope of judicial review of agency action. The central theme of the course is how the law manages the tension between “rule of law” values (e.g., accountability and substantive limits on arbitrary action) and the desire for flexible, effective administrative governance.

Course Objectives

The goal of this introductory course is for students to develop a working knowledge of the key doctrinal components of this area of law. You will come to understand both the tremendous power exercised by administrative agencies and the significant constraints (legal and political) under which they operate. You will learn to identify the design features that might make an agency constitutionally problematic, the factors that make one type of decision-making framework more appropriate than another; the prerogatives and limits of agencies in interpreting the statutes they are charged with implementing; and agencies prerogatives and limits in adjudicating facts and exercising policymaking discretion. You will also learn to identify the factors that affect the availability and timing of judicial review of agency action.
**Required Textbook**

We will use Gary Lawson, *Federal Administrative Law* (6th Ed. 2013) for the casebook. It is doctrine-centered in the sense that the current case law dominates the material. Ordinarily, this textbook would stand alone, because administrative law doctrine has been relatively stable over the past sixty years. But we now live in an era of expanding government, and with that, an expanding administrative state. Consequently, we will spend some time in the course focusing on the evolution of administrative law and the theories of the administrative state.

**Recommended Texts**

In addition to the textbook, I recommend the following supplemental reading for students looking for a deeper dive into the doctrine of administrative law and broader context in which administrative agencies operate.


**Attendance Policy**

You should attend class sessions and arrive on time. It is very important that you attend class prepared and ready to participate. It is essential, not just for your exam preparation, but for a thorough understanding of the themes (and their connections) introduced throughout the course. If you arrive late, out of respect for other students and the class environment, please try to minimize the disturbance.

**Class Format and Class Participation**

I generally conduct class in a modified lecture and question and answer format. I do not lecture the entire class – although there may be times when I will need to lecture at length to move us through the material. During class, I will call on students randomly by name without warning. I expect all students to be prepared to answer my questions and to participate in class discussion. I do not use this type of “cold calling” method to intimidate students. Rather, I use this format to keep students prepared and ensure that we hear from a variety of students during class discussion.

In-class discussions are aimed at both deepening your understanding of the assigned materials and offering you repeated opportunities to articulate legal principles in front of an audience. Being able to speak fluently and comfortably about legal issues in an essential skill for a lawyer. You should therefore approach this class as an opportunity to develop those skills.
I reserve the right to call on any student at anytime. Class participation is required, but will also be considered in determining “bonus points” added to the final score in determining a final grade. If exceptional circumstances make it impossible for you to prepare for a particular class, leave me a note on the podium before class and I will not call on you that day.

**Exam and Grading**

Course grades will be based on class attendance and participation (20%) as well as a final examination (80%). The final examination will be a 3-hour, scheduled, open-book examination. You will also be permitted to consult in-class materials, and any notes or outlines you prepared for class. No other material will be permitted.

**Office Hours**

I will not have formal office hours. However, I am more than happy to set up a time to meet with you by appointment. I encourage you to come see me when you have questions or issues that you want to discuss related to the course. Just email me to set up an appointment that works for you.

In addition to discussing course-related material, I am happy to meet with students to talk about other law-related issues. For example, I previously clerked on the U.S. Court of Appeals for the Fifth Circuit and the U.S. District Court for the District of Maryland. I did a one-year civil rights fellowship at a nonprofit, as well as served as a senior counsel on the Senate Judiciary Committee, an appellate attorney at the U.S. Department of Justice Civil Rights Division, a counsel to the Assistant Attorney General for Civil Rights, and been a federal prosecutor in Washington, D.C. and Seattle. Thus, I am happy to discuss clerking or working as a public interest lawyer.

**Class Cancellations**

I work full-time as a federal prosecutor. I will make every effort to not inconvenience the class with unnecessary absences. But there may be times when I am in trial and class will have to be cancelled. If that occurs, cancelled classes will be rescheduled and accommodations made for those who cannot attend the make-up session to view a recording of the make-up class.

**Evaluations**

You will have an opportunity at the end of the course to submit an evaluation of my class. Please note that evaluations will occur **no later than Tuesday, March 4, 2014.**
Reading Assignments

A tentative schedule of assignments is set forth below. Assignments may be updated as necessary through the quarter.

I. INTRODUCTION

Class 1

At the federal level, Congress creates most agencies through explicit statutory actions, known as “organic statutes.” This legislation determines what authorities the created agency shall have. We will look at Londoner and Bi-Metallic, and see how the distinction between rulemaking and adjudication affects an individual’s right to a hearing.

After completing this reading, you will be able to identify what is an agency, have a general understanding of why they are useful, and understand how an independent agency varies from an executive agency. You will also have a good grasp on the theories that justify the existence of agencies in a tri-partite system of government.

First Hour: Agencies: Their Origins, Forms, and Functions (pp. 1-34).

Second Hour: A. Theories of Agency Behavior (pp. 34-40).

II. THE CONSTITUTION AND ADMINISTRATIVE STATE

What is administrative power? The U.S. Constitution creates and vests three types of power in Articles I, II, and III – the legislative, the executive, and the judicial, respectively. Nowhere does it mention any other kind of power, but neither does it say that this omission is intentionally exclusive. This portion of the course explores the ways in which the three branches of government relate to the administrative departments, agencies, commissions, and offices according to modern doctrine.

Class 2

The first part of this reading introduces separation of powers and how it relates to administrative law. Pay attention to the tension between the separation of powers principles underlying the Constitution and the existence of the administrative state. We will then begin looking at the non-delegation doctrine.

Historically, the Supreme Court has taken a very deferential view of how much lawmaking authority Congress may “delegate” to (or vest in) an administrative agency without violating Article I. But after Schecter, the intelligible principle test evolved from a strong rule into a mere canon of construction. We can see this diminished role for the non-delegation doctrine in American Trucking.
First Hour: A. Theories of Agency Behavior Cont. (pp. 34-40).

Second Hour: B. Concepts of Separated Powers (pp. 41-42, 48-59, review the U.S. Constitution, especially Articles I-III, at pp. 42-48).

Class 3

Agencies and Article I

First Hour: 1. The New Deal (pp. 66-74)

Second Hour: 2. After the New Deal (pp. 74-85)

3. Life After Mistretta (107-114)

Class 4

The Chadha case represents a major shift in the law. Congress previously had included its own invented check on administrative agency discretion better known as legislative veto in organic acts going back for decades. Are all legislative vetoes in any form whatever unconstitutional after Chadha?

Unlike models known to the framers in the late eighteenth century, Article II vests the “executive Power” in one official alone. But as Buckley illustrates, Article II also creates a rather complex array of relationships between the Congress, President, and appointed officials which define their respective authorities.

First Hour: 4. Controlling Delegations (p. 114-131)

Second Hour: 5. The Scholarly Debate (pp. 131-140)

Class 5

C. Agencies and Article II

First Hour: 1. Appointments of Agency Officials (pp. 140-164)

Second Hour: Appointments of Agency Officials Cont’d (pp. 164-178)

Class 6

Article I, Section 5 of the Constitution tells us how to remove members of Congress. But the Constitution does not tell us how to remove executive officials, leading to confusion.

First Hour: 2. Removal of Agency Officials (pp. 178-200)
III. STATUTORY CONSTRAINTS ON AGENCY PROCEDURE

The Administrative Procedures Act (APA) was enacted in 1946 to require agencies covered by its terms to comply with various procedural safeguards. In some respects, it codified preexisting law and in others it blazed new paths in court-agency relationships. Today, the APA is a series of interlocking provisions that divides agency actions into adjudications, rulemakings, and investigations. The challenge is distinguishing among these categories. We will focus primarily on adjudication and rulemaking.

Class 8

The APA was the product of fierce compromise, and was implemented to reign in the expanding administrative state. Ironically, as we go through the course, we will see that the APA often protects agencies by guarantying agencies a certain level of autonomy. We will begin looking at how the APA governs rulemaking and adjudication, beginning with formal proceedings.

First Hour

A. Introduction: The Administrative Procedures Act (pp. 256-263)

Second Hour

B. Formal Rulemaking (pp. 263-288)

Class 9

C. Formal Adjudication (pp. 288-306)

Class 10

D. Informal Rulemaking

Because formal rulemaking is cumbersome and expensive, much rulemaking takes place through informal notice-and-comment rulemaking. The notice and comment period during the rulemaking gives the public an opportunity to help shape the rulemaking process. Although public participation might be viewed by some as having little impact on agencies, the D.C. Circuit has vigorously protected it by strictly enforcing Section 553.

Much rulemaking is even less formal than notice-and-comment rulemaking. The line between legislative notice-and-comment rules and non-legislative rules (such as interpretive rules and policy statements) is blurry, at best. But the distinction is important, as agencies will often try to treat non-legislative rules as binding on the
public, in an attempt to circumvent the more rigorous notice and comment process. This is a frustrating and complex area of administrative law.

**First Hour:**
1. Hybrid Rulemaking (pp. 306-322)

**Second Hour:**

Hybrid Rulemaking Con’t (pp. 332-365)

**Class 11**

**First Hour:**
2. Rulemaking Procedures Exemptions (pp. 365-403)

**Second Hour:**
Rulemaking Procedures Exemptions (pp. 403-413)

**Class 12**

E. Informal Adjudication (pp. 413-437)

*Overton Park* is another important case in administrative law, that reflects a growing skepticism toward agencies. A more straightforward application of the APA to informal adjudication can be found in *Pension Benefit Guaranty v. LTV*.

**Class 13**

The *Chenery* decisions are highlighted in our book to show that agencies with both rulemaking and adjudicative authority can choose which tool is appropriate for a particular circumstance. But these cases are also very important for maintaining a separation of powers between the judicial and executive branch.

**First Hour:**
F. The Choice Between Rulemaking and Adjudication (pp. 437-456)

**Second Hour:**

**IV. SCOPE OF REVIEW OF AGENCY ACTION**

Judicial deference to agencies is the heart of this course. The fact that agencies have specialized knowledge that general courts do not differentiates judicial review of agency decisions from judicial review of lower court decisions. Disputes regarding what standard of review should apply can sometimes reflect tension between the judicial and executive branches of government.

A. Introduction (pp. pp. 457-464)

**Class 14**

The Court’s construction of the “substantial evidence” standard of review in *Universal Camera* was not actually about Section 706(2)(E), but most administrative lawyers take the substantial evidence standard to be uniform. On the record
proceedings before agencies tend to carry with them many more opportunities for searching judicial scrutiny than their informal counterparts.

First Hour: B. Review of Findings of Fact in Formal Proceedings (pp. 464-475)

Second Hour: C. Review of Findings of Fact in Formal Proceedings (pp. 492-501)

Class 15

*Chevron* is one of the most cited and influential decisions in modern Supreme Court history. The Supreme Court did not intend for *Chevron* to be a major departure from its prior precedent. But the requirement that courts provide strong deference to agencies where Congress merely *implicitly* delegates interpretive authority is the revolutionary aspect of the case.

First Hour: D. Review of Agency Legal Conclusions

1. Theory and Current Practice (pp. 501-502, 532-550)

Second Hour: 2. When Does *Chevron* Apply? (551-569)

Class 16

*Chevron* was substantially weakened in subsequent Supreme Court decisions. In *Mead*, the Supreme Court begins to pull back on *Chevron*, by drawing distinctions between legislative and non-legislative rules.

First Hour: When Does *Chevron* Apply? Cont’d (pp. 569-592)

Second Hour: When Does *Chevron* Apply? Cont’d (pp. 592-608)

Class 17

First Hour: 3. How Clear is Clear? (pp. 609-636)

Second Hour: How Clear is Clear? Cont’d (pp. 636-668)

Class 18

5. How Far Does This Go? (pp. 668-696)

Class 19

First Hour: E. Review of Agency Discretion & Policymaking (pp. 697-727)

Second Hour: Review of Agency Discretion & Policymaking Cont’d (pp. 734-759)
Class 20

First Hour  Review of Agency Discretion & Policymaking Cont’d (pp. 759-801)

Second Hour  Quarter Review
Course Evaluation - bring laptop or mobile device to class.