

# **THE UNIVERSITY OF GEORGIA**

## **PUBLIC ADMINISTRATION 6490: ADMINISTRATIVE LAW**

**SUMMER SEMESTER 2017  
TUESDAY EVENINGS, 6:00 p.m. – 9:45 p.m.**

### **SYLLABUS**

#### **COURSE DESCRIPTION**

This course examines the legal principles and practical doctrines involved in the work of administrative agencies vested with quasi-legislative and/or quasi-judicial powers.

#### **COURSE OBJECTIVES**

This course is designed to help students:

1. Explain the development of administrative law and why it is important for public managers;
2. Define the concepts of the Administrative Procedure Act (APA), the delegation doctrine, and their influence on the administrative state;
3. Analyze the constitutional guarantees of due process and equal protection of the law;
4. Grasp how discretion and informal actions are crucial to the administrative process and how balancing the rule of law and administrative discretion is a central theme of administrative law;
5. Comprehend the limits that the Constitution and statutes place on the investigative powers of administrative agencies;
6. Appreciate citizen rights in dealing with administrative agencies;
7. Understand how agencies act like legislatures through the rulemaking process and how they promulgate rules;
8. Recognize that agencies act like courts in the formal adjudication process and understand how the adjudication process is governed by the Constitution, statutes, and rules;

9. Explain how courts play an essential role in legitimizing the administrative process through review of administrative actions; and
10. Realize that the courts can make government and its officials accountable for their actions when they are sued for money damages and other relief.

## **INSTRUCTOR**

James Michael “Mike” Martinez

Part-time instructor

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Office Hours: Upon request and by prior appointment.

Because I am seldom on campus during the day, the telephone and fax numbers listed are for my home-office. Feel free to call between 8:00 a.m. and 11:00 p.m. (or send me an e-mail message at any time). If I am unavailable when you call, leave a voice message (including a telephone number with an area code) and I will return your call as soon as I can.

## **REQUIRED TEXTS**

Two texts are required.

Cooper, Philip J. *Public Law & Public Administration*. Fourth Edition. Boston, Mass.: Wadsworth, Centage Learning, 2007. ISBN-13: 978-0-495-00755-5; ISBN-10: 0-495-00755-2.

Rosenbloom, David H. *Administrative Law for Public Managers*. Second Edition. Boulder, Colo.: Westview Press, 2014. ISBN-13: 978-0813348810; ISBN-10: 08133488-11.

### **Additional readings are available to students via e-Learning Commons or via a web link:**

Bertelli, A.M., and Lynn, L.E. Jr. 2006. “Public Management in the Shadow of the Constitution.” *Administration & Society* 38(1): 31-57.

*Bi-Metallic Investment v. State Board of Equalization of Colorado*, 239 U.S. 441 (1915).

Bureau of International Information Programs. *Outline of the U.S. Legal System*. Washington, D.C.: U.S. Department of State, 2004.

*Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

*Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

*Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

*Goldberg v. Kelly*, 397 U.S. 254 (1970).

*Griggs v. Duke Power Company*, 401 U.S. 424 (1971).

*Mathews v. Eldridge*, 424 U.S. 319 (1976).

Moe, R.C., and Gilmour, R.S. 1995. "Rediscovering Principles of Public Administration: The Neglected Foundations of Public Law." *Public Administration Review* 55(2): 135-46.

*Motor Vehicles Manufacturer's Association v. State Farm*, 463 U.S. 29 (1983).

*Munn v. Illinois*, 94 U.S. 113 (1877).

Nelson, M. 1982. "A Short, Ironic History of American Bureaucracy." *The Journal of Politics* 44(3): 747-78.

Rosenbloom, D.H., and Piotrowski, S.J. 2005. "Reinventing Public Administration While 'De-Inventing' Administrative Law: Is It Time for an 'APA' for Regulating Outsourced Government Work?" *Syracuse Journal of International Law and Commerce* 33(1): 175-189.

*U.S. v. SCRAP*, 412 U.S. 669 (1973).

*Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

Yackee, S.W. 2006. "Sweet-talking the Fourth Branch: The Influence of Interest Group Comments on Federal Agency Rulemaking." *Journal of Public Administration Research & Theory* 16(1): 103-124.

Yackee, J.W., and Yackee, S.W. 2009. "Divided Government and U.S. Federal Rulemaking." *Regulation & Governance* 3(2): 128-144.

## **GRADING POLICIES & PROCEDURES**

Class grades are calculated based on a student's performance on three assignments.

(1) Each student must submit 10 case briefs on the major administrative law cases discussed throughout the semester. A case brief contains the following six elements:

- (a) Case name and citation;
- (b) Facts (identification of the parties, what happened factually and procedurally, and the judgment);

- (c) Issues (what is in dispute);
- (d) Holding (the applied rule of law);
- (e) Rationale (reasons for the holding); and
- (f) The significance of the case for administrative law (i.e., why are we discussing it in this class?)

(2) Each student will discuss his/her term paper topic in class on July 18 (and the discussion may extend into the July 25 class, if necessary). The in-class presentation will last 10-15 minutes and can include PowerPoint slides, although visual materials are not required.

(3) Each student will write a term paper, which is due on July 28.

Points are allocated according to this percentage breakdown:

Assignments	Percentage of Final Grade
10 case briefs	5% each (50% Total)
In-class presentation	10%
Term paper	40%

## **TERM PAPER**

The term paper assignment will require students to research and write on a topic of their choice regarding some aspect of administrative law. As we will discuss throughout the semester, administrative law sometimes is controversial because it involves a delegation of authority from elected officials to unelected officials. Moreover, administrative law judges make quasi-judicial decisions even though they are not part of the judicial branch. The purpose of the term paper assignment is for students to explore these types of contentious issues and thereby achieve a deeper understanding of public policy in the field of administrative law. The term paper should be 10-15 pages in length for master's students and 15-20 pages in length for doctoral students (not including prefatory matter and a list of references). The paper should follow standard citation format for all secondary materials.

**A one-paragraph description of the paper topic is due at the start of class on Tuesday, July 18, 2017. Final papers are due on Friday, July 28, 2017.**

A good graduate level-level term paper consists of several parts. Writers refer to the appropriate formula as: Tell me what you are going to tell me; tell me; and tell me that you told me.

**Tell me what you are going to tell me:** In the first few paragraphs, the author must introduce the reader to the topic. What is this paper about and how does the author plan to prove his or her point? In other words, what does the author hope to accomplish in the paper? This is what English teachers call the "thesis." A good paper must begin with a clear, concise statement

of the thesis. If the thesis is that the death penalty constitutes cruel and unusual punishment and thereby violates the Eighth Amendment, the author must explain the debates over interpretation of the Eighth Amendment, introduce the reader to the concept of “cruel and unusual punishment,” and discuss why one the author’s perspective on the issue is superior to other interpretations. This process of “setting up the problem” should be accomplished near the beginning of the paper.

**Tell me:** Next, the paper must set forth an argument and lead the reader through the argument, building one point on another so that the arguments and evidence are cumulative and persuasive. Whereas the introduction summarized the argument, this section fleshes it out, providing the detail that was only hinted at in the introduction. The author would be well-advised to apply concepts discussed in class, as appropriate. The use of examples is especially helpful in illustrating salient points.

**Tell me that you told me:** Finally, the paper must include a conclusion that does more than restate the thesis. If the assignment asks the author to state an opinion and defend it, the author should do so in more than a mere perfunctory fashion. He or she must demonstrate a clear understanding of the issue and an ability to use concepts discussed in class to develop arguments. The conclusion also must bring together the disparate points discussed in the paper.

**Grammar & Mechanics:** A good term paper should adhere to the normal rules of English grammar, syntax, punctuation, and so forth. Numerous style manuals and grammar books are available. Any well-recognized manual (e.g., *The Chicago Manual of Style*, the APA guide, etc.) will suffice.

**Originality:** A good term paper is written in the author’s own words and relies on very few direct quotations. It is preferable to present your own ideas and sentences, even if they need improvement, rather than present paraphrased material you gleaned from secondary sources. In addition, the examples the author uses should be original and demonstrate a mastery of the material used in the assignment and the concepts discussed in the course.

**Research:** “A” papers always cite and discuss the relevant literature and cases in support of a point or argument. It is easy to “get lost in the research”; that is, a student is tempted to simply throw in a great deal of information and facts amassed in the research. The thinking is, “hey, if I went to the trouble of gathering all this material, I should throw it in there.” This kind of thinking is almost always a mistake. You should not bore or confuse the reader with extraneous or irrelevant information. You should use sources and cases that best illustrate your point, but don’t go off on a tangent. Two or three well-argued points supported by a handful of cases are preferable to ten poorly-developed points backed up by cases that don’t pertain to the subject.

## **CLASS ATTENDANCE & ACADEMIC INTEGRITY**

Students are encouraged to attend classes in accordance with policies and procedures of the university. A strong correlation exists between class attendance and high achievement.

Wilson Mizner once observed that “to copy from one is plagiarism, but to copy from two is research.” The University of Georgia does not share Mizner’s permissive attitude on plagiarism. Accordingly, every student is responsible for upholding the provisions of the student code of conduct, which addresses the university’s policy on academic honesty, including provisions regarding plagiarism and cheating, unauthorized access to university materials, misrepresentation/falsification of university records or academic work, malicious removal, retention, or destruction of library materials, malicious/intentional misuse of computer facilities and/or services, and misuse of student identification cards. Incidents of alleged academic misconduct will be handled through the established procedures of the university judicial program, which include either an “informal” resolution by a faculty member, resulting in a grade adjustment, or a formal hearing procedure.

## **E-LEARNING COMMONS**

The Department of Public Administration & Policy uses eLearning Commons to provide supporting materials for PADP courses. Accordingly, eLearning Commons will display the syllabus, supplemental readings and materials, copies of PowerPoint slides, and important announcements, including procedures to be followed in the event of inclement weather, university closings, and/or the instructor’s illness. All students should check eLearning Commons frequently to ensure that they are informed of course requirements and milestones.

## **ASSIGNMENTS**

Students should read all applicable assignments before attending class. For example, if the assignment for Tuesday, June 13, is to read Cooper, Chapter 4, among other things, students should have read that material by the time they arrive in class.

<b>Topic</b>	<b>Readings &amp; Assignments</b>
1. <u>Tuesday, June 6:</u> Introduction to the Course: Part I: Key terms—law versus ethics; rules and principles; types of law; political questions and legal questions; the judicial process. Part II: An overview of administrative law—A view from 30,000 feet.	Syllabus review; Cooper, Chapters 1, 2 & 3; Moe & Gilmour, “Rediscovering Principles of Public Administration”; Rosenbloom, Chapter 1. Optional: Bureau of International Information Programs, <i>Outline of the U.S. Legal System</i> .
2. <u>Tuesday, June 13:</u> The Constitutional and Historical Context.	Bertelli & Lynn, “Public Management in the Shadow of the Constitution”; Cooper, Chapter 4; Rosenbloom, Chapter 2; Nelson, “A Short, Ironic History of American Bureaucracy.” Caselaw: <i>Munn v. Illinois</i> (1876): <a href="https://supreme.justia.com/cases/federal/us/94/113/case.html">https://supreme.justia.com/cases/federal/us/94/113/case.html</a> .

<p>3. <u>Tuesday, June 20:</u> Rulemaking.</p>	<p>Cooper, Chapter 5; Rosenbloom, Chapter 3; Yackee and Yackee, “Divided Government and U.S. Federal Rulemaking.” Caselaw: <i>Bi-Metallic Investment v. State Board of Equalization of Colorado</i> (1915): <a href="https://supreme.justia.com/cases/federal/us/239/441/case.html">https://supreme.justia.com/cases/federal/us/239/441/case.html</a>; <i>Motor Vehicles Manufacturer’s Association v. State Farm</i> (1983): <a href="https://supreme.justia.com/cases/federal/us/463/29/case.html">https://supreme.justia.com/cases/federal/us/463/29/case.html</a>.</p>
<p>4. <u>Tuesday, June 27:</u> Administrative Adjudication.</p>	<p>Cooper, Chapter 6; Rosenbloom, Chapter 4. Caselaw; <i>Goldberg v. Kelly</i> (1970): <a href="https://supreme.justia.com/cases/federal/us/397/254/case.html">https://supreme.justia.com/cases/federal/us/397/254/case.html</a>; <i>Mathews v. Eldridge</i> (1976): <a href="https://supreme.justia.com/cases/federal/us/424/319/case.html">https://supreme.justia.com/cases/federal/us/424/319/case.html</a>.</p>
<p>5. <u>Tuesday, July 4:</u> Holiday.</p>	<p>No class session.</p>
<p>6. <u>Tuesday, July 11:</u> Judicial Review.</p>	<p>Cooper, Chapter 7; Rosenbloom, Chapter 6; Caselaw: <i>U.S. v. SCRAP</i> (1973): <a href="https://supreme.justia.com/cases/federal/us/412/669/">https://supreme.justia.com/cases/federal/us/412/669/</a>; <i>Citizens to Preserve Overton Park v. Volpe</i> (1971): <a href="http://caselaw.findlaw.com/us-supreme-court/401/402.html">http://caselaw.findlaw.com/us-supreme-court/401/402.html</a>; <i>Vermont Yankee v. NRDC</i> (1978): <a href="https://supreme.justia.com/cases/federal/us/435/519/case.html">https://supreme.justia.com/cases/federal/us/435/519/case.html</a>. <i>Chevron v. NRDC</i> (1984): <a href="https://www.law.cornell.edu/supremecourt/text/467/837">https://www.law.cornell.edu/supremecourt/text/467/837</a>.</p>
<p>7. <u>Tuesday, July 18:</u> Transparency and Discretion.</p>	<p>Cooper, Chapters 8 and 9; Rosenbloom, Chapter 5; Rosenbloom and Piotrowski, “Reinventing Public Administration”; Yackee, “Sweet-Talking the Fourth Branch.” In-class discussion of term paper topics.</p>
<p>8. <u>Tuesday, July 25:</u> Politics and Public Employees/Wrap-up.</p>	<p>Cooper, Chapters 10 and 12; Caselaw: <i>Cleveland Board of Education v. Loudermill</i> (1985): <a href="https://supreme.justia.com/cases/federal/us/470/532/case.html">https://supreme.justia.com/cases/federal/us/470/532/case.html</a>. <i>Griggs v. Duke Power Company</i> (1971): <a href="https://supreme.justia.com/cases/federal/us/401/424/case.html">https://supreme.justia.com/cases/federal/us/401/424/case.html</a>.</p>

**DUE DATES**

<b>Assignment</b>	<b>Due Date</b>
<i>Munn v. Illinois</i> (1876) brief.	June 13
<i>Bi-Metallic Investment v. State Board of Equalization of Colorado</i> (1915) and <i>Motor Vehicles Manufacturer's Association v. State Farm</i> (1983) briefs.	June 20
<i>Goldberg v. Kelly</i> (1970) and <i>Mathews v. Eldridge</i> (1976) briefs.	June 27
<i>U.S. v. SCRAP</i> (1973); <i>Citizens to Preserve Overton Park v. Volpe</i> (1971); <i>Vermont Yankee v. NRDC</i> (1978); and <i>Chevron v. NRDC</i> (1984) briefs.	July 11
Term paper topic (one-paragraph) and in-class presentation about the paper (10-15 minutes per student).	July 18
<i>Cleveland Board of Education v. Loudermill</i> (1985) and <i>Griggs v. Duke Power Company</i> (1971) briefs.	July 25
Extra credit assignment.	July 25
Term paper.	July 28 by 5:00 p.m.



## ADMINISTRATIVE LAW

### Extra Credit Assignment: Due Tuesday, July 25, 2017

(25 Points):

Some scholars argue that law and ethics are both fundamentally concerned with rules of human behavior, albeit they impose different sets of duties on individuals. What do scholars mean by this assertion? In your own words, explain the difference(s) between law and ethics.

One way to appreciate the link between law and ethics is to observe how the two concepts are related. You should watch the 1965 film *King Rat*. (Available on Amazon Video as well as other places.) This film, based on the classic James Clavell novel, raises issues involving law, ethics, and administration. Summarize the plot of the film in a few paragraphs. Afterward, explain how the film illustrates the link between law and ethics. This is a class on administrative law which, at its core, involves the development and implementation of rules for governing a bureaucracy. What does *King Rat* teach us about rules that can be helpful in studying administrative law?

You may want to read the article “Understanding Ethics Through Literature: Character, Honor, and the Corruption of Body and Soul in *King Rat*,” available on e-Learning Commons. You are not required to read the article to complete this assignment, but it should provide a context for understanding the film.

Your response should be written as a Word file (double-spaced, 12-point type, Times New Roman with one-inch margins) and submitted in class by the due date. The response should be approximately 4-6 pages long.