

The Foundations of Public Administration Series is a collection of articles written by experts in 20 content areas, providing introductory essays and recommending top articles in those subjects.

MODEL ADMINISTRATIVE LAW SYLLABUS

Provided by Professor Stephanie Newbold of the School of Public Affairs, American University (Washington, DC)

COURSE DESCRIPTION:

The purpose of this course is to examine the legal foundation and environment of public management in the United States, a subject matter central to the intellectual, institutional, and constitutional dynamics of public administration scholarship and practice. We will emphasize how the Constitution affects the administrative state as well as how the federal judiciary, especially the U.S. Supreme Court, struggles to shape the public administrative process in its own image. This course will explore the need for public managers to exhibit constitutional competence while simultaneously examining how constitutional and administrative law influences the decision-making processes and discretionary judgments of civil servants working in public agencies.

COURSE GOALS AND OBJECTIVES:

By the end of this seminar, students will be able to:

- Develop an institutional, intellectual, and historical foundation for how the legal basis of public administration shapes various dynamics of public management at all levels of government.
- Identify the core areas of administrative law.
- Discuss and analyze how the judiciary shapes the legal environment of the administrative state and the nation's democratic institutions.
- Improve writing quality and analytical thinking.

PAR

Foundations of Public Administration

Administrative Law – Syllabus
David H. Rosenbloom and Helena Rene

REQUIRED TEXTS:

Rosenbloom, David H. 2003. *Administrative Law for Public Managers*. Boulder, CO: Westview.

Rosenbloom, David H., James D. Carroll, and Jonathan D. Carroll. 2000. *Constitutional Competence for Public Managers: Cases and Commentary*. Itasca, IL: F.E. Peacock.

Breyer, Stephen. 2005. *Active Liberty: Interpreting our Democratic Constitution*. New York: Alfred A. Knopf.

OR

Greenhouse, Linda. 2005. *Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey*. New York: Times Books.

OR

Levinson, Sanford. 2006. *Our Undemocratic Constitution: Where the Constitution Goes Wrong and How the People Can Correct It*. New York: Oxford University Press.

OR

Rosen, Jeffrey. 2006. *The Most Democratic Branch: How the Courts Serve America*. New York: Oxford University Press.

OR

Rohr, John A. 2002. *Civil Servants and their Constitutions*. Lawrence: University of Kansas Press.

OR

Scalia, Antonin. 1998. *A Matter of Interpretation: Federal Courts and the Law*. Princeton: Princeton University Press.

Selected State, Federal, and Supreme Court cases, which can be found on-line at www.findlaw.com, www.lexisnexus.com, www.westlaw.com, or in the library's government documents section.

RECOMMENDED TEXTS:

The following texts are not required but are recommended to students as excellent sources in the area of constitutional and administrative law. They provide additional commentary on many of the topics discussed in this course and would be welcome additions to any public administration library.

- Asimow, Michael, Arthur Earl Bonfield, and Ronald Levin. 1998. *State and Federal Administrative Law*, 2nd Ed. St. Paul, MN: West Group.
- Cooke, Jacob. 1961. *The Federalist*. Middleton, CT: Wesleyan University Press.
- Cooper, Phillip J. 2007. *Public Law and Public Administration*. 4th ed. Thompson-Wadsworth Publishers.
- Cooper, Phillip J. 2005. *Cases on Public Law and Public Administration*. Thompson- Wadsworth.
- Cooper, Phillip J. and Chester A. Newland, Eds. 1997. *Handbook of Public Law and Administration*. San Francisco: Jossey-Bass.
- Glendon, Mary Ann. 1991. *Rights Talk: The Impoverishment of Political Discourse*. New York: Free Press.
- Kelly, Alfred H., Winfred A. Harbison, Herman Belz. 1991. *The American Constitution: Its Origin and Development*. 7th ed. New York: W.W. Norton. (Volumes I and II).
- Kerwin, Cornelius M. 2003. *Rulemaking: How Agencies Write Law and Make Policy*, 3rd ed. Washington, DC: CQ Press.
- 2nd ed. Washington, DC: Congressional Quarterly.
- Lee, Yong S with David H. Rosenbloom. 2005. *A Reasonable Public Servant: Constitutional Foundations of Administrative Conduct in the United States*. Armonk, NY: M.E. Sharpe.
- Rehnquist, William H. 1998. *All the Laws But One: Civil Liberties in Wartime*. New York: Vintage.
- Rehnquist, William H. 2002. *The Supreme Court, revised and updated*. New York: Vintage.
- Rohr, John A. 1995. *Founding Republics in France and America: A Study in Constitutional Governance*. Lawrence: University Press of Kansas.
- Rohr, John A. 1989. *Ethics for Bureaucrats: An Essay on Law and Values*, 2nd ed. New York: Marcel Dekker.
- Rohr, John A. 1986. *To Run a Constitution: The Legitimacy of the Administrative State*. Lawrence: University Press of Kansas.
- Rosenbloom, David H. 2002. *Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946-1999*. Tuscaloosa: University of Alabama Press.
- Westin, Alan F. 1990. *The Anatomy of a Constitutional Law Case*. New York: Columbia University Press.
- Strauss, Leo and Joseph Cropsey. 1987. *History of Political Philosophy*, 3rd ed. Chicago: University of Chicago Press.

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Final Examination:

There will be one cumulative, take home final examination at the end of the seminar. Students will be given at least ten questions to answer and will be required to respond to at least eight. The exam should range in length from 25 to 30 pages typed, double spaced, one-inch margins. Students can submit their exams to the professor's office, via e-mail, or Blackboard.

Critical Analysis:

Students will be divided into six groups, preferably no more than five participants in each group, to analyze, critique, and discuss the substantive value of one of the key works cited on page 2: Breyer, Greenhouse, Levinson, Rosen, Rohr, or Scalia. Each group will meet with the professor separately after completing the review (towards the end of the semester, at a mutually agreed upon time) to discuss the key arguments made in the assigned work and then one week after meeting with the professor, each student will submit an individual written reaction to the text.

The purpose of this assignment is two-fold. It provides you with an opportunity to examine a critically acclaimed work that underscores how the federal courts affect the administrative state in a variety of different contexts. In addition, it allows students to review the key arguments presented in their selected work, evaluate its strengths and weaknesses, and demonstrate its contribution to the legal basis of public administration scholarship and practice.

Film Critique:

On class six, we will have "Movie Night" and watch the critically acclaimed film, *A Man for All Seasons*, which won the 1966 Oscar for Best Picture. This film serves as a creative way to study important topics that surround how the law and themes commonly associated with democratic principles can complement or contradict one another; noteworthy complexities associated with right versus wrong; obedience to God versus obedience to the state; and why public organizations have *always* been extraordinarily complicated and multi-dimensional in both theory and practice. So, bring your popcorn, candy, and favorite soda!

Students are required to submit a written reaction (approximately five pages) to the film, which is due at the beginning of class seven.

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Class Attendance & Participation:

Students are expected to attend class on-time and participate in discussions. This is a graduate seminar, therefore, students should complete all assigned readings prior to the start of class. If you cannot attend class or will be late, please inform the instructor as soon as possible.

Extensions and Special Exceptions for Assigned Work:

Students are expected to submit work on time. Unless prior arrangements are made with the instructor, late work will not be accepted.

Writing Expectations:

All written work submitted for this course must be typed and double-spaced. Correct English, grammar, spelling, and punctuation is expected. Papers that do not meet this expectation will be penalized; the worse the grammatical infraction(s) the more steep the penalty.

Students with Disabilities:

If you experience difficulty in this course for any reason, please do not hesitate to consult with me. In addition to the resources of the department, a wide range of services is available to support you in your efforts to meet the course requirements. If you qualify for accommodations because of a disability, please notify me in a timely manner with a letter from the Academic Support Center or Disability Support Services so that we can make arrangements to address your needs.

General Disclaimers:

- (1) The professor can amend the course syllabus at any time. If necessary, the professor will announce and discuss these changes in class.
- (2) Tape recorders are not permitted.

GRADING:

The evaluation for this course is based on the following percentages:

Final Examination:	50%
Critical Analysis:	20%
Film Critique	10%
Class Participation:	20%

COURSE CALENDAR:

CLASS I

COURSE INTRODUCTION & OVERVIEW:

- Review of the Syllabus & Course Expectations
- Historical Overview of Administrative Law in the United States
- The American Constitution Revisited

CLASS II

NOT GETTING SUED: THE NEED FOR PUBLIC MANAGERS TO EXERCISE CONSTITUTIONAL COMPETENCE

TEXT:

-Rosenbloom (2000):

Preface

Chapter 1: Constitutional Competence, Interpretation, and Structure;

Chapter 2: At Your Own Risk! Public Administrators' Liability for Violating Individuals' Constitutional Rights

-Rosenbloom (2003):

Chapter 2: The Constitutional Context of U.S. Public Administration

CASES:

- 2.1 *Harlow v. Fitzgerald* (1982), p.51
- 2.2 *Pembaur v. City of Cincinnati* (1986), p.53
- 2.3 *City of Canton v. Harris* (1989), p.56
- 2.4 *Harley v. Schuykill County et al.* (1979), p. 59

- Nixon v. Fitzgerald*, 457 U.S. 731, (1982)
- Clinton v. Jones*, 520 U.S. 681 (1997)

CLASS III

JUDICIAL STRUCTURE AND PROCESSES: HOW THE FEDERAL COURTS ATTEMPT TO BALANCE POWER AMONG CONGRESS, THE PRESIDENT, & THE STATES

TEXT:

- Rosenbloom (2000):
Chapter 9: The Promise of Constitutional Competence

JOURNAL ARTICLE:

- Rosenbloom, David H. 2001. “Whose Bureaucracy is This, Anyway? Congress’ 1946 Answer.” *PS: Political Science and Politics* 34:4, December: 773-777.

CASES:

- DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989)
- Lawrence v. Texas*, 539 U.S. 538 (2003)
- Kelo et al. v. City of New London et al.*, 545 U.S. 469 (2005)

CLASS IV

THE CONSTITUTIONALIZATION OF PUBLIC ADMINISTRATION I: EQUAL PROTECTION

TEXT:

- Rosenbloom (2000):
Chapter 4: Decisionmaking
- Rosenbloom (2000):
Chapter 8: Economy

CASES:

- 5.3 *Adarand Constructors v. Peña*, p. 121
- 4.3 *Craig v. Boren*, p. 98
- 7.3 *U.S. v. Virginia*, p. 167

- Regents of the University of California v. Bakke*, 438 U.S. 265 (1978)
- Grutter v. Bollinger*, 539 U.S. 306 (2003)
- Gratz v. Bollinger*, 539 U.S. 244 (2003)

CLASS V

**THE CONSTITUTIONALIZATION OF PUBLIC ADMINISTRATION II:
DUE PROCESS, “NEW PROPERTY,” & THE “TAKINGS CLAUSE”**

TEXT:

-Rosenbloom (2000):
 Chapter 6: Efficiency

CASES:

-6.1 *Cleveland Bd. of Education v. Loudermill*, p. 134
-6.2 *Cleveland Bd. of Education v. LaFleur*, p. 137
-8.1 *Wyatt v. Stickney*, p. 181
-8.4 *Dolan v. City of Tigard*, p. 191

-*Goldberg v. Kelly*, 397 U.S. 254 (1970)
 (Read *Goldberg* before reading *Mathews*)
-*Mathews v. Eldridge*, 424 U.S. 319 (1976)

CLASS VI

FILM: A MAN FOR ALL SEASONS

CLASS VII

**THE CONSTITUTIONALIZATION OF PUBLIC ADMINISTRATION III:
SUBSTANTIVE & PROCEDURAL RIGHTS**

TEXT:

-Rosenbloom (2000):
 Chapter 5: Administrative Effectiveness
-Rosenbloom (2000):
 Chapter 7: Administrative Standardization

CASES:

-5.2 *Elrod v. Burns*, p.116
-6.3 *Rankin v. McPherson*, p. 141
-7.1 *Goldman v. Weinburger*, p. 158
-8.2 *Sherbert v. Verner*, p. 183

-*Locke v. Davey*, 540 U.S. 712, (2004)
-*Thomas and Windy City Hemp Development Bd. v. Chicago Park District*, 122 S.Ct. 775, (2002)
-*Zelman v. Simmons-Harris*, 536 U.S. 639 (2002)

CLASS VIII

**THE CONSTITUTIONALIZATION OF PUBLIC ADMINISTRATION IV:
PRIVACY, DUE PROCESS, RELIGIOUS DISPLAYS ON STATE PROPERTY, & LOCAL
GOVERNMENT EXPERIMENTATION POST-BROWN**

CASES:

- Georgia v. Randolph*, 547 U.S. 103 (2006)
- Samson v. California*, 547 U.S. 843 (2006)
- Van Orden v. Perry*, 545 U.S. 677 (2005)
- McCreary County v. ACLU of Kentucky*, 545 U.S. 845 (2005)
- Parents Involved in Community Schools v. Seattle School District No. 1 et al.*, 127 S.Ct. 2738 (2007)

CLASS IX

ADMINISTRATIVE LAW: RULEMAKING

TEXT:

- Rosenbloom (2003):
 - Chapter 1: *What's Administrative Law?*
 - Chapter 3: *Administrative Rulemaking*
- Administrative Procedure Act, pay particular attention to Sections 553 & 556-557

JOURNAL ARTICLE:

- Newbold, S. and D. Rosenbloom. (2007). "Critical Reflections on Hamiltonian Perspectives on Rule-Making and Legislative Proposal Initiatives by the Chief Executive." *Public Administration Review*, 67(6): 1047-56.

CASES:

- U.S. et al. v. Florida East Railway Co. et al.*, 410 U.S. 224 (1973)
- Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council*, 98 S. Ct. 1197 (1978)
- FDA v. Brown and Williamson Tobacco Corporation*, 120 S. Ct. 1291 (2000)

CLASS X

ADMINISTRATIVE ADJUDICATION

TEXT:

- Rosenbloom (2003):
 - Chapter 4: *Evidentiary Adjudication and Enforcement*

CASES:

- Londoner v. Denver*, 210 U.S. 373 (1908)
- Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441 (1915)
- Morse v. Frederick*, 127 S. Ct. 2618 (2007)

CLASS XI

JUDICIAL REVIEW

TEXT:

-Rosenbloom (2003):

Chapter 6: Judicial and Legislative Review of Administrative Action

CASES:

-*Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Company*, 463 U.S. 29 (1983)

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

**Pay particular attention to Parts I, II, & VII.

-*United States v. Mead*, 121 S Ct. 2164 (2001)

**Pay particular attention to Justice Scalia's Dissent

CLASS XII

STATE ACTION, PRIVATIZATION, & OUTSOURCING

TEXT:

-Rosenbloom (2000):

Chapter 3: Privatization and Outsourcing

-Rosenbloom (2003):

Chapter 4: Transparency

CASES:

-3.1 *Lebron v. National Railroad Passenger Corporation* (1995), p. 69

-3.2 *West v. Atkins* (1988), p. 71

-3.3 *Board of County Commissioners, Wabaunsee County v. Umbeher* (1996), p. 74

-3.4 *Richardson v. McKnight* (1997), p. 77

-*Brentwood Academy v. Tennessee*, 531 U.S. 288 (2001)

-*Correctional Services Corp. v. Malesko*, 534 U.S. 61 (2001)

CLASS XIII

CONSTITUTIONAL STRUCTURE I: THE FEDERALISM REVOLUTION IN THE REHNQUIST COURT – HOW IT ROSE, HOW IT FELL

CASES:

-1.4 *United States v. Lopez* (1995), p. 32

-1.5 *Printz v. U.S.* (1997), p. 36

-*U.S. v. Morrison*, 529 U.S. 598 (2000)

-*Massachusetts v. EPA*, 549 U.S. 497 (2007)

-*Gonzales v. Raich*, 545 U.S. 1 (2005)

CLASS XIV

CONSTITUTIONAL STRUCTURE II: SEPARATION OF POWERS

CASES:

-1.1 *Immigration and Naturalization Service v. Chadha* (1983), p. 20

-1.2 *Morrison v. Olsen* (1988), p. 25

-*Clinton v. City of New York*, 524 U.S. 417 (1998)

-*Hamdi v. Rumsfeld*, 542 U.S. 507 (2004)

-*Hamdan v. Rumsfeld*, 548 U.S. 557 (2006)

JOURNAL ARTICLE:

-Newbold, S. (2008). “Teaching Organization Theory From a Constitutional Perspective: A New Twist on an Old Flame.” *Journal of Public Affairs Education* 14:3, 335-51.

-Distribute Final Exam

CLASS XV

FINAL EXAM DUE BY 5:00 P.M.

About the Authors



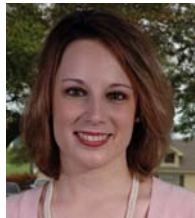
David H. Rosenbloom is Distinguished Professor of Public Administration at American University (Washington, DC) and Chair Professor of Public Management at City University of Hong Kong.

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Helena Rene is a doctoral candidate in Public Administration at American University (Washington, DC). She holds a Master of Arts in Teaching Degree from the Department of Education at the University of California-Irvine. Her research interests include public administration and bureaucracy in the U.S. and the People's Republic of China.

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Stephanie Newbold is an Assistant Professor of Public Administration and Affairs specializing in the intellectual history of public administration, administrative ethics, the legal environment of public management, and organization theory. Her research broadly examines the importance of connecting the constitutional and institutional values of American government to administrative theory and practice.

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