

PUAD 616.001: The Legal Basis of Public Administration, Fall 2013  
Professor D. Rosenbloom  
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Monday 5:30-8 PM, Room: TBA

**Purpose:** The course analyzes the legal framework for contemporary public management in the United States. It covers the principles of federal constitutional and administrative law that govern public administrators' decisions, actions, and operations. It shows how and why legal requirements must be integrated into general administrative processes, practices, and systems. It provides students with the non-technical constitutional competence welcomed by the U.S. Office of Personnel Management and required by the federal courts. Attention is devoted to the fit between and U.S. constitutional/administrative law and contemporary administrative practice, including collaborative governance and public-private partnerships. Although the course deals with U.S. law, many of the issues discussed are pertinent to other political and administrative systems. Similarly, the course content is relevant to nonprofit management in the U.S. because it explains how public agencies are empowered and constrained by law. Several of the cases and issues analyzed involve public employment, but the course does not focus specifically on public sector human resource management law.

**Reading Materials:**

1. D. Rosenbloom, J. Carroll, and J. Carroll, *Constitutional Competence for Public Managers: Cases and Commentary* (Thomson Custom Publishing, 2010 or later). ISBN varies yearly. All editions of this book are identical except for the cover and ISBN; all the cases in this book are also posted on Blackboard. It will be convenient, but not necessary to purchase this book.
2. D. Rosenbloom, *Administrative Law for Public Managers* (Boulder, CO: Westview, 2003). ISBN 0-8133-9805-3.
3. The following are U.S. Supreme Court decisions. Excerpts are posted on Blackboard. Those seeking the full text of these cases should be able to obtain them in any substantial university library or law library, including AU's Law and Bender Libraries, as well as at <http://www.findlaw.com/casecode/> and click on Supreme Court under "Popular Federal Resources."

>*Agency for International Development v. Alliance for Open Society International* 570 U.S.— (2013); (133 S.Ct. 2321)

>*Atwater v. City of Lago Vista* 532 U.S. 318 (2001)

>*Brentwood Academy v. Tennessee Secondary School Association* 531 U.S. 288 (2001)

>*City of Arlington, TX v. Federal Communications Commission* 569 U.S.— (2013) (133 S.Ct. 1863)

>*City of Ontario v. Quon* 560 U.S.— (2010) (130 S.Ct. 2619)

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

>*Federal Aviation Administration v. Cooper* 566 U.S.— (2012) (132 S.Ct. 1441)

>*Federal Communications Commission v. Fox TV* 566 U.S. 502 (2009)

>*Federal Maritime Commission v. South Carolina State Ports Authority* 535 U.S. 743 (2002)

- > *Filarsky v. Delia* 566 U.S.— (2012) (132 S.Ct. 1657)
- > *Fisher v. University of Texas at Austin* 570 U.S.— (2013); No. 11-345 (Supreme Court)
- > *Garcetti v. Ceballos* 547 U.S. 410 (2006)
- > *Goldberg v. Kelly* 397 U.S. 254 (1970)
- > *Gonzales v. Raich* 545 U.S. 1 (2005)
- > *Gratz v. Bollinger* 539 U.S. 244 (2003)
- > *Grutter v. Bollinger* 539 U.S. 306 (2003)
- > *Hamdi v. Rumsfeld* 542 U.S. 507 (2004)
- > *Hope v. Pelzer* 536 U.S. 730 (2002)
- > *Kelo v. City of New London* 545 U.S. 569 (2005)
- > *Koontz v. St. Johns River Water Management District* 570 U.S.— (2013) (133 S.Ct. 2586)
- > *Lawrence v. Texas* 539 U.S. 558 (2003)
- > *Lefemine v. Wideman* 568 U.S.— (2012) (133 S.Ct. 9)
- > *Los Angeles v. Humphries* 562 U.S.— (2011) (131 S.Ct. 447)
- > *National Archives and Records Administration v. Favish* 541 U.S. 157 (2004)
- > *National Federation of Independent Business v. Sebelius* 567 U.S.— (2012) (132 S.Ct. 2566)
- > *Pearson v. Callahan* 555 U.S. 223 (2009)
- > *Sackett v. EPA* 566 U.S.—(2012) (132 S.Ct. 1367)
- > *San Diego v. Roe* 543 U.S. 77 (2004)
- > *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers* 531 U.S. 159 (2001)
- > *Thomas and Windy City Hemp Development Bd. v. Chicago Park District* 534 U.S. 316 (2002)
- > *Town of Castle Rock v. Gonzales* 545 U.S. 748 (2005)
- > *U.S. v. Jones* 565 U.S.— (2012) (132 S.Ct. 945)
- > *U.S. v. Morrison* 529 U.S. 598 (2000)
- > *U.S. v. Windsor* 570 U.S.— (2013); No. 12-307 (Supreme Court)

### **Additional Resources:**

1. David H. Rosenbloom, Rosemary O'Leary, and Joshua Chanin, *Public Administration and Law*, 3rd ed. (Boca Raton, FL: CRC Press, 2010). ISBN: 978-1-4398-0398-1.
2. Jerome Barron and C. Thomas Dienes, *Constitutional Law in a Nutshell*, 7th ed. (St. Paul, MN: Thomson/West, 2010). ISBN: 9780314190284.
3. Kenneth Warren, *Administrative Law in the Political System*, 5th ed. (Boulder, CO: Westview, 2011). ISBN: 0813344565; 9780813344560. Electronic version, UNIV Electronic Book, 2011.

### **Requirements:**

Informed class participation and final examination. Each participant will present one side of a legal case to the class. **All readings must be completed before the class for which they are assigned.** If you have trouble understanding a legal case, skim it and ask for clarification in class. Do not get hung-up on precedents or technical legal material and language. The course is concerned with the impact of law on public administrative practice, not parsing precedents, statutory construction, and lawyering. An optional in-class midterm examination will be given on October

28. The final examination is required, cumulative, open-book, and in class.

**Grading:** Class participation, 30%; midterm, 35% for those taking it; final, 35% for those who take the midterm, 70% for others.

### **1. August 26: Introduction and Overview: The Legal Framework of U.S. Public Administration**

This session presents an overview of how and why law and the courts became central to the practice of public management in the U.S.

Optional Reading:

Rosenbloom, "Public Administration's Legal Dimensions" (Blackboard)

### **September 2: Labor Day (class does not meet)**

#### **2. September 9: At Your Own Risk! Constitutional Torts**

This session is devoted to public administrators' liability for violations of individuals' federally protected constitutional rights. The session demonstrates that reasonable knowledge of constitutional law is *a job requirement* for public managers at all levels of government in the U.S. The problematic fit between public administrative doctrine and constitutional theory is analyzed.

Reading:

1. *Constitutional Competence*, Foreword and text of chapters 1 & 2

Cases:

2.1 *Harlow v. Fitzgerald* (p. 51)

2.2 *Pembaur v. City of Cincinnati* (p. 53)

2.3 *City of Canton v. Harris* (p. 56)

2.4 *Harley v. Schuylkill County* (p. 59)

2. Additional cases:

*Hope v. Pelzer* (2002) (Blackboard)

*Los Angeles v. Humphries* (2011) (Blackboard)

*Pearson v. Callahan* (2009) (Blackboard)

*Lefemine v. Wideman* (2012) (Blackboard)

#### **3. September 16: Judicial Structure and Process: What Makes Public Administration's Judicial Partners Tick?**

This session is necessary background for understanding how the federal courts operate. It considers their political roles, decisionmaking, and doctrines of justiciability, with an emphasis on the judiciary's impact on public administration. The political divisions on the current Supreme Court and their consequences are analyzed.

Reading:

1. *Constitutional Competence*, chapter 9 (omit case 9.1; read case 9.2 *Missouri v. Jenkins*, p. 204)

2. D. Rosenbloom, R. O'Leary, J. Chanin, *Public Administration and Law*, 3/e, chapter 9 (Blackboard)

3. *Administrative Law for Public Managers*, chapter 2 and pp. 139-155; **chapter 2 is an overview of the constitutional law that is relevant to the course.**

**Refer back to the material that pertains to each class on the**

### **constitutionalization of public administration and the classes on the separation of powers and federalism.**

#### 4. Additional cases:

*Lawrence v. Texas* (2003) (Blackboard)

*U.S. v. Windsor* (2013) (Blackboard)

### **4. September 23: The Constitutionalization of Public Administration I: Equal Protection**

This session analyzes the structure, application, and importance of equal protection doctrine in contemporary public administration. Some of the material will probably spill over into the next session—read cases 7.4 and 8.3 last.

#### Reading:

##### 1. *Constitutional Competence*, text of chapters 4 and 8

#### Cases:

4.4 *Hawkins v. Town of Shaw* (p. 100)

4.3 *Craig v. Boren* (p. 98)

5.3 *Adarand v. Peña* (p. 121)

7.3 *U.S. v. Virginia* (p. 167)

7.4 *Zobel v. Williams* (p. 170)

8.3 *Shapiro v. Thompson* (p. 187)

#### 2. Additional cases:

*Grutter v. Bollinger* (2003) (Blackboard)

*Gratz v. Bollinger* (2003) (Blackboard)

*Fisher v. University of Texas at Austin* (Blackboard)

### **5.: September 30: Constitutionalization of Public Administration II: Due Process, the "New Property," and the "Takings" Clause**

This session analyzes the structure and importance of constitutional procedural and substantive due process in the context of contemporary public administration. It also reviews the Fifth Amendment's "Takings" clause.

#### Reading:

##### 1. *Constitutional Competence*, text of chapter 6

#### Cases:

5.1 *Kolender v. Lawson* (p. 114)

6.1 *Cleveland Bd. of Ed. v. Loudermill* (p.134)

6.2 *Cleveland Bd. of Ed. v. La Fleur* (p. 137)

8.1 *Wyatt v. Stickney* (p. 181)

8.4 *Dolan v. City of Tigard* (p. 191)

#### 2. Additional cases:

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

*Kelo v. City of New London* (2005) (Blackboard)

*Koontz v. St. Johns River Water Management District* (2013) (Blackboard)

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

### **6. October 7: The Constitutionalization of Public Administration III: Substantive Rights**

This session examines the structure and importance of First Amendment rights as well as the application of "unconstitutional conditions" analysis in the context of

contemporary public administration. Some of the material dealing with religion may spill over to the next class (cases 7.1, 7.2, 8.2).

Reading:

1. *Constitutional Competence*, text of chapters 5 and 7

Cases:

- 5.2 *Elrod v. Burns* (p. 116)
  - 6.3 *Rankin v. McPherson* (p. 141)
  - 7.1 *Goldman v. Weinberger* (p. 158)
  - 7.2 *Church of Lukumi Babalu Aye v. Hialeah* (p. 162)
  - 8.2 *Sherbert v. Verner* (p. 183)
2. Additional cases:
- Garcetti v. Ceballos* (2005) (Blackboard)
  - San Diego v. Roe* (2004) (Blackboard)
  - Thomas and Windy City Hemp Development Bd. v. Chicago Park District* (2002) (Blackboard)
  - Agency for International Development v. Alliance for Open Society International* (2013) (Blackboard)

### **7. October 14: The Constitutionalization of Public Administration IV: Fourth Amendment Privacy**

This session examines the structure, application, and importance of Fourth Amendment privacy rights in the context of public administration. It reviews the constitutional problems posed by street-level administrative discretion.

Reading:

1. *Constitutional Competence*

Cases:

- 4.1 *Delaware v. Prouse* (p. 90)
  - 4.2 *New Jersey v. TLO* (p. 94)
  - 6.4 *Vernonia School District 47J v. Acton* (p. 144)
2. Additional cases:
- Atwater v. City of Lago Vista* (2001) (Blackboard)
  - City of Ontario v. Quon* (2010) (Blackboard)
  - U.S. v. Jones* (2012) (Blackboard)

### **8. October 21: State Action, Privatization, Outsourcing, Nonprofit Concerns**

This session considers constitutional constraints on privatization, public-private partnerships, outsourcing (competitive sourcing), and the federal legal framework for nonprofits.

Reading:

1. *Constitutional Competence*, chapter 3

Cases:

- 3.1 *Lebron v. National Railroad Passenger Corporation* (p. 69)
- 3.2 *West v. Atkins* (p. 71)
- 3.3 *Board of County Commissioners, Wabaunsee County v. Umbehr* (p. 74)
- 3.4 *Richardson v. McKnight* (p. 77)
- 9.1 *DeShaney v. Winnebago County. DSS* (p. 201)

2. D. Rosenbloom and S. Piotrowski, "Outsourcing The Constitution and Administrative Law Norms," *American Review of Public Administration*, 35 (June 2005):103-121 (Blackboard)
3. Additional cases:
  - Brentwood Academy v. Tennessee Secondary School Association* (2001) (Blackboard)
  - Correctional Services Corporation v. Makesko* (2001) (Blackboard)
  - Filarsky v. Delia* (2012) (Blackboard)
  - Town of Castle Rock v. Gonzales* (2005) (Blackboard)

### **9. October 28: Optional Midterm Examination**

The exam is open-book, in class, non-collaborative. The midterm comprises 35% of the final grade of those taking it. The final exam is cumulative over the entire course.

### **10. November 4: Constitutional Structure I: Federalism**

This session analyzes the relationship between the Commerce Clause and the Tenth Amendment. It also considers the administrative consequences of the states' sovereign immunity under contemporary Eleventh Amendment and judicial interpretation.

Reading:

#### 1. *Constitutional Competence*

Cases

- 1.4 *U.S. v. Lopez* (p. 32)
- 1.5 *Printz v. U.S.* (p. 36)
- 1.6 *Carbone v. Town of Clarkstown* (p. 40)
2. Additional cases (read in the order below):
  - National Federation of Independent Business v. Sebelius* (2012) (Blackboard)
  - U.S. v. Morrison* (2000) (Blackboard)
  - Solid Waste Agency of Northern Cook County v. Army Corps of Engineers* (2001) (Blackboard)
  - Gonzales v. Raich* (2005) (Blackboard)
  - Federal Maritime Commission v. South Carolina State Ports Authority* (2002) (Blackboard)

### **11. November 11: Constitutional Structure II: The Separation of Powers**

This session deals with the scope of presidential and congressional authority over federal administration.

Reading:

#### 1. *Constitutional Competence*

Cases:

- 1.1 *Immigration and Naturalization Service v. Chadha* (p. 20)
- 1.2 *Morrison v. Olson* (p. 25)
- 1.3 *Local 2677, AFGE v. Phillips* (p. 30)
2. Rosenbloom, "Reevaluating Executive Centered Public Administration," in Robert Durant, ed., *Oxford Handbook of American Bureaucracy*. New York: Oxford University Press, 2010, pp. 101-113, 117-127 (Blackboard)
4. Additional cases:
  - Hamdi v. Rumsfeld* (2004) (Blackboard)

## **12. November 18: Administrative Law: Origins and Contemporary Requirements**

This and the next session examine the development of federal administrative law, its underlying values, and its requirements for representation, public participation, transparency, and dispute resolution. Emphasis is placed on rulemaking, freedom of information and "sunshine," adjudication and conflict resolution, and judicial review of administrative discretion.

Reading:

1. D. Rosenbloom, "Whose Bureaucracy Is This Anyway? Congress' 1946 Answer," *PS: Political Science & Politics*, 34 (December 2001), pp. 773-777 (Blackboard)
2. *Administrative Law for Public Managers*, chapters 1, 3-5
3. Additional cases:
  - Industrial Union Department, AFL-CIO v. American Petroleum Institute* 448 U.S. 67 (1980) (**This can be found on Blackboard under Admin. Law Cases**)
  - National Archives and Records Administration v. Favish* (2004) (Blackboard)
  - Sackett v. EPA* (2012) (Blackboard)

## **13. November 25: Administrative Law (Continued): Judicial Review and Implications for Administrative Reforms**

Reading:

1. *Administrative Law for Public Managers*, pp. 156-170
2. Cases (**These cases can be found on Blackboard under Admin. Law Cases**):
  - Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council* 435 US 519 (1978)
  - Motor Vehicles Manufacturers Association v. State Farm* 463 US 29 (1983)
  - Chevron v. Natural Resources Defense Council* 467 US 837 (1984)
  - Federal Communications Commission v. Fox TV Stations* 566 U.S. 502 (2009)
  - Heckler v. Chaney* 470 US 821 (1985)
  - Federal Aviation Administration v. Cooper* (2012) (Blackboard)
  - Schweiker v. Hansen* 450 U.S. 785 (1981)
3. Additional case:
  - City of Arlington, TX v. Federal Communications Commission* (2013) (Blackboard)

## **14. December 2: Spillovers, Review, Conclusions**

This session is devoted to covering any material on the syllabus not reached previously, a student driven review of course materials, and conclusions about the legal basis of public administration and contemporary public administrative practice.

Reading:

1. *Administrative Law for Public Managers*, chapter 7

## **15. December 9: Final Examination (in-class, open-book)**

*The School of Public Affairs requires course syllabi to state that all work must comply with American University's Academic Integrity Code (consult [www.American.edu](http://www.American.edu)).*