

# **THE LEGAL BASIS OF PUBLIC ADMINISTRATION: PUAD 616-002**

**DEPARTMENT OF PUBLIC ADMINISTRATION AND POLICY  
SCHOOL OF PUBLIC AFFAIRS  
AMERICAN UNIVERSITY**

**FALL 2011: MONDAYS AT 5:30 – 8:00 P.M. IN WARD 202**

## **PROFESSOR CONTACT INFORMATION**

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Office Hours: Before & After Class; By appointment

## **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 United States 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 and how they help to shape American government and public administrative agencies.
- Discuss and analyze how the judiciary shapes the legal environment of the administrative state and the nation's democratic institutions.

- Improve writing quality, analytical thinking, and oral presentation skills.

**REQUIRED TEXTS:**

McCabe, Katie and Dovey Johnson Roundtree. 2009. *Justice Older Than the Law: The Life of Dovey Johnson Roundtree*. Jackson: University Press of Mississippi.

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

Rosenbloom, David H., James D. Carroll, and Jonathan D. Carroll. 2004. *Constitutional Competence for Public Managers: Cases and Commentary*. 2<sup>nd</sup> ed. Itasca, IL: F.E. Peacock.

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Breyer, Stephen. 2010. *Making Our Democracy Work: A Judge's View*. New York: Alfred Knopf.

OR

Glendon, Mary Ann. 1991. *Rights Talk: The Impoverishment of Political Discourse*. New York: Free Press.

OR

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

OR

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.

OR

Rohr, John A. 1998. *Public Service, Ethics, and Constitutional Practice*. Lawrence: University Press of Kansas.

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Selected state, federal, and Supreme Court cases, which can be found on-line at [www.findlaw.com](http://www.findlaw.com), [www.lexisnexus.com](http://www.lexisnexus.com), [www.westlaw.com](http://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*, 2<sup>nd</sup> 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*. 4<sup>th</sup> 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.
- Hall, Kermit L. and Kevin T. McGuire, editors. 2005. *Institutions of American Democracy: The Judicial Branch*. New York: Oxford University Press.
- Kelly, Alfred H., Winfred A. Harbison, Herman Belz. 1991. *The American Constitution: Its Origin and Development*. 7<sup>th</sup> ed. New York: W.W. Norton. (Volumes I and II).
- Kerwin, Cornelius M. and Scott R. Furlong. 2010. *Rulemaking: How Government Agencies Write Law and Make Policy*, 4<sup>th</sup> edition. Washington, D.C.: Congressional Quarterly Press.
- Lundmark, Thomas. 2008. *Power and Rights in U.S. Constitutional Law*. 2<sup>nd</sup> ed. New York: Oxford University Press.
- 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.
- Robertson, David Brian. 2005. *The Constitution and America's Destiny*. New York: Cambridge University Press.
- Rohr, John A. 2002. *Civil Servants and their Constitutions*. Lawrence: University Press of Kansas.
- 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*, 2<sup>nd</sup> ed. New York: Marcel Dekker.
- Rohr, John A. 1986. *To Run a Constitution: The Legitimacy of the Administrative State*. Lawrence: University Press of Kansas.

- Rosen, Jeffrey. 2006. *The Supreme Court: The Personalities and Rivalries that Refined America*. New York: Times Books.
- Rosenbloom, David H. 2002. *Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946-1999*. Tuscaloosa: University of Alabama Press.
- Scalia, Antonin. 1998. *A Matter of Interpretation: Federal Courts and the Law*. Princeton: Princeton University Press.
- Schwartz, Barnard. 1993. *A History of the Supreme Court*. New York: Oxford University Press.
- Westin, Alan F. 1990. *The Anatomy of a Constitutional Law Case*. New York: Columbia University Press.

### **FINAL EXAMINATION**

There will be one cumulative, open-book, open-note, take home final examination at the end of the semester. Students will be given at least fifteen questions to answer and will be required to respond to at least eight of their choosing. The exam should range in length from 25 to 30 pages typed, double spaced, one-inch margins. It is due on Monday, December 12<sup>th</sup> at 6:00 p.m. Students can submit their exams to the professor's office, via e-mail, or on Blackboard.

### **AN EVENING WITH KATIE MCCABE, JUSTICE OLDER THAN THE LAW**

On Monday, October 3<sup>rd</sup>, Class VI, Katie McCabe will visit our class to discuss her work, *Justice Older than the Law*. McCabe is an award winning journalist who coauthored an autobiographical account of the life and times of Dovey Johnson Roundtree, a prominent leader in the U.S. civil rights movement. You are required to read this book in advance of McCabe's visit to our class and to come prepared with at least three questions that you would like to ask during the question and answer period of this class. You are then required to write a five page reaction paper to the book and McCabe's conversation with us. Your reaction should focus on the parts of the book that resonate the most with you and/or this course, some of which include: justice, due process, equality, fairness, equal protection under the law, race, gender, and/or family. The reaction paper is due at the beginning of the next class on October 10<sup>th</sup>.

### **CRITICAL ANALYSIS & GROUP PRESENTATION**

Students will be divided into five groups, preferably no more than six participants in each group, to analyze, critique, and discuss the substantive value of one of the key works cited on page two of the syllabus: Breyer, Glendon, Greenhouse, Lee and Rosenbloom, and Rohr. Once assigned to a group, each student is responsible for reading his/her selection and working with fellow group members to prepare an in-class presentation. Some areas to consider addressing for this assignment include but are not limited to: how the work contributes to the legal basis of public administration; how the federal courts affect various aspects of the administrative state; the key

arguments presented by the author; and an evaluation of the book's strengths and weaknesses. Students will make their group presentations on either class 12 or 13. In addition, students are individually responsible for submitting a written analysis of their selected book, which is also due on the day of the presentation.

#### **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. Excessive tardiness and/or absences will affect your grade negatively.

#### **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. I expect correct English, grammar, spelling, and punctuation. Papers that do not meet this expectation will be penalized; the worse the grammatical infraction(s) the more steep the penalty. Students may use either the APA or Chicago Manual of Style for citing references. Please refer to the accompanying "grammatical rules" document for more specific details regarding academic and professional writing.

#### **STUDENT SUPPORT**

If you experience any difficulty with this course, academic, professional, or personal, please do not hesitate to consult with me so that we can discuss how we can go forward and meet the goals set forth in this seminar.

In addition to the resources of the public administration department, a wide range of services are available from the University to support you in your efforts to meet our course requirements, including:

**Academic Support Center** (x3360, MGC 243) offers study skills workshops, individual instruction, tutor referrals, and services for students with learning disabilities. Writing support is available in the ASC Writing Lab or in the Writing Center, Battelle 228.

**Counseling Center** (x3500, MGC 214) offers counseling and consultations regarding personal concerns, self-help information, and connections to off-campus mental health resources.

**Disability Support Services** (x3315, MGC 206) offers technical and practical support and assistance with accommodations for students with physical, medical, or psychological disabilities.

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 the proper arrangements to address your needs.

### ACADEMIC INTEGRITY

American University expects students to uphold its honor code at all times. AU's Academic Integrity Code sets forth standards of academic conduct, defines academic violations, and outlines the adjudication process for academic offenses. Please visit <http://www1.american.edu/academics/integrity/code.htm>, for more information.

### 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:	40%
Reaction to <i>Justice Older Than the Law</i>	15%
Critical Analysis & Group Presentation:	25%
Class Participation:	20%

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### COURSE CALENDAR:

**CLASS I**  
August 29<sup>th</sup>

#### **COURSE INTRODUCTION & OVERVIEW:**

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

**CLASS II**  
SEPTEMBER 5<sup>TH</sup>

#### **LABOR DAY - UNIVERSITY CLOSED**

**CLASS III**  
SEPTEMBER 12<sup>TH</sup>

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

#### **TEXT:**

-Rosenbloom (2004):

#### 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

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

CLASS IV  
SEPTEMBER 19<sup>TH</sup>

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

**TEXT:**

-Rosenbloom (2004):  
Chapter 9: The Promise of Constitutional Competence

**CASES:**

-*DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989)  
-*Lawrence v. Texas*, 539 U.S. 538 (2003)  
-*Citizens United v. Federal Election Commission*, 558 U.S. 50 (2009)

CLASS V  
SEPTEMBER 26<sup>TH</sup>

**THE CONSTITUTIONALIZATION OF PUBLIC ADMINISTRATION I: EQUAL PROTECTION**

**TEXT:**

-Rosenbloom (2004):  
Chapter 4: Decisionmaking  
-Rosenbloom (2000):  
Chapter 8: Economy

**CASES:**

-5.3 *Adarand Constructors v. Peña*, p. 121  
  
-*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)  
-*Kristin M. Perry et al. v. Arnold Schwarzenegger et al.*, U.S. District Court for the Northern District of California. No. C 09-2292 (Proposition 8 Case)

CLASS VI  
OCTOBER 3<sup>RD</sup>

AN EVENING WITH KATIE MCCABE  
*JUSTICE OLDER THAN THE LAW*

CLASS VII  
OCTOBER 10<sup>TH</sup>

THE CONSTITUTIONALIZATION OF PUBLIC ADMINISTRATION II:  
DUE PROCESS, "NEW PROPERTY," & THE "TAKINGS CLAUSE"

TEXT:

-Rosenbloom (2004):  
Chapter 6: Efficiency

CASES:

-6.1 *Cleveland Bd. of Education v. Loudermill*, p. 134  
-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)  
-*Kelo et al. v. City of New London et al.*, 545 U.S. 469 (2005)

CLASS VIII  
October 17<sup>th</sup>

THE CONSTITUTIONALIZATION OF PUBLIC ADMINISTRATION III:  
SUBSTANTIVE & PROCEDURAL RIGHTS

TEXT:

-Rosenbloom (2004):  
Chapter 5: Administrative Effectiveness  
-Rosenbloom (2004):  
Chapter 7: Administrative Standardization

CASES:

-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)  
-*Zelman v. Simmons-Harris*, 536 U.S. 639 (2002)  
-*Berghuis v. Thompkins*, 130 S.Ct. 2250 (2010)



CLASS IX  
OCTOBER 24<sup>TH</sup>

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

**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 X  
OCTOBER 31<sup>ST</sup>  
*Happy Halloween*

**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

**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 XI  
NOVEMBER 7<sup>TH</sup>

**ADMINISTRATIVE LAW: ADJUDICATION & JUDICIAL REVIEW**

**ADJUDICATION TEXT:**

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

**ADJUDICATION CASES:**

- Morse v. Frederick*, 127 S. Ct. 2618 (2007)

**JUDICIAL REVIEW TEXT:**

- Rosenbloom (2003):
  - Chapter 6: Judicial and Legislative Review of Administrative Action

**JUDICIAL REVIEW 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**  
NOVEMBER 14<sup>TH</sup>

**GROUP PRESENTATIONS**

**CLASS XIII**  
NOVEMBER 21<sup>ST</sup>

**GROUP PRESENTATIONS**

**CLASS XIV**  
NOVEMBER 28<sup>TH</sup>

**STATE ACTION, PRIVATIZATION, & OUTSOURCING**

**TEXT:**

-Rosenbloom (2004):

Chapter 3: Privatization and Outsourcing

**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 XV**  
DECEMBER 5<sup>TH</sup>

**CONSTITUTIONAL STRUCTURE:**

**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)

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

**SEPARATION OF POWERS**

**CASES:**

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

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

**DISTRIBUTE FINAL EXAM**

**FINAL EXAM DUE: MONDAY, DECEMBER 12<sup>TH</sup> AT 6:00 P.M.**