Course Description: Inevitably, one of the major challenges of any modern government is to ensure that its administrative branch remains under control. Each society differs to some degree concerning what types of controls will be utilized, and who should operate the levers of power. In the United States, a complex web of procedural, constitutional, and statutory obligations encircles administrative agencies. This course is intended to provide an overview of the various means that are used to promote administrative accountability. The first and largest component, Administrative Law, consists of the procedural and judicial controls that guide bureaucratic conduct. It also includes an examination of the various powers – legislative, executive, and judicial – that are exercised by public organizations at every level of government. As such, the content of this course is largely comprised of an analysis of the legislative (rule-making), adjudicatory (order-making), and general policy-making powers of administrative agencies and regulatory commissions. The scope of judicial review of administrative actions, coupled with the procedural obligations of bureaucratic organizations, occupies a central role in the discussions. The second major component – one that will be integrated into the discussion throughout the semester – consists of society’s efforts to encourage administrative compliance through codes of conduct, the proper socialization of public managers, and other measures that collectively are discussed as “Ethics.”

A consistent theme in any course of this nature is the role that legal institutions and other actors play in ensuring administrative accountability. This is merely a reflection of the fact that public administrators frequently perform tasks and make decisions within arenas that are not governed by unambiguous standards or procedures. Simply stated, the administrators exercise discretion. Because the Administrative Procedures Act (APA) and judicial review of administrative actions constitute a significant portion of the external controls on bureaucratic discretion, administrative law courses have long been centerpieces of public management curricula. Over time, however, the professional literature devoted increased attention to alternative means of regulating the behavior of civil servants. The other branches of government, for instance, have always been appreciated as critical participants in the effort to guide administrative discretion. And, more recently, the role that ethics plays in the accountability conundrum has attracted considerable professional and public attention. Thus, this course essentially constitutes a marriage of Administrative Law with an Ethics component. This approach is predicated on the notion that administrative behavior is best channeled through a variety of measures, both formal and informal.
Course Objectives: Upon completion of the course, the student should be able to:

(1) understand the basic legal content of the United States Administrative Procedures Act (APA) and the Model State APA;

(2) identify the relationships between procedural fairness and regulatory efficiency within the constrained context of the American legal system;

(3) identify and comprehend the legal, political, and economic considerations surrounding current efforts at regulatory reform;

(4) distinguish between regulatory and administrative law problems, and describe the origins and developments of each;

(5) understand and appreciate the legal and procedural responsibilities of public managers.

(6) gain a broad appreciation for the entire web of institutional and attitudinal controls on administrative discretion; and

(7) comprehend how professional ethics figure into the drive to promote administrative accountability, and how differing ethical expectations complicate administrative decision-making.

TEXTS:


Method of Presentation: Depending upon class size, the course will be conducted in a seminar format. Lectures will be combined with student discussions of important issues and topics in the field. Although course content will concentrate primarily upon the assigned readings, material drawn from other bodies of literature will often be used. The case method of analysis will only be employed to exemplify and elaborate specific points of discussion.

Method of Evaluation: There will be a mid-term and a final examination. These exams will be essay and short-answer in format, and will be based upon lectures, class discussions, and the assigned readings. Each will "count" 35%.

The remaining 30% of your grade will be based on two additional assignments. First, you are asked to submit a research paper (25%) that examines a contemporary issue or event influencing administrative law, the accountability question, or ethics. Brief (15 to 20 minute) oral summaries of these papers will be made during the final weeks of the semester. Everyone will be asked to select a topic from the list of possibles provided by the instructor (below) or one that you propose (subject to instructor approval). Fifteen page research papers will be due during the second week of April. Potential topics include, but are not limited to:

* Alternative Dispute Resolution (ADR)
* delegation
* judicial bias
* evidence in administrative proceedings
* rulemaking and adjudication (comparisons)
* the status of regulatory reform
* deregulation - costs and consequences
* proposed changes in the Administrative Procedures Act
* cost/benefit analysis of regulations and/or procedures
* tort law (South Carolina and/or United States)
* expanding access to the courts (relaxation of doctrinal impediments)
* Privacy Act
* Sunset Legislation
* Sunshine Legislation
* developing trends in rulemaking
* specialized courts and their potential use in administrative law
* Freedom of Information Act (State and/or Federal)
* case studies of specific agencies or regulatory arenas
* statutory codes of ethics
* professional codes of ethics
* methods and effectiveness of legislative oversight
* attribute variables and the bureaucracy
* values and their influence on management and accountability
Method of Evaluation (Continued): In addition to these papers, everyone is asked to prepare an ethics case study (5%) for class discussion. This should consist of a real or hypothetical ethical conundrum (puzzle, dilemma, challenge) that confronts public managers. Examples can be found in the PA Times series “An Ethics Moment.” The instructor will provide other examples. We will discuss one or two of these ethics moments on evenings in which time permits, so you are encouraged to get an early start on the requirement. Please type your case study and prepare sufficient copies for everyone in the class. The case studies are typically very short, usually less than one page in length. You will be asked to present the facts, and then to lead a brief discussion of the options and/or appropriate responses to the facts that are presented.

Other Resource Materials:

The following journals will be helpful: Regulation, Administrative Law Review, Administrative Law Journal, Public Administration Review, and Ethics. Also, law reviews frequently publish articles dealing with relevant topics. You are encouraged to consult The Guide to Legal Periodical Literature (which is available in the Law Library). The general public administration literature, especially Public Administration Review (but also American Review of Public Administration, International Journal of Public Administration, Review of Public Personnel Administration, State and Local Government Review) also frequently contains articles that are relevant to these topics.

TOPICAL OUTLINE AND ASSIGNMENTS:

The readings assigned below are pertinent to class discussions. Be sure that you have read them thoroughly and that you grasp the essentials. Class discussion will depend upon your ability to respond to questions posed by the instructor. Given the nature of the course, you are strongly encouraged to read ahead as soon as possible.

It is significant to note that, despite the legal orientation of much of the content, this course is not an introduction to business law; contracts, torts, and commercial transactions are not directly discussed. The course is not taught as a law school course, and the intent is not to turn out students prepared to practice law or to advise others on legal considerations. Instead, the course is intended to produce administrators who are sufficiently familiar with the major concepts, players, and issues in administrative law, regulation, and ethical obligations to know when to seek professional advice and to be able to understand and communicate the advice when received. Regulatory processes and administrative law are responsive to and often shaped by political forces that are ignored by a single-minded concentration on the "literal letter" of law and legal precedent.
It is strongly suggested that students read the Administrative Procedures Act and the South Carolina Administrative Procedures Act [to be provided] as soon as possible. A heavily abridged version of the Federal APA is contained on pages 467 through 482 in the Warren book. Anyone with a special interest in the legal structure of public management and regulation is advised to read both the complete Federal APA and the Model State APA, which are contained in the appendices of any Administrative Law text.

The remaining reading assignments correspond to the topical list below. Given the nature of the course, no attempt has been made to establish a rigid schedule for discussions. Flexibility will prevail, as we will take as much time as is necessary to cover each topic adequately. Thus, the reading list is not assigned by day or week. A general reading assignment will be made at the conclusion of each class period.

I. Introduction; The "Intellectual Hooks" of Administrative Law

Warren, Chapter 1  
South Carolina Administrative Procedures Act (Handout)  
Rosen, Chapter 1

II. Nature of Administrative Agencies and Processes; Legal, Practical, and Economic Sources of Bureaucracy

Warren, Chapter 2

III. Administrative Adjudication

Warren, Chapter 6

IV. Process of Administrative Adjudication (Investigations and Inspections, Hearings, Findings and Reasons)

Warren, Chapter 10

V. Rulemaking (Rules and Orders; Rulemaking Procedures, APA)

Warren, Chapter 5  
Kerwin, Chapters 1-4  
Public Accountability and Ethics  
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VI.  Legislative and Executive Controls on Agency Action

    Warren, Chapters 3 & 4
    Kerwin, Chapter 6
    Rosen, Chapters 2-4

VII.  Additional Problems of Agency Discretion

    Warren, Chapter 7

VIII. Freedom of Information and Open Government

    Kerwin, Chapter 5
    Rosen, Chapters 5 and 7

IX.  Ethical Challenges and Expectations

    Cases

X.  Scope of Judicial Review

    Warren, Chapter 8
    Rosen, Chapter 6

XI. Remedies and Reviewability of Agency Decisions

    Warren, Chapter 9
    Rosen, Chapter 8
    Kerwin, Chapter 6

XII. The Future

    Kerwin, Chapter 7
    Rosen, Chapter 9

NOTE: Copies of this syllabus, along with other handouts and supporting information, can be found on Blackboard.