

L32-349: Politics in Bureaucracies

Fall 2015

Class Time: Monday/Wednesday 10-11:30am

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Office Hours: Mondays 1-3 or by appointment

Introduction to the Course: Bureaucratic policymaking touches on virtually every facet of law and policy that we encounter in our daily lives. With the growth of the American administrative state, in particular since the New Deal, and our expectations of what the government ought to provide, we have also witnessed a vast increase in reliance upon bureaucracies to carry out the policies passed by the legislature. This raises important questions about representation and administration in modern American politics. Given this increasingly prominent role of administrative agencies in the United States separation-of-powers (SOP) setting, this course is aimed at studying the growth of the US administrative state, the structure of the bureaucracy and the policy implications that emerge from its organization and discretion, as well as how these administrative agencies interact – sometimes constrained, other times empowered – with courts, Congress, the president, and interest groups as they work to implement significant matters of public policy. The course is aimed at providing students with the political and legal rationales underlying the American bureaucracy’s historical foundations and procedures employed in making policy decisions. Thus, there will be considerable attention to agencies’ roles in the US separation-of-powers system, as well as evaluating the politics and organization within those agencies. We will evaluate the conditions under which these other institutional actors are more versus less successful in influencing agencies (in terms of bureaucratic structure, political environment, ideology, legislation), and the features of agencies that provide it with political insulation (as well as the limits of that agency autonomy).

This is a very reading-intensive course. As it will be evaluating, in addition to the historical development of the executive branch, empirical and strategic literature on executive branch politics, the course will include a number of readings for which some background in statistics and game theory would be helpful, but not required. This is a substantive rather than a methods course, so we will not be solving/focusing on the technical aspects of the models, though we will be discussing their main findings.

REQUIRED TEXTBOOKS:

There are five required textbooks for the course, which will be available for purchase as well as put on reserve:

- *Institutions of American Democracy: The Executive Branch*. 2005. Aberbach, Joel D. & Mark A. Peterson, eds. New York, NY: Oxford University Press.
- Eisner, Marc Allen. 2000. *Regulatory Politics in Transition, 2nd Edition*. Baltimore, MD: Johns Hopkins University Press.
- Gailmard, Sean & John Patty. 2013. *Learning While Governing: Expertise & Accountability in the Executive Branch*. Chicago, IL: University of Chicago Press.
- Kerwin, Cornelius M. & Scott R. Furlong. 2011. *Rulemaking, 4th Edition*. Washington, DC: CQ Press.
- Wilson, James Q. 1991. *Bureaucracy: What Government Agencies Do And Why They Do It*. New York, NY: Basic Books.

The remainder of the course readings (articles, book chapters, cases) will be made available online. *Administrative Law and Process In a Nutshell* is a reference text on administrative law and procedures, which may be helpful but is not required.

COURSE REQUIREMENTS:

Two short papers (3-5 pages): 15% each

- Short paper 1: Identify a federal agency in the United States government, and discuss its origins and bureaucratic structure. Discuss why it was founded and organized that way, what its main policy responsibilities are, and who has led the agency over time. If it no longer exists, discuss why it was shut down.
- Short paper 2: Discuss the logic behind congressional delegation to agencies, and how it applies to policymaking in an area of your choosing (e.g., environment, health care, financial regulation) with respect to its advantages and disadvantages (e.g., expertise, interest group influence, etc.).

Long paper (15-18 pages): 30%

- Choose a federal agency (it can be the one from your short paper or can be different) and identify a significant rule that it promulgated. Discuss the statutory authority that the agency invoked in promulgating that rule, and the history behind its formation/what led up to it. What were the key events that preceded its being drafted? Who were the key players in shaping the content of the rule? What were the main sources of contention among the relevant institutional actors and how were they resolved? Finally, discuss the response to the rule's promulgation with respect to congressional, interest group (e.g., litigation), presidential, and/or judicial attention in the way of support or criticism (even potentially overturning), and any characteristics of the rule or SOP environment that might have provoked that response (e.g., being very sweeping, being more responsive to certain industries, divided government).

- You may provide in advance a paper summary (1-2 pages) with the opportunity for feedback before writing the full paper, or discuss during office hours your proposed paper, though drafts themselves will not be reviewed in advance.

Final exam: 30%

- The final exam will consist of a mix of IDs and short answer questions, and one longer essay (with two options from which to choose). Papers may be submitted via email *before* class or submitted as hard copies during class.

Attendance and participation: 10%

Final Course Grading: The final grade for the course will be assigned based on the following scale:

A: 93+%	A-: 90-92%	B+: 87-89%
B: 83-86%	B-: 80-82%	C+: 77-79%
C: 73-76%	C-: 70-72%	D+: 67-69%
D: 63-66%	D-: 60-62%	F: > 60%

Policy Regarding Late Assignments: It is imperative that students turn in work at the specified deadlines. Failure to do so will result in a third letter grade reduction per day late unless you have requested and received an extension in advance (granted for medical or family emergencies only). Work will not be accepted at all more than one week late unless said extension was granted in advance. All students must sit for the final exam at the assigned day and time, with the only exception of university-approved absences.

All members of the academic community should be able to engage fully in the academic opportunities and services provided, regardless of disability status, and to that end accommodations to this course can be made if necessary. Please feel free to discuss with me any concerns you may have.

Statement on Academic Integrity: It is expected that all students will work in accordance with the student honor code. Thus, plagiarism, cheating, and receiving unauthorized assistance with the work in this course will not be tolerated. Should a student violate academic integrity in this class, the matter will be reported to the university administration.

COURSE OUTLINE:

Note: Readings subject to change. I will highlight during class the readings of most importance for the purposes of lecture and assignments, and which ones are recommended.

Week 1: Introduction and Overview. Rational Choice Theory and Principal-Agent Models of Delegation.

- Schepsle, Kenneth A. & Mark S. Bonchek. *Analyzing Politics: Rationality, Behavior, and Institutions*. Ch. 1, 2, 12, 13.
- Gailmard, Sean & John W. Patty. 2012. “Formal Models of Bureaucracy.” *Annual Political Science Review* 15: 353-77.
- Optional: Bendor, Jonathan & Adam Meirowitz. 2004. “Spatial Models of Delegation.” *American Political Science Review* 98(2): 293-310.

Week 2: Political Origins of the Administrative State.

- Balogh, Brian. 2009. *A Government Out of Sight*. Conclusion: Sighting the Twentieth-Century State.
- Carpenter, Daniel. “The Evolution of National Bureaucracy in the United States.” In *The Executive Branch*.
- Carpenter, Daniel. 2001. *The Forging of Bureaucratic Autonomy*, Conclusion: The Politics of Bureaucratic Autonomy.
- Skowronek, Stephen. 1982. *Building a New American State*. Part 1: The state-building problem in American political development.
- *Wilson*, Chapter 11: Strategies, Chapter 12: Innovation.
- Optional: Jenkins, Jeffery A. 2014. “APD and Rational Choice.” In *The Oxford Handbook of American Political Development*.

Week 3: Personnel and The Civil Service.

- *Gailmard & Patty*, Chapter 4: The Federal Civil Service.
- Ingraham, Patricia W. “The Federal Public Service: The People and the Challenge.” In *The Executive Branch*.
- Lipsky, Michael. *Street-Level Bureaucracy*. 1980. Chapter 1: The Critical Role of Street-Level Bureaucrats, Chapter 2: Street-Level Bureaucrats as Policy Makers.
- *Wilson*, Chapter 8: People.
- Lewis, David. 2012. “The Personnel Process in the Modern Presidency.” *Presidential Studies Quarterly* 42(3): 577-96.
- Lewis, David. 2011. “Presidential Appointments and Personnel.” *Annual Review of Political Science* 14: 47-66.

Week 4: The New Deal and Federal Administration.

- Balogh, Brian, Joanna Grisinger, & Philip Zelikow. 2002. "Making Democracy Work: A Brief History of Twentieth Century Executive Reorganization." *Working Paper*.
- *Eisner*, Chapter 4: The New Deal: Relief, Recovery, and Regulatory Change.
- Skocpol, Theda & Kenneth Finegold. 1982. "State Capacity and Economic Intervention in the Early New Deal." *Political Science Quarterly* 97(2): 255-78.
- Just skim: Zellmer, Sandra B. 2000. "The Devil, the Details, and the Dawn of the 21st Century Administrative State: Beyond the New Deal." 32 *Arizona State L. J.* 941.
- Schiller, Reuel E. "The Era of Deference: Courts, Expertise, and the Emergence of New Deal Administrative Law." *Michigan Law Review* 106(3): 399-441.
- Sunstein, Cass R. 1987. "Constitutionalism After the New Deal." *Harvard Law Review* 101(2): 421-510.
- Cushman, Barry. *Rethinking the New Deal Court*, Ch. 12: The Struggle with Judicial Supremacy.
- Optional: *Eisner*, Chapter 5: Regulating Land, Labor, and Capital: The Political Economy of the Associational Regime.
- Optional: Cushman, Barry. *Rethinking the New Deal Court*, Chapter 2: Judging the New Deal Court Judging.

Week 5: Post-War Federal Administration.

- Campbell, Colin. "The Complex Organization of the Executive Branch: The Legacies of Competing Approaches to Administration." In *The Executive Branch*.
- *Eisner*, Chapter 6: Compensating for Capitalism: The New Social Regulation. Chapter 7: Regulating Risk: The Political Economy of the Societal Regime, Chapter 8: Bringing the Market Back In: The Efficiency Regime.
- Krause, George A. 1999. *A Two-Way Street: The Institutional Dynamics of the Modern Administrative State*. Chapter 4: An Empirical Investigation into the Institutional Dynamics of Regulatory Enforcement in a Democratic System.
- McNollgast. 1999. "The Political Origins of the Administrative Procedure Act." *Journal of Law, Economics, and Organization* 15(1): 180-217.
- Melnick, R. Shep. "Courts and Agencies in the American Civil Rights State." In Jeffrey Jenkins and Sidney Milkis, eds., *The Politics of Major Policy Reform in Postwar America* (Cambridge University Press, 2014)

- Melnick, R. Shep. “Pollution Deadlines and The Coalition for Failure.” *The Public Interest*, (Spring, 1984)
- Moe, Terry. 1989. “The Politics of Bureaucratic Structure.” In *Can the Government Govern?* (Chubb and Peterson, eds.). Washington, DC: The Brookings Institution. Pp. 267-329.
- Tushnet, Mark V. *The New Constitutional Order*, Ch. 2: The Supreme Court of the New Constitutional Order.
- Optional: Krause, George A. 1999. *A Two-Way Street: The Institutional Dynamics of the Modern Administrative State*. Chapter 2: A Dynamic Systems Model of Administrative Politics
- Optional: Melnick, R. Shep. “Administrative Law and Bureaucratic Reality.” *Administrative Law Review* (Summer, 1992)
- Optional: O’Connell, Anne Joseph. 2006. “The Architect of Smart Intelligence: Structuring and Overseeing Agencies in the Post-9/11 World.” *California L. Rev.* 94: 1655.
- Optional: Skowronek, Stephen. 1982. *Building a New American State*. Epilogue: Beyond the state of courts and parties – American government in the twentieth century.

Week 6: Determinants of Bureaucratic Discretion.

- *Chevron v. NRDC* (1984).
- Clean Air Act of 1963
- Bawn, Kathleen. 1997. “Choosing Strategies to Control the Bureaucracy: Statutory Constraints, Oversight, and the Committee System.” *Journal of Law, Economics, and Organization* 13(1): 101-26.
- *Gailmard & Patty*, Chapter 3: Expertise and Deference.
- Lewis, David. 2008. *The Politics of Presidential Appointments: Political Control and Bureaucratic Appointments*. Chapter 3: Why, When, and Where Do Presidents Politicize the Bureaucracy?
- MacDonald, Jason A. 2010. “Limitation Riders and Congressional Influence over Bureaucratic Policy Decisions.” *American Political Science Review* 104(4):766-82.
- McNollgast. 1987. “Administrative Procedures as Instruments of Political Control.” *Journal of Law, Economics, and Organization* 3 (2):243.
- *Wilson*: Ch. 7: Constraints

- Optional: Balla, Steven J. 1998. "Administrative Procedures and Political Control of the Bureaucracy." *American Political Science Review* 92 (3):663-73.
- Optional: Dickinson, Matthew J. "The Executive Office of the President: The Paradox of Politicization." In *The Executive Branch*.
- Optional: *Gailmard & Patty*, Chapter 2: Developing Administrative Expertise.

Week 7: Agencies and Interest Groups

- Boehmke, Frederick J., Sean Gailmard, & John W. Patty. "Business as Usual: Interest Group Access and Representation Across Policy-Making Venues." *J. of Public Policy*.
- Devins, Neal & David E. 2008. "Not-so-Independent Agencies: Party Polarization and the Limits of Institutional Design." *Boston University Law Review* 88(2): 459-98.
- Landes, William & Richard Posner. "The Independent Judiciary in an Interest-Group Perspective." *Journal of Law and Economics* 18 (1975): 875-901.
- Macey, Jonathan R. 1993. "Administrative Agency Obsolescence and Interest Group Formation: A Case Study of the SEC at Sixty." *Cardozo Law Review* 15: 909.
- McCubbins, Mathew D. & Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms." *American Journal of Political Science* 28(1): 165-79.
- Smith, Kristi M. 2004. "Who's Suing Whom? A Comparison of Government and Citizen Suit Environmental Enforcement Actions Brought Under EPA-Administered Statutes, 1995-2000." *Columbia Journal of Environmental Law* 29: 359.
- Stewart, Richard B. 1985. "The Discontents of Legalism: Interest group Relations in Administrative Regulation." *Wisconsin Law Review* 655.
- *Wilson*: Ch. 4: Beliefs
- Optional: Lewis, David. 2003. *Presidents and the Politics of Agency Design*. Chapter 3: Presidents and the Politics of Agency Design

Week 8: Delegation I: Congress and Bureaucracy.

- Epstein, David & Sharyn O'Halloran. 1999. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*. Chapter 2: Choosing How to Decide, Chapter 6: Delegation and Congressional-Executive Relations, Chapter 8: Delegation and Issue Areas.

- Farhang, Sean & Miranda Yaver. 2015. “Divided Government and the Fragmentation of American Law.” Forthcoming in the *American Journal of Political Science*.
- Huber, John D. & Charles Shipan. 2002. *Deliberate Discretion?: The Institutional Foundations of Bureaucratic Autonomy*. Chapter 2: Rational Delegation or Hapless Abdication? The Relationship Between Bureaucrats and Politicians, Chapter 3: Statutes as Blueprints for Lawmaking.
- Melnick, R. Shep. *Between the Lines*, Chapter 1: Statutory Interpretation in American Politics, Chapter 2: The New Political Context
- Weingast, Barry. “Caught in the Middle: The President, Congress, and the Political-Bureaucratic System.” In *The Executive Branch*.
- *Wilson*, Chapter 13: Congress

Week 9: Delegation II: Congress, Bureaucracy, and Courts.

- Canes-Wrone, Brandice. 2003. “Bureaucratic Behavior and the Composition of Lower Courts.” *American Journal of Political Science* 47(2): 205-214.
- Melnick, R. Shep. “The Courts, Jurisprudence, and the Executive Branch.” In *The Executive Branch*.
- *Wilson*, Chapter 15: Courts, Chapter 20: Bureaucracy and the Public Interest
- Spriggs, James. 1997. “Explaining Federal Bureaucratic Compliance with Supreme Court Opinions.” *Political Research Quarterly* 50:567-93.
- Wright, J. Skelly. 1974. “Court of Appeals Review of Federal Regulatory Agency Rulemaking.” *Administrative Law Review* (26):199.
- Optional: Farhang, Sean. 2011. *The Litigation State: Public Regulation and Private Lawsuits in the U.S.* Chapter 3: An Empirical Model of Enactment of Private Enforcement Regimes.
- Optional: Halpern, Stephen C. *On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act*, Chapter 3: The Johnson Years: Implementing and Redefining the Right to Equal Educational Opportunity, Chapter 4: The Nixon-Ford Years: Litigating against the Political Backlash.

Week 10: Introduction to Rulemaking.

- Bryner, Gary C. 1987. *Bureaucratic Discretion: Law and Policy in Federal Regulatory Agencies*. Chapter 2: Administrative Law and Administrative Procedures.

- *Kerwin*: Chapter 1: The Substance of Rules and the Reasons for Rulemaking, Chapter 2: The Process of Rulemaking, Chapter 3: Issues and Contradictions, Chapter 4: The Management of Rulemaking
- Lavertu, Stephane & Susan Webb Yackee. 2014. “Regulatory Delay and Rulemaking Deadlines.” *Journal of Public Administration Research and Theory* 24: 209-34.
- O’Connell, Anne Joseph. 2008. “Political Cycles of Rulemaking: An Empirical Portrait of the Modern Administrative State.” *Virginia Law Review* 94: 889.
- O’Connell, Anne Joseph. 2011. “Agency Rulemaking and Political Transitions.” *Northwestern University Law Review* 105: 471.
- Optional: Lubbers, Jeffrey. 2006. *A Federal Guide to Agency Rulemaking, 4th ed.* Part 2: A Statutory Framework for Rulemaking.

Week 11: Rulemaking Oversight.

- Bruff, Harold H. “Presidential Management of Agency Rulemaking.” *George Washington Law Review* 57: 533.
- Bryner, Gary C. 1987. *Bureaucratic Discretion: Law and Policy in Federal Regulatory Agencies*. Chapter 4: Political Oversight of Administrative Rule Making
- Crowley, Steven. 2003. “White House Review of Agency Rulemaking: An Empirical Investigation.” *The University of Chicago Law Review* 70(3): 821-85.
- Gerber, Brian J., Cherie Maestas, and Nelson C. Dometrius. 2005. “State Legislative Influence over Agency Rulemaking: The Utility of Ex Ante Review.” *State Politics & Policy Quarterly*. 5(1): 24-46.
- *Kerwin*: Chapter 6: Oversight of Rulemaking
- Yackee, Jason Webb & Susan Webb Yackee. 2010. “Is Agency Rulemaking ‘Ossified’? Testing Congressional, Presidential, and Judicial Procedural Constraints.” *Journal of Public Administration Research and Theory* 20: 261-82.

Week 12: OIRA.

- Executive Order 12,866 (issued in 1993 by President Clinton)
- Acs, Alex and Charles M. Cameron. 2013. “Does White House Regulatory Review Produce a Chilling Effect and ‘OIRA Avoidance’ in the Agencies?” *Presidential Studies Quarterly* 43(3):443-467.

- Arbuckle, Donald. 2008. "OIRA and Presidential Regulatory Review: A View from Inside the Administrative State." Working paper, University of Texas at Dallas.
- Copeland, Curtis W. 2009. "Federal Rulemaking: The Role of the Office of Information and Regulatory Affairs." Congressional Research Service Report for Congress.
- Tozzi, Jim. 2011. "Oira's Formative Years: The Historical Record of Centralized Regulatory Review Preceding Oira's Founding." *Admin. L. Rev.* 63:37.
- West, William F. 2005. "The Institutionalization of Regulatory Review: Organizational Stability and Responsive Competence at OIRA." *Presidential Studies Quarterly* 35(1): 76-93.

Week 13: Participation in Rulemaking.

- Furlong, Scott & Cornelius Kerwin. 2004. "Interest Group Participation in Rulemaking: A Decade of Change." *Journal of Public Administration Research and Theory* 15(3): 353-70.
- Golden, Marissa Martino. 1998. "Interest Groups in the Rulemaking Process: Who Participates? Whose Voices Get Heard?" *Journal of Public Administration Research and Theory* 8.
- *Kerwin*: Chapter 5: Participation in Rulemaking
- Schmidt, Patrick E. 2002. "Pursuing Regulatory Relief: Strategic Participation and Litigation in U.S. OSHA Rulemaking." *Business and Politics* 4 (1):71-89.
- Woods, Neal D. 2009. "Promoting Participation? An Examination of Rulemaking Notification and Access Procedures." *Public Administration Review* 2009(2):518-30.
- Yackee, Susan Webb. 2006. "Sweet-Talking the Fourth Branch: The Influence of Interest Group Comments on Federal Agency Rulemaking." *Journal of Public Administration Research and Theory* 16(1): 103-24.

Week 14: Wrap up. Reach of Bureaucratic Power in SOP system.

- *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (Daniel Carpenter & David Moss, eds.). Chapter 14: Courts and Regulatory Capture (M. Elizabeth Magill), Chapter 15: Can Executive Review Help Prevent Capture? (Richard Revesz)
- Lewis, David, Jennifer L. Selin & Abby K. Wood. "Congress, Responsiveness, and Agency Performance." *Working paper*.
- Shipan, Charles R. 2004. "Regulatory Regimes, Agency Actions, and the Conditional Nature of Political Influence." *American Political Science Review* 98 (August): 467-80.