FALL 2017 □ POLITICAL SCIENCE 102L
The Politics of Regulation
Visiting Prof. Glenn Smith
Tuesdays, 5 P.M. to 7:50 P.M.
CSB 002

COURSE APPROACH

This course introduces you to many major theoretical and practical issues flowing from the reality that in modern America substantial regulatory power is exercised by unelected administrative agencies and executive-branch officials (with substantial oversight by officials who are not elected either: presidential appointees, judges, the media, and representatives of private interest groups). The course examines the scope and importance of the modern regulatory power, and the relative strengths and weaknesses of mechanisms for controlling it politically and legally.

The class is conducted “modified law school” style; sessions will usually focus on class discussion of questions based on assigned materials. At times I will lecture to provide an overview of relevant materials. At times, class members will discuss questions or hypothetical problems in small groups.

You will get maximum value from the course by doing the assigned reading for each session completely and actively, and coming to class prepared to engage in a lively discussion. Especially given the class-discussion format, it is always preferable to attend classes in person, rather than rely on notes from others. However, barring unforeseen technical difficulties, class sessions will be available by podcast.

We will have FUN!

READINGS AND SYLLABI

You are required to purchase one text for the class: C. Kerwin, RULEMAKING: HOW GOVERNMENT AGENCIES WRITE LAW AND MAKE POLICY (2010 4th Ed. CQ Press)

You will also read -- and may want to copy onto hard copies, so that you can refer to them in class and during open-book course exams -- (1) case excerpts prepared by Prof. Smith and made available for free on the TED webpage and (2) past exam questions. NOTE: You will probably want to copy these materials onto hard paper pages, so that you can refer to them in class and during open-book course exams.

Please bring the appropriate text(s) to each class.

There are two Assignment Syllabi for this course. The first Syllabus, posted on the class webpage, covers Phases I & II of the course -- materials potentially testable on
the midterm exam. A second Assignment Syllabus, covering later assignments, will be posted separately on the webpage. These latter materials will be tested on the final exam.

**EXAMINATIONS**

Fifty percent (50%) of your course grade is based on an in-class midterm exam (composed of five questions) held during the first two-plus hours of class on **TUESDAY, NOVEMBER 14th**. This midterm exam will cover materials on the First Syllabus (and discussed during the first six weeks of class) – including materials covered by the guest professors during the second week. After the midterm and a 15-minute break, I will lecture on new materials until 7:50 PM.

Thirty percent (30%) of your course grade is based on a **final examination**, held from **7 P.M. to 8:30 P.M. on FRIDAY, DECEMBER 15th** (the first part of the designated final-exam period). This final exam will be cumulative -- BUT the emphasis will be on materials studied after the midterm (and listed on the Second Syllabus).

Both examinations will pose short-answer essay questions, in the format illustrated through past exam questions posted on the class webpage. Both exams will be open book / open note.

**IMPORTANT:** PLEASE LOOK AT YOUR SCHEDULE IMMEDIATELY, and ensure that you will be able to take both exams. I REGRET THAT I WILL NOT LIKELY BE ABLE TO ACCOMMODATE OTHER THAN EMERGENCY CONFLICTS.

I will provide more details on examination coverage and format from separate handouts, in-class announcements, and class discussion of past exam questions.

**ADDITIONAL COURSE REQUIREMENT**

The remaining twenty percent (20%) of your course grade is based on a short “agency case-study memorandum” you write about a current regulatory initiative of your choosing. Responding to specific prompts, you will analyze some key substantive and procedural issues posed by your chosen case study.

I will provide separate, specific instructions about selecting case studies, conducting basic research to locate key documents relating to the proposal, and responding to the several prompts.

**THE AGENCY CASE-STUDY MEMORANDUM IS DUE BY THE BEGINNING OF CLASS ON THE 10TH WEEK – TUESDAY, DECEMBER 5th.**
ADDITIONAL LEARNING OPPORTUNITY

I invite you to take on an additional practice that will significantly enhance your learning in the course: as you interact with general informational media (i.e., newspapers, magazines, newsletters, online databases, etc.) I invite you to notice media reports discussing current controversies relating to the regulatory law and politics issues we are studying in the course. (Making the connection between class materials and the “real world out there” can be an important learning boost!)

When you identify media reports that you believe would be interesting to the class—ideally, reports that contain enough information to understand the context and legal basis of the legal or political controversy—I would very much appreciate your giving me a hard-copy version (or sending me an email with the text of the media report in the body of the email) so that I can consider sharing it with the class at an appropriate time.

MY AVAILABILITY

***For UCSD office hours:
--I will generally be available a few minutes before and after class in the classroom.
--In addition, I will be available for “coffee and conversation” about class materials or other topics of interest at Peet’s on Scholar’s Walk near RIMAC, Tuesdays, 2:30 P.M. to 4:30 P.M. (except no OH on Tuesday, October 10).

***For “virtual office hours,” or to arrange office hours at a mutually convenient time other than regular office hours, email me at gsmith@cwsl.edu. [NOTE that this is NOT a “ucsd.edu” email address.] WHEN YOU EMAIL ME, please INCLUDE A REFERENCE TO “P SC 102L” in the subject line, so that I will know it’s not spam.

***For law-school-planning questions and recommendations: A number of the students taking this course are planning to attend (or thinking about attending) law school. As a full-time law professor guest teaching this course, I am happy to provide general counseling about law school and legal careers, arranging visits to law-school classes at my home institution, and writing letters of recommendation in appropriate cases. (I am not recruiting students to law school in general or my law school in particular. In fairness, I simply wish to make sure all potentially interested students know in advance of my policy on being a law-school resource.)

***In appropriate cases I am also willing to write recommendation letters for graduate study, internships (e.g., AIP or UCDC), foreign study, or other related opportunities.

Do not hesitate to contact me if I can be of any assistance on any matter.
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FIRST SYLLABUS FOR PHASES I, II & III
(Assignments for first six weeks of classes)

*All references to “Kerwin” are to Kerwin, RULEMAKING: HOW GOVERNMENT AGENCIES WRITE LAWS AND MAKE POLICY (Fourth Ed. 2010 CQ Press). Unless page numbers are given the reference to a Chapter is to the entire Chapter.

*All references to “Smith” are to excerpts from leading court cases; these excerpts are prepared by Professor Smith and will be made available in advance of the class for which they are assigned via the P Sc 102L webpage on TED.

[Read the Referenced Materials for First Class, Tuesday, Oct. 3:]

I. AN INTRODUCTION TO REGULATION AND THE AWKWARD LEGAL AND POLITICAL POSITION OF ADMINISTRATIVE REGULATORS

A. An Introduction to the Course and the Importance of Its Subject
   Kerwin, Chap. 1, pp. 1-2 & 21-28

B. The Constitutional Scheme of Separated Powers, and the Awkward Place of Regulators in That Framework
   Introductory Lecture (no reading assignment)

C. The Functions and Work Product of Regulators: Federal Regulators as Case Study
   1. Federal-Government Regulation: An Introductory Overview
      Kerwin, Chap. 1, pp. 2-7)
   2. Three “Case Studies” in Different Forms of Regulation (Rulemaking, Executive Enforcement & Adjudication)

Skim read (i.e., skim through the pages to get a sense of the context and nature of the different documents, so you can get maximum benefit from an initial class lecture) Smith, pp. I-1 through I-122 [five .pdf documents in a folder labeled “Regulatory Case Studies” – in the
II. TWO CASE STUDIES IN CONTEMPORARY REGULATION: Opportunities and Challenges

A. Regulating Pollution: Guest Class by Deborah Seligsohn, Ph.D. Candidate, UCSD


B. Institutions & Legal Processes of the U.S. Patent System—Guest Class by Prof. Tabrez Ebrahim, Professor of Law, California Western School of Law

An Introduction to Patent Law & An Introduction to Patent Litigation [in .pdf documents on course TED page]

III. SEMI-FORMALIZED LEGISLATING AT THE ADMINISTRATIVE LEVEL (“RULEMAKING”): AN IN-DEPTH LOOK AT THE POLITICAL AND LEGAL ISSUES IT RAISES

A. The History and Rationale for Rulemaking


B. Analyzing Rulemaking: Some Initial Theoretical and Practical Perspectives

Kerwin, Chap. 3 (“Issues and Contradictions”)
Kerwin, Chap. 7 (“Theory, an Agenda for Research, and an Appreciation”)

C. Rulemaking Procedures: Attempting to Control Political Processes through (Largely) Legal Means

Kerwin, Chap. 2 (“The Process of Rulemaking”) 
Smith, Excerpts from leading court cases

[Read the Following Materials for Second Class, Tuesday, Oct. 10:]

[Read the Following Materials for Third Class, Tuesday, Oct. 17:]

[Read Referenced Materials for Fourth Class, Tuesday, Oct. 24:]

[Read Referenced Materials for Fifth Class, Tuesday, Oct. 31:]

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D. Controlling Rulemaking “From the Inside”

Kerwin, Chap. 4 (“The Management of Rulemaking”)  
Kerwin, Chap. 6, pp. 221-222 (introductory observations); 232-247  
(“Accountability to the President”)  
[Perhaps…] Smith, Excerpts from leading court cases

[Read Referenced Materials for Sixth Class, Tuesday, Nov. 7:]

E. Controlling Rulemaking “From the Outside”

Kerwin, Chap. 5 (“Participation in Rulemaking”)  
Kerwin, Chap. 6, pp. 222-232 (“Accountability and Congress”) & 247-268  
(“Accountability to the Courts” and conclusion)  
Smith, Excerpts from leading court cases

[An In-class Midterm on the above materials will start promptly at 5 PM on Tuesday, November 14th and complete around 6:30 PM. After a fifteen-minute break, class will recommence for a lecture on new materials…]

[A second syllabus will contain new assignments relating to…]

IV. ADDITIONAL CASE STUDIES IN REGULATORY (and DEREGULATORY) POLITICS (AND JUDICIAL REVIEW)

A. Difficulties in Achieving Judicial Oversight of Regulation: “Standing” Disputes in the Environmental Arena:

B. Federal and State Regulation of Cigarettes and other Tobacco Products: Issues of Statutory Authority, Preemption & Commercial Speech

C. Case Studies from the Current Administration’s Deregulatory Agenda