

Abstract

Why is administrative law so neglected in the curricula of graduate public administration in the United States? In the light of professed adherence to democratic administration and rule of law, this gap in the academic education of public service professionals seems surprising and somewhat disconcerting. Public servants are not only empowered but obligated by law to use the power of the state to make decisions and take actions in the public interest. Yet, study of the theory, processes, and practices of administrative law seems to play little or no part in their preparation for these tasks.

Key words: *administrative law, public administration education, MPA curriculum*

Introduction

Why is administrative law so neglected in the curricula of graduate public administration in the United States? In the light of professed adherence to democratic administration and rule of law, this gap in the academic education of public service professionals seems surprising and somewhat disconcerting. Public servants are not only empowered but obligated by law to create and implement regulations, to use the power of the state to enforce public policies, and to exercise their judgment and discretion to make decisions and take actions in the public interest that affect groups, businesses, and individuals. Yet, study of the theory, processes, and practices of administrative law seems to play little or no part in their preparation for these tasks. Should administrative law be included in the Master of Public Administration (MPA) curriculum?

This article begins with the case for administrative law in the study of public administration. The following section discusses how it might be integrated into the public administration curriculum. The third section uses the example of Amanda Olejarski's (2013) book *Administrative Discretion in Action: A Narrative of Eminent Domain* to illustrate the potential of case studies in constitutional and administrative law for public administration education. The article concludes with brief examples illustrating the relevance of administrative law in public administration education today.

The Case for Administrative Law

Administrative law is commonly defined as the branch of law governing the operations of government agencies, including rule making and enforcement (regulation), adjudication of individual cases (including special administrative courts), implementation of public policies, and organizational management. It is not a new subject. For example, in the early days of the United States, Treasury Secretary Alexander Hamilton labored long hours regulating the details of lighthouse construction and operations, and to produce directives for the new Customs Service (which were still in use into the 1960s!) (Caiden, 2006). As government functions grew, the role of public administration grew with them, and so did the volume of regulations, administrative adjudications, and court cases involving citizens' rights and interests. Administrative law became an accepted and complex specialization for legal education, as witnessed by the number of large, expensive, and multi-edition administrative

¹ Professor Emeritus, Department of Political Science, California State University, Los Angeles, ncaiden@calstatela.edu

law texts.

Why should public administration students, who do not intend to become lawyers, study administrative law? The reasons lie in the nature of effective, democratic public administration, which is both enabled and constrained by the rule of law. In fact, we might redefine administrative law in more general terms as the interface of public administration and law: concern for due process, the role of judicial review, the supremacy of the constitution, and professionalism in exercising administrative discretion.

Due Process

Due process in administrative law was codified in the 1946 Administrative Procedure Act (APA) and subsequent similar state laws. The APA sets standards and regularizes procedures for federal rule making, agency adjudications, hearings, administrative courts, decisions and reviews, and official actions. It requires open processes, notification, publication and good faith opportunities for public comment in making regulations, and protection of individuals against arbitrary or capricious actions by officials. Due process is an important part of public administration, and it seems reasonable that students should understand, be able to articulate, and expect to apply it.

Judicial Review

Unlike many European countries that have a separate unified system of administrative courts, in common law countries such as the United States, the regular judicial system has the power of review over government agencies' delegated powers. Regulations, decisions and actions of individual officials, and administrative agencies are subject to standards of procedural and substantive review based on criteria established and enforced by the courts. The potential for judicial review should increase officials' awareness of constitutional and legal constraints on their actions, and their obligation to make decisions based on reasonable judgment of facts, and knowledge of current laws and judicial rulings. The facts and contexts of leading court cases touching on public administration, the reasoning of these judicial decisions, and their impact on the conduct of administration would seem to be an essential part of public service education.

Constitutional Rights

Because so many official/citizen encounters involve rights enumerated in the Constitution (especially the First, Fifth, Eighth, and Fourteenth Amendments), it is not surprising that many administrative disputes easily turn into constitutional disputes. The result is a body of constitutional judicial precedent that governs a whole host of matters such as, for example, admission practices in universities, definition of terms such as wetlands, stop-and-frisk actions by police officers, urban redevelopment, school discipline, discrimination in recruitment and hiring, admissibility of cell phone records as evidence, privacy of communications, and environmental regulations. Because of the close relationship of administrative and constitutional law, the definition of administrative law therefore expands to include relevant aspects of constitutional law as well. Future practitioners should not only be familiar with constitutional rights in general but be in a position to apply and evaluate them in their own areas of expertise and in their everyday work.

Discretion

Administrative law is not only about the rights of individuals but also about implementing lawful, justified public policies in the public interest and for the common good. In the course

of their duties, public servants exercise administrative discretion to make decisions based on their official authority and professional expertise. Olejarski (2013) defined administrative discretion as the use of practitioners' "informal authority, or their ability to interpret policies, laws, and statutes" (p. 21). Administrators are expected to carry out the functions of government agencies economically, efficiently, and effectively to achieve public benefits, and at the same time give appropriate attention to individuals' rights. The public is therefore dependent on the ways practitioners approach these responsibilities—their integrity, concern for the public interest, professionalism and competence, objectivity, and knowledge—within the context of organizational constraints, institutions, and culture—the very essence of public administration.

Responsible governments take administrative law seriously. The State of California, for example, has an Office of Administrative Law that reviews administrative regulations proposed by more than 200 state agencies for compliance with the California APA. It "ensures that regulations are clear, necessary, legally valid, and available to the public" (California Office of Administrative Law, n.d.). There is also an Office of Administrative Hearings, a quasi-judicial tribunal, that hears between 10,000 and 14,000 administrative disputes annually "to provide a neutral forum for fair and independent resolution of administrative matters ensuring due process and respecting the dignity of all" (California Office of Administrative Hearings, n.d.).

The case for administrative law in public service education rests on the nature of contemporary public administration—the size, scope, and complexity of government; the extent to which formation and implementation of public policy depend on professional public servants; the necessary inclusion of quasi-legislative and quasi-judicial functions in the administrative state; and the important role of case law in settling administrative and constitutional issues arising between governments and individuals (Kaufman, 2001; Rohr, 1986; Rosenbloom, 1983, 1994).

Approaching Administrative Law

The absence of administrative law in current public administration programs is marked—there appear to be few separate courses (although there are some programs that include a course on public administration and law), and the leading public administration journals rarely publish articles on it. One reason is the competition for inclusion in the MPA curriculum, with only so many courses to go around. Another is that students often express a preference for "practical" subjects, "marketable skills," and "real-world experiences." Faculty without law degrees may also feel unqualified or uninterested in teaching administrative law. Neither public management nor public policy, which have in recent years largely divided up public administration between them, seems an amenable home for it. The composition of the student body has also changed to include more students intending a career in the nonprofit sector, who may feel that many aspects of public administration are not applicable to them. Administrative law tends to be seen as a narrow specialization, devoid of interest for most students, and with little relevance for career opportunities.

However, there are several textbooks specifically designed for public administration students. A forerunner was David Rosenbloom's influential *Public Administration: Understanding Management, Politics and Law in the Public Sector*, first published in 1986, and now in its eighth edition (Rosenbloom, Kravchuck, & Clerkin, 2014). Its lead in stressing the need to integrate constitutional considerations into the decisions and actions of public administrators

was continued by two other texts, *Constitutional Competence for Public Managers: Cases and Commentary* (Rosenbloom, Carroll, & Carroll, 2000) and *Public Administration and Law: A Practical Handbook for Public Administrators* (Rosenbloom, O'Leary, & Chanin, 2010).

Some other books focus more directly on administrative law. Three recent texts (Barry & Whitcomb, 2005; Hall, 2014; Rosenbloom, 2014) cover a similar group of topics: an introduction explaining the meaning of administrative law, its history and context; rule making; delegation; judicial review; and common qualities or criteria, such as transparency, fairness, or accountability. Steven Cann's (2006) textbook is divided into three parts: politics, democracy, and bureaucracy; administrative process; and substantive issues in administrative law. All provide case material for discussion. There are also books on legal aspects of administration in special areas such as health, personnel, or environment, and more specialized topics such as public servants' liability (Lee, 2005).

These readily available texts are a good start, but by themselves do not resolve the question of how to advance knowledge and understanding of administrative law. Simply "adding a course" or reading a textbook is unlikely to fulfill two important aims: integration and application. First, it is necessary to integrate and internalize students' knowledge and understanding of administrative law so that they reflect and are reflected throughout their studies (as opposed to a stand-alone subject divorced from the rest of the degree). Second, students need to understand and appreciate their own role in applying administrative law to the everyday exercise of administrative discretion. How might these be achieved?

First, administrative law has broad relevance to the contemporary world of public service. Almost every subject that may be found in the MPA curriculum could include an administrative law aspect. For example, the operations of street-level bureaucrats on the front lines (social workers, police, prison officials, teachers) inevitably give rise to frictions with the public, and often to challenges to their discretion. Organizational management, behavior, and culture may be approached from the need to balance legal constraints and values with other considerations. Human resources and budgeting are bounded with observance of law and due process. Urban planning, environmental management, and sustainable development are involved with issues of licensing, permissible land use, and eminent domain. Administrative law could have a place in analyzing these and other subjects, as well as in the general introduction and conclusion of degree programs.

Second, administrative law allows plenty of room for discussion. One of my students, with considerable practical experience in the public sector, told the class he could easily gain the knowledge required by the courses in the MPA by reading books on his own, but he saw as essential the interactions and discussions with other students and faculty. Where judgment, persuasion, weighing of competing values, encountering opposing opinions and interests, and cooperation are involved, practical learning takes place. If administrative law is to be a vital part of students' professional preparation, it needs to be presented so as to stimulate dialogue, openness, debate, tolerance, and analysis of complex problems as opposed to simple, enforced solutions. In this way, knowledge and values will carry over not only to the curriculum as a whole (whatever its formal structure) but also into application in the practical world of public administration.

I have pondered these concerns over many years of teaching the capstone course, "Philosophy of Public Service," in the Master of Science in Public Administration program at California State University, Los Angeles. As time passed, I introduced more readings that

reflect administrative and constitutional law issues, and in 2013-2014, my final year of teaching, I found Amanda Olejarski's (2013) book *Administrative Discretion in Action: A Narrative of Eminent Domain* and made it a centerpiece for the course. Starting from a single court case in an area unfamiliar to most of the students, our class discussions ranged from normative considerations of constitutionalism and professionalism in public service to empirical aspects of the application of administrative law. The book's purpose was not only to stimulate dialogue about an important issue, eminent domain, but it also demonstrated the potential of pertinent and interesting case studies to illuminate the interface of law and public administration.

A Case for Administrative Law: Administrative

Discretion in Action

Administrative Discretion in Action (Olejarski, 2013) is built around the 2005 Supreme Court decision, *Kelo v. the City of New London*. Dr. Olejarski ably explains the precedents considered by the Court, the details of the decision, and the issues at stake. But the book is equally concerned with the normative and empirical aspects of "administrative discretion in action," the role of practitioners before and following the *Kelo* decision.

The constitutional foundation for eminent domain, the taking of private property by governments, is the Fifth Amendment, which states "Nor shall private property be taken for public use, without just compensation." This exercise of administrative power may critically affect individuals' lives and business interests, and pits the rights of the public as a whole against those of private property owners. In practice, much depends on how administrators use their discretion to determine the meaning of "taking," "public use," and "just compensation," and whether the courts concur in their interpretation.

Briefly, the facts of the case were as follows. In 1990, the State of Connecticut designated the City of New London as a "distressed municipality." In 1998, the State set up a public-private body, the New London Development Corporation (NLDC), and approved bond funding for redevelopment planning and a park. Early in the process, Pfizer Corporation initiated a proposal to build a US\$300 million research and development facility in Fort Trumbull, a modest residential neighborhood, and there were plans for other private developments (Olejarski, 2013, p. 40). The City granted the NLDC the power of eminent domain, which they used to "take" several private residences in the neighborhood. Suzette Kelo and other homeowners sued and lost the case. By a margin of 5-4, the Supreme Court decided that "taking" of private property for economic development that included private development was constitutional. However, the Court also emphasized that "nothing in our opinion precludes any state from placing further restrictions on the exercise of the takings power," thereby handing the issue back to the states to legislate (Olejarski, 2013, p. 41).

Dr. Olejarski carried out several interviews with officials and residents on the background of the case. While the Fort Trumbull community members were initially supportive of improving the neighborhood, they wanted to incorporate the existing community into the plan (Olejarski, 2013, p. 61). However, despite the provision for public hearings, and although several public meetings were held, they found there was no way that they were able to exert any influence. By the time the city Planning and Zoning Committee held the one actual public hearing on the plan in January 2000, at which city council voted to grant the power of eminent domain to the NLDC, it was too late (Olejarski, 2013, p. 62). Community members felt they had had no real opportunity to contest the substantive issues—the

characterization of the neighborhood, the tactics of the NLDC, and the taking of private residences for private development. The lack of transparency (failure to inform them about the process) and accountability (the use of a public-private organization) struck them as especially unfair and wrong.

What was the impact of *Kelo*? Judicial decisions are one thing; Implementation is another, and in the individual case, implementation is everything, especially where the decision requires interpretation. This task falls on the shoulders of public officials, as well as those working for contracted bodies, such as the NLDC. They are called upon to balance public policy and individual rights, provide advice, steer processes, draw up documents, clarify, negotiate, facilitate, give guidance, supervise, and also account for their actions. The practical implementation of eminent domain is particularly tricky because of the high stakes involved, the reach and capacity of governments, the intertwining of public and private, and the relatively vague guidance of the constitution, statutes, and case law. Hence, the importance of administrative discretion, and the reliance of property owners, development interests, elected officials, and concerned citizens on the professionalism and good faith of administrators.

How *should* administrators exercise their discretion? The short answer is in accordance with professional values. The second chapter of *Administrative Discretion in Action* discusses professionalism in relation to administrative discretion. Public servants should be expert and knowledgeable based on their education and experience; should recognize the weight of their advice and decisions in policy processes and implementation; should not only be objective but also be sensitive, concerned, and merciful; should be fair and exercise good judgment; and should act with integrity and ethics.

How *do* administrators exercise their discretion? Olejarski saw practitioners as “groping their way” through a thicket of conflicting values and interests. The results of her survey and interviews demonstrated the multiple balances professional administrators were called upon to make in the events leading up to the court case and in its aftermath. Among other questions, she asked practitioners their views on taking property for economic development, where they looked for guidance in making decisions, and how the context in which they worked influenced their relative concerns for the community or political fallout. All of these provided useful class discussions, and might be organized into seven separate but related issues, as follows:

- ***Expertise balanced against values, ethics, and morals:*** Expertise and knowledge too easily lead to arrogance, expediency, or self-interested cynicism. By failing to inform the community of the processes of eminent domain, the city and state officials in the *Kelo* case used their knowledge to further the interests of one side.
- ***Proactiveness balanced against prudence and good faith:*** Practitioners are justified in supporting and promoting legitimate policies of their agencies, where they believe these are for the public good. But the end should not justify the means: In *Kelo*, “going through the motions” to a predetermined decision breached the trust of the community, and flawed what should have been a considered and objective decision.
- ***Legal compliance balanced against the ethical components of complex decisions:*** Practitioners try to make decisions within legal boundaries, guided by their values. In the wake of *Kelo*, Olerjarski’s respondents appear as far as

possible to have made efforts to avoid litigation over taking private property. They tried to balance the transaction costs of implementing eminent domain (in policies concerning, for example, housing removal following disasters or “holdouts” who refused to move) with their discretion over interpretation of “just compensation.”

- ***Responsibility to the public interest as a whole balanced against responsiveness to the community:*** *Kelo* set the imperative of business opportunity, more employment, and “gentrification,” against the community of existing residents. It brought to the fore the intertwining of public and private interests, because, in fiscally stressed times, economic development is more than likely to include private elements and public–private partnerships like the NLDC. Olejarski’s respondents mostly agreed that the use of eminent domain was justifiable in the interest of economic development, but very few approved of using it to replace one kind of private property with another.
- ***Administrative independence balanced against political control and accountability:*** Olejarski’s questioning of local government officials found little to support the traditional politics–administration dichotomy. The picture seemed rather one of mutual cooperation, similar to that found by Nalbandian (2005): interdependency between political and appointed officials, overlapping roles, complementarity, and sharing of responsibilities rather than sharp demarcation.
- ***Public service as a calling balanced against administrative concerns:*** However great the ideals of practitioners, and their concern for their clients, the community, or the public interest, they have to work within the realities of bureaucracy, and particularly in accordance with the control and directions of their superiors in the hierarchy. Yet, when Olejarski sought out practitioners’ sources of guidance, her respondents cited colleagues both from their own and other jurisdictions, local community leaders and elected officials, contacts from conferences and other meetings, rather than superiors in the chain of command. They stressed the informal coordination of negotiations, interpersonal relations, and qualities of persuasion reflected in administrative skills.
- ***Economy, efficiency, and effectiveness balanced against responsiveness, responsibility, and representativeness:*** Because of the delegation of the governmental power of eminent domain to an appointed public–private corporation, *Kelo* emphasized the contrast between public and private ways of doing business. The NLDC did not appear responsible or accountable in any way to the residents of Fort Trumbull, but seemed more responsive to the interests of business, specifically the Pfizer Corporation. Were its directors and employees constrained by the values of public service professionalism, or simply motivated by achieving the task at hand? Olejarski’s survey and interviews did not include the NLDC, so we do not really know.

From the perspective of administrative law, *Administrative Discretion in Action* engages public administration students from a number of perspectives. First, it describes and analyzes the evolution of judicial concepts through leading precedents, and the reasoning behind majority and minority opinions of the Supreme Court justices. It is important for students not simply to be able to recite the names and outcomes of court cases but to recognize societal and legal

changes that may have influenced successive decisions, to understand the motives and passions of the real people involved, and to appreciate the issues and the arguments on both sides.

Second, *Administrative Discretion in Action*, was written with the aim of facilitating dialogue, to bring people together. In Olejarski's (2013) words,

As long as people keep talking, things *should* get better. And as I continued conducting interviews, I came to realize *that* was the problem with eminent domain: it has become such a controversial issue that practitioners and community members had stopped talking *to* one another and had begun speaking *past* one another. (p. xvi)

While she was referring primarily to eminent domain, the need for dialogue applies equally to other controversial issues that public administration students encounter.

Finally, context is critical to understand the ways in which courts decide and administrators interpret law and apply it to the facts on the spot. Many students will be familiar with the context of *Kelo*, a local government suffering fiscal stress, and seeing their only salvation in luring outside investment through tax incentives and other inducements. But this scenario may play out quite differently in other places. Since *Kelo*, 43 states have passed laws on their governments' right to "take" private property for economic development, including private construction (Olejarski, 2013, p. 41). In the face of prolonged fiscal stress (Bayonne, New Jersey), disasters (New Orleans, Hurricane Sandy), bankruptcy (Detroit), or recession (Richmond, California), cities have found their own solutions that may or may not require the use of eminent domain. Hence, Olejarski emphasizes the need for more case studies to deepen and broaden understanding of eminent domain and other issues in different contexts.

Postscript: Ironically, only 4 years after the *Kelo* decision, Pfizer decided to desert New London, taking an estimated 1,400 jobs with it. The planned revitalization failed to take place, and in 2009, only weed strewn empty lots marked the site of the former Fort Trumbull modest houses (McGeehan, 2009). (For a fuller review of *Administrative Discretion in Action*, see Caiden, 2014. For more commentary on the case, see Olejarski & Farley, 2015.)

The Relevance of Administrative Law

Further exploration of eminent domain might appeal to a wide audience of public administration students, including those interested in urban planning, economic revitalization, fiscal policy, energy and environmental policy and management, collaborative neighborhood governance, sustainable development, and more. But the scope of administrative law is of course far broader. Almost every day, the media report cases with implications for professionals across the spectrum of public and nonprofit administration. There is space for only a few examples.

Personnel Management

In 2007, backed by the U.S. attorney general, a coalition of black firefighters sued the New York City Fire Department, which had perpetuated racial discrimination by "using an employment screening exam that had virtually nothing to do with the firefighting job and that excluded disproportionate numbers of minority applicants" ("A New Fire Commissioner," *The New York Times*, May 13, 2014, A18). In March 2014, the case was finally settled, costing the city US\$98 million in compensation (Santora & Schwirtz, 2014). In 2014, in *Vergara v. California*, a judge in Los Angeles County Superior Court found that California's

tenure laws and regulations for public school teachers were unconstitutional, as they deprived poor and minority students of effective teachers (Medina, 2014). Two years later, the California Appeals Court reversed the decision, and a few months later, a further appeal failed when the California Supreme Court refused to rehear the case (Blume & Resmovits, 2016; Medina, 2016).

Immigration

Immigration agents may question and detain suspected illegal immigrants but have refrained from doing so in “sensitive” locations such as schools, houses of worship, hospitals, or demonstrations. But they have continued to detain immigrants in the vicinity of courthouses, and advocates argue that the effect is to deter immigrants from exercising their rights to due process or recourse to law. In response, new guidance for field agents conducting enforcement actions at or near courthouses was issued, but at the time of writing the contents do not appear to have been disclosed (Semple, 2014). What should be the balance between access to law for all residents, against efficient and safe enforcement of immigration law? Immigration issues also highlight the role of administrative law judges, because immigration cases are heard by 56 immigration courts run by the Justice Department; in 2016, there was a reported backlog of more than 520,000 cases, with consequent delays in hearings (Preston, 2016).

Affordable Health Care Act Regulation

The Health Resources and Services Administration (HRSA) is the primary federal agency for improving access to care for underserved person and administers the 340B Drug Pricing Program allowing them to purchase outpatient drugs at discounted prices. However, “orphan drugs” were excluded from the program. In October 2013, HRSA issued a Final Rule implementing provisions of the Affordable Care Act that would include orphan drugs within the discounted price program if they were prescribed for other than orphan approved purposes. The Pharmaceutical Research and Manufacturers of America (PhRMA) sued, arguing that HRSA was not authorized to issue rules interpreting the legislatively adopted orphan drug exception. The U.S. District Court judge agreed, invalidating the rule (Sternfield, 2014). In July 2014, the Department of Health and Human Services (HHS) issued guidance substantively identical to the Final Rule as an Interpretive Rule (IR), and PhRMA challenged it as “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” In October 2015, the D.C. District Court struck down the IR, stating it imposed an immediate and significant practical burden on the regulated agencies and was contrary to the plain language of the statute (Elson, Hepworth, & Shankar, 2015).

Carbon Emissions Regulation

On June 2, 2014, the Environmental Protection Agency (EPA) proposed a regulation to cut carbon pollution from the nation’s 600 coal-fired power plants by 30% from 2005 levels by 2030. President Obama, who failed to get Congress to pass a climate change bill in his first term, used executive authority under the 1970 Clean Air Act to issue the sweeping regulation. Implementation would be by State governments, which were given discretion within a range of options to adopt their own policies across their electricity systems (Davenport, 2014). In August 2015, the EPA finalized the Clean Power Plan (CPP) Rule to cut carbon pollution from existing power plants, effective on December 2015. After announcement of the rule, 27 states petitioned the U.S. Court of Appeals for the District of Columbia for an emergency stay, while 18 other states joined in the litigation in support of the CPP. In February 2016, the U.S.

Supreme Court ordered the EPA to halt enforcement until the D.C. Court of Appeals rules in the lawsuit. In September 2016, the D.C. Court heard the case against the CPP (Tsang & Wyatt, 2017).

Road Safety

On June 14, 2014, the Senate Appropriations Committee voted to suspend a new Department of Transportation regulation that required truck drivers to take at least 34 hr off (restart) after working 60 hr in 7 consecutive days or 70 hr in 8 days. The regulation took years to write and had been upheld by the U.S. Court of Appeals for the District of Columbia circuit in 2013. The latest government data showed more than 3,900 fatalities and 104,000 injuries from accidents involving large trucks in 2012 (“Drowsy Drivers, Dangerous Highways,” *The New York Times*, June 14, 2014, A24). The Consolidated and Further Continuing Appropriations Act of 2015, enacted December 16, 2014, suspended the 34-hr restart, pending a report by the Federal Motor Carrier Safety Administration.

Police

In August 2013, a judge of the Federal District Court in Manhattan ruled unconstitutional the long-running New York Police Department tactic of stopping, questioning, and often frisking people on the street. In the first quarter of 2012 alone, police stopped people—mostly Black and Latino men—on more than 200,000 occasions, most of whom were found to have done nothing wrong. The judge determined the stops violated the Fourth Amendment protections against unreasonable searches and seizures and also the Fourteenth Amendment through “indirect racial profiling.” Lengthy appeals followed, as the mayor and police administration strongly resisted the changes mandated by the judge. In January 2014, the new mayor announced the City would settle the suits and would institute far-reaching reforms (Weiser & Goldstein, 2014).

Together with *Kelo*, these examples have much in common. They are highly political and controversial in nature. They may also give a somewhat misleading impression of the everyday experiences of administrative law, as the cases that “hit the headlines” are usually those that could not be resolved in any other way and so have ended up in the courts. They are exceptional and selective in that judicial review only takes place in response to lawsuits, and recourse to law is an expensive and daunting proposition that may take years to resolve, particularly for the disadvantaged (unless bankrolled by wealthy political interests).

Concluding Remarks

Nonetheless, the examples indicate the degree to which administrative law is embedded in public administration over a wide spectrum of government activities. They also reveal a dimension that is especially valuable for the education of public service professionals, what might be called its *indeterminacy*. Administrative law is not a fixed body of knowledge or a collection of unvarying information. It is a subject with indeterminate and constantly changing boundaries. An unstable and fast changing world continually throws up new problems and frictions. The examples are only a small sample of the issues arising from contemporary rapid developments in computers, banking, security, telecommunications, food safety, medicine, global warming, energy, structural economic changes, shifting industries and populations, public– private partnerships and government contracting, and education. The cases cited here are witness to how laws, regulations, administrative decisions, and judicial rulings wrestle to resolve disputes over new concerns, new attitudes,

and new standards.

Indeterminacy of boundaries is matched by indeterminacy of outcomes. Judicial review of administrative actions is intermittent, expensive, and unreliable, because it requires cases to be brought by plaintiffs. The interpretations of the justices are usually difficult to forecast, and precedents are not always a good guide for case-by-case reasoning for new situations. Moreover, the background of judges does not necessarily equip them to adjudicate cases where determination rests on scientific and technical issues. Thus, the courts for many years deferred to the expertise of administrative agencies, looking only to ensure that they were acting constitutionally, within their lawful jurisdictions, and according to some standard of reasonableness. More recently, the courts have been more willing to intervene in the substance of official policies and actions.

Finally, the examples reflect the realities of the contemporary administrative state that give public officials wide and variable discretion in making and implementing public policies. Every case—from a traffic stop to a building inspection—involves its own application of law and estimation of facts. Public employees are often in positions of responsibility that require them to act according to their discretion and initiative. Large and complex organizations pose problems of control for those nominally in charge. Public servants dealing with dependent or vulnerable populations may see themselves as having a free hand. Policies of delegating and contracting out powers of administrative discretion to private and nonprofit entities have posed even greater difficulties in maintaining accountability (see Rosenbloom, 2013).

This indeterminacy of administrative law pervades public administration in practice. The very *raison d'être* of graduate degrees in public administration is that the professional preparation of today's and tomorrow's public servants requires the nurturing of qualities to face, in the words of Richard Green, Lawrence Keller, and Gary Wamsley, a "host of perplexing challenges." These qualities, they contend, include "at the very least, an ability to persuasively apply ambiguous but enduring values to the contingent world of public affairs" (Green, Keller, & Wamsley, 1993, p. 517). Similarly, a veteran international public servant Demetrios Argyriades (2005) has cited the importance of "tolerance for ambiguity . . . and independent judgment coupled with accountability" among the qualities he lists as essential for professional public administrators (p. 93).

The study of administrative law, with its indeterminate boundaries, outcomes, and applications of discretion, is especially appropriate for developing such qualities. Case after case illustrates conflicts over values and ethical dilemmas, to which there are no easy textbook applications or predetermined solutions. The exploration of cases, through discussions, assignments, and presentations, offers students knowledge and understanding of the interface of law and public administration. Just as important, it encourages development of their capabilities to cooperate, argue, persuade, debate, absorb information, forecast consequences, weigh values, listen, and exercise independent judgment. Administrative law, far from being a narrow subject for specialists only, is highly relevant to the education of those preparing to engage in "running a constitutional democratic republic" (Goodsell in Olejarski, 2013, p. xiii).

References

- Argyriades, D. (2005). The human factor . . . globally. In G. Fraser-Moleketi (Ed.), *The world we could win: Administering global governance* (pp. 87-102). Amsterdam, The Netherlands: IOS Press.
- Barry, D., & Whitcomb, H. (2005). *The legal foundations of public administration* (3rd ed.). Lanham, MD: Rowman & Littlefield
- Blume, H., & Resmovits, J. (2016, August 22). In a major win for teachers' unions, California Supreme Court lets teacher tenure ruling stand. *Los Angeles Times*, <https://www.latimes.com/local/education/la-me-edu-ca-supreme-/court-lets-teacher-tenure-survive-20160819-snap-story-html> (accessed 15 March 2017).
- Caiden, N. (2006). Book review: To build a nation. Alexander Hamilton by R. Chernow (2004) New York: Penguin. *Public Administration Review*, 66, 291-294.
- Caiden, N. (2014). Book review: Administrative discretion in action: A narrative of eminent domain, by Olejarski, A. M. *American Review of Public Administration*, 44, 373-375.
- California Office of Administrative Hearings. (n.d.), www.dgs.ca.gov/oah/About.aspx
- California Office of Administrative Law. (n.d.). Available from www.oal.ca.gov
- Cann, S. (2006). *Administrative law* (4th ed.). Thousand Oaks, CA: Sage Publications.
- Davenport, C. (2014, June 1). Obama to take action to slash coal pollution. *The New York Times*, p. A1.
- Drowsy drivers, dangerous highways. (2014, June 14). *The New York Times*, p. A24.
- Elson, E., Hepworth, A., & Shankar, A. (2015). *Court strikes down 340B orphan drug rule again: Will this impact the "mega guidance"?* *Health Care Today*, <https://www.healthcarelawtoday.com/2015/10/19/court-strikesdown-340b-orphan-drug-rule-again-will-this-impact-the-mega-guidelines>
- Goodsell, C. (2013). Foreword. In A. Olejarski (Ed.), *Administrative discretion in action: A narrative of eminent domain* (pp. xi-xiii). Lanham, MD: Lexington Books.
- Green, R., Keller, L., & Wamsley, G. (1993). Reconstituting a profession for American public administration. *Public Administration Review*, 53, 516-524.
- Hall, D. (2014). *Administrative law: Bureaucracy in a democracy* (6th ed.). Englewood Cliffs, NJ: Prentice Hall.
- Kaufman, H. (2001). Major players: Bureaucracies in American government. *Public Administration Review*, 61, 18-24.
- Lee, Y. (in collaboration with Rosenbloom, D). (2005). *A reasonable public servant: Constitutional Foundations of Administrative Conduct in the United States*. Armonk NY: M.E. Sharpe.
- McGeehan, P. (2009, November 13). Pfizer to leave city that won land-use case. *The New York Times*, p. A1.
- Medina, J. (2014, June 12). Teacher tenure ruling is expected to move debate from legislatures to the courts. *The New York Times*, p. A15.
- Medina, J. (2016, April 14). California Appeals Court reverses decision to overturn teacher tenure rules. *The New York Times*, p. A13
- Nalbandian, J. (2005). Professionals and the conflicting forces of administrative modernization and civic engagement. *American Review of Public Administration*, 35, 311-326.
- A new fire commissioner. (2014, May 13). *The New York Times*, p. A18.
- Olejarski, A. (2013). *Administrative discretion in action: A narrative of eminent domain*. Lanham, MD: Lexington Books.

- Olejarski, A., & Farley, K. (2015). The little blue pill that killed the little pink house: A narrative of eminent domain. *Administration & Society*, 47, 369-392.
- Preston, J. (2016, December 1). Deluged immigration courts, where cases stall for years, begin to buckle. *The New York Times*, <https://www.nytimes.com/2016/12/01/us/deluged-immigration-courts-where-cases-stall-for-years-begin-to-buckle.html>, (accessed 3 March 2017).
- Rohr, J. (1986). *To run a constitution: The legitimacy of the administrative state*. Lawrence: University Press of Kansas.
- Rosenbloom, D. (1983). Public administrative theory and the separation of powers. *Public Administration Review*, 43, 219-227.
- Rosenbloom, D. (1994). Public administrative professionalism and public service law. *State and Local Government Review*, 16, 52-57.
- Rosenbloom, D. (2013). Reflections on “public administrative theory and the separation of powers.” *American Review of Public Administration*, 43, 381-396.
- Rosenbloom, D. (2014). *Administrative law for public managers* (2nd ed.). Boulder, CO: Westview Press.
- Rosenbloom, D., Carroll, J., & Carroll, J. (2000). *Constitutional competence for public managers: Cases and commentary* (2nd ed.). Independence, KY: Cengage Learning.
- Rosenbloom, D., Kravchuck, R., & Clerkin, R. (2014). *Public administration: Understanding management, politics, and law in the public sector* (8th ed.). New York, NY: McGraw-Hill.
- Rosenbloom, D., O’Leary, R., & Chanin, J. (2010). *Public administration and law: A practical handbook for public administrators* (3rd ed.). Boca Raton, FL: Taylor and Francis Group, CRC Press.
- Santora, M., & Schwirtz, M. (2014, March 19). New York City settles lawsuit accusing Fire Dept. of Racial Bias. *The New York Times*, p. A17.
- Semple, K. (2014, May 26). Push to keep immigration authorities out of courts. *The New York Times*, p. A14.
- Sternfield, E. (2014). *Court invalidates 340B orphan drug law*. *Health Law & Policy Matters*, <https://www.healthlawpolicymatters.com/2014/05/28/court-invalidates-340b-orphan-drug-rule>.
- Tsang, L., & Wyatt, A. (2017). Clean Power Plan: Legal Background and Pending Litigation in *West Virginia v. EPA*. CRS Report No. R44480, Washington, DC: Congressional Research Service. January 7.
- Weiser, B., & Goldstein, J. (2014), Mayor says New York City will settle suits on stop-and-frisk tactics. *The New York Times*, <https://www.nytimes.com/2014/01/31/nyregion/de-blasio-stop-and-frisk.html>