Introduction to Administrative Law and Practice

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Statutory Interpretation and Regulatory Practice
March 30, 2020
Comments and Feedback – A Judicial Perspective on Statutory Interpretation
Quick look back

• Last class – Llewellyn’s challenge – the canon conundrum and “picking your friends in a crowded room”

• *Coherence Canons*
  – Presumption on Use of Common Law Terms
  – Reenactment Canon
  – Borrowed Statute Canon
  – Presumption against Implied Repeals
  – Presumption against Rejected Proposals

• *Bob Jones University v. U.S.* (1983)
  – Meaning of “charitable”
  – Notions of Elemental Justice
  – Legislative Acquiescence
Welcome to Administrative Law

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Administrative Law Building Blocks

• Legally, it’s where the action is at

• Administrative Procedure Act – “The Magna Carta of Administrative Law”

• Sets out requirements for both rules and orders

• Also specifies how courts review administrative actions
  – Section 706 – “arbitrary and capricious” (much more details later)
  – Beware: “mini-APAs” hidden in substantive statutes

• NOTE – we’ll cover ultra vires and agency appointment later
Agency Rulemaking Processes

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<td>Vast majority of agency rulemaking activity</td>
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<td>Close of Period, and Agency Internal Review</td>
<td>Revised Proposed Rule</td>
<td>Executive Review of draft Final Rule (OIRA and OMB)</td>
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Additional Procedural Steps for Agency Rulemaking

- Regulatory Flexibility Act of 1980
- Unfunded Mandates Reform Act of 1995
- Paperwork Act
- Congressional Review Act of 1995
  - 60 days to report new rule to Congress
  - Congress can pass resolution to disapprove
  - NO FILIBUSTER
  - Resolution subject to veto
Executive Oversight of Rulemaking Process

- Fundamental question – is it appropriate for President to intervene? How much is too much?

- Executive Order 12,866 (1993)
  - Planning + Review
  - Include independent agencies now
  - No rulemaking can commence w/o regulatory political officer assent
  - Disputes resolved by Vice-President and/or President

- Touchstone – “significantly regulatory action” allowed “only upon a reasoned determination that the benefits of the intended regulation justify its costs”
OIRA

- **Office of Information and Regulatory Affairs**, within Office of Management and Budget

- Tools:
  - Cost-benefit assessments
  - Return letters
  - Prompt letters
  - Review letters

- The endless do-loop
The Zoonotic Disease Prevention Initiative
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