**國立清華大學課程大綱**

 **<11002版>**

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| 科號 |  | 組別 |  | 學分 |   | 人數限制 | 無 |
| 上課時間 | 每週四下午13:20-15:10 | 教室 |  |
| 科目中文名稱 | 美國行政法專題研究：行政國家的憲法基礎與司法謙讓 |
| 科目英文名稱 | Seminar on the U.S. Administrative Law: Constitutional Foundation of Administrative State and Judicial Deference |
| 任課教師 | 黃丞儀 |
| 擋修科目 |  | 擋修分數 |  |

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| 請勾選 | 此科目對應之系所課程規畫所欲培養之核心能力Core capability to be cultivated by this course  | 權重（百分比）Percentage |
|  | 分析問題與提供對策Analyzing issues and offering solutions | 15%  |
|  | 法學外文Legal studies in foreign language | 35%  |
|  | 法學寫作Legal writing | %  |
|  | 保障人權與社會正義Human rights protection and social justice | 5%  |
|  | 科際整合Interdisciplinary studies | 25 %  |
|  | 國際視野 Global perspectives | 20 %  |
|  | 蒐集資料與批判思考Collecting materials and critical thinking | 0% |

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| 一、課程說明 | 制定於十八世紀的美國憲法中並未針對行政機關（agency）的憲法地位和權力控制有所規定。然而邁入二十世紀開始，隨著行政事務日趨龐雜，行政國家（或管制國家）（administrative state or regulatory state）已經是無可避免。然而，行政機關行使龐大的管制權力（其實也是政治權力），其合憲性基礎從何而來？即成為小羅斯福總統新政（New Deal）以來，聯邦最高法院和美國公法學界的重大課題。支持行政國家的論者往往溯源至新政後的聯邦最高法院判決，亦有認為1946年公布施行的〈行政程序法〉（Administrative Procedure Act）可作為行政國家權力運作的規範基礎（如William N. Eskridge, Jr.即認為〈行政程序法〉是小寫的「憲法」（small-c Constitution））。這股趨勢雖著1970年代的「權利革命」（環境權、民權、性別平權等），更是甚囂塵上。到了1980年代，一方面雷根政府透過白宮行政革新，賦予預算管理局（Office of Management and Budget）對行政機關有更強大的控制力，形成日後「行政權一元論」（unitary executive theory）的濫觴，二方面聯邦最高法院在1984年作成*Chevron v. Natural Resources Defense Council*判決，高舉司法謙讓（judicial deference）原則，讓行政機關的法律解釋取得優勢，各項管制措施的司法審查密度降低。Chevron謙讓原則在聯邦最高法院歷經三十年不墜，直到邁入2010年代開始，陸續有不少法律學者開始批判行政國家的權力擴張掏空了美國憲法的權力分立體制，進而認為行政國家違憲。聯邦最高法院也開始在各種案件中援引「重要問題」原則（Major Questions Doctrine），迴避適用Chevron謙讓原則。因此，針對行政國家是否合乎美國憲法體制，以Chevron為基礎的行政法是否違憲，引發重大論戰。本專題研究將以此一行政法上的重大論戰為核心，從判決、教科書和重要學術論文出發，連續三年分別探討「Chevron謙讓原則」、「行政權一元論」和「正當行政程序與內部行政法」。本年度將先以禁止授權原則和Chevron謙讓原則為主軸，透過蘇格拉底教學法，引導學生認識和瞭解聯邦最高法院的重要判決，並輔以主要教科書和相關論文，彼此參照，深入美國行政法的理論發展與實務趨勢。 |
| 二、指定用書 | [簡稱**Breyer**] Stephen G. Breyer, Richard B. Stewart, Cass R. Sunstein, Adrian Vermeule, Michael E. Herz, Administrative Law and Regulatory Policy, 8th Edition, Wolters Kluwer. [簡稱**Strauss**] Peter L. Strauss, Todd D. Rakoff, Gillian E. Metzger, David J. Barron, Anne Joseph O’Connell, Gellhorn and Byse’s Administrative law: Cases and Comments, 12th Edition, Foundation Press. [簡稱**Mashaw**] Jerry L. Mashaw, Richard A. Merrill, Peter M. Shane, M. Elizabeth Magill, Mariano-Florentino Cuellar, and Nicholas R. Parrillo, Administrative Law: The American Public Law System – Cases and Materials, 8th Edition, West. [簡稱**Beermann**] Ronald A. Cass, Colin S. Diver, Jack M. Beermann, and Jody Freeman, Administrative Law: Cases and Materials, 8th Edition, Wolters Kluwer. [簡稱**Rubin**] Lisa Schultz Bressman, Edward Rubin, and Kevin Stack, The Regulatory State, 3rd Edition, Wolters Kluwer. * 其他指定書籍及期刊論文，如「教學進度」所列。
* 「閱讀範圍」所列為必讀、必抽問的內容，「延伸閱讀」則會指定相關範圍，不需全部閱讀。如未指定，則為輔助參考。
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| 三、參考書籍 | 如教學進度所列。 |
| 四、教學方式 | 1.每次上課前請先將指定「閱讀範圍」的內容閱讀完畢，上課時授課教師將就當週進度，以案例問答的方式抽問。可以不回答，但必須附理由。請注意，授課教師不會強迫回答問題，但上課有無收穫，完全取決於事前是否充分準備。2.本課程進行至第十二週時，將以二到三位修課同學為一組，每組挑選「閱讀範圍」內的一項讀本，在上課前提出1,000-2,000字左右的「回應文」（responding note），進行分析、評論與提問。3.本課程進行至第十週前後，授課教師將與修課同學討論，分別以三項主題，將全班分為三組，合作撰寫5,000-10,000字以內的研究報告，分別於課堂進行簡要報告，於期末繳交完整報告。分組報告必須註明組員分工程度與各自擔當內容。5. 本課程評分範圍為上課參與、回應文，和研究報告三項，各佔50%、35%、15%，沒有期末考，不需個別繳交報告。 |
| 五、教學進度 | 本學期課程進度如下：1-18週**第一週 禁止授權原則（I）：行政機關與國會的關係***A.L.A. Schechter Poultry Corp. v. United States* (1935)*Amalgamated Meat Cutters v. Connally* (1971)* 閱讀範圍：

Breyer, pp. 52-57; 75-77Mashaw, pp. 41-56**第二週 禁止授權原則（II）：當代復興的伏筆***Industrial Union Department, AFL-CIO v. American Petroleum Institute (The Benzene Case)* (1980)*Whitman v. American Trucking Association, Inc.* (2001) and the D.C. Circuit Court’s judgment* 閱讀範圍：

Breyer, pp. 57-66, 79-84Strauss, pp. 791-807. **第三週 禁止授權原則（III）：理論問題與比較視野*** 閱讀範圍：

Strauss, pp.808-824; 777-789Mashaw, pp. 73-86* 延伸閱讀：

Peter L. Strauss, “Separation of Powers in Comparative Perspective: How Much Protection for the Rule of Law?”, in The Oxford Handbook of Comparative Administrative Law (2021), pp. 397-419. **第四週 司法審查的框架***National Labor Relations Board v. Hearst Publication* (1944)*Skidmore v. Swift & Co.* (1944)*Citizens to Preserve Overton Park v. Volpe* (1971)* 閱讀範圍：

Strauss, pp. 1118-1129Beermann, pp. 119-130**第五週 司法審查的範圍***Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.* (1983)*Federal Communications Commission v. Fox Television Stations, Inc.* (2009)* 閱讀範圍：

Strauss, pp. 1069-1100Mashaw, pp. 904-915**第六週 司法對於行政機關法律解釋的退讓：Chevron原則***Chevron U.S.A., Inc. v. Natural Resources Defense Council* (1984)* 閱讀範圍：

Breyer, pp. 251-260Strauss, pp. 1136-1150 **第七週 Chevron Step Zero***United States v. Mead Corporation* (2001)*King v. Burwell* (2015)*City of Arlington, Texas v. FCC* (2013)*Gonzales v. Oregon (2006)** 閱讀範圍：

Breyer, pp. 262-281Mashaw, pp. 941-950Strauss, pp. 1242-1244* 延伸閱讀：

Blake Emerson, *Administrative Answers to Major Questions: On the Democratic Legitimacy of Agency Statutory Interpretation*, 102 Minn. L. Rev. 2019, 2019-2041 (2018).**第八週 Chevron Step One***MCI Telecommunications Corp. v. American Telephone & Telegraph Co.* (1994)*Babbitt v. Sweet Home Chapter of Communities for a Great Oregon* (1995)*FDA v. Brown & Williamson Tobacco Corporation* (2000)*Mass. v. EPA* (2007) * 閱讀範圍：

Breyer, pp. 281-314**第九週Chevron Step Two***Entergy Corp. v. Riverkeeper, Inc.* (2009)*Michigan v. EPA* (2015)*National Cable and Telecommunication Association v. Brand Z Internet Services* (2005)*Utility Air Regulatory Group v. EPA* (2014)* 閱讀範圍：

Breyer, pp. 319-337Beermann, pp. 200-210**第十週 行政機關解釋行政命令***Auer v. Robbins* (1997)*Kisor v. Wilkie* (2019) *Decker v. Northwest Environmental Defense Center* (2013)* 閱讀範圍：

Rubin, pp. 825-829; 836-841Beermann, pp. 229-242; 242-244Breyer, pp. 341-346Strauss, pp. 1245-1253Mashaw, pp. 956-961**第十一週 Chevron的影響與未來***West Virginia v. EPA (2022)** 閱讀範圍：

597 U.S. \_\_\_, 1-31 (2022)Strauss, pp. 1150-1161; 1166-1171Breyer, pp. 337-341Beermann, pp. 242-244Rubin, pp. 841-845, 820-823; 872-874**第十二週 對Chevron的不滿和批評*** 閱讀範圍：
1. Richard A. Epstein, *Part 3: Chevron Synthesis*, The Dubious Morality of Modern Administrative Law, Rowman & Littlefield, pp. 85-127, (2020).
2. Randy E. Barnett, *Chapter 8: A Government of Men and Not of Laws: The rise of the executive-administrative state*, Our Republican Constitution, pp. 203-221, 280-281, Broadside (2016).
3. Antonin Scalia, *On Chevron Deference in 1989* & *On Chevron Deference Twenty Years Later*, in Jeffrey S. Sutton & Edward Helan eds., The Essential Scalia, pp. 281-298, 314, Crown Forum (2020).

**第十三週 對行政國家合憲基礎的質疑*** 閱讀範圍：
1. Philip Hamburger, *Chapter 15 Deference*; *Chapter 16 Return to Deference*, Is Administrative Law Unlawful? pp.283-321, 578-580, The University of Chicago Press (2014).
2. Philip Hamburger, *Chapter 20 Subdelegated*, Is Administrative Law Unlawful? pp. 377-402, 594-602, The University of Chicago Press (2014).
* 延伸閱讀：

Gary Lawson, *The Return of the King: The unsavory origins of administrative law*, 93 Tex. L. Rev. 1521, 1521-1545 (2015). **第十四週 回應上一週的質疑與批評（I）**1. Adrian Vermeule, *Chapter 1 The Legality of Administrative Law*, Law’s Abnegation, Harvard University Press, pp. 23-55, 223-226 (2016).
2. Adrian Vermeule, *Chapter 2 Separation of Powers without Idolatry*, Law’s Abnegation, Harvard University Press, pp. 56-86, 226-228 (2016).
* 延伸閱讀：

Craig, Paul P., *The Legitimacy of US Administrative Law and the Foundations of English Administrative Law: Setting the Historical Record Straight* (June 30, 2016). Oxford Legal Studies Research Paper No. 44/2016, pp. 1-60, Available at SSRN: [https://ssrn.com/abstract=2802784](https://ssrn.com/abstract%3D2802784) or [http://dx.doi.org/10.2139/ssrn.2802784](https://dx.doi.org/10.2139/ssrn.2802784)**第十五週 回應對於行政國家的質疑與批評（II）**1. Cass R. Sunstein & Adrian Vermeule, *Introduction* & *Chapter 1 The New Coke*, Law & Leviathan: Redeeming the Administrative State, Belknap Press, pp. 1-37 (2020).
2. Cass R. Sunstein & Adrian Vermeule, *Chapter 2-3 Law’s Morality 1, 2*, Law & Leviathan: Redeeming the Administrative State, Belknap Press, pp. 38-87, (2020).
3. Cass R. Sunstein & Adrian Vermeule, *Chapter 4 Law’s Morality 3, Chapter 5 Surrogate Safeguards in Action*, Law & Leviathan: Redeeming the Administrative State, Belknap Press, pp. 88-141 (2020).
4. 本書註解，pp. 147-170

**第十六週 Chevron司法退讓與行政國家**1. Thomas W. Merrill, *Introduction, Chapter 1*, The Chevron Doctrine: Its Rise and Fall, and the Future of the Administrative State, Harvard University Press, pp. 1-32.
2. Thomas W. Merrill, *Chapter 6, 7,* The Chevron Doctrine: Its Rise and Fall, and the Future of the Administrative State, Harvard University Press, pp. 121-165
3. Thomas W. Merrill, *Chapter 12, 13, Concluding Thoughts,* The Chevron Doctrine: Its Rise and Fall, and the Future of the Administrative State, Harvard University Press, pp. 243-281.
4. 本書註解，pp. 283-293, 311-318, 333-339.

**第十七週 行政國家與公共政策的發展**Karen Orren and Stephen Skowronek, *Chapter 4 Structure in the Policy State,* The Policy State: An American predicament, Harvard University Press, pp. 88-150, 214-232 (2017).**第十八週 行政國家的崛起與民主體制**William J. Novak, *Chapter 6 Democratic Administration: Public Service and Social Provision*, New Democracy: The creation of modern American State, Harvard University Press, pp. 218-258, 337-349 (2022).  |
| 六、成績考核 | 以上課參與程度（50%）、「回應文」的內容（35%）和主題研究報告（15%）為主，進行評分。「回應文」缺交二次（含以上），該項為零分。主題研究報告會依照各組報告內容及分工情形給分。 |
| 七、講義位址 http:// |  |