The Required Law & Public Policy Course in the College of William & Mary's Master of Public Policy Program: 25 Years of Lessons

James S. Heller
William & Mary Law School, heller@wm.edu
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James Heller*

I. INTRODUCTION

In recent years, several commentators have called for an increased emphasis on law in public affairs education. Citing the American Society for Public Administration (ASPA) Code of Ethics, Sheila Suess Kennedy, professor of law and public policy in the School of Public and Environmental Affairs at Indiana University-Purdue University Indianapolis, and Deanna Malatesta, associate professor in the School of Public and Environmental Affairs at Indiana University, Bloomington wrote that public affairs instructors are “obliged to teach with a ‘healthy respect for the Constitution and law.’”237 But these commentators disagree on precisely what law should be taught, and how.

In volume 17 of the Journal of Public Affairs Education, Stephanie Newbold (now associate professor and director of the JD/MPA Program in the School of Public Affairs and Administration at Rutgers, Newark) and Charles Szypszak (professor of public law and government at the University of North Carolina, Chapel Hill), wrote about the importance of and need for a law course in master of public administration and master of public policy programs. Each offered different reasons for recommending such a course: Szypszak pointed to the practical benefits of giving students a grounding in the substantive law touching upon their careers,238 while Newbold put forth more of a “good shepherd” reason for giving policy students a brief, but solid, introduction to the constitutional limits placed upon administrative power.239

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* Professor of Law, Marshall-Wythe Law School; Director, Wolf Law Library; M.L.S., University of California-Berkeley; J.D., University of San Diego; B.A., University of Michigan Ann Arbor
Like other universities, the College of William & Mary’s Master in Public Policy is a 2-year program that also offers several MPP joint degree programs; ours are with the Law School, Business School, School of Education, and the Virginia Institute of Marine Science. What makes William & Mary atypical is that every MPP student—even those not seeking a joint MPP/JD degree—must take at least one course in the law school during his or her second year. First year students also take a required Law & Public Policy (LPP) course, which is within the Public Policy—not the Law School—curriculum. I teach this course with my colleague Chris Byrne.

Over the life of William and Mary’s LPP course, different instructors have adopted curricula that roughly adhere to both the Szypszak and Newbold approaches. The current iteration of Law & Public Policy is closer to Newbold’s. It emphasizes an understanding of constitutional law more than it does other disciplines, but it departs from a strictly constitutional approach by also underscoring the extent to which policy considerations and actors seek to influence the law. We believe that a more thorough examination of our approach will add to the ongoing discussion about the best way to teach law in public policy programs.

II. LITERATURE REVIEW

This paper is not the first to advocate for a greater emphasis on teaching law in public affairs programs. Multiple authors have called for a renewed focus on the legal framework which defines the space in which public administrators operate. These advocates generally rely on one of two justifications for changing the public affairs curriculum in this way. Some argue that public affairs programs have a duty to impress upon their students an innate respect for constitutionalism and the rule of law. Others claim that a rudimentary knowledge of a few select fields of law—the precise fields differ between authors—is a necessary part of any effective public administrator’s working knowledge.

Scholars have been calling for an enhanced focus on law in public affairs curricula for decades. The late John Rohr, professor emeritus at Virginia Tech, argued that public law served as the foundation of a bureaucrat’s ethical obligations.\(^{240}\) Rohr based this argument on three premises: that a bureaucrat’s ethical norms should be derived from the “salient values” of the regime she serves, that these values are normative for her because she swore to uphold the regime, and that regime values are reflected in the regime’s public law.\(^ {241}\) Rohr defined these “regime values” as

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\(^ {241}\) Rohr, *Ethics for Bureaucrats*. 
values “brought into being by the ratification of the Constitution . . .” 242 Rohr went on to argue that ethical education for bureaucrats should focus on such regime values,243 and promoted the teaching of Supreme Court decisions as tools “particularly suitable for ethical reflection on the values of the American people.”244

Rohr expanded upon this line of thought in To Run a Constitution,245 which he wrote with an eye toward “introducing both practitioners and students of Public Administration to the Constitutional origins of [the] profession.”246 Rohr lamented that “Constitutional law and history are sadly neglected in academic programs in Public Administration and in public management training as well”, 247 and offered the work as an opportunity for public servants to “reflect seriously on how the object of their oath [ie., the Constitution] grounds the agencies they manage.” 248

David Rosenbloom,249 Distinguished Professor of Public Administration at American University, argues that public administration can be interpreted distinctly through managerial, political, and legal understandings, and that each of these understandings corresponds with one of the branches of government.250 However, he contends that the legal understanding has largely been “eclipsed” by the political and managerial approaches.251

Similarly, the late R.C. Moe of the Congressional Research Service and R.S. Gilmour, formerly of the University of Connecticut,252 argued that “public administration has largely abandoned or forgotten its roots in public law” and replaced them with an emphasis on management principles.253 Moe and Gilmour argued that this is inappropriate, as management

242 Ibid.
243 Ibid., 62-63.
244 Ibid., 68.
246 Ibid., ix.
247 Ibid.
248 Ibid.
250 Ibid.
251 Ibid.
253 Moe and Gilmour, 135.
techniques should supplement, rather than supplant, “the traditional, constitutional way of doing
the nation’s business.”

L.E. Lynn, Jr., professor emeritus at the University of Chicago, also argues that the study of law is given inadequate attention in public administration education.\textsuperscript{255} Lynn observes that “a broad consensus in public administration appears to hold that law is one of many environmental constraints on administrative discretion rather than its source . . . .”\textsuperscript{256} To remedy this misconception, Lynn argues that “public administration’s teachers and practitioners must ‘bring the law in’ by exercising the practice of ‘thinking institutionally’ about the rule of law.”\textsuperscript{257} Lynn calls for changes at the academic level, suggesting that “the rule of law might well be treated as a foundational concept in every introductory course, in every course on administrative ethics, and in every course on management, planning, and policy making.”\textsuperscript{258}

Newbold (2011), argues that MPP/MPA programs are derelict not to have "required curricula that emphasize the legal and constitutional basis of public administration theory and practice."\textsuperscript{259} She suggests that the National Association of Schools of Public Affairs and Administration (NASPAA) adopt or recommend within its accreditation standards a core or courses where students learn "how the Constitution and its democratic institutions work to preserve and maintain the republican and democratic values embedded within the founding documents of the American state."\textsuperscript{260}

Newbold maintains that students need to know how the "core governing principles of American republicanism [e.g., federalism and the separation of powers] pervade administrative management at all levels of government."\textsuperscript{261} Over and over, Newbold refers to civil servants’ responsibility to "the Constitution and the rule of law",\textsuperscript{262} going so far as to cite James Madison in

\textsuperscript{254} Moe and Gilmour, 136.
\textsuperscript{256} Lynn, 803.
\textsuperscript{257} Lynn, 810.
\textsuperscript{258} Lynn.
\textsuperscript{260} Newbold, 468.
\textsuperscript{261} Newbold, 469.
\textsuperscript{262} Newbold, 471–473.
She repeatedly uses words like “responsibility” and "liberty" to support her thesis that "how public administrators fit within the continual and constant power struggles between the three constitutionally created branches of government is vital to the maintenance, preservation, vitality and legitimacy of the American administrative state." In a previous work, Newbold suggested that American constitutional law could be used as a lens through which to acquaint public policy students with organizational theory. Others have also emphasized the teaching of Constitutional principles in law and public policy courses. While arguing for a revised approach to teaching administrative ethics, Sheila Suess Kennedy of Purdue University and Deanna Malatesta of Indiana University - Bloomington work off of the premise that administrative ethics are built upon an understanding of and respect for the Constitution. Suess Kennedy and Malatesta maintain that shortcomings in teaching constitutionalism at the secondary and undergraduate levels require public administration programs to provide a “remedial” education in the “ethical, philosophical, and Constitutional premises of American government”, and offer the required 3-credit “Law and Public Policy” course taught at Indiana University-Purdue University Indianapolis as a model.

Richard Harris, a professor of political science at Rutgers who teaches graduate level law and public policy courses, argues for a greater emphasis on history and historiography in public affairs education. Like Newbold, Harris asserts that an understanding of the history of the American administrative state’s growth and development helps to “inculcate[e] an appreciation of the foundations on which our governing institutions rest.”

Diane Hartmus, associate professor of political science at Oakland University, maintains that students must be able to address the “tension” between “the administrative values of efficiency, effectiveness, and economy” on the one hand and “constitutional law protecting individual rights and therefore imposing responsibility on administrators” on the other. She also

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263 Newbold, 473.
264 Newbold, 474.
265 Newbold, “Teaching Organization Theory from a Constitutional Perspective”.
266 Kennedy and Malatesta, “Safeguarding the Public Trust”, 165-166.
267 Kennedy and Malatesta, 176-177
268 Ibid., 165.
270 Harris, 35.
techniques should supplement, rather than supplant, “the traditional, constitutional way of doing the nation’s business.”

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Federalist 51. She repeatedly uses words like "responsibility" and "liberty" to support her thesis that "how public administrators fit within the continual and constant power struggles between the three constitutionally created branches of government is vital to the maintenance, preservation, vitality and legitimacy of the American administrative state." In a previous work, Newbold suggested that American constitutional law could be used as a lens through which to acquaint public policy students with organizational theory.

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266 Kennedy and Malatesta, "Safeguarding the Public Trust", 165-166.
267 Kennedy and Malatesta, 176-177
268 Ibid., 165.
270 Harris, 35.
observes that public affairs programs as a whole put much more emphasis on administrative law in their curricula than they do on constitutional law; of the 100 MPA programs she surveyed, Hartmus found that 45 programs offered coursework in administrative law, but only 5 offered coursework in constitutional law. She asserts that “giving students a greater understanding of the reasoning behind legal precepts” can “make them more capable of administering policy in a way that may be both efficient and constitutionally sound.”

In contrast to authors who rely on constitutional justifications for a deeper focus on public law, some scholars advocate that public affairs students focus on specific areas of the law that will be relevant to their work. Writing about the “inextricable interrelationship between public affairs and the law,” Szypszak argues for a “law-based course that synthesizes law’s role in political theory, decision making, and personal responsibility, to better prepare graduates for dealing with several realities: avoiding unnecessary legal entanglements, more effectively analyzing public policy, making better decisions, and promoting liberty and justice.” He notes the paucity of law-related courses in U.S. News’ 25 highest ranked MPP or MPA programs: four include such a course in their core requirements, nine offer electives in constitutional or administrative law, and eight offer specialized courses, such as environmental or labor law.

Szypszak laments that “most graduates will have limited, piecemeal knowledge about aspects of the law that public administrators encounter in practice.” The jobs MPA and MPP graduates move into, Szypszak contends, require “basic knowledge about the laws governing public meetings, eminent domain, public contracts, employment law, civil litigation, torts and sovereign immunity, and criminal procedure,” and that graduates “should at least be familiar with the basics of the legal subjects that they are most likely to encounter in practice.” Szypszak also writes that students should know how to do basic legal research to find useful information and appreciate how complex law can be.

What Szypszak recommends—and what he teaches at UNC—is a 3-credit “Law for Public Administration” survey course, one of nine core courses in the UNC School of Public

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272 Hartmus, 355.
273 Ibid., 356.
274 Szypszak, “Teaching Law in Public Affairs Education”, 484.
275 Szypszak, 485.
276 Szypszak, 486.
277 Szypszak, 488.
278 Szypszak, 490.
Administration's curriculum, that covers "the nature of a rule of law, substantive law commonly encountered by public officials, and the practicalities of making decisions involving the law, lawyers, and legal process." He covers sources of law, legal research, constitutional principles (judicial review, due process, equal protection, and civil rights), a variety of substantive topics (contracts, employment, torts, criminal law and procedure, public ethics, and civil litigation/alternative dispute resolution), and how public administrators work with lawyers. Szypszak notes that students read "a couple of important cases for most of the topics," and that "coverage of a range of law topics in a single semester is necessarily broad and not deep."

Like Szypszak, Robert Roberts, professor of political science at James Madison University, endorses teaching a law and public affairs course with a broad curriculum. The key objective Roberts advocates is "shifting the focus of courses on the legal environment of public administration to public sector risk management." He recommends a course that supplements the "traditional" topics covered in administrative law with coverage of five principles related to risk management: (1) the constitutional foundations of public administration, (2) tort and statutory risk management, (3) public integrity management, (4) legal issues in privatization, and (5) public employment law. In arguing for this shift in focus, Roberts points out that recent decades have seen decreased regulation at the federal and state level but increased litigation against administrative agencies and their employees.

Even scholars who focus on the constitutional justification recognize the benefit of teaching public administrators to avoid unnecessary litigation. Yong S. Lee and David Rosenbloom argue that the constitutional law relevant to a public servant's practice is an essential part of his working knowledge. They write that “[p]rivate sector employees might learn constitutional law in order to be good citizens; public servants must know it to be competent

279 Szypszak, 492.
280 Ibid., 495.
282 Roberts, 361.
283 Ibid., 362.
284 Roberts.
employees.”

Furthermore, they contend that public servants must understand both “the broad principles on which constitutional law rests” and “the constitutional requirements that currently govern public service in the United States.” Rosenbloom had previously written that the expansion of constitutional rights of individuals and erosion of public officials’ immunity from civil suits means that “the concept of administrative competence is expanded to include a reasonable knowledge of constitutional law.”

In addition to making normative arguments about the proper role of law in public affairs education, scholars have examined the frequency at which law appears in curricula. Eric Jensen cites a 2006 survey which found that public affairs programs that require instruction in administrative law typically require public law (also known as “law and policy”) as well. Jensen found that 40% of public policy programs offered courses dedicated to law, but only 10% required that students take these courses. Jensen, a former economics professor at William & Mary who also served as director of the Public Policy Program from 2004-2012, examines the course description of two such courses—including the one we teach—and observes that “[t]he concept of these courses seems to be to make public policy students intelligent consumers of legal work.”

More recently, John Kincaid, professor of government and public services at Lafayette College, and the late Richard Cole, a professor in the School of Urban and Public Affairs at the University of Texas, Arlington found that the topics of federalism and intergovernmental relations (IGR) were more prevalent in public affairs curricula than they initially expected; 52.5% of the respondents they surveyed reported that their departments offered coursework on these topics.

Finally, a few words discussing literature related to the pedagogical techniques employed in our course are appropriate. The late Gerald Mark Breen, a graduate research associate in the Public Affairs program at the University of Central Florida, et al., advocated for the use of
“student-centered learning” (SCL) concepts in public affairs education. SCL emphasizes the importance of ensuring that students be active participants in the learning process instead of passive recipients of information. As such, the instructor in a course taught through SCL concepts will serve as a facilitator instead of a lecturer when possible.

Chris Silvia, assistant professor of public management at Brigham Young University, advocates for the use of simulations in public affairs education. Silvia observes that simulations help public affairs students think critically about policy issues. John Fliter, associate professor of political science at Kansas State University wrote that Supreme Court simulations can be used to good effect in undergraduate-level constitutional law courses. Sarah Ryan, formerly of Baruch College, observes that having students in introductory civics courses engage in debates can help them to develop their critical thinking habits. In her words, “propositions of policy engage students directly in the policy-making process by positioning them on a particular side in a debate over what should be done.”

III. WILLIAM & MARY’S MPP PROGRAM AND THE LAW & PUBLIC POLICY COURSE

When I began teaching the required Law & Public Policy (LPP) course with Chris Byrne at William & Mary in 2002, we did not consider Szypszak’s "practical" or Newbold's "responsible" approaches, nor any of the other rationales or strategies suggested by the other authors. Rather, we built upon a foundation laid by the two William & Mary Law School professors who, one after the other, taught LPP before us, Professor Neal Devins and Professor Susan Grover.

William & Mary began its Master in Public Policy Program (MPP) in 1992. From the outset, every student was required to take the Law & Public Policy course during the first semester.

294 Breen et al., 109.
295 Breen et al.
297 Silvia, 409, 411.
of the program, and a law school course in the second year. Devins was among the College faculty who designed the program, which from the outset had a cross-sectional curriculum that brought together the studies of economics, quantitative analysis, government, and law. The program would not merely facilitate, but rather require, an ongoing conversation between the faculties and students within these departments.

As for Devins’s Law & Public Policy course, his goal was not to prepare Public Policy students for their future classes at the law school. Instead, he introduced the students to constitutional law, with an emphasis on policy implications of court decisions. Devins also covered the political structure of the United States government and some political science, teaching from *The Political Dynamics of Constitutional Law* and other readings. His students also engaged in two role-playing exercises (a mock congressional hearing and a court opinion written from the perspective of a Supreme Court Justice) and a closed-package statutory interpretation research assignment designed to familiarize students with Lexis, Westlaw, and William & Mary’s Law Library.

After Grover took over teaching Law & Public Policy, the course changed to reflect her interests and teaching style. Like Devins, Grover wanted her students to understand the intersection between law and policy, but she emphasized topics law students typically learn in their first-year courses—torts, contracts, constitutional law, civil procedure, and property. Her students also read excerpts from William Burnham’s *Introduction to Law & the Legal System of the United States,* and she supplemented that text with legislation and court decisions pertaining to employment discrimination, a subject she taught at the law school.

Throughout the course, Grover also sought to introduce the public policy students to legal concepts they would likely encounter in their professional careers—not as lawyers, but as policy analysts, budget analysts, program evaluators, private or public sector consultants, etc. She ran her class like those she taught for law students, employing a volunteer-based method of questioning students to facilitate discussion. Grover also added quizzes and a law-school-style exam with essay and multiple-choice questions to prepare students for the law school classroom and examination process they would encounter the following year.

**A. WHAT WE TEACH**

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When Chris Byrne and I began preparing for our first semester of teaching Law & Public Policy, we sought out Neal and Susan to see how they taught the course, and then set about designing our own version of it. The goals we had in 2002 are essentially unchanged today. We want our students to understand not only how the legislative, executive, and judicial branches make law—and, therefore, policy—but also how each branch’s powers limit, and are limited by, their interactions with the others. Furthermore, we feel that it’s important for public policy students to appreciate how non-governmental entities—especially lobbyists and the media—try to influence the branches of government. We designed our curriculum with several assumptions in mind:

- The class would have about 20 students (we have had as many as 25 students and as few as 15).
- W&M has a very quantitative Public Policy Program, and most students who enter the program would have a strong background in economics.
- The students would be news hounds and policy wonks (they still are today).
- For the most part, every student would be well-prepared, having read all assigned readings before class (this has always been the case).
- We would have some guest instructors because we wanted the students to hear from men and women who were experts in their fields.
- We would hold the class as a seminar: lots of discussion, with very little lecturing from us.
- Like a law school class, we would challenge the students on what they said, often using the Socratic method. (While this initially intimidates a few students each year, by the 3rd or 4th week they all get the hang of it . . . and seem to enjoy the back-and-forth conversation with us and with one another).

After reviewing the texts used by our predecessors, we decided to use only about 20 pages from Burnham’s *Introduction to Law & the Legal System of the United States.* After exploring dozens of other texts and journal articles, we created a syllabus with readings on:

- Very basic legal research

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• The United States judicial system
• How non-parties try to influence courts using amicus briefs
• Powers of and limitations on the legislative branch
• The Commerce Clause
• Separation of Powers and Federalism
• The relationship between Congress and the courts:
  • Judicial review (the power of courts to declare acts of Congress unconstitutional)
  • Statutory interpretation (courts interpreting acts of Congress)
• Models of how judges make decisions
• Lobbying and money in politics
• The media’s influence on Congress and the courts
• Administrative rule-making
• Local government law

In our inaugural Law & Public Policy class, students read about 250 pages we selected from textbooks, articles, and two Supreme Court cases: *Marbury v. Madison* (judicial review), and *Lorillard v. Reilly* (the commerce clause, federalism, and the first amendment). As the years went by, we added more court decisions to the required readings. Students actually wanted this; legal and policy issues come alive when they involve real legal disputes. That all but one of these cases had dissenting opinions—and strong language from the justices—helped the students appreciate that great legal minds often differ on what the law means and how it should be applied. In addition to *Marbury and Lorillard*, which are still in the course syllabus, we added *Muller v. Oregon* (“protective” labor legislation), *United States v. Lopez* (commerce clause and federalism); *Gonzalez v. Raisch* (commerce clause, supremacy clause, and federalism), *Plaut*

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v. Spendthrift Farm (separation of powers),\textsuperscript{307} and Massachusetts v. Environmental Protection Agency (administrative rule-making).\textsuperscript{308}

Supreme Court cases usually are very long, and we edit each case down to about a dozen pages, focusing on the issues we want to discuss and deleting those (such as procedural matters) that we do not. Some may wonder how we can teach a Law & Public Policy course and not include Citizens United v. Federal Election Commission.\textsuperscript{309} We concluded that this long and complex decision could not be edited down to a dozen pages and still make any sense. Instead, we selected two engaging articles from The New Yorker and Slate.com that provide the essential facts, policy, and legal issues and go behind the curtain in how Citizens United was decided.

Students also read and do significant work on three or four additional cases we select from the Supreme Court’s docket for that year—decisions that have been granted certiorari by the court. We refer to these cases, nearly all of which are from a U.S. Circuit Court of Appeals or a state supreme court, as the students’ “Lead Cases”.

The United States Supreme Court’s argument calendar fairly closely tracks William & Mary’s academic calendar, and each year we take the class to the court in October to see oral arguments in two of the Lead Cases. Students do extensive work on these cases, including writing several papers on them and conducting a moot court and mock legislative hearing for each. These exercises are discussed at length below.

B. HOW WE TEACH

Law & Public Policy is a seminar-style class in which every student participates in the discussion and we question those who do not volunteer. It is rare for a student not to have read all the assigned readings for each class; we assume they have, and we hardly lecture at all. We use something akin to the Socratic method to delve more deeply into the answers students give to questions; we often reply to an answer by asking another question.

What we discuss in class is governed partly by issues the students identify themselves. The day before each class meets, each student must send us two well-thought-out questions about the readings. A good question is not something like “Does the Supreme Court just change the Commerce Clause test when its members change?” Better questions are like the following, submitted by two students in 2015:

\textsuperscript{308} Massachusetts, et. al., Petitioners v. Environmental Protection Agency, et. al., 549 U.S. 497 (S. Ct. 2007).
Is it possible that a more effective ‘test’ could be created with regards to the Commerce Clause and those intrastate activities that indirectly affect interstate commerce (i.e. *Wickard v Filburn*)? Even the test presented by Chief Justice Rehnquist seems exceedingly ambiguous (i.e. “those activities that substantially affect interstate commerce...”). Is the Court destined to circle back to this issue in perpetuity?

Repeatedly we see Justices refer to the “Founders” and “Framers” throughout their discussion, for purposes ranging from legitimization to explanation, with special attention paid to the federalist papers. While clearly important, there are references to these documents in the cases that we read that contradict or refute current judicial decisions. So while important, just what use should the original intent of the commerce clause (based in say the federalist papers) be used when it is clear that we have already moved far away from that old definition?

Our teaching assistant organizes the questions into several topics, and we select several to begin classroom discussion. Because we know what’s on every student’s mind, we can use their questions to engage each of them in every class. The students quickly learn the drill, and after the first couple of classes most relish the opportunity not only to offer their opinions, but also to question one another. The late Gerald-Mark Breen, formerly at the University of Central Florida’s School of Public Affairs, endorsed a similar reliance on student-centered learning—a pedagogy in which the instructor takes on a role that is more collaborative than it is executive—in teaching interdisciplinary courses to public affairs students.

As we discuss cases in class, it usually takes some practice for our students to couch their defenses of policies at issue in terms of what is permitted by the law and the Constitution, instead of efficacy. As “John,” one of our former LPP students (names have been changed to preserve anonymity), wrote, “students (myself included) sometimes had difficulty preventing their political views from influencing their legal arguments, which could be frustrating...” Our use of Socratic questioning allows us to probe these biases and to nudge students towards arguments rooted in law.

While we are quick to acknowledge that judges effect or make policy when they write court decisions, it is important for our students to understand that judges cannot (or at least should not)

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use policy considerations to justify a holding that isn't supported by the law. This is a valuable learning experience for students like John, who wrote that "my biggest takeaway from the LPP class was that no matter how creative or effective a policy may be, it's useless if the policy isn't legally feasible." As Hartmus observed, public affairs students must understand that the courts are concerned with a policy’s compliance with constitutional constraints, not its efficiency or efficacy. However, there is little doubt that judges can be influenced by public opinion, and also consider the policy implications of their decisions.

"Kate," another MPP alumna, observed that "I enjoyed learning to defend positions I did not necessarily agree with personally. Cultivating this skill through course debates and policy briefs helped me learn how to understand approaches other than my own, and perhaps more importantly, begin to grasp the 'why' behind alternative approaches." This comment supports Sarah Ryan’s contention that in-class debates help students develop critical thinking habits. These lessons are important ones for public affairs students to learn under either the Newbold or Szypszak approaches.

Our students know that American courts inherited the doctrine of precedent—stare decisis—from the English legal system. Because courts look to earlier cases with similar facts and issues to guide their decisions, a ruling today is likely to affect future court decisions. It does not take our students long to understand that the language judges and justices use in a court decision could have significant impact on future cases. Precise writing and precision in analyzing law and policy issues are other skills students acquire in Law & Public Policy.

We supplement our discussion sessions with visits from guest speakers. While Law & Public Policy focuses on the federal government, our class on local government includes an elected member of the Board of Supervisors, the county attorney from James City County, and the city manager from Williamsburg, Virginia.

We also bring in speakers from both the left and right to speak to our class and the law school community, such as criminal defense/ACLU lawyer David Baugh, Jay Sekulow (a lawyer with the conservative American Center for Law and Justice), and former Virginia Attorney General (now conservative pundit) Ken Cuccinelli. During our annual visit to the Supreme Court, students usually have the opportunity to meet with a Justice, and always meet with a Justice’s law

312 Hartmus, "Teaching Constitutional Law", 356.
314 Ryan, “Arguing Toward a More Active Citizenry”, 387.
clerks. While at the Supreme Court, the class also meets with lobbyists and current or former Congressional or White House legislative/policy assistants. Time permitting, we travel next door to the Capitol and meet with a Virginia senator.

C. ASSIGNMENTS & GRADING

Students in Law & Public Policy must complete five assignments, which comprise 80% of their grade. The remaining 20% is based on class participation, oral presentations, and the in-class role-playing exercises.

For the first assignment, students write 2-page briefs on each of the 3-4 Lead Cases—those that we continually revisit during the semester. Writing case briefs acquaints students with something they need to do when taking a law school class during their second year in the program. Ours differ slightly, in that we have an additional component—the public policy implications of the court’s decision. This assignment is worth 15% of a student's final grade.

Once the briefs have been written, we have in-class moot court oral arguments for each of the Lead Cases. (By this point in the semester the students have discussed and argued over several non-lead cases from the readings.) Two to three students represent the petitioner (the party that lost in the lower court and is appealing that decision), the same number represent the respondent, and several students serve as Supreme Court Justices. Every student eventually role plays as both a Justice and a lawyer arguing a case before the court.

The second assignment covers basic legal research. Designed to be rather easy, it takes no more than 2-3 hours to complete, and constitutes 5% of a student’s grade.

The third assignment involves legislative drafting. Representing a real or fictitious interest group that has a stake in one of the Lead Cases, students review a statute at issue in the case and draft legislation—either brand new or an amendment to the statute—that promotes the goals and values of the interest group they represent. They also must indicate how their proposed legislation supports the public policy goals of the organization they represent. Students must identify any constitutional issues, and explain why their proposal is constitutional. To emphasize the importance of writing clearly and concisely, the paper can be no more than five pages, double-spaced. Later in the semester, students present their proposed legislation to a panel of their classmates in a mock congressional hearing. The third assignment makes up 20% of one’s final grade.

The fourth assignment is a legislative review paper; students act as a congressional staff member who is reviewing the proposed legislation generated by other students in the previous assignment. Students must summarize and evaluate the positive and negative policy implications
of each proposal, and make a recommendation. This 5-page paper is also worth 20% of a student’s grade.

The final written assignment has a different spin: a press release and op-ed piece. Students are told to select an organization of their choice that could have filed an amicus brief in one of the four main cases. (They may not use one of the actual briefs filed in the case, nor write on their Lead Case or the cases they worked on in the congressional hearing exercise.) The 200-300 word press release discusses why their organization filed a brief in the case, and should entice the reader to want to engage with the op-ed piece. The 4-page op-ed should explain clearly why, both as a matter of law and policy, their position is the proper one. We also tell the students that because the public will have various positions on the issue(s), they should address potential counter arguments. These two papers make up 20% of the final grade.

These role-playing assignments give students an additional opportunity to understand how political concerns, as well as policy implications, influence the lawmaking process. As mentioned above, Chris Silvia found that simulations help students develop their analytical skills, evaluate policy alternatives, and understand alternative points of view.\textsuperscript{315} While our simulation does not include John Fliter’s attempt to replicate the jurisprudential leanings of the sitting Justices,\textsuperscript{316} we agree with his conclusion that the simulation helps students “develop an understanding of the process and politics of Supreme Court decision making and an appreciation for the role of the Court within our political system.”\textsuperscript{317}

We also found that our students appreciate the opportunity to develop their writing skills, which necessarily includes legal analysis. Reading well-crafted court decisions—and writing about those decisions—introduces public policy students to legal writing, which is quite different from the type of writing they learned throughout their primary, secondary and undergraduate education (This is particularly helpful, as public policy students do not take the required “Legal Research and Writing” course that all J.D. candidates take). “Rick,” a former student, reported that: “the main professional value I’ve gotten out of the course (and it’s a significant one) is the skill of writing succinct, high-level briefs that cover complex policy issues.”

\textsuperscript{315} Silvia, “Impact of Simulations”, 409, 411-412.
\textsuperscript{317} Filter, 20.
IV. CONCLUSION

Let us conclude by revisiting the justifications for a Law and Public Policy course put forward by Szypszak and Newbold.

Szypszak argues that:

Public affairs programs can better prepare their graduates for dealing with their future responsibilities by giving them more than a piecemeal or superficial knowledge of the law and the legal process. The curriculum should introduce students to fundamental legal principles and the basics of the legal subjects they are likely to encounter. It should also engage students in critical thinking about legal rights and obligations and explore personal responsibility for promoting a rule of law. When seen as a synthesis of political theory, decision making, and personal responsibility, a law-based course can not only contribute significantly to students' knowledge about their field but also better equip them for making sound decisions with real-world consequences for themselves and the public.\(^{318}\)

While Newbold takes the stance that:

Quite simply, good administration in the United States is dependent on the complementary relationship between public and constitutional law and the theory and practice of administrative management.

As professors of public administration, it is our responsibility to instruct MPA/MPP students on where the boundaries of the United States Constitution lie so that our students can use their discretionary judgment as future public managers to serve the citizenry in constitutionally competent manners (Richardson, 1977; Rosenbloom et. al. 2004). As Madison observed in Federalist 51: “The interest of the man must be connected to the constitutional right of place” (quoted in Cooke, 1961, p. 349) and such monumental perspective provides the intellectual and constitutional foundation for why MPA/MPP programs must instill within their students’

\(^{318}\)Szypszak, “Teaching Law in Public Affairs Education”, 497.
educational curriculum the value of how the rule of law will affect nearly every aspect of their public management decision making.\textsuperscript{319}

Our objectives may skew towards Szypzak’s competency-based approach, but they share similarities with both his and Newbold’s approaches, while fully adhering to neither. Like Newbold and Szypzak, we do not endeavor to teach our Law & Public Policy students every intricacy of the law that touches upon their future work in public policy. Instead, we want our graduates to be able to recognize existing or potential legal issues, to engage in some level of legal analysis, and to understand that parties on different sides in legal disputes usually have some law on their side. These skills should also enable them to effectively communicate and work with lawyers. “Jordan,” another former student, cited such an understanding as one of the principal benefits of his LPP experience:

I work in an organization where perhaps 4000 attorneys are involved in producing nearly 1 million administrative decisions each year. The fluency I gained [helps] me understand how our organization works and how our production might change based on regulatory or legislative changes to our program. I find myself in a better position to understand what my coworkers are saying, and then make that information meaningful for the day-to-day budget work I perform.

Perhaps our goals are too modest, but after taking the Law & Public Policy course, we hope our students:

- Understand the workings of the government.
- Appreciate that each branch of government has certain powers, but that there are limitations on those powers.
- Recognize not only that public policy issues nearly always involve the law, but that when a legislator, administrator, or judge creates or interprets the law through legislation, regulations, or court decisions, he or she is making policy decisions.
- Can see—and seek—different sides of issues, and understand that legal and policy issues are usually more grey than black or white.

We also want the course to be useful to each student’s current education and future career. Happily, I think we achieve this. Co-author Peter Quinn-Jacobs (who took the Law & Public Policy course, was our teaching assistant for the course, and recently completed a joint MPP/JD degree

\textsuperscript{319} Newbold, “No Time Like the Present”, 477.
at William & Mary) surveyed several MPP graduates via email. He found that nearly all consider the Law & Public Policy class the highlight of the Public Policy Program, remembering the Supreme Court trip and the openness of class discussion as memorable strengths. Students also found that the course helped prepare them for their law school classes by encouraging flexibility in thinking and analysis. Graduates who moved into diverse careers as teachers, public administrators, legislative assistants, and policy analysts note that the course gave them the vocabulary and analytical skills to work easily with attorneys, as well as the ability to write clearly and concisely about complex policy issues.

Whether one’s goals are more akin to those of Charles Szypszak, Stephanie Newbold, or anyone else, a Law & Public Policy course is a valuable addition to every MPA/MPP program. Ours, which includes doctrinal analysis and simulations, along with the required law school course, equips William & Mary MPP students with knowledge and skills that enable them to be more effective as both policy professionals and as stewards of our constitutional way of government.