Federal Courts

Spring 2024

Syllabus

Professor Seth Davis Dohee Kim (Legal Assistant, FSU)

([faculty webpage](https://www.law.berkeley.edu/our-faculty/faculty-profiles/seth-davis/#tab_profile)) (dohee\_kim@berkeley.edu)

(he/him/his)

([hear how to pronounce my last name](https://www.youtube.com/watch?v=D2RAwbywqts))

(email me using [bCourses](https://bcourses.berkeley.edu/courses/1530848))

Welcome to Federal Courts! I look forward to working with you.

This document explains the basics of the Federal Courts course and describes your assignments for the semester. Please read it before our first class. [Part 1](#_Part_I._Introduction) introduces you to the course. [Part 2](#_Part_2._Class) is a detailed list of assignments and learning objectives. [Part 3](#_Part_3._Panel) lists the panel assignments for the semester, which will tell you when you are on call. [Part 4](#_Part_3._School-Wide) contains school-wide policies relevant to our work together, including information about requesting accommodations and sources of support for members of our community.

# Part I. Introduction to the Course

What is the Federal Courts Course About?

Federal Courts is a course about the development of rules and principles of federal jurisdiction, judicial review, federalism, and the separation of powers. The doctrines of federal courts law not only set boundaries on judicial review and the enforcement of rights, but also shape the powers of the other branches of the federal government as well as those of the states and Native nations. This course will place federal courts doctrines in their historical and contemporary contexts, exploring the social and political circumstances that have shaped the field.

We will, in short, learn the doctrines and the contexts of federal courts law.

### Class Meetings

Our class meets on Monday/Tuesday/Wednesday from 10:00 AM - 11:10 in Law 100. Please note that the Law School does not hold classes on Monday, January 15; Monday, February 19; or Monday to Wednesday, March 25-27. The Law School has scheduled class sessions on Monday, April 22, and Tuesday, April 23, to make up for sessions missed on January 15 and February 19.

Office Hours

 My office hours for Federal Courts will be on Monday from 11:15 am – 12:15 pm. **I will host office hours outside on the west side of the Law School** (see map [here](https://www.google.com/maps/place/Boalt%2BHall%2C%2B215%2BBancroft%2BWay%2C%2BBerkeley%2C%2BCA%2B94720/%4037.8696055%2C-122.254322%2C20.09z/data%3D%214m12%211m6%213m5%211s0x80857c30196f781d%3A0xdffb69be45e34f44%212sUC%2BBerkeley%2BSchool%2Bof%2BLaw%218m2%213d37.8694764%214d-122.2540154%213m4%211s0x80857c301078849b%3A0x561257a4b8cddc2%218m2%213d37.8699767%214d-122.2532914)). When the weather does not permit, I will host office hours in my office. My office hours are group events, with multiple students talking with me and one another about the course. Please feel free to stop by unannounced during office hours. You can stop by for all or part of the conversation.

### The Casebook

Our textbook will be [Erwin Chemerinsky, Seth Davis, Fred O. Smith, Jr., & Norman W. Spaulding, Federal Courts in Context (1st edition 2023)](https://aspenpublishing.com/products/chemerinsky_federal_courts).

The casebook has short essays throughout that summarize the doctrine and contextualize the cases. Unlike many casebooks, it does not have long series of numbered notes with rhetorical questions. Instead, its essays aim to help you understand the cases within their doctrinal, human, and historical contexts. To preview this approach, you may want to read the Preface on pgs. xxiii-xxiv.

**bCourses and How to Email Me**

[Here is the link](https://bcourses.berkeley.edu/courses/1530848) to the bCourses site for our course. I will use bCourses to post the syllabus and assignments and to communicate with you. **Please** **email me any course-related questions using bCourses**. **I will reply to all course-related questions via bCourses every Friday.** **I will not respond to course-related emails sent without using bCourses**. Using bCourses for course-related emails ensures that I do not miss your email.

Learning Objectives

*Berkeley Law Learning Outcomes*

1. We shall gain knowledge and understanding of substantive and procedural law.

2. We shall learn legal analysis and reasoning, legal problem-solving, and

written and oral communication in the legal context.

3. We shall learn how to use the law to solve real-world problems and to

create a more just society.

*Class-Specific Learning Outcomes*

1. **Doctrine:** We shall learn the doctrines of federal courts law. These doctrines

address federal jurisdiction and structural constitutional law. They are a combination of constitutional and statutory interpretation and judge-made common law and equitable doctrines. At the end of this course, you will understand the foundational concepts and doctrines concerning federal judicial power.

1. **Analytical Tools and Types of Argument:** Federal courts law is a vehicle for

learning common analytical tools and types of argument about public law. We will learn about formalism vs. functionalism, federalism vs. nationalism, and legal process vs. law’s substance.

1. **Formalism (rules) vs. functionalism (standards)**: The U.S.

Constitution refers to three governmental powers: the legislative power, the executive power, and the judicial power. Federal courts law focuses upon the judicial power and also addresses the legislative power and the executive power.

One view – let’s call it formalism – takes the position that it is possible and desirable to separate the legislative power, the executive power, and the judicial power through bright-line rules. In this view, one very important task of federal courts law is to “keep ’em separated.”

Another view – let’s all it functionalism – takes the position that it is possible to develop flexible standards that are judicially manageable and desirable for courts to use these standards when deciding separation-of-powers questions. In this view, federal courts law is not so much about keeping powers separated as it is about preserving a working government in which no institution or actor has unchecked power. As a shorthand, “checks-and-balances” communicates this view.

1. **Federalism vs. nationalism**: The U.S. has a federal system that divides

authority between a national government and fifty state governments. Native nations are preconstitutional sovereigns with government-to-government relationships with the federal government and in many cases with the states. Territorial governments have relationships with the national government, moreover.

 Federal courts courses have traditionally focused upon the relationship between the national government and the fifty state governments. My course resists this singular focus by showing that Native nations and territorial governments have also figured prominently in the development of federal courts law. The question that naturally raises is how we should think about the ideas of federalism and nationalism that appear in the cases.

 The federalist model of federal courts law takes the states as the starting point. The idea is that the state governments are the primary sovereigns in the U.S. The federal government, by contrast, is a government of limited powers. It follows from these premises that state courts should be in the driver’s seat when it comes to judicial review. They are, for example, the primary guardians of constitutional rights.

 The nationalist model takes a different view. Since at least Reconstruction, the nationalist model holds, the federal government has been in the driver’s seat when it comes to securing constitutional rights. Taken for all it might suggest, this model would guarantee a federal forum for the enforcement of every federal right.

 This contrast between the federalist and nationalist models raises many questions that we will explore. Here is one question that gives you a sense why we cannot limit our study to just the national government and the states: Are there some federal rights that only tribal courts may enforce? The answer, it turns out, is yes.

1. **Legal process vs. law’s substance:** Law schools have taught courses

like torts for longer than they have taught federal courts. The federal courts course got off the ground in the 1950s, during a period in which scholars of public law became very interested in a way of thinking about law called the legal process. Many of the leading federal courts scholars were then (as they are now) legal process scholars.

The Legal Process School started during a moment in American history where legal elites (the sort of folks teaching at Harvard Law School in the 1950s and early 1960s) could imagine that a focus upon process rather than substance would provide a neutral foundation for law. This wasn’t a crazy idea then, and it’s not a crazy idea now. In fact, it’s the common wisdom of most American lawyers.

The basic idea was this: someone has to decide controversial questions, and we should design fair and competent institutions to make those decisions and agree up front to respect what those institutions decide, even if we disagree. This institutional settlement is the way that law can create common ground to resolve what otherwise could be intractable (and potentially violent) disputes in a plural society. These sorts of ideas—about institutional competence and settlement—have deeply influenced American constitutional theory.

A concrete example may help. The U.S. has a federal system of government with three sovereigns. Some decisions are for the national government to make. Some are for the states. And some are for Native governments. Federalism is thus a principle of institutional settlement.[[1]](#footnote-1)

Beginning in the 1970s, the Legal Process School was criticized from two points of view that stressed law’s substance and rejected the idea that institutional settlement was a neutral principle that creates common ground. One criticism came from Law and Economics, which asked a substantive question of any doctrine: Is it efficient? Another criticism came from Critical Legal Thought, which took as a premise that law is a social phenomenon that must be understood in its historical contexts and concluded that law is not neutral, but rather a system of power.

What is the point of sharing this intellectual history? This course is not a survey of legal thought. But this history provides the backdrop to understanding a question at the center of federal courts law: Does federal courts law shape substantive law by how it constructs legal processes? If the answer is “yes,” then are there patterns in how federal courts law shapes substantive outcomes?

1. **Law in Context:** Sometimes when we think about law, we divide doctrine

from context. We might listen to a lecture, for example, and parse the moments when we are learning “law” from the moments that we are learning “history” or “policy.” When we do that, we often take the “law” part more seriously than the “history” or the “policy” part.

I will be serious about law, history, and policy. I start from this premise: We can’t understand doctrine without understanding context. For the canonical cases, the casebook provides short essays explaining the social and historical context. I will say more about various cases’ contexts in class.

What does it mean to think about law in context? Here is one thing that I *do not* mean by that phrase. I don’t mean to ignore doctrine. Federal courts doctrine is a puzzle. One of my goals is to help you understand the puzzle, that is, to be able to identify its pieces and to describe how they might fit together. Indeed, one of the joys of the course is puzzling through the doctrine.

So, what *do* I mean when I say that I teach federal courts law in context? In law schools today, we often say that context matters. But what precisely do we mean? I think we tend to mean a few things, all of which are important for this course.

First, I think that we mean to say that we want to be pragmatic about law. On the one hand, we know that if we want to understand doctrine, we need to pull rules out of cases. And to do that, we have to abstract away from the case’s facts and history. On the other hand, we sense that something is lost if we think *too* abstractly *too* often. At some point, we can forget that law involves practical judgments that change people’s lives. We can forget, in other words, that law is not just a puzzle.

Second, I think that different people who are interested in context have different practical intuitions about law. These differences are one reason why we might want to reject contextual analysis – why we might, in other words, want to discourage legal decisionmakers from consulting contexts and making value judgments. One defense of formalism as a way of making legal decisions is that it eschews context and that’s a good thing if you don’t trust the value judgments of the decisionmaker. I take this defense of formalism seriously as we explore the relationship between formalism and functionalism in different contexts in federal courts law.

Third, I believe that thinking about law in context means taking the relationship between law and power seriously. The Core in Context lecture series at Berkeley Law reflects this definition of “context.” The core idea is that abstract and apparently neutral principles may empower some people and disempower other people. Take federalism, for example, which legal process identifies as a neutral principle of institutional settlement, and think about the history of federalism and race in the U.S. Or think about national power and the U.S. territories today. Neither federalism nor nationalism look like neutral principles when you think along those lines. The objection to this way of thinking – and, again, it is one that I take seriously – is that contextual analysis leaves us without any foundation from which to make defensible practical judgments about federal courts law.

1. **Lawyering Skills:** My final teaching objective is to use federal courts law as a

vehicle to help you hone your skills at case synthesis and to develop your skills at interpreting positive law (that is, the Constitution and statutes).

Sensitive Topics

Federal Courts is a course that can raise difficult and deeply felt questions, some of which may particularly affect you. Please let me know if discussing a particular case or set of cases would prove particularly difficult, and please let me know if you prefer not to be called on during discussion of a particular topic, and I’ll be sure not to call on you, no questions asked. Additional resources for support throughout the semester are [here](https://www.law.berkeley.edu/students/wellness/) and [here](https://www.law.berkeley.edu/students/wellness/mental-health-resources/).

Course Work and Grading

You will be evaluated on the basis of a final exam, which will constitute 95% of your grade, and class participation, which will constitute 5% of your grade.

***Final exam.*** The final exam will be an open-book test of your achievement of the four class-specific learning objectives I have discussed above. The exam will include three essay questions. Two questions will be issue spotters and the third will invite critical thinking about federal courts law.

We shall have a review session after instruction ends to review for the final exam. The review session has been scheduled by the Registrar’s Office for April 24 from 10:00 – 11:15 am (see [here](https://www.law.berkeley.edu/students/review-session-schedule/)).

As the Law School’s Final Exam [webpage](https://www.law.berkeley.edu/php-programs/students/exams/examTimesList.php?&term_year=2024&term_cd=B) explains, “All take-home exams will be available to download (self-schedule) starting at 8:30 a.m. on the first day of the exam period and must be completed and uploaded to the online exam interface by 12 p.m. (noon) on the last day of the exam period. The exam period runs from Monday, April 29th at 8:30am to Wednesday, May 8th at 12pm (noon).”

***Class participation.*** You will be evaluated based upon your participation when your panel is on call. To find your panel assignment and schedule, please go to [Part 3](#_Part_3._Panel) of this syllabus. If you are prepared and actively participate by answering questions when your panel is on call, then you will receive full credit for this component of the class participation grade.

**Attendance, Seating Chart, and Recording Policy**

Please use the seating chart to reserve your seat in Law 100. You will be able to access the seating chart on the first day of class.

As for attendance, please make a good faith effort to notify me in advance by emailing me through bCourses if you will be missing a class because of an emergency. Your panel will be on call multiple times throughout the semester, and it is especially important to notify me if you have to miss a class when you are on call.

My recording policy is to make a recording of a class session available to a student who notifies me in advance and has an excused absence. The recording will allow such a student to keep up with the course and will be available to that student for one week after the missed class session.

My Approach to Teaching

**Lecture and active learning:** You will find the material confusing at times. That’s okay. It’s normal. It shows that you’re learning. We’ll work together, and with patience and effort, we’ll accomplish the question of understanding the doctrine and thinking about it deeply and critically.

One great way to learn the doctrine is by applying it to problems. In class, therefore, we won’t simply summarize the cases we read. From time to time, I’ll give you problems to apply the law to, and sometimes ask you to discuss those problems in small groups for a few minutes before we discuss them as a group.

More generally, our class will combine lecture with Socratic questioning and other forms of active learning, such in-class exercises that allow you to test your understanding of the material as we go along. I understand that students often feel that lecture always is the best way to learn, but studies (such as [this one](https://www.pnas.org/content/116/39/19251)) have found that active learning exercises improve student understanding of the material.

In using Socratic questioning, I shall call upon each of you throughout the semester. Part 3 of this syllabus tells which panel you are on and when that panel will be on call. You should come to each class prepared to respond to questions. That being said, you will have one free pass during the semester. If you are unprepared for class, please notify me beforehand by e-mail or by coming up to the front of the classroom, and I shall give you a pass. In addition, if you are having trouble with a particularly sensitive topic, then I shall give you a pass, no questions asked.

It’s fine to give a “wrong” answer when I call upon you. Be prepared and give it your best shot if I call on you. I’m not interested in embarrassing anybody. It’s hard to learn when you feel that way. I am interested in learning, and that often happens best when we make mistakes.

My approach aims for classroom conversations that everyone feels comfortable joining, with no one dominating the discussion.

**How I teach doctrine:** I am not interested in hiding the ball on the doctrine. The casebook summarizes the doctrine and I will restate in class the doctrinal rules and standards that we are learning. In asking questions, I am interested in challenging you to apply and to critique the doctrine. Applying the doctrine to the facts of the case we are reading (and to hypotheticals) is crucial to understanding it. Critiquing the doctrine is too.

Often, I will present the basic facts of a case myself and identify the basic doctrine to get our discussions started. I’ll focus my questions on asking you to think about the facts and on applying and critiquing the doctrine. For example, I may ask a question to demonstrate ambiguity in the doctrine. Or, to take another example, I may ask a question to identify assumptions and value judgments that may explain the doctrine. Perhaps I will ask a question designed to help us understand arguments and counterarguments, as we develop the lawyerly skill of seeing an issue from multiple vantages. Or, to offer a final example, I may ask a question (or a series of questions) to encourage us to imagine alternatives to current doctrine.

**Contextualizing cases and confronting hard questions:** I also believe that we understand the doctrine better by contextualizing it. That is why I will lecture about historical and sociolegal contexts of doctrines we learn. The casebook provides contextual material for the canonical cases.

Contextualizing cases means confronting hard questions about the legal system, including questions about whether it is unjust. The casebook raises these questions and I will raise them in class.

**Working collaboratively and inclusively:** As we work together to confront these hard questions, I expect that we’ll treat each other with mutual respect. That doesn’t mean we have to agree. It does mean a few things to me, however.

For one, it means that while I permit laptops in class, I expect that you will avoid using your laptop in any way that would distract your classmates.

For another, treating each other with mutual respect means listening to each other in good faith and responding with care and thoughtfulness. It’s hard to learn how to listen well in law school. It’s even hard once you’re out of law school; I sat on a jury in a criminal trial a few years out of law school, and I found it hard to listen well to everything that was going on. I hope that we’ll be able to create a space together where we are patient and empathetic as we listen to each other - and where we are willing to disagree in a spirit of goodwill.

Finally, treating each other with mutual respect means creating a space where we all feel comfortable speaking. I’ll do my best to help us create that sort of space.

**Handouts:** I will post handouts on bCourses for each class session. These handouts provide you a roadmap of each day’s concepts, doctrines, themes, and questions. Some students use the handouts during class to take notes. Others prefer to use them after class to check their notes and as an aid in outlining. My (gentle) suggestion is to look at them each week, whether before, during, or after a class session.

**Panel Memos:** Using bCourses, I have assigned you randomly to panels that will be on call seven times throughout the semester. These memos will help you prepare for being on call. I will post these memos on bCourses for everyone in the class to read.

**Test Your Understanding:** Throughout the semester (though not in every single class session), we will do “Test Your Understanding” exercises to help you test whether you are understanding the material. We may discuss these in small groups and then as a large group.

**PowerPoints:** The PowerPoints for each class session will be posted on bCourses.

**Past exams:** I do not have past exams for Federal Courts. We will discuss a practice essay question during our midterm review to give you a preview of the final exam.

\* \* \*

I look forward to a great semester, and I wish each of you the same.

# Part 2. Class Plan and Assignments for Classes

The class plan lists the readings for each of our class sessions and identifies the big-picture question that we will discuss for each session. **As you read, please sketch your answer to each of the big-picture questions,** as we will explore answers to them in class.

**Please read for each class session in the order listed below** (for January 8, you’d read Class 1’s assignments, then for January 9, you’d read Class 2’s assignments, and so on). I encourage you to plan your reading weekly, not just daily. I take both the daily workload and the weekly workload into account when designing the class plan. It’s to your benefit to take note of how the reading load is distributed each week. The average amount of reading per class session is 22 pages, with the longest reading for Class 1.

 **References to readings and page numbers are to pages in the casebook.**

Please be aware that many of our class sessions will help us learn tort law not simply through traditional Socratic methods, but rather by calling upon us to apply the materials we have read to solve a particular problem. As a result, do not be surprised if on a particular day of class we discuss one part of the reading more than another. You should, however, prepare for the exam based upon all the material. The handouts will help you understand how all the material fits together. Moreover, I shall make clear in lectures the significance of any readings that we do not emphasize in class discussion, and, if you have any questions, then you should simply e-mail me, come up after class, or visit office hours to get answers.

Take time to work through each day’s assignment. Federal courts law is complicated. At first it will take a long time to read each day’s assignment enough to understand it. And, truth be told, there will be much you don’t understand. That’s why we meet to discuss the material!

**PDFs of the first two weeks of reading will be available on bCourses by January 2, 2024**, as I understand that you may still be waiting to receive your casebook.

**I. Introduction – What are the Federal Courts For?**

**Class – The Emergence of Judicial Review [Panel 1]**

The question: To quote *Johnson v. M’Intosh*, what are the federal “Courts of justice” for?

Reading: pgs. 1-35

**Class – The Politics of Judicial Review and the Constitutional Structure [Panel 2]**

The question: What is the relationship between the politics of judicial review and the doctrines of judicial review?

Reading: pgs. 35-65

**Class – The Adverseness Requirement [Panel 3]**

The question: Why can’t federal courts issue advisory opinions?

Reading: pgs. 166-178

**II. Justiciability: Constitutional and Prudential Limits on Federal Judicial Power**

**A. Standing – Is the Litigant the Proper Party to Bring the Suit?**

**Class – The Injury Requirement and the Ban on Litigation of Generalized Grievances [Panel 4]**

The question: What is an injury in fact?

Reading: pgs. 178-181, 189-216 (beginning with “As *Lujan* ….”), 254-264

**Class – Causation and Redressability [Panel 5]**

The question: Is there a unifying thread to the jurisprudence of constitutional standing?

Reading: pgs. 216-233

**Class – Third-Party Standing [Panel 6]**

The question: Why can’t a litigant assert the rights of third parties?

Reading: pgs. 234-253

**Class – Government Standing [Panel 7]**

The question: How does standing doctrine favor government litigants (and why)?

Reading: pgs. 264-287

**B. Ripeness and Mootness – Is it the Timing Right?**

**Class [Panel 1]**

The question: How do ripeness and mootness differ from standing?

Reading: pgs. 289-304, 308-314

**C. Political Question Doctrine**

**Class [Panel 2]**

The question: What makes a political question “political” and not “judicial”?

Reading: pgs. 339-342, 359-377

**III. Congressional Control of Federal Adjudication and State Adjudication**

**A. Congressional Control of Federal Court Jurisdiction and Statutory Limitations on Judicial Remedies**

**Class – Control of Lower Federal Court Jurisdiction [Panel 3]**

The question: May Congress deny access to any judicial forum for a federal constitutional claim?

Reading: pgs. 379-392

**Class – Control of Federal Remedies [Panel 4]**

The question: Are there any limits to congressional control of the remedies that a federal court may issue?

Reading: pgs. 394-423 (begin with second full paragraph on pg. 394)

**Class – Control of the Supreme Court’s Jurisdiction [Panel 5]**

The question: Are there any limits to congressional control of the Supreme Court’s appellate jurisdiction?

Reading: pgs. 423-438

**Class – Dictating Rules of Decisions in Pending Cases [Panel 6]**

The question: May Congress dictate the outcome in a pending case?

Reading: pgs. 438-453

**B. Congressional Power to Create Legislative Courts and to Authorize Administrative Adjudication**

**Class – Legislative Courts for the Territories, the District of Columbia, and the Military [Panel 7]**

The question: Is there a common theme to (or explanation for) the jurisprudence endorsing legislative courts for the territories, the District of Columbia, and the military?

Reading: pgs. 472-479

**Class – Non-Article III Adjudication of Public Rights Cases [Panel 1]**

The question: Before the question, a caution: The public rights exception to Article III is confusing. Now the question: can you distinguish formalist from functionalist approaches in the cases?

Reading: pgs. 484-505 (begin with final paragraph on pg. 484)

**Class – Non-Article III Adjudication of Public Rights Cases, Continued [Panel 2]**

The question: Same question as in class 15: can you distinguish formalist from functionalist approaches in the cases?

Reading: pgs. 505-529

**C. Congressional Power to Have State Courts Decide Federal Law Matters**

**Class – Discrimination Against Federal Claims [Panel 3]**

The question: When, if ever, may state courts decline to adjudicate federal claims?

Reading: pgs. 529-554

**IV. Federal Common Law**

**Class – The Scope of Federal Common Law [Panel 4]**

The question: I know, you thought you were done with *Erie*. No such luck. And so, again, why don’t federal courts have general lawmaking powers?

Reading: pgs. 565-580

**Class – The Development of Federal Common Law to Protect Federal Interests [Panel 5]**

The question: What are the federal interests in making common law to address sovereign disputes?

Reading: pgs. 596-608

**Class – Implied Rights of Action to Enforce Federal Statutes [Panel 6]**

The question: Why is the modern Court skeptical of implied rights of action to enforce federal statutes?

Reading: pgs. 613-638

**V. Midterm Review**

**Class [Panel 7]**

The question: Review, anyone?

Reading: Practice essay question (on bCourses)

**VI. Federal Court Relief Against State and Local Governments and their Officers**

**A. State Sovereign Immunity**

**Class – The Eleventh Amendment and Sovereign Immunity [Panel 1]**

The question: Is state sovereign immunity limited to the text of the Eleventh Amendment?

Reading: pgs. 645-668

**Class – Immunity and Suits Against State Officers for Prospective Relief [Panel 2]**

The question: What are the limits on *Ex parte Young* suits against state officers?

Reading: pgs. 668-697

**Class – Abrogation of Immunity by Congress [Panel 3]**

The question: When may Congress abrogate state sovereign immunity?

Reading: pgs. 700-736

**B. Section 1983**

**Class – The Section 1983 Right of Action [Panel 4]**

The question: What must a section 1983 plaintiff show in order to invoke the right of action?

Reading: pgs. 747-775

**Class – The Qualified Immunity Defense [Panel 5]**

The question: What must a defendant show to invoke qualified immunity?

Reading: pgs. 794-820

**Class – The Future of Qualified Immunity [Panel 6]**

The question: What are the criticisms and defenses of qualified immunity, and what are its prospects?

Reading: pgs. 825-839

**VII. Federal Court Relief Against Tribal Governments and Tribal Government Officers**

**Class [Panel 7]**

The question: How does the unique status of tribal sovereigns raise unique questions about the proprietary of federal court relief against tribal governments and tribal government officers?

Reading: pgs. 840-861

**VIII. Federal Court Relief Against the Federal Government and its Officers**

**Class – Federal Sovereign Immunity, Waiver, and Suits Against Federal Officers [Panel 1]**

The question: What are the roles of Congress and the courts in authorizing federal court relief against the federal government and its officers?

Reading: pgs. 871-889

**Class – Suits Against Federal Officers – The *Bivens* Doctrine’s Decline [Panel 2]**

The question: Why has the Court concluded that Congress should decide whether to authorize a damages remedy to enforce constitutional rights?

Reading: pgs. 890-924

**Class – The Availability of Injunctive Relief to Enforce Federal Law [Panel 3]**

The question: What explains the difference between injunctive relief, which federal courts will provide even when Congress has not authorized it, and damages, which the federal courts will not provide unless Congress has authorized it?

Reading: pgs. 638-644, 924-927

**IX. The Writ of Habeas Corpus**

**A. A History of the Writ and its Use to Challenge Executive Detention**

**Class [Panel 4]**

The question: How does the history of the writ of habeas corpus relate to the modern doctrine on suspension and executive detention?

Reading: pgs. 943-952 (read up to “The modern doctrine on suspension …”); 964-988 (begin with first sentence on pg. 964)

**B. Collateral Attack on State Criminal Convictions**

**Class – Procedural Prerequisites: Custody, Exhaustion, and Procedural Default [Panel 5]**

The question: What (if anything) justifies the use of federal habeas in the state post-conviction setting?

Reading: pgs. 1009-1034

**Class - Procedural Prerequisites: The Statute of Limitations, Successive Petitions, and Fact Finding [Panel 6]**

The question: Why are the procedural prerequisites to a federal habeas petition challenging a state conviction so demanding?

Reading: pgs. 1034-1053

**Class - The Standard of Review: The Warren Court Approach and *Teague*’s Non-Retroactivity Principle [Panel 7]**

The question: How has the Court’s approach to retroactivity changed over time (and why has it changed)?

Reading: pgs. 1054-1088

**Class – The Standard of Review: Exceptions to the Non-Retroactivity Principle and Retroactivity Rules for State Courts [Panel 1]**

The question: What are the exceptions to *Teague*’s non-retroactivity principle?

Reading: pgs. 1088-1112

**Class - The Standard of Review: AEDPA § 2254(d) [Panel 2]**

The question: What does AEDPA § 2254(d) do and how does it interact with the Court’s doctrine?

Reading: pgs. 1112-1136

**X. What are the Federal Courts For? – A Concluding Case Study of the Relationship Between Federal Courts and State Courts**

**Class – Supreme Court Review of State Courts [Panel 3]**

The question: Why is there Supreme Court review of state courts?

Reading: pgs. 1137-1140, 1163-1191

**Class – Supreme Court Review of State Courts, Continued [Panel 4]**

The question: What are the limits on Supreme Court review of state courts and why do they exist?

Reading: pgs. 1191-1224 (stop at final paragraph)

**Class - Abstention: *Pullman* and *Colorado River* [Panel 5]**

The question: Should federal courts abstain on federalism grounds when they have jurisdiction over a case?

Reading: pgs. 1266-1275, 1282-1290

**Class – Abstention and Statutory Control: *Younger* and the Anti-Injunction Act [Panel 6]**

The question: Should federal courts abstain on federalism grounds even when Congress has expressly authorized federal relief?

Reading: pgs. 1231-1245, 1290-1310

**XI. Conclusion**

**Class – Concluding Lecture: The Federal Courts in Context [Panel 7]**

The question: What do we learn from placing the federal courts in context?

Reading: pgs. 1-5 (review from Class 1)

# Part 3. Panel Assignments

Panel 1

* Josh Cayetano
* Clare Connaughton
* Tim Dabrowski
* Taylor Fox
* Matthew Kenney
* Evan Mantler
* Scott Pease
* Andrew Schwartz
* Caressa Tsai
* Emily Welsch
* Lucas White Moon
* Robert Zhu

Panel 2

* Harvinder Bassi
* Thomas Chafin
* Maya Darrow
* Mariam Elbakr
* Lora Faraj
* Sacha Heymann
* Ortal Isaac
* Meaghan Katz
* Leila Nasrolahi
* Dani O’Donnell
* Zabdi Salazar

Panel 3

* Cecilia Almaraz
* Kayla Clough
* Natalie Friedberg
* Adriana Hardwicke
* Harrison Holland-McCowan
* Chelsea Hu
* Jim Lischeske
* Emma Rodriguez
* Mia Stange
* Ali Suebert
* Camille Tabari

Panel 4

* Remy Carreiro
* Angelica Cesar
* Arianna Chen
* Kennedy Edwards
* Theodore Galvan
* Sarah Joffe
* Cynamon Mantley
* Hyunsu Park
* Georgiana Soo
* Taiya Tkachuk
* Cristina Violante

Panel 5

* Martha Boben
* Becca Cooley
* Max Epstein-Shafir
* Grace Geurin-Henley
* Drake Goodson
* Sean Kim
* Maria Kollaros
* Ryan Laws
* Lorena Ortega-Guerrero
* Josh Schapiro
* Milton Zerman

Panel 6

* Tiffaney Boyd
* Chelsea Christopher Strawn
* Katie Hendrickson
* Leila Hooshyar
* Jacobi Jefferson
* Evan Jester
* Niki Kates
* Gabriella Lanzas
* Claudia Liss-Schultz
* Devanshi Patel-Martin
* Marie Talarico

Panel 7

* Andrea Clark Gomez
* Brigitte Desnoes
* Gwen Iannone
* Livia Jaramillo
* Joanna Ong
* Miranda Paez
* Maripau Paz
* Eric Provost
* Ian Smith
* Hayley Uno
* Elise Wurtman

# Part 4. School-Wide Policies

1. *Credit Hours:* Federal Courts is a four-credit course. A “credit hour” at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including a) classroom time, b) time spent preparing for class, c) time spent in review sessions and studying and taking, final exams, d) time spent researching, writing, and revising papers and other written work, and e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on in-class and out-of-class, course-related work as described above.

2. *Accommodations:* Students who need accommodations for disability or pregnancy or want to discuss the implementation of their accommodations, including accommodated exams, should contact Chelsea Yuan, Director for Student Services, Accessible Education (email here).

Student Services schedules all exams, including accommodated exams, as the law school is committed to anonymous grading. **Professors do not have the authority to reschedule exams**.

3. *Honor Code:* The Academic Honor Code (available [here](https://www.law.berkeley.edu/academics/registrar/academic-rules/academic-honor-code/)) governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law.

4. *Berkeley Law Academic Skills Program*: Every student admitted to Berkeley Law has the ability to succeed in law school and we are committed to fostering an academic environment in which all students can achieve their full potential. To schedule an individual appointment and for handouts on core law school skills and study strategies, free online study aids, information about practice exams and hypos, and much more, please visit and bookmark [the Academic Skills Program website](https://www.law.berkeley.edu/students/student-services/academic-skills-program/).

5. *Student Technology Help*: As a Berkeley Law student, you are entitled to general software support for your computer from the law school, and certain free software downloads from UC Berkeley, while enrolled. If you have issues with internet access or computer equipment required to participate in classes remotely, contact studentcomputing@law.berkeley.edu. Information, links, and instructions for many common computer/technical questions can be found in the [law library’s online computing guide](http://libguides.law.berkeley.edu/computing/home). For bCourses, Zoom, and technical support questions, please email studentcomputing@law.berkeley.edu or use the [Student Computing chat.](https://www.law.berkeley.edu/library/internal/techChat.php) In both cases, someone will respond to you during our regular business hours.

If you have research-related questions, please contact the reference librarians by filling out the [reference request form](https://www.law.berkeley.edu/library/dynamic/students/researchRequest.php). You can also reach reference librarians during business hours by using the [law library’s chat service](https://www.law.berkeley.edu/library/dynamic/internal/chat.php).

6. *Economic, Food, or Housing Support*: If you are in need of economic, food, or housing support, you can find basic needs information [here](https://basicneeds.berkeley.edu/) You may be eligible for money to buy groceries via [CalFresh](http://calfresh.berkeley.edu/) or our Food Assistance Program. If you need food immediately, please visit our [UC Berkeley Food Pantry](https://pantry.berkeley.edu/).

7. The University of California is committed to creating and maintaining a community dedicated to the advancement, application, and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior (“Prohibited Conduct”) that violates the law and/or University policy. The University will respond promptly and effectively to reports of Prohibited Conduct and will take appropriate action to prevent, correct, and when necessary, to discipline behavior that violates this policy. For the complete UC Policy, definitions, compliance, and procedures, please access the [Sexual Violence and Sexual Harassment Policy](https://policy.ucop.edu/doc/4000385/SVSH).

1. This sketch leaves out the fact that the U.S. has overseas territories and military bases around the world. But, as we shall see, that fact is important for understanding federal courts law. [↑](#footnote-ref-1)