Public Law and Policy Workshop Professor Farber

LAW 220G (Spring 2021) Simon Hall 894

This seminar will present papers on public law by leading scholars from Berkeley Law and other schools. Papers this semester will focus on topics broadly related to constitutional law, including the separation of powers and methodology of constitutional interpretation. The course gives students the opportunity of learning from and interacting with the nation’s leading scholars on the subject.

***Course Specific Information***

*Reading Materials*

Each week there will be a new paper by that week’s speaker. These papers will be typically unpublished works-in-progress. Please do not share the papers with anyone outside the class. All papers will be posted on bcourses.

*Schedule of Classes*

We will meet on Mondays, from 12:00 to 1:50 p.m., by Zoom. You have to be signed into Zoom to join the event. Here’s the Zoom information:

<https://berkeley.zoom.us/j/92307080628?pwd=RGVIUzFlU3ZOb0VCaGh4T1dIdFRoUT09>

Meeting ID: 923 0708 0628

Passcode: 397763

**Instructor Information**

Instructor: Daniel Farber

Email: [dfarber@law.berkeley.edu](mailto:dfarber@law.berkeley.edu)

Blog: Legal-Planet.org

Facebook public page: facebook.com/dfarber

*Office Hours*

I will hold office hours 3:30-4:30 on Tuesdays but am happy to set up meetings at other times. The Zoom information for office hours is:

<https://berkeley.zoom.us/j/97517134001?pwd=cnFTRmplN0RneStVRDZ4a3Nyc0wwZz09>

Meeting ID: 975 1713 4001

Passcode: 443842

**Class Requirements and Grading**

Grades will be based on the following factors:

33% Class participation

66% Response Memoranda (four)

This course will be conducted as a seminar. In the first twenty minutes, the professor will discuss issues related to the assigned paper and/or legal scholarship generally, and in the last ninety minutes, the speaker will do a short presentation, followed by a question and answer period.

Students are expected to come to class fully prepared to discuss the presented paper. In other words, all students are expected to read the paper for each week before class, even if not assigned to write a response memorandum. And students are expected to ask questions of the speaker, particularly when assigned a response memorandum.

The intellectual value of a seminar depends on the quality of discussion. The goal is to create an energetic, but comfortable, forum for intellectually creative exchange from which we all learn. Attendance and participation therefore are essential. Participation entails active, thoughtful listening as well as speaking. The professor will sometimes call on people in order to promote the broadest participation.

If you must miss or be late to any class, please notify me by email as soon as possible and in advance if the absence is anticipated.

Four times during the semester you will be required to write a short reaction memorandum (no more than 1500 words, but 800-1000 words should be sufficient). These memoranda must be solely your own work. These memoranda should not be summaries of the assigned paper. Instead, they should assess the quality of the arguments and evidence, make connections to issues with which you are familiar, and at the end raise specific questions (two to five) for discussion. You may do outside research for these memoranda but do not need to.

I will post a google form allowing you to list your top four choices among the papers. I’ll do my best to at least give you 2-3 of those preferences, subject to the need to balance the number of commentators between speakers. On January 26, you will receive the sessions for which you are responsible for circulating a discussion memorandum. (This gives you a week if you’re doing a discussion paper for the first speaker). By mutual consent, you may exchange an assigned date with another student, but let the professor know of any changes. Please write these memoranda to the seminar, and email them to dfarber@berkeley.edu before 2:00 p.m. on the day immediately before the seminar (typically this will fall on Sunday). I will distribute the memos to the class via b-courses in the weekly folders established with the week’s assigned paper. You should plan to read two of these memos (of your choice) each week before the seminar meets.

*First Class Assignment*

The first class will present some background material on executive power disputes, including a short overview of the relevant history from the Framing period.

*Tentative Workshop Speaker Schedule*

1/25 Introductory class

2/1 – Bertrall Ross - Berkeley Law

2/8 – Gillian Metzger - Columbia Law School

2/15 - Holiday

2/22 – Josh Chafetz - Cornell Law School – “Nixon/Trump: Strategies of Judicial Aggrandizement”

3/1 – Eloise Pasachoff - Georgetown Law School, on politics and executive branch spending decisions.

3/8 – Kristin Hickman - University of Minnesota - "Taking Nondelegation Seriously But Not Literally?"

3/15 – John Harrison - University of Virginia

3/22 - Spring Break

3/29 – JD Mortenson - University of Michigan

4/5 – Amanda Tyler - Berkeley Law, “Justice Ginsburg’s Legacy”

4/12 – John Yoo - Berkeley Law – “Rational Nondelegation”

4/19 – Jonathan Gould - Berkeley Law – on the political dimension of public law doctrines.

4/26 – Saikrishna Prakash - University of Virginia

4/27 - Final class

**Class Meetings Format**

Class meetings will be offered online via web conference with . You are strongly encouraged to attend classes live on Zoom if that is possible for you. If you are not able to attend at the time the class takes place, then you must view the entire class recording. Whether you attend in real-time or view the recording, you are responsible for all content covered in each class meeting. This class combines lecture, exercises, polls, small-group discussions on Zoom, and discussion forums on bCourses.

**Learning Outcomes**

This course will advance two of the Law School’s learning outcomes: (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context.

**Formative Assessments**

I will provide feedback on your discussion papers after the session.

***General Information***

**Remote Instruction Guidelines**

The relevant skills to participate in remote instruction are not only technology skills. You also need to exercise good communication, judgement, and professionalism. To that end, please follow these recommendations for conduct in remote classes on Zoom:

* Your ability to engage meaningfully with your instructor and classmates, exercising the full range of your communication skills, will be enhanced if you can talk to each other and see each other. We realize that this will not always be possible for a variety of reasons. But please use video when it is possible, unless your instructor gives other instructions.
* The benefits of video will be compromised if your background is distracting. If you can’t avoid being in a place with distractions in the background, consider using a virtual background. See instructions for that here: <https://support.zoom.us/hc/en-us/articles/210707503-Virtual-Background>
* Along the same lines, try to present yourself with the same professionalism you bring to in-person classes. In other words: wear appropriate clothes and sit upright facing your screen as you would face the instructor in class.
* *Note that recordings of Zoom classes typically capture images of participants, screen-shared material, and a transcript of all chats that are displayed to the meeting host.* So (1) all of your participation should be class-appropriate (i.e. avoid snarky comments in the chat); (2) you should not distribute the videos (which would have both copyright and privacy implications).
* Do not share your screen with the class unless instructed to do so by me.
* Keep yourself on “mute” when you are not speaking. This will help to minimize background noise for everyone.
* When you would like to speak during a class discussion, use the “raise hand” function in the participants pane. Then, wait for me to call on you before speaking.
* You can use the chat function to ask clarifying questions during the lecture.

**Technology Help**

If technical difficulties prevent you from completing course work, please alert your professor immediately. However, understand that the professor cannot assist you with technical problems. You must contact tech support and make sure you resolve any issues immediately. Be sure to document (save emails and transaction numbers) for all interactions with tech support.

Berkeley Law students are entitled to general software support for their computers from the law school, and certain free software downloads from UC Berkeley, while enrolled. UC Berkeley does not provide hardware support. 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 contact [studentcomputing@law.berkeley.edu](mailto:studentcomputing@law.berkeley.edu). 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 form here: <https://www.law.berkeley.edu/library/dynamic/students/researchRequest.php>.

You can also reach reference librarians during business hours by using our chat service (<https://www.law.berkeley.edu/library/dynamic/internal/chat.php>) or by calling +1 (510) 642-0900.

**School-wide Policies**

• The Academic Honor Code [Academic Honor Code] governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law. We expect students to adhere to this code scrupulously. If you have any question whether your conduct may violate the code, please contact your professor before you act. You may face severe consequences, including a failing grade in this class or removal from the program, if you violate the code, even if similar conduct is not considered wrong in your home country.

• A common and serious form of misconduct and Honor Code violation is plagiarism. You must cite the sources of any words or ideas that are not your own. Cite all sources — hard copy, web-based, and others — in proper academic format.