Reflections on Executive Power and Administrative Law

University of Wisconsin Law School

Program

Overview
This workshop will bring together a mix of junior and senior scholars for a wide-ranging discussion of topics related to executive power and administrative law. Participants will discuss their working papers on topics including state and local executive power and bureaucracy; separations of power between branches and within the executive branch; privatization and hybrid entities in the administrative context; and intergovernmental interactions.

Day 1: Friday, April 14, 2017

2:00-2:15 pm Check-in (Room 7200)

Welcome
Miriam Seifter
University of Wisconsin Law School

Associate Dean Susannah Tahk
University of Wisconsin Law School

2:15-3:45 pm Panel 1: New Perspectives on Separation of Powers

Moderator: Ryan Owens, University of Wisconsin-Madison

“Sovereigns, Shopkeepers, and the Separation of Powers”
Jon Michaels
University of California, Los Angeles School of Law

“Governing Agencies”
Jennifer Nou
University of Chicago Law School

“Internal Administrative Law”
Kevin Stack
Vanderbilt Law School
3:45-4:00 pm  Break

4:00-5:30 pm  **Panel of State Solicitors General (Room 2260)**

**Welcome**
Dean Margaret Raymond  
*University of Wisconsin Law School*

“A Conversation with State Solicitors General: Reflections on Federalism, Executive Power, and Public Service”

**Moderator:** Miriam Seifter, *University of Wisconsin Law School*

Elbert Lin (West Virginia)  
Noah Purcell (Washington)  
Carolyn Shapiro (Illinois)  
Misha Tseytlin (Wisconsin)

6:30 pm  Dinner for speakers and invited guests  
(Harvest, 21 N Pinckney Street)

---

**Day 2: Saturday, April 15, 2017**

8:30-9:00 am  **Welcome and Refreshments (Room 7200)**

9:00-10:30 am  **Panel 2: The Executive in Intergovernmental Affairs**

**Moderator:** David Schwartz, *University of Wisconsin Law School*

“Our Regionalism”  
Jessica Bulman-Pozen  
*Columbia Law School*

“Two Cheers for Evidence: Law, Research, and Values in Education Policymaking and Beyond”  
Eloise Pasachoff  
*Georgetown University Law Center*
“Negotiating Environmental Federalism”
Erin Ryan
*Florida State University Law School*

10:30-10:45 am  Break

10:45 am-12:15 pm  **Panel 3: Reflections on Delegation and Devolution**

**Moderator:** Anuj Desai, *University of Wisconsin Law School*

“Fire Alarm Federalism”
Miriam Seifter
*University of Wisconsin Law School*

“Cost Benefit Analysis and Public Trust”
Jed Stiglitz
*Cornell Law School*

“Federal Rights, Coordination Remedies, and the Reproduction of Inequality”
Justin Weinstein-Tull
*Stanford Law School*

12:15-1:30 pm  Lunch

1:30-3:00 pm  **Panel 4: New Perspectives on Administrative Law**

**Moderator:** John Ohnesorge, *University of Wisconsin Law School*

“Rulemaking and the Guidance Exemption”
Ron Levin
*Washington University Law School*

“Taking Representation Seriously in Agency Rulemaking”
Jim Rossi
*Vanderbilt Law School*

“Is it Better Not to Know?: Bathroom Access for Transgender Students and the Problem of the Big-Deal Guidance”
Aaron Saiger
*Fordham University School of Law*

3:00 pm  Adjourn
Biographies of Participants

Jessica Bulman-Pozen (Columbia Law School)
http://www.law.columbia.edu/faculty/jessica-bulman-pozen

Jessica Bulman-Pozen is a Professor at Columbia Law School. She writes about constitutional and administrative law, with a particular focus on federalism; her recent articles include "Executive Federalism Comes to America" and "Partisan Federalism." Before joining the Columbia faculty, she served as an attorney-adviser in the U.S. Department of Justice's Office of Legal Counsel and as a law clerk to Justice John Paul Stevens and Judge Merrick B. Garland.

Ronald Levin (Washington University Law School)
https://law.wustl.edu/faculty/pages.aspx?id=279

Ronald M. Levin, the William R. Orthwein Distinguished Professor of Law, specializes in administrative law and related public law issues. His coauthored books include a casebook, State and Federal Administrative Law, now in its fourth edition, and a student text, Administrative Law and Process in a Nutshell, now in its sixth edition. He has testified before Congress on regulatory reform issues and has published numerous articles and book chapters on administrative law topics, including judicial review, rulemaking, and legislative reform of the regulatory process. He also has written about the law of lobbying and legislative ethics. Professor Levin has been active in the ABA Section of Administrative Law and Regulatory Practice for more than three decades and served as its Chair in 2000-01. He currently represents the Section in the ABA House of Delegates. He also served as the ABA’s advisor to the drafting committee to revise the Model State Administrative Procedure Act. He is a senior fellow of the Administrative Conference of the United States and currently chairs its Judicial Review Committee. He is also a member of the American Law Institute. Before joining the law faculty, Professor Levin clerked for the Hon. John C. Godbold, U.S. Court of Appeals for the Fifth Circuit, and practiced for three years in Washington, D.C., with the firm of Sutherland, Asbill & Brennan. He was the Associate Dean of the School of Law from 1990-1993.

Elbert Lin (Solicitor General of West Virginia)
http://www.fed-soc.org/experts/detail/elbert-lin

Elbert Lin is the Solicitor General of West Virginia. The state’s chief appellate lawyer, he also oversees the issuance of Attorney General Opinions and manages all legal issues and litigation involving the federal government. He has argued numerous significant matters in state and federal appellate courts, and is counsel of record for the State of West Virginia in several cases challenging actions by federal agencies.

Prior to joining the West Virginia Attorney General’s Office, Lin was a partner at Wiley Rein LLP in Washington, DC, where he focused on appellate matters and successfully challenged the FCC’s first “net neutrality” decision. A former law clerk at all three levels of the federal judiciary, he has
worked for U.S. Supreme Court Justice Clarence Thomas, U.S. Court of Appeals Judge William H. Pryor Jr., and Senior U.S. District Judge Robert E. Keeton. He has also served as a trial attorney with the U.S. Department of Justice, where he primarily litigated suits involving the constitutionality of federal laws and challenges to federal agency action.

Jon Michaels (University of California, Los Angeles School of Law)
https://law.ucla.edu/faculty/faculty-profiles/jon-d-michaels/

Jon D. Michaels is a professor of law at the UCLA School of Law, where he teaches and writes about administrative law, national security law, privatization, and the separation of powers. He is currently working on a book, tentatively titled "Still No Angels: America's Enduring Commitment to Separation of Powers from Madison to FDR to Trump" (forthcoming, Harvard University Press).

Jennifer Nou (University of Chicago Law School)
http://www.law.uchicago.edu/faculty/nou

Jennifer Nou's research and teaching interests are in administrative law, legislation, executive power, legal interpretation, and election law. Prior to joining the faculty, she was a Public Law Fellow at the Law School and also worked as a policy analyst and special assistant at the Office of Information and Regulatory Affairs. Jennifer is a graduate of Yale College and Yale Law School, and received an M. Phil in Politics from Oxford University as a Marshall Scholar. After law school, she was a law clerk to Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit and then to Justice Stephen Breyer of the U.S. Supreme Court.

Eloise Pasachoff (Georgetown University Law Center)
https://www.law.georgetown.edu/faculty/pasachoff-eloise.cfm

Eloise Pasachoff is Professor of Law at the Georgetown University Law Center. Her scholarship focuses on administrative and constitutional law issues surrounding federal funding, with a particular interest in legal regimes governing education and social welfare programs. Her most recent article, The President's Budget as a Source of Agency Policy Control, 125 YALE L. J. 2182 (2016), was selected for reprinting in the ENVIRONMENTAL LAW AND POLICY ANNUAL REVIEW as one of the year's best law review articles in the field of environmental law and policy. An earlier article, Special Education, Poverty, and the Limits of Private Enforcement, 86 NOTRE DAME L. REV. 1413 (2011), won the Education Law Association's 2012 Steven S. Goldberg Award for Distinguished Scholarship.

Noah Purcell (Solicitor General of Washington)
http://www.atg.wa.gov/solicitor-generals-office

In 2013 Attorney General Bob Ferguson appointed Seattle attorney Noah Guzzo Purcell as the Solicitor General for the Washington State Attorney General's Office, replacing retiring Solicitor General Maureen Hart. Prior to joining the office, Purcell worked as an attorney in Perkins Coie's
Litigation and Appellate practices. Purcell's diverse litigation experience includes constitutional issues, antitrust claims, environmental law, preemption, campaign finance, and administrative law. Purcell served in the U.S. Department of Homeland Security's Office of General Counsel from 2009-2010, advising on security and immigration issues and working extensively on the federal government's challenge to Arizona's immigration law. After graduating magna cum laude from Harvard Law School, where he served as an editor of the Harvard Law Review, Purcell worked as a law clerk to former U.S. Supreme Court Justice David Souter and U.S. Court of Appeals Judge David Tatel of the D.C. Circuit.

Jim Rossi (Vanderbilt Law School)
https://law.vanderbilt.edu/bio/jim-rossi

Jim Rossi is nationally recognized for his research on administrative and energy law topics. His recent articles focus on the role of public utility doctrines and principles in modern energy markets, as well as federalism and other shared jurisdictional issues affecting agency regulation. His books include *Energy, Economics and the Environment* (4th edition, Foundation Press, 2015, with Joel Eisen, Emily Hammond, David Spence, Jacqueline Weaver and Hannah Wiseman); *Regulatory Bargaining and Public Law* (Cambridge University Press, 2005); and an edited collection of essays, *Dual Enforcement of Constitutional Norms: The New Frontier of State Constitutionalism* (Oxford University Press, 2010, with James Gardner). Professor Rossi served as a consultant to the Administrative Conference of the United States' Committee on Collaborative Governance project on Improving Coordination of Related Agency Responsibilities, which resulted in a set of recommendations adopted by the conference on how agencies should coordinate. Before joining Vanderbilt's law faculty, he was the Harry M. Walborsky Professor and associate dean for research at Florida State University College of Law. Professor Rossi has also taught as a visiting professor at Harvard Law School, the University of Texas School of Law and the University of North Carolina School of Law. Before entering the legal academy, he practiced energy law in Washington, D.C. Professor Rossi was the law school's 2013-14 FedEx Research Professor.

Erin Ryan (Florida State University College of Law)
http://www.law.fsu.edu/our-faculty/profiles/ryan

Professor Erin Ryan teaches environmental and natural resources law, property and land use, water law, negotiation, and federalism. She has presented widely in the United States, Europe, and Asia, including the Ninth Circuit Judicial Conference, the National Association of Attorneys General, the United States Forest Service, and the United Nations Institute for Training and Research. She has advised National Sea Grant multilevel governance studies involving Chesapeake Bay and consulted with multiple institutions on developing sustainability programs. She has appeared in the Chicago Tribune, the London Financial Times, the Associated Press, Thomson-Reuters Beijing, the Huffington Post, National Public Radio, and local NBC and CBS Television News. She is the author of many scholarly works, including *Federalism and the Tug of War Within* (Oxford, 2012).

Ryan is a graduate of Harvard Law School, where she was an editor of the Harvard Law Review and a Hewlett Fellow at the Harvard Negotiation Research Project. She clerked for Judge James R. Browning of the U.S. Court of Appeals for the Ninth Circuit before practicing environmental, land
use, and local government law in San Francisco. She began her academic career at the College of William & Mary in 2004, joined the faculty at the Northwestern School of Law at Lewis & Clark College in 2011, and moved to Florida State University in 2015. Ryan spent 2011-12 as a Fulbright Scholar in China, during which she taught American law, studied Chinese governance, and lectured throughout the country. She has also lectured at leading universities and government agencies in Japan, Vietnam, and India.

Prior to law school, she served as a U.S. Forest Service ranger on the Mono Lake District of the Inyo National Forest, east of Yosemite National Park. She graduated from Harvard College with a degree in East Asian Languages and Civilizations and received a Master's degree in Ethnomusicology from Wesleyan University.

Aaron Saiger (Fordham University School of Law)
https://www.fordham.edu/info/23176/aaron_saiger

Aaron Saiger is Professor of Law at Fordham Law School, where he has taught since 2003. He writes and teaches in the areas of administrative law and regulation, education law, legislation, and property. Saiger has been a Spencer Foundation/National Academy of Education Postdoctoral Fellow (2006–07) and a Research Fellow at Columbia Law School (2002–03). He received his Ph.D. from the Woodrow Wilson School of Public and International Affairs at Princeton University and his J.D. from Columbia University. He was law clerk to the Honorable Ruth Bader Ginsburg of the United States Supreme Court and the Honorable Douglas H. Ginsburg of the United States Court of Appeals for the District of Columbia Circuit.

Miriam Seifter (University of Wisconsin Law School)
http://law.wisc.edu/profiles/miriam.seifter@wisc.edu

Miriam Seifter’s research and teaching interests include administrative law, energy law, and federalism. Her recent work focuses on the role of states and interest groups in the federal regulatory process, and on executive power and the separation of powers at the state level. Her recent articles include “Gubernatorial Administration” and “Second-Order Participation in Administrative Law.” Prior to joining the Wisconsin faculty, she was a Visiting Researcher and Adjunct Professor of Law at Georgetown University Law Center and an attorney at Munger, Tolles & Olson LLP in San Francisco. Professor Seifter is a graduate of Yale University, Oxford University, and Harvard Law School. After law school, she served as a law clerk to Judge Merrick Garland on the D.C. Circuit and for Justice Ruth Bader Ginsburg at the Supreme Court of the United States.

Carolyn Shapiro (Chicago-Kent College of Law)
https://www.kentlaw.iit.edu/faculty/full-time-faculty/carolyn-shapiro

Carolyn Shapiro is an associate professor of law at IIT Chicago-Kent College of Law, where she is also the co-director of the Institute on the Supreme Court of the United States (ISCOTUS). From 2014 to 2016, Professor Shapiro was on leave from Chicago-Kent to serve as Illinois Solicitor
General. Professor Shapiro attended the University of Chicago Law School and she also has both an M.A. in Public Policy Studies and a B.A. in English from the University of Chicago. After law school, she clerked for Judge Richard Posner on the Seventh Circuit and Justice Stephen Breyer on the United States Supreme Court, and she was a Skadden Fellow with the Sargent Shriver National Center on Poverty Law and an associate at a small civil rights firm in Chicago.

Kevin Stack (Vanderbilt Law School)
https://law.vanderbilt.edu/bio/kevin-stack

Kevin M. Stack is a Professor of Law at Vanderbilt University School of Law. Professor Stack’s research is in the areas of US administrative law, regulation, separation of powers, and legislation as well as EU administrative law. His work has appeared in numerous law reviews and journals, including the Yale Law Journal, Columbia Law Review, Michigan Law Review, Northwestern University Law Review, and the Journal of Common Market Studies. In 2013, he received American Bar Association’s 2013 Scholarship Prize in Administrative Law for his article, Interpreting Regulations, 111 Mich. L. Rev. 355 (2012); that article also provided the basis for a recommendation adopted by the Administrative Conference of the United States for which he served as the academic consultant. In 2015, Vanderbilt University awarded him a Chancellor’s Award for Faculty Research. He is also a co-author of THE REGULATORY STATE (2010). Prior to joining the Vanderbilt faculty, he on the faculty at the Benjamin N. Cardozo School of Law, Yeshiva University. He received his undergraduate degree in philosophy from Brown University, a master's degree in philosophy from Oxford University, supported by a Fulbright Scholarship, and his law degree from Yale Law School. After law school, he served as a law clerk for the Honorable Kimba M. Wood, U.S. District Court in the Southern District of New York, and for the Honorable A. Wallace Tashima of the United States Court of Appeals for the Ninth Circuit, worked in litigation in Washington, D.C.

Jed Stiglitz (Cornell Law School)
http://www.lawschool.cornell.edu/faculty/bio_jed_stiglitz.cfm

Jed Stiglitz is an Assistant Professor of Law and the Jia Jonathan Zhu and Ruinyin Ruby Ye Sesquicentennial Fellow. His research focuses on administrative law, with an emphasis on the relationship between judicial review and the values of trust and accountability in the administrative state. He also studies legislation and other areas of public law.


Following law school, he clerked for the Honorable Stephen F. Williams of the D.C. Circuit Court of Appeals.
Susannah Tahk (University of Wisconsin Law School)
http://law.wisc.edu/profiles/susannah.tahk@wisc.edu

Susannah Camic Tahk serves as the Associate Dean for Research and Faculty Development at UW Law. She also researches and teaches tax law and policy and supervises UW Law’s Volunteer Income Tax Assistance program. She is currently the Rowe Faculty Fellow in Regulatory Law as well as an affiliate of UW-Madison's Institute for Research on Poverty. Before coming to UW Law, Tahk practiced in the tax group in the Washington, DC office of Skadden, Arps, Slate, Meagher & Flom LLP, where she focused on controversy and policy matters.

A graduate of Madison's Memorial High School, Tahk received her B.A. magna cum laude in economics and ethics, politics and economics from Yale University, where she also received an M.A. in political science as a Sterling Prize Fellow. Tahk received her J.D. from Yale Law School, where she was executive editor of the Yale Journal on Regulation and a student director of the Landlord-Tenant Clinic.

Tahk is currently writing a book tentatively titled *The Tax War on Poverty* that explores the reasons for and consequences of tax policies that address poverty in the US. In 2015, Tahk received the Vilas Early Career Investigator Award from UW-Madison and was named an Up and Coming Lawyer by the Wisconsin Law Journal.

Misha Tseytlin (Solicitor General of Wisconsin)
https://www.doj.state.wi.us/exec-profile/misha-tseytlin

Misha Tseytlin became Wisconsin Solicitor General in December 2015. Tseytlin previously served as General Counsel in the West Virginia Attorney General’s Office, where he specialized in litigation challenging unconstitutional and otherwise unlawful overreach by the Federal Government. Prior to joining General Patrick Morrissey’s staff in West Virginia, Tseytlin was as an associate in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP, where he handled high profile litigation cases throughout the United States.

Tseytlin graduated summa cum laude from Georgetown University Law School in 2006, where he received the Francis E. Lucey Award for having the highest grade point average in his class. At Georgetown, Tseytlin served as the president of the student chapter of the Federalist Society and was the articles editor of the Georgetown Law Review. Tseytlin received his B.A. from Amherst College, magna cum laude.

Tseytlin’s distinguished resume includes a clerkship for United States Supreme Court Justice Anthony Kennedy. Additionally, he clerked, for the Honorable Janice Rodgers Brown on the Court of Appeals for the District of Columbia Circuit in Washington, D.C. and the Honorable Alex Kozinski on the Court of Appeals for the Ninth Circuit in Pasadena, CA.
Justin Weinstein-Tull is a Thomas C. Grey Fellow and Lecturer in Law. He studies election law, state and local government law, civil procedure, and federalism. His most recent projects examine the ways in which different federal laws filter down through state administrative bodies and local governments to the people they target. He has previously written about the effects of our decentralized elections system on the right to vote. He teaches Legal Research and Writing and Federal Litigation.

Before joining Stanford Law School in 2014, Justin was an attorney in the Civil Rights Division of the United States Department of Justice. There, he enforced federal voting laws in suits against states and local governments and was part of the team that defended the constitutionality of Section 5 of the Voting Rights Act in Shelby County v. Holder. He was also a litigation associate in the San Francisco office of Munger, Tolles & Olson. After receiving his law degree from Yale Law School and a Master’s in Public Policy from Harvard’s Kennedy School, he clerked for Judge Sidney Thomas on the United States Court of Appeals for the Ninth Circuit. He received his undergraduate degree from Stanford University.