

PROMOTION RECOMMENDATION
The University of Michigan
Law School

Approved by the
Regents
May 21, 2015

Nicholas Bagley, assistant professor of law, Law School, is recommended for promotion to professor of law, with tenure, Law School.

Academic Degrees:

J.D.	2005	New York University School of Law, New York, NY
B.A.	2000	Yale University, English, New Haven, CT

Professional Record

2010-Present	Assistant Professor, Law School, University of Michigan
2007-2010	Attorney, U.S. Department of Justice, Civil Division, Appellate Staff, Washington, D.C.
2006-2007	Law Clerk, Justice John Paul Stevens, United States Supreme Court
2005-2006	Law Clerk, Judge David S. Tatel, U.S. Court of Appeals for the D.C. Circuit

Summary of Evaluation:

Teaching: Professor Bagley has taught first-year Civil Procedure (a required course), a course on Legislation and Regulation (which became a required course during Professor Bagley's time here), and a small class on Health Law and Policy. He is a beloved teacher. On the "excellent course" question, students gave him median ratings of over 4.50 in six of his nine classes, and over 4 in the others; on the "excellent teacher" the median for each class was over 4.5, with four of them over 4.90. Student comments offer suggestions and criticisms, but the overall tone is remarkably positive. One student commented that "the skill with which Bagley conducts his class affirms my belief that Michigan has the best professors of any school in the country." Another student says: "Prof. Bagley was the most well prepared of any professor I have ever had," noting that "[m]any times I came to class without really understanding the readings and left with a foundational grasp of the material." Our personal interviews with a dozen randomly chosen students confirm that students regard him as "an exceptional teacher." Professor Bagley won the L. Hart Wright Teaching Excellence Award in 2012.

Research:

Professor Bagley's work is on Administrative Law and Health Care Law, with an emphasis on the intersection between the two. His most recent piece explores the historical case for treating medical providers as a regulated industry. He published a major piece that takes on one of the central presumptions in Administrative Law today, that actions of administrative agencies should be reviewable in a court of law. He wrote another major article examining the history of Medicare, in an effort to explain why reforms have not curbed explosive costs.

In these articles, Professor Bagley displays a diverse set of skills: an outstanding ability to analyze intricate legal problems as a lawyer, an uncanny ability to distil enormous amounts of complex material into digestible bits, a talent for perceptive historical work, a remarkable aptitude for astute policy analysis, and a knack for persuasive writing.

Professor Bagley has also emerged as one of the nation's leading commentators (via blogs, media appearances, and quotations) on key questions surrounding the legality of the Affordable Care Act and its implementation in the States.

Recent and Significant Scholarship:

Medicine as a Public Calling, 115 MICH. L. REV. (forthcoming 2015).

The Legality of Delaying Key Elements of the ACA, *New Eng. J. Med.* 1967 (2014).

The Puzzling Presumption of Reviewability, 127 Harv. L. Rev. 1285 (2014).

Essential Health Benefits and the Affordable Care Act: Law and Process, 39 *J. Health Pol., Pol'y & L.* 441 (2014) (with Helen Levy).

Bedside Bureaucrats: Why Medicare Reform Hasn't Worked, 101 *Georgetown L.J.* 520 (2013).

Why It's Called the Affordable Care Act, 110 Mich. L. Rev. *First Impressions* 1 (2011) (with Jill R. Horwitz).

Agency Hygiene, 89 *Tex. L. Rev.* See Also 1 (2010).

Service: Professor Bagley's service record is excellent. Chairs of the six committees on which he has served describe Professor Bagley's participation as "responsible" and even "exemplary." He has also been an active participant in workshops, faculty hiring, student events, and alumni gatherings. Professor Bagley has reached beyond the Law School to the broader university community. He is a member of the Institute for Healthcare Policy and Innovation, which has brought Michigan's health-services researchers together to foster interdisciplinary exchanges, and he has given guest lectures in other departments on campus.

Acting beyond the university, Professor Bagley testified in 2010 about agency capture before the U.S. Senate Subcommittee on Administrative Oversight and the Courts. His most significant public role comes through blogging and public writing. Professor Bagley has written regularly for a prominent health care policy blog, having contributed over 100 posts to date, at the rate of about one a week.

External Reviewers:

Reviewer A: "In sum, Professor Bagley's scholarship has significant potential. He picks important topics and has a good understanding of the issues he tackles. His research is comprehensive and benefits from the use of interdisciplinary sources. At the same time, his approach is insufficiently attentive to clusters of arguments; the work thereby attains an element of unsatisfyingly narrow focus."

Reviewer B: "Notwithstanding its several limitations, Bagley's work is still significant and insightful. ... The very lengthy nature of my review of these four papers [18 pages] should indicate the extent to which I found each paper to be interesting and worthy of engagement. ... [M]y overall conclusion is that the scholarship of his I read is making a 'significant contribution' and demonstrates the kind of 'substantial achievement' that 'one would expect of a person on the way to becoming a leading scholar.'"

Reviewer C: "Perhaps the strongest way I can endorse him is to 'put my money where my mouth is' and note that myself, [a colleague], and our Dean have all tried to get him to do a visit...since we are of the opinion that he would be a serious candidate for a lateral appointment."

Reviewer D: "I consider [Bagley] to be the most accomplished and promising health law scholar of his cohort in the country. At this stage of his career, I regard his health law scholarship to be equal or

superior to that of the pre-tenure health law work by [junior] faculty tenured in recent years at Harvard (Glenn Cohen), Chicago (Anup Malani), and Yale (Abbe Gluck, previously at Columbia).”

Reviewer E: “There is little question that Professor Bagley is on his way to being a leading figure in health law circles, and I expect that trajectory to continue. If I were...on the Michigan Law faculty, subject to evaluation of the other articles in the file, I would vote yes in this case. I would urge my colleagues to do the same.”

Reviewer F: “Professor Bagley would receive tenure at [my institution], and he should certainly receive it at the University of Michigan.”

Reviewer G: “Let me state my bottom line. *The Puzzling Presumption of Reviewability* is an excellent article that, if combined with other strong work, would make the case for tenure. I am very familiar with the question, as I did extensive research on the question more than a decade ago when I thought about writing on the same subject. I have kept up with the question since.”

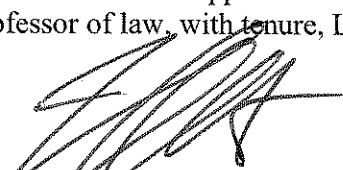
Reviewer H: “Considering Professor Bagley’s overall legal accomplishments, and assuming that his record of teaching and service is strong and his administrative law writings have been well received, I think it likely that he would be awarded tenure at [my institution]. His health law work alone, however, would make it a much closer case in my view.”

Reviewer I: “[B]oth . . . writings [I have seen] have the strengths of style, organization, imagination and thought that we associate with scholarly success... . I have not seen [Bagley’s] other work; and it is evident he is a splendid teacher, which ought to count for more than it often does at schools like ours.having read few scholars at his stage of development as closely as I have tried to read the works you sent me.”

Reviewer J: “I can enthusiastically recommend Professor Bagley for tenure and for promotion to the rank of professor. He has already established himself as one of the most important [junior] Administrative Law scholars in the country and his contributions on health care financing...already put him a the top of the field. ... My institution would enthusiastically tenure someone with his stellar academic record, and I cannot imagine any other serious law school hesitating for a moment.”

Summary of Recommendation:

Professor Bagley has made a significant contribution to scholarship, and is on his way to becoming a leading scholar in his field. He is an outstanding teacher, an exemplary citizen of this institution, and among the leading voices informing the media on pressing matters of public concern in his area of expertise. With the support of the Law School faculty, I recommend Nicholas Bagley for promotion to professor of law, with tenure, Law School.



Mark D. West
Dean, Law School
Nippon Life Professor of Law

May 2015