

# Erik Encarnacion

Assistant Professor of Law  
University of Texas School of Law  
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## ACADEMIC POSITIONS

<b>UNIVERSITY OF TEXAS SCHOOL OF LAW, AUSTIN, TX</b> <i>Assistant Professor of Law</i>	2019-present
<b>UCLA SCHOOL OF LAW, LOS ANGELES, CA</b> <i>Law &amp; Philosophy Postdoctoral Fellow</i>	2018-2019
<b>HARVARD LAW SCHOOL, CAMBRIDGE, MA</b> <i>Climenko Fellow and Lecturer on Law</i>	2016-2018

## EDUCATION

<b>UNIVERSITY OF SOUTHERN CALIFORNIA, LOS ANGELES, CA</b> Ph.D. in Philosophy, August 2016 Dissertation: “Contract, From Promise to Commodity” Honors: USC Provost Fellowship (competitive, five-year academic fellowship)  Activities: Teaching Assistant, “Legal Controversies and Ethical Principles” Teaching Assistant, “Contemporary Moral and Social Issues”	
<b>COLUMBIA UNIVERSITY SCHOOL OF LAW, New York City, NY</b> J.D., May 2006 Honors: Milton B. Conford Prize in Jurisprudence (awarded for best essay in jurisprudence) Harlan Fiske Stone Scholar  Activities: Member, Latino Law Students Association (LaLSA) Member, <i>Columbia Journal of Law and Social Problems</i> Extern, Hon. Robert A. Katzmann, United States Court of Appeals for the Second Circuit Teaching Assistant, “Constitutional Law,” Professor Kendall Thomas Teaching Assistant, “Perspectives on Legal Thought,” Professor Jeremy Waldron	
<b>PRINCETON UNIVERSITY, Princeton, NJ</b> A.B., Philosophy, June 2003 Honors: Graduated <i>magna cum laude</i> in Philosophy Activities: Member, Princeton University Law Journal Research Assistant, Court-Appointed Appellate Attorney Counselor, National Hispanic Institute, Lorenzo de Zavala Youth Legislative Session	

## TEACHING INTERESTS

Contracts, Private Law Theory, and Jurisprudence

## CLERKSHIP

Hon. Ronald Lee Gilman, U.S. Court of Appeals, Sixth Circuit, Memphis, TN	2008-2009
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## LEGAL EXPERIENCE

**WEIL, GOTSHAL & MANGES LLP**, New York, NY and Dallas, TX

2006-2008, 2009-2010

### *Attorney*

Drafted objections in bankruptcy proceedings, motions to dismiss, copyright complaints, briefs in support of asylum claims. Prepared expert witness to testify before the FTC and state AGs in connection with false-advertising claims. Moderated panel discussion on client relations. Advised media company on compliance with federal law. Managed document review and the production of privilege log. Managed due diligence on copyright enforcement matter. Two-time recipient of *pro bono* service award. Performed legal research. Member of Latinos@Weil.

## PUBLICATIONS

### *Articles & Essays*

- *Section 1981 as Contract Law*, 111 Va. L. Rev. \_\_ (forthcoming 2025)
  - Reviewed in David Hoffman, *Contract Law's Hidden Civil Rights Foundation*, JOTWELL (February 28, 2025), <https://contracts.jotwell.com/contract-laws-hidden-civil-rights-foundation/>.
- *Making Whole, Making Better, and Accommodating Resilience*, 108 Minn. L. Rev. 1335 (2024)
  - Reprinted in 40 Civil Rights Lit. and Att'y Fees Ann. Handbook 1013 (Steven Saltzman, ed., 2024)
  - Chosen for presentation at Harvard/Yale/Stanford Jr. Faculty Forum (June 2022)
  - Chosen for presentation at the Analytical Legal Philosophy Conference (April 2022)
  - “Highly Recommended,” Lawrence Solum, *Legal Theory Blog*, <https://lsolum.typepad.com/legaltheory/2023/12/encarnacion-on-compensatory-damages-that-make-plaintiffs-better-off.html>
- *Two Standards of Repair: Restoration and Resilience*, 2 Oxford Studies in Private L. Theory 131 (Paul Miller & John Oberdiek, eds., 2023)
  - Chosen for biannual volume “showcasing the best article-length work across private law theory.”
  - Peer-reviewed, competitive selection process
- *Text is Not Law*, 107 Iowa L. Rev. 2027 (2022)
  - “Important,” “Highly Recommended,” and “Download of the Week,” Lawrence Solum, *Legal Theory Blog*, <https://lsolum.typepad.com/legaltheory/2022/08/download-of-the-week-text-is-not-law-by-encarnacion.html>
- *Resilience, Retribution, and Punitive Damages*, 100 Tex. L. Rev. 1025 (2022)
  - Reviewed in Kenneth W. Simons, *A New Retributive Justification for Punitive Damages*, JOTWELL (July 13, 2021), <https://torts.jotwell.com/a-new-retributive-justification-for-punitive-damages/>
- *The Oath Doesn't Require Originalist Judges*, 15 Harv. L. & Pol'y Rev. 571 (2021) (w/ Guha Krishnamurthi)
- *Discrimination, Mandatory Arbitration, and Courts*, 108 Geo. L.J. 855 (2020)

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- *Boilerplate Indignity*, 94 Ind. L.J. 1305 (2019)
- *Contract as Commodified Promise*, 71 Vand. L. Rev. 61 (2018)
- *Backpay for Exonerees*, 29 Yale J. of L. & the Humanities 245 (2017)
- *Why and How to Compensate Exonerees*, 114 Mich. L. Rev. First Impressions 139 (2016)
- *Corrective Justice as Making Amends*, 62 Buff. L. Rev. 451 (2014)
- *Reviving the Assurance Conception of Promising*, 48 J. of Value Inquiry 107 (2014) (peer-reviewed)

***Reviews, Symposium Pieces, and Other Works***

- *An Ideal of Resilience and the Law of Torts*, 73 DePaul L. Rev. 395 (invited symposium piece) (2024)
- *Book Review: Andrew Gold, The Right to Redress* (2020), 19 J. of Moral Phil. 629 (2022) (peer-reviewed)
- *Political Integrity's Systemic Dimension*, 8 Jurisprudence 667 (2017) (peer-reviewed)
- *On Raphael Demos's "Legal Fictions,"* 125 Ethics 540 (2015) (peer-reviewed)
- Note, *Desuetude-Based Severability: A New Approach to Old Morals Legislation*, 39 Colum. J. of L. & Soc. Probs. 149 (2005)

***Works in Progress***

“Excluding Antidiscrimination Rules from the Common Law of Contract”

“Resilience, Autonomy, and Narrative Capacity”

“Swiss Army Knives”

“The Continuity Thesis: Political, Not Metaphysical”

**ACADEMIC PRESENTATIONS**

*As Speaker*

“Section 1981 as Contract Law”

- 5<sup>th</sup> Annual Yale-Toronto Private Law Theory Discussion Group, Yale Law School (March 2025) (zoom)
- Washington University in St. Louis School of Law, Faculty Colloquium (Oct. 2024) (in person)
- University of Texas School of Law, Drawing Board Lunch (April 2024) (in person)

“Resilience, Autonomy, and Narrative Capacity”

- Fordham School of Law, Law and Philosophy Colloquium (March 2024) (in person)

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“An Ideal of Resilience and the Law of Torts”

- DePaul College of Law, 29<sup>th</sup> Annual Clifford Symposium (June 2023) (in person)
- Duke School of Law, 2023 Culp Colloquium (May 2023) (in person)

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“Making Whole, Making Better, and Accommodating Resilience”

- Sturm College of Law, University of Denver Faculty Colloquium (February 2024) (in person)
- Boston College Law School, 2023 IV Annual Junior Faculty Roundtable (March 2023) (in person)
- Harvard Law School, Law & Philosophy Workshop (November 2022) (in person)

“Making Whole by Making Better”

- The University of Chicago Law School, Culp Colloquium (June 2022) (in person)
- Harvard Law School, Harvard/Stanford/Yale Jr. Faculty Forum (June 2022) (in person)
- University of Pennsylvania School of Law, Analytical Legal Philosophy Conference (April 2022) (zoom)
- The Buchman Faculty of Law, Tel Aviv University (March 2022) (zoom)
- University of Houston Law Center, Faculty Colloquium (February 2022) (zoom)
- The University of Texas School of Law, Drawing Board Workshop (February 2022) (zoom)
- The University of Texas School of Law, Law & Philosophy Workshop (February 2022) (in person)

“Two Standards of Repair: Restoration or Resilience”

- Philosophy & Private Law Discussion Group (October 2021) (zoom)
- Oxford Studies in Private Law Theory Workshop (August 2021) (zoom)
- St. Andrews (Scotland) / UT Austin Workshop on Blame and Responsibility (April 2021) (zoom)

“Resilience, Retribution, and Punitive Damages”

- Fordham Law School, Faculty Colloquium (March 2021) (zoom)
- UVA School of Law, Legal Theory Workshop (Feb. 2021) (zoom)

“Living Well is the Best Revenge”

- The University of Texas School of Law, Faculty Colloquium (Nov. 2020) (zoom)
- Harvard Law School, Private Law Workshop (Sept. 2020) (zoom)
- Legal Philosophy Workshop (July 2020) (zoom)
- Stanford Law School, Culp Colloquium (June 2020) (zoom)

“Discrimination, Mandatory Arbitration, and Courts,” UCLA Legal Theory Workshop (Oct. 2018)

“Boilerplate Paternalism,” Stanford Law School, Emerging Scholars Presenter (June 2018)

“Backpay for Exonerees,” Yale Law School, Law and Philosophy Symposium (Apr. 2017)

“Contracts and the Practice Theory of Promising,” Cornell Law School Private Law Workshop (Sept. 2015)

“Responsibility, Tort Liability, and Loss Ownership,” Yale Law School Doctoral Conference (Nov. 2014)

“Loss Ownership in Tort Theory,” University Southern California, Speculative Society (April 2014)

“On Shapiro’s Way Out,” Western Michigan University, Graduate Philosophy Conference (Dec. 2011)

“Legal Positivism and Theoretical Disagreement,” Texas Wesleyan University School of Law (Nov. 2010)

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*As Commentator*

Christopher Lewis, “*Lex Talionis* Unlocked,” Harvard Law School, Culp Colloquium (June 2024) (in person)

Stephen Bero, “Mercy in Tort,” University of Texas School of Law, Texas Law Review Symposium (Jan. 2024) (in person)

Raquel Muñoz, “A Theory of Racialized Judicial Decision-Making,” Boston College Law School, 2023 IV Annual Junior Faculty Roundtable (March 2023) (in person)

Julian Jonker, “Individualism and the Interpersonal in Antidiscrimination Law,” Brooklyn Law School, *North American Workshop in Private Law Theory* (NAWPLT) (Oct. 2021) (zoom)

Alexandra Lahav, “The Knowledge Remedy,” in *Remedies in Complex Litigation*, University of Texas School of Law, Texas Law Review (Feb. 2020)

Prabha Kotiswaran, “An Ode to Altruism: How Indian Courts Value Unpaid Domestic Work,” *Inequality, Labor, and Human Rights: The Future of Work in the Age of Pandemic Events* (Oct. 2020)

Dimitrios Kyritsis, “Legality, Integrity and Institutional Design,” McMaster Philosophy of Law Conference, The Legacy of Ronald Dworkin (May 2014)

Casey Hall, “Aiming to Shame?” Am. Phil. Ass’n Pacific Conference (April 2014)

**SERVICE**

*As Referee*

*Economics & Philosophy, Ergo, Ethical Theory & Moral Practice* (x2), *Journal of Applied Philosophy*, *Journal of Ethics & Social Philosophy*, *Journal of Moral Philosophy*, *Journal of Value Inquiry*, *Legal Theory*

*As Student Advisor*

Faculty Advisor, Chicano/Hispanic Law Students Association (CHLSA)

*As Committee Member*

Texas Law Academic Fellowships Committee (2024-present)  
Colloquium Committee (Texas Law, 2021-2024)

**REFERENCES**

<p>John C.P. Goldberg Eli Goldston Professor of Law HARVARD LAW SCHOOL 232 Areeda 1563 Massachusetts Ave. Cambridge, MA 02138 jgoldberg@law.harvard.edu (617) 496-2086</p> <p>Gregory C. Keating Professor of Law &amp; Philosophy USC GOULD SCHOOL OF LAW 699 Exposition Blvd. Los Angeles, CA 90089 gkeating@law.usc.edu (213) 740-2565</p> <p>Rebecca Stone Professor of Law UCLA SCHOOL OF LAW 385 Charles E. Young Dr. East Los Angeles, CA, 90095 rebecca.stone@law.ucla.edu (310) 794-9530</p> <p>Gary Watson Professor of Philosophy &amp; Law USC GOULD SCHOOL OF LAW 699 Exposition Blvd. Los Angeles, CA 90089 gwatson@law.usc.edu (213) 740-9046</p>	<p>Mark Greenberg Professor of Law and Professor of Philosophy UCLA SCHOOL OF LAW 385 Charles E. Young Dr. East Los Angeles, CA, 90095 greenberg@law.ucla.edu (310) 206-1337</p> <p>Andrei Marmor Jacob Gould Schurman Professor of Philosophy and Law CORNELL LAW SCHOOL 110 Myron Taylor Hall Ithaca, NY 14853-4901 am2773@cornell.edu (607) 254-5097</p> <p>Jeremy Waldron University Professor NYU SCHOOL OF LAW Vanderbilt Hall 424 40 Washington Sq. South New York, NY 10012 jeremy.waldron@nyu.edu (212) 998-6573</p>
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