

Joseph R. Fishkin
Marrs McLean Professor in Law
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ACADEMIC APPOINTMENTS

UNIVERSITY OF TEXAS, Austin, TX

Marrs McLean Professor in Law, 2017-present; Professor of Law, 2015-2017; Assistant Professor of Law, 2010-2015

Courses Taught: Employment Discrimination; Constitutional Law II: Election Law; Equal Opportunity Law

Interests: Employment Discrimination Law, Constitutional Law, Distributive Justice, Election Law, Labor & Employment Law, Torts, Education Law

YALE LAW SCHOOL, New Haven, CT

Irving S. Ribicoff Visiting Professor of Law, 2016-2017

Oscar M. Ruebhausen Fellow, 2008-2010

CLERKSHIP

CHIEF JUSTICE MARGARET H. MARSHALL, SUPREME JUDICIAL COURT OF MASSACHUSETTS,
Boston, MA, 2007-2008

EDUCATION

YALE LAW SCHOOL, New Haven, CT

J.D. May 2007

President, American Constitution Society for Law and Policy, Yale Law School Chapter

Senior Editor, *Yale Law Journal*

Articles Editor, *Yale Journal of Law & the Humanities*

Income Tax Assistance Clinic

UNIVERSITY OF OXFORD, Oxford, England (Balliol College)

D. PHIL. in Politics, August 2009

M. PHIL. in Politics, with Distinction, June 2002

Fulbright Scholar to the United Kingdom, 2000

ORS Award (U.K. government graduate research grant)

Tutor in Political Theory, Modern Social & Political Thought

YALE UNIVERSITY, New Haven, CT

B.A. in Ethics, Politics, and Economics, with Distinction, *summa cum laude*, May 2000

Phi Beta Kappa; J. W. Saxe Memorial Prize

Mendell Prize for contributions to the intellectual life of Branford College

Mike Dodge Prize for the outstanding philosophy paper in Directed Studies

Editorial Page Columnist, Theater Critic, and Reporter, *Yale Daily News*

Founder & Editor, *Yale Review of Books*

BOOKS

THE ANTI-OLIGARCHY CONSTITUTION (with Willy Forbath), under contract with Harvard University Press

BOTTLENECKS: A NEW THEORY OF EQUAL OPPORTUNITY, Oxford University Press (2014)
Winner of the 2015 North American Society for Social Philosophy (NASSP) Book Award
[OUP] [Google] [Amazon] [Kindle edition]

- Chinese translation edition, 瓶颈：新的机会平等理论, trans. Xibai Xu, with a new preface by the author, Social Science Academic Press of Beijing, 2015 [Amazon.cn]
- Korean translation edition, Moonye Publishing, forthcoming

ARTICLES & ESSAYS

When is Discrimination Bad? (in progress)

Race-Based State Action and the Law of Equal Opportunity (in progress)

Taking Virtual Representation Seriously (forthcoming, William and Mary Law Review, 2018)

Asymmetric Constitutional Hardball (with David Pozen), 118 Columbia Law Review ____ (forthcoming 2018)

Wealth, Commonwealth, & the Constitution of Opportunity (with Willy Forbath), NOMOS LVIII: Wealth 45 (2017) [SSRN]

Bottlenecks and Flourishing: A Response 12 Review Journal of Political Philosophy 37 (2016) (part of a symposium about *Bottlenecks: A New Theory of Equal Opportunity*) [SSRN]

Bottlenecks, Disability, and Preference-Formation: A Reply, 32 Social Philosophy Today 189 (2016) [SSRN]

The Democracy of Opportunity and Constitutional Politics: A Response (with Willy Forbath) 94 Tex. L. Rev. 1469 (2016)

Reclaiming Constitutional Political Economy: An Introduction to the Symposium on the Constitution and Economic Inequality (with Willy Forbath) 94 Tex. L. Rev. 1287 (2016)

The Party's Over: McCutcheon, Shadow Parties, and the Future of the Party System (with Heather Gerken) 2014 Supreme Court Review 175 (2015) [SSRN]

The Great Society and the Constitution of Opportunity (with Willy Forbath), 62 Drake Law Review 1017 (2014)

The Anti-Bottleneck Principle in Employment Discrimination Law, 91 Washington University Law Review 1429 (2014) [[SSRN](#)]

The Two Trends that Matter for Party Politics (with Heather Gerken), 89 NYU Law Review Online 32 (2014) [[SSRN](#)]

The Anti-Oligarchy Constitution (with Willy Forbath), 94 Boston University Law Review 669 (2014) [[SSRN](#)]

The How of Unequal Opportunity, 40 Philosophical Topics 27 (2013) [[SSRN](#)]

The Dignity of the South, 123 Yale Law Journal Online 175 (2013) [[SSRN](#)]

Weightless Votes, 121 Yale Law Journal 1888 (2012) [[SSRN](#)]

Voting as a Positive Right: A Reply to Flanders, 28 Alaska Law Review 29 (2011) [[SSRN](#)]

Equal Citizenship and the Individual Right to Vote, 86 Indiana Law Journal 1289 (2011) [[SSRN](#)]

SELECTED SHORTER WRITINGS & OP-EDS

Contributing blogger, *Balkinization*, <http://balkin.blogspot.com/>, 2011-present
(A collection of posts through June 2014, for tenure file purposes, can be found here: [[PDF](#)])

The Sixteenth Amendment (with Willy Forbath and Erik Jensen) and *Congress Has Broad Power to Tax* (with Willy Forbath), part of the National Constitution Center's Interactive Constitution (2017) [[link](#)]

From Subgroups to Bottlenecks: New Directions for the Empirical Study of Intergenerational Mobility—A Comment on Timothy Smeeding, "Multiple Barriers to Economic Opportunity in the United States," RSF: The Russell Sage Journal of the Social Sciences, volume 2, issue 2, online supplement (2016), available at: [[PDF](#)] or [[SSRN](#)]

Bottlenecks: A New Theory of Equal Opportunity—A Précis, 12 Review Journal of Political Philosophy 1 (2016) (very brief summary at the start of a symposium about *Bottlenecks*)

Preface to the Chinese Edition, Bottlenecks: A New Theory of Equal Opportunity (2015) [[SSRN](#)]

Character Is Experience, in *Essays on Character & Opportunity* (Brookings Center on Children & Families) (Richard Reeves, ed.), October 22, 2014 [[link](#)] [[SSRN](#)]

Guest blogger, online symposium about *Bottlenecks: A New Theory of Equal Opportunity*, Brookings Institution *Social Mobility Memos* blog, April–May 2014 [[link](#)]

Guest blogger, online symposium about *Bottlenecks: A New Theory of Equal Opportunity*, *Concurring Opinions* blog, February–April 2014 [[link](#)]

Perry Should Change Course to Accept Medicaid Funding, Op-Ed, Austin American-Statesman, July 14, 2012

Guest blogger, online symposium about Jack Balkin's *Constitutional Redemption, Concurring Opinions* blog, August 2011 [\[link\]](#) [\[link\]](#)

PRESENTATIONS & LECTURES

“The Anti-Oligarchy Constitution,” University of Wisconsin Law School, Madison, WI, October 11, 2017

Commentator, “Rethinking the Future of Work: Law, Technology, and Economic Citizenship” (Brishen Rogers), Rapoport Center Colloquium on Labor, Inequality, and Human Rights, University of Texas School of Law, Austin, TX, October 2, 2017

“When is Discrimination Bad?,” Twelfth Annual Colloquium on Scholarship in Labor and Employment Law (COSELL), Texas A&M University School of Law, Fort Worth, TX, September 15, 2017

“The Past and Future of Racial and Partisan Gerrymandering,” Supreme Court Review, University of Texas School of Law, Austin, TX, August 31, 2017

“The Anti-Oligarchy Constitution,” Conference on the Future of the United States Constitution, Indiana University Maurer School of Law, Bloomington, IN, April 14, 2017

“When is Discrimination Bad?,” Harvard Law & Philosophy Colloquium, April 5, 2017

“Taking Virtual Representation Seriously,” William and Mary Law Symposium, 2020 Redistricting: Mapping a New Political Decade, Williamsburg, VA, February 17, 2017

“When is Discrimination Bad?,” Conference on “The Moral Status of Discrimination and its Legal Implications,” Minerva Center for Human Rights, Hebrew University, Jerusalem, Israel, December 14-16, 2016

Panelist, Roundtable on *Evenwel v. Abbott*, American Political Science Association (APSA) Convention, Philadelphia, PA, September 4, 2016

Panelist, “The Constitution’s Obligations,” American Constitution Society Convention, Washington, DC, June 10, 2016

“Wealth, Commonwealth, and the Constitution of Opportunity,” Vanderbilt Law Faculty Workshop, Nashville, TN, April 13, 2016

“Race-Based State Action and the Law of Equal Opportunity,” University of Texas School of Law Faculty Workshop, March 31, 2016

“The Anti-Oligarchy Constitution,” Conference on the Constitution and Economic Inequality, Center for Constitutional Governance, Columbia Law School, March 25, 2016

Organizer and panelist, *Texas Law Review* symposium on “The Constitution and Economic Inequality.” University of Texas School of Law, Austin, TX, January 29-30, 2016

Moderator, panel on “Representation,” conference on *An Argument Open to All: Reading the Federalist in the Twenty-First Century*, University of Texas School of Law, Austin, TX, January 22, 2016

“Inequality and the Constitution of Opportunity,” panel on New Directions in Poverty Law (Poverty Law section), American Association of Law Schools Annual Meeting, New York, NY, January 8, 2016

“An Introduction to Election Law in the United States,” International Fulbright Enrichment Seminar (for foreign Fulbright scholars studying in the United States), LBJ Library, Austin, TX, December 3, 2015

“The Constitution of Opportunity,” Law, Economics, and Politics Colloquium, NYU School of Law, New York, NY, December 1, 2015

Guest lecture, Class on “Race, Citizenship, and Immigration” (Professor Edwin Dorn), LBJ School of Public Affairs, Wednesday, November 11, 2015

“The Constitution of Opportunity,” Conference on Inequality and the Law, Yale Law School, New Haven, CT, October 17, 2015

Panelist, *Fisher v. University of Texas at Austin*, Student-Alumni Diversity Weekend, University of Texas School of Law, Austin, TX, October 3, 2015

Interlocutor, “A Conversation with Justice Goodwin Liu of the California Supreme Court,” University of Texas School of Law, Austin, TX, September 17, 2015

Respondent, Book Award Plenary Panel—2015 North American Society for Social Philosophy (NASSP) Book Award for “Bottlenecks: A New Theory of Equal Opportunity,” North American Society for Social Philosophy Conference, Liberty, MO, July 18, 2015

“Wealth, Commonwealth, and the Constitution of Opportunity: A Story of Two Traditions,” Political Economy of Modern Capitalism Seminar, Harvard University, Cambridge, MA, March 30, 2015

“Wealth, Commonwealth, and the Constitution of Opportunity: A Story of Two Traditions,” Duke Law School Faculty Workshop, Durham, NC, March 20, 2015

Panelist, “Citizens Invited: Scholars and Professors in the Campaign Finance Wars,” Hot Topic / Bridge Program Panel, American Association of Law Schools Annual Meeting, Washington, DC, January 4, 2015 [\[audio\]](#)

Panelist, *A Conversation on Voting Rights*, Future Forum, LBJ Presidential Library, Austin, TX, November 20, 2014

“What Forms of Discrimination Should Antidiscrimination Law Cover?”, Conference on the Civil Rights Act at 50, Boston University School of Law, Boston, MA, November 14, 2014

Commentator, “Multiple Barriers to Economic Opportunity in the United States” (paper by Timothy Smeeding), Conference on *Inequality of Economic Opportunity*, Federal Reserve Bank of Boston, Boston, MA, October 17, 2014

“McCutcheon v. Federal Election Commission,” Supreme Court Review, University of Texas School of Law, Austin, TX, September 4, 2014

“Race-Based State Action,” Panel on “The Civil Rights Act at 50: Rethinking Antidiscrimination Principles,” Law and Society Annual Meeting, Minneapolis, MN, May 29, 2014

Panelist, “Beyond McCutcheon: The Political System and the Court,” Conference on *Money in Politics 2030: Towards a New Jurisprudence*, Brennan Center for Justice, NYU School of Law, New York, NY, May 1, 2014

Commentator, Bookfest on *Bottlenecks: A New Theory of Equal Opportunity*, responding to comments about my book from Cynthia Estlund, Lani Guinier, and Gerald Torres, University of Texas School of Law, April 26, 2014 [\[video\]](#)

“Bottlenecks: A New Theory of Equal Opportunity,” Public Law Lunch, Department of Government, University of Texas, Austin, TX, April 16, 2014

“The Anti-Bottleneck Principle in Employment Discrimination Law,” Seattle University School of Law, Seattle, WA, April 7, 2014

Respondent, Author-Meets-Critics Panel on “Bottlenecks: A New Theory of Equal Opportunity,” Midwest Political Science Association annual meeting, Chicago, IL April 4, 2014

Invited participant, American Bar Association Standing Committee on Election Law, Town Hall on Election Reform with a focus on Redistricting, Austin, TX March 6, 2014

“The Anti-Bottleneck Principle in Employment Discrimination Law,” Ohio State University Law School, Columbus, OH, February 7, 2014

Commentator on “Framing Democracy” by Jamie Terence Kelly, Conference on “Is Democracy Desirable?”, University of Texas School of Law, Austin, TX, January 31, 2014

“The Anti-Bottleneck Principle in Employment Discrimination Law,” Panel on Title VII at Fifty: Looking Forward, Looking Back, AALS Annual Meeting, New York, NY, January 4, 2014

“The Anti-Oligarchy Constitution,” Conference on America's Political Dysfunction: Constitutional Connections, Causes, and Cures, Boston University School of Law, Boston, MA, November 15, 2013

“Voting Rights in Texas,” Plenary Panel, Swimming Upstream in Texas: Texas ACS Regional Convening, Austin, TX, November 9, 2013

Moderator, “Voting Rights in Texas after *Shelby County*,” American Constitution Society, University of Texas School of Law, Austin, TX, October 24, 2013

“Bottlenecks: A New Theory of Equal Opportunity,” Colloquium on Current Scholarship in Labor & Employment Law, UNLV, Las Vegas, NV, September 27, 2013

“*Shelby County v. Holder*,” Supreme Court Review, University of Texas School of Law, Austin, TX, September 10, 2013

Panelist, “Teaching You” Panel, FreshLaw Orientation, University of Texas School of Law, Austin, TX, August 27, 2013

“The Anti-Bottleneck Principle in Employment Discrimination Law,” Panel on New Voices in Labor & Employment Law, Southeastern Association of Law Schools, Palm Beach, FL, August 7, 2013

Presenter/Participant, Panel Discussion on Citizens’ Redistricting Commissions, University of Texas, Austin, TX, May 2, 2013

“Enfranchisement and Disenfranchisement in America,” Presentation before the Electoral Tribunal of the Federal Judiciary of Mexico, Conference on the North American Political-Electoral System, Mexico City, Mexico, March 1-2, 2013

Presenter/Participant, Panel Discussion of *Fisher v. University of Texas at Austin*, part of the Excellence in Diversity Celebration, University of Texas School of Law, Austin, TX, February 22, 2013

“The Constitution of Opportunity,” (with Willy Forbath), Texas Law Review Symposium on *Constitutional Foundations*, University of Texas School of Law, Austin, TX, February 15, 2013

Moderator, Panel Discussion on the Constitutionality of Section 5 of the Voting Rights Act, co-sponsored by the Federalist Society and the American Constitution Society, University of Texas School of Law, Austin, TX, February 13, 2013

Moderator, Panel on Electoral Systems, Conference on “Is America Governable?”, University of Texas School of Law, Austin, TX, January 24-26, 2013

“The *How* of Unequal Opportunity,” Conference on Rethinking Inequality: Philosophical Reflections on Recent Empirical Research, University of Ottawa, Ottawa, Canada, November 16-17, 2012

“Opening the Bottlenecks: A New Theory of Equal Opportunity,” Legal Theory Workshop, Columbia Law School, New York, NY, November 12, 2012

Participant in a half-day workshop on my book manuscript, “Opening the Bottlenecks: A New Theory of Equal Opportunity,” jointly organized by the Center for the Study of Social Justice (CCSJ) at the University of Oxford and the Center for Law, Ethics, and Public Affairs (CELPA), University of Warwick. The workshop took place at the University of Oxford, Oxford, England, November 6, 2012

Presenter, Panel on *Fisher v. University of Texas at Austin*, William Wayne Justice Center, University of Texas School of Law, Austin, TX, October 24, 2012

“Texas and the Voting Rights Act,” American Constitution Society, University of Texas School of Law, Austin, TX, September 20, 2012

“The Anti-Bottleneck Principle in Employment Discrimination Law,” Colloquium on Current Scholarship in Labor & Employment Law, Northwestern University School of Law & Loyola University Chicago School of Law, Chicago, IL, September 14, 2012

“*NFIB v. Sebelius*,” Supreme Court Review (one of three faculty members presenting aspects of the case), University of Texas School of Law, Austin, TX, September 6, 2012

“Opening the Bottlenecks: A New Approach to Antidiscrimination Law,” Jurisprudence Discussion Group, Law Faculty, University of Oxford, Oxford, England, May 31, 2012

“Opening the Bottlenecks: A New Theory of Equal Opportunity,” Nuffield Political Theory Workshop, University of Oxford, Oxford, England, May 28, 2012

“Opening the Bottlenecks: A New Theory of Equal Opportunity,” Faculty Colloquium, University of Texas School of Law, Austin, TX, May 1, 2012

Moderator, Texas Redistricting Litigation, American Constitution Society, University of Texas School of Law, Austin, TX, April 5, 2012

Panelist, Texas Redistricting, Thurgood Marshall Legal Society Biannual Symposium, University of Texas School of Law, Austin, TX, February 9, 2012

“Constitutional Protestantism or Constitutional Televangelism,” Conference on *Constitutional Faith/Constitutional Redemption*, University of Texas School of Law, Austin, TX, October 22, 2011

“Equal Protection and Equal Opportunity”, ACS Constitutional Law Workshop, George Washington Law School, Washington, DC, June 16, 2011

Moderator & Commentator, Panel on Disparate Impact and the Future of Antidiscrimination Law, Conference on *The Future of Equality*, University of Texas School of Law, Austin, TX, April 1, 2011

“Equal Citizenship and the Individual Right to Vote,” American Constitution Society Election Law Reading Group, Yale Law School, New Haven, CT, March 25, 2010

Discussant, Panel on Electoral Reform, Conference on *Comparing the Democratic Deficit in Canada and the US: Defining, Measuring and Fixing*, Harvard University, Cambridge, MA, May 9, 2008

“Merit, Genes, and Developmental Opportunities,” Nuffield Political Theory Workshop, University of Oxford, Oxford, England, February 17, 2003

SERVICE

National

American Constitution Society for Law and Policy, Board of Academic Advisors, 2015-present

American Association of Law Schools (AALS) Section on Election Law: Founding Secretary, 2014-16; Executive Committee, 2016-17

American Association of Law Schools (AALS) Section on Employment Discrimination: Executive Committee, 2011-12, 2014-16; Secretary, 2016-17; Chair-Elect, 2017-18

Peer Reviewer: Journal of Applied Philosophy; Politics & Governance; University of Kansas Press; and others, including informal peer reviews for a number of student-edited law reviews

Law School & University

Faculty Advisor, American Constitution Society for Law and Policy, University of Texas Law Student Chapter, 2013-present

Faculty Advisor, Texas Hispanic Journal of Law & Policy (THJLP), 2015-present

Colloquium & Lectures Committee, University of Texas School of Law, 2012-2015, 2017-present

Computer Services Committee, University of Texas School of Law, 2010-2012

Dissertation Committee Member, LBJ School of Public Policy, Ph.D. dissertation of Eli Poupko (theories of voting), 2013-present

Affiliated Faculty, Rapoport Center for Human Rights and Justice, University of Texas School of Law, 2012-present

OTHER LEGAL & RESEARCH EXPERIENCE

NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. (LDF), New York, NY, Summer 2006
Intern. Worked on housing discrimination, voting rights, & school desegregation cases.

WILMER CUTLER PICKERING HALE & DORR, New York, NY, Summer 2005
Summer Associate. Worked on *District of Columbia v. Heller*, class certification, attorney-client privilege, and researched Voting Rights Act violations in Birmingham, Alabama.

AMERICAN CONSTITUTION SOCIETY FOR LAW & POLICY, YALE LAW SCHOOL CHAPTER, 2005
President. Planned and executed national conference on “The Constitution in 2020.” Built a chapter recognized as the 2005 Chapter of the Year for Overall Excellence.

YALE LAW SCHOOL, 2005
Research Assistant to Professor Peter Schuck.

LEGISLATIVE ADVOCACY CLINIC, Yale Law School, 2004-2005
Tax and Budget Director. Developed empirical models of the impact of tax changes. Testified twice before Connecticut Legislature’s Finance, Revenue & Bonding committee.

JOHN KERRY FOR PRESIDENT, Washington, Summer & Fall 2004
Legal Intern. Researched and wrote materials for Kerry campaign legal team on state-by-state election law issues including voter roll purges, eligibility, and intimidation.

THE VILLAGE VOICE, New York City, Summer 2001
City-State Intern. Assisted Senior Editor Wayne Barrett with coverage of NY mayoral race.

THE NEW REPUBLIC, Washington, Summer 2000
Reporter-Researcher. Reported, wrote, and fact-checked stories; helped cover 2000 election.

CONNECTICUT VOICES FOR CHILDREN, New Haven, 1999-2000
Research Intern. Analyzed state budget and economic security issues.

Bar admissions: Admitted to practice in Massachusetts