Erik Encarnacion

Professor of Law
School of Law
The University of Texas at Austin
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ACADEMIC POSITIONS

UNIVERSITY OF TEXAS SCHOOL OF LAW, AUSTIN, TX
Professor of Law 2025-present
Assistant Professor of Law 2019-2025

UCLA SCHOOL OF LAW, LOS ANGELES, CA 2018-2019
Law & Philosophy Postdoctoral Fellow

HARVARD LAW SCHOOL, CAMBRIDGE, MA 2016-2018
Climenko Fellow and Lecturer on Law

EDUCATION

UNIVERSITY OF SOUTHERN CALIFORNIA, LOS ANGELES, CA
Ph.D. in Philosophy, August 2016
Dissertation: "Contract, From Promise to Commodity"
Honors: USC Provost Fellowship (competitive, five-year academic fellowship)

COLUMBIA UNIVERSITY SCHOOL OF LAW, New York City, NY
J.D., May 2006
Honors: Milton B. Conford Prize in Jurisprudence (awarded for best essay in jurisprudence)
Harlan Fiske Stone Scholar

PRINCETON UNIVERSITY, Princeton, NJ
A.B., Philosophy, June 2003
Honors: Graduated *magna cum laude* 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, Torts, Private Law Theory, and Jurisprudence

CLERKSHIP

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

LEGAL PRACTICE

WEIL, GOTSHAL & MANGES LLP, New York, NY and Dallas, TX
Associate 2006-2008, 2009-2010

PUBLICATIONS

Articles & Essays

- *Discrimination as Bad Faith*, Wis. L. Rev. (forthcoming)
  - "Highly Recommended," Lawrence Solum, *Legal Theory Blog*, Sept. 9, 2026, https://legaltheoryblog.com/2026/09/09/encarnacion-on-discrimination-as-bad-faith/
  - "Download of the Week," Lawrence Solum, *Legal Theory Blog*, Sept. 12, 2026, https://legaltheoryblog.com/2026/09/12/download-of-the-week-discrimination-as-bad-faith-by-encarnacion/

- *Section 1981 as Contract Law*, 111 Va. L. Rev. 1605 (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)
  - Reviewed in Marco Jimenez, *Rethinking the Make-Whole Principle*, JOTWELL (November 26, 2025), https://lex.jotwell.com/rethinking-the-make-whole-principle/
  - 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,* Dec. 6, 2023, https://legaltheoryblog.com/2023/12/06/encarnacion-on-compensatory-damages-that-make-plaintiffs-better-off/

- *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*, Aug. 6, 2022, https://legaltheoryblog.com/2022/08/06/download-of-the-week-text-is-not-law-by-encarnacion/

- *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)

- *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)

    - "Very interesting and recommended," Lawrence Solum, *Legal Theory Blog*, March 21, 2013, https://legaltheoryblog.com/2013/03/21/encarnacion-on-corrective-justice-making-amends/

- *Reviving the Assurance Conception of Promising*, 48 J. of Value Inquiry 107 (2014) (peer-reviewed)

Reviews, Symposium Pieces, and Other Works

- *Two Problems for Justificatory Theories of Punitive Damages*, __ Denv. L. Rev. __ (2027) (invited symposium issue)

- *The Rule of Law, Through Thick and Thin*, JOTWELL (June 15, 2026) (reviewing Felipe Jiménez, *The Rule of Law*, __ Mich. St. L. Rev. __ (forthcoming 2026), available at SSRN (Dec. 05, 2025)), https://juris.jotwell.com/the-rule-of-law-through-thick-and-thin/

- *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) (reviewing Dimitrios Kyritsis, *Shared Authority: Courts and Legislatures in Legal Theory* (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

"The Continuity Thesis: Political, Not Metaphysical"

"Swiss Army Knives"

"Resilience, Autonomy, and Narrative Capacity"

ACADEMIC PRESENTATIONS

As Speaker

"Swiss Army Knives"

- The University of Texas School of Law, Drawing Board Lunch (June 2026) (in person)

"The Continuity Thesis: Political, Not Metaphysical"

- North American Workshop in Private Law Theory (NAWPLT), Peter A. Allard School of Law, University of British Columbia (Nov. 2025) (in person)

"Section 1981 as Contract Law"

- UCLA School of Law, Faculty Colloquium (April 2026) (in person)
- The University of Texas School of Law, American Constitutional Society Lunch Talk (Feb. 2026) (in person)
- Yale Law School, 5th Annual Yale-Toronto Private Law Theory Discussion Group (March 2025) (zoom)
- Washington University in St. Louis School of Law, Faculty Colloquium (Oct. 2024) (in person)
- The 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)

"An Ideal of Resilience and the Law of Torts"

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

"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 of 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)

As Commentator

Samuel Mortimer, *Discrimination as Defamation*, 5th Annual Normative Foundations of Markets Conference (May 2026) (in person)

María Guadalupe Martínez Alles, *Torts and Retribution: The Case for Punitive Damages*, Book Workshop, University of Denver, Sturm School of Law (April 2026) (in person)

James Toomey, "Privately Crafted Obligations," Berkeley-Texas-Toronto-Yale (BETTY) Conference on Private Law Theory, Texas Law School (April 2026) (in person)

Angel Diaz, "On Race, Chatbots, and Human Relations," Harvard Law School, Culp Colloquium (June 2025) (in person)

Christopher Lewis, "The Weight of Police Violence," Harvard Law School, Culp Colloquium (June 2025) (in person)

Conor Crummey, "What is Non-Positivism?", University of Texas School of Law, Law and Philosophy Program (April 2025) (in person)

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 Muñiz, "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 (x2)

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)