

William E. Forbath

Lloyd M. Bentsen Chair in Law, Associate Dean of Research, School of Law & Professor of History, UT Austin

UT Austin School of Law
727 E. Dean Keeton St.
Austin, TX 78705

Phone: 512-657-9181

Education

Ph.D. (American Studies), Yale University, 1992
J.D. Yale Law School, 1983
M.A. (Social and Political Sciences), Trinity College, Cambridge University, 1976
A.B. (English and American History and Literature), Harvard College, 1974

Academic Employment

UT Austin School of Law, Austin, Texas
Angus Wynne, Sr. Professor of Law & Professor of History, 1997-2002
Lloyd M. Bentsen Chair in Law & Professor of History, 2002-present
Associate Dean of Research, School of Law, 2009-present

Princeton University, Princeton, N.J.
Marion Crane Fellow in Law & Public Affairs, Spring 2019

Tel Aviv University Faculty of Law, Tel Aviv, Israel
Visiting Professor, May 2018

NYU School of Law, New York, New York
Scholar-in-Residence, 2013-14

SciencesPo Ecole du Droit, Paris, France
Visiting Professor, November-December 2013

Harvard Law School, Cambridge, MA
Charles Warren Visiting Professor of Legal History
2008-09

Tel Aviv University Faculty of Law,
Visiting Professor, June 2008

Columbia Law School, NY, NY
Visiting Professor of Law, 2001-02

UCLA School of Law, Los Angeles, CA
Professor of Law, 1989-96
Acting Professor of Law, 1984-89

Teaching Fields

Constitutional Law, Legal and Constitutional History, Comparative Constitutional Law

Publications

Books

[THE ANTI-OLIGARCHY CONSTITUTION: RECONSTRUCTING THE ECONOMIC FOUNDATIONS OF AMERICAN DEMOCRACY](#) (Harvard University Press, 2022) (with Joseph Fishkin)

LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT (Harvard University Press, 1991)

THE UNQUIET YEARS, vol. 19 in THE AMERICAN DESTINY: A HISTORY OF THE UNITED STATES (Henry Steele Commager, ed., 1986) (with E. J. Dionne)

Selected Articles & Book Chapters

“The Anti-Oligarchy Constitution,” *The Atlantic* (February, 2022)(with Joseph Fishkin)

“Socialism Past and Future (Part I)” ; “Socialism Past and Future (Part II)” *Law and Political Economy* [on line], June 23-24, 2020 - this essay on socialism and constitutionalism was the basis for a symposium with several commentaries and contributions

“Constitutionalism, Human Rights and the Genealogy of American Jewish Liberalism,” in THE LAW OF STRANGERS: JEWISH LAWYERING AND INTERNATIONAL LEGAL THOUGHT IN HISTORICAL PERSPECTIVE, eds. James Loeffler, Moria Paz (2019)

“A Political Economy the Constitution Requires,” *Law and Political Economy* [on line], October 23, 2019

“Constitutional Political Economy – What Is It Good For? – On the Labor Scene” ; “The Labor Movement Never Forgets?” ; “Janus in Appalachia” ; “Three Views of Constitutional Political Economy,” *Law and Political Economy* [on line], February 12-14, 2019

“The Loyal Critic,” *Law & History Review – The Docket* [on-line], Volume 1, Issue 3 (October, 2018)

“Visions of Radical Reform in South Africa: Toward a New Constitutional Political Economy”; “Antitrust and the Informal Sector in South Africa,” *Law and Political Economy* [on line], March 20-21, 2018

“New Workers, New Labor Laws,” NEW YORK TIMES, September 17, 2017 (Op Ed)

Wealth, Commonwealth and the Constitution of Opportunity, LVIII NOMOS 45-125 (2017) (with Joseph Fishkin)

Reclaiming Constitutional Political Economy: An Introduction to the Symposium on the Constitution and Economic Inequality [Symposium: *The Constitution and Economic Inequality*], 94 TEXAS LAW REVIEW 1287 (2016) (with Joseph Fishkin)

The Democracy of Opportunity and Constitutional Politics: A Response [Symposium: *The Constitution and Economic Inequality*], 94 TEXAS LAW REVIEW 1469 (2016) (with Joseph Fishkin)

The Great Society and the Constitution of Opportunity, 62 Drake U. L. Rev. 1017 (2014) (Constitutional Law Center Symposium on *Great Society*) (with Joseph Fishkin)

The Anti-Oligarchy Constitution, 94 BU L. REV. 671 (2014) (with Joseph Fishkin)

“The War on Workers,” NEW YORK TIMES, July 3, 2014 (Op Ed) (with Cynthia Estlund)

The Role Of Courts and Constitutions in the New Politics Of Welfare in Latin America, in Randall Peerenboom and Tom Ginsburg, eds., LAW AND DEVELOPMENT OF MIDDLE INCOME COUNTRIES (New York: Cambridge University Press, 2014) (with Daniel Brinks)

An Originalist View of the March on Washington: Decent Work and Wages as Civil Rights, ACSBLOG (August 28, 2013), <http://www.acslaw.org/acsblog/an-originalist-view-of-the-march-on-washington-decent-work-and-wages-as-civil-rights>

“Workingman’s Constitution,” NEW YORK TIMES, July 6, 2012 (Op Ed)

Workers’ Rights & the Distributive Constitution, DISSENT (2012) (with responses by Michael Walzer, Michael Kazin, & others)

The Distributive Constitution and Workers’ Rights, [Symposium: *Reflections on Progressive Constitutionalism: Theory, Practice, and Critique*], 72 OHIO STATE LAW JOURNAL 1115 (2011)

Radicalism and the Modern State: A Critique of Republican Nostalgia, 21 CORNELL JOURNAL OF LAW AND PUBLIC POLICY 121 (2011)

Social and Economic Rights in Latin America: Constitutional Courts and the Prospects for

Pro-Poor Interventions [Symposium: *Latin American Constitutionalism*], 89 TEXAS LAW REVIEW 1943 (2011) (with Daniel M. Brinks)

“Cultural Transformation, Deep Institutional Reform, and Social and Economic Rights Practice: South Africa’s Treatment Action Campaign,” in STONES OF HOPE: HOW AFRICAN ACTIVISTS RECLAIM HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY 51 (Lucie White & Jeremy Perelman editors; Stanford: Stanford University Press, 2011) (with assistance from Zackie Achmat, Geoff Budlender, & Mark Heywood)

The Will of the People? Pollsters, Elites, and Other Difficulties, 71 GEORGE WASHINGTON LAW REVIEW 1191 (2010)

Courting the State: An Essay for Morton Horwitz, in 2 TRANSFORMATIONS IN AMERICAN LEGAL HISTORY: LAW, IDEOLOGY, AND METHODS -- ESSAYS IN HONOR OF MORTON HORWITZ, 70 (Harvard University Press; Daniel W. Hamilton & Alfred L. Brophy eds., 2010)

The Will of the People? Pollsters, Elites and Other Difficulties, 78 GEO. WASH. L. REV. 1191 (2010)

Social and Economic Rights in the American Grain: Reclaiming Constitutional Political Economy, in THE CONSTITUTION IN 2020 55 (Jack M. Balkin & Reva B. Siegel eds.; Oxford: Oxford University Press, 2009)

Politics, State-Building, and the Courts, 1870-1920 in Volume II THE CAMBRIDGE HISTORY OF LAW IN AMERICA 643, 813 (M. Grossberg & C. Tomlins, eds., 2008)

The Politics of Race, Rights, and Needs—and the Perils of a Democratic Victory in Post-Welfare America: Some Reflections on the Work of Felicia Kornbluh, 20 YALE JOURNAL OF LAW AND FEMINISM 195 (2008)

Popular Constitutionalism in the 20th Century: Reflections on the Dark Side, the Progressive Constitutional Imagination, and the Enduring Role of Judicial Finality in Popular Understandings of Popular Self-Rule, 81 CHICAGO-KENT LAW REVIEW 967 (2006)

The Long Life of Liberal America: Law and State-Building in England and the U.S., 24 LAW & HISTORY REVIEW 179 (2006)

Not So Simple Justice: Theories of Social Rights and the American Constitution, in THEORIES OF SOCIAL AND ECONOMIC JUSTICE 72 (Andre Van der Walt ed.; Stellenbosch, South Africa: African Sun Media, 2005)

The White Court (1910-1921): A Progressive Court?, in THE UNITED STATES SUPREME COURT: THE PURSUIT OF JUSTICE 172 (Christopher Tomlins ed.; Boston: Houghton Mifflin, 2005)

Social Rights, Courts, and Constitutional Democracy: Poverty and Welfare Rights in

the United States, 12 DEMOCRATIZATION 725 (2005)

Working Borders: Linking Debates About Insourcing and Outsourcing of Capital and Labor [conference proceedings], 40 TEXAS INTERNATIONAL LAW JOURNAL 691 (2005) (with Karen L. Engle et al.)

David Brion Davis and the Historian as Moralist, in Steven Mintz, ed., THE PROBLEM OF EVIL: SLAVERY, RACE, AND THE AMBIGUITIES OF REFORM (U. Mass. Press, 2005)

Not So Simple Justice: Frank Michelman on Social Rights, 1969 – Present [Symposium: *The Scholarship of Frank I. Michelman*], 39 TULSA LAW REVIEW 597 (2004)

Lincoln, the Declaration, and The “Grisly, Undying Corpse of States’ Rights”: History, Memory, and Imagination in the Constitution of the Southern Liberal [Symposium: *Charles L. Black, Jr.*], 92 GEORGETOWN LAW JOURNAL 709 (2004), <http://ssrn.com/abstract=544283>

Comparative Avenues in Constitutional Law: An Introduction [Symposium: *Comparative Avenues in Constitutional Law*], 82 TEXAS LAW REVIEW 1653 (2004) (with Lawrence Sager)

The Politics of Constitutional Design: Obduracy and Amendability—A Comment on Ferejohn and Sager, 81 TEXAS LAW REVIEW 1965 (2003)

The New Deal Constitution in Exile, 51 DUKE LAW JOURNAL 165 (2001)

Constitutional Welfare Rights: A History, Critique, and Reconstruction, 69 FORDHAM LAW REVIEW 1821 (2001)

Civil Rights and Economic Citizenship: Notes on the Past and Future of the Civil Rights and Labor Movements, 2 UNIVERSITY OF PENNSYLVANIA JOURNAL OF LABOR & EMPLOYMENT LAW 697 (2000)

Caste, Class, and Equal Citizenship, 98 MICHIGAN LAW REVIEW 1 (1999)

Merit and Diversity After Hopwood, 10 STANFORD LAW & POLICY REVIEW 185 (1999) (with Gerald Torres)

Constitutional Change and the Politics of History, 108 YALE LAW JOURNAL 1917 (1999)

Caste, Class, and Equal Citizenship, 98 MICHIGAN LAW REVIEW 1 (1999)

Habermas’s Constitution: A History, Guide and Critique, 23 LAW & SOCIAL INQUIRY 969 (1998)

Short-Circuit: A Critique of Habermas’s Understanding of Law, Politics, and Economic Life, 17 CARDOZO LAW REVIEW 1441 (1996)

Why Is This Rights Talk Different from All Other Rights Talk? Demoting the Court and Reimagining the Constitution, 46 STANFORD LAW REVIEW 1771 (1994)

The Shaping of the American Labor Movement, 102 HARVARD LAW REVIEW 1109 (1989)

The Ambiguities of Free Labor: Labor and the Law in the Gilded Age, 1985 WISCONSIN L. REV. 767 (1985)

Taking Lefts Seriously, 92 YALE LAW JOURNAL 1041 (1983) (reviewing *The Politics of Law: A Progressive Critique*, ed. by David Kairys)

Selected Recent Lectures & Presentations

“Private Law Theory Meets Work Law,” Wrap-Up Lecture at Two-Day International [Zoom] Conference, NYU School of Law & Tel Aviv University School of Law, September 10, 2021

UT Austin, Rapoport Center, Pop-Up Institute – “What’s Wrong with the Gig Economy?– A Conversation with,” June 1, 2021

Commentator, Author Meets Critics Panel on Mark Tushnet & Bojan Bogdovich, POWER TO THE PEOPLE, Law & Society Association, Annual Conference, May 29, 2021

“Lawyering & Labor Movement Advocacy,” Law & Political Economy Zoom Conference, March 4, 2021

“Social Justice, Poverty and Inequality – Advocacy in the Global South,” INSTITUTE for GLOBAL LAW & POLICY Webinar, February 24, 2021

“A Progressive Approach to the Court’s Hostility to Redistributive Reform,” Jurisprudence of Distribution- Zoom Conference, Boston College/Northeastern, September 12, 2020

Chair, Drafting Committee on Provisions on Economic Inequality, for *Democracy Journal* Project on Drafting a New Progressive Constitution, Zoom gatherings, October 2020-April 2021

“Critical Legal Studies – the Key Ideas,” Talk at Critical Legal Studies: Intellectual History and History of the Present Conference, Law & Public Affairs, Princeton University, Princeton, NJ, February 28, 2020

“Socialism and Constitutionalism,” Plenary Lecture, 2020 Global Conference on Constitution-Making and Constitutional Change, UT Austin School of Law, January 18, 2020

“A Jewish Constitutional Moment,” Law & Public Affairs Seminar, Princeton University, April 1, 2019; Northwestern University School of Law, Faculty Workshop, April 10, 2019

“The Constitutional Political Economy of Work,” Conference on Law and Work, Program in Law & Public Affairs, Princeton, University, April 12, 2019

“The Loyal Critic,” Festschrift for Robert Gordon – *Taming the Past* – Stanford Law School,

January 20-21, 2018

“The Half Life of New Deal Constitutional Political Economy,” University of Chicago Law School, Public Law Workshop, February 13, 2018; Conference on “Law and Politics Under Stress,” Wayne Morse Center, University of Oregon, April 12-13; Conference on “Understanding Constitutional Change: The State of the Field,” Tulane Law School, New Orleans, LA, October 13-14, 2017

“The Jewish Constitutional Moment,” Tel Aviv University School of Law, Legal History Workshop, May 21, 2018

“Law and Political Economy,” [invited speaker] Hewlett Foundation, Conference on New Approaches to Political Economy, Seattle, Washington, July 11-13, 2018

“Marxism and Legal History,” American Society for Legal History Annual Conference, Houston, TX, November 10, 2018

Principal Director & Convener - Open Society Foundation Project on Expanding the Scope for Social and Economic Rights Litigation in Ghana and South Africa: “Toward a New Constitutional Political Economy – Transition and Transformation,” Cape Town, South Africa, May 19-21, 2017 [workshops, conferences and collaborative strategic project design involving development economists and economic and social rights attorneys and NGO and social movement activists addressing resource extraction in Ghana (off-shore oil) and South Africa (mining sector) [co-director with Lucie White (Harvard Law School), Dennis Davis (High Court judge and law professor, South Africa), Raymond Atuguba (Senior Counsel to the President and law professor, Ghana)]

“The Jewish Constitutional Moment,” Conference on Jewish Law in the Modern State, Yale Law School, New Haven, CT, March 5, 2017

“Law, Lawyering and the Labor Movement: Past, Present, Future,” Conference on “Lawyers and Social Movements,” UCLA, Los Angeles, CA, February 10, 2017

Principal Director & Convener - Open Society Foundation Project on Expanding the Scope for Social and Economic Rights Litigation in Ghana and South Africa: “Equitable, Democratic and Sustainable Pathways of Oil Governance and Economic Development?” Accra, Ghana, January 10-14, 2017

Featured speaker: The American Constitution Society for Law and Policy Presents: Is America Becoming a Plutocracy? Press Conference Call/American Constitution Society, December 16, 2016

“The Jewish Constitutional Moment: Diaspora and Group Rights in the Making of American Jewishness and Modern Liberalism,” Gabry Memorial Lecture, University of Virginia, September 22, 2016

“The Constitutional History of the Democratic Party,” podcast for National Constitution Center (with Jeff Rosen, Sean Wilentz) <http://blog.constitutioncenter.org/2016/07/podcast-a->

[constitutional-history-of-the-democratic-party/](#)

“The Future of Economic and Social Rights,” Lecture at Boston College Law School, Chestnut Hill, MA, April 19, 2016

Fishkin & Forbath, *The Anti-Oligarchy Constitution* in draft - centerpiece of conference on “Constitution and Economic Inequality” at The Center for Constitutional Governance 2016 Annual Conference, Columbia Law School, New York, NY, March 25, 2016

Texas Law Review Symposium on “The Constitution and Economic Inequality” – core text Fishkin & Forbath, *The Anti-Oligarchy Constitution* in draft, with commentaries by Jack Balkin, Jeremy Kessler, Cynthia Estlund, Frank Michelman, Jed Purdy, & Reva Siegel, Austin, TX, January 28–30, 2016

“Wealth, Commonwealth and the Constitution of Opportunity: A Story of Two Traditions,” Harvard University Workshop on the History of Capitalism, Cambridge, MA, March 30, 2015 (with Joseph Fishkin)

“The Jewish Constitutional Moment in the Early Twentieth Century,” Lecture at Conference on “Jewish Rights, Minority Rights, Human Rights?” Tel Aviv University, Tel Aviv, Israel, March 18-19, 2015

“Constitution, Courts, and the South African National Political Economy,” (with Dennis Davis) at “Heterodox Innovations in Development Economics and Social and Economic Rights” sponsored by the Radcliffe Institute and the Ecole du Droit, SciencesPo, Paris, May 18-19, 2014

“Magical Legalism in the Global South,” Plenary Session Talk, Law & Society Association Annual Meeting, Boston, MA, May 31, 2013

“The Constitution of Opportunity,” paper presented, Panel on “The Legal Construction of Work and Employment,” Law & Society Association Annual Meeting, Boston, MA, May 31, 2013

“Jews, Law and Identity Politics,” American Bar Foundation Legal History Roundtable, IIT Chicago-Kent College of Law, Chicago, IL, April 19, 2013

Participant in workshop on “Enacting Strong Democracy Through Constitutional Design: Ghana’s Bold Experiment,” Radcliffe Institute for Advanced Study at Harvard University, Cambridge, MA, April 11-13, 2013

“Jews, Law and Identity Politics,” University of Minnesota Legal History Workshop, Minneapolis, MN, March 29, 2013

“The Constitution of Opportunity,” University of Minnesota Faculty Works-in-Progress Workshop, Minneapolis, MN, March 28, 2013

“Jews, Law and Identity Politics,” Harvard Legal History Workshop, Cambridge, MA, February 28, 2013

Speaker on *Fisher v. University of Texas*, panel, The University of Texas “Excellence in Diversity: a Weekend Celebration,” UT Austin, Austin, TX, February 23, 2013

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

“Jews, Law and Identity Politics,” Yale Law School Legal Theory & Yale Law School Legal History Workshops, November 1, 2012

“Jews, Law and Identity Politics,” BU Legal History Workshop, October 31, 2012

Speaker on *Fisher v. University of Texas*, panel sponsored by UT Journal of Civil Rights & Civil Liberties, UT student chapter of A.C.S., and the William Wayne Justice Center, UT Austin School of Law, October 24, 2012

Organizer & Participant, Joint UT-ITAM Colloquium on Latin American & U.S. Law, Instituto Tecnológico Autónomo de México (ITAM), Mexico City, Mexico, October 19-20, 2012

“Jews, Law and Identity Politics,” NYU Legal History Workshop, October 3, 2012

“The Constitution of Opportunity,” Annual Constitution Day Lecture, Austin Presbyterian Theological Seminary, Austin, TX, September 19, 2012

“Popular Constitutionalism and the 2012 Election,” Conference on “Whose Constitution? Popular Constitutionalism and the 2012 Election,” Roger Williams Law School, Bristol, RI, Feb 24, 2012

“The Constitution and the 2012 Election,” The University of Colorado Law School, Faculty Colloquium, Boulder, CO, Feb 17 2012

“A Liberal Jurisprudence & Constitutional Narrative for the 21st Century,” Conference on The Conservative Legal Movement and the Future of Liberal Jurisprudence, Brookings Institute, Washington, DC, December 1, 2011

“Constitutional Faith and Jewish Identity: A Century Ago and Today,” Conference on Constitutional Faith/Constitutional Redemption, University Of Texas School Of Law, October 21-22, 2011

“Jews, Law and Identity Politics In The Progressive Era,” Temple University School Of Law Faculty Workshop, Philadelphia, PA, October 19, 2011

“To Promote the General Welfare,” American Constitution Society Series on “What the Constitution Means & How to Interpret It,” national Webinar, Live Seminar broadcast on-line, October 12, 2011

“Judicial Enforcement Of Social Rights In Latin America, Europe And The U.S.: Individual And Group Remedies And Structural Reforms,” European University Sponsored Colloquium On Access To Justice And Social Rights, 19-20 August 2011, Rio de Janeiro, Brazil

“Author Meets Readers: Stones of Hope: How African Activists Reclaim Human Rights to Challenge Global Poverty (Stanford University Press: 2011), Law & Society Association Annual Conference, San Francisco, CA, June 2, 2011

“The Distributive Constitution And Workers’ Rights,” 2010-2011 Ohio State Law Journal Symposium, “Reflections On Progressive Constitutionalism: Theory, Practice, and Critique,” Moritz College of Law, Columbus, Ohio, April 15, 2011

“William Forbath on the Constitution’s Past and Present,” University of Oregon weekly radio interview, Oregon Humanities Center, University of Oregon, Eugene, Oregon, April 8, 2011

“Are Human Rights The Socialism of the 21st Century?” 2010-11 O’Fallon Lecture in Law and American Culture, University Of Oregon, Eugene, Oregon, April 7-8, 2011

Keynote: “Joel Handler on Poverty, Work and the Welfare State,” “Poverty and the Bureaucratic State: A Symposium in Honor of Joel Handler,” UCLA School of Law, Los Angeles, CA, March 11, 2011

“Social and Economic Rights in Latin America: Constitutional Courts And The Prospects For Pro-Poor Interventions,” Texas Law Review Annual Symposium: “Latin American Constitutionalism,” School of Law of The University of Texas, Austin, TX, March 4-5, 2011

“Commentary on Law and the Politics of School Finance Reform,” Future of Federalism Conference, University of Texas School of Law, February 10–12, 2011

“Reflections On The ‘Social’ And The Claims Of Citizenship And Humanity—On Reading Tony Judt’s *Ill Fares The Land*,” Lecture in Honor of Tony Judt, Remarque Institute, New York University, NY, NY February 4, 2011

Debate with Jeff Sachs on “Human Rights, Institutional Innovation and Development: Socio-Economic Rights Advocacy in the African Context,” The Human Rights Institute and the Center for Institutional and Social Change, Columbia Law School, November 22, 2010, NY, NY

“Jews, Law and Identity Politics in the Progressive Era,” Legal History Workshop, Columbia University, November 18, 2010, NY, NY

“Radicalism and The Modern State: A Critique of Republican Nostalgia,” Symposium on Aziz Rana, Two Faces of American Freedom, Cornell Law School, Cornell University, Ithaca, NY, October 21, 2010

“Transformative Constitutionalism and the Politics of Rights in South Africa: The U.S. as Counterpoint, Counter-History, Critical Reflection,” Panel on “Deploying History: Uses of the Past in Constitutional Discourse, Comparative Studies”; Commentator, Panel on The Right to Health in Action; Commentator, Panel on Conceptualizing Freedom, Law and Society Association Annual Meeting, May 27-30, 2010, Chicago, IL

“Jews, Law and Identity Politics in the Progressive Era,” Making Legal History: A Conference in Honor of William E. Nelson, NYU School of Law, May 7, 2010, NY, NY

“Courting the State: Law and the Making of the Modern American State,” Princeton University, Department of Government, Faculty Workshop, Princeton NJ, May 5, 2010

“Jews, Law and Identity Politics in the Progressive Era,” Sidney Lapidis Endowed Lecture in Jewish American History, May 4, 2010, Princeton, NJ

“The Politics of Law and State-Building in the New Deal Era and Today,” Throver Symposium on The New Deal: From Deregulation to Re-Regulation, Emory University Law School, Feb 10-12, 2010, Atlanta, GA

“Legal and Judicial Elites in the Making of Modern American Politics and Society,” Symposium on The Judiciary and the Popular Will, University of Pennsylvania School of Law, January 29-30, 2010, Philadelphia, PA