

BARAK D. RICHMAN

CURRENT POSITION

Edgar P. and Elizabeth C Bartlett Professor of Law and Business Administration
Duke University School of Law
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Classes Taught: Contracts, Antitrust, Health Law & Policy (cross-listed at Fuqua School of Business), Religious Authority in a Secular State, Introduction to Health Policy (as contributing lecturer, at Sanford School of Public Policy)

Areas of Research: Institutional Economics, Health Law & Policy, Behavioral Economics & Health Policy, Economics of Contracts, Competition & Regulation Policy

PROFESSIONAL EXPERIENCE

2003-current **Bartlett Professor of Law and Business Administration**
Duke University (Asst. Prof. 2003-06; Assoc. Prof. 2006-07; joint appointment with Fuqua effective 2009; chaired professorship effective 2013)

Spring 2011 **Scholar-in-Residence & Senior Fellow, Center for Contract and Economic Organization, Columbia Law School**

2002-2003 **Law Clerk**
Judge Bruce M. Selya, United States Court of Appeals for the First Circuit

1996-1997 **Visiting Lecturer in Economics**
Economics Faculty, Hanoi National University

1993-1996 **Research Assistant**
U.S. Senate Committee on Finance, International Trade Subcommittee, Democratic Staff (Sen. Daniel P. Moynihan, Chairman/Ranking Member)

EDUCATION

2009 **University of California, Berkeley**
Haas School of Business
Ph.D. in Business Administration, Program in Business and Public Policy
Dissertation: "Essays in Private Ordering: Mechanisms, Efficiencies, and the Law"
Advisors: Pablo T. Spiller & Oliver E. Williamson

2002 **Harvard Law School**
J.D., *magna cum laude*
John M. Olin Fellow in Law & Economics

- 1999 **University of California, Berkeley**
M.A. in Economics
Fields: Industrial Organization & International Economics
- 1993 **Pardes Institute of Jewish Studies** (Jerusalem, Israel)
Certificate in Biblical and Talmudic Studies
- 1992 **Brown University**
A.B. in Urban Studies, *magna cum laude* and with Honors
Honors Thesis: “Urban Fiscal Crises and the Post-Industrial City: The Cases of Philadelphia and Providence”

PUBLICATIONS & WORKING PAPERS

Articles

1. “Assessing Competency for Concealed-Weapons Permits—The Physician’s Role,” *New England Journal of Medicine* (April 17, 2013) (with Adam Goldstein, Kathleen Barnhouse, Anthony Viera, and James Tulsky)
2. “Saving the First Amendment From Itself: Relief from the Sherman Act Against the Rabbinic Cartels,” *Pepperdine Law Review*, vol. 39 (January 2013) (invited symposium)
3. “Norms & Law: Putting the Cart Before the Horse,” *Duke Law Journal*, vol. 62 (November 2013) (invited symposium)
4. “Overbilling and Informed Financial Consent – A Contractual Solution,” *New England Journal of Medicine* (Aug. 2, 2012) (with Mark Hall and Kevin Schulman)
5. “Concentration in Health Care Markets: Chronic Problems and Better Solutions,” *Beyond Repeal and Replace: Ideas for Real Health Reform*, AMERICAN ENTERPRISE INSTITUTE (June 2012)
6. “When Money Grew On Trees: *Lucy v. Zehmer* and Contracting in a Boom Market” (with Dennis Schmeltzer), *Duke Law Journal*, vol. 61 (April 2012)
7. “Fairness in Health Care: Who Pays? Who Benefits?” *Notre Dame Journal of Law, Ethics & Public Policy*, vol.25 (Spring 2011) (with Clark C. Havighurst) (invited symposium)
8. “The Provider-Monopoly Problem in Health Care” *Oregon Law Review*, vol. 89 (Spring 2011) (with Clark C. Havighurst) (invited symposium)
9. “A Cautious Path Forward on Accountable Care Organizations” *Journal of the American Medical Association* (Feb. 4, 2011) (with Kevin Schulman)
10. “The Antitrust of Reputation Mechanisms: Institutional Economics and Concerted Refusals to Deal” *Virginia Law Review*, vol.95 (April 2009)
11. “On Doctors and Judges” *Duke Law Journal*, vol.59 (April 2009)

12. "Lessons from India in Organizational Innovation: A Tale of Two Heart Hospitals" *Health Affairs*, vol.27 (Sept./Oct. 2008) (with Krisna Udayakumar, Will Mitchell, and Kevin A. Schulman)
13. "Transaction Cost Economics: An Assessment of Empirical Research in the Social Sciences" *Business and Politics*, vol.10: Iss.1, Article 1 (April 2008) (with Jeffrey Macher)
14. "Understanding the 'Corporate' in Corporate Social Responsibility" *Harvard Law & Policy Review*, vol.2 (January 2008) (with Aaron Chatterji)
15. "Rebuilding *Illinois Brick*: A Functionalist Approach to the Indirect Purchaser Rule" *Southern California Law Review*, vol.81 (November 2007) (with Christopher Murray)
16. "Antitrust and Nonprofit Hospital Mergers: A Return to Basics" *University of Pennsylvania Law Review*, vol.156 (November 2007)
17. "Insurance Expansions: Do They Hurt Those They Are Designed to Help?" *Health Affairs*, vol.26 (Sept./Oct. 2007)
18. "Distributive Injustice(s) in American Health Care" *Law and Contemporary Problems*, vol. 69 (Autumn 2006) (with Clark Havighurst)
19. "The Corrosive Combination of Nonprofit Monopolies and U.S.-Style Health Insurance: Implications for Antitrust and Merger Policy" *Law and Contemporary Problems*, vol.69 (Autumn 2006)
20. "A Bridge, a Tax Revolt, and the Struggle to Industrialize: The Story and Legacy of *Rockingham County v. Luten Bridge Co.*" *North Carolina Law Review*, vol.84 (September 2006) (with Jordi Weinstock and Jason Mehta)
21. "How Communities Create Economic Advantage: Jewish Diamond Merchants in New York" *Law and Social Inquiry*, vol.31 (Spring 2006). *Reprinted in Corporate Business Responsibility* (Ashgate Publishing, 2009) (Justin O'Brien, ed.)
22. "A Transaction Cost Economizing Approach to Regulation: Understanding the NIMBY Problem," *Yale Journal on Regulation*, vol.23 (Winter 2006) (with Christopher Boerner)
23. "Behavioral Economics and Health Policy: Understanding Medicaid's Failure," *Cornell Law Review*, vol.90 (March 2005)
24. "Firms, Courts, and Reputation Mechanisms: Towards a Positive Theory of Private Ordering," *Columbia Law Review*, vol.104 (December 2004)
25. "Organizational Responses to Discontinuous Innovation: A Case Study Approach" *International Journal of Innovation Management*, vol.VIII (March 2004) (with Jeffrey Macher)
26. "Modeling Supreme Court Strategic Decision Making: The Congressional Constraint" *Legislative Studies Quarterly*, vol. XXVIII (May 2003) (with Mario Bergara and Pablo Spiller)

Book Chapters, Op-Eds, Amicus Briefs, and Shorter Works

27. "Contracts & Cartels: Reconciling Competition and Development Policy," in *COMPETITION LAW AND DEVELOPMENT* (Stanford Univ. Press, 2013) (Sokol & Lianos, eds.)

28. "Contracts Meets Henry Ford," *Hofstra Law Review*, vol. 40 (invited submission to "Ideas" Symposium) (Fall 2011)
29. "Privatizing Medicare Won't Slow Rising Costs" *Des Moines Register* (December 22, 2011), *Pittsburgh Post-Gazette* (December 22, 2011), also appeared as "... Tackle Medical Monopolies Instead," *Raleigh News & Observer* (December 22, 2011) (with Kevin Schulman)
30. "An Anti-Competitive Get-Together: Why to Oppose the Proposed AT&T-T-Mobile Merger," *Raleigh News & Observer* (October 4, 2011) (with Andrew Chin)
31. Amicus Brief of Antitrust Professors and Scholars, *Hosanna Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, et al.*, No. 10-553, Supreme Court of the United States
32. "Resisting Another Threat to Competition in Health Care," *FTC: Watch*, no.783 (April 15, 2011)
33. "Rabbi Searches Are Tough, but Are They Illegal?" *The Forward* (October 8, 2010)
34. "On the Constitutionality of Health Care Reform" *North Carolina Medical Journal*, vol. 71 (May/June, 2010)
35. "Mechanism Choice" in *Public Choice and Public Law* (Daniel A. Farber & Anne Joseph O'Connell, eds.), in *HANDBOOK OF LAW AND ECONOMICS* (Edward Elgar, 2010) (with Jonathan Wiener)
36. "Fragmentation in Mental Health Benefits and Services: A Preliminary Examination into Consumption and Outcomes" in *OUR FRAGMENTED HEALTH SYSTEM: CAUSES AND SOLUTIONS* (Oxford Univ. Press, 2010) (Einer Elhauge, ed.) (with Frank Sloan and Daniel Grossman)
37. "The New DOJ: Lessons Learned from the Ticketmaster Live Nation Decision," *The Huffington Post* (Jan. 29, 2010) (with Alan Meese)
38. "Searching for Industry Modernization" *Modern Physician* (February 9, 2009) (with Will Mitchell and Kevin Schulman)
39. "Ethnic Networks, Extralegal Certainty, and Globalisation: Peering into the Diamond Industry," in *LEGAL CERTAINTY BEYOND THE STATE* (Hart Publishing, 2008) (Volkmar Gessner, ed.)
40. "The First Bridge to Nowhere" *Raleigh News & Observer* (September 21, 2008)
41. "Who Pays for Health Insurance?" *Wall Street Journal* (September 6, 2007) (with Clark Havighurst)
42. "The King of Rockingham County and the Original Bridge to Nowhere," in *CONTRACTS STORIES* (Foundation Press, 2007) (Douglas Baird, ed.)
43. "Blood Diamonds' Many Facets" *Raleigh News & Observer* (January 11, 2007) (with Joost Pauwelyn)
44. "Foreword: Health Policy's Fourth Dimension" *Law and Contemporary Problems*, vol.69 (Autumn 2006) (with Clark Havighurst)

45. “Unintended Consequences: A Critical View of *U.S. v. Nektalov*” *New York Law Journal* (August 10, 2006)
46. “Fifty Years of Community Service: A Tribute to Mel Shimm” *Law and Contemporary Problems*, vol.69 (Summer 2006)
47. “Mandating Negotiations to Resolve the NIMBY Problem: A Creative Regulatory Response” *UCLA Journal of Environmental Law and Policy*, vol.20 (Spring 2002)
48. “The Adventures of Keeping Kosher in Vietnam” *New York Times* (April 23, 1997)

Working Papers & Unpublished Works

49. “A Careful Examination of the Live Nation-Ticketmaster Merger” (with Alan J. Meese), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1542626
50. “Static and Dynamic Costs and Benefits of Pharmaceutical Blockbuster Acquisitions: Reports from the Front Line” (with Will Mitchell, Aaron Chatterji, & Kevin Schulman)
51. “Mental Health Care Consumption and Outcomes: Considering Preventative Strategies Across Race and Class” (with Dan Grossman, Craig Chepke, & Frank Sloan), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989038
52. “Hidden Costs? Malpractice Allegations and Defensive Medicine Among Cardiac Surgeons” (with Marco Huesch), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989035
53. “Examining the Effect of Health Provider Race on Adherence to Asthma Regimes” Research prospectus to the Duke Center for Comparative Biology of Vulnerable Populations, funded by the National Institute of Environmental Health Sciences, 1 P30 ES-011961-01A1. (funding granted) (with Laura Smart Richman and Judith Voynow)
54. “Do Optimal Deterrence Jury Instructions Optimally Deter? An Empirical Test of the Polinsky-Shavell Jury Instructions”
55. “The History, Economics, and Political Economics of Automobile Insurance Regulation”
56. “National Comparative Advantage and New Institutional Economics: How Political Institutions in Japan and the United States Determine the Flow of Trade”

Books & Volumes

- STATELESS COMMERCE: DIAMOND DEALERS, ETHNIC TRADING NETWORKS, AND THE PERSISTENCE OF RELATIONAL EXCHANGE (Harvard Univ. Press, forthcoming)
- WHO PAYS? WHO BENEFITS? DISTRIBUTIONAL ISSUES IN HEALTH CARE. *Law and Contemporary Problems* (Autumn 2006) (ed. with Clark Havighurst).

CONFERENCE & WORKSHOP PRESENTATIONS

Conferences Organized

- Triangle Law & Economics Conference: Contracts, Innovation, & Organization
Duke Law School, Duke University (May 2010) (with Andrew Chin & Tracy Lewis)
- Triangle Law & Economics Conference: Game Theory and the Law
Fuqua School of Business, Duke University (May 2009) (with Scott Baker & Tracy Lewis)
- Applications of Economic Analysis in Law: Racial Profiling, Preferences, and Disparities
Economic Initiatives at Duke Conference (April 2009) (with Hanming Fang, Peter Arcidiacono,
& Nicola Persico)
- Triangle Law & Economics Conference: A New Generation of Antitrust.
University of North Carolina, Chapel Hill (May 2008) (with Scott Baker & Tracy Lewis)
- Triangle Law & Economics Conference: The Role of Information in Supporting Legal and Economic
Institutions. Duke Law School (April 2007) (with Scott Baker & Tracy Lewis)
- Who Pays? Who Benefits? A Discussion of Distributional Issues in American Health Care
Duke Law School Symposium (November 2005) (with Clark Havighurst)

Selected Presentations

- American Antitrust Institute, Conference on Antitrust and Civil Liberties
National Press Club, Washington D.C. (June 2012)
“Saving the First Amendment from Itself: Scrutinizing the Rabbi Cartels”
- Int’l Society for New Institutional Economics Annual Meeting
Univ. of Southern California (June 2012)
“Contracts and Cartels: Reconciling Competition and Development Policy”
- American Law & Economics Assn Annual Meeting
Stanford, CA (May 2012)
“Mental Health Care Consumption and Outcomes”
- Dept. of Justice, Fed. Trade Comm., and USPTO Joint Workshop
Washington, DC (April 2012)
“The Provider-Monopoly Problem in Health Care”
- F.A. Hayek Program for Advanced Study in Philosophy, Politics and Economics
Mercatus Center, George Mason Univ. (March 2012)
“Stateless Commerce”
- Nootbaar Institute, Competing Claims of Law & Religion
Pepperdine University (Feb 2012)
“Saving the First Amendment from Itself”

ABA Antitrust Section, Antitrust Immunities
CLE Teleconference (Nov. 2011)
“Antitrust & Judaism”

Triangle Law & History Workshop
Nat'l Humanities Center, Durham, NC (Sept. 2011)
“When Money Grew on Trees: Lucy v. Zehmer and Contracting in a Boom Market”

NYU Law & Economics Workshop
NYU Law School (March 2011)
“Mental Health Care Consumption and Outcomes”

UCL Global Competition Law & Economics, Competition Law & Development
New Dehli, India (November 2010)
“Contract Enforcement and Antitrust”

American Antitrust Institute, Annual Conference
Washington, DC (June 2010)
“The Provider-Monopoly Problem in Health Care”

Faculty Workshop & Symposium:
University of Utrecht, The Netherlands (February 2010)
“The Organization of Diamond Networks”

American Antitrust Institute: Competition in Health Care in an Era of Reform
Indiana University at Indianapolis (December 2009)
“Consumerism and Health Care Reform”

HBS Health Care Initiative Workshop
Harvard Business School (November 2009)
“Heart Hospitals and Organizational Innovation: Lessons from India”

O'Neill Institute for National and Global Health: Empirical Issues in Health Law
Georgetown University Law Center (November 2009)
“Mental Health Care Consumption and Outcomes”

International Society of New Institutional Economics Annual Meeting
Berkeley, CA (June 2009)
“The Antitrust of Reputation Mechanisms: Institutional Economics and Concerted Refusals to Deal”

Petrie-Flom Center for Health Policy Conference: Pharmaceutical Research, Development, & Markets
Harvard Law School, Cambridge, MA (June 2009)
“Static and Dynamic Costs and Benefits of Pharmaceutical Blockbuster Acquisitions”

Leadership & Corporate Accountability Faculty Workshop
Harvard Business School (March 2009)
“Private Ordering in the Diamond Industry: Origins, Efficiencies, and the Law”

Measuring Judges and Justice, Duke Law Journal Symposium
Duke Law School (February 2009)
“On Doctors and Judges”

American Enterprise Institute
Washington, DC (July 2008)
“Beyond More Health Insurance Coverage, Towards Better Health Outcomes”

Conference on Law, Commerce, and Development
NYU School of Law, New York (April 2008)
“The Persistence and Future of Ethnic-based Exchange”

Law and Economics Faculty Workshop, Center for Contract and Economic Organization
Columbia Law School, New York (January 2008)
“The Antitrust of Reputation Mechanisms: Concerted Refusals to Deal Under the Rule of Reason”

American Enterprise Institute
Washington, DC (May 2007)
“Robin Hood, Robber Baron, or Rubik's Cube? How Fair Is the Distribution of Benefits in the U.S. Health-Care System?”

John Hope Franklin Center
Durham, NC (March 2007)
“Patterns in Health Care Consumption: Do You Get What You Pay For?”

Braxton Craven Inn of Court
Durham, NC (February 2007)
“The King of Rockingham County and the Original Bridge to Nowhere”

Onati International Institute for the Sociology of Law: Legal Certainty Beyond the State: Autonomous Structures in Globalized Exchange Processes
Onati, Spain (September 2006)
“Ethnic Networks, Extralegal Certainty, and Globalisation: Peering into the Diamond Industry”

Washington University Law School Faculty Workshop
St. Louis, MO (March 2006)
“The Story and Legacy of *Rockingham County v. Luten Bridge Co.*”

University of North Carolina Law School Faculty Workshop
Chapel Hill, NC (November 2005)
“A Bridge, a Tax Revolt, and the Struggle to Industrialize: The Story and Legacy of *Rockingham County v. Luten Bridge Co.*”

Southeastern Association of Law Schools Annual Meeting
Hilton Head, SC (July 2005)
“A Bridge, a Tax Revolt, and the Struggle to Industrialize: The Story and Legacy of *Rockingham County v. Luten Bridge Co.*”

Western Economic Association Annual Meetings
San Francisco, CA (July 2005)
“Markets, Norms, and Law: Transaction Costs and Institutions.”

American Law and Economics Association Annual Meetings
New York, NY (May 2005)
“Community Institutions”

Tulane University Law School Faculty Workshop
 New Orleans, LA (January 2005)
 “Courts and Communities: A Comparative Institutional Analysis (Plus Policy Implications)”

University of Virginia Law School Faculty Workshop
 Charlottesville, VA (October 2004)
 “Firms, Courts, and Reputation Mechanisms: Towards a Positive Theory of Private Ordering”

Yale/Stanford Junior Faculty Forum
 New Haven, CT (June 2004)
 “Behavioral Economics and Health Policy: Understanding Medicaid’s Failure”

American Law and Economics Association Annual Meetings
 Chicago, IL (May 2004)
 “A Transaction Cost Economizing Approach to Regulation: Understanding the NIMBY Problem”

Institute for Law and Economic Policy Annual Conference
 Miami, FL (April 2004)
 “Illinois Brick: Is It Time for Remodeling?”

American Law and Economics Association Annual Meetings
 Toronto, CA (September 2003, originally scheduled for May 2003)
 “Incorporating Psychosocial Variables into Health Care Policy: A Behavioral Economic Examination of Medicaid Expansion”

American Law and Economics Association Annual Meetings
 Cambridge, MA (May 2002)
 “Modeling Supreme Court Strategic Decision Making: The Congressional Constraint”

Administrative Sciences Association of Canada
 University of Quebec at Montreal (July 2000)
 “Corporate Responses to Architectural Innovation”

ACADEMIC HONORS, FELLOWSHIPS & GRANTS

2010	Duke Law School Teacher of the Year
2006-2007	Provost Common Fund Award
2005-2006	Faculty Fellow, Duke University Social Science Research Institute
2005-2006	National Institute of Environmental Health Sciences Grant, 1 P30 ES-011961-01A1
2000-1, 2001-2	John M. Olin Fellowship in Law and Economics, Harvard Law School
2000	John M. Olin Summer Research Grant
1997-1998	Sasakawa Fellowship, Haas School of Business
1996-1997	Henry R. Luce Scholarship, Luce Foundation
1992-1993	Dorot Fellowship, Dorot Foundation
1992	Phi Beta Kappa, Alpha Chapter of Rhode Island

PROFESSIONAL SERVICE

2010-13 University Priorities Committee, Duke University
2008-10, 2011-12 Faculty Appointments Committee, Duke Law School
2006-07 Dean Search Committee, Duke Law School

PROFESSIONAL AFFILIATIONS

Member of: American Antitrust Institute, Advisory Board
 American Law Institute
 Massachusetts Bar Association
 American Economic Association
 American Law and Economics Association
 International Society for New Institutional Economics
 Western Economic Association

On Editorial Board for:
 Business and Politics
 International Journal of Strategic Change Management
 Journal of Antitrust Enforcement

Referee for: *Business and Politics*
 Health Affairs
 Health Policy
 Journal of Economics and Management Strategy
 Journal of Law, Economics, & Organization
 Journal of Legal Studies
 Law and Social Inquiry
 Oxford University Press
 Public Choice
 Yale Journal of Health Policy, Law, & Ethics.

PERSONAL

Wife: Laura Smart Richman, Ph.D.
Children: Ariella Sofi Richman, born January 2001
 Eden Mae Richman, born November 2004
 Izak Lev Richman, born August 2008
Hometown: Philadelphia, PA

Last Updated: May 2013