

## BARAK D. RICHMAN

### CURRENT POSITION

Edgar P. and Elizabeth C Bartlett Professor of Law and Business Administration  
Duke University School of Law  
Box 90360  
Durham, NC 27708-0360  
Tel: (919) 613-7244  
E-mail: [richman@law.duke.edu](mailto:richman@law.duke.edu)  
SSRN Website: <http://ssrn.com/author=334149>

Classes Taught: Contracts, Property, Antitrust, Health Law & Policy (cross-listed at Fuqua School of Business), Health Policy Practicum: Innovation via Legal Reform, Religious Authority in a Secular State  
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)  
**Senior Fellow, Kenan Institute for Ethics** (2011-current)  
**Faculty Affiliate, Social Science Research Institute** (2005-08)

Fall 2015      **Robert Braucher Visiting Professor, Harvard Law School**

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: Oliver E. Williamson & Pablo T. Spiller

- 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**

### **Books & Volumes**

STATELESS COMMERCE: THE DIAMOND NETWORK AND THE PERSISTENCE OF RELATIONAL EXCHANGE  
(Harvard Univ. Press, 2017)

WHO PAYS? WHO BENEFITS? DISTRIBUTIONAL ISSUES IN HEALTH CARE. *Law and Contemporary Problems* (Autumn 2006) (ed. with Clark Havighurst).

### **Articles**

1. “Static and Dynamic Costs and Benefits of Pharmaceutical Blockbuster Acquisitions: Reports from the Front Line,” *Loyola University Chicago Law Review* (forthcoming) (with Will Mitchell, Elena Vidal, and Kevin Schulman)
2. “Battling the Chargemaster: Remediating Surprise Billing for Out-of-Network Care,” *American Journal of Managed Care* (April 2017) (with Arnold Milstein, Nick Kitzman, and Kevin Schulman)
3. “Reassessing ACOs and Health Care Reform,” *Journal of the American Medical Association* (Aug. 16, 2016) (with Kevin Schulman)
4. “Outlook for Alternative Payment Models in Fee-for-Service Medicare,” *Journal of the American Medical Association* (July 28, 2015) (with Jeffrey Clough and Seth Glickman)
5. “Market-Based Solutions to Antitrust Threats – The Rejection of the Partners Settlement,” *New England Journal of Medicine* (March 4, 2015) (with Regina Herzlinger and Kevin Schulman)
6. “The Challenge of Coreligionist Commerce” *Duke Law Journal*, vol.64 (February 2015) (with Michael Helfand)

7. “Shifting Towards Defined Contributions—Predicting the Effects,” *New England Journal of Medicine* (June 26, 2014) (with Regina Herzlinger and Kevin Schulman)
8. “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)
9. “Saving the First Amendment From Itself: Relief from the Sherman Act Against the Rabbinic Cartels,” *Pepperdine Law Review*, vol. 39 (January 2013) (invited symposium)
10. “Norms & Law: Putting the Cart Before the Horse,” *Duke Law Journal*, vol. 62 (November 2012) (invited symposium)
11. “Overbilling and Informed Financial Consent – A Contractual Solution,” *New England Journal of Medicine* (Aug. 2, 2012) (with Mark Hall and Kevin Schulman)
12. “Concentration in Health Care Markets: Chronic Problems and Better Solutions,” *Beyond Repeal and Replace: Ideas for Real Health Reform*, AMERICAN ENTERPRISE INSTITUTE (June 2012)
13. “When Money Grew On Trees: *Lucy v. Zehmer* and Contracting in a Boom Market” (with Dennis Schmeltzer), *Duke Law Journal*, vol. 61 (April 2012)
14. “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)
15. “The Provider-Monopoly Problem in Health Care” *Oregon Law Review*, vol. 89 (Spring 2011) (with Clark C. Havighurst) (invited symposium)
16. “A Cautious Path Forward on Accountable Care Organizations” *Journal of the American Medical Association* (Feb. 4, 2011) (with Kevin Schulman)
17. “The Antitrust of Reputation Mechanisms: Institutional Economics and Concerted Refusals to Deal” *Virginia Law Review*, vol.95 (April 2009)
18. “On Doctors and Judges” *Duke Law Journal*, vol.59 (April 2009)
19. “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)
20. “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)
21. “Understanding the ‘Corporate’ in Corporate Social Responsibility” *Harvard Law & Policy Review*, vol.2 (January 2008) (with Aaron Chatterji)
22. “Rebuilding *Illinois Brick*: A Functionalist Approach to the Indirect Purchaser Rule” *Southern California Law Review*, vol.81 (November 2007) (with Christopher Murray)
23. “Antitrust and Nonprofit Hospital Mergers: A Return to Basics” *University of Pennsylvania Law Review*, vol.156 (November 2007)

24. "Insurance Expansions: Do They Hurt Those They Are Designed to Help?" *Health Affairs*, vol.26 (Sept./Oct. 2007)
25. "Distributive Injustice(s) in American Health Care" *Law and Contemporary Problems*, vol. 69 (Autumn 2006) (with Clark Havighurst)
26. "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)
27. "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)
28. "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.)
29. "A Transaction Cost Economizing Approach to Regulation: Understanding the NIMBY Problem," *Yale Journal on Regulation*, vol.23 (Winter 2006) (with Christopher Boerner)
30. "Behavioral Economics and Health Policy: Understanding Medicaid's Failure," *Cornell Law Review*, vol.90 (March 2005)
31. "Firms, Courts, and Reputation Mechanisms: Towards a Positive Theory of Private Ordering," *Columbia Law Review*, vol.104 (December 2004)
32. "Organizational Responses to Discontinuous Innovation: A Case Study Approach" *International Journal of Innovation Management*, vol.VIII (March 2004) (with Jeffrey Macher)
33. "Modeling Supreme Court Strategic Decision Making: The Congressional Constraint" *Legislative Studies Quarterly*, vol. XXVIII (May 2003) (with Mario Bergara and Pablo Spiller)

### **Book Chapters, Amicus Briefs, and Shorter Works**

34. "Breaking Good? The Arc of Antitrust Policy in the Health Sector," *Health Affairs Blog* (March 15, 2016)
35. "A Healthy Skepticism of Incumbents, A Healthy Commitment to Entry," *Health Affairs Blog* (March 3, 2016)
36. "Accountable Care Organizations: How to Proceed When We Don't Know What Works," *Harvard Business Review Insight Center* (November 25, 2014)
37. "Right-Skilling: Rabbis and the Rabbinic Role for a New Century," in *KEEPING FAITH IN RABBIS: A COMMUNITY CONVERSATION ON RABBINIC EDUCATION* (Avenida Books 2014) (Herring & Roscher, eds.) (with Daniel Libenson)
38. "The Partners HealthCare Settlement and the Future of Health Care Organizations," *The Economists Voice* (December 2014) (with Kevin Schulman)

39. “Elhauge on Tying: Vindicated by History” *Tulsa Law Review*, vol.49 (Spring 2014) (with Steven Usselman) (invited symposium)
40. “Organizational Innovation in Health Care,” *Health Management, Policy, and Innovation*, vol.1 no.3 (2013) (with Will Mitchell and Kevin Schulman)
41. “Contracts & Cartels: Reconciling Competition and Development Policy,” in *COMPETITION LAW AND DEVELOPMENT* (Stanford Univ. Press, 2013) (Sokol & Lianos, eds.)
42. “Contracts Meets Henry Ford,” *Hofstra Law Review*, vol. 40 (invited submission to “Ideas” Symposium) (Fall 2011)
43. 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
44. “On the Constitutionality of Health Care Reform” *North Carolina Medical Journal*, vol. 71 (May/June, 2010)
45. “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)
46. “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)
47. “Ethnic Networks, Extralegal Certainty, and Globalisation: Peering into the Diamond Industry,” in *LEGAL CERTAINTY BEYOND THE STATE* (Hart Publishing, 2008) (Volkmar Gessner, ed.)
48. “The King of Rockingham County and the Original Bridge to Nowhere,” in *CONTRACTS STORIES* (Foundation Press, 2007) (Douglas Baird, ed.)
49. “Foreword: Health Policy’s Fourth Dimension” *Law and Contemporary Problems*, vol.69 (Autumn 2006) (with Clark Havighurst)
50. “Fifty Years of Community Service: A Tribute to Mel Shimm” *Law and Contemporary Problems*, vol.69 (Summer 2006)
51. “Mandating Negotiations to Resolve the NIMBY Problem: A Creative Regulatory Response” *UCLA Journal of Environmental Law and Policy*, vol.20 (Spring 2002)

### **Op-Eds and Popular Writings**

52. “Religious Freedom Debate Upends Balance Between Establishment, Free Exercise Clauses,” *Raleigh News & Observer* (April 2, 2015)
53. “‘Anti-Shariah’ Bill Clumsy and Dangerous to People of All Faith,” *Raleigh News & Observer* (July 12, 2013)

54. "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)
55. "An Anti-Competitive Get-Together: Why to Oppose the Proposed AT&T-T-Mobile Merger," *Raleigh News & Observer* (October 4, 2011) (with Andrew Chin)
56. "Resisting Another Threat to Competition in Health Care," *FTC: Watch*, no.783 (April 15, 2011)
57. "Rabbi Searches Are Tough, but Are They Illegal?" *The Forward* (October 8, 2010)
58. "The New DOJ: Lessons Learned from the Ticketmaster Live Nation Decision," *The Huffington Post* (Jan. 29, 2010) (with Alan Meese)
59. "Searching for Industry Modernization" *Modern Physician* (February 9, 2009) (with Will Mitchell and Kevin Schulman)
60. "The First Bridge to Nowhere," *Raleigh News & Observer* (September 21, 2008)
61. "Who Pays for Health Insurance?" *Wall Street Journal* (September 6, 2007) (with Clark Havighurst)
62. "Blood Diamonds' Many Facets" *Raleigh News & Observer* (January 11, 2007) (with Joost Pauwelyn)
63. "Unintended Consequences: A Critical View of *U.S. v. Nektalov*" *New York Law Journal* (August 10, 2006)
64. "The Adventures of Keeping Kosher in Vietnam" *New York Times* (April 23, 1997)

### **Working Papers & Unpublished Works**

65. "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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1542626)
66. "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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989038)
67. "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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989035)
68. "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)

## **CONFERENCE & WORKSHOP PRESENTATIONS**

### **Conferences Organized**

- Conference on Empirical Legal Studies, Annual Meeting  
Society for Empirical Legal Studies, Duke University (November 2016)
- American Jewish Institutions and Organizational Innovation  
Kenan Institute for Ethics, Duke University (January 2014)
- 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**

- House Judiciary Committee, Subcommittee on Regulatory Reform, Commercial and Antitrust Law  
Washington DC (September 2013)  
“The Patient Protection and Affordable Care Act, Consolidation, and the Consequent Impact on  
Competition in Healthcare,” Congressional Testimony
- American Enterprise Institute  
Washington, DC (March 2013)  
“Big Health: Consolidation and Competition under the Affordable Care Act”
- Centre for Corporate Reputation, Annual Symposium  
Oxford University (June 2013)  
“Norms and the Law”
- 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”

## **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**

2015-current	Founding Faculty Principal, Duke-Margolis Health Policy Center
2013-15	Provider Pricing Power in Health Care Markets Study Group, National Academy of Social Insurance (NASI) & the Robert Wood Johnson Foundation



2012-14                    President, Beth El Congregation

2010-13                    University Priorities Committee, Duke University

2008-10, 2011-12,      Faculty Appointments Committee, Duke Law School  
2013-14 (chair)  
2016-17

2006-07                    Dean Search Committee, Duke Law School

## **PROFESSIONAL AFFILIATIONS**

Member of:      National Academy of Social Insurance  
                      American Antitrust Institute, Advisory Board  
                      American Law Institute  
                      Fellows of the American Bar Foundation  
                      Massachusetts Bar Association  
                      American Economic Association  
                      American Law and Economics Association  
                      International Society for New Institutional Economics

On Editorial Board for:

*Business and Politics*  
*International Journal of Strategic Change Management*  
*Journal of Antitrust Enforcement*

Referee for:

*Health Services Research*  
*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: August 2016