

## Francisco J. Urbina

2156 Eck Hall of Law  
Notre Dame, IN  
46556  
furbinam@nd.edu

### Current position

Associate Professor, Notre Dame Law School (from December 2022).

- Faculty Board of Advisors of the NDLS Global Human Rights Clinic.
- Faculty Fellow, Klau Institute for Civil and Human Rights.
- Faculty Fellow, Kellogg Institute for International Studies.

### Recent previous positions

Visiting Fellow, Kellogg Institute for International Studies and concurrent professor, Law School, University of Notre Dame (Spring 2022)

Assistant Professor, Faculty of Law, Pontificia Universidad Católica de Chile (Santiago, Chile) (2014 - 2022, on leave 2019 - 2022).

Human Rights Attaché to the Mission of Chile to the Organization of American States (OAS) (2019 - 2021).

### Studies

University of Oxford

- Doctorate (D.Phil.) in Law (2013).
- Master of Studies (M.St.) in Legal Research (2011).

Pontificia Universidad Católica de Chile

- Licentiate in Law in 2007 (summa cum laude).
- Minor in Philosophy

### Academic Publications

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#### ***Books***

- *A Critique of Proportionality and Balancing* (Cambridge University Press, 2017)
- *Legislated Rights: Securing Human Rights Through Legislation* [In co-authorship with Grégoire Webber, Paul Yowell, Richard Ekins, Maris Köpcke-Tinturé, and Brad Miller] (Cambridge University Press, 2018).

#### ***Articles and Book Chapters***

- "Reasons for Interpretation" (2024) 124 Columbia Law Review (forthcoming).

As to April 15, 2024, the paper was featured at the top following SSRN lists for most downloaded recent papers: Philosophy of Law eJournal Top Ten, PRN Subject Matter eJournals Top Ten, Philosophy Research Network Top Ten, Legal, Medical & Applied Linguistics eJournal Top Ten and Linguistics Research Network Top Ten. Also among the top ten in Constitutional Law, Jurisprudence & Legal

Philosophy eJournals Top Ten, Law & Humanities eJournal Top Ten and U.S. Constitutional Law: Interpretation & Judicial Review eJournal Top Ten.

- “The Veto Player's Repertoire An Analysis of the Chilean Constitutional Tribunal's Reasoning in Landmark Cases (1981-2019)” (2023) 78 *Zeitschrift für öffentliches Recht* 481-499 (with Cristián Villalonga).
- “Human Rights Law and Adjudication: the Role of *Determinatio*”, in T. Angier, I. Benson and M. Retter (eds.) *The Cambridge Handbook on Natural Law and Human Rights* (Cambridge University Press, 2022) 385-401.
- “Understanding Proportionality in the Illegality Defence” (2020) 136(Oct) *Law Quarterly Review* 575-598 (with Ernest Lim).
- “Proportionality in Medical Law” in A. Philips, J. Herring, and T. Campos *Philosophical Foundations of Medical Law* (Oxford University Press 2019) 172-184.
- “La claridad como especificidad: una revisión del *desideratum* de la claridad en la teoría de Lon Fuller” (Clarity as Specificity: a Revision of the *Desideratum* of Clarity in the Theory of Lon Fuller) (2019) 138 *Vniversitas*, Colombia (with Fernando Contreras).
- “Derecho y ordenamiento de la conducta” (Law and Ordering of Conduct) (2019) 16 2 *Revista Jurídicas* 108-125 (with Fernando Contreras).
- “Estado de derecho y control jurisdiccional: desafíos y tensiones (Rule of Law and Judicial Review: Challenges and Tensions)” (2017) 24 1 *Revista de Derecho Universidad Católica del Norte* 105-132 (with Gonzalo Candia).
- “Balancing and Incommensurability” (2015) 35 3 *Oxford Journal of Legal Studies* 575-605.

Chinese translation: “不可通约性与平衡原则” [2023] (03) *法律方法* (Legal Methods) 282-307 (Zuo Fei (左飞) translator).

- “Is it Really that Easy? A Critique of Proportionality and ‘Balancing as Reasoning’” (2014) 27 *Canadian Journal of Law and Jurisprudence* 1 167-192.
- “A Critique of Proportionality” (2012) 57 *American Journal of Jurisprudence* 49 - 80.
- “Rawls y una disputa sobre derechos (Rawls and a Debate over Rights)” (2008) 58 1 *Persona y Derecho* 185 - 242.
- “Una crítica a la perspectiva de la ponderación (A Critique of the Balancing Perspective)” (2007) 69 *Revista de Derecho Público* 415 - 426.
- “El principio de subsidiaridad, sus fundamentos y su función en una sociedad democrática (The Principle of Subsidiarity and its Role in a Democratic Society)” [2005] 11 *Revista de Derecho y Humanidades* 325 - 335.

*Forthcoming publications and works in progress*

- “The Force of Separation of Powers”
- “The Lie in Legalism”

**Shorter Publications**

“It Doesn’t Matter what Interpretation Is” (Review Essay of Cass Sunstein, *How to Interpret the Constitution?*) 38 *Constitutional Commentary* (2024) (forthcoming).

As to April 15, 2024, the paper appeared in the top ten most downloaded recent papers in SSRN in the following lists: Philosophy of Law eJournal Top Ten, PRN Subject Matter eJournals Top Ten, Philosophy Research Network Top Ten, Legal, Medical & Applied Linguistics eJournal Top Ten and Linguistics Research Network Top Ten, and U.S. Constitutional Law: Interpretation & Judicial Review eJournal Top Ten.

“Cost-Benefit Analysis in Rights Adjudication: An Assessment in Light of the Proportionality Debate” (2021) 19 3 International Journal of Constitutional Law (I.CON) 1146-1153 (with Cristóbal Caviedes).

“Revisión judicial de la sanción ambiental (A propósito de *Pascua Lama*)” (Judicial Review in Environmental Enforcement: Comments on the *Pascua Lama* Decision), in Arturo Ferrandois and José Francisco García (eds.) *Sentencias Destacadas 2014*, LyD, Santiago, Chile, 2015, 61-89 (coauthored with Ignacio Urbina).

“Balancing as Reasoning” and the Problems of Legally Unaided Adjudication: A Reply to Kai Möller” (2014) 12 1 International Journal of Constitutional Law (I.CON) 214-221.

“Reconciliación: la Deuda de la Transición” (Reconciliation: the debt of the transition), en Hernán Larraín y Ricardo Nuñez, *Las Voces de la Reconciliación*, Instituto de Estudios de la Sociedad, Santiago, Chile, 2013, 341-351.

### **Awards and Prizes**

Fondecyt Iniciación 2015 (three year government funding from November 2015 until November 2018).

Chosen one of Chile’s “100 Young Leaders” in 2008, by newspaper El Mercurio, and the Centre for Strategic Leadership of Adolfo Ibañez University.

Carlos Casanueva Prize, given by the School of Law of the Pontificia Universidad Católica de Chile (2006).

### **Served as reviewer for the following publications**

- Oxford Journal of Legal Studies (2)
- International Journal of Constitutional Law (ICON) (4)
- Modern Law Review (1)
- Legal Theory (1)
- American Journal of Jurisprudence (2)
- Revista Chilena de Derecho (2)
- Canadian Journal of Law and Jurisprudence (1)

### **Areas of Teaching**

Human Rights  
Jurisprudence  
Constitutional Law  
Research Seminar

### **Select Academic Presentations**

*The Global Relevance of the UDHR*, (presentation in conference “Dialogues on Dignity. Celebrating 75 years of the Universal Declaration of Human Rights” at Notre Dame’s Keough School of Global Affairs), Notre Dame, November 2023.

*The Lie in Legalism* (presentation in MANCEPT workshop, University of Manchester), virtual presentation, September 2023.

*The Peremptory Requirement of Separation of Powers* (paper presentation at the ICON-S annual conference), Wellington, New Zealand, July 2023.

*Legally Incomplete Constitutional Rights* (paper presentation at the ICON-S annual conference), Wellington, New Zealand, July 2023.

*The Force of Separation of Powers* (presentation at the Oxford Public Law Discussion Group), Oxford May 2023.

*New Standards on the Right to Protest* (organized by the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights) virtual presentation to members of the IACHR, July 2022.

*Presentation of Report on the Deadlines and Timeline of the Chilean Constitution Making Process* (in virtual panel *Chile's Constitution-Making Challenges*, organized by the Constitution Transformation Network at the University of Melbourne and the CJC of Universidad del Desarrollo, Chile), virtual panel March 2022.

*¿Quién es el “guardián de la Constitución”?* (*Who is the guardian of the Constitution?*) (organized by the Constitutional Court of Chile) virtual presentation, February 2022.

*Deliberación Pública y Libertad de Expresión en una sociedad más inclusiva: ¿podemos tener ambos?* (*Public Deliberation and Freedom of Expression in a More Inclusive Society*) (organized by the David Rockefeller Center of Harvard University) virtual presentation, December 2021.

*Presentation of Jamal Greene's Book How Rights Went Wrong: Why our Obsession with Rights is Tearing America Apart* (by invitation of the President of the Supreme Court of Mexico, Feria Internacional del Libro Jurídico organized by the Judicial Power of Mexico) virtual presentation, November 2021.

Comment on Jamal Greene's book *How Rights Went Wrong: Why our Obsession with Rights is Tearing America Apart* (organized by Centro de Estudios Públicos, virtual presentation, July 2021.

*Proportionality and the World of Enemies* (paper presentation at the ICON-S annual conference), Santiago, July, 2019.

*El principio de proporcionalidad* (*The Principle of Proportionality*) (talk for the justices and lawyers of the Chilean Constitutional Court, by special invitation of the President of the Court), Santiago, May, 2019.

*El dilema de la ponderación: algunas notas críticas sobre la proporcionalidad* (*The balancing dilemma: some critical notes on proportionality* [this was one of the three plenary presentations in the XXXII Conference of the Argentinean Society of Philosophy of Law]), Buenos Aires, August, 2018.

*Separation of Powers: The Minimal View* (paper presentation at the ICON-S annual conference), Hong Kong, Junio 2018.

*Specificationism in Law and Morality* (presentation at symposium “The Nature of Rights Revisited”, Stanford University, Palo Alto, June 2018.

*Proportionality and the Illegality Defence* (presentation at the Obligations Discussion Group, Law Faculty, University of Oxford) Oxford, May 2018.

*Separation of Powers: The Minimal View* (seminar at the Faculty of Law, University of Sao Paulo, Brasil) Sao Paulo, April 2018.

*“A Critique of Proportionality and Balancing”* (Conference at the Faculty of Law, University of Sao Paulo, Brasil) Sao Paulo, April 2018.

*“A Critique of Proportionality and Balancing”* (book talk) Trinity College Oxford, Oxford, November 2017.

*“A Critique of Proportionality and Balancing”* (session of the Public Law Group of the Faculty of Law of University College London on my book) London, November 2017.

*Separation of Powers: The Minimal View* (one of the ten papers chosen for presenting at the International Junior Faculty Forum) Stanford Law School, October 2017.

*El Ideal de una cultura de justificación: un análisis institucional (The Ideal of a Culture of Justification: an Institutional Analysis)*, Public Law Meetings, University of Chile, November 2016.

*Jerarquía y limitación de los derechos fundamentales (Hierarchy and Limitations of Fundamental Rights)*, Human Rights Colloquium, Santiago, Chile, October 2015.

*The Need for Legal Direction in Adjudication*, James Madison Program Fellow’s Presentation, Princeton University, Princeton, October 2013.

*Proportionality, Human Rights, and Moral Reasoning*, Law and Public Affairs Discussion Group, Oxford Faculty of Law, Oxford, October 2012.

*Incommensurability, Proportionality, and Human Rights*, St Anne’s Law Forum, St Anne’s College, Oxford, June 2012.

### **Legal Qualifications**

Admitted to legal practice in Chile since 2009.

### **Languages**

Spanish (native), English (fluent), French (advanced).

### **Other Activities**

- Co-organizer of the conference of the International Society for Public Law, ICON-S, 2019, in Santiago, Chile.
- Fellow, Programme for the Foundations of Law and Constitutional Government, Oxford Law Faculty (2017).
- Founder and First Convener of Law and Public Affairs Discussion Group (2012/2013) at Oxford Law Faculty.
- Past president of Student Union, Law Faculty, Pontificia Universidad Católica de Chile (2005)