

## MARC O. DEGIROLAMI

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### ACADEMIC APPOINTMENTS

#### ST. JOHN'S UNIVERSITY SCHOOL OF LAW, Queens, NY

Professor of Law  
Associate Director, Center for Law and Religion

Courses: Constitutional Law I and II, Torts, Criminal Law, Law and Religion, Catholic Social Thought, Constitutional Theory, Professional Responsibility

- Dean's Award for Outstanding Scholarship, 2013, 2014
- Dean's Teaching Award, 2012 (Constitutional Law)
- 1L Teacher of the Year, 2012, 2013

#### THE CATHOLIC UNIVERSITY OF AMERICA, COLUMBUS SCHOOL OF LAW, Washington DC

Visiting Assistant Professor and Scholar in Residence, 2008–2009

#### COLUMBIA LAW SCHOOL, New York, NY

Associate-in-Law, 2007–2008

### PUBLICATIONS & WORKING PAPERS

*The Traditions of American Constitutional Law* (law review article in progress).

*On Article XI of the Treaty of Tripoli and the Uses of Christian Nationalism* (book chapter in progress).

*The Once and Future Separation* (book chapter in progress).

*The Sickness Unto Death of the Freedom of Speech* (law review article in progress).

### BOOK

THE TRAGEDY OF RELIGIOUS FREEDOM, Harvard University Press (2013).

- Reviewed in *Commentary* (featured and excerpted); *Journal of Church and State*; *Law and Politics Book Review*; *Journal of Religion and Human Rights*; *Choice*; *The University Bookman*; *Review of Politics*

- Discussed and featured on NPR’s “Interfaith Voices” and The Liberty Fund’s “Liberty Law Talk”

### BOOK CHAPTERS

*The Once and Future Separation*, in THE CAMBRIDGE COMPANION TO THE FIRST AMENDMENT AND RELIGIOUS LIBERTY (Michael Breidenbach & Owen Anderson, eds.), Cambridge University Press (forthcoming 2018).

*The Bloating of the Constitution: Equality and the US Establishment Clause*, in THE SOCIAL EQUALITY OF RELIGION OR BELIEF (Alan Carling, ed.), Palgrave Macmillan (2016).

*James Fitzjames Stephen: The Punishment Jurist*, in FOUNDATIONAL TEXTS IN MODERN CRIMINAL LAW (Markus Dubber, ed.), Oxford University Press (2014).

*The Choice of Evils and the Collisions of Theory*, in RETRIBUTIVISM: ESSAYS ON THEORY AND POLICY (Mark D. White, ed.), Oxford University Press (2011).

### ARTICLES & ESSAYS (\*peer refereed)

*Religious Accommodation, Religious Tradition, and Political Polarization*, 20 LEWIS & CLARK LAW REVIEW 1127 (2017) (symposium contribution).

*Substantial Burdens Imply Central Beliefs*, 2016 ILLINOIS LAW REVIEW ONLINE 19 (symposium contribution).

*Virtue, Freedom, and the First Amendment*, 91 NOTRE DAME LAW REVIEW 1465 (2016) (symposium contribution).

- Reprinted in FIRST AMENDMENT LAW HANDBOOK (Rodney A. Smolla, ed.), Thompson Reuters (2017).

*Free Exercise by Moonlight*, 53 SAN DIEGO LAW REVIEW 105 (2016) (symposium contribution).

*Constitutional Contraction: Religion and the Roberts Court*, 26 STANFORD LAW & POLICY REVIEW 385 (2015).

- Translated into Italian and reprinted in *La Corte Roberts e la Tutela Della Libertà Religiosa Negli Stati Uniti* (Pasquale Annicchino, ed.), EUI Press (2017).

*Judge Posner, Judge Wilkinson, and Judicial Critique of Constitutional Theory* (with Kevin C. Walsh), 90 NOTRE DAME LAW REVIEW 633 (2014).

\**Against Theories of Punishment: The Thought of Sir James Fitzjames Stephen*, 9 OHIO STATE JOURNAL OF CRIMINAL LAW 699 (2012) (selected for inclusion in volume on punishment and culpability).

\**The Vanity of Dogmatizing*, 27 CONSTITUTIONAL COMMENTARY 201 (2010).

*\*The Excitement of Interdictory Ideas: A Response to Professor Anders Walker*, 8 OHIO STATE JOURNAL OF CRIMINAL LAW 155 (2010).

*\*No Tears for Creon*, 15 LEGAL THEORY 245 (2009).

*Culpability in Creating the Choice of Evils*, 60 ALABAMA LAW REVIEW 597 (2009).

*The Problem of Religious Learning*, 49 BOSTON COLLEGE LAW REVIEW 1213 (2008).

*Faith in the Rule of Law*, 82 ST. JOHN'S LAW REVIEW 573 (2008).

*Recoiling from Religion*, 43 SAN DIEGO LAW REVIEW 619 (2006).

*The New Religious Prisons and Their Retributivist Commitments*, 59 ARKANSAS LAW REVIEW 1 (2006).

*Congressional Threats of Removal Against Federal Judges*, 10 TEXAS JOURNAL ON CIVIL LIBERTIES & CIVIL RIGHTS 111 (2005).

## GRANTS AND OTHER AWARDS

*The Tradition Project, Part I* ("Tradition in Law and Politics") Project co-leader (with Mark L. Movsesian), The Lynde & Harry Bradley Foundation, \$100,000 grant, 2015-2016.

*The Tradition Project, Part II* ("Tradition, Culture, and Citizenship"), Project co-leader (with Mark L. Movsesian), The Achelis and Bodman Foundation, \$50,000 grant, 2016-2018.

## SELECTED SHORT WRITING

*2017 Supreme Court Roundup*, FIRST THINGS, September 2017 (with Kevin C. Walsh, forthcoming).

*Fake Law*, THE WEEKLY STANDARD, May 15, 2017.

*Thoughts on Brady's "The Distinctiveness of Religion in American Law,"* -- JOURNAL OF LAW AND RELIGION (forthcoming).

*Entries for Justice David Josiah Brewer and Justice Antonin Scalia*, in ENCYCLOPEDIA OF CHRISTIANITY IN THE UNITED STATES (George Thomas Kurian and Mark Lamport, eds.), Rowman & Littlefield (2017).

*The Unforgettable Fire: Tradition and the Shape of the Law*, LIBERTY FUND LIBRARY OF LAW AND LIBERTY, August 2016 (with responses from David Bernstein, Sanford Levinson, and James Stoner).

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*On Expressivism and Retributivism in Wolterstorff's 'The Mighty and the Almighty,'* 4 JOURNAL OF ANALYTIC THEOLOGY 395 (2016).

*What is a "Substantial Burden" on Religious Exercise—Or Is It Best Not to Ask?*, LIBERTY FUND LIBRARY OF LAW AND LIBERTY, April 20, 2016.

*The Optimist: For Scalia, Textualism Was a Matter of Trust*, COMMONWEAL, Feb. 23, 2016.

*Classical Liberalism: Teaching Its Own Undoing*, LIBERTY FUND LIBRARY OF LAW AND LIBERTY, Jan. 6, 2016 (invited response to Richard A. Epstein, *Freedom of Association and Antidiscrimination Law: An Imperfect Reconciliation*).

*The Empty Bromide of Religious Neutrality*, LIBERTY FUND LIBRARY OF LAW AND LIBERTY, July 24, 2015.

*Pantagruel Comes for the Establishment Clause*, LIBERTY FUND LIBRARY OF LAW AND LIBERTY, December 12, 2014.

*American Religious Freedom: The Revised Story* (reviewing STEVEN D. SMITH, *THE RISE AND DECLINE OF AMERICAN RELIGIOUS FREEDOM* (2014)), THE UNIVERSITY BOOKMAN, July 21, 2014.

*The Deeper Meaning in Hobby Lobby*, LIBERTY FUND LIBRARY OF LAW AND LIBERTY, July 1, 2014.

*Seeking Guidance? New Legal Challenges to Legislative Prayer*, COMMONWEAL, January 17, 2014.

*Legalese*, COMMONWEAL (reviewing ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012)), November 4, 2013.

*Why Standing Matters: Same-Sex Marriage & the Role of Courts*, COMMONWEAL, July 23, 2013.

Book Review, STEPHEN V. MONSMA, *PLURALISM AND FREEDOM: FAITH BASED ORGANIZATIONS IN A DEMOCRATIC SOCIETY* (2012), 55 JOURNAL OF CHURCH AND STATE 578 (2013).

*Astral Appetites*, THE NEW REPUBLIC, *The Book* (reviewing J. HARVIE WILKINSON III, *COSMIC CONSTITUTIONAL THEORY: WHY AMERICANS ARE LOSING THEIR INALIENABLE RIGHT TO SELF-GOVERNANCE* (2012)), September 5, 2012.

*The School Question*, THE NEW REPUBLIC, *The Book* (reviewing STEVEN K. GREEN, *THE BIBLE, THE SCHOOL, AND THE CONSTITUTION: THE CLASH THAT SHAPED MODERN CHURCH-STATE DOCTRINE* (2012)), July 2, 2012.

*True Religion*, THE NEW REPUBLIC, *The Book* (reviewing PAUL HORWITZ, *THE AGNOSTIC AGE: LAW, RELIGION, AND THE CONSTITUTION* (2011)), July 11, 2011.

*James Fitzjames Stephen's "Liberty, Equality, Fraternity,"* JOURNAL OF CHRISTIAN LEGAL THOUGHT, Volume 1, Number 1 (2011).

*The Handmaid of Politics*, 26 J. L. & RELIGION 101 (2010-2011).

Co-founder (with Mark L. Movsesian) *Law and Religion Forum*, (blog of the Center for Law and Religion).

Member of *Mirror of Justice* (blog of Catholic legal thought).

## SELECTED PRESENTATIONS & CONFERENCES

The Tradition Project, Part II: “Tradition, Culture, and Citizenship”  
St. John’s Center for Law and Religion, New York, October 2017.

“Tradition and Traditionalisms Compared”: A Joint Program of the Tradition Project and the Post-Secular Conflicts Project, Trento, Italy, June 2017

Roundtable, *Pagans and Christians in the City* by Steven D. Smith, Notre Dame Law School, March 2017.

*On Article XI of the Treaty of Tripoli and the Uses of Christian Nationalism*  
Conference on “Faith, Sexuality, and the Meaning of Freedom,” Yale Law School, January 2017.

The Tradition Project, Part I: “Tradition in Law and Politics”  
St. John’s Center for Law and Religion, New York, October 2016.

Landmark Supreme Court Cases: Employment Division v. Smith  
Hertog Foundation, Washington, D.C., July 2016 (with Adam White).

*Religious Accommodations and Religious Systems*  
Notre Dame Law School Faculty Workshop, April 2016.  
St. John’s Law School Faculty Workshop, April 2016.

*Virtue, Freedom, and the First Amendment*  
Conference on “Religious Liberty and the Free Society: Celebrating the 50<sup>th</sup> Anniversary of *Dignitatis Humanae*,” Notre Dame Law School, November 2015.

Conference on “Catholic Legal Theory: Aspirations, Challenges, and Hopes,” Villanova Law School, April 2015.

*Free Exercise by Moonlight*  
Institute for Law and Religion, University of San Diego School of Law, March 2015.

*Constitutional Contraction: Religion and the Roberts Court*  
European University Institute (by Skype), Robert Schuman Centre for Advanced Studies, Florence, Italy, October 2014.

“Libertas Project,” Villanova Law School, Workshop on Religious Freedom (co-moderator), July 2014, July 2015.

“International Religious Freedom and the Global Clash of Values” (conference co-organizer), Libera Università Maria SS. Assunta, Rome, Italy, June 2014.

Roundtable, *The Mighty and the Almighty* by Nicholas Wolterstorff, Notre Dame Law School, March 2014.

Lumen Christi Conference on Christian Legal Thought (conference co-organizer with Zachary Calo), New York, January 2014.

“The Politics of Religious Freedom: Contested Norms and Local Practices” (panelist), Northwestern University, October 2013.

“Morality and the Criminal Law” (panelist), Southeastern Association of Law Schools Conference, Palm Beach, FL, August 2013.

Annual Law and Religion Roundtable, Stanford Law School, June 2013.

“Colloquium: Thomas More on Ethics, Law, and Liberty” (participant), University of St. Thomas School of Law, Minneapolis, MN, June 2013.

*Judge Posner, Judge Wilkinson, and Judicial Critique of Constitutional Theory*

Third ICLARS Conference: “Religion, Democracy, and Equality,” William & Mary Law School, August 2013.

St. John’s University School of Law, March 2013.

New York City Junior Faculty Colloquium, Fordham Law School, December 2012.

*The Punishment Jurist*

Conference on “Foundations of Modern Criminal Law,” University of Toronto Faculty of Law, November 2012.

Pace University School of Law Faculty Workshop, October 2012.

“Catholic Perspectives on Religious Liberty” (panelist), Georgetown University Law Center, The Berkley Center for Religion, Peace, and World Affairs, September 2012.

“State-Sponsored Religious Displays in the U.S. and Europe” (conference co-organizer and panelist), Libera Università Maria SS. Assunta, Rome, Italy, June 2012.

“The HHS Contraception Mandate and Religious Institutions” (panelist), Yale Law School, April 2012.

“On the Present Condition of Punishment Theory,” Talk at University of St. Thomas School of Law (with United States District Judge Richard J. Sullivan), April 2012.

“The Retributivist Tradition and its Future” (conference organizer and panelist), St. John’s University School of Law, November 2011.

*Against Theories of Punishment: The Thought of Sir James Fitzjames Stephen*

Criminal Theory Colloquium, New York University School of Law, April 2011.

AALS Conference, Panel on Jurisprudence: The Choice of Evils, San Francisco, January 2011.

“Religious Legal Theory Conference: Religion in Law and Law in Religion” (conference co-organizer and panel moderator), Center for Law and Religion, St. John’s University School of Law, November 2010.

*The Tragedy of Religious Freedom*

Stanford Constitutional Law Center, Stanford Law School, November 2013.

Law and Religion Colloquium, BYU Law School, January 2013.

Conference on Religious Legal Theory, Pepperdine University School of Law, February 2012.

Annual Law and Religion Roundtable, Northwestern University School of Law, June 2011.

St. John’s University School of Law Faculty Scholarship Workshop, February 2011.

Annual Law and Religion Roundtable, Brooklyn Law School, June 2010.

Conference on Christian Realism and Public Life, Terrence J. Murphy Institute, University of St. Thomas School of Law, November 2009.

Conference on Religious Legal Theory, Seton Hall University School of Law, November 2009.

Associates in Law Workshop, Columbia Law School, November 2009.

“Laïcité in Comparative Perspective” (panel moderator), Center for Law and Religion, St. John’s University School of Law, Paris, France, June 2010.

“Areas in Need of Constitutional Criteria: The Eight Amendment, The Establishment Clause, and the Foreign Commerce Clause” (panel discussant), Law, Culture, and the Humanities Conference, Brown University, March 2010.

*The Choice of Evils and the Collisions of Theory*

Pace University School of Law, September 2009.

“Choice and Chance in Criminal Law” (chair and panelist), Law and Society Association Conference, Denver, CO, May 2009.

*The Problem of Religious Learning*

Columbia Law School, February 2008.

*Faith in the Rule of Law*

Columbia Law School, September 2007.

## EDUCATION

**COLUMBIA LAW SCHOOL, J.S.D., LL.M.**

- Doctoral Dissertation: *Tragic Historicism: A Theory of Religious Liberty*.
- Walter Gellhorn Prize (awarded to the highest ranked LL.M. student)

### **BOSTON UNIVERSITY SCHOOL OF LAW, J.D.**

### **HARVARD UNIVERSITY, M.A., Romance Languages and Literature**

- Master's Thesis: *Machiavelli and Machiavellianism*

### **DUKE UNIVERSITY, B.A.**

## **PROFESSIONAL ACTIVITIES AND SERVICE**

### Referee:

Harvard University Press  
 Oxford University Press  
 Palgrave Macmillan  
 New York University Press  
 Journal of Church and State  
 The New Criminal Law Review  
 Yale Law Journal

### Promotion and Tenure Reviews:

Mark Rienzi

AALS Section on Law and Religion (Chair, 2015)

### St. John's University School of Law

Associate Director, Center for Law and Religion  
 Associate Academic Dean, 2016-2017  
 Associate Dean for Faculty Scholarship, 2014-2016  
 Faculty Appointments Committee, 2014-16  
 Budget Committee, 2014-  
 Curriculum Committee, 2012-2014  
 Advisor, Journal of Catholic Legal Studies  
 Research Fellow, Vincentian Center, St. John's University

## **LAW PRACTICE**

MIDDLESEX DISTRICT ATTORNEY'S OFFICE, Cambridge, MA

Special Assistant District Attorney, 2007-2008

Assistant District Attorney, 2005-2007

HON. JEROME FARRIS, Seattle, WA

U.S. CIRCUIT JUDGE, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, 2004-2005



Law Clerk

HON. WILLIAM E. SMITH, Providence, RI  
U.S. DISTRICT JUDGE, U.S. DISTRICT COURT, DISTRICT OF RHODE ISLAND, 2003-2004  
Law Clerk

SULLIVAN & WORCESTER LLP, Boston, MA  
Associate, Litigation Department, 2001-2003

HON. ROBERT W. LOVEGREEN, Providence, RI  
U.S. MAGISTRATE JUDGE, U.S. DISTRICT COURT, DISTRICT OF RHODE ISLAND, 2000-2001  
Law Clerk

## **LANGUAGES**

Fluency in Italian; reading competence in French, Spanish, and Latin