

## MARC O. DEGIROLAMI

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

ST. JOHN'S UNIVERSITY SCHOOL OF LAW

Cary Fields Professor of Law  
Codirector, Center for Law and Religion

UNIVERSITY OF NOTRE DAME SCHOOL OF LAW

Visiting Professor of Law, Spring 2020

PRINCETON UNIVERSITY, DEPARTMENT OF POLITICS, JAMES MADISON PROGRAM

Visiting Fellow, Spring 2019

THE CATHOLIC UNIVERSITY OF AMERICA, COLUMBUS SCHOOL OF LAW

Visiting Assistant Professor and Scholar in Residence, 2008-09

COLUMBIA LAW SCHOOL

Associate-in-Law, 2007-08

### PUBLICATIONS AND WORKING PAPERS

#### **BOOK**

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

- Reviewed in *Commentary*; *Journal of Church and State*; *Law and Politics Book Review*; *Journal of Religion and Human Rights*; *Choice*; *Politics and Religion*; *The University Bookman*; *Review of Politics*
- Featured on National Public Radio and The Liberty Fund

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

*Establishment's Political Priority to Free Exercise*, 97 NOTRE DAME LAW REVIEW --- (forthcoming 2022).

*\*Reconstructing Malice in the Law of Punitive Damages*, 14 JOURNAL OF TORT LAW --- (forthcoming 2021).

*The End of the Affair*, 66 AMERICAN JOURNAL OF JURISPRUDENCE --- (forthcoming 2021)  
(review essay of JOEL HARRISON, POST-LIBERAL RELIGIOUS LIBERTY: FORMING COMMUNITIES OF CHARITY (2020)).

*First Amendment Traditionalism*, 97 WASHINGTON UNIVERSITY LAW REVIEW 1653 (2020).

*The Traditions of American Constitutional Law*, 95 NOTRE DAME LAW REVIEW 1123 (2020).

*The Two Separations*, in THE CAMBRIDGE COMPANION TO THE FIRST AMENDMENT AND RELIGIOUS LIBERTY (Michael Breidenbach & Owen Anderson, eds.), Cambridge University Press (2020).

*The Sickness Unto Death of the First Amendment*, 42 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 751 (2019).

- Reprinted in FIRST AMENDMENT LAW HANDBOOK (Rodney A. Smolla, ed.), Thompson Reuters (2019-20).

*On the Uses of Anti-Christian Identity Politics*, in RELIGIOUS FREEDOM, LGBT RIGHTS, AND THE PROSPECTS FOR COMMON GROUND (William Eskridge & Robin Fretwell Wilson, eds.), Cambridge University Press (2018).

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

*Substantial Burdens Imply Central Beliefs*, 2016 ILLINOIS LAW REVIEW ONLINE 19.

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

- Reprinted in FIRST AMENDMENT LAW HANDBOOK (Rodney A. Smolla, ed.), Thompson Reuters (2017-18).

*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).

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

*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).

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

\**Against Theories of Punishment: The Thought of Sir James Fitzjames Stephen*, 9 OHIO STATE JOURNAL OF CRIMINAL LAW 699 (2012).

- Responses by Judge Richard A. Posner and Professor Chad Flanders.

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

\**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).

## **WORKING PAPERS**

*Private-Public Nuisance.*

*The Marshall-Story Correspondence: A Study in Republican Judging.*

## **AWARDS, HONORS, AND GRANTS**

*Establishment's Political Priority to Free Exercise*, selected paper at the National Conference of Constitutional Law Scholars, William H. Rehnquist Center, University of Arizona Law School, March 2021.

Research Fellow, The Nootbaar Institute on Law, Religion, and Ethics, Pepperdine University, 2020-2022.

Dedication by the St. John's Law Review, Volume 93:3 (2019).

*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.

Professor of the Year (St. John’s) (by student vote): 2018; 1L Teacher of the Year, 2012, 2013 (by student vote)

Dean’s Award for Outstanding Scholarship (St. John’s): 2019, 2014, 2013

Dean’s Teaching Award (St. John’s): 2018 (Torts); 2012 (Constitutional Law)

Dean’s Award for Outstanding Service (St. John’s): 2017

## OCCASIONAL PIECES

*Restoring Legal Conservatism*, FIRST THINGS (forthcoming).

*American Millstone* (reviewing JOHN LAWRENCE HILL, *THE PROPHET OF MODERN CONSTITUTIONAL LIBERALISM: JOHN STUART MILL AND THE SUPREME COURT* (2020)), LIBERTY FUND LIBRARY OF LAW AND LIBERTY, March 5, 2021.

*Amy Coney Barrett and Originalism*, FIRST THINGS, October 12, 2020.

*Integrating Originalism and Stare Decisis*, LIBERTY FUND LIBRARY OF LAW AND LIBERTY, September 1, 2020 (invited responses from Professors Randy Barnett, Jesse Merriam, and Ilan Wurman).

*Wanted: A Republican Judiciary* (reviewing GREG WEINER, *THE POLITICAL CONSTITUTION: THE CASE AGAINST JUDICIAL SUPREMACY* (2019)), LIBERTY FUND LIBRARY OF LAW AND LIBERTY, January 13, 2020.

*Notes on a New Fusion*, LIBERTY FUND LIBRARY OF LAW AND LIBERTY, July 19, 2019 (invited response to Jesse Merriam, *Is Legal Conservatism as Accomplished as It Thinks It Is?*).

*Cross Purposes*, PUBLIC DISCOURSE, June 25, 2019.

*Jurisprudence as an Expression of Character* (reviewing RICHARD BROOKHISER, *JOHN MARSHALL: THE MAN WHO MADE THE SUPREME COURT* (2018)), LIBERTY FUND LIBRARY OF LAW AND LIBERTY, January 28, 2019.

*2018 Supreme Court Roundup: Kennedy’s Last Term*, FIRST THINGS, October 2018 (with Kevin C. Walsh).

*Conservatives, Don’t Put Too Much Hope in the Next Justice*, NEW YORK TIMES, July 2, 2018 (with Kevin C. Walsh).

*The Long Tail of Legal Liberalism* (reviewing PATRICK J. DENEEN, *WHY LIBERALISM FAILED* (2018)), LIBERTY FUND LIBRARY OF LAW AND LIBERTY, February 7, 2018.

*2017 Supreme Court Roundup: A Less Corrupt Term*, FIRST THINGS, October 2017 (with Kevin C. Walsh).

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

*The Limits of Phenomenological and Experiential Ecumenism*, 32 JOURNAL OF LAW AND RELIGION 501 (2017) (symposium on KATHLEEN A. BRADY, THE DISTINCTIVENESS OF RELIGION IN AMERICAN LAW: RETHINKING RELIGION CLAUSE JURISPRUDENCE (2015)).

*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 (invited responses from Professors David Bernstein, Sanford Levinson, and James Stoner).

*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, (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, (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, (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) (reviewing STEVEN H. SHIFFRIN, THE RELIGIOUS LEFT AND CHURCH-STATE RELATIONS (2009)).

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

### *Establishment's Political Priority to Free Exercise*

National Conference of Constitutional Law Scholars, William H. Rehnquist Center, University of Arizona Law School, March 2021.

Nootbaar Fellows Workshop, Pepperdine Law School, March 2021.

### Panelist, "Stare Decisis, Justice, and the Rule of Law"

Global Summit, International Conference on The Future of Constitutionalism, January 2021.

### "Originalism and Its Discontents"

Panelist, Federalist Society Conference, January 2021.

### *Reconstructing Malice in the Law of Punitive Damages*

Notre Dame Law School Faculty Workshop, April 2020.

### *First Amendment Traditionalism*

Roundtable on "Constitutionalism, Sovereignty, and Peoples," Notre Dame Program on Constitutional Structure, London, February 2020.

Symposium on The Religion Clauses, Washington University School of Law, January 2020.

Respondent, panel on KEITH E. WHITTINGTON, REPUGNANT LAWS: JUDICIAL REVIEW OF ACTS OF CONGRESS FROM THE FOUNDING TO THE PRESENT (2019), James Madison Program, Princeton University, November 14, 2019.

Lecture, "The Supreme Court's New Traditionalism," Skidmore College, September 19, 2019.

*The Traditions of American Constitutional Law*

Visiting Fellow Presentation, James Madison Program, Princeton University, April 2019.  
Hertog Foundation, Washington, DC, July 2019.

The Tradition Project, Part III: “Tradition and the Global Clash of Values”

St. John’s Center for Law and Religion (jointly with the McCullen Center for Law, Religion, and Public Policy and LUMSA University), Rome, Italy, December 2018.

“Higher Purposes of Free Speech,” Conference, “Higher Powers,” Notre Dame Center for Ethics and Culture, November 2018.

Constitution Day Discussion, The King’s College, New York (with David Tubbs), September 2018.

*The Sickness Unto Death of the First Amendment*

Panel on “Free Exercise of Religion and Freedom of Speech,” AALS Section on Law and Religion, New Orleans, January 2019.

“Religion and the Administrative State,” Center for the Study of the Administrative State, George Mason University School of Law, March & September 2018.

Lecture, “First Amendment Developments in the Supreme Court’s Recent Cases,” Loyola University Maryland, September 13, 2018.

Conference, “Through Every Human Heart,” Notre Dame Center for Ethics and Culture (roundtable participant), November 2017.

The Tradition Project, Part II: “Tradition, Culture, and Citizenship”

St. John’s Center for Law and Religion, New York, November 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, DC, July 2016 (with Adam White).

*Religious Accommodation, Religious Tradition, and Political Polarization*

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*

“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 Eighth Amendment, The Establishment Clause, and the Foreign Commerce Clause” (panelist), 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*
- ABD

**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  
Oxford Journal of Legal Studies

Promotion and Tenure Reviews:

Mark Rienzi, Catholic University of America, Columbus School of Law  
John Infranca, Suffolk University Law School

Teaching:

Constitutional Law I and II  
Criminal Law  
Torts  
Professional Responsibility  
The First Amendment: The Religion Clauses  
Constitutional Theory  
Colloquium in Law and Religion  
Catholic Social Thought and the Law

AALS Section on Law and Religion (Chair, 2015)

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St. John's University School of Law  
Co-Director, Center for Law and Religion  
Associate Academic Dean, 2016-2017  
Associate Dean for Faculty Scholarship, 2014-2016  
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

**Honorable Jerome Farris, United States Court of Appeals for the Ninth Circuit**  
Law Clerk, 2004-2005

**Honorable William E. Smith, United States District Court, District of Rhode Island**  
Law Clerk, 2003-2004

**Sullivan & Worcester LLP, Boston, MA**  
Associate, 2001-2003

**Honorable Robert W. Lovegreen, United States District Court, District of Rhode Island**  
Law Clerk, 2000-2001

## **LANGUAGES**

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