

# NELSON TEBBE

Brooklyn Law School • 250 Joralemon Street • Brooklyn, NY 11201  
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## ACADEMIC APPOINTMENTS

### BROOKLYN LAW SCHOOL

Professor of Law, 2011 – present  
Associate Professor of Law, 2008 – 2011  
Assistant Professor of Law, 2007 – 2008

Teaching: Constitutional Law, Law and Religion, Legal Theory Colloquium,  
Professional Responsibility

Service (selected): Lateral Appointments Committee, Status Committee, Entry-Level  
Appointments Committee, Clerkships Committee

### CORNELL LAW SCHOOL

Visiting Professor of Law, Fall Terms 2014, 2015, 2016  
Teaching: Constitutional Law, First Amendment

## PUBLICATIONS AND WORKING PAPERS

### Books

RELIGIOUS FREEDOM IN AN EGALITARIAN AGE (Harvard University Press, forthcoming  
2017)

RELIGIOUS LIBERTY AND SECULAR GOVERNMENT: CASES AND MATERIALS (West,  
forthcoming 2017) (with Frederick Mark Gedicks, Robert W. Tuttle, and Micah  
Schwartzman)

RELIGION AND EQUALITY LAW (Nelson Tebbe, ed., Ashgate Press, 2013)

### Articles & Essays

*Conscience and Equality: A Reply to Critics*, 29 JOURNAL OF CIVIL RIGHTS AND  
ECONOMIC DEVELOPMENT \_\_ (forthcoming 2017) (symposium issue on RELIGIOUS  
FREEDOM IN AN EGALITARIAN AGE)

*When Do Religious Accommodations Burden Others?* in THE CONSCIENCE WARS:  
RETHINKING THE BALANCE BETWEEN RELIGION, IDENTITY, AND EQUALITY (Susanna  
Mancini & Michel Rosenfeld eds., Cambridge Univ. Press, forthcoming 2017) (with  
Richard Schragger and Micah Schwartzman)

*How Much May Religious Accommodations Harm Others?* in LAW, RELIGION, AND

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- HEALTH IN THE UNITED STATES (Elizabeth Sepper, Holly Fernandez Lynch, and I. Glenn Cohen, ed., Cambridge Univ. Press, forthcoming 2017) (with Richard Schragger and Micah Schwartzman)
- Is the Constitution Special?*, 101 CORNELL LAW REVIEW 701 (2016) (with Christopher Serkin) (selected as the subject of a forthcoming symposium in the *Cornell Law Review*)
- Religion and Social Coherentism*, 91 NOTRE DAME LAW REVIEW 363 (2015)
- Religious Institutionalism—Why Now?*, in THE RISE OF CORPORATE RELIGIOUS LIBERTY: HOBBY LOBBY AND THE NEW LAW OF RELIGION IN AMERICA 207 (Micah Schwartzman et al., eds. 2015) (with Paul Horwitz)
- Countersupermajoritarianism*, 113 MICHIGAN LAW REVIEW 809 (2015) (book review) (with Frederic Bloom)
- Religion and Marriage Equality Statutes*, 9 HARVARD LAW AND POLICY REVIEW 25 (2015) (symposium issue)
- Associations and the Constitution: Four Questions About Four Freedoms*, 92 NORTH CAROLINA LAW REVIEW 917 (2014) (solicited response to John Inazu, *Four Freedoms and the Future of Religious Liberty*, 92 NORTH CAROLINA LAW REVIEW 787 (2014))
- The End of Religious Freedom: What Is At Stake?*, 41 PEPPERDINE LAW REVIEW 963 (2014) (solicited response to Steven D. Smith, *The Last Chapter?*, 41 PEPPERDINE LAW REVIEW 903 (2014))
- Government Nonendorsement*, 98 MINNESOTA LAW REVIEW 648 (2013)
- Nonbelievers*, 97 VIRGINIA LAW REVIEW 1111 (2011)
- Smith in Theory and Practice*, 32 CARDOZO LAW REVIEW 2055 (2011) (symposium issue)
- Equal Access and the Right to Marry*, 158 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1375 (2010) (with Deborah A. Widiss)
- Constitutional Borrowing*, 108 MICHIGAN LAW REVIEW 459 (2010) (with Robert L. Tsai)
- Condemning Religion: RLUIPA and the Politics of Eminent Domain*, 85 NOTRE DAME LAW REVIEW 1 (2009) (with Christopher Serkin)
- Excluding Religion*, 156 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1263 (2008)
- Inheritance and Disinheritance: African Customary Law and Constitutional Rights*, 88 JOURNAL OF RELIGION 466 (2008) (peer reviewed)

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*Witchcraft and Statecraft: Liberal Democracy in Africa*, 96 GEORGETOWN LAW JOURNAL 183 (2007)

*Free Exercise and the Problem of Symmetry*, 56 HASTINGS LAW JOURNAL 699 (2005)

**Selected Other Works**

McElroy Lecture, *How to Think About Religious Freedom in an Egalitarian Age*, 93 UNIVERSITY OF DETROIT MERCY LAW REVIEW 353 (2016)

*Zubik and the Demands of Justice*, SCOTUSBLOG (May 16, 2016) (with Micah Schwartzman, and Richard Schragger), <http://www.scotusblog.com/2016/05/symposium-zubik-and-the-demands-of-justice/>

*The Contraception Compromise*, SLATE (April 14, 2016) (with Richard Schragger and Micah Schwartzman), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2016/04/seven\\_sisters\\_are\\_open\\_to\\_obamacare\\_contraception\\_compromise.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2016/04/seven_sisters_are_open_to_obamacare_contraception_compromise.html)

*Obergefell and the End of Religious Reasons for Lawmaking*, RELIGION & POLITICS (June 29, 2015) (with Richard Schragger and Micah Schwartzman), <http://religionandpolitics.org/2015/06/29/obergefell-and-the-end-of-religious-reasons-for-lawmaking/>

*Indiana's New Law Allows Discrimination. That Was The Point.*, SLATE (March 30, 2015) (with Micah Schwartzman and Robert Tuttle), [http://www.slate.com/blogs/outward/2015/03/30/gov\\_mike\\_pence\\_s\\_characterization\\_of\\_indiana\\_s\\_new\\_religion\\_law\\_is\\_wrong.html](http://www.slate.com/blogs/outward/2015/03/30/gov_mike_pence_s_characterization_of_indiana_s_new_religion_law_is_wrong.html)

*Utah "Compromise" to Protect LGBT Citizens From Discrimination Is No Model for the Nation*, SLATE (March 18, 2015) (with Richard Schragger and Micah Schwartzman), [http://www.slate.com/blogs/outward/2015/03/18/gay\\_rights\\_the\\_utah\\_compromise\\_is\\_no\\_model\\_for\\_the\\_nation.html](http://www.slate.com/blogs/outward/2015/03/18/gay_rights_the_utah_compromise_is_no_model_for_the_nation.html)

*Written Testimony Before the House Judiciary Committee, Subcommittee on the Constitution and Civil Justice, "Oversight on the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act"* (Feb. 13, 2015), [http://judiciary.house.gov/\\_cache/files/497441bc-b2fa-4b10-8ade-91f6603588fe/tebbe-02132015.pdf](http://judiciary.house.gov/_cache/files/497441bc-b2fa-4b10-8ade-91f6603588fe/tebbe-02132015.pdf)

*A License To Say Anything?*, N.Y. TIMES (Jan. 9, 2015) (with Corey Brettschneider), [http://www.nytimes.com/2015/01/10/opinion/a-license-to-say-anything.html?\\_r=0](http://www.nytimes.com/2015/01/10/opinion/a-license-to-say-anything.html?_r=0)

*The New Law Of Religion*, SLATE (July 3, 2014) (with Richard Schragger and Micah Schwartzman), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2014/07/after\\_hobby\\_lobby\\_there\\_is\\_only\\_rfra\\_and\\_that\\_s\\_all\\_you\\_n](http://www.slate.com/articles/news_and_politics/jurisprudence/2014/07/after_hobby_lobby_there_is_only_rfra_and_that_s_all_you_n)

eed.html

*A Prayer for Liberals: Why are some liberals conceding that it's their fault for objecting to legislative prayer?*, SLATE (May 7, 2014) (with Micah Schwartzman), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2014/05/the\\_strange\\_liberal\\_argument\\_that\\_thin\\_skinned\\_religious\\_minorities\\_should.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2014/05/the_strange_liberal_argument_that_thin_skinned_religious_minorities_should.html)

*Obamacare and Religion and Arguing Off the Wall: What the New York Times and the Courts Are Missing in the Birth Control Mandate Fight*, SLATE (Nov. 26, 2013) (with Micah Schwartzman), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2013/11/obamacare\\_birth\\_control\\_mandate\\_lawsuit\\_how\\_a\\_radical\\_argument\\_went\\_mainstream.2.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2013/11/obamacare_birth_control_mandate_lawsuit_how_a_radical_argument_went_mainstream.2.html)

*Symposium: The Puzzle of Town of Greece v. Galloway*, SCOTUSBLOG (Sep. 24, 2013) (with Micah Schwartzman), <http://www.scotusblog.com/2013/09/symposium-the-puzzle-of-town-of-greece-v-galloway/>

*Notes on Borrowing and Convergence*, 111 COLUMBIA LAW REVIEW SIDEBAR 140 (2011) (with Robert Tsai) (comment on Jennifer Laurin, *Trawling for Herring: Lessons in Doctrinal Borrowing and Convergence*, 111 COLUMBIA LAW REVIEW 670 (2011))

*Witchcraft and the Constitution*, in TRADITIONAL AFRICAN RELIGIONS IN SOUTH AFRICAN LAW 156 (T.W. Bennett, ed., University of Cape Town Press, 2011)

Debate, *The Argument for Same-Sex Marriage*, 159 UNIVERSITY OF PENNSYLVANIA LAW REVIEW PENNUMBRA 21 (2010) (with Deborah A. Widiss)

*Excluding Religion: A Reply*, 157 UNIVERSITY OF PENNSYLVANIA LAW REVIEW PENNUMBRA 283 (2009)

*Eclecticism*, 25 CONSTITUTIONAL COMMENTARY 317 (2009) (reviewing KENT GREENAWALT, 2 RELIGION AND THE CONSTITUTION: ESTABLISHMENT AND FAIRNESS (2008))

*Privatizing and Publicizing Speech*, 104 NORTHWESTERN UNIVERSITY LAW REVIEW COLLOQUY 70 (2009)

*Understanding Laïcité*, 23 JOURNAL OF LAW AND RELIGION 371 (2007-08) (reviewing JOHN R. BOWEN, WHY THE FRENCH DON'T LIKE HEADSCARVES: ISLAM, THE STATE, AND PUBLIC SPACE (2007))

*Witchcraft and the Polis*, 86 JOURNAL OF RELIGION 710 (2006) (peer reviewed) (reviewing ADAM ASHFORTH, WITCHCRAFT, VIOLENCE, AND DEMOCRACY IN SOUTH AFRICA (2005))

SELECTED PRESENTATIONS

*Conscience and Equality*, Columbia Public Law Workshop, Columbia Law School (February 2017)

*Religious Freedom in an Egalitarian Age*, Faculty Workshop, University of Pennsylvania Wharton School of Business, Legal Studies and Business Ethics Department (October 13, 2016)

*Religious Freedom in an Egalitarian Age*, Brown University, Political Science Department (October 4, 2016)

Religious Freedom Today: A Symposium on Nelson Tebbe's *Religious Freedom in an Egalitarian Age*, Saint John's University School of Law (September 16, 2016) (Articles will be published in a forthcoming issue of the *Journal of Civil Rights and Economic Development*)

*Free Speech After Justice Scalia and Is Religion Special?*, panel presentations at the Annual Meeting of the Southeastern Association of Law Schools (August 2016)

Religion, Liberalism, and Law: A Symposium on Cecile Laborde's *Liberalism's Religion* and Nelson Tebbe's *Religious Freedom in an Egalitarian Age*, University of Virginia Law School (April 2016)

*Religious Freedom in an Egalitarian Age*, St. John's University School of Law, Faculty Workshop (April, 2016)

Discussant, Faculty Workshop, University of Texas Law School, February 2016 (with John Ferejohn, based on a paper by Lawrence Sager)

*Religious Freedom in an Egalitarian Age*, What's Next For the LGBT Movement after the Marriage Cases: Defects in Anti-Discrimination Laws and Religious Freedom Challenges, AALS Panel of the Section on Sexual Orientation and Gender Identity Issues (January 9, 2016)

Commentator, Childress Lecture by Lawrence Sager, Saint Louis University Law School, Nov. 13, 2015

*When Do Religion Accommodations Harm Others?*, "The Conscience Wars: Rethinking the Relationship Between Religion, Identity, and Equality," Cardozo Law School (Sept. 20-21, 2015) (with Micah Schwartzman)

*When Do Religion Accommodations Harm Others?*, Annual Law & Religion Roundtable (June 24-25, 2015) (with Micah Schwartzman)

*When Do Religion Accommodations Harm Others?*, Petrie-Flom Center on Health Law Annual Conference, Harvard Law School (May 7-8, 2015) (with Micah

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Schwartzman)

*Religion and Social Coherentism*, Philip J. McElroy Lecture on Law and Religion, Detroit Mercy School of Law (March 4, 2015)

*Religion and Social Coherentism*, Faculty Workshop, Washington University in Saint Louis School of Law (Feb. 18, 2015)

Testimony Before the House Judiciary Committee, Subcommittee on the Constitution and Civil Justice, “Hearing: Oversight on the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act” (Feb. 13, 2015), [http://judiciary.house.gov/\\_cache/files/497441bc-b2fa-4b10-8ade-91f6603588fe/tebbe-02132015.pdf](http://judiciary.house.gov/_cache/files/497441bc-b2fa-4b10-8ade-91f6603588fe/tebbe-02132015.pdf)

*Religion and Social Coherentism*, Law and Philosophy Colloquium, University of Texas Law School (Feb. 5, 2015)

*Religion and Social Coherentism*, Annual Law and Religion Roundtable, Washington University School of Law (June 25, 2014)

*Marriage Equality and Religion*, Religious Freedom “Versus” Equal Rights? Emerging Dilemmas in Law and Policy Across the Americas—Gender, Sexuality, Religion, Hemispheric Institute for Performance and Politics, New York University (April 24, 2014)

*Marriage Equality and Religion*, Religious Accommodation in the Age of Civil Rights Conference, Harvard Law School (April 3 – 5, 2014)

*Marriage Equality and Religion*, Spring 2014 Law and Sexuality Colloquium, Columbia Law School (March 11, 2014)

Free Speech Roundtable, Washington University Law School (January 31, 2014)

*Is the Constitution Special?*, Faculty Workshop, George Washington University Law School (Nov. 14, 2013)

*Blasphemy, Hate Speech, and Witchcraft in South Africa*, Graduate Institute of International and Development Studies, Geneva, Switzerland (Oct. 17 – 19, 2013)

*Associations and the Constitution: Four Questions About Four Freedoms*, DePaul College of Law Center for Church-State Studies (Sept. 26 – 27, 2013)

Free Speech Roundtable, Washington University Law School (March 22, 2013)

*Is the Supreme Court Threatening Religious Groups?*, Debate with John Inazu, Terrence J. Murphy Institute, University of St. Thomas (March 8, 2013)

*Religion and Social Coherentism*, Faculty Workshop, University of St. Thomas School of

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- Law (March 7, 2013)
- Can Government Deny the Use of Public Space for Religious Services? Debate on Bronx Household of Faith vs. NYC Dept. of Education*, Federalist Society New York Lawyers' Chapter, The Cornell Club, New York, NY (February 20, 2013) (with Jordan Lorence and Hon. Douglas Ginsburg)
- Supreme Court Review*, New York State Bar Association, Committee on Attorneys in Public Service, 2013 Annual Meeting (Jan. 22, 2013)
- Religion and Social Coherentism*, Religion and Legal Theory Colloquium, BYU School of Law (Jan. 10, 2013)
- Religion and Social Coherentism*, Faculty Workshop, Cornell Law School (Nov. 30, 2012)
- Religion and Social Coherentism*, Faculty Workshop, Temple University Beasley School of Law (Oct. 31, 2012)
- Religious Institutionalism and Constitutional Change*, The Freedom of the Church in the Modern Era, Institute for Law and Religion, University of San Diego School of Law (October 12 – 13, 2012)
- Marriage Equality: Constitutional Issues, Alternatives, and Ethical Concerns*, New York City Bar (June 25, 2012)
- Government Nonendorsement*, Herbert & Elinor Nootbaar Institute on Law, Religion, and Ethics Annual Conference, Pepperdine University School of Law (Feb. 25, 2012)
- Government Nonendorsement*, Faculty Workshop, Cardozo Law School (Feb. 20, 2012)
- Government Nonendorsement*, Faculty Workshop, Vanderbilt Law School (Jan. 30, 2012)
- Government Nonendorsement*, Faculty Workshop, Cornell Law School (Dec. 2, 2011)
- Government Nonendorsement*, Faculty Workshop, Florida State University College of Law (Nov. 16, 2011)
- Government Nonendorsement*, First Amendment Law Review Symposium, University of North Carolina, Chapel Hill (Oct. 28, 2011)
- Participant, Roundtable on Paul Horwitz's *First Amendment Institutions*, Notre Dame Law School (Sept. 30, 2012)
- Religious Freedom in 2020*, "Schmooze" Organized by Mark Tushnet, American Constitution Society Annual Convention, Washington, D.C. (June 16, 2011)
- Nonbelievers*, Faculty Workshop, Fordham University School of Law (January 27, 2011)

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*Nonbelievers*, Faculty Workshop, University of Virginia School of Law (November 12, 2010)

*Nonbelievers*, Religious Legal Theory Conference: Religion in Law, Law in Religion, St. John's University School of Law (November 5, 2010)

*Nonbelievers*, Faculty Workshop, University of Georgia Law School (October 11, 2010)

*Smith in Theory and Practice*, Symposium, Twenty Years After *Employment Division v. Smith*, Floersheimer Center for Constitutional Democracy, Cardozo Law School (October 7 – 8, 2010)

*Equal Access and the Right to Marry*, Faculty Workshop, Pace University Law School (January 20, 2010)

*Privatizing and Publicizing Speech*, Supreme Court Roundup: Religious Speech and Government Property, Brooklyn Law School (September 24, 2009)

*Constitutional Borrowing*, Faculty Workshop, Brooklyn Law School (April 23, 2009)

*Inheritance and Disinheritance: African Customary Law and Constitutional Rights*, South African Institute for Advanced Constitutional, Public, Human Rights and International Law, Johannesburg, South Africa (March 9, 2009)

*Condemning Religion: The Political Economy of RLUIPA*, Municipal Arts Society of New York (October 23, 2008) (with Christopher Serkin)

*Eclecticism*, Roundtable on KENT GREENAWALT, RELIGION AND THE CONSTITUTION: ESTABLISHMENT AND FAIRNESS, Notre Dame Law School (October 10, 2008)

## SELECTED ACADEMIC ACTIVITIES

Board of Consultants, *JOURNAL OF RELIGION* (University of Chicago Press) (2014 – 2019)

Board of Faculty Editors, *The Humanities in Law Book Series* (Cornell University Press)

Contributing Blogger, *BALKINIZATION*

Organizer, Annual Law and Religion Roundtable (with Richard Garnett and Paul Horwitz)

Notre Dame (2017)

McGill University (2016)

Georgetown Law Center (2015)

Washington University School of Law (2014)

Stanford Law School (2013)



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Harvard Law School (2012)  
Northwestern Law School (2011)  
Brooklyn Law School (2010)

Section on Law and Religion, American Association of Law Schools, Program  
Committee Member (2015), Executive Committee Member (2012), Chair (2011),  
Program Committee Chair (2010)

**EDUCATION**

PH.D., *with distinction*, UNIVERSITY OF CHICAGO, THE DIVINITY SCHOOL, Anthropology  
and Sociology of Religion

Martin Marty Center Dissertation Fellowship  
Doolittle Fellowship  
Overseas Dissertation Research Fellowship  
Fulbright Scholar (South Africa)

J.D., YALE LAW SCHOOL  
*Yale Law Journal*, Symposium Editor

A.B., BROWN UNIVERSITY, *magna cum laude*  
Phi Beta Kappa  
Honors in Religious Studies

**PAST ACADEMIC APPOINTMENTS AND LEGAL EXPERIENCE**

CORNELL LAW SCHOOL  
Visiting Professor of Law Fall 2012

ST. JOHN'S UNIVERSITY SCHOOL OF LAW  
Assistant Professor 2005 – 2007  
Dean's Teaching Award (based on student evaluations of all courses)

NEW YORK UNIVERSITY SCHOOL OF LAW  
Acting Assistant Professor, Lawyering Program 2002 – 2005

DAVIS POLK & WARDWELL  
Associate 2001 – 2002

AMERICAN CIVIL LIBERTIES UNION, NATIONAL DRUG POLICY PROJECT  
Attorney 2000 – 2001

THE HONORABLE JOHN M. WALKER, JR., UNITED STATES COURT OF APPEALS FOR THE  
SECOND CIRCUIT  
Law Clerk 1999 – 2000

**PROFESSIONAL QUALIFICATION**

Admitted to the New York Bar