



THE RELIGION AND DIVERSITY PROJECT/RELIGION ET DIVERSITÉ



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Biography

B.A. with First-Class Honours (Alberta) 1999, LL.B. (UVic) 2002, LL.M. (Yale) 2004, J.S.D. (Yale) 2008, of the Bars of Ontario and British Columbia.

Professor Benjamin Berger's areas of teaching and research specialization are criminal and constitutional law and theory, law and religion, and the law of evidence. He holds an appointment as an Associate Professor (status only) in the Department for the Study of Religion at the University of Toronto and is a member of the faculty of the Graduate Program in Socio-Legal Studies at York University. Prior to joining Osgoode, Professor Berger was an associate professor in the Faculty of Law and held a cross appointment in the Department of Philosophy at the University of Victoria, where he began teaching in 2004. He served as law clerk to the Rt. Honourable Beverley McLachlin, Chief Justice of Canada, and was a Fulbright Scholar at Yale University.

He has published broadly in his principal areas of research and his work has appeared in multiple edited collections and in legal and interdisciplinary journals. He is the author of *Law's Religion: Religious Difference and the Claims of Constitutionalism* (University of Toronto Press, Forthcoming 2015). Berger is the Editor in Chief of the *Canadian Journal of Law and*

Society and is an associate editor for the Hart Publishing series *Constitutional Systems of the World*. He received the Canadian Association of Law Teacher Prize for Academic Excellence in 2015, and the 2010 Canadian Association of Law Teacher's Scholarly Paper Award for an article entitled "The Abiding Presence of Conscience: Criminal Justice Against the Law and the Modern Constitutional Imagination." Professor Berger is active in professional and public education, and is involved in public interest advocacy. While at UVic Law, Professor Berger twice received the Terry J. Wuester Teaching Award, and was awarded the First Year Class Teaching Award; he received the Osgoode Hall Law School Teaching Award in 2013. His recent research can be viewed at <http://ssrn.com/author=376756>

Professor Berger is active in professional and public education, is involved in public interest advocacy, and has appeared before the Supreme Court of Canada. While at UVic Law, Professor Berger twice received the Terry J. Wuester Teaching Award, and was awarded the First Year Class Teaching Award; he received the Osgoode Hall Law School Teaching Award in 2013.

Professor Berger convenes the [Osgoode Colloquium in Law, Religion & Social Thought](#).

Research Statement

My research focuses on the interaction of law and religion, raising questions of their historical and contemporary relationship, how religion and law influence and define one another, and how modern theories and practices of constitutionalism shape the relationship between public life/authority and the world of religious belief, practice, and community. In particular, my research attempts to explore a kind of phenomenology of law and religion, asking how religion is perceived and experienced by the law and legal culture, and how contemporary legal orders are encountered and understood from within religious cultures.

Among the variety of issues generated from these questions, the following are currently at the centre of my work:

Religion, Tolerance, and Legal Multiculturalism:

Canadians have come to understand the management of deep diversity from within a story about multiculturalism. Religious diversity as a public policy issue is overwhelmingly discussed as a matter of tolerance and accommodation, mandated by a policy of multiculturalism in which the law and legal institutions play a key managerial role. My work questions the adequacy of this account, exploring the theory, practices, and experience of legal toleration and the way in which a close examination of legal tolerance and accommodation shows the limits and commitments of legal culture, the boundaries of religion in public life, and the cross-cultural nature of the interaction of law and religion.

Judgment, Morality, and Religion:

I am keenly interested in the ethics and theory of judgment, both legal and otherwise. This focus has led me to study the nature of judgment in criminal and constitutional law and, recently, the way in which religion has historically shaped our understanding and practices of legal judgment. In contemporary constitutional and criminal law religion appears both as a particularly fraught subject of legal judgment (how do we assess religion and religious practices?) and as a cultural force that informs practices of legal judgment (what imprint have theological conceptions such as equity, retribution, mercy, and fear left on how we think about just judgment?).

Secularism, Political Theology, and Comparative Constitutionalism:

At the most general level, my research on law and religion inquires into the relationship between modern liberal legal culture and religion. I am interested in how various polities and constitutional traditions have understood the nature of religious freedom, secularism and public reason and, in particular, how these matters are understood and contested in Canada. The role of belief and value in the rule of law, as well as the imprint of history on our understanding of the modern liberal state, leads me also into questions about the deeper meanings and commitments that abide in our legal and political practices, questions that have sometimes been characterized as matters of “political theology”.