

ROBERT L. TSAI

Professor of Law
American University
The Washington College of Law
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EDUCATION

- J.D. Yale Law School, 1997
The Yale Law Journal, Editor, Volume 106
Yale Law and Policy Review, Editor, Volume 12
Honorable Mention for Oral Argument, Harlan Fiske Stone Prize Finals, 1996
Morris Tyler Moot Court of Appeals, Board of Directors
- B.A. University of California, Los Angeles, History & Political Science, *magna cum laude*, 1993
Phi Beta Kappa
Highest Departmental Honors (conferred by thesis committee)
Carey McWilliams Award for Best Honors Thesis: *Building the City on the Hilltop: A Socio-Political Study of Early Christianity*

ACADEMIC APPOINTMENTS

- American University, The Washington College of Law
Professor of Law, May 2009–Present
Associate Professor of Law, June 2008–May 2009
- University of Georgia Law School
Visiting Professor, Semester in Washington Program, Spring & Fall 2012
Course: *The American Presidency and Individual Rights*
- University of Oregon School of Law
Associate Professor of Law (with tenure), 2007-08
Assistant Professor, 2002-07
- Yale University, Department of History
Teaching Fellow, 1996, 1997

CLERKSHIPS

- The Honorable Hugh H. Bownes, U.S. Court of Appeals for the First Circuit, 1998-99
- The Honorable Denny Chin, U.S. District Court, Southern District of New York, 1997-98

PUBLICATIONS

BOOKS

AMERICA'S FORGOTTEN CONSTITUTIONS: DEFIANT VISIONS OF POWER AND COMMUNITY
(Harvard University Press 2014)

- Reviewed by *Harvard Law Review*, *Texas Law Review*, *Journal of American History*, the *Daily Beast*, *Reason*, *Pop Matters*
- Reviews and news collected at www.americasforgottenconstitutions.blogspot.com

ELOQUENCE AND REASON: CREATING A FIRST AMENDMENT CULTURE (Yale University Press 2008)

- Reviews and news collected at www.eloquenceandreason.blogspot.com
- "Highly recommended" by *Choice*. Also reviewed by *Northwestern University Law Review*, *Perspectives on Politics*, and *H-Net*

ARTICLES

A Tradition at War With Itself, 94 TEXAS LAW REVIEW SEE ALSO 60 (2016) (responding to Aziz Rana, *The Many American Constitutions*, 93 TEX. L. REV. 1163 (2015) (Review of AMERICA'S FORGOTTEN CONSTITUTIONS: DEFIANT VISIONS OF LAW AND COMMUNITY (2014))

Three Arguments About War, 30 CONSTITUTIONAL COMMENTARY 1 (2015)

"Simple" Takes On the Supreme Court, 5 ALABAMA CIVIL RIGHTS & CIVIL LIBERTIES LAW REVIEW 35 (2013)

Notes on Borrowing and Convergence, 111 COLUMBIA LAW REVIEW SIDEBAR 140 (2011) (with Nelson Tebbe) (Comment on Jennifer Laurin, *Trawling for Herring: Lessons in Doctrinal Borrowing and Convergence*, 111 COLUM. L. REV. 670 (2011))

John Brown's Constitution, 51 BOSTON COLLEGE LAW REVIEW 151 (2010)

The Ethics of Melancholy Citizenship, 89 OREGON LAW REVIEW 557 (2010)

Constitutional Borrowing, 108 MICHIGAN LAW REVIEW 459 (2010) (with Nelson Tebbe)

Reconsidering Gobitis: An Exercise in Presidential Leadership, 86 WASHINGTON UNIVERSITY LAW REVIEW 363 (2008)

- Selected for 2008 Stanford/Yale Junior Faculty Forum in *Constitutional History* (Referees: Larry Kramer, William Nelson)

Democracy's Handmaid, 86 BOSTON UNIVERSITY LAW REVIEW 1 (2006)

Sacred Visions of Law, 90 IOWA LAW REVIEW 1095 (2005)

- Shortlisted for *The Green Bag Almanac & Reader of Good Legal Writing 2006*

Fire, Metaphor, and Constitutional Myth-Making, 93 GEORGETOWN LAW JOURNAL 181 (2004)

- Selected for 2004 Stanford/Yale Junior Faculty Forum in *Constitutional Theory* (Referees: Kathleen Sullivan, Bruce Ackerman)
- Shortlisted for *The Green Bag Almanac & Reader of Good Legal Writing 2006*

- Excerpted in *Oregon Quarterly* 9 (Autumn 2004)

Speech and Strife, 67 *LAW & CONTEMPORARY PROBLEMS* 83 (Summer 2004) (invited paper for 2002 Public Law Conference, Duke University School of Law)

Conceptualizing Constitutional Litigation as Anti-Government Expression: A Speech-Centered Theory of Court Access, 51 *AMERICAN UNIVERSITY LAW REVIEW* 835 (2002)

REVIEW ESSAYS

Book Review, 103 *JOURNAL OF AMERICAN HISTORY* _ (forthcoming 2016) (reviewing Nicholas Guyatt, *Bind Us Apart: How Enlightened Americans Invented Racial Segregation* (Basic, 2016))

Book Review, *CONTEMPORARY POLITICAL THEORY* (forthcoming, 2015) (reviewing Elizabeth Beaumont, *The Civic Constitution: Civic Visions and Struggles in the Path Toward Constitutional Democracy* (Oxford 2014))

Book Review, 102 *JOURNAL OF AMERICAN HISTORY* 523 (2015) (reviewing Zephyr Teachout, *Corruption in America: From Ben Franklin's Snuff Box to Citizens United* (Harvard 2014))

The Language of Civic Republicanism, and Theory as Recipe, Online Symposium on James Fleming & Linda McClain, *Ordered Liberty: Rights, Responsibilities, Virtues* (Harvard 2012) <www.concurringopinions.com>.

Book Review, 8 *PERSPECTIVES ON POLITICS* 1228 (2010) (reviewing Beau Breslin, *From Words to Worlds* (Johns Hopkins 2009))

Sovereignty as Discourse, 25 *CONSTITUTIONAL COMMENTARY* 157 (2008) (reviewing Howard Schweber, *The Language of Liberal Constitutionalism* (Cambridge 2007))

The System Worked: Our Schizophrenic Stance on Welfare, 106 *YALE LAW JOURNAL* 929 (1996) (reviewing Steven M. Teles, *Whose Welfare: AFDC and Elite Politics* (Kansas 1996))

CONTRIBUTIONS

Legal Language in Nineteenth Century America, in Nan Goodman & Simon Stern eds., *ASHGATE RESEARCH COMPANION TO NINETEENTH CENTURY AMERICAN LAW AND CULTURE* (Ashgate forthcoming, 2015)

Conclusion—The Migration of Legal Ideas: Legislative Design and the Lawmaking Process, in Nicola Lupo & Lucia Scaffardi, eds. *COMPARATIVE LAW IN LEGISLATIVE DRAFTING: THE INCREASING IMPORTANCE OF DIALOGUE AMONGST PARLIAMENTS* (Eleven Int'l Publ'g 2014)

Introduction—The Politics of Hate, 10 *JOURNAL OF HATE STUDIES* 9 (2012) (Guest Editor)

Chambers v. Florida, in *ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES*, David S. Tanenhaus, ed. (New York: MacMillan Reference USA/Thomson-Gale 2008)

First Amendment, in *ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES*, David S. Tanenhaus, ed. (New York: MacMillan Reference USA/Thomson-Gale 2008)

Public Forum, in *ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES*, David S. Tanenhaus, ed. (New York: MacMillan Reference USA/Thomson-Gale 2008)

WORKS IN PROGRESS

TRUMP'S ASCENT: THE POLITICS OF RAGE AND RESTORATION (book manuscript)

EQUALITY BY OTHER MEANS (book manuscript)

PRESIDENTIAL LEADERSHIP IN THE AGE OF RIGHTS (book manuscript)

COMPLEX LIBERTY: JUSTICE FOR A DIVIDED PEOPLE (book manuscript)

Obama's Conversion on Same-Sex Marriage: The Social Foundations of Individual Rights

Forms of Popular Sovereignty

The Role of Social Turmoil in Speech and Religion Cases

Carter's Pardons of Vietnam Protestors as First Amendment Action

SHORT PIECES

Actually, Paul Ryan, the President's Words Do Matter, SLATE, Dec. 5, 2016 (with Dahlia Lithwick)

Trump's Constitutional Revolution, BOSTON GLOBE, Dec. 2, 2016

What Aryans See in Donald Trump, SLATE, May 26, 2016

Racial Slurs Shouldn't be Trademarked: The Washington Football Team's Name is an Obstacle for Interstate Commerce, SLATE, Apr. 20, 2015 (with Christine Haight Farley)

Why Americans Love to Declare Independence, BOSTON GLOBE, June 29, 2014

From NSA to Race, A Protector of Rights Needed, BOSTON GLOBE, May 4, 2014

A Former Mascot Says: Change "Redskins," PORT TOWNSEND LEADER, July 18, 2012

Aryans, Gender, and American Politics, 4.2 SEXUALITY & POLITICS 16 (2011)

Revolutionary Spark, LEGAL AFFAIRS, November/December 2004, p. 20

County Has a Duty to Interpret State Marriage Law and Constitution, Editorial, THE OREGONIAN, March 6, 2004

Deciphering the Will of the People, Editorial, THE OREGONIAN, Nov. 15, 2004 (online), reprinted as *Measure 36 Does Not Rule Out Civil Unions*, THE REGISTER-GUARD, Nov. 12, 2004, at A13

COURSES AND AREAS OF SPECIALIZATION

Constitutional Law	Jurisprudence
The American Presidency	Criminal Procedure
Democratic Theory	Law & Literature
Federal Jurisdiction	Civil Rights Litigation
Cultural Change	Structure & Politics of Hate

SELECTED SCHOLARLY PRESENTATIONS

Police Coercion: A New Theory of Law?, Comments on Rachel Harmon, “Police Violence and Lawful Orders,” WCL Distinguished Speakers Series, Washington D.C., Oct. 7, 2016

The Social Foundations of Presidential Leadership Over Individual Rights, Constitutional Law Symposium, Loyola University Chicago School of Law, Chicago, Illinois, Nov. 7-8, 2014

Celebrating the Tradition Rather Than the Document, Constitution Day, National Archives, Washington D.C., Sept. 18, 2014

The Northwest American Republic: Dreams of White Forefathers, Public Lecture, Human Solidarity and Security Speaker Series, Gonzaga University, Spokane, Washington, January 30, 2014

The Republic of New Afrika: Popular Constitutionalism and International Law, Faculty Workshop, Gonzaga University Law School, Spokane, Washington, January 30, 2014

Participant, *First Amendment Roundtable*, Washington University School of Law, St. Louis, Missouri, March 22, 2013

Commenter, Rebecca Lee, “Judging Judges: Empathy as the Litmus Test for Impartiality”; Stuart Chinn, “*Brown*, Political Party Ideology, and ‘Jurisprudential Bundling,’” Hastings Law School, San Francisco, California, February 2, 2013

Three Arguments About War, Oregon Law & Humanities Initiative and the Wayne Morse Center for Law & Politics, University of Oregon School of Law, Eugene, Oregon, January 31, 2013

Fiction as Dissent: Simple Takes on the Supreme Court, “The Art & Politics of Irony,” Institute for the Public Life of Arts and Ideas, McGill University, Montreal, Quebec, April 13, 2012

Why Study Failed Constitutions? John Brown’s Vision for America, William & Mary Law School, Bill of Rights Institute, Williamsburg, Virginia, November 10, 2011

Commenter, “First Amendment and Fallen Heroes: The Unpleasant Case of *Snyder v. Phelps*,” American Studies Association Annual Meeting, Baltimore, Maryland, October 21, 2011

When We Talk About War, Constitutional Law Roundtable, American Constitution Society, George Washington University Law School, Washington, D.C., June 16, 2011

Forms of Popular Sovereignty, “Popular Sovereignty and American Democracy,” Inaugural Conference of American Democracy Forum, University of Wisconsin, Madison, Wisconsin, May 25, 2011

Egalitarianism and Displacement, Workshop on Race, Gender, and Sexuality in Law and Political Development, Ohio University, Athens, Ohio, May 20-21, 2011

Non-Territorial Forms of American Sovereignty, Faculty Workshop, University of Washington Law School, Seattle, Washington, May 12, 2011

Whose Virtues?, Comment on Linda McClain, *Rights, Responsibilities, and Virtues*, WCL Distinguished Speakers Series, April 15, 2011

Is Liberalism Bound by a Command of Evaluative Neutrality?, Comment on Adrienne Stone, *Is There a Right to Freedom of Expression? A Response to Larry Alexander*, WCL Distinguished Speakers Series, March 30, 2011

Charles R. Clason Lecture: Lessons from the Indian Stream Republic, Western New England College of Law, Springfield, Massachusetts, March 3, 2011

Two Alternative Republics, Faculty Workshop, Rutgers University Law School, Camden, New Jersey, February 7, 2011

“One Good World”: *Deploying the American Experience to Undermine the Nation-State*, Midwest Constitutional Law Discussion Group, University of Wisconsin, Madison, Wisconsin, October 22, 2010

Dealing With Democratic Heartbreak, Address for Conference “How Rhetoric Shapes the Law: Pedagogy, Theory, Practice,” American University, Washington College of Law, October 15, 2010

Pioneer Constitutionalism, D.C. Area Legal History Roundtable, Georgetown University Law Center, Washington, D.C., October 8, 2010

Dreams of White Forefathers, Law & Society Association, Panel: “Uses of the Past in Constitutional Discourse,” Chicago, Illinois, May 29, 2010

America’s Forgotten Constitutions, Legal Studies Workshop, Stanford Law School, Stanford, California, March 8, 2010

America’s Forgotten Constitutions, Faculty Colloquium, University of Connecticut Law School, Hartford, Connecticut, January 20, 2010

John Brown’s Constitution, Symposium: “John Brown Remembered: 150 Year Anniversary of the Raid on Harper’s Ferry,” Harper’s Ferry, West Virginia, October 16, 2009

The Northwest Homeland, Loyola Law School, Los Angeles, California, September 10, 2009

Eloquence and Reason, Author Meets Readers, Annual Meeting of the Law and Society Association, Denver, Colorado, May 28-31, 2009 (Discussants: Susan Burgess, Lief Carter, Mark Graber, Julie Novkov)

War Constitutionalism, D.C. Public Law Roundtable, American University, May 21 & June 24, 2009

The Ethics of Melancholy Citizenship, Symposium: Contested Citizenship, University of Oregon School of Law, Eugene, Oregon, May 7-8, 2009

Eloquence and Reason, Wayne Morse Center for Law & Politics, University of Oregon, Eugene, Oregon, May 6, 2009 (Commentator: Joseph Lowndes)

Constitutional Borrowing, Annual Meeting of the Association for the Study of Law, Culture, and the Humanities, Boston, Massachusetts, April 4, 2009, May 2009

Eloquence and Reason, Author Meets Readers, Annual Meeting of the Association for the Study of Law, Culture, and the Humanities, Boston, Massachusetts, April 3, 2009

Two Arguments Against Tolerance, Panel: *The Limits of Tolerance*, Symposium: Religion and the State, Center for the Study of Liberal Democracy/Lubar Institute for the Study of Abrahamic Religions, University of Wisconsin, Madison, Wisconsin, March 27-28, 2009

Bottom-Up Accounts of Religious Support for Gay Marriage, Comment on Sarah Barringer Gordon, *The Spirit of the Law*, American University, Washington College of Law, February 13, 2009

The Role of Presidential Leadership in Advancing Civil Rights, American University, Washington College of Law, January 30, 2009

Constitutional Borrowing, Faculty Workshop, University of Baltimore Law School, Baltimore, Maryland, October 23, 2008

Assessing Polarization, West Coast Constitutional Law Discussion Group, University of Oregon School of Law, Eugene, Oregon, September 13, 2008

Reconsidering Gobitis, Stanford/Yale Junior Faculty Forum, New Haven, Connecticut, June 21, 2008

Contested Citizenship and the Processes of Identity Formation, Annual Meeting of the Association for the Study of Law, Culture and the Humanities, Berkeley, California, March 29, 2008

John Brown's Constitution, Constitutional Law Discussion Group, University of Maryland School of Law, Baltimore, Maryland, March 8, 2008

Reconsidering Gobitis, Faculty Colloquium, Georgetown University Law Center, Washington, D.C., February 20, 2008

How Social Conservatives Remade the Wall of Separation, Symposium: "The 21st Century Brain: Why It Matters for the Academic and Political Worlds," University of Pittsburgh School of Law, Pittsburgh, Pennsylvania, February 8, 2008

Presidential Leadership and Linguistic Transformation, University of Iowa College of Law, Iowa City, Iowa, September 6, 2007

Gobitis Reconsidered, May Gathering, University of Virginia Law School, Charlottesville, Virginia, June 1, 2007

The Responsive Judiciary, Faculty Workshop, Thomas Jefferson School of Law, San Diego, California, April 20, 2007

Measuring Interpretive Plausibility, Faculty Colloquium, St. John's University School of Law, New York, New York, March 5, 2007

First Amendment Borrowing, Distinguished Speakers Series, Seattle University School of Law, Seattle, Washington, March 3, 2006

Text as One Aspect of a People's Vocabulary, Faculty Workshop, University of Washington School of Law, Seattle, Washington, March 2, 2006

The Irrepressible First Amendment, Faculty Workshop, Chicago-Kent College of Law, Chicago, Illinois, February 8, 2006

Eloquence and Reason, Faculty Workshop, St. Louis University School of Law, St. Louis, Missouri, February 7, 2006

The Irrepressible First Amendment, Faculty Workshop, Washington University School of Law, St. Louis, Missouri, February 6, 2006

The Irrepressible First Amendment, Panel: "First Amendment Borrowing," Annual Meeting of the Law & Society Association, Las Vegas, Nevada, June 3, 2005

Metaphor and Democracy, Eighth Annual Meeting of the Association for the Study of Law, Culture and the Humanities, Austin, Texas, March 11, 2005

Fire, Metaphor and Constitutional Myth-Making, Stanford-Yale Junior Faculty Forum, Yale Law School, New Haven, Connecticut, June 5, 2004

Roundtable: *Brown, Legitimacy, and Constitutional Culture*, Annual Meeting of the Law & Society Association, Chicago, Illinois, May 29, 2004

The First Amendment: Metaphor and Role-Playing, Faculty Colloquium, University of California, Davis, King Hall School of Law, Davis, California, October 1, 2003

Framing Judicial Power, Joint Conference of Asian Pacific American Law Teachers and Western Regional Law Teachers of Color, Seattle, Washington, March 20-22, 2003

The Meaning of Judicial Authority, Fourth Annual Public Law Conference, Duke University School of Law, Durham, North Carolina, December 14, 2002

OTHER PRESENTATIONS

- Recent Research*, Adam Mickiewicz University of Poznan, Faculty of Law & Public Administration, September 26, 2011
- Why Write Books?*, Conference of Asian Pacific American Law Faculty, Tucson, Arizona, March 4, 2010
- Eloquence and Reason*, American Constitution Society/ACLU of Oregon/Federal Bar Association, Portland, Oregon, May 8, 2009
- Framing First Amendment Arguments in Uncertain Times*, Distinguished Speakers' Series, Marbury Institute, Offices of DLA Piper, Atlanta, Georgia, March 6, 2009
- Eloquence and Reason*, Federalist Society, American University, Washington College of Law, Washington, D.C., November 18, 2008
- Constitutional Interpretation and Litigation After Heller*, Moderator, American University, Washington College of Law, Washington, D.C., September 24, 2008
- What are the Stakes in the Guantanamo Bay Detention Cases?*, Wayne Morse Center for Law and Politics, Eugene, Oregon, October 8, 2007
- Workshop on Thriving and Surviving the Academy: Concrete Steps for People of Color and Their Law Schools*, Washington, D.C., June 27-28, 2007
- The Impact of Judge John Roberts' Confirmation to the U.S. Supreme Court*, Seminar, National Association of Criminal Defense Lawyers, Portland, Oregon, August 5, 2005
- Imagining Life Under a Libertarian Constitution*, Response to Randy E. Barnett, *Restoring the Lost Constitution*, The Federalist Society, University of Oregon School of Law, Eugene, Oregon, April 19, 2004
- The State of the Law of Affirmative Action: Where Do We Go From Here?*, Annual Convention of the National Asian Pacific American Bar Association, Honolulu, Hawaii, November 13, 2003
- Judging in the Shadow of the New Federalism: Legislative-Judiciary Relationships*, Moderator, Kenneth J. O'Connell Judicial Conference, Portland, Oregon, November 6, 2003
- U.S. Supreme Court Roundup: Cross Burning and Internet Filtering*, Oregon State Bar Annual Meeting, Seaside, Oregon, September 18, 2003

HONORS AND COMPETITIVE GRANTS

- Elizabeth Payne Cubberly Scholar Award, American University, Washington College of Law, 2010
- Summer Stipend, Dean's Fund, American University, Washington College of Law, 2008-2016
- Lorry I. Lokey Award for Faculty Excellence, University of Oregon (nomination and peer review), 2008
- Orlando John Hollis Faculty Teaching Award, University of Oregon Law School, 2007
- Dean's Research Program, University of Oregon Law School, 2007
- Summer Stipend, Dean's Fund, University of Oregon Law School, 2003-07
- University Research Award, University of Oregon, 2004
- New Faculty Award, University of Oregon, 2003
- Jeffrey George Wilson Research Stipend, University of California, Los Angeles, 1993
- Washington State Scholar, 1989

EMPLOYMENT HISTORY

- Staff Counsel, American Civil Liberties Union, Atlanta, Georgia, 1999-2002
- Summer Associate, Wilmer, Cutler & Pickering, Washington, D.C., 1997
- Research Assistant, Bruce Ackerman, Yale Law School, 1997
- Summer Associate, Cravath, Swaine & Moore, New York, New York, 1996

Law Clerk, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, Washington, D.C.,
Summer 1995

Law Fellow, Congressman Richard A. Gephardt, Washington, D.C., Summer 1995

Research Assistant, Steven B. Duke, Yale Law School, 1995-97

Research Assistant, David C. Rapoport, Department of Political Science, UCLA, 1990-92

SELECTED SERVICE

Guest Editor, "Hate and Political Discourse," *Journal of Hate Studies*, 2012-13

ASLCH Dissertation Award Committee, 2010

WCL Speaker Series and Scholarship Committee, 2008-09, 2010-11, 2016-17

Chair, WCL Rank and Tenure Subcommittee, 2008-09, 2010, 2012-17

WCL Committee on Career Development, 2014-16

WCL Library Committee, 2013-14

WCL Curriculum Committee, 2011-12

WCL Public Interest Committee, 2012-13

Founder and Co-Chair, Oregon Legal Theory Workshop, 2005-07

Planning Committee, "Democracy and Citizenship," Wayne Morse Center for Law & Politics, 2006

Curriculum Committee, 2005-06

Dean's Faculty Advisory Committee (elected), 2004-05, 07-08

Faculty Appointments Committee, 2004-05, 06-07

AFFILIATIONS

American Political Science Association

Law and Society Association

Association for the Study of Law, Culture and the Humanities

PEER REVIEW

Oxford University Press

Cambridge University Press

Temple University Press

Aspen Publishers

Law and Social Inquiry

Journal of Criminal Justice and Popular Culture

Studies in Law, Politics & Society