

## ROBERT L. TSAI

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### EDUCATION

- J.D. Yale Law School, 1997  
*The Yale Law Journal*, Editor, Volume 106  
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)  
College Honors  
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–May 2009

University of Oregon School of Law  
Associate Professor of Law (with tenure), 2006-08  
Assistant Professor, 2002-06

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

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

### ARTICLES

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

*Constitutional Borrowing*, 108 MICHIGAN LAW REVIEW (2009) (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

*Sovereignty as Discourse*, 25 CONSTITUTIONAL COMMENTARY 157 (2008) (reviewing Howard Schweber, *The Language of Liberal Constitutionalism* (Cambridge University Press 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* (University Press of Kansas 1996))

## CONTRIBUTIONS

*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

A FEVER TO WRITE: AMERICA'S FORGOTTEN CONSTITUTIONS (book manuscript)

PRESIDENTIAL STRATEGIES ON RIGHTS (book manuscript)

*Langston Hughes: The Ethics of Melancholy Citizenship*

*The Practice and Perils of War-Based Constitutionalism*

*Two Arguments Against Tolerance*

*Assessing Polarization*

*Between Two Legal Orders: Justice Frank Murphy as Transitional Figure*

*Citizenship as Portfolio Management*

## POPULAR WRITINGS

*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  
Criminal Procedure

Civil Rights Litigation  
Social Movements

Democratic Theory  
Federal Jurisdiction

Law as Language  
Presidential Leadership

#### SELECTED SCHOLARLY PRESENTATIONS

*The Northwest Constitution and White Migration*, Legal Studies Workshop, Stanford Law School, Stanford, California, March 9, 2010 (Leaders: Robert Gordon, Amalia Kessler, Joshua Cohen)

*John Brown's Constitution*, Symposium: "John Brown Remembered: 150 Year Anniversary of the Raid on Harper's Ferry," Harper's Ferry, West Virginia, October 14-17, 2009

*The Forgotten State of Deseret*, 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 (Discussants: James Fleming, Kenneth Kersch, Michelle McKinley, Sally Engle Merry)

*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, 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 (with Lynda Dodd, Joseph Lowndes, Kevin McMahon, Steven Teles, Jeff Tulis, Keith Whittington)

*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

*Trends in Constitutional Litigation*, Oregon State Bar: Constitutional Law Section, Portland, Oregon, December 11, 2009

*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 (Commentator: Ilya Shapiro, Cato Institute)

*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

Lorry I. Lokey Award, Fund for Faculty Excellence, University of Oregon (nomination and peer review)  
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 UCLA Crew, Coxswain: Second Place, 1990 *Pacific Coast Championships* (Freshman Eights); First Place, 1990 *Newport Regatta* (Novice Eights)  
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  
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

ASLCH Dissertation Award Committee, 2010  
WCL Speaker Series and Scholarship Committee, 2008-09  
Chair, WCL Rank and Tenure Subcommittee, 2008-09  
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

Temple University Press  
Aspen Publishers  
*Law and Social Inquiry*  
*Journal of Criminal Justice and Popular Culture*

## REFERENCES

Furnished upon request