

LAURENCE H. TRIBE

Vita

April 2018

Biographical Data

Personal:

Born: October 10, 1941, Shanghai, China
Parents: George and Polia Tribe; moved to San Francisco, California, March 1947
Citizenship: United States
Children: son Mark, born Dec. 11, 1966; daughter Kerry, born Jan. 12, 1973

Education:

A.B. with *summa cum laude* in Mathematics, Harvard College, 1962
Phi Beta Kappa *Junior Eight* (one of eight juniors elected from class of 1,100), 1961
Detur Prize, Harvard College (one of the two *Detur Prizes* awarded in class of 1,100), 1959
National Science Foundation Fellow and *Woodrow Wilson Fellow*, Graduate School of
Mathematics, Harvard, 1962-63
J.D. *magna cum laude*, Harvard Law School, 1966
Joseph Beale Prize, Harvard Law School, 1966

Career:

Carl M. Loeb University Professor, 2004-present*
Ralph S. Tyler, Jr. Professor of Constitutional Law, 1982-2004
Professor of Law, 1972-82
Assistant Professor of Law, 1968-72
First Senior Counselor for Access to Justice, U.S. Dept. of Justice, 2010
Member, President's Commission on White House Fellowships 2009-2013
Constitutional Consultant to President Nelson Mandela of South Africa (assisted in drafting
the nation's first democratic constitution), 1993-1994
Constitutional Consultant to Chief Justice Valery Zorkin of Russia, 1992
Member, U.S.-European Committee on Revision of the Czechoslovak Constitution, 1992
Constitutional Advisor to President Václav Havel of Czechoslovakia, 1992
Chair, Governor's Press Shield Law Task Force, 1983-85
Chair, Marshall Islands Judicial Service Commission, 1979-80
Consultant to Marshall Islands for drafting new constitution, 1978-79
Member, U.S. Supreme Court Bar, from 1978
Member of the Bars of U.S. Courts of Appeals for the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th,
10th, 11th, and D.C. and Federal Circuits
Member, Bar of U.S. District Court for D. Mass., from 1978

*Harvard's University Professorships, created in 1935, represent the highest honor the university can accord a member of its faculty and entitle the holder to teach without departmental limitation. Of the university's 1,108 tenured faculty members, only 24 currently hold University Professorships. Between 1935 and the present, a total of just 43 others have held this title.

Member, Bar of Massachusetts, from 1978
Member, Bar of California, from 1966
Executive Director of Technology Assessment Panel, Nat.'l Academy of Sciences, 1968-69.
Law Clerk to Justice Potter Stewart, United States Supreme Court, 1967-68.
Law Clerk to Justice Mathew O. Tobriner, California Supreme Court, 1966-67.
Research Associate in Mathematical Physics & Computer Science, Lawrence Radiation
Laboratory, Berkeley, California, Summers 1959-64.

Honorary Degrees:

D. Litt., Columbia University, 2013
LL.D., Institute for Criminal Science, Government of Mexico, 2011*
LL.D., University of New Hampshire Law School, 2011
LL.D., University of Miami, 2010
LL.D., New York University, 2008
LH.D., Hebrew University, 1998
LL.D., Colgate University, 1997
LL.D., Illinois Institute of Technology, 1988
LL.D., American University, 1987
LL.D., University of the Pacific, 1987
LL.D., Gonzaga University, 1980

Elected to Membership in Academic Societies:

Member, American Philosophical Society, elected 2010
Fellow, American Academy of Arts and Sciences, elected 1980

Awards:

American Philosophical Society's *Henry Allen Moe Prize in Humanities*, 2018
20th Annual Clay Award (2016) for Public Interest Law (for successful pro bono
representation of U.S. vets in *Valentini v. Shinseki*)
ABA's 2015 *Silver Gavel Honorable Mention Award* for *Uncertain Justice: The Roberts
Court and The Constitution* (2014) (as one of the two best law-related books of 2014)
ABA Young Lawyers Division *Fellows Award*, 2014
American Philosophical Society's *Henry M. Phillips Prize in Jurisprudence*, 2013**
Boston Best Lawyers' *Appellate Lawyer of the Year*, 2012
Ramona Ripston *Liberty, Justice and Equality Award*, ACLU of Southern California,
2011 *Outstanding Scholar of 2009*, Fellows of the American Bar Foundation
Veritas Award for 2009, Harvard Gay and Lesbian Caucus

* Awarded once each year since 1998. This was the first time Mexico awarded the degree to anyone from the United States.

** Previous recipients of this annual award have included Justices Ruth Bader Ginsburg, Sandra Day O'Connor, and John Paul Stevens; Senators George Mitchell and Hillary Rodham Clinton; Archbishop Desmond Tutu; and Attorney General Janet Reno.

Albert D. Chernin Award for Public Service, 2009, Jewish Council for Public Affairs
Anonymous \$10 million gift made (by someone) to Harvard to create a professorship to be named, after my retirement, the *Laurence H. Tribe Professorship in Constitutional Law*, and to be named, until that time, after someone of my choosing. I chose to name the chair the *Thurgood Marshall Professorship in Constitutional Law*. The chair is currently held by Professor Vicki C. Jackson.

New York University Annual Survey of American Law Dedication, 2002*

Sacks-Freund Award for Excellence in Teaching, Harvard Law School, 2001

Second Annual *Spirit of Justice Award*, Gay & Lesbian Advocates & Defenders, 2001

Eleventh Annual *Honoring Our Allies Award*, National Gay and Lesbian Task Force, 2000

Listed as one of "America's 100 Most Influential Lawyers," National Law Journal, 1985, 1988, 1991, 1994, 1997, 2000, 2006

ABA's 1990 *Silver Gavel Award* for *Abortion: The Clash of Absolutes* (1990)

Distinguished Lifetime Achievement Award, National Gay Rights Advocates, 1988

11th Annual *William O. Douglas Award*, Public Counsel, 1987

Legal Achievement Award, Bay Area Lawyers for Individual Freedom, 1985

Roger Baldwin Award, Massachusetts Civil Liberties Union Foundation, 1985

Triennial Coif Award, Outstanding Work of Legal Scholarship in the U.S., 1980 (for *American Constitutional Law* (1978 ed.))

Scribes Award for *American Constitutional Law* (1978 ed.) (awarded once annually since 1961 by the American Society of Legal Writers)

Listed as "One of the Ten Most Outstanding Law Professors in U.S." by *Time Magazine*, 1977

National Intercollegiate Debate Champion, 1961

First Place, National Strathmore Pastel Competition (seascape), 1958

Named Lectureships:

Keynote on Separation of Powers, Harvard Law School, 2016

11th Annual *Robert H. Jackson Lecture*, Chautauqua, 2015

California State Bar *Morrison Lecture*, 2014

Keynote Address, Allan C. Lebow Supreme Court Review, UCLA School of Law, 2014

Owen J. Roberts Memorial Lecture in Constitutional Law, University of Pennsylvania Law School, 2013

Wyant Lecture, Emmanuel College, 2011

Constitution Day Lecture, U.S. Justice Department, 2010

Hugo L. Black Lecture, Wesleyan University, 2008

Constitution Day Lecture, National Archives of the United States, 2008

Visiting Scholar, National Constitution Center, 2007

Constitution Day Lecture, Harvard University, 2005

Keynote Address, 3rd Annual National Convention, American Constitution Society, 2005
(following Justices Ruth Bader Ginsburg and Stephen Breyer as Keynoters for 1st and 2nd Annual ACS Conventions)

Tanner Lecture on Human Values, Oxford University, 2002

* Awarded once every several years since 1895. This was the 25th time the award has been bestowed. Previous recipients have included Roscoe Pound, Karl Llewellyn, John Rawls, Willard Hurst, Ronald Dworkin, Martha Nussbaum, and Jeremy Waldron.

First Annual Louis D. Brandeis Lecture, Israel Academy of Science and Humanities, Jerusalem, 1994
Alexander Meiklejohn Lecture, Brown University, 1998
Keynote Lecture, Bill of Rights Bicentennial, National Archives of the United States, 1991
Fulbright Distinguished Lecturer, India, 1991
Co-Lecturer with Justice William J. Brennan, Jr., Miami, Florida, 1991 and 1992
Co-Lecturer with Justice Anthony M. Kennedy, Salzburg, Austria, 1990
Fulbright Distinguished Lecturer, Brazil, 1982
43rd *Annual Cardozo Lecture*, Association of the Bar of the City of New York, 1989
Inaugural Lecture, Richard Salomon Distinguished Lecture Series, N.Y. City Public Library, 1988
Tanner Lecture on Human Values, University of Utah, 1986

Selected Bibliography

Books:

To End A Presidency: The Power of Impeachment (with Joshua Matz) (Basic Books, 2018)
Uncertain Justice: The Roberts Court and The Constitution (with Joshua Matz) (Henry Holt and Company, 2014)*
The Invisible Constitution (Oxford University Press, 2008)
American Constitutional Law, Volume One (Foundation Press, 3d ed. 2000)**
Constitutional Choices (Universal Law Publishing Company, Central Asia ed. 2001) (India, Pakistan, Nepal, Bangladesh, Sri Lanka)
On Reading The Constitution (with Michael C. Dorf) (Harvard University Press, 1991).
Abortion: The Clash of Absolutes (W.W. Norton & Co., 1990)
American Constitutional Law (Foundation Press, 2d ed. 1988)**
God Save This Honorable Court: How the Choice of Supreme Court Justices Shapes Our History (Random House, 1985)
Constitutional Choices (Harvard University Press, 1985)
American Constitutional Law (Foundation Press, 1st ed. 1978)**
When Values Conflict: Essays on Environmental Analysis, Discourse, and Decision (ed. with C. Schelling & J. Voss) (Ballinger, 1976)
Channeling Technology Through Law (Bracton Press, 1973).
Environmental Protection (with Louis L. Jaffe) (Bracton Press, 1971)
Technology: Processes of Assessment and Choice (U.S. Govt., 1969)

Major Articles Since 1985:

“Transcending the *Youngstown* Triptych: A Multidimensional Reappraisal of Separation of Powers Doctrine,” 126 The Yale Law Journal Forum 86 (2016).

* The No. 1 national bestseller for 2014 in its subject category (books about law) according to Bookscan.

** This treatise (including its 1978 and 1988 editions) was cited more often (5,351 times) from 1955 to 2000 than any other legal text or treatise published in the 20th century, according to *The Journal of Legal Studies* (Jan. 2000). See also *The American Lawyer* 107 (Dec. 1999).

- “Equal Dignity: Speaking Its Name,” Harvard Law Review Forum (online) (Nov. 2015)
- “Dividing *Citizens United*: The Case v. The Controversy,” 30 Constitutional Commentary 463 (2015)
- “An Ephemeral Moment: Minimalism, Equality, and Federalism in the Struggle for Same-Sex Marriage Rights,” 37 N.Y.U. Rev. L. & Soc. Change 199 (2013) [with Joshua Matz]
- “The Constitutional Inevitability of Same-Sex Marriage,” 71 Md. L. Rev. 471 (2012) [with Joshua Matz]
- “The Constitutionality of the Patient Protection and Affordable Care Act: Swimming in the Stream of Commerce,” 35 Harv. J. L. & Pub. Pol’y 873 (2012)
- “Death by a Thousand Cuts: Constitutional Wrongs Without Remedies After *Wilkie v. Robbins*,” Cato Supreme Court Review 23 (2006-07)
- “The Inverted Constitution: Presidential Hegemony and the Eclipse of Privacy,” 12 The Berlin Journal, 41 (2006)
- “The Anti-Emergency Constitution,” 113 Yale Law Journal 1801 (2004) [with Pat Gudridge]
- “*Lawrence v. Texas*: The ‘Fundamental Right’ That Dare Not Speak Its Name,” 117 Harvard Law Review 1893 (2004)
- “Public Rights, Private Rites,” 6 The Green Bag 289 (2003)
- “The Unbearable Wrongness of *Bush v. Gore*,” 19 Constitutional Commentary 571 (2003)
- “Lost at the Equal Protection Carnival: Nelson Lund’s Carnival of Mirrors,” 19 Constitutional Commentary 619 (2003)
- “Waging War, Deciding Guilt: Trying the Military Tribunals,” 111 Yale Law Journal 1259 (2002) [with Neal Katyal]
- “*eroG .v hsuB* and its Disguises: Freeing *Bush v. Gore* From its Hall of Mirrors,” 171 Harvard Law Review 170 (2001)
- “Disentangling Symmetries: Speech, Association, Parenthood,” 28 Pepperdine L. Rev. 641 (2001)
- “*Saenz* Sans Prophecy: Does the ‘Privileges or Immunities’ Revival Reveal the Future—or Expose the Hidden Structure of the Present?” 113 Harvard Law Review 110 (1999)
- “Comment,” in Justice Scalia’s *A Matter of Interpretation: Federal Courts and the Law* 63-94 (Princeton University Press, 1997)
- “Taking Text and Structure Seriously: Reflections on Free-Form Method in Constitutional Interpretation,” 108 Harvard Law Review 1221 (1995)
- “Levels of Generality in the Definition of Rights,” 57 Chicago Law Rev. 1057 (1990) (with M. Dorf)
- “The Curvature of Constitutional Space: What Lawyers Can Learn From Modern Physics,” 103 Harvard Law Review 1 (1989)
- “Remarks: Revisiting the Rule of Law,” 64 N.Y.U. Law Review 726 (1989)
- “Judicial Interpretation of Statutes: Three Axioms,” 11 Harv. J. of Law and Public Policy 51 (1988)
- “On Reading the Constitution,” 9 Tanner Lectures on Human Values (University of Utah Press, 1988), reprinted in 1988 Utah Law Review 747 (1988)
- “Contrasting Constitutional Visions: Of Real and Unreal Differences,” 22 Harvard C.R.-C.L. Law Review 95 (1987)
- “The Idea of the Constitution: A Metaphor-morphosis,” 37 Journal of Legal Education 170 (1987)
- “Substantive Due Process,” in *Encyclopedia of American Constitutional Law* (L. Levy ed. 1987)
- “In What Vision of the Constitution Must the Law be Color-Blind?,” 20 John Marshall Law Review 201 (1986)

“The Abortion Funding Conundrum: Inalienable Rights, Affirmative Duties and the Dilemma of Dependence,” 99 Harvard Law Review 330 (1985)
“Constitutional Calculus: Equal Justice or Economic Efficiency?,” 98 Harvard Law Review 592 (1985)

Other Published Work, 1970-2014:

56 other articles in scholarly journals or compedia
35 prepared statements accompanying testimony in Congress
130 magazine articles and op-ed newspaper essays

Lead Counsel in U.S. Supreme Court Cases (clients underlined and in bold type):

- Lost Wilkie v. Robbins, 551 U.S. 537 (2007), argued 3/19/07—Rejecting *Bivens* damages action against federal officials for ongoing retaliation against rancher who refused to give their agency an easement.
- Lost Johanns v. Livestock Marketing, 544 U.S. 550 (2005), argued 12/8/04—Rejecting First Amendment challenge to the federal beef promotion program on a ‘government speech’ rationale not considered in *United Foods*.
- Dismissed Nike v. Kasky, 539 U.S. 654 (2003), argued 4/23/03—Declining on procedural/jurisdictional grounds to reach merits of First Amendment questions presented by citizen suit seeking to impose liability for statements made by Nike in course of public debate; cert dismissed as improvidently granted, but majority of Justices seemingly reject state court’s holding that, because the speech in question could encourage purchase of speaker’s products and had that purpose, it could be deemed ‘commercial’ and thus was wholly unprotected if misleading.
- Lost State Farm v. Campbell, 538 U.S. 408 (2003), argued 12/11/02—Reversing and remanding as excessive \$145 million state court punitive damages award and establishing presumptive ceiling of 9:1 in ratio of punitive to compensatory damages as a matter of substantive due process, at least where state’s highest court’s decision to uphold the punitive award rested in part on defendant’s out-of-state misconduct.
- Won FCC v. NextWave, 537 U.S. 293 (2003), argued 10/8/02—Rejecting FCC’s cancellation of spectrum licenses held by debtor reorganizing in bankruptcy where licenses secured multi-billion dollar credit extended under installment purchase arrangement by FCC and holding that Bankruptcy Code’s provision (sec. 525(a)) expressly banning revocation of license for nonpayment of dischargeable debt contains no implied exception for revocation motivated by regulatory purpose properly within FCC’s jurisdiction.
- Won U.S. v. United Foods, 533 U.S. 405 (2001), argued 4/17/01—First Amendment precludes forcing mushroom growers to pay for generic advertising campaign unrelated to substantive regulation of mushroom market.

- Lost New York Times v. Tasini, 533 U.S. 483 (2001), argued 3/28/01—Copyright Act requires permission from author of each contribution to composite publication reproduced in electronic database.
- Remanded for clarification Bush v. Gore I (Bush v. Palm Beach County Canvassing Board), 531 U.S. 70 (2000), argued 12/1/00—vacating and remanding decision of Florida Supreme Court establishing procedures for recounting ballots cast in 2000 presidential election, and directing state court to explain how its recount procedures could be reconciled with U.S. Const. Art. II, §1, Cl.2 (requiring state’s *legislature* to establish method of selecting state’s slate of presidential electors) and 3 U.S.C. §5 (setting relevant time frame). The Florida court did not respond to the Supreme Court’s demand until after SCOTUS had decided to halt the state’s recount after second argument (by David Boies) on 12/11/00.
- Won Ortiz v. Fibreboard, 527 U.S. 815 (1999), argued 12/8/98—invalidating \$1.53 billion asbestos class action settlement as improperly certified on a limited fund theory under Rule 23 (b)(1)(B).
- Won & Lost AT&T v. Iowa Utilities Board, 525 U.S. 366 (1999), argued 10/13/98—upholding in part the Bell Operating Companies’ challenge to FCC jurisdiction over interconnection with local exchange networks.
- Won Baker v. General Motors, Inc., 522 U.S. 222 (1998), argued 10/15/97—holding unenforceable, in Missouri trial in which plaintiffs sought to have expert testify against G.M., Michigan court’s judgment purporting to enjoin that expert’s testimony (as part of decree settling litigation between the expert and G.M.), where plaintiffs had neither been parties to nor represented in the Michigan litigation, inasmuch as full faith and credit to judgments does not include giving them binding effect against absent parties.
- Won Amchem Products, Inc. v. Windsor, 521 U.S. 591 (1997), argued 2/18/97—invalidating \$1.3 billion asbestos class action settlement under Rule 23 (b)(3), where class was found by Court to be too heterogeneous for purposes of litigation by purported class representatives and accordingly ineligible for judicial approval for settlement at their behest.
- Lost Vacco v. Quill, 521 U.S. 793 (1997), argued 1/8/97—States may prohibit physician-assisted suicide for terminally ill patients nearing death even while empowering such patients to refuse or terminate life-extending medical procedures (including nutrition and hydration), where necessary pain relief is made available despite predictable but unintended death-hastening effect; Court leaves open question whether some applications of state law that bans provision of lethal medication for self-administration by terminally ill patients who ask to die without consciousness-destroying effects of pain medication, but that empowers patients to demand termination of all life-extending procedures (even after “terminal sedation” is administered to render such patients unconscious), would violate due process or equal protection.
- Lost Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997), argued 12/4/96—States may limit each candidate on an election ballot to one nominating party.

- Mooted U.S. v. Chesapeake & Potomac Tel. Co.; N.C.T.A. v. Bell Atlantic, 516 U.S. 415 (1996), argued 12/6/95—Congress may not ban video programming by telephone cos. (ruling won below) (mooted by 1996 Telecom. Act).
- Lost Honda Motor Co. v. Oberg, 512 U.S. 415 (1994), argued 4/20/94—Right to judicial review of amount of punitive damages.
- Won TXO v. Alliance Resources, 509 U.S. 443 (1993), argued 3/31/93—Rejecting due process attack on punitive damages award 526 times size of compensatory award where evidence would support finding that punitive award was much lower multiple of harm that defendant’s conduct might have caused had plan succeeded.
- Won Cipollone v. Liggett, 505 U.S. 504 (1992) (reargued 1/13/92)—Tort suits against cigarette companies for costs imposed by their behavior on smokers and on states not federally preempted by companies’ compliance with Surgeon General’s labeling requirements.
- Lost Rust v. Sullivan, 500 U.S. 173 (1991), argued 10/30/90—Abortion counseling may be banned in federally funded clinics where recipients of federal funds remain free to establish physically and fiscally separate, albeit wholly-controlled, facilities making such counseling available without support from public funds.
- Won Adams Fruit Co. v. Barrett, 494 U.S. 638 (1990), argued 1/17/90—Department of Labor may not limit migrant farm workers’ federal suits authorized by Congress.
- Lost Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 (1989, argued 1/9/89)—Bankruptcy trustee’s fraudulent transfer action is subject to Seventh Amendment.
- Won Sable Communications Co. v. FCC, 492 U.S. 115 (1989), argued 4/19/89—Congress may not abolish non-obscene “dial-a-porn” services where methods of keeping children from accessing such services are not shown to be unavailable.
- Lost Schweiker v. Chilicky, 487 U.S. 412 (1988), argued 3/1/88—No *Bivens* action for wrongful denial of social security disability benefits.
- Won Pennzoil v. Texaco, 481 U.S. 1 (1987), argued 1/12/87—Federal court may not interfere with state court enforcement of multi-billion dollar judgment.
- Lost * Bowers v. Hardwick, 478 U.S. 186 (1986), argued 3/31/86—No right of privacy for consensual sodomy.
- Won Fisher v. City of Berkeley, 475 U.S. 260 (1986), argued 11/12/85—Local rent control is not preempted by Sherman Act.

* But the Hardwick decision was both expressly overruled, and held to have been wrong from the date it was decided, in Lawrence v. *Texas*, 123 S.Ct. 2472 (2003), in which I was counsel of record for the American Civil Liberties Union and the ACLU of Texas as *amici* for petitioner Lawrence

- Won Bd. of Ed. of Oklahoma City v. Nat'l Gay Task Force, 470 U.S. 903 (1985), argued 1/14/85—First Amd. protects gay rights advocacy in public schools (judgment for NGTF affirmed by equally divided Court).
- Won Northeast Bancorp v. Federal Reserve System, 472 U.S. 159 (1985), argued 4/15/85—States may limit bank mergers to several-state region.
- Won Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984), argued 3/26/84—States may force landowners to sell privately held residential land to occupants at fair prices set by juries.
- Won Pacific Gas & Electric Co. v. California Energy Resources Conservation and Development Commission, 461 U.S. 190 (1983), argued 1/17/83—State moratorium on nuclear power plants not preempted.
- Won White v. Mass. Council of Construction Employers, 460 U.S. 204 (1983), argued 11/1/82—Commerce clause does not bar municipal hiring preferences.
- Won Larkin v. Grendel's Den, 459 U.S. 116 (1982), argued 10/4/81—Establishment Clause bars delegating licensing power to churches under statute permitting issuance of liquor licenses to establishments without regard to objections of neighbors but giving neighboring schools and churches in particular an automatic veto power over such liquor licenses.
- Lost Crawford v. Board of Education of City of Los Angeles, 458 U.S. 527 (1982), argued 3/22/82—State may limit court-ordered busing for purposes of racial integration to instances where such busing is required to satisfy U.S. Constitution while imposing no similar limits on court-ordered busing for other purposes.
- Won* N.O.W. v. Idaho, 455 U.S. 918 (1982), no oral argument—Federal courts may not interfere with Congress's time extension for Equal Rights Amendment.
- Lost Heffron v. Internat'l Society for Krishna Consciousness, 452 U.S. 640 (1981), argued 4/20/81—State may restrict speech and solicitation on fairgrounds through neutral rule confining such activity to fixed booths that interested fairgoers are free to enter or to avoid at their own option.
- Won Richmond Newspapers v. Virginia, 448 U.S. 555 (1980), argued 2/19/80—Press and public have right to attend criminal trials.
- Won* Boston v. Anderson, 439 U.S. 951, 1389 (1978), no oral argument—State court may not prohibit free speech by municipality on referendum issue pending before the people in statewide election.

* Won without oral argument, the Court having ruled on the basis of the briefs supporting review. Both cases became moot before argument was possible. In all of the other cases listed, I argued orally before the Court.