



# ON LEGAL REASONING

F. SCHAUER 12, 13, 14/AUG/2014 UAH

## SEMINAR ON LEGAL REASONING

Legal reasoning is rule-based. Rules are enacted to promote certain goals, for protecting certain goods or for eradicating certain evils. Rules, then, have a justification, a rationale, and it's the factual predicate of the rule the one that specifies its scope or conditions for application, selecting the relevant features or properties in order to reach the goal or avoid the evil. On the other hand, rules are authoritative, in the sense that sometimes they dictate outcomes different than those the decision-maker would otherwise have chosen.

Reasoning with rules can be challenging, at least in a twofold way: first, because of its selective nature, generalizations of factual predicates cannot assure perfect adjustment with the justification of the rule, and sometimes this leads to problems of under and over inclusiveness; second, a big part of the rule ruleness is tied up with the language in which the rule is written, and natural language is vague and ambiguous.

Concerning the first problem, a *rule is over-inclusive* if it is a rule applicable to a concrete case –it is included in the generalizing factual predicate– but its observance in a particular instance does not promote its purpose or its justification. For example, the rule “no dogs in the restaurant” is applicable to all dogs, including those that will not cause annoying disruption. In this case, the connection between the justification –avoiding annoying disruption– and the consequences –prohibition of entrance– is absent. A *rule is under-inclusive* if a rule is not applicable to a particular case, but if it would have been applicable, the rule would have promoted its purpose. For example, the rule “no dogs in the restaurant” does not include other agents that can cause annoying disruption, such as cats.

In turn, open texture is the possibility that even the least vague or the most precise term can turn vague as a consequence of our imperfect knowledge of the world and our limited ability to foresee the future. One of the obstacles that law confronts is, thus, between fixed language and a continuously changing world.

Should we apply a rule even if its application would not serve its justification; or should we refrain of applying a rule even when its application would serve that justification? Are under-inclusive and over-inclusive rule bad rules? If so, should we follow them? What should we do in cases of “inaptness” of a rule to serve its justification? How much do rules (and precedent) constrain legal decision-makers? An important sphere of legal reasoning is the debate about the role of rules in decision-making, and about how to solve the tension between the wording of rules and its purpose.

The Seminar will be developed in three sessions of 3 hours each. Professor Schauer will discuss his main ideas on legal reasoning advanced in different moments of his theoretical career and in several texts. For every session, there will be a reading list, to favor the debate and exchange of opinions. The Seminar is directed to law professors and researches concerned with legal reasoning. Interested professors and researchers will be asked to confirm its participation in the three sessions before registering the seminar. The number of participants will not exceed 18.