



# THINKING LIKE A LAWYER

## What distinguishes legal reasoning?

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### CONFERENCE/MASTER CLASS ON THINKING LIKE A LAWYER

For a first-year law student it is often difficult to figure it out what it is to think like a lawyer. Is it to learn a bunch of legal rules? Is it to know what judges have said about certain issues? Is it to know what to do inside courtrooms? Even if we can identify some procedures or materials that lawyers use when they have to construe a legal argument or engage in legal decision-making, are they sufficient in order to distinguish the way in which lawyers reason from other kinds of reasoning?

From a skeptical point of view there is nothing distinctive about legal reasoning. Judges and lawyers, just like every human being, reason on the basis of their ideology, attitudes, politics, and policy preferences. Policy choices and various non-legal attributes would explain, according to the skeptic, legal arguments and outcomes.

One way of approaching this skeptical challenge is to consider just how much is explained by the fact that judges and lawyers are human beings and just how much is explained by their specialized training and roles. On this regard it would be necessary to ask: *Is there a form of reasoning that is distinctively legal reasoning?* In fact, Law schools aspire to teach their students how to think *differently* from ordinary people, and differently from members of other professions.

However, what lawyers have other than their technical skills (such as knowledge of the law, skills of advocacy and drafting, and so on) is no easy to specify. For instance, sometimes it has been argued that the special skills of the lawyer consists in a facility in dealing with facts and evidence, coupled with the related ability to understand the full context of a particular even, dispute or decision. Yet, although these are important skill for good lawyers to have, it seems that they are also important for successful police detectives, historians, psychiatrists, and anthropologists.

Maybe the first step in exploring legal reasoning is to notice, on the one hand, that law is not a closed system. Unlike chess, not all moves in legal arguments are set at the outset. On the other hand, that even if we can find concentrated in law some modes of reasoning, they are not, at the end of the day, forms of reasoning that cannot be found outside legal system. Once this is accepted, we can see that in law there is a dominant mode of reasoning. A form of reasoning that often leads to results other than what would otherwise seem to be the best all-things-considered outcome for the case at hand.

The conference/master class will last one our/our and a half. Professor Schauer will explore the various forms of reasoning that have been specially associated with law and will also present his key ideas about what is distinctive about legal reasoning, as they were proposed in his 2009's book *Thinking Like a Lawyer*. The conference/master class is directed to undergraduate students and part of the faculty will be present too. It will be asked to confirm participation. As it will take place in the Aula Magna we estimate the number of participants in approx. 100.