FREDERICK SCHAUER Fulbright Specialist Program AUG /2014 UAH

PUBLIC DECISION-MAKING

Frederick Schauer

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Frederick Schauer is one of the leading American scholars of jurisprudence and legal process. His academic production is vast, thorough and renowned, and includes works on freedom of speech, constitutional theory, rule-based decision-making, legal interpretation and reasoning, law of evidence, the role of the judiciary and transparency.

Frederick Schauer is David and Mary Harrison Distinguished Professor of Law at the University of Virginia. He is also Frank Stanton Professor of the First Amendment, Emeritus, at the Kennedy School of Government, Harvard University, where he taught from 1990 to 2008, served as academic dean and acting dean, and also taught courses on evidence and freedom of speech at the Harvard Law School. Previously, Schauer was professor of law at the University of Michigan, and has also been visiting professor of law at the Columbia Law School, Fischel-Neil Distinguished Visiting Professor of Law at the University of Chicago, Morton Distinguished Visiting Professor of the Humanities at Dartmouth College, distinguished visiting professor at the University of Toronto, distinguished visitor at New York University, and James Goold Cutler Professor of Law at the College of William and Mary. In 2007-2008, he was the Eastman Professor at Oxford University and a fellow of Balliol College. A fellow of the American Academy of Arts and Sciences and former holder of a Guggenheim Fellowship, Schauer is the author of *The Law* 1976), Free Speech: A Philosophical Enquiry (Cambridge, of Obscenity (BNA, 1982), Playing By the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life (Oxford, 1991), Profiles, Probabilities, and Stereotypes (Harvard, 2003), and Thinking Like a Lawyer: A New Introduction to Legal Reasoning (Harvard, 2009). He is also the editor of Karl Llewellyn, The Theory of Rules (Chicago, 2011), and co-editor of The Philosophy of Law (Oxford, 1996) and The First Amendment (West, 1995). Schauer was founding co-editor of the journal Legal Theory, has served as chair of the Section on Constitutional Law of the Association of American Law Schools and of the Committee on Philosophy and Law of the American Philosophical Association. He has served on the board of governors of the MacArthur Foundation Law and Neuroscience Project, and on the board of visitors of the Rockefeller Center at Dartmouth College. In 2006, Schauer was author of the foreword to the Harvard Law Review's Supreme Court issue, and has written numerous articles on freedom of speech and press, constitutional law and theory, evidence, legal reasoning and the philosophy of law. His books have been translated into Italian, Spanish, Portuguese, Chinese, and Turkish, and his scholarship was the subject of a book (Rules and Reasoning: Essays in Honour of Fred Schauer, Linda Meyer, ed., Hart Publishing, 1999) and special issues of the Notre Dame, Connecticut, and Quinnipiac law reviews; Politeia and the Harvard Journal of Law and Public Policy. In 2005 he was a recipient of a university-wide Outstanding Teacher award at Harvard University.

About the program: FSP

The Fulbright Specialist Program (FSP) promotes linkages between U.S. scholars and professionals and their counterparts at host institutions overseas. The program awards grants to qualified U.S. faculty and professionals, in select disciplines, to engage in short-term collaborative two- to six-week projects at eligible institutions in over 140 countries worldwide. Shorter grant lengths give Specialists greater flexibility to pursue projects that work best with their current academic or professional commitments. International travel costs and a per day grant payment are funded by the U.S. Department of State Bureau of Educational and Cultural Affairs. Participating host institutions cover grantee in-country expenses or provide in-kind services.

Project requests are submitted by non-U.S. institutions and focus on strengthening and supporting institutions' development needs. Eligible activities include short-term lecturing, conducting seminars, teacher training, assessments and evaluations, special conferences or workshops, as well as collaborating on faculty development and curriculum or institutional planning.

The goals of the Fulbright Specialist Program are:

- To increase the participation of leading U.S. scholars and professionals in Fulbright academic exchanges
- To encourage new activities that go beyond the core Fulbright activities of lecturing and research
- To promote increased connections between U.S. and non-U.S. institutions

The UAH project: Virtues in public decision-making

The main role of legal culture is to try to understand puzzling features of Law and of the Rule of law within societies. How is it that, on the one hand, Chile has implemented a deep reform on transparency in public administration while, on the other hand, public services have contested before courts these legal regulations and their application? Why does Chile have high rates of non-compliance of rules of evidence in criminal cases against one of our indigenous group, mapuche, whereas public opinion appears to be deeply compromised with human rights?

Chilean public decisions-making is a symptom of the crisis and tensions of internal legal culture. This project aims at *mobilizing and strengthening Chilean legal culture through the debate of public decision-making*. Ordinarily, there are at least four "virtues" or elements endorsed to public decisions as requirements for their "correctness" or appropriateness, or as criteria for judging a decision as a good one. These four virtues are:

- i) Public decisions should be justified
- ii) Public decisions should be universalizable
- iii) Public decisions should be based in categories and generalizations
- iv) Public decisions should be transparent

The project will promote and enrich the intellectual debate and the academic and public discussion in constitutional theory and legal philosophy.

Some controversies in Chilean legal community about the four virtues of decision- making are:

i) Public decisions should be justified, i.e., supported by reasons. What are good or sound reasons to justify judicial decisions? How do rules constrain judicial reasoning?



Are there distinctive features when "thinking like a judge"? Is there an axiological hierarchy among different types of reasons?

- ii) Public decisions should be universalizable, since universalizability, it is said, is a feature of rationality or it is an expression of formal justice. Concerning judicial decision-making, universalization has to do with the force of precedent, and more generally, with certainty and predictability. Chilean legal culture has always been resistant to precedent, claiming judicial independence as a way of ignoring previous rulings. How can a *civil law* system coexist with the idea of strong precedent, when not recognized by the law? How to harmonize judicial independence and precedent? What elements should be taking into account when discussing the need of creating a procedure to unify rulings at the level of the Supreme Court?
- iii) Public decisions should be based in categories and generalizations: in criminal law procedures, as well as in legal reasoning in general, the use of generalizations has been controversial. On the one hand, considering particular conditions of the case is a sort of guarantee for its "just" solution; on the other hand, a bad use of stereotypes understood as prejudices dismiss the use of generalizations. Appeals to the "stock of knowledge" as a limit for evaluation of evidence in Chilean criminal law procedures has been fuzzy, because there has been poor discussion on the merits of well-constructed generalization and confusion about its meaning and content.
- iv) Public decisions should be transparent: it is commonly defended that decisions financed through public funds should be transparent. The recent construction of the Chilean system of transparency in public administration reflects that transparency has a superior value over any other public good. Nevertheless, this point of view has been contested, since transparency would not act precisely as a "virtue" in all cases, and there are other interests or virtues to consider or balance.

The visit to our Faculty of Law

As an expert on three main and pervasive areas in law –constitutional law, legal philosophy, and reasoning and evidence– Frederick Schauer has contributed to the conceptualization and study of all these features referring specially to one type of public decisions, legal decisions. During his visit, professor Schauer will lead the dialogue among groups of professors, researchers, students, public actors and judges, and also to guide seminars and present lectures on his frameworks and insights concerning decision-making in law. The idea is to explore how changes in the way of theoretically conceiving the features of public decision-making, or how rethinking their foundations, brings different solutions to some concrete Chilean legal and institutional problems.

Professor Schauer will be visiting our Faculty on August 2014 (03-23 August)

Agenda

04/08	Conference/Master class on Thinking Like a Lawyer
06/08	Colloquium on Transparency in Three Dimensions
08/08	Workshop on Profiles, Probabilities and Stereotypes
12-14/08	Seminar on Legal Reasoning
21/08	Seminar3 on The Force of Law