

FREDERICK SCHAUER

David and Mary Harrison Distinguished Professor of Law
University of Virginia School of Law
580 Massie Drive
Charlottesville, Virginia 22903
(434) 924-6777 (voice); (434) 924-7536 (fax); email: schauer@virginia.edu

EDUCATION

A.B., 1967, Dartmouth College
M.B.A., 1968, Dartmouth College, Amos Tuck School of Business Administration
J.D., 1972, Harvard University
M.A. (by resolution), University of Oxford, 2007

PROFESSIONAL POSITIONS

University of Virginia School of Law
David and Mary Harrison Distinguished Professor of Law, from August 2008
John Ewald Distinguished Visiting Professor of Law, 1996

Harvard University, John F. Kennedy School of Government
Frank Stanton Professor of the First Amendment, Emeritus, from 2008
Frank Stanton Professor of the First Amendment, 1990 – 2008
Academic Dean, 1997-2002
Acting Dean. Spring 2001
Affiliated and Visiting Professor, Harvard Law School, 1996 - 2009
Visiting Professor, Edmond J. Safra Foundation for Ethics, 2004-2005
Fellow, Radcliffe Institute for Advanced Studies, 2002-2003
Acting Director, Carr Center on Human Rights Policy, 1999-2001
Acting Director, Joan Shorenstein Center on the Press, Politics and Public Policy,
1994-1995

Oxford University
George Eastman Visiting Professor, 2007-2008
Fellow of Balliol College, 2007-2008

University of Chicago Law School
Daniel R. Fischel & Sylvia M. Neil Distinguished Visiting Professor of Law, 2005
Visiting Professor of Law, 1990

Dartmouth College
Visiting Professor of Government, 1997
William Morton Distinguished Visiting Professor of the Humanities, 1991

University of Michigan Law School
Professor of Law, 1983-1990
Professor of Law and Political Science, 1989

College of William and Mary Law School
James Goold Cutler Professor of Law, 1980-1983
Associate Professor of Law, 1978-1980

Cambridge University
Visiting Scholar, Wolfson College, 1977-1978
Member of the Faculty of Law, 1977-1978

West Virginia University College of Law
Associate Professor of Law, 1976-1978
Assistant Professor of Law, 1974-1976

Fine & Ambrogne, Boston, Massachusetts
Attorney (litigation), 1972-1974

PUBLICATIONS

BOOKS

The Theory of Rules, by Karl Llewellyn, edited and with an introduction by Frederick Schauer
(University of Chicago Press, forthcoming, 2011)

Thinking Like a Lawyer: A New Introduction to Legal Reasoning (Harvard University Press, 2009) (Spanish edition, Madrid, Marcel Pons Ediciones, translation in progress)
(Portuguese edition, Madrid, Marcial Pons Ediciones, translation in progress) (South Asia edition, Universal Law Publishing Company, forthcoming 2011)

Profiles, Probabilities, and Stereotypes (Harvard University Press/Belknap Press, 2003)
(paperback edition, 2006) (Italian edition, *Di Ogni Erba un Fascio: Generalizzazioni, Profili, Stereotipi nel Mondo della Giustizia*, Bologna, il Mulino, 2008)

Playing By the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life (Oxford University Press/Clarendon Press, 1991) (paperback edition, 1992)
(Italian edition, *La Regole del Gioco*, Bologna, il Mulino, 2000) (Spanish edition, *Las Reglas en Juego*, Madrid, Marcel Pons Ediciones, 2004)

The Philosophy of Law: Classic and Contemporary Readings with Commentary (with Walter Sinnott-Armstrong) (Harcourt Brace/Oxford University Press, 1996)

Supplements to Gunther, Constitutional Law (Foundation Press, 1983-1996)

Law and Language (editor) (Dartmouth/Gower/Ashgate Publishing Company, 1992)

The First Amendment: A Reader (with John H. Garvey) (West Publishing Company, 1992,
Second edition, 1995, Third edition, in progress)

Free Speech: A Philosophical Enquiry (Cambridge University Press, 1982) (paperback edition, 1982) (Turkish edition, *İfade Özgürlüğü: Felsefi Bir İnceleme*, Ankara, Liberal Düşünce

Topluluğu, 2002)

The Law of Obscenity (BNA Books, 1976)

ARTICLES AND REVIEW ESSAYS

“Social Epistemology, Holocaust Denial, and the Post-Millian Calculus,” in Michael Herz & Peter Molnar, eds., *The Content and Context of Hate Speech* (Cambridge University Press, forthcoming 2011)

“When and How (If at All) Does Law Constrain Official Action,” *Georgia Law Review* (the John Sibley Lecture), 44 (2010), 769-801

“Facts and the First Amendment,” *UCLA Law Review* (the Melville Nimmer Memorial Lecture), 57 (2010), 897-919

“Can Bad Science Be Good Evidence?: Neuroscience, Lie-Detection, and the Mistaken Conflation of Legal and Scientific Norms,” *Cornell Law Review*, 95 (forthcoming 2010)

“Neuroscience, Lie-Detection, and the Law: A Contrarian View,” *Trends in Cognitive Sciences*, 14 (3) (2010), 101-03

“Is There a Psychology of Judging?” in David E. Klein & Gregory Mitchell, eds., *The Psychology of Judicial Decision Making* (Oxford University Press, 2010), 103-20

“Was Austin Right After All?: On the Role of Sanctions in a Theory of Law,” *Ratio Juris*, 23 (2010), 1-21

“The Trouble with Cases,” in Daniel Kessler & Andrei Shleifer, eds., *Litigation versus Regulation* (National Bureau of Economic Research/University of Chicago Press) (forthcoming 2010) (with R. Zeckhauser)

“Balancing, Subsumption, and the Constraining Role of Legal Text,” in Matthias Klatt, ed., *Institutional Reason: The Jurisprudence of Robert Alexy* (Oxford University Press, forthcoming 2010)

“Is Defeasibility an Essential Property of Law,” in Jordi Ferrer, ed., *Defeasibility in Law* (Oxford University Press, forthcoming 2010)

“Is it Important to be Important?: Evaluating the Supreme Court’s Case Selection Process,” *Yale Law Journal Online*, 119 (2009), 77-86

“Paltering,” in Brooke Harrington, ed., *Deception: From Ancient Empires to Internet Dating* (Stanford University Press, 2009), pp. 38-54 (with R. Zeckhauser)

“Rules, Rationality, and the Significance of Standpoint,” *Queen’s Law Journal*, 35 (2009), 305-26

- “Artists’ Moral Rights and the Psychology of Ownership,” *Tulane Law Review*, 83 (2009), 661-78 (with B. Spellman)
- “Is It Better to Be Safe Than Sorry?: Free Speech and the Precautionary Principle,” *Pepperdine Law Review*, 36 (2009), 301-15
- “Rules of Recognition, Constitutional Controversies, and the Dizzying Dependence of Law On Acceptance,” in Matthew Adler & Kenneth Himma, eds., *The Rule of Recognition and the U.S. Constitution* (Oxford University Press, 2009), 175-92 (with L. Alexander)
- “Institutions and the Concept of Law: A Reply to Ronald Dworkin (with Some Help from Neil MacCormick),” in Maksymilian Del Mar, ed., *Law as Institutional Normative Order: Essays in Honour of Sir Neil MacCormick* (Ashgate Publishing, 2009), 35-44
- “A Critical Guide to Vehicles in the Park,” *New York University Law Review*, 83 (2008), 1109-34
- “Why Precedent in Law (and Elsewhere) is Not Totally (or Even Substantially) About Analogy,” *Perspectives on Psychological Science* 3 (2008), 454-60
- “Authority and Authorities,” *Virginia Law Review*, 95 (2008), 1931-61
- “In Defense of Rule-Based Evidence Law – and Epistemology Too,” *Episteme*, 5 (2008), 295-305
- “Abandoning the Guidance Function: *Morse v. Frederick*,” *Supreme Court Review*, 2007 (2008), 316-48
- “Hohfeld’s First Amendment,” *George Washington Law Review*, 76 (2008), 914-32
- “Has Precedent Ever Really Mattered in the Supreme Court?” (The Henry J. Miller Lecture), *Georgia State Law Review*, 25 (2008), 217-36
- “Regulation By Generalization,” *Regulation & Governance*, 1 (2007), 68-87 (with R. Zeckhauser)
- “Expression and Its Consequences,” *University of Toronto Law Journal*, 57 (2007), 705-20
- “Ambivalence About the Law” (J. Byron McCormick Lecture), *Arizona Law Review*, 49 (2007), 11-28
- “Institutions as Legal and Constitutional Categories,” *UCLA Law Review*, 54 (2007), 1747-66
- “Pitfalls in the Interpretation of Customary Law,” in Amanda Perreau-Saussine & James Bernard Murphy, eds., *The Nature of Customary Law* (Cambridge University Press, 2007), 13-34
- “Should Presidents Obey the Law (And What Is “The Law,” Anyway),” in Terry L. Price & J. Thomas Wren, eds., *The Values of Presidential Leadership* (Palgrave Macmillan, 2007), 183-98

- “Foreword: The Court’s Agenda – And the Nation’s,” *Harvard Law Review*, 120 (2006), 4-62
- “Do Cases Make Bad Law?” *University of Chicago Law Review*, 73 (2006), 883-918
- “On the Supposed Jury-Dependence of Evidence Law,” *University of Pennsylvania Law Review*, 155 (2006), 165-202
- “(Re)Taking Hart,” *Harvard Law Review*, 119 (2006), 852-83
- “Legislatures as Rule-Followers,” in Richard W. Bauman & Tsvi Kahana, eds., *The Least Examined Branch: The Role of Legislatures in the Constitutional State* (Cambridge University Press, 2006), 468-79
- “Is There a Right to Academic Freedom,” *University of Colorado Law Review*, 77 (2006), 907-27
- “Legal Information as Social Capital,” *Law Library Journal*, 99 (2006), 267-83 (with V. Wise)
- “The Social Construction of the Concept of Law: A Reply to Julie Dickson,” *Oxford Journal of Legal Studies*, 25 (2005), 493-501
- “Towards an Institutional First Amendment,” *Minnesota Law Review*, 89 (2005), 1256-79
- “Imposing Rules,” *San Diego Law Review*, 42 (2005), 85-90
- “The Exceptional First Amendment,” in Michael Ignatieff, ed., *American Exceptionalism and Human Rights* (Princeton University Press, 2005), 29-56
- “Freedom of Expression Adjudication in Europe and America: A Case Study in Comparative Constitutional Architecture,” in Georg Nolte, ed., *European and U.S. Constitutionalism* (Council of Europe and Cambridge University Press, 2005), 47-64
- “On the Migration of Constitutional Ideas,” *Connecticut Law Review*, 37 (2005), 907-19
- “The Tyranny of Choice and the Rulification of Standards,” *Journal of Contemporary Legal Issues*, 14 (2005), 803-14
- “On the Relationship Between Press Law and Press Content,” in Timothy Cook, ed., *Freeing the Presses: The First Amendment in Action* (Louisiana State University Press, 2005), 51-68
- “Deferring,” *Michigan Law Review*, 103 (2005), 1567-77
- “The Wily Agitator and the American Free Speech Tradition,” *Stanford Law Review*, 58 (2005), 2157-70
- “La Categorización, en el Derecho y en el Mundo,” *Cuadernos de Filosofía del Derecho*, 28 (2005), 307-20

- “The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Salience,” *Harvard Law Review*, 117 (2004), 1765-1809
- “The Limited Domain of the Law,” *Virginia Law Review*, 90 (2004), 1909-56
- “Judicial Supremacy and the Modest Constitution,” *California Law Review*, 92 (2004), 1045-67
- “The ‘Speech-ing’ of Sexual Harassment,” in Catharine MacKinnon & Reva Siegel, eds., *Directions in Sexual Harassment Law* (Yale University Press, 2004), 347-64
- “Intentions, Conventions, and the First Amendment: The Case of Cross-Burning,” *Supreme Court Review*, 2003 (2004), 197-230
- “The Failure of the Common Law” (The Willard Pedrick Lecture), *Arizona State Law Review*, 36 (2004), 765-82
- “Neutrality and Judicial Review,” *Law and Philosophy*, 23 (2003), 217-40
- “The Convergence of Rules and Standards,” *New Zealand Law Review*, [2003], 303-28
- “The Heroes of the First Amendment,” *Michigan Law Review*, 101 (2003), 2118-33
- “The Dilemma of Access,” in Nancy Palmer, ed., *Terrorism, War, and the Media* (Hollis Publishing, 2003), 259-69
- “The Dilemma of Ignorance: PGA Tour v. Casey Martin,” *Supreme Court Review*, 2001 (2002), 267-97
- “First Amendment Opportunism,” in Lee C. Bollinger & Geoffrey R. Stone, eds., *Eternally Vigilant: Free Speech in the Modern Era* (University of Chicago Press, 2002), 174-97
- “Bundling, Boundary Setting, and the Privatization of Legal Information” (with V. Wise), in John Donahue & Joseph Nye, eds., *Market Based Governance* (Brookings, 2002), 129-42
- “Free Speech and the Social Construction of Privacy,” *Social Research*, 68 (2001), 221-32
- “Defending Judicial Supremacy: A Reply,” *Constitutional Commentary*, 17 (2001), 455-82 (with L. Alexander)
- “Non-Legal Information and the Delegalization of Law,” *Journal of Legal Studies*, 29 (2000), 495-515 (with Virginia J. Wise)
- “Can Public Figures Have Private Lives?” *Social Philosophy and Policy*, 17 (2000), 293-309
- “The Generality of Rights,” *Legal Theory*, 6 (2000), 323-36
- “Incentives, Reputation, and the Inglorious Determinants of Judicial Behavior” (The Robert Marx Lecture), *University of Cincinnati Law Review*, 68 (2000), 615-36

- “The Cost of Communicative Tolerance,” in Raphael Cohen-Almagor ed., *Liberal Democracy and the Limits of Tolerance* (University of Michigan Press, 2000), 28-42
- “Speech, Behaviour, and the Interdependence of Fact and Value,” in David Kretzmer & Francine Hazan eds., *Freedom of Speech and Incitement Against Democracy* (Kluwer, 2000), 28-42
- “Electoral Exceptionalism and the First Amendment,” *Texas Law Review*, 77 (1999), 1803-36 and in J. Rosencranz ed., *If Buckley Fell* (Century Foundation, 1999), 103-20 (with R. Pildes)
- “Talking as a Decision Procedure,” in Stephen Macedo ed., *Deliberative Politics: Essays on Democracy and Disagreement* (Oxford University Press, 1999), 17-27
- “Fuller on the Ontological Status of Law,” in W.J. Witteveen ed., *Rediscovering Fuller: Essays on Implicit Law and Institutional Design* (Amsterdam University Press, 1999), 124-42
- “Principles, Institutions, and the First Amendment,” *Harvard Law Review*, 112 (1998), 84-120
- “Positivism Through Thick and Thin,” in Brian Bix ed., *Analyzing Law: New Essays in Legal Theory* (Oxford University Press, 1998), 65-78
- “Instrumental Commensurability,” *University of Pennsylvania Law Review*, 146 (1998), 1215-1234
- “On the Supposed Defeasibility of Legal Rules,” *Current Legal Problems 1998* (M.D.A. Freeman ed., Oxford University Press, 1998), 223-40
- “La ética del gobierno ¿debe codificarse?” (The Ethics of Codification and the Codification of Ethics), *Perspectivas en política, economía y gestión*, 1(2) (1998), 167-84
- “Internet Privacy and the Public-Private Distinction,” *Jurimetrics*, 38 (1998), 555-64
- “Prediction and Particularity,” *Boston University Law Review*, 78 (1998), 773-89
- “Legal Positivism as Legal Information,” *Cornell Law Review*, 82 (1997), 1080-1110 (with V. Wise)
- “Discourse and Its Discontents,” *Notre Dame Law Review* (Symposium in Honor of Frederick Schauer), 72 (1997), 1309-34
- “On Extrajudicial Constitutional Interpretation,” *Harvard Law Review*, 110 (1997), 1359-87 (with L. Alexander)
- “The Ontology of Censorship,” in Robert Post ed., *Censorship and Silencing: Practices of Cultural Regulation* (Getty Research Institute for the History of Art, 1997), 147-68
- “Constitutional Invocations,” *Fordham Law Review*, 47 (1997), 1295-1312

- “Generality and Equality,” *Law and Philosophy*, 16 (1997), 279-97
- “Prescriptions in Three Dimensions,” *Iowa Law Review*, 82 (1997), 911-22
- “Justificación ética de la libertad de expresión: asignando los costos de la tolerancia,” *Perspectivas en política, economía y gestión*, 1(1) (1997), 1-15
- “The Speech of Law and the Law of Speech,” *Arkansas Law Review*, 49 (1997), 687-702
- “On the Degree of Confidence for Adverse Decisions,” *Journal of Legal Studies*, 24 (1996), 27-52 (with R. Zeckhauser)
- “Positivism as Pariah,” in Robert George ed., *The Autonomy of Law: Essays on Legal Positivism* (Oxford/Clarendon Press, 1996), 31-56
- “Justice Stevens and the Size of Constitutional Decisions,” *Rutgers Law Journal*, 27 (1996), 543-61
- “Ashwander Revisited,” *The Supreme Court Review 1995* (1996), 177-204
- “Giving Reasons,” *Stanford Law Review*, 47 (1995), 633-59
- “Opinions as Rules,” *University of Chicago Law Review*, 62 (1995), 1455-75
- “Amending the Presuppositions of a Constitution,” in S. Levinson ed., *Responding to Imperfection: The Theory and Practice of Constitutional Amendment* (Princeton University Press, 1995), 145-61
- “Too Hard: Unconstitutional Conditions and the Chimera of Constitutional Consistency,” *Denver University Law Review*, 72 (1995), 989-1005
- “Fuller’s Internal Point of View,” *Law and Philosophy*, 12 (1994), 285-312
- “Free Speech in a World of Private Power,” in T. Campbell & W. Sadurski eds., *Freedom of Communication* (Dartmouth/Gower, 1994), 1-16
- “Judicial Review of the Devices of Democracy,” *Columbia Law Review*, 94 (1994), 1326-47
- “Jeftina Tolerancija” (Cheap Tolerance), *Filozofska Istrazivanja*, 55 (1994), 835-48 (Croatian), and *Synthesis Philosophica*, 9 (1994), 439-54 (English) (with R. Zeckhauser)
- “Commensurability and Its Constitutional Consequences,” *Hastings Law Journal*, 45 (1994), 785-812
- “The Phenomenology of Speech and Harm,” *Ethics*, 103 (1993), 635-53
- “Constitutional Positivism” (The Day, Berry & Howard Lecture), *Connecticut Law Review*,

- 25 (1993), 797-828
- “The Political Incidence of the Free Speech Principle” (Rothgerber Lecture), *University of Colorado Law Review*, 64 (1993), 935-58
- “A Comment on the Structure of Rights,” *Georgia Law Review*, 27 (1993), 415-34
- “Uncoupling Free Speech,” *Columbia Law Review*, 92 (1992), 1321-57
- “The Practice and Problems of Plain Meaning,” *Vanderbilt Law Review*, 45 (1992), 715-41
- “Messages, Motives, and Hate Crimes,” *Criminal Justice Ethics*, 11 (1992), 52-54
- “The Questions of Authority” (The Philip Hart Lecture), *Georgetown Law Journal*, 81 (1992), 95-115
- “Free Speech and the Cultural Contingency of Constitutional Categories,” *Cardozo Law Review*, 14 (1992), 865-80
- “The Occasions of Constitutional Interpretation,” *Boston University Law Review*, 72 (1992), 729-46
- “Speaking of Dignity,” in M. Meyer & W. Parent, eds., *Human Dignity, the Bill of Rights, and Constitutional Values* (Cornell University Press, 1992), 178-91
- “The First Amendment as Ideology,” *William and Mary Law Review*, 33 (1992), 853-69
- “Deliberating About Deliberation,” *Michigan Law Review*, 890 (1992), 1187-1202
- “Freedom of Speech” and “Freedom of the Press,” in *The Readers’ Encyclopedia of American History* (Houghton Mifflin, 1992)
- “Roth v. United States,” “Miller v. California,” and “Stanley v. Georgia,” in *the Oxford Encyclopedia of the Supreme Court* (Oxford University Press, 1992)
- “Exceptions,” *University of Chicago Law Review*, 58 (1991), 871-904
- “The Calculus of Distrust,” *Virginia Law Review*, 77 (1991), 653-67
- “The Authority of Legal Scholarship,” *University of Pennsylvania Law Review*, 139 (1991), 1003-17
- “Statutory Construction and the Coordinating Function of Plain Meaning,” *The Supreme Court Review, 1990* (1991), 231-56
- “Reflections on the Value of Truth,” *Case Western Reserve Law Review*, 41 (1991), 699-724
- “Parsing the Pentagon Papers,” Joan Shorenstein Center (Harvard) Research Paper R-3 (1991)

- “The Determinants of Legal Doubt,” *Michigan Law Review*, 89 (1991), 1295-1301
- “The Bork Nomination” and “Children and the First Amendment,” in *The Encyclopedia of the American Constitution (Supplement)* (Macmillan, 1991)
- “Who Decides,” in J. Lichtenberg, ed., *Democracy and the Mass Media* (Cambridge University Press, 1990), 202-28
- “Rules and the Rule-Following Argument,” *Canadian Journal of Law and Jurisprudence*, 3 (1990), 187-92
- “A Brief Note on the Logic of Rules, With Special Reference to *Bowen v. Georgetown University Hospital*,” *Administrative Law Review*, 42 (1990), 447-55
- “Judicial Self-Understanding and the Internalization of Constitutional Rules” (Rothgerber Lecture), *University of Colorado Law Review*, 61 (1990), 749-71
- “Mrs. Palsgraf and the First Amendment,” *Washington & Lee Law Review*, 47 (1990), 161-70
- “Is the Common Law Law,?” *California Law Review*, 77 (1989), 455-71
- “The Second-Best First Amendment” (The Cutler Lecture), *William and Mary Law Review* 31 (1989), 1-23
- “The Aim and the Target in Free Speech Methodology,” *Northwestern University Law Review*, 83 (1989), 562-68
- “Rules, the Rule of Law, and the Constitution,” *Constitutional Commentary*, 6 (1989), 69-85 and in *The Evolving U.S. Constitution* (Academica Sinica, 1989), 193-215
- “Constitutional Conventions,” *Michigan Law Review*, 88 (1989), 1407-17
- “Harry Kalven and the Perils of Particularism,” *University of Chicago Law Review*, 56 (1989), 397-414
- “Marking Time,” *Georgetown Law Journal*, 77 (1989), 1959-66
- “Formalism,” *Yale Law Journal*, 97 (1988), 509-48
- “Judging in a Corner of the Law,” *Southern California Law Review*, 61 (1988), 1717-33
- “Commercial Speech and the Architecture of the First Amendment,” *University of Cincinnati Law Review*, 56 (1988), 1181-1203
- “Precedent,” *Stanford Law Review*, 39 (1987), 571-605

“Rights as Rules,” *Law and Philosophy*, 5 (1987), 115-19

“The Constitution as Text and Rule,” *William and Mary Law Review*, 29 (1987), 41-51

“Authority and Indeterminacy,” *NOMOS*, 29 (1987), 28-37

“The Role of the People in Free Speech Theory,” *California Law Review*, 74 (1987), 761-88

“The Jurisprudence of Reasons,” *Michigan Law Review*, 85 (1987), 847-70

“The Varied Uses of Constitutional History,” *Introduction to W. Nelson & R. Palmer, Constitution and Rights in the Early American Republic* (NYU Press, 1987)

“The Pentagon Papers Case,” in *Encyclopedia of the American Constitution* (Macmillan, 1986)

“May Officials Think Religiously?” *William and Mary Law Review*, 27 (1986), 1075-85

“Opinions as Rules,” *University of Chicago Law Review*, 53 (1986), 682-89

“Slippery Slopes,” *Harvard Law Review*, 99 (1985), 361-83

“Legal Process and the Identification of Human Values,” *American Journal of Industrial Medicine*, 9 (1985), 75-85

“Easy Cases,” *Southern California Law Review*, 58 (1985), 399-440

“Cuban Cigars, Cuban Books, and Incidental Restrictions on Communication,” *William and Mary Law Review*, 26 (1985), 779-91

“Liars, Novelists, and the Law of Defamation,” *Brooklyn Law Review*, 51 (1985), 233-67

“Lawyers and Lawmaking,” *Michigan Law Review*, 83 (1985), 1141-49

“Must Speech Be Special?” *Northwestern University Law Review*, 78 (1984), 1284-1306

“Public Figures,” *William and Mary Law Review*, 25 (1984), 905-35

“Does Doctrine Matter?” *Michigan Law Review*, 82 (1984), 655-64

“Free Speech and the Demise of the Soapbox,” *Columbia Law Review*, 84 (1984), 558-72

“Free Speech and the Argument from Democracy,” *NOMOS*, 25 (1983), 241-55

“Refining the Lawmaking Function of the Supreme Court,” *University of Michigan Journal of Law Reform*, 17 (1983), 1-24

“Religious Advocacy and Religious Legislation,” in R. Rutyna ed., *Conceived in Conscience* (Donning Publishers, 1983), 57-66

- “Obscenity,” in *Encyclopedia of Crime and Justice* (Macmillan, 1983)
- “Rights and the Right to Know,” *Philosophic Exchange*, 14 (1983), 65-74
- “Codifying the First Amendment: New York v. Ferber,” *Supreme Court Review 1982* (1983), 285-317
- “Decriminalization and the Constitution,” *Criminal Justice Ethics*, 3 (1983), 76-79
- “Is Government Speech a Problem?” *Stanford Law Review*, 35 (1983), 373-86
- “Free Speech and the Assumption of Rationality,” *Vanderbilt Law Review*, 36 (1983), 199-210
- “An Essay on Constitutional Language,” *UCLA Law Review*, 29 (1982), 797-832
- “Can Rights Be Abused?” *The Philosophical Quarterly*, 31 (1981), 225-30
- “Categories and the First Amendment: A Play in Three Acts,” *Vanderbilt Law Review*, 34 (1981), 265-307
- “Free Speech and the Paradox of Tolerance,” in B. Leiser ed., *Values in Conflict* (Macmillan, 1981), 228-37
- “Search and Seizure of Obscene Materials,” *Search and Seizure Law Report*, 8 (1981), 85-89
- “Social Foundations of the Law of Defamation: A Comparative Analysis,” *Journal of Media Law and Practice*, 1 (1981), 1-23
- “Private Speech and the Private Forum: Givhan v. Western Line School District,” *The Supreme Court Review 1979*, (1980), 217-49
- “Speech and ‘Speech’ – Obscenity and ‘Obscenity’: An Exercise in the Interpretation of Constitutional Language,” *Georgetown Law Journal*, 67 (1979), 899-933
- “Pornography and the First Amendment,” *University of Pittsburgh Law Review*, 40 (1979) 605-17
- “Language, Truth, and the First Amendment: An Essay in Memory of Harry Canter,” *Virginia Law Review*, 64 (1978), 263-302
- “Fear, Risk and the First Amendment: Unraveling the Chilling Effect,” *Boston University Law Review*, 58 (1978), 685-726
- “Reflections on Contemporary Community Standards,” *North Carolina Law Review*, 56 (1978), 1-28
- “Hudgens v. NLRB and the Problem of State Action in First Amendment Adjudication,”

- Minnesota Law Review*, 61 (1977), 433-60
- “The Return of Variable Obscenity,” *Hastings Law Journal*, 28 (1977), 1275-92
- “Freedom of Expression Under the European Convention on Human Rights,” *Poly Law Review*, 3 (1977), 25-31
- “English Natural Justice and American Due Process,” *William and Mary Law Review*, 18 (1976), 47-72
- “School Books, Lesson Plans, and the Constitution,” *West Virginia Law Review*, 78 (1976), 287-314
- “Obscenity and the Conflict of Laws,” *West Virginia Law Review*, 77 (1975), 377-400

HONORS, AWARDS, ETC.

Fellow, American Academy of Arts and Sciences (elected 1993)

Guggenheim Fellowship, 2001-2002

George Eastman Visiting Professor and Professorial Fellow of Balliol College, Oxford University, 2007-2008

Chair, Committee on Philosophy and Law, American Philosophical Association, 2006-08

Board of Governors, MacArthur Foundation Law and Neuroscience Project, 2006 – 2010

Vice-President, American Society for Political and Legal Philosophy, 1996-98

Chair, Section on Constitutional Law, Association of American Law Schools, 1985-87

Co-Founder and Co-Editor, *Legal Theory*, 1995-2000

Editorial Board, *Ethics*, 1991-2006

Editorial Board, *Communication Law and Policy*, 1994-2002

Board of Visitors, Faculty of Law, University di Tella, Buenos Aires, 2004 –

Board of Visitors, Nelson Rockefeller Center for Public Policy, Dartmouth College, 2000-2008

Fellow, Radcliffe Institute for Advanced Study, Harvard University, 2002-2003

David C. Baum Memorial Lecture, University of Illinois College of Law, 2010

Sibley Lecture, University of Georgia School of Law, 2009

Melville Nimmer Memorial Lecture, UCLA School of Law, 2009

'Or 'Emet Lecture, Osgoode Hall Law School, York University, 2009

Ben Beinart Memorial Lecture, University of Cape Town, South Africa, 2008

Henry J. Miller Lecture, Georgia State University, 2007

Radio Telefis Eireann Broadcasting, Society and the Law Lecture, 2007

J. Byron McCormick Lecture, University of Arizona, 2006

Willard Pedrick Lecture, Arizona State University, 2004

Florence Davis Dean Lecture, University of Vermont, 2004

Robert S. Marx Lecture, University of Cincinnati, 2000

Donley Lecture, West Virginia University, 2000

James Moffett '29 Lecture, Princeton University, 1999

Propter Honoris Respectum, Notre Dame Law School, 1996 (*Notre Dame Law Review*, 72 (1997), 1309-1596)

Honoree, Symposium on Legal Reasoning and the Work of Frederick Schauer, Quinnipiac Law School, 1997 (published as Linda Meyer ed., *Rules and Reasoning: Essays in Honour of Fred Schauer* (Hart Publishing, 1999))

George Rudolph Distinguished Lecture, University of Wyoming, 1994

Martha Boaz Distinguished Lecture, University of Michigan School of Information, 1993

Phelps Lecture, Tulane University, 1993

Clason Lecture, Western New England College of Law, 1993

Philip Hart Memorial Lecture, Georgetown University, 1992

Day, Berry, and Howard Lecture, University of Connecticut, 1992

Rothgerber Speaker, University of Colorado, 1990, 1993

Cutler Lecture, College of William and Mary, 1989

Bush Foundation Lecture, Hamline University, 1987

Rubin Forum Lecture, Columbia University, 1987

Ohio Humanities Council Speaker, University of Dayton, 1987

Legacy of George Mason Lecture, George Mason University, 1983

Distinguished Visitor, New York University School of Law, 2003

Distinguished Visiting Professor, University of Toronto Faculty of Law, 2001

Visiting Professor, National University of Singapore, 2000

Visiting Professor, University of the North, Pietersburg, South Africa, 1995

Visiting Fellow, Research School of Social Sciences, Australian National University, 1993, 1998

Chair, American Bar Association Central and East European Law Initiative, Working Group on Mass Demonstration Law in Belarus, 1993

Legal Advisor, Asia Foundation (Mongolia, 1993), United Nations Development Program (Vietnam 2000, 2004), United States State Department (Estonia, 1992), Constitutional Committee of the Faroe Islands (2001)

Distinguished Teaching Award, Harvard University (one of 20 university-wide), 2004

Professor of the Year, College of William and Mary, 1979

Commissioner, Attorney General's Commission on Pornography, United States Department of Justice, 1985-96

American Bar Association Certificate of Merit for *Free Speech: A Philosophical Enquiry*, 1983

National Endowment of the Humanities Summer Fellowship, 1980

Private First Class (Artillery) Massachusetts Army National Guard, active duty, November 1970-April 1971, Honorable Discharge, June 1972

Member of the Bar of the Commonwealth of Massachusetts and the Supreme Court of the United States