

**MAXWELL L. STEARNS**

Professor of Law and Marbury Research Professor  
University of Maryland School of Law  
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**EDUCATION**

**University of Virginia School of Law**  
Charlottesville, Virginia J.D., May 1987

Order of the Coif  
Virginia Law Review  
Armour Scholar, 1984-87

**University of Pennsylvania**  
Philadelphia, Pennsylvania  
B.A. Political Science and Economics, May 1983  
Summa Cum Laude

Mortar Board Senior Honor Society  
Pi Sigma Alpha Political Science Honor Society  
Elected Member of Undergraduate Assembly

**TEACHING  
EXPERIENCE**

**The University of Maryland School of Law**, Baltimore,  
Maryland.

**Professor of Law** (appointed with tenure beginning Fall 2006). Constitutional Law II, Public Choice and Public Law, Evolutionary Psychology and the Law Special Topics Seminar.

**Marbury Research Professor** (Three-year appointment initially awarded fall 2007 through 2010 and renewed fall 2010 through 2013). Constitutional Law I and II, Public Choice and Public Law; Law and Economics.

**Distinguished Visiting Professor.** Fall 2005 through Spring 2006. Research leave, Federal Civil Rights, Public Choice and Public Law.

**George Mason University School of Law**, Arlington, Virginia  
Professor of Law. Sept. 1992 to 1996  
Constitutional Law, Advanced Constitutional Law -- First Amendment, Public Choice and Public Law, Federal Courts, Federal Civil Rights, Contracts II (Promoted to Associate

Professor September 1995; awarded tenure September 1996; promoted to Full Professor September 1998).

**The University of Michigan Law School**, Ann Arbor, Michigan. Visiting Professor. Fall 2001 through Spring 2002. Constitutional Law, Federal Courts, Public Choice and Public Law.

**The University of Florida Fredric G. Levin College of Law**, Gainesville, Florida. Visiting Professor. Spring 1999 Political and Civil Rights (First Amendment), Public Choice Theory.

## **TEACHING ABROAD**

**University of Canterbury, Department of Economics and Finance**, Christchurch, New Zealand. Visiting Erskine Fellow. July through October 2010. Public Choice (3 credit hour course for undergraduate economics and law students).

**The Buchmann Faculty of Law, Tel Aviv University**, Tel Aviv, Israel. Visiting Professor. December 1997; May 1999; December 2000; July 2002; July 2003; December 2008-January 2009. Public Choice and Public Law; Selected Topics in United States Constitutional Law; Public Choice and Comparative Constitutional Law (condensed 2 credit hour courses).

**Griffith University**, Brisbane, Australia. Visiting Professor. Summer 2001. Public Choice and Comparative Constitutional Law (condensed 2 credit hour course).

## **OTHER LEGAL EXPERIENCE**

**Pepper, Hamilton & Scheetz**, Philadelphia, Pennsylvania. September 1990 to May 1992. Litigation Associate. Experience in insurance, intellectual property, contract, and state post-conviction death-penalty litigation.

**Palmer & Dodge**, Boston, Massachusetts. Oct. 1988 to Aug. 1990. Litigation Associate. Experience in personal injury, construction, administrative, labor, municipal, and state post-conviction death-penalty litigation.

**Harrison L. Winter, Chief Judge**, United States Court of Appeals for the Fourth Circuit, Baltimore, Maryland. Sept. 1987 to Aug. 1988. Judicial Clerkship.

## **PUBLICATIONS**

**BOOKS**

MAXWELL L. STEARNS, PUBLIC CHOICE CONCEPTS AND APPLICATIONS IN LAW (West Publishing Company 2009) (with Todd J. Zywicki) (Foreword by Daniel A. Farber).

TEACHER'S MANUAL TO PUBLIC CHOICE CONCEPTS AND APPLICATIONS IN LAW (West Publishing Company 2010) *Teachers' Manual* (with Todd Zywicki).

MAXWELL L. STEARNS, CONSTITUTIONAL PROCESS: A SOCIAL CHOICE ANALYSIS OF SUPREME COURT DECISION MAKING (University of Michigan Press 2000) (paperback edition with Afterword on *Bush v. Gore*, March 2002).

MAXWELL L. STEARNS, CONSTITUTIONAL PROCESS: A SOCIAL CHOICE ANALYSIS OF SUPREME COURT DECISION MAKING (University of Michigan Press 2000) (Foreword by Lee Epstein).

MAXWELL L. STEARNS, PUBLIC CHOICE AND PUBLIC LAW: READINGS AND COMMENTARY (Anderson Press 1997) (Foreword by Saul Levmore).

**BOOK CHAPTERS**

Maxwell L. Stearns, *An Introduction to Social Choice*, THE ELGAR HANDBOOK ON PUBLIC CHOICE 88-134 (Dan Farber and Anne O'Connell, eds. Elgar 2010) (invited contribution).

Maxwell L. Stearns, *A Private-Rights Standing Model to Promote Public-Regarding Behaviour by Government Owned Corporations*, in FROM BUREAUCRACY TO BUSINESS ENTERPRISE: LEGAL AND POLICY ISSUES IN THE TRANSFORMATION OF GOVERNMENTAL SERVICES 121-42 (Michael J. Whincop, ed., Ashgate) (2003) (invited contribution).

**LONGER ARTICLES**

Maxwell L. Stearns, *Standing at the Crossroads: The Roberts Court in Historical Perspective*, 83 NOTRE DAME L. REV. 875 (2008) (issue lead article).

Maxwell L. Stearns, *The New Commerce Clause Doctrine in Game Theoretical Perspective*, 67 VAND. L. REV. 1 (2007) (volume lead article).

Maxwell L. Stearns, *Defining Dicta*, 57 STANFORD L. REV. 953 (2005) (with Michael Abramowicz) (issue lead article).

Maxwell L. Stearns, *A Beautiful Mend: A Game Theoretical*

*Analysis of the Dormant Commerce Clause Doctrine*, 45 WM. & MARY L. REV. 1 (2003) (volume lead article).

Maxwell L. Stearns, *Beyond Counting Votes: The Political Economy of Bush v. Gore*, 54 VAND. L. REV. 1849 (2001) (with Michael Abramowicz) (issue lead article).

Maxwell L. Stearns, *From Lujan to Laidlaw: A Preliminary Model of Environmental Standing*, 11 DUKE ENVTL L. & POL'Y F. 321 (2001).

Maxwell L. Stearns, *Should Justices Ever Switch Votes?: Miller v. Albright in Social Choice Perspective*, 7 S. CT. ECON. REV. 87 (1999).

Maxwell L. Stearns, *Restoring Positive Law and Economics: Introduction to Public Choice Theme Issue*, 6:4 GEO. MASON L. REV. 709 (1998) (issue lead article).

Maxwell L. Stearns, *How Outcome Voting Promotes Principled Issue Identification: A Reply to Professor John Rogers and Others*, 49 VAND. L. REV. 1045 (1996).

Maxwell L. Stearns, *Standing Back from the Forest: Justiciability and Social Choice*, 83 CAL. L. REV. 1309 (1995) (issue lead article).

Maxwell L. Stearns, *Standing and Social Choice: Historical Evidence*, 144 U. PA. L. REV. 309 (1995) (issue lead article).

Maxwell L. Stearns, *The Misguided Renaissance of Social Choice*, 103 YALE L. J. 1219 (1994).

Maxwell L. Stearns, *The Public Choice Case Against The Item Veto*, 49 WASH. & LEE L. REV. 385 (1992).

**SHORTER  
ARTICLES AND  
ESSAYS**

Maxwell Stearns, "Dicta," ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (Vol 2) (edited by David S. Tanenhaus) (McMillan reference USA: Detroit, 2008) pp. 33-34.

Maxwell Stearns, "Rule of Four," ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (Vol. 4), pp. 298-99

Maxwell Stearns, "Standing," ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (Vol. 4), pp. 442-46.

ENCYCLOPEDIA OF LAW AND SOCIETY: AMERICAN AND GLOBAL PERSPECTIVES (David Clark, ed. 2007): Essays on *Public Choice and the Rational Actor* and *Social Choice and Judicial Decision Making*.

Maxwell L. Stearns, *Appellate Courts Inside and Out* (Reviewing Jonathan Cohen, *Inside Appellate Courts*), 101 MICH. L. REV. 1764 (2003).

Maxwell L. Stearns, *The Condorcet Jury Theorem and Judicial Decision Making: A Reply to Saul Levmore*, 3 THEORETICAL INQUIRY (2002).

Maxwell L. Stearns, *The Case for Including Marks v. United States Within the Canon of Constitutional Law*, 17 CONST. COMM. 321 (2000).

Maxwell L. Stearns, *Why Should Lawyers Care About Institutional Data on Courts?*, 83 JUDICATURE 236 (2000).

Maxwell L. Stearns, Review of *Maltzman, Wahlbeck, and Spriggs, Crafting Law on the Supreme Court* (Cambridge U. Press 2000), in LAW AND POLITICS BOOK REVIEW (on line journal fall 2001).

Maxwell L. Stearns, *The Remand that Made the Court Expand*, 16 CONST. COMM. 581 (1999).

Maxwell L. Stearns, *Mistretta versus Marbury: The Foundations of Judicial Review*, 74 TEX. L. REV. 1281 (1996).

Maxwell L. Stearns, *Book Review: William N. Eskridge: Dynamic Statutory Interpretation*, 86 PUBLIC CHOICE 379 (1996).

Maxwell L. Stearns, *Poetic Law: A Statement on Intent*, 48 VAND. L. REV. 195 (1995).

ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION, SUPPLEMENT II. Article on *Article III and Public Choice Theory* (Leonard W. Levy, Kenneth L. Karst, and Adam Winkler, eds., May 1998).

Maxwell L. Stearns, *Maternal Duties During Pregnancy: Toward a Conceptual Framework*, 21 NEW ENG. L. REV. 595 (1985-86).

**OP-EDS**

Maxwell Stearns, McDonald *typifies need for consensus*, NATIONAL LAW JOURNAL 35 (July 12, 2010) (with David S. Cohen).

Maxwell Stearns, *Yes, justices make law*, BALTIMORE SUN 15 (May 3, 2010).

**CONFERENCE PRESENTATIONS**

Author Meets Critics Book Panel: PUBLIC CHOICE CONCEPTS AND APPLICATIONS IN LAW (May 2010): Law and Society Annual Meeting, Chicago, IL

*The Median Voter and Universal Participation by Supreme Court Justices* (with Eugene Kontorovich) (September 2008): Midwest Law and Economics, Chicago, IL

*How Narrow is the Narrowest Grounds Rule?* (September 2008): Midwest Law and Economics, Chicago, IL

*Teaching Public Choice: Comments on Public Choice Concepts and Applications in Law* (October 2007): Canadian Law and Economics Association, Toronto, Canada.

*Standing at the Crossroads: The Roberts Court in Historical Perspective* (October 2007): Canadian Law and Economics Association, Toronto, Canada.

Crops, Guns & Commerce: A Game Theoretical Critique of *Gonzales v. Raich* (August 2005): Constitutional Law and Economics Conference, University of California at Berkeley, Boalt Hall College of Law.

*A Rational Choice Analysis of the Dormant Commerce Clause*: Midwest Political Science Association Annual Meeting (April 2002); Institutional Games and the U.S. Supreme Court (conference held at Texas A&M University, November 2001).

*A Private-Rights Standing Model to Promote Public-Regarding Behavior by Government-Owned Corporations* (solicited for conference on Government-Owned Corporations at Griffith University, Brisbane, Australia, Summer 2001).

Author meets critics book panels: CONSTITUTIONAL PROCESS: A SOCIAL CHOICE ANALYSIS OF SUPREME COURT DECISION MAKING: Midwest Political Science Association (April 2001);

Public Choice Society (February 2000); Law and Society (May 2000).

The Canon of Constitutional Law, Georgetown University School of Law, December 1999 (discussion group with twenty-five leading constitutional scholars) (*The Case for Including Marks v. United States within the Canon of Constitutional Law* was initially prepared for this conference).

Beyond *Lujan*: Citizen Suits and Standing Doctrine in the 21<sup>st</sup> Century, Duke University School of Law, May 2000 (invited commentator) (*From Lujan to Laidlaw: A Preliminary Model of Environmental Standing* was initially prepared for this conference).

*Static Constitutional Process: How Individual Cases are Decided* (chapter 3 of CONSTITUTIONAL PROCESS: A SOCIAL CHOICE ANALYSIS OF SUPREME COURT DECISION MAKING): Public Choice Center, George Mason University (May 1997); American Law and Economics Association (ALEA) annual meeting, Berkeley, California (May 1998); American Political Science Association (APSA) Annual Meeting, Boston Massachusetts (September 1998).

Constitutional Law and Economics, The Cegla Institute, Buchmann Faculty of Law, Tel Aviv University, December 2000 (*The Condorcet Jury Theorem and Judicial Decision Making: A Reply to Saul Levmore* was initially prepared for this conference).

The Midwest Political Science Association, panel participant on *Positive Political Theory in Constitutional Law and Judicial Politics Research* (April 1998).

Presentation at law and economics conference on Richard Epstein, BARGAINING WITH THE STATE (1992), exploring public choice implications of Epstein thesis.

## **FACULTY PRESENTATIONS**

*Direct (Anti-)Democracy*, The University of Canterbury Department of Economics and Finance, Christchurch, NZ (August 2010); Law and Economics Society (LEANZ), Auckland, NZ (August 2010); Law and Economics Society (LEANZ), Wellington and Center for Public Interest, Victoria University, Wellington, NZ (August 2010); The University of Canterbury School of Law, Christchurch, NZ (October 2010).

*Direct (Anti-)Democracy*, The University of Maryland School of Law, Half-Baked Ideas Luncheon Workshop (2009).

*Takings Games (with Thoughts on Kelo)*, The University of Maryland School of Law Half Baked Luncheon Workshop (2008).

*How Narrow is the Narrowest Grounds Rule*, The University of Maryland School of Law Half Baked Luncheon Workshop (2008).

*Standing at the Crossroads: The Roberts Court in Historical Perspective* (October 2007): Washington University School of Law faculty workshop.

*The New Commerce Clause Doctrine in Game Theoretical Perspective*: The University of Maryland School of Law Legal Theory Workshop (Fall 2005); Robert E. Levy Workshop, George Mason University School of Law (Fall 2005); The University of Colorado School of Law Legal Theory Workshop (Fall 2005).

Habeas Corpus, Non-Retroactivity and Social Choice, Bar Ilan University Law School (June 2005).

*The Political Economy of the Roberts Court*, University of Maryland Faculty of Law Distinguished Visiting Professor Lecture (November 2005).

*Public Choice for the Uninitiated*, University of Maryland Faculty of Law (October 2004).

*Defining Dicta*, George Washington University Faculty of Law (October 2004).

*A Beautiful Mend: A Game Theoretical Analysis of the Dormant Commerce Clause Doctrine*: Vanderbilt Law School Legal Theory Workshop (March 2003); University of Chicago Constitutional Theory Workshop (April 2003).

*A Rational Choice Analysis of the Dormant Commerce Clause*: Northwestern University School of Law (November 2001); The University Michigan Law School Legal Theory Workshop (November 2001).

*Beyond Counting Votes: The Political Economy of Bush v. Gore*: University of New South Wales (July 2001).

*Should Justices Ever Switch Votes?: Miller v. Albright in Social Choice Perspective*: Rutgers-Camden School of Law (December

1999); University of Florida Fredric G. Levin College of Law (January 1999); Emory University School of Law (March 1999); Florida State University College of Law (February 1999).

*Static Constitutional Process: How Individual Cases are Decided* (chapter 3 of CONSTITUTIONAL PROCESS: A SOCIAL CHOICE ANALYSIS OF SUPREME COURT DECISION MAKING): Tel Aviv University School of Law (December 1997); Hebrew University School of Law (December 1997); The University of Chicago Law and Economics Workshop (February 1997); Temple University School of Law (February 1997).

*Standing and Social Choice*: Olin Workshop, Georgetown University Law School (January 1996); The Locke Institute, Institute for Humane Studies (April 1996); Hebrew University School of Law (May 1996).

Faculty presentations at GMUSL: *A Rational Choice Analysis of the Dormant Commerce Clause* (November 2001); *Beyond Counting Votes: The Political Economy of Bush v. Gore* (2001); *Static Constitutional Process: How Individual Cases are Decided* (chapter 3 of CONSTITUTIONAL PROCESS: A SOCIAL CHOICE ANALYSIS OF SUPREME COURT DECISION MAKING) (February 1997); *Standing Back From the Forest: Justiciability and Social Choice* (1995); *The Misguided Renaissance of Social Choice* (1994); *Poetic Law: A Statement on Intent* (1993); *The Public Choice Case Against the Item Veto* (1992).

## **OTHER PRESENTATIONS**

*The Duel (with Professor Mark Graber): On the (In)significance of Marbury v. Madison in the Law School Curriculum* (October 2009) (precariously cast in the role of Alexander Hamilton while defending the inclusion of *Marbury* in the canon of Constitutional Law).

*Commentator for panel discussion of Erin O'Hara and Larry Ribstein, THE LAW MARKET* (Oxford 2009), American Enterprise Institute, Washington DC (January 2009) (with Larry Ribstein and Michael Greve).

*The New Commerce Clause Doctrine in Game Theoretical Perspective*, Campbell University School of Law (Spring 2006).

*A Beautiful Mend: A Game Theoretical Analysis of the Dormant Commerce Clause Doctrine*: University of California at Berkeley, Boalt Hall College of Law, Law and Economics Seminar (October 2004).

*A Rational Choice Analysis of the Dormant Commerce Clause*: Georgetown Law Center Law and Economics Seminar (November 2001).

*Static Constitutional Process: How Individual Cases are Decided* (chapter 3 of CONSTITUTIONAL PROCESS: A SOCIAL CHOICE ANALYSIS OF SUPREME COURT DECISION MAKING): graduate political science seminar, Johns Hopkins University (April 2000).

*The Law and Economics of Survivor*: Law and Economics Workshop, Tel Aviv University, Buchmann Faculty of Law (December 2000); Public Choice Society (March 2001).

The Center for Law and Economics, Economics Institute for Law Professors, George Mason University School of Law, Dartmouth, NH. Lecturer, Public and Social Choice (June 1997).

*The Obscenity Doctrine*: seminar on free speech, Tel Aviv University School of Law (May 1996).

*Standing and Social Choice*: student presentation, The University of Chicago School of Law (February 1997); seminar on Israeli Supreme Court, Tel Aviv University School of Law (May 1995).

## **SPEECHES**

*The Political Economy of the Roberts Court*: Keynote speaker at Campbell University Annual Symposium (Spring 2006).

*The Commerce Clause (with Comments on the Medical Marijuana Case)*, Close-up Foundation (program for high school students throughout the United States in Washington DC) (March 2006)

Faculty Graduation Speaker, George Mason Law School (May 2001).

*Themes of Constitutional Law*, Fairfax Bar Association lecture for Fairfax Public School social studies and business law teachers (April 1998).

## **MISCELLANEOUS**

*The Supreme Court and the 2009 Election*, Panel Moderator, with Bill Van Horne, Staff Member to Senator Ben Cardin for the Judiciary Committee and Elizabeth Hays, Staff Member to Senator Arlen Specter for the Judiciary Committee (sponsored by the Constitution Society, upcoming October 29, 2008).

## **AWARD**

Recipient, Outstanding Faculty Publication Award for 1995, George Mason University School of Law, for *Standing and Social Choice: Historical Evidence*, 144 U. PA. L. REV. 309 (1995).

## **LAW SCHOOL AND UNIVERSITY ACTIVITIES**

*University of  
Maryland Law  
School*

Committee Work	<p>Appointments (Fall 2006 to Spring 2009)</p> <p>Library and Technology (Fall 2009 to Spring 2010)</p> <p>Administrative Committee (Spring 2011)</p> <p>Promotions Committee (peer review of junior faculty instruction) (Fall 2006 to present)</p>
Other activities	<p>Faculty Development Workshop (Fall 2006-Spring 2008): Designed and implemented program for presentation and prepared feedback on works in various stages of progress for junior faculty members, with active participation of invited senior faculty.</p>
<i>George Mason Law School</i>	
Committee work	<p>Law School Dean Search Committee (Appointed by University Provost 2004-5).</p> <p>Chair, Retention, Promotion and Tenure Committee (“RPT”) (2000-01); RPT (2003-05).</p> <p>University-Wide Provost Search Committee (Appointed by University President Summer and Fall 1999).</p> <p>Appointments Committee (1999-2000).</p> <p>Chair, Judicial Clerkship and Placement Committee (1993-96; 1997-98).</p> <p>Chair, Ad Hoc Grade Policy Committee (Fall 1998).</p> <p>Chair, Academic Standing Committee (1997-98).</p> <p>Library, curriculum, law review advisory, and admissions committees.</p>
Other activities	<p>Faculty Board of Directors, George Mason University Press (1994-95).</p>
<b>PEER AND LAW REVIEW SCHOLARSHIP REVIEW</b>	<p>Invited to review manuscripts for <i>The Journal of Legal Studies</i>; <i>Publius: The Journal of Federalism</i>; <i>The Supreme Court Economic Review</i>; <i>The Journal of Politics</i>; <i>The University of Michigan Press</i>; <i>Stanford Law Review</i>.</p>
<b>BAR MEMBERSHIPS</b>	<p>Admitted to practice in Massachusetts and Pennsylvania.</p>
<b>PROFESSIONAL MEMBERSHIPS</b>	<p>American Law Institute (effective September 2007)</p> <p>American Bar Association</p>

Society for the Evolutionary Analysis of Law (SEAL)

**PERSONAL**

Married with two daughters and one son.