

Faculty Publications

2007

Ron Coffey: The Thinker's Thinker

Peter M. Gerhart

Follow this and additional works at: https://scholarlycommons.law.case.edu/faculty_publications



Part of the [Legal Profession Commons](#)

Repository Citation

Gerhart, Peter M., "Ron Coffey: The Thinker's Thinker" (2007). *Faculty Publications*. 156.
https://scholarlycommons.law.case.edu/faculty_publications/156

This Article is brought to you for free and open access by Scholarly Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Scholarly Commons.

RON COFFEY: THE THINKER'S THINKER

Peter M. Gerhart[†]

Good thought does not come in predetermined categories; there is no necessary division between legal thought, economic thought, and philosophical thought, or between contract and torts. Good thought avoids the superficial and general, focusing instead on the particular and the precise. Good thought works out the models that allow us to organize our beliefs about cause and effect and values and behavior and to compare models across subject matter. Good thought avoids using words that are ambiguous or vacuous, except when we acknowledge their use as placeholders until our analysis permits greater specificity. Good thought seeks to analyze, which means to tear things apart into constituent parts and then reconstruct a way of thinking about the problem we are working on in a way that reveals the normative justification for one course of action over another.

Ronald J. Coffey was among the first on our faculty, and (I daresay) in the country, to recognize these attributes of good thought and to bring them to bear on the study of law. He has been passionate about methodology—that is, about the modes of thought that are the hallmark of good analysis. He understands legal analysis not as the application of rules, doctrine or abstract principles, but the other way around—as the construction of the outcome (and therefore of rules, doctrine, and principles) that comports with a justification rooted in an understanding of the kind of problem the law faces, the kinds of values that ought to be considered in addressing the problem, and the behavioral traits of people that allow us to predict how people will act in light of social and socially constructed (*i.e.*, legal) incentives. We came to call this justificational analysis. It is what good legal scholars do.

[†] Professor, Case Western Reserve School of Law and former Dean (1986–1996).

Ron's methodology is interdisciplinary, drawing on the best and newest insights from virtually every field of study. Although his own thought has been most closely identified with what came to be called economic analysis, his attraction to economics was methodological, not substantive. The economists had seemed to discover, before other behavioral sciences, the value of models and systematic thought. This allowed economists to break matters down to their core causal elements, to identify underlying assumptions, and to use models of behavioral response to identify what would happen if the underlying assumptions were changed. It was this systemic thinking about human behavior in the light of incentives that allowed economists to study human behavior with specificity and that therefore aligned the behavioral science of economics with the behavioral science of law. It was this systematic thinking that attracted Ron to economic analysis.

But Ron was never wedded to a single or narrow view of economics. He is neither Posnerian nor libertarian; neither Baumolian nor interventionist. He understands and respects both markets and market failure, both efficiency and equity. Although skeptical of the value of legal intervention, he starts his analysis without knowing where the analysis will take him. His mind does not try to prove that markets (or the law) generally tend toward efficient results (the efficiency hypothesis), for he knows this about the efficiency hypothesis: it is tautological unless the analyst specifies the nature of the efficiency that is sought and it is unnecessary once the analyst specifies the nature of efficiency that is sought.

Then, as the analytical rigor of economic analysis began to infiltrate the other behavioral sciences, Ron rejoiced in seeing how learning from various behavioral sciences could be interwoven to create a more complete view of various influences on human behavior.

Moreover, Ron's reliance on learning from other disciplines is never an interest in abstract thought or theory for theory's sake. What matters to him is the application of learning from other disciplines to the issues the law faces, and the law requires that intervention choices be made. Therefore, to Ron, interdisciplinary learning must "mesh" with the law by being integrated into legal analysis, by paying attention to the institutional setting in which legal decisions are made, and by appreciating the institutional constraints of a rule-based system. Ron's intellectual firepower is directed at intensely practical results: how to understand and advocate within a system that believes the law to be based on rules, doctrine, and principles. He taught us that doctrine does not matter until we understand the range of thought

that allows us to apply doctrine in concrete cases to achieve a justified result, and that once we understand the appropriate analytical factors the doctrine comes alive in a way that allows it to be applied in other situations.

Few, if any, on the faculty have read as widely as Ron. His daily consumption encompasses not only the major currents in legal thought but all of the major economic journals, in all phases of economics. He is consistently ahead of the curve. Amartya Sen was appreciated in economics, but not in law, before he won the Nobel Prize, but Ron brought him to our attention long before he was understood to be a Nobel candidate. And long before behavioral economics became a buzzword in law, Ron had understood economics as a behavioral science and therefore understood the importance of interpreting the rational person in light of psychological realities. Freakonomics was never freaky to Ron because he never defined economics by the narrow view of the rational person. Altruism was not a mystery to Ron because he understood that economics does not assume the maximization of any particular value—it only assumes that people (and communities) will want to maximize some value.

Few, if any, on the faculty have integrated their reading into a comprehensive view of the foundational theories that are used in understanding intervention choice. Perhaps Ron's greatest intellectual gift is his ability to understand the relationship between seeming disparate phenomena by understanding them as offshoots of common models of behavior. Consumer decision in the face of uncertainty is like voter decision in the face of uncertainty, which is like interpersonal decision in the face of uncertainty, which is like producer decision in the face of uncertainty, which is like social decision in the face of uncertainty. Whatever the decision, people or groups protect themselves against uncertainty in ways that can be modeled and understood comparatively. And comparing reactions to uncertainty across contexts allows us to develop a more complete theory of behavior in the light of uncertainty.

And Ron's thought is not limited to concepts of efficiency. Although Ron despairs of finding any way of modeling the efficiency/equity trade-off in a way that would allow us to tractably compare the apples of equity with the oranges of efficiency, he marvels at various theories of fairness and is eager to pursue them in justificational analysis. His only requirement is methodological: is systematic and analytical thought being applied to theories of fairness in the same way that we apply it to theories of efficiency?

Few on the faculty have written as much as Ron, although many have published much more than Ron. Our students were the beneficiaries of his writing, for it often came in the form of material for class. Binders of material that he has prepared stand in his office as a testament to his comprehensive and diligent pursuit of justificational analysis in the fields in which he taught. He used his own material in most of his courses and it was never stale. Sarbanes-Oxley was not an appendix to Ron's material; it was a part of the material from the time there was a glimmer of the fraud that it addressed. Not enough of this writing has gotten out of the binders and into print, but it is not too late. Ron is retiring from teaching but not from thinking and (it is to be hoped) from publishing. But the target of his materials is a moving one and in the author's view the material has never been quite good enough.

Perfectionism, rigor, and integration have their costs, and one of those costs is that in order to get access to Ron's thought you have to get access to either his binders or to his conversation about ideas. His students were lucky, for their access to both the binders and the conversation was immediate and plentiful. For those colleagues who took the time to access his ideas, the rewards were many. The University of Chicago had Aaron Director, a teacher of teachers whose influence came not from publishing but from thinking broadly and teaching deeply¹; we have had Ron Coffey. For those who took the effort to access his mind, the force of his thought will be carried forward in countless of unprogrammed and productive ways.

¹ See *Aaron Director Founded Field of Law and Economics*, UNIVERSITY OF CHICAGO CHRONICLE, September 24, 2004, available at <http://chronicle.uchicago.edu/040923/obit-director.shtml>.