

2021

Tribute to Professor Peter M. Gerhart

Wendy Wagner

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>

 Part of the [Law Commons](#)

Recommended Citation

Wendy Wagner, *Tribute to Professor Peter M. Gerhart*, 72 Case W. Res. L. Rsv. 263 (2021)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol72/iss2/10>

This Tribute is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

Wendy Wagner[†]

Legal education lost a superhero this year. Even setting aside his hugely successful deanship at Case Western Reserve (which others are detailing in their tributes), Peter Gerhart was a first-class scholar, a passionate and beloved teacher, and the best mentor one could imagine. His determination to push the boundaries of our thinking about the law are on display in all aspects of his professional life. And, on a personal note, as one of the beneficiaries of his largesse, Peter was a constant positive force in my own life, serving not only as a mentor, but also as a dear friend and surrogate family member for over thirty years.

What made Peter so special? In my own view there were several traits that shine particularly brightly.

I. SEEING THE INVISIBLE

Jonathan Swift is attributed with saying that “vision is the art of seeing what is invisible to others.”¹

Peter could see the invisible and helped others see it as well. I first witnessed these powers nearly thirty years ago. Peter was the Dean that hired me into academia, and one of my responsibilities in this new job was to publish. But I was very slow to produce anything. After two years, when I finally did cobble together the draft of an article, Peter gently volunteered that he’d be happy to read it. I figured he would never get to it since he was a busy dean, so I said “sure.” But he did read it—all 120-plus pages—and, more to the point, Peter immediately zeroed in on the fundamental assumption of the piece and noted how I hadn’t supported or even tried to explain it to the reader. It was then, in 1994, when I first witnessed Peter’s superpowers to see the invisible—in this case the unstable foundation of a project that I hadn’t noticed myself, even after several years of working on it.

It was thus no accident that, soon after he retired as Dean, I (selfishly) suggested that maybe we could become “study buddies” by trading our work and taking turns commenting on each other’s drafts. So, we did that—on and off—for at least twenty years to the present—sometimes meeting every other week throughout the summer. I can

[†] Richard Dale Endowed Chair, University of Texas School of Law.

1. It is not clear where the quote comes from in Swift’s work and life, but the general sentiment (sometimes worded slightly differently) is widely attributed to him. See, e.g., *Jonathan Swift Quote, “Vision is the art of seeing things invisible”*, GOODREADS, <https://www.goodreads.com/quotes/13734-vision-is-the-art-of-seeing-things-invisible> [https://perma.cc/G3UP-48GM] (last visited Sept. 1, 2021); Graham Speechley, *Vision Is the Art of Seeing What Is Invisible to Others*, LEADERSHIP QUOTE, <http://leadershipquote.org/vision-is-the-art-of-seeing-what-is-invisible-to-others/> [https://perma.cc/V226-NJAU] (last visited Sept. 1, 2021).

assure you that Peter was making all the contributions in these meetings. And thanks to Peter, I got a lot of work through the door, including projects that cut to the heart of my own interests, but that I would otherwise have been too timid to complete. Peter read every interim draft and painstakingly helped me—sometimes scribbling on the back of napkins during lunch—locate the essence of what I was trying to say.

I know that my experience is not unique and there are dozens of other colleagues who have used Peter’s powers to see the invisible. Like me, he helped them find the buried gems in their own work and muster the courage to put those discoveries into writing.

But, more importantly, these powers to see the invisible also define Peter’s own projects. He saw the siloed, under-theorized approach to legal education. Over several decades he read widely—moral philosophy, institutional theory, all the classics in legal systems and theory—and from that foundational work, Peter began to construct a theory he called a “Social Morality” theory of the law. This project, which was very much ongoing when he died, still contributed more than a lifetime of work to the legal literature—three books, as well as a forthcoming property casebook; articles; and more work to be published posthumously.²

Peter’s social-morality project was immensely ambitious and important. The early reviews offer high praise,³ and I am certain that the accolades are only just beginning. Sadly, Peter will not be able to revel in the joy of watching his impactful work be admired and influence future scholarly work.

II. MENTOR

Related to Peter’s ability to see the invisible is a second amazing power of Peter: Through generous mentoring, Peter had an uncanny ability to help others find their inner voices. In my own case, Peter repeatedly pushed me to find projects that were important to me and to pursue them, no matter what the obstacles.

Peter’s mentoring also extended to the examples he set through his own work. Peter was particularly passionate about the failings of legal education and followed out on this passion in his own research. Students, he said, should not just learn a series of isolated cases but instead should understand the underlying social values that unify the

-
2. See, e.g., PETER M. GERHART, *CONTRACT LAW AND SOCIAL MORALITY* (2021); PETER M. GERHART, *PROPERTY LAW AND SOCIAL MORALITY* (2014); PETER M. GERHART, *TORT LAW AND SOCIAL MORALITY* (2010).
 3. See, for example, the essays in a law-review symposium dedicated to Peter’s *Property Law and Social Morality* book, published in 2015 in the second volume of the *Texas A&M Journal of Real Property Law* at pages 187–340.

cases and make up the law. He not only wrote on this subject but volunteered to teach an exhausting load of new classes—Torts, Property, Contracts, Legislation & Regulation—to field test his theories and share his ideas with students. This kind of commitment to excellence is hard for the rest of us to live up to but impossible to forget.

III. GENEROUS AND OTHER-REGARDING

Peter had a luminous personality and zest for life that was contagious. He was one of the most warm, compassionate, supportive, “other-regarding”⁴ persons I’ve ever met. He listened intently to others and was always one of the first to offer help. Indeed, despite all of his teaching and writing commitments, Peter had seemingly boundless time and energy for others. He was always positive, always had a smile, and always was somebody you looked forward to seeing. I relish the time I spent with him.

Early in 2021, Peter and I discussed all the fun we planned to have during the coming summer, post-vaccine. We would meet at our favorite coffee houses and trade drafts on the next iteration of projects. In Michigan (where he was instrumental in helping us find a summer cottage), we planned to race around in a ski boat, paddle along the shore of Crystal Lake, and eat cherry pie. And I know that many, many others had similar plans for the time they would spend with Peter.

IV. THE WHOLE PERSON

I will never forget my last few moments with Peter in person. Our families were watching the sun set over Crystal Lake in Michigan in late summer 2020, with the moon coming up over his beloved Beulah. Peter convinced his daughter Gracie (against her better judgment) to show us her headstand on a paddleboard. She did it! We sat in awe—of Gracie, of the rising moon, of the color of the water and the sky. Everything was quiet. It was a moment I’m sure none of us will ever forget. The world literally seemed to stop.

But for me, Gracie’s amazing feat also encapsulated Peter: standing on one’s head on a magnificent lake at sunset and leaving everyone who witnessed it with memories they will never forget.

4. *See generally*, GERHART, TORT LAW AND SOCIAL MORALITY, *supra* note 2, at 5 (describing “other-regarding behavior as the single guiding star of tort law”).—Eds.