

MICHAEL HOFFHEIMER: A MAN FOR ALL SEASONS

*Michael Vitiello**

When Professor Hoffheimer wrote this past spring to tell me that he was retiring from the Ole Miss faculty after thirty plus years, my response was, “Hell no!” The legal academy will be much poorer upon his retirement. Indeed, I doubt that the University of Mississippi can find anyone who can fill his shoes. Perhaps, if the University hires two professors, the odds of replacing him increase a bit, but only a bit.

My friendship with Mike dates to my service as a visiting professor at Ole Miss during the spring of 1990. Mike was a junior member of the faculty then. He was among the most welcoming members of the faculty, which led to long discussions of criminal law, civil procedure, and other legal doctrine. At times, over espresso at Square Books, our conversations turned to literature, including to William Faulkner’s work (the author whose work led me to Mississippi in 1968).

To offer a measure of Mike’s work, I want to borrow from a letter that I wrote in support of his appointment to the position of Distinguished Professor of Law at the University. Here are a few comments from that letter:

I have always admired the sheer breadth of Professor Hoffheimer’s work. Few scholars in the legal academy cover the amazing range that he does. That work is creative and thoughtful. The quality of his work is seldom matched by legal scholars. His work has also made an impact on the scholarly debate.

* Distinguished Professor of Law, the University of Pacific McGeorge School of Law; University of Pennsylvania, J.D., 1974; Swarthmore College, B.A., 1969. I would like to thank Jordan Thomas, the Editor-in-Chief of the *Mississippi Law Journal* for inviting me to participate in the celebration of my friend Michael Hoffheimer’s retirement issue.

Most legal scholars develop narrow areas of specialization. Today, mentors to young scholars advocate that young scholars develop scholarly agenda with a goal of becoming experts in their fields. Further, they often advise their mentees to focus on narrow areas in which they can become truly expert. Such a narrow focus comes with a cost. Contrast that to Professor Hoffheimer's career as a scholar.

Start with the range of traditional legal areas in which Professor Hoffheimer has taught and written. Few scholars in America teach such diverse subjects as Criminal Law, Civil Procedure, Property, and Private International Law. Nor do they write thoughtfully in so many areas. A quick review of Professor Hoffheimer's resume demonstrates his intellectual curiosity and flexibility. He has written important articles on personal jurisdiction, a core doctrine in Civil Procedure. His Criminal Law scholarship is well-regarded and widely read. So too is his scholarship dealing with Conflict of Laws. But then he regularly writes about philosophy and literature as well. He is an expert on Hegel and has written several fascinating articles about *Les Misérables*. Add to this a scholar who writes about history as well. You can see the extraordinary breadth of his intellect.

Breadth might signal a lack of intellectual depth. That is not the case with Professor Hoffheimer's work. I have read many of his articles, either in draft or in final version. Some of his articles demonstrate workman like craft of a lawyer. For example, he often writes doctrinal scholarship, helpful to members of the practicing bar. His *Conflict of Laws: Examples and Explanations* book is one such endeavor, a book that is now in its third edition. So too are articles like *Mississippi Conflict of Laws* and *Lesser Included Offenses in Mississippi* that appeared in the *Mississippi Law Journal*. But compare the creative and analytical articles on diverse topics. Thus, he has written about Bollywood, Hegel, and Natural Law. His understanding of modern philosophy is evident in articles like *Hegel's Criticism of Law*, appearing in *Hegel-Studien* (a specialized journal) and *The Early Critical and Philosophical Writings of Justice Holmes*, appearing in the *Boston College Law Review*.

His work on necessity (a defense in the criminal law) is frequently cited and a highly regarded article on an important Criminal Law topic. His article is a cross-over work: it is not simply doctrinal scholarship. Instead, it explores important philosophical aspects of the Criminal Law. His article *Codifying Necessity: Legislative Resistance to Enacting Choice-of-Evils Defenses to Criminal Liability* (in the Tulane Law Review) takes a comprehensive look at the necessity defense. Professor Hoffheimer examines the broad scholarly support for the defense, and the failure of legislatures to adopt the broad Model Penal Code necessity defense that had support of many prominent scholars. He enters the debate with a fresh perspective and explores the philosophical premises of the debate (identifying the utilitarian aims of scholars supporting the broad version of the defense) and the practical applications of the defense in hard cases.

Professor Hoffheimer's articles on personal jurisdiction demonstrate a similar combination of doctrine, history, philosophy and politics. Building on his article *General Personal Jurisdiction after Goodyear Dunlap Tires Operations, S.A. v. Brown* (appearing in the Kansas Law Review), he and a co-author developed several critically important themes in *Good-Bye Significant Contacts: General Personal Jurisdiction after Daimler AG v. Bauman*, (published in the Ohio State Law Journal). He and his co-author develop in depth historical roots of personal jurisdiction, whereby they demonstrate how justices, some of whom ordinarily rely on tradition, have gravely narrowed the jurisdictional reach of American courts by ignoring history. They explore practical implications of this process and delve into possible political explanations for the sudden shift in personal jurisdiction. Even before its publication (thanks to SSRN), many of us have had access to the article. I have relied heavily on some of his themes in an article that I wrote and that will be published soon.

Professor Hoffheimer's recent personal jurisdiction article, *The Stealth Revolution in Personal Jurisdiction*, 70 Fl. L. Rev. 1 (2017), picks up with his earlier work. It focuses on the justices' efforts to treat the Court's new due process principles as mere applications of existing principles, rather as new rules that narrow access to justice. He unmasks the Court's efforts as

pretentious and dangerous to principles underlying the rule of law.

Professor Hoffheimer's work is influential and important. Not only have I relied on his work on personal jurisdiction, but other scholars have too. He has been invited to participate in panels on the subject because of the importance of his views on the topic. Online searches reveal that his work has been cited literally hundreds of times. Many of those citations are in prominent law reviews, including Yale, University of Chicago, Stanford, Michigan, Virginia, NYU, Texas, Pennsylvania, Duke, Georgetown, Florida, Tulane. The author of the most widely adopted Criminal Law casebook features a discussion of Professor Hoffheimer's necessity article in the material on that defense. Similarly, an online search reveals numerous citations in judicial opinions. Those courts range widely from the Mississippi Supreme Court to the United States Court of Appeals for the Tenth Circuit and beyond. The fact that courts in such diverse states as California, Delaware, Illinois, Indiana, Kansas, Michigan, Nebraska, Pennsylvania, West Virginia, Wisconsin, and Wyoming suggests the extraordinary nature of his work. Few legal scholars can boast such significant influence in both settings: the legal academy and the courts.

Finally, Professor Hoffheimer is truly generous with his time. I have not gone back to count the number of times when I have thanked him in articles which he has reviewed for me in the draft stages. I have done so often. Whether I am writing about Civil Procedure or Criminal Law, I include him on the short list of outside readers from whom I seek input. I do so because the results are so helpful. He takes the task seriously and offers support and important suggestions on how to improve the paper.

My experience with Professor Hoffheimer is hardly unique. A look at his resume suggests how often he has worked with others in a mentoring role. For example, he has collaborated with a junior faculty member at the University of Tennessee on a significant article on personal jurisdiction and on organizing a panel on that topic at a professional conference at the 2016 SEALS conference. He has published a study of Mississippi legal authority with law librarians at Ole Miss. He

has worked with his wife and son on different projects as well as with others, including filmmaker and private scholar Nilu Gavankar on a book project.

I have been in legal education since 1977 and have seldom found a scholar so deeply involved in working with others. He is truly an extraordinary and distinguished legal scholar, deserving of special recognition for his accomplishments.

Since my recommendation above, Mike has continued to offer his generous support to so many of us. Almost always, I send him articles in early drafts to seek his considerable insight. Ask his colleagues, especially junior colleagues, if he has ever said no to a request for help.

How will Ole Miss replace Mike? How can the law school find someone who can write about Hegel, Natural Law, Oliver Wendell Holmes, *Les Misérables*, criminal law doctrine, conflicts of law, personal jurisdiction, and to do it all well? How can Ole Miss find someone with Mike's generous spirit, wry sense of humor, and wonderful intellect? For now, I will reserve judgment whether the law school can do so. But I am not holding my breath.

As I suggested in opening, when I think about Mike's retirement, I want to shout, "Hell no, you can't go!" But I know that he will remain engaged with the law school, the law, and the rest of us who rely on him in so many ways.

