

"Must We Choose Between Rationality and Irrationality?"

Law Review Symposium
Chicago-Kent College of Law, Chicago
November 6, 2004
Report by Claire Hill

On November 5-6, 2004, the Chicago-Kent Law Review, the Gruter Institute, and the Society for Evolutionary Analysis in Law co-sponsored a symposium entitled "Must We Choose Between Rationality and Irrationality." Among the scholars participating were economists, psychologists, neurologists, law professors, and philosophers. Most scholars presented papers; some participated in a roundtable. The papers and roundtable proceedings will be published in a special symposium issue of the Chicago-Kent Law Review.

The first day of the symposium began with informal conversation among the participants. Professor Claire Hill, the symposium organizer, made opening remarks. She noted that the debate in law and economics between those who held to a more orthodox rational choice model and others who focused on the existence of "mistakes" was increasingly being superceded by a more productive inquiry into how people feel, reason, and make decisions. She also noted that an important aim of the symposium was to bring together scholars who were working on rationality from disparate perspectives.

The first talk, Behavioral Finance: What are its Central Insights? What are its Limitations?, was by Werner DeBondt, a finance professor (DePaul University). Professor DeBondt surveyed the history and present status of behavioral finance, and, using techniques and scholarship from many different fields, considered important questions that behavioral finance has had success with, and important questions as to which behavioral finance has not yet delivered significant insights.

The second talk, Toward a Foundation for Discrimination, was by Roland Fryer, an economist (Harvard University). Professor Fryer used categorization theory to develop a model of discrimination. The third talk was the keynote address by George Loewenstein, an economist at Carnegie Mellon, entitled Emote Control: The Substitution of Symbol for Substance in American Life. Professor Loewenstein contrasted affective, reflexive processes with deliberative processes, and discussed the results of experiments showing the strength and pervasiveness of affective processes. He considered policy implications of his findings for law.

Professor Fred Schauer's (Kennedy School, Harvard University) paper, entitled Rationality and Autonomy, discussed the complexities underlying the concept of autonomy in moral, political, and legal theory. He considered how we (morally and legally) should react when we believe others will act both mistakenly and harmfully to others. He argued that recognizing this domain of irrationality has important implications for thinking about tolerance, among other things, and suggests limitations on the extent to which we ought to respect the autonomy of those whose actions we suspect will be both irrational and harmful.

Professor Ed Rubin's (University of Pennsylvania Law) paper was entitled *Rat Choice v. Rational Choice: Some Thoughts on the Nature of Rationality*. Professor Rubin, a law professor, argued that Rat choice theory, the claim that people's goals are self-regarding, has been confounded and amalgamated with rational choice theory, the study of how decision makers act to implement pre-established goals regardless of what those goals may be. He argued that the two theories together describe free market behavior, but that such behavior depends in part on the existence of non-market behavior, including other-regarding behavior.

Professor Kevin McCabe, an economist at George Mason University, spoke on *Neuroeconomics and Rationality*. He discussed the neural basis for decision-making and the nature of rationality given the processes that are actually used by humans to make decisions. Professor McCabe discussed the neural mechanisms used in the assessment of uncertainty, the neural mechanisms involved in bargaining and trust as well as the neuroeconomic research on game-theoretic decisions. He argued that evolutionary models shed a great deal of light on human decision-making processes.

After the first day of talks, there was a symposium dinner at Professor Hill's apartment. Participants and attendees continued their conversations.

The second day of the symposium began with a talk by Gerald Clore, a psychology professor from the University of Virginia. Professor Clore's talk was entitled *Rationality: The View from Emotion Theory*. Professor Clore noted that just as cognition concerns whether things are true and false, emotion is about whether they are good or bad. Thus, emotion may be a necessity for rationality, rather than its antithesis. Professor Clore discussed research showing that emotional feelings provide compelling information about the value of outcomes, actions, and objects. As a result, although it can also lead to excess, emotions provide a coherent basis for judgment and decision.

The next talk was by Geoffrey Miller (NYU Law), and was entitled *The Legal Function of Ritual*. Professor Miller argued that an important function of rituals is to align personal identities with social roles. He conjectured that societies will tend, in general, to make efficient investments in each of these approaches. Societies that expend the most resources on ritual are likely to be small, homogenous, insulated from technological change, or politically undeveloped. After lunch, the next session of the symposium began with a paper by Mary Anne Case (University of Chicago, Law) entitled *Pets or Meat?* Her paper considered whether and when commingling commodification with affection is more problematic than naked commodification. The secretary given flowers instead of a bonus, the housekeeper whose employers say of her, "she's one of the family" - each of these cases is troubling although it's not clear that more naked commodification of personal services would be preferable. What about instances when affection is explicitly what we're buying? Laws against prostitution say money can't (legally) buy some forms of love. But why don't we think of nannies as mistresses and baby sitters as hookers? The final paper of the symposium was given by Janet Landa (York University, Economics) and was entitled *Homo classificus: The Law-and-Bioeconomics of Social Norms as Classification*. Professor Landa analyzed social norms as classification, and provided a bioeconomics theory of the origins of morality/social norms. This law-and-bioeconomics approach to social norms has important implications for understanding racial discrimination, racial profiling, ethnic conflicts, international terrorism, etc.

The final event of the symposium was a roundtable in which Phil Curry (Economics, Simon Fraser University), Claire Hill (Chicago-Kent, Law), Oliver Goodenough (Vermont Law School, Law, and Gruter Institute Fellow), Richard McAdams (University of Illinois at Champaign, Law), Kevin McCabe (George Mason, Economics), Todd Preuss (Neuroscience, Yerkes, Emory University), Richard Warner (Chicago-Kent, Law), and Erin O'Hara (Vanderbilt, Law) discussed their view of the 'symposium question' as well as their current work in the area. The roundtable was followed by a reception attended by both conference participants and attendees.