

*John Gardner*

*1965-2019*

*In Memoriam*







## *Foreword*

John Gardner was born in Glasgow on March 23, 1965. He was educated at Glasgow Academy and New College, Oxford (1983–86), where he took a first in law. Following his election as a Prize Fellow of All Souls College, Oxford (1986–91), John won the Vinerian Scholarship, for the best performance in examinations on the Bachelor of Civil Law degree (1987). John was elected a Fellow at Brasenose College, Oxford (1991–96); a Reader in Legal Philosophy at King’s College, London (1996–2000); and in 2000—aged 35—Professor of Jurisprudence at Oxford and a fellow of University College, Oxford. In 2016, John returned to All Souls College, Oxford as a Senior Research Fellow. In October 2018, John was diagnosed with oesophageal cancer. He died in the Churchill Hospital on July 11, 2019, aged 54. He is survived by his wife, Jennifer (‘Jenny’) Kotilaine Gardner; his three children, Henrik, Annika and Audra; his brother, David; and his mother, Sylvia. A memorial service was held in the Codrington Library of All Souls on 30 November. This book contains the text of the addresses delivered, in their original order. The addresses were interspersed with excerpts from the Goldberg Variations, played by Marius Ostrowski.



# *Goldberg Variations*

Aria

Var. 4

Var. 10 Fughetta

Var. 15 Canone alla Quinta

Var. 21 Canone alla Settima

Var. 18 Canone alla Sesta

Var. 25

Var. 30 Quodlibet

Aria da Capo



## *John Vickers*

Good afternoon everyone. I am John Vickers, Warden of the College and a friend of John and Jenny. I would first like to welcome you all – family, friends, colleagues and former students – to this celebration of John’s life and work.

This afternoon we will hear how it was to be John’s tutorial partner at New College and his Law tutor there, about his times (plural) here at All Souls, including on the BCL course, about John as teacher at Brasenose and at King’s College in London, and about John as a graduate supervisor and college colleague. In conclusion Jenny will tell us, among other things, why the various contributions today are interleaved by Goldberg variations.

Let me add a personal word. John and I were both first here ages ago but in separate halves of the 1980s, so we knew each other but not well. A memorable evening occurred years later, in the spring of 2011 – the 90th birthday dinner here for Tony Honoré – when my wife Maureen and I first met Jenny and John together. After John returned to All Souls three years ago, friendship grew and flourished, especially around the dinner table in Osney, before there was any cloud in the sky regarding John’s health. But when that awful thing happened, and then returned, friendship reached a new level. To see such dignity and courage, amidst the jokes, gossip and memories of times past, is an experience never to be forgotten.

A college like this is made of people but it is also made of stone. The stonemason working by John’s room this summer had got to know him, and made a wonderful suggestion for re-

placement of a worn-out gargoyle – not an everyday problem – a carving to commemorate John’s subject of study. So in memory of John and of Tony Honoré and other lawyers associated with that room, the head of Justitia, the Roman goddess of justice, now graces the college in the most enduring of ways.

John’s full life was cut short but his memory lives on.

## *Lizzie Barmes*

These are despatches from John's very early days in Oxford. He and I met in September 1982 at our New College interviews for a conditional offer to study law and we were undergraduate law students from 1983 to 1986, and tutorial partners for several subjects. Like all of us, I have been thinking back over John's life, with a deep gratitude to have known him, and an equally deep sense of loss and regret about all that will not now happen.

In thinking back I am struck that John's time at New College was a pivot, echoing back to his early family and school life and forward to the man he became, the person and the scholar – so deeply intertwined in him even then.

As I recall John, emerging from being a teenager and into the world, there are three aspects that stand out as strong and enduring.

The first was his very particular quality of kindness. I now perceive that as rooted in close, although unobtrusive, attention to what someone needed and to what he, specifically, could do to help – and the conviction that if he could do something, then he should. There was an unusual concern with detail in thinking through what was needed and in what he then did, but no grandiosity. That could make it easy at the time to miss the significance of John's kindnesses. It was often only much later that their meaning truly hit home.

Two things from the early 1980s at New College perfectly exemplify this. I can honestly say that at our interview John was at least as worried about whether I would get an offer as about

whether he would. We talked about this last March and he still sounded quite harassed at the thought that him seeking to transfer his Modern Languages offer to law might have deprived me of a place. Thank goodness for all of us that he did not decide the solution was to switch back – and in the end we both got in. You may not be surprised that this was a serious outlier in my experience of brilliant young men at Oxford.

The other instance of John's genius for kindness concerned the weird way that Oxford started exams. John realized, somehow, that I was particularly unsettled by the prospect of someone bellowing that our exam had started and then having to dash (in fancy dress) through the corridors of the Examination Schools to find the correct room and desk. So, with no fanfare, he told me he was coming to get me settled before he went to his desk. In hindsight I marvel at how he made this feel totally natural and normal. It remains a treasured act of kindness, which has only grown in significance and meaning with the intervening years.

The second quality I want to highlight was the seriousness of purpose John showed about intellectual endeavour – of course a wide and capacious category for him. It was obvious from early on that something was happening with John's Oxford education that was quite different to what the rest of us were experiencing. That was clearly to do with his exceptional mind, but there was also dawning realization of the extraordinary commitment he brought to seeing thought, ideas and inquiry through.

That became apparent to me from our tutorials and we both blossomed under Niki's guidance. A particular debate that stands out was from tutorials in Moral and Political Philosophy with Jonathan Glover that Niki directed us towards. John was going through a nihilist phase (who knew?) and his arguments would

end up with adamant assertions, not only that there were no moral duties to intervene to save someone, but that he would live by that and never put himself out to save anyone. We endlessly discussed thought experiments that involved John walking blithely by as people drowned in holes. My immediate response was to look at him as if he had lost his marbles, knowing from first-hand experience that he would not be seen for dust if there was someone, anyone, to be rescued ie he would be at the head of the queue – and equally that there was always an ought behind his behaviour. It is crucial to noticing John's deadly intellectual seriousness that these arguments did not descend into fits of giggling, as we all know that discussions with John easily could. There was no letting me off with rolling my eyes. We had to stick with the argumentation to the bitter end and, what is more, to get somewhere. I love and cherish that about John's work to this day. Re-reading his pieces about equality law, there is deep joy in the sheer tightness, rigour, tenacity, courage and openness of the argumentation.

Third, and linked, is the intensity, focus and singlemindedness with which John loved what he loved – and of course who he loved – although with his playful, self-deprecating and irreverent humour never far away. Philosophy aside, at New College there was already the passion about food, cheese toasties especially in our early, hungry weeks of university life, and some lovely, possibly a little bit out there, sartorial choices. John's love of life was so immeasurably enriching to so many. Amongst an awful lot that I miss, that looms large, not least in the way it led to a great deal of mucking about, chatting and laughing about unlikely things, often at the back of the metaphorical class – or tutorial – room that we never quite left behind.



## *Niki Lacey*

Thirty-five years ago, I arrived at New College as Fellow in Law. The impending election of the other law fellow, Harvey McGregor, to the Wardenship of the College was about to effect my meteoric rise to becoming senior law fellow, and Harvey was accordingly keen to engage in an intensive induction period in which he initiated me, a complete novice, into all the secrets of successful law tutoring. Amid the welter of information, one theme, and a number of variations on it, recurred:

Theme: the students are absolutely marvellous.

Variation I: without prejudice to the fact that *all* the students are *absolutely* marvellous, the second year students are particularly strong, with two students getting distinctions in Mods - and exceeding the bounds of legalism by winning the second year moot-ing contest while still only in the first year...

Variation II: without prejudice to the exceptional talents of the *entire* second year, there is one *utterly outstanding* student - who, in a happy expression of the natural order of things, also happened to be - like Harvey - a Scot.

This, of course, was John Gardner.

So I was prepared, before I even met John, for the fact that he would be articulate, confident, motivated, energetic. He was all of these, but something much more, and though I was immediately aware that I warmed to him and enjoyed his company, it took me a while to identify those further qualities which made him much more than simply a brilliant second year student. I had a little time to do so, because as it happened I didn't teach

the second years during that first term, which gave me time to get to know them and to think about how to group them for the tutorials which I would be arranging or teaching from then on. It won't surprise you to know that John's verbal brilliance and speed, which were such a mark of his whole way of being an academic, were already very much evident; but I also sensed in him a capacity to listen; a depth and reflectiveness which is truly rare – perhaps especially in people so gifted with intellectual speed at an early stage of their career. I had also been impressed by unusual qualities of reflectiveness in another, more reserved student, and so originated the tutorial partnership between John and Lizzie about which you have just heard.

I have been fortunate to teach and supervise many extraordinary students in the decades since; but I can honestly say that tutorials with John and Lizzie remain the highlight of my teaching career. The tutorial system can never have been put to better use than it was by John. He wasn't just clever and well prepared; he was positively bursting with ideas and bubbling with intellectual curiosity. It was virtually impossible to find anything in which he wasn't interested. But while he handled the intricacies of technical legal argumentation with something approaching insouciance, it was clear right from the start that his deeper interest was in the underlying principles which motivated and made sense of particular legal arrangements – or which might be deployed to subject those arrangements to criticism. Tutorials simply felt like utterly engaged and fascinating conversations, with John as interested in what his tutorial partner or I had to say as in developing his own ideas. Among my happiest memories of my years at New College are times with John, often with his partner and later first wife Margaret; our tutor/student relationship develop-

ing seamlessly into a friendship which endured even as our work diverged.

Harvey had a brilliant future planned for John as Scotland's latest gift to the bar; but I felt from very early on that his real destiny lay in academic work. This became yet clearer when we moved on to Jurisprudence. John was very generous about the influence which I had on him in those tutorials: but of course he would have excelled in the subject even if he had been taught by a block of wood. He took to philosophical argument like a duck to water, and quickly declared his intention to take whatever optional courses in philosophy were available to him. I sent him and Lizzie to Jonathan Glover, and this proved to be decisive in shaping John's future thinking: Jonathan remembers John, as I do, as 'engaged, unfailingly interesting', and as someone who 'often came up with new ideas that put me on the defensive in our discussions.'

John of course went on to excel in his finals, and in due course to take the Vinerian Scholarship for the strongest performance in the BCL. In the mean time, he had been elected to a fellowship here at All Souls. When Tony Honoré rang me to ask if I felt his early brilliance presaged great things to come, the answer was clear. Of course, what I could not know at that stage was the key importance of John's and Tony's intellectual and personal friendship to the way John's career unfolded. John's gifts were so exceptional that his equally exceptional achievements often seemed to come naturally. But John was not only an outstandingly dutiful person, he also – like many very creative people – held himself up to the most exacting standards, and could on occasion be very hard on himself. The deep confidence which Tony had in John was, I think, very important to him; both dur-

ing his time as a prize fellow, and when he later took up the chair of jurisprudence at such a young age.

John's early fascination with philosophy never left him; but the distinctive voice which he found in his later work not only engages his profound philosophical training but infuses it with something very personal, very warm, and often very concrete. Very, very few legal philosophers have illuminated as many doctrinal fields as John. The intensely personal way in which this work communicates with us of course helps to explain his extraordinary courage and commitment in finishing his book on torts in his final weeks. How lucky we are that he did: and how devastating that it will be his last.

In preparing this tribute, and reflecting on my great good fortune in meeting John all those years ago, I have sought in vain for an anecdote which sums him up. Instead, what strikes me is the fact that he remained so essentially unchanged. The world famous legal philosopher John Gardner was still the witty, eager, sparkling 19 year old John; the open, warm, funny, generous John with his blue eyes and his ready laugh. That is how I shall remember him.

## *Frederick Wilmot-Smith*

Aged 21, months after finishing his undergraduate studies, John Gardner was elected a Prize Fellow of this College, All Souls. Although still a student—he was enrolled on the BCL—his life as an academic had begun.

His election was a transformative event. John had planned to become a barrister; All Souls made him become an academic. And it *made him* as an academic. He was introduced to an extraordinary array of intellectuals—Cohen, Parfit, Honoré, Sen—and, suddenly, he had the time to develop his own thoughts. He once told me that he would wander this library looking for new things to read, desperate to know enough, to have *thought* enough, to warrant his place here. His early work has an electricity owed, I think, to that experience.

John swiftly became a giant in legal philosophy. Giants can sometimes carve clean lines through life's foliage, supremely indifferent to the finer details of the events, and the people, left in their wake. John was not like this. After he died, tributes poured in online, often from people who had scarcely known him. Some striking adjectives—"kind", "generous"—recurred. Here's just one example of his generosity. In August 2018, John was in great pain; this, we later discovered, was caused by the cancer which would take his life. In scarcely a week, he read an entire book manuscript of mine—simply to advise me on the best order of chapters.

John loved to teach; students loved to be taught by him. He never lost that love: he taught his last class while receiving gru-

elling treatment. I wish I could convey just how much *fun* his seminars were, how people would come back just for the ride. John delighted in discussing ideas, and his enthusiasm, that laugh, was highly contagious.

Knowledge was never handed down, like tablets from the mountaintop; he worked best when ideas emerged from his students, and he showed us how to develop them. ‘Here’s what you might say’, he would chime in, after some half-formed thought was proposed. Timothy Endicott said that John “was such a good listener that he sometimes heard something better than we had said.” In that way, he would fashion pearls from the grit of our ideas—and we could *just* about believe that these treasures, too, were ours.



The things we do, John argued, constitute us as humans. He quoted Malcolm Bradbury: “We meet events halfway; they are part of us, and we part of them.” Thus the value of our lives depends in part on our impact on others. A silver lining to the cloud of John’s last illness is that he discovered—with delight and genuine surprise—how much he meant to so many. He saw, I hope, how *deeply* his life had mattered.

I can perhaps give a sense of his importance to those he taught if I say something of the impact he had on me. Although we agreed on many issues, we disagreed on many others, and he never sought to browbeat me, easy as it would have been to do so. Like all good academic parents, John never wanted disciples. So, in one way, my thoughts seem to me very much my own.

Yet such was his influence that I also find it hard to imagine what my mind would have been like had it never come into his orbit.

Derek Parfit, one of John's teachers, coined the term 'the non-identity problem' to describe a set of moral puzzles that arise where our actions affect which people come into existence. It is hard to express quite what our parents, for example, mean to us in part because we cannot imagine ourselves in a world where they never existed. John's influence was of this nature: so formative as to elude description. He helped make me the scholar I am—and did the same, I think, for all his students. They are all independent, all unique; but we owe our intellectual existence partly to him. In that way, a part of him lives on through us and the work we do.



But I was talking about his early years here. He never forgot that this was where his academic life began and, although he moved across the Radcliffe Camera, to Brasenose, and then on to greater and greater heights, he talked often of All Souls. "How is the old place?", he would ask me. When he returned as a Senior Research Fellow, he was delighted to be back; we were all delighted to have him. His humour lightened College meetings; his kilts brightened the dinners that followed.

No institution is perfect, this place included. When John first arrived, the atmosphere was quite different from today. Our first female Fellow was elected only in 1981, a mere five years before John arrived. There was a handful of older, male fellows whose own regrets could emerge in spasms of cruelty and, as a

junior fellow, John spent some evenings managing their demands for port.

But there were—and are—wonderful, timeless things about this College. Some are obvious: it is a centre of learning; there is perhaps no better place to develop as, and to be, a scholar. Some are less obvious—and eased John's last days. While this is, of course, an academic institution, it is also a community. I would like, on John's behalf, to thank the College for its care of him. The Staff, Fellows and, especially, the Warden came together to help him and his family in their time of need. Some things were quotidian: people prepared food for him, they helped him to climb the stairs; when he was, quite suddenly, very cold and tired, our wonderful Porter, Maria, brought him blankets and a pillow.

Just as John did not realise what his daily kindnesses meant to his students, these people may not realise how much all this help meant to him. He was amazed.



The night before his funeral, John Gardner lay in the chapel of All Souls. He wanted to spend his last night in this College, which he loved, which loved him, and where he will be remembered.

## *Ben Brown*

I first met John in 1990 when I chose to do the Moral and Political Philosophy option of my Law degree and the Philosophy tutor at Worcester who was meant to be teaching me suddenly couldn't. And how lucky that was or I'd never have met John.

John was just four years older than me and having one-to-one tutorials with him in a subject we both loved turned out to be one of the great formative experiences of my life.

I would trot off after each tutorial keen as mustard to go and read the books and articles on the reading list – often here in the Codrington, which he introduced me to – and come back the next week to read my essay to him, which felt like just a starting-off point for further thinking. And because the tutorials were one-to-one and we were so close in age, our discussions sometimes felt more like a conversation between contemporaries than a tutorial, though I was, of course, and remain, deeply in awe of him.

After finals, I went off to Birmingham for a year to do a Masters in Playwriting before returning to Oxford to do the BCL, by which time John was at Brasenose. Now our conversations ranged even more widely, and, indeed, as a sad post-grad (practically all of whose friends had left by then), I was probably closer to John than anyone else that year. I certainly saw more of him than anyone else. And I remember being particularly fascinated, as a dramatist, by John's frequent references to the great jurisprudential conflict that was raging at the time between Dworkin and Raz (John being in the latter camp, of course).

After the BCL and Bar Exams, John asked me to take over his teaching at Brasenose in Criminal Law and Moral and Political Philosophy (now renamed Ethics) in 1994-5 and I still feel sorry for the students who got me rather than John that year. I hope they got him the next year.

Since John mostly wasn't there when I was (indeed I stayed in his rooms), I have few memories of him then, but a former colleague of John's, Clare Morgan (who I now teach with on the Masters in Creative Writing that she runs here), remembers "dancing on tables" with John and another tutor one night in the 90s. So it clearly wasn't all work.

One regret I have is that I couldn't take up John's offer to do the admissions interviewing with him that December because they clashed with a friend's wedding in South Africa – especially since, when I arrived in Cape Town, my friend told me the wedding was off.

After that year of teaching, I left Oxford to write plays and screenplays full time in London, but I'd by no means escaped John's influence as my first play, *All Things Considered* (about a moral philosopher who wants to kill himself), was derived almost entirely from my All Souls tutorials with John ... Thankfully, he never asked for a share of the royalties.

Now we moved in different circles, I remember fearing we might lose touch, but John was in fact hugely supportive of my writing and I, of course, followed his rocket-like academic ascent with great interest, so our relationship continued, taking in dinners, holidays and even occasional trips to the theatre.

And I was, of course, thrilled when John got on so well with my wife, Jenny, who also has an outgoing and enthusiastic nature, and it's been a joy more recently to get to know John's Jenny, who

changed his life so much. I'd never seen him happier.

Shortly before John died, Jenny asked us to send our memories of John, and I'd like to finish with the ones I sent to her and that I know she read to him.

The sheer joy and excitement of going to All Souls to have those tutorials with John. John made it such fun, and never had I loved work so much. Almost immediately we became friends.

When I did the BCL, I chose all the philosophical and human rights options John taught, so he was my tutor for 3 out of 4 subjects. John would always say, when reminding me of things we'd already discussed, "yeah? ... so this is familiar", before moving on to the next step.

The night before my Jurisprudence and Political Theory essays deadline, I managed to run out of petrol and had to spend the night in a service station car park in Telford ... But when I rang John in a panic from a phone box the next morning, he just laughed and told me not to worry and that he'd explain everything and simply tell the proctors at Schools that I'd be a couple of hours late.

Singing *Smoke Gets in Your Eyes* round the piano in a beautiful old Tuscan villa that belonged to a friend of John's in 1994. I think we also sang *These Foolish Things*.

Going to dinner in his and Margaret's flat in Crouch End for the first time and then with my wife, Jenny, in the mid-90s and John saying he didn't know if he'd ever have children. I'm so glad he did.

John coming to dinner alone with us in London and telling me on the sofa that he'd fallen in love with you.

Going to John's inaugural lecture, 'The Mark of Responsi-

bility', at the Bodleian when John became Professor of Jurisprudence, following the great HLA Hart and Ronald Dworkin.

Going to your wonderful wedding at Univ with my wife and children.

Walking back from Durdle Door with John, Henrik and my son David on one of your trips to stay with us in Dorset.

John and you bringing the ingredients and making pizzas.

Seeing John for coffee in All Souls followed by Annika singing with her school in the Ashmolean.

Having dinner in that Slovakian restaurant on St Clement's with John, you and Audra.

But most of all, I remember the laughter.

He was simply the most wonderful teacher and friend one could ever wish for.

## *Timothy Macklem*

John's achievements, as a person and as a scholar, are singular and memorable, but they are not what I want to talk about. I want to draw attention to something rather different, but perhaps even more telling. I want to speak of John the person and what was not memorable about him. I want to speak of the grain and flavour of his life, of its evanescence and its non-individuation, of its living character. By their nature these things are, for the most part, not susceptible to record, and their goodness is a function of that fact. If they were memorable, or at least fully memorable, if they survived in ways that could be traced to our individual existences, they would not be what they are, could not do what they do. Yet it seems to me that they lie at the core of the way in which our lives inform the lives of others, and that John was especially good at them. It was part of why he was passionate about teaching, and why his pupils and peers were passionate about him.

John and I met when we were both doing the BCL. I was in my mid-thirties and had already figured out how to fail in several different ways. Not the full 57 varieties; there was life ahead of me yet. John was 21, and brimming with possibility. I reminded him of this the last time we met, just moments before we parted. He was sitting in an armchair, upstairs, in the room that had been newly renovated to house his books, trying to appreciate how nice it all looked, trying to find something like comfort in the armchair, wrapped for warmth, cushioned against pain. None of it was in any way easy. I said to him, you know, you were just 21 when we met, and he said, we've known each other such a

long time. I said, the funny thing about you was that although you were just 21 you knew everything. It was very noticeable to a person like myself who was that much older. It was as if he had lived his life before he had ever lived it. He said I know, I know this about myself, but I don't know where it came from. So, going home and in the days that followed, I thought about it.

I asked a colleague, Irit Samet, whether I was right. John was no longer there to ask, as he always had been. It seems to me possible, I said, to work life out in advance. That's ridiculous, she said, life is infinitely complex. There can't be any question of anticipating its direction. And of course she was right. There is no way to work out the details, and perhaps no reason to want to. Yet the possibility stayed with me, continued to seem real. On reflection, I think one can work life out in advance, and what is more I think that the project of doing so is what is called philosophy. Doing philosophy and living well were continuous in John's life, and that was essential to his wisdom and to his goodness, not to mention his appeal. So how does that continuity extend to us?

To invoke a very familiar image, existence flows through us like a river, one in which our lives make up both the waters and their course, imparting character as they do so. Sometimes the river flows rapidly, sometimes it meanders, sometimes it is clear, sometimes murky. The river itself lies within a glacier, which also has waters and a course, which also flows, and which in turn lies within a landscape that is itself in flux. We transmit existence, from the existences that have brought us into being to those that we help to bring into being, directly and indirectly, and in the act of transmission we unavoidably shape or fail to shape, preserve

or expend. Some of this transmission can be individuated, to persons, moments, places, objects, and ideas, some cannot; some of what can be individuated isn't. Yet the artefacts of existence that individuation picks out are no more significant in the fact of transmission than any other part of the flow, any other element of the narrative. What is more, they themselves are ultimately part of the flux, the dynamism, the narrative, as much as anything else.

It is a commonplace about wickedness that patterns of abuse echo through the generations in spite of ourselves. Yet the same is also true of goodness, and the shapes that it bequeaths. When we are kind, or generous, or solicitous, or indeed any of the small forms of goodness that make up the fabric of everyday life and constitute its richness, we do things that are unremembered, not susceptible to record, and yet that are often, perhaps typically, all the better for that fact.

One thing that nearly everyone in this room has in common is that we knew John Gardner, and the consequence of that fact is that we have all been just that bit John Gardner-ized. Our lives are not what they would have been had we not spent time with him. When we encounter the world, pursue the balance of our lives, we do so as people who have been shaped by him, and who are bound to shape others in and through the shape that he has given us. He inescapably though untraceably dwells in all our lives. That is something that is bound to be unremembered, but that matters no less deeply.

So, by all means read his writings, attend to his memory, notice all the other artefacts that his life gave rise to. I can tell you for a fact that he would be delighted. But also simply go forth, be the persons that he has helped you to be, and in so doing be him,

and be too all the others before him whose legacies we silently embody, in the form that in self-congratulatory moments we call civilization, that form in which what is unmarked, undescribed, unremembered, lives on, no less powerfully for being absorbed without trace. Much of what we are and that makes our lives valuable could not be what it is, could not do the work that it does, if it were of a kind that was susceptible to acknowledgment.

Do not misunderstand me. I am not saying that John himself lives on in us. He doesn't. If you have ever been to Graceland you will have heard people saying, Elvis isn't really dead. Oh yes he is. Our shapes merge with the world irretrievably, so as to become indiscernible, before as well as after our deaths. The story of existence is a story not only of presence and persistence, but also of incalculable, inconsolable loss.

When John and I did the BCL one or two of our fellow students stayed on for a second year. The next summer I met one of them, and I asked her, so, what was it like to do that? I was just curious. It was good, she said. It was good. But there was no John Gardner. I never forgot that sentence, and I never will.

Welcome to the future.

## *Prince Saprαι*

John's humanity shone not just through his own life, but through the lives of his family, his friends, his colleagues, and his students. That's because John wanted people to live the best lives they could and he was happy to help, whether by listening to them, encouraging them, teaching them, inspiring them, making them laugh, cooking for them, or just looking out for them. He had an amazing capacity for love and cared deeply about those around him.

I want to say a few words about how John improved my life, and about how John thought the point of law was to help people.

I saw John in hospital a few days before he died. I took the bus up from London to Oxford. I knew making that journey that this was probably the last time I would see him. I wrote a list of everything I had to thank him for. It was a very long list.

There was the first time we met. I was an undergraduate student at King's College London. It was 1999, I think. I was struggling with something from Raz. *Some things never change*. I went to see *Dr. Gardner* (as he then was), but without an appointment. He did not turn me away, but instead dropped what he was doing, and spent half-an-hour talking the problem through with me, but like an equal.

Then there was the time a year or so later when he had moved to Oxford, and I had moved back home to Birmingham. I emailed *Professor Gardner* (as he had become) from Birmingham Public Library reminding him who I was. I asked whether he would help me with my BCL application. He wrote back saying 'yes' and sent me feedback even before I had left the library.

He said my personal statement was ‘sycophantic’. I did not know what that word meant. Luckily though I was in a library.

Or the time – now a BCL student – when he and Tony Honoré let me lead a class here in All Souls – like they did with countless other students over the years. I remember beforehand sitting in the Starbucks on Cornmarket going over and over my notes – sick with fear. Looking back though, I now know there was little risk: John made sure every student that presented left feeling that they had done the most amazing job.

Or the time – in 2006 – when I gave my first paper at the Jurisprudence Discussion Group here in Oxford. I did not know who – if anyone – would come. I was just a student. But John came.

Or the time – the end of the DPhil in sight – when I wanted to apply for a Law Fellowship at Oxford. Everyone else told me (and they were right!) that I had no chance. I phoned John and his first words were: ‘I don’t care what they think; why do *you* want it?’ I explained my reasons, and then working with those premises, John convinced me – *absolutely convinced me* – that the job was not good enough.

The bus journey went on and my list grew longer and longer. I realised that I couldn’t read all of this out. Why did John matter to me so much? The answer when it came was quite simple really. John gave me the one thing he saw that I needed: *confidence*. He made me believe – *truly* believe – that if I made the effort and still found something hard it was not because of *me*, but rather it was because the problem or ‘puzzle’ (as John liked to call it) *was* hard. How lucky I was to meet John when I was so young. To quote my old friend and classmate Chris De Souza who, like me, followed John from King’s to Oxford, John was ‘an angel in my

life’.

John improved the lives of others, but that’s what he thought law should do too. A few words about his work on responsibility.

TS Eliot said of Shakespeare that the aspect of human nature that he dramatised better than anyone else is ‘the human will to see things as they are not’. Othello consumed by jealousy murders the innocent Desdemona but in his final moments asks that when we ‘these unlucky deeds relate’ speak of him as he is: ‘Of one that loved not wisely but too well’.

Is there, Eliot asks, ‘a more terrible exposure of human weakness’ than Othello’s attempt at ‘*cheering himself up*’ even in the face of his horrific crime? Othello, Eliot says, turns himself ‘into a pathetic figure, by adopting an *aesthetic* rather than a moral attitude’. Shakespeare’s purpose, according to Eliot, was to show that: ‘Humility is the most difficult of all virtues to achieve; nothing dies harder than the desire to think well of oneself’.

Where Shakespeare dramatised the aesthetic attitude, John brought out – better than anyone else I know – the moral; how we *should* respond to our wrongs. John wanted us to confront them. John thought that the reasons we had not to commit those wrongs don’t vanish when we become wrongdoers, but rather beckon us – in the wake of the wrong – to make things better by offering up our justifications or excuses, or apologising, making reparation, begging forgiveness, and so forth. This retrospective attempt to comply with the reasons we previously fell short of is, in John’s words, ‘built into the bricks of rationality’. Rationality does not give up on us even when – like Othello – we do the most terrible things, and perhaps give up on ourselves.

This hopeful attitude was bound up with John’s very being. In every supervision I ever had, my limitations – and I had many

– were never dwelt on. He had no time for that. He extracted the positive in what he saw and worked with it relentlessly. And that has been a source of confidence my whole life. If John believed in me, how could I not?

As in his personal life, John knew that for people to live the best lives that they could, they sometimes need help. For John, the law too could be a way to overcome human weakness and confront our failings. Even when the accusation is murder, the law will give you an opportunity to offer up your justifications or excuses. As John said of the criminal trial:

‘[T]he most fundamental point of all this legal rigmarole, all these pleas and committals and verdicts and even the physical layout of the courtroom with the dock and the stand and the bench ... is to have structured explanatory dialogues in public, in which the object of explanation is ourselves. The point is not a point relative to which the procedure is instrumental; rather the point is *in* the procedure.’

The message of John’s work is that the legal system is not just for the benefit of victims or the public, but it plays an important role in the life of the wrongdoer by making sure that she responds *for her own sake* in the right way to her wrong.

Better to assert your responsibility than to evade it by painting a false picture. Why? John explains:

‘[O]ne’s success in seeing reasons, in using them, and in negotiating conflicts among them is an instrument of better living, but also a constituent of it. When tragedy

strikes, one may still console oneself with the second aspect. One may say: a life blemished, but at least not blemished for having been lived by a blemished person.'

John was a great scholar and a great man. I have felt his loss more than I have any loss in my life; I miss him deeply, and I cannot even begin to imagine what it is like for his family. I feel blessed that my life – quite by accident – got tangled up with his, and that because of his brilliance, humility, generosity, sensitivity, loyalty and care he made my life much richer than it would otherwise have been.

I am so glad I got to see him and thank him in hospital that day. He, of course, would not take a compliment.

There was a time – the DPhil going terribly – when I did almost quit. I got offered a job in politics. I talked to John about it. I said to John in politics I could make more impact on people's lives. John said I was right: I could not make the same impact on people in general in academia. However, he said in academia you can make a different kind of impact: on the lives – one by one – of your students. I now know what he meant.



## *Cécile Fabre*

Jenny asked me to say a few words about what it has been like to have first been taught by John, and to then have become his colleague and his friend, here in Oxford, and at All Souls, over the course of almost a quarter of a century.

Those words, ‘almost a quarter of a century’ scarcely seem believable to me. And yet, in 1995, my doctoral supervisor Jerry Cohen went on sabbatical leave for a term and suggested that John take over. I had not met John properly yet: I knew him only from the class he taught with Tony Honoré. Those of you who knew both John and Jerry might be surprised to hear that I was infinitely more scared of John, before I got to know him, than I ever was of Jerry. The reason is quite simple: John’s formidable intellect was all the more intimidating for the fact that he was not much older than me.

I only have a very vague memory of our supervision meetings. But I have a crystal-clear memory of the lesson which John taught me that term, and which I try to apply in my own work as a supervisor: how to guide students with a light touch, how to suggest to them where they might be wrong without destroying their confidence, how to persuade them that *they* have the resources to work out how to get it right. Much more importantly, he also showed me, by example, how to communicate to students that it is important not just that they should do good work, but that they should do it in the context of a good life – a well lived life.

Over the years that followed, John became a colleague and

a friend. We stayed in touch after I left Oxford. When I came back, almost ten years ago, we taught a class together in legal and political philosophy; we started hanging out socially, as families – at the school gate dropping our respective children off, at my home eating my pancakes, at the home he had by then made with Jenny eating his pizzas, gossiping, talking about his music band and his latest guitar. And of course, we carried on with our ongoing philosophical conversation.



As Niki Lacey reminded us, John’s philosophical interests were unusually wide-ranging. It is impossible to do justice to the breadth and depth of his work here. But I’ll mention two of its strands which to my mind best show the scholar and the person he was.

In the early-ish phase of his career, some of his most influential writings tackle issues which are of great concern to women (not *only* to women, of course, but *particularly* to them): the wrongfulness of rape, and the wrongfulness of discrimination. John was a feminist. He would not have recoiled from the label. On the contrary, he would have embraced it unreservedly as a description of much of his work and of the way he conducted himself in his personal and professional life. You heard Lizzie Barmes’ testimony to that effect. I too had first-hand experience of John’s attitude: I saw his awareness of, and anger at, the many subtle (and not so subtle) ways in which women are still subject to negative gender-stereotyping – myself included. I heard him talk of the insidious effects of ‘implicit bias’ long before the term

became widely used. None of this had to be pointed out or explained to him: he just got it.

John was a deeply humane person. This is obvious in his book *From Personal Life to Private Law*, which came out at around the time of his cancer diagnosis. There he argues that the aim of private law is to protect us from wrongdoings at the hands of those to whom we are vulnerable, or to whom we stand in a special relationship. In so doing - in giving us justice - the law also protects what is valuable about those relationships. And so, to understand private law, John argues, we need to understand anger, blame, and the desire for revenge, but we also need to understand the importance of remorse, the power of forgiveness, and the central place, in a good life, of friendship and love in all their richness and complexity.

The book is relentlessly analytical: full of acute conceptual distinctions, strewn with incisive arguments, scalpel-sharp in its diagnosis of the law. In those respects, it echoes Bach's music: so precise, so rigorous, so exacting. At the same time, like Bach's music, it is also very moving. To those of us who knew John well, that book *is* John, so strong is his authorial voice. It is the voice of a man who always saw the humorous side of life, even in his bleakest moments, even as he faced death; a man who was slow to condemn and quick to praise; aware of human foibles, not least his own, but never cruel; intellectually demanding, yet always generous. Above all, it is the voice of a man who, however important his work was to him, was first and foremost a family man.



The Warden mentioned Justitia. Justitia is blind, as befits the goddess of justice. In this sculpture, she is not carrying a sword or scales. But she has something else - something which no other Justitia anywhere in the world has: she has a guitar - *John's guitar* -, lovingly nested around her ear. John, a just and musical man, will never know that she is there - and that is a cause of immense sadness. Yet the thought of her, perched right on top of him, with a guitar, would have filled him with delight. In the midst of our sorrow, that, perhaps, is a source of comfort.

## *Jennifer Kotilaine*

Just under 6 months ago, I was sitting here in the Codrington Library for Tony Honoré's memorial service. It was a hugely moving occasion as it celebrated the life of a great man whose work touched so many different fields in such profound and long lasting ways. Just under 6 months ago, I was sitting here next to my beloved John who was by now terminally ill. I knew then with absolute certainty that the next time I would be sitting in the Codrington would be for my own husband's memorial. And so it has come to pass.

Those of you who attended Tony's memorial may remember that the huge doors to the Codrington began to shake and rumble and finally opened of their own accord, letting in from the Great Quad the sweet air of early June. This happened twice, in fact, and the Warden himself stood up to close the doors. Although I am sure that others may have thought the doors opened because of the breeziness of the day, I felt very much that it was actually Tony himself, or at least his spirit, who was trying to come in to see what all the fuss was about. Afterward, when I mentioned this to John he told me that, if he could manage it, he would try to pop back to see his funeral and also, if possible, his memorial. He said that, unlike dear Tony, he wouldn't try to break down any doors. Instead he would, in the case of the Codrington, be observing surreptitiously, just out of sight from somewhere up in the stacks of this great place.

I like very much to think that John is up in the stacks. He would be so very pleased to have heard all the kind tributes from

his old colleagues as they traced his academic journey from his undergraduate days all the way to his final days as a Senior Research Fellow here at All Souls. So thank you, speakers, for doing John justice and for allowing us to remember him so vividly. I know that John would also have appreciated the excerpts of the Goldberg Variations played so perfectly by Marius. The last concert John and I went to was to hear the Goldbergs, just weeks before he was diagnosed. Thank you, Marius, for reminding me of that day in that other life that I used to have, the one I naively thought would just go on forever.

Of course I also have to thank All Souls, both as an institution as well as the people who are in and of it. John's election as a Prize Fellow changed the very course of his life, and what a life it turned out to be. There is a certain beautiful symmetry that John ended his professional career in the same place he began it. From the very moment he was diagnosed the people of All Souls held him close and looked after him in so many different yet interlocking ways. I will never forget all the individual kindnesses that were extended to John in Trinity Term 2019, including but not limited to an endless supply of ice when John's mouth got so sore from the chemo; making the college wheelchair available to John when it was getting harder for him to walk any distance; and John's personal favourite: as much strawberries and cream from the kitchen as he wanted. Anytime.

The fact that he finished his book and taught his seminar of course has everything to do with John's fortitude and single mindedness. But it also has a lot to do with All Souls itself which held him in its strong embrace and allowed him to retain a sense of himself as a scholar until the very end. This preservation of a sense of self might arguably be referred to as 'dignity'; but I

advance this thesis only gingerly, knowing all too well that I am in the company of so many better and more philosophical minds than my own. I can only say that it is surely beyond any argument that John's belief that he still had a contribution to make is what allowed him to carry on as long as he did. So I thank the college for its role in allowing John to maintain his dignity and giving him reasons to be cheerful as his career and indeed his life came to an all too early end.

Finally I must also of course thank each and every one of you for coming to John's memorial today. In his last weeks John was worried that he would be forgotten. I told him that he was daft—of course he wasn't going to be forgotten! I hope very much that John has indeed made it to the stacks to see for himself how many people have come to pay tribute to his memory and to see that, once again, I have been proved right! So thank you.

John asked me to make sure that people understood how very much he loved his family. He said in his last days that he was satisfied with his work: his teaching, his writing, his mentoring, his close friendships of many years. He was really only sorry to leave his family behind because at heart it turns out that John was fundamentally a family man. And this is how he wanted to be remembered most of all. Before he and I embarked on a proper relationship, John promised me that he would love Henrik and Annika as if they were his own. And this he did for the rest of his days. He never made any distinction in his mind between his step children and Audra. He always, always said that he was a father of three. And he found such deep meaning in being at the very centre of our little tribe.

To his mother Sylvia John was devoted and dutiful; to his brother David he was amused and amusing; to his in laws he

was warm and welcoming; to his nieces and nephews he was interested and interesting.

To all three of his children (Henrik, Annika, and Audra): he supported, admired, teased, monitored, assisted, corrected, entertained, embarrassed, provoked, advised, encouraged, consoled, reassured, cuddled, loved and in fact adored them with all his huge and generous heart.

To me, well, John was quite simply everything. He always said that we were soul mates, a perfect match, each other's other half. He said that we were just made for each other, and I agree. But it is what we made together in our teamwork day to day that I miss the most. You see, John and I were warp and weft. And the fabric of the life we wove together was strong and durable and warm; and also intricate, sparkling, sumptuous. Although John's death has caused this fabric to unravel, by some miracle I've managed to save a piece of it, a glorious remnant which I shall treasure and carry with me always. Indeed, to paraphrase the poet Michel Faber:

All I can do, in what remains of my brief time,  
is mention, to whoever cares to listen,  
that a man once existed, who was kind  
and beautiful and brave, and I will not forget  
how the world was altered, beyond recognition,  
when we met.

After I speak, Marius will play the *Aria da capo*. The magic of the Goldberg Variations, like the magic of John's career, is that it ends up where it started. So do take a moment to think of that as we hear the theme again. Or you may want to join me in thinking of the very mystery of existence, the circularity

of life and death. And please, after this service ends and you go on to remember John in your various ways—as teacher, as scholar, as friend, as neighbour, as colleague, as mentor—please also remember him simply as a man. A man who is missed by his family, indeed longed for, more than mere words could ever begin to say.