

# Auctoritas, non Veritas

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post-modern chronicles from medieval oxford

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## GAPS, CONFLICTS AND AMBIGUITIES

*Titles.doc* is the file I created when I first sat down to think about how I was going to structure the newsletters. It is a file consisting of headings and subheadings. At that time I decided that the first issue of the newsletter would deal with predominantly administrative stuff (settling-down procedures, and the like) in order to draw the framework for more substantive reflections to be made in subsequent numbers. According to *Titles.doc*, this second issue should have started directly with hard-core jurisprudential questions. And it would have been in line with the suggestions made by some of you that I provide more information about my intellectual life in Oxford.

The problem is that I absolutely agree with the point, but I am also absolutely sure that I can't pursue this method.

True, academics *are* the whole purpose of my stay in Oxford. Thus, a rational account of my experiences as a student should give a distinctive emphasis to the academic *content*, besides the academic *form* and the social *framework*. And, believe me, I would love to be able to give such an account.

But what would have to be accounted for does not exist. Oxford is not a rational place. One would indeed expect to identify there an academic life *parallel* to the social life, a substance *parallel* to the procedures, as one does everywhere else. One would expect to be able to write about one's intellectual development without reference to room-keys, bowties or laundry-machines. Unfortunately, that is not possible when one writes about Oxford. And even less so, when one writes about Oxford *from* Oxford. I told you: *I* am also increasingly bewitched by Oxford's chaotic spirit. It is contagious. The chaos consists in aspiring to rationality by irrational means; it consists in a self-contradiction, a "performative contradiction" if you want to be exact. It further consists in a mixture of

planes of intelligibility precisely through the insistence to hold them separate.

So, in the end, both the object and the subject of the description escape rational patterns. Can you expect the resulting description to be rational itself?

Nevertheless I will try. I shall make an effort to disentangle substance from form whenever possible. In a sense, I want to honour Oxford's claim to rationality and, at the same time, the claim to rationality I myself make when writing these chronicles. I would add that I also want to honour your expectations, if expectations did not make so little sense where, as in Oxford and this newsletter, time is suspended. And something similar happens to "description". It can hardly remain, in this scenario, a value-neutral account of a delimited sphere of reality (if it ever can be such). No wonder that finally the very fate of rationality is in danger. That is my whole point.



Reflection and reality at Oxford

A claim to rationality that is *aware* that it cannot be completely fulfilled is a self-mocking claim. It is "proudly self-mocking", in the wonderful expression by David Kennedy in his "description" of duncan. A claim that is aware of its own limitations is, after all, an honest claim. (And a brave

one, Unger might add). When a claim, like a belief, becomes aware of its own nature – when it becomes aware that it is but a *claim*, or a *belief*, and not a certainty or truth – it turns feeble and strong at the same time<sup>1</sup>. It gets feeble out of its acknowledgement that it is pervaded with gaps, conflicts and ambiguities: the enemies of reason. But it gets strong by the act of overtly facing these limitations and looking *beyond* them – not *away from* them.

<sup>1</sup> Existentialists: forgive if my paraphrasing of Sartre is not totally accurate.

Has Oxford already reached the phase of facing its limitations? Or does the chaos rather arise from a stubborn denial of the change of a reality which a rusty paradigm can no longer capture? This question is not for me to answer. But, then again, I cannot offer a neutral description – in the first place because there is no such thing. And, in the second place, because in Oxford nothing *really* happens along rigid boundaries. It does not happen the way it *claims* to happen. Or, this is my perception. If this perception is true, then there is a difference between the (blind) chaos at Oxford, and the (proudly self-mocking) chaos I personally defend. The latter chaos, I claim, is a necessary ingredient of these chronicles. That's why the chronicles are post-modern, not medieval.

But remember that it, too, is only a claim.

### **An Afternoon at the Laundry**

The expression “gaps, conflicts and ambiguities” is, as far as I can tell, original from my dear duncan. It labels a phenomenon well-known to post-classical legal and social theory<sup>2</sup>. One could call it with different names (such as rational underdetermination) but this expression is useful in that it lists the jointly exhaustive and mutually exclusive variants of meaning-based indeterminacy. Whenever the law (or another normative system) does not offer one (right) answer, then there either is a gap, a conflict or an ambiguity.

No theory that I know of establishes any sequence of appearance as between gaps, conflicts and ambiguities. They are possibilities, not stages along a temporal, or logical, line. However, in Oxford my senses betrayed this theory, at least in one respect. I experienced an almost linear progression between, first of all, gaps, then, ambiguities, and, finally, conflicts. Whether this sequence is of general application to Oxford students I doubt. In any case, it is the sequence that best accounts for my gradual immersion into the academic life of a student of analytical legal philosophy.

I will never forget the afternoon in which I slipped from the stage of “gaps” into the stage of “ambiguities”. Up to that moment – an afternoon in early October – everything had been a big gap. I will not bore you with details on the virtual absence of information during the first two weeks regarding matters such as telephone, meals, courses, internet, libraries, or door-codes to enter and exit the college. (Not that the information that thereafter slowly was leaked out was ever sufficient; in Oxford, one has to “push manually” to access resources, and information is probably the

scarcest amongst them). But from the side of the Faculty of Law there was also silence, although it was the Faculty that had asked me to come to Oxford well before the start of the Term – a time at which college life was asleep (federalism!)<sup>3</sup>.

So, besides the two-week feeling of being the only student at Oxford (and the only person, had it not been for American tourists and Mark), I had also reasonable doubts as to what I was a student *of*, starting with the indeterminacy of my student status (MSt v PRS). The promised “package” containing “essential information” which supposedly was awaiting me on arrival turned out to be a standard 1.5-page letter wishing me the best and reminding me of the upcoming meeting with the Director of Research Students (and Jenny!). I did not know what to expect in the following months, though I had meanwhile inferred from the *Graduate Studies Prospectus* that what corresponded to my level in the “research pyramid” was the attendance of the “course of legal research method” plus the writing of a 30,000-word thesis for the degree. But how, with whom, when, where? A huge gap that only slowly would be filled.

### **The Supervisor**

The first landmark in the filling of the big gap – but not yet the epic afternoon – was a letter laying in my pidge<sup>4</sup> a couple of days after my arrival. It contained no more and no less than the attribution of my doctoral supervisor. (Yes, you have read well: I came to Oxford without knowing who would supervise my thesis and, needless to say, without having any influence upon the decision).

Some of you might not know him: John Gardner. He is 38 and was appointed two years ago the Professor of Jurisprudence of Oxford, which makes him the “official” successor of Ronald Dworkin and, farther, of HLA Hart. There is a wide-spread rumour within the academic world that he is “very young but brilliant”. This is roughly what I knew about him at that time, in addition to having read his sharp defences of (hard) legal positivism against everything else – “everything else”, by the way, being internal enemies, outdated grandfathers, misguided supporters, well-intentioned recyclers, (in a way) natural lawyers, and Dworkin.

It's funny, I thought. I write a research project specifically attacking the value-neutral self-portrait of legal “positivism”, and I get the heir of the “positivist” tradition as my supervisor. Well, you *must* acknowledge it is funny. And the more so, since Gardner and I had had a couple of email-exchanges during my admission process (I was at HLS then) precisely because he, as convenor of the legal philosophy group, informed me that the



Thoughtful silence in an analytical library

<sup>2</sup> This last sentence is in US-format. Europeans, please substitute for the following Euro-compatible version: “It labels a phenomenon irrelevant to early modern legal theory, secondary to Kelsenian legal theory, natural to post-Kelsenian legal theory, and essential to post-Oxfordian legal theory (if your conscience does not allow you to think in these terms, replace for ‘Brusselian legal theory’).”

<sup>3</sup> I see now that my compliance with Law Faculty obligations has cost me over 100 pounds extra college accommodation (editor's note, 15.1.04).

<sup>4</sup> “Pidge” stands for “pigeon hole” which, in turn, stands for the individual mailbox-shelves inside the college lodge. A Derridian chain of supplements (heresy, heresy!).

original research project I had submitted (about post-modernity) had to be changed into something “squarely analytical” for my application to keep chances of success. (I later learned that this is the department’s policy whenever, as it often happens, research projects are remarkably weaker than the rest of the application. It is an extremely kind and, I think, sensible policy, and I owe it to my admission to Oxford). In a word, the application had to be made compatible with the fact of his colleagues and himself being “straightforwardly analytical legal philosophers”. Gardner, whom I am very grateful for his sincerity, was nice enough as to suggest, on reply, that an analytical critique of a post-modern thinker could be an alternative for me, though he immediately added that the problem might lie in finding a post-modern thinker worth being written about. I got the message and spent three days in Langdell drilling through the Razian anthology that helpful library assistants had rescued for me overnight from Harvard Depository’s “dust of history” (duncan’s sic). Thus, it was funny, I repeat, to be assigned John Gardner. And a huge challenge, too. And, needless to say, an immense honour. As well as an enormous question-mark.

The gap got thereby significantly closed. Still, some crucial co-ordinates remained to be unveiled. What would I be asked to do with John Gardner? Would I have courses to follow? Was he the only authority I would depend on? But the time was not yet ripe.

### Identity Crisis

This was the scenario right before that memorable, glorious early October afternoon, which had to close so many gaps, and launch so many ambiguities.

I was still digesting the news of my being Gardner’s student, firmly believed there was no other law student besides me, kept on waiting for some positive act on the part of the college (I had only got the room-keys, and not even by the porter), and began to experience the first symptoms of an intellectual and personal identity crisis. My daily life up to that point had consisted in focused search-actions of logistic essentials (soymilk, heater, whole cow milk, lamps, Nutella, bed sheets, map of Oxford...), and pub-meetings with the other few students around.

Such meetings, coupled with the encounter of my gradually arriving neighbours, reinforced the sensation that nobody else dealt with law in at least 250 miles from Carfax. Oxford pub-meetings follow a rationalisable, predictable, scheme. “Hi, there”. “Hi, so... what’s your subject?”. “I am associated to the Nuclear Research Centre of the Faculty of Physics, yeah<sup>5</sup>”. “Cool! MPhil?”. “DPhil, second year”. “I see, and what are you working at?”. “Well, I am looking at neutrinos and their oscillations...

<sup>5</sup> I am inventing; but it sounds similar.

[detailed explanation follows]”. Then someone in the surrounding area interrupts, visibly shaken. “I am actually also looking at neutrinos, but, you know, not those that oscillate in 39 degrees, but those cute ones, the ones with the tail, which... [a yet more detailed explanation follows]”. Within seconds, a group is formed which passionately discusses the different facets of neutrinos and their oscillations (this concretely happened several times in my presence), in competition with the congregation developed around those who, some meters and Guinesses away, dispute why Medieval English is “in” again but not as cool as Classical Archaeology.



A pub – by daylight

So I had learned a lot (?) about Greek philology, Genetics, and beer, but was completely helpless regarding all other matters relative to my stay at Oxford.

### The Call from Destiny

One afternoon in early October my fate was to change. Instead of knocking at my door, destiny knocked at my pidge. And, as it usually happens when destiny knocks at your door or your pidge, I was not prepared to receive it. In fact, I was heavily loaded with a heterogeneous conglomerate consisting of my huge laundry-bag, another bag with the detergent and the fabric conditioner, plus my own handbag and umbrella. You may guess which safari-trip I was up to on that afternoon. Indeed, after two weeks of cleaning my stuff in the washing basin, I took courage and set out to investigate the mysterious location of the college laundry – whose existence I only intuited through some loose remarks made by Mark. I was equipped for harsh conditions, prepared for the worst, but resolved to penetrate the college’s catacombs to operate the promised laundry-machine and tumble dryer. Under these circumstances I met destiny, when entering the lodge and glancing at my usually empty pidge<sup>6</sup>.

Destiny came in the form of a violet plastic DIN-A 4 folder, at least 2 cm thick. Full with sheets and booklets. My name (of course wrong) written on a white label attached to the bottom right corner of the violet surface. One could guess it through the transparent cover: it was a Welcome Pack! From the college, to me! The key to all answers I had dreamt of! Containing sheets and sheets of information in different colours! The definitive closure of my gaps?

<sup>6</sup> Another fact that makes my meeting with destiny especially proverbial is that one can never know whether all one finds in the pidge corresponds to all that was put in it. This is because pidges have no locking (they have no cover to begin with) and the room where they are (which also has no door) can be easily reached by anyone from the street through the lodge (which is open during day-time). We are therefore advised to check the pidge as often as possible, but is this a guaranty – now as in the 13<sup>th</sup> century?

As it usually happens when destiny unexpectedly knocks at your pidge at the moment you were going to the laundry, you do not feel strong enough to face your fate all at once. Not that washing your clothes is more important than destiny; precisely *because* destiny is more important you feel the urge to see your clothes tumbling amongst the soap-bubbles before granting yourself permission to caress the first green sheet with your fingertips. It is an experience everybody has had.

Thus, the violet folder got placed on the top of the heterogeneous conglomerate, and the three of us (the folder, the conglomerate, and me) began our walk, first through the main college quadrangle, then across the Radcliff quadrangle, in direction to Staircase XI – the entry gate to the Promised Laundry. It must be added that it was getting dark, and that only the opaque resonance of our footsteps on the stone pavement of the Radcliff quadrangle distorted the otherwise monotonous moaning of the wind between the trees whose shadows were shaken against the moon and against the moon's reflection on the snoring window-panes of the 800-year-old college chapel. Clic, clac, clic, clac. With the corresponding echo glig, glag, glig, glag. Another instance of the quijotesque endeavour that Jeanne Tai (one of my pillars of strength at HLS) attributes to me: again, a fight against evil wind(mill)s. To round off the picture, now and then one could see some shadow-figures – with white hair and long gowns floating in the wind – who rushed across a corner of the courtyard to finally disappear in one of the staircases or between them, absorbed in the wall. I, of course, was not dressed in sub-fusc since I was not attending any of the secret Masonic meetings that arguably take place in the college during the night. So we, even plastically, were intruders in the scene.

For these white-haired men in gown, and/or their shadows (it is often hard to decide), form part of the normal landscape of dawn- and evening-life in the college quadrangles.



Quijotesque quadrangle, college chapel

Staircase XI (a magic number?) consists of a stone arch that leads to an immediate bifurcation: a narrow upward stairs on the right, and a sequence of further arches in the form of a corridor on the left. The corridor was dark, and some wooden doors placed at its both sides did announce the name of their normal occupant (whether current or historic I would not venture to tell); others simply left the question open to trust (and, probably, memory). None of them gave signs of concealing a laundry, and moreover I had been told that the laundry was "on the left, downstairs, at the end of the tunnel". So I followed the instructions. What I subsequently saw was captured some days later with my tiny low-resolution, mobile phone camera – so that I

can offer you a close equivalent to a *National Geographic* documentary. The findings of the expedition were, succinctly, the following.

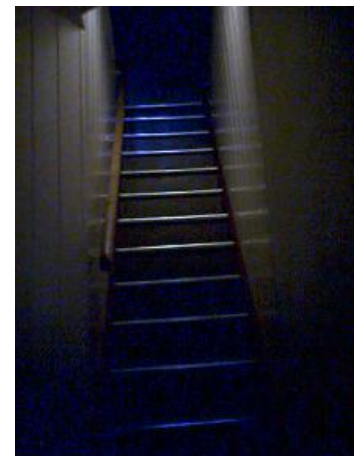
### The Descent

The laundry is more hidden than the ossuary in *The Name of the Rose*, and that makes me suspect (and my mother, too) that what they call the laundry is actually a façade that conceals something much more relevant and unspeakable. But, officially, I went to the college laundry. By turning left (which is always a good idea) from the left corridor in Staircase XI, one finds a terribly steep and terribly narrow (and terribly old, and terribly dirty) downward stairs. Since there is no light in the "underground" of the college (at least the London Underground has better signalling), it was difficult to make a picture, but I did it:



*At the right you see the last rays of daylight that accompany one before being submerged in the veins of the college; at the centre-left you see the downward stairs.*

After one reaches the bottom of the stairs...



*Similar feeling to Alice's falling through the rabbit-hole... this is what you have before you: it's a no-return!*

...the next stop is passing by a useless window; one that has a wall in front of itself and only receives some light through the open space at the top of this wall. What is the window for? I could not help posing myself this question, sure as I was that the answer – as all other answers – was only minutes away, and eager as I was to read it in the violet folder I was carrying. Several likely responses came to my mind. The window could stem from ancient times (the college's foundation), in which the bottom-line of all buildings was surely lower than ours. They could have simply kept the window as one further sign of Oxford's stubbornness in maintaining tradition just for the sake of tradition. Another explanation is more ecological. There is a magnificent spider's web with manifold layers; it must at least be as old as the college. Probably nature forms part of tradition, and even the spiders

have a right to a habitat. The third possibility is it being an example of post-modern architecture (that's apparently how post-modernity started, by the way).

Though I never found out the truth (you guessed it, the violet folder did not mention spider-webs), here you have the window, and judge for yourselves:



This window is in a narrow tunnel (I am reluctant to call it "corridor"), which basically requires one to pass several doors, always to the left. This is what we three did. Somehow I felt uneasy about walking in the left direction while expecting to find out about my Oxford academic future at the destination. But

ideological superstitions aside, this is a shot of the initiation tunnel:

*The picture does not show it clearly, but the floor is exclusively made out of irregular big stones, in the best style of a medieval castle.*



The further I walked, the closer I got not only to the laundry but also to the revelation of the keys to my uncertainties. It is too vulgar now to draw an analogy between detergent and the cleaning of doubts; yet, with every step, both these layers of



intelligibility overlapped and merged in my unconsciousness as did the layers of the spider-web at the window.

After some more doors and corners, one arrives to the antechamber of the laundry, decorated with what seems like a huge medieval hamster cage standing there, almost as uselessly as the spider-window (see left).

If one now turns right, and hits the correct key combination on a panel, one reaches the main hall – the laundry. In this case, too, I had been given the (numeric) key by Mark. And I expected to get all the other keys (the ones for the cleaning of doubts) upon crossing the threshold of the laundry.

The laundry, *qua* laundry, is actually not bad; rather big and with plenty of (very old) washing and dryer machines, and even an ironing board with two irons:



*This is what you see when you get in. If you move to the opposite corner, you stare at the machines...*

*(The red door is the entry.)*



Washing at Oxford is expensive: 1 pound washing, 1 pound drying. In the US, students have cards which they swift in the machine and with which they can pay their washing (who cares about carrying coins nowadays?). But in Oxford there is a jump backwards in time, so that one needs coins and those have to be carefully slid into the sophisticated (and rusty) apparatus you can see on the top of each machine. First put the coin, then strongly push the "drawer", and then, if you are lucky, the machine will have swallowed your money and wash. If you are unlucky, you will hit the wrong button and have to pay twice, or – which is even worse – have to do the washing twice because you select the wrong program due to the lack of operation instructions (as happened, again you guessed it, to yours truly). If, by contrast, you are not only lucky but *very* lucky, you might know that the second machine from the left (you see it in the picture) sometimes works without money or, better, that it washes twice for just one coin. As you can equally guess, I realized that only after three hours of struggling with the machines at the cost of four pounds.

But the struggle had a sense, had a horizon. It was not just the struggle to get the machines washing. There were incentives accompanying this struggle. For one thing, at my college you get a bonus each time you do a washing. That's the good thing about going to big colleges; they have more money and you can enjoy a better comfort. Each time you do a washing (paying or not), there either

is a sock, a bra or a pant as “bonus”. Not bad. Since people sometimes leave their presents there if they have a surplus of the kind, you can get a rough idea (see picture on this page).

For another thing, there was, as you know, even more at stake when I tried to squeeze my coin through the rusty slot. The end of washing was merely a means from the point of view of the superior goal of the big illumination. And, by the same token (got it, got it?), the complexity of the washing and drying task was merely a premonition of the complexity of the other task – the task of unveiling and processing the information contained in the folder.

### The Folder

I know it's hard, but trust me, it was true. A whole DIN-A 4 folder, lying there, waiting for me. My trembling hands opened it carefully – it felt incredible, after over one week of desperately asking in the desert basic questions such as how to use the telephone, who is my college advisor, or how long do the terms last. I suddenly had it in front of me: all the answers in one single bunch of photocopies?

I took out the first sheet. A cover letter, addressed to ME, with an index to the pack's contents and some advices about medical appointments and other administrative issues on the following week.

Second sheet – another letter. “Dear Maria”. Signed by the “Dean of Graduates”. And who is this? Remember that in Oxford there are more statuses than people; so that could have been anybody, including the Chaplain. Even after reading in the enclosed booklet the pages “who is who at Oxford”, I was unable to tell if this man was important, and in which respect, in the college or the faculty or the university. So I contented myself with the recognition that he was dean, which is surely more than a student, and that therefore he was my superior and I ought to pay attention to his letter.

The letter, as usual, contained the default clause “please feel free to contact me about anything concerned with the organization of your course...”. It further reminded that “the college has a superb Chaplain (Bill Sykes), and a nurse” (the undersigned, thus, was not the Chaplain). I might soon need them, I thought.

The next paragraph was about the “college advisor”. The “college advisor” is an interesting, typically Oxfordian, figure. John Gardner was appointed as my thesis supervisor by the Law Faculty. But college advisors are, as the very name discloses, entirely a college matter. Though both the supervisor and the college advisor are individually assigned to each student, college advisors play a different role than supervisors. Such role was explained in detail in the third sheet – the so-called “College Advisor Scheme”.

I will quote the relevant fragments to give you an idea of what the college advisor is (adding emphasis where appropriate). These are the lines that I read that afternoon deep down in the laundry, whilst my washing machine kept noisily turning and some hungry spiders observed me from a corner of the ceiling:

*“The College advisor is available as a **source of help and advice**, which may concern academic matters in a broad sense (the advisor's field of study will usually be similar but not necessarily identical to that of the student) but may also be required in connection with **financial or personal problems**, in which case the advisor provides an additional avenue of approach to the College administration. It is also felt that **closer personal ties between individual fellows and graduate students give both sides opportunities for exchange of ideas on more general matters.**”*



For each wash there is a “bonus” item of clothing

Closer personal ties sounds great – depending on how close they are, as my mother immediately pointed out upon my reading her this abstract on the mobile phone from the laundry (yes, it had signal!). I was very excited about there being someone out there, on the surface, waiting for me to go and expose my doubts. At that very moment, whilst I read this, my situation was odd enough. Try to put yourself in my place. I was watching with impotence the turning of the independent tumble dryer, not having been able to guess its instructions (they, too, were not displayed) and thus ignoring in how many sizes it would shrink my only black trousers, and furthermore being faced with the imminent financial problem of needing a second round of drying and not having any 1 pound coin left (just 2 x 50 pence). It was really the right moment to let me know whom I can contact for such transcendental personal and financial matters – and for others, too.

Here is another fragment of the “College Advisor Scheme”, under the heading “Responsibilities of Graduate College Advisors”:

*“...to be available for consultation on academic or other **matters which the student feels could not be taken to a supervisor**”.*

Well, fantastic! That made my day! Finally a person of confidence, I thought; someone I can ask anything that is not sufficiently important as to bother Prof. Gardner with. I cannot tell Gardner I have my period! I cannot ask for his opinion regarding how to clean a slightly-torn shirt-collar! And if I feel homesick, or miss anyone? Gardner is probably too important for that – it's fine, I felt, to have someone closer to me. That is probably the key to all questions.

Happy with the news, hopeful about the personal matters that cannot be taken to the supervisor, and curious about the “close personal

ties”, I returned to the second sheet – the letter from the Dean – to read on and know the name of my College Advisor. And it read: “Your College advisor is Professor John Finnis.”

I only hope there are no secret cameras in the laundry, for otherwise my hysteria-attack will have been registered and I risk reclusion in a sanatorium. It took me quite a while to recover from the shock.

Try and picture me, in my role as college advisee, sharing with Finnis my anxieties, allergies and fears that the young Gardner has no time for: honestly, do you think John Finnis – one of the world’s top legal philosophers for the past decades – will counsel me as to where to buy tomatoes?!? It’s simply too much. I understand that the rules about supervisors and college advisors are of a general nature – but as applied to this case, the result is tragicomic at best. That was the rationale of my hysteria-attack – a mixture of laugh, incredulity, absurdity and helplessness. And the intuition that the gaps that were to be closed would only open up gapless ambiguities...

My mother, however, saw things much more practically. She insisted that I get immediately in touch with this Finnis to be able to pay for my second drying round. These are the type of problems they actually care for at Oxford – she said. When people really have a problem, they are kicked out – as happened to a Scottish friend of my family at Cambridge, UK. That’s why they care about trivial matters. If ever you have a serious problem, my mother continued, you will probably be made to ask the scout (the lady that every morning cleans my paper bin).

And I am afraid I will end up having to do so, not only because the scout seems fairly nice (though I have so far only seen her from my bed, half asleep), but especially because Finnis and I have never met during the first term. (One of the “Responsibilities of College Advisors” was to “meet the student within two weeks of the start of the Term”, especially in the case of “international students” such as to help them “settling in” and “adapting to the new environment”. But Finnis has missed the deadline – when I write this it is already week 14. That said, I am pretty sure, as I trust you are, that Finnis never knew about the deadline’s existence).

Voilà my #1 New Year’s resolution<sup>7</sup>.

<sup>7</sup> Just in case you were wondering what else I found in the Welcome Pack, there was also another bad photocopied, but this time 3-D, map of the Oxford centre, and some 3-4 lists of appointments, all from different entities (common room, law faculty, university) which, of course, overlapped, amongst which there was the High-table dinner for which I have to be invited at least once a year, precisely with my college-couple,

## Intellectual Diet / Expiation

On the part of Gardner, I got a list of compulsory New (Academic) Year’s resolutions to be executed in the peremptory period of eight weeks (one term). We did not loose time in our first meeting, and neither did we do so in any of the five that followed (approx. 90 minutes each).

Gardner is a young and enthusiastic man. He is friendly and open as a person; as an academic, his brilliance indeed stands out from the moment he has finished his first sentence. His method is sharp, his approaches original, his lectures sparkling, his rhetoric clear, his opinions rotund, his conclusions compelling, his critiques insightful, his conversation vibrant, his organisation capacity admirable (and much needed over there!). In other words: I find important similarities to the best professors I have had so far. Though, of course, his field of interest is squarely circumscribed to straightforward analytical legal philosophy. And that distinguishes him heavily from some precious academic encounters of my recent past.

It was straightforwardly raining on the morning of our first interview. Gardner’s rooms are in my college, so I could walk. They are also close to the Faculty of Philosophy. I had had time to get my coffee and even a fried egg, so my energies were loaded. He opened the door, invited me in, and we talked relaxedly about the weather. I think we had immediately a smooth communication; rhetorically we are pretty much in the same “wavelength”, and I also rather quickly made him laugh (whether or not that is good is another question; description is value-free!).

We soon went on to discuss the most urgent matters of academic-organisational nature. (To put it analytically: a second, forward-looking, phase of conversation about the structure of my course had followed the first, present-looking, phase of conversation about the weather). There were two main ways in which to proceed: either I immediately started writing, or I started writing in January and spent the first term doing tutorials about general topics in analytical jurisprudence. What would be the advantage of the

i.e. my college advisor. The last “big” news was an appointment in the following week with no more and no less than the Domestic Bursar (luckily, a collective appointment of all graduates with her), with the added emotion that she would, amongst other things, disclose the way to use the telephones (!!!). My father calmly remarked that it was still better they told us by then than on the day of graduation, and I definitely agree. One has to try and see everything from its positive side.



College freshers in sub-fusc: do they all have a college advisor?



Analytical fortress

second option? He put it elegantly. It would both allow *me* to narrow down my research interests, and allow *him* to make sure my mind has got sufficiently sharp such as to be able to produce serious work.

I, of course, preferred the second option. But could I also sense the same preference on his side? I commented that, as he might have guessed, I did not feel close enough to any particular analytical subject yet, and the more so since, as he knew, I had spent my last two years studying a different type of legal philosophy. He seemed convinced that a series of analytical tutorials would do me good. They would consist of my writing an essay on a topic of my choice out of his list, and then reading it out before him, sentence after sentence. He would interrupt me, correct me, or ask me questions whenever necessary and I would be forced to answer in real time. In short, I would have an undergraduate experience once every two weeks (which makes four experiences in total). That sounded perfect to me – I had always felt the need to be instructed in writing method, notably in English.

He seemed, in my perception, particularly excited about my liking the idea. Since I prefer relations to be as transparent as possible, I made a try at spelling out the possible substance of his joy. I remarked that, in addition to my needing some time to get into the analytical authors, I supposed he wanted to make me undergo an intellectual brainwash to expel from my mind the pollution that the bad post-moderns had introduced. He burst out in a laughter, which nevertheless felt affirmative. And – I continued in the same half-joking tone – besides this, even within the analytical framework, I would need an extra effort to turn to the positivist tradition considering that he, a positivist, was my supervisor.

When his laughter receded, he admitted not to be sure to be a “positivist” himself and recommended to abstract the various “isms” from the question of *method*, which was here at stake. In that respect, the tutorials would be an invaluable tool. He had to secure my proficiency in the analytical method of drawing very, very fine distinctions. Had they (he and his colleagues) not been sure I had this potential ability, they would not have admitted me. But sometimes abilities take some time until they get *in use* and keep running, and this is what I would have to learn with him. He would teach me to draw “again sharp distinctions” (sic).

It is worth stressing the implicit assimilation he made between post-modern legal theory and vague forms of expression. He made a similar association in a collateral remark during one of our later tutorials, when he attributed to some people “who

call themselves ‘critical legal studies’” an “anxiety” to “reconcile the formal virtues of the law with the pursuit of sensitive social policies” (in other words, a connection between ideological agenda and law’s form). At times, you see, I feel I do not understand the world anymore. Or that I never understood it. Did I get it so wrong last year? Did I dream, week after week, month after month, that if one thing was amongst the central tenets of duncan’s legal thought it was the absence of a conceptual (necessitarian, for Unger) link between law’s substance and law’s form? Did “Form and Substance” not say it clearly enough (...in *duncan’s* reading, we should add ;-)? In order to denounce as *manipulation* what others do, must one not of necessity deny the necessary relationship that the manipulator, *qua* manipulator, deploys as a façade?

I did not react to that the day of our first meeting. Everything went very quick and, moreover, it did not feel like Gardner was expecting a comment on my part. At that point already, I found it funny not to be asked something more about the post-modern, or critical, substance he allegedly had to exorcise out of me through the tutorial-based intellectual diet (*rectius*: expiation). But I must have thought that he tried to maintain the conversation focused; which is, by the way, a very healthy thing. However, the feeling of funniness acquired consistency during the third, backward-looking, phase of our conversation.

He was interested in my academic background. I talked about ESADE, my inspiring analytical professor there, my decision to go into academics, my LLM in Brussels... “I regard the Brussels Academy as our main competitors in Europe”, he sentenced. Just to make sure there was no confusion, I added timidly that I supposed he knew they did not do analytical theory but things that can be called – I got close to him, looked right and left, and uttered in a whispering voice – “post-modern”. Half-smiling, with a regard of complicity, he confirmed that he knew, but that that was fine with him: “you don’t want your competitors to do the same thing as you”.

I went on with “then I was in the US...” without giving express details before sensing he wanted to have them (as I had done regarding the previous institutions). But Gardner did not send signals. He never asked what I had worked at, or with whom, and did not seem at all interested in knowing it. We basically did a jump in time, leaping over my Harvard period directly to my arrival in Oxford. I, on my part, did not feel like provoking him. Under such circumstances, I believe, a cross-current account of my Harvard studies and professors would have had the effect of a provocation. And



H/CLS, a dark past that never was...?



...as contingent as the snow-woman at Harvard Yard?

there is simply no need to provoke. After all, my role is that of a discreet investigator, not that of a fanatic hooligan. Therefore, I confined myself to throwing in the air isolated, peripheral references to my having learned there very much, to my having done something so different from analytical theory, to my having done torts but from a completely different angle than they do here, etc... However, he did not seize any of these occasions, and left them floating in the air until they vanished.

When it had become pretty patent that his omissions, his gaps, were full of meaning, I remember myself adding on one occasion "but if you ask me what I did and with whom [looking into his eyes as duncan would do, and with a confident smile] I will be *extremely proud* to tell you about it". Childish mimetics, duncan is right. Mimetics do normally not last long.

Maybe this is what Gardner thought when he confidently smiled back, implying that was the end of the matter. He who smiles last, smiles best.

These silences of his, these polite avoidances of the subject, I consider kind – do not misunderstand me. He surely neither wanted to offend me nor to lie, and he managed to keep the matter ambiguous enough such as to never make me feel uncomfortable. Ambiguities in the place of gaps.

Ambiguities, of course, on my part, too. For, although I told him "I guess you want me to..." and "I suppose you will ask me to...", and he nodded, note that I never said that I *intended* to, and even less that I *would*, do so. Yet, what did I really think? What *do* I think? Can ambiguities betray, *must* neutrality be partisan?

By way of closure of our third, backward-looking, phase of conversation, he also talked about his immediate background. As a junior faculty member, he had witnessed how the jurisprudence department had three big minds (Finnis, Raz, Ronny<sup>8</sup>) but it lacked adequate organisational support to flourish to its full capabilities. When he was appointed professor in 2001, he took reorganisation as one of his priorities, *inter alia* launching a department website as the main locus of co-ordination and publicity<sup>9</sup>. After explaining this to me, he gave me valuable information on how to find my way (close my

<sup>8</sup> "Ronny" stands for Ronald Dworkin.

<sup>9</sup> His website (<http://www.law.ox.ac.uk/jurisprudence>) was an immediate success, within Oxford and in the rest of the world. Meanwhile Gardner is almost a professional web designer, and was even finishing the new Law Faculty website (<http://www.law.ox.ac.uk>) the morning we first talked – it was launched that same afternoon under a climate of wide-spread enthusiasm. For more design and interesting curiosities, check his homepage (<http://users.ox.ac.uk/~lawf0081/>).

gaps!) in the really thorough website, and advised me to audit a couple of jurisprudence courses such as the one in political theory taught by himself and Tony Honoré (yes, the one who wrote with Hart "Causation in the law" and who is mentioned in the foreword to "The Concept of Law").

Gardner further encouraged me to participate in the weekly Jurisprudence Discussion Group and, in general, to progressively get in touch with the vast Oxford jurisprudence community. But not too fast, he could have added. Detoxifications take their time, he probably thought. For, upon a new reference to my tutorial-based regeneration, he finished by venturing "let's see whether in January we can already organize you an interview with Raz".

### *The Anxiety*

If the laundry-experience had turned my gaps into ambiguities, my interactions with Gardner – starting from that first conversation all through the four tutorials and one High-

Table dinner – have progressively transformed my initial ambiguities into a more or less overt conflict.

Whenever there is a conflict, there needs to be a bit of truth on each side. Since the relevant conflict here is internal to myself, the "sides" are my allegiance to post-modern/critical legal theory, on the one hand, and to analytical legal theory, on the other hand.

It is not that I feel too uncomfortable during analytical immersions. After all, it connects back to my Spanish jurisprudential education. And the method secures mental hygiene. I must say that my tutorials went pretty well, sometimes giving rise to deep-going substantive discussions and quite often arousing positive comments on the part of Gardner. I got very helpful methodological hints and received valuable substantive

corrections. So, during my tutorial sessions on (i) the rule of law, (ii) validity, (iii) normativity and (iv) "the nature of the enterprise" a learned a lot.

But there is a caveat. Though I did learn a lot, I am not completely sure that what I learned was always worth learning. It is hard for me to get excited about the relationship between legal formalism and legal positivism (though he suggested this to become my thesis subject!). Whatever I could say about the rule of law has been more exhaustively written by Ricardo G. Manrique, and understanding what Kelsen *really* said gets only interesting for me when it bears on the Finnisian question of the limits of value-free description of the law. But, besides that, I



Visual ambiguities on High Street, 10 December



Matriculation Ceremony: "...now you become something you were not before..."

experience the debate between “inclusive” (soft) and “exclusive” (hard) legal positivists as the closest analogue to the activity of squeezing stones (which, I absolutely grant, must be difficult and energy-consuming). Unfortunately (for me), it is one of the hottest research-foci across the Oxford jurisprudence department.

Gardner himself is largely beyond the inclusive/exclusive discussion and principally engaged (as I see him) in reconceptualising existing debates, positions and imaginable points of view into an intelligible scheme that dispels the halo of impenetrability which often surrounds certain questions which, for that reason, have remained classified as “unsolvable” for years. He does so in the fields of legal theory *stricto sensu*, political philosophy, tort and criminal law theory, and whichever he accidentally touches upon. Gardner, in this sense, is a machine of mental hygiene. Eventually that is why his courses are so popular, even amongst students and researchers whose area of interest only tangentially touches upon the scope of the course’s subject.

There is, for instance, my friend Rodrigo, who comes from Argentina and is doing a DPhil in legal theory (with Prof. Stavropoulos). He had worked with important Argentinian legal philosophers, I think also with Coleman at Yale, and he is now shaping his thesis project as a defence of inclusive legal positivism (we are friends, notwithstanding this). Nothing, absolutely nothing to do with core political philosophy. Rodrigo has, however, not missed any of the Friday afternoon Gardner/Honoré lectures in political philosophy at All Souls College. It soon became a routine for us to comment with one another, when leaving All Souls, on the brilliance of Gardner’s performance that day. Rodrigo found every day new words to express his admiration, and I could only assent to them. Gardner’s ability to transmit enthusiasm is indeed remarkable. He himself told once that for him lectures were intense experiences which he enjoyed to the utmost... and afterwards could often not remember!

So, if there is a caveat, it concerns the substance to which this attractive method is applied. I cannot help asking myself: could you do post-modern theory with the analytical method? For that would be, in the abstract, my ideal endeavour. But I say “in the abstract” because I feel this mixture cannot even be conceived of, let alone implemented. I perceive the same kind of non-commensurability as there is between “positivism” and *pensée en réseau* (à la Brussels). And yet – should a method not be detachable from whichever substance? Why, then, do the people “who call themselves analytical legal philosophers” systematically avoid broadening their fields of interest beyond the internal positivist debates (soft/hard, etc.) and, at most, their contrast to natural law theory? Is this created by an “anxiety”, one that is meta-theoretical and so far unspoken

(at least, that I know of)? And is this anxiety rationalisable, does it have grounds, reasons? If so, I wonder on which intellectual scheme such reasons are dependent. If not, we would have to find alternative, almost causal, explanations, such as the inertia of tradition or – as Ost believes – the fear of the unknown.

Maybe I have gone too far and the answer is at an earlier point of the argument. Maybe there *are* methods which are not detachable from a certain substance without more. Or, better, maybe in certain realms one cannot speak of “methods” *stricto sensu* (i.e., as opposed to substantive claims). My constant claim is that at Oxford processes and substances get intertwined, at all levels. So this could be one of such levels – the intertwining of the analytical method with the typically analytical subjects of discussion (“typicality” is here a statistical notion, short of having a more rational criterion). It would further confirm that Oxford does not live up to its own claim to rationality – for I do not imagine Gardner supporting the thesis that the analytical “method”



All Souls, the college without students, at dusk

cannot be detached from a particular substance. He would probably say that the reason why at Oxford “only” certain subjects are treated is that that is all there is within jurisprudence. To go beyond would be to do jurisprudence *and something else*, or straightforwardly to do *something else*. As always, talk about the boundaries of disciplines appears as crucial to the characterisation of the

disciplines themselves. – And was this not what we were talking about?

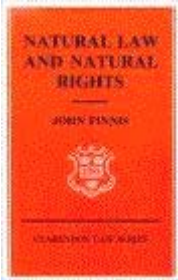
### ***Finnis On Two Wheels***

So you see the conflict. At the moment when ambiguities can no longer be self-sustained one enters the phase of conflict. But I see a faint hope of resolution. It may or may not turn out to be one. It may make things worse. Still, it is worth trying. I feel particularly encouraged to do so against the background of my initiatic laundry-experience. There was something to it, something more than I could grasp at that time, just as ossuaries tend to conceal more than is apparent (at least, when Sean Connery explores them). That’s the reason why I have spent so many lines in narrating the laundry-event.

I must make a confession: I seriously like John Finnis’ thought. I love his writings. I liked him well before coming to Oxford, and I continue liking him, every time more. Now that I have audited his lectures I can confirm why his texts hit the point so often and so much. It is not only the way he writes – it is the way he speaks, he looks at people, he moves. He is thoughtful and discreet, confident and respectful.

He has been repeating the same basic theses for over 20 years to an audience of predominantly deaf ears (respectable exceptions aside). The

situation continues to this day. I have not yet come across any research student that currently works under his supervision (there surely are, but apparently not many). Nor does there seem to be great interest amongst the master's class in hearing his viewpoints (in the seminar he teaches with Endicott he essentially limits himself to adopting the negative role of a critical interlocutor of legal positivism). Natural law is outdated, we hear. I do



not think so; but, even if it was (*etiamsi daremus*), Finnis is not only about natural law. Besides his nuclear natural law theses Finnis offers a vast palette in the realm (inter alia) of method. Actually, I should not say "besides" but "in connection with". For that is the essential revelation: description and prescription go hand in hand,

as do – in an important sense – method and substance. This he wrote 24 years ago in chapter 1 of "*Natural Law and Natural Rights*", and he has kept referring to this text in many of his works to the present day. It can be said with more detail or greater exemplification, but it cannot be said better.

For Finnis, "legal positivism's" self-image as a value-neutral account is flawed. On some occasions he considers the account coherent though not fruitful. Yet on other occasions he makes a stronger claim. The account is incoherent, it is self-contradictory. I am not proficient enough in Finnis so as to tell which of the two positions he favours.

But that is not important now. What is important is that – gasp! shock! horror! – chapter 1 of "*Natural Law and Natural Rights*" is a beautiful summary of what I learned in Brussels. And my subsequent studies with duncan and Janet (and many others) could be seen – if looked at from the right perspective – as a further development and partial concretisation of that same thing.

I guess I am now being heretical even in the eyes of the heretics. But let us not jump over conclusions. I am pointing out an analogy; it is not an identity claim. Finnis' orthodoxy and post-modern heresy can actually be construed as exact mirror-images. That is, as the exact *opposites*. This possibility is all too apparent. But often enough, in theory and in life, extremes touch. For something to be your mirror-image it must have a lot in common with you. And so do, I feel, all the theories that, from different angles and with different intensities, break with what can be called (but not everybody calls) linear, binary, arborescent, Cartesian logic, or even positivist epistemology.

Finnis is worth investigating. He must share the analytical method, if there is such. But nevertheless he does not spend his time maddening inclusivists against exclusivists. True, his critique of the claim to value-neutrality is built upon Reason. That is why I have placed the heretics at the opposite extreme. But it is worth investigating more deeply the relationship between Finnis' Reason-based critique of descriptive purity and a critique that comes from the bracketing of Reason: is one *alternative* to the other? Are they *complementary*? Or are they, on

the contrary, *mutually exclusive*? If the latter, then which one is better? And "better" according to what?

It is probably grotesque to fetishise Finnis as a bridge between analytics and the "others". As I said above, there seems no synthesis possible, and I would not want to be read as accusing Finnis of attempting a self-defeating enterprise. Nevertheless, from my present viewpoint, within my delirious anxiety between two world-views, I experience Finnis as a piece of living dialectics. This impression was not only triggered by the experience at the laundry. It was subsequently reinforced.

The first time I saw Finnis had entered our classroom in a brown-green suit, holding in his hand a yellow bike-helmet and carrying an original "briefcase-bag" of green cloth with its handle fixed by two padlocks. He left the helmet and the bag on a chair next to me, so I had plenty of time to scrutinise these objects. When the lecture finished he rode away down Longwall Street between the cars, his yellow helmet glistening in the mist.

The next day I saw him, too. But not in class. It therefore took me some seconds to recognize him; I first recognized his green bag, then his yellow helmet, and then him. I was queuing at the bank's Bureau de Change. Somebody in a brown-green suit was standing immediately in front of me, waiting too. All of a sudden my eyes were caught by the charismatic objects which my memory had so well retained. I looked up and saw his light grey, slightly curled, hair.

I am very mythomaniac. Those who know this facet of mine will understand. I thus experienced an irresistible, thoroughly overpowering urge to record that moment, to transmit beyond those square meters the emotion of (secretly!) queuing not only behind Finnis, but behind Finnis, his green bag and his yellow helmet (My mental age, as you know, is half my physical one, at most). Fortunately the little mobile-phone camera was with me. It is totally silent. In addition, not too many people were around. So I shot – I made three attempts, and this is the one that best hit:



One of the other shots depicts, besides a close-up of the green bag, the astonished regard of a bank-employee standing behind the till left of the Bureau de Change.

He rejoined his bike upon leaving the bank and rode away in slow but secure pace. Since then I have often seen him on two wheels. In my mind, in my abstract imagination, I also picture him on these same two wheels, wheels that he keeps moving and that keep him moving; and I ask myself if those two necessary wheels might not seem on face incommensurable only because of their non-reducibility to one another...

### **Auctoritas, Non Veritas?**

And here I am, about to start the second term (Hilary), and approx. one week away from presenting to my supervisor a provisional thesis subject. The time of the intellectual diet / expiation is now over. I should now be able to think about a theme to write about. One that is squarely within analytical legal philosophy. I continue having doubts as to whether "analytical" stands for a method, for a series of claims about the nature of law, or for both. But I do know I must not trespass the walls of the analytical empire. How, then, can I be sure I don't miss the target? My supervisor, of course, will make sure this does not happen.



Maris at the analytical threshold...

I still have a couple of days to get proficient in Razian "authority of law", and to try to fully reason from Oxfordian premises. I need to learn to close my eyes to the gaps, conflicts and ambiguities at the periphery of law, and focus my attention on the rationality that – who could doubt it – is at the core. Away from Harvard's (motto) "veritas", and whilst this year's "Book Trouble" is presided by Goya's "*El sueño de la razón produce monstruos*", and the Brussels Academy deepens its commitment to interdisciplinarity, I will keep repeating to myself "Auctoritas, Non Veritas" to see whether one day I fully believe it. Maybe I will, though at the moment I do not.

\* \* \*

The problem, in the end, is that I also do not fully believe the opposite slogan, "Veritas, Non Auctoritas". Things would be really easier for me if I only managed to take less seriously the advice by my dear François Ost, that « *un seul sourire, un seul regard porte infiniment plus loin que toutes les distinctions du Sein et du Sollen...* ».

## **The Gargoyles' Corner**

**"El sueño de la razón**



**produce monstruos"**

(Francisco de Goya)

Pride (New College)

The image shows one of the gargoyles or grotesques decorating the various college buildings of Oxford University, which was founded by the medieval Monks to educate the clergy. The name Grotesque stems from the typically exaggerated forms and expressions of these carvings.

See

<<http://www.thecrypt.net/gargoyle/gargrp.htm>>  
for more information on Oxford's famous Gargoyles

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Photos are all mine.

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