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Summer 2005

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Recommended Citation

Summers, Robert S., "Oxford: A Haven for Sabbaticals and Other Visits" (2005). *Cornell Law Faculty Publications*. Paper 1210.
<http://scholarship.law.cornell.edu/facpub/1210>

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Oxford—A Haven For Sabbaticals and Other Visits



Robert S. Summers

Over the years, many Cornell Law School professors have spent at least one sabbatical or other academic leave in Oxford, England. Among those on the current faculty who have done so are Gregory Alexander, John Barceló, Roger Cramton, George Hay, Faust Rossi, Stewart Schwab, and myself.

The University of Oxford had its beginnings in the twelfth century, and has long been one of the great institutions of higher learning in the world. The University is characterized by a “college system.” That is, each student is admitted to a college, of which there are over thirty. In a college, the student has accommodations (for a year or more), takes meals, and receives tutorials. The student may attend some lectures in the college but more often does so elsewhere in the University. Usually, each faculty member is also a senior member of a college (called a Fellow), has rooms there, and enjoys dining privileges. A visiting academic may have a college affiliation, too. Alexander was at Worcester, Barceló at St. John’s, Cramton at Brasenose, Hay at Balliol, Rossi at Wadham, Schwab at Wolfson, and I at various colleges over the years.¹ Beginning with the academic year 1964-65, I spent several sabbaticals, other leaves, and many summer months in Oxford. My wife and I even kept a small flat in Oxford from the mid 1980s until the summer of 2004.

Many factors account for the lure of Oxford, either as a haven for American academics wishing to take leave abroad, or as simply a remarkable place to visit, whether an academic lawyer, a practicing lawyer on vacation, or indeed anyone in search of a splendid venue.² Of course, the people in Oxford speak English, an important fact for visiting Americans, who are not notable for their foreign language skills. For Americans in the law, another obvious factor lies in the English ancestry of the American legal system. Also, Oxford

has, for a long while, had a distinguished law faculty and a flourishing law curriculum.

American academic visitors generally find they are most welcome at Oxford, especially if they have the good fortune to arrange an affiliation with a college. For visitors on sabbatical or other leave, there is an excellent law library at St. Cross Road. The University Library has vast holdings. Most colleges have good libraries, as well.

It is possible for visiting academics to arrange to sit in on seminars or to attend lectures. The many 2004-05 curricular offerings in law include the following: Comparative Law (S. Vogenauer); Comparative Human Rights (J.C. McCrudden); Roman Law (J. Getzler); Law and the State (J. Gardner and A.M. Honoré); Topics in Jurisprudence and Political Theory (T. Endicott and J. Finnis); Theories of Law and Society (D. Galligan); The Rule of Law (B. McFarlane); Topics in Theoretical Ethics (J. Raz); The Effects of Contracts: Essays in Comparison (S.J. Whittaker); Child Protection and Adoption (J. Eckelaar); History of the Law of Tort (M. Macnair); Causation, Remoteness, and the Scope of Obligation (J. Stapelton); Criminal Justice and the Penal System (A.J. Ashworth); and System and Land Law (J. Hackney).

A visitor may be co-opted into doing “a bit of teaching.” For example, I once co-taught a seminar on the principles of statutory interpretation for an entire term at The Queen’s College with the late Geoffrey Marshall. Over the years, I have also been invited to give about a dozen “special” lectures or seminars in various colleges and other Oxford venues. These have usually been followed by thoughtful discussion of high value for one’s work in progress. Oxford, as the saying goes, “operates orally,” and stimulating discussion can wear a visitor down!

So-called “high table” dining in college is a special privilege. Fellows and guests sit around a dining table,

The front quad of The Queen’s College, Oxford

slightly elevated, at the far end of a dining hall. There they converse during dinner, and continue on during dessert in a “senior common room.” Topics are not necessarily light, and are often interesting or amusing. One can recall conversations about such subjects as: “Was Isaiah Berlin or Maurice Bowra the greater conversationalist?” “Why do so many chemists ridicule historical knowledge?” “Present company excepted, who is the cleverest academic in this University today?” “What are the three most important differences between Oxford and Cambridge?”

There are many lovely walks in and around Oxford. Christ Church Meadow is only a short distance from the center of the city, as are Addison’s Walk, the Botanical Gardens, and the Iffley tow path along the River Isis (downstream called the Thames). The University Parks are the site of the university cricket pavilion, grass tennis courts, a duck pond, the Cherwell River, wide swaths of green, and many majestic trees. Farther afield are the Bagley Wood, Boars Hill and Port Meadow, all splendid settings for longer rambles.

Oxford bookstores are dangerous from a budgetary viewpoint. The two best are Blackwell’s and the Oxford University Press bookshop. The law section and the philosophy section in Blackwell’s (both downstairs) may be the best in the Western world. Across the street is the Sheldonian Theater. Designed by Sir Christopher Wren in the seventeenth century, the mural on the ceiling optimistically depicts the triumph of religion, art, and science over envy, hate, and malice. The Sheldonian is the site of many university ceremonial events, and also functions as a concert hall. The acoustics are excellent but the seats are hard as any pew. Oxford also has several fine museums.

Not far from Oxford are many places of interest, including Blenheim Palace, where Churchill was born. Bibury and Burford are picturesque villages in the Cotswolds, and a bit farther is Stratford on Avon, where it is possible to see Shakespeare’s plays at the Memorial Theater. About two and a half hours away by car in the other direction is Stonehenge. Almost the same distance eastward by car is Oxford’s tradi-

tional competitor, the similarly beautiful University of Cambridge, where, among other things, Rutherford and Thomson were the first to split the atom, Watson and Crick the first to identify DNA, and Isaac Newton not the first to watch an apple hit the ground. It is also where much else occurred. For example, three great philosophers there, G.E. Moore, Bertrand Russell, and Ludwig Wittgenstein, changed the direction of modern philosophy. The Cambridge University Press also happens to be the oldest university press in the world.³

In what follows, I will provide historical background and summary accounts of four sabbaticals and other leaves I spent in Oxford with my family. These are based on my own recollections, on the extensive diaries I kept on those occasions, and on recollections of my wife, Dorothy. My main purpose here is to portray some of the potential of a sojourn in Oxford, as exemplified by my own experiences while there as an

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academic visitor. Thus what follows is also necessarily autobiographical.

On graduation from the University of Oregon in 1955, I was awarded a Fulbright scholarship to England. The Fulbright Program situated us for the academic year at the University of Southampton on the southern coast. In March of 1956, my wife, Dorothy, and I traveled for the first time to Oxford to see the University and to meet there with other Fulbright students with whom we had become acquainted enroute from New York to England in August 1955 on the liner *Queen Elizabeth*. But it was actually in the late spring of 1956, and in Southampton, that I first met an Oxford professor.

H.L.A. Hart came to Southampton to give a lecture in the law faculty. The dean of the law faculty knew that I was scheduled to enter Harvard Law School in the fall, and also knew that Hart was to be a visiting professor there at the same time. The dean kindly invited me to join him and Professor Hart for tea, and Hart sug-



H.L.A. Hart, then Oxford Professor of Jurisprudence

gested that I look him up at Harvard in the fall. A recent biographer of Hart states that “this was the beginning of a relationship that lasted the rest of Herbert’s life. Herbert seems almost to have regarded Summers as a surrogate intellectual son: he organized sabbaticals for him in Oxford and showered both him and his wife with kindness. They regarded him with gratitude, affection, and something approaching reverence.”⁴

My first sabbatical was in 1964-5 while I was still a member of the University of Oregon law faculty. Professor Hart kindly supported my application for a research grant, and he also arranged for us to rent a self-contained flat in the home of the widow of the Oxford philosopher, Professor J.L. Austin. While sitting at what had been Austin’s desk, I drew on his writings on “excluders” to develop ideas for what became an article on good faith, the essence of which was later adopted in the Restatement of Contracts. (I learned later that it was this article that led to my visiting semester in Ithaca in the fall of 1968.)

Mrs. Austin, our landlady, and a member of the Oxford philosophy faculty, invited Dorothy and me to various social events in her home. Other guests included philosophers such as Hart, Gilbert Ryle, and R.M. Hare. During the year, I attended lectures or seminars in Oxford offered by all of these as well as by other philosophers such as Isaiah Berlin and John Lucas. In the law faculty, I attended lectures or seminars by A.M. Honoré, Patrick Atiyah, A.W. B. Simpson, Rupert Cross, and Francis Reynolds. During the year it was also my good fortune to meet Hart regularly for discussion of papers I had, by prearrangement, prepared and given him in advance. Hart was at the peak of his powers. He was eager to discuss and argue about what one had written. Hart always combined

criticism with encouragement. These sessions were extremely stimulating and also exhausting.

For much of the year, I enjoyed special dining privileges at The Queen’s College, with Dr. Geoffrey Marshall as my host. (Geoffrey was later to become Provost of Queens). The year also afforded opportunities to do much reading and writing. The good faith article eventually appeared as “Good Faith in General Contract Law and the Sales Provisions of the Uniform Commercial Code,” 54 *Virginia Law Review* 195 (1968). I also worked on a book for undergraduate courses in which law is conceived as a liberal arts

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subject. The book, *Law, Its Nature, Functions and Limits*, was published in 1965 by Prentice Hall, Inc. (This book, now in its third edition and now co-authored with Robert Hillman and several other Cornell colleagues, has been taught regularly in Cornell’s College of Arts and Sciences for about forty years.) I also worked on, and discussed with Oxford colleagues, two other articles, one called “Professor Fuller on Morality and Law,” 18 *Journal of Legal Education* 1 (1965),⁵ and the other “The New Analytical Jurists,” 41 *New York University Law Review* 861 (1966). The year was productive in other more important ways, too. Our only daughter, Elizabeth Anne, was born in Oxford that year (and she later graduated from Cornell Law School in 1991).⁶

The second sabbatical year in Oxford was in 1974 through 1975, after we had moved from Oregon to Cornell. Much of the year we lived on Boars Hill south of Oxford in a house called “Pinsgrove” owned by Corpus Christi College. During that year I was affiliated with The Queen’s College and with Balliol College.

I attended seminars or lectures by G. Marshall, John Plamenatz, Michael Dummett, Peter Strawson,

and A.J.P. Kenny. I also read widely about, and worked on, “the limits of law.” I put the finishing touches on “Evaluating and Improving Legal Processes—A Plea for Process Values,” 60 *Cornell Law Review* 1 (1974). I contributed an essay to a German journal: “The Present State of Legal Theory in the United States,” 6 *Rechtstheorie* 65 (1975), and wrote a monograph called *Collective Bargaining and Public Benefit Conferment* which had been commissioned by the Cornell University ILR Monograph Series and was published in 1976. I also prepared an essay for a Festschrift, later published as: “Naïve Instrumentalism and the Law,” in *Law, Morality, and Society – Essays in Honor of H.L.A. Hart* (Oxford U. Press, Oxford, 1977). In various Oxford colleges that year I was privileged to have many profitable academic discussions with H.L.A. Hart, A.M. Honoré, Geoffrey Marshall, Tony Kenny, John Finnis, Joseph Raz, John Lucas, Peter Hacker, Patrick Atiyah, and others.

During the 1974–1975 sabbatical, I gave a number of lectures on topics in law and legal theory. In addition to presentations at Oxford venues, I lectured at Cambridge University, King’s College, and University College in the University of London, the University of Warwick, the Universities of Bristol, Nottingham, and Exeter, and the Universities of Glasgow and Edinburgh (where Neil MacCormick was my host). Oxford’s proximity to the Continent led to lectures at the Universities of Oslo, Vienna, Salzburg, and Aarhus.

The foregoing lectures were on “process values,” “the technique element in law,” “the limits of law,” “law and morals,” and other topics. At midyear, I gave a talk at the annual Younger Society Dinner for undergraduates and Fellows in the field of law at Balliol College, Oxford.

Our third full year of sabbatical leave in Oxford was in 1981-1982. During most of that year, we lived in a flat on Holywell Street owned by Merton College with which I was affiliated as a Visiting Research Fellow. This flat was only a block from Blackwell’s Bookstore, and our own personal library inevitably grew.

During one term of that year, I co-taught a course in legal theory at the nearby University of Warwick

with Professor William Twining. I also organized and hosted, at Merton College and The Queen’s College, a small two-day conference on legal theory. Besides Oxford participants, we were joined by Robert Alexy, Aulis Aarnio, and Alek Peczenick from the Continent, and by Neil MacCormick of Edinburgh. Professor Hart also attended.

In addition to reading in law and philosophy, I worked on two books during the 1981-82 year in Oxford: one on American legal theory published as *Instrumentalism and American Legal Theory* (Cornell U. Press, 1982), and one on a leading American legal theorist, eventually published as *Lon L. Fuller* (Stanford U. Press, 1984). I discussed aspects of my work on these books (and much else) with various Oxford scholars including Hart, Honoré, Marshall, Lucas, Kenny, Hacker, Francis Reynolds, John Bell, and Simon Whittaker. In this period, I also put finishing touches on an article I co-authored with a Cornell law student of mine, Leigh B. Kelley ’80: “Economists’ Reasons for Common Law Decisions—A Preliminary Inquiry,” 1 *Oxford Journal of Legal Studies* 213 (1981).

During this sabbatical I again gave a number of lectures at various Oxford venues, and elsewhere in England and Scotland. I was also invited to lecture on the Continent at Lund, Stockholm, Helsinki, Turku, Florence, Bologna, Siena, Berlin, and Vienna. The topics included “Lon L. Fuller’s legal theory,” “substantive



The St. John’s Garden and Library

reasons in the law,” “pragmatic instrumentalism and the law,” “the law’s limited efficacy,” and “good faith in general contract law.”

In the course of the 1981-82 year, I had various guests in Oxford from the Continent with whom I also had extended discussions. These included Ralf Dreier, Okko Behrends, and Robert Alexy of Göttingen, Joachim Hruschka of Hamburg, Enrico Pattaro of Bologna, Alek Peczenik of Lund, and Aulis Aarnio of Helsinki.

The fourth full year of sabbatical leave in Oxford was in 1988-89. We lived during the entire year in a flat we had bought in Butler Close a few blocks from the town center. In the course of that year, I did further work on form and formality in the law, an interest I continued to pursue after publishing with my co-author, Patrick Atiyah of Oxford, *Form and Substance in Anglo-American Law* (Oxford U. Press, 1987). (Professor Atiyah was at St. John’s College, and I also enjoyed dining privileges there.) In that year, I also gave the Hamlyn Lecture at the Fourteenth World Congress of the International Association of

Law and Social Philosophy held in August of 1989 in Edinburgh. This lecture was published the next year as “Theory, Formality, and Practical Legal Criticism,” 106 *Law Quarterly Review* 407 (1990). In the 1988-99 year, I also co-authored, with James J. White, two volumes of the third edition of our treatise on the Uniform Commercial Code published by West Publishing Company. (By this time, I had available in my Oxford flat a complete set of the Uniform Commercial Code Reporting Service.) I also published several articles, and worked further on the theory of legal reasoning, form in the law, statutory interpretation, and theories of obligation in contract.

In addition to giving a number of presentations in Oxford, I again gave various lectures in England and

Scotland, and on the Continent at Helsinki, Tampere, Göttingen, Hamburg, Münster, Brussels, and Bologna. The lecture at Bologna, at the invitation of Enrico Pattaro, was one of several at a celebration commemorating the 900th anniversary of the founding of that university, the oldest in the West.

Throughout the year, I was again fortunate to have many academic discussions with old and new friends in Oxford, Cambridge, London, Edinburgh, and on the Continent. I was also privileged to have discussions with H.L.A. Hart from time to time. He was then in his eighties. My diary recounts many educational (for me) “walking talks” around Christ Church Meadow with John Lucas of Merton College.

At this time I was serving as co-chair of the Bielefelder Kreis, a group of largely European legal theorists

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who met annually for many years. During the 1988-89 year, the group met at the Center for Interdisciplinary Studies at the University of Bielefeld in Germany, and again at the University of Edinburgh. The group published two books, one in 1991 on comparative statutory interpretation in nine western systems, and one in 1997 on comparative precedent methodology in those systems.

In the middle of the 1988-89 academic year, to my surprise, the *London Times* carried a notice of my election to a visiting chair at Cambridge University, the Arthur L. Goodhart Professorship of Legal Science, for the year 1991-92. My American predecessors in this chair had included Guido Calabresi, Archibald Cox, and Arthur von Mehren. In March, Dorothy and I were invited to travel from Oxford to Cambridge where we were taken through the Goodhart Lodge

which was to be our abode in 1991-92. I also gave a lecture on that occasion on the statutory interpretation work of the Bielefelder Kreis.

Between 1989 and the present, we spent no further full-year sabbaticals in Oxford. In 1991-92 we were in Cambridge where we were privileged to spend much good time with Peter Stein, Tony Weir, Richard Fentiman, Yvonne Cripps, and others.⁷ In subsequent years, we took only half-year sabbaticals in Oxford every fourth year. Often we combined these with a full summer so that we had roughly a nine-month stay each time. On each occasion, I gave lectures in Oxford, in Cambridge, and elsewhere in England and Scotland, and also on the Continent. Again, I read widely and profited greatly from much discussion with friends old and new. While in Oxford the two comparative books of the Bielefelder Kreis appeared, as did the fourth edition of the White and Summers four volume treatise on the Uniform Commercial Code.

In 1993, on my sixtieth birthday, I was surprised to be the recipient of a Festschrift in recognition of my work, a substantial share of which had been done over the years in Oxford. The volume was presented by Professor Dr. Werner Krawietz of the University of Münster, and was published by Duncker and Humblot of Berlin. The co-editors were Krawietz, G.H. von Wright of Helsinki, and Neil MacCormick of Edinburgh. Forty-four scholars from a dozen countries contributed, including a number from Oxford.

The foregoing general account may convey something of an impression that sabbatical and other leaves in Oxford were almost all work and no play. Nothing could be further from the truth. Far too little has been said here of companionship with friends old and new, enjoyment of annual college feasts, the delights of light conversation, concerts and plays, drives to admire the countryside, visits to the gravestones, birthplaces, and habitats of poets and other literary figures, tours of great country houses, trips to scenes of major historical events, and vacations with the family in Cornwall, in the Scottish Highlands, in the West Country, and in the Fenlands. Then, too, the great city of London was only an hour by train, and the Continent just across the channel.

1. Stephen P. Garvey (University College), Robert C. Hockett (Lincoln), and Muna B. Ndulo (Trinity) of our current faculty are actually University of Oxford alumni.

2. Recommended books for the prospective Oxford visitor are: R. Fasnacht, *A History of the City of Oxford* (Basil Blackwell, Oxford, 1954), D. Balsdon, *Oxford Life* (Eyre and Spottiswoode, London, 1957), J. Morris, *The Oxford Book of Oxford* (Oxford U. Press, Oxford, 1978), J. Mabbott, *Oxford Memories* (Thornton's, Oxford, 1986), G. Tyack, *Oxford* (Oxford U. Press, Oxford, 1998), and A. Kenny, *A Life in Oxford* (John Murray, London, 1997).

3. The press will soon publish a book of mine to be called: *Form and Function in a Legal System: A General Study*. This book was written in Oxford, Cambridge, Ithaca, and Halfway, with the good help of various Cornell Law School students serving as my research assistants, and the good help of my two administrative assistants, Pamela Finnigan and Anne Cahanin.

4. N. Lacey, *A Life of H.L.A Hart* 166 (Oxford U. Press, Oxford, 2004).

5. I later modified some of my criticisms of Fuller in "Professor Fuller's Jurisprudence and America's Dominant Philosophy of Law," 92 *Harvard Law Review* 433 (1978) and in *Lon L. Fuller* (Stanford U. Press, 1984).

6. Prospective visitors to Oxford may be interested to know that, over the years, all of our five children, Brent, Bill, Tom, Betsy, and Rob, attended various Oxford schools and managed well.

7. See R. Summers, "An Academic Year in Cambridge," 19 *Cornell Law Forum* 8 (1993). We were also fortunate in this year to see much of Marr and Julie Grieve, in Cambridge. We had known Julie since 1955-56 when she had served as Secretary to the Fulbright Commission in London.



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