TONY HONORÉ

Antony Maurice Honoré

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elected Fellow of the British Academy 1985

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Tony Honoré was a profoundly influential legal philosopher, Romanist and South African trusts lawyer whose active teaching career at Oxford, unrivalled in duration and surely also impact, spanned more than seven decades. His power lay in his plain articulation of profound insights and in his sustained output of authoritative scholarship. In personal terms he left a rich layering of associations with colleagues and students whom he mentored, encouraged and inspired. Tributes after he died, five weeks before his 98th birthday, conveyed an uncommon depth of personal connection, gratitude and warmth.

† John Gardner, who was originally to co-ordinate this memoir, died before he could complete his work on it. This memoir incorporates text from Gardner's several tributes to Honoré over the decade before their respective deaths.

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TONY HONORÉ

Antony Maurice Honoré was born in London but aged 6 moved with his parents to Southern Africa. He spent his formative years in South Africa, with which he sustained a lifelong connection after his high school, in Cape Town, awarded him its Rhodes Scholarship to Oxford. The award, in 1939, was interrupted when Honoré, then eighteen, volunteered to fight in the war against Nazi Germany. He sustained severe life-imperilling wounds in the Battle of El Alamein in late 1942 and survived improbably, after medical intervention in Beirut.

In 1946 Honoré took up his scholarship at New College, Oxford. He completed the BCL in 1948, winning the Vinerian Scholarship, jointly with a Canadian, William Lederman. Offered teaching posts at both Nottingham University and The Queen's College, Oxford, Honoré taught at the former for a year but settled at the latter, thus embarking on his seventy-year teaching career at Oxford. His philosophy colleague amongst the fellows at Queen's was Tony Woozley, who had an interest in the law (and in his later years occupied a chair of law). Together they presented a class that became justly renowned, 'Philosophy and Legal Concepts', which was formative to Oxford's school of 'ordinary language' philosophy, and predated H. L. A. (Herbert) Hart's entry into the jurisprudential field.[1]

Hart was then philosophy tutor at New College but had practised as a barrister in London before the Second World War. He was elected Professor of Jurisprudence in 1952. He and Honoré embarked on a collaboration manifesting first in a series of articles which culminated, in 1959, in the publication of their jointly authored *Causation in the Law*.[2] The book's founding premise, illuminated through close examination of English, Scottish and American decisions, was that causes are best understood as events that interfere with or intervene in the course of events that would otherwise normally (non-extraordinarily) have taken place, and that, in attributing legal responsibility, courts apply everyday notions of causation embedded in common sense. It followed that everyday causal idioms sufficiently describe the idea of causation that the law adopts and applies. The work received serious attention from philosophers,[3] and has proved influential in Anglo-American judicial decision-making.[4]

[1] On Hart see T. Honoré, 'Herbert Lionel Adolphus Hart 1907–1992', *Proceedings of the British Academy*, 84 (1994), pp. 295–321.

[2] H. L. A. Hart and A. M. Honoré, *Causation in the Law* (Oxford, 1959; 2nd edn, 1985).

[3] Including Philippa Foot, 'Hart and Honoré: *Causation in the Law*', *Philosophical* Review, 72 (1963), 505–15, who ended her review flatteringly by asserting that the chief impression the book leaves 'is of its richness and subtlety, and of the amazingly high standard of work which has gone into one after the other of its close-packed pages'.

[4] Amongst other impacts, the theories in *Causation in the Law* were pivotal to the decision of the South African Supreme Court of Appeal in *S v Tembani* 2007 (2) SA 291 (SCA), available at http://www.saflii.org/za/cases/ZASCA/2006/123.html (accessed 23 January 2020). Drawing on Hart and Honoré, the court answered Yes to the internationally vexed question whether one may be guilty of murder who with

In 1958, Honoré was appointed Rhodes Reader in Roman-Dutch Law. For the ensuing nearly thirty years, until his formal retirement from the law faculty at Oxford, Honoré taught a course in the Roman-Dutch law of trusts, which encompassed the Roman and Roman-Dutch roots of modern South African trust law. The appointment also afforded him the opportunity to undertake a rigorous exposition of the South African law of trusts which, until then, had received only somewhat episodic and doctrinally incoherent treatment.

It is a pleasing paradox about Honoré's output as a lawyer and philosopher that most who know him from Anglophone and civil law jurisdictions have seldom heard of his work on the South African law of trusts; while most South African lawyers who rely definitively on his treatise on trusts know very little about his work as a philosopher and a Romanist.

The South African book on trusts[5] has justly earned the epithet 'monumental'. Its publication in 1966 formed the basis for Oxford's conferral on Honoré of the Doctorate in Civil Law. When Honoré started work on it, he encountered scattered, fragmented writing and judicial decisions on trusts. As his historical survey illuminatingly showed, the trust was imported into South Africa after the English conquest of the Cape in 1806. As English wealth and English practitioners moved to the colony, the trust proved an indispensable mechanism for their accumulations and their property dispositions. Honoré's achievement was not merely to collate the sources of trust law—which he did with meticulous and even grinding efficiency, noting every single decided case and piece of writing, professional, academic or informal—it was also to synthesise this body of material into a novel and coherent exposition.

Honoré's thinking on trusts was responsible for two important innovations. First, it propounded the illuminating notion that the trust, in its South African form, was distinct not only from the English trust but also from the Romanist legal constructions

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murderous intention inflicts a fatal wound even though the victim dies where efficient health care interventions that would have saved her life were not administered. The appellant's main submission, that the hospital staff and doctors treating his victim were grossly negligent and that this broke the chain of causation between his attack and his victim's death two weeks later, thus exempting him from liability for murder, was rejected. This was on the basis of Hart and Honoré's observation that improper medical treatment is 'too frequent in human experience for it to be considered abnormal in the sense of extraordinary' (2nd edn, 1985, pp. 355–6). The authors added that 'the idea one that who deliberately wounds another takes on himself the risk of death from that wound', despite failure to treat it properly, draws on the idea 'that an omission to treat or to cure, like the failure to turn off a tap, cannot be called a cause of death or flooding in the same sense as the infliction of the wound or the original turning on of the tap' (2nd edn, 1985, p. 362).

[5] A. M. Honoré, *The South African Law of Trusts* (Cape Town, 1966; 2nd edn, 1976; 3rd edn, 1985; 4th edn, *Honoré's South African Law of Trusts*, by Honoré and E. Cameron, 1992; 5th edn, *Honoré's South African Law of Trusts*, by E. Cameron, M. J. de Waal, E. Kahn, P. Solomon and B. Wunsh, 2002; 6th edn, 2018, by E. Cameron, M. J. de Waal and P. Solomon).

into which early judicial decisions had tried to squeeze it. Instead, it comprised a blend of Roman, Roman-Dutch and English law—what Honoré called *ius tripertitum*. He noted that it was precisely this distinctive indigenous mix that had made the trust form so useful to family, business and property transactions in South African law.

Secondly, Honoré propounded a provocation. This was that the Dutch *bewind*, in which an administrator is appointed to manage property whose title remains vested in another,[6] was in fact a manifestation of the distinctively evolved South African trust. The book's publication in 1966, embodying this proposition, excited furious denunciation by a Leiden-educated senior practitioner, C. P. Joubert SC. In two lengthy scholarly disquisitions he excoriated the notion that an institution distinctive to Roman-Dutch law could by sleight of hand be assimilated to the alien English institution of the trust.[7] Joubert's indignation was tremulous, his language scathing. Even his title—'opvattings' (strange notions); and 'ons trustreg'—implied that Honoré was violating a national heritage that should be protected from foreign intrusion.

Timing was of course everything. The first edition appeared in the year in which the ideological architect of grand apartheid, Dr H. F. Verwoerd, was assassinated. His separatist, race-pure political ideology was at that very time being given resonance in a swathe of appellate decisions under the Chief Justiceship of the formidable L. C. Steyn. Steyn considered that the doctrinal purity of Roman-Dutch law should be preserved from contamination by English law in just the way Verwoerd believed that whites would be preserved from contamination by racial impurity.[8] In both projects, a pure, unassimilated white Afrikaner heritage should be conserved. C. P. Joubert's vilification of Honoré's notions on trust law had close ideological resonance with this.

Joubert was appointed a judge in the 1970s and to the Appellate Division in 1977, where he sat for eighteen years.[9] In the 1980s he became part of the apartheid-enforcing panels Chief Justices Rumpff and Rabie specially constituted in crucial cases to render reliably pro-government decisions when executive action or proclamations were challenged.[10]

But the quixotic attempt to retain the ideological purity of Roman-Dutch law in South Africa was as ill-fated as the zeal to maintain the white racial domination that

[6] See A. C. F. G. Thiele, *Collective Security Arrangements: a Comparative Study of Dutch, English and German Law* (Deventer, 2003), para 32 at p. 11.

[7] C. P. Joubert ''n Kritiese beskouing van Honoré se opvattings oor ons trustreg', *Tydskrif vir Hedendaagse Romeins-Hollandse Reg*, 31 (1968), Part I, 123–46 and Part II, 262–81.

[8] See E. Cameron; 'Legal chauvinism, executive-mindedness and justice—L. C. Steyn's impact on South African law', (1982) 99 *South African Law Journal*, 38–64.

[9] http://www.supremecourtofappeal.org.za/index.php/history (accessed 23 October 2019).

[10] See N. R. L. Haysom and C. Plasket, 'The war against law: judicial activism and the Appellate Division', (1988) 4 *South African Journal on Human Rights* 303.

spawned it. As apartheid lurched dangerously to its end, the legislature, acting on the sound advice of the South African Law Commission—which at that very time produced also an innovative report advising against any attempt to constitutionalise protection of group as opposed to individual rights—enacted the Trust Property Control Act of 1988.[11] This defined 'trust' in terms that ringingly vindicated Honoré's conception that a trustee's ownership of the trust assets was not definitive of the institution. Rather, ownership could be located, indifferently, in either the beneficiary or the trustee, so long as enjoyment and control were properly separated.

In liberating the trust from its strict English heritage and envisioning it instead as an indigenous South African legal creature, Honoré may well have helped open up the field for the proliferation of the trust beyond elite property accumulations into business, estates and much smaller property transactions. Indeed, after 1985, when emergency legislation by the apartheid government explicitly menaced independent civil society and non-governmental organisations, anti-apartheid lawyers invoked the trust form to secure their assets against government seizure.[12]

But this very proliferation of trusts also led to debasement. It necessitated what is no doubt the major decision on trusts by the Supreme Court of Appeal, *Land and Agricultural Bank of SA v Parker*,[13] which reasserted the foundations Honoré had laid for the operation of trusts concepts. There the court embraced Honoré's conception that the embodiment of the trust was the separation of control, in contradistinction to ownership, from enjoyment. This led the court to denounce, for practical rather than doctrinal reasons, the evolution of duplicitous family trusts in which unscrupulous family and other debtors could sequester their assets from attachment for debts they had willingly undertaken as trustees while invoking technical formalities of the trust form to resist recovery when the trust defaulted.

When Honoré died on 26 February 2019, the impress of the sixth edition was fresh in his hands, since the book, published late in 2018, had just reached his home in Banbury Road. He could know assuredly that the main doctrines of his work and its unexampled coalition of sources and authorities had placed him indisputably at the pinnacle of the field.

As a 'Romanist', or civilist, Tony Honoré studied with Fritz Pringsheim (1882–1967), who had taken refuge in Oxford from Nazi Germany. In this field—his pre-eminence in which was recognised in his election in 1970 to the Regius Chair of Civil Law at Oxford, with a Fellowship at All Souls College—which scholars in all

[11] Act 57 of 1988.

[12] See https://www.sahistory.org.za/article/partial-state-emergency-july-1985 and https://www.sahistory.org.za/article/holding-operation-surviving-state-emergency-june-1986 (accessed 7 June 2019).

[13] [2004] ZASCA 56; [2004] 4 All SA 261 (SCA), 2005 (2) SA 77 (SCA), available at http://www1.saflii.org/za/cases/ZASCA/2004/56.html (accessed 22 October 2019)

European languages had addressed for centuries, he took an especial interest in the personalities of the main players in ancient Roman law, the classical jurists, since he was convinced that 'Even lawyers are partly human'.[14] To detect the human qualities of the Roman jurists is difficult, as there were no—and probably never had been—written biographies of any. In addition, the writings of jurists then and now tend to avoid revealing facts about their background and personal history; occasional references to personal experience were usually of a vocational nature.

Yet Honoré was convinced that if a writer had authored a number of texts, one could find many albeit inconspicuous indications of personality. Thus the subjects of his first three publications on Roman law, which appeared when he was 41 years old, long after Pringsheim had returned to Freiburg, were two Roman jurists plus a group: Proculus,[15] Gaius,[16] and the Severan lawyers.[17]

His book on Gaius—its title was the shortest any book on Roman law had ever had—carefully dissected the texts, made many new and detailed observations and brought them into sharper focus. His special interest in biographical detail and intellectual influences led him to many often enlightening and keen conclusions. His novel ways of opening fresh access to the Roman jurists' personalities were partly admired, but scepticism prevailed.[18] Some of his conclusions from 1962 were never accepted later, whereas others—almost unanimously rejected in the 1960s—were ultimately revealed to have been substantially correct.

At that time he spared his readers neither the consequences of a hypothesis, nor their logical entailments. But he was the first who tried to delineate the individuality of a given jurist far beyond his dates of birth and death, family status, teachers, pupils and offices, as prosopography had been practised since the late 19th century.[19] He was skilled in ancient Greek and Latin, even writing a portion of one of his biographical studies in Latin.[20] These skills he applied to find out more about the Roman legal authors by subjecting their language to intense study.

[14] A. M. Honoré, *Gaius* (Oxford, 1962), p. xvii.

[15] A. M. Honoré, 'Proculus', *Tijdschrift voor Rechtsgeschiedenis*, 30 (1962), 472–509.

[16] Honoré, *Gaius*, pp. xviii and 183.

[17] A. M. Honoré, 'The Severan lawyers. A preliminary survey', *Studia et documenta historiae et iuris*, 28 (1962), 162–232.

[18] See, for example, the extensive review of Franz Wieacker, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, 81 (1964), 401–12.

[19] Especially by Elimar Klebs (1852–1918), Hermann Dessau (1856–1931), Paul von Rohden (1862–1939), Friedrich Münzer (1868–1942 Theresienstadt), Hans-Georg Pflaum (1902–1979), Ronald Syme (1903–1989), Louis Robert (1904–1985), Arnold Hugh Martin Jones (1905–1970), André Mandouze (1916–2006), André Chastagnol (1920–1996), Geza Alföldy (1935–2011), Werner Eck (* 1939) and others. Kunkel (1902–1981) had presented in 1952 work from the 1940s, still now considered by many Romanists as the ultimate truth.

[20] See Honoré, *Gaius*, pp. 131–80.

Until then, Romanists had considered single terms and expressions. Honoré's approach, by contrast, was as broad as possible. He noted even the slightest linguistic features, and from these he inferred characteristics of the author. He generously offered hypotheses to be criticised and thus expanded discussion within the Romanist community to various new research fields.

In the 1960s and 1970s, Justinian's *Digest* became a main subject of Honoré's research, which he focused on the principal manager of Justinian's legislation, Tribonian. A hundred years before Justinian, the emperor had failed to achieve the then obvious task of legislation: to set the law down authoritatively by selecting and adapting those texts of the classical law literature that remained important for current law practice. Roman legislation until then had settled the law only sporadically. Tribonian managed the task within three years. He and his collaborators collected, arranged and updated all still-available texts from the classical Roman law literature that might still be of practical use. They reduced more than three million standard lines to almost 150,000,[21] less than 5 per cent of the bulk. How this feat was possible fascinated scholars for centuries.

Honoré, occasionally with Alan Rodger, published a series of articles on that subject,[22] and their work culminated in his book on Tribonian.[23] Here again he took into account not only linguistic peculiarities as before, but as many variations in style as possible. Obvious changes in vocabulary and style in the chronological order of Justinian's constitutions (imperial ordinances) could be shown to have occurred at exactly the same time as ancient historians had established that Tribonian entered upon the office of imperial quaestor, or left it (that quaestor being the one who was normally responsible for drafting the wording in imperial legislation).

[21] Justinian (16 Dec. AD 533) const. Tanta = Δέδωκεν § 1. Counting *libri* (originally papyrus rolls, a Roman papyrus *liber* corresponded to an average of thirty modern pages), as Justinian did as well, yields less reliable results, as the emperor exaggerated the number of excerpted *libri*; he said *duo paene milia librorum* (Justinian ibid.), whereas Detlef Liebs, in contributing to this memoir, could count only 1517 *libri*; and his compilers, who had been ordered to condense all in 50 *libri*, filled these 50 *libri* up with texts of an extent of 75 *libri*, at that time less easily controllable, as then all was written on parchment *codices*.

[22] A. M. Honoré, 'Textual chains in the Digest', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, 80 (1963), 362–78; A. M. Honoré and A. Rodger, 'How the Digest Commissioners worked', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, 87 (1970), 246–314; A. M. Honoré, *Justinian's Digest: Work in Progress*. An Inaugural Lecture Delivered before the University of Oxford on 12 May 1971 (Oxford 1971); A. M. Honoré, 'The editing of the Digest titles', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, 90 (1973), 262–304; seven later articles on this subject from 2004 to 2010, five of them until then unpublished, are collected in T. Honoré, *Justinian's Digest: Character and Compilation* (Oxford 2010).

[23] T. Honoré, *Tribonian* (London, 1978), reviewed by Wolfgang Waldstein, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, 97 (1980), 232–55.

It was Honoré who detected that there was no uniform Roman imperial chancellery style, but that the style of imperial constitutions depended on the personality of the individual responsible for drafting the imperial texts—and that those changed. He developed criteria to identify when there was a change in the use of language in the chronological order of the laws.

Justinian's constitutions have come down to us in large numbers, at full length, and precisely dated. Less numerous and well-preserved are the constitutions of the third-century emperors. Many imperial rescripts on questions from private people from that period have survived. Literary sources tell us that the emperors employed classical jurists to assist them in managing this task of imperial service to the public.

Honoré now tried to apply his means of differentiating individual authors of imperial constitutions to that material, beginning by reading the datable rescripts in their chronological order. Here, too, he detected obvious changes in style. Moreover, he detected identical 'marks of style' in a sequence of rescripts and the writings of contemporary jurists such as Papinian, Ulpian, and Hermogenian, later adding Arcadius Charisius. And he extended this research, trying to identify more classical jurists as rescript authors, proposing Modestin and Arrius Menander. Those studies resulted in his book *Emperors and Lawyers*,[24] which provoked vehement controversy in the scientific community.

Honoré was scrupulously responsive to serious objections. Fifteen years later he presented a second, revised edition with diskette containing a palingenesia of all third-century rescripts.[25] This either corroborated his earlier results and assumptions, or qualified them. He thus supplemented the classical jurists' writings, adding other legal writers who had remained anonymous until then.

Honoré also co-operated with the team in Linz directed by Marianne Meinhart and Josef Menner, who had begun to digitise Roman law texts. That work resulted in the *Concordance to the Digest Jurists*,[26] published together with Josef Menner and consisting mainly of 84 microfiches, a useful resource for all those interested in the individual language of any specific Roman jurist. He employed it himself to introduce a study on another Roman jurist, Ulpian.[27] There he proposed solutions to intensely discussed problems. He could clearly distinguish Ulpian's authentic works from those

[24] T. Honoré, *Emperors and Lawyers* (London, 1981). In relation to Arcadius Charisius see T. Honoré, 'Arcadius, also Charisius: career and ideology', *Index. Quaderni camerti di studi romanistici*, 22 (1994), 163–79.

[25] Honoré, *Emperors and Lawyers.* Second edition completely revised, with a palingenesia of third-century imperial rescripts AD 193–305 (Oxford, 1994) + 2,741 rescripts on diskette.

[26] T. Honoré and J. Menner, *Concordance to the Digest Jurists* I–III (Oxford, 1980), I Anleitung: englisch, deutsch, spanisch, französisch, italienisch, 44 pages; II: 50 Microfiches; III: 34 Microfiches.

[27] T. Honoré, *Ulpian* (Oxford, 1982).

which were not authentic, such as pseudo-epigraphs or those written by another Ulpian. His results are convincing, if sometimes surprising.

The other challenging task with Ulpian was to deal with the fact that almost all the indications regarding the date of his substantial output, which totals about 400,000 standard lines, point to Caracalla's short reign (sole emperor AD 211 to 217). Could Ulpian really have written so prodigious an output within five years? How, and especially why, such haste? According to Honoré, it was not only possible, but there were good reasons for doing so. At the beginning of his reign, Caracalla extended Roman citizenship to nearly all the free inhabitants of the empire. More than half of the population had been deprived of citizenship till then, and thenceforth they also lived as subjects of Roman law. To include these new citizens, the entirety of Roman law had to undergo a new interpretation, which is just what Ulpian undertook. To explain how, Honoré proposed a five-year plan; he offered a solution for the problem. This book too had a second, completely revised edition twenty years later.[28]

Honoré was one of the first Romanists in law to take advantage of the computer for his research. This he extended to the Codex Theodosianus, a compilation of the laws of the Roman Empire under the Christian emperors after 312, which the Emperor Theodosius II commissioned in 429. Again he placed the datable fourth- and fifth-century laws in chronological order. In so doing, he detected a change in style in a certain rhythm, scrutinising the style of each writer who had drafted these laws, and he began to characterise them. The result was *Law in the Crisis of Empire*,[29] a colourful depiction of legislation and codification at that time.

Honoré's contribution to the science of Roman law was 'frisch, interessant und geistvoll', as Franz Wieacker summarised it.[30] He approached old problems of the old subject 'Roman law' in a distinctive manner, finding new subjects of research. He was reluctant to follow paths predecessors had taken, and he enjoyed overstepping boundaries between different fields. His arguments always kept close to the pertinent sources, of which he mastered a veritable plethora. His imagination and diligence as a Romanist were infinitely admirable.

Indeed, across the extraordinary breadth of his scholarship, Honoré's intellectual contributions were radical, rich and often quietly subversive. For he was distinctive not only in the range of his intellectual interests and achievements but also in his boldness and methodological originality. Not only was his approach to studying the

[28] Honoré, *Ulpian*; 2nd edn, *Ulpian: Pioneer of Human Rights* (Oxford, 2002).
[29] T. Honoré, *Law in the Crisis of Empire 379–455 AD: the Theodosian Dynasty and its Quaestors*, with a palingenesia of laws of the dynasty (Oxford, 1998) + diskette with 1,653 constitutions (ca. 1,000 pages).
[30] Wieacker, letter dated 28 April 1985 addressed to Detlef Liebs.

great Roman jurists ground-breaking; he produced one of the very first monographs on law's treatment of sex.[31] And his career as a legal philosopher spanned an extraordinary period; one upon which his co-author Herbert Hart and a handful of powerful thinkers imposed, in R. V. Heuston's words, a town planning scheme for the intellectual slum of English jurisprudence.[32] Honoré was a leader in this programme of improvement and held a distinctive place within it. It is hard to think of any other scholar who could have been elected to one, taken up a second, and been eminently qualified for a third[33] chair in the Oxford law faculty, while also being the honorand of three Festschrifts.[34]

Town planning schemes may be distorted by ideologically driven rigidity, as may jurisprudential schemes. The best are tempered by a humane vision, by sympathetic imagination, by common sense and by wisdom. Luckily, Honoré and others were able to provide the necessary detail, imagination, common sense and wisdom. Honoré's sensitivity to the texture of different forms of law, and of law in different systems, allowed him to identify issues that escaped the notice of Hart's philosophical system, as their book on causation testifies. For while Hart in effect used law for philosophical ends, in Honoré's scholarship law and philosophy are equal partners.

In his later jurisprudential work, Honoré found a deep friendship and companionship with John Gardner (1965-2019), a vividly responsive protégé and an electrifying co-presenter of a seminar that ran for over thirty years. Honoré was initially Gardner's academic advisor at All Souls College, which, with Honoré presiding, elected him to a Prize Fellowship in 1986. Quickly they became close friends. Their friendship—but yet more remarkably their professional association—continued from Honoré's official retirement as Regius Professor of Civil Law in 1987 until his death. Their principal collaboration was in the classroom. They offered seminars on various topics, mostly to Bachelor of Civil Law (BCL) students. In particular, they taught seminars on causation. They also worked on the philosophical foundations of tort law.

Perhaps most memorably, Honoré and Gardner held Friday evening seminars on problems of general legal and political philosophy. Their classes were famous, not just for the intellectual content, which was formidable, but also because of their atmosphere and style. In these more general seminars on Fridays the pair taught eight

[31] T. Honoré, *Sex Law* (London, 1978).

[32] Letter from R. V. Heuston to H. L. A. Hart, 1952, quoted in N. Lacey, *A Life of H. L. A. Hart: the Nightmare and the Noble Dream* (Oxford, 2004), p. 140.

[33] Before taking up the Regius Chair, Honoré was elected to the Chair of Comparative Law at Brasenose College in 1970; he was, evidently, also highly qualified for the Chair of Jurisprudence.

[34] N. MacCormick and P. Birks (eds.), *The Legal Mind: Essays for Tony Honoré* (Oxford, 1985); P. Cane and J. Gardner (eds.), *Relating to Responsibility: Essays in Honour of Tony Honoré on his 80th Birthday* (Oxford, 2001); D. Visser and M. Loubser (eds.), *Thinking about Law: Essays for Tony Honoré* (Cape Town, 2011).

topics a year. They chose two—and the students chose the other six. Between Honoré and Gardner and the students a syllabus would emerge. And they insisted that the students choose the readings, meaning that every year the course developed in a different direction.

It was during this period, officially post-retirement, that Honoré arguably did his most important work in the philosophy of law. Quite apart from his work with Hart, he had already proved to be a generalist who turned his hand brilliantly to many miscellaneous topics: the obligation to obey the law, the nature of and right to revolution, the criteria for the existence of a legal system, and many others. Honoré had an unerring capacity for entering on the core of issues that had escaped scholars more firmly embedded in one or other established jurisprudential approach. Essays such as 'Groups, laws and obedience'[35] broke new ground in identifying a key question until then neglected in the standard debates: how does the fact that we live in groups affect the normative structure of law and its capacity to secure obedience? Another key example is 'Real laws'[36]—a strikingly original paper, which bears its considerable philosophical learning lightly, but reflecting that Honoré had deeply absorbed the ideas of Continental thinkers, including Kelsen. What difference would it make, Honoré asked, were we to think of law in terms of a very small group of 'real laws'—'do not commit crimes', 'do not breach contracts' and so on.

Yet it was mainly towards the end of Hart's life, in the late 1980s, that Honoré began to flourish in his own right as a philosopher of law. Arguably, that was because he finally chose to devote himself to, and to write systematically about, topics that Hart had preferred to avoid. Hart was interested in how our causal contributions bear on our responsibility, moral and legal. These formed the main focus of *Causation in the Law*. Yet Hart refrained from investigating the question *why* our causal contributions bear on our responsibility, moral and legal. This was the very question, or questions, to which Honoré's post-retirement work turned. The work brought out two sides of his intellect and sensibility. First there was Honoré the lawyer, concerned with fairness, institutional arrangements, social alternatives. These, he thought, could be otherwise. Strict liability in law was but an option among others. On the other hand, there was Honoré the humanist, always engaged with the underlying human condition. For Honoré's humanist sensibility, our causal connections with the world, the traces we leave behind, are unavoidably ours. They weave the story of our lives. He said that they gave us an identity, a character, a personality. Without them we are nothing.

[35] A. M. Honoré, 'Groups, laws and obedience', in A. W. B. Simpson (ed.), *Oxford Essays in Jurisprudence* (Second Series) (Oxford, 1973), pp. 1–21.

[36] A. M. Honoré, 'Real laws', in P. M. S. Hacker and J. Raz (eds.), *Law, Morality and Society: Essays in Honour of H. L. A. Hart* (Oxford, 1977), pp. 99–118.

These themes are reflected in his two volumes of collected essays, *Making Law Bind,* published in 1987, and *Responsibility and Fault,* which followed in 1999.[37] In the latter, Honoré decoupled responsibility from fault. He defended strict liability in the law and strict responsibility, within limits, in ethics. His compelling thesis was this: to treat people as responsible agents promotes both individual and social well-being. It does this in two ways: by helping to preserve social order through encouraging good and discouraging bad conduct, while, at the same time, it makes 'possible a sense of personal character and identity that is valuable for its own sake'.[38] 'Responsibility and luck: the moral basis of strict liability',[39] in particular, is one of the most important articles in legal theory over the last half century.

Honoré's and Gardner's classes were often extensions and developments of the themes Honoré's published work canvassed. Gardner, in his tribute written for Honoré's memorial service at All Souls College on 8 June 2019, shortly before his own death,[40] recorded that he was often, but not always, persuaded by Honoré's arguments, and wrote what he called 'some spinoffs of them' himself. Perhaps oddly, though, the two close comrade-collaborators wrote together only once, in 2018, in a thus-far unpublished paper that revisited, mostly defending, unfashionable ideas from *Causation in the Law*. Gardner considered that he and Honoré 'always remained resolutely unfashionable'.

A deeply erudite man, Honoré had a commanding facility in the academic languages of Europe, including ancient Latin and Greek, though he wore his learning lightly. His war injuries continued to impede his mobility and hearing until he died, but they left him with a profound sense of good fortune at the rich life of thought, teaching, intellectual engagement, productive output and deep personal connection that Oxford afforded him. His long association with All Souls College was a source of delight to him; on his retirement, after sixteen years as Regius Professor, he served as Acting Warden for two years, and in that role negotiated important changes which rebalanced the College in favour of full-time scholarship. He was also a powerful advocate of the decision to admit women to the College in 1979.

This sense of good fortune was compounded when, after termination of his first marriage, he met Deborah Duncan, whom he married in 1980. Their companionable

[37] T. Honoré, *Making Law Bind: Essays Legal and Philosophical* (Oxford, 1987); T. Honoré *Responsibility and Fault* (Oxford, 1999). Also note that Honoré delivered the 1998 Maccabaean Lecture in Jurisprudence on 'Being responsible and being a victim of circumstance', *Proceedings of the British Academy*, 97 (1998), pp. 169–87.

[38] Honoré, *Responsibility and Fault*, p. 125.

[39] T. Honoré, 'Responsibility and luck: the moral basis of strict liability', 104 *Law Quarterly Review* (1988), 530–53, reprinted in his *Responsibility and Fault*.

[40] Gardner's tribute was read, in his presence, by his wife Jennifer Kotilaine Gardner.

life together afforded intense memories to the many to whom they extended their friendship. One of the authors of this tribute recalls the particular privilege of spending time with Honoré when she was working on Herbert Hart's biography,[41] to which his contribution was as generous as it was large. Her memory of those years is filled with images of lively and often very intense conversations around the Honorés' kitchen table, with Honoré bringing post-war Oxford and its intellectual and personal dramas alive through his formidable memory, his acute powers of observation, and his fascination with peculiarities of human life—and with Deborah Honoré often adding her own intense aperçus, amid the warm embrace of their supremely happy home.

In 1990, the University of Cape Town conferred on Honoré an honorary degree; Nelson Mandela, recently released after twenty-seven years in apartheid's prisons, was supposed to be capped with him, but could not attend. Honoré sent his address, which likened Caracalla's extension of citizenship to all the Empire's inhabitants to the impending extension of enfranchised citizenship to all South Africans, and urged establishing a new Constitutional Court, to Mandela. Mandela responded by commending the notion of a new apex court, a response Honoré treasured particularly.

Honoré's vision of human agency was liberal and humane, one palpably in threat at this time. Though steeped in the Oxford tradition of thought and argument, he brought to it a practical simplicity of expression and humane connection with ordinary problems that made him an inspiring source of authority for judicial decision-making.

His profoundly reflective contributions to philosophy and law continue to resonate as we struggle to sustain the virtues Honoré best represented: rationality, gentle though rigorous humanity, humane wisdom, a sometimes childlike animation in argument, an utter lack of vainglory and pride, together with disavowal of any grand rhetorical gesture, an abundance of gentle enjoyments and—most important of all—an abiding belief in the power of thought to influence action.

He is survived by his two children from his first marriage, Frank Simenon and Niki Honoré, his sister Jasmine (born 1924), who lives in Johannesburg, and his widow, Deborah.

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[41] Lacey, *A Life of H. L. A. Hart: the Nightmare and the Noble Dream*.

Economics; she was elected a Fellow of the British Academy in 2001. Detlef Liebs is Professor Emeritus of Civil Law at the University of Freiburg-im-Breisgau; he was elected a Corresponding Fellow of the British Academy in 2005.