

Conversations with Professor Stroud Francis Charles (Toby) Milsom

by
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First Interview: Early Years (1923-1955)

Date: 2nd October 2009

Between October and December 2009, Professor Milsom was interviewed four times at his home in Newnham to record his reminiscences of over sixty years of an illustrious academic career, the majority of which was spent in the Faculty of Law at Cambridge.

The interviews were recorded, and the audio version is available on this website with this transcript of those recordings. The questions and topics are sequentially numbered in the three interviews for use in a database of citations made across the Eminent Scholars Archive to personalities mentioned therein.

Interviewer: Lesley Dingle, **her questions and topics are in bold type**

Professor Milsom's answers are in normal type.

Comments added by LD, *in italics*.

All footnotes added by LD.

1. Professor Milsom, you've had a very illustrious career and it's a great privilege to interview you for the Eminent Scholars Archive. Your reminiscences will be a valuable contribution to the faculty history stretching back to before the Second World War. You have a formidable reputation of a legal historian, and I hope that during these interviews you will be able to recount the highlights of your life and career, and perhaps in our last conversations in a few weeks' time we can have a general discussion of your scholarly work. So could we start by talking about your early life, your childhood, your school days. You were born in 1923 in Merton, Surrey.

Yes. That's right, yes. The family moved from that house to another one in Wimbledon, and my poor father was Secretary of the London Hospital, which is now the Royal London³. It was the biggest voluntary hospital in England, possibly in the world, and it's in Whitechapel, so that living in Wimbledon wasn't the ideal starting point. And he used to toddle off and four times a year he would toddle down the road in full morning dress with topper and the lot, because this was the Quarterly Court of Governors who were very grand people; and if the truth be told he looked a right Charlie. We'd had for some years a holiday cottage in Cornwall, and the Wimbledon house was bombed, not destroyed but damaged, and so the family moved to Cornwall where I was based throughout most of my school days.

¹ Foreign & International Law Librarian, Squire Law Library, Cambridge University.

² Freshfields Legal IT Teaching and Development Officer, Faculty of Law, Cambridge University.

³ Founded in 1740 as the London Infirmary (renamed London Hospital in 1748). Taken over by NHS in 1948 and renamed Royal London in 1990. http://www.bartsandthelondon.nhs.uk/aboutus/history/royal_london.asp



2. Your mother I noticed was from New Zealand.

She's a New Zealander, yes. Yes. Her father qualified as a doctor in England at St George's Hospital⁴ and incidentally played rugger for England and the whole of that side of the family were sporting toffs as it were. In those days if you wanted to practice medicine you had to buy a practice and he had no capital to buy a practice, so he took a job to accompany an invalid on a world cruise, and the invalid died as they were nearing New Zealand and my grandfather got off and thought New Zealand looked rather nice so he stayed and hung up a brass plate and practiced in Wellington all his life. My mother had an idyllic childhood I think. I think I'm right in saying she was the New Zealand ladies golf champion when she was 14. She played in the Open Championship in England, but she didn't get all that far with it, but she was a very good golfer. My mother's brother came to England to go to Trinity, where he was still a very, very unusual combination. He was a cricket and a rowing Blue. He met my father and they were both rather lonely souls, so they became friendly, and my mother I think, at the age of 15, was at school in Wickham Abbey and she was allowed to go to the Trinity May Ball. I can't help feeling that somebody slipped up. Anyway she had a whale of a time and met my father and eventually they got married and settled in Merton and then in Wimbledon, and my father did this job at the London Hospital and my mother played golf and tennis, and sent my brother and me off to a little baby school, it was in fact a girls' school, the Wimbledon High School for Girls, a very grand establishment. It took in, in those days, one class of little boys to enable their mothers to go and play golf. This was before the days of working mothers, and so my brother and I went there and then we were sent off to a prep school, in which I think we got the name wrong on, the prep school was in Guildford. We haven't got the name, it doesn't matter at all. And from there we both, he was four years ahead of me is Edward, one after the other we went on to Charterhouse⁵ where, when it came to specialising, I became what they grandly called a Science Specialist. And I did Higher School Certificate in physics and chemistry.

3. I wondered at what point your interest had been generated in science.

Well it was there to start with I think.

4. Even before you went to Charterhouse?

Yes, I never had any doubt that I was going to go and do what I could with the sciences, and I went up from Charterhouse to Trinity with my trunk full of books on physics and chemistry, intending to do the natural sciences tripos, and my tutor, a great blow to me, said, "Look we've been looking through your record and you're okay at physics and chemistry, but your mathematics is hopeless, and it's no good trying to be a scientist in the 20th Century without being a good mathematician, so you'd better do something else. What will you do?" So I said, "English," and he said "Want to be a school master?" So I said "Law" and he said "done".

5. It sounds a bit like Maitland ...So really it was at school that your interest began in science?

Oh yes, yes.

⁴ University of London teaching hospital. Founded in 1733 in vicinity of Hyde Park. Re-located to Tooting in 1954 <http://www.stgeorges.nhs.uk/>

⁵ Independent school, near Godalming. Founded 1611.



6. And before we actually move on to your time at Trinity, do you have any recollections of your days at boarding school?

Not that could be repeated anyway. Oh it was all right, it was all right. I hated it. I think we mostly hated it. Charterhouse sends me every year its annual Journal, lavishly illustrated with top quality photographs of good looking young women, because they now have girls as well.

7. I noticed that actually when I went to their website.

I'm sure they're doing fine. I never went back – I did after we married I did drive my wife down to Charterhouse and we drove around the school grounds because I thought she ought to see it, but we didn't get out.

8. Professor Milsom you went up to Trinity College in 1941, we're now at your Trinity War Service and Bar period of your life from '41 to '47. What was life like at Trinity College in those days? There must have been a period of rationing perhaps in the aftermath and/or during the war in fact.

Well it was peculiar, because there were only the semi-invalids like myself, all the healthy young men were away fighting.

9. When you say semi-invalid, how do you mean Professor Milsom?

I had knocked my head in, in 1938 I think it was, and I was very lucky to be alive. I was taken to the hospital in Plymouth where a charming old surgeon cleaned up my head and said, "Well look I can't do anything more. We'll have to see what happens." And he didn't expect me to live.

10. You must have been about 15 then?

Yes.

11. Right. How awful.

And my father rang the London Hospital to try to get hold of Hugh Cairns⁶ who was the neurosurgeon at the time. He was the pioneer of neurosurgery in England, and he was just returning with the Mitford girl⁷ who had shot herself. And he had to disentangle himself from her, but he came down to Plymouth and had me removed to the London Hospital. Those were the days. He said, "You can't possibly. He'll never survive a journey by ambulance, I'll lay on an ambulance train." And he did.

12. Were you conscious at the time?

Mm, yes. Yes. I was conscious most of the time actually. And I could hear what he was saying which wasn't a great comfort to me, but still he got me to the London Hospital and then he moved off to Oxford as the first Nuffield Professor of Surgery. I was sent home and a dressing was done on my forehead every day for a year, and it wouldn't heal and my nose dripped, and eventually somebody had the wit to put a test tube under and find out what

⁶ Hugh William Bell Cairns, 1896-1952. Australian neurosurgeon.

<http://www.whonamedit.com/doctor.cfm/3166.html>

⁷ Unity Valkyrie Mitford, 1914-1948, one of the noted Mitford sisters. She was a prominent supporter of fascism and friend of Adolf Hitler. Purportedly tried to commit suicide in Germany in 1939.



it was, and it was the cerebral spinal fluid, so I had a puncture as it were. So from the London I was taken to the Radcliffe Infirmary in Oxford⁸ where he opened me up and mended it with a sort of puncture repair kit.

13. It was an extraordinary ordeal.

Extraordinary story. Well back in 1935/36, no '37, I think, and nearly all his patients survived the operation. Hardly any survived much longer.

14. That must have been so daunting. What an ordeal for your parents as well.

Awful for them. I was happily unconscious of how serious it was.

15. Yes. Goodness.

I do remember actually, he was looking at it and he said, "Yes well we have torn away a bit of brain," and I heard this, but I rationalised brain into membrane, so I still didn't realise how serious it was, how lucky I was actually. And I was in and out of hospital for about a year, and I suppose I then went back to school. I did, I went back to Charterhouse. You know, I had call-up papers but of course they couldn't call me up.

16. No.

So I was told to go up to Cambridge and just pretend life was normal. I said, "Shouldn't I do some other war work?" and these were the military people interviewing me, they said, "No you go and make yourself into a real person, because there aren't going to be many of them around."

And so I was sent up to a life of luxury in Cambridge. Cambridge was a very strange place, you know. All the young dons were away.

17. Kurt Lipstein⁹ would have been around.

Lipstein was around and Glanville Williams¹⁰ was around, and dear old Buckland¹¹ lectured in Roman Law.

18. I remember in one of your pieces in your studies in the *History of the Common Law*, that you remembered his lectures with pleasure as rather mathematical.

Yes, well yes, he liked to work things out in front of you, and he liked you to follow. And being wartime, there weren't many of us, so he felt entitled to ask questions around the class, and I was his, as it were, anchor man. He would end up with me, and expect to get the answer and once I said, "I'm afraid I don't know." "Of course you don't know if you don't come to my lectures Milsom". I'd missed one lecture the previous week to go for an interview for my war job. He was a very short man, and he was well on in his eighties, so that to stand throughout a lecture would be an ordeal, but the old Law Faculty (for all I know

⁸ Opened 1770, closed 2007. It had specialised in neurology, neurosurgery, neuroradiology, neuropathology, neurophysiology and neuropsychology services. <http://www.clneuro.ox.ac.uk/radcliffe-infirmary>

⁹ 1909-2007, Professor of Comparative Law (1973-76).

¹⁰ 1911-1997, Glanville Llewelyn Williams, Rouse Ball Professor of English Law (1968-78).

¹¹ 1859-1946, William Warwick Buckland, Regius Professor of Civil Law (1914-45).



they're still around), had these lecturers seats with a desk and a chair, and the chair was so the lecturer felt like it could stand up behind the desk or he could sit down, but if you were Buckland and sat down you couldn't see over the desk. So being an engineer by training....

19. Really?

Yes¹². He said he'd built a couple of dismal bridges. So he would poise this blasted seat at 45 degrees and there would come a point at which he would get excited and the thing would lose its balance and drop, and he would bounce up and down. We were horrid. We were so amused. He really was a great man. Have you ever been in the Old Squire?

20. I have actually, yes.

Yes, well that was quite a staircase up, and he fell on the stairs one day and broke an arm, and everybody expected him to get an ambulance or even a taxi and go home. Instead he went out to do his shopping. He said those shops have been letting me down for long enough and now I'm in a bad temper I'm going to say what I think. I'm sure the shopkeepers had a ghastly morning. He was a very kindly man, and so was Winfield¹³, whom I got to know rather better, because the Winfield family used to, for their summer holidays, rent a rather grand house near to where my parents had settled in Cornwall, and they asked us to meals and things.

21. Lovely.

He was very, very deaf and supervisions we call them now don't we? I still lapse into the Oxford language and call them tutorials. Anyway, a supervision with Winfield was daunting, because he couldn't hear a word I said. And I howled away hopelessly. We got on and he was actually extremely good to me. I think it was old Winfield who persuaded, when I had become a Prize Fellow of Trinity, a Research Fellow, I think he persuaded Trinity to take me on as a Staff Fellow. So there, I was set as an academic.

22. And you were reading Law, Professor Milsom?

Yes.

23. Because I was very interested in one of your remarks in the *Natural History of the Common Law*¹⁴ in your introduction, page 8 you say of yourself, you describe yourself as one who, and I quote "turned reluctantly from natural sciences to the law, and you could not quite suppress a hankering for test tubes". I wondered whether your interest was chemistry because of that, and whether you actually had an opportunity.

I don't know. I was very, very upset when I went up to Trinity and my tutor said, "You'd better not read natural sciences, your mathematics are not up to it." And I was distressed, but the law had the one great advantage over for example, history or English or most other subjects, in that one thing follows from another. Or more or less. It looks as

¹² Buckland was educated at Hurstpierpoint College, West Sussex, and the Crystal Palace School of Engineering. (The latter was established in 1872. The only building left after the fire of 1936 is the present Museum in Crystal Palace Park.)

¹³ 1878-1953, Sir Percy Henry Winfield, Inaugural Rouse Ball Professor in English Law (1928-1943).

¹⁴ 2003, *A Natural History of the Common Law*, Columbia University Press



though everything follows. And that was comforting to one who would have liked to have been a scientist. Actually I enjoyed it.

24. Professor Milsom, during this time did you meet Professor Gutteridge¹⁵ at all? Was he about?

No. Well, I suppose I met him in the street, but I doubt if I ever exchanged words with him.

25. Was Hazeltine¹⁶ around at any point?

Hazeltine had gone to the States.

26. Back to the States. Professor Hollond¹⁷?

Very much around, yes.

27. Described by Professor Jolowicz¹⁸ as really setting the mould for the modern Faculty in terms of administration.

Yes, yes. Harry Hollond did set up the Faculty as it now exists certainly. He was a very intimidating character and when I went down, when I ceased to be an undergraduate, I went to call on him to thank him for all he had done for me, and he was living in an attic set in Neville's Court in Trinity, and I think I'm quoting verbatim "I think all these stairs are a bit too much for me and so does my mother, but my grandmother says nonsense." He was just on the verge of retirement. He didn't make it to 100. His grandmother did and I think his mother did too actually. He insisted on my wife and me going to visit his mother and sisters in their very grand house near Bury St. Edmunds. It was a grand place. And the gardener's cottage had absolutely everything, all mod cons, but they didn't. Earth closets. By choice, I mean there was more money than you could shake a stick at. His father had been a merchant in India. I don't know what in, but had made a fortune. So there was a lot of money, most of which eventually went to Trinity.

28. How interesting.

He and his wife got married when he was living in rooms in Trinity and she was living in rooms in Girton. She was Bursar at Girton, and they were as happy as anything, and occasionally went off for weekends together. And he retired but that didn't make any difference because Trinity doesn't throw out the old, so he could stay in his rooms, but she retired from Girton, so they had to go and buy a house, live together, a rude shock I think.

29. I think the house..... is that in Storeys Way at the top of Storeys Way? The house that they bought? Near Churchill College.

It is, but it's not in Storeys Way, it's in Madingley Road.

30. That's right.

It's probably still called the Stone House, and I think it's now Barristers Chambers.

¹⁵ 1876-1953, Harold Cooke Gutteridge, Professor of Industrial & Commercial Law, University of London (1919-30), Professor of Comparative Law University of Cambridge (1930-41).

¹⁶ 1871-1960, Harold Dexter Hazeltine, Downing Professor of the Laws of England (1919-42).

¹⁷ 1888-1974, Henry Arthur Hollond, Rouse Ball Professor of English Law (1943-50).

¹⁸ b. 1926- , Professor J. Anthony Jolowicz, Emeritus Professor of Comparative Law (1976-93).



31. That's right, it is.

And it was a very nice house to live in, very comfortable.

32. Lovely limestone.

Yes, that's why they bought it. It had to look right. You know they were both pretty choosy people. A semi in Barton Road wouldn't have done at all.

33. Professor Milsom, did you remember Professor Wade¹⁹ at this time?

Yes. Emlyn Wade, yes. I got to know him quite well because the Foreign Office allowed itself to get into a cockeyed dispute with the French Government over some miserable rocks in the English Channel. They're near Jersey and Guernsey but they're separate, and there was a dispute over the ownership of these rocks which didn't matter to anybody, but they did carry very valuable fishing rights. So it did matter. But instead of doing a nice treaty and just dividing up the fishing rights, the Foreign Office foolishly decided to take it to the International Court, and the legal adviser to the Foreign Office at the time, a man called Sir Eric Beckett²⁰ had been a pupil of Emlyn Wade's and he yelled to Emlyn for help and Emlyn yelled to me. So Emlyn Wade and I spent months and months over these wretched rocks.

34. Very interesting.

It was fun. We were taken to see them. We went in the States of Jersey's state barge, which wasn't a very stately vehicle, and we had with us a couple of marines because you never know about what those damn Frenchies might not get up to. We went and landed on the one of these rocks that had a flagpole, and one of the marines was sent to raise the flag and it was a boiling hot day and the poor chap was struggling with this damn thing and it wouldn't go up and the rest of us decided to go in for a swim. I was swimming next to the Bailiff of Jersey who was a real Jersey grandee, Sir Alexander Coutanche²¹, VC twice over I think. Heaven knows how many other decorations - wonderful, good old fashioned gent. And he and I were swimming in the sea when quite suddenly he vanished, and I've always been proud of guessing what had happened, that the marine had won, the flag was fluttering at the flagpole, and the Bailiff had come to attention in the water and gone down. He bobbed up again all right. That's really about all I can remember of that visit. The whole thing was tremendous fun and poor Emlyn Wade, who was the least suspicious person you could possibly imagine, when we came back to England the Customs - he must have looked like somebody else I think. The Customs really went for him and they even opened his wrist watch.

35. Goodness.

So, that was a happy outing.

¹⁹ 1895-1978, Emlyn Capel Stewart Wade, Downing Professor of the Laws of England (1945-62).

²⁰ 1896-1966, Sir (William) Eric Beckett, K.C.M.G., Q.C. formerly chief Legal Adviser to the Foreign Office. Led UK legal team before ICJ in the Corfu Channel case, (*UK vs. Albania*) 1949. President of the British Institute of International and Comparative Law (1952-54).

²¹ 1892-1973, Sir Alexander Moncrieff Coutanche, Baron Coutanche, Attorney-General and Bailiff of Jersey (1935-61) and member of the House of Lords in the United Kingdom (1961-73). Last Bailiff appointed for life. Knighted 1946 after liberation of Jersey from German occupation.



36. It sounds quite exciting. Professor Hersch Lauterpacht²², did you cross his path at all?

Oh yes, yes. He was a lovely man. Very kindly man, charming, unselfish, helpful to everybody.

37. Professor Jolovicz was telling me how relaxed he was actually. Very laid back, almost?

Oh yes, absolutely.

38. Very kindly.

He was, Emlyn Wade was the most decent member of the Faculty and Hersch Lauterpacht was the nicest I think.

39. And when you consider his stature, you imagine a Germanic lawyer, I would have thought he would have been different, but from others' accounts as well he was delightful.

And [his wife] was a pianist. Lady Lauterpacht²³. I think she'd been a professional pianist and she used to give, well since I came back to Cambridge, which is, oh Lord it's now 30 something years, but she was still alive when we came back and she was still occasionally giving recitals. Not in public halls, but in her own home and it was invited audiences.

40. Delightful. Someone else who springs to mind is Professor Duff²⁴. Do you recall him at all?

Oh yes, indeed I knew him very well. He wasn't my tutor in the Cambridge sense, but he taught me Roman Law and was my "Director of Studies" for Heaven's sake, this ghastly language that we used, do we still talk about Directors of Studies, I bet we do.

41. Yes.

Yes, he was a funny man. He was a classical scholar by upbringing and took to the law because when he did his bar exams he did well enough to get one of these grand scholarships that the Inns give, and so he read Law and became a law tutor. He lived I don't think he got to his nineties, but he was well on in his eighties when he died. He lived in Trinity in rooms which looked down the bowling green, the Fellows' bowling green there which is, you go under the clock tower and there was a terrible old cleric called F A Simpson who went round pruning things, to the despair of all the gardeners, the College gardeners in Cambridge I think. But the Trinity gardeners suffered most, and once I was in my rooms which looked down over the bowling green, and there was a squeak squeak and this was F A Simpson pruning with a long pruner. And then I heard the patter of little feet from the rooms below me, and so I kept watching and Patrick Duff shot out in his, I think he was in his pyjamas, seized this long pruner, he'd bought with him a can of oil, oiled it carefully and then gave it back to Simpson.

²² 1897-1960, Sir Hersch Lauterpacht, Whewell Professor of International Law (1938-55), Judge at International Court of Justice (1954-60).

²³ Rachel, née Steinberg. Married Hersch in Vienna in March 1923.

²⁴ 1901-1991, Patrick William Duff, Regius Professor of Civil Law (1945-68).



Actually he never wrote anything. By and large the Law Fellows of Trinity didn't write anything in those days. Harry Hollond didn't write anything. Patrick Duff wrote one article, which I thought was extremely insightful, but what the Romanists think of it I've no idea.

42. Do you remember the title of that article?

It was probably something to do with *furtum*, theft, and it was really about why theft was treated as a delict, a tort rather than as a crime, and that was because most thieves were slaves and therefore their masters were able to pay up. It was a simple thought but very convincing. I don't know where it's published, it's probably in the *Cambridge Law Journal*. If you've got an old *Who's Who* you would probably find it under his entry.

43. I could have a look in the index to the Cambridge Law Journal.

Sure.

44. Professor Milsom did you ever come across David Daube²⁵ in your?

Oh yes, absolutely.

45. He was a mentor to Peter Stein²⁶ and of course he was a PhD student with Professor Lipstein, that Kurt abandoned Roman Law because of Daube.

Yes.

46. And then of course Professor Jolowicz knew him because of the association with his father.

Yes, absolutely yes. Yes, David Daube was the story as I was told it, and I'm sure it is substantially true, is that Buckland hired an aeroplane and flew off to, I can't remember now which German University it was that Daube was working in, and just brought him back. Because you know he wouldn't have survived long, and got him a Fellowship at Caius. Buckland was a man who got what he wanted out of everything. So Caius made Daube a Fellow, and I think I'm right in saying that he became Regius Professor in Cambridge for a short time, but he went off to Oxford and was Regius Professor there and died there I think.

47. I think he actually went to California.

You're right. Absolutely right. He went to this great Institute for Roman Law²⁷.

48. The Robbins.

Yes. And he and a couple of other eccentrics lived in huge luxury.

49. I can imagine.

You're absolutely right, yes. He was a very sweet man, Daube. In wartime not many dons invited their pupils to their houses for drinks or anything else, because supplies were

²⁵ 1909-1999, David Daube, Inaugural Professor of Jurisprudence, University of Aberdeen (1951-55). Regius Professor of Civil Law, University of Oxford, (1955-70).

²⁶ b. 1926-, Peter Gonville Stein, Regius Professor of Civil Law (1968-93).

²⁷ He was Curator, Robbins Collection of Jewish and Roman Law, School of Law, University of California at Berkeley (1970-93).



short. But David Daube asked me to tea and I knocked on the door and it was opened, apparently by an enormous dog which was sitting there regarding me, and scared out of my wits I said, "Lovely doggy", and a small voice by the door said, "Yes indeed, a beautiful animal is it not?" This was David Daube's little boy aged about five. Yes. I can't remember who else you've got on the list there.

50. I think in terms of faculty who might have taught you at the time, that's probably all I have on my list for the moment. Of course there are other colleagues when you were in a later stage as an academic, but in 1944 you joined the Naval Intelligence, can you talk about the circumstances of this work and what it entailed?

It entailed finding out about places that we hoped we might one day recapture or capture, and it was actually quite exciting. The outfit concerned had started in the School of Geography in Oxford, but the School of Geography was tiny and from there they moved into Manchester College²⁸ which is a Unitarian, and there weren't any in the war, there weren't many Unitarians - I think there were a couple. So this bit of the Admiralty occupied that, and then they outgrew that and I was in one of the Nissen huts that they had on the end of the Balliol Cricket pitch, on Jowett Walk, and it was a very, very - whoever it was who was educated in the holidays from Eton - I think in a way I was educated on the Balliol Cricket pitch you know. I'd just graduated, they interviewed me for this job and I missed my Buckland lecture and I got the job and I went, and there was one other recent graduate, a girl who had just graduated from LMH [*LD: Lady Margaret Hall, Oxford*]; everybody else was really pretty senior and most of them were in the military one way or another, so that I and my fellow victim were being paid, I think we were being paid, £250 a year. All these other chaps were lolling around in their Service outfits with the Service income. So it had its moments of hardship and annoyance, but it was very interesting. They were very interesting people.

The boss of my hut - this was how we thought of it - was a Major of Marines who'd been horribly wounded and could just about walk with two sticks, and he was a wonderful man. I always remember some very big brass, covered in gold braid, came in to ask what we were doing, and my boss explained and said, "Of course we try and do it in words of one syllable" and gold braid said "Yes, well, but of course nobody below the rank of Major is going to read your output," - that's just what I mean. So that was fun. It was a silly thing to say of a wartime job but it was actually fun. One of my fellows in that hut was a man called Frank Stubbings²⁹ who I think is.. no, he died a year or two ago [*LD: 2005*]. He was a fellow of Emma [*LD: Emmanuel College, Cambridge*], a classicist, and he'd married a girl while they were in that hut together. We had Norwegians, Dutch, French. It really was extremely interesting and I really wished that Mr Rumsfeld³⁰ could have had a similar training, because one of the things that we were concentrating on was that if you hope to get back, then it was good to know where the gun emplacements were, and all that sort of thing. But also it would be good if you could take it without totally alienating the population. So we had to know

²⁸ Established as Manchester Academy in Manchester in 1786. It was one of the few dissenting academies that provided religious nonconformists with education. It moved (via York and London) to Oxford into buildings designed by Unitarian architect Thomas Worthington in 1893. Now called Harris Manchester College, it was granted Permanent Private Hall status in 1990, and only became a full college of Oxford University in 1996.

²⁹ 1915-2005, Dr Frank Stubbings, Life Fellow of Emmanuel College; University Orator (1974-82).

³⁰ b. 1932, Donald Henry Rumsfeld, 21st US Secretary of Defense (under President George W. Bush, 2001-06).



exactly where the power station was, and the waterworks and the gas works, so that our people could make sure those survived undamaged. And it was really very interesting, and if you build a power station, as we learned, you write it up in some technical journal, so we had all the details, but all we had to do was to find the right journal. And some other outfit got us the names of people who had lived in all these places, and we used to get them and ask them where things were and all that, and it was very interesting. Mostly they were not much help. We discovered that the ones who were most helpful were those who had done Pelmanism³¹ courses. Pelmanism was quite a thing in the Forties; they could probably tell you how many steps it was from the harbour to the power station. Extraordinary. And from that I came back to Trinity.

51. And were you not called to the Bar first?

I was. I did all the work for that in - Trinity kindly put me up. I had no claim on them at all, but they had a lot of spare rooms. They were quite glad to get a bit of rent.

52. So at that stage you were actually quite serious about your legal career?

Oh yes. I was going to the Bar. I should have stuck to it. I was planning to use my, what remained of my scientific background, to try and get into the Patent Bar.

53. Right. That would have ..

Which is a tiny Bar earning a fortune. Yes, and I should have stuck to that. However.

³¹ A card game based on memory testing. Called Pelmanism after Christopher Louis Pelman, who founded the "Pelman Institute for the Scientific Development of Mind, Memory and Personality" in London in 1899. In USA the game is called Concentration.



54. And after being called to the Bar, Professor Milsom, you spent a year in the States at the University of Pennsylvania, you were 24 years old then and you were awarded the Harkness Commonwealth Scholarship to study Legal History at the University of Pennsylvania.

Well, it was just .. the Harkness, the Commonwealth Fund Fellowships³², they are now the Harkness Fellowships, they told you where to go on the basis of a person that you were going to be as it were supervised by, helped by but the natural person for me in the States was S E Thorne³³, the main Legal Historian of the time. But he was in England that year, so I went instead to a man called George Haskins³⁴ who was at Penn, the Penn Law School. His father C. H. Haskins³⁵ was one of the great historians of Normandy, and George was wonderful. He never did anything except answer when I went in to say, "Look where should I look for information about this?" And he always knew. I mean the answer very often might be, you know, *Holdsworth*, Volume 7, perhaps page 318. He was obviously flicking through the pages in his mind.

55. Astonishing.

Amazing man. He died some years ago. I had a lovely time in Penn Law School. I was in very comfortable digs.

56. Probably different to the sort of circumstances of Trinity.

Oh absolutely. And I had to eat out the whole time because my digs weren't providing - I think she gave me breakfast. I'm not even sure of that actually. I think I went to an establishment called *Horn and Hardart* for my breakfast, which was a sort of supermarket eatery, if you know what I meant. And I sent off my dissertation from Penn for the Trinity Prize Fellowship and to my astonishment got it. Harry Hollond's doing I think.

57. I wondered whether you'd written it at Penn, whether the work had been done while you were in Pennsylvania.

Yes, yes and it was sent off to old Plucknett³⁶ for an opinion and he was kind about it.

³² The Commonwealth Fund is a US philanthropic foundation established by Anna Harkness (1918). Her son, Edward Stephen Harkness, initiated the Commonwealth Fund Fellowships in 1925. They were analogous to Rhodes Scholarships, enabling British graduates to study in the United States.
http://en.wikipedia.org/wiki/Harkness_Fellowship

³³ 1907-94, Sometime Librarian of the Yale University Law School, later Professor of Legal History, University of Harvard.

³⁴ George Lee Haskins, A.S. Biddle Professor of Law, Pennsylvania State University.

³⁵ 1870-1937, Charles Homer Haskins, an American historian of the Middle Ages, and advisor to US President Woodrow Wilson. The Haskins Society, an international scholarly organization dedicated to the study of Viking, Anglo-Saxon, Anglo-Norman, and early Angevin history and the history of neighboring areas and peoples, is named after him:

<http://www.worldlawdirect.com/article/869/haskins-society.html>

³⁶ 1897-1975 Theodore Frank Thomas Plucknett. Instructor in Legal History at Harvard Law School (1923-26). Professor of Legal History, LSE (1931-63), Dean of Faculty of Laws (1954-58). Literary Director of Selden Society 1937-63.



58. One general conclusion that I can surmise is that you acquired an admiration for the US system because you went back many times in the course of your career. What is it that attracted you, Professor Milsom, to the university system there?

Well, it's nice to be asked. I mean that's the main thing I think. An invitation to go and visit for a year or three months or whatever was always fun, and the LSE where I was teaching at first were very good about letting me go, provided they didn't have to pay me. Well the American universities were always paying me more for a term than I got in three years at the LSE, so that was okay. Yes, I think the American legal system still has I suppose, they would say it was the spirit of free enterprise or something, which English lawyers have rather lost. We're all a bit hidebound and they go for it, which is fun.

59. Professor Stein used to very much enjoy his visits to the States, Virginia, Baton Rouge, several places, and they all remember him there.

I'm sure they do, yes.

60. You returned to Cambridge in 1948 where you were then awarded the Yorke Prize and that is presumably the dissertation that you wrote.

That was the same dissertation as got me the Prize Fellowship at Trinity, yes.

61. And then you became a Fellow of Trinity in 1948 and you stayed there as a lecturer until 1955. What subjects did you teach in those days, Professor Milsom?

Goodness me. I taught almost everything I think.

62. Could you concentrate on legal history?

Well yes, but I mean I tried to, but it's always been a very optional subject and most people who are planning to make their livelihood at the law don't give a damn. So I had to teach all kinds of real things.

63. Did you find when you returned..... ?

I think I taught Tony Jolowicz Contract, unbelievable though it sounds, and I'm sure it damaged him for ever.

64. Did you find that the place had changed much since you'd been away? Or not really? I mean England had just begun to emerge after the war years.

Well, what mainly changed was that whereas when I was an undergraduate there were no, virtually no undergraduates, now there were lots of them but they were all mostly in their thirties, because they were returned warriors. So it was again, all abnormal, still.

65. Yes. Interesting. Mickey Dias³⁷ mentioned that as well, and Kurt Lipstein was telling me how difficult it was sometimes to accommodate people who had had positions in the Army, and then they had to sort of fall into line so to speak.

Mostly they didn't. More difficult for Kurt because he was older than them. I was younger than them, and they didn't expect me to tell them anything, you know. They expected to come and ask me questions and get their essays written that way.

³⁷ b. 1921-. Mr R. W. M. Dias, Lecturer in Law, University of Cambridge (Jurisprudence & Tort) 1951-1986, Emeritus Fellow of Magdalene College.



66. Did you remember Kurt at all from that time?

Oh yes. I mean Kurt was, when I was an undergraduate I can't remember exactly, I suppose he supervised me in International Law, which I detested, even Kurt couldn't make it. He probably supervised me in all kinds of unexpected things because there was nobody around; there was Kurt and Glanville, each with a little office in the upper gallery of the Squire, where they did their supervisions. There was a man called Fraser Roberts at Corpus who I think was ill, and he lectured on Contract and otherwise it was Buckland or me if you see what I mean.

67. Anyone else who springs to mind from that period?

Well, you listed Whalley Tooker³⁸; he was an extraordinary figure. I think he was ill. He's the only man I ever knew who actually lectured from that rather grand lecture thing with a sounding board, that I think stands somewhere in the Squire, I think it's now in the Squire foyer.

68. That's right, it is.

Yes. And he was the only person I ever knew who actually used it. I don't think it made much difference whether one heard him or not.

Who else? Henry Barnes³⁹, of course Henry Barnes who had been ejected [*LD: 1939 - he was replaced as teaching fellow by Robert Yewdell Jennings*], he'd been a Fellow of Jesus and ran off with the Master's wife or daughter I'm not sure which. Anyway, he had to set up teaching heaven knows how many hours a week, from rooms in Sidney Street, if I remember rightly. And he did lecture in, he lectured on Criminal Law. He was an exciting lecturer rather than a useful one... everything about Henry Barnes was exciting. He was rumoured to have been President of Mexico for a few days; it's more than possible. He was a great figure.

Who else have you got on your list?

69. I recently interviewed Judge Stephen Schwebel⁴⁰ who was a student at Trinity from 1950 to 51, and he was of course very enamoured with Trinity. Did he cross your path at all, Professor Milsom?

If so I can't remember it.

70. Do you recall any of the weekenders who used to supplement teaching. I know that Professor Jolowicz was one of those. Sir Eli Lauterpacht used to do weekend teaching. Any of those perhaps?

I mainly remember Eli as an undergraduate.

71. Your time as a lecturer came to an end in 1955 and you were appointed to a position at New College Oxford.

Yes, I went for a year to LSE in between.

³⁸ Hyde, C. Whalley-Tooker, Fellow of Downing College, Senior Tutor 1931-47.

³⁹ Lecturer in Law 1932-1959.

⁴⁰ b. 1929-, Stephen, M. Schwebel, Judge of ICJ 1981-2000, President 1997-2000



72. All that remains is for me to thank you so much for a fascinating account. I'm really very grateful to you and I'm really looking forward to the next interview.
Being bored further.

No, thank you so much.

