

## Conversations with Emeritus Reader David Eryl Corbet Yale

Part 1: Early Life and Career

by

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*This is an interview with the thirtieth personality in the Eminent Scholars Archive. David Yale was Lecturer and Reader in English Legal History at Christ's College from 1952 to 1993. He is Hon QC and FBA, and was President of the Selden Society (1994-97). The interview was recorded in David's home in Porthmadog, Snowdonia.*

*Questions in the interviews are sequentially numbered for use in a database of citations to personalities mentioned across the Eminent Scholars Archive.*

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

David Yale's answers are in normal type.

Comments added by LD, [*in italics*]. Footnotes added by LD.

**1. Mr Yale, it is a great pleasure and a privilege to have this opportunity to interview you. You will be the 30<sup>th</sup> scholar in the archive. A few of these scholars, like yourself, were born before the Second World War and have helped preserve invaluable memories of the University, the Faculty and their colleges during the war and in the unique immediate post-war period. You joined Christ's just after the war and you and your contemporaries were an integral part of the narrative in the Faculty's rebuilding during the 50s and 60s, and who have memories few others possess. Simultaneously you embarked on a career which entailed a remarkable research endeavour that focused on understanding aspects of the legacies of two outstanding 17<sup>th</sup> century legal figures, Lord Nottingham<sup>3</sup> and Matthew Hale<sup>4</sup>.**

**In three seminal volumes you documented and interpreted the former's contribution to the development of equity while Hale's work led you into constitutional matters, and in combination with the work of William Fleetwood<sup>5</sup>, an Elizabethan lawyer and politician, an authoritative treatise on the history and jurisdiction of the Admiralty Courts. The latter was a monumental 30-year project with another of our eminent scholars, Michael Prichard. I hope we can learn about your legal history achievements in a consideration of your scholarly works, but initially could we focus on your early life and academic career?**

**So starting with your early life, you were born, Mr Yale, on 31<sup>st</sup> March 1928.**

That's right, in Southsea, by Portsmouth. My father<sup>6</sup> was stationed, he was in the Army and went where, of course, the Army directed and he really led quite a peripatetic life moving around and finishing with the Indian Army. He and my mother<sup>7</sup> never owned a

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<sup>1</sup> Foreign & International Law Librarian, Squire Law Library, Cambridge University

<sup>2</sup> Freshfields Legal IT Teaching and Development Officer, Faculty of Law, Cambridge University

<sup>3</sup> Heneage Finch, 1st earl of Nottingham, (1621-1682), Attorney General (1670-75) Lord Chancellor of England (1675-82).

<sup>4</sup> Sir Matthew Hale, (1609-1676), common law scholar, judge. Chief Baron of the Exchequer 1660-1671), Chief Justice of King's Bench (1671-1676).

<sup>5</sup> William Fleetwood, (1535?-1594), lawyer and politician, MP for Marlborough (1558, Lancaster (1559, 1567), and City of London (1572-92), Recorder of London (1571-91).

<sup>6</sup> Lt- Col J C L Yale

<sup>7</sup> Beatrice Yale (nee Breese)



house. They were always on the move and my childhood was spent in this house, which was my grandmother's. I didn't go to school until I was eight or nine years of age because I was in India for five or six years prior to that, but when I went to school I was here locally until I was packed off to Malvern College in Worcestershire in 1942.

## **2. You attended Malvern College for your secondary education - was this as a boarder?**

The Lent Term in 1942 I spent at Malvern, and Malvern was then commandeered by the Admiralty and other important people who were bombed out of Bath and [we] were sent packing<sup>8</sup>. The remarkable thing is that the school survived that and went into exile, to Harrow on the Hill just outside London, where I spent the rest of my secondary schooling career up until '45 when finally I left Harrow on the Hill on account of the V-1 and V-2s overhead<sup>9</sup>. I was always a historian and on the outside by preference. I had no bent at all for mathematics or the natural sciences. So I was fortunate in that respect because Malvern had a good staff of historians who were quite gifted teachers, some of them, and I was able to benefit from that.

## **3. You then went on to Cambridge, where you effectively spent the whole of your academic career?**

I came to Cambridge via not Christ's College but by Queens' College without any serious sense of direction. A great-uncle of mine who was keen on genealogies discovered a couple of ancestors who in the 16<sup>th</sup> century had worked their way from Wales to Cambridge and they had gone to Queens' College. So to Queens' College I must go. But I wasn't in a position to go to Queens' College unless there was some money to float me there and much depended upon getting a scholarship. The school rather advised me against attempting an open scholarship to Cambridge, they thought perhaps I was being a bit over-ambitious, but needs must. I had a stab at it in the disastrously cold winter of '46/'47, and I remember in those days one had to attend Cambridge for about three or four days being examined and writing furiously the whole time. I managed to survive that and gained an open scholarship to Queens' College which was, as I say, my initiation into Cambridge. Yes, so I didn't go to Christ's until 1950. That's what happened.<sup>10</sup>

## **4. So in those immediate post-war years when you arrived in Cambridge, was there a feeling of the sort of deprivation of war, did you get a sense that there were shortages ?**

Well, when I was a freshman I was one of two persons in the college [*Queens' - LMD*] first year who were not ex-service. All the rest stumped in straight off the boat, as it were, and stamping the sand off their boots as they came<sup>11</sup>. They had all been in the services of one sort or another, and the chap who stroked the boat I was in on the river had only six months before been captain of one of Her Majesty's submarines. That was the sort of milieu in which I was cast as a sort of rather inexperienced schoolboy, and it was quite a challenge actually. In the event I got round to reconciling myself and them to it by, you know, joining in, in the sporting activities at the college.

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<sup>8</sup> The Admiralty in the early part of the war, and later the Telecommunications Research Establishment for RAF work (see <https://www.malverncollege.org.uk/Our-History>.)

<sup>9</sup> V-1 flying bombs (Vergeltungswaffe 1 "Vengeance Weapon 1"); V-2 rockets (Vergeltungswaffe 2, "Retribution Weapon 2")

<sup>10</sup> Queens' Autumn '47- June '49 (BA); Christ's Autumn '49- June '50 (LLB).

<sup>11</sup> So-called "returning warriors".



**5. Well, there were at that time eight newly arrived lecturers in the Faculty, quite an influx to boost the staff and I wonder whether you have any memories of them: David Daube, Robbie Jennings?**

Yes, I really knew them more in a rather distant way, of course. One or two were quite important in a sense. Old Hollond, Harry Hollond<sup>12</sup> was the representative of legal history. As far as I was concerned he was, you know, a frightfully important person, but he was Vice Master of Trinity, and he was the only person in the Faculty who had survived Maitland<sup>13</sup> as a lecturer. He'd heard Maitland lecture. He himself was a very pedestrian sort of scholar: he published nothing at all but ploughed his way on regardless, and on the whole in the inter-war years the subject had become rather a lost cause. [*Then*] there was Professor Haseltine<sup>14</sup> at Downing who was supposed to be also in the advancement of legal history as a subject but who didn't really do very much about it. So that by the time we get to the post-war years, on the whole the subject was very much in the... you might say the dog's house as... comparatively speaking. Therefore the immediate post-war generation had quite a lot of, as it were, catching up to do, rejuvenating the lecturing really. The lecturing had got very matter of fact and uninspiring.

**6. Mr Yale, do you remember any of the weekenders and whether they were effective, in your view?**

Yes, I used to employ them when I was Director of Studies in Christ's because they were very valuable. They would come up on a Friday night and give the supervisions on Saturdays and disappear for the rest of the weekend, but they were very useful for plugging gaps. If you were a Director of Studies you had to provide supervisors in all the Tripos subjects and that was very difficult to do with the existing staff who had their own priorities and preferences and so forth. So, on the whole, we did rely on them to a considerable extent. They were very valuable because they were in touch with the practicalities of that, and also they were very popular with the undergraduates who felt they were in contact with real lawyers who had their hands on the levers as they themselves hoped in the immediate future. So they were all, I think, quite well received as entirely amateur supervisors but they were not professional academics at all, but we had relied on them quite considerably in the early days.

**7. Do you recall any of your supervisors?**

Yes, I can remember the ones in the Faculty who worked for me who took up different subjects, yes. I remember one or two had careers, one or two ended up... well, I can remember one who became a cabinet minister in the end.

**8. Mr Yale, which Faculty lecturers impressed you the most?**

Well, the ones on modern law on the whole, I think. I didn't take particularly to some subjects as others were favourites, and it's very strange how one comes to be immersed in one particular field... there's a danger, of course, from becoming an over-specialist. The best sort of academic work is very often done in the field of comparative law where one is juggling with more than two systems at the same time. Like Kurt<sup>15</sup>, for example, he was in

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<sup>12</sup> Professor Henry Arthur Hollond (1888-1974), Rouse Ball Professor of English Law (1943-50). Vice-Master of Trinity College (1951-55). Attended Harvard Law School (1913-14).

<sup>13</sup> Professor Frederic William Maitland (1850-1906), Downing Professor of English Law (1888-1906).

<sup>14</sup> Professor Harold Dexter Hazeltine (1871-1960). (USA), Professor of Law, University of Wisconsin (1908-19), Downing Professor of the Laws of England (1919-42).

<sup>15</sup> Professor Kurt Lipstein (1909-2006), Professor of Comparative Law (1973-76).



comparative law. He was first of all at Trinity College under [*Hersch-LMD*] Lauterpacht<sup>16</sup> who felt, I think, that as refugees from Germany they should not be seen to be promoting each other and held down Kurt very much in Trinity. I don't know whether you have ever heard this sort of comment before. It was only after an inordinate period of time that he was rescued by Clare and taken in there as a Fellow [*1956-LMD*]. He was very badly dealt with by Trinity College, almost a scandal. He spent years working for them without any advancement at all.

**9. What was remarkable was how he maintained a very stoical and cheerful disposition despite this.**

Yes, he was indeed a very easy person to get on with.

**10. Your time as an undergraduate coincided with the brief tenure of Toby Milsom<sup>17</sup> who was an assistant lecturer from 1949 to '55. Did he teach you at this time and did he have any influence on you, Mr Yale?**

Well, I followed him quite closely. When I started doing work on my own account, research work, he was quite generous of his time because I wasn't a research student. I simply decided I would do my initial work and put in for things like a Yorke Prize, which I got, a university prize. Milsom at that time was a junior Fellow at Trinity and he allowed me to read to him some passages of what I was writing to get his comments on them. That was valuable to me because he was able to make suggestions and make criticisms. At that stage of my career I depended on him a fair amount, later on not so much.

**11. The Faculty at this point was housed in the old schools. Was this quite cramped for lectures and so on?**

It was quite cramped, yes, it was, certainly and it was also a battlefield between ourselves, the Law Faculty and the administrative people in the old King's Court part of the building. They were constantly taking... they took away Room 3, for example, which was one of the best lecture rooms in the university. And the [*Faculty - LMD*] handed over the old School of Canon Law - that room was handed over to the computer wallahs, you see. I remember that raid quite well, the Registry had the argument that they had been so used in the Administrative Court as to taking the forms and papers off the shelf that they couldn't have a computer which was parked a mile away. It wouldn't work because they always had been used to being at arm's reach of what they wanted, therefore the computer had to be in the office.

**12. Was Room 3 the room which had marvelous acoustics?**

It was very good, yes. It was a very good room for lecturing in.

**13. Do you have memories at that time of the Squire Law Library?**

Yes, I remember the Squire Law Library and people who worked on it. In fact, John Baker<sup>18</sup> was an assistant librarian there. His first job when he came up from London [*1971 -*

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<sup>16</sup> Professor Sir Hersch Lauterpacht (1897-1960). Judge ICJ (1954-60), Whewell Professor of International Law (1938-55).

<sup>17</sup> Stroud Francis Charles (Toby) Milsom, (1923-2016). Fellow & Lecturer Trinity College (1949-55), Professor of Legal History LSE (1964-76), Professor of Law Cambridge (1976-90).

<sup>18</sup> Sir John Hamilton Baker (b.1944) Librarian, Squire Law Library (1971-73), Professor of English Legal History (1988-98), Downing Professor of the Laws of England (1998-2011).



LMD] was to work as a librarian in that office. In fact, then of course he took off and got a university appointment, but that was his first move into Cambridge.

**14. I think he felt very much in tune with the Cockerell Building, being very beautiful.**

It was a fine library. Still is a library, of course, if you want to see it, as you can walk in, and it's part of Caius now. Handed it over to Caius on a 400-year lease, a rather ambitious span of time to look ahead.

**15. Yes. There were some quite colourful people on the staff at this time and the name of Henry Barnes<sup>19</sup> springs to mind.**

Barnes, yes, Henry Barnes. I was a favourite of Henry Barnes for some strange reason. He had a very extraordinary career which made him very popular with the undergraduates. He had been as a young man in Mexico and the Caribbean and had joined a pack of revolutionaries in Mexico at one stage. This was just before the First World War and he had... the myth surrounding him was considerable but it was said that he had for 48 hours been vice-president of Mexico.

I'm not sure whether that's true or not but he had a sort of gun-running youth and had survived that, miraculously, and washed up at Trinity College where he insisted on becoming a member of Trinity and qualifying himself as a sort of rough-and-ready lawyer. But his experiences made him very popular with the undergraduates because he lectured on some of the most raffish parts of criminal law with great gusto, and he had this extraordinary history of guerrilla warfare behind him and he was a person of really a rather generous disposition.

I remember once I had a long chat with him in his rooms overlooking Sidney and at the end of the discussion he leapt up and took down four volumes of Blackstone's *Commentaries* which he handed over to me, and it was a very precious set which had a distinguished Cambridge ownership of those books and he just pressed them onto me and told me to take away and look after, you see, but he was a very impulsive sort of man.

**16. Yes**

The undergraduates used to tell the most extraordinary stories about him, going up and sitting in his rooms waiting for him to appear to supervise them. He would come up the stairs and go to the windows overlooking Sidney Street and twitch the curtains across and then he would turn round and say, "You never know who will be shooting through the windows at dusk." Then he managed to engage the undergraduates most successfully by his reminiscences, I suppose, of his raffish days. He was a real character. Now I doubt whether he would be appointed, you know, to a university lectureship but he had one for a number of years and was very popular. Was a strict teetotaler, as he had reason to be.

**17. Very Interesting. Another rather colourful character was Clive Parry<sup>20</sup>.**

Clive, yes. I thought well of Clive. He did a lot for international law in one way or another and was a great editor of the original archives in the Foreign Office and the rest and he had experience of other parts of the world. He had done a stint in Australia at one stage in his career, as I nearly did, as a matter of fact. I remember one departmental head from Adelaide trying to induce me to go to South Australia to make a living, which he didn't succeed in bringing off. But Clive was, how should I say, not a very easy person to get to know actually but he always commanded respect, he was a very talented man.

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<sup>19</sup> Henry Barnes, Fellow of Jesus College until 1939, Lecturer in Law (1932-59).

<sup>20</sup> Clive Parry (1917-1982), Professor of International Law (1969-82).



**18. Sadly, he died relatively young.**

Yes, yes.

**19. Did David Daube<sup>21</sup> have any sort of ....**

Daube, no, I didn't know him very well at all but he was at Caius College. He was really the one successor in Roman law after Buckland<sup>22</sup> who was entitled to respect in the academic scale of things. He was a very gifted man. He went on to be a Regius Professor in Oxford. He was eventually in All Souls and he lectured in Roman law. That was, well, not his only subject. He was a great Jewish scholar as well, but he was... well, he was the one Roman lawyer who was worthy as... I say, as a successor to Buckland. Buckland was the great name, Cambridge name in the subject.

I used to lecture a lot on Roman law and teach it, and supervisions too because of its elementary character in introducing people to basic legal concepts. It's very valuable in that respect, much more so than English law. You get a sense of pattern and of shape in Roman law which you don't get in the heterogeneous collection which goes for English law and common law. The concepts are much sharper and I think more easily grasped, so although it was never a very popular subject with undergraduates I think educationally it was one of the more rewarding ones.

**20. I'm glad that it's still taught at Cambridge.**

Yes, it is, is it?

**21. Yes.**

Well, in my time it fairly well flourished, I think, but we even had a lecturer in Roman-Dutch law, modern Dutch, modern Roman law.

**22. That might have been Colin Turpin?**

I forget. It may well have been.... yes, he may... from South Africa. Colin was from Durban, wasn't he?

**23. That's right, yes.**

Did you ever meet him, interview him?

**24. Sadly, we had arranged a meeting and ....**

Of course, I remember him as a student from South Africa.

**25. Right. When he came to Cambridge initially. That would have been in the 60s. Sadly, it wasn't to be because, actually, he died in August, this year.**

Well, I hadn't been in touch with him for a long time, but he was at Christ's, wasn't he? I seem to remember him quite vividly.

**26. Initially, yes. Then at Clare<sup>23</sup>.**

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<sup>21</sup> David Daube (1909-1999), Professor of Jurisprudence, University of Aberdeen (1951-55), Regius Professor of Civil Law, University of Oxford (1955-70), Fellow of Gonville & Caius 1935-46), Lecturer in Roman Law, Cambridge University (1946-51). Curator, Robbins Collection of Jewish and Roman Law, University of California Berkeley (1970-93).

<sup>22</sup> William Warwick Buckland, (1859-1946), Regius Professor of Civil Law (1914-45).

<sup>23</sup> Christ's College (1951-53) as undergraduate, Clare College (1961-95) lecturer & Reader.



Now, how did I come across him then? Perhaps he moved between the two colleges as a research student. I think it may have been that.

**27. By all accounts he was a very amiable, convivial person. And, of course, he did produce that seminal constitutional law...**

Yes. Well, with all these people I have become so much out of touch now after 20, or more than 20 years', absence.

**28. Well, your memory is remarkable then, Mr Yale, absolutely remarkable. Still on the subject of people during this early time when you were at Christ's. There were some professors [referring to list]: McNair<sup>24</sup>, who was Professor of Comparative Law. Do you have any recollections of him?**

Comparative Law, McNair, no, I didn't know McNair at all. He was a Fellow of Caius, wasn't he, and a great name there. He and Buckland wrote a very good joint book on comparing Roman law and common law which I valued very much. Duff<sup>25</sup> was Regius Professor in Roman law and was quite dependable but not particularly outstanding in the literary side of things. ECS Wade<sup>26</sup>, who was a public lawyer, public law lawyer... constitutional law, I should say, I knew slightly but not at all well.

**29. The other outstanding professors....?**

Harold Potter<sup>27</sup>, I have underlined here, you mentioned him. He wasn't at Cambridge, but he was in and about quite a lot. He used to come to Cambridge at weekends and deliver a lecture on Saturday or Friday night and buzz off again, but he was always in the Squire at a weekend. He came to Cambridge from London and disappeared back to London where he was professor. He wasn't on the Faculty at all, but he was very useful to the Cambridge Faculty. He wrote quite a good little... well, large textbook on the subject of legal history. He was quite willing to extend a helping hand, because I do recall very vividly how when I had finished being an examinee I was trying to collect a subject or a field which I could develop in a research direction and I tried a number of subjects that I needn't bore you with, but none of them were really very satisfying. I found Potter in the Squire Library one Saturday afternoon and I said, "I am having a difficult time thrashing around taking up things and dropping them again. Have you any ideas?" He said, "Oh you had better do something on early Equity."

So I asked him what his view about the openings there, or the vacancies of the interests which could be, as it were, supplied by some latter-day research, and he then told me that Nottingham was a good bet and he suggested I run Nottingham as a trial, so I did.

**30. That was the original inspiration?**

It was, it was just a ten-minute conversation which I had.

**31. Incredible.**

I hadn't thought of him [*Nottingham - LMD*] at all.

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<sup>24</sup> Lord Arnold Duncan McNair (1885-1976), Whewell Professor (1935-37), Professor of Comparative Law (1945-46), Vice-Chancellor Liverpool University (1937-45), British Member Hague Permanent Court of Arbitration (1945-65), Judge & President ICJ (1946-55, 1952-55).

<sup>25</sup> Patrick William Duff (1901-1991), Regius Professor of Civil Law (1945-68).

<sup>26</sup> Emlyn Capel Stewart Wade (1895-1978), Downing Professor (1945-62).

<sup>27</sup> Harold Potter (1896-1951) Professor of English Law, Kings College London (1938-51).



**32. Well, I greatly look forward to returning to that when we talk about your publications. Before we leave this time I was told by Professor Baker that you were quite a sportsman or an athlete and as an undergraduate and I wondered whether you could tell us of some of your triumphs?**

Well, I think that's a bit of an exaggeration on John's part, but I set out to be an oarsman but I was never in the range of proficiency or build where you can expect to have trials for, you know, the blue boat or anything of that nature. But I was an enthusiastic college performer and each of the main boats I rode in for all three years, each of them got their oars for successive bumps, three or four successive bumps in the bumping races, you know, on the Cam. So I had, I'm sure, a run of luck in that regard. But that doesn't really suggest I was more than a good college member of a boat club. I wasn't an all-round athlete.

I was a great believer in a bit of active exercise to keep one's head in good order. You know, people would sometimes, as I myself did, overwork occasionally and the discipline of getting out of doors was rather important.

**33. Well, that brings us, Mr Yale, to your graduation. You graduated in 1949 when you were 21 and then you did your LLB. Your specific interest in law by this stage was perhaps legal history?**

It was, yes indeed.

**34. And you became a Fellow of Christ's in 1950.**

Yes.

**35. This would have been about the time that you first met Michael Prichard<sup>28</sup>?**

Well, Michael was one hop ahead of me - by one year. He was a London... well, I needn't tell you about him but... you know all about his career. He came up from London to do the LLB and joined at that stage. He was one of Potter's prize pupils at one time.

**36. Right. So you joined the Inner Temple in 1951. Any circumstances that you recall from that?**

Not really, no. I can't say that I had any special reason for choosing the Inner Temple than elsewhere.

**37. You did your Bar exams that year?**

Yes, I did do Bar exams after the LLB.

**38. Did you intend practising, did you have any intention...?**

I went into chambers for six months in 13 Old Square, Lincoln's Inn, a conveyances chambers really, a man called Hector Hillaby. I was his pupil for six months, commuting from Cambridge and doing some research at the same time in a preliminary way in the British Museum Library, British Library as it now is. So I did that for six months, travelling up on a more or less daily basis to London and I never, as it were, did any work on my own account. It was always sitting in for someone else or acting as a sort of bellweather for my pupil master who was a conveyancer mainly. We didn't ever appear in anything of spectacular interest to the wide world, as you get with certain types of case. We were always dealing with trusts and property and transactions of that nature.

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<sup>28</sup> Michael J Prichard (b. 1927). Lecturer in Law (1950-95), Life Fellow of Gonville & Caius, President (1976-80), Edit. *Cambridge Law Journal* (1996-2002).





**39. Mr Yale, you mentioned the influence of Professor Potter and this more or less inspired you to become a legal historian. Do you have any personal recollections of him as a person?**

Very little, only what I knew of him from his weekend visits and coincidences in the Squire on Saturday. He never, as it were, corresponded with me. All I remember of him is word-of-mouth conversation.

**40. At this time, this was the early 50s, there were no women at Christ's. As I understand, this only took place in 1979.**

That's right.

**41. Do you know why? Why it took a fair bit of time?**

Well, all the colleges went in that decade really. I don't think there was any movement until the early 70s, and they had all merged by the time you get to the 80s, so it was that decade really. All the colleges went within about six or seven years of each other. To some extent the process was staggered to, as it were, make the change more digestible. So it was done in stages. Admittedly, different colleges took a bit longer by agreement so they should acclimatise more easily to change, but it was accomplished without... there were one or two objectors, I suppose, in each college, but on the whole it was a minority interest in preserving the status quo at that time. I think now things have settled down in a way which is really satisfactory to all.

**42. In 1952 you became an assistant lecturer, and then a lecturer, and you held these positions for 17 years. Can you describe the circumstances of your appointment to an assistant lectureship? I mean, did you have to apply or was it a conversation?**

You had to apply, yes. You were sometimes advised to apply, or [it was] suggested you should apply, but you had to apply. You couldn't be, as it were... find yourself elected *ex post facto*. I was willing to do that because at that stage I had decided I was probably going to stay in the university rather than go seeking my fortune at the Bar, which is something I might have done but in the event I didn't. Of course, at that time we were in need of some financial security too because, I suppose it's relevant to mention, but we had become rather impoverished as a family. My mother was an Army widow after my father's death<sup>29</sup> and that was only a pittance.

There was no spare money whatsoever and there was a big overdraft at the bank and a mortgage on the house [*in Porthmadog - LMD*] and all the rest of it. We needed to, you know, resolve these unfortunate circumstances, which we did.

When I attained the age of 21 or 22 I set about that by various manoeuvres which I needn't recall now. We got on an even keel again and pumped the boat out financially, but a job in the hand was worth any amount of years waiting at the Bar before you could get to a practice and I wasn't of a sufficiently dashing disposition to undertake that risk. So I was playing it safe rather, that's why I stayed in Cambridge. They seemed willing to let me stay, so I stayed.

**43. Any particular duties during that time that you recall...teaching duties?**

Well, I was appointed to a research fellowship in the college [*Christ's - LMD*] before I got any advancement on the lecturing front. Although, it was supposed to be a research

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<sup>29</sup> Killed in action in WWII, when David was 13.



fellowship for three years, the usual sort of thing, it wasn't really, because the next day they made me director of studies, which was a job in itself. And then, they of course expected me to undertake quite a lot of teaching which, again, wasn't really the job description at all. As a research fellow you are supposed not to teach but to research, but it didn't work out that way with me. I wasn't going on my terms, but their terms.

**44. So a very full life...a very full academic life?**

Yes, well, it was... that's what happened to me, certainly.

**45. Did you teach legal history?**

No, not much. Only the LLB.

Later on the LLB got much more interesting because the people there would be already well in advance of the undergraduate performances, they would be able to.

**46. Some of your fellow lecturers at this point included Mr Mickey Dias<sup>30</sup>, who was appointed in 1951. Any recollections of him? In fact, I think he might have taught Roman-Dutch law?**

I remember Mickey very well, yes. He was from Ceylon, as the name suggests, and he taught jurisprudence, theoretical aspects of law at Trinity Hall in a basement, and then he went off to be a lecturer in Aberystwyth.

**47. That's right.**

Then he returned to Cambridge. He got an appointment for a lectureship in jurisprudence and he made his way in one way or another. He was a member of the Inner Temple, became a bencher and all the rest of it. He was confident, but he was in analytical jurisprudence and that is very much an acquired taste, I think. I remember he communicated fairly well though. He was a valuable member.

Michael Prichard I knew rather better, but not at that stage. Only later did I become really close to Prichard and his work. Keith Wedderburn<sup>31</sup> I didn't know at all well, though he was a member of Queens' when I was and he was eventually in London as a professor.

Toby Milsom was another... he was certainly influential on my career. I mentioned Toby helping me at an earlier time. Of course, he spent much of his career outside Cambridge. After Trinity he was in London for quite a while because they made him Professor of Legal History after Plucknett's<sup>32</sup> retirement or demise, and then he went off to Oxford at New College. He spent a bit of time at New College in Oxford and then returned in '76 or so, thereabouts, to Cambridge where he got a professorship which was then vacant, I've forgotten which it was.

He got that appointment. He was always therefore one or two jumps ahead of me and jumping from place-to-place, and on the whole I think sometimes he found me too close on his heels for comfort. Though I didn't jump about from place-to-place, I stuck in a rut. By the time I left Cambridge, which was two years before I was due to retire, I had become the

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<sup>30</sup> Reginald Walter Michael (Mickey) Dias (1921-2009). Coastal Command (1942-44), Lecturer in Law, University of Aberystwyth (1944-51), Lecturer in Law, University of Cambridge (Jurisprudence & Tort) (1951-82). Fellow of Magdalene College (1955 - 2009).

<sup>31</sup> Kenneth William Wedderburn (1927-2012), Baron Wedderburn of Charlton, Labour politician, lecturer in law at Cambridge, Cassell Professor of Commercial Law, LSE.

<sup>32</sup> Theodore Frank Thomas Plucknett (1897-1965), Professor of Legal History, LSE (1931-63), Literary Director of Selden Society (1937-63), disciple of Maitland.



most senior unadvanced reader in the university. Not just in the Law Faculty, in the whole university.

**48. You have a very impressive publication record.**

Yes, well, the whole balance of this is an interesting reflection isn't it? They used to say in Cambridge - I don't know whether you heard this - there are four areas, three areas perhaps, in which one can put in an effort. One is, of course, teaching and instruction and so on, and the second is the field of research and learning, and the third is administrative duties and committees and carry on of that sort. But you should never attempt more than two in any one person otherwise you run the risk of being submerged and not being able to cope at all. I confess I've tried all three and some of them I've tried simultaneously and I think I've overdone it badly, as you will see in the course of discussion, because after a while I was very much drawn into the administrative side of the university. I spent much too much time on that, which is a confession I'm willing to make, but I think it has had a considerable effect upon the amount of work I was able to do in the field of teaching and research.

**49. Very interesting.**

We might come to that later perhaps?

**50. Were there any particular circumstances when you were upgraded from an assistant lecturer to a lecturer?**

I don't think so, no, except that that's what commonly happens. I think on the whole unless there is some accident of a serious nature that normally, if you had survived the probationary tenure of the assistant lecturer, you could expect to be prolonged, unless you wished otherwise. If you were good enough to, as it were, maintain the task at the lower level, there had to be some reason why you should not, you know, be prolonged. But people did have to go elsewhere from time-to-time, of course, simply because they needed a promotion earlier than they were going to get it by waiting.

Sometimes one had to wait quite a while and be an assistant for more than three years. That might be the tenure, but you found yourself perhaps being there for six years, or... pressure. If you have a set establishment, or in the faculty or the department, you have only a limited number of slots which you can fill, therefore it means that you have to juggle a bit with people, unfortunately. Sometimes people get advanced quite rapidly under certain circumstances, and under other circumstances they get held down for an uncomfortable time.

**51. This brings us to your earliest publications. Not the content at this point, Mr Yale, but if we could just talk a little bit about the circumstances. This was again the early 50s, two years after your appointment as a lecturer when your Selden Society volume on "Lord Nottingham's Chancery Cases" volume 1 was ready for publication. It was a major work of about 580 pages, and in the Preface you intimated that volume 2 was at least well underway. So two volumes amounting to well over a thousand pages, which suggested you had put in a huge amount of scholarly research. This wasn't just a casual entry. Perhaps you commenced this research before you even became an assistant lecturer? So at what point did this active research on legal history....?**

The dates. It's curious that it didn't appear, volume 2, for some time. The reason for that was simply that old Plucknett, who was the Literary Director of the Selden Society was under pressure to postpone my second volume because he needed to insert an earlier



contribution by Sir Cecil Carr<sup>33</sup> who is a very eminent scholar and was a parliamentary counsel to the Speaker of the House of Commons and all the rest of it. He produced an edition of the “Pension Book of Clement’s Inn” which is now in the Selden Society, but it was ready and he wished to promote Cecil Carr’s volume as soon as possible on account of age and retirement and so forth. He asked, “Can you postpone volume 2?” So I said, “I’ve done the work on it but I’m quite ready to wait a couple of years and you can have it when you can take it.” That was all that happened there. It was a sort of a juggling act which the literary directors of the Selden have to do one year after another, who is first, who is second and so on.

**52. So the motivation for the Nottingham project implies that within two years of getting your LLB in 1950, you had set your mind on testing whether Lord Nottingham could be considered the father of modern equity. And you concluded that he was. So this quest, at such an early stage in your career, suggests a remarkable sense of confidence and maturity, because you couldn’t have been more than 22 or 23 years. How did you manage to buoy yourself up for such an ambitious project?**

Well, it was being suggested to me, I thought there might be something in it, and I proceeded to find out as much as I could, and it was possible. I laid my hand on what turned out to be a reliable copy of the reports, over a thousand cases. In those days it took time, not to read it in the British Museum, but, in those days it was really taking photographs, getting microfilm. Then you had copying facilities. You had the Xerox, of course. You didn’t have the modern facilities you have [now] for reproducing facsimile texts, [and] that sort of thing.

So what I did was I sat down in front of a microfilm reader and transcribed by hand. Having done that, I typed by hand, and having done that I then read the thing all over again for verification purposes and turned it into modern English which, of course, raised some eyebrows.

They should have preserved the old spellings - some people would have felt in the Selden Society [that] you have to reproduce what was [the original, even] if it was French, [with] an English translation with the French.

The actual wording is important. So I did all that and I don’t regret it because I spent hours at it, but the very fact of having to copy the thing, to rewrite it, and to publish it in its final form was a way of learning the subject. A lot of it was very new to me and a lot of it is highly technical, but it was manageable, partly because I was pushed to, as it were, writing out sentence by sentence, then copying and verifying. It stuck in one’s head after a while.

**53. Fascinating. In the same period, the mid-50s, that you were working on your Nottingham project, there were some early journal publications. The earliest one that I could find in 1955 was on tort and the subject of maintenance, which was illegal help in law suits. You looked at the historic use of this and how the common law has developed, as you put it Mr Yale, “adapting of old rules to new circumstances and in the subsequent creation of new law.” So how did this interest develop. Was it after or simultaneously with the Lord Nottingham work?**

I think I felt all that a long time ago, that the process of adaption, and it’s really a point of principle of what is the process of adaption or adoption for the creation of new law. I

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<sup>33</sup> Vol. 78, for 1960. *Pension Book of Clement’s Inn*, 1714-1749. Edited with an introduction by Sir Cecil Carr, KCB, QC, FBA.

See: The Mission of the Selden Society, Sir Cecil Carr, KCB, QC, President of the Society.

(Selden Society Lecture delivered in the United States Court House, Washington, D.C., on August 30, 1960.)

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don't think you can study the subject of legal history without feeling that the common law on one hand is a process of continuous change and adaptation. It's under pressure of all sorts of impersonal factors - politics and economic and social factors - which eventually are infected in the beliefs of the profession. The profession [then] churns out the doctrine which then governs the law for the time being, until it's revised and reversed. So there is a process of great change.

This is the area in which I rather departed from Milsom. Milsom was inclined to the view that the early common law was all that he was interested in. He wasn't interested at all in the 17<sup>th</sup> century and later. The early common law was clearly an inductive, and not a deductive way of going about things, but the early common law was a process of greater accretion. A little bit and a little bit, rather like, if you like, the analogy of building up a coral reef, that sort of thing. He was very dismissive of the view that great figures produce revolutionary changes at any one time. He thought that was quite the wrong way to go about things and, of course that difference of opinion rather coloured relationships in a way His interpretation of the process was not quite my interpretation of the process to the extent that something of a fairly fundamental nature in approach to the subject made for certain awkwardnesses in later times.

We always remained on very good terms personally, but on grounds of how to cope with the material, there was a difference, I think, of a very fundamental nature. I was quite prepared to allow for much greater personal influence of certain individuals and certainly critical points than Toby was ever prepared to admit or believe in. Well, that's all a bit of rather refined justification.

**54. Very interesting indeed. It is fascinating. This brings us back to the narrative of your lectureship years. You married in 1959, Elizabeth Anne Brett from Belfast.**

Yes. Well, there we are. '59 I lived in college all the time. Well, we lived in flats until we moved out to Fulbourn when we returned from America. We went to America in the early 60s on a sabbatical trip. I had met the Dean of the law school at Newhaven who was in Cambridge the year before, and he got an appointment for me as a visiting professor in Newhaven. So we went there in the early 60s just for one year, spent a year in America. The only other sabbatical I took in my time was in the early 80s when I took a year off, and on that occasion I spent a year doing research on some of these later efforts and we only went to a short holiday in the 80s. We went off for some weeks or a month or two to the South of France.

Those are the two occasions when I took leave. On the whole the first of them was doing a full stint really at the law school in Newhaven, and the second was most pursuing research for the later works, which you refer to here. We started Admiralty by then and we continued with Admiralty for year after year after year with considerable lapses of doing anything in between. We went at it hammer and tongs all the time until the very end when we realised that time was running out on both of us until, you know, retirement age arrived. We hadn't got so much time left.

I put it to Michael either we would give up, or we do what we can. We decided to, instead of producing what one would call a narrative history of the institution from A to Z, which is I think what we were originally supposed to be doing, we decided to reduce it to a much more shorter time span.

That is to say the period between, shall we say, the Middle Ages and modern times on the jurisdictional question of who was to run the commercial law of the country. Was it the civilians in the Court of Admiralty, or was it the common lawyers in the courts of Common Law? What we eventually published on the Admiralty front was an examination of that latter



question. It wasn't a history of the court as institutionally from A to Z at all. We did it because we had made this big collection, which you have kindly dug up, and we were unable to really find time to do what was originally intended, which was an A to Z account, event, whatever.

**55. Very interesting. That brings us to your Readership, which was from 1969 to 1993. 24 years in total. Can you recall the circumstances of this promotion?**

No, it was a fairly early promotion, but that's all I can say about it. It lasted a long time, as you can see. There are one or two things I would add to that list actually. You might also pencil in that I was editor of the *Cambridge Law Journal* for a span of years - 1974 to 1981, that's just about six or seven years or something. Rather unintendedly because what happened was that Hamson, Jack Hamson<sup>34</sup>, had been editor for a long time and then he had been persuaded [*that*] he had done enough, I suppose, and he retired. They pitched on a chap called Stanley de Smith<sup>35</sup>, who had held a chair in London and had recently been appointed to a chair of public law in Cambridge. [He] was obviously a very suitable choice to have for the job, but he had only been in Cambridge for a matter of six months before he was fatally ill and was no longer with us at all. So they cast round in a panic really, halfway through the year, and they pitched on me. I had no connection with editorial work on the journal before at all, but they said, "You must pull us out of this emergency," and I pulled. I pulled my fingers out for the next half dozen years on the *CLJ*.

**56. Which must have been hugely time consuming?**

Very time consuming and it wasn't the only thing, you see, because I had the monograph series, which you do mention here [*on his notes - LMD*], and which was a very valuable instrument for the subject because a lot of people, who are looking for initial appointments, would like a dissertation or something of that sort in book form. They would get on more readily if they have, a publication to their name. If it's sufficiently good, why not publish it? That's really the function of this series, to get people going.

**57. Is this the "Cambridge studies in English Legal History"?**

That's it, yes, the "Cambridge studies in English Legal History".

The only thing I can remember about that now is that during that period the press had a rather remarkable scare financially. They thought they were insolvent or something horrible was going to happen and they were looking around for economies. They decided to axe the series. I had a very stiff time with them, including writing letters that are placed before the syndicate, and eventually clouds lifted and they decided they could continue on reduced terms. Any rate they were not going to go in for suppression and disposal so that was....

**58. Which was, to some extent, thanks to your intervention?**

That was a victory of a kind, yes.

**59. You were Chairman of the Faculty from '76 to '79.**

I was Chairman of the Faculty also, yes.

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<sup>34</sup> Charles John Hamson (1905-1987), Professor of Comparative Law (1953-73). Editor *CLJ* (1955-74), captured and held POW in Germany (1941-45).

<sup>35</sup> Stanley Alexander De Smith (1922-1974). Downing Professor (1970-74). Editor, *Cambridge Law Journal* (1973-74).



**60. Any highlights from that time?**

Not really no.

**61. Or low points?**

I think it was a rather uneventful span of service.

But one of the jobs I did was also a spin-off from being on one of the central bodies. I was once on the Council and the Senate, but I spent most of my time in the old schools on General Board duties. You know, the General Board of the Faculties, and that meant that sometimes there were specialised tasks which were spun off, as it were. I found myself Chairman of the Standing Committee on Academic Work, and stipend matters for university staff of academic rating. That was quite an onerous job because it involved looking after the rights and duties of all the people working academically. You know, professor right down through departmental heads and all the rest of it, right down to the lower ranks and seeing that they got what they ought to get and they had to deliver what they ought to deliver. That took about one meeting a week. Of course, there was support from the university administrative staff, but even so it took up a lot of time and it's what I was referring to earlier when we were talking about the division of time available to one, apart from teaching and research. There was this additional burden which occupied a good deal and probably too much of one's time, but it's the freedom the university possesses to conduct its own affairs which is at stake, and I think worth the effort to keep.

**62. At this stage, do you recall any discussions of the Faculty being given its own premises. Was there any discussion at this point about moving to its own accommodation rather than the Old Schools?**

I wasn't involved much in that, but I'm glad it happened because things were getting very compressed and restricted in the old site and the Old Schools, and, of course, there was the horrid precedent of the historians having the Stirling Building next door, which is still, I suppose, in being. Or has it been pulled down?

**63. It's still there, yes.**

Well, I do remember discussions about whether it was cheaper to repair that building or to pull it down.

**64. It's had a major refurbishment in the last months.**

Really?

**65. Yes. You gave the "Hale as a Legal Historian" Selden Society lecture in the old hall of Lincoln's Inn in 1976, July, where you must by that stage have decided to bring Hale into sharp focus. Can you say something of this occasion?**

That was really quite a short lecture on Hale as a legal historian which I gave really as a sideshow or as an episode in the exhibition we held in Lincoln's Inn of Hale's writings, a large portion of which are in the custody of Lincoln's Inn. So it was quite convenient to be able to set it out in the Old Hall of Lincoln's Inn as a standing exhibition for three or four days and the lecture was just one episode in that. It wasn't a very important lecture, it was only about a text of three or four hundred words almost.

**66. Right. Throughout this time, your research time as a Reader, you were still working on the large volume of material that you were amassing with Michael Prichard for the Admiralty Court project and this would also have taken up your time as well. In the**



**meantime you published a separate volume on Hale's work dealing with "The Prerogatives of the King", and this was another huge piece of editorial work.**

It's a bulky work. It's a composite volume actually, because he wrote that in instalments, as it were. So I had to give it rather a stitch-up job that I did on the text, but it's only the opening chapters of a very vast work which he prefigured. I was able to track down the outline of the whole discourse and he only achieved a very partial opening in this thousand pages or whatever it was. He was aiming to write a very long work indeed on public law generally.

**67. It was during this period that you were the Literary Director of the Selden Society. From '76 to '80?**

Yes, I was associated with Milsom as an assistant, but that was rather titular in the sense that he did all the work and we were simply available to him for consultation if and when wanted. I was an assistant, that was the arrangement, but then later, when he retired, I became for a very short time, I think, sole editor or literary director. I then decided it really was a two-person job and associated John Baker with me and then, of course, when I dropped off, he took the post with the Selden as literary director. He had an associate with him to do some of the work. The Selden originally had a secretary who did a certain amount of the literary work, but in modern times it's become the job of the literary director to [*see to*] all stages of production work. There has been a shift in the "who does what" scheme of things.

**68. The current literary director is Neil Jones.**

That's right, yes, and he needs help, I think. I don't know whether he has appointed anyone but I have got the impression he has been under too much pressure as a sole incumbent.

**69. So you also seem to have played an important role in the general running of the society. I recall Toby Milsom telling me about the centenary celebrations in 1987. Do you remember this event?**

Yes, I think I do recall it, not all that well, but on that centenary occasion we had a dinner, as far as I remember, and the Duke of Edinburgh was present as patron of the whole society.

**70. By that stage you had already been elected to the British Academy in 1980. Can you recall the circumstances of this honour?**

Not really. I was elected, I think, not at a particularly young age. By 1980 I was what, I should be in my forties, late forties, but perhaps you would say that there's nothing remarkable in that.

**71. I was reminded by Professor Baker that you had a major university role by chairing the committee that drew up the new university statutes.**

Yes, that was another effect of being on the central bodies. One got roped in for those sort of jobs. The first one I had was the result of Lord Devlin's report<sup>36</sup> on discipline in the university. There were ructions and rows, you know, in the 60s. The law school itself was under occupation, so called, for almost one whole term in the Lent term when the troubles were at their height and Devlin was called in. He had retired, I think, just then from the House of Lords and he, Patrick Devlin, came in and held an inquiry and published a report. I

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<sup>36</sup> Devlin Report and Evidence, 1972. *Cambridge University Reporter*, 14 Feb 1973.





was involved in the job of translating the report into the new university ordinances which dealt with these matters. So I had that initial job.

Then I was made a member of the WASS Committee<sup>37</sup> on the constitution of the university. We felt it was time to make an internal effort to produce some reform because there were all sorts of difficulties piling up, and in the cases of Oxford and Cambridge much of the reforms in the last hundred years or so come about by outside intervention - Parliament getting its hand into the machinery and tweaking it about. But we decided we would have our own go and we got this highly-paid and regarded civil servant to come in and guide the deliberations. I was on that committee, as a delegate of course, but afterwards I had the job of trying to translate all this into university ordinances and many a long hour I spent with John Easterling of Trinity who had the job of being the university draftsman. He did a great deal of the work, but I had to be there at all times on that endeavour and I think we did fairly well.

Of course, the press and the public thought of it entirely in terms of changing the Vice-Chancellorship from a rotating office into a permanent and established single head of house of the university. That was all that we were deemed to have done - to have revolutionised number one as top of the working of the university - but we did much more than that, and it's not the more important part either. We were really thinking along devolutionary lines and I think we were partly acceptable. Of course, the old system depended upon university bodies having powers to recommend, but not to ratify and not to do things. All they could do was to recommend to the highest bodies what should be done and very often there were delays and mistakes and lacunae in the whole business which really was no longer defensible.

Things got shelved and not put through which had been discussed and thoroughly voted upon in the lower level. So what we were wishful of achieving was to drive down the autonomy of these bodies and give it lower down, subject to a general supervision of the higher bodies. To take down the level of decision-making, down from the General Board of Faculties to a Faculty board who reported up, but they actually do things at a lower and more appropriate level. When we had done all that we felt that we had achieved much of what WASS wanted us to do and we had a modest amount of devolution and the machinery was again speeding up from a bigger, really a very unsatisfactory instrument of delay and indecision.

**72. And this system that you put into place, or helped put into place, is in existence today?**

Yes, basically. I'm no longer in the midst of all this, so whether anything has been happening, but not in the newspapers, I would be ignorant of now actually.

**73. Very interesting. Well, that takes us then to your retirement in 1993. Simultaneously with the appearance of the monumental "*Hale and Fleetwood*" volume, which had been ready by 1992. That must have been a great sense of relief to you, Mr Yale. Do you recall how you felt after almost 33 years of working on this project?**

Well, I left two years early, as I mentioned, but by that time I had done 40 years in a university post in various grades, so I thought that 40 years is the maximum which you can ring up for pension purposes. I gave up a salary, of course, and turned to a pension which wasn't an advantage straight away but it gave me two years, in effect, to leave.

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<sup>37</sup> WASS Report, *Cambridge University Reporter*, 1988-9, p. 613-646.



**74. Did you come here pretty much..?**

Yes, we did. You see, we had always kept half the house here for holiday purposes. We divided the hall there, and people were tenants in the wing which runs along there. We were able to keep the ownership of the building and when we came back we reintegrated it into one house and that was quite a job too, as it were. We had to pull down things and rewire and re-roof and all the rest.

**75. At the same time that you made this decision, you had just recently seen the publication of the “Hale and Fleetwood”. Was that a great relief to you, to see that published?**

I think it was, yes, because we had been at it so long. It had taken a decision of some magnitude to get out anything at all, but we managed to get out what we got out by changing the terms of reference really. I don't know whether we acted honestly or dishonestly in that. Dishonestly in the sense that just to our convenience something was done that was at least respectable, but not what was originally designed or promoted as desirable. This was a general history, not a jurisdictional analysis of the legal history.

Nowadays the mercantile matters of ships and cargoes and all the rest of it have been entirely absorbed into the Common Law courts. The civilians don't exist any longer. The civil law has no part to play. All that is left is a section in the White Book which is the official compendium of procedural matters in the High Court which gives the *in rem* procedure to a High Court judge sitting in Admiralty. He is still able to order the arrest of a ship. You know, stick a writ to the mast, as it were, in the old style of arresting a ship, and that's still a genuine fragment of Admiralty law that's still available, but the general scene of things has been obliterated as from being a civil law court to a court of common law.

**76. So, Mr Yale, with a sense of relief you retired to this beautiful home in the depths of Wales, the land of your forefathers, and you were then appointed or elected as President of the Selden Society in 1994. Can you recall the circumstances of this honour?**

Not really, except that it has been an understanding that ever since the earlier days, the job of being President should be a rotated round the judiciary and the Bar, and also the academic side of things, so that different interests are involved. It's a two or three-year term, I forget which, so there is plenty of chance to change the chairmanship of the whole outfit.

The President presides over the meetings, and on the whole that's worked pretty well. At the moment the Chairman is Nicholas Le Poidevin<sup>38</sup>, who is a QC in chancery in New Square in Lincoln's Inn, and he is very suitable because he has got a footstep in the Year Book series as well.

He is writing up a medieval year book and producing that one day. It will appear, no doubt, but he is someone who has academic credentials as well as being a practising lawyer in Lincoln's Inn and if you read in the guide you get the names of all these people down the ages ever since it was established 120-odd years ago. There's a cycle of different qualified persons.

**77. In 1999 the Selden Society initiated the David Yale Prize as a further honour to commemorate your distinguished services. I wonder if you can comment on the circumstances of this award and any outstanding awardees that have since received it?**

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<sup>38</sup> Nicholas Le Poidevin, QC, barrister at New Square Chambers, specialises in trusts and estate work. He is an editor of *Lewin on Trusts*



Yes, well, that is a sum of money which was accepted from various contributors to found a prize for beginners who would find it difficult to get published, but who were able to produce an article or something of that sort which was worth a prize of a few hundred pounds, for a suitable submission.

**78. Neil Jones was awarded the prize in 2003 for his piece upon “The Use upon a Use in Equity Revisited”.**

Well, it’s been going for about 15 or 20 years.

**79. You were made an Honorary QC in 2000. Are there any duties attached to this?**

Not really, no. It’s *honoris causa*, you know. If you attend a creation of QCs you get quite a mob of people. Most of them are dressed in wigs and so forth, and they are the real QCs for whom this is a professional promotion. And then you have a few people like myself who are not working in the profession as such, but who are deemed worthy to receive the honour of the rank and it is *honoris causa*. It’s not the real thing.

As they say at the Bar, the real silk is different from the artificial silk. I’m an artificial silk, and it’s the same thing as you get in the university when you get in the summer proceedings at the commencement some people dressed up as doctors of law *honoris causa*. Well, some of them, if you look closely at them, are very distinguished persons but they don’t know any law at all and never have done, but they are there because it is *honoris causa*, it’s an honorary thing.

They have no rights and no duties at all but they are just given the rank for the purpose of good fellowship on the day and as a permanent mark of regard and appreciation. So that’s really where I, in a sense, fit in. I’m not a professional QC, I’m a, as it were, a QC as a mark of respect.

The occasion I was on the line was one in which I was hanging onto Nelson Mandela’s coattails, because he came all the way from South Africa to receive an honorary QC and I happened to be number two in the line of four persons. There was a criminologist after me and someone else and someone else at the fourth rank. We were all singled out, as it were, not for our legal merit, in a sense. Strictly professional promotions all had a large crowd of people who had acquired big practices in the law. That doesn’t apply to any of the honorary QCs.

**80. I understand. A final point about this period of your retirement. In his interview in 2012 Michael Prichard mentioned that he was involved in an arbitration in the early 2000s that concerned the mining rights in the Lordship of Bromfield and Yale, and that they called you in for help, Mr Yale. This was after you had retired to Snowdonia.**

Yes, I was asked to come in as a historian rather than as a lawyer, to dig into the records and if I could give what help I might to the case of the Grosvenors. It’s the Westminster estate.

What had happened was that in the time of Charles I<sup>39</sup>, the Crown had given to the then Grosvenors, (later Dukes of Westminster<sup>40</sup>), the rights to all mine and minerals within the old Lordship, much of it in Lordships of Bromfield and Yale. Yale is a district up in the Denbighshire Hills, Bromfield also nearby, and these were challenged by the Crown recently, the grant, the extent of the grant and what it meant, whether it included quarries, whether it included this or didn’t include that and all the sort of questions were raised about it. There

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<sup>39</sup> 1600-1649. Reigned 1625-49.

<sup>40</sup> Hugh Lupus Grosvenor, 1st Duke of Westminster, KG, PC, JP (1825-1899), landowner, politician and racehorse owner. At his death he was considered to be the richest man in Britain.



was a contention between the Crown estate, you might say, and the Grosvenor family who are, of course, well known because of the extent of their financial wealth. Sideline to them perhaps, mines and minerals in North Wales were limited scale, but there it is. We were employed by the Grosvenor interest and we did a certain amount of work, but the whole thing was settled.

Eventually it became clear that the Crown was probably not going to win, or to win as much as it sought, so that they agreed to a settlement. They just paid out to the Grosvenors a settlement sum and the litigation finished before it was decided. The Grosvenors are entitled thereby in this territory to mines and minerals, which is not as extensive as one might think.

If you dig up gold and silver and if you find oil and have a gusher you are no better off now because those things are by either common law or statute vested in the Crown. But there are still quite a lot of mineral wealth to be had in North Wales, even if it's only a limestone quarry or something like that and certainly you might get slates and suchlike. So there was quite a lot of money at stake, development potential at stake but, as I say, the thing collapsed because the Crown came to the conclusion it wasn't going to get what it wanted and was willing to take a sum of money from the Grosvenors and hand over the title to them.

**81. Well, that brings us to the end of this truly fascinating account of your early life, your academic career. I'm greatly looking forward to discussing your scholarly work in our next conversation.**

The only other thing I can add is that Michael has forgotten various other episodes we had with the state. We had to advise the Foreign Office on one occasion about the contents of a Spanish galleon wrecked off the coast of Antrim in Ireland, because they were all anxious to know whether any bits of gold and silver recovered from the wreck was disposable by the law of wreck or whether it was still the property of the Spanish government, or the property of a deceased Spanish Admiral who was drowned. They didn't know what to do with the stuff and we had the rather daunting task of saying what we thought they ought to do, or could do in legal terms, by freezing their fingers over the wreck.

**82. That is very interesting.**

But you get all sorts of such questions flung at you. That's because we had a reputation for knowing something about Admiralty law, but there was a much wider question than Admiralty law there. It was really about the position of archaeologists who go down below the low water mark.

**83. Thank you. I think it might be an idea to have a break before we tackle the scholarly work.**

Yes, I think so, yes.

