

Conversations with Emeritus Reader David Eryl Corbet Yale

Part 2: Scholarly Works

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.

84. Mr Yale, we come now to your scholarly works. During your career you've produced five monographs, numerous journal publications. It's time now to consider – and I've only been able to peruse just the monographs – the production of these occupied the whole span of your career from the early fifties to the 1990s and they encapsulate your immense effort and great scholarship from the immediate postgraduate days to retirement.

Chronologically the first three monographs were related to your research on Heneage Finch who became Lord Keeper of the Great Seal in the Court of Chancery. As we've already mentioned these three were produced when you were a lecturer in the period pre-1965³ and you set out to test the notion that Lord Nottingham could be considered the father of modern equity. So, on the question of Nottingham shaping the future direction of travel of equity, you said in volume two that when Nottingham became Chancellor in 1673, I quote, "Equity had reached its critical point of development and it could have gone one of two ways either with 'An increasing fixity in its rules and doctrines,' or by retaining its 'Emphasis on the moral and therefore relatively unstable impulse in judicial decisions.'" What brought equity to this legal junction in its evolution?

Yes. Of course the questions raised there have been further explored by others since those days and I don't know what I can usefully say about them. Nottingham, I think, was the person who decided for the future that equity should not be a matter of an individual conscience of the Lord Chancellor but should be a system of law on the grounds of equity, that is to say to some extent following precedent and following prescribed patterns of development. I think the current person who is most forward in answering those further questions is Dr Mike Macnair⁴ at Oxford and he has compared recently the status in this

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³ 1957 *Lord Nottingham's Chancery Cases, Vol 1*. Selden Society Vol 73, 446pp, 1961 *Lord Nottingham's Chancery Cases, Vol 2*. Selden Society Vol 79, 805pp, 1965 *Lord Nottingham's "Manual of Chancery Practice" and "Prelegomena of Chancery and Equity"*, CUP, 385pp

⁴ Mike, Macnair, Associate Professor, Tutor in Law at St Hugh's College, Oxford

<https://www.law.ox.ac.uk/people/mike-macnair>



context of Nottingham, Hardwicke⁵ and Eldon⁶, and he thinks perhaps the greater amount of formalisation of equity can be attributed to the two latter chancellors, Hardwicke in the middle of the 18th century and Eldon at the end of it and the beginning of the 19th century.

I think myself that although those last two went on building and refining the work of the Court, there is a lot to be said for Nottingham retaining his title as the father of modern equity in the sense that he first traced out the lines of development which the others followed, and the shift from considerations of morality and ethics to ones of law is, I think, the work of someone who was certainly steeped in the common law tradition and I would say that of Finch.

One text I haven't dealt with, but which is pretty telling is the text of his copier, Coke⁷ upon Littleton⁸, which at the moment is still unworked on in the British Library. It shows the nature of his annotations to that volume are such that it shows he was profoundly learned in the common law before he ever attained judicial rank. So I think that on the notion of the reification of equity as a branch of law rather than individual discretion it is maintainable. Not very sure I can say anything about the reviewers of the work except that they were all very welcome as persons of competent knowledge taking an interest in what the cases reveal.

85. The reviewers were very complimentary, Mr Yale. "Excellent work of literature," by Professor Hanbury⁹; "Well documented, scholarly," by O R Marshall; "Scholarly, extremely erudite and comprehensive, learned," by Boyle¹⁰; "Most notable volume, major contribution to our knowledge of the growth of equity," by Professor Keeton¹¹. These must ...

Of course, Holdsworth's¹² remark here is, "The key to legal history must be found in biography." I referred to that this morning. It's the sort of statement which would have been strongly repudiated by Toby Milsom¹³. It was against his principle the biographical explanation is something he would not have thought of as sufficient or, indeed correct, but he was not one of the reviewers.

86. Right. That's very interesting.

Whether he would have reviewed it if he was asked, I don't know, he probably may not have been asked. Over the page we come to beliefs about the 'Mirror of Justices'¹⁴ is certainly a book of foolery and was quite properly debunked by Maitland¹⁵ and, indeed, by practically everyone who has read it ever since. It's a joke really and quite a learned joke, but all the propositions are in, sort of, distorted mirror fashion and I think those remarks are

⁵ Philip Yorke, 1st Earl of Hardwicke, (1690-1764), Lord High Chancellor of Great Britain (1737-56).

⁶ John Scott, 1st Earl of Eldon, PC, QC, FRS, FSA (1751-1838), Lord High Chancellor of Great Britain (1801-6, 1807-27).

⁷ Sir Edward Coke, (1552-1634), Chief Justice Kings Bench (1613-16), CJ Common Pleas (1606-1613).

⁸ Sir Thomas de Littleton (1407-1481) judge and legal writer. See Lobban's article: Coke on Littleton, <https://sas-space.sas.ac.uk/3766/1/1348-1484-1-SM.pdf>

⁹ Harold Greville Hanbury, (1898-1993), Vinerian Professor of English Law Oxford (1949-64).

¹⁰ Alan Boyle, Emeritus Professor International Law, University Edinburgh (1995-?), Practices at Essex Court Chambers.

¹¹ George Williams Keeton, (1902-1989), Professor of English Law UCL (1937-69).

¹² Sir William Searle Holdsworth, (1871-1944), Vinerian Professor (1922-1944).

¹³ Stroud Francis Charles (Toby) Milsom, (1923-2016). Professor of Law Cambridge (1976-90), Professor of Legal History, LSE (1964-76).

¹⁴ *Le mireur a justices*, 14th century law text in Anglo-Norman French by Andrew Horn. Original manuscript in the Parker Library, Corpus Christi College, Cambridge. Printed in 1642 from a copy owned by Francis Tate and the Cambridge manuscript. Selden Society (1895) published an edition with introduction by Maitland.

¹⁵ Frederic William Maitland (1850-1906, Downing Professor (1888-1906).



justified.

87. So, Professor Hanbury also says that you followed Holdsworth in, I quote, “Crediting Nottingham with being, in Cottington’s case, a pioneer of private international law.” Could you explain the significance of this comment?

I’m afraid I can’t without recalling the case itself. It was a case in which an issue of foreign law arose and would therefore be called a private international law nowadays. I think it was an instance of where litigation did suddenly emerge with a foreign tag to some of the tensions between the parties and he had to make a choice. I doubt whether you can talk sensibly of private international law as a cohesive body of learning as existing in Nottingham’s time. I think that’s a premature mark by Holdsworth in terms of what one would call private international law, except that it is one of the cases I suspect where one found, as well, a foreign element, either substantively or jurisdictionally, creeping into what the Chancellor had to decide.

88. Marshall praised your thorough knowledge of the Year Books. Did this mean that you had to master Law French?

Well, he could certainly deal with law French, he could certainly read it, understand it.

89. Could you deal with it, Mr Yale?

Law French?

90. Law French, yes.

Up to a point. I can read a Year Book. But I don’t claim to have edited a Year Book or any of that sort.

Law French is, by Nottingham’s time, passing out of fashion. It passes out of the professional equipment by the early part of the 18th century, but it’s still alive, people are still writing it and reading it in Nottingham’s time, yes.

91. Boyle also commented on Lord Nottingham’s, what he called, surprising modernity of some of his decisions. Is this something that you...

Well, it depends what you mean by modernity. He was a systematiser and certainly when you’re considering the law of trusts in his time the first thing you would do is to notice how he, as it were, classifies various forms of trust. He is inclined not just to lump the idea together but to analyse it in its parts and how it takes different forms and one leads into an analysis of the different types of trust which can be made. He was a great mind for, I think, analysing what he’s met with by way of a general notion which can be then applied in different, discrete fashions. I don’t know whether modernity is a good expression actually here. Except you perhaps have to ask Boyle what he means by being up-to-date which is modernity, is it, or prescience?

Keeton, of course, is a very well-known name of the period.

92. He said that you threw a great deal of light on the process.

Yes, it did actually get a good deal of bad stick in the Commonwealth period. It’s true of America, too but they placed great emphasis on jury trial. A tribunal which doesn’t use a jury, it’s always suspect and the reference there, I think, is to the efforts at law reform in the Commonwealth which included at one point propositions for the abolition of the Court of Chancery.



93. You rounded off your work, Mr Yale, on Lord Nottingham by publishing in 1965 called ‘Nottingham’s Manual of Chancery Practice and Prolegomena of Chancery and Equity’. This was by CUP and this would have been undertaken in the early sixties by which time you were really deep into your joint project with Michael Prichard¹⁶ on Hale and Fleetwood¹⁷. How did you fit all of this in?

I wanted to round off Nottingham, as it were, by looking at what he had to start with and the ‘*Manual of Chancery Practice*’ is important, it seems to me, because it shows the tools he had to use when he was taking his steps in developing the subjective subject of equity itself. Let me see, the *Prolegomena* is a collection of earlier notes and remarks about equity; a collection of his predecessor’s decisions in some cases. He was, sort of, educating himself as he went along. He started off with these tracts before he was through his judgeship period of Chancery, he was preparing these things as introductory work to the work as a Chancery Judge as Chancellor. So, in a sense, if you want a historical sequence, not a publication, but his history, these come first. You should read these first, it seems to me, before you turn to his actual work in the Court as a judge.

94. Right. Was Equity a topic that you lectured on at the time? Did you ever lecture on equity, Mr Yale?

No. None of this is... It’s only in terms of legal history that I dealt with Nottingham.

Of course I started by reading books on equity, certainly, modern equity, particularly a book which was written by Hanbury in Oxford¹⁸, which many people regarded as idiosyncratic, but I found very valuable. Hanbury was Vinerian Professor in Oxford and he made quite a reputation for himself of his exposition of equity which not everyone agreed with, but I found very valuable and derived a good deal of help from his work, Harold Hanbury.

95. I looked at a review by J P Dawson¹⁹, who was professor at Harvard, and he was extremely praising of your conclusions and he said that your volume met the highest standard of...

Too much of the conflict between Chancery and the common lawyers?

96. Yes. Do you think that his criticism was fair?

I don’t know that I did make too much emphasis about that or too little. He thinks I emphasised too much the conflict, but I think the conflict was quite real considering that there were quite formal propositions in parliament to abolish the Court outright. Once you get there, you’re in the, it seemed to be, the danger area of something horrible happening. I think it was quite on the cards when they were in the full swing of reform, of change, after all they’d abolished Star Chamber, they’d abolished wards and liveries, they’ve abolished this, they’ve abolished that. Why, in the throes of radical reform, one can’t abolish Chancery, is also a question which they did debate, actually did debate. I think it was on the cards, yes.

97. Right. Perhaps we can move to the two volumes that both involved Matthew Hale? Matthew Hale’s ‘The Prerogatives of the King’ was published in 1976, by the Selden Society, Volume 92 [353pp]. This appeared 11 years after your Nottingham volumes,

¹⁶ Michael Prichard (b.1927) Lecturer in Law (1953-95), Editor, *CLJ* (1996-2003).

¹⁷ Prichard & Yale, 1993, *Hale and Fleetwood on Admiralty Jurisdiction*, Selden Society, Vol. 108, 420pp.

¹⁸ “*Modern Equity*”, first published in 1935. 13 editions. Updated now in 21st edition.

¹⁹ John Philip Dawson (1902-1985), Professor Harvard Law School (1956-74).



and by then you'd been a Reader for seven years and, with Michael Prichard, working on the Admiralty tome for 16 years. Did 'Prerogatives' arise as a spin-off from your exposure to the works of Matthew Hale²⁰ while you were investigating and doing your research in the British Museum and Lincoln's Inn libraries during the course of the Admiralty Court project?

Yes. *'The Prerogatives of the King'* is a very substantial chunk of writing. Well, [apropos - LMD] the help from Dr Baker²¹ and Professor Milsom. I think Milsom helped in making room for the volume and deciding when to publish it, but I remember having some conversations with him about that. I really forget. John Baker would have perhaps helped in certain ways, but I can't remember how exactly he would have affected the... I think most of his knowledge [was] on one of the sources. But he didn't, I think, help me in the editorial work.

I had to take some decisions there for myself about its composite nature because the trouble was that old Hale wrote more than one version and one had then to put the versions together to make a complete text of the thing. It was building up out of not fragments, but out of one stage and two stage and the third stage of the writing. All, as it were, had to be reconciled. That was the complication.

98. I looked at a review of the 'Prerogatives' by the noted historian, legal historian, Charles Gray²² and he was very complimentary. He said it was a notable addition to sources of Hale's jurisprudence and beautifully edited. This must have been very satisfying to you at the time, Mr Yale.

Yes. Well, I'm very glad to have had his approval, I must say. He, himself, was a very competent editor because he published on the law of Copyhold²³ at one time in a very expert manner and was a very gifted legal historian. I haven't met him for many a long year.

99. He re-emphasises some interesting points that you brought out in your 58-page Introduction. He said, on page 371, that, "Hale saw the powers of the Crown as virtually coterminous with constitutional law so that Hale identified the Government with the King, in contrast to today, when one thinks of the Government merely including the Crown." So, Mr Yale, seeing the steadily diminishing role and prerogative powers of the King in modern government is there truly any meaningful role for the King in our constitutional arrangements?

Yes, the Head of State obviously had a role to play outside statutory law and that's what we mean by the common law powers core prerogative. They are common law powers which the executor, executive head, has to make the constitution serve its purpose. They were very much larger and more extensive in the old days because so much power was committed to the Crown, but in modern times those have been limited in the sense of shifting of powers to the legislative part of the Government. But the diminishing role referred to here is a very obvious feature of modern law.

We had one the other day, didn't we, with Brenda Hale²⁴ and their Lordships

²⁰ Sir Matthew Hale (1609-1676), Chief Baron of the Exchequer (1660-71), Chief Justice of King's Bench (1671-76).

²¹ Sir John Hamilton Baker (b. 1944) Downing Professor (1998-2011).

²² Charles Montgomery Gray (1928-2011), Professor in History Yale (1978-2011), University of Chicago (1960-72).

²³ Form of customary tenure of land in England from the Middle Ages. The land was held according to the custom of the manor wherein "title deed" received by the tenant was a copy of the entry in the manorial court roll.

²⁴ <https://www.bbc.co.uk/news/uk-politics-49810261>



declaring Her Majesty “out of order” on publishing a prorogation order. It’s certainly part of the prerogative to suspend or end parliament and call for a new election, but people are surprised now that the thing is remitted to a judgement at all. It’s a question of deciding how to limit the prerogative and still leave the executive with some powers in cases of emergency, like war and peace and so forth.

100. Right. Mr Yale, that brings us now to your 1993 Prichard and Yale, ‘Hale and Fleetwood²⁵ on Admiralty Jurisdiction’. This is the major work you did jointly over 33 years and it was a consequence of the 600th anniversary of the Admiralty Courts and suggested by the then Registrar of the Admiralty.

Yes, McGuffie²⁶.

101. Yes. Can you tell us your memory of the original arrangements that were made?

Well, they were having a great, sort of, celebration of 600 years since which they thought of as an anniversary of Admiralty, but really, I think the Laws of Oléron²⁷ which was the code of law for the Bay of Biscay and that part of the Atlantic Ocean. Now, all these ports, Barcelona had its own code, Oléron, which is off Bordeaux, had all the wine trade, all the big freight work of the middle ages, that was the eastern seaboard of the Atlantic Ocean. Then there were other codes in the Baltic and elsewhere.

So that the history of the matter really starts when all these tend to coalesce, and the Admiralty enforces these seafaring rights and wrongs by its own peculiar civil law means. Frank Wiswall²⁸, I see here, wrote a very good book on American Admiralty, which is rather different from English Admiralty because they had to deal with inland waters like the Great Lakes, not just saltwater. I knew Frank very well because he spent a year in Cambridge and wrote a thesis which was subsequently published, and a very good book he made of it too. I said this morning that the whole business of the work on Admiralty was considerably changed in direction in the course of this long period of years and we only got a definition of what the monograph should be when we were pushed for time at the end of our working lives. So, we did have a considerable contraction of the original project in order to get something out.

102. Did you select Hale and Fleetwood because they presented snapshots of the Admiralty approximately 100 years apart?

Yes, I suppose so. Hale and Fleetwood were that distance apart, that’s very true. Fleetwood was a dissertation on the Commission of a Vice-Admiralty of the Thames, and he took the clauses of the commission clause by clause in order to explain what the components of the jurisdiction of vice-admiral were. Hale was, I think, a better scheme. He took a historical scheme of starting from what he understood to be the beginning and then working up to his own day and taking it chronologically, which was a different scheme, but I think Barton²⁹ had really good points in his review, which I see are mentioned here.

Brenda Marjorie Hale, Baroness Hale of Richmond, DBE, PC (b.1945), President of UK Supreme Court (2017-19).

²⁵ William Fleetwood (1535?-94), Recorder of London (1571-91).

²⁶ Kenneth C. McGuffie, Registrar, Admiralty Court (1955-72).

²⁷ First formal statement of "maritime" or "admiralty" laws in northwestern Europe. Promulgated by Eleanor of Aquitaine ~ 1160, after her return from the second crusade. The Rolls were based upon the mediaeval European customary sea law (lex maritima).

²⁸ Frank L Wiswall, Jr, PhD, Maritime lawyer, practices at Castine, Maine.

Cambridge PhD 1970. *The Development of Admiralty Jurisdiction Since 1800*.

²⁹ John Latimer Barton (1929-2008), Reader in Roman Law, Merton College Oxford. Retired 1996.



103. Mr Yale, can I just ask you, before we come to the review, can I just ask you about the fact that Mr Prichard mentioned that the Admiralty Criminal Court was quite unique because it had been set up as a common law assize court but staffed by civilians and it must be about the only time, they ever sat side by side. That's what he told me. So, unravelling the two intertwined jurisdictional strands, the civil and the common law, sounds similar to the analysis that you had done, or at least partly simultaneously, with Lord Nottingham and equity. So, did the Nottingham project stand you in good stead for the Admiralty project?

It involved a rather special arrangement. It was set up by statute by Thomas Cromwell's³⁰ endeavours in the reign of Henry VIII, 1535, as a court which could convict pirates. The problem was that when the pirates went on the rampage and captured a ship they immediately threw into the sea and killed all of the mariners who might otherwise be survivors and become witnesses to the act of piracy. It was really the ordinary course of things to accompany piracy with the murder of the crew. The idea was that if you could change the Admiralty civilian court into a statutory court for piracy, and for other crimes as well, then you could get juries who would convict more readily in the absence of witnesses. It was that sort of feeling that to capture and hang pirates it was a desirable move to get a more effective murder trial against them because they usually, under the civil law, needed a couple of witnesses before you could convict anyone of any serious offence, a couple of witnesses. Well, if the witnesses had all been duly murdered, you see, the pirates went liable to be discharged in a civilian court for lack of evidence.

That was really what was alleged by Cromwell and others and I dare say it's basically the truth of the matter.

104. Apparently, because Admiralty law was a federal matter it's remained an important jurisdiction in the United States.

Yes, it does. It's a separate jurisdiction and quite distinct, but in this country it's been taken over by the common law. Today if you get a dispute over mariners' wages, for example, to take the obvious example, the ship has been discharged and the mariners have been discharged, but their pay has been withheld, what they do in Admiralty law is to go into the court having arrested the ship as a pledge for the payment of the money not paid. It works remarkably well but the *in rem* procedure, a civilian procedure, is the only one which is available and surviving in the hands of the common law. It's no longer a civilian court. There is no Court of Admiralty now it's a jurisdiction exercised by the High Court of the old Admiralty matters and litigation. So, it has still one vital point of separate procedure when it chooses to exercise it.

Of course, it doesn't mean that it's applied sensibly. If you get a claim on a ship, not for unpaid wages, to repairs for anything else or for a failed mortgage, the ship's mortgage or some of this sort, you certainly may arrest the vessel to start the procedures. But once you've started the procedures the defendants are able to make payments into court *pro tem* provisionally, pending the outcome, and so the ship can be released and the sum of money given in substitution to hold. So the system works very well, but it's practically the only thing left of what you might call separate Admiralty jurisdiction.

There are others too, there's the whole field of salvage, for example. In civil law there's *negotiorum gestio*, you probably know that. Well, there isn't a *negotiorum gestio* proposition of any consequence in English common law. If you interfere in other people's

³⁰ Thomas Cromwell, 1st Earl of Essex, KG, PC (1485-1540), Chief Minister to Henry VIII (1532-40).



property benevolently you may be found paying for the privilege, but if you run to the rescue at sea it's okay because that's a civil matter and marine salvage, but it's another matter if you think of land salvage. There are problems there. Let's leave that alone.

105. You touched on Frank Wiswall earlier and he was, of course, a PhD student. Do you have any specific recollections of him when he was a student?

He was at Cornell University. He's a New Englander. Lives still in Maine and I lost sight of him. He's as old as I am now. He's had a very distinguished career. He's been very much in demand on international commissions for all sorts of marine matters. He's a maritime law specialist and he is a big name in that area.

106. In his review of your book he mentioned the excitement that you and Michael Prichard felt when you unearthed the Admiralty Bill indicting Henry Hudson's³¹ crew for mutiny in 1611. Do you remember the circumstances of this discovery?

Well, there were a lot of excitements in the Admiralty records. That was the marooning of Hudson in the bay. They managed, I think, to pick up some of the malefactors in that marooning. There was an after story about that.

The marooning of John Cabot³² was well known at the time but these were the proceedings afterwards for the people who had perpetrated this disgraceful act.

107. Frank Wiswall, in his review, also said that an outstanding contribution that you made was that you came as close as we are ever likely to get to the truth of the original nature of the actions *in rem* and *in personam*.

Well, yes. It's controversial but I think *in rem* goes back a long way of impounding a vessel to get litigation going. They had a procedure in the City of London for impounding goods to start an action going when - I forgot the name of it - something to do with the market, you could impound goods in the City of London when you had a claim against the person who possessed them and to get the action going. It's possible that a local custom may have been taken up by the civilians down the rivers, as it were, to ships disputes.

But the idea of arrest is, I think, a fairly obvious one. You've got an asset of the other side in your power, you impound it in order to bring an action. It seems to me reasonable enough. You get instances, of course, for something very similar in the common law where there's a lien on a property. For example, you have your car repaired in the garage, there's an artisan's lien, isn't there, to keep the car until the bill is paid. That can be enforced in the courts. The unpaid workman simply impounds the object under repair until he is assured he's going to get paid. That's the nature of the *in rem*. It's only a device for bringing a recalcitrant defendant into court.

108. Frank Wiswall also said that your book was, "A monument to the perseverance and a fitting capstone to their distinguished careers." Did you feel this as well as you retired more or less as the monograph appeared?

Well, that's very kind of him. I'm glad to learn of that. I didn't realise he had been able to say that.

109. I brought you a copy of the review which I will leave with you.

That's very good of you, yes. I'd like to see that.

³¹ Henry Hudson, (1570-?1611), English explorer and navigator.

³² John Cabot (Giovanni Caboto) (~1450--1500). Italian navigator and explorer.



110. I think you'll enjoy it.

Perhaps it's a review which I missed.

111. In his review, John Barton at Merton College pointed out that you dealt with the jurisdiction of the Admiralty Court rather than the law.

Rather than civil law, yes.

112. Yes. Was this because of the change of trajectory when you decided to present Hale and Fleetwood's manuscript rather than...

No, I don't think it was, actually. I think it was a decision that we should keep the exposition within bounds on which we had sufficient materials and could speak with some confidence, but we weren't sufficiently, I think, prepared to make confident account of the jurisdiction at its earlier stages or, indeed, at the very latter end which, of course, was in the last century, quite recently. The Admiralty Court lasted until Victorian times.

But then it was abolished at the time of the Judicature Acts³³ and its jurisdiction was passed over to the King's Bench and Chancery and Probate, Divorce and Admiralty, as they call it. It's the third division.

113. One aspect that I found very interesting was your conclusion, on page 207, that Admiralty law did not apply in foreign ports or in rivers and within command of gunshot from the shore. You said, "This reflects very clearly the influence of the development in international law of notions of the sovereignty and exclusive jurisdiction of a state over its own territory." That's a quote from you. Do you know if this line of thought has been followed up by later legal historians or international lawyers?

Well, territorial waters, of course, has always been a matter of expansion. Originally it was just as far as the gunnery would reach. That was later-on generalised into a three-mile limit, wasn't it? Now, in modern times, it's been exceeded.

The influence of the development in international law of notions of exclusive jurisdiction of its own territory. Well, there was, of course, in the period we were looking at a great debate about dominion of the sea and sovereignty over the North Sea and there were even wars, in effect, over who was in charge of the Channel and the North Sea, the Dutch and the French always quarrelling about that.

114. Mr Yale, all the data that you amassed is now stored in the Squire Library.

Is it?

115. Yes. I went down and had a look at it in advance of this visit and I wondered whether you had ever seen it since you retired?

No, I haven't. I left it with Michael. I trusted him to deposit it in a safe place.

116. Which he has done, and awaiting some further research.

Someone will maybe want to dig into it and do a much lengthier spread than we achieved. There's a lot there to use, including some tentative drafts of things such as Admiralty in Scotland and Admiralty in Ireland as well as Admiralty in England, but it was a

³³ Act of 1873 (ss. 3, 4). The Court of Chancery, the Court of Queen's/King's Bench, the Court of Common Pleas, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, and the Court of Divorce and Matrimonial Causes were consolidated into the Supreme Court of Judicature, subdivided into two courts: the "High Court of Justice" ("High Court"), with (broadly speaking) original jurisdiction, and the "Court of Appeal".



regular part of Doctors' Commons³⁴ as a professional monopoly. Doctors' Commons lasted until comparatively modern times; they were only dissolved at the time of the Judicature Acts so the Commons went out of business as a body of learned lawyers. They survived right up to the very end.

117. We're coming now briefly to your other works and journal papers Mr Yale. You wrote numerous other shorter articles, many were case notes. Too many to consider here with the time available to us, but including two on Admiralty matters in 1987 and 1988 in the *Cambridge Law Journal*. Could you summarise which of these many papers you think were the most significant?

Well, my favourite article actually is quite recent, comparatively speaking. It was the article I wrote as I was leaving, going to retire. It was published in the *CLJ* under the title of, "A Year and a Day in Homicide."³⁵ I don't know whether you've ever come across that piece? 'A Year and a Day in Homicide' deals with the old common law rule that if a person inflicted a fatal injury on another and that person has survived a whole year and then died of the injury you couldn't be... there's no possibility of holding a trial because it was no longer cause and effect, full stop. That is there was a rule of law which prevented you indicting of someone who had done a thoroughly fatal act, but the fatality had not occurred within a year and a day.

It's a rule which had attracted a certain amount of criticism from time to time, but I came across a particular incidence of that in a newspaper, the *Cambridge Daily News*, I think it was, of a girl who had been horribly assaulted and then spent the rest of her life, over a year, in a coma before she died. Now, of course, the perpetrator in a case like that can be got at for attempting to kill, even if he didn't, in fact, in law produce the death, but the whole thing has become very lopsided that people now, with medical assistance, can survive very serious injuries which eventually do in effect cause death. The rule was, on the whole, I think at a time to reconsider it so I wrote this article expressed my opinion. Among other things it contained a proof of how the rule came into existence in the middle ages which I was able to explain historically, the actual cases in which this highly restrictive rule was manufactured. The Royal Commission took it up and with correspondence with me they drafted an Act of Parliament, and an Act of Parliament was passed to abolish the law³⁶. So that's the one article I would wish to, as it were, offer as a justification for anything I'd written earlier, but it did solve a point of law and lead the way to making things more sensible and if people do inflict fatalities on other people they are not protected from the consequences.

118. Given the current political and legal turmoil re our place in the EU, I cannot resist asking what are your views on the future development of the common law, (a) if we stay in the EU...

Heavens, yes.

119.or; (b) if we leave the EU, would it matter, or would there be a significant difference in the English common law's evolution, do you think?

Well, I think close association with the EU in the future would be probably productive of some changes certainly because having an ultimate Court of Appeal in Strasbourg and other places is, I think, sufficient for that to happen. And, of course, the civil law procedures are already beginning to take some effect along those lines. Many people think that civil law

³⁴ Society of lawyers practising civil law in London.

³⁵ 1989. *CLJ*, 48(2), 202-213.

³⁶ Law Reform (Year and a Day Rule) Act 1996



procedures are better attuned to producing just results. There's some truth in that, especially in the area of criminal law. I'm not so sure about other areas.

120. Finally Mr Yale, after a career stretching over more than 40 years, what do you judge as your most important academic scholarly achievement for which you would most like to be remembered?

Well, possibly for remembrance sake, it might be the writing and research, but I would rather prefer to claim tutorial teaching as the best memorial although the memory of that only lasts the lifetime of perhaps 50 years or less because it is a personal interplay, in effect, whereas the writing and research I don't think is. Legal history is, up to a point, rather a self-indulgent exercise, and although when it's well done, I think it can claim to be time well spent, I don't think it's as time well spent as if one is actually helping people get in the way of the science of it.

121. Well, all I can do is thank you so much for giving me this opportunity to capture your memories and thoughts to place in the archive along with other illustrious colleagues, and for your and Mrs Yale's hospitality here in North Wales. Thank you very much.

Thank you very much. I hope all this is repeatable in your box of tricks, if I might call it that, because I'm not a fluent speaker normally and I don't know whether I've been sufficient help in answering your queries, but for what they're worth, there they are.

122. Mr Yale, this has been an extraordinarily fluent and fascinating account and I really can only reiterate my gratitude.

Well, I'm glad that you were able to come.

123. Thank you so much.

I don't think it's very likely that I shall be back at Cambridge in the next year or two. At my age, of course, it's unlikely I shall go travelling here and there, so I appreciate your trouble in making the journey. It's much easier to walk round to a room in the Squire Library.

124. It's been such a pleasure, such a great, great pleasure. I can't begin to describe to you. It's been a wonderful day. A wonderful day.

Good idea to capture people while they're available.

125. Yes. So, again, that was a very long interview, long and very interesting indeed. I'm just going to switch it off.

Yes, of course.

