

Conversations with Emeritus Professor John Rason Spencer

Part 1: Early Life and Career

by

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This is an interview with the thirty-third entrant in the Eminent Scholars Archive. John Spencer was Lecturer and Professor in Law at Selwyn College from 1973 to 2013. He is Hon QC, CBE, and was Faculty Chairman 1995-97. The interview was recorded online from Professor Spencer's home in Norfolk.

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**.

Professor Spencer's answers are in normal type.

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

1. Professor Spencer, it is a great pleasure to interview you today. You will be the 33rd entrant in the archive, and the 20th faculty member to reminisce on your time at the University of Cambridge.

Your career began in the post-war period, by which time the university had recovered from the shortages of staff and materials caused by the war, but during which it was coming to terms with the new national and world order. Deference in society was waning, and the colleges were opening up to women and those like yourself who were grammar school educated.

It was also the time of the Cold War, and international deadlock in many areas, while locally the country was readying itself for the entry into the Common Market with all that entailed for politics and legal repositioning. I am sure you will enliven our archive with your observations and reminiscences of these times, and the reforms of criminal law that our new European situation required, in particular with the introduction of the 1998 Human Rights Act. I am also sure the potential legal fallout from the 2016 Brexit referendum will not escape your forensic observations.

For the record, we should recall that this is a COVID interview, the second such interview in the archive, from which, for you part, Professor Spencer, is conducted online, from the depths of rural Norfolk.

Could we start with your early life and education, complete your university career in a second interview, and then conclude with a discussion on your published work? You were born immediately after World War 2 in 1946 in Chelmsford.

That's right, yes, and when I was four we moved to north Dorset, where my father had a job as a district surveyor for Dorset County Council in the roads and bridges department, There he and my mother stayed for the rest of their lives, and that is where I was brought up.

2. What would you say is one of the most important legacies of this rural upbringing?

In a strange way, nothing really much to do with the countryside directly. I fell a victim to the polio epidemic in 1950, I think it was, when I was four. My parents were

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convinced I was physically too weak to send to primary school when I was five, and I don't think they wanted me to go to the village primary school anyway, for other reasons, and they had me taught by an octogenarian clergyman who lived next door.

That went well, and he later taught my sister too, and so from five until ten, when we moved to Sturminster Newton, a little town just about five miles away, I was educated, together with my sister, in this extraordinary fashion. We didn't play with other children very much and we never played any sport. By the time I went to primary school at ten, I had a reasonable knowledge of Latin and some French, but I was behind the others in mathematics, and I'm afraid that stuck with me for the rest of my time, and I was absolutely useless at sport. All this stayed with me for the rest of my life, but it was an eccentric beginning to my education, a quirky start for sure.

3. Very interesting. So, when you went to Blandford Grammar School (1957-64). Were you a day boy, or were you a boarder?

It was just a day school for the surrounding rural area. From Sturminster Newton, where I then lived, we used to go by train to school every day, a steam train, on a railway line: the Somerset and Dorset Joint Railway line, as railway enthusiasts will know. There was great corporate spirit among the Sturminster Newtonians going up and down on that railway line every day. All that makes me particularly sad that the railway is now closed³.

4. Overall, did you enjoy those school days?

Yes, I did. It was a small country grammar school, but there were teachers who had been there for years who were good, and I fell in with some other people in the sixth form who were interested in the world around us, and we talked and talked. To this this day I am still in touch with people I got to know at the grammar school. Yes, it did very well by me. There was an association of old members which continued to exist until earlier this year (*LD - 2020*), and as one of the last group of people who went to that school before it closed to become became part of a comprehensive school⁴ I was sad when, with so many members lost, the association closed.

5. Any subjects that you enjoyed particularly at school and that you were good at?

History, French, Latin, English, I think. I liked the sciences too, but if you are not very good at mathematics then you come to a brick wall in science subjects.

6. Professor Spencer, what made you decide to apply to come to Cambridge?

There arrived at the school a headmaster who had, himself, gone to Cambridge from a state school, and he was keen on encouraging those he thought had the ability to apply to Cambridge, and it was he who stimulated me and a class-mate of mine who went up to Cambridge with me.

7. And, of course, you applied to come to Selwyn College. When you arrived, were there still ecclesiastical trappings operating in the mid-60s?

Here's how I came to apply to Selwyn. David Harrison⁵ was the admissions tutor, Sir David Harrison, as he now is, who celebrated his 90th birthday earlier this year, and eventually became Master of the College after a distinguished career in many areas of

³ Closed 7th March 1966

⁴ Photos taken in 1970 <https://www.blurb.co.uk/b/2854945-blandford-grammar-school>

⁵ Sir David Harrison (b. 1930). V- Ch University of Keele (1979-84), V-C University of Exeter (1984 - 94), Master Selwyn College (1994-2000), Pro-V-C University of Cambridge (1997)



academic life. The headmaster of the grammar school, Arthur Frankland, sent for me, and said, “We have had this pamphlet from the admissions tutor, David Harrison, at Selwyn College. I don’t remember much about Selwyn but I think it has something to do with the Church of England. You have short hair, and you go to church, so why don’t you apply to Selwyn?” and that’s why I applied to Selwyn, where I was accepted. I think it had a church reputation greater than how far the Church of England was then a central part of it. There was an active chapel, with a chapel choir (in which I sang), and the Master of the college was Owen Chadwick⁶, who was a clergyman. But you no longer had to be a member of the Church of England to be admitted.

8. When you arrived from Dorset, did you find it quite a change, coming to Cambridge and to Selwyn? Was it to your liking, initially?

I never felt discriminated against or made to feel small because I was a state-school boy. There were a lot of state-school boys at Selwyn College, and David Harrison himself, if I remember rightly, was from a grammar school background. I got on well with fellow students there, from whatever background. I think I suffered from “imposter syndrome”, wondering how on earth I had got to Cambridge and whether I was good enough, but I think that is very usual for people who go to university, particularly Oxford or Cambridge. I had a good time as an undergrad. I confess I didn’t study particularly hard. I played the ‘cello in those days, and I wanted to play in CUMS, the university music society orchestra. There are two levels of it: CUMS II, the second division, and CUMS I, and, finally, in my third year I managed to graduate into CUMS I. When I wasn’t studying, music was what I was mainly doing.

9. In the 60s there were several sit-ins, with the Garden House riot in 1970⁷. Did you experience any of these - did they affect your equilibrium at all?

The Garden House riot was after I had gone down, and when I was away in Canada. There were preliminary rumblings and a degree of disgruntlement and left-wing activity. I think I prided myself on being a “young fogey” in those days. Over the years, I think I moved from being young fogey to become (possibly!) an “old Turk”! But in my student days I had little patience with those who took an extreme left-wing position and wanted to tear everything to bits. It seemed to me that Cambridge was partly filled with people from privileged backgrounds who were embarrassed about it and wanted to wreck the University, and partly filled with people from modest backgrounds who were happy to have got there and wanted to keep it as it was. I was part of that second group.

10. That’s very interesting. So, when you came to Cambridge, did you come with the intention of reading law?

Oh, yes. I had applied to read law. From early on, my father was wondering what I could do for a living. He was a civil engineer, and his father had been an engineering draftsman. My mother’s father was another highway engineer, and I think the tendency would have been – if I had been good at mathematics – to push me in that direction. But he had a friend who was a solicitor who said, “Would he like to come to my office in school holidays and see what goes on and what I do?” and I found it very interesting. I was lined up to go there as an articled clerk, and there was initially a question about whether I would go

⁶ William Owen Chadwick (1916-2015), OM. Dixie Professor of Ecclesiastical History (1958-68), Regius Professor of History (1968-83), Master Selwyn College (1956-83)

⁷ <https://www.independent.co.uk/news/education/education-news/the-varsity-protest-that-shaped-a-generation-2141131.html>



there immediately and just study to become a solicitor or go to university first. But the school said I should try to go to Cambridge, and, of course, I applied to Cambridge to read law. My idea all along was to go back and be a country solicitor.

11. In Dorset?

That's right. It never happened, did it?

12. No. Very interesting. So, at that time, you would of course have been as an undergraduate in the cramped but colourful quarters of the Old Schools. Do you have any memories of the actual accommodation?

Oh, very much, yes. It was a bit crowded, and the lecture rooms were physically not very comfortable with bone-hard seats and poor ventilation and poor acoustics. And the university administration kept on getting bigger, and was gradually edging the law faculty out of the parts of the Old Schools that it had. For a time the Law Faculty was given the East Room in compensation. It was a lovely room but the acoustics were particularly bad so we had to strain to hear the lectures.

13. Right.

It was right next to the Squire Law Library, of course, and that was convenient. Later, when I was first a don, we were squeezed out yet further. We then had to have lectures in different parts of the city, but all the lectures used to take place down in the Old Schools when I was an undergrad.

14. So, you may have been lectured by, or certainly knew, academics such as, for example, the Regius Professor of Civil Law at the time. Did you ever come across him, Professor Duff⁸?

Patrick Duff gave us one or two of the lectures in Roman law. I think he was just about to retire, and, to everybody's astonishment he used to come to lectures dressed not only in a gown, as all the lecturers then did, but also with a mortar board. I remember we once took a photograph of him coming in with his mortar board, as this living relic of how things used to be, years before. I don't remember much about the content of his lectures but he gave the impression of being a pleasant, gentle individual.

15. The Rouse Ball Professor at the time was Professor Bailey⁹.

Yes. Poor Professor Bailey, I learned later, suffered from early onset dementia, and there were already signs of that when he lectured to us. This seemed amusing to us at the time, but as an old man myself now it no longer seems so, and I'll say no more about his lectures.

16. Well, he was succeeded by Professor Glanville Williams¹⁰, who, when you first arrived, was a Reader, and he, of course, has had a great influence on you. You wrote his obituary in the Independent in '97. You also wrote his entry in the DNB. Several of the scholars in the archive whom I have had the privilege of interviewing have commented on his brilliance as well as his pacifism. I wonder if you could summarise your views on this scholar with such wide-ranging talents?

⁸ Patrick William Duff. (1901-1991), Regius Professor of Civil Law (1945-68)

⁹ Stanley John Bailey. (1901-1980), Rouse Ball Professor of English Law (1950-68)

¹⁰ Glanville Llewelyn Williams. (1911-1997). Quain Professor of Jurisprudence UCL (1945-55), Rouse Ball Professor of English Law (1968-78)



Glanville Williams was an astonishing man. He was brilliantly intelligent, and amazingly single-minded and persistent. He was, by nature, a quiet sort of person, quietly spoken, but he never gave up. He was like Agatha Christie's Miss Marple when setting out to solve a crime. He was ahead in identifying difficult legal problems and in pressing for solutions, and some of his solutions seemed far-fetched when he first proposed them. For example, tape recording of police interviews with suspects. I think he put that forward in the 1950s, long before I was at Cambridge, and at the time nobody took it seriously. But everybody has it now. He was, personally, a little shy, and on first acquaintance seemed a rather austere individual, but he had kindness and he gave a lot of encouragement to junior members of the Faculty he thought worth helping. He would read typescripts of things you had written and he would offer useful comments and advice.

I suppose in so far as there is any consistent current of philosophy behind English law – both criminal law and English law more generally – you would say it is utilitarianism, and probably goes back to Bentham¹¹ and his predecessors. Glanville Williams was, of course, a devoted follower of Jeremy Bentham. I didn't know it at the time, but utilitarianism was central to much of what he taught, and it had a big influence on those people whom he helped and taught. I think he was on sabbatical leave, or otherwise occupied, when I read criminal law in my first year at Cambridge, and it was only later on that I got to know him. When I started out as an assistant lecturer in the Faculty I didn't teach criminal law at first. He, it was, who nudged me in that direction later. Assistant lectureships in those days were temporary posts, time-limited, and he said, "In future we shall need more criminal lawyers in the Faculty. I am going to retire, and if you want to make yourself useful in an area where your utility might be noticed, I advise you to get into criminal law." I had always enjoyed criminal law, and I needed little encouragement to move into that area of work. The man who lectured to us in criminal law when I first studied the subject in our first year was not Glanville Williams, however, but J C Smith, later Sir John Smith¹², who was seconded to us from Nottingham University, where he held a chair. He was one of the best lecturers I have ever heard. Brilliant, clear, wryly amusing sometimes, and I can remember some of his more incisive comments now. I got to know him slightly, later on, when I was on the editorial board of the *Criminal Law Review*, of which he was also a member. We would meet every year. He was a charming man and helpful to his junior colleagues too.

17. That is very interesting. A comparative lawyer who you may recall was Professor Hamson¹³, and I wonder if you have any account or recollections of him?

Yes, I do. Professor Hamson lectured to me in Contract and Tort II. I wasn't into comparative law then, which was his main subject, and I didn't hear him lecture on that. He had a slightly wild lecturing style and I have a suspicion he didn't prepare his lectures too thoroughly. His lectures always ran up to the hour, if not a minute beyond, and, of course, you needed to get out the lecture and into the next one. We couldn't always follow what he said, but he was bursting with energy and enthusiasm. Later on, he very much helped me, though he didn't really know me at that point, when he accepted an article I had written for the *Cambridge Law Journal*, of which he was the editor. I think it was his approving of that article that was a key stroke of luck in my academic career. So I have reason to be grateful to his memory, as I likewise do to the continued presence of David Harrison, because the help he gave was obviously an important step in my career.

Professor Hamson used to organize the summer foreign lawyer's course which

¹¹ Jeremy Bentham. (1748-1832), Legal and moral philosopher

¹² Sir John Cyril Smith. (1922- 2003), Professor of Law, Nottingham (1957-87)

¹³ Charles John Joseph (Jack) Hamson. (1905-1987), Professor of Comparative Law, Cambridge (1955-73)



Roderick Munday¹⁴ then ran later on, and this involved a coach trip to the Courts of Justice in London. One day when I was a junior lecturer I met him in the corridors in the Old Schools and he abruptly said, “You will come with us on the coach to London!” and so I joined the trip as a marshal. Jack Hamson was a commanding personality, and I don’t think any junior member of the Faculty would have dared to refuse!

18. Did you have much, or anything, to do with the then Whewell Professor, who would have been Robbie Jennings¹⁵?

I remember his lectures, and we liked him as a lecturer. Later on, I knew him slightly as a colleague in the Faculty, and thought he was a kind and friendly man. But public international law was never my thing, really, so I didn’t have a lot to do with him.

19. Closer to your age when you arrived would have been academics like, or junior assistant lecturers such as Gareth Jones¹⁶, a few others. Did you have very much to do with Gareth Jones at all?

I don’t think he had been a lecturer long when I arrived, but I remember him lecturing us about constructive trusts in our third year. It was much later that I got to know him well, because in the late 1970s he became Chairman of the Faculty and I served as his Faculty Secretary for his three years in office. He became a close friend, and he and his wife, Viv, became close friends of both Rosie and myself.

20. Someone else who was with you at that time would have been Paul O’Higgins¹⁷.

Again, I was conscious of him, and I think I heard him lecture at some point, but apart from being aware of him and knowing who he was and finding him friendly when I met him, I don’t have any memory of him.

21. Colin Turpin?¹⁸

Oh, certainly. Colin Turpin lectured to us in constitutional law with great clarity, slightly stiffly, but memorably, and some of the things that he said in the course of lectures still stick in my mind after many years. Then we were colleagues in the Faculty later. After he retired he went on supervising for a long time, I should think until at least 80. He supervised Selwyn students in constitutional law, and was always popular as a supervisor. He never seemed to tire of inspiring the young to enthusiasm about the things he was concerned about.

22. Tony Weir?¹⁹

Tony Weir arrived on the scene when I was an undergrad. He was a stupendously funny and incisive lecturer. Sometimes the lectures didn’t seem to have an altogether clear thread through them, but they were always full of memorable comments. He lectured us on Roman law, and some aspects of the English legal system, and he said some memorable things about both. I suppose we found him slightly intimidating when we were undergrads,

¹⁴ Fellow & College Director of Studies in Law, Peterhouse

¹⁵ Sir Robert Yewdall Jennings. (1913-2004), President ICJ (1991-94), Whewell Professor of International Law, Cambridge (1955-81)

¹⁶ Gareth Hywel Jones. (1930-2016). Downing Professor, Cambridge (1975-98)

¹⁷ Paul O’Higgins. (1927-2008), Regius Professor of Laws, Dublin (1984-87), Professor of Law, Kings College London (1987-92)

¹⁸ Colin Conyngham Turpin. (1928-2019), Assistant Lecturer (1961-66), Lecturer (1966-92), Reader in Public Law (1992-95) Clare College

¹⁹ J. A (Tony) Weir. (1936-2011), Reader in Law, Trinity College



but, again, he was somebody I got to know well later. He was a kind friend and my wife and liked him very much.

23. Ken Polack²⁰ would have been around at that time.

Yes. Ken Polack doubled up as Bursar of Kings College, if I remember, and that was a pretty busy job. I think he did what he had to do in the Faculty, but he wasn't hugely prominent in the Faculty. I think Kings College was his main domain.

24. Any memories of John Hopkins²¹?

Oh, yes. Very much. John Hopkins supervised us. John Hopkins really was an excellent supervisor. He did enormous hours of supervising. I can't think how he managed to tirelessly supervise hour after hour after hour as he did. Again, he had a gift of explaining some apparently complicated legal topic in a simple fashion so that you would remember it. So, he was highly gifted as a supervisor, certainly. As a lecturer he was also good. He went at high speed. We used to call him "machine gun Hopkins", I remember. Later we were colleagues in the Faculty for many years. I knew him well, and we became good friends.

25. Cherry Hopkins²²?

Yes. She was on the scene when we were undergraduates, but she didn't teach me then. I got to know her later, through the *Cambridge Law Journal*, mainly.

26. John Collier²³ would have been around at that point.

Oh, yes. John Collier supervised us. John Collier also lectured us, and then he was a Faculty colleague later. Yes, I remember him with affection as well.

27. Then, you mentioned in your very helpful notes that you sent me, Professor Spencer, Paul Fairest²⁴.

Paul Fairest was a key person in my life, because he had just arrived at Selwyn College when I applied, and it was he and David Harrison who decided to admit me to read law. I and my Selwyn contemporaries were the first year of people whom he had admitted. So, he was new, and keen, and enthusiastic. We very much liked him, and he took great efforts on all of our behalf. Again, he was an excellent lecturer, and an excellent supervisor too. Later it was he who heard about and encouraged me to apply for the one-year temporary post in the Faculty of Commerce and Business Administration at the University of British Columbia and then persuaded me to take it. I went, and that was another turning point. That is what finally stopped me becoming a country solicitor and set me on the road for being an academic.

Paul moved on from Cambridge in the mid-1970s and went to Hull where he was a professor and where he worked for the rest of his days, and so disappeared from the Cambridge scene. But we remained in touch, and he was a personal friend, and a person to whom I owe a big debt of gratitude.

28. Did you have anything to do with, or do you have any recollections of a somewhat

²⁰ Kenneth Polack. (1933-1995), Fellow King's College, Bursar (1969-81), Lecturer (1961-69)

²¹ John A. Hopkins. (1936-2018), University Lecturer (1968-2004), Downing College

²² Cherry Hopkins (nee Charity A. "Cherry" Busbridge), Lecturer in Law, Girton College

²³ John Collier. (1933-2016), Fellow of Trinity Hall (1966-2001), International lawyer
Co-author with Vaughan Lowe of *The Settlement of Disputes in International Law*, 2000, OUP

²⁴ Moved to Hull in mid-70s and became Professor



enigmatic character, Professor Clive Parry²⁵?

Oh, yes. John Hopkins was a pupil of Clive Parry's and at John's funeral one of the speakers described Clive Parry as "mercurial", and he was. He was extremely clever. He could be very funny, and incisive. I can remember now some of the amusing things he said. He could also be extremely difficult and when I became a member of the Faculty Board, I saw some of the disruptive side of him in action. But as far as I am concerned he was always helpful and I regard him as another of my benefactors. He was kindly disposed towards me and was always friendly.

Yes, he was somebody else who could see the realities of a legal problem. For example, I remember something that he told us when he lectured us on extradition. He said somebody had just sent him, very kindly, a three-volume book on the law of extradition they had written. Parry said to us, "I asked the author, 'Do you know how many extraditions this country actually has each year?'" and he said, 'No, I don't,' and Parry said, 'It was ... (I don't remember the exact figure, but it was insignificant). In practice our police officers ring up colleagues in the other country and say, 'Do us a good turn, would you? Just arrest him for us and put him on a plane back to Heathrow', and when the plane lands somebody from the Metropolitan Police is waiting to arrest him, so we almost never bother with extradition.'"

Parry was irreverent enough to teach us what really happened rather than what was in the books. The practice he described came to an end in the 1990s when the House of Lords said it was an abuse of process to prosecute somebody who had been illegally exported by a collusive arrangement of this sort.

Yes, in his time he was one of the greats. Sadly, he died relatively young: in his mid-60s, if I remember.

29. That's right. I think he was 65.

I think that might be so, yes.

30. I used to share a room with Professor Lipstein²⁶ who was very, very fond of him.

Yes.

31. They shared a house.

That's right, yes. Kurt Lipstein... he seemed to have been there forever, and he seemed to stay there forever.. When I read the LLB he lectured to us on the conflict of laws. Yes, a very nice and learned man, and endlessly obliging. Interestingly, he had the habit of going up to people whom he saw lost in the Squire Law Library, "damsels in distress" particularly, and saying, "Can I help you?" Working with me one summer was an Italian PhD student. This would have been in the mid-2000s, I suppose, when Kurt Lipstein was about 94 or 95. I told her about this as a joke and she said, "It's happened to me! He came up and said 'Can I help you?' and he showed me where the book was that I wanted." I later heard that one student who had this experience thought he was a library assistant, albeit an elderly one, and thereafter was always seeking him out to find books for her!

32. Well, I'm very fortunate to have interviewed Kurt for the archive, and some other scholars that are in the archive include Mickey Dias²⁷.

Mickey Dias supervised us with clarity and rigour in Roman Law 2. He also lectured us in Negligence in English and Roman law in the LLB. An excellent lecturer. It was a

²⁵ Clive Parry. (1917-1982), Professor of International Law (1969-82). Downing College

²⁶ Kurt Lipstein, (1909-2006), Professor of Comparative Law (1973-76)

²⁷ Reginald Walter Michael (Mickey) Dias, (1921-2009). Lecturer in Law (1951-82)



slightly bizarre experience going to his supervisions, because there was a human skull on his desk, which we found a little off-putting. I then worked with him later, because he was the general editor of *Clerk & Lindsell on Torts*, and for a number of years I edited some chapters in the book. Yes, he was friendly, and I have kind memories of him as well.

33. That very skull was present when I interviewed him at his home in Babraham Road on the little table.

I can't imagine how he came by it or why he had it there.

34. Someone else I have been very lucky to interview was Michael Prichard²⁸. Of course, he is almost 93 now, and I was very impressed to notice that he had attended the annual Faculty meeting last week - by Teams.

Yes. Michael Prichard lectured to us as undergrads. Another excellent lecturer. He lectured in land law, and I remember my father came to pay me a visit when I was an undergrad I smuggled him into one of Michael's land-law lectures.

35. How touching.

Yes, so, he could see what a Cambridge lecture was like. I don't think my father was particularly interested in land law, but he liked the lecture. Michael was teaching in the Faculty when I was a Junior Lecturer and he also edited the *Cambridge Law Journal*, for which I wrote a number of articles. So I got to know him fairly well. He was a much-respected member of the Faculty, and much liked.

36. He is a great fund of knowledge about the Faculty.

Oh, and everything. A huge fund about every aspect of legal history. If you wanted a lead on something, you could always ask Michael and he would point you in the right direction.

37. He worked for many years with David Yale²⁹ on the Admiralty Court Project. Do you remember David Yale from those days?

Yes, I do. David Yale lectured to us in tort. Private nuisance, I think. He was Faculty Chairman at one point, and I seem to remember that he was on the Faculty Appointments Committee when I was first appointed as an Assistant Lecturer. He retired many years ago and last year I was delighted to read the Eminent Scholars Archive entry for him.

38. Thank you. It was delightful interviewing him. In his 90s, he too is a very clear thinker, still. I didn't know what would ensue, obviously, but it was very, very worthwhile. I am thrilled with that interview. Thank you. Professor Jolowicz³⁰, or Tony Jolowicz as he would have been at the time, is someone you would have known.

Yes. Tony Jolowicz supervised us in contract and tort II. No nonsense. Bursting with energy, somehow, and you tried hard if you were preparing for his supervisions and writing essays. He was firm but kindly, I think you would say. He was a jolly good lecturer. Very forthright, and I won't insult his memory by imitating him and his lecture style, but he was a good lecturer whom we liked and later on he became another friend and supportive Faculty colleague. (Looking back I was lucky to work with so many whom I liked and

²⁸ Michael Prichard. b.1927. Lecturer (1953-95), Gonville & Caius. Editor, *CLJ* (1996-2003)

²⁹ David, Eryl Corbet Yale, b. 1928), Reader in English Legal History (1969-92), Christ's College, FBA 1980

³⁰ J. Anthony (Tony) Jolowicz. (1926- 2011), Professor of Comparative Law (1976-93), Trinity College



respected.)

39. Poppy Jolowicz was a bit like him in terms of how she came across. Very slightly fierce, but actually was very kindly behind it.

Tony Jolowicz, if initially seemingly fierce, was a generous and kind and friendly man. Poppy likewise.

40. Len Sealy³¹ would have been here at that point in your career, Professor Spencer.

When I first went back to Selwyn, I was notionally a Research Fellow. I think the reason was that if you were a Research Fellow your pay was notionally a grant, and you didn't have to pay tax on it and so they could legitimately pay you less! I made a rather faint and not very serious attempt to start a PhD with Len as my supervisor. He was kind and understanding. I didn't progress much with it, but it wasn't all wasted time because it was work I started towards that which eventually became the article which was published in the *Cambridge Law Journal* by Professor Hamson.

41. Would that have been your 1973 article?

That's right, yes.

42. Right, which we will come to. In 1969 you took a temporary lectureship in the Faculty of Commerce and Business Administration.

Yes.

43. Was that what became the Judge Institute?

No, no. This was in British Columbia, in Canada.

Canadian universities, at that point, were expanding, and they were potentially overwhelmed with good Americans who wanted jobs there, and to counter-balance this they would offer temporary posts to people from the United Kingdom, and, if they liked them, invite them to stay longer. It was in that context. So I was in Vancouver, in Canada for that year, and that was the Faculty of Commerce and Business Administration in the University of British Columbia.

44. That sounds a very exciting experience.

Oh, certainly, yes. That's when I first lectured.

45. You were then given a Junior Fellowship at Selwyn. This was in 1970.

Yes.

46. I wonder what the circumstances were of this, and what this entailed?

The law side was expanding, and Paul Fairest needed help, and essentially he caused the college to engineer the creation of a post for me to come back and help him. As I said, it was presented as a Research Fellowship. I didn't do a lot of research, apart from writing that article, and I did a lot of teaching. I hadn't entirely given up the idea of being a country solicitor, but I thought it would be a nice thing to do for a couple of years, and I got on well with Paul Fairest. So I went back to Selwyn, and rather expected it all to come to an end after a year or two when I would have to go off and do something else for a living. But I was encouraged to apply for Faculty posts and obtained an Assistant Lectureship at the second

³¹ Leonard Sedgwick Sealy. (1930-2020), S J Berwin Professor of Corporate Law (1991-97), Gonville & Caius



attempt. That would have been in 1973, I think.

47. During your Junior Fellowship at Selwyn, you published your first paper at the end of this period, and I assume that you were following up on topics that had crossed your path while you were teaching the commerce business course. I read the paper, and I enjoyed it enormously. It was your first sortie, if you like. Very witty, slightly irreverent, insightful, and it was on the notion of disputing a grievance in a contract. Was this spurred on by a particular case that you came across while you were lecturing contract?

It was stirred up by a particular case (*L'Estrange v Graucob*) which I remembered learning about when I was an undergrad and thinking was unfair. It was thinking about the injustice that the rule caused which stimulated me to write the article.

I admire your endurance reading it in preparation for this interview, and I'm not sure, if I were writing it again today, I would be quite so irreverent towards Lord Denning³² who, in retrospect, I much admire. I thought the idea I put forward in the article was useful because it found a way round a harsh legal rule, which was if you signed a contractual document you were bound by all the terms, however onerous – and this however obscurely drafted was the contractual document you had signed.

In the end it was all overtaken by legal events, because we had the Unfair Contract Terms Act³³, which just simply invalidated a range of onerous terms in consumer contracts, so my bright idea was never taken up by the courts. Not long after writing that article I moved away from the law of contract anyway and into criminal law and so forth.

48. You wrote very amusingly about the eavesdropper theory introduced by Lord Denning in *Solle v Butcher*³⁴, and you criticised this because, *inter alia*, he had to be a jack of all trades and have encyclopaedic knowledge.

Well, yes. I did say that. I thought it was very clever at the time. I'm not sure it was so clever when I look back on it years afterwards!

49. Well, it was a very enjoyable paper to read.

I became a great admirer of Lord Denning later on. Lord Denning was a judge who could see his way through a legal thicket to produce a sensible solution at the end, and who expressed himself very clearly. So in retrospect I think I was more irreverent to Lord Denning in that article than I would be if I set out to write it now.

50. Interesting. Professor Spencer, you were appointed a University Assistant Lecturer in 1973, as you mentioned. What did this entail?

Lecturing in whatever the Faculty wanted you to teach, basically. When you started then, the expectation was that you could teach anything that you had learned, essentially. I was asked to teach contract, initially. It also meant being on hand to take on other administrative jobs if the Law Faculty wanted you to do so.

51. I couldn't see any publications during this period, so I assume that you would have been overwhelmed with the teaching responsibilities.

Academic life was not demanding in those days, and there was an expectation that once you had got a Faculty post you could keep it, and it wasn't required of you to keep

³² Baron Denning of Whitchurch, Alfred Thompson Denning. (1899-1999), Master of the Rolls, (1962-82)

³³ 1977, <https://www.legislation.gov.uk/ukpga/1977/50>

³⁴ 1950, https://www.oxbridgenotes.co.uk/law_cases/solle-v-butcher



publishing things, whether you had anything to say or not. Rosie and I had got married in 1972, and we had a house which needed work, and I enjoyed being a handyman. I spent my vacations doing extensive works in the house, including building a new staircase under the direction of our next-door neighbour's friend, who was a professional carpenter. In the Faculty nobody checked up on you; nobody minded. We hadn't started calling the long vacation the "research period", as we have now renamed it, and I was content to have the liberty that academic life then gave you. But I was working on various academic projects. I had got involved in *Clerk & Lindsell*³⁵, and so I put a lot of academic work into keeping my chapters up to date.

I also translated a section of a multi-volume work called (I think) the Universal Encyclopaedia of Comparative Law, which is a German project, but published in English. A Belgian academic had written a chapter on an aspect of the law of tort which I translated into English. So I was busy with academic things, but not writing original articles much at that point.

At that point in my career I was much involved with the law of tort. If I look at the case notes I wrote back then, quite a lot of them were about the law of tort, rather than about criminal justice matters. When I did start publishing articles in the *Cambridge Law Journal* and so on, they were about aspects of the law of tort, like one on public nuisance and one about *Rylands v Fletcher*³⁶ and strict liability for motor cars, and so on.

52. In 1976 you were promoted to a University Lecturer. Was this a natural progression, or were there specific circumstances?

The hope and expectation was that if you got as far as being an Assistant Lecturer you would then be promoted to University Lecturer. It wasn't automatic. If you had not been in the least academically productive and you were known to be a bad lecturer and an awkward colleague, then you might have your assistant lectureship extended and be told you weren't likely to be moved up to lecturer. But it was pretty much an expected progression at that point.

53. So it was probably at this point that you began to move seriously to criminal law.

Yes. I had supervised criminal law ever since I started as a Junior Fellow at Selwyn, and it was about then that I got to know Glanville Williams personally. He was pushing me in that direction and got me involved. There was the SPTL - it's called the Society of Legal Scholars now - in those days called the Society of Public Teachers of Law. It had a criminal law group, of which he was part, and J.C. Smith too. Tony Smith³⁷ was a member too. I started going to meetings of that group with them and got much more closely involved in criminal law at that point.

54. It was at this point that you contributed to a Festschrift for Professor Smith on his retirement, and this was your first book chapter. Was your co-author his son?

No, just a coincidence of name, and the Smith who put the collection together was the editor, nor a co-author... But to go back a step. I think the first Festschrift chapter that I wrote was actually one for Glanville Williams himself when he retired in 1978. Peter Glazebrook³⁸ put that together, and I wrote a chapter about the history of prosecutions of the newspapers

³⁵ *Clerk & Lindsell on Tort*. Currently: 23rd Ed, Sweet & Maxwell, General Editor, Michael Jones

³⁶ 1868, *HoL*, <https://www.bailii.org/uk/cases/UKHL/1868/1.html>

³⁷ Professor Anthony Terry Hanmer (Tony) Smith. b. 1947, Pro Vice-Chancellor and Dean, Faculty of Law, Victoria University of Wellington (2007-), Gonville & Caius (1990)

³⁸ Peter R. Glazebrook, University Lecturer in Law (1967–2003), Jesus College



for criminal libel. I had got interested in criminal libel earlier on because there had been a resurrection of prosecutions for it. Through that I had realised that it had a colourful history and it had been much used against newspapers at one point.

I did a lot of research, and I had a grant from a Faculty fund to hire a student, Stephen Tromans, now Stephen Tromans QC³⁹, eminent counsel at the Bar, to go to the university library and look up large numbers of reported prosecutions in the archive volumes of *The Times* newspaper.

That I wrote that piece was partly as a result of my interest in the law of tort, because criminal libel was a criminal version of what was mainly the tort of defamation. I think I was lecturing on the tort of defamation at that point in the tort course. This was the first Festschrift article I wrote, and then the John Smith one followed on from that.

55. Apparently, Professor Smith’s case notes in the *Criminal Law Review* were known for their witty, engaging style, which is very much like your style. Do you think that you were influenced by him?

I know I liked John Smith’s case notes in the *Criminal Law Review*. I don’t remember ever consciously thinking, “That’s nice, I’m copying that,”. But certainly the clarity of them was something which I admired at the time, and thought, “That’s the way to write notes about cases”. At the start of my writing career there were contemporary legal writers whose style I liked, because they were clear and incisive and could point out what the essence of a particular problem was. Glanville Williams, obviously, Tony Weir, particularly, and John Smith as well.

It has always seemed to me that a lot of law is not as complicated as lawyers like to make it. One of the reasons that I and other people liked Lord Denning, was that he could see his way through all the case law to what was the essence of the problem. I always thought, “I want to make this accessible not just to lawyers who specialise in a field, but make it understandable to any intelligent layperson who wants to know about it.”

Rosie, my wife, was a research scientist and I used to get her to read my case notes. If she couldn’t understand them, then I would have another go. I wanted to make them clear not just to legal colleagues who had studied this particular area, but to anybody who might read it. That is what I have always tried to do. For a time I got into writing articles in *The Times* newspaper about legal issues, and in these too I was trying to explain legal problems in a way that everybody could grasp.

It often seemed to me that the longer a legal article is, the less anybody is likely to read it, and the less it is likely to have any influence. If you want to have an impact and cause a rule of law to be changed, you must write something short which many people are going to read, and, as the saying goes, you “pile it high and sell it cheap”.

I am sad that there is, increasingly, a divorce between what academic lawyers are expected to do, which is to keep churning out longer and longer articles for more and more specialised journals (preferably with “International,” in the title), in order to score marks for the Research Assessment Exercise or Research Excellence Framework, or whatever it is now called, and less and less encouragement to write anything which anybody might read other than appointments committees or assessment boards.

56. Very interesting indeed.

To continue on that theme. I always thought that if you haven’t something to say, it is better not to say anything. Happily, I was an academic during the period when there wasn’t

³⁹ Essex Chambers. <https://www.39essex.com/barrister/stephen-tromans-qc/>



any compulsion on you to write except when you actually had some message you wanted to put across. That's not so today. People have to keep writing whether they have anything to say or not, and whether anybody is going to read it or not. I just took it for granted there was no point writing anything unless you actually had a message to put over. But looking back on it, it was a luxury that I had, born of the time in which I worked, in that you could do that.

57. This was a very fruitful period for you - from 1976 to 91. 1990 was a particularly busy year in which you published your book on children's evidence, which we will come to at a later stage. I wonder whether you could say something about the sabbatical to Paris in 1990 to 1991.

Yes.

58. Can I just say, before you do, Professor Spencer, that your knowledge and affinity for continental and especially French law are very well known in the faculty, as well as the establishment of the Erasmus exchange programme and the Double Maîtrise with Paris II.

There was a long-standing arrangement dating from when there was just one single and entire university of Paris, that the Paris Law Faculty got somebody from the English-speaking world to give a course, or more than one course, in the Anglo-American law of contract to their equivalent of an LLM. This had started years back, and a number of Cambridge people had gone, including Basil Markesinis⁴⁰, who was at Cambridge then, and Brian Napier⁴¹. I think it was Basil Markesinis who suggested to Paris inviting me. I was hesitant about it, but those who had been before encouraged me to go, and I did, so I reverted to teaching the law of contract to a class of French students.

They were not French undergraduates; they were French graduates doing a fourth year course, the equivalent of our LLM. It was selective at that stage, not like French undergraduate courses where everybody can go and then they have a massacre at the end of the year and until then the lecture room is full of hundreds of people. It was a smallish class, as we have in Cambridge.

I had to lecture in French, and at the end of my first attempt to do that one of the nice students came up and said, "You know, I think we all have English. If you would find it easier to lecture to us in English, why don't you do that? I'm sure we would understand you." I put this idea to my "minder" at the University of Paris I, and he said, "*En France, il faut enseigner en français, monsieur. Il faut avoir une dérogation du ministère de l'éducation nationale. Allez-y*".

So suitably reprimanded I just kept going and stumbled along. Eventually, having done it for a while, it started to come more easily, and the point arrived when I could lecture from a page of notes in French as I would in English. It took me longer to prepare, because I would have to foresee words which I didn't know the French for and check them out, so it was by doing it for a year that I ended up able to lecture in French without any terror. But it was an uphill struggle at the start, and I think my initial lectures would have been painful for the students to listen to.

59. That's very interesting, and it's an interest you have maintained ever since.

Yes. I had always enjoyed French at school. I had got on well with the lady who

⁴⁰ Sir Basil Spyridonos Markesinis, b. 1944-. Professor of Common and Civil Law, UCL (2001-), Director of Studies in Law Trinity College, (1974-86), Lecturer in Law, Cambridge (1978-86)

⁴¹ Brian W. Napier, Professor of Information Technology Law, Queen Mary College, London (1989- 1994), Lecturer in Law Cambridge (1975-88)



taught us French in the sixth form, who is still alive at great old age now, and I am still in contact with. It always remained. I had always liked the French language and been interested in it.

When I was in Paris, I made contact with a number of French lawyers who were interested in English law and wanted to know more about it. There was a big debate going on in France about reforming French criminal procedure at that time, and there was an interest in finding out about “Anglo Saxon criminal procedure”. In their minds they put together the United States of America and the British Isles as, “les Anglo-saxons,” despite the differences between them. I often found myself invited to lecture to groups of French *magistrats* about English, or English and American criminal procedure, and how it differs from French criminal procedure. That continued after I went back from Paris.

I made many friends there, and it was as a result of that that the Faculty used me to set up the first links of the Erasmus programme, and that led to the Double Maîtrise programme later on.

60. Also, still in the year of 1990. It was at this time that you were on the Calcutt Committee, and I wonder if you could say something about that?

I think instrumental in setting it up was the then Lord Chancellor, Lord Mackay⁴². It was to look into the question of invasions of privacy and outrageous behaviour by the press, particularly the down-market press, the tabloid press. Until then I had always averted my eyes from the tabloid newspapers. We used to take them in the Senior Combination Room at Selwyn at those days. I think we stopped eventually because people didn’t like them and didn’t read them. It was a revelation to me how dreadful they were and some of the invasive and abusive things that they did. We struggled with the problem, and there was a division of opinion on the Calcutt Committee.

The driving forces of the group were David Calcutt⁴³, who was the Chairman, and the two powerful people on opposite sides of the debate: David Eady QC⁴⁴ who was at the libel and privacy bar and later became a judge and Simon Jenkins⁴⁵, journalist, polymath, writer about everything. He was editor of *The Times* for a while shortly after that [LD - 1990-92].

To say they clashed would imply they were personally at each other’s throats. They weren’t, but they held philosophically different views on how one should proceed. In the end we produced a report which recommended the creation of the Press Complaints Commission, as yet another attempt to get the industry itself to regulate what happens and ensure proper standards of behaviour. Did it make any difference? In essence, the Report of the Committee said, “Give the newspapers another chance to set up a method of regulation to avoid the worst abuses.”

Shortly afterwards David Calcutt (on his own this time) produced a follow-up report which said, “Well, it hasn’t worked, has it? There should now be legislation to regulate abusive behaviour by the press.” But there wasn’t any, of course. Then, years later, Sir Brian Leveson⁴⁶ was brought in to produce the Leveson Report, a most weighty report, which the Prime Minister David Cameron⁴⁷ promptly rejected, and so we continue to have the problem

⁴² James Peter Hymers Mackay, Baron Mackay of Clashfern, KT, PC, QC, FRSE, b.1927. Lord Chancellor (1987–1997)

⁴³ Sir David Charles Calcutt, QC (1930 - 2004) barrister and public servant, Master of Magdalene College, Cambridge (1985-94), created Press Complaints Commission (1990)

⁴⁴ Sir David Eady, QC, (1943-). High Court judge (Queen's Bench division) (1997-2013)

⁴⁵ Sir Simon David Jenkins, FSA FRSL (b. 1943) author, columnist and editor

⁴⁶ Sir Brian Henry Leveson, (b. 1949-), Deputy High Court Judge (1998- 2000). Presiding Judge Northern Circuit (2002–05). Lord Justice of Appeal (2006-)

⁴⁷ David William Donald Cameron, (b.1966-), Prime Minister (2010-16)



of a tabloid press which invades people's privacy. So I don't regard my period on the Calcutt Committee as one of the successful endeavours in my life. Interesting, but it wasn't successful.

61. Thank you, Professor Spencer. Before we conclude, is there anything that you would like to add where I might have overlooked some aspect of your career? Maybe something you want to add in relation to

I was proud of having set up the Double Maîtrise, and of setting up the Faculty's Erasmus programme, which we first started with the University of Poitiers. It was outside the Erasmus framework initially, because the message we had from the university was that with a collegiate university you can't run within the Erasmus scheme, but then a way was found and the scheme was expanded and I eventually handed over the running of it to John Bell⁴⁸. As of now it still continues, I understand, with links with not only Poitiers but Utrecht and Regensburg and one of the universities in Madrid.

What is going to happen to it with Brexit nobody at present knows. But I felt it was helping to stitch together the more united Europe in the future. It was one of the things that made me very sad about Brexit, that I could see all that crumbling.

The Double Maîtrise was a much more taxing venture and, as you know, the Faculty eventually decided to close it down. It did have some problems, and I regret, obviously, that the Faculty decided in the end not to continue with it. It did attract a number of extremely good students, and I am still in touch with two or three of the best students who went to Cambridge through that course. Only yesterday I had a letter from a French participant who was part of the Double Maîtrise course who went back to Paris where he now is a leading member of one of the best known *cabinet d'avocats* which does criminal work in France. In his letter he reflected on his time at Cambridge and said how grateful he was for it, let. So I think it was a worthwhile enterprise, even if it doesn't continue.

62. Thank you. Well, Professor Spencer, this might be a good time to break. We can follow up with the remainder of your academic career in the next interview. So for now I thank you most sincerely for a wonderful account, a lively, interesting account. I am greatly looking forward to the next conversation, which hopefully we can arrange for some time in January. Thank you very much indeed.

Thank you, Lesley. I am grateful to you for setting it up.

⁴⁸ John Bell, Professor of Law (2001-); Director Centre for Public Law, Cambridge

