

Conversations with Professor Sir Robin Auld QC

by
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This is the second interview for the Eminent Scholars Archive with an incumbent of the Arthur Goodhart Visiting Professor of Legal Science. Sir Robin is a former Lord Justice of Appeal and Vice-Chairman of the Judicial Appointments Commission. He is now a Justice of the Bermuda Court of Appeal and President of the Solomon Islands Court of Appeal, and sits occasionally in the Judicial Committee of the Privy Council. He has very recently led a Commission of Inquiry into Governmental Corruption in the Turks & Caicos Islands. He is a Member of Lamb Chambers³.

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

Sir Robin's answers are in normal type.

Comments added by LD, *in italics*.

All footnotes added by LD.

1. Sir Robin you are the second Goodhart Professor I shall have had the pleasure of interviewing for the Eminent Scholars Archive. We hope to make it a tradition to hear the views of the Goodhart Professor at the start and end of tenure. I'm extremely grateful to you for agreeing to add to our archive, and could I start by asking you what your aspirations are for your time here?

I hope to enjoy the life of the University and to contribute in a small way to the work of the Faculty. I've been made a visiting Member of two Colleges, and I hope to live life to the full in Cambridge as a quasi-academic.

2. And what subjects are you teaching?

Public Law, in particular Natural Justice, mostly framed around Judicial Review and Court processes, and also Constitutional Law, which again has a particular focus on Judicial Review and on European Human Rights.

3. Very interesting. On the matter of Constitutional Law and given the very recent opening of the new Supreme Court, what are your feelings, Sir Robin, on the passing into history of the House of Lords?

I think it's long overdue. I don't think it will make very much difference to the work that the Court in its new guise undertakes. But it was very important to remove the Supreme Court Judges geographically, as well as institutionally, from Parliament and to give them their own home. I don't think there will be much difference in the short term in the way they work or in their impact. The new Court has the same, or much the same powers, that it had as a Committee of the House of Lords.

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³ <http://www.lambchambers.co.uk/membshow.asp?showID=ra>



4. While you are in the Goodhart chair, can you say how you think you'll be able to draw upon your experience gained in high office as Lord Justice of Appeal from 1995 to 2007?

A Judge's job is practical in the sense that he is concerned with the working and application of the law on a day-to-day and case-to-case basis. There is not much time, however much you try, to pay proper attention to principle and the wider structure and development of the law in its many different areas. I suppose I can bring some practicality to questions of principle, their strengths and weaknesses, in the fields in which I shall be teaching.

5. During your career you have been associated in various capacities with several socially very important and topical boards of enquiry as well as commissions, for example: the 1967 Casino Gambling in the Bahamas⁴; the '75 to '76 William Tyndale School⁵; and the 1981 Brixton Riots⁶. How do you envisage drawing upon this wide range of experience during your tenure in the Goodhart chair?

I suppose it will help me when lecturing on Judicial Review, because inquiries in their various forms, mostly affect wide ranges of interest –often in the glare of publicity and in a highly political and fevered atmosphere. They tend to be ready targets for judicial review challenges.

6. If we can turn to your role in the Judicial Studies Board⁷ from 1989 to 1991. Was this concerned at all with the way that law is taught in tertiary education in this country?

I wouldn't think we had much thought for our comparison with tertiary legal education. But we relied very heavily on academic lawyers, in particular from Cambridge, to keep the judges up to date with the law. Professor Spencer⁸, for example, lectured frequently at the Board's seminars. So also did Dr David Thomas and Nicky Padfield⁹. So the traffic was the other way – distinguished academics keeping seasoned judges up to date and introducing new judges to the practicalities of substantive, evidential and procedural law and the constant flow of new material from Parliament and the appellate courts.

⁴ *Bahama Islands : report of the Commission of Inquiry into the operation of the business of casinos in Freeport and in Nassau*, 1967. HM Stationery Office, St. Stephen's Parliamentary Press

⁵ Auld, R. 1976. *William Tyndale Junior and Infants School Public Inquiry. A report to the Inner London Education Authority*. Inner London Education Authority, London, ISBN: 0708500153, 309pp

⁶ Sir Robin (then Mr Auld QC) was one of three counsel for the Inquiry (along with Mr J. G. M. Laws and Mr L. Crawford) during Lord Scarman's investigation into the riots: Scarman, L. G. 1983. *The Scarman report - the Brixton disorders, 10-12 April 1981*. Penguin Books, 255pp.

⁷ Judicial Studies Board (JSB) is a Government organisation "to ensure that high quality training is delivered to enable those who discharge judicial functions in England and Wales to carry out their duties effectively, in a way which preserves judicial independence and supports public confidence in the justice system."

<http://www.jsboard.co.uk/>

⁸ Professor John R Spencer, Selwyn College, Professor of Law; Co-director of Centre for European Legal Studies.

⁹ Mrs Nicky M Padfield, Fitzwilliam College, University Senior Lecturer in Law.



7. How interesting. Your Criminal Courts Review¹⁰ from 1999 to 2001 has been a major contribution to reforming criminal justice in England and Wales and led to the Labour Government's Criminal Justice Act of 2003¹¹. Do you feel, Sir Robin, that by and large the resultant act reflected your original aspirations?

In most respects it did. These were recommendations which had been made by others before me, and some of them were blindingly obvious and needed repeating. Many of the systemic, administrative, procedural and, evidential changes broadly reflected what I had recommended. But the Act was over-prescriptive - so I wouldn't like to claim responsibility for much of the detail.

Some of my so-called controversial recommendations, for example on venue, form of jury trial and evidence, did not appear in the Act; and nothing has been done about my unoriginal recommendations for codification of the criminal law - despite governmental acceptance. A number of such recommendations have, however, been adopted in the Commonwealth; and some of them are even filtering through here now in subsequent legislation.

8. Well, I'm sure that you anticipated the emphasis in the reviews and the press on juries, because it's a very emotive topic in English law. Several of your recommendations were to make them more representative of national and local communities. Do you think, Sir Robin, this has been achieved?

Yes, I think it has. That was an obvious need, in which the judiciaries in the United States have led the way, for promoting a system in which everybody should serve on a jury, whatever their job, save only if they were ill or had criminal records. I think that was one of the successes.

9. In your address to the Medico Legal Society in April 2003¹², before publication of the Criminal Justice Bill, you said that you thought the objectivity of expert witnesses who gave their and I quote "Olympian views" was in danger of being lost in the development of what you called, again I quote "A cadre of professional, or sometimes not so professional experts". Has this problem been addressed in any way by the provisions of either the Act or the way the Government has handled the reform of the criminal justice system?

I think it has been. There has been much movement over the last few years towards ensuring that expert witnesses are truly expert in their discipline and objective in the way they give their evidence. New criminal justice procedural rules and expert witness bodies have done much to improve the qualification requirements and procedures in this area. And there has been a push, not only through the legislation, but also through the bodies, to enhance the service that expert witnesses can give to courts. One of the problems is that there are too many expert witness bodies, engendering a degree of rivalry and lack of coordination.

10. Sir Robin. You have talked as well in your Review of online sentencing information systems. What did you mean by this and has it been accommodated in the Act as you hoped?

¹⁰ *A Review of the Criminal Courts of England and Wales by The Right Honourable Lord Justice Auld, September 2001.* <http://www.criminal-courts-review.org.uk/ccr-00.htm>

¹¹ http://www.opsi.gov.uk/acts/acts2003/ukpga_20030044_en_1

¹² "Reforms in the Criminal Law", *Medico-Legal Journal*, 71(18).



No, I don't think it has. I saw such a system many years ago when I was in New South Wales, and have seen similar facilities in the United States and other common law jurisdictions. I had in mind, when writing the Review, on-line aids for judges on the bench that would give them, not only the information about the offender and the offence, but also the relevant tariffs for sentencing and the various rehabilitative and restorative justice options, as well as punitive disposals - all on the screen. It has not come about. The resources required for it would be enormous – but some other jurisdictions have, I believe, taken some steps along the way.

11. This point is of interest to me of course, as a librarian.

The answer is, I think we're a long way off. The reason in part is fragmentation of the various criminal justice agencies. Police, prison, probation, health, employment - all of those who are in one way or another involved in the disposal, punishment, care and treatment of criminal offenders - have their separate hierarchies, budgets and communication systems, so that there is lack of good communication and other co-ordination within the criminal justice system as a whole.

12. Very interesting. Finally, Sir Robin I'm intrigued by your continuing involvement in legal problems related to the Caribbean and more recently the South West Pacific¹³. What is the basis for this attraction to tropical islands, Sir Robin?

Wouldn't you like to come with me to a tropical island whatever I was doing? I was in Chambers that enjoyed the last vestiges of the British Empire. When I joined them in the early sixties, if there was sedition in Malawi or riots on a Pacific island, or a murder in Singapore, or corruption in the Caribbean, they came to my Chambers, whose grandees, including Sir Elwyn Jones, would go out and do whatever had to be done. This work gradually filtered down to others in Chambers. From time to time I had the good fortune to become involved in commissions of inquiry in the Caribbean, East Africa and in Australia involving all sorts of different matters. It was all very interesting, varied and, often, exciting - and was a lovely change from London. I was never doing the same work twice. Great variety I think is the answer to your question.

13. Sir Robin, thank you for this fascinating insight into your aspirations and your views and observations into some of the topical juristic problems with which you've been involved over your illustrious career.

I hope that you will be willing to be interviewed in the Summer when your tenure is drawing to a close. There was a good deal of interest engendered by Professor Koskiniemi's contribution, and I know that visitors to the Archive look forward eagerly to your own contribution, so thank you very much indeed.

Thank you very much.

¹³ Justice of the Court of Appeal, Bermuda, 2008-; President, Solomon Islands Court of Appeal; Sole Commissioner of Inquiry into Governmental Corruption in the Turks & Caicos Islands, 2008-2009.

