

## Conversations with Professor Sir Robin Auld

by  
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### Second Interview: 18 August 2010

*This is the second interview with Sir Robin Auld, the incumbent of the 2009-2010 Arthur Goodhart Visiting Chair in 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 recently conducted a Commission of Inquiry into Governmental Corruption in the Turks & Caicos Islands. He is a Member of Lamb Chambers in the Temple.*<sup>3</sup>

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

Sir Robin's answers are in normal type.

The interview was recorded at the Squire Law Library. Questions and answers are sequentially numbered from the first interview with Sir Robin (December 2009). All footnotes and [comments] added by LD.

**14. Sir Robin, eight months ago, at the start of your tenure as the Goodhart Professor, you were kind enough to speak to me for the Eminent Scholars Archive about some of the achievements in your illustrious judicial career and what you hope to achieve during your time at Cambridge. Here we are, at the end of your visit, and I am very grateful to you for agreeing to give a follow up interview. In your first interview you said, "I hope to live life to the full in Cambridge, as a quasi-academic." Can you say, Sir Robin, whether you feel you achieved these aims, and what were the highlights of your time here?**

The answer to the first part of your question is *Yes*, within my limits. I have had a wonderful year. I have lectured in two of the Tripos papers on Judicial Review and Natural Justice, from which I learned much that I had missed in practice at the Bar and as a Judge. I learned too how hard academics work, but also how the pain of preparing lectures is rewarded by the pleasure in giving them. As to the second part of your question, I cannot claim any "highlights", save enjoyment of my involvement with students and of the good company and hospitality of Members of the Law Faculty and Fellows of many Colleges, in particular, of Selwyn and Wolfson.

**15. You said at the start, in our first interview, that you expected to teach, "Public Law, and in particular Natural Justice, mostly framed around judicial review and court processes", also, "Constitutional Law, which again has a particular focus on judicial review and European human rights." Were these in fact the topics that you taught, Sir Robin?**

Yes. There was some overlap between the two courses. I covered part of the Administrative Law Paper for second year students and of the Constitutional Law Paper for

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



those of the first year, about 20 lectures in all. I also participated in Nicky Padfield's valuable and engaging LL.M Seminars on "Criminal Justice - Players and Processes".

**16. And in retrospect, did you find you could draw upon your vast experience as an eminent judge in your teaching?**

My practical experience in public law gave me a bit of a start, but it was the first time I had had occasion to look at the theory, principles and practice of judicial review and natural justice in the round. Previously I had had to deal with it on a case-by-case basis – and usually in a hurry. So, I now have a sharper appreciation than before of the frailties of judge-made law, including its cyclical pattern of statements of clear and general principle, soon and in the interests of common-sense eroded to vanishing point by accumulating exceptions, only to be replaced with new generalities subject to the same process of erosion.

**17. How fascinating. Visiting academics sometimes say that they find the Cambridge system very different from other UK and continental systems, particularly the importance of the colleges which render the Law Faculty, as a place of scholarly interaction, less important. Was this your experience, Sir Robin?**

Although, I was not at Oxbridge, I was familiar with the collegiate system of both Universities, having worked closely in different contexts with academics from both. As a teaching member of the Cambridge Law School, with its matchless resources, and, as a Member of Selwyn and Wolfson, I found a beneficial and reassuring academic and social mix. I felt at home.

**18. During your time here, you were called upon to undertake judicial commitments that are ongoing. You sat as a judge in the Bermuda Court of Appeal and you also sat as the President of the Court of Appeal of the Solomon Islands. Is it possible, Sir Robin, for you to comment in any way how, or if, either of these have provided you with materials that were germane to your time here?**

In both jurisdictions, for which I only sit for a few weeks a year, I had to deal with judicial review appeals, as well as many other areas of law. There was no particular case in either jurisdiction that added significantly to the content of my lectures. However, I had the aftermath of my Inquiry into potential governmental corruption in the Turks and Caicos Islands<sup>4</sup>. It has been the subject of a number of judicial review challenges – all unsuccessful to date, but two of which are now winding their way to the Privy Council. Those challenges were interesting recent illustrations of the present judicial trend – noted by Professor Forsyth in the latest edition of his book on Administrative Law<sup>5</sup> – towards a less intrusive exercise of oversight of the immensely varied and difficult tasks now the stuff of many modern public inquiries.

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<sup>4</sup> This site has transcripts of the Commission of Inquiry hearings:

<http://www.caribbeanpressreleases.com/articles/4444/1/Turks-amp-Caicos-Day-1-2-3-amp-4---Transcripts-of-Commission-of-Inquiry-Hearing---Premier-Micheal-Misick/Page1.html>

see the attachments: TCI\_transcript13\_01\_09.pdf, TCI\_transcript14\_01\_09.pdf, TCI\_transcript15\_01\_09.pdf, TCI\_transcript16\_01\_09.pdf

This site has an unredacted copy of Sir Robin's report:

[http://wikileaks.org/wiki/Turks\\_and\\_Caicos\\_Islands\\_Commission\\_of\\_Inquiry\\_into\\_grand\\_corruption\\_Final\\_Report\\_unredacted\\_18\\_Jul\\_2009](http://wikileaks.org/wiki/Turks_and_Caicos_Islands_Commission_of_Inquiry_into_grand_corruption_Final_Report_unredacted_18_Jul_2009)

<sup>5</sup> Administrative Law, Forsyth C. & Wade, W. 10th Ed. 2009, OUP, p. 898



**19. Right, because it was your Commission of Inquiry into the allegations of governmental corruptions in the Turks and Caicos Islands [TCI], the report which was released in 2009, that resulted in the partial suspension by an order in council of the constitution of the Islands and the trial by jury.**

And resumption of direct rule from Westminster<sup>6</sup>.

**20. Do you feel, Sir Robin, that in a constitutional sense these events have been unique in recent UK history?**

No, it has happened before. In particular, it has happened before in the Turks and Caicos Islands, about 25 years before [LD: 1985] in an inquiry conducted by Sir Louis Blom-Cooper QC into various matters, including allegations of public corruption. The British Government implemented his recommendations for resumption of direct control from Westminster. It suspended the Islands' constitution for two to three years and then granted it a new constitution, restoring local parliamentary government under a Governor.

**22. The application by the TCI Premier, Mr Misick<sup>7</sup>, before the English courts was finally refused about the time that you began your Goodhart tenure.**

That's right. That was only one of the challenges. There were four other judicial review claims, all in the courts of the Turks and Caicos and, so far, also unsuccessful, as I have mentioned.

**23. Sir Robin, could you distinguish this case from that involving the Chagos islanders. I am thinking of Bancoult's various actions.**

That was a very interesting case, involving claims by the Chagos Islanders to quash the exercise of the Crown's prerogative power by an Order in Council expelling them from and depriving them of the right to return to the Islands. It was not a challenge to the propriety or fairness of a public inquiry.

**24. Thank you. Sir Robin, are there any colleagues here at Cambridge with whom you had a particularly fruitful association, and perhaps were able to establish projects for future collaboration?**

Yes, there were – in particular, Professor John Spencer and Nicky Padfield, with whom I had worked before when I was involved with the Judicial Studies Board. Over many years they have both lectured at regular JSB Seminars to newly appointed and seasoned judges - to the great advantage to the judicial system. I had also sought their advice and had been involved with them in various review and research projects. In particular, Professor

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<sup>6</sup> See reports in national press. For examples:

<http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/turksandcaicosislands/6030311/Turks-and-Caicos-Britain-suspends-government-in-overseas-territory.html>

<http://www.independent.co.uk/news/world/americas/britain-seizes-control-of-scandalhit-dependency-1772511.html>

[http://news.bbc.co.uk/1/hi/world/americas/country\\_profiles/4489209.stm](http://news.bbc.co.uk/1/hi/world/americas/country_profiles/4489209.stm)

<sup>7</sup> Prime Minister of Turks & Caicos who resigned over the allegations. He had been Chief Minister from 15 August 2003 to 9 August 2006 and was the first Premier of the Turks and Caicos Islands from 9 August 2006 to 23 March 2009. There is a profile on [http://en.wikipedia.org/wiki/Michael\\_Misick](http://en.wikipedia.org/wiki/Michael_Misick)



Spencer was a highly influential consultant to my *Review of the Criminal Courts*, and he and I worked closely together for a period on codification of criminal procedure. I should also mention Professors Virgo and Forsyth, who very kindly encouraged and invited me to give a public lecture or two, but which I was unable to give because the timings did not work out. I hope to maintain contact with them and other Members of the Cambridge Law Faculty with whom I have a shared legal interest and experience.

**26. Finally, if I may return to a question raised in the last interview? When we spoke in December, the new Supreme Court had been operating for just eight weeks and your comment was, “I think it’s long overdue but I don’t think there’s going to be very much difference in the short term to the way in which it does its work or to the impact it has.” So I am sure, Sir Robin, that you take a great forensic interest in its progress. Has it produced for you any constitutional surprises yet?**

No surprises. What I said then has, I think, been the case. The institutional change, has not had any significant effect yet on the way in the way in which it exercises its jurisdiction or on its jurisprudence. There are signs that, if pushed, it might take a more active stance than before in challenging legislation it does not like. As to the impact of the change, I think it has been in every way good. In their new incarnations, the Supreme Court Judges are more publicly visible as judges sitting in a proper court - the highest court in the land. They have their own court building and, for the first time, suitable resources and facilities for their collective stewardship of it. They have good public relations, over which they have control. They have opened the Court to the view of the public, both physically and in the information they provide about the Court’s job and how it does it. And I think there is a greater tendency now than formerly for them to give collegiate judgments when they are unanimous

**27. Thank you. Sir Robin, it has been a great pleasure interviewing you. This will be yet another very valuable addition to the Faculty’s historical archive and I thank you very much indeed for so kindly sparing the time to speak to me and I wish you all the best for the future. Thank you very much.**

Lesley, thank you very much for the way in which you’ve talked with me - twice now. With all your colleagues in the Faculty, you have made me feel part of it, a vital ingredient of my great enjoyment of the Goodhart Chair this year.

Perhaps you would allow me to end our discussion with a suggestion that, if adopted, would affect my successors, not me. I do so – following my old Dad’s precept, “Do as I say, and not as I do”. For one reason or another, I haven’t managed to give any public lectures this year, which I would have liked to have done. It’s nobody’s fault; as I have said, the timing wasn’t right for all sorts of reasons. I just wonder whether consideration might be given to the introduction of a public “Goodhart Lecture”, to be delivered by the incumbent of the day. She or he could - and be required to – talk on a subject of topical importance of her or his choice. Professor Goodhart<sup>8</sup> bestrode the common law for the middle 50 years of the last century in a manner that no other legal academic had then achieved. His influence on academic lawyers and law-givers, both legislative and judicial, was enormous. It continues to

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<sup>8</sup> Sir Arthur Lehman Goodhart (1891-1978), American-born British academic jurist and lawyer, Professor of Jurisprudence, University of Oxford, 1931—51, Fellow of University College Oxford, First American Master of an Oxford college. The annually- filled post of Arthur Goodhart Visiting Professor in Legal Science at Cambridge was created in his honour in 1971.



permeate large areas of the common law today. An annual public lecture in his name might be a fitting part of his memorial in Cambridge.

