

## Conversations with Emeritus Professor William Rodolph Cornish

by

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### Second Interview: Academic Career

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*In January - May 2015, Professor Cornish was interviewed three times at the Squire Law Library to record his reminiscences of over forty years of research and teaching in Oxford, LSE and Cambridge.*

*The interviews were recorded, and the audio version is available on this website with this transcript of those recordings. The questions and topics are sequentially numbered in the interviews for use in a database of citations made across the Eminent Scholars Archive to personalities mentioned therein.*

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

Professor Cornish's answers are in normal type.

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

**50. In our first interview, Professor Cornish, we covered your early life in South Australia which includes your studies at the University of Adelaide. After that you came across to the United Kingdom where you obtained your BCL at Oxford. Perhaps in your second interview today we can start with your academic career. In 1962 you were appointment to an Assistant Lectureship at LSE.**

Yes, I was extremely pleased to get that job, having made rather a fool of myself in the interview, I thought. Anyway, they took me and that was, of course, on the basis – typical of those days – that you had three years of initiatory teaching as an Assistant Lecturer and then you would hope to be offered a full lectureship which would last to pensionable age. So, that's where I really got going.

**51. Any particular colleagues who stood out from that period?**

The Law Department was one of the largest and was led by a phalanx of distinguished professors. First of all, the two great public lawyers, Professor John Griffith<sup>3</sup>, the great authority on the operations of the British politico-legal system under what counts as a constitution and a very critical one; and Professor Stanley de Smith<sup>4</sup> who afterwards moved to the Downing Chair at Cambridge for a short while before his early death. He was absolutely in the forefront of the generation of new ideas about what administrative law could be and also of the constitutional arrangements for British commonwealth territories as they gained independence from British rule. His great book was entitled "*Judicial Review of Administration Action*" [CUP]. On other sides there was, first of all, Professor Ash Wheatcroft<sup>5</sup> who had pursued a number of careers, including a solicitor and Chancery Master, before he came to the LSE as a professor. His real love and interest was in the law of taxation and he established a whole following of younger scholars who would, most of them,

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<sup>3</sup> John Aneurin Grey Griffith, (1918-2010), Professor of English Law (1959-70) and Professor of Public Law (1970-1984) at LSE.

<sup>4</sup> Stanley Alexander De Smith, (1922-1974). Downing Professor of the Laws of England (1970-74).

<sup>5</sup> George Shorrocks Ashcombe "Ash" Wheatcroft, (1905-1987), Professor of English Law, LSE (1959-68).



go and work in tax matters at the Bar afterwards and they broadened the field of what could be studied in relation to public finance enormously because very little had been done in the law schools of this country until that time. He had many contacts which, of course, made it possible to see what tax law was really like and how it was a game you played with Her Majesty's Commissioners of Revenue rather than hard law which had to be applied.

Turning to other fields, Professor Jim Gower<sup>6</sup> was known for establishing a new critical style of approach to company law but in 1962 he was just leaving to become the founding professor in the University of Lagos' new law school. He went on to be Vice-Chancellor of Southampton University and one of the first Law Commissioners and so forth appointed by Gerald Gardiner<sup>7</sup>. Professor Bill Wedderburn<sup>8</sup>, afterwards Lord Wedderburn of Charlton, became famous not only as a labour lawyer but also as a corporate lawyer and held the Cassel Chair of Commercial Law at the LSE in the footsteps of great forebears, of whom the last was his immediate predecessor Jim Gower.

## **52. Right.**

And above all, there was Professor Toby Milsom<sup>9</sup>, a very fine legal historian who was at the LSE there as a Professor of Legal History during the period when his writing really reached its highest point and widest audience with his book, "*The Historical Foundations of the Common Law*" [OUP]. He was indeed a fine scholar to be working with even at one remove. LSE was a strong law school and what is more, for the most part, it was looking to do new things in legal education to make it more socially aware; to make it more easily criticised and not just the learning of black letter rules and that was going on very much in my first years there. Staff addressed all sorts of radical thoughts like splitting up what the law of property had always been, which was the law of land, and associating it with tort, such as conversion, trespass and so forth. There were many ways to recategorise legal solutions more meaningfully.

All sorts of things you could do that would be new and one would hope would be more relevant to students aged... undergraduate students aged much, for the large part between 18 and 21. There were also LLM courses beginning to blossom, undergraduate syllabus reforms, Roman Law having been removed as a course. Interestingly, they were run not on the basis of each separate law school that taught in the University of London, but on a federated system so that students could come to LSE KCL, UCL, QMC and SOAS and take subjects that were actually taught in one or more of these Colleges of the University.

## **53. Fascinating. So, during this time, Professor Cornish, you were called to the Bar as well. It seems as though you had a very hectic schedule.**

Yes, calling to the English Bar meant, first of all, passing what was then Part II of the Bar exams and then doing a pupillage in barrister's chambers. After a year of that you would qualify to practise as a barrister. Fairly primitive by today's standards of getting into the Bar but probably less taxing in the 1960s than it would become later.

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<sup>6</sup> Laurence Cecil Bartlett "Jim" Gower, (1913-1997) MBE, Vice Chancellor of the University of Southampton (1971-79), Professor and Dean of the Faculty of Law, University of Lagos (1962-65).

<sup>7</sup> Gerald Austin Gardiner, Baron. 1900-1990. Chancellor, The Open University, 1973-78.

<sup>8</sup> Kenneth William Wedderburn, (1927-2012). Baron Wedderburn of Charlton, Labour politician, lecturer in law at Cambridge, later Cassell Professor of Commercial Law, London School of Economics.

<sup>9</sup> Stroud Francis Charles (Toby) Milsom, (1923- ). Professor of Law Cambridge (1976-90).

<http://www.squire.law.cam.ac.uk/eminent-scholars-archive/professor-stroud-francis-charles-toby-milsom>



#### **54. Did you ever practise?**

I undertook opinion work particularly when I got my own subjects settled, one of which was intellectual property, when it began to become a “Europeanised” subject and not something that was necessarily well-known even to people who practised in that area. So I did some of that work but it was never a major commitment of mine beside teaching and research.

#### **55. The late sixties was a period of student unrest worldwide.**

Certainly this was too in parts of the U.S., France, Germany as well as Britain.

#### **56. Do you have any specific recollections of this at LSE?**

The very roots of the movement that was so critical of tertiary education were well known at the LSE and more broadly in the USA. For instance we all knew the name of Danny Cohn-Bendit<sup>10</sup>, “Danny le Rouge”, what he and his comrades stood for. Universities run on the old systems of grand professors dictating to crowds of eager students had to be superseded and students must control what was taught and say when people were good enough and so forth. High flying days. At the LSE these were two particular points of explosion. First of all, for two years – starting 1967 – before most of the university trouble began, because the President of the Students’ Union at LSE wrote a critical letter about education policy to “The Times”, from the School address, the Director of the School, Sir Sydney Caine<sup>11</sup>, pronounced that this was not proper; his permission had not been granted. That led to quite some demonstrations, all peaceable, and students of the LSE began to get the idea this was a time for new attitudes and in 1968, by which time the Director had become Sir Walter Adams<sup>12</sup>, a man who had been Vice-Chancellor of the University of Rhodesia and had been heavily criticised for his running of the establishment by an investigation and report by Sir Robert Birley<sup>13</sup>, ex-Headmaster of Eton. So that did him not much good and leftist students turned on him and said he was not a respectable person to be directing the LSE.

This led to fights within the administration. The main building of the LSE was just a concrete block of the 1930s with a central staircase going up it. So the Bursar’s office erected cages or gates on the stairwell as it wound round a lift and gave another excuse that the School’s insurance company had demanded this because on the fourth floor there were some valuable pictures that had been given to the school. This infuriated a crowd of mistrustful students who rushed to pull down the gates as well as staging an occupation. There had to be disciplinary action after that and you can imagine the kind of fuss that went on in every direction and there was a ... in the end there was something like a trial court. Sir William Wade<sup>14</sup> of Cambridge was one of the judges. This body duly punished both a member of staff in the Sociology Department by requiring his resignation and levied fines on

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<sup>10</sup> Daniel Marc Cohn-Bendit (b. 1945-), French-born German politician, prominent in student unrest in the late 60s.

<sup>11</sup> Sir Sydney Caine, KCMG (1902-1991), Financial Secretary of Hong Kong (1937-40), Director of LSE (1957-67)

<sup>12</sup> Sir Walter Adams, CMG OBE (1906-1975), historian, Principal of the College of Rhodesia and Nyasaland (1955-67), Director of LSE (1967-74)

<sup>13</sup> Sir Robert Birley, (1903-1982) Professor and Head of Department of Social Science and Humanities at City University (1967-71), Head Master of Charterhouse School (1935-47), and Eton College (1949-63).

<sup>14</sup> Professor Sir Henry William Rawson Wade, (1918-2004), Professor of English Law, University of Oxford (1961-76), Rouse Ball Professor of English Law, University of Cambridge (1978-82).



students who were identified as participants in this rabble-rousing occasion. Gradually it settled back and in the 1970s students became much more concerned again about what they were doing a university degree for and where it would lead in a world where jobs were not necessarily there for once they had secured their university degrees.

**57. Very interesting.**

Yes. So, that was going on in '68-'69. It was just the period when I was moving college so I escaped the worst of it personally because I was promoted to a readership at Queen Mary College.

**58. Did you move to a different Law School within London University after your teaching or research?**

In fact, I went on teaching much the same subjects as I had been teaching at the LSE. I did quite a lot of it still at the LSE because of the intercollegiate relationship and that was very satisfactory to me. I'm not sure that Queen Mary College got real value out of me and this dodging about that went on.

**59. Anyone whom you recall from that time at Queen Mary?**

Queen Mary was a new law school. It had started in 1965 under Professor Crane<sup>15</sup>, who previously had been at King's College, London, and so there was some excitement in it. There were young lecturers there, in particular, who were clearly destined for great things. One I think of is Lord Grabiner<sup>16</sup>, now the Master of Clare College in this University, who has come recently after a highly successful career at the Bar and more generally in political matters during the years of the Blair governments. So he was becoming a very distinguished figure. I think Queen Mary was more concerned with new people than relying on people who'd been teaching for 20 or 30 years at that stage. It was a good place to be.

**60. I see. You also managed to fit in a sabbatical to Adelaide and, as I understand, you arranged that prior to your appointment at Queen Mary.**

Yes. I went to Adelaide in the British autumn of 1968 on sabbatical leave from the LSE and then came back and started at Queen Mary.

**61. It must have been rewarding for you, Professor Cornish, to have had that opportunity to go back to Adelaide.**

In many ways it was, even though its professoriate was at that stage full of tensions.

**62. Yes. It must have seemed a very different world.**

That's right. Australia in the sixties was building education in much the same style as was happening here after the Robbins Report. They were becoming much larger; larger proportions of students would stay on to go to university, so not dissimilar.

**63. You didn't stay in your readership for very long before you were awarded the Chair of English Law at LSE. That was in 1970 and you were only 33 years old. That's quite a young age for such an elevated position.**

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<sup>15</sup> Francis Roger Crane, (?- 2001), Professor of Law, Queen Mary College University of London (1965-78)

<sup>16</sup> Anthony Stephen Grabiner, Baron Grabiner QC (1945-), barrister, Master of Clare College Cambridge (2014-), Chair of the Governors of the London School of Economics (1998-2007)



That's true, yes.

**64. Do you recall the circumstances of this appointment?**

Probably the main circumstances were that the LSE was in a terrible mess after its student insurgencies of 1968 - 69 and they couldn't, I think, find anybody who might have been my senior by 15-20 years, which would have been more appropriate. There was a bit of a scrabble around to find someone, frankly, and when I got there I was asked if I would be prepared to be the Pro-Director of the School as a whole - an invitation which I firmly refused. The administration had been badly mauled in all the troubles with students and they were trying to rebuild their world renowned reputation as a School of the Social Sciences. This aim would advance only with the appointment of Ralph Dahrendorf<sup>17</sup>, the German politician and sociologist, as Director of the school. That really made a huge difference because he was an internationally-known figure who had been in coalition governments in Germany as a liberal.

**65. You had a 20-year stint in this LSE Chair – you introduced for the first time in the UK the teaching of intellectual property as a regular course. I wonder if you can explain a bit about the background leading up to this?**

Germany has a long tradition of the establishment of patent rights for inventions, copyrighting, literary and artistic works, the protection of trademarks, which are all aspects of what we now call intellectual property. They tended to have in their capital city universities which taught this subject because that is where the practitioners of the subject also worked, and these professors were often practising lawyers who just delivered lectures. That was typical round so much of the globe, South America, much of the continent, before the Second World War. So there was the United Kingdom really lacking this whole tradition. It wasn't thought of as anything other than a subject with strong practical implications; it brought a lot of money in certain fields to people of independent mind, really, who would write or would invent and at the LSE there was the famous Professor, ultimately Sir Otto Kahn-Freund<sup>18</sup>, an enormously distinguished man who I didn't mention before but was probably the greatest of them all at that time, because he saw in all German universities that there was a professor of intellectual property and he thought something should be done. So he invited from the Bar the one man there who wrote independently and critically about the evolution of intellectual property rights, particularly in his book which was entitled, "*Patents for Inventions and Registered Designs*" and went through several editions eventually becoming more popular in place of older, boring textbooks which didn't give much away of the practical arts.

So he invited Mr Blanco White<sup>19</sup>, the barrister who had written critically on the subject, to come and give some extracurricular lectures on intellectual property. They were advertised but nobody came. Deeply embarrassing because they were not part of any degree or diploma course. So, after that they looked around for some suspect in the teaching staff who could take it up as a subject. So, I actually started to do that, (a) by undertaking a pupillage at the Bar with Mr Blanco White and also finding others who could, together with

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<sup>17</sup> Ralph Gustav Dahrendorf, Baron Dahrendorf, KBE, FBA, (1929-2009), German-British sociologist, philosopher, political scientist and liberal politician, Director of LSE (1974-84).

<sup>18</sup> Otto Kahn-Freund, (1900-1979), Professor of Law, LSE (1951-64). Professor of Comparative Law, University of Oxford (1964-70).

<sup>19</sup> Thomas Anthony Blanco White QC (1915-2006), Patent lawyer, and an inductee to the IP Hall of Fame in 2010. *Patents for inventions, and the registration of industrial designs*. Stevens, 1962.



me, teach it as a subject in the University of London. The course was in the LLM syllabus before I went down to Queen Mary College for my two years there. That's how the course got going. It would be through exciting times when changes were actually happening to intellectual property law; just the beginnings of the great flood we've had since, and we got going to a flying start. One of my co-helpers was Robin Jacob<sup>20</sup>, who had first taken a natural sciences degree at Trinity College, Cambridge, but then came to London and took the evening course in law, undergraduate law, that was available at the LSE. There I taught him other subjects and we got on well and he was quickly acquiring his intellectual property skills at the Bar and together we and a very clever patent agent, Richard Lloyd<sup>21</sup>, put on this first course. We maintained it together for four or five years before they were drawn to full time practice.

**66. Was there a good take-up by the students?**

Yes. Always more. But the next step in teaching the subject around Britain was to introduce it as an undergraduate subject as well as an LLM subject because very few universities then had a wide ranging LLM programme. Much of the demand would come from increasing numbers of foreigners coming to Britain and wanting to do it and I maintained it there until I left to come to Cambridge in 1990, with some help from various people. Good fun it was.

**67. You've mentioned Professor Otto Kahn-Freund. Any other notable people whom you recall? Did you ever, perhaps, cross paths with Dame Rosalyn Higgins<sup>22</sup>, as she is now?**

Yes, of course. I helped appoint her. She came to the LSE as Professor of International Law in 1981 and was obviously a high-flying candidate. She had written quite a lot but had had her children and hadn't done much teaching through that period and so was coming back into full-time academic life. She made the most of it. She's a charismatic figure who would go on to be President of the International Court of Justice in The Hague.

**68. Any other names, Professor Cornish, that you recall during the 20 year stint as a Professor at LSE?**

Yes. Certainly interesting things were happening. Two young, high flyers who wrote strikingly in ways that practicing lawyers and judges did not necessarily appreciate, were Tim Murphy<sup>23</sup> and Richard Rawlings<sup>24</sup>. Richard is still a professor at University College London and a very distinguished scholar. They wrote an article on the low grade of reasoning by judges in the House of Lords, the senior court of the time, and their analysis was less than flattering. Decisions could all turn on, "that seems reasonable to me" and couldn't go beyond that sometimes, fearing to be classed as political judges who had taken a particular position in real life.

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<sup>20</sup> Sir Robert Raphael Hayim "Robin" Jacob, (1941-), Lord Justice in the Court of Appeal of England and Wales (2003-11), Sir Hugh Laddie Professor in Intellectual Property, University College London (2011-).

<sup>21</sup> Patent attorney and manager at Hewlett-Packard, France.

<sup>22</sup> Dame Rosalyn Higgins, DBE, QC (1937-) Became Judge of the International Court of Justice (1996), President of the International Court of Justice (2006-09), Professor of International Law, University of Kent at Canterbury (1978-81), Professor of International Law LSE (1981-95).

<sup>23</sup> Tim Murphy, Professor of law LSE (1999-), Deputy Director LSE (2005-)

<sup>24</sup> Richard Rawlings, Professor of Public Law, University College London



So, that's an example. It was a lively place to be and much more peaceful by the mid 1970s than it had been in the mid 1960s.

**69. In 1984, I can just remind you, Professor Cornish, that you became a Fellow of the British Academy.**

It was mainly because I had by then produced a first textbook mainly for students in the common law world on the law of intellectual property in this country. That hadn't been done before in the Common Law world and the rest of the members of the law section must have thought it was worth giving some sort of prize for, so they admitted me. I think I was 46. John Baker<sup>25</sup>, now Sir John of this university, was also elected and he was seven years younger than me. He was elected for his very substantial contribution to English legal history across its whole trajectory.

**70. During this time you had several very interesting sabbaticals, overseas trips. I think your first one was to the University of British Columbia. You were a special guest lecturer in 1973.**

Vancouver was a delightful place to be, and a good bunch of people teaching law there. I can remember giving a public lecture on the jury system which went well because they still use it too sometimes, and altogether I got through a lot of work there as well.

**71. You were a visiting researcher at the Max Planck Institute in 1979. This was the first of your visits during this period in Munich to a renowned research Institute, specialising in IP and competition law.**

That's what it became a little later but it was certainly Intellectual Property law. That's why it existed, Munich having become the big IP centre in Germany after the Second World War. The German Patent Office having moved there from Berlin after 1945 and several very significant figures were associated with it directly as well as being founders of a Max Planck Institute for Intellectual Property. That was the great step that they took; they treated it very professionally compared with any other European country or even the United States as far as thinking that the law was very substantial, quite difficult and needed people who worked on its basis. The Max Planck Institute, like others in other legal fields, was set up on a comparative law and international law basis rather than just the law of the particular country. So they had specialist researchers in different geographical areas; they were even getting into China in those days and that was remarkable; it didn't exactly fit with Mrs Mao and the visions of the world that she passed on.

That was in 1979.

**72. And then you went to Monash in '87.**

We also went on to Australia in 1978 and that was a good visit as well, but much of what I'd done before. Then 1987 going to Monash, yes, that was agreeable six weeks with a man from LSE days at the beginning who had become a great friend, Professor Gerald Dworkin<sup>26</sup>, who had also taken up an interest in intellectual property because he was

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<sup>25</sup> Professor Sir John Hamilton Baker, (1944-), Professor of English Legal History University of Cambridge (1988-98), Downing Professor of the Laws of England (1998-2011).

<sup>26</sup> Gerald Dworkin (1933 - ), Emeritus Herbert Smith Professor European Law and Director, Centre of European Law, King's College, University of London (1993-97), Director of Singapore's Intellectual Property Academy (2003-05).



essentially a tort lawyer and you can put intellectual property into the tort basket if you want to.

We did a seminar which seemed to attract quite a lot of practitioners and was, in fact, given in the city of Melbourne rather than out in the suburbs at Monash.

**73. You had a second, what seems to be very important, appointment to the Max Planck Institute in Munich as an external academic member and that was in 1989.**

Yes, that was a real honour. At that stage I don't think any of the other Max Planck Institutes for legal subjects, of which there were about seven, had any foreign members at all, so this was an attempt to get someone there who would have an expertise in common law approaches to intellectual property as distinct from the grand civilian attitude which prevailed particularly in Germany, rather than in France, which rather ignored the subject for various complicated reasons. But no, for the Germans it was important. They regarded themselves as the leaders of Europe in this – a fair claim at the time.

**74. So you must have gone across and lived there for a time?**

Yes. After they very kindly helped me to find a flat on the borders of the Englischen Garten, which is very delightful in Munich, where the university had a sort of quarter; it was partly for students, partly for staff. That made going there much easier and more pleasant and sometimes we let the flat to other people from the Institute. I've always remained a member of it as an External Academic Member.

**75. Did you enjoy living in Germany, Professor Cornish?**

Yes. Well, I didn't have any German when we first started going so I was 42 when I started learning the language. That is not a good idea. It is a taxingly grammatical language even though it's spoken comparatively clearly if the comparison is with mature French speakers. So I have some German and, of course, English has become so much more of a lingua franca of that sort of technical or... just as it has even more with the natural sciences.

**76. You had the last of several trips during this period to Hong Kong in 1989. Anything that stands out from that visit?**

Well, Hong Kong and its universities, notably its colonial university, the University of Hong Kong, had built a strong connection with the LSE. Several lecturers, ultimately professors, went out in mid-career and worked there and found it a pleasant place to live. So I went, first of all, as an external examiner and then on this trip, where I had a general invitation to visit the faculty, but quite a short one and I don't think I did anything particularly striking for me or for them during that visit. I did go to parts of mainland China which weren't usually visited at that stage and that, of course, is interesting to see but very difficult to penetrate.

**77. I can imagine.**

Yes. I mean, these were the days when Taiwan was completely separate and Hong Kong was the place they all had to travel through in order to do business in the Republic. So I was going up in a plane with those sorts of people. China Airlines, horrible food.





**78. Well, that brings us to 1990 and the end of your time at LSE. Twenty- six years in all - a very long period. I wonder if you could perhaps summarise for us what you feel were your main achievements during this period, this very productive period?**

Almost from the beginning at the LSE I became interested in the promotion of new subjects which weren't known in English law schools. The LSE being more generally tending in that direction was a leading establishment where new ideas were being tried out; new lines of research publication were coming to the fore. As far as I was concerned I was much influenced by a man who became a great friend, Charles Clark<sup>27</sup>, a legal publisher essentially, in his early career; then went on to lead a couple of British publishing houses as a whole because he was a leader. He was at Penguin Books, in the second half of the 1960s and there he promoted a series which he called "Law and Society" in which new types of writing, more socially-conscious, would be available at the level of a general readership but also students therefore and introduced us to such fine works as Harry Street's<sup>28</sup> *Freedom, the Individual and the Law*, Borrie and Diamond's consumer law<sup>29</sup>, in effect. What were some of the others? The great LSE one was Bill Wedderburn's, *The Worker and the Law* which became much chastised by members of the Bar who were somewhat more conservatively constructed. So this series, it all came out of one meeting in Harmondsworth where Penguin were and seemed to get under way and for that I wrote my book on the jury system which was published first in 1968<sup>30</sup>. At the same time I was becoming interested in possibilities of bringing in the actual techniques of other social sciences and out of the jury book, in connection with two social psychologists, we began to try to do replica experiments with groups of people who would function as if they were a jury. For instance, trying to spot what they made in a criminal law case of the instructions to be "convinced beyond reasonable doubt" before finding a defendant guilty. What did they make of those words enshrined in the law? We got grants to do this. It was nevertheless enormously time-consuming. We ran them tapes of the judge instructing them what had happened in the case and then we recorded their deliberations and to some extent were able then to analyse the dialogues between members of the jury. Interesting stuff.

It was criticised however by some people by saying, "This is very unrealistic. This is not the jury experience at all. They're in there; they're hearing but not seeing witnesses; they're there much longer; they may be afraid to express opinions in an experiment." All the objections and in the end we published some articles about our findings which were quite interesting and remain on the record But those criticisms have a certain force which makes the work interesting rather than wholly convincing, and in the end we all started going in different directions and doing different things, but I'm glad we did it. I had one extraordinary experience. My legal collaborator in this work was Dr David Thomas<sup>31</sup> who came to the Cambridge Institute of Criminology and became a great authority on sentencing. David picked up, in "*The Guardian*" of all places, a comment on someone else's much more recent jury work in the 1990s in which this man, who was a magistrate in Surrey, said that we had done our experiments earlier for the Home Office which suppressed the results and it just shows what tricks memories play. He hadn't... I think he may have been on one jury but that was all. And it's completely wrong. The work was not funded by the Home Office at all. We

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<sup>27</sup> Charles David Lawson Clark, (1933-2006) publisher and lawyer, authority on the law of copyright.

<sup>28</sup> First published 1963.

<sup>29</sup> *The Consumer, Society and the Law*. Gordon J. Borrie & Aubrey L. Diamond. Penguin Books, 1973, 352pp.

<sup>30</sup> *The Jury*, Nov 1968, W.R. Cornish: Publisher; A. Lane, 295pp.

<sup>31</sup> David Thomas, (1938-2013), LSE, Institute of Criminology University of Cambridge (1971-2003), Trinity College. *Principles of Sentencing* (1970).



published our first results. People took it for what it was worth then and the comparison he was suggesting was just non-existent. Finally we got some sort of minor grovelling apology for this mistake but the newspaper was not at all keen to say that this man was wrong and we never discovered why.

It's memory. Memory can be so out of touch and you notice it in yourself as the years drift by. You just remember things incorrectly in the process of ageing.

**79. Or selectively.**

Yes. So that was the jury project, the LSE jury project. I enjoyed doing that.

**80. I would love to come back to that, Professor Cornish, when we discuss all your work in another interview.**

I'd better go and read the old articles then.

**81. Professor Cornish, in 1990 you were appointed to a professorship here at Cambridge. I had understood that it was Herchel Smith Professorship.**

Not straight away. Herchel provided the funding for that chair in the early 1990s.

**82. Not straight away. So, could you describe the circumstances of this appointment in the first instance?**

Well, it was to what was then called the "1973 Professorship" because that is how Cambridge labelled things that they couldn't label in other ways. It had been first held, one suspects, or been created for Professor Kurt Lipstein<sup>32</sup> who was outstanding on the faculty here because he was almost the only one who believed in the European Community's British membership.

**83. Really?**

Yes. He, however, retired quite soon after that appointment and Professor Milsom<sup>33</sup>, my old friend from the LSE, was appointed to it in his place and it then became the Chair of Legal History because that was his great subject. There was a general advertisement for this Chair when Professor Milsom was about to retire and somebody popped down to see if I was at all interested. I didn't actually know that the chair was being advertised but in the end I got it. I was very pleased about that and, as you say, I'd been at the LSE for a very long time.

**84. Something I, perhaps, forgot to ask you about your long period at LSE, you lived in London?**

Yes, certainly.

**85. So you had then to move up to Cambridge.**

We did.

**86. In 1990 and you were quite happy to do that?**

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<sup>32</sup> Professor Kurt Lipstein, (1909-2006), Professor of Comparative Law, University of Cambridge (1973-76).

<sup>33</sup> Stroud Francis Charles (Toby) Milsom (b. 1923-), QC MA FBA, Professor of Law Cambridge (1976-90).



We were. Our children had left home. They were in their twenties. So it was a good moment to move. We were still energetic enough to take it in our stride.

Yes, we came up here and we were very fortunate to find a house in north west Cambridge which had come back on the market because in 1990 there was a slump in the property market and so there was this one house for resale again and it was delightful. We want to go on living there as long as we can.

**87. Wonderful. When you came up here, Professor Cornish, did you have to change your *modus operandi*, your teaching methods, or was it all fairly similar to the LSE style?**

The style did not have to change greatly. I came as one of those old-fashioned experts on the outside of the system as a professor from outside. It is quite difficult to carve out your niche in your fifties in a place like Cambridge with people who have been here man and boy and who are, many of them, deeply committed to the formation of the undergraduates whom they had admitted to their College.

**88. But you did have some experience of the Oxford way.**

That's true, yes, but it was a distant experience. I suppose the one distinction that was clear, since I was mostly teaching graduates in LLM subjects in both places, the great difference was that Cambridge did not have a regular system of supervision for the subjects whereas Oxford had done that in its BCL, the BCL being the equivalent then of the LLM, as it still is.

**89. Did you find that your research was assisted by being in Cambridge; perhaps the fact that you didn't have to commute must have made life a lot easier in some ways?**

Yes. Cut out my half hour's bike ride each way which was how I got about in London.

**90. Were you otherwise able to continue with your research.**

Well, there had to be some adjustments, of course, because there were from my start here other people doing here – great names – teaching what I had taught in London and I just had to fit into that schema. As a Professor of the University, I was very restricted in the number of hours you had to teach – 16 a year I think was still the figure, amazingly.

Of course by then people were going well over that formal limit depending on what their interests were and the courses that they wanted to run but for professors it was less intensive teaching contact at post-graduate level than in London.

**91. Must have been helpful in one sense, Professor Cornish, helpful, freeing up your time in one sense.**

Yes, it does give you more time, certainly, and of course the terms are only for eight weeks. So, two things about that. I became the Director of the LLM immediately because it wasn't a large job. We were then choosing from hundreds of applications the best 120-150 students for each year. The other thing I did immediately was to become the first Director of the Centre for European Legal Studies<sup>34</sup>.

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<sup>34</sup> CELS, <http://www.cels.law.cam.ac.uk/>



**92. The first director.**

The first director. Partly because there remained a sceptical attitude amongst the public law scholars here towards membership of the EU, even 20 years after Britain had become an EC member in 1973. So I said yes, I'd do it to get it launched and we did have such an event as in 1991: a visit from the Legal Affairs Committee of the European Parliament. They rather liked visiting attractive towns throughout the EC, as it then was, and they were an acceptable body to invite and our best international and European lawyers who have since become very distinguished, spoke to them and they reacted to it and it seemed to be a good occasion. It ended up with a grand party in the Senate House celebrating the establishment of the CELS so they were done proud.

**93. Did you find, in those early days, that there was some resistance to what you were doing in the faculty?**

Not very distinct.

**94. When you came up to Cambridge it was the start, really, of the move Law Faculty's move to [to West Road]. You had some time at the old schools, presumably, and it was almost that time that the plans were beginning to....**

They were well under way.

**95. Were you involved in that at all, Professor Cornish?**

Not significantly. Professor Tiley<sup>35</sup> was the member of the faculty who was the Chair in my early years. For a short while Professor Milsom and Baker, and then Professor Tiley took over and it was he who was good at giving drive to getting to the final stages of the plans, hoping that all was all right but as everybody knows there was a famous row over noise within the building penetrating into all parts of the library and he was one of those who had to deal with this. Professor Spencer<sup>36</sup>, who succeeded him, was even more determined not to let the architect and acoustic engineers get away with their view that noise only traveled sideways.

Eventually a glass wall had to be inserted into the building and those deepest in the Senate House might be able to tell you, if they were ever ready to do so, who exactly paid for this wall.

**96. Yes, I've often wondered that.**

So, the building was an interesting new move. It's a pity in many ways that we couldn't have had the university's administration move out of the centre of Cambridge and more specifically the Old Schools so that we could have the whole of it instead of just having the law library which was part of it, but in the deal was sold to Caius College, which they did up most beautifully. It's a building of the 1830s. The books were moved to the Faculty here and there has been room enough for them. We have not had these kind of problems on the scale that many law schools have faced throughout the United Kingdom since with the great flood of new publications and the whole problem of digitisation now, now law libraries are less crucial than a short while ago.

**97. A very interesting landscape and a very challenging one.**

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<sup>35</sup> John Tiley (1941-2013), Professor of the Law of Taxation(1990-2008), Fellow Queens' College Cambridge.

<sup>36</sup> John R. Spencer, (b?-), Professor Emeritus of Law, President of the European Criminal Law Association (UK), Murray Edwards College.



Yes. Now, there's something else I'd like to tell you about early 1990s and what I did when I came to Cambridge. Because I was prepared to take on the early years of the Centre for European Legal Studies up to the time when Professor Dashwood<sup>37</sup> arrived as the first Professor of European Law in the Faculty, which must have been in 1995. The complete breakdown of Communist rule in Central and East Europe ended the simple division of government into Marxist/Leninist on the one hand and pro-Capitalist/Free Enterprise on the other. Judge George Dobry<sup>38</sup> made a proposal to help him in founding, in Warsaw University, a British law centre<sup>39</sup>, the object of which would be to give courses to students, directed to English common law and its ways of approaching law. Quickly however once we started to do this work, showed that knowing about the European communities, as they were in those days, was very much an object in the mind of students who wanted to take the course. The course was to be taught in English at all times with lecturers from the Cambridge Faculty and some other British universities and by a staff of tutors who would be in Warsaw and were therefore able to give British university-style law courses in which it wasn't just lectures but it could be larger or smaller classes (everything from four members to 16 or something like that), in which students were expected to perform from their knowledge in discussion. So the idea of classes, which had become so common in British teaching, encouraged them to work through to sensible answers about the doubts that arise often in legal matters.

After some five years we were able to turn this course in Warsaw into one which lasted over two years of law teaching and from it the students got option points in them, just as they would by taking options in a law degree here, and at the end of it they were being passed and distinguished in the category of best performers and good performers. They were getting all this teaching and discussion. They were writing essays in English. One of the major objects was to make them familiar with the sort of English that lawyers talk. We were indeed surprised how some of these students had good English already. Some of them had this from parental knowledge and some through working in an English environment during the 1980s.

Some of the cleverest had associated with legal practice or other professions, the media and so forth just through the language skills. The course has been a considerable success in Warsaw. We had 200 student undergraduates at any one time. So we take in 100 each year.

## **98. This is ongoing?**

Yes. We celebrated our 21<sup>st</sup> anniversary two years ago at a dinner in the Marriott Hotel in Warsaw. Also now we have celebrated 20 years of a moot competition based on a question of European Law, which is open to teams from universities throughout the places where we teach and others, if they are in Central or Eastern Europe. We get fluctuations in who comes, but just for instance we recently had good teams from three universities from Georgia. In 2015 in another month's time, this moot is going to be held in Tbilisi and we are expecting financial support from sources in that country and lots of money for this occasion – don't always have lots of money in hand – but somehow it runs.

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<sup>37</sup> Alan A Dashwood, (b?-), Emeritus Professor of European Law (1995-2009), Sidney Sussex College.

<sup>38</sup> George Dobry, (1918-), CBE, QC, Circuit Judge (1980-1992), Founder of the British Centre for English and European Legal Studies at Warsaw

<sup>39</sup> <http://britishlawcentre.co.uk/about-us/>



with lots of fun in it but also heart stretching because the judges, mostly who are young, European lawyers from, for instance, the European Commission or the European Court of Justice, but beyond that some professors, some of them from East Europe now, and at the head of it all a leading British figure. For many years it was Lord Slynn of Hadley<sup>40</sup>, who loved mixing with these students. He and his wife came regularly to Europe on such activities. When he died Eleanor Sharpston<sup>41</sup> took over the role of the Chairman of the Judges at the mooted competition and she can be really demanding of the students. It's wonderful to see her at work with them and how they sometimes stand up to her. The Mooting Competition is a very successful enterprise and an experience they mostly get wherever they come from in these countries; they learn how to keep their head in an adversarial context.

The University of Cambridge's Institute of Continuing Education was prepared to grant our students a diploma for all their work as well as the diplomas that the students get from their local university. For several years after 2000, and they owed us a considerable amount because they had got themselves mixed in up in a Russian digital university, that taught by broadcasting, using our materials but without our permission. We had to rescue Institute for Continuing Education by marking all the students' papers and say they were hopeless. So the Institute for Continuing Education which had done this certainly owed us something and they were allowed certificates but a few years later their attitude hardened, I think from the central university in part, because our students did not come into residence in Cambridge; we were not allowed to continue to give a certificate for our work and we felt genuinely aggrieved by this. We felt we had achieved so much and that people in the university with a proper view, objectively, of what could be achieved by the very limited means available for teaching them. Students pay fees but of course the level is much lower than anything you could imagine in Britain these days. And we felt we were hard done by people who refused to understand us. We have, however, survived without the Cambridge diploma with people like Richard Fentimann<sup>42</sup>, John Morgan<sup>43</sup> and Jennifer Davis who still go and teach them. That's just great.

**99. Another external project with which you were associated was that you were the Chairman of the National Academy's Policy Action Group (NAPAG) on Intellectual Property which produced a Report in 1993 – 94. Can you describe this work, Professor Cornish?**

Well, first of all, NAPAG, is an affiliation of the leading British academies – the Royal Society, the British Academy, the Academy of the Engineers and the Academy for Medicine, all of which had one or other interest in intellectual property which was becoming more acute and which had to be managed within universities. Universities were beginning to set up technology transfer offices. Since the government wasn't then absolutely determined to run everything in tertiary educational management that they could get their hands on this was left to different universities to make their own policies. Some became very aggressive. Imperial College London needs to be named because they really did try to insist on

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<sup>40</sup> Gordon Slynn, The Right Honorable, Baron Slynn of Hadley, GBE, PC, QC (1930-2009), a former judge of the European Court of Justice and Lord of Appeal in Ordinary.

<sup>41</sup> Eleanor V. E. Sharpston, QC (1955-) an Advocate General at the Court of Justice of the European Union, Senior Research Fellow at the Centre for European Legal Studies of the University of Cambridge (1998–2005), fellow of King's College, Cambridge (1992-2014).

<sup>42</sup> Richard Fentiman, Professor of Private International Law; Fellow of Queens' College; Chairman of the Faculty Board (2014-)

<sup>43</sup> Jonathan Morgan, University Lecturer in Tort Law, Corpus Christi College.



ownership for their institution being the prime way in which exploitation of new technologies would take place. Where particular scientific projects had been put into universities by industry, for instance, industry was not prepared to be bullied in this fashion when their contribution to research and its exploitation was very considerable. It would be recognised in various ways in the contracts that they pursued, but Imperial College were badly hit by this one-way, “We’ll tell you what to do” approach.

Many institutions, however, did have some kind of policy in which a university got a share in revenues that were coming in and at the same time probably got the ability to control who you would choose as outside partners for exploitation and so forth. Oxford went quite a long way down that road and the NAPAG report was about the various ways of doing these things; what assessments there had been so far of the efficiency of technology transfer offices, which then lacked a good deal of momentum in many places – partly because salaries were too low for the officers – and it led on, I think it was quite widely read and has had quite a sustained influence – led on to patterns in different universities of how to deal with these problems; how to turn ideas into exploitable technologies which would then start earning.

In Cambridge we had a big row about it, not least because computer scientists in the university wished to keep the returns on their inventive ideas mainly for themselves; a portion for their research students, but absolutely nothing, either in terms of revenue or control over where the exploitation would take place, being left to the university to decide except by contract with the inventors. Needless to say the university thought there might be some other distribution both of power and of money through this and, without going into details of the very wearisome process of deciding what to do, first of all in the field of patents for inventions and secondly in copyright of the material which has been produced in ever greater quantities thanks to research assessment activities of the government. We established a pragmatic system in which patents from inventions had to be distinguished, really, from copyright rights where there’s much less basic reason for saying it’ll all belong to the university. So we hammered out our own relatively liberal pro-academic version of what should happen and that became a policy, if I remember rightly, in 2002 or ’03 and has been successfully operated now by Cambridge Enterprise under leadership that could understand the interests of both sides, but didn’t go quite as far as some of the computer scientists would like in their own favour.

**100. That is fascinating.**

I wanted to include that in this session.

**101. Professor Cornish, in 1998 you became President of your college, Magdalene College, and I wondered if you could tell us a little bit about that and how you found it?**

Yes, it’s not a big deal. The President, who has office for up to five years at a time, in some colleges is called Vice-Master, it’s the same kind of function. The President of a college for the time being charged to make sure that the Master or Principal of the college keeps within the bounds of the charity that they are, and within the rules in their statutes, and tries to reach compromises where there may be a division between the Master and the rest of the colleges, Governing Body and Council. So, that’s the formal role of the person in office. It’s a job that becomes a sort of social secretary to the Fellows. It says where they can have their day studies and, for some of them, accommodation. It just dribbles off into all sorts of little jobs like that.



**102. Interesting little byways.**

Some, yes. Occasional horrors.

**103. Yes, I'm sure. Over the years have you seen much change in the college?**

I think the answer to that so far is not a great deal. The big push that is now going on in the university is in favour of advanced research students, plus those who have reached the Junior Research Fellowship stage and I hear talk around the university of really establishing specific facilities for these high flyers.

**104. And these are specifically academics who do not have long, proper contracts, long-term contracts.**

Well, they don't have long-term contracts such as the university would give them. They may have mostly these days much shorter contracts with colleges directly because the college wants to promote a particular science or humanity.

**105. It sounds as though it was an enjoyable time.**

Yes, it was. I needed to go off on sabbatical leave before I got to retirement age so I only did three years.

**106. I see. In 1997 you were made a QC. Any comments upon that?**

No, because it was an honorary QC. Her Majesty confers the appointment for contributions to legal education. They are given, a few, or a couple each year, to people essentially in the academic profession in recognition that they're prominent people but no duty is attached to it. Even if you're a practising QC no duty is attached to it. Some rules regulate how you practise but they don't require from Her Majesty a command of any kind. That's just historical.

**107. Professor Cornish, you retired in 2004. I wonder what course your research had taken in the last ten years?**

When I first came to Cambridge I undertook to Professor Baker that I would put together a team of scholars to contribute to his great series, the *Oxford History of the Laws of England* that would round off that long progression covering the period 1820-1914, because that's been my big serial interest and where a number of scholars have pointed their whole emphasis as distinct from developments in the legal techniques up to the beginning of the industrial revolution. By 2010 we were in a position to produce three volumes of substantial size. It has not been possible to organise that they would come out in chronological order. As the appointed authors had finished their task, they have come out. It's tremendously hard work because of the condensation you have to apply after you've discovered everything you can and all the volumes up to our period, which starts in 1820 and ends with the beginning of the First World War, before our efforts each volume has only one author; periods of 60 to 100 years, depending on what was happening, and it's not surprising that some people have become ill and unable to finish; periods go blank because it's too daunting a task to do a single job on a long period unless you've been working at that period for 30, 40 years.

**108. So, it is ongoing?**

The series is, yes, but it's now beginning to look as though it will all happen and that is very gratifying. Six of us contributed to Vols XI - XIII and we all took aspects of the law differently and covered a great deal. One can always see corners where one should





have gone and did not because exhaustion had set in or we had not thought about it sufficiently. There are fringes around legal history always – such matters as public finance, for instance, and the taxation system – in the 19<sup>th</sup> century the law that would apply across the Empire and so on; areas where it was difficult to go and we didn't do much if we did anything at all. But it has been a big project.

Otherwise I keep my textbooks going though I'm handing their revision over to younger scholars where I can.

**109. It does sound a very enjoyable retirement, if I may say.**

Yes it is.

**110. I wonder if you could perhaps summarise for us the inexorable rise of intellectual property rights in the digital age?**

Yes. Some of the big problems of the subject are the result of digitisation. Most certainly are, because as you can see from any newspaper you open, at the top of digitisation and the things you can do with it, there are huge sums of money to be made and much of those sorts of competitive tangles hang on who has intellectual property rights that are relevant. The entanglements can be very complex technically and quite complex legally as well. Much depends on how well original contracts licensing the protected material have been drawn, whether there are real problems there or not. But, increasingly, you see conferences advertised on the drafting of intellectual property licences, because that is how the exploitation of inventive ideas is organized. The rest of the law is there to stop people who just imitate without asking permission; taking the patented inventions; taking copies of copyright material and so on and selecting a trademark rather too close to a well-known one.

Written material has been a major sphere in which it is difficult to get successful recognition of intellectual property rights, so many techniques have been available just to rip off behind the scene material, which in days of analogue publishing appeared in hard copy and so could be captured. But if you have a great volume of literary work in digital form such as leading universities have contributed to, or if you're out there with great lists of musical works or copies of paintings which others may then want for illustration, advertising or a thousand other uses, the opportunities for taking the material and it not being spotted and charged for are legion compared with what was happening even ten years ago.

So we are in a difficult world in which the intellectual property owners have been put on trial and have often been slow to adapt in some way that gives a technique for capturing this material. At the same time there have been very greedy people around trying to capture huge territories of information, much of it to do with the genetic character of human beings as well as for the genetic make-up of plants and animals, where there have been people at the beginning of science turning into innovation, who have been only too ready to grab large areas of the science and say it is theirs uniquely and anybody who makes the same thing or makes things from it must pay a licence fee to do so, or may be stopped.

I have not yet explained who Herchel Smith<sup>44</sup> was, since I held the Chair in his name, but he is exactly such an inventor. He invented mainly in Cambridge, as I understand

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<sup>44</sup> Herchel Smith, (1925–2001), Anglo-American organic chemist, benefactor to university science: Cambridge University, Emmanuel College, Queen Mary University of London, Harvard, University of Pennsylvania, and Williams College.



it, from being a student of Lord Todd<sup>45</sup>, a medical, chemical scholar of great distinction. Herchel discovered the crucial structure of the oral contraceptive – he didn't actually find the final product but he found the combination beforehand – and out of that he personally made a great deal of money from the patents that he got on it. So rich, but so decent, that the many millions that he made in conjunction with the American pharmaceutical company, John Wyeth<sup>46</sup>, led him to bestow huge endowments of chairs and other posts in research schools, both in the United States – notably at Harvard and also in this country.

But that was not his only interest. Another of his areas of benefice are concerned with the patent system, protecting inventions such as he had done so well out of and in the end he gave Cambridge University the largest gift from an individual person it had ever received – worth in all some 40 million pounds. In the later 1990s, when things did go up and down, particularly in relation to digitisation – '98 was the first collapsing year of NASDAQ – and he devoted his wealth to these good educational purposes. He was drawn into giving some of his endowments to intellectual property chairs, the study and teaching of intellectual property as well as to direct scientific discovery. Those who acted for him in patent matters and were accordingly keen that that should happen as well as straight science, by these gifts and, as I understand it, it's been money well-placed and it includes my subject.

**111. And the endowment for the chair to which you were transferred, and you were the first incumbent of that chair?**

Yes, in 1995. Recognising Herchel is quite a good point to climax with.

**112. Before we conclude. You have received various honours. In 1997 Cambridge University gave you an LLD.**

That was not just an honour; that was for my work – it is an academic LLD, recognizing my contributions to modern legal history as well as to intellectual property. So I was very pleased to receive that.

**113. In 1997 you became an Honorary Fellow at LSE.**

Yes, that follows on from my being there for nearly 30 years and I may say having become quite a substantial academic administrator there: I was Chairman, a Vice-Chairman of the Appointments Committee and then Vice-Chairman of the Academic Board, both of them key bodies in the democratic organisation of the School.

**114. Do you still have strong links with LSE?**

After my move to Cambridge I became a governor of the School for several years and then a governor emeritus. One cannot do everything!

**115. In '98 you became a Bencher at Grey's Inn.**

Yes, I appreciated that. I just visit it as much as I am able and do one or two things each year with students who are seeking to go to the Bar.

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<sup>45</sup> Alexander Robertus Todd, Lord Todd FRS, (1907-1997), Sir Samuel Hall Professor of Chemistry and Director of Chemical Laboratories, Manchester University 1938-44; Professor of Organic Chemistry, Cambridge University 1944-71; Nobel Prize for Chemistry 1957; Chancellor, Strathclyde University 1965-91

<sup>46</sup> Wyeth, an independent pharmaceutical company until it was purchased by Pfizer in 2009. Founded in Philadelphia, Pennsylvania, in 1860 as John Wyeth and Brother.



**116. In 2013, you received the Companion of the Order of St Michael and St George. I wonder if you could tell us about that?**

That was specifically for my work in Poland and elsewhere because that is the order that is really the charge of the Foreign Office and goes those who hloep support worthwhile endeavours of the British government in other countries.

**117. Did you go down to London to receive this prestigious award?**

I received the award from the Prince of Wales at Buckingham Palace.

**118. It sounds like a lovely occasion, Professor Cornish.**

Yes, it was.

**119. Well, I think this is probably a good place to stop.**

Yes, indeed.

**120. In our next interview I hope that we can cover your scholarly work, so all that remains is for me to thank you again very much for a wonderful account for which I'm extremely grateful to be able to add to our archive. Thank you very much.**

Thank you very much for organising it all.

