

CHAPEL OF THE COLLEGE  
OF SAINT JOHN THE EVANGELIST  
CAMBRIDGE

PROFESSOR STROUD FRANCIS CHARLES (TOBY) MILSOM  
QC, M.A., Hon. LL.D., FBA

PROFESSOR OF LAW 1976–1990

EMERITUS PROFESSOR OF LAW 1990–2016

FELLOW 1976–2016

2 MAY 1923  
24 FEBRUARY 2016

SATURDAY 19 NOVEMBER 2016  
AT 12 NOON

## STROUD FRANCIS CHARLES (TOBY) MILSOM

Stroud Francis Charles Milsom, known since childhood as Toby, was the pre-eminent English legal historian of the twentieth century. During his schooldays in 1938 an explosion on the beach in Cornwall punctured his brain and brought him close to death, but his formidable mental faculties were unimpaired and in 1941 he followed his father to Trinity College. He won distinctions and prizes in both parts of the Law Tripos, and wrote case-notes as an undergraduate. After his call to the Bar, an opportunity to study at the University of Pennsylvania Law School in Philadelphia on a Commonwealth Fellowship (1947–1948) turned his thoughts towards an academic career. The dissertation which he wrote there, on the early history of appellate jurisdiction, was full of perceptive insights into the nature of the early legal process and won him a prize fellowship of Trinity on his return. In 1956, after marrying Irène, he moved to Oxford as law tutor (and later also dean) of New College.

As was then usual, he was teaching most subjects on the syllabus, sixteen hours a week. Meanwhile, in the vacations, he was beginning to rewrite legal history and to overturn the enduring legacy of F. W. Maitland (d.1906), whose pioneering work he greatly admired. He began with contract and tort, a subject dominated by Maitland's posthumously published *Forms of Action*, which had portrayed the actions of Covenant, Trespass and so forth, as 'evolving and competing in a Darwinian kind of ecological system' in which Trespass (Maitland's 'fertile mother of actions') eventually proved the fittest and extinguished its rivals. It soon dawned on Milsom that 'trespass' did not begin life as a technical legal concept at all; it just meant wrong, as in the Lord's Prayer. Covenant did not originally mean a formal agreement under seal, as it did later; it was just an agreement. The forms of action were not a coherent scheme of refined legal ideas but simply tickets controlling admission to the king's courts, and the victory of Trespass was not the result of natural evolution, or increasing juristic sophistication, but rather of practical ingenuity in surmounting or bypassing the procedural hurdles which they came to embody.

In 1964 he succeeded T. F. T. Plucknett as Professor of Legal History at the LSE, and held the chair until he moved back to Cambridge in 1976 as Professor of Law and a Fellow of St John's. He succeeded Plucknett also as Literary Director of the Selden Society, in which office he served from 1964 to 1980. Free from college teaching, the London years were highly productive. In 1967 he revealed another discovery, that 'legal development consists in the increasingly detailed consideration of facts'. Obvious when put into words, it never had been before, and its implications were fully worked out in his revolutionary textbook *Historical Foundations of the Common Law* (1969; 2nd edition, 1981). The following year he published his second and most significant 'heresy' (as he called it). He had been asked to produce a new edition of 'Pollock and Maitland', the standard work on the early common law, but wisely decided it was impossible to revise Maitland. The problem was, how to write a sensible critical introduction to a reprint. He had dealt with contract and tort already, but there remained the problem of the land law. Even Maitland had admitted defeat over 'the mystery of seisin', the concept which lay at its root. The solution to the mystery came to Milsom in a flash of inspiration while waiting for a train home at Charing Cross. Maitland had unconsciously carried back into the twelfth century the assumptions of the nineteenth, and thought of owning land in the same way as one might own a horse. But possessive pronouns are a trap: 'my land' could indicate contract rather than property, in the same way as 'my job' or 'my bank account'. Milsom suddenly saw that seisin did not begin as a 'horizontal' relationship between people and land, but as a 'vertical' relationship between people, and that it was at first more about managerial control than abstract ownership. This revelation led to a rethinking of all the forms of action concerned with property, and many features of the land law, and inspired his 1972 Maitland Memorial Lectures, published as *The Legal Framework of English Feudalism* (1976), a small book which he regarded as his magnum opus. The lectures were delivered at Cambridge by candlelight, during power cuts, and Milsom became only too aware that some of the audience found his challenges to orthodoxy more impenetrable than the ambient gloom of the lecture room. And in later years he became increasingly upset that historians without a legal background, even some of the most eminent, did not always seem to understand the dimensions of thought in which his reinterpretations were framed.

Milsom's retirement in 1990 more or less coincided with his wife's increasingly serious loss of memory. She had managed his life, read his proofs, compiled his indexes, and travelled the world with him. For the last ten years of his life, after losing Irène and suffering a spinal stroke, he became reclusive, to the distress of his many friends and colleagues who held him in affection as well as esteem. But the great work had already been done. Among many honours he became FBA (1967), an honorary bencher of Lincoln's Inn (1970), QC (1985), and an honorary LLD at Glasgow, Chicago and Cambridge. His contribution to historical jurisprudence and to the way legal historians think – even those who do not agree with him – has been incalculable. Legal history for him was not simply the heap of technical facts which he had been taught, or a form of social history obscured by lawyers' jargon, but nothing less than 'the intellectual history of society'.

ORGAN MUSIC BEFORE THE SERVICE

*from 11.45 a.m.*

'Nimrod'

*Edward Elgar  
(1857–1934)*

Rhosymedre

*Ralph Vaughan Williams  
(1872–1958)*

ORDER OF SERVICE

*Sung in the Ante-chapel*

¶*Sit*

INTROIT

Requiem aeternam dona eis Domine, et lux perpetua luceat eis.  
Te decet hymnus Deus in Sion, et tibi reddetur votum in Jerusalem.  
Exaudi orationem meam, ad te omnis caro veniet.  
Requiem aeternam dona eis Domine, et lux perpetua luceat eis.

*Rest eternal grant them, Lord, and let light perpetual shine upon them.  
Thou, O God, art praised in Sion, and unto thee shall the vow be  
performed in Jerusalem.*

*Hear my prayer, unto thee shall all flesh come.*

*Rest eternal grant them, Lord, and let light perpetual shine upon them.*

*Words from the Requiem Mass*

*Music Plainsong*

¶*Stand as the Choir and Clergy enter*

## SENTENCES

We are gathered today in remembrance of TOBY MILSOM: to give thanks for his life, his example and the benefit of his friendship; for his teaching and his promotion of the study of legal history within our universities and the legal profession; for his substantial contribution to our understanding of Common Law; and, to commend his soul to the gracious keeping of God.

Blessed be God, even the Father of our Lord Jesus Christ.

I am persuaded that neither death, nor life, nor angels, nor principalities, nor powers, nor things present, nor things to come, nor height, nor depth, nor any other creature, shall be able to separate us from the love of God, which is in Christ Jesus our Lord.

Therefore, my beloved brethren, be ye steadfast, unmoveable, always abounding in the work of the Lord, forasmuch as ye know that your labour is not in vain in the Lord.

### PSALM 15

1. Lord, who shall dwell in thy tabernacle : or who shall rest upon thy holy hill?
2. Even he that leadeth an uncorrupt life : and doeth the thing which is right, and speaketh the truth from his heart.
3. He that hath used no deceit in his tongue, nor done evil to his neighbour : and hath not slandered his neighbour.
4. He that setteth not by himself, but is lowly in his own eyes : and maketh much of them that fear the Lord.
5. He that sweareth unto his neighbour, and disappointeth him not : though it were to his own hindrance.
6. He that hath not given his money upon usury : nor taken reward against the innocent.
7. Whoso doeth these things : shall never fall.

Glory be to the Father, and to the Son : and to the Holy Ghost;  
As it was in the beginning, is now, and ever shall be : world without end.  
Amen.

*Chant Christopher Gibbons  
(1615–1676)*

READING I

¶Sit

*Read by*

*Professor David Ibbetson*

Many years ago an English law student law society was addressed by a much-respected judge on the merits of judge-made law; and at the end questions were invited. There followed one of those silences in which the students are gripped by shyness and the senior members rack empty brains. This time it was broken by a student: did the speaker not agree, he asked, that for judges to make law was very undemocratic. It is the faces that I chiefly remember; the embarrassment of most of the company; the unthinking confidence of the questioner; the hunted look of the speaker as he wondered how to explain, without unkindness, that democracy has nothing to do with the matter. Perhaps the scene really lodged in the mind of a legal historian as a kind of tableau of changing assumptions. Almost the first thing an English law student is taught is that the law springs from two comparable sources, that judges make it in somehow the same sense, though not at all the same way, as Parliament. What he is not told is how recent that understanding of things is. The largest legal changes are precisely in the understanding of things, in the assumptions upon which the system rests. And since it is the point of assumptions that one does not think about them, it follows that the largest changes are never visible until they are all over. The legal historian is generally tolerated by lawyers on a false basis: he is thought somehow to testify that all the wisdom of the ages is behind the present arrangements. But in fact the only distinctive service he can do for his own day is to raise doubts.

*Toby Milsom, from his Fullagar Memorial Lecture, Monash, 1981*

LESSON I

¶Sit

Read by

Dr John S. Beckerman

How different it is with the one who devotes himself to reflecting on the law of the Most High, who explores all the wisdom of the past and occupies himself with the study of prophecies!

He preserves the sayings of the famous and penetrates the subtleties of parables. He explores the hidden meaning of proverbs and knows his way among enigmatic parables.

In his teaching he will reveal his learning, and his pride will be the law of the Lord's covenant.

*Ecclesiasticus 39 vv. 1-3, 8*

ANTHEM

JUSTORUM ANIMAE

Justorum animae in manu Dei sunt,  
et non tanget illos tormentum malitiae.  
Visi sunt oculis insipientium mori,  
illi autem sunt in pace.

*The souls of the just are in the hand of God,  
and the torment of death shall not touch them.  
In the sight of the unwise they seemed to die;  
but they are in peace.*

Words *Wisdom 3 vv. 1-2a, 3b*

Music *Charles Villiers Stanford  
(1852-1924)*



LESSON II

*Read by  
Gillian Perrin*

Finally, brethren, whatsoever things are true, whatsoever things are honest, whatsoever things are just, whatsoever things are pure, whatsoever things are lovely, whatsoever things are of good report; if there be any virtue, and if there be any praise, think on these things.

Those things, which ye have both learned, and received, and heard, and seen in me, do: and the God of peace shall be with you.

*Philippians 4 vv. 8-9*

ADDRESS

Professor Sir John Baker

NUNC DIMITTIS

Lord now lettest thou thy servant depart in peace : according to thy word.  
For mine eyes have seen : thy salvation;  
Which thou hast prepared : before the face of all people:  
To be a light to lighten the Gentiles : and to be the glory of thy people  
Israel.

Glory be to the Father, and to the Son : and to the Holy Ghost;  
As it was in the beginning, is now, and ever shall be : world without  
end. Amen.

*Service in C  
Charles Villiers Stanford  
(1852-1924)*

*Minister* Let us pray.

*Minister* Lord, have mercy upon us.

*All* **Christ, have mercy upon us.**

*Minister* Lord, have mercy upon us.

*All* **Our Father, which art in heaven, hallowed be thy Name, thy kingdom come, thy will be done, in earth as it is in heaven. Give us this day our daily bread; and forgive us our trespasses, as we forgive them that trespass against us; and lead us not into temptation, but deliver us from evil. For thine is the kingdom, the power, and the glory, for ever and ever. Amen.**

Unto thee, O God, be praise and thanksgiving for every act of generosity and devotion, known and unknown, in all the duties of life. More especially we praise thy name for those who, having endured faithfully, have finished their course on earth. Grant to them eternal peace; guide them still in whatever unknown paths they tread; and grant that we, strengthened by their example and fellowship, may be faithful unto death and gain with them the inheritance of the saints in light; through Jesus Christ our Lord. **Amen.**

O God, who art the author and giver of all good things, and who dost accept all true and faithful service as done unto thyself: we praise and bless thee for the life and work of TOBY MILSOM, for the benefits of his example; for his love of family especially his wife Iréne and for the enjoyment of his friendship; and grant that we, having these gifts in remembrance, may so faithfully serve thee in this life that we fail not to attain with him thy heavenly promises; through Jesus Christ our Lord. **Amen.**

O God, who hast prepared for them that love thee such good things as pass man's understanding, pour into our hearts such love towards thee, that we, loving thee above all things, may attain thy promises which exceed all that we can desire; through Jesus Christ our Lord. **Amen.**

Almighty God, Father of all mercies and giver of all comfort: deal graciously, we pray thee, with those who mourn, that casting every care upon thee, they may know the consolation of thy love, through Jesus Christ our Lord. **Amen.**

Bless, O Lord, the work of this College, which is called by the name of thy beloved disciple; and grant that love of the brethren and all sound learning may ever grow and prosper here, to thy honour and glory, and to the good of thy people, who, with the Father and the Holy Spirit, livest and reignest, one God, world without end. **Amen.**

The Grace of our Lord Jesus Christ, and the love of God, and the fellowship of the Holy Ghost, be with us all evermore. **Amen.**

## HYMN

*¶Stand*

Now thank we all our God,  
 With heart and hands and voices,  
 Who wondrous things hath done,  
 In whom his world rejoices;  
 Who from our mother's arms  
 Hath blessed us on our way  
 With countless gifts of love,  
 And still is ours to-day.

O may this bounteous God  
 Through all our life be near us,  
 With ever joyful hearts  
 And blessed peace to cheer us;  
 And keep us in his grace,  
 And guide us when perplexed,  
 And free us from all ills  
 In this world and the next.

All praise and thanks to God  
 The Father now be given,  
 The Son, and him who reigns  
 With them in highest heaven,  
 The one eternal God,  
 Whom earth and heaven adore;  
 For thus it was, is now,  
 And shall be evermore.

Words *Martin Rinkart*  
 (1586–1649)  
 Tr. *Catherine Winkworth*  
 (1827–1878)

Tune NUN DANKET  
 Melody in *J. Crüger's*  
 'Praxis Pietatis Melica' c. 1647  
 Harmony chiefly from *Mendelssohn-Bartholdy's 'Lobgesang' 1840*  
 Descant *Christopher Robinson*  
 (b.1936)

VOLUNTARY  
 Fugue in E flat (St Anne)  
 (BWV 552ii)

*Johann Sebastian Bach*  
 (1685–1750)

Following this Service,  
Refreshments will be served in the Combination Room