

Conversations with Emeritus Professor William Rodolph Cornish

by

Lesley Dingle¹ and Daniel Bates²

First Interview: Early Years

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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.

1. Professor Cornish, it is a great pleasure to interview you for the archive. You have had an illustrious career, having been a Professor of English Law at the London School of Economics for 20 years. You have recently retired from a Chair at Cambridge. You have the reputation for introducing into the UK the teaching of intellectual property law.

Could we start with your early life? You were born, in 1937 in Adelaide in South Australia.

Well, I thought we should perhaps get things going by my saying just a little about my family background, and then to its relation to the state or economy of South Australia, where eventually I grew up, because it's quite an interesting and distinctive history from the rest of the history of Australia.

My father was a youngish, poorly paid solicitor when he married my mother in 1935. They'd both done degrees at Adelaide University and were settling down after the worst of the Great Depression. I was born two years later and my sister was born in 1940. That was our family group we made until death began to strike. Our curiosity, perhaps, was that my mother and father were first cousins. Our grandmothers were sisters and I've always just wondered whether that affected who we were and what we went on to do. In England it had long been accepted that marriage between first cousins was legally permissible. Indeed this was particularly so for the landed aristocracy and gentry when it came to organizing the property affairs of succeeding generations. For the children of such marriages there was no persistent concern about the physical or mental condition. In our family there was a distinguished doctor who said it was perfectly all right. So my parents did marry but both I and my sister in various ways had some mental instabilities, much worse in her case than mine, I've been able to cope, but she had the added disadvantage of being a Rubella baby, a child born to a mother who during the pregnancy contracts German measles. This can produce abnormalities in the foetus. So it was with my sister's birth and there was an

¹ Foreign & International Law Librarian, Squire Law Library, Cambridge University

² Freshfields Legal IT Teaching and Development Officer, Faculty of Law, Cambridge University



epidemic of the disease in South Australia just around the beginning of World War II. When an adult she had to have two lots of holes in the heart operated on and it was the most terrible strain on her and particularly after that, she had periods of serious schizoid disturbance - times when she could not actually form a statement that made any sense or which exhibited marked symptoms of paranoia. In her forties she would be diagnosed with cancer and would die of it by the time she was 51 – a tragic history for all of us. My mother felt guilty about it always for having had the German measles.

2. Did your sister remain in Australia?

She toured overseas, but essentially she stayed in Australia. Of course, she had to live with my parents through this really bad time. And that was a deeply distressing factor within the family.

But, there it was. Otherwise, my parents were a very happy couple together and we lived a quiet, day by day life in the atmosphere of post-war South Australia which was essentially a placid place, with none too grave distinctions of, for instance, class. Some serious religious differences there were, particularly between Catholics and Protestants, but rarely so intense as it could be in the eastern states of Australia.

So, I would very much like to say something about how South Australia came to be founded and why it's different. So, can we turn to that?

3. Thank you

South Australia was formed as a British colony by sending out a small fleet of ships which bore the first representative of the Crown in the new colony, in what was thought to be completely unoccupied and undeveloped land, except for whatever Aboriginal tribes used this as part of their itinerant lives. So, it was being founded on unknown territory, which was carved off from the huge colony of New South Wales. NSW and then Tasmania, Victoria, Queensland and Western Australia had all mainly been founded to solve the problem of transporting serious offenders from Britain, including Ireland, instead of executing them. South Australia was the only colony in Australia which was entirely a free settlement and it was brought about in the 1830s, because by then it was increasingly thought that the British Empire could be a large and continuing block of power in world terms. It used to be said that the Empire as a whole came to contain a quarter of the Earth's population in a quarter of its area.

So, what initiated the colonization of South Australia? A group of liberal thinkers, somewhat radical, much influenced in general terms by Jeremy Bentham and his utilitarian model for judging all political questions of significance, had got quite a grip on the public imagination through publishing and journals and so forth and some of them had got into significant positions on royal commissions or Parliamentary committees or as civil servants. 1832 is of course the first year when there was any real membership of the House of Commons, so much was happening at once; an exciting and also a disturbing time in Britain. Hence the debates about how colonies should develop within the growing Empire. Edward Gibbon Wakefield³, contributed significantly to the discussion by publishing *A Letter from Sydney* (1830) which proposed a simple economic strategy for free settled colonies. Despite

³ Edward Gibbon Wakefield (1796-1862), British politician, the driving force behind much of the early colonisation of South Australia, and later New Zealand.



his work's title, Wakefield had never been to New South Wales, being at the time in Newgate Prison for having abducted an heiress. Nonetheless the essence of his proposal was that land would be granted to settlers by the Crown for a price of at least 12s.6d an acre, a high figure even for people with some capital; too high for a working class that might be attracted by the new conditions. So British legislation created the South Australia Company to set up a free colony in which investors would be placing their money by buying land as the main funding for its initiatory stage. The British Government being represented by a Governor and those administrators strictly essential for running a political system, but as few as possible. The whole aim was to reproduce British country life, society, with on the one hand and a labouring population most of whom would never amass the capital, it was thought, to move into the territory of the social class. So, straightforward, but with the 12 and sixpence an acre there was a form of regulation being imposed by government and really Wakefield's thinking was so simple and unappreciative of how grasping and selfish human beings can be, as well as purposeful and decent and so forth, that almost immediately the economy went completely awry. After the first wave of grants from the Crown, a bull market in private land transfers rapidly set in and comparatively little work was being done to turn patches of scrub to productive use either for public utilities like roads and bridges or for food production, all of which was crucial. Indeed within five years a group of German émigrés from a poor part of Prussia went up into the cooler hills behind Adelaide, the colony's capital and began market gardening: undoubtedly a life-saving venture. So, they helped to get it going but then people with some intentions to do things with their land soon enough found that they could begin to make quite substantial profits, particularly in sheep for wool, to some extent for meat, but much more for wool so it could be exported, and copper, which was found there because a sheep kicked a piece of rock and it turned out to be copper coloured. Wakefield's theory may have provided an initial inspiration but it proved unduly narrow-minded in practice. So, the place did show within a decade that it had real economic potential and it got going on a broadly private ownership employment of cheap labour basis and somehow survived through that. But, I hope I've given some sense of the risk that was involved and the stupidity of thinking you could just say, "We'll sell it to you at so much."

4. Yes, fascinating. What were the most difficult consequences?

I mean it's a fairly fascinating history in many ways. You can't begin on it but there are two areas that had something to do with my later career and so I think worth emphasising.

The first is that because land was being bought and sold so rapidly and there were very few lawyers coming out in the first shiploads of colonists, if they were coming they were probably to do something like running of the customs service. So, titles to the land very soon got mixed up, they weren't properly surveyed so there could be mistakes and overlaps and it was very unclear what responsibilities to collaborate in road making and so forth were being imposed on these people. So, the whole system was pretty much hated by those who wanted to make money out of it and the lawyers were deeply distrusted for a lot of... it probably wasn't directly their fault. That led, by the 1850s, to a strong movement to take the conveyancing of land away from the private lawyers and away from it being secret, because nobody else could see what the title deeds were until they'd bought the land or whatever, and replace it with a public system of registration in which, crucially in the argument, the government would guarantee, and therefore pay compensation, to weed out mistakes and get things settled on a pretty straightforward grid pattern. It wasn't little winding country roads at all. So it was certainly possible. It was much debated. The lawyers kept on saying that you couldn't possibly run a conveyancing system except on the one that they knew and loved



but public opinion in this small community was so strongly hostile to what had been done between 1836 and 1856 that it looked as though there would have to be political moves to introduce this public land registry with government backing of the exactness of the titles. At the same... and this was largely managed, may I say, by Sir Robert Richard Torrens⁴, who had gone out there to be the person who formed the customs operation in the early 1840s. It's a bit muddling because his father was Colonel Robert Torrens⁵, and Colonel Torrens had played a major part in setting up the South Australian Company and giving it its directions in various ways, because he was quite a central figure writing in the politico economic world of the times and it connected with the larger names like, McCullough and Nassau Senior and so forth, who are the generation after David Ricardo⁶ in the political economy movement. So, the elder Torrance was all very much part of that and he had sent his son out because they were all... the family was interested in what would happen in this colony that they had helped to create. So, it was the younger Torrance, the man who becomes Sir Robert Richard Torrens, afterwards an MP for Cambridge would you believe?

When he came back to England in the 1860s. But, before that, he'd gone ahead with a will and saying the registered title would be set up, but he did one other vital thing, to respond to the political strain, was to create a second professional body alongside the lawyers who were both barristers and solicitors, a second body of land agents who were just knowledgeable in how to transfer title on this new register, which was going to take over all the land in the colony. He got his Act through in 1858 and for a short while he became the premier, the leading politician of the colony, because two years before that, in 1856, it had been granted limited independence through chamber legislature. So, things were moving strongly towards something like a more formed political community, as well as all this land stuff. The effect of course was, since the land agents could charge a good deal less, they didn't have to find a long period of training and so forth, they just learnt about how you'd run the titles register and they became a large and successful profession because their fees were cheaper than the lawyers. The consequence of that was that in South Australia the legal profession was very much reduced in its importance and size compared, for instance, with the eastern seaboard colonies of Australia. It was still essentially like that, certainly when my father trained in the 1920s as a solicitor and when we, our group of law students, were going through in the second half of the 1950s

5. That is very interesting. That would have been the prospect that awaited you, had you remained there for a time.

It would indeed. Certainly the colony which in 1901 became one of the six that made up the States of the Australian Commonwealth, would by the 1960s need a wider range of legal skills from its practitioners because of the growth of its agricultural sector, and also of mining and a motor vehicle industry. That really brings me to the second special point I'd like to make, which is that of course any decent, reasonably liberal society is going to breed moral ideas and want them inculcated, particularly for education, all the direct services of religions. South Australia had to do a bit of learning about that, it had, for instance, been sent out with no government official to form a South Australian police. Now, it had to be done by

⁴ Sir Robert Richard Torrens, GCMG (1814-1884), third Premier of South Australia, pioneer and author of simplified system of transferring land.

⁵ Colonel Robert Torrens (1780-1864), Royal Marines officer, political economist, MP, owner of the *Globe* newspaper and prolific writer.

⁶ David Ricardo (1772-1823), British political economist. Made the bulk of his fortune as a result of speculation on the outcome of the Battle of Waterloo (1815).



about 1840, four years, because convicts started to come from the eastern states when they were released, they were the big fear. But, beyond that and on a much wider perspective, colonisation throughout the Empire was deeply affected by Christian movements of one kind or another, to establish higher moral virtues of one kind or another as well. By 1850, 14 years of operation, the Church of England was certainly in a prominent position and from Britain was putting a lot of money into building its position up, but the numbers of nonconformist sects were moving out as well, where the workers came from for instance, Cornwall tin mining, needed in South Australia, so many came and many other names, scarcely heard of in Britain at that stage, were also positioning themselves. So, one fascinating thing that happens very early in South Australia, because it doesn't have so many problems from the convict states, is that the Church of England, responsibly led, decided not to continue as the state religion it had been assumed to be, the established church, the Anglican Church. They asked to surrender and disestablish themselves in response to some pressure from the other sects, of course, but disestablishment came in 1851, you know, long before Welsh disestablishment or Irish disestablishment.

In the ethos there too. In many ways these Australian colonies were becoming melting pots for new ideas. It was 10,000 miles away, you didn't have to worry, the government in London, could only reach by letter or ship transfer of some kind, the telegraph doesn't come until 1870 and that of course makes a huge difference in the strength of British interest and all the rest of it. That's not until 1870. So, the religions were left to get on with it, disestablished as far as the Church of England was concerned but, interestingly, well led and may I just mention the name of the first Bishop of Adelaide, whose name was Augustus Short⁷, came out after a successful academic career at Christchurch, Oxford. He actually tutored Gladstone would you believe. He arrived with a good display of free and open ideas about education and is very influential. He gets there in 1847 and immediately sets up a church school intended for the sons of the successful farmers and so forth and it was called The Collegiate School of St Peter, a grandiose title. The college, of course, reflecting his Oxford experience and wanting to draw on it. So, that became St Peter's College⁸ and I went there and it's also abbreviated in lingo there to Saints. I went to Saints. Yes.

6. And it continues to this day?

As such. It's been highly successful. It isn't even... it's unisex, it's a male college still, because it's so much in demand and that's true of one or two of the other schools; you find the Methodists is, the Presbyterians and so forth. So, Bishop Short arrives and sets up his school straightaway and the government give him land and he finds people rich enough then, mainly in the colony, to start putting money in, in the charitable sense. So, it does blossom at least to a reasonable extent but that's not the end of Bishop Short's interest in the welfare of the community, as distinct from worship and the understanding of complex doctrine. He worked purposefully for 20 years to get a University of Adelaide established and he achieved that in the mid-1870s, he still has five years to run before he retires and goes back to England, so he's there for 30 years and in many ways the university is probably his most interesting achievement. Well, of course he was deeply imbued with the ideas that for all the glories of Oxford and Cambridge, their syllabuses, particularly Oxford's, which he knew, was amazingly eighteenth century in that it was a training in the classics, starting at

⁷ Augustus Short (1802-1883), Bishop of Adelaide (1847-1882), Chancellor of University of Adelaide (1876-1882).

⁸ <http://www.stpeters.sa.edu.au/>, famous alumni, include three Nobel laureates, forty-two Rhodes scholars and ten Australian Premiers. Founded 1847.



school and going on there and not much else. Modern subjects, like any history later than Rome, and even mathematics wasn't stressed as much in Oxford as it was coming to be in Cambridge. Part of the scientific turn as it had such a prominent distinction between the two universities, even today, were not regularly taught. It was a sort of finishing school for the aristocracy and gentry and the big middle classes that began to get more power and influence, particularly after the first Reform Act of 1832. So, change was in the air, Oxford and Cambridge were battling about the question of how far they could possibly change. Bishop Short, was quite clear that in a new colony you had to be teaching the young generation what they could do for the economy as well and so insists on a major place for the new sciences, like botany, like geology, both of which would prove to be directly important, engineering and modern languages and some history, so that all along it was going to open on quite a wide purview and when people appeared with money to donate to it who wanted to turn it into their university, sit on the council and dictate what was going to happen, put forward rather limited conservative views of what should happen, Short, was just short with them. Very, very dignified of course but he was not standing for that and he set Adelaide University up on a really remarkable path for the number of people there were in this still very small colony, compared with the growing New South Wales in Sydney and the growing Victoria in Melbourne. They were the other two places that had a university at this stage and there were distinct marks of non-success about the university in Sydney in particular, they had a tiny number of pupils

8. So, it led the way in terms of university education?

In many ways, yes, it established this attitude to modern education that you must be able to take a tertiary step and learn what was really tough.

9. As an outsider I look at South Australia on the map and it is a large state in a very, very large country, but it all seems very remote. Yet there was this flowering at the university.

The right people in the right time I think we'd now look back on it to say, to see. You've certainly characterised how remote it was and how remote people felt that they were. They were interested only in the concerns of the colony, not the whole of Australia where competition was in the air, where the cities had had big labour populations and therefore the growth of trade unions and rather a belligerent way in both Sydney and Melbourne, were a new cause for unrest. Adelaide didn't have much of that. It was a placid, rather complacent community, no great social distinctions. People knew their place all right and Short had a lot to do with that. I mention this because the University of Adelaide has... which is having its 140th anniversary, has just published a new biography of him in relation to the university and for me at least it's very interesting reading⁹.

10. As you were growing up did you feel a sense of remoteness when you were... particularly after you'd sort of gone through your childhood and you went into boyhood, did you feel isolated at all?

No. I didn't know how isolated we were in a way and, as I was saying, the minute I had a chance to come to England for a year when I was 17, and that's when I realised how cut off we were. No newspapers that have anything much other than idle gossip and content in them. Pretty poor. Well, the radio facilities were somewhat better because was a government

⁹ Michael Whiting *Augustus Short and the Founding of the University of Adelaide*, University of Adelaide Press, 2014



institution, the Australian Broadcasting Commission, sort of on Reithian lines to the BBC but there were private commercial stations which no doubt were very much more popular. But, that was part of the educational conspectus that people had of the country, that you should have both these things available to you and cut off we undoubtedly were. You see it now in what is left of the old dominions, more in New Zealand because they were poorer than Australia was through the latter half of the twentieth century. However, they too are catching up now and doing more industrial things, not so dependent on sheep and cattle. So, it's important to get an impression of this because partly through going overseas before university study, I did acquire a very strong will to see European countries for myself and to acquire some understanding of their peacetime resurgence.

11. I wondered about that.

Because I'd had a bit of experience of it at the right time, when your mind is completely open.

12. Before you had that wonderful opportunity, that gap year, you had a very happy and a productive, fruitful school career at Saints?

So, shall I say something about Saints?

13. Any teachers that you recall, perhaps?

Yes. It had of course only had headmasters who were ordained priests of the Church of England, until about the time that I got there, which was in 1945, but it had a full conspectus of education from a pre-prep, through a prep, to a senior school as we called it and that would lead to doing the compulsory state exams which were set at three levels then. That set a pattern by the law of the state as to what would happen, but then complicated arguments about state funding and the religions, particularly as the Catholic community had grown and it did tend to provide schools for Catholic boys, to some extent girls, which were quite good. So, the Catholics demanded of the state that there be very substantial subsidies for running what was still their schools. As you can imagine, some of the orders were running the schools, the Jesuit, the Christian Brothers and so forth. So, what did Saints give us over time? Needless to say it was streamed in intellectual ability terms, so by the time you got to the top school, the top of the school, there were four classes and they'd adapted things. I was in the top stream and that was all very encouraging. What did you get? We got English literature, well taught on the whole. Languages, we had to do two, Latin and French in my case. I'm very sorry not to have done German, because of what happened to me afterwards. You don't get all these things right. Nothing else. No Asian languages then. They would come within 20 years after that. The need to be able to talk to our nearest neighbours. I mean the idea of teaching Japanese in Australia in 1945, the end of the War with the Japanese, would be beyond ken. It just wouldn't begin to get off the ground. So, languages, maths, these were the good old days of the slide rule and the logarithm tables and so forth, all gone now completely. In our case I think reasonably well taught, on old-fashioned lines. Divinity of course, which mostly meant reading Dorothy L Sayers, *The Man Born to be King*. I think the whole English speaking world did that. Then a sort of science track and a sort of arts track and science was just physics and chemistry and the arts track was history, geography in the main. Some good teachers, particularly those who had either come back from fighting or didn't go but continued to run the school, they were old hands. But, finding... by the 1950s, finding good, new teachers as they were being brought out from some part of Europe, or Britain and Ireland of course, was very difficult. There was clearly just a huge shortage of manpower.



14. Some had gone to war perhaps?

Oh clearly, yes. If you think of the huge losses, all the fractured personalities who came back out of the Japanese prisoners camps, beyond belief.

But, we did then have a particular headmaster called Colin Gordon, who was not ordained, perfectly acceptable of Anglican Christianity, but determined to do something to broaden, in quite a clear educative sense, our understanding of the world. So, he brought out people who had... Jews who had had to escape to Britain mainly, a few, and so he himself was having a considerable influence on where the school was going. One of the previous headmasters had made sport compulsory and that consisted of PE in the morning, between subjects, and either compulsory cricket, rowing, tennis or football, it was all football, in the winter and that was Australian Rules football, a variety of Irish football, in the very broad sense. So, this was very... sport was very much part of the ethos of the whole school and a lot of sportsmen [inaudible 49.56], on the staff, a good deal on that but there was a cultural life as well and we always did a school play and I appeared in various of those and that was fun. There was a bit of music, but nothing like teaching instruments on a regular basis to a large proportion of at least people under the age of say 12. So, nothing to carry it through. There was no orchestra. That I was sorry about because I've always had a strong and keen interest in classical music, that hasn't really shifted

15. So that started in your primary years and you were able to continue?

Yes, in my primary years I took private lessons, yes. From teachers who were at the university's conservatorium, the elder conservatorium, which had started right at the beginning of the university. So, that's broadly what we studied and some of the teachers may have been competent, but they were incredibly boring, particularly the man who had written the book for the whole state on physics. I could never take to physics. I found chemistry much more colourful and it's also been quite a use to me in later life.

16. With your extra murals, Professor Cornish, plays that you took part in - did you take part in dramatic productions?

Not much whilst I was still at school. University then filled in and there were various things we did. We did reviews and all those things and after all there was Dame Edna, appearing for the first time in Australian life and we all listened to her all right. Extraordinary how that has gone on as long as it has, sometimes rather embarrassing. So, yes, there were things to be done and I did quite a lot of music at university as well.

17. And that's a lifelong pursuit and continuing interest?

Yes, it's been a good hobby for me. I'm no great performer when it comes to going on the concert platform but I've always enjoyed it immensely and we did do some good touring around the country districts in Australia, when I was a law student. So, that was excellent as well. Now, where have we got to? The university. Oh no, my gap year

18. Your gap year. Yes, I wondered about that because I'd assumed that you went straight from university to Oxford, but you obviously had this wonderful introduction before.

Ah, no it comes after my school career and before I start my undergraduate degree. So, I really was pretty young to contemplate going to England by oneself.



19. Quite a step.

Well, of course there weren't the kind of modern fears that there are now, about children being let out on their own but, yes, my mother went and consulted the good headmaster about whether this would be appropriate and he thought I was fidgeting to get away and do other things. I could have stayed on at school for another boring year, directing younger boys how to behave and that kind of thing. So, he backed it and the opportunity was to go and work with the Reverend Tubby Clayton¹⁰, I don't know whether he's a name now who means anything to you, but shall I say just a word about him?

He was an army chaplain at the outbreak of the First World War and we all know how terrible Northern France and the Ypres Salient were, Flanders, for battle conditions, trench warfare and gas. Frightful things happened and Tubby Clayton set up a house for, sort of, not so much recreation as recovery, the ability to get out and away from the battlefield and lead something like a human existence, even if only temporary, and in its smallish way it was a great success. It was badly, badly needed and he had the open, strong personality to turn it his way. So, there was a chapel upstairs and there were places that people would stay and evening entertainment and so forth and this became known as Toc H, because those are signallers' terms for TH and the actual name for the premises was Talbot House, after a man called Talbot who had been killed sometime in 1915 I think it was. And after the war, Tubby and many associates, who had been involved in this, turned it into a peacetime movement, thinking primarily of young men to begin with and those who had survived but with time it acquired a woman's [inaudible 55.47], a women's movement as well, for the same kinds of concern about Christian good, communal living, finding ways of getting jobs, realising your full potential, out in the workplace, essentially. And so they started setting up separate houses around London and then in a few provincial cities and it grew as a movement very considerably between the two World Wars, which after all was only 21 years, one needs to remind oneself.

With the depression in the middle of it. So, it was one of those movements... Tubby died around 1970 and with his great personality disappearing as a figurehead it has gradually wound down into being a local branch organisation where people have the enthusiasm to keep it going. But, it's like Rotary and the Lions and so forth, various... encouraging people to do really useful things as a way of forming their own personalities, mostly at a young stage. So, it certainly had its time. It was a great movement.

20. And when you went across did you go by sea - docked at Southampton perhaps?

Tilbury. Which of course was the first big shock that I think personally I had, because Tilbury is a train into Liverpool Street and in 1955 it was still just bomb devastation wherever you looked. The whole of the East End more or less had gone, people just living here and there, still ten years after the end of the war.

21. After your sedate existence in Adelaide.

Yes, Adelaide. I never saw anything like that. There were very few... bits of invasion into anywhere in Australia. More fighting of course in the terrible conditions in New Guinea, but not on Australia. So, Tubby Clayton liked to have young men living there as ADCs of which I was to be one. We would organise parts of his day and get him where he needed to

¹⁰ Reverend Philip Thomas Byard Clayton CH ("Tubby") (1885-1972), Australian born Anglican clergyman. As Army Chaplain, established rest centre for soldiers in WWI, Talbot House (= Toc H) in the Ypres Salient 1915.



go, exercise the dog, help his lunch guests, run other errands. Equally when he went out of London to visit Toc H branches, close friends or people with influence, the practical elements of the journeys would fall to us. It was a very exciting place to be. He had a house in one corner of that, close to where there was a strip of the Roman wall around the City of London, which he had done a lot to sort of have preserved and built up again after the war, because that's... he had strongly historical interests, and doing something about them. But All Hallows was very sadly bombed extremely badly and so by the time I got there, in 1955, he was deep in the middle of a campaign to raise from around Toc H, effectively throughout the British Empire, the monies needed to restore the church and to find the architects who were a good firm of architectural restorers, adding where they had to, to whatever the building had been, but essentially interested in putting back the churches as they had been. So, that was going on. Then there were all these Toc H branches to be visited from the length and depth of England. We went to Lands End and we went to the Orkneys.

22. Did you drive to the Orkneys?

We drove to Inverness and there was a little plane then you could take there. We had to land in Wick first before we went over to Scapa Flow¹¹. So much of the war was still very proximate there. Tubby himself had spent time as a chaplain on the Orkneys in the Second World War, so he knew a lot of the people and the Navy was much installed in the Orkney islands and so it was fascinating meeting them and discovering that they were not Scots.

Their loyalties were to Norway if anything. That's where many of them had come from and they'd been a big seafaring group, certainly from the beginnings of steam onwards. So, a separate people and we saw them and my father came over from Australia for the first furlough he'd ever had from his dogged soliciting in Adelaide and I think thoroughly enjoyed going around with Tubby on some of his work, including the trip to the Orkneys. He loved that.

23. Delightful. It just sounds the most marvelous opportunity.

Yes it was, undoubtedly.

24. In a way the die was cast, because it changed your perspective.

Yes, it was cast through that experience, sure.

Tubby seemed to have taken to having St Peter's College boys; there'd been a couple before me and several afterwards, whilst he still needed that kind of assistance. He was pretty hale more or less up to his end, which was pretty healthy. He must have lived to be nearly 90. So, yes it was just a great experience and I met... he didn't think in class terms and he was very careful to keep his visiting going to those who might have power and influence over what happened to the movement. So, we did meet grand people who lived on Hyde Park and all that but he would go anywhere and talk to anybody about their problems, so I learnt a lot about humanity and how you manage it with skill, whilst still being in his case a very prominent personality. If he came into the room everybody talked to him and he talked to everybody. So, yes it was a great experience. He found me a trip back... I came on one of those old, I don't know whether you know it, Peninsular and Orient [*P&O*], boats, mostly starting with Scottish sounding names and ours was the *Strathnaver*¹². It was so ancient after

¹¹ UK's chief naval base during World War I (the Grand Fleet) and World War II. Closed in 1956.

¹² <http://www.pandosco.co.uk/strathnaver.html>, 22,547 tons, launched 1931, Barrow-in-Furness, scrapped 1962.



30 years use or something that it was one class, that's the first sign that the end is nigh. On the way back he found me a berth, because there were usually a few going in a cargo ship, which was going out to Australia. That was also an experience. You played with the officers, you learnt about the life, a lot of gin was drunk.

25. It sounds absolutely superb.

Yes, it was. The thing I've not yet mentioned about the time in England was that Tubby Clayton had established a well-funded, American funded, scheme for mostly university students to come over, particularly from the eastern states of the United States, as Winant volunteers. Winant¹³ had been the US Ambassador to Britain after Joe Kennedy¹⁴ had to return home and Britain was much involved. So, they came for three months, the money was found for them and they went and worked in the various settlements and parishes, particularly in the East End of London, including its south-east end. In amongst the pictures I'll show you in a minute there is a picture of the group as a whole and you'll get some impression of just how large it was to organise for.

They went to Oxford for five days at the beginning to be briefed really on what was going to hit them when they got into these places, very different from Oxford. We also, together, did a large trip, C M Buses I think it was, to the war fields of the Flanders... that was west of the city of Ypres and Brussels. So, the west end of, of course, terribly battered Belgium, much of it still the First World War battering still to be seen. So, it was a tour of the First World War sites that he had known and worked for and, yes, we walked along lots of the remains of trenches and we went to Passchendaele and we saw a lot of the cemeteries which the British in particular had done so beautifully after the First World War.

They just stretch out, still. Of course, a lot of people are visiting them this year; they seem to have become a tourist trap.

26. It must have been very moving, Professor Cornish.

Yes, it was, in a kind of unstressed manner. We knew what we were looking at. It was great to meet these young Americans. I had met very few Americans before that and sadly I haven't really kept in touch with most of them, we all went off and did our own things. You get overtaken by student life, don't you?

So, that was in the summer that I was with them. I also got in three weeks with a French family to do something about my French, which I bicycled for four days from the... a little plane took me and my bike and my suitcase over to where the Seine comes out into the sea, in Normandy, and I bicycled up the Seine, camping at night in a tiny tent I had.

27. On your own?

Yes, absolutely on my own. So, it gave me if nothing else the smell of old France, because they smoked the most fumous black tobacco and everywhere you went there was just this smell in the towns and villages. They were pretty poor still, many of them.

28. This journey that you undertook by bike - was this planned by yourself?

Yes, I can't remember how we found the basic link to the family, except that it was a

¹³ John Gilbert Winant, OM (1889-1947), US Ambassador to UK (1941-46).

¹⁴ Joseph Patrick "Joe" Kennedy, Sr. (1888-1969), US Ambassador to UK (1938-40), resigned the post following furore over his anti-British views.



lady called Miss McPherson who did this kind of finding for people, to place them with French families and she got some small cut, something tiny I would think. So, I paid them to have me and I guess my parents funded that, and very useful it was.

29. Yes. Intrepid to say the least.

It was just so sad to see Paris in ruined condition, suddenly with these dreadful events last week.

30. Extraordinary the way they've galvanised this response. They seem to know exactly how they feel about things, there's no ambivalence It's quite moving.

They're not going to stand for it. Whether that lesson is going to be learnt so that it all comes down or just makes it worse.

So that's about everything up to going to university in Adelaide.

31. You returned and enrolled at Adelaide. As I understand, you did an LLB - you didn't do a pre-degree?

No, because that was not the system. There was simply a law degree and that all changed in Australia, as you know, about 20 years later, when so many more people were going to university. There were more universities. Still in South Australia there was just the University of Adelaide in 1956 when we started, so that was where the law degree was and anybody who wanted to become a practising lawyer or eventually a judge would have to go through that channel.

32. Had you always planned to do law, because of your father?

No. I hadn't. I didn't have much idea about what I wanted to do at university. So, in the end I just slipped into doing a law degree somehow. I had very little impression of what it would be. Again, we had some good teachers, particularly those who were full-time university staff, but they were in short supply. The law school in Adelaide had a professor, the [Benithem? 70.35] professor of the law, after the donor who had provided it. It was occupied by a distinguished man who'd been a Rhodes Scholar to Oxford, Dick Blackburn¹⁵, but he was wanting to move on and enter practice and did in the end become a federal judge and did a fine job I think. There was a New Zealand Catholic called, Daniel Patrick O'Connell¹⁶, who was taking up almost for the first time in Australia, public international law. He came to Cambridge and did.....

33. D P O'Connell?

On the law of the sea and all the things he did in his all too short career. He died in his mid-fifties

34. I didn't know that. Did he teach you, Professor Cornish?

Yes, he taught us jurisprudence. He was certainly a self-willed man, so our jurisprudence course got as far as the last great saints as it were, Catholic writings and things of this kind. In other words, the mid-seventeenth century and after that it was all Bentham, you know, who just dismissed that but we learnt quite a lot from Dan. There were others who

¹⁵ Sir Richard Arthur (Dick) Blackburn, (1918-1987), Bonython Professor of Law, University of Adelaide (1950-57), judge of Federal (1977-82) and Supreme (1982-85) Courts of Australia.

¹⁶ Daniel Patrick O'Connell, (1924-1979), Chichele Professor of Public International Law, All Souls College, Oxford (1972-79), New Zealand barrister.



came because the law schools in Australia were beginning to fill up with people from all round the Empire who could teach the common law in some sense and some of them were very good, some of them were even second generation Australians from immigrants from Europe, who were able to take a broader look at civil law backgrounds and so forth. So, it was beginning to change, but some of them, particularly the more practical subjects, were simply taught by practitioners in the little Adelaide legal community. Some of them just came and read out somebody else's notes, you know, bad as that. That's how we learnt land law. Terrible, but it wasn't all darkness. There were some very learned people who talked to us and there was one, Leo Blair¹⁷, who taught us Roman law. He had come out with his very young family of three boys, or whatever it is, including Tony, number two, to the political science department, because he was a Scots lawyer, trained in Edinburgh. So, he didn't mind, in a year when most of the permanent staff were overseas collecting themselves either [inaudible 73.44] or wives, he didn't mind coming over and teaching Roman law. Of course, it's part of the Scots tradition but, particularly when his wife went back with the children to England and he stayed on to finish the year, he became a great social figure in our little circle of law students, because we were very small, there was only something just over 20 in a whole year in the 1950s. That of course all follows from what I said earlier about the legal profession as a whole being tiny in the place because of the land register and all of that had come to mean, with land agents challenging the lawyers. So, Leo Blair was great fun, he really was tremendous and I hope still stays that way, he's pretty sick. I don't think he's died. It hasn't been easy but he's over in Wrexham. I can't report on Tony. He didn't come our way but I have met him a couple of times since. So, we got through a respectable set of legal subjects, much influenced by... particularly by those who had been to an English law school, such as those who went over on the Rhodes scholarships to Oxford and people like Dan O'Connell, who went to Cambridge because it was the place to do international law then, as now. McNair¹⁸ and Lauterpacht¹⁹, big names like that were all here, so he got the right spot. [Other names that Professor Cornish mentioned in a subsequent conversation were Igor Kavass²⁰; the "ebullient public lawyer" from Melbourne, Alex Castle; and Colin Howard²¹]. Then there was a question of what to do next and most of my group only thought in Australian terms, hadn't been overseas and I had, although I think that's where it made all the difference. I really couldn't wait to get to a better law school, more in the centre of change, of legal education. By incredible luck, I was in the first year of the British Commonwealth scholarship scheme which was being started between mainly at that stage the Dominions and Britain, and I was lucky enough to get one of the scholarships. This was a huge expansion. There used to be two scholarships a year to get to Britain, out of the whole state of South Australia. Well, we weren't a big... and that's for all subjects. So, it shows you how remote and primitive it all was, comparatively speaking

It would change quite soon afterwards in much the same spirit as the Robbins

¹⁷ Leo Charles Lynton Blair, (born Charles Leonard Augustus Parsons) (1923-2012), barrister, lecturer at Adelaide University, and Durham University, father of Tony Blair, the former Prime Minister of the United Kingdom.

¹⁸ Lord, Professor Sir Arnold Duncan McNair, (1885-1976). Whewell Professor of International Law, University of Cambridge (1935-37), Professor of Comparative Law (1945-46).

¹⁹ Sir Hersch Lauterpacht, (1897-1960). Whewell Professor of International Law (1938-1955), Judge of the ICJ (1955-1960).

²⁰ Igor Kavass (1932-2008), Professor of International Law

²¹ Colin Howard QC, (1928-2011), "a criminal law specialist from London", who became Hearn Professor of Law Melbourne University (1965-1990), and Vale Professor Emeritus, Melbourne.



Report²² induced a vast expansion of university places and so forth in the early sixties, in this country. That's all up the scale of course. So, that was the chance to do... to go to Oxford and do the BCL degree, which, as my tutor there described, was the best law degree in the world. I think he was talking just as a common lawyer, but he didn't mince his words

35. So, you arrived probably at the start of the term in the gloom of an Oxford autumn [1960], from your nice Adelaide spring.

Wet, wet, cold.

36. But, not quite the cultural jump or leapfrog that it would have been had you not had that wonderful gap year.

Yes. That's why I found it easy. Longing to get back to see what had happened to the country in four years, how much had been repaired in the late fifties, bringing it back to something more like the civilisation it had been. Of course they were exciting years, the sixties.

37. Worldwide student unrest.

Student unrest, yes. I hit that but I don't that hit until 1968, so we'll leave that until the next edition. Of course the LSE, where I was teaching by then, was a hot bed of radicals and everybody who piles in on those occasions to be seen on the battleground. So, Oxford. Oxford ran its degree then, quite sensibly in my view, so that those who were coming from outside Oxford, who hadn't done an undergraduate degree there, were required to do two years' study. Those who'd been at Oxford did only one year. They did just the specialised courses. We would have had a year of being trained up to their level so we could be with them, as it were, in the second year

And of course they've changed it now so that most people do it in one year still I think but I'm not actually up to date on that. So, there we were in Oxford and suddenly I was amongst a high of... a cohort of highly committed legal students. The Adelaide crowd hadn't been quite like that. There were three or four of us who were struggling to do something serious academically there but this was totally different. There were great teachers around.

38. Did you encounter people like Hart, for example?

Hart I heard deliver the concept of law as he had written it out in his bed in pencil that morning and gave to us and I do remember the room being full of strident Americans, listening to him, because they always had something to say. They mightn't be able to write it terribly well, but boy, they crashed in with their own theories and so forth, so that made it more exciting as well. And Herbert Hart²³ also took... was one of a bunch of people who were building up a course on criminology for the first time in Oxford and it was great to have him and some other very interesting people, including Rupert Cross²⁴, the famous blind lawyer of Magdalen College Oxford, whose real subject was the law of evidence, *Cross on Evidence*, and a number of other really significant teachers, all would be doing better than anything much that had gone on in Oxford before the Second World War and the arrival of the Jewish émigrés looking for academic posts. That of course made such a difference to

²² The Robbins Report (1963), Higher Education. Report of the Committee appointed by the Prime Minister under the Chairmanship of Lord Robbins, Command Paper 2154.

²³ Herbert Lionel Adolphus Hart, (1907-92), Professor of Jurisprudence Oxford University (1952-69).

²⁴ Sir Alfred Rupert Neale Cross, (1912-1980), Vinerian Professor of English Law, University of Oxford.



academic life here, as we all learnt from the great book by Beatson and Zimmerman²⁵ and of course the work of Kurt Lipstein²⁶.

39. Who had two entries in the book.

Indeed, but also kept the whole connection with civil law as a major preoccupation in Cambridge, as opposed to the school which believed in particular we should never be joining the European Community and the constitutional changes that were being made at that stage to the idea of parliamentary sovereignty would wreck us in the end. Very prominent. We represented in Cambridge, not only from... by people from this country, but also people coming from countries like South Africa.

40. Oh really?

Colin Turpin²⁷ was very suspicious of what was happening.

41. I think Tony Weir²⁸ was.

He undoubtedly was.

42. He wasn't South African obviously but I just remember reading a book review which he used as a ...

To carve somebody up. Yes. So, in some respects Cambridge was slow on that, surprisingly, given its building reputation in public and international law and the difference that someone like Hersch Lauterpacht was making to the place in that field. A really distinguished scholar. So, in my BCL second year, when we were doing subjects new to most of us, and there was this highly competitive atmosphere going on, in particular learnt a lot from the best scholars by a tutor at... I was at Wadham? College, the law tutor there was the redoubtable, Peter Carter²⁹, his two subjects were evidence and private and international law. So, we had to opt for them as BCL subjects and we could go off and do the criminology and jurisprudence and so forth as well. That was a really stimulating experience, it was. So, I started to look around towards the end of that about how I could stay in Europe and one thing was to go to the English Bar and I did do my Bar finals.

43. At the same time?

No. Not quite, but in the year when I first started teaching, I did that with a view perhaps to staying there. There were other things going on as well. There was some interesting civil law teaching run by two rival institutes, one in Luxembourg, I think it was Luxembourg, and the other in Strasbourg at Easter each year, for three weeks or something. It was a variable experience because those who went and did that teaching were on holiday; lunch lasted a very long time. The lecturer after lunch, if they didn't fall asleep, would be a jumble of words but, you know, it was contact of other traditions, very likeable people. I did go and teach on it myself a bit later on and enjoyed doing that. Where the money came from it was undisclosed. This was people trying to get their own act into position so that they could be some influence, like what we would do in Warsaw 30 years later and it was a chance

²⁵ *Jurists Uprooted: German-speaking Émigré Lawyers in Twentieth-century Britain*

Edited by Jack Beatson and Reinhard Zimmermann, OUP, 2004, 872pp.

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

²⁷ Colin C Turpin, (1928- 2019), Emeritus Reader in Public Law, University of Cambridge.

²⁸ J. A (Tony) Weir, (1936-2011), Reader in Law, Trinity College.

²⁹ Peter Basil Carter, (1921-2004), Fellow and Tutor in Law at Wadham College, Oxford. Awarded Croix de Guerre with silver star by France for actions in Normandy.



to do it all in French. Of course French was the dominant language. So, yes, interesting.

44. This experience must have begun the sort of germination of some of the ideas which you developed later in your experiences with Warsaw, and so on.

Indeed, yes. So, then there was the possibility of teaching in England and Mr Carter went down to visit a very grand friend, Otto Kahn- Freund³⁰, who was at the LSE then and, Otto, said, “We have an assistant lectureship going, got anybody to apply?” so I applied immediately and amazingly after a terrible interview, I thought, got the job. So, that really fixed things.

45. Yes, a major event in your career

Yes, from which I didn’t look back.

It was clear I wanted to be a teacher and not have a life of dealing with clients and putting arguments forward and trying to think out what the other side was going to say and all that stuff, which would have been a career at the Bar. But, I’ll say a word about that when we get on into my career as it developed, I think, because I did go and do a pupillage in order to become a sort of competent intellectual property lawyer, whilst teaching at the LSE and that was....

46. Looking back, how you found time for all these, is just....

Yes, I just went and did them. Everything was easier then. What was expected of you was more limited. There weren’t tests like the REF [*Research Excellence Framework*]. I couldn’t have had a career like mine, doing a lot of little things on a pretty broad scale, in the present generation, unless there was some magic subject there that no-one had ever looked at or was being important for the first time, looked worth making a career of. That’s what youngsters face today.

47. When we finally come to your scholarly work, it will be fascinating to hear how you came from Adelaide, to this strange foreign milieu and you basically picked up a ball that had actually been unnoticed by others and you ran with it. It’s very fascinating you did... perhaps having come from a milieu that gave you some insight into what could be done.

I think it did and I found a lot of likeminded people at the LSE. It was really led by great figures like Kahn-Freund and Gower³¹ of company law. They were well ahead of much of what was going on, what they regarded as the fringe subjects. Things we wouldn’t dream of sending kids out without these days.

48. Well, Professor Cornish, in our second interview we can hopefully start with your time at LSE. We’ll take that through until your retirement at Cambridge.

Okay, that’s fine by me.

49. And then the third interview will be scholarly work. So, if you think that that there’s nothing more which you can add at this point, all I can do is thank you very much for a truly fascinating account for which I’m very, very grateful. Thank you so much.

³⁰ Sir Otto Kahn Freund (1900-1979), Professor Comparative Law, University of Oxford, 1964-1971.

³¹ Laurence Cecil Bartlett Gower (1913-1997), Hon Fellow LSE 1970, Vice-Chancellor, University of Southampton 1971-1979.



Yes, well I've quite enjoyed having to think back through it all and wonder what I should stress, so I think I've covered what I wanted to say.

