

Conversations with Professor Sir Bob Hepple
Second Interview: Cambridge and UK (1963 - present)

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Between August 2007 and June 2008, Sir Bob was interviewed three times at the Squire Law Library to record his reminiscences of over forty years of an eventful legal career, during the last thirty of which he has been involved with the Faculty of Law at 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 three interviews for use in a database of citations made across the Eminent Scholars Archive to personalities mentioned therein.

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

Sir Bob's answers are in normal type.

Comments added by LD, *in italics*.

All footnotes added by LD.

44. Professor Hepple, this is our second interview. The first was in August last year when you covered the period in your life between your early years as a boy in Johannesburg, through your training at Wits and to the point at which you left South Africa in 1963. Perhaps today we can deal with your life post 1963, when you were based in the UK, and can I ask you cast your mind back to the end of that year when you first arrived here?

Yes, well I arrived in England on a cold December day seeking asylum and I said to the immigration officer that I intended to study at university, and he asked me, "Where are your letters of acceptance?" and of course I didn't have any. So he immediately served me with a deportation order to go back to Tanzania, where I had already been granted asylum. But my friends outside contacted Canon John Collins¹, who was a very good friend of those involved in the anti-apartheid struggle and he, I was told, then phoned on a Sunday morning the Home Secretary who was then Henry Brooke². I was let in for seven days and then I was let in indefinitely. After three years because I was granted British citizenship on the basis of patriality that was my grandfather had been born in England. So that was how I came into the country and I then had a wife and two small children to support and I had thought about trying to practice at the Bar in England but I had no contacts and I had to do all of the training as well, and I thought I would go back to an academic career. I realised I needed to get a degree in English law and I was thinking of going to London University but a South African friend put me in touch with Ken Polack³, who was a former South African, a Fellow of Kings

¹ 1905-82. UK-based Anglican cleric who founded (1981) and ran the charity Canon Collins Educational Trust for Southern Africa. Helped to found the International Defence Aid for Southern Africa. Also a prominent member of the Campaign for Nuclear Disarmament (CND).

² 1903-84. Baron Brooke of Cumnor. Conservative Party Home Secretary 1962-64. Last Home Secretary to preside over carrying out of death sentence in UK.

³ See item 37



and lecturer in Roman Dutch law in the university and he invited me, him and his wife, Rosemary Polack, who was a Cambridge solicitor and I can remember meeting in their small flat in King's Parade. There I met for the first time, Colin Turpin another South African, who was a Fellow of Clare and I also met again my old friend, Charles Feinstein⁴, who I had known and who was a Fellow in Clare as well in Economics. And between them they encouraged me to come to Cambridge to study, and they put in a good word for me with the then Master, Sir Eric Ashby and the senior tutor, Dr Northan and I was admitted to read what was then called the LLB, now called the LLM.

45. And this took you two years rather than the normal three years because you had already acquired...

No, it was a two year degree because I came as an affiliated student and I had the choice of either doing the Tripos in two years or doing the post-graduate LLB, and I opted for the LLB, I didn't feel like going through the Tripos regime. And at that time you had to spend two years in Cambridge, now it is only one. But the first year I took four subjects, the second year I had to write a dissertation and so I got the LLB over two years.

46. I see, and this dissertation, was this supervised by O'Higgins⁵?

That's right, it was, yes. When I finished the first year, I was looking for a subject and I had been struck, I mean perhaps I could talk about this in a later interview, then I can explain then how I came to the subject, but O' Higgins was a wonderful supervisor so I got to know him then. The subjects I took in the first year also introduced me to some wonderful teaching. First of all I did Conflict of Laws and I had Professor Lipstein⁶, he is one of the best teachers I have ever had. Then I took a subject called Negligence in English and Roman law with Mr Mickey Dias⁷, and he too was a very systematic, a very clear teacher and it was a wonderful bridge for me between South African law, Roman Dutch and English law because we were comparing what I was familiar with, the *Lex Aquilia* with the English concepts and duty of care and so on, and I learnt really my foundation in English law taught through Mickey Dias. For a long time I was very influenced by his approach but later I changed my mind. And then the third subject I took was Administrative Law and there I had some wonderful teachers as well; Professor Tony Bradley⁸, he wasn't a professor then, he

⁴ Charles Hilliard Feinstein, 1932-2004, b. Johannesburg, Arrived Cambridge 1954. Fellow of Clare College 1963-78. Chichele Professor of Economic History, Oxford, 1989-99. Times obituary: <http://www.timesonline.co.uk/tol/comment/obituaries/article405099.ece>

⁵ 1927-2008, Fellow of Christ's College 1959-84, Vice-Master 1992-95, Regius Professor of Laws, Trinity College Dublin 1984-87, Professor of Law, Kings College London 1987-92.

⁶ See entry in Eminent Scholars Archive:
http://www.squire.law.cam.ac.uk/eminent_scholars/kurt_lipstein.php

⁷ See entry in Eminent Scholars Archive:
http://www.squire.law.cam.ac.uk/eminent_scholars/rwm_dias.php

⁸ Emeritus Professor Anthony Bradley, University of Edinburgh, 1990- .
Bradley, A., & Ewing, K. D. *Constitutional and Administrative Law*, 14th Edit. 2008.



was a Fellow of Trinity Hall, Geoffrey Wilson, later founder of the Law School at Warwick, he was a Fellow of Queens and also Paul O'Higgins, who did some of the Administrative Law teaching. So that took me into that field as well and I did company law and there I had Ken Polack and Len Sealy⁹ were my two teachers, and I had studied Company Law in South Africa but this was a much broader course, which had originally been devised by Bill Wedderburn¹⁰, later Lord Wedderburn, and Wedderburn had just left Cambridge where he had been a Fellow of Clare and he used to send me every week his handouts from the LSE, which gave me a lot of ammunition to fire difficult questions at Ken Polack and Len Sealy, and so it was a very stimulating year.

47. A very busy year because you were also called to the Bar in that year?

Yes, over the vacations I did the Bar course, which was different from what it is now. I was given exemption from most of the first part but I had to do the second part and I took the exams and it was quite frustrating because, for example, we had to do company law and in those days they didn't let you take into the Bar exam, a copy of the statute. I can remember writing essays, there was a firm called Gibson & Weldon, who used to do this, a correspondence course, and I would write these essays and they would come back with a very poor mark saying, "Don't quote all these cases, just memorise the sections of the statute"; I was telling them too much, and I had to refine my technique having done the university course for the kind of very low level Bar course that we had in those days. So I did those exams and then I was called by Gray's Inn in 1966.

48. In that same year, you went to Nottingham University where you stayed for two years. Were you a lecturer there?

Yes, what had happened was that when I got First Class in my LLB exam and one of the examiners, I think in the negligence course, was Alan Pritchard, the brother actually of Michael Pritchard of Caius College, who was a... I don't think he was a professor then, but he was a lecturer at Nottingham University, an extraordinarily nice warm generous man, and he was on the lookout for lecturers and he asked Kurt Lipstein was there anybody who was interested, and Kurt, unknown to me, suggested my name. I was then invited for an interview and they offered me the job and held it open for a year while I finished my second year dissertation. So then I moved to Nottingham and there I came very much under the influence of Professor Sir John Smith¹¹, who was one of the originators in this country of case method teaching. He had this wonderful casebook on contract. It is a well-known American style and I was slightly familiar with it from my earlier days in South Africa when Professor Hahlo, my Head of Department, had used it. But he encouraged me to use it in the Law of Tort and I was primarily responsible for teaching tort and I found this the best way of teaching, I really enjoyed it and I developed my own set of cases and materials, which eventually led to the publication of my casebook. And one of my students there was in my first year, there was

⁹ Leonard Sealy, B J Berwin Professor of Corporate Law, University of London

¹⁰ b. 1927. Kenneth William Wedderburn, Baron Wedderburn of Charlton, QC, Labour Party Peer 1977.

¹¹ 1922-2003. Read law at Downing College 1947, Professor of Law, University of Nottingham 1957-87.



Martin Matthews, who then came to Cambridge, came to do a graduate course and we edited this book together. So that was, I think, a big influence, John Smith and Alan Pritchard.

49. A very productive time early in your career in the UK?

Yes.

50. You became an assistant lecturer at Cambridge in 1968 and you stayed in this position for the next eight years. What were the circumstances of your return to Cambridge?

Yes, well I liked the Nottingham Law School but my then wife just didn't settle very well in Nottingham and she was very keen to come back to Cambridge, we had had two very happy years living in college accommodation in Cambridge. So I applied to Cambridge and I was appointed firstly to an assistant lectureship and then after three years upgraded to a lectureship in Cambridge. And at the same time I was invited to become a Fellow of Clare College, so that was for that eight-year period. Those were probably my most productive years.

51. Do you have reminiscences of any of the people who were in place when you came back to Cambridge?

Yes, well let me say that in my career I have had a number of very important academic influences; one always is learning from one's colleagues and it would be invidious to single out too many individuals but I think the people who influenced me most were first of all, Paul O'Higgins because he had supervised my research, arranged its publication in the form of a book called *Race, Jobs and the Law in Britain* in 1968 and the second edition 1970. But he immediately invited me to share the Labour Law lectures with him and we developed a remarkable partnership over that period. First of all, we got a lot of research students: that was a time when Labour Law was very prominent on the public agenda, there had been a report by the Royal Commission under Lord Donovan¹²; the Conservative government introduced its Industrial Relations Act in 1971 to try and restrain the unions. There had been the miners' strike of 1974 and the Heath government fell and a lot of new laws coming up, the law of unfair dismissal, all of these things that we didn't have before. And Paul and I got the opportunities then to write quite extensively, we wrote first of all a book on individual employment law and various other things, which I can talk about on another occasion, but we did that. And the other big thing we did was we got together a group of research students. It was easier for those from the UK to get research awards in the 1960s and 70s and we had at one point as many as 16 people doing research in Labour Law in the early 70s, and many of them have gone on to important careers. Such as Patrick Elias¹³, who is now the President of the Employment Appeal Tribunal [LD: 2006-09]; Brian Napier, who became a professor, he was a lecturer here and then a professor [at Queen Mary]¹⁴ and now practises at the Scottish Bar. A whole range of other people who went on to become either academic or practising lawyers in this field and we used to have regular weekly seminars just on Labour Law. We

¹² Lord Donovan (Chairman), *Royal Commission on Trade Unions and Employers' Associations 1965-1968*, HMSO, Cmnd 3623, 1971.

¹³ b. 1947, Sir Patrick Elias QC, Judge of High Court Queen's Bench 1999.

¹⁴ Head, Centre for Commercial Law Studies, University of London



also attracted, in that period, some visiting professors, so two of the Arthur Goodhart¹⁵ professors were labour lawyers. One was Sir Otto Kahn-Freund¹⁶ about whom I will say something in a moment; the other one was Professor Folke Schmidt¹⁷ from Stockholm. And we also got Archibald Cox¹⁸, who was the Pitt Professor of American history [LD: *Pitt Professor of American Institutions in the Faculty of Social & Political Sciences, Cambridge*] but in fact was a well known and leading American labour lawyer as well as having been the man who was sacked by Richard Nixon¹⁹ when he was investigating the Watergate or other scandals. So it was a very fruitful and enjoyable period for Labour Law. But Labour Law wasn't even regarded as my main subject by the faculty, my main subjects were Contract, Tort and also Administrative Law in the LLB. The LLB at that time had a rather small class, about 50 people, and I shared the Administrative Law with my friend, David Williams²⁰, who later became Vice-Chancellor. And then Professor Stanley de Smith²¹, who is really one of the founders now of modern administrative law, was appointed to the Downing Chair and I was asked to sort of move aside so he could take over, which I was very glad to do because he was such a distinguished and very nice man. And I worked with him in other capacities but that meant that I gave up Administrative Law, which I saw as one of the biggest mistakes of my career because it was just the most exciting moment for administrative law. The case of *Ridge v Baldwin*²² had been decided in 1964 and there were huge developments in judicial review and I always felt that that was what I should have been doing as well as Labour Law but I kind of missed the boat because I had got into other things. So I was Tort and Contract, Labour Law and some Administrative Law as well, I was teaching both in supervisions and in lectures.

¹⁵ See entry on Eminent Scholars Archive:
http://www.squire.law.cam.ac.uk/eminent_scholars/arthur_goodhart_professors.php

¹⁶ 1900-79, b. Frankfurt-am-Main. Professor of Comparative Law, University of Oxford. Member of the Donovan Commission - see item 51.

¹⁷ Professor of Private Law, 1956-80. Founded Stockholm Institute for Scandinavian Law, 1956.

¹⁸ Archibald Cox Jr (1912-2004). US Solicitor General 1961-64 (Under President Kennedy), First Special investigator for the Watergate scandal 1973 (Sacked by President Nixon).

¹⁹ Richard Milhous Nixon, 1913-94. President of the USA 1969-74.

²⁰ Sir David G. Williams QC, Emeritus Rouse Ball Professor of English Law, Former President of Wolfson College

²¹ Stanley Alexander de Smith, 1922-74, Downing Professor of the Laws of England 1970-74. Fellow of Fitzwilliam College. Editor of *Cambridge Law Journal* 1973-74.
http://en.wikipedia.org/wiki/Stanley_Alexander_de_Smith

²² *Ridge v Baldwin* [1964] AC 40, 65



52. Very interesting. Well your work was very significant during that period because your next appointment was to a Chair and that was at the University of Kent [1976].

Yes, well the University of Kent²³. I was invited by Professor Claire Palley²⁴, who is also a former South African, and Professor Brian Simpson²⁵, to come to Kent and they created a Chair for me and I think I succumbed to flattery, and it turned out, I am afraid, to be a mistake. Because when I got there I thought it was a university based on a collegiate system like Cambridge, but it couldn't work in a modern university because the individual colleges, there were four colleges, had no resources of their own and everything was planned by central bureaucracy. So one moment you would be teaching in Keynes College, Kent and the next moment in Elliot College on the other side of the campus and the law students were divided between the four colleges. There was no faculty building. You didn't ever meet your other law colleagues who were in other colleges, rather like an unreformed Oxford, but Cambridge never suffered from that. And so after a year there, I was approached to become a full-time Chairman of Industrial Tribunals. I had been a part-time chairman in Cambridge since 1974 and I just kind of needed a way out of Kent. But I wanted to stay living in Canterbury because my children were at school there and my parents had moved to Canterbury as well: I didn't want to disrupt that and this job in Ashford in Kent came up. So I spent five years in Ashford as a chairman of industrial tribunals but I remained an honorary professor at Kent and I used to lecture on a course on, I think it was called, Labour Law and Industrial Relations, at Kent. I used to go once a week and give my lectures. So I kept a connection with the academic world and I also wrote what was probably regarded as one of my more important books because I had a lot of free time as a Chairman of Industrial Tribunals, a much easier, but better paid, job than being a professor.

53. Well, this period must have coincided with the time of considerable unrest leading up to the 84/85 miners' strike?

That happened afterwards. There was a period of unrest, I mean it had been going on since really the 1960s right down from you, might say the early 1980s, the miners' strike of

²³ <http://www.kent.ac.uk/law/>

²⁴ Academic, specialising in foreign affairs who was United Kingdom representative to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities from 1988 to 1998 and Constitutional Consultant to the President of Cyprus from 1980 to 2004. Former wife (divorced 1985) of Dr Ahrn Palley (1914-93), politician in Rhodesia who was critical of Ian Smith's UDI government.

²⁵ b. 1931. Professor at Kent 1973-85. "As Professor of Law at the University of Kent, A[lfred] W[illiam] Brian Simpson played a crucial role in the development of the University's Law School. By the time he left Kent in the early 1980s, he had held the post of Head of Department as well as that of Dean of the Faculty of Social Sciences. He then went on to hold a professorship at the University of Chicago and is now Charles F and Edith J Clyne Professor of Law at the University of Michigan. A specialist in human rights, he recently helped conduct a course for Croatian lawyers in Dubrovnik and in 2001, he was appointed Honorary Queen's Counsel. His publications include *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*; *A History of the Common Law of Contract* and *A Biographical Dictionary of the Common Law*." Taken from University of Kent website, Honorary Degrees, 7th July 2003.



84. So it was going through the period, but as a Chairman of Industrial Tribunals I wasn't much concerned with that because industrial tribunals deal with individual disputes, so I was dealing with unfair dismissal, race and sex discrimination. For example, when I was sitting in Cambridge I heard the very first case of indirect sex discrimination here in Cambridge, and the first decision on the subject reported was given by me in Cambridge. Similarly when I was sitting in Kent, I developed because of my academic knowledge, the notion of the duty of mutual cooperation, which was very little used in labour law until then. But I gave a judgment, which was reported, and it is now regarded as one of the basic tenets of Labour Law. I was able through my judicial work to actually develop some ideas because you are always getting rich new material in cases.

54. So it must have been very fulfilling, the work?

Well, it was actually in one respect fulfilling, because you were dealing with real people in the real world, but it became very boring. Because, I think, most judicial work is about facts and every case is different, there is not a lot of law in it. So as somebody who has always been intellectually fascinated by law and had been a professor of law, I think I was frustrated. I stayed for five years and then thought well now is the time to get back. And I was about to go back to the University of Kent, who had said that they could find a position for me, and the famous letter came around from the University Grants Commission 1981 or 82 making drastic cuts in funding and Kent could not then fund the post. That is when I applied for the job at University College London.

55. And this was a Chair?

Yes.

56. Which you held from 1982 to 1993 and you were the Professor of English law?

Yes.

57. Do you have any specific memories of this time?

Yes, well I mean the interesting thing you might ask is why did I become professor in English law? University College London was the first university in the United Kingdom to have regular teaching of English law. Blackstone²⁶ had started lectures on English law at Oxford but all of this soon died out. And Cambridge, although it had the Downing Professor of the Laws of England, was not teaching English law until late in the 19th Century. But in 1828 University College London was founded for the dissenters, for the non-Anglicans; the Catholics, the Jews, the agnostics and all the rest and the first thing they did was establish a faculty of law and they had two Chairs. One was the Chair of Jurisprudence, which was held by Austin²⁷, who was the famous disciple of Bentham²⁸; and the other was held by Andrew

²⁶ 1723-80, Sir William Blackstone, Inaugural Vinerian Professor of English Law, Oxford, 1758-66, author of *Commentaries on the Laws of England* (1765-69)

²⁷ 1790-1859, John Austin, Jurist and legal philosopher, Professor of Jurisprudence, University College London 1826-32.

²⁸ 1748-1832. Jeremy Bentham. Inspired the founding of University College London 1826.



Amos²⁹, who was actually a practitioner and judge, who was the professor of English law. And I was appointed to the Amos Chair, and I remember Sir James Lighthill³⁰, who was then Provost of University College, saying he had Amos in me and he had in Professor William Twining, who was appointed at the same time, Austin. He wanted to re-establish that kind of connection, because I came from the practical side whereas William Twining was a theorist. So I think in many ways I had some of my very best teaching years at UCL. I had a thoroughly enjoyable time. I think it is a wonderful institution and a wonderful faculty, of which I became Dean and Head of Department in 1989, I think it was, yes 89.

58. Did you move down there, Professor Hepple, to London?

Yes, I mean I had been living in Canterbury and then lived in London until 1993.

59. So, during this time what were your impressions of government legislation in the early 80s that so drastically reduced the power of the unions?

Well, I found myself quite often on television commenting on things like the miners' strike and so on, not on the merits, but more on the legal position because this was a huge confrontation. Mrs Thatcher³¹ wanted to restrain the power of the unions and she basically took away the right to strike, limited it very severely and restricted collective bargaining and generally that coincided with an economic period in which Britain was moving from manufacturing, where the unions had the greater strength, to service industries and also the feminisation of the workforce was taking place. So there were huge structural changes as well as legislation and one saw the role of the unions changing dramatically. At the same time what was happening was what some people called the juridification of law, that is all sorts of disputes like dismissals, discipline, discrimination, which would have been dealt with informally now became the subject of legal regulation; so it was a period of major change. The irony was that I wasn't actually teaching much Labour Law because there was already a Professor of Labour Law at UCL called Professor Roger Rideout and although I did a bit of teaching on that course, I think I did some discrimination law and I started my own seminars on discrimination, I wasn't in the main stream of Labour Law at that time. I was rather teaching my main courses which were Contract and Tort. And then came the influence of Glanville Williams³², which had existed before when I was at Cambridge as a lecturer.

One day in the early 1970s, Glanville Williams knocked at my door and he said, "I have got these boxes of papers on the law of tort, I would like you to look at them. I started writing a book, I am now concentrating on criminal law and I would like you to look at this and see if you would be willing to complete this." Perhaps I can talk more about that later,

²⁹ 1791-1860, b. India. Inaugural Professor of English Law at UCL 1829-1837, Downing Professor of the Laws of England, Cambridge, 1849 - 1860

³⁰ 1924-98. Mathematician, Provost of UCL 1979-89, died attempting to repeat the feat of being the first person to swim around Sark (1973).

³¹ b. 1925, Margaret Hilda Thatcher, Baroness Thatcher, Prime Minister of UK 1979-90.

³² Glanville Llewelyn Williams, 1911-1997, Rouse Ball Professor of English Law 1968-78.



but Glanville Williams' conception was of, if you like, a unified Law of Obligations, not a narrow division between contract and tort and restitution and that influenced my approach.

So when I came to UCL and had complete freedom, unlike Cambridge where you do not have freedom because you have got so many other people teaching in a topic and you have to get their agreement, I could devise my own course and I devised a course on the Law of Obligations. So we taught in an integrated way over two to three years, the Law of Obligations and we mixed it between contract, tort and restitution all in the same cycle of three years for all students. So that was a very interesting experience and there were some colleagues, who worked very hard to achieve that. So that was the main work I was doing. It had to be reduced when I took on the role of Head of Department.

60. Nevertheless, you still maintained your interest in industrial relations at this time?

Oh yes, and I remained part-time Chairman of Industrial Tribunal, I used to sit at London North, the tribunal was about once a week over that period as well.

61. So, Professor Hepple, what actually are your views on this new, if you like, sort of industrial relationship between the government and the unions...

It is a big topic, I don't know if I can give a simple answer. I think my views have changed. I am certainly not a supporter of the neo-liberal ideology of Mrs Thatcher, which seemed to think, I think she famously said that, "There is no such thing as society, there are only individuals" and I don't accept that. I think there is society and I think what we have moved towards is a notion of Human Rights to protect the individual, but you have still got to recognise the collective interests of society, and an important part of the collective interests are the groups of, if you like, autonomous organisations. Universities are one, which have lost so much of their power and autonomy; another would be the Inns of Court and the third is the trade unions, where it seemed to me they needed some reform but unions are a basic expression of democratic will because they involve ordinary people in deciding on their working conditions and their lives and I therefore was opposed to a lot of her legislation. Although I fully recognise that the unions too were, in a sense, abusing their power; at one point they were going in for all of these strikes. For example, the famous winter of discontent in 1979/1980, which seemed to me an abuse of their position and so, in a way, they were asking for it.

62. Did you ever meet any of these personalities, the union...

Yes, I knew quite a number of the leading union figures like Jack Jones³³ and others and I did a lot of work for the TUC and I was involved in advising the TUC on its proposals for legislative reform. I also advised somebody called Tony Blair³⁴, who was the employment spokesman for the Labour Party at that time. I was in a group of academics, who were giving advice but he didn't always follow that advice. So, no, I was involved in that but in a way, in the background.

³³ 1913-, trade unionist, General Secretary of Transport & General Workers Union 1968-77, instrumental in establishing Advisory, Conciliation & Arbitration Service. Served in the International Brigade in the Spanish Civil War (1938).

³⁴ b. 1953, Anthony Charles Lynton Blair, Prime Minister of UK 1997-2007.



63. EU legislation has had quite an effect on this area of the law, in your view for the better?

From a British point of view, for the better, but I think my first contact with it came in the 1970s when I was still in Cambridge and I was appointed to one of the committees of experts, at that time dealing with the directive on the transfers of undertakings and then I was on several other EC committees. And I began to realise that the mistake the EC was making, was to make very specific directives on particular matters. We couldn't really harmonise, even partially, the laws of the member states, and I started advocating in, I think it was the early 80s, that a different approach should be taken. That was to have a broad framework directive, particularly in defining fundamental rights and that the member states should then have greater freedom as to how to achieve the objectives. And that, I am glad to say, is what has happened in the EU and it was inevitable once they enlarged the EU to 27 members, you couldn't regulate directly all of the countries in that way. So we have had more like a famous directive on health and safety at work, which is a framework directive and then a lot of guidance as to how to implement it, and this has happened in other areas as well. So I think labour legislation in the EU is necessary, but the current approach of rather seeking to achieve objectives rather than prescribing detailed regulation is a much better approach.

64. During this time, Professor Hepple, you were commissioner for racial equality from 1986 to 1990; can you tell me something about this role?

Yes, of course I had been active from the time I came to the United Kingdom in campaigns against discrimination and I had written on the subject and I have had various academic commissions in that field. And then I was asked in 1986 to become a member of the Commission for Racial Equality, and that was an extremely interesting but also rather frustrating experience. Whilst there I chaired various enquiries, for example, the enquiry into the St Mary's Medical School for racial discrimination in their admissions and also enquiries into London Underground and so on. I was Chairman of their Complaints Committee and Chairman of their Employment Committee, so it was a very interesting four years. Frustrating because during that period the Salman Rushdie³⁵ affair occurred, where a fatwa was issued³⁶. I think the commission wasted a lot of time debating this, because some of us who were advocates of free speech were very disappointed at the way in which some people were protesting about Rushdie's free speech, but on the other hand that wasn't the job of the commission, I thought. It rather frustrated some of the work we did.

³⁵ b. 1947, Sir Ahmed Salman Rushdie, writer of the controversial novel *The Satanic Verses* 1988.

³⁶ 1989, by Ayatollah Ruhollah Khomeini



65. Interesting. In 1990 the Banning Order was overturned that you had been under in your days in South Africa and you went back to South Africa, you were immediately invited to the Labour Congress in Durban and you acquainted yourself with a new generation of labour lawyers, Cheadle Thompson³⁷ and Martin Brassey³⁸, do you have any recollections of that trip back to South Africa in 1990?

I do, it was a very emotional experience, I cannot remember if we talked about this previously but when I came back I was immediately met by my old friend, John Dugard³⁹, who had been a student with me when I did the LLB and he took me straight back to Johannesburg, which I hadn't seen for 27 years and which had been changed, you know a lot of new roads and buildings and so on. I revisited the house in which I was born and another one in which I had lived and went to the university and then I flew down to Durban and gave a lecture to the labour law conference. So it was a very emotional experience for me, going back. I was actually on route to Namibia, the International Labour Organisation had appointed me as an expert to draft a new labour law for Namibia, which I did, I spent some time in Namibia. And then just after that I was invited by the new South African government in I think it must have been about 1994, to join a ministerial task force to draft the Labour Relations Act in South Africa. And that involved extensive meetings both in Geneva at the ILO and in South Africa and I worked with some of the people you mentioned in that. And also I worked with my very close friend, Manfred Weiss⁴⁰, Professor of Law at Frankfurt University [LD: *J. W. Goethe-Universität*], he was one of the other experts on the committee and it was a very stimulating experience because I felt that all of the years I had spent in the UK trying to get the knowledge and understanding of labour law, I could pay back because I could bring that experience to bear whenever devising new laws. And I would like to say that some of the provisions in the Labour Relations Act, I am not sure how successful, were based directly on my own knowledge and experience of labour relations.

³⁷ Cheadle Thompson & Haysom Inc

<http://whichlawyer.practicallaw.com/which/firmListing.do?poid=:20267350&jurisdictionId=%3A22500>

³⁸ Senior counsel at the Johannesburg Bar. Visiting professor of Law at University of Witwatersrand. Acting judge in the South African Labour Court and High Court

³⁹ b. 1936, Fort Beaufort, Cape Province, South Africa. Dean of Law, Wits, 1975-77; Director, Centre for Applied Legal Studies, Wits, 1978-90; Director of Lauterpacht Centre, Cambridge, 1997, Professor of Public International Law, Leiden, 1998- ; Judge *ad hoc*, International Court of Justice, 2000.

⁴⁰ b. 1940, Professor of Labour and Civil Law, University of Hamburg, 1974-77, Professor at Frankfurt since 1977, specialising in German and EU labour and employment law.



66. In 1993 you became Master of Clare and you stayed in that position for ten years until 2003 and in 1994 you became a member of the Lord Chancellor's Advisory Committee on Legal Education and Conduct?

Yes, well yet another South African enters the picture, Lord Johan Steyn⁴¹, who was chairman at that time and I had a phone call from him "Would I join the committee?" Now I had been, whilst I was in London, the Chairman of the Heads of University Law Schools and I had been attending meetings convened by the Advisory Committee on Legal Education and Conduct (ACLEC), and I worked quite closely with Professor Peter Birks⁴², who was the secretary of the Society of Public Teachers of Law, on this field, so it wasn't altogether a surprise. Peter Birks himself disliked the committee so much that he didn't want to remain a member, so in a way, I was his replacement. And that was an extremely interesting experience, but again there were frustrations. The positive side was that I was asked by Lord Steyn to draft the report of the committee on legal education, its first report, which was a very substantial document and I put a lot of work into it, a lot of discussions by the committee, and I gave my inaugural lectures as a professor at Cambridge on that report called the "Renewal of the Liberal Law Degree"⁴³. I will not go into detail about it now but I think the report was, in many ways, quite an important turning point in legal education in this country. The frustrating part of the work on that committee was our main task was to deal with the rights of audience of the Crown Prosecution Service in the High Court and the committee was completely divided on this issue. And my South African experience taught me, as it had taught Lord Steyn, that it is a bad idea for the prosecution to be too closely tied into the High Court proceedings. In other words, I think the traditional English system of drawing as your prosecutors, people who are also acting for defendants, is admirable because it means you can see it from both points of view and you form a more objective view. And I did not like the idea of a professional Crown Prosecution Service at the highest level drawn only from people who had experience as prosecutors and had never defended anybody. So, for that reason, I was opposed to extending the rights of audience in the highest courts and so there was a divided report on this. Eventually the government disregarded the report completely and did its own thing and now they have all got rights of audience and the whole situation has been transformed. They were very stimulating years, but eventually the ACLEC didn't fit the government's agenda and it was wound up and a much limited body called the Legal Services Consultative Panel⁴⁴ was set up and I became a member of that, but after two years I gave that up.

⁴¹ Johan van Zyl Steyn, Baron Steyn, b. 1932, Cape Town. Rhodes Scholar 1955, Emigrated to UK 1973, Lord Chief Justice 1992-95, Law Lord 1995-2005.

⁴² 1941-2004, Regius Professor of Civil Law, Oxford, 1989-2004, established Oxford Institute of Legal Practice 1994.

Times obituary: <http://www.timesonline.co.uk/tol/comment/obituaries/article455082.ece>

⁴³ (1966) CLJ, 55 pp. 470 - 487

⁴⁴ Est. 2000 in Department of Constitutional Affairs.
<http://www.dca.gov.uk/atoj/lscp/lscpr2.htm>



67. Also during this time, from 1998 to 2000, you were on the Runnymede Commission for the future of Multi-Ethnic Britain⁴⁵.

Yes, that was set up by the Runnymede Trust, which is a charitable body to try and look at the problems that had developed in Britain through immigration and settled ethnic minorities⁴⁶. It was chaired by Bhikhu Parekh, Lord Parekh⁴⁷, with whom I had worked on the Commission for Racial Equality and it produced a report⁴⁸, to which I made, I have to say, a fairly limited contribution. My contribution was the chapters relating to the law and discrimination and the setting up of a single commission. This coincided with research I had been doing at the time in Cambridge with my wife, Mary Coussey⁴⁹, on the review of UK anti-discrimination legislation, for which we worked in this faculty, the Law Faculty in Cambridge.

68. Whilst you were the Master of Clare, you became a professor in the Faculty of Law at Cambridge, this was in 1995. Did you find, Professor Hepple, that the faculty had altered greatly in the almost twenty years that you had been away?

Yes, first of all it had increased largely in size, it was a much bigger faculty than what I remembered. Secondly, it had been transformed in terms of the administration. I had been Secretary of the Faculty Board of Law from 1970 to 72 and we were all in the Old Schools. And there was also a Secretary of the Board of Graduate Studies, who in my time was Gareth Jones⁵⁰, and the two of us sort of basically ran the faculty with the chairman at that time who was Dick Gooderson⁵¹, he was the chairman of the faculty. When I came back this was highly efficient with professional administrators and a much larger administrative staff.

The other change was the library because I had, as a student and in my earlier period in Cambridge, had of course always worked in the Squire Law Library in its wonderful setting. When I came back this current building was under construction [LD: *interviews were on the West Road site*], I think it was opened in about 1995, and so there was that transition

⁴⁵ <http://www.runnymedetrust.org/projects/meb.html>

⁴⁶ <http://www.runnymedetrust.org/>

⁴⁷ Bhikhu Chotalal Parekh, Baron Parekh, b. 1935, Gujarat Province, India. Professor of Political Philosophy, Centre for the Study of Democracy, University of Westminster. <http://www.wmin.ac.uk/ssh/page-148-smhp=1>

⁴⁸ *The Future of Multi-Ethnic Britain - The Parekh Report*, 2001, 417pp. <http://www.runnymedetrust.org/publications/29/74.htm>

⁴⁹ Chair, Advisory Board on Naturalisation and Integration (ABNI), 2005-2008, sometime Senior Associate of Management Studies, Judge Institute, Cambridge; Chair of Advisory Board on Naturalisation; Director of Employment, Equality and Human Rights Commission. Author of *Tackling Racial Equality: International Comparisons*, Home Office Study No. 238, 2002.

⁵⁰ Gareth Hywel Jones, Emeritus Downing Professor of the Law of England, 1975-98.

⁵¹ 1915-81, Richard Norman Gooderson, Reader in Law. Obituary in Family archive: http://www.gooderson.org/miscellaneous/obits/1981_Dr_Richard_Gooderson.html



into the new building. And I am a great fan of the new building because I think it has got the space and the light and the facilities you need. I was rather sorry that they didn't build rooms for faculty members as well, but I understand first of all the pressures of money, but secondly the feeling that we shouldn't take people away from their college activities and if they had a faculty office, they would never be in the college. So there were major transformations. There were quite a few colleagues who hadn't been here before, but there were also some others who I knew extremely well like John Collier and David Williams⁵² and may I just say at this point, a word about David Williams?

When I first joined the faculty, David Williams was my more or less next-door neighbour, he lived over the road with his young family and my young family, so we got to know each other very well and then we shared the Administrative Law course. When I came back, David had already become President of Wolfson College and he has always been extremely kind to me and I particularly thought very highly of his works, which I do not think had been highly enough recognised in the world. He wrote a book "*Not in the Public Interest*" about official secrets and he also wrote a book called "*Keeping the Peace*", about public order, so really seminal works in a style that I approve of. They are addressed to the general public, the intelligent public, not just to the legal profession. So I admired his work and then of course he also became Vice Chancellor of the university and it was he who admitted me on behalf of the Chancellor, as Master of Clare College, so it was a nice rounding up of our relationship.

69. Do you have any recollection of the translocation from the old premises to the new site?

Yes, well I mean first of all, it caused me some disruption because I used to be able to just slip out of the Master's Lodge at Clare through the back door and into the old Squire Library and it was very convenient. I could go there at weekend and now I had to walk for five or ten minutes to come to the new building. But I wasn't personally very much involved in the move, but it went, I thought, very smoothly. The only difficulty was about the soundproofing of the library where we had extensive meetings, as others can tell you; and eventually we got in the screens, which I think made it into a very attractive library and a nice place to work. I had a sabbatical year in 1999 to 2000 and I worked in the faculty most of the time on the research project funded by Nuffield and the Rowntree's Trust on the enforcement of UK anti-discrimination legislation and I found it a very good working environment.

70. I am very pleased to hear that. Professor Hepple, do you remember Professor Dugard⁵³ from this period because he was in Cambridge at that time?

Yes, he was an old friend from back in 1964, my student days, and we had always kept in touch. He went back to South Africa and played a very important role in the resistance, if you like, to apartheid laws and he became the leading South African international lawyer, so it was really nice to welcome him back when he was Goodhart Professor. He stayed for a second year as the acting director of the Lauterpacht Research Centre.

⁵² Also see item 51

⁵³ Also see item 65



71. During this time, presumably still your major interest was Labour Law?

Well no, when I first came back I was asked to teach tort and I did tort for about two years. But then, as I was a non-university teaching officer and I was standing in for people on leave, I wasn't asked to continue with that, and then I got involved, right from the start I suppose, I was involved in Labour Law. So together with Simon Deakin⁵⁴ and Catherine Barnard⁵⁵, two wonderful colleagues, we really ran labour law together for the whole period I was there. And after I retired in 2001, I carried on doing some Labour Law teaching for the faculty for a year or two.

72. Professor Hepple, your retirement seems to have been extremely busy. I don't know whether you originally planned a more peaceful retirement, but then just became overwhelmed by offers from various bodies but you seem not to have really...

Yes, well it was in two stages. First of all, I retired as a Professor of Law at the age of 67 and then I stayed on as Master of Clare College for a further two years until I was 69. So I gradually got out of the faculty side, although I was still doing bits of work for the faculty, with inquiries and so on, such as the enquiry into whether we should have a course on professional legal education here. And then in 2003, I really wanted very much to finish a book I had been working on for ten years, so the first year of so-called retirement was working full-time on getting this book out on *Labour Law and Global Trade*, which I did and then, as you say, other things came up. I have been particularly involved in four human rights and education charities. The first was something, which I had had a long connection with, called the Canon Collins Educational Trust for South Africa⁵⁶, which raises money for projects and students at university in South Africa who want to study in this country, in the UK. The second was the European Roma Rights Centre⁵⁷, where I was asked by my old friend, Anthony Lester⁵⁸, Lord Lester to take over from him as chairman of that. It is based in Budapest, but it is a public interest law organisation, which takes up cases on behalf of the Roma, who are the most oppressed minority in Europe. We have had some very important court victories. Most recently, against the segregation of Roma children into special schools in the Czech Republic and Slovakia, and I gave that up when I came to the end of my term of office in 2007. Then I was involved as a board member of the International Centre for the Legal Protection of Human Rights INTERIGHTS, and more recently I have become chairman of something called the Equal Rights Trust, which seeks really to promote equality of opportunity and anti-discrimination legislation worldwide.

⁵⁴ Simon F. Deakin, Professor of Law, Programme Director Cambridge Centre for Business Research

⁵⁵ Catherine S. Barnard, Jean Monnet Professor of EU Law, Cambridge University.

⁵⁶ Also see item 44

⁵⁷ <http://www.errc.org/>

⁵⁸ Anthony Paul Lester, Baron, b. 1936, Liberal-Democrat, Co-founded Runnymede Trust 1968, appointed special advisor to Secretary of State for Justice on constitutional reform



So those have particularly kept me busy and I have kept up research. I am still working on a major comparative study with colleagues from other universities in Europe on the history of labour law. And finally, if I can just mention, perhaps the most significant of my activities in this period was my chairmanship of the Nuffield Council on Bioethics⁵⁹, which took about on average one day a week. That council is an independent body funded by the Nuffield Foundation, the Wellcome Trust and Medical Research Council, which looks at bioethical issues, and whilst chairman, I have, myself, chaired two working parties. One on the subject of the ethics of research into genetics and human behaviour, like the connection between your genes and your intelligence or your sexuality and so on, and that was a report on a subject which had not been looked at before. And then more recently, I chaired the working party on the forensic use of bio information, in particular DNA. And that was very interesting, we got a report out rather quickly and it has had a lot of coverage because it deals with all of the current disputes about civil liberties and police powers on the one hand and the benefits of DNA in fighting crime.

73. Fascinating, how did you come to be involved in these areas?

I think the Nuffield Council I became involved in because of ignorance. I think it was a qualification for the job of not to know anything of the subject, like the famous Cambridge advertisement for a lecturer in, what was then called Mohammedan Law in the 1960s, and the advertisement said, “No knowledge of the subject is required”. What they had in mind was that they were going to train somebody into the field, and I learned it on the job. I was chosen because I had, I think, it was perceived I had qualities of chairmanship and I had a general interest in the field, partly through my work in the law of tort and on human rights, so this came in useful. And I developed my knowledge over a period and just as I reached the period of thinking I am beginning to understand this, my term of office ended at the end of 2007. But I still do odd bits of work for the council.

74. And in the meantime in 2003, you became a Fellow of the British Academy and in 2004 you were knighted. How did this honour transpire?

Well, there was a leaked minute, which got into the press that the committee, which considers honours, has said there are too many Knighthoods in the Law Faculty at Cambridge. I think I was the sixth or seventh such Knight. It was a complete surprise, I had no idea it was going on. I had no idea what processes come into play in it and the citation was simply “For services to legal studies”. So, you know, it was a great honour to be given this, but I took it in part as an honour to the faculty because we have this tradition. I fear I may be, and James Crawford⁶⁰, the chairman said he thought I would be the last because there had been this publicity that there were too many Cambridge Knights, a long line - Sir John Baker⁶¹, Sir Eli Lauterpacht⁶² and going all the way back.

⁵⁹ Founded 1991, <http://www.nuffieldbioethics.org/>

⁶⁰ Whewell Professor of International Law, Fellow of Jesus College

⁶¹ Sir John Hamilton Baker, b. 1944, Downing Professor of the Laws of England, 1998-.

⁶² See entry in Eminent Scholars Archive
http://www.squire.law.cam.ac.uk/eminent_scholars/professor_sir_elihu_lauterpacht.php



75. Yes, Sir Derek Bowett⁶³ was also one.

Yes, that is right.

76. Well, that takes us then to your current work as a judge of the United Nations Administrative Tribunal. This was an appointment in 2006?

Yes, I mean that again was a total mystery to me because I was asked by the Foreign Office whether I would like to accept the nomination. But I heard nothing further and then one day I was in Geneva for another purpose and a French judge came up to me and congratulated me on the fact that the General Assembly of the UN had elected me as a judge of this tribunal. It is in fact a kind of employment tribunal for all the 100,000 or more employees of the UN all over the world. It is the final kind of Court of Appeal because the UN, being a sovereign body, is not subject to any national jurisdiction. People who are sacked by the UN cannot go to an American or British court so this is there only legal recourse; and I have only in fact been doing it for a year now and it is quite interesting. It involves two months a year, one month in Geneva and one month in New York and the whole thing is being reformed at the moment and I am not sure how much longer I will be a member. If there is a new system I may fall by the wayside.

77. So, for example, when your term comes to an end they won't necessarily appoint someone from the UK again?

No, it is not a UK appointment. There are seven judges; each from a different region of the world and my predecessor was an Irish judge. They are all people who have had to have had senior, usually judicial, experience and so they are a very interesting group of people, drawn from different regions and different legal systems. And I have got the kind of common law slot and there is also always an American judge, and when I leave I would be replaced, I think, by a common lawyer but not necessarily an English one.

78. I noticed the jurisdictions include Greece, Sri Lanka, Argentina, France, Singapore...

That is currently, it changes from time to time.

79. On your visits to the United Nations, do you have any contact with the South African delegations at all?

Not directly, no. I mean I have contact with the United Kingdom delegation because I mean that might seem to be my origin, I am now British and not South African.

80. Professor Hepple, I notice that you played a substantial role in drafting certain important government bills between 1975 and 2006. I am thinking of bills from New Labour and also under the Wilson government. What springs to mind, there is, for example, the 1975 Sex Discrimination Bill. There was also the 76 race relations and the equality bill more recently. How did you find this experience of collaborating with government?

Yes, I must say I didn't actually have a direct hand in the drafting of any of the 1970s legislation, other than the discrimination legislation. I had been involved in the race relations

⁶³ See entry in Eminent Scholars Archive
http://www.squire.law.cam.ac.uk/eminent_scholars/derek_bowett.php



field since I wrote the first book on the subject in early 68 and I was involved in what became the Race Relations Act 1976 and the Sex Discrimination Act, I was quite closely involved with that. And then more recently, I have been involved with the proposal for a Single Equality Act based on our Cambridge research but I must say I haven't really been involved in the drafting process at the government level with any of this legislation. I have been more an outside commentator, making contributions. In the South African context in Namibia, I did draft large parts of legislation. I also drafted legislation for Hong Kong and this was before the Chinese takeover and the Chinese repealed what I had done, the trade union legislation.

81. So, looking back over your very eventful career, what you say are your most outstanding memories or achievements?

Well, I won't talk about achievements - that is for others to judge, but I think I have been extraordinarily lucky. Whenever things seemed to be going badly then one door closes and another one always opens and I have had some very stimulating careers. I suppose above all I have enjoyed teaching. I like the contact with students but I have a kind of reputation as being a hard teacher, who expects perfection from his students. There are others who are much gentler and perhaps get more out of their students in one way but my approach has been to be quite demanding but I have enjoyed it. Secondly, I think that period with up to 16 or 20 research students in Cambridge in the 70s, working with Paul O'Higgins⁶⁴, was extremely stimulating and we were kind of laying down the foundations for a new subject with all the changes that were going on; so I enjoyed that, I enjoyed the creative side. One Lord of Appeal, who shall be nameless, described me as a "sensible radical" and I really like that description, I hope I live up to it because I like to do radical things but I like to do them in a rational way. So I was lucky in having as influences, on the one hand Sir Otto Kahn-Freund⁶⁵, with whom I worked on various things, who was a radical but a very clear thinker on a comparative basis. And on the other hand, I worked with Glanville Williams⁶⁶, who was the most rational, utilitarian man I have ever met; a very shy man but on the other hand somebody who would subject everything to careful analysis on a rational basis. And I think those were both influences, which I tried to bring into bear in my work. So I enjoyed all of that and finally, I think enjoyed very much the comparative legal scholarship. I mean one of my failings is an inability to speak many languages and that is partly due to my South African background and the result, however has been that English is becoming more frequently used and I can get past in one or two other languages at a reading level. So the result is that I have gradually developed contacts and we have done a lot of comparative work together and I think working with these colleagues, working for the expert committees of the European Commission and also working as an expert for the International Labour Organisation⁶⁷ and the International Institute of Labour Studies⁶⁸, travelling for them. I was sent, for example, to

⁶⁴ Also see item 46

⁶⁵ Also see item 51

⁶⁶ Also see item 32

⁶⁷ <http://www.ilo.org/global/lang--en/index.htm>

⁶⁸ <http://www.ilo.org/public/english/bureau/inst/>



Russia to advise the new government there in 1992, they have all been very real highlights in my career. And I suppose I should say that the most emotional thing was going back to South Africa in 1990 and then seeing the new South Africa and having a little role in the new South Africa.

82. After 27 years?

Yes, yes.

83. Professor Hepple, do you have any regrets of things that you think would like to have done?

Well, I have many regrets but I think academically, as I have said, I am sorry I gave up Administrative Law, and I think that would have been very interesting. I suppose I would have had to give up something else, but one always has to teach a range of subjects and you are not always interested in all of them. I think I was interested in everything I taught but I couldn't keep them all up to the same level. But in the fields of Labour Law and Discrimination Law, I suppose I have had the greatest passion and therefore it has been the greatest commitment. But again, the Law of Tort, I sort of faded out of that in the mid 90s and a new edition of my casebook is just coming out with others doing it. Looking through the proofs, I think "I wish I had been able to write on that", you know it is really interesting.

84. Yes, so what do you still hope for?

Well, I hope to keep up, as I am, that is all I can say. It is a wonderful environment; Cambridge and I wouldn't want to be anywhere else because the faculty is very kind to its retired professors. And we have full use of the facilities and you feel part of the family and the same applies to my college of course. So I think it is a great environment, it is intellectually stimulating, lots of friends in Cambridge and so on.

85. Well, thank you so much for yet another fascinating interview.

