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OCCASIONAL SERIES

Conversations with Michael J. Prichard: the Fun of Legal History and the Triumph of Research Over Administration

Abstract: Michael Prichard was born before the Second World War and lived through the bombing and destruction of much of London. When he entered university in 1945, King's College London had reoccupied its old quarters in the badly-damaged Somerset House, and along with LSE and UCL had pooled teaching resources to overcome staff shortages and accommodation damage. This inadvertently gave Michael a rich pool of mentors upon which to found his career, and who served him well in later years. He entered Queens' College Cambridge in 1948 and experienced the unique post-war phenomena of the "returning warriors", which continued, along with the "weekenders", when he became a fellow at Gonville & Caius in 1950. Here he has remained, and is still a Fellow, seventy years later. His legacy is a fund of memories of a life-long journey through changing landscapes of legal research, teaching, and college and faculty administration. Lesley Dingle first interviewed Michael for the Eminent Scholars Archive in 2012, where his biography and general academic reminiscences are set forth. She now revisits aspects of these, following a conversation she had with David Yale for ESA in November 2019. David was Michael's career-long colleague, and his interview shone new light on their decades of joint endeavour unravelling the development of maritime law in the British Isles. Shortly after David's reminder of the magnitude of their project, an encounter with Professor David Ibbetson, and most recently a meeting with Michael, now in his 93rd year, spurred the author on to summarise particular aspects of Michael's varied research projects. In the process, she will emphasise the overall sense of adventure, and enjoyment - in short "fun", with which he explored the history and jurisdictional intricacies of the Admiralty Court (jointly with David Yale), presented his enlightened insights into the evolution of aspects of tort law, and explained his research of the few esoteric conundrums in which a retiree was able to indulge.
Keywords: legal history; admiralty court; maritime law; law of tort; negligence; Gonville & Caius College

INTRODUCTION

When interviewed originally in 2012, Mr Prichard had amassed sixty four years of unbroken association with the Law Faculty of Cambridge University, sixty two of these as a Fellow of Gonville & Caius. His reminiscences gave the Eminent Scholars Archive its longest continuous narrative of the post-war evolution of Faculty staffing, *modus operandi* and social dynamics. Of particular interest were his first-hand accounts of the early years, when "weekenders" played a crucial role in shoring up staff shortages and dealing with the influx of returning war veterans (the "returning warriors") eager to make up for lost years in the armed forces. For Michael Prichard, this meant being thrown in at the deep end of teaching and administration as soon as he had joined Caius in 1950. It was his fate ultimately to devote over nineteen years to formal positions of administration, firstly in the Faculty

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(1962–1965, 1966–1969: Secretary), and later at Gonville & Caius (1976–1980, President; and 1980–1988, Senior Tutor). An account of these travails was given in a biographic sketch that accompanied Mr Prichard's transcripts on the ESA website,[1] where he gave personal insights into the re-establishment of the Faculty as a compact facility in the Old Schools in the 1950s. He went on to describe the Faculty's gradual diasporisation under pressures from rapidly increasing student numbers and the relentless expansion of the University Administration in the '70–80s, through to its re-found harmony on the Sidgwick site in 1995. This history should be read in conjunction with the present article, in which extracts from his conversations with me can be located in context by reference to their question number in the transcripts (as Qx).

Despite deep involvement throughout his career with a variety of time-consuming organisational duties, Mr Prichard persevered over the decades with several research projects. Here I would like to highlight these, lest they be overlooked, interspersed as they are with his unstinting service record to Faculty and college. They illustrate that in spite of the press and distraction of years of day-to-day bureaucratic trivia, solving long-misunderstood legal conundrums could be achieved by a combination of patient research and innovation. For Mr Prichard himself, it was clear during our interviews, that although time spent on research over the years was limited, he not only derived intellectual satisfaction from his contributions, but also a great sense of fulfilment in their forever associating him with a small coterie of contemporary luminaries of legal history which Cambridge has been privileged to host. Particular aspects of his work were and are a source of joy and he summed up his legacy as - "*It's been fun to be alive at the same time as all three of them, Glanville*,[2] *Toby*[3] *and John*[4] *- and David*[5] *too. We've been very lucky in Cambridge with legal history in that sense,*" (Q103).

Figure 1: First Interview with Michael Prichard 2 March 2012.

Fun is a word Michael used several times during his interviews - both in the sense of discovery, and also the *"excitement"* of new approaches[6] - it seems to have been the magic potion that fuelled his perseverance.

EARLY BACKGROUND

For readers to appreciate the conflicting demands upon a young academic's time in the years following the war, we need to look briefly at Michael Prichard's early life.

Born in Banstead, Surrey in 1927, he was twelve years old at the outbreak of WWII. The family stayed in south London (Sutton) for the duration of the war, and Michael had long daily commutes by bus to school in Wimbledon throughout the period of the blitz and its aftermath. It was here that he developed his love for history and his early knowledge of Latin.

He was eighteen when the war ended. Having missed the military call-up, but still commuting from home daily by train, he attended King's College London from 1945–1948. Here Michael studied for a BA in law. King's College is in central London, and then, as now, it occupied the east wing of Somerset House, which had also housed The Admiralty, Inland Revenue and the Registrar General of Births Deaths and Marriages. Somerset House was extensively damaged by bombing, so when the college returned, after its enforced wartime evacuation to the relative safety of Bristol, facilities were poor and law lectures were crammed into one small room. In addition, many of the staff had not yet come back from military service. Other law faculties in the London University system (University College, and London School of Economics) were in similar circumstances, so they devised a system of shared premises and staff.

Shuttling back and forth between the three centres posed many logistical problems to Michael and his fellow undergraduates, but it had one priceless advantage - the students had access to a wider than normal spectrum of scholars. By good fortune, this included some luminaries whose profound influence Mr Prichard acknowledges to this day. Three stand out above the others: Harold Potter[7] (King's College) for his passion for the law and his abstruse but stimulating lectures; Glanville Williams (LSE), whose lectures were outstanding in their lucidity, precision and presentation; and Herbert Jolowicz[8] (UCL), "*quite a remarkable scholar who….taught me all the Roman Law I ever knew*" (Q11).

Michael recalled in his interviews how Potter's enthusiasm was particularly influential in enthusing him - "[he] *instilled in all us boys a love of the law…just a passionate interest in law and what it should do for society*" (Q11). It

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was he who eventually steered Michael, through his friendship with Professor Emlyn Wade,[9] to Queens' College in Cambridge, where he did a two year LLB (1948–1950). Finally, there was also the critical presence at King's of Albert Kiralfy,[10] who had done a good deal of research himself on both the topics with which Michael later became involved. More of this anon.

MATTERS MARITIME

During his career, Michael Prichard made unique contributions to scholarship as a legal historian in two main areas: extra-territorial jurisdictions (and in particular Admiralty jurisdiction), and understanding the early development of notions of negligence in tort law.

He began researching the issue of extra-territorial jurisdiction shortly after becoming a Fellow at Gonville & Caius in 1950. The *Cambridge Law Journal* was keen to publish a note on the then recent case of *R v Page*[11], which involved murder by a serving British soldier in Egypt, in the light of the new Courts-Marshall (Appeals) Act 1951. They had approached E Gareth Moore[12], a canon lawyer who was Chairman of the Legal Advisory Commission of the Church of England, but he declined and suggested Mr Prichard. Michael took up the challenge for what turned into a substantial first paper[13], and it whetted his appetite for legal issues where a clash of jurisdiction could be invoked. He summed it up in this first paper with a stirring statement: "the Army carries the criminal law with it wherever it goes…It is a principle as ancient as the Laws of Cnut"[14].

He emphasised the contingent nature of this kindling of a latent interest. "*I had no particular interest in military law until the Cambridge Law Journal wanted an article done on Sergeant Page, who had been arrested for an offence in Egypt after the Second World War and who should try him. If a British military court had tried him, what law did they apply? Is it the ordinary criminal law? Page had to deal with that subject….. But that started me*" (Q99). Nevertheless, "*I didn't take it further because I am not an international lawyer: that is the one subject we were never taught at London*" (Q99). In any case, he soon become enmeshed in the thickets of teaching and supervisions at Gonville & Caius, and the constant chore of having to arrange for weekenders to supplement ongoing post-war staff shortages.

Mr Prichard did not revisit the subject of extra-territorial jurisdictions for several years, but in 1960, he accepted an invitation from David Yale, a young fellow lecturer at Christ's College, to join him on a project to write a history of the Court of Admiralty to mark the 800th anniversary of the adoption of the Laws of Oléron[15]. Ominously, this was only two years before Michael began his first stint as Secretary to the Faculty (1962–1965).

Michael agreed to join David, but this commitment raised again the issue of expertise. It ultimately circumscribed their scope: "...*it would have been better if both of us had been international lawyers, because much of the work on admiralty jurisdiction appears in American international law journals.*[16] *There's a vast amount more in American international law journals that in any English work on the history of the admiralty*" (Q99). But they decided to proceed, knowing they would have to tackle the subject as legal historians. This posed no problem to their sponsors, the Selden Society, whose remit is promoting the study of legal history, and who wished to supplement two important volumes on the early Admiralty courts that had been produced by Marsden in the previous century (1892, 1897)[17].

The idea to commemorate the octocentenary had emanated from the then Registrar of the Admiralty Court, Kenneth C. McGuffie[18], and he proposed that funding could be obtained from the Pilgrim Trust with the assistance of Sir Jocelyn Simon (President of the Probate, Divorce and Admiralty Division of the High Court)[19] and Lord Evershed (Master of the Rolls)[20]. In its original conception the project was to "prepare a narrative history of the Court [of Admiralty]"[21].

At this point, Michael's King's College connections resurfaced. Before the Second World War, Professor Harold Potter had been commissioned by the Selden Society to edit Hale's[22] treatises, but had been unable to complete the work. He had handed the task to his colleague Albert Kiralfy, another of Michael Prichard's lecturers at King's who pursued the project during the difficult war years. Kiralfy had concentrated on the common law side of the problem, and on his retirement, he generously handed over his notes and references to Michael and David who incorporated it into their own project.

Their efforts took over thirty years to come to fruition, and occupied every decade of Mr Prichard's career, except the 50s. Soon after the project started, Michael began his first stint as Faculty Secretary (1962–1965), and the necessity of travelling to London constantly became a serious logistical problem. It was only when he took a sabbatical in 1965–1966 that he could concentrate on digging material from the Public Records Office (at that time in Chancery Lane, currently at Kew) as well as some from the Maritime Museum at Greenwich. Also, the sheer quantity of material became difficult to manage - "*neither of us had realised just what a colossal amount of material there is down there - an absolutely phenomenal amount*," (Q86).

Michael's expectation had been for a clear run at the project once his time as Faculty Secretary was over, but fate thwarted him. He was asked to undertake a second stint in the post, when Tony Jolowicz was unable to complete his term. Unfortunately, Michael's second spell (1966–1969) proved to be particularly challenging, with new statutory responsibilities that necessitated engaging and training an assistant, and the growing problems with the University Administration over their shared quarters in the cramped Old Schools building in the centre of

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town. Things came to a head with an occupation of part of the Faculty in 1968, as university personnel from other Faculties expressed their solidarity with student protests that were popular in many western countries around this time[23]. It was a trying period, and the Admiralty work fell into abeyance.

In retrospect, Mr Prichard confided in his conversations "*I'm afraid it dragged on far, far too long. All David and myself can say is it was quite remote, unfortunately, from anything we were actually engaged in teaching or researching on in our ordinary work, either in college or in the university. I think both of us recognised that one had to wait until the end of term and then turn almost* [immediately] *back to the files*," (Q91).

Mr Prichard took another sabbatical in 1974–1975, and ploughed on, but it dawned on the two doughty researchers that they had committed themselves to an overwhelming task. By this stage, they had amassed a vast quantity of information (which currently lies in the basement of the Squire Law Library on the Sidgwick site), but it is a regret to Michael that in the 1960s and 70s the quality of copying machines was so poor that this archive, much of which has faded badly, is probably of little value to modern researchers. He only wishes that they had had digital cameras at their disposal.

Inevitably, the sheer volume of data, and unavoidable delays, forced them to revise their strategy. As explained, diplomatically, in their final report "other duties and academic distractions have intervened, and we welcome the opportunity to offer instead another Admiralty volume to the Society's series, but one which is very different from Marsden's…" They decided instead to present the arguments "of the contemporary lawyers of both the civil and common law traditions as it developed in practical terms into a clash of courts in competition for maritime jurisdiction…"[24].

In other words they decided to concentrate on documenting and understanding the history of the jurisdictional conflicts between admiralty law on the high seas (civilian law) and county courts on land (common law)[25]. As Barton[26] put it, they concerned themselves with "the jurisdiction of the Admiralty rather than with the law which it applied…". To achieve this, they chose to edit, revise and publish two 16th and 17th centuries treatises by Fleetwood[27] and Hale[28], respectively. Both were common lawyers, but Hale's strongly common law approach (reign of Charles II) was tempered by Fleetwood's account, which well-reflected "the major features of the Admiralty practices of his day[29]" (i.e. Elizabethan period).

These writings epitomised the different approaches to criminal maritime jurisdictional matters that lay at the heart of many of the legal conflicts over the centuries. They were brought together in the unique Admiralty Sessions. Mr Prichard explained it thus:

> "*It was set up in 1535 as a common law assize court, but staffed by…….Roman Law civilian, clerks. It was a curious combination of civil law procedure, while the actual trial was in English criminal law, and presided usually by an English common law judge. Technically* [though] *the one who's in charge of it was the Admiralty judge. An almost unique combination of civilian and common law judges. It must be about the only time they ever sat side by side on the bench administering the same law……The Central Criminal Court, took it over* [in 1834] *and that ended the association with the Admiralty Court, but all the records came to the Admiralty Court, because not only was the Admiralty judge presiding…. but also the Registrar of that court acted as the clerk of the criminal court. It's quite unique, the oyer and terminer records of Admiralty (HCA1)*," (Q87).

One of the fascinating aspects of Mr Prichard's account was the difficulty, as common lawyers, that he and David Yale experienced in appreciating the logic with which the civilian Admiralty Court lawyers in Tudor and earlier times argued, and how such difficulties resonate in the present day. "*The totally different mind-set and way of thinking and expressing themselves that the civilians had. If you pick up a Common Law report, of, say Coke's*[30] *…. or Spelman*[31]*, they may be inadequate, …… but on almost any subject you can follow their reasoning, which is very much the common law, inductive reasoning. But both of us found it extraordinarily difficult, and we still do, in really understanding the force of an argument as presented by a civilian - at the risk of bringing down the wrath of comparative lawyers and European Union lawyers…….In the sixteenth century it was a great deal more difficult because they were scattered across references without trying to explain them, simply because one civil lawyer would know what it would mean if you referred to a text in The Digest, or a Canon Law writer,….. You didn't have to go further - you didn't have to set out the text of it at all. It's remarkably difficult for common lawyers coming 500 or 400 years later*," (Q92).

The gestation period for their grand monograph was long, and was further drawn out by a decade and a half of administrative duties that Mr Prichard undertook for his college, Gonville & Caius. In the second half of the 70s to the late 80s he became President, then Senior Tutor while pioneering the computerisation of various college and faculty records. Eventually, the results of three decades of joint research appeared in 1993[32] in the Selden Society series - a 420 page tome. By then, David Yale had retired, and Michael was within two years of his own retirement from his university lectureship.

After thirty years of effort Michael concluded: "*in retrospect, you might say it was a mistake to undertake it. It was totally different, distinct and miles away from the college teaching one was doing*". He was, however, fulsome in his praise for David Yale's contribution: "*David was by far the hardest worker…..he ranged more widely…. David always had a facility for expanding in a way that was easy to read*." (Q87).

Despite the long delay in bringing the complete work to fruition, and the regrettable curtailment of the original

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concept, it would be incorrect to assume that some of their conclusions did not see the light of day in their own right. On the contrary, both Michael and David published separately over the years on specific topics[33]. In 1983 Michael was invited to lecture on law in colonial Nova Scotia at Dalhousie University. However, "*I told them that I was quite incompetent to do that, but if they wanted something which was a contribution to knowledge, I would much prefer to tell them a little bit about extraterritorial criminal jurisdiction….it was ……directed towards lawyers who were concerned with extraterritorial jurisdiction, and particularly maritime extraterritorial jurisdiction. It became of some interest to people in places like Australia, who were just beginning to be concerned with jurisdiction in respect of offshore oil drilling and the rest,*" (Q87).

The resulting paper "Crime at sea: Admiralty Sessions and the background to later colonial jurisdiction" was published in 1984[34], and drawing on the research he and David had undertaken, gave a summary of the demise of Admiralty Sessions in which crime at sea was tried between 1536 and 1834[35]. Perhaps ironically, in the colonies, the Admiralty Sessions outlasted their English counterparts by fifteen years[36].

Unfortunately, this book article is hard to come by, and even Mr Prichard did not receive one, as before it was distributed, a fire at the Dalhousie University library in 1985 had destroyed all the copies. Luckily, it is now available via HeinOnline. Herein, the unique combination of common law and Roman law civilian elements in the records give fascinating non-legal insights into circumstances surrounding cases such as diseases, brutality and murder on voyages of discovery, penal vessels, and the slave trade. He also recounts details of warrants for execution from the Admiralty criminal sessions that were carried out "between high and low water marks at Execution Dock at the first bend of the Thames below London Bridge[37]" to conform with the jurisdictional requirements.

Finally, the Admiralty jurisdiction work provided the opportunity for Michael to supervise a "*really quite outstanding research student*" (Q94), Frank L. Wiswall Jr[38] who came over from the USA in 1965. Frank worked on the history of 19th century Admiralty jurisdiction, and for the excellence of his research, he was awarded the Yorke Prize in 1967[39]. His PhD was "*remarkably good*", and Clive Parry[40] one of the assessors, normally a "*quite ferocious*" examiner, gave a "*rave review of it for the Faculty Board*". Parry told Michael that reading it had been "*a most enjoyable task*" (Q94). Clearly, in those early years of the project enthusiasm ran high.

MATTERS TORTIOUS

In spite of the large number of fascinating documents unearthed over the course of his *Hale and Fleetwood* endeavours, it was not this research which ultimately gave Mr Prichard the most satisfaction. The enterprise that did this also involved aspects of legal history, but more particularly it allowed Michael to explore the evolution of some core notions in tort law. The seeds of this interest may have been sown in his dealings with Professor Albert Kiralfy during his undergraduate time at King's College London, but the ideas flowered after discussions he had in the tearoom at the Old Schools with one of his earlier mentors, Glanville Williams who had been at LSE when Michael was an undergraduate at King's. Now, both at Cambridge in the early 60s, they considered the conundrum of the practical reasons of when and why a plaintiff should choose to plead the action on the case in a claim for damages in tort.

As Mr Prichard recalled the episodes - "*He'd* [GW] *been reading a case in the nineteenth century……show*[ing] *that there were a number of different causes of action pleaded. ……..That's what really got me interested in the action on the case ……why should plaintiffs choose to sue in negligence and accept a burden of proof when, if they had sued in trespass, they wouldn't have the burden of proof? …….in fact, they came almost totally to sue in negligence and not in trespass. In other words, they choose the action on the case…..Glanville had drawn attention to Mitchil v Alestree in the seventeenth century* [1676][41]" (Q102).

This transpired to be a landmark case for what Michael later called "non-relationship negligence cases". These became more numerous as mechanised transport became common, and resulted in what were known as "running-down actions" - the equivalent of modern-day road accidents. " *I took it* [the conundrum] *on to find* [why] *they chose the apparently more difficult task of bringing an action of negligence, which is an action of case, but which requires a burden of proof which is much heavier than trespass….and* [I] *was able to produce the solution*" (Q101). Here was something (exploring the origins of a legal notion) into which he could immerse himself.

As with the Admiralty paper trail, Michael's King's College teachers had also been active in this area - Professor Potter had expressed strong views in his teaching on the forms of action, based on Maitland's seminal lecture[42], while Albert Kiralfy had written his PhD on the subject[43]. However, by the time Michael Prichard started his own work, Kiralfy's pre-war views, coloured by the teachings of Winfield[44] and Holdsworth[45], were out-dated, with the main stumbling block being "*that Winfield had believed that the action on the case for negligence was a nineteenth century phenomenon, which he associated with the introductions of trains that would run down anything from cabinet ministers to wandering cows*" (Q102).

Mr Prichard first looked at the case of *Williams v Holland*[46] which he felt held the key to plaintiffs being nonsuited if they chose the incorrect action: trespass or case[47]. He remembers that the solution came to him as a "*blinding flash of the obvious*" (Q103), to quote a favourite phrase of Professor Milsom. Michael published his conclusions in 1964[48], and it has been a continued source of pleasure to him that Milsom was very admiring of the diagram (page 251) with which he had explained the complicated choices faced by plaintiffs.

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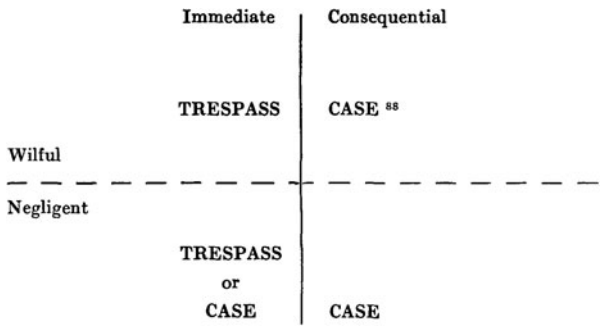

Figure 2: Michael Prichard's diagram in the Cambridge Law Journal, The Rule in Williams v Holland 1964.

"*I think it was about the only diagram that appears in the Cambridge Law Journal……He* [Milsom] *did me the compliment of saying, many years later, that he used to enjoy reproducing this in his class in London.*"[49] (Q101).

Professor Handford[50] has described the case of *Williams v. Holland* as a more important landmark in negligence law than the widely cited *Donoghue v Stevenson*[51], and says it signalled that "negligence of itself is a recognised cause of action". What Michael Prichard so clearly laid out with this paper was that the choice for plaintiffs, where immediate injury was caused by the "carelessness and negligence of the defendant", as long as it was not wilful, was to bring an action on the case (i.e. not use trespass, which had hitherto been used where immediate, rather than consequential, injury had been caused). This obviated the earlier uncertainties about whether the defendant would claim nonsuit because of immediacy, intervention of servants (the issue of vicarious liability), or "loss of control" etc.

In spite of this early success, Mr Prichard's next important contribution to the debate did not appear for a further nine years. In 1973 he delivered his erudite "*Scott v. Shepherd* (1773) and the Emergence of the Tort of Negligence"[52] lecture to the Selden Society. This had "*developed out of the lectures I had given in negligence in Roman law*" (Q82) and he acknowledges "*the hindsight and enormous help of having both Glanville Williams' views about it, and also the totally new light that Toby Milsom had been casting on it since the 1950's*" (Q103).

In this case[53], one youth (Shepherd) had thrown a lighted squib into a crowded market in Somerset, which exploded in the face of another (Scott), but only after it had been tossed on by two stall-holders, to avoid injury to themselves. What was the correct action for the plaintiff? The plaintiff had brought trespass, but if the injury was consequential, not immediate (to refer to Mr Prichard's famous 1964 diagram), should not the plaintiff have brought an action on the case? The jury found for the plaintiff, but their verdict was made subject to the opinion of the court on a special case, so that the questions of law disclosed by the facts came out. By a majority, the judges maintained the action, two invoking the rule that trespass is the correct action if the act is unlawful while the correct action is on the case if the act is *prima facie* lawful and injury is consequential[54]. Blackstone J dissented and maintained that because the injury was not immediate, the jury should have found for the defendant (i.e. trespass *vi et armis* had been the wrong action). This difference of judicial opinion meant that many of the later running-down actions were still thrown out because plaintiffs were judged to have brought the wrong form of action, but in his lecture Mr Prichard was principally concerned to identify earlier and hitherto unrecognised signs of an acceptance of the notion of non-relationship negligence.

Mr Prichard used *Scott v Shepherd* to illustrate the fictions to which courts acceded in order to bring actions of trespass *vi et armis*. In this case Shepherd, who had thrown the squib, was fancifully portrayed as attacking Scott "with sticks, staves clubs and fists". Michael further traced such dishonest legal fictions to at least the 14th century and amusingly recounts writs against negligent farriers, which implied that there was " a strange madness suddenly afflicting the stolid English blacksmith and causing him to rush about equicidally striking horses *vi et armis* and *contra pacem*" a situation that "defies belief"[55]. One cannot but conclude that such observations were made and presented by someone who was deriving enjoyment from research, as well as serious legal points.

1976 was the date of Michael Prichard's last important contribution to action on the case, and its coincidence with his being enveloped for a decade and a half in another round of college and Faculty administrative duties is worth noting. The two papers, *Williams* and *Shepherd*, stand as Mr Prichard's seminal contributions to our understanding of the development of the notion of negligence in tort law (e.g. Lunney & Oliphant 2010[56], Handford 2010[57]), while he himself is content to have a position "*in the chain*" of the Cambridge luminaries already mentioned - professors Glanville Williams, Toby Milsom, John Baker and David Ibbetson. His own fortune in writing when he did, was contrasted self-effacingly with his old mentor Albert Kiralfy, whom he described as being "*slightly unfortunate*" in working pre-war, before the inspirational publications of Williams and Milsom had seen the light of day.

A BUSY RETIREMENT

Four years after he gave up the formal administrative duties referred to in the last paragraph, Michael Prichard and David Yale were able to see their Admiralty monograph into print, and two years later Michael retired (1995). Since then, Mr Prichard has produced no specialised legal texts, but has trodden a familiar path between research and collegial altruism, as well as having undertaken a further engagement at his erstwhile haunts of forty-five years ago near Chancery Lane.

The latter was in connection with a case that had dragged on for centuries, in true Dickensian fashion. It involved mineral rights in North Wales, and related mediaeval documents with which Michael was thoroughly at

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Figure 3: Michael Prichard and the original Gonville and Caius Waterhouse iron gate that he had restored in 2010. Photo 11 March 2020

home. (It also, coincidently, involved the estates to which his old comrade in arms, David Yale's family, were linked[58].) True to form, Michael found this work "*enormous fun*", but it was very tiring "*it took one down to London and back every day - fight*[ing] *for a place on the train. But it was great fun, and it revived memories of a very enjoyable year under John Brunyate*[59] *when I was a pupil in the fifties*" (Q114).

His subsequent collegial commitments have both involved research into documents. The first, of Victorian vintage, related to architectural plans for refurbishment of Gonville & Caius in the 1870s. This was tackled with Michael's hallmark meticulousness which involved applying techniques learnt in his early years exploring tort: "*it was detective work. One of my pupils said that I really ought to have made my fortune…… by writing detective novels…..It took months for things to dawn. It was the same sort of work as legal history. Not so much the effect of it, but what was in the mind of the person who did this? It was Toby Milsom's technique of saying "what is it that caused the plaintiff to put it this way or that way?*" (Q116). A sense of discovery and enjoyment was palpable when Mr Prichard talked to me of this work, and it shines through in a booklet the college produced of his outlining his endeavours[60].

Finally, a more testing assignment has occupied his most recent years, *viz* the translation of, and commentary on, the college's Latin documents setting out its refounding statutes. This was to mark the quincentenary of the birth of John Caius[61], who refounded Gonville & Caius in 1557. The statutes are dated 1573, and are considerably more extensive than those for any other Oxbridge college at the time, containing "*very precise statutory instructions about what terms must be imposed upon lessees of land*" (Q126). Many of the college's tenants held by copyhold tenure[62], or else on beneficial leases for long terms of years and this necessitated a great deal of research into the history of esoteric areas of English land law.

POSTSCRIPT

Eight years later I had the great pleasure of seeing Michael Prichard again in the Spring sunshine, where we had arranged to meet by the great wrought-iron Waterhouse gate that he had rescued from obscurity. It was in March 2020, a week or so before the infamous "lockdown" that fell upon the nation and is with us still as I complete this, to contain the novel coronavirus. As a postscript to the work with which he was still burdened in 2012, he was happy to tell me that he eventually completed his work on the college's early statutes and this has now been published in a book of some 600 pages.[63] It was fitting therefore that we had met so I could photograph him by the gate the college had resurrected, with a plaque that informs future generations of another tribute to the 500th anniversary of John Caius with which Michael's name will be associated.

In many ways, Mr Michael Prichard's latest activities for the college epitomise a mixture of altruism and historical detective work, so characteristic of the manner in which he undertook all the research and administrative projects over his long career: an underlying joy of discovery, a meticulous eye, and a dogged resolve to complete the job in hand. His legacy of over seventy years of unbroken

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service, with his contributions to the law of tort, the intricate history of the Admiralty Court, and the welfare of his college are a rich bequest to Cambridge University and legal science. It was a privilege to have been able to record his reminiscences for the Eminent Scholars Archive, and to get to know him personally.

CV IN BRIEF

Michael J. Prichard: Life Fellow of Gonville & Caius

- b. 27th November 1927, Banstead, Surrey
- 1935–45 Wimbledon College
- 1945–48 King's College London
- 1948–50 Queens' College Cambridge, LLB
- 1950 Fellow of Gonville & Caius
- 1952–53 University Assistant Lecturer
- 1953–95 University Lecturer
- 1952–53 Practised in Chancery Division
- 1962–65, 1966–69 Secretary to Faculty
- 1976–80 President, Gonville & Caius
- 1980–88 Senior Tutor, Gonville & Caius
- 1995 Retired

ACKNOWLEDGEMENT

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Footnotes

[1] https://www.squire.law.cam.ac.uk/eminent-scholars-archive/mr-michael-j-prichard.
[2] Glanville Llewelyn Williams (1911–97), Quain Professor of Jurisprudence, London University (1945–55); Reader in Law, Cambridge University (1957–65), Professor of English Law (1966–68), Rouse Ball Professor of English Law (1968–78).
[3] Stroud Francis Charles (Toby) Milsom, (1923–2016), Professor of Law Cambridge (1976–90).
[4] Sir John Hamilton Baker (b. 1944), Librarian, Squire Law Library (1971–73), Professor of English Legal History (1988–98), Downing Professor of the Laws of England (1998–2011).
[5] David. E. C. Yale (b. 1928), Christ's College Reader in English Legal History, President of the Selden Society (1994–97). Recently interviewed for ESA: https://www.squire.law.cam.ac.uk/eminent-scholars-archive/mr-david-eryl-corbet-yale.
[6] Eg. the description of his first encounter with Toby Milsom's lecturing style - Q17.
[7] Harold Potter (1896–1951), Professor of English Law King's College London (1938–51.
[8] Herbert Felix Jolowicz (1890–1954), Professor of Roman Law, LSE (1931–48), Regius Professor of Civil Law, University of Oxford (1948–54).
[9] Emlyn Capel Stewart Wade (1895–1978), Downing Professor of the Laws of England (1945–62).
[10] Albert Kenneth Roland Kiralfy (1915–2001), Professor in Law, King's College London, specialist in Soviet & Russian law.
[11] *Regina v. Page* [1954] 1 Q.B. 170 at 176.
[12] He had taught at Corpus Christi College.
[13] Prichard, M. J. The Army Act and Murder Abroad. (1954) 12 CLJ 232–241.
[14] Op cit. p. 241.
[15] The Rolls of Oléron: first formal statement of maritime law in NW Europe, promulgated by Eleanor of Aquitaine circa 1160. The anniversary celebrations included ceremonies on the Île d'Oléron (south of La Rochelle) and a facsimile of the laws taken from the "Black Book of the Admiralty". See F. L. Wiswall Journal Maritime Law and Commerce (1994) 25 4 599.
[16] Maritime law is a federal jurisdiction in the USA.
[17] Reginald Godfrey Marsden (1845–1927). Registrar of Court of Admiralty. *Select Pleas of the Court of Admiralty. Vol. I, 1390–1404*, Selsden Society, Vol. 6, for 1892; *Select Pleas of the Court of Admiralty, Vol. II 1527–1545,* Selsden Society, Vol. 11 for 1897.
[18] Kenneth McGuffie, Registrar of Court of Admiralty (1955–1972), author of *British Shipping Laws, vol. I "Admiralty Practice*. London: Stevens & Sons Ltd., 1964.
[19] Jocelyn Edward Salis Simon (1911–2006), High Court (1962–71).
[20] Sir Raymond Evershed (1899–1966), Master of the Rolls (1949–62).
[21] M.J. Prichard and D.E.C. Yale (Editors). 1993. *Hale and Fleetwood on Admiralty Jurisdiction*. The Selden Society, 419pp, p. v, preface.
[22] Sir Matthew Hale (1609–1676), barrister, judge and jurist. Common lawyer.
[23] For example: 1969 Old Schools sit-in, 1970 Garden House Riot. See: https://www.varsity.co.uk/features/5124
[24] Prichard and Yale, 1993, p.v., preface.
[25] As epitomised by *Lacy's Case,* 1580, King's Bench, Trin. 25 Eliz.
[26] Lloyd's Maritime and Commercial Law Quarterly, (1994) 4 572–573 at p.573.
[27] Sir William Fleetwood (1525–1594), Sergeant at Law to Elizabeth I, and Recorder of London. A common lawyer, but less dogmatic in his approach to civilian law than Hale. *Certen Notes declaring Admirall Jurisdiction taken out of the Queenes Majesties Letters Patents granted unto the Lord Admirall of England for the tyme being as out of certen Statutes confirming the same, with a*

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declaration when the Civill Lawe or the Common Lawe of this Realme is to be used in any Admirall Court for the triall of such matters as be there to be heard or determined.

[28] *A Disquisition touching the Jurisdiction of the Common Law and Courts of Admiralty in relation to Things done upon or beyond the Sea, and touching Maritime and Merchants Contracts.*

[29] Wiswall, F. L. Book review (1994) 25(4) Journal of Maritime Law and Commerce pp. 599–603.

[30] Sir Edward Coke, (1552–1634), Attorney-General for Elizabeth I, Chief Justice of the Common Pleas 1613–16 (James I).

[31] Henry Spelman (c.1564–1641), writer on law, his dictionary: *Glossarium archaiologicum: continens latino-barbara, peregrina, obsoleta, & novatae significationis vocabula*. Second ed. London: apud Aliciam Ward, 1664. 35 cm.

[32] M. J. Prichard and D. E. C. Yale (Editors). 1993. *Hale and Fleetwood on Admiralty Jurisdiction*. The Selden Society, Vol 108, 420pp.

[33] Prichard M. J. Crime at Sea: Admiralty Sessions and the Background to later colonial Jurisdiction, (1984) 8 Dalhousie Law Journal pp. 43 – 58. Yale, D. E. C. A historical note on the Jurisdiction of the Admiralty in Ireland (1968) 3 Irish Jurist 146- Yale, D. E. C. Salvage — Admiralty Jurisdiction — Inland Waters (1987) 46 CLJ pp. 14–16. Yale, D. E. C. Salvage — Admiralty Jurisdiction — Inland Waters (1988) 47 CLJ 2, pp.153–155.

[34] In P. Waite, S. Oxner & T. Barnes *Law in a Colonial Society: the Nova Scotia Experience,* Toronto, Carswell, 1984 43–58.

[35] Established by 28 Henry VIII c. 15 and made redundant when the Central Criminal Court was created. Criminal jurisdiction was administered by commissioners of oyer and terminer, known as Justices of the Admiralty sitting in the Admiralty Sessions.

[36] Transferred to colonial criminal courts by the Admiralty Offences (Colonial) Act 1849.

[37] Ibid, p. 45. This was at Wapping.

[38] A maritime lawyer in Castine, Maine, USA. Colby College, B.A.; Cornell University, J.D.

[39] Published later as *The Development of Admiralty Jurisdiction and Practice since 1800,* CUP, 1970 223 pp.

[40] Clive Parry (1917–1982), Professor of International Law (1969–82).

[41] 1 Vent. 295, 2 Lev. 172, 3 Keb. 650.

[42] See F. W. Maitland: *The Forms of Action at Common Law, 1909* at: http://www.fordham.edu/halsall/basis/maitland-formsofaction.asp This text is part of the Internet Mediaeval Source Book. The Sourcebook is a collection of public domain and copy-permitted texts related to mediaeval and Byzantine history. © Paul Halsall, October 1998, halsall@fordham.edu.

[43] His PhD thesis "The Action on the Case" was started in 1936. See J. H. Baker, "Kiralfy's The Action on the Case" (1995) 16 Journal of Legal History 231.

[44] Sir Percy Henry Winfield (1878–1953), Rouse Ball Professor in English Law (1928–43).

[45] Sir William Searle Holdsworth, (1871–1944), Vinerian Professor of English Law, Oxford University (1922–1944).

[46] (1833) 10 Bing 112; 131 ER 848.

[47] A general problem that Michael had earlier addressed in his paper "Nonsuit: a preliminary obituary", CLJ,(1960) 88–96.

[48] Prichard, M. J. Trespass, Case and The Rule in *Williams v. Holland* [1833]. (1964) 22 CLJ 234–253.

[49] Milsom was Professor of Legal History, London School of Economics (1964–76).

[50] University of Sydney. "Intentional negligence: a contradiction in terms?" (2010) 32 Sydney Law Review, 29–62, at p. 38.

[51] [1932] AC 562.

[52] Published, Selden Society 1976, 1–43. Lecture delivered in Old Hall, Lincoln's Inn, July 4th 1973.

[53] *Scott v. Shepherd* (1773) 2 W Bl 892; 96 ER 525.

[54] Established by Lord Raymond C.J. in *Reynolds v Clarke* (1725) 2 Ld. Raym. 1399.

[55] M. J. Prichard 1973. *Scott V. Shepherd* (1773) and the Emergence of the Tort of Negligence. Selden Society lecture delivered in the Old Hall of Lincoln's Inn, July 4th, 1973. Published 1976 by Selden Society in London, p.9.

[56] Lunney, M. & Oliphant, K. 2010. *Tort Law, Text and Materials*, 4th Edit. OUP, p. 8–9.

[57] Handford, P. Intentional negligence: a contradiction in terms? (2010) 32 Sydney Law Review, 29–62.

[58] Estates of the Lordship of Bromfield and Yale in Denbighshire.

[59] John Waddingham Brunyate, Counsel at 4 Stone Buildings, author of *F.W. Maitland, Equity: A Course of Lectures,* 2d ed. 1936, and The Legal Definition of Charity (1945) 61, Law Quarterly Review 268.

[60] Michael Prichard, 2010. *Waterhouse and his Gate*, Gonville & Caius College, Cambridge, 35pp.

[61] John Caius, (1510–1573), physician.

[62] A status finally extinguished in the Law of Property Act 1922.

[63] Gonville & Caius College: The Statutes of the Founders (Boydell Press, 2017).

Biography

Lesley Dingle is the Foreign & International Law Librarian at the Squire Law Library, University of Cambridge. She is the founder of the Eminent Scholars Archive and a Senior Member of Wolfson College, Cambridge.

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