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The Editorial Committee record with the deepest regret the death on 12 February 1974 of the Editor of the Journal, Professor S. A. de Smith. The April 1974 issue of the Journal went to press under his editorship shortly before his death.

PROFESSOR C. J. HAMSON

ON 30 September 1973 Professor Hamson retired from the Chair of Comparative Law in the University of Cambridge, a Chair to which he had been elected in 1953. On 31 December 1973 he retired from the editorship and treasurership of the *Cambridge Law Journal*. His photograph (taken, we are asked to point out, only a few years ago) is our frontispiece.

Jack Hamson, a classicist turned lawyer, became a University Assistant Lecturer in Law in 1933 and a Fellow of Trinity College in 1934. A Cambridge man to the core, he rendered unremitting and dedicated service to his College, his Faculty and his University for a period of over forty years, interrupted only by wartime. Energetic in the defence of those standards to which he was attached, forceful in personality, he has never been a man to shirk controversy. Observing him in the cut and thrust of debate, one has often been reminded that here was a former captain of the Cambridge *épée* team. With the spoken and the written word alike he has an elegant sense of style and a calculated mastery of language. And he is a highly efficient administrator. He was ideally equipped to assume the editorship of the *Cambridge Law Journal* in 1955; and he held the office longer than

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any incumbent apart from Sir Percy Winfield. The Editorial Committee readily acknowledge that the quality maintained by the *Journal* during this period is attributable above all to his leadership. From 1953, moreover, he also discharged with conspicuous success the arduous duties of Treasurer. Simultaneously he occupied himself with what was perhaps a still more congenial form of voluntary service, as Senior Treasurer of the Cambridge University Law Society. To his multifarious activities, some of which he will continue to pursue in his retirement, he brought a zest for life, a sense of purpose, a meticulous dedication and a marked ability to get the best out of people.

Here we shall not purport to assess his contribution to legal education and scholarship, but nobody at all familiar with the facts is likely to underestimate its importance. An exceptional gift for lucid exposition has placed him among the distinguished teachers of the Cambridge Law School. His services to the study of comparative law, and particularly the laws of England and France, have been acknowledged by the award of honorary doctorates by five French universities as well as by his designation as a Chevalier of the Legion of Honour. Readers of his celebrated Hamlyn Lectures, *Executive Discretion and Judicial Control*, will have recognised in them the work of a discerning and penetrating intellect.

To mark his retirement from the Chair of Comparative Law, a dinner was held in his honour on 4 October 1973 in Cambridge. It was attended by a large gathering of friends and colleagues. Professor Hamson's health was proposed by Professor Arthur Goodhart, K.B.E., the first Editor of this *Journal*. Extracts from Professor Hamson's speech in reply are printed below.

A VALEDICTORY ALLOCUTION

. . . I have in my time been fortunate in my Faculty. May I mention first that group of persons, five, ten, fifteen years my juniors, to whom in my heyday I referred, in fair lordly fashion, as " the younger members of the Faculty "? It is some time now that it was cogently called to my attention that the appellation was scarcely apt, since by the unnoticed effluxion of time most of them had already become grandfathers or were otherwise established and respectable. Still it is as the younger members of the Faculty that I care most to remember them. I am glad to see many of them present tonight and I believe that I have received from all of those who are absent messages, not always as respectful as they should be, which I much cherish. I am greatly indebted to them for their forbearance and indeed often enough for their support—they were of course on occasion misguided:

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they were after all the younger members, not part of the *pars senior et sanior* to which I fancied I always belonged; but still they didn't do too badly, nor have they done too badly later. I greatly admire the solid and unobtrusive work which they did—it was they who in those days kept the Faculty and much else afloat—as well in the colleges as in the Law School. I am fortunate indeed to have had them as my junior companions.

. . . They have put about a scandalous story—I'm sure it is they—that I misquoted cases when lecturing—or rather talking (for I do not think that I have ever lectured)—upon the august topics of Contract and Tort. That is not only untrue but, what more distresses me, it is evidence of a profound misunderstanding on their part of the art of teaching. The facts of the case must be so put as to make unambiguously clear the relevant point so as to arrest and impinge upon the mind of even an idle undergraduate. If all the appropriate facts are not in the book, well, so much the worse for the book. And the proof of the pudding is in the eating: these retailers of scandalous stories remember to this day, and remember correctly, the *Satanita* for example and the *Paludina*—ships after all are the staple of the Common Law—and have been enabled to pass on to their own pupils sound traditional instruction.

The which reminds me of Harold Gutteridge, the first holder of the Chair of Comparative Law. He was short, jovial and rotund—the very embodiment of the Common Law, if his daughter (whom I am glad to see with us tonight) will allow me so to describe him. He brought an incomparable zest to the recital of a case—he really was in love with the Common Law. I am sure that I shall never forget the drama of the horse-coper buttoning up the cash in his coat pocket *after* the deal—of course he would not take a cheque—and loudly reassuring the dazed customer that the horse was in tip top condition and he would never regret his bargain—after the deal, no warranty. *Roscorla* v. *Thomas* was a much better case, and much more memorable, in his hands than it is in the books. (For the younger ' younger members ', *nota* that the horse-coper was the used-car-salesman of his day, before Consumer Protection was invented.)

Arnold McNair used a different technique: if I may return to that magical year 1927–28 when I first took to the law. Time brings a certain element of confusion—it is forty-five, forty-six years ago—but his was I think the very first lecture on law which I attended: in the attic-like room at the top of the Downing Street site. McNair on Contract. It was a quiet kind of performance—a simple lucid, subdued recital of the facts. And, after a pause, the lecturer would lean over the desk and take you into his confidence and wag his forefinger

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at you—" no contract." I have seen a good deal of Lord McNair since that day, at Gray's Inn as well as at Cambridge, and I am deeply indebted to him for his constant and unfailing kindliness and helpfulness—I shall not forget that he went to meet my wife at the docks in Liverpool in 1945 when I was unable to be there—but I think I shall most vividly remember him in that attic-room confidentially assuring me that there was " no contract."

In that same year I attended the lectures—almost all of them I think—of Arthur Goodhart. That was before he was seduced by the meretricious offer of a professorship at Oxford, a temptation to which, alas, others also have succumbed—more pardonably perhaps than to Vice-Chancellorships. It has been really a most serious loss. He was dealing then, and dealing manfully as may be imagined, with the improbable subject of Jurisprudence. It *is* a most improbable subject. The lecturer was, as is right and reasonable, clearly bored with Austinian sovereignty; but that had to be, and was, dutifully despatched before we got down to the real stuff, precedent and possession and negligence. And negligence. Arthur had already embarked upon his battle with *Polemis*. He was quite cock-a-hoop the other day, thinking that he had at last done *Polemis* down. I'm sure he is mistaken. It is a sound and sensible decision, and anyhow it is a decision of Scrutton's. It is a serious error to pamper defendants—an error to which Scrutton never succumbed: they should in any case be insured—as serious as to pay undue attention to the complaints, reasonable or not, of the young. But, right or wrong, it was always a delight to argue a point of law with Goodhart, and he encouraged such argument—indeed I fancy that he trailed his coat. Again the reasons I have for being grateful to Arthur Goodhart are numerous, are very numerous indeed. I shall not embarrass him by seeking to recite them. Yet nevertheless I am perhaps most grateful to him for an event which he will not remember—slogging away in his rooms in Corpus, under his supervision, composing the first note I wrote for the *Cambridge Law Journal: Marbe* v. *Daly's Theatres* in the 1928 issue at p. 253. It is of course a very good note; but the important thing is that I came away persuaded that I had written it. The Faculty has failed to live up to the standard of devotion to duty which its then members exhibited—twenty years ago we succumbed to the temptation of writing the notes ourselves, which is certainly a great deal less arduous than getting the undergraduate to do so.

In those days—I am still in 1927–28—and for a long time before then and for many years after, the Law Faculty was Henry Arthur Hollond. There were of course some professors about, including Buckland; but in those pristine days, there were three professors only

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—the Rouse Ball chair had not yet been established. (The Rouse Ball chair was Percy Winfield—how can I have failed to say anything about him, and Henry Barnes and David Oliver and Cecil Turner and later Hersch Lauterpacht, for many years my opposite neighbour, who was so considerate of me, and of my wife and of my daughter, herself from her earliest days his devoted admirer—and, and, and. . . . But there must be an end of discourse.) There *were* some professors, but Harry Hollond was Reader, and usually chairman, and having recently drawn up the new statutes for the University and for most of the Colleges he seemed to me to be generally in control of these establishments. He and Arnold McNair were indeed a formidable pair of negotiators who a little later obtained our own establishment in the Old Schools. Had we been able to continue at the same level we would long ago have wholly ejected the administrators.

Harry was also my supervisor in College. Well, that is calculated to throw wide open the notorious floodgates with which the House of Lords so often threaten us: but in this case there is a more probable imminence of danger. I shall start with a story which I warrant to the company is not apocryphal. Before my first supervision Harry issued to me a supervision paper. I was innocent of all knowledge of law—I did not know what a case looked like. I had that Long Vacation been disporting myself in the Near East. The question directed my attention to a then recent (1925) decision of the House of Lords named *Sorrell* v. *Smith*. It further referred me to three previous cases named *McGregor Gow* v. *Mogul S.S. Co.*, *Allen* v. *Flood* and *Quinn* v. *Leathem*, which I did not then recognise as the famous or infamous trilogy. I was requested to peruse these cases and to inform my supervisor what I understood to be their upshot; and that was that. Surely this was a heroic method of instruction. It was certainly taking aback for a person accustomed to the decencies and rational coherence of Aristotle and Plato—in those leisurely days I had had the benefit of spending three years on the Classics before venturing over to the law. But as a method of instruction it had its advantages: any subsequent supervision question seemed simple and straightforward, and anyhow I doubt whether we would have returned a more sensible answer if we had taken the question at the end rather than at the beginning of the course. By the way, it is a serious error upon the part of the younger law teacher to endeavour to discover a logical sequence of instruction. The thing is a muddle anyway, and you might as well start at the end as at the beginning: there is strictly no beginning and no end. The perfect method of instruction is as chimerical as the perfect Tripos curriculum. As Aristotle sapiently remarked some time ago, it is silly, uneducated, to seek a higher

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degree of rationality than the subject matter admits: the capacity of the Common Law in this respect is strictly limited.

. . . When I was still reading the Classics, I made the acquaintance of one Patrick Devlin. He is a year my academic senior, but, as I have had occasion in the past to remind him, he is in fact two days younger than me. He has never been sufficiently conscious of his important deficit in this respect. He had already embarked upon the law precociously—he has generally been precocious in his career: it is shocking to reflect that it is already six years since he retired from the House of Lords. It was taking aback for a philosopher like myself to find that an apparently sensible young man held, categorically and with a totally misplaced confidence upon alleged authority, such confused and indeed contradictory ideas about things so plainly philosophical as, to take the example I remember, inevitable accident. Even at that early stage I really exerted myself to help him clarify and correct his concepts—with extremely little success. I have continued to get poor results from the High Steward.

A little later when he was living at Bourne and devilling for Jowitt, he used to come down for the weekend with great masses of paper on cases to be argued in the House. It was singularly stimulating and a great advantage to me to hear his argument. It was always, I think, the best complexion that could be put upon a legal proposition, erroneous or not. He rarely used an unfair argument, though I do remember an occasion when he ventured to suggest that he had been right because their Lordships had sustained his view. What a non sequitur! I am sure he now more fully appreciates its enormity. I hope that Lord Devlin will manage occasionally to sit in the House. Their Lordships struck a reasonably good patch after the retirement of Viscount Simonds, but things are getting perilous again. . . .

A recent pupil of mine—recent, *sub modo*, he must date from over twenty years ago—ventured to suggest that I might condescend to descend to more obviously historical times and speak about Cambridge after the war—meaning after the Second and less bloody World War. Well, perhaps, but that is within the recollection, one way or another, of most of the company. I shall allow myself two observations. I returned after the war with surprise and with relief. With surprise, for I was persuaded at the outset of the event, and later, that I would not returning be. With the greatest relief, for I found the fabric of the College intact. I had been much exercised during the war by the thought that it might be and probably would be destroyed. My Job's comforters told me that this was very silly—I should be more concerned about the survival of the Fellows: it was absurd to prize property above lives. They were quite wrong. The then

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existing, or any other, body of Fellows could not reconstitute the College in the prairies of Canada; there was some chance, admittedly a slim one, that a new batch of them might continue a physically existing college. The Fellows after all are transitory—no doubt not as transient as the undergraduates who are privileged to be bare licensees on sufferance in the College during a part of the year, but still transitory: they will have to be replaced in due course. And though it would be sad to lose some of one's colleagues prematurely, it is a loss which is inevitable. Whereas the fabric of the College has another kind of permanence and of importance. What the war was all about (monstrous silly as it was) was, as I saw it, the continuance of that way of life which was exemplified for me by the College and the University. So I was wonderfully relieved to find the fabric of the College intact. Most of the Fellows also were intact, or virtually; but that did not seem to be so crucial.

The second observation is that the returned warriors or quasi-warriors—very quasi, some of them—were an admirable batch of law students. So, as a matter of fact, were a number of my younger companions in a prisoner of war camp. That was an interesting and instructive experience. I did very well out of it. They (the prisoners, I mean) were, by and large, an attractive lot of young people, quite reasonably intelligent on the average, and exceptionally considerate: I became, and remain, very fond of them. They soon recognised that I could not be expected to perform without sugar and coffee, which was a rare and highly prized commodity; but it was always forthcoming. The prisoner student was diligent and attentive. He had little in the way of distraction, though some were digging tunnels (a singularly profitless enterprise). They were eager for an intellectual occupation. Though eventually we had textbooks, the teacher had not to waste time coping with the extravagant opinions of colleagues, and he enjoyed a sense of near-infallibility, which is a very agreeable sense. The student was taught authentic Scrutton, or as near as may be, and so did extremely well in examinations—so well that I was suspicious and on return plucked up the courage to ask Winfield who was one of the Bar examiners whether the condition of the candidates had been taken into consideration. He was really indignant that I should have believed it possible that he as examiner could have paid attention to so irrelevant a circumstance as the place in which the script had been composed—an admirable state of mind in an examiner. This double experience leads me to suggest that it would be good for the undergraduate, good for the don and good for the University if the school-boys and school-girls whom we now receive were drafted first for a couple of years of Voluntary Service Overseas.

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I realise that some would fail to return from work so engrossing and engaging, but I do not see that as an objection: though it is often the better sort who fail to return from expeditions abroad.

Well, there it is. You will understand that I reckon myself to have been exceptionally fortunate in my life and not least in my Faculty. I reach the end of my term without regret, thankful in many ways, hopeful that I have not too often too much presumed upon the forbearance of my colleagues. My wife and I greatly appreciate it that you decided to hold this dinner. . . . Finally we wish to thank the company for coming to celebrate, and to grace, the occasion, some of you from afar. It has been very kind of you, and to my wife and myself very agreeable.

CASE AND COMMENT

EUROPEAN CONVENTION ON STATE IMMUNITY

SOVEREIGN immunity is one of a group of topics in international law which raises exceptional intellectual and political difficulties. Like recognition of states and governments, nationality, extradition and asylum, diplomatic and consular immunities, expropriation of foreign-owned property, it is a problem which arises in the overlapping area between international law and national laws. Faced with such problems, the existing intellectual structure of customary international law has been unable satisfactorily to organise the relationship between the national and international situations. The inchoate and slow-moving policy of international law meets the intense and fast-moving policies of national legal systems at a disadvantage. The struggles which international and national courts have had with such problems—the official acts of authorities of the German Democratic Republic before it was generally recognised as a state, Rhodesia, flags of convenience, political asylum and the "political offence" exception to extradition, the rights of shareholders in international companies—and the criticism which their efforts so often attract illustrate the nature and importance of the difficulties. The European Convention on State Immunity, concluded at Basle on 16 May 1972, is an attempt at international legislation on one of these perennial problems among a group of European states. The fact that the Convention took some six years to complete and the complexity of the resulting instrument (forty-one articles plus an Annex and an Additional Protocol) reflect the difficulty of this particular task. The Convention was drawn up in

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