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An interview with Tony Honoré

Reinventing the foundations of European legal culture

On May 28th 2014, an interview was held with A.M. (Tony) Honoré, emeritus Regius professor of Civil Law in All Souls College, Oxford. The main reason for having the interview is the fact that Honoré was a pupil of Fritz Pringsheim during his Oxford-years. Pringsheim, a German professor of Roman law, had fled to the United Kingdom due to his Jewish family background, and taught at Oxford for almost twenty years. Being a refugee scholar, Pringsheim is one of the subjects of the research program 'Reinventing the foundations of European legal culture 1934-1964', to which both authors are attached. The aim of this research program, hosted by the University of Helsinki and made possible by a grant of the European Research Council¹, is to study the intellectual history of five key-figures in the twentieth-century development of Roman legal studies, and law as a science in general. Together, these five scholars may have been instrumental in formulating an idea of a common European past through the history of law and jurisprudence. The first set of scholars was exiled in the advent of the Second World War, forcing them to rethink and restate their theories to a new audience that lacked the Roman legal tradition as it had been present in Germany. Of this group, Fritz Pringsheim² and Fritz Schulz³ (along with for instance Hermann Kantorowicz, David Daube and Ernst Levy) continued their scientific endeavors in the Anglo-Saxon academic world, whereas Paul Koschaker stayed in Germany, but was effectively ousted from office in Berlin⁴. Helmut Coing also remained in Germany during this period, becoming a professor of Roman law in Frankfurt am Main in 1940⁵. Finally, Franz Wieacker, the fifth scholar and a pupil of Pringsheim, did not only remain in Germany during the Second World War, but could be seen as to a degree sympathizing with the Nazi Regime⁶. The method we are employing is a combination of literature study, archival

1

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² A.M. HONORÉ, Fritz Pringsheim (1882-1967), in: J. BEATSON, R. ZIMMERMANN (Hg.), *Jurists uprooted. German-speaking émigré lawyers in twentieth-century Britain*, Oxford 2004, S. 205-232

³ W. ERNST, Fritz Schulz 1879-1957, in: J. BEATSON, R. ZIMMERMANN (Hg.), *Jurists uprooted. German-speaking émigré lawyers in twentieth-century Britain*, Oxford 2004, S. 106-204.

⁴ Somewhat implicitly, G. RIES, Koschaker, Paul, in: *Neue Deutsche Biographie* 12 (1979), S. 608-609.

⁵ K. LUIG, In memoriam Helmut Coing (28.2.1912-15.8.2000), in: *SZ r.A.* 119 (2002), S. 663; H. COING, *Für Wissenschaften und Künste. Lebensbericht eines europäischen Rechtsgelehrten* (Hg. M.F. FELDKAMP), Berlin 2014, S. 53.

⁶ D. LIEBS, Franz Wieacker (1908 bis 1994). *Leben und Werk*, in: O. BEHREND, E. SCHUHMAN (Hg.), *Franz Wieacker. Historiker des modernen Privatrechts*, Göttingen 2010, S. 24-30; L.C. WINKEL, *Franz Wieacker. Romanist und Rechtshistoriker, zwei Seelen in einer Brust?*, in: O. BEHREND, E. SCHUHMAN (Hg.), *Franz Wieacker. Historiker des modernen Privatrechts*, Göttingen 2010, S. 213-221.

research as well as interviews with those having had first-hand experiences with the five scholars central to the project. In this article, the project wishes to present the interview as intact as possible, however with references to the sources wherever needed, and preceded by two brief biographies, one of Pringsheim and one of Honoré himself. Also, for reasons of legibility at points small emendations and corrections have been made: the full audio-file of the interview has however been made available to *Forum Historiae Iuris*.

F. Pringsheim

Fritz Pringsheim (1882-1967) was among the most respected and acknowledged legal historians of his generation. Although highly appreciated for his scientific performance in the contemporary academic world, he is also remembered as an influential teacher and tutor to many subsequent legal historians, and a fearless critic of the Third Reich and its ideological shortcomings⁷. Pringsheim was born in a wealthy and conservative Jewish family in Hessen, but throughout his life he considered himself German first and stated 'Protestant' as his confession⁸. As a son in an upper-middle-class family, he enjoyed the best educational possibilities Imperial Germany had to offer, and a legal career suited his socio-cultural background. When the First World War started, Pringsheim, like so many other young men throughout Europe, naturally enlisted. He served as a lieutenant from the first day of the war to late 1917, both on the Western and Eastern fronts⁹. His mere survival can be regarded as a small miracle, since the death rate in the trenches of the Great War among the younger officers was devastating. The War decisively influenced Pringsheims persona, writings and academic identity¹⁰. Not only did the idealization of the virtues of the common soldier remain as an undertone in his works and teaching, but the circle of pupils and colleagues which started to gather around him also reflected this patriotic and vigorous view he had and embodied as an academic. Pringsheims scientific seedbed was the so-called 'Mitteis circle'. This loose group of scholars had arranged around the professor Ludwig Mitteis and included for example Josef Partsch and Hans Peters. According to Mitteis, Roman law should be studied in relation to provincial laws and other contemporary practices, especially Greek law¹¹. In his early works Pringsheim dealt with this same agenda in a detailed way, but preserved that outlook also in later publications, whose themes were more general and

2

⁷ Apart from Honoré, Pringsheims students included Franz Wieacker, Herman Lange, and Georg Felgentraeger, see L. BREUNUNG, M. WALTHER, *Die Emigration deutschsprachiger Rechtswissenschaftler ab 1933 I*, Berlin 2012, . 415–418.

⁸ HONORÉ, Fritz Pringsheim (Anm. 2), S. 212, see also E. BUND, Fritz Pringsheim 1882-1967. Ein Großer der Romanistik, in: H. HEINRICHS, H. FRANZKI, K. SCHMALZ, M. STOLLEIS (Hg.), *Deutsche Juristen Jüdischer Herkunft*, München 1993, S. 740–741.

⁹ BREUNUNG & WALTHER, *Emigration* (Anm. 7), S. 407.

¹⁰ See Honoré's discussion of the influence of the war on Pringsheim at par. 12 and 82, as well as F. PRINGSHEIM, Hans Peters #, in: *Gesammelte Abhandlungen I*, Heidelberg 1961, S. 19-20.

¹¹ HONORÉ, Fritz Pringsheim (Anm. 2), S. 208-210; BUND, Fritz Pringsheim (Anm. 8), S. 736–737

abstract. Some of his most noted, and cited, works are *Beryt und Bologna*¹², *Die Archaistische Tendenz Justinians*¹³ and *The Greek Law of Sale*¹⁴.

When the Nazis seized power in Germany in 1933, the political pressure on Pringsheim slowly and progressively increased. Although an acknowledged expert on oriental law and papyri, Pringsheim was convinced that the only law really worth studying was classical Roman law¹⁵. Its study should be defended against those who wished to eliminate Roman law from the curriculum. Among those more reserved with respect to Roman law were the defenders of the newly drafted German codification, the BGB (1900), and obviously the supporters of the National-Socialist view on law. So Pringsheim despised the politics of the Third Reich, not only of its visible racism, but also the National-Socialists blunt arrogance towards all supposedly 'foreign' elements in German law¹⁶. His opposition to 'the regime' wasn't a silent one¹⁷. Against all odds he managed to maintain his official post rather long, thanks to his position as a war veteran ('Frontkämpfer') and the wide appreciation he enjoyed in the German academic world. Nevertheless he didn't go down without a fight, but questioned the means and goals of the new rulers both publically and in private discussions¹⁸. Eventually, Pringsheim was ousted and even arrested during the Reichskristallnacht in 1938 and put into a concentration camp, from where he however was released after a series of lucky incidents. He fled to England and stayed in Oxford with his family. The working conditions in England were far from the ones Pringsheim had had in Freiburg im Breisgau. As a man of conviction and strong will, Pringsheims persona didn't fit the mold casted to German refugees in his new homeland. The complicated situation (with admittedly some humoristic sides) wasn't eased by the internation of him and two of his sons in 1940, or by the family habit to sing German songs with the windows open¹⁹. When the Second World War ended, Pringsheim saw it as his personal duty to return to Germany and to help rebuild the nation²⁰. The family kept their Oxford residence, but Fritz Pringsheim spent most of the following years in Freiburg and was a tireless, dedicated and prominent figure in the reconstruction of the university. His efforts weren't restricted solely to the academic or administrative level, but he was genuinely interested in educating a new generation of lawyers, and cared about the well-being of his students²¹. Pringsheim died in 1967, as a respected and celebrated scholar and teacher.

¹² F. PRINGSHEIM, *Beryt und Bologna*, in: *Gesammelte Abhandlungen I*, Heidelberg 1961, S. 391-449.

¹³ F. PRINGSHEIM, *Die archaistische Tendenz Justinians*, in: *Gesammelte Abhandlungen II*, Heidelberg 1961, S. 9-40.

¹⁴ F. PRINGSHEIM, *The Greek law of sale*, Weimar 1950.

¹⁵ HONORÉ, *Fritz Pringsheim (Anm. 2)*, S. 214-215.

¹⁶ Par. 49 Below

¹⁷ F. PRINGSHEIM, *Die Haltung der Freiburger Studenten in den Jahren 1933 bis 1935*, in: *Die Sammlung. Zeitschrift für Kultur und Erziehung* 15 (1960), S. 532.

¹⁸ PRINGSHEIM, *Haltung (Anm. 17)*, S. 532.

¹⁹ HONORÉ, *Fritz Pringsheim (Anm. 2)*, S. 221-223.

²⁰ HONORÉ, *Fritz Pringsheim (Anm. 2)*, S. 224.

²¹ See: *Zum 80. Geburtstag von Professor Fritz Pringsheim*, in: *Freiburger Zeitung* 5.10.1962.

A.M. Honoré

4

A.M. (Tony) Honoré was born in London in 1921, brought up in South Africa, and studied at New College, Oxford. He was accepted as a student there already in 1940²², but when the Second World War broke out, he fought in the Allied forces until 1945, being wounded in the Second Battle of El Alamein in North-Africa (1942)²³. Effectively, his studies at New College commenced in 1946, being granted a Rhodes-scholarship in 1949²⁴. After graduating, he was a Fellow of The Queen's College (1949-1964) and New College (1964-1970)²⁵, becoming Regius Professor of Civil Law and Fellow in All Souls College in 1971²⁶. He retired as an emeritus Fellow of All Souls in 1989, receiving an Honorary Fellowship of New College in 2008²⁷. His publications are numerous and on a wide range of topics: perhaps he is best known for his fundamental work in legal philosophy and legal theory, cooperating with the influential legal philosopher H.L.A. Hart for *Causation in the law* in 1959²⁸, as well as his 1999 book *Responsibility and fault*²⁹. Also, he has published extensively on South African law, on for example the law of obligations³⁰ and the law of property³¹, but the law of trusts above all else³², of which as of 2002 five editions have been made. His third field of study is Roman law and jurisprudence, writing major monographs on individual jurists such as Gaius³³, Ulpian³⁴ and the compiler Tribonian³⁵ and single articles on a variety of Roman legal scientific personalities³⁶. Moreover, Honoré has treated law-making in the Roman legal order a more general sense, as a result of the interplay between emperors and jurists from the 1st century AD on³⁷, as a

²² Profile of Professor Tony HONORÉ, www.all-souls.ox.ac.uk, viewed October 1st, 2014.

²³ Par. 80 Below

²⁴ Profile of Professor Tony HONORÉ, www.all-souls.ox.ac.uk, viewed October 1st, 2014.

²⁵ Profile of Professor Tony HONORÉ, www.all-souls.ox.ac.uk, viewed October 1st, 2014.

²⁶ Profile of Professor Tony HONORÉ, www.all-souls.ox.ac.uk, viewed October 1st, 2014.

²⁷ Profile of Professor Tony HONORÉ, www.all-souls.ox.ac.uk, viewed October 1st, 2014.

²⁸ H.L.A. HART, A.M. HONORÉ, *Causation in the law*, Oxford 1959 (2nd ed. 1985); B. TEARLE, The publications of Tony Honoré 1950-1985, in: N. MACCORMICK, P. BIRKS (Hg.), *The legal mind. Essays for Tony Honoré*, S. 307-308.

²⁹ Portland, Oregon 1999; Profile of Professor Tony HONORÉ, www.all-souls.ox.ac.uk, viewed October 1st, 2014.

³⁰ (with R.W. LEE ea.) *The South African law of obligations*, Durban 1950; TEARLE, *Publications (Anm. 28)*, S. 307.

³¹ (with R.W. LEE and T.W. PRICE) *The South African law of property, family relations and successions*, Durban 1954; TEARLE, *Publications (Anm. 28)*, S. 307.

³² *The South African law of trusts*, Cape Town 1966; TEARLE, *Publications (Anm. 28)*, S. 307.

³³ *Gaius. A biography*, Oxford 1962; TEARLE, *Publications (Anm. 28)*, S. 307.

³⁴ *Ulpian*, Oxford 1982 (2nd ed. 2002); TEARLE, *Publications (Anm. 28)*, S. 307.

³⁵ *Tribonian*, London 1978; TEARLE, *Publications (Anm. 28)*, S. 307.

³⁶ Proculus, in: *Tijdschrift voor Rechtsgeschiedenis* 30 (1962), S. 472-509; The Severan lawyers: a preliminary survey, in: *SDHI* 28 (1962), S. 162-232; Julian's circle, in: *Tijdschrift voor Rechtsgeschiedenis* 32 (1964), S. 1-44; TEARLE, *Publications (Anm. 28)*, S. 308.

³⁷ *Emperors and lawyers*, London 1981; TEARLE, *Publications (Anm. 28)*, S. 307.

consequence of the crisis of Roman Empire in the 4th and 5th century AD³⁸ and in various articles regarding the Corpus Iuris Civilis, Justinian's 6th century compilation of Roman legal texts, the Digest in particular³⁹.

Honoré became a pupil of Pringsheim most probably in 1946⁴⁰, in a time when the Second World War was over and Germany was already in the process of rebuilding itself. Pringsheim aided in this restoration by shuttling back-and-forth between Oxford and Freiburg im Breisgau to help reconstruct the university there⁴¹. As Honoré notes, Pringsheim's return to Freiburg 'took place by stages'⁴². This resulted in a twofold transference of ideas after the Second World War: on the one hand, under Pringsheim's influence elements of the Oxford Collegiate system were established in Freiburg, such as the *studium generale*⁴³. On the other, many of the recurring themes present in Pringsheim's works carried a lasting influence on the study of Roman law in the Anglo-Saxon countries, in particular on the writings of Honoré as one of the most important post-war Roman law scholars. In this, it is interesting to note there are definite points of contact between Pringsheim's and Honoré's scientific endeavours apart from the problems of Common and Civil Law, such as the relation between Roman law in its 'classical' and 'post-classical' periods⁴⁴, and various forms of 'Hellenization' in Roman society, be it the influence of Greek culture, law or philosophy⁴⁵. The conclusions of the pupil do not always conform to those of the master: case-in-point is Honoré's biography of the jurist Gaius, which came out in Pringsheim's lifetime, and in which an argument is made for the usage of Greek philosophical – more particularly Aristotelian- notions in the Institutes⁴⁶. One of the more idiosyncratic aspects of Roman law scholarship in general in this period is the categorical denial of this kind of usage at least in the classical sources themselves, and Pringsheim therefore may not have agreed with that part of the biography⁴⁷. Nonetheless, Honoré assisted Pringsheim with writing *Greek*

³⁸ Law in the crisis of Empire. The Theodosian dynasty and its quaestors 379-455 AD, New York 1998: profile of Professor Tony HONORÉ, www.all-souls.ox.ac.uk, viewed October 2nd, 2014.

³⁹ For example his inaugural lecture as a Regius Professor of Civil Law: Justinian's Digest: work in progress, Oxford 1971 (repr. Aalen 1983), also published as: Justinian's Digest: work in progress, in: Law Quarterly Review 88 (1972), S. 30-56: TEARLE, Publications (Anm. 28), S. 307, S. 309.

⁴⁰ Par. 14 and 28 Below

⁴¹ HONORÉ, Fritz Pringsheim (Anm. 2), S. 225-228; above par. 3 and below par. 28

⁴² HONORÉ, Fritz Pringsheim (Anm. 2), S. 226.

⁴³ HONORÉ, Fritz Pringsheim (Anm. 2), S. 228: 'The best of Oxford could not be exported, but much of it could be given a different shape in Freiburg.'; and below par. 28 and 96

⁴⁴ HONORÉ, Fritz Pringsheim (Anm. 2), S. 214-217 as contrasted with the continuities for example in HONORÉ, Ulpian (Anm. 34) and HONORÉ, Law in the crisis (Anm. 38). However, HONORÉ, Fritz Pringsheim (Anm. 2), S. 230-231.

⁴⁵ According to Pringsheim this took place only in the later development of Roman law, i.e. in the eastern law schools from about 300 AD on: HONORÉ, Fritz Pringsheim (Anm. 2), S. 214-216. Pringsheim does assume an earlier influence on the imperial chancery, for example in: The legal policy and reforms of Hadrian, Journal of Roman Studies 24 (1934), S. 141 ('In accordance with Stoic doctrine...') ea., whereas Honoré also argues for an earlier employment of Greek (philosophical) notions by individual Roman jurists; HONORÉ, Ulpian (Anm. 34), S. 76.

⁴⁶ HONORÉ, Gaius (Anm. 33), S. 100, S. 104 ea.; the Institutes or *Institutiones* is a teaching manual composed around 141-161 AD; HONORÉ, Gaius (Anm. 33), S. 59-61.

⁴⁷ Par. 52 Below

*law of sale*⁴⁸, and from the interview it appears their relation, although perhaps not personal, was professionally pleasant⁴⁹. Moreover, both Pringsheim and Honoré experienced first-hand how law can become politicized, Pringsheim in the advent of Nazism, even being placed in a concentration camp for a short period, and Honoré as a staunch opponent of Apartheid. As such, their relation could be seen as a microcosm of the whole of the twentieth century, in legal scholarship but also far beyond that. Thus, it gives us in the project 'Reinventing the foundations of European legal culture' great pleasure to present this interview with Tony Honoré.

An interview with Tony Honoré (May 28th, 2014)

(Q. = Giltaij, A. = Honoré)

6

On Pringsheim in Oxford (1939-1958)

*Q. How did Pringsheim's Jewish background rhyme with his German nationalism*⁵⁰ ?

7

A. Pringsheim hated Nazism, but loved Germany, and kept that, in spite of the atrocities. The war left Pringsheim very disillusioned.

8

*Q. In this, you quote the Brierly-report, which states 'if P. were not a Jew, he would have been a German nationalist'*⁵¹.

9

A. Well, he was a German nationalist. If we go back in scholarship, he was very much a pupil of Lenel⁵², he knew Lenel very well, and he said the most stressful thing for Lenel, who was in the Franco-Prussian war, was, that being at the founding of the German Empire, he as a Jew was treated badly by the Nazis. For instance, he was not allowed to continue to work at the university. It was a most disgraceful way of treating patriotic Germans.

10

*Q. Pringsheim also referred to himself as such, 'Nicht-Arier, Frontkämpfer'*⁵³.

11

A. This is a very interesting way of describing himself, and I understand it exactly. About my own background, of course I was at school in South Africa in Cape Town. There were many Afrikaners born Republicans, and when the Boer war broke out in 1899, they went out to fight

12

⁴⁸ PRINGSHEIM, Greek law (Anm. 14); HONORÉ, Fritz Pringsheim (Anm. 2), S. 228: '...and the present author helped with the author's English.'; and par. 14 below 'the language'

⁴⁹ Par. 102 Below

⁵⁰ HONORÉ, Fritz Pringsheim (Anm. 2), S. 222: '(I)n fact he was both, but he was also anti-Nazi'.

⁵¹ HONORÉ, Fritz Pringsheim (Anm. 2), S. 222: James Brierly (1881-1955), professor of international law, advised on releases for the Home Office.

⁵² HONORÉ, Fritz Pringsheim (Anm. 2), S. 211: 'He won the friendship of Lenel, not easily gained but all the firmer for that'; Otto Lenel (1849-1935) was a professor at the universities of Kiel, Marburg, Strasbourg and Freiburg, and is best known for his reconstructions of the praetorian Edict (Das Edictum Perpetuum, 1883) and the writings of the classical Roman jurists (Palingenesia iuris civilis, 1887-1889): E. BUND, Lenel, Otto, in: Neue Deutsche Biographie 14, Berlin 1985, S. 204-205.

⁵³ HONORÉ, Fritz Pringsheim (Anm. 2), S. 211, S. 222, Anm. 59.

for their country⁵⁴. This was the normal thing to do, everybody should fight for their country in a war. Now this sounds so completely out of date, but in those days it was part of your curriculum.

Q. You yourself fought in the Second World War; at El Alamein, how did that ... let me start elsewhere, you refer to yourself as the only English-speaking Romanist pupil of Pringsheim⁵⁵, how did you get to know him? **13**

A. Pringsheim settled in Oxford in 1939. He did not hold a university position⁵⁶. He was not really properly appreciated by the faculty and so forth. He did do some teaching at the law faculty. Among other Colleges he did some teaching for Worcester College. I was not at Worcester College, but I was tutored by a tutor at that College at the time, and he sent me to Pringsheim to be tutored. This was how I came to know Pringsheim This ended up with me really advising him, about the language I suppose, on the Greek law of sale, which came out and was published in the German Democratic Republic, the DDR⁵⁷. The new republic wanted to seem intellectually respectable. **14**

Q. So the tutor sent you to be tutored by Pringsheim, and if I understand your biography correctly, he was a bit of an outsider in Oxford⁵⁸. He did for example not hold official position, but my bench-mark remains Schulz, who also did not hold official position⁵⁹. But Schulz seemed much more integrated ... **15**

A. He wasn't so rude as to discuss these matters publicly, Schulz however was more connected with Brasenose College, Pringsheim in this particular case with Worcester College and New College⁶⁰, where I was. You have to think about this being a Collegiate university. The connection with the College does not mean you are not connected with the university. The university worked so largely through Colleges. **16**

Q. You were tutored by Pringsheim in what is basically a rather esoteric subject at Oxford, Roman law, with respect to Common Law. Roman law is for instance charmingly taught as a pars pro toto for Civil Law. **17**

A. It has a position in the curriculum, since the chair of Civil Law was founded by Henry VIII⁶¹. His idea for supporting it was that he did not want Canon Law, and through Civil Law he could present himself as a sort of emperor. You could connect it with him striving to annul **18**

⁵⁴ The (Second) Boer War (1899-1902) was a war fought between the British and the Afrikaners, more particularly two Boer republics, Transvaal and Orange Free State, for South African independence, however resulting in British victory.

⁵⁵ HONORÉ, Fritz Pringsheim (Anm. 2), S. 231.

⁵⁶ Initially living off a grant given by Merton College: HONORÉ, Fritz Pringsheim (Anm. 2), S. 220; and later tutoring at various Colleges: HONORÉ, Fritz Pringsheim (Anm. 2), S. 224.

⁵⁷ PRINGSHEIM, Greek law (Anm. 14): HONORÉ, Fritz Pringsheim (Anm. 2), S. 228-229.

⁵⁸ HONORÉ, Fritz Pringsheim (Anm. 2), S. 221: 'He did not make friends in Oxford.'; S. 222: 'The Pringsheims were unpopular in Oxford for other reasons.' ea.

⁵⁹ ERNST, Fritz Schulz (Anm. 3), S. 160-171, receiving grants from the Rockefeller Foundation during the war.

⁶⁰ HONORÉ, Fritz Pringsheim (Anm. 2), S. 224, as well as Magdalen College.

⁶¹ Between 1538 and 1546: J. BARTON, The Faculty of Law, in: J. MCCONICA (Hg.), The history of the University of Oxford III: the Collegiate University, Oxford 1986, S. 262-267.

the marriage with Catherine of Aragon, but he in any case was extremely keen to support Civil Law, resulting in the Regius Professorship.

Q. Civil Law was thus a compulsory subject in the first year, but how did you become interested in Roman law? 19

A. I am a South African, you see, and I was brought up as a lawyer in a mixed legal system, and became a Rhodes-scholar. I got to know another Rhodes-scholar studying Roman law over here. Through that, I gained an interest in Roman law early on. 20

Q. There are some similarities between Roman law and Common Law, which Pringsheim also indicates ⁶². 21

A. He was very interested in that, and he was right about that, not a hundred percent right, but he had a love of the discussion of particular cases. English law is formed by discussions between judge and counsel. A lot of my work has been about showing that in Roman law, for example in *Emperors and lawyers* ⁶³. 22

Q. Pringsheim stresses that as well, the importance of an independent class of jurists as primary law-makers ⁶⁴. *Were you inspired by that, for instance seeing Gaius, which came out when Pringsheim was still alive* ⁶⁵? *Did he comment on the book?* 23

A. P. did not discuss it in great detail. But he was very happy with it, although he did not review it. When working on *Causation* ⁶⁶, it was to Freiburg that I went. My ongoing connection with Freiburg is that with Detlef Liebs, who was in Freiburg. Liebs is now retired. 24

Q. One of my colleagues went to Freiburg to talk to Liebs about Franz Wieacker: Liebs wrote one of the main biographies of Wieacker ⁶⁷. 25

A. I met Wieacker, of course, when he was in Göttingen. I did not have a formal connection with Wieacker, however. 26

Pringsheims return to Freiburg im Breisgau and the aftermath of the Second World War

Q. Wieacker was also a pupil of Pringsheim, and this is one of my main queries. You start a pupillage with Pringsheim after the Second World War in 1946. One of the weirdest things about 27

⁶² F. PRINGSHEIM, 'The inner relationship between English and Roman law', in: Cambridge Law Journal 5-3 (1935), S. 347-365.

⁶³ HONORÉ, *Emperors and lawyers* (Anm. 37): above par. 4

⁶⁴ For instance: F. PRINGSHEIM, *Besprechung von Paul Koschaker, Europa und das römische Recht*, in: *Gesammelte Abhandlungen I*, Heidelberg 1961, S. 68: 'Was die Römer der republikanischen und der klassischen Epoche aufgebaut haben, war im Gegensatz zur Rechtskunde aller anderen Nationen eine Art von Wissenschaft, die der Welt ein feinschliffenes Instrument zur Bewältigung der Fälle des Lebens geschenkt hat (...) Obgleich das Schaffen eines solchen Instrumentes ein unvergängliches Verdienst der Römer ist: ob es in rechter Weise verwendet wird, hängt von dem Geist ab, in dem es gebraucht wird. Daß es mißbraucht werden kann, lehrt die deutsche, daß auch ohne seine Schärfe gutes Recht gesprochen werden kann, die englische Erfahrung.'

⁶⁵ HONORÉ, *Gaius* (Anm. 33).

⁶⁶ HART & HONORÉ, *Causation and the law* (Anm. 28).

⁶⁷ LIEBS, *Franz Wieacker* (Anm. 6), S. 23-48.

*Pringsheim compared to for example Schulz is that he almost immediately, as soon as the war is done, goes back to Freiburg*⁶⁸.

A. This is because he was patriotic. He wanted to reconstruct the German university of Freiburg. so he went back there in 1946. Freiburg was then still under French military occupation, and he was asked about democracy. He said, first of all, we have been subject to rhetoric, don't just repeat what you are told. You need to ask: what is the evidence⁶⁹? And that was very important for the reconstruction. Secondly, based on his former Oxford-experience, he let students associate in hostels, for them to mind their own things, discuss things among themselves and form their own unions. That was the sort of Oxford-life idea. He introduced a sort of College-system into Germany⁷⁰. **28**

*Q. After Pringsheim goes back to Freiburg, he writes a report on the situation there, an apocalypse has taken place in which everything has been destroyed. The students are basically the soldiers coming back from the war, mentally destroyed. Pringsheim writes this gorgeous report about how they can resurrect Germany as a scientific country again*⁷¹. *But wasn't it strange he went to Freiburg, going back-and-forth to Oxford, but his scientific endeavor was focused on Germany? How did people respond to that here?* **29**

A. I can't comment in general, but there was a period of strong feelings among some people. But there was also a lot of sympathy, strong sympathy among for instance organizations like the Quakers⁷². I fought in the War, getting wounded in North Africa, but we strangely admired Rommel⁷³. **30**

Q. There was this gentleman's agreement on Rommel being a fine general, even though he still fought on the wrong side. Yet, Pringsheim has this Jewish background, he goes back to Germany after the war, and at one point he must have been aware of what actually happened there while he was in Oxford. **31**

A. I don't know, but I think he may have had some ambiguity about his Jewish background, between the Sephardim and the Ashkenazim, which is very important in Judaism⁷⁴. He would have been more skeptical about what it means to be Jewish. I think a lot of people in Germany were. **32**

⁶⁸ HONORÉ, Fritz Pringsheim (Anm. 2), S. 223f.

⁶⁹ HONORÉ, Fritz Pringsheim (Anm. 2), S. 225.

⁷⁰ HONORÉ, Fritz Pringsheim (Anm. 2), S. 228 and above par. 4

⁷¹ HONORÉ, Fritz Pringsheim (Anm. 2), S. 225; Bodleian Library, Oxford, Archives of the Society for the Protection of Science and Learning, MS. SPSL. 272.1, no. 213-219: the report is enclosed with a letter from Pringsheim to Ursell, the secretary of the SPSL.

⁷² Members of the Religious Society of Friends or 'Quakers' are known for their pacifist stance before, during and after the Second World War, see for instance H. BARBOUR, W.J. FROST, *The Quakers*, New York 1988, S. 247, S. 254-257.

⁷³ Compare D. YOUNG, *Rommel*, London 1950, S. 23-42.

⁷⁴ The Sephardim are Jews from the Iberian Isles, whereas the Ashkenazim originally are from Eastern Europe, leading to cultural and ritual differences, compare for example J. ROSEN, *Understanding Judaism*, Edinburgh 2003, S. 17.

- Q. Before he goes to Oxford, he is put in a concentration camp. The thing is, before he is targeted specifically, his mind-state as well as your description of him comes down to: even though I am Jewish, I am so well-respected they will leave me alone. For example, during his lectures, there were students wearing insignia who did not disrupt him in any way⁷⁵. Did he think himself impervious?* **33**
- A. I think he knew perfectly well he was in danger, otherwise why would he send his family away⁷⁶? I think it is very important in showing the extent of the anti-Semitism among the Nazis. **34**
- Q. In this regard, Schulz's story is heartbreaking, in that he is slowly but surely removed from scientific life.* **35**
- A. You can't underestimate the importance of Hitler's remark: we can make no exceptions, which I think he made to Max Planck. **36**
- Q. That must have stung Pringsheim.* **37**
- A. That's right, although he himself stayed on and wanted to do good I suppose. **38**
- Q. But doesn't make this his relation to Wieacker peculiar: Pringsheim even defended Wieacker from attacks that Wieacker had disowned Pringsheim in his works during the War⁷⁷.* **39**
- A. I cannot really speak about Wieacker, but without doubt Pringsheim viewed Wieacker as a serious scholar. **40**
- Q. Exactly, there is this connection between their scholarly work and their politics, but they always remained scientists, which I am very fascinated by. Wasn't that strange when you met Wieacker in Göttingen, knowing his background?* **41**
- A. I knew that he did things, criticizing Jewish scholars⁷⁸. But I wonder, there was the threat of violence. I remember Daube talking to me about his. The behavior of the jurists in Germany was very wrong, but Daube told me you have to think about the threat of violence. That was one of the main aspects, and Daube did come over quite early on⁷⁹. **42**
- Q. Did you have contact with Daube? During what period, in the War or after?* **43**
- A. He was my predecessor in the Chair here⁸⁰. After the War he was in Cambridge, and in fact I owe him the Chair. **44**
- Q. We would have picked Daube as one of the people to study because he is a Jewish scholar who fled quite early on. The problem for us with Daube is that he went to the US during the Second World War, which means that contrary to Pringsheim and Schulz he sort of loses contact* **45**

⁷⁵ HONORÉ, Fritz Pringsheim (Anm. 2), S. 213.

⁷⁶ Already in 1936: HONORÉ, Fritz Pringsheim (Anm. 2), S. 218-219.

⁷⁷ HONORÉ, Fritz Pringsheim (Anm. 2), S. 227: 'He was loyal to his pupils. In particular, he was proud of Wieacker, with whom he kept contact and whom he defended against the charge of slanting his scholarly work to gain favour with the Nazis.', referring to O. BEHRENDT, Franz Wieacker 5.8.1908-17.2.1994, in: SZ r.A. 112 (1995), S. xxvi-xxvii in particular.

⁷⁸ Wieacker's wartime writings are collected in Chr. WOLLSCHLÄGER (Hg.), *Zivilistische Schriften* (1934-1942), Frankfurt-am-Main 2000, see WINKEL, Franz Wieacker (Anm. 6), S. 213, Anm. 1.

⁷⁹ In 1933: A. RODGER, David Daube (1909-1999), in: J. BEATSON, R. ZIMMERMANN (Hg.), *Jurists uprooted. German-speaking émigré lawyers in twentieth-century Britain*, Oxford 2004, S. 234.

⁸⁰ Daube was Regius Professor of Civil Law from 1955 to 1970: RODGER, David Daube (Anm. 79), S. 234. par. 44

*with continental scholarship. There, he is still seen as a Common Law scholar today, even though his Roman law work is above all question. He doesn't have the centrality to the debate that for instance Pringsheim and Schulz have. As an aside, at one point Daube, Pringsheim and Schulz all apply to the Chair of Civil Law at Edinburgh*⁸¹. *None of them get it, what happened there?*

A. That was very much a local community looking after itself. But there is a parallel. After the War, I applied for a lectureship in Hull, and I got turned down in favour of a local person. Me and one of my colleagues were much better qualified, but it was localism, you see, and localism is quite important. **46**

The relation between Pringsheim and Honoré

*Q. How did Pringsheim inform your scholarship? Your works and Pringsheim's works coincide, but there are also large differences, namely Greek philosophy and the gradual development of the Eastern influence on Roman law*⁸². **47**

A. I suppose he had a strong feeling towards Roman law. Similarly, I remember Daube saying to me my work on ownership⁸³ could only have been written by a Romanist, so I can see it, although I was not so much conscious of it. There was a specific way of thinking about the relations between Civil Law and Common Law, and how they functioned as a whole. **48**

*Q. This is a feature of both Pringsheim. and Schulz, that there are general elements in Greek law, Common Law etc. that can be put together. But Greek philosophy did not make that cut for some reason, certainly not with Schulz who was very dismissive*⁸⁴, *as was Wieacker*⁸⁵. **49**

A. At a later age I studied the strong influence of Stoicism⁸⁶. But back then, it wasn't really generally accepted. **50**

Q. But already in Gaius you refer to him employing Aristotle, I can imagine that Pringsheim was less than thrilled with that. **51**

A. He was. This is also due to him concentrating on particular cases, particular subjects rather than general theory⁸⁷. I suppose he was a textualist in that way⁸⁸, and I dare say I am too. **52**

Q. There is another biography of Pringsheim, written by Elmar Bund, also a pupil of Pringsheim, and in that he similarly views Pringsheim as being principally against an influence **53**

⁸¹ In August 1938: HONORÉ, Fritz Pringsheim (Anm. 2), S. 220.

⁸² Compare HONORÉ, Fritz Pringsheim (Anm. 2), S. 214-218 and below par. 52 and 54

⁸³ HONORÉ, South-African law of property (Anm. 31).

⁸⁴ See F. SCHULZ, *Prinzipien des römischen Rechts*, Leipzig Berlin 1934, S. 23-25; F. SCHULZ, *History of Roman legal science*, Oxford 1946, S. 69-75, S. 134-137.

⁸⁵ Compare F. WIEACKER, *Römische Rechtsgeschichte I*, München 1988, S. 661-662: the jurists of the late-republic limitedly employed Greek philosophy, i.e. almost exclusively as a tool for intellectual development.

⁸⁶ For example in HONORÉ, Ulpian (Anm. 34) with regard to the Severan jurist Ulpian at S. 30-32, elaborated on in the 2002 second edition at S. 76f.

⁸⁷ HONORÉ, Fritz Pringsheim (Anm. 2), S. 215 (classical Roman law), S. 217 (Common Law).

⁸⁸ HONORÉ, Fritz Pringsheim (Anm. 2), S. 213: 'He took pleasure in difficult texts...'

*of Greek philosophy on Roman law*⁸⁹. If there had been an influence, it was a later influence: however, Pringsheim on a rare occasion does not seem to be textual here, but principal, would you agree with that?

A. I was very skeptical about that. In Gaius, I take the vocabulary of the jurists seriously as an aspect of their thought⁹⁰, and was never much into interpolationary criticism. **54**

Q. Did Pringsheim teach interpolationary criticism at Oxford? **55**

A. Yes, but particularly with regard to Gaius I was never convinced by that. Perhaps this is something religious, being brought up as an Anglican, taking seriously the words and the texts as handed down to us. One cannot just discard or rearrange these texts as one sees fit. **56**

*Q. Schulz was originally envisioned by OUP to make the English edition of the Institutes, instead of De Zulueta*⁹¹. Even though he was a fantastic Romanist, he also to a degree subscribed to the idea that there had been later emendations in the Gaius-text⁹². Can you imagine a Gaius-edition made by Schulz? **57**

A. (laughs) It wouldn't have been an acceptable edition, but it would have been an interesting one. **58**

*Q. Pringsheim argues for more later emendations in Roman legal texts, in the time between the classical period and Justinian*⁹³, how did you feel about that? **59**

A. Although the texts may have been altered by copying and transcribing, Justinian was so keen on the authenticity of the texts, although they (the Roman jurists- JG) were not Christian. Acquiring the original text authored by the jurists was perhaps essential for the compilation of the Digest: the scholars doing so must have known the texts could have been altered, and may have attempted to deal with this⁹⁴. **60**

Q. What strikes me most about Pringsheim and even to a larger degree about Wieacker is that for example regarding rhetorical or philosophical phrases in the texts, they seem to make the choice first, and support this choice with theories second. **61**

A. It is very interesting, why do we make the choices we make? Why are some matters 'classical' and others 'post-classical'? **62**

⁸⁹ BUND, Fritz Pringsheim (Anm. 8), S. 740, though not explicitly Greek philosophy but 'Hellenistische Denkfiguren'.

⁹⁰ Compare HONORÉ, Gaius (Anm. 33), S. 1-11: 'quod Gaius noster dixit'.

⁹¹ Per his own suggestion: Oxford University Press Archives, Oxford, Schulz PB ED 010382 (letter from De Zulueta to Sisam (20.12.1938); 'I think Schulz could do a Manual at least as well as an edition of Gaius, although it must be remembered he did the standard initial edition of Ulpian's Regulae. All I ask is that my plans should not be mentioned in this connection, and that they should not even form too serious an objection in your mind.'

⁹² See for example the review by PRINGSHEIM of SCHULZ, History (Anm. 84) par. 49 as printed in his *Gesammelte Abhandlungen I*, Heidelberg 1961, S. 47.

⁹³ HONORÉ, Fritz Pringsheim (Anm. 2), S. 230-231.

⁹⁴ Compare HONORÉ, Tribonian (Anm. 35), S. 248-256.

- Q. This is even more so in Schulz, the argument for a large schism somewhere around the late 3rd century AD between 'classical' and 'post-classical'* ⁹⁵. 63
- A. I agree, it is a strange way of looking at historical developments. There is an ideal, and the decline of that ideal later. 64
- Q. Could you speculate on why they make this choice?* 65
- A. Well, there was the Roman Empire, and then there was the fall, and this fall was complete, also with regard to art, literature etc. It may have been a question of envy. 66
- Q. Did you express this to Pringsheim?* 67
- A. No, I don't think so, I was too junior, too deferential. I may have harboured some doubts in the back of my mind. 68

On South Africa and constitutionalism

- Q. Did you follow the recent South African elections?* 69
- A. South Africa is polarized, has always been polarized. We lived through some aspects, such as the Boer war, immediately followed by the Rebellion⁹⁶. Behind the scenes the Afrikaners acquired political power, leading to Apartheid and creating resentment. Afrikanerdom is very interesting, because it had to adjust itself to being conquered by the British, and it also had to adjust itself by being overcome by the ANC. It is a negotiated freedom, and that ability of Afrikanerdom is very important. Regarding what's happening now, it is hard to say how solid the constitution is. But it is a constitution that calls for argument. Constitutionalism seems to me a crucial thought: also if I think about the ancient world, you must never underestimate the importance of constitutionalism. 70
- Q. Even though you are a scholar of Common Law, which in England does not operate though a constitution, and a scholar of Roman law, which does not have a written constitution?* 71
- A. Two very important rebellions in England were against unconstitutional government, government that was exercising powers which it did not possess⁹⁷. Religion was a background factor, but the phrase used with regard to King Charles was 'unconstitutional'. There was an institutional requirement to respect rights, and not to tax without consent of power. That was the constitution. 72
- Q. You have written on human rights in Roman law⁹⁸, Pringsheim also wrote on rights in Roman law⁹⁹, were you influenced by this in creating the South African constitution and fighting Apartheid basically with rights?* 73

⁹⁵ SCHULZ, History (Anm. 84) par. 49 distinguishes between the 'classical' (S. 99-261) and 'bureaucratic' (S. 262-329) periods of Roman legal science, separated by the reign of Diocletian, i.e. from 284 AD on. However (S. 262-263): '(t)he description 'post-classical' is not only uninformative but also misleading...'.

⁹⁶ The Maritz Rebellion, named after the South African general Salomon Maritz, followed the Boer War in 1914.

⁹⁷ In the English civil wars or the Great Rebellion (1642-1651) Parliament challenged the authority of Charles I.

⁹⁸ The 2002 2nd edition of HONORÉ, Ulpian (Anm. 34) is subtitled 'Pioneer of human rights'.

A. Hard to say, isn't it? I think the constitutional aspects have been crucial in the developments in South-Africa. They express a feeling, connected with the extension of citizenship, which carried a lot of legal implications. 74

Q. But citizenship in this vision is only important because it gives access to a judge, and I would say that this is a guarantee that at least comes close to this notion of rights. 75

A. Slavery is being entirely subject to some other person's whims: it is to be counteracted by employing a third party to correct that relation. I just wrote an introduction to a book about slavery in the modern world in which I describe this¹⁰⁰. In order to have access one ought to have rights. 76

Q. Or in order to have rights, one needs access: it is a strange coincidence both you and Pringsheim move towards the notion of rights in unwritten constitutions. 77

A. Yes, but behind the scenes there is always some type of constitution. 78

Pringsheims pupils, other German scholars and European unity

Q. Let me ask you about the relationship with other pupils of Pringsheim after the War. 79

A. I was severely wounded in North Africa. My regimental doctor thought I was dead, so when I met him nine months later he looked like he had seen a ghost. I was not able to go back after that, so I was enrolled in military college in South Africa before coming up to Oxford, at which I was already accepted in 1940, before the War. 80

Q. Pringsheim was a soldier¹⁰¹, I am not sure Wieacker also fought, but for example Coing did enlist in the Wehrmacht¹⁰². Whether or not Wieacker fought, I think in all three there was this militaristic ethic, a militaristic set of values. Did that make you more connected to Pringsheim and Wieacker? 81

A. Maybe. In any case, I understand the motives and conduct of people who fight for their country. It is not so important now, but it was important in the day. 82

Q. It is fascinating that people from so vastly different sides of a conflict can form a community in which it is not the content of the conflict that matters, but the fact of having taken part in it. In this regard, did you meet any other pupils of Pringsheim? 83

A. In the War was also Jescheck, who was in charge of the Max-Planck where I worked after the War¹⁰³. He fought against Russia, I think, gaining an Iron Cross. He greatly respected the 84

⁹⁹ Or, at least, comparable modes of action in English and Roman law: PRINGSHEIM, Inner relationship (Anm. 62), S. 357-359.

¹⁰⁰ A.M. HONORÉ, The nature of slavery, in: J. ALLAIN (Hg.), The legal understanding of slavery. From the historical to the contemporary, Oxford 2012, S. 9-16.

¹⁰¹ HONORÉ, Fritz Pringsheim (Anm. 2), S. 208-211.

¹⁰² LUIG, Helmut Coing (Anm. 5), S. 663; COING, Für Wissenschaften (Anm. 5), S. 59-76.

¹⁰³ Hans-Heinrich Jescheck (1915-2009) became director of the Max-Planck-Institut für ausländisches und internationales Strafrecht at Freiburg im Breisgau in 1954: U. SIEBER, Hans-Heinrich Jescheck #, in: Neue Juristische Wochenschrift (2009), S. 3291.

Russian tankpeople. I remember talking to him about the War. Certain things had to be done, even though they were wrong.

Q. Have you been to the Max-Planck in Frankfurt ¹⁰⁴ ? **85**

A. Yes, but only to give a lecture. **86**

Q. Did you meet Coing? **87**

A. Yes, when he came as a visiting fellow to All Souls with his wife¹⁰⁵. They were both married to other people when they met in April 1939 in Paris before the Mona Lisa. Of course, they knew the war was imminent, and they set, I believe this is true, let's meet again here in twenty years. In twenty years time, their partners had died, they met again, and got married. I don't know, but this is what he said. **88**

Q. You would not expect a professor of legal history to be such a romantic. **89**

A. Well, it was a very romantic story. The way I see it, moving into difficult times, who knows if we survive? **90**

Q. In his autobiography, which has been published recently, he recounts a visit to South Africa, making some rather dubious remarks about the relation between the black and white population there ¹⁰⁶ . *This is striking, because to me Coing is the one after the War really getting into natural law and ethical underpinnings for law such as human equality* ¹⁰⁷ . *These remarks clash with that theory immensely.* **91**

A. I can see that. Europe was very central for Coing. **92**

Q. In the project, we can connect most people to the idea of Europe: Coing easily ¹⁰⁸ **93**
, Koschaker obviously ¹⁰⁹ , *Wieacker wrote fantastically about Europe and European legal culture* ¹¹⁰ , *Schulz however I cannot, not explicitly at least. I never knew Pringsheim had a connection to the European idea, until I saw his after War report from Freiburg* ¹¹¹ . *He emphasized the need for a European organization, mostly to balance Germany and France. Did you speak about that?*

¹⁰⁴ The Max-Planck-Institut für europäische Rechtsgeschichte in Frankfurt-am-Main was founded in 1964 by Helmut Coing, who remained its director until 1980: LUIG, Helmut Coing (Anm. 5), S. 663; COING, Für Wissenschaften (Anm. 5), S. 194-209.

¹⁰⁵ COING, Für Wissenschaften (Anm. 5), S. 97-98.

¹⁰⁶ COING, Für Wissenschaften (Anm. 5), S. 131-126, i.e. S. 134-135.

¹⁰⁷ See for example H. COING, Die obersten Grundsätze des Rechts. Ein Versuch zur Neugründung des Naturrechts, Heidelberg 1947.

¹⁰⁸ Apart from being director of the Max-Planck-Institut für europäische Rechtsgeschichte, also through his membership of the Comité Juridique de Fédération Bancaire de la Communauté Economique Européenne: COING, Für Wissenschaften (Anm. 5), S. 147-149.

¹⁰⁹ P. KOSCHAKER, Europa und das römische Recht (4th ed.), München Berlin 1966, s. 347-353: 'Das römische Recht und das heutige Europa.'

¹¹⁰ Certainly F. WIEACKER, A history of private law in Europe, Oxford 1995, but also comparing the legal orders of ancient Rome and the modern European Union in WIEACKER, Römische Rechtsgeschichte (Anm. 85), S. 487-488 par. 29; see J. GILTAIJ, L.C. WINKEL, Rechtsordnung als Begriff in der Historiographie des römischen Rechts, in: M. ARMGARDT, F. KLINCK, I. REICHARD (Hg.), Liber amicorum Christoph Krampe zum 70. Geburtstag, Berlin 2013, S. 128-130.

¹¹¹ Above par. 28 and 29; Bodleian Library, Oxford, Archives of the Society for the Protection of Science and Learning, MS. SPSL. 272.1, no. 219 (p. 7), referring to a possible community of European nations.

A. No, but it was very much present before the War. My grandfather was already very keen on European unity.	94
<i>Q. Pringsheim was quite explicit about how a European organization should take shape. Particularly the role of education was incredibly important to him ¹¹². Taking a sample of the English Collegiate system to the continent, did he take a part of the German university culture back to Oxford?</i>	95
A. If he did, I don't think it was very successful. Certainly not if you're thinking about the position of professors in Germany. I don't think that was part of the Oxford culture. Oxford culture is very egalitarian. Professors are no better than anybody else. Tutors are as good in their own way as them. This particular university strives for a very egalitarian way of thinking about teachers.	96
<i>Q. But that was not true for Pringsheim himself.</i>	97
A. True, I don't remember him presenting himself thusly.	98
<i>Q. This also shines true from the documents you quote.</i>	99
A. He was very distinguished.	100
<i>Q. Still, it must have been fantastic to have been taught by him.</i>	101
A. It was!	102
<i>Q. Professor Honoré, thank you very much for this interview!</i>	103
<i>Helsinki/Oxford 2014</i>	104
You can download here the original interview as soundfile (.amr)	105

¹¹² HONORÉ, Fritz Pringsheim (Anm: 2), S. 225, S. 227.