

BASIL MARKESINIS

Basil (Vassili) Spyridonos Markesinis

10 July 1944 – 24 April 2023

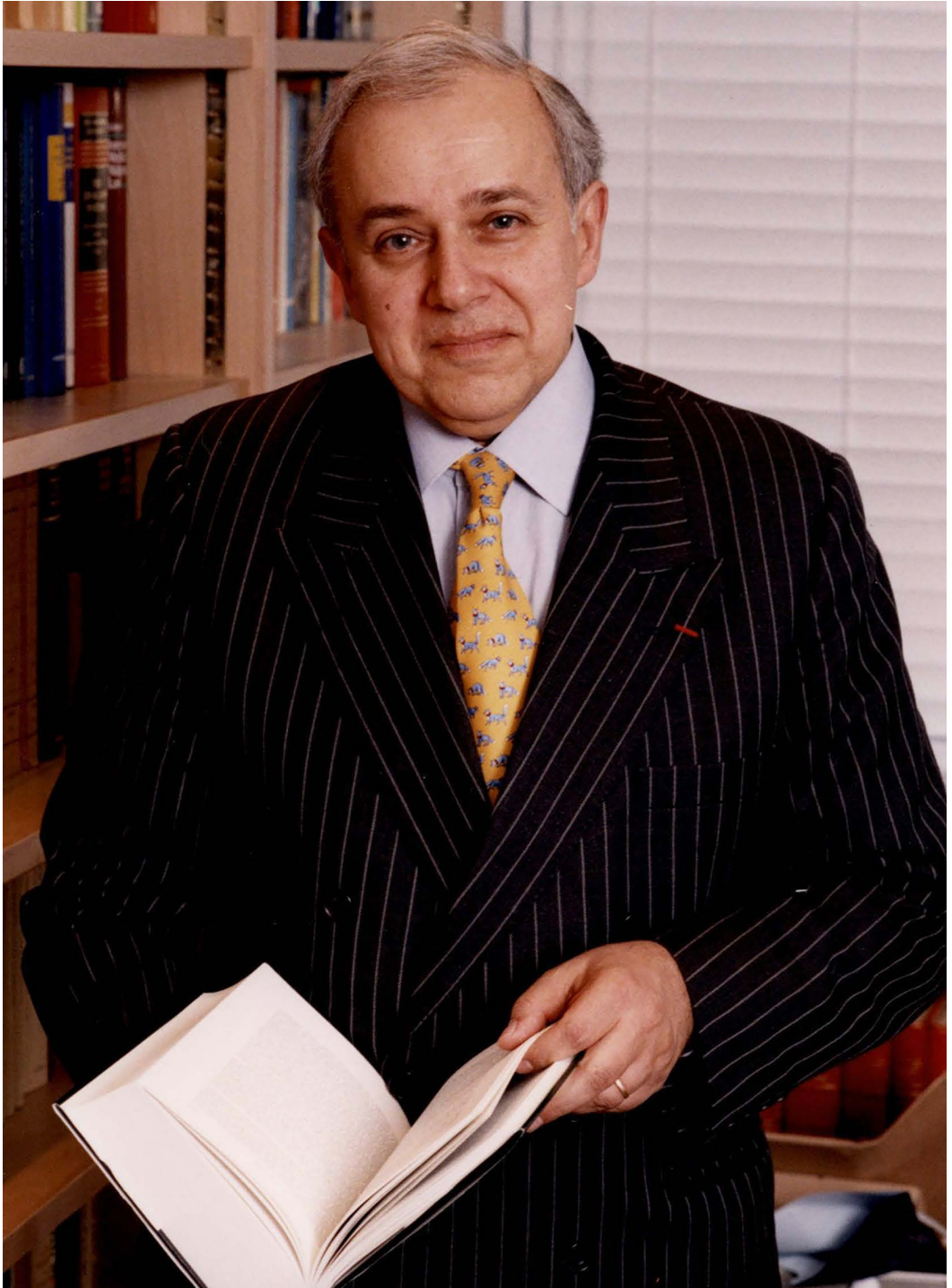
elected Fellow of the British Academy 1997

by

ROY GOODE

Fellow of the Academy

Born in Athens towards the end of the Second World War and settling in England in 1968, Basil (Vassili) Markesinis was to become one of the world's leading comparative lawyers of his generation. An Assistant Professor of Roman and Byzantine Law at the University of Athens, he went on to hold Chairs at the universities of London (Queen Mary and Westfield College and University College) and Oxford, and Visiting Professorships at Cornell University, the University of Paris I (Panthéon-Sorbonne), the University of Paris II (Panthéon-Assas) and the universities of Leiden, Texas, Ghent, Siena and Michigan. A prodigious scholar, he wrote and co-authored more than 40 books, as well as publishing countless articles and lectures in English, French, German and Greek in leading periodicals. He also founded several Institutes. At whatever law school he was based he enriched its international profile and activity. But law was not his only interest. He had a deep knowledge of the classics and of art, in which fields he also published, and his hobbies included archaeological digs, painting and fundraising (he was a past master at raising substantial funds from governments to establish academic posts).



B. S. Manserhi

I. Early years

Basil (Vassili) Markesinis (or Markezinis)¹ was born on 10 July 1944 in Athens. His father, Spyridon (Spyros), of Venetian ancestry but educated in England, was a lawyer, and for several years acted as counsel to King George II of Greece. The King had to leave the country on the occupation of Greece by Nazi Germany in 1941 and run the government-in-exile, which moved from one country to another, returning to Cairo, its first refuge after the Nazi invasion of Crete, while Spyros, a very intelligent, cultured man with a highly developed political awareness, remained. Spyros was involved in the Greek resistance, though not in the field, and later entered into politics. The period of Nazi occupation was a dangerous time. There was widespread starvation, and Basil's mother, Ieta (née Xydis), had to ride pillion on the back of her sister-in-law's bicycle to get to the maternity hospital. As a baby Basil and his mother lived for safety's sake in a different part of Athens from his father. Ieta came from an Anglo-Greek family, so that Basil had both Greek and English nationality. Both his parents were strong influences in his life. Basil's mother inculcated in him an undying love for England and things English, but his upbringing ensured that he was truly cosmopolitan, comfortable in political circles and, indeed, at one time said by some to be a future Prime Minister of Greece, following in the footsteps of his father,² though this did not materialise. Flamboyant in style, he was diminutive in stature, slightly tubby and with a high-pitched but penetrating voice, and a great love of chocolate.

II. Entry into law

Basil's legal education began at the law school of the Kapodistrian University of Athens, where he graduated in 1965 with a first class degree, followed by a Doctor Juris *summa cum laude* in 1968. He remained at the University of Athens as Assistant Professor of Roman and Byzantine Law for three years.

¹ The family name had been changed during the 19th century from Marchessini to Markezinis to comply with the demands of Greek grammar, and the family became Greek Orthodox.

² Who had briefly been Prime Minister in 1973, having been appointed to that post by Georgios Papadopoulos on behalf of the military Junta and entrusted with the task of leading Greece back to parliamentary rule, but this was frustrated by events.

III. Becoming a leading scholar

Cambridge days

In 1968 Basil took up a British Council scholarship to St John's College, Cambridge, to do postdoctoral research. On discovering that there was no such thing, he switched to do a second PhD, coming under the influence of his supervisor, the great C.J. ('Jack') Hamson, whom he revered,³ and who in supporting Basil's application to join Gray's Inn described him as 'an exceptional young man'.⁴ Hamson, a classicist turned lawyer who had been born and brought up in Constantinople, was equally cosmopolitan but more English than the English, and they became good friends. It was while he was working on his doctoral thesis that Basil took up a post at Churchill College, Cambridge, as a Gulbenkian Residential Fellow, having turned down the offer of a research fellowship at Balliol College, Oxford.

Eugenie, the daughter of a businessman, George Trypanis, and his American wife, Margaret ('Maggie'), had briefly glimpsed Basil one summer in Greece, but had not properly met him. George had been a close friend of Basil's mother Ieta since before the Second World War, and had become a friend of Spyros when he married Ieta; so in 1968, on learning that Basil had come to England to study, Eugenie's parents invited him to dinner. Basil fell in love with Eugenie and they were married two years later.

Eugenie recalls that the years 1968 to 1972 were among the happiest of Basil's life. The couple had two children, a son Spyros (Spyro), who qualified as a solicitor but went into film production, and a daughter Julietta. Basil and Eugenie planned to settle in Greece and did indeed return to Athens in 1972 during the dictatorship of the Junta, and Basil joined a law firm there. But after two years the political situation in Greece proved too difficult, and when the an advertisement of the post of assistant lecturer in law at Trinity College, Cambridge, his mother literally pushed him out of house and instructed him to send a telegram to apply for the post, which he secured. The couple then returned to England, which remained Basil's home for the rest of his life. He later became a lecturer in the Faculty of Law and Fellow and Director of Studies in Law at Trinity College.

During his 16 years at Cambridge Basil published several influential textbooks covering a wide range of subjects, including English and German tort law, agency, German contract law, constitutional law and comparative law. His *Theory and Practice*

³ It seemed to have become the practice of law professors captured during the Second World War to pass their time teaching law to their fellow prisoners. Hamson taught English law as a POW, and the celebrated French jurist René David did the same with French law.

⁴ Gray's Inn obituary 'Master Sir Basil Markesinis'.

of *Dissolution of Parliament*⁵ reproduced his Cambridge doctoral thesis which had secured the Yorke Prize as the best law thesis of the year.⁶ He then moved into the law of torts, co-authoring with R.W.M. ('Mickey') Dias *The English Law of Torts: A Comparative Introduction*,⁷ an erudite work in which English tort law is described remarkably concisely, with excursions on aspects of French and German law. This work in due course morphed into *Tort Law*,⁸ co-authored with Simon Deakin, which quickly established itself as the leading student text and is now in its eighth edition. Eschewing the standard rule-based approach of prior texts, this book addressed fundamental concepts of tort law, and set them in the context of the developing economic analysis of tort law initiated by the British economist Ronald Coase and goals of accident compensation as developed by Guido Calabresi and Patrick Atiyah, both of which became hugely influential. A two-volume work *Tortious Liability for Unintentional Harm in the Common Law and the Civil Law*,⁹ co-authored with the renowned comparative lawyer F.H. ('Harry') Lawson,¹⁰ was published in 1982 in the *Cambridge Studies in International and Comparative Law* series. This was a happy conjunction of what that outstanding French jurist and Anglophile Professor André Tunc described in his foreword as 'the great old master of comparative law and his bright younger colleague'.¹¹

Basil was called to the English Bar at Gray's Inn in 1972, becoming an honorary Queen's Counsel (later King's Counsel on the death of Queen Elizabeth II) in 1998. His practice at Essex Court Chambers consisted primarily of opinion work.

The move to London

A man of immense energy and creativity, keen to establish institutional links with European and American law schools, Basil found life in Cambridge somewhat stultifying. To use a Yiddish term, Basil was a *macher*, someone who made things happen, and

⁵ Cambridge, Cambridge University Press, 1972.

⁶ Discussed below, p. 394.

⁷ Cambridge, Brussels, Bruylant, 1976.

⁸ Oxford, Oxford University Press.

⁹ Cambridge, Cambridge University Press, 1982.

¹⁰ Lawson was possessed of intense intellectual curiosity and he also had the gift of expressing complex ideas in simple language. His little book *Introduction to Property Law*, published in the Clarendon Law series and later co-authored with Bernard Rudden, was a gem and conveyed more of the essence of property law than was to be found in larger textbooks on the subject.

¹¹ André Tunc was a Visiting Fellow at All Souls College, Oxford, and later became the first holder of the Goodhart Visiting Professorship of Legal Science at Cambridge. He held honorary doctorates from both universities and acquired a profound knowledge of English law. He was also a Corresponding Fellow of the British Academy. In one of the several memorials to Tunc, Professor J.A. Jolowicz of Cambridge University wrote: 'Français jusqu'au bout des ongles, André Tunc se trouvait pourtant parfaitement à l'aise en Grande Bretagne': 'In memoriam André Tunc' (2000) 52 *RIDC: Revue internationale de droit compare* 12.

he felt frustrated by what he saw as the lack of interest in the practical, as opposed to the doctrinal, aspect of comparative law. By good fortune Roy Goode, then Crowther Professor of Credit and Commercial Law at Queen Mary and Westfield College, University of London, was looking for a top flight comparativist to fill the newly established Denning Chair of Comparative Law (named in honour of that great judge Lord Denning), and was able to tempt Basil to leave Trinity College and its beautiful gardens in 1986 to come to the rather less glamorous surrounds of East London's Mile End Road as the first Denning Professor and Deputy Director of the Centre. Roy, who had six years before established the Centre for Commercial Law Studies within the Queen Mary Law Faculty, found in Basil a kindred spirit, innovative, international in outlook, willing to take controlled risks and appreciating the value of his links with the practising profession. Like any great teacher he had a passion for his subject, a deep knowledge of its history, its virtues and its defects, and an ability to communicate to his students its relevance to everyday life. He also possessed an extraordinary breadth and depth of knowledge of the classics and of art.

Basil's appointment to the Denning Chair at Queen Mary was a turning point in his life. In the freewheeling environment of the CCLS, Basil thrived. Comparative law was now firmly on the map in the University of London, the Denning Chair being generously supported by law firms, banks, a law publishing house, the Law Society and the Middle Temple Inn. Through Basil's wide-ranging connections, links were forged with the law schools of the University of Siena, the University of Leiden and the University of Texas at Austin, to which he was invited by the famous American law professor Charles Alan Wright, whom he had met in Cambridge. Basil had a long-standing relationship with Texas as Visiting Professor almost every year from 1986 onwards, becoming tenured in 1997 as the Jamail Regents Professor and, on his retirement from that post, becoming Emeritus Professor of Comparative Methodology. He brought to Texas numerous leading European judges and scholars; and the CCLS in turn, during his time at Queen Mary, welcomed several Visiting Professors from Texas and elsewhere, including Professors David Anderson, Jay Westbrook and David Robertson, the latter being notable in his Texas lectures for transposing reported cases into songs which he sang to the accompaniment of his guitar. Basil had a great affection for Texas which was warmly reciprocated. Professor Mark Yudof, the former Dean of the Texas Law School, records that Basil

was charming, gregarious and witty ... Basil had a formidable intellect and excelled as scholar and teacher. But what I remember most is how he encouraged me to open the doors of the University of Texas Law School to international possibilities.

This observation neatly encapsulates Basil's global outlook on legal education and co-operation. Almost everywhere he went he set up and became director of an institute with an international outlook: at Leiden, the Institute of Anglo-American Law; at Texas

at Austin, the Institute of Transnational Law, which houses translations and annotations of French, German and Italian legal decisions,¹² organised by Basil with the help of Dr. Jörg Fedtke (of whom more below) and for which Basil procured funding from American donors at Texas; at Oxford, the Centre (later Institute) of European and Comparative Law; and at University College London, the Institute of Global Law, though this last is no longer operative.

From an early stage in his career as a comparative lawyer Basil fell under the influence of the great Ernst Rabel, an outstanding scholar. In Basil's words

For me Rabel, in particular, still stands out as a giant of my subject – as the indisputable creator of an enduring methodology ... Unlike his British counterparts, Rabel consciously chose (mostly) not to link his comparative studies to history or philosophy but to the interests and needs of the practitioners of his time, and he saw that his disciples did the same. This was a world that he got to know and admire since he, himself, was to act as a judge, as an arbitrator and as a consultant of big business and which, later in his life, he was to reinforce as a result of studying the common law.¹³

Basil's focus on the need for a modern methodology of comparative law, coupled with a concomitant passion for exposing law schools to the practical operation of foreign legal systems and international perspectives, had a huge influence in changing what had previously been a rather insular approach in both common law and civil law jurisdictions. It was not that the teaching of comparative law was neglected but rather that the focus was on doctrinal discussions of codes rather than on the living law as reflected in decided cases.

Many years of teaching foreign and comparative law mainly – but not exclusively – to common lawyers have convinced me of the value of presenting a foreign system to an unfamiliar audience primarily through its case law rather than by means of an exegesis of codal provisions.¹⁴

Indeed, Basil was sceptical about the value of codes as instruments of harmonisation;¹⁵ what interested him was the living law as reflected in court decisions. And it was this focus on the law in action, coupled with anecdotes about his experiences in numerous foreign jurisdictions, that so captivated his students¹⁶ – to whom he gave continuous

¹²The Texas Ransom Center also holds a large collection of early books and manuscripts, and UK scholars researching British manuscripts treat the Center as an enormously valuable resource.

¹³*Comparative Law in the Courtroom and the Classroom* (Oxford, Hart Publishing, 2003), p. 13.

¹⁴Basil Markesinis, 'Comparative Law – a Subject in Search of an Audience' (1990) 53 *MLR* 1.

¹⁵See, for example, his short article 'Why a Code is not the best way to advance European Unity' (1997) *European Review of Private Law* 519, reproduced in Basil Markesinis, *Always on the Same Path*, vol. 2, *Essays on Foreign Law and Comparative Methodology* (Oxford, Hart Publishing, 2001), p. 103.

¹⁶Among whom was, as Basil relates, 'a German student who had never heard of Rudolf von Jhering and mistook his (Austrian) title of nobility as being a *versus*, not a *von*, and treated him as a case: the case of Rudolf against Jhering!' *ibid*, p. 63.

support, going to great pains to further their careers¹⁷ in a continuing fatherly relationship, much in the style of that existing between German law professors and their junior colleagues. The glowing tribute paid to him by the Texas Law School in its *Faculty News* shortly after his death records that a favourite with the Texas law students was his course Good and Evil in Art and Law, based on his book carrying that title. It was at Texas also that Basil used to hold court at the Four Seasons Hotel, where, in the words of a Texas colleague, ‘Basil’s lively, capacious intelligence surveyed large swaths of the world and served it up by the tea cup-full.’

Basil was a keen European and bemoaned the lack of interest then shown by English scholars in European law.¹⁸ His own comparative law range was vast, covering not only private law, particularly the law of contract and the law of torts as well as the law of privacy, but public law, including human rights, as well as differences in legal education and judicial style and reasoning.

Netherlands links

Basil was always in search of new enterprises. While at Queen Mary Basil secured a part-time professorship at the University of Leiden, as Ordinarius Professor of Anglo-American Private Law. The post was tenured for life though he gave it up in 1999. The University, founded in 1575, is the oldest in The Netherlands and owes its existence to William of Orange, who as a reward for Leiden’s valiant inhabitants in resisting attacks by Spain offered them the alternative of 50 years’ freedom from taxes or the creation of a new university. To their great credit they opted for the university.¹⁹ Installed in Leiden in an old prison cell, Basil lost no time in setting up an Institute of Anglo-American Law, of which he was the first Director. The Institute, mainly financed by the international law firm Clifford Chance, was opened with great ceremony by HRH the Prince of Wales (now King Charles III) on 27 October 1988, its purpose being to promote the knowledge of Anglo-American law and finance the study of Dutch students at Anglo-American universities. Perched high up in the Aula, almost invisible to the human eye but clearly audible, Basil laid out his plans for the new Institute. The year previously Basil had

¹⁷ One of his first students at the start of his career in Cambridge was Isabel Letwin, now Lady Letwin, who became a senior civil servant.

¹⁸ ‘Our Debt to Europe, Past, Present and Future’, in *Always on the Same Path*, vol. 2, p. 16, noting that the late Professor Guenther Treitel, himself a distinguished comparative lawyer, kept this part of his intellectual armoury quite separate from his textbook on English contract law. This was indeed the case, to the point that Treitel’s textbook and his published work on comparative law might well have been thought written by different people.

¹⁹ No doubt some of the more hard-headed of the citizenry also asked themselves whether the pledge of no taxes for 50 years would survive the death of William of Orange!

given his inaugural lecture at Leiden on a topic of considerable importance in English law,²⁰ in which he argued that the reluctance of English courts to give a third party to a contract made for that party's benefit a remedy for breach of the contract was forcing the courts towards allowing damages in tort for pure economic loss.

From Queen Mary to UCL, and then on to Oxford

Basil's restless energy and persistent desire to establish new institutions meant that he was constantly on the move. His longest attachment to an English law school was at Queen Mary, where he remained for seven years, enjoying the fact that in the well-staffed CCLS the amount of teaching required was not so heavy as to inhibit writing, a complaint he sometimes made about our two oldest universities.

In 1990 Roy moved to Oxford, and some years later, learning that Basil was thinking of moving on, he attempted to bring him to Oxford. But in this ancient university the mills of God grind slowly, and while Oxford was deliberating Professor Jeffrey Jowell (now Professor Sir Jeffrey Jowell), who as Dean of UCL's Faculty of Laws and Head of its Department of Law had re-energised the UCL law school, moved in and secured Basil's appointment as Professor of European Private Law. But not for long. By now Oxford was getting its act together and had established, with the help of funding from the European Commission, the Clifford Chance Chair of European Law. The post was duly advertised and there were around nine applicants. Basil was not one of them. He had wisely decided to await events rather than jeopardising his position at UCL by applying for the Oxford Chair which he might not get. The Oxford Selection Board, however, having spent most of its meeting discussing the various applications, then turned its attention to the one person who had not applied and unanimously decided to invite Basil to become the first Clifford Chance Professor. He took up his post in 1995 and almost immediately established and became first Director of the Centre for the Advanced Study of European and Comparative Law, now the Institute of European and Comparative Law.

Basil's skilful negotiations with the French and German governments through the Maison Française and the Deutscher Akademischer Austauschdienst (DAAD) resulted in their funding of French and German deputy directorships of the Institute. One of the many beneficiaries of Basil's work at the Institute was Nello Pasquini, who was appointed to the then Centre as a teaching fellow in Italian private and constitutional law, and who became a good friend. In his own tribute Pasquini, referring to Basil as a 'very complex character' who 'could be formal',²¹ records the occasion in 1998 when he joined Basil and four Law

²⁰ 'An Expanding Tort Law: the Price of a Rigid Contract Law' (1987) 103 *LQR* 354.

²¹ This was particularly true when he was talking to people of whom he did not approve!

Lords on a trip to Siena to sign a student exchange agreement between Oxford and Siena, before moving on to Rome to see Italy's President and Prime Minister. Basil organised similar visits to Italian academic institutes by other leading English judges.

It was at Oxford that Basil awakened the interest in comparative law of Stefan Enchelmaier, now Professor of European and Comparative Law at Oxford. Basil, still the Clifford Chance Professor of European Law, also held a Fellowship at Lady Margaret Hall, but later took the established Chair of European Law at Brasenose College in succession to Professor Bernard Rudden, and was himself succeeded by Professor Birke Häcker. But he retained a deep appreciation of Clifford Chance and that firm's constant encouragement and support, and maintained his association with them even after moving to London.²² Clifford Chance was responsible for initiating the *Clifford Chance Lectures* in different disciplines, including law, and Basil skilfully edited several volumes of these, including *The Coming Together of the Common Law and the Civil Law*,²³ *The British Contribution to the Europe of the Twenty-First Century*,²⁴ and, with Jörg Fedtke, *Patterns of Regionalism and Federalism*.²⁵

Basil and Eugenie lived for many years in Middleton Stoney, a picturesque village in North Oxfordshire where they entertained their many friends. They moved to their final home, Michaelmas Cottage in Bletchington, Oxfordshire, in November 2018.

Return to UCL

Basil remained at Oxford for five years, after which he returned to UCL as Professor of Common and Civil Law, where he was later joined by Fedtke, whom he recruited to UCL after interviewing him at the headquarters of the DAAD in Bonn. Fedtke recalls that it was less an interview than a vigorous academic interchange in which it became apparent that they disagreed on just about everything, and Fedtke was convinced that the interview had been a disaster. It transpired that to the contrary Basil had enjoyed the discussion and Fedtke was duly appointed as Basil's junior colleague, later becoming a professor and a close friend. Basil, he said, was his *akademischer Vater*, whom Jörg assisted, as mentioned above, in setting up a database of translations of extracts from tort law judgments in various jurisdictions, with translations of German judgments by Professor Tony Weir, a law professor and an outstanding German legal translator.²⁶

²² Preface to volume 2 of *Always on the Same Path*.

²³ London, Bloomsbury, 2000.

²⁴ Oxford, Hart Publishing, 2002. The papers in this volume were designated 'British Academy Centenary Lectures', as a contribution to the British Academy centenary celebrations in 2002.

²⁵ London, Bloomsbury, 2006.

²⁶ Weir's translation of Franz Wiecker's great work *Privatrechtsgeschichte der Neuzeit* was so outstanding that one scholar is said to have remarked that Weir's *A History of Private Law in Europe* was a brilliant work badly translated into German!

Basil left Oxford for what may have seemed a trivial reason, namely the refusal of the administration to give him a parking permit to park his car at the St Cross Building where his department was based. But this was merely a reinforcement of his sense that his work in raising funds for and developing the Institute of European and Comparative Law was not appreciated. Unfortunately Roy was away teaching at Harvard at the time and was unaware of the problem, and no one thought to take the matter up with the university authorities, so he left. We all enjoy appreciation, but Basil felt the need for this more strongly than most people, and because he was a loner and tended not to become involved in the general life of the Faculty, he lacked the support he might otherwise have enjoyed. He craved the approval of his father, which unfortunately was rarely expressed, though secretly the old man had a huge admiration for his son's achievements. Moreover, Basil's sense of the university's lack of awareness of what he had achieved was not without foundation. He was particularly good at cultivating relations with French and German Heads of State and Foreign Secretaries, and this resulted in a steady inflow of funds for the Institute via the *Maison Française d'Oxford* and the DAAD. But instead of a thank you this prompted an uncharacteristically pompous letter from the Chancellor, Roy Jenkins (an outstanding Chancellor, a prolific political biographer and one of the most liberal Home Secretaries this country had ever had), saying:

It has come to my notice that you have been engaged in discussions with Heads of State. This not a matter for ordinary Faculty members, it is for me as Chancellor

to which the Vice-Chancellor had added a note 'I entirely agree.' But it would surely have been better to send Basil a note saying: 'Congratulations on all you have achieved. It would be helpful if in future you were to liaise with my office to ensure that wires are not crossed.' However, at the time that was not the Oxford way. This sense of want of appreciation may well have prompted Basil's desire to ensure that his many achievements did not pass unnoticed, for every book he published listed his many honours and awards. Or perhaps this reflected an underlying sense of insecurity. Certainly his experience both in Greece and in England reflected the saying of Jesus that 'a prophet is not without honour except in his own country', though he did have devoted friends at Oxford, including Professor Martin Matthews and the writer of this Memoir. In the event, Basil, disillusioned with Oxford, returned to UCL for two further years as Professor of Common and Civil Law. During this period he was elected a Fellow of the British Academy, an honour he so richly deserved and one which gave him the greatest pleasure. While still at UCL he raised funds for the establishment of the Institute of Global Law, of which he was Chairman, before retiring in 2007 and becoming a non-executive director of the Alexander S. Onassis Public Benefit Foundation. But of course his retirement was purely notional. A cascade of books and articles issued from his pen. Indeed, he continued writing right up to the time when he became ill and could no longer

continue. Professor Dawn Oliver, a former Dean of the UCL Law School, records that ‘as a colleague Basil was both kind and thoughtful’, confirming, as stated earlier, that ‘he was also rather anxious to be appreciated and supported. He constantly needed reassurance, and so the many honours he received were important to him.’

IV. Building international relationships

Basil had a phenomenal ability to engage with the great and the good in pursuing with single-mindedness his drive to develop international relations between whatever institute he was currently heading and institutions and foreign scholars and institutions. Some examples have already been given. His technique was simple but required ‘*un peu d’audace*’. He would organise a major, widely publicised event, invite a judge on the highest court of a given country to give a keynote address in the presence of his counterparts elsewhere as well as of scholars and practising lawyers both in the home institution and abroad, and arrange for the rector or other head of the institute to receive the speaker with suitable tributes, and arrange a dinner in his or her honour. Another practice was to organise a collection of essays to which senior judges and other leading lawyers were invited to contribute. These included three volumes edited by Basil (some of them with his friend and former colleague Fedtke), in the series *The Clifford Chance Lectures*, published by Bloomsbury Press and reproduced in lectures sponsored by that firm: these were the aforementioned *The Coming Together of the Common Law and the Civil Law*, *The British Contribution to the Europe of the Twenty-First Century*, and *Patterns of Regionalism and Federalism*. He also organised, through the Institute of Global Law at UCL and the Institute of International Law at Queen Mary, a conference of which the papers were subsequently published under the title *Issues of State Responsibility before International Judicial Institutions*.²⁷ He also co-published with Fedtke *Engaging with Foreign Law*.²⁸

Among the outstanding jurists brought into Basil’s circle were: Lords Wilberforce and Bingham, both of whom were Senior Law Lords; Lord Goff, also a Law Lord and, earlier in his life, co-author with Professor Gareth Jones of a leading text on the law of restitution (now called unjust enrichment); Dame Rosalyn Higgins, who became President of the International Court of Justice; Mme Noëlle Lenoir, a judge of France’s Conseil Constitutionnel; Professor Dr Günter Hirsch, President of the Bundesgerichtshof; Professor Dr Walter Odersky, Emeritus President of the Bundesgerichtshof; and Professor Dr. Iuta Limbach, President of the German Federal Constitutional Court. Basil also

²⁷Ed. Malgosia Fitzmaurice and Dan Sarooshi, Oxford, Hart Publishing, 2004.

²⁸Hart Publishing, 2003.

served as *conseiller scientifique* to Guy Canivet, First President of the French Cour de Cassation, facilitating the gift to the Court of a large number of paper-based law books and other legal materials held by the Cornell Center for Documentation on American Law, to enhance relations between France and the United States. What also particularly impressed French and German Heads of State and foreign ministers was Basil's enthusiasm for inculcating into English students and colleagues a greater awareness of the French and German legal systems and of the contributions made to jurisprudence by their courts and doctrine by their scholars. He was a member of prestigious academies in England, France, Germany, Italy, Belgium, The Netherlands, the United States and Athens. He built up a network of distinguished friends in European law schools, among them: Professors Christian von Bar, of Osnabrück University, who had spent several years as research fellow at Churchill College; Henry Schermers, who held Chairs at Amsterdam and later at Leiden; Dominique Hascher, who became a judge on the French *cour de cassation*; François Terré, a professor at Paris II; Francesco Francioni, of the European University Institute; and Giovanni Grottanelli De' Santi, of Siena University.

One of Basil's other great friends and colleagues was Professor Guido Alpa, an outstanding jurist, as fluent in English as in his native Italian, who served two terms as President of the Italian Bar and with whom Basil wrote a number of essays. In his own graceful tribute Alpa recorded his sense of loss on learning of Basil's death.

It is difficult for those who for so many decades had the good fortune to frequent first as a colleague and then as a friend a person so rich in vitality and cultural curiosity as Sir Basil Markesinis – Basil, for all of us – to recall in one page his rich personality, extraordinary culture and merits – truly great – as a writer and lecturer. It is also difficult to overcome the first moments of hesitation, as memories mingle with emotions and deep sorrow at his passing a few days ago.

Alpa shared Basil's international approach and made it his business to develop relations between the Italian bar and the English legal profession, aided by another Italian lawyer Nello Pasquini, relations which unhappily faded away on the expiry of Alpa's second term of office.

V. Other publications

The yardstick by which most academics are judged is published scholarly work. This, after all, is the most objective evidence of their abilities, and it has become even more important for universities with the introduction of the research assessment exercise in 1986, a high rating carrying with it substantial research-related funding from the higher education funding councils. It is arguable that the almost exclusive focus on research

activity has led to unfairness: some of the most valuable members of an academic department are not writers by nature, but are pillars of the department not only as conscientious teachers who in addition give their students a high degree of pastoral care but also play critical roles in departmental and university administration.

The criticism of neglect for anything other than research could not be made of Basil. He was an inspirational teacher, a highly effective fund-raiser and a creator of new institutes in every law school of which he was a member. Despite this, an astonishing series of scholarly publications, in English, German, French and Greek, flowed from his pen from the late 1960s onwards. Several of these have been mentioned already. One of Basil's ambitious aims, which he eventually achieved in masterly fashion, was to produce comparative textbooks and casebooks covering the American, English, French and German law of obligations. But this was only part of his *oeuvres*. Altogether he wrote more than forty books and well over 100 articles in law and law-related subjects, not to mention book reviews as well as numerous articles in leading newspapers on contemporary diplomacy and geopolitics concerning the Eastern Mediterranean.

The art of diplomacy began in ancient Greece and Basil, who had a wicked sense of humour, proved to be a past master; indeed, who knows what he might have achieved in the political world if he had followed a career in politics rather than one in the world of academe? His publications in Greek were, indeed, political, not legal, texts. They included *Επικοινωνιακή Διπλωματία και Διπλωματία Βάθους* (*Communication and Substance in Diplomacy*, 2009); *Οι Επτά Ιδέες για Πιθανή Αναγέννηση της Ελλάδας* (*Seven Ideas for the Revival of Greece*, 2011); and *Η Ελλάς των Κρίσεων* (*The Greece of Crises*, 2011).

Basil's first book on English law, published in 1972, was *The Theory and Practice of Dissolution of Parliament*,²⁹ being volume IX of the *Cambridge Studies in International and Comparative Law*, under the general editorship of his mentor C.J. Hamson and the great international lawyer R. Y. ('Robbie') Jennings. After setting out a general theory of dissolution, this work, dedicated to Basil's father, went on to examine in some detail the dissolution of Parliament in the United Kingdom and in Greece, a complex subject governed partly by law, partly by convention. It was a masterly exposition by a 28-year-old research fellow, which involved a great amount of historical research into the dissolution process. It was accepted that the sovereign could not take the decision to dissolve on his own, indeed this rule was necessary for the sovereign's own protection to avoid being blamed for an unwise or controversial decision. So strongly was this felt that Prime Ministers Pitt and Peel 'offered themselves as scapegoats in order to save the Monarchy

²⁹ Preceded by his first known publication *The Mother's right to Guardianship according to the Greek Civil Code*, published in Greek in 1968.

from the disastrous effects the King's action had produced ...³⁰ One of the highly controversial issues it discussed was the circumstances in which the sovereign could refuse to dissolve Parliament on the advice of a minority administration. Another was whether advice had to come from the Cabinet, as was once the case, or simply from the Prime Minister, as was later established.

Basil followed that great comparative lawyer Harold Gutteridge, the first professor of comparative law at the University of Cambridge and a fine commercial lawyer,³¹ in bemoaning the gulf that existed between the academic and the practising lawyer, leaving both the poorer.³² Happily that is no longer the case. Several academics now spend some time in practice, while experienced practitioners contribute to teaching, particularly in postgraduate course, and the senior judiciary rarely decline an invitation to talk to students or take part in conferences and seminars.

In contrast to courts in the United States, English courts are happy to take account of foreign jurisprudence in developing their own. That was vividly demonstrated in the decision of the House of Lords in *White v Jones*,³³ where the issue was whether a solicitor whose neglect to draw up a will deprived the intended beneficiaries of their legacies was liable to them in tort and/or contract. In upholding the plaintiffs' claim, both the Court of Appeal and the House of Lords referenced (*inter alia*) Basil's article 'An Expanding Tort Law – the Price of a Rigid Contract Law',³⁴ paid close regard to his description of the position in German law but finding that, while Basil had convincingly argued that a contractual as opposed to a tortious solution was the preferable one, it was precluded by binding precedent applying the privity rule,³⁵ so that in the absence of privity the only remedy lay in tort. Basil's other writings were also extensively referred to. He also worked closely with other scholars in some of his publications, including Hannes Unberath, Angus Johnston, Werner Lorenz, Gerhard Danneman, John Bell, and Jörg Fedtke. With the first two, he co-authored volume 1 of a major two-volume work *The German Law of Obligations*, this volume being devoted to the law of contracts and restitution, and being described by a reviewer as 'a profound and comprehensive analysis'

³⁰ *The Theory and Practice of Dissolution of Parliament*, p. 68.

³¹ Gutteridge's little book *Comparative Law* (2nd edn 1949) is a gem, combining academic mastery of the subject with a detailed knowledge of the mechanics of unification. He wrote *The Law of Bankers' Commercial Credits* (London, Sweet and Maxwell, 1932). This classic text, with subsequent editors, ran for several editions.

³² Appendix I to *Comparative Law in the Courtroom and the Classroom* reproduces the exchange of letters between Gutteridge and Lord Atkin on this issue.

³³ [1995] 2 AC 207. Basil appeared as co-counsel in that case.

³⁴ (1987) 103 *LQR* 354.

³⁵ English law did not at that time recognise the rights of a third party beneficiary under a contract. The position was changed by the Contracts (Rights of Third Parties) Act 1999.

of the subject,³⁶ while Basil was the sole author of the first edition of volume 2 on the law of torts, both volumes being published in English.

There were not many works on German law published in England, the most comprehensive being E.J. Cohn's outstanding two-volume work *Manual of German Law*.³⁷ The two volumes of *The German Law of Obligations* were equally outstanding but, in addition to being more up to date, adopted a different approach. True to Basil's belief that case law provided the best insight into a legal system, each chapter consisted of a narrative commentary followed by translations of decided cases (in volume 2, in the form of addenda). Both works were widely praised. The torts volume has gone to five editions, Basil being joined in the fifth edition by John Bell and André Janssen in collaboration with Colm McGrath. From the outset this work attracted acclaim from comparative lawyers. To return to André Tunc:

On reste confondu devant la prodigieuse activité de Basil Markesinis, maintenant professeur de droit comparé à l'Université de Londres (Queen Mary College) et professeur de droit anglo- américain à l'Université de Leiden ... On ne saurait trop insister sur l'enrichissement que procure la lecture de cet ouvrage. La culture juridique de l'auteur dans les droits allemand, anglais, américain et français est proprement étonnante, comme étonne l'aisance et la force avec lesquelles il combine les données de son savoir.³⁸

Basil was much in demand as a lecturer, receiving invitations from over two dozen law schools. A man of astonishing erudition, he was almost as knowledgeable about art and poetry as he was about law. Mention has already been made of *Good and Evil in Art and Law*, in which he set out his stall as an academic.

The prime aim in my work as an academic and practicing [*sic*] lawyer has been to study law in its international dimension. More precisely, I have tried to understand the rules adopted by different systems and find ways to 'bring them closer to each other' not only in order to emphasize my belief in our common humanity and a minimum of shared values in which I believe passionately but which so often are concealed by state, religious, or racial bias, but also because I have always believed that we might learn more from one another's 'good' ideas. I am, in short, one of those who have celebrated difference, not only because I find it intellectually enriching, but also because – paradoxically perhaps – it has stimulated me to discover hidden similarities.

Secondly, as an academic with a deep interest in what I have always called the 'real world,' (stemming both from my indirect but long association with the world of European

³⁶ Antje Kunst (1998) 47 *ICLQ* 739.

³⁷ Cohn, who had a substantial practice in London, wrote volume 1 himself, but for volume 2 was joined by two practitioners, O.C. Giles and M. Bohndorf. A third contributor is shown, one J. Tomass, on 'Two Aspects of East German Law', but he did not exist! The chapter was written by Cohn himself, who did not wish to be identified as the author of a chapter on East German law!

³⁸ (1987) 39 *RIDC* 299-300.

politics but also from my dislike of the reclusive attitudes of academics and judges) I have also tried to give my writings as practical an orientation as I could imagine the world beyond the cloisters required. This has often led me to mistrust purely theoretical explanations for human conduct, always seeking – though not always successfully – interpretations which struck me as being closer to real life. Likewise, it led me to a degree of reconciliation with the ideas of relativity and uncertainty.

In November 2017, spectacles dangling from his neck, he delivered a full-length lecture on Euripides in Macedonia to the Macedonian Society without a single note. In his little book *Myths, History and Art: Twelve Essays on Art and Deception*, published in 2020, just three years before his death, Basil discusses the need for truthfulness in art.

Art, which disguises human evil, is one of the most repulsive kinds, at any rate, once its viewers have managed to see what may lay behind artistic mastery.³⁹

So whether what is being depicted is a portrait or an event, it is the duty of the artist to be true to himself and, while illustrating virtue, not to conceal vice. Basil gives as his first example Jacques Louis David's portrait of Marat lying in his bath where he was assassinated by Charlotte Corday. Marat, a well-travelled and widely educated man, had played a key role in the French Revolution and was responsible for the guillotining of a large number of entirely innocent people on the ground of their alleged disloyalty to the cause of the revolution. Yet none of this emerges from the painting. Naturally truth is not always pleasing to the sitter. Pope Innocent X is said to have complained of Velasquez's portrait of him: 'È troppo vero! È troppo vero!' He had a similar dislike of Bernini's sculpture of him.

Equally perceptive are Basil's writings on Greek poetry. In 2017 he published a three-volume work *Ancient Greek Poetry from Homer to Roman Times*, in which he described the central theme of his academic work of fifty years as the movement of cultural ideas from one country to another.

Another interest of this remarkable man was archaeology, which perhaps was hardly surprising, given his passion for digging into the past.

VI. Thoughts expressed in public lectures

As in other disciplines, there are many prestigious annual public lectures named for a distinguished jurist or institution, and Basil received numerous invitations to deliver several of these, among them the Atkin Lecture at the Reform Club in memory of the

³⁹At p. 15. Punctuation was not always Basil's strong point. The first two commas unintentionally change the sense and should be ignored.

great lawyer Lord Atkin,⁴⁰ the Lionel Cohen lecture at the Hebrew University of Jerusalem,⁴¹ the John Maurice Kelly memorial lecture in University College, Dublin,⁴² and the Irvine Distinguished Lecture at the Cornell Law School.⁴³ In preparation for the first of these, entitled *Litigation Mania in England, Germany and the USA: Are We So Very Different*,⁴⁴ Basil sought statistics on litigation in Germany from the German judiciary and, being told that these were not held, proceeded to construct them himself from various sources. It was one of his characteristics that when searching for previously unknown data he was like a terrier, digging away and not giving up until he had found what he was looking for. In the second of the above lectures⁴⁵ he posed the question how one sets about encouraging an internationalist approach, to which he gave the answer ‘by promoting, among other things, a greater partnership between academic and judge’. In the third lecture⁴⁶ he defined scholarship as embodying three requirements – wide learning, originality of thought, and clarity of expression by means of a felicitous style – and paid tribute to four great comparative lawyers whose work exemplified these qualities: Barry Nicholas, Bernard Rudden, Tony Jolowicz and Tony Weir, all of whom he described as writing with elegance and depth. Basil’s own writings fully met the three requirements he had prescribed for scholarly work, to which one might add a fourth: lightness of touch. In his Irvine Distinguished Lecture he tilted at the tendency of US judges to treat US law as so distinct that it could learn nothing from foreign legal systems, an attitude particularly unfortunate when the courts of those legal systems felt it fruitful to draw on American doctrine and jurisprudence, and he sensed a lack of reciprocal respect. Basil himself was a great admirer of US law and lawyers, as indicated by his long attachment to the Texas Law law school.

⁴⁰ Famous among other things for formulating, in *Donoghue v Stevenson* [1932] AC 562 the scope of the duty of care in both England and Scotland

⁴¹ Lionel Cohen had been a Law Lord who chaired a number of Royal Commissions, including one on the reform of company law, whose report led to the ground-breaking Companies Act 1948. The lecture, held continuously since 1953, is organised by the British Friends of the Hebrew University.

⁴² A distinguished Irish lawyer who was Professor of Roman Law and Jurisprudence at University College, Dublin, and went on to become the Attorney General of Ireland.

⁴³ An American judge and former Dean of the Cornell Law School.

⁴⁴ Published in (1990) 49 *CLJ* 233.

⁴⁵ ‘Bridging Legal Cultures’, reproduced in (1993)

⁴⁶ ‘Scholarship, Reputation of Scholarship – Provocative Reflections from a Comparativist’s Point of View’, reproduced in (1993) 27 *Israel Law Rev* 363.

VII. 'A great Hellene'

Nick Stamatis has described Basil as 'a great Hellene and a patriot',⁴⁷ devoted to his native land and doing what he could to help the country escape the effects of a deep financial crisis, but his advice was ignored by his country's leaders and a fresh crisis developed several years later. Basil always felt that the approach of the West to Russia was fundamentally flawed and that it was important that Europe and America should engage with Russia.

VIII. Family and friends

Mention has already been made of several of Basil's friends and colleagues from different jurisdictions. He had many other academic friends from around the world, too numerous to list here. Among those with whom he developed a relationship both cordial and of mutual respect was Mme Nöelle Lenoir, a former member of the French Conseil d'Etat, whose warm tribute to him at the memorial service at Gray's Inn on 21 September 2023 perfectly captured the essence of the man:

He was first and foremost a dear friend and a model of legal and intellectual excellence. He is, in my opinion, one of the greatest comparatists of his time. But I would also like to show the originality, in fact uniqueness, of his character, whether in his ability to judge men and women, his talent for building bridges between cultures and nations, or the rare feature of being both a thinker and a man of action whose practical achievements are legion ... his students [at Austin Law School in Texas] adored him. He received me with his colleagues, and I was immediately seduced by his charisma, the sharpness of his intelligence and his not just British but undoubtedly also Greek sense of humour.

IX. 'His blushing honours thick upon him'⁴⁸

During Basil's working life honours and awards were showered upon him. Already holding a doctorate from the University of Athens and higher doctorates from the universities of Cambridge and Oxford, as well as an honorary doctorate from the University of Gent, he was awarded further honorary doctorates by the universities of Paris 1 (Panthéon-Sorbonne), Munich and Athens. In 1991 the President of the German Federal Republic conferred upon him the Order of Merit for his work on German law and his

⁴⁷ *Helleniscope*, 24 April 2023.

⁴⁸ William Shakespeare, Wolsey's Farewell to Greatness, *Henry VIII*, act. 3, sc. 2.

exceptional services in strengthening Anglo-German relations. This was later followed by the award of the Grosse Verdienstkreuz, Commander of the Order of Merit, for his outstanding contribution to British-German relations and the promotion of German law, further upgraded in 2003 to Knight Commander of the Order of Merit. A series of honours and awards came from other countries: France,⁴⁹ Italy,⁵⁰ Greece,⁵¹ and the United Kingdom. In every case the honour was conferred personally by the Head of State for services to comparative law and international legal relations. Basil was very much at home in the surroundings of these awards, just as he had been in the world of politics. He had the gift of moving effortlessly among academic institutions, governments and practitioners. In France he was scientific adviser to the First President of the Cour de Cassation, while in London, as stated earlier, he was much in demand from the major law firms for Opinions on English and foreign law, also acting for one international law firm as Special Adviser for European Affairs. In England, having taken silk earlier, he was appointed Knight Bachelor in the 2005 New Year's Honours List.

X. The closing years

In November 2018 Basil became seriously ill with a brain bleed following a fall, and though he had a successful operation he was never the same thereafter – gradually becoming more and more withdrawn to the point where he was no longer able to communicate with anyone other than his wife Eugenie, who had loyally supported him throughout their 50 years of marriage, subordinating her own interests to his. Devotedly nursed by her for the next few years, he died on 23 April 2023, bequeathing a rich legacy of outstanding scholarship and the deep affection of family and friends.

Acknowledgements

The author gratefully acknowledges his great indebtedness to Eugenie Markesinis when preparing this memoir, as well as assistance by Noelle Lenoir and Professors Dawn Oliver, Hazel Genn, Jörg Fedtke, Mark Yudof, Jay Westbrook, and Sir Ross Cranston. A curriculum vitae, including a comprehensive list of Basil's publications, can be accessed at <https://docplayer.net › 20848269-Sir-basil-markesinis>.

⁴⁹ Successively Officier dans l'Ordre des Palmes Académique, Chevalier dans l'Ordre Nationale de la Légion d'Honneur, Commander of the Order of the Légion d'Honneur, and Knight Grand Cross of the National Order of Merit, of which he was only the sixth English recipient.

⁵⁰ Cavaliere-Ufficiale del Ordine al Merito, later raised to Grand Officiale del Ordine al Merito della Repubblica Italiana and further raised to Knight Grand Cross of the Order of Merit.

⁵¹ Commander of the Order of Honour.

Other sources:

Texas Law News, 25 April 2023, ‘Law School Remembers Sir Basil Markesinis, Longtime Professor and Leading Scholar’

Telegraph obituary 26 April 2023

John Bell, ‘Basil Markesinis: An Appreciation’, *BACL blog* available at <https://wp.me/p80U0W-1qN>

Note on the author: Roy Goode is Emeritus Professor of Law in the University of Oxford and Emeritus Fellow of St John’s College, Oxford. A former solicitor, he transferred to the Bar in 1988 and in the same year was elected a Fellow of the British Academy. He was appointed Queen’s Counsel (now King’s Counsel) in 1990 and knighted for services to academic law in 2000.

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Biographical Memoirs of Fellows of the British Academy (ISSN 2753–6777) are published by The British Academy, 10–11 Carlton House Terrace, London, SW1Y 5AH
www.thebritishacademy.ac.uk

