

INTERVIEW WITH PROFESSOR RENÉ CREMONA, LL.D.

Dean of the Faculty of Laws, at the University

by Neville Gatt & Christopher Spiteri

Professor, what are your recollections of pre-War Malta?

I am not that old to have too many recollections of pre-War Malta. I was about to be ten years old when Italy declared war. I lived a rather sheltered life in Valletta¹. I remember Valletta as a true capital city² as the fulcrum of the entire island, as a residential city throbbing with life³. This is exactly what it ceased to be. What struck me over the years is the fact that Valletta has degenerated.

Which do you consider to be the major changes which have occurred in Maltese society from your childhood till the present day?

The one change which strikes me most of all is that within a relatively short period of time the Maltese have changed from an eminently thrifty race into a practically spendthrift one. What our forefathers saved we are now dissipating. From persons who were always preparing themselves for the rainy day we have now become utterly consumerist. There has been a change from one extreme to the other. We are now relying on social services, on a benevolent government that will see us through instead of relying on our own resources. There is also a change in values. I was brought up to believe that you have to be a gentleman, that if you are a gentleman you cannot be better. There is nothing higher than a gentleman. Today being a gentleman is something which is soon becoming ridiculous, something to be laughed at. The traditional values which have kept us together are being jettisoned and they are not being replaced by anything comparable. There are also changes for the better, people are better, more people are more educated though not necessarily better educated because we used to take education more seriously. We did not rely on the media but read a lot of books. Today's youngsters only read the essential textbooks.

You entered University at a relatively young age. What led you to choose the legal career from any other and what made you so sure of your choice at such a tender age?

I never had any real choice. I was conditioned to consider that I had to go to university. At fourteen I had to choose which course to take. At the time there were four possible professions which I could pursue, the medical, the

1. We used to go to Sliema for the Summer holidays but I remember Valletta most of all.

2. As a hive of activity.

3. It used to be dignified, but it is no longer so.

ecclesiastical, the legal, and architecture. I did not have the calling for an ecclesiastical career. I used to associate architecture with going into building sites and getting muddy, so while I liked to draw plans I didn't like the idea of going into the countryside in boots; I didn't like it at all. I was acquainted with the medical profession since my father was a doctor and my brother was studying medicine and so our discussions during lunch time were always related to diseases and similar topics. I was very much interested in this work but on the other hand I saw that my father worked literally day and night. I remember him coming home very tired late at night and after two hours the phone rings and he had to go out again. This did put me off a bit especially since I did not realize that even the legal profession takes so much of your time to such an extent that it hardly leaves you any leisure time. So by elimination I chose the legal profession, also because it was a fairly common profession in my family. My eldest brother had already become a lawyer and two uncles of mine were a judge and a magistrate respectively, so it seemed as good as any other. However I cannot say that I was in the least sure that I was making the right choice, though it turned out to be the right choice.

What memories do you have of your student days at university?

I have lovely memories which will always remain with me, so much so that I have always remained a student at heart. I have always associated myself with the students rather than with the academic staff. It is not something I do consciously. I feel myself as a student possibly because I harp back to those days when we were carefree and respected as a body. We just used to study which is in itself interesting – and the rest was seen to by others. My line of study was fascinating and since it was a smaller university we were more united.

What differences do you see in the mentality of the students of your time as compared to that of today's students? Do you believe that the priorities have remained essentially the same?

What strikes me particularly is that for us university was a privilege for which we paid and therefore we took it very seriously. Today the average student considers university as a right for which he deserves payment. We were certainly more motivated than some of today's students who are hardly ever seen on campus and in the lecture room themselves. On the other hand today's students are more adventurous and more at grips with reality and less starry-eyed than we used to be. I do not know whether they have kept the same priorities. In my time the first priority was to learn while I suspect that today the first priority is to pass the examinations.

Did you carry out any research abroad? If yes, what did it consist in and how was it connected to the subjects you teach at university?

When I graduated I was still too young to expect clients to have confidence in me so my father suggested that I should undertake some postgraduate studies. I went to the University of London and had the privilege to carry out research under Sir David Hughes-Parry at the London School of Economics and under Professor Raphael Powell at University College, London. I also used to meet

Professor Jolowicz who was a brilliant man who gave me a thorough insight in Roman Law. I also spent some time in Rome where I got to know another famous Romanist, Vincenzo Arrangio – Ruiz and where I carried out research in Roman Law, Intermediate law and modern Civil law. It was obviously very relevant to what I teach at university and it has given me an additional training to examine legal matters in a historic perspective.

Roman Law is considered by many students as a subject which is perhaps far removed from today's world. What attracted you so much to this area of study?

Students who consider Roman law far removed from today's world are making a terrible mistake. Roman law is still part of today's world because the law of most European countries has evolved from Roman law. For Europe and for us our law is a natural development of Roman law. When you are dealing with a law that is so vital that it has developed naturally, adopting itself and making allowance for local custom, but essentially retaining its characteristics, you have a living law. Time and again you find that only by going to the sources would you be able to understand a particular provision of the law. I was attracted to Roman law when I realized during my studies in the law course how advanced the Romans were. Through their casuistic approach they enunciated rules which were valid for all times because they sought the intentions of the parties which remain substantially the same even though centuries have passed.

Latin is no longer a compulsory subject for entry in the law courses. Do you think that a basic knowledge of Latin is no longer as essential today as it was in the past, or was it perhaps a wrong decision to remove this subject from the compulsory curriculum of prospective law students?

For a lawyer and a law student Latin is still very important. Latin had traditionally always been the *lingua franca* of lawyers. Moreover the Romans had the capacity of enunciating complex legal principles in a few well chosen words: Maxims which have become famous and if you use these maxims lawyeres all over the world understand exactly what you are saying. We are using Latin all the time and we lawyers and law students need to know Latin. I do not know whether the removal of Latin as a compulsory subject was a correct decision. In point of fact what actually happened was that we were overtaken by events. Latin was traditionally taught by priests, so when Vatican Council II did away with Latin it removed our base. Latin cannot be compulsory if there are not enough teachers to teach it. I am in favour of reintroducing Latin as a compulsory subject but only if I am sure that there are enough qualified teachers to teach the subject.

What obstacles did you encounter as a young lawyer in the early fifties. Do you believe that these obstacles have increased for today's law graduands?

The only problem I had was that I was so young but that was overcome since I spent some time doing postgraduate studies. Otherwise I think that I was fortunate since I did not find any obstacles in my path. I found some clients,

I found the greatest help from my senior colleagues and things went very smoothly. There was enough work for those who really wanted to work. The atmosphere in Court was a pleasant one with excellent camaraderie. Today's lawyers have plenty of opportunities. There should not be any serious obstacles even if at the moment our profession seems to be attracting large numbers. The training which our law students receive makes them a very good acquisition not only in law offices, but it will also be attractive to people in industry, business and government departments. Even the young lawyers manage quite nicely. We have not yet reached saturation point.

You were married at a relatively late age. Do you believe that your constant contact with your children who are still teenagers enables you to maintain a youthful attitude to life?

I believe that I was married at the right age. Probably it is the contact with my students which has enabled me to maintain a youthful attitude to life, if I have such an attitude. When I started to lecture at university I was not much older than my students. My children have also helped me to remain young but unfortunately I had to sacrifice constant contact with my children because my work load especially university and my other responsibilities which are not directly connected with legal work take a lot of my time. Still I tried to utilize as best as I could the time I could give to my children.

We all know that you are a very busy person. Do you consider yourself as a workaholic or do you consider it important to dedicate a substantial amount of time to leisure? Moreover what are your extra legal interests?

I am certainly not a workaholic. I have always looked for free time but somehow I never find it. Every year that little time which I was hoping to keep for myself, I have to give up for some cause or other. Nowadays I seem to be the obvious choice for those jobs also which have to be done and which nobody particularly wants to do. Due to lack of time I cannot say that I have any particular extra legal interests due to lack of time. I have always been interested in reading but most of what I read is to a larger or smaller extent connected with the law. I have always been interested in art and architecture and I have also managed to instill this interest in my children.

You have lectured in Family law for a very long period of time. It is generally held that Family law is a field which is in dire need of reform. Which do you consider to be the area where change is most urgent?

Family law has to change as the socio-economic conditions change. However reform should never anticipate the wishes of the people and should wait for those wishes to be expressed and ascertained. Time enough has now been given to get the people accustomed to the changes which must be brought about to establish equality between the spouses and equality between the parents. This is something which has to be done now and such changes are appropriately incorporated in the white paper on the reform of the Family law which has been recently published. Other changes which will have to be considered will be in eliminating the distinction between legitimate and illegitimate children. In fact the judgements of the European Court have been pointing out towards

this direction. However this will necessitate a reform of our law of Succession in particular in regard to the capacity to inherit. Also, the preference which is given to the children over the spouse in regard to the legitim and the reserved portion are no longer justifiable. It is somewhat shocking that in the present circumstances there are so many limitations on what the wife can receive upon the death of her husband since very often this means that the wife's standard of living is reduced drastically at a time when she is too old to do anything about it. There should be more freedom of testation when dealing with the spouses, possibility of leaving property to each other. Eventually we will also have to tackle what has been traditionally termed concubinage. The legal position of the parties living together has to be clarified but we must maintain some kind of distinction between marriage and concubinage. We would also have to establish what constitutes a permanent union outside marriage and differentiate it from a substantially ephemeral union. Here again there are pointers that the matter must soon be tackled.

In 1988 you were elected President of the Chamber of Advocates. In which way does this body achieve its aim of safeguarding the interests of lawyers and their clients? In which field would you prefer your main personal contribution to be towards the achievement of these aims?

Much to my surprise I was elected president of the Chamber of Advocates in 1988. The Chamber of Advocates seeks to maintain and keep high the dignity and honour of the profession. It looks after the interests of lawyers and takes up grievances with the appropriate government departments and ministries. It also seeks to ensure that lawyers follow the due professional ethic in their relations among themselves and towards their clients. As President of the Chamber I have to deal with complaints which are sometimes made by clients against their lawyers. I have always sought to settle these matters prudently and fairly. I hope that my own personal contributions towards the attainment of these aims is that I have always tried to behave honourably. I have always sought to be loyal towards my colleagues and clients and I hope that I have set a good example.

By far the greatest number of politicians in Maltese political history have come from the legal profession. Do you think that a legal career is intrinsically bound with the political reality? Why do you think that the electorate gives such a consistent support to lawyers in elections? Do you believe that this phenomenon is healthy for Maltese society?

The legal profession gives you a certain freedom of action which enables you to go in many directions. Politics is undoubtedly one of them but I know many lawyers who have not at any time been attracted to a political career. I am one of the latter. However the training we receive at university and in the Law Courts makes us particularly good as politicians. At the university we are basically taught to reason things out. In Court while pleading our cases we reason things out and we also speak in public. Moreover it is a truism to say that the job of a politician is to make laws. So undoubtedly lawyers are suitable for this purpose. Legal practice also puts you in the limelight and that helps you to obtain the all important quota. I do not think that the fact that you

have a large number of lawyers in Parliament is in itself unhealthy for the Maltese society. There is nothing unhealthy about lawyers and indeed they are in a position to understand and to tackle certain situations better than anyone else.

Despite all this it is commonly held that lawyers are not to be trusted. Do you think that this belief contains any grain of truth or is it perhaps a traditional prejudice against the legal profession?

I think it is very much a traditional prejudice against the legal profession. It goes back to the beginning of the profession itself. Perhaps it is due to the fact that lawyers speak a rather strange language. We are cautious in what we say and use a jargon which is unfamiliar to our clients and we go so far as to wear a gown to make us different from non-lawyers. Consequently we are looked upon as almost persons to be distrusted. In point of fact however you may find that lawyers are amongst the most honest persons you may come across. It is very rarely that you find a lawyer who abuses the trust placed in him.

You have for a number of years been a prominent critic of the excessive delays which occur in Court proceedings. Briefly which suggestions would you offer for the solution of this problem?

Rather than a prominent critic it has been my unpleasant duty to criticize excessive delays. Delays have always been with us but over the years they have increased. What bothers me is that the matters can be controlled if tackled seriously. Various factors could combine to avoid delays. A simplified procedure where substance is made to prevail over form, a sound and modern infrastructure for the Law Courts, a will to tackle the problems as they arise and above all hard work can do a lot to alleviate and eventually solve the problem. Indications are that at the moment certain measures which can actively decrease the delays are being taken in hand. A most welcome development would be the hearing of cases by appointment.

It is commonly acknowledged that the local system of legal aid has a variety of lacking. Which are in your opinion the main shortcomings present in the system as it is currently organized?

Firstly, the means test is utterly absurd for today's world. It was last amended way back in 1971 and since then what was money in 1971 is less than pocket money in 1991 after two successive world economic crises. Apart from this, the most serious shortcoming is that it does not allow the litigant who cannot pay the right to choose a lawyer whom he trusts. The poor litigant is not given equality of arms when he is saddled with a lawyer whom he does not trust. This is as important a social service as any other and should be treated as such. Requests for legal aid should be examined by a central authority and if such a request is found to be justified the applicant should be allowed to choose his own lawyer who would be then paid by the state. I am confident that in the circumstances, lawyers would accept from the government a reduced fee for their services so that they would be making their own contribution.

Which do you consider to be the essential attributes which a judge must possess if he is to execute his duties in the best manner and to the satisfaction

of all parties in a suit, so that justice would not only be done but would also be seen to be done?

A judge should be wise and conscientious. Being wise is much more than having a knowledge of the law. It means being learned not only in the ways of the law but also in the ways of the world. Being conscientious means being honest, impartial and being willing to listen rather than to speak, being ready to listen to your conscience and being ready to work even if you would rather do something else. Finally a judge should not allow a case to last one minute more than is strictly necessary.

In 1990 you have been elected Dean of the Faculty of Laws. Which are the most pressing problems which you have encountered in this post? Which reforms and changes would you like to introduce in order to make the faculty more efficient and its courses more relevant to the needs of modern society?

The most pressing problem at the moment is finding enough lecture rooms. We also need some more adequate sort of infrastructure. We are now dealing with a student body approaching 400 students. The faculty is being serviced by part-timers and although there are distinct advantages in having part-timers who remain in constant contact with the practical side of law, it is also true that the amount of time they can give to the administrative work at university is extremely limited. I find that I am giving in the faculty much more time than I can really afford and as a result I have in one day more hours of work than I can really take. I would like to have one or two full-time lecturers preferably teaching subjects which are not directly connected with legal practice who would carry out research and who would also assist in the administration of the faculty. We will have to put more emphasis on European law and we have to encourage our students to carry out more research. I would like to introduce a purely research degree, like a masters in socio-legal studies and I would also like to see our students putting more effort in their thesis which very often is the only research work they will ever produce and at least they should ensure that it is of a sufficiently high standard. If this continues perhaps we would have to make arrangements which would restrict the LL.D. to those students who produce a thesis of a sufficiently high standard, and with the necessary amendments to the law, we would grant an LL.M. which would still allow them to practice law in Malta.

One of the commonest problems met by our law student is the virtual inexistence of local legal literature. How could this situation ever be improved? What contribution do you propose to give towards the solution of this problem?

It is certainly a problem which has always existed. It is partly due to the fact that our laws have been modelled on the laws of other larger countries and so we have found legal literature ready made by others and utilisable by us for purposes of interpretation. Another reason is that our lawyers have never commanded high fees. Our tariffs have traditionally been on the low side and to make a decent living a lawyer has to take more cases than he can deal with comfortably and put in a considerable number of hours of work. This leaves

him hardly any time for the research which is necessary to produce good legal literature. If tariffs were to be considerably increased the situation could be improved since there are quite a few lawyers who are interested in doing research work if their living standards are not jeopardized in the process. I myself have done quite a bit of research on various matters. I have begun various works some of which are in a relatively advanced stage but I have never found the time to finish them and as time passes instead of finding more time to finish what I have started I am finding myself with less and less time.

Lawyers are not bound by any retiring age. Do you intend to continue practising till your health permits or do you plan to pursue a different and perhaps more fruitful path in the immediate future?

One of the attractions of the legal professions is that you do not have to retire so long as you are in sufficiently good health to remain active in the profession itself. As you grow older you find that you are no good for anything else but work and I certainly would like to continue with my work as long as I can. I have no plans at all to move on to something different and indeed it would have to be something very attractive to induce me to do so. All I can say is that if I were to be given a choice again to start afresh I would still choose what I have been doing so far, the two things which I have been enjoying most, the combination of exercising the legal profession and teaching at the university. It has always struck me as a pleasant surprise that for doing something which I enjoy so much I am sometimes also paid.