

POLITICS AND THE CONSTITUTION IN BRITISH AND AMERICAN HISTORY: INTERVIEW WITH PROFESSOR MAURICE VILE

by Joaquín Varela Suanzes-Carpegna

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I. CURRICULUM VITAE OF M. J. C. VILE

Date of Birth: 23 July 1927

Nationality: British

Qualifications:

B.Sc.(Econ.), London School of Economics, 1951.

Ph.D., University of London, 1954.

M.A., Oxford University, 1962.

D.C.L.(Hon.), University of Kent, 1993.

F.R.Hist.S.

Education:

1938-43 The Hackney Downs School, London.

1943-44 The Polytechnic, Regent Street, London.

1944-45 & The London School of Economics and Political

Science,

1948-54 University of London.

Army Service:

1945-48 Royal Armoured Corps. Commissioned in the 4th./7th. Royal Dragoon Guards.

Academic Posts:

1954-62 Lecturer in Government and Politics, the University of Exeter.

1962-65 Research Fellow of Nuffield College, Oxford.

1963-64 Lecturer in Politics, Magdalen College, Oxford.

1965-68 Reader in Political Studies, the University of Kent.

1968-85 Professor of Political Science, the University of Kent.

1985 to date Professor Emeritus of Political Science, the University of Kent

1989-1994 Director of British Programmes and Adjunct Professor of Political Science, Boston University.
1994-1999 Director of Research, Canterbury Christ Church University

Administrative Posts:

1969-75 Dean of the Faculty of Social Sciences, the University of Kent.
1975-81 Pro Vice-Chancellor, the University of Kent.
1981-84 Deputy Vice-Chancellor, the University of Kent.

Visiting Posts:

1960 Visiting Professor, the University of Massachusetts.
1961 Visiting Professor, Smith College, Massachusetts.
1974 Royer Lecturer, University of California at Berkeley.

Other Appointments:

Formerly Director of the Centre for Research in the Social Sciences, University of Kent

Formerly member of the Political Science Committee, Social Science Research Council

Formerly member of the Executive Committee and Chairman of the Workshops Committee, European Consortium for Political Research.

HEFCE Specialist Subject Assessor in American Studies,

Publications:

Books:

The Structure of American Federalism, Oxford University Press, 1961, 206 pp.

Constitutionalism and the Separation of Powers, Clarendon Press, Oxford, 1967, 359 pp.; Second edition with new chapter and bibliography, Liberty Fund, Indianapolis, 1998; Chinese edition, published by SDX Joint Publishing Company, Beijing, 1997; Spanish edition, edited by Joaquín Varela Suanzes-Carpegna, published by Centro de Estudios Políticos y Constitucionales, 2007.

Politics in the U.S.A., Allen Lane, 1970, Pelican Books edition, 1973; published by Hutchinsons, 1976; 6th. edition, Routledge, 2007, 318 pp. French edition: *Le régime des Etats-Unis*, Editions du Seuil, Paris 1972. Iranian edition, Teheran, 2006.

Federalism in the United States, Canada and Australia, Research paper no. 2, The Royal Commission on the Constitution, 1973, 48 pp.

The Presidency: American Historical Documents, Vol. IV, Harraps, London, 1974, 210 pp.

General Editor, *The Penguin Interdisciplinary Readings*, 5 volumes, Penguin Books, London.

Chapters in Books and Articles:

"Federalism and Labor Regulation in the United States and Australia," in *Political Science Quarterly*, Vol. LXXI, No. 2 June 1956, pp. 223-241.

"Fédéralisme et sécurité sociale," *Fédération*, Paris, No.134, 1956, pp. 145-154.

"Judicial Review and Politics in Australia," *American Political Science Review*, Vol. LI, No.2, June 1957, pp. 386-391.

"The Formation and Execution of Policy in the United States," *Political Quarterly*, Vol. 33, No. 2, pp. 162-171.

"Community Studies and Decision-Taking," *British Journal of Political Science*, Vol. 2, April, 1972, pp.133-153 (with Theresa Brown and M.F.Whitemore).

"Federal Theory and the 'New Federalism'," *Politics*, Sydney, Nov. 1977, pp. 1-14.

"Presidential and Parliamentary Systems," in *The Prospect for Presidential-Congressional Government*, edited by A. Lepawsky, Institute of Governmental Studies, Berkeley, 1979, pp. 49-64.

"The Dynamics of American Federalism," in *American Government and Politics*, edited by B.K. Shrivastava and T.W. Casstevens, New Delhi, 1980, pp.19-36.

"The Declining Significance of American Presidential Elections," in *Contemporary Review*, June 1980, Vol. 236, No. 1373, pp. 281-6.

"Federation and Confederation: The Experience of the United States and the British Commonwealth," in *Political Co-operation in Divided Societies*, edited by D. Rea, Dublin, 1982, pp. 216-228.

"Carl Friedrich and Political Science," in *Government and Opposition*, Vol. 20, No. 2, Spring 1985, pp. 178-184.

"Federalism", "The Separation of Powers", and "Checks and Balances", articles in *The Encyclopaedia of Political Institutions*, edited by V. Bogdanor, Basil Blackwell, Oxford, 1987.

"Unbuckling Bagehot," in *The Times Higher Educational Supplement*, No. 814, June 10, 1988, p. 17.

"Parliament and Government: Unbuckling the Powers," in *Social Studies Review*, Vol. 4, No. 3, January 1989, pp. 100-103.

"Separation of Powers", article in *The Encyclopedia of the American Constitution*, edited by Leonard W. Levy and Kenneth L. Karst, Macmillan, New York.

"Separation of Powers", article in *The Blackwell Encyclopedia of the American Revolution*, edited by Jack P. Greene and J.R.Pole, Blackwells, Oxford, 1991.

"British Influences on the American Founding Fathers: Lessons for Europe," in *Federalism and the British: Two Centuries of Thought and Action*, edited by Stanley Henig, The Federal Trust, 2007, pp. 16-34.

II. M.J.C. VILE'S WORKS ON CONSTITUTIONAL HISTORY

1. Professor Vile, thank you very much for agreeing to this interview for the number 10th of *Historia Constitucional*. I will begin asking you about the first steps in your academic career. What were the reasons that led you to become a researcher and a scholar? Did anybody especially support you? Who were your first masters?

MJCV: There were two people who influenced me deeply as a student. Harold Laski and Karl Popper. Laski was teaching at the London School of Economics in 1944-5 when I was studying there, and was still there when I returned to continue my undergraduate studies in 1948. Although Laski had become a convinced Marxist by 1938 his early works developed pluralist ideas and his *A Grammar of Politics*, first published in 1924, developed the notion of "authority as federal". Although I could never share Laski's later admiration for Marxism and the Soviet Union, what personal contact I had with him convinced me that the analysis of the *Grammar of Politics* was that of the "real Laski". Karl Popper, who also taught at the LSE influenced me deeply. His book *The Open Society and its Enemies* was, I think, one of the greatest works of political philosophy of the 20th century, and his *The Logic of Scientific Discovery* developed a conception of common sense empiricism which outlives all the later post-modernist and other fads.

2. Your doctoral dissertation, read in 1954, was about federalism in the United States of America and in Australia. I would like to know why you chose that subject that together with the division of powers has been the central idea of your research. I would also like to know who was the director or directors of this first academic research.

MJCV: The understanding of the combination of pluralism and empiricism that I came to at the LSE led me to see democratic politics as a complex pattern of bargaining and compromise. The standard descriptions and definitions of

federalism at that time were too legalistic, so that I wanted to study realistically how political forces worked within, and manipulated the legal structures of federalism. I worked under the direction of Professor William Robson.

3. Your first book was "*The Structure of American Federalism*", published in 1961. As you said in the preface, you wrote it at the same time you were working on your doctoral dissertation, however this is only about federalism in the United States. It will be the main idea of this book that conflicts which develop between the Supreme Court, on the one hand, and either the Federal Congress or the States, on the other, or conflicts which develop between Congress and the States, are usually solved without becoming embedded, due to the mechanisms of political integration that operates in the U.S. political system, which are based on the party system and pressure-groups. Without these political mechanisms it is impossible to understand this system, even though it also requires for its correct comprehension knowledge of the constitutional law. Could you expand on this critical matter, that is not only a characteristic of federalism in the U.S.A., but also, Professor Vile, the way you understand the study of politics and the Constitution, to which I will refer later?

MJCV: It is important to realise that "constitutionalism" involves more than simply having a constitution. Constitutions can be of great significance, or virtually none. As Madison put it, they can be mere "parchment barriers". The constitution of a country is a part, but only a part, of its political system. The distribution of political power, and the way in which it is exercised, interacts with constitutional provisions in many different ways, according to the country's history, its social and economic conditions, its political psychology, and other factors. Thus the Soviet Union had an elaborate constitution which was of little significance, because political power was centralised in the Communist Party, whereas in the United States the Constitution has considerable significance, although the exact meaning of the Constitution at any one time is expressed in ways which relate to political realities. Thus a constitution may define the ways in which legal power is divided up, but there must be political powers which make the legal provisions workable. Constitutionalism, therefore, involves having a set of political institutions which make the constitution work and a political culture which respects the processes of the Rule of Law.

4. There is no doubt that federalism is a fundamental part of the US constitutional structure, as well as in Canada and Australia, three countries that you studied in your brief book "*Federalism in the United States, Canada and Australia*", published in 1973. After the decentralising processes promoted by Blair's administration in Northern Ireland, Scotland and Wales, do you think federalism could be implemented in the UK? Do you not think it is very difficult for federalism to succeed in countries like the UK and Spain, where there are powerful nationalist movements that are closer to an idea of confederation or independence than to a federal State?

MJCV: I do not see “federalism” as a clearly defined Platonic “idea” hovering somewhere above us, to be implemented by a philosopher-king. Rather there are various federal elements, legal or political, that can be found in different political systems, and we can construct a Weberian “ideal-type” of a federal state in order to measure the extent to which individual political systems embody these elements of federalism. Thus in the United Kingdom today there exist a number of federal elements in the political system, even though the UK does not have a written constitution. Although the powers of the Scottish Parliament depend, in law, on a statute of the Parliament at Westminster, and that statute could be amended or repealed, it is inconceivable that the Scottish Parliament could simply be abolished. At the present time its existence is as secure as that of the state of New York or California.

5. Your second book is “*Constitutionalism and the separation of powers*”, the first edition of which appeared in 1967 and the second in 1998. This book has been translated into Chinese in 1997 and into Spanish in 2007 by the Centro de Estudios Políticos y Constitucionales, in an edition which I had the pleasure and the honour to carry out. There is no doubt that it is a reference book to study the evolution of the separation of powers, as well as understanding some questions that essentially concern the study of the Constitutional State, such as the different systems of government. Actually, your book has become a classic work, that could only be compared, at least in the XX century, to the brief monograph “The meaning of the separation of powers” (1965) by William B. Gwyn, and mainly to “*La séparation des pouvoirs et l’histoire constitutionnelle française*” (1973) by Michel Troper. However, while the former only deals with Great Britain and the United States during the 17th and 18th centuries and the latter, much deeper, deals with the development of this doctrine in France between 1789 and 1848, your book, professor Vile, gives an overview of those three countries during more than 300 years: from the English civil war in the middle of the XVII century until almost the end of the XX century. Could you tell us the reasons that led you to write this ambitious book and the main challenges you had to face to finish it?

MJCV: I came to see the separation of powers as the major constitutional barrier to the abuse of governmental power, and the most effective way to give institutional expression to the pluralistic forces in society. I wanted to examine the circumstances in which the concept had arisen, and the differing forms that it had taken in differing circumstances. The history of Great Britain, France and the United States provided the possibility of comparing three countries that had, over a long period of time, an interactive relationship, in which there was a genuine interchange of ideas and experience that deeply affected their constitutional development. Fortunately, I held a Research Fellowship at Nuffield College, Oxford, from 1962 to 1965, which enabled me to devote my whole time to this project, and gave me access to the necessary research materials. I also spent periods of study in the United States accessing materials not readily available in Europe.

6. In the beginning of the extensive epilogue of the second edition of *“Constitutionalism and the separation of powers”*, you noticed that in 1967 your book was far away from intellectual trends of that moment, in particular Marxism, behaviourism, and a group of thinkers that you named “the sceptics”. One of the most representative thinkers of “the sceptics” was Quentin Skinner, the author of *“Meaning and Understanding in the History of Ideas”* (1969). Three different trends, but with something in common: all of them came into conflict with the history and the analysis of an institutional theory concerned with the limitation of power, which led them to reject the idea that there could be a coherent tradition of political thought about the institutional structure of government that had something useful to say about the way in which government impacted upon the liberty of the citizen. During the three decades between the two English editions the interest for the history in constitutional thought, and particularly in the doctrine of the separation of powers increased greatly both in the UK and in the USA, as you remark in your epilogue. At the same time Marxism and behaviourism were in decline, while “the sceptics” were rectifying their original thesis, as is clearly shown in *“The Foundations of Modern Political Thought”* (1978), written by the afore-mentioned Skinner. I suppose that this fundamental change had an effect in the different intellectual acceptance that your book received in 1967 and 1998. Could you expand on this point? How can you explain China’s interest in the translation of this book, even though its political system is not based at all in the separation of powers?

MJCV: Because the United Kingdom does not have a written constitution, British political scientists have been relatively uninterested in constitutions, leaving the subject to the lawyers. Walter Bagehot had established the (erroneous) view that British government embodied a “fusion” of powers, and the accepted academic line was that there was no separation of powers in Britain. Furthermore, in the post-war period, federalism seemed to have little relevance to Britain, the central principle of its political system being the unlimited sovereignty of Parliament. The post-war period also saw a remarkable fashion for a mode of thought which held that we cannot understand societies other than our own, or even our own society in earlier times. This line of thought was developed by Peter Winch in *The Idea of a Social Science* and Quentin Skinner in the article you mention above. Neither attempted to set the boundaries, spatial or temporal, up to which we could understand other societies or other times and beyond which we could not. Thus my work was unfashionable in Britain, but relatively well-received in the United States. Since then, of course, the picture has changed fundamentally. With the development of the European Community, and Britain’s entry into it, the study of federalism became a veritable academic industry and federalism a lively political issue. The realisation that the British Parliament was no longer fully sovereign in the old sense, and the impact of the European Convention on Human Rights, resulted in a very different role for the judiciary than had traditionally been the case in Britain, and therefore more attention being paid to the separation of powers.

As for the interest in the book in China, I am afraid I am not able to throw any light on why the book was published there, or who decided to do it.

7. In your epilogue in the second edition of *“Constitutionalism and the separation of powers”* you had no doubt in announcing “a death-knell for any concept of parliamentary government in Britain” during John Major’s government, as well as the failure of the British Parliament to control the new public administration associated with the creation of a number of diverse agencies. This phenomenon was reflected in the rise of regulators and “ombudsmen”, or in the appointment of extra-parliamentary committees headed by senior judges. Do you hold the same opinion in relation to Tony Blair’s government? How do you assess this long and recent political stage of the UK concerning its influence in the organization of powers, the territorial structure of the State and the exercise of public liberties?

MJCV: The power of the Government in modern Britain is overwhelming. Parliament has become largely a rubber-stamp for government policies, in all but a very tiny handful of cases. This is the result of the hold which the party system has over the system of government, a system characterised by very strong party discipline. This situation evolved as a consequence of the deep ideological differences between the Labour and Conservative Parties at the end of the Second World War and although those ideological differences have eroded to a degree, party discipline in the House of Commons still determines the outcome of most policy issues. This means that policies can be adopted which a majority of members of the House of Commons do not support, but which are voted through by the government party because of the loyalty of its members. This situation can certainly impact upon civil rights, as in the case of the laws which have been passed allowing suspected terrorists to be detained without being charged for twenty-eight days. This legislation was passed in the Blair era against a great deal of opposition in the Labour Party, and party discipline has remained very strong, although opposition within the Labour Party on some issues has caused difficulties for Blair and Brown.

8. *“Politics in the U.S.A”* is your most well-known book, as it is now in its sixth edition, the first published in 1970 and the sixth in 2007, as well as being translated into French in 1972. It is an extraordinarily clear study about the main elements of the intricate U.S. political system, where you examine the two-party system, pressure-groups and lobbies, the organization and the running of the Congress, and of the Presidency (an issue you deal with in 1974, in the collection *“American Historical Documents”*), public administration and the activity of the judicial power, with an accurate analysis of the political implications of judicial review. In addition, in this book you analyse the historical background of the most powerful nation in the world. In the preface you advise: “I have attempted to write an essay on the American political system both for the undergraduate looking for his first introduction to the subject, and also for

the general reader". Are you satisfied with the great success of this book?

MJCV: I feel that I achieved what I set out to do with this book, but judging from other textbooks in this field I would have sold more copies if I had included some photographs!!!

9. In the last chapter of "*Politics in the U.S.A*" you reflect on the political situation of each period of time. In the most recent edition, in 2007, you analyze the foreign policies of the Administrations of Bill Clinton and George W. Bush, as well as the emergence of neo-conservatism, and the discussion of controversial issues such as gun control, abortion, homosexual rights and stem cell research. Even if *Historia Constitucional* is concerned mainly with the past I cannot avoid asking your opinion about the battle between the two candidates of the Democrat party, Hillary Clinton and Barack Obama for the presidency of United States, as well as what Barack Obama represents in the history of the United States.

MJCV: Of course the election of Barack Obama is a landmark in American history, almost inconceivable a few years ago, and like many others I am glad to see an end to the Bush era. However, I feel that the expectations that Obama has aroused cannot possibly be realised. America remains a very divided society. Obama's election was achieved by a coalition of blacks, Hispanics and young voters, and he was opposed by a majority of non-Hispanic whites, particularly non-Hispanic white men. With the growth in particular of the Hispanic population, the non-Hispanic white population is projected to become a minority in the United States in 2042. I fear, therefore, that ethnic divisions in American politics are likely to increase in significance in the future. In the short term Obama will have to face a House of Representatives, that has a Democratic majority, but which is facing elections in two years time, and a Senate that can still be held to ransom by a small group of Senators with the determination to mount a filibuster. I am sure that the new President will face some very strong opposition to many of his policies.

10. I would like to assume, Professor Vile, that your retirement from academic life does not mean you are retired from academic research. In that case, what are you researching nowadays? Which are your most immediate academic projects?

MJCV: I am not sure that I am doing anything that could be dignified by the term "research". I just finished writing a chapter on American federalism in the Bush years. I was in the British army in Palestine in 1947-8, in the last days of the Mandate, and I have a lively interest in the history of the Balfour Declaration and the subsequent events leading up to the creation of Israel and the present disastrous situation in the Middle East. I would like to be able to write something on this issue which might have an impact on the situation, but it is not yet clear to me what form it would take. Of course, I also have a lot of "great thoughts".

III. THE DEVELOPMENT OF BRITISH AND AMERICAN CONSTITUTIONAL HISTORIOGRAPHY AND ITS PRESENT STATE

11. In your publications you deal with the U.K, France (as in *"Constitutionalism and the separation of powers"*) and also Canada and Australia, but the country you have studied the most is the United States. Being an English citizen it is surprising that you have decided to pay more attention to the United States than to your own country. According to you, USA is the most fascinating country, as you remark in the introduction of *"Politics in U.S.A."*: *"of all political systems this is perhaps the most complex that the modern world has evolved, and it is also one which is the conscious creation of the mind of man"*. Can you talk us a bit about this issue?

MJCV: The United States is fascinating because it does represent a rare example of an elite setting out to achieve a fundamental political change and largely achieving that aim without too many unexpected consequences. As I explain in answer to some of your later questions, they were able to do this because of the very exceptional circumstances of the English colonies. In spite of the fact that their motives were not wholly idealistic, nevertheless it was an extraordinary sequence of events. Then the history of immigration into the United States provides a unique example of a society and a political system adapting to the influx of millions of people of different origins, languages and customs, with difficulty to be sure, but with a reasonable degree of success. Furthermore, the high degree of freedom of speech and of the press in British America means that we have an extraordinary record of events and of the ideas of the people of the time, not just the views of the elite, but of all section so f society.

12. Charles H. McIlwain, in his classic work *"The American Revolution: a Constitutional interpretation"* (1923), insisted that the American Revolution was a constitutional revolution for freedom and against tyranny. This interpretation would be endorsed later with subtle differences by Hannah Arendt and Bernard Baylin. This last author, in *"The ideological origins of the American revolution"* (1967), supported that this revolution was an ideological, constitutional and political struggle, and not really a controversy among social groups wanting to change the social and economic organization of their time, although Baylin and Pocock insisted in the importance not only of liberalism but also of republicanism as intellectual ingredients of that revolution. Another author that insisted in the constitutional nature of this revolution is Nicola Matteucci in *"La Rivoluzione americana: una rivoluzione costituzionale"* (1987), where he opposed the American revolution to the French, but not to the 1789's, like Burke did, but to to the 1793's. What is your opinion about this controversy?

MJCV: It is a mistake to assume that when human beings engage in a political action that their motives are simple and straightforward. The problem of assigning motives to political actors is one of the greatest methodological problems of the social sciences. Undoubtedly many of the Americans who engaged in rebellion against the British Crown had deeply held ideals of liberty and justice, but why they held these ideas, and to what extent, it is difficult to say. The “tyranny” against which they fought was a very mild one, compared with the governments that ruled most of the world at that time. The extent of this tyranny can be judged by the complaint made by Thomas Jefferson in his *Summary View of the Rights of British America*, of 1774: “By an act passed in the 5th year of the reign of his late majesty king George the second, an American subject is forbidden to make a hat for himself of the fur which he has taken perhaps on his own soil, an instance of despotism to which no parallel can be produced in the most arbitrary ages of British history.” That was the most horrible persecution that the colonists had had to endure! In fact the British colonists in America enjoyed a higher degree of liberty and democracy than any of their contemporaries, certainly greater than the citizens of Britain itself. The “American revolution” can be seen more as the men of wealth and influence in the colonies ensuring that they continued to exercise their power in the face of an attempt by the British government reassert powers that it had largely relinquished.

The colonists were happy to accept British rule as long as they needed the protection of the British Navy and Army, without which they could not have survived against the Indians, the Spanish or the French. Thus the most significant event in the evolution of the American Revolution was the defeat of the French at Quebec in 1759 by General Wolfe. After that the colonists no longer feared the French or their Indian allies and they were able, only 17 years later, to assert themselves against their former British allies.

Washington, Madison, Jefferson, were great men, but they were human. They followed what they saw as their own interests and those of the society that they were creating. In 1763 the British Government issued a Proclamation reserving the lands to the west of the Appalachians to the Crown, thus threatening the anticipated expansion of Virginia and the other colonies into the vast expanses of western lands extending to the Pacific Ocean to which they laid claim under their Charters. Madison and the other revolutionaries were land speculators, hoping to make considerable profits from westward expansion. They considered that keeping control of the Mississippi Valley in the hands of the British colonies was crucial to the development of that western empire that was so important to them. The Proclamation of 1763 threatened that expansion, and a break with Britain might be the only way to protect their interests. When it came to war with Britain, the colonists were happy to accept the support of an absolute monarch, Louis XVI, who ruled a country in which there were few political liberties, but without whose troops they would not have won the war. At the Battle of Yorktown in 1781 there were more French soldiers than British soldiers, and the French navy played an indispensable role in the American victory. The admiration of some of the revolutionaries for the absolutist French monarchy went even further: in 1782 Madison and others mounted a magnificent celebration in Philadelphia to mark the birth of the Dauphin to Marie Antoinette.

As far as idealism about human rights and liberty were concerned, when it came to writing the Constitution of the United States the Founders protected the institution of slavery, because that was a political necessity. There is some evidence to suggest that one causal influence of the revolution was that the colonists feared that British law, extended to the colonies, would result in the abolition of slavery, particularly after the decision by Lord Mansfield in *Somerset's Case* in 1772. American Indians did not attain full American citizenship until 1924! The revolutionaries were idealists, but they were also realists.

The contrast between the French and American revolutions is critical to the understanding of the emergence of the United States. In the English colonies there was no class comparable to the French aristocrats, nor was there a group comparable to the *sans-culottes*, except of course for the African slaves who were largely excluded from the revolutionary movement. The object of the elite who ran the revolution was not to transform American society, but to seize control from the colonial power whilst maintaining the existing power relationships within the colonies. The French reformers who met in the *jeu de paume* quickly lost control of the revolution, but the American colonial elite never lost control, quickly putting down any popular democratic movements that emerged.

13. Professor Vile, I have a question about an English author from the first third of the XIXth century, John James Park, of whom I have been interested for many years. As this author is not well known I consider it could be appropriate to explain to the readers of this journal the importance of Park in the Constitutional History. The transfer of power from the King to a Cabinet that should be responsible in front of the Commons was taking place in Great Britain from the beginning of the XVIIIth Century through conventions or unwritten rules, without modifying the statute law, at least until the twentieth century, yet it is true that the transition of power from a constitutional monarchy to a parliamentary monarchy was also affected by the judges. However, not all studies of the Constitutional Law have stressed the importance of the conventions. The most significant example is Blackstone, the most influential lawyer of XVIII century, who did not write about conventions, in contrast to Burke's attitude. But more significant is the fact that even many of the English constitutional historians ignore these unwritten rules which transformed deeply the constitutional agreement of 1688. In fact, with Hume's exception, the British historiography did not insist on these conventions till the beginning of XIX century. Still in 1827 Henry Hallam, in "*The Constitutional History of England*", continued affirming the English constitutional continuity since the revolution of 1688, at the same time he considered the Magna Carta to be a document of the same nature as the Bill of Rights. Facing this attitude, some romantic historians, like James Mackintosh and William Betham, insisted in the constitutional change that commenced in the United Kingdom in 1688, rather than its apparent continuity. However, according to me, and I am not sure if you share my

opinion, the one who insisted with more sharpness in this new perspective of the constitutional history was not an historian but a lawyer: J.J Park, whose ideas seem to be influenced by Savigny and Comte. In his book *"The dogmas of the Constitution"*, published in 1832, Park analyzed the constitutional transformations that had been produced since the 1688 revolution, rejecting the traditional interpretations of Montesquieu, De Lolme and mainly Blackstone, who had been more inspired by the words of the Constitution, than by its spirit. That is, they had pay attention more to the "formal Constitution" than to the "real Constitution". For that reason these authors paid more attention to the British rules and institutions, than to the deep change created by the unwritten rules agreed by the political actors. This way of analyzing the constitutionalism, in which some time before Park had insisted Thomas Erskine and Lord John Russell as well, would have later a great development in the constitutional and political theory (Henry G. Grey, Stuart Mill and Walter Bagehot), in the Jurisprudence (Austin), in the Constitutional law (Dicey) and in the Legal History (Maitland). On the other hand, the distinction between "formal Constitution" and "real constitution" is very important to analyze the constitutional debate that took place in the U.K during the XVIIIth century, that -as you have magisterially studied, professor Vile- was basically among the defenders of the "formal constitution" (Bolingbroke and Blackstone, among others), as had been showed by Locke just after the 1688 revolution, and the "real constitution" defenders (like Walpole and Burke), that had been developed during that century by means of conventions that stressed as the central element the two-party system. Well, in spite of that, Park's works are almost forgotten even in his own country. I confess, professor Vile, that the first time I heard about this author was in your book *"Constitutionalism and the separation of powers"*, which I read for the first time in the early 80's during a stay in the London School of Economics. Later on, in 1999, I promoted the translation of *"The dogmas of the Constitution"* (a book with a very complex writing style), carried out in an admirable way by professor Fernández Sarasola, and I wrote for that translation an extensive preliminary study. Now I would like to ask you if you agree with me in the fact that this book, at least, deserves a new edition in English language.

MJCV: I completely agree with you about the importance of Park's work. Walter Bagehot's book, *The English Constitution* is one of the most quoted works on the development of the British system of government, and has been reprinted innumerable times. Park was a Professor at University College, London, where Bagehot was a student ten years after the publication of Park's book, and surely Bagehot must have read it. Bagehot reproduces Park's ideas, without acknowledgment. A new edition of Park's book would set the record straight.

14. U.K and the U.S.A have historical Constitutions even if of a very different nature; for that reason the study of the constitutional state in both cases must follow an historical perspective. However, I am afraid the British constitutional historiography of the last two decades, with the exception

of some valuable contributions (like the Peter Hennessy's demystifying book "*The Hidden Wiring. Unearthing the British Constitution*" (1995), in the very trail of W. Bagehot, when revealing "the living reality" of the constitutional system), suffers some stagnation, above all in what concerns to the study of legal and institutional questions. To some extent this may be due to the fact that the British sources and historical documents have already been deeply studied, and it is not easy to find something new to say about them, after all that has been said, without having to go back further than the last third of the XIXth century, by authors coming from diverse social scientific disciplines (Political History, History of Political Thought, Legal History, Constitutional Law and Political Science) such as Gardnier, Macaulay, Erskine May, Dicey, Anson, Maitland, Stubbs, Adams, Jolliffe, Namier, Keir, Keith, Chrimes, Greaves, Costin and Watson, Jennings, MacKintosh, Kemp, Elton, Kenyon, Williams, Hanham, G.H Le May and a long etcetera. Maybe the abandonment by the British publicists of the study of Constitutional History has contributed to the relative decline of this subject in the U.K. However it is encouraging to me that there are exceptions to this trend, such as Elizabeth Wicks, Senior Lecturer in the School of Law in University of Birmingham, whose modest but interesting work "The Evolution of a Constitution: Eight key moments in British constitutional history" (2006), points out that "this book is based upon the premise that it is impossible to fully comprehend the nature, content and implications of today's Constitution without a firm grasp on how it evolved into its present form". What is your opinion, Professor Vile, about the present state of British constitutional historiography? Is there any historian of British constitutionalism that has had a special influence on you?

MJCV: As I said earlier, the study of British institutions and their history is coloured by the nature of the political system. Until Britain joined the European Community there was not really a "British Constitution" at all. There was really only one constitutional rule: the legal supremacy of the King-in-Parliament. Everything else was either regular statute law, the common law (subject to change by legislation), or a matter of convention. This meant, and to some extent still means, that the study of the British system of government is the study of continuous, gradual change, the description of political practice. The celebrated Bagehot was really a journalist, and it could be argued that much of the writing on British politics since Bagehot has been little more than current affairs. Hence the decline in academic interest in constitutions, and the tendency to ignore the history of the system of government, without which, I agree, no full understanding can be reached.

15. By contrast, I believe the situation of the constitutional historiography in the United States is excellent. Firstly, US researchers have not leaving the important task of purging and compiling primary sources. Some examples in support of this statement are the work of Bruce Frohnen, "The American Republic. Primary Sources"(2002), and the voluminous and useful recompilation of Philip B. Kurtland and Ralph Lerner, "The Founders' Constitution" (2000). Another remarkable effort is carried out

by *Liberty Fund* (which, by the way, published the second edition of your book “Constitutionalism and the separation of powers”), with such interesting works as those by Collen A. Sheehan and Gary L. McDowell (“Friends of the Constitution. Writings of the “Other” Federalists. 1787-1788”), Ellis Sandoz (“Political Sermons of the American Founding Era, 1730-1805”) or Charles S. Hyneman and Donald S. Lutz (“American Political Writing During the Founding Era: 1760-1805”), that recover these quite unknown works. The publication of sources has been reinforced as well by the recovery of pamphlets –whose value had been pointed out by Bernard Bailyn in his classic work “The Origins of American Politics” (1965)– speeches, press writings or letters. In the same way a special interest in taking care of the colonial origins of constitutionalism has also been noticed (I am thinking, for example, in the book of Donald S. Lutz “Colonial Origins of the American Constitution”), overtaking the tendency to focus just on the constitutionalism that emerged since the Declaration of Independence, as it could be seen in Gordon S. Wood’s classic book “The Creation of the American Republic, 1776-1787”. It might be surprising that nowadays researchers continue investigating *framers’* constitutional thought and even their predecessors’ (Otis, Dickinson...). Some of these researches have even obtained the Pulitzer prize, as it happened with the previously mentioned book of Bernard Bailyn “The Ideological Origins of the American Revolution” (1967) or more recently with Jack N. Rakove’s “Original Meanings. Politics and Ideas in the Making of the Constitution” (1996). The title of the latter book is significant. Maybe this interest to rescue the writings of the *founding fathers* is due to the maintenance between US jurisprudence and doctrine of an originalist interpretation of the Constitution, as it is defended, by example, by Bruce Ackerman? And, on the other hand, in which way do you consider that this originalist reading of the Constitution should keep having value? Would a more dynamic perspective be more appropriate, such as those who support that the US Constitution as a *living Constitution* that adapts itself to social and political changes? After all, as you have written in “Politics in the USA”, an important part of the present US political system is built on basis that had not been considered by the *founding fathers*, as it happens, for example, with the doctrine of the presidential implicit powers. Finally, do not you think that the greater strength of the constitutional historiography of the United States compared to the British one is, somehow, because their Constitution is the supreme rule of the legal and political system, whose content is always bought up to date by the Supreme Court through the *judicial review*, which obliges it to be taken into account not only by the historians, but also by lawyers?

MJCV: Of course, the American constitution is a living, changing entity, although the actual document has been changed very little since 1789. The study of the history of the Constitution is important because the rationale of judicial review is that the Supreme Court is developing the traditions of American constitutional law, not simply making it up as they go along. However, it is an illusion to believe that we can know exactly what the Founders intended, and that the Court ought to follow those intentions to the letter. First, “the

Founders” were not a single united entity. The Convention consisted of a group of men with differing interests and aptitudes. They made their decisions by majority voting, and the majorities shifted and changed from time to time, so some Founders thought one way, and others thought differently about the issue under discussion. The members of the Convention were not all present all the time, so that the absence of some members when votes were taken could affect the outcome. Often decisions were compromises, and thus asking “what did the Founders intend?” is an intolerably oversimplified question. Second, there is a tendency among strict constructionists to treat the Founders as demi-gods who produced a perfectly coherent document. Of course they were not demi-gods, and the Constitution contains contradictions and has imperfections. Third, the Supreme Court today faces problems of which the Founders could not conceive, such as how to deal with nuclear power, air transport, etc. To pretend that we can work out what the Founders would have done if they had been faced with these problems is just nonsensical.

16. But going further from the American experience, the fact of having a Constitution conceived as the supreme law of the country and with judicial review, like United States and, in a different way, like some European countries, do not you think it is a decisive matter not only to reinforce the importance of Constitutional law in the Law ambit, but also to reinforce the Constitutional History in the ambit of History?

MJCV: Having a written constitution, which is usually adopted after a revolution or a profound political change, is of course a force for stability, but only if it is matched both by political structures that reinforce the constitution and an ethos of “constitutionalism”. The history of France exemplifies this. It was not until the passage of the Constitution of the Fifth Republic, embodying as it did a workable version of the separation of powers, that France attained true stability for the first time since 1789.

17. Do not you think that the space devoted to constitutional history and in general to the constitutional aspects of the political system by the most relevant Anglo-Saxon Journals of Political science is very limited? For example in the “*American Political Science Review*” and the “*British Journal of Political Science*”, where you have written? If you agree with this statement, do you think the lack of attention for the legal and historical aspects is the consequence of an excessive tendency of Political Science to concentrate on empirical studies?

MJCV: I agree that insufficient attention is paid in the journals to constitutions and that this is in part the consequence of the emphasis on empirical studies.

18. Do you think Constitutional History receives the attention it deserves in British and American universities?

MJCV: No, but this simply reflects the modern trends in education which place less stress upon history, and in the modern world student demand determines what is taught.

19. In number 5 of *"Historia Constitucional"* Professor E. B. Böckenforde pointed that the most suitable places for the investigation and teaching of constitutional history are the Institutes and Seminars that bond professors from various Faculties, mainly from History and Law, but also from Political Science. This opinion was shared as well by professor Michel Troper in the number 7th of this revue. Do you agree with this appreciation?

MJCV: This is a very interesting Continental European phenomenon that hardly exists in British universities. I imagine that there are differing characteristics in the organisation and financing of universities in various countries that explain this.

IV. THE METHODOLOGY OF CONSTITUTIONAL HISTORY

20. One of the most significant characteristic of the books you have dedicated to the United States is the wise combination of the political and constitutional aspects when you analyze its institutions. While the first item is ignored sometimes by European constitutionalists, at least in continental Europe; the second is disregarded by many political scientists, as you have remarked in *"Constitutionalism and the separation of powers"*, in relation to behaviorism, in particular with the work of R. A. Dahl. Do you still agree with what you wrote then?

MJCV: Yes, I do. Behaviorism was a reaction to the excessively legalistic study of political institutions that sometimes bore no resemblance to what actually happened in a political system. In a sense the study of society *is* the study of behavior, because everything else, in a parliament for example, is bricks and mortar, metal and wood. Laws, at one extreme, are merely ink marks on paper. What matters is how people react to these material substances. But behaviorism can also go to extremes, ignoring the importance of procedures, of orderly patterns of behavior, which are formed and conditioned by institutions, and of the ideas that are essential to the way in which institutions work. Only by trying to draw out the interrelationships between behavior, institutions and ideas can one reach an understanding of the nature of politics.

21. In *"Constitutionalism and the separation of Powers"*, after exposing the debate about the division of powers along three centuries (mainly in Great Britain, United States and France), you show your own thesis about this subject and formulate a model of constitutional theory. A model based on three concepts: function, structure and process. The three deeply connected with some values, such as justice, efficiency and democracy. In this constitutional theory is remarkable the influence of the

political scientist G. A. Almond and of the lawyer H. L. A. Hart. Being as we are, accustomed to consider Political Science and Jurisprudence as two separate subjects, the combination of both subjects in your book has favorably surprised me. Do you consider necessary to resort to Political Science and Jurisprudence to formulate a theory of constitution adjusted to today?

MJCV: Yes, indeed. This follows inevitably from what I said in response to your previous question. Laws can be irrelevant or unenforceable, but they are also essential for an orderly society, and their content and the interpretation of that content are vital. Consider the history of the Fourteenth Amendment to the U.S. Constitution and its impact on the law concerning racial segregation from *Plessy v. Ferguson* in 1896 to *Brown v. Board of Education of Topeka* in 1954. It is possible for a constitutional lawyer to discuss these cases as purely an exercise in legal interpretation, but to do so without considering the development of the politics of race in the United States is vacuous.

22. Besides the mixture of politics and law, in all your works you pay attention to history. This feature is of course clear in *“Constitutionalism and the separation of powers”*, a book which is mainly a history of constitutional thought. But your interest in history is also remarkable in books that attempt to analyze the whole political system of the United States, as in *“Politics in the USA”*, or to analyze some essential elements of this system, as in *“The Structure of American Federalism”*. Both books include mention of the distinctive historical development of the United States, which you consider to be fundamental for the understanding of its political system and its differences with European ones, as for instance the absence in America of an *ancien regime*, a matter that has also been exposed by Louis Hartz. In reference to this topic, how do you conceive the relation between Constitutional History and Political Science? Would you consent to the phrase, whose author I can not remember, *“Political Science without History, no roots; History without Political Science, no fruits”*?

MJCV: I was not aware of this saying, but I certainly agree with it. Many historians assert that they are simply reporting the facts, but of course they are selecting what they consider significant and giving emphasis to certain facts over others. They need to be guided by an understanding of the concepts of political science if they are to present their materials in as objective a way as possible. On the other hand, some political scientists are contemptuous of history, but it is literally impossible to understand the materials that they are dealing with without an understanding of how political situations have evolved, and of the ideas behind that development.

23. In the study of constitutional history it is possible to pay attention to the history of texts (constitution, law, etc.) and institutions or, otherwise, to focus on political thought. You have been interested in both topics (for example in *“The Structure of American Federalism”* and in *“Politics in the*

USA”), but I believe the second subject is the one you have worked the most. This appreciation can be seen in “*Constitutionalism and the separation of powers*”, where you hardly extend further from the legal and political context where the doctrine of the separation of powers was exposed or even on its reflect in constitutional texts. You show your main interest in the study of doctrinal development. That is why I believe this book more than being a work on constitutional history, is in fact a monograph about the history of political thought or even better a history of constitutional ideas. Do you agree?

MJCV: Yes, that is true, because I focus on the “doctrine” of the separation of powers, but I hope also that I have been able to set it within its context of historical development.

24. In my “presentation” to the Spanish edition of “*Constitutionalism and the separation of powers*” (CEPC, Madrid, 2007) I emphasize an affirmation that you make in this book: “Any theory of politics must begin with a discussion of human nature”. An affirmation that has been forgotten by many thinkers, and that in fact is very linked to the anglo-saxon way of reflecting about politics and constitutions (for example Hume). This particular way of thinking tends to be more devoted to an anthropological and psychological understanding of politics and constitutional law, than is usual in continental European thought (specially the French one), with its inclination to examine those subjects in a more abstract way. Certainly the reflection on human nature leads to an appreciation of what is permanent or otherwise changeable in the human being. After all, as the Spanish thinker Ortega y Gasset wrote, human beings have more history than nature. It is not accidental that Hume next to his masterpiece *A Treatise on Human Nature* wrote *The History of England*. Well, do you think that the present “humanization” of political theory should lead to a confirmation of the historical perspective of constitutional and political thought? And, if so, do you not think that it would give more power to Constitutional History, as a discipline that is devoted also to the study of this thought?

MJCV: An attempt to understand “human nature” is essential to the study of politics, although it must not be a simple-minded approach of the kind that generalises about humankind as if we are all similar. “People are basically good” is a silly generalisation that I heard a so-called expert express recently. In the 1960’s and 70’s it used to be the case that the left-wing belief that all human behaviour is to be understood as shaped by environmental factors prevented a sensible discussion of human nature, but nowadays a more balanced view of the relationship between “nature” and “nurture” is possible. The study of society, of the legal and political framework and its history in meeting the needs of diverse populations is the very core of the challenge to modern political science.

25. The so-called “Cambridge School” (whose more distinguished members are Q. Skinner and J. G. A. Pocock) has carried out a brilliant revision of

the history of the political thought with the purpose of reaching a better understanding of the original sense of the historical texts. Skinner has underlined that the most important is not the doctrine itself but the intention or the end of this doctrine. Pocock has insisted in the analysis of the concepts within the framework of the language or political speeches, which conform to a determined paradigm of interpretation. Even if I had mentioned before your opinion about Skinner, I would like to know your view about the contribution of the “Cambridge School” to the study of political thought. Particularly I would like to know if you share the criticism made by these authors of those researchers who interpret past doctrines with the words and categories of the present day. A phenomenon which is the cause of many anachronisms, as has been also pointed out by Otto Brunner, Reinhart Koselleck, Werner Conze and in general by the German conceptual history (“Begriffsgeschichte”).

MJCV: Of course we must try to understand texts within the context in which they were written, and we must use the concepts of earlier thinkers, as far as we possibly can, in the sense in which they intended and not in a sense which we impose upon them for our own ends. However, we must also realize that there is a continuity in the development of human thought, because earlier thinkers were not grappling with problems wholly different from those that we face, and if their thoughts were completely inaccessible to us there would be no point in discussing their work at all.

26. Leo Strauss is perhaps the most outstanding and acute representative of the neo-conservatism thought which was consolidated at both sides of the Atlantic after the fall down of the Soviet Union and that reached the higher point during the administration of G. W. Bush. Strauss has criticized the dominant conception of Political Science as descriptive and empirical, as it has been promoted by most of its specialists, who underestimated the political importance of philosophy. Even if I do not share at all many of the Strauss’s views, I do agree with him in this criticism and I assume you do as well. Is that correct?

MJCV: I certainly agree with you. The study of politics must deal with both empirical and normative questions. However, although the empirical evidence can be used to illuminate normative issues, we must be very careful to keep the two kinds of enquiry distinct, and to be as objective as possible in our use of evidence.

V. THE FUTURE OF CONSTITUTIONAL HISTORY IN EUROPE AND IN THE UNITED STATES OF AMERICA AND THE POSSIBILITIES OF A EUROPEAN CONSTITUTIONAL HISTORY

27. One of the most appealing features of *“Constitutionalism and the separation of powers* is your comparative approach of three great constitutional traditions: the British, the American and the French. Do not you think historians of constitutionalism should pay more attention to the

comparative survey? For this respect, do not you consider it necessary to boost the studies of constitutional history in the European area, at least in the area of Western Europe that goes further than the examination of a unique national history? And in the case of the United States and the United Kingdom, do not you think those studies are excessively focused in the Anglo-Saxon area?

MJCV: Yes, of course. Unfortunately the study of languages in Britain and America is not as effective as one would wish, and the study of comparative politics requires a very high competence in foreign languages. Most British students who study political science are incapable of doing serious research in a foreign language, hence the emphasis on English-speaking countries. This is a very difficult problem and could probably only be addressed if the government were to allocate a large sum of money to encourage the study of comparative politics and the ancillary subjects which would be required. I don't think that is very likely!

28. According to me, European constitutional history only can be properly understood by comparing it with the American Constitution, which has often been used in Europe as a constitutional model or one to be avoided. It happens, for instance, with federalism, with the presidential system (that comes from a strict conception of the separation of powers with great influence in Spanish and Portuguese-speaking American nations) and with judicial review. The latter was an instrument introduced in many European countries during XXth century, even with many differences with respect to the US pattern. Do you agree with this reflection?

MJCV: The complex interrelationship between European and American constitutional models is central to an understanding of politics in both Europe and America. No period of history is more fruitful in this respect than 1750-1850, and I wish that I could study it more deeply than I have.

29. But, at the same time, I think constitutional history of the United States, at least in its origins, can only be understood by contrast with the European one, in particular with the British. You have pointed in your books, for example in *"The Structure of American Federalism"* (page 31): "It was the American sense of uniqueness, of being new and clean compared with an old and corrupt Europe, which gave to Americans the feeling of separateness necessary to a sense of national self-determination, but allowed them the luxuries of federalism and isolationism". Could you talk to us about this issue that I consider of great interest?

MJCV: The American colonists benefited from a quite unique combination of circumstances. They established themselves on a continent which was sparsely populated and where apparently unlimited land was available for settlement. In Europe all the land was already owned, to a large extent by aristocrats. The

immigrants were mainly drawn from the middle or lower classes in Britain, who were at that time largely excluded from the political power structure. They were mostly British or Irish and they took with them the then current political and constitutional ideas, but of course many of them were rebelling against the social and religious establishment in Britain. Thus they took old ideas and reformed them to fit the very different circumstances in which they found themselves. They found themselves in a situation in which they depended upon the mother country, but were able to a large extent to shape their political institutions to their own needs. There was a continuity, a respect for tradition, but also the adaptation of old ideas to create new institutions. At the same time, after the revolution although they were independent of Britain, throughout the nineteenth century they were protected from external attack by the British navy, and they were able to develop the natural resources of North America, to almost eliminate the original inhabitants and to maintain institutions such as slavery which were no longer tolerated in much of the rest of the world.

30. As Spanish and therefore as a member of the Iberoamerican community of nations, I believe it is also necessary to study the constitutionalism of the Spanish and Portuguese-speaking American nations in the frame of western constitutional history. I will not elaborate on the difficulties, in differing ways, that these countries have had, and still have, in becoming authentic constitutional states, difficulties similar to those, experienced by some European countries, and not only those of Eastern Europe. But what I would like to know is if you still consider that the political systems of the Spanish and Portuguese-speaking countries must be studied in the context of the political systems of the "Third world", together with African and Asiatic countries, as you state in "*Constitutionalism and the separation of powers*".

MJCV: When I made this reference to Latin America (writing in 1967) I was quoting the views of G.A. Almond and J. Coleman in *The Politics of the Developing Areas* (1960). Almond and Coleman were looking for a way of comparing political systems in different parts of the world with the "modern democracies", in order to evaluate the extent to which their political systems actually embodied the characteristics of truly democratic government. I am sure that at that time Almond and Coleman were right to look at the political systems of Latin America, in general, as not measuring up to the requirements of democratic government, although you are also quite right to point out that many European countries, particularly in Eastern Europe fell short of the democratic ideal, and still do. I certainly think that the term the "Third World" is no longer appropriate, because the developments which have taken place throughout the world in the last fifty years have differentiated different areas to the point where lumping them together in this way is not a helpful analytical approach.

My own interest in this issue, as in many other contexts, was in seeking out the relationships between constitutional forms and the reality of political practice. The question I would ask is whether there is a real "*constitutionalism*" in Latin American countries, not merely western-style *constitutions*. For example, in Latin America in 1967 countries with American-style presidential constitutions

were often in reality dictatorships. Clearly a great deal has changed in Latin America since 1967, but a recent study of Latin American nations concluded that democracy in those countries differed in many ways from the “Western democratic” model, particularly in the role of the military, and the fact that “neither political parties, civil society, nor interest groups and pluralism are highly valued in Latin America; they are still often seen as divisive and unnecessary.” (Howard J. Wiarda and Margaret McLeish Mott, *Politics and Social Change in Latin America: Still a Distinct Tradition?*, 2003, p. 290.). I am afraid I do not have a sufficient knowledge of that part of the world to be able to say whether that is a correct judgement and I would be very interested to have your view.

31. I would not like to end this interview without asking your opinion about the existence of an electronic journal of Constitutional History, like this.

MJCV: For someone, like myself, who now rarely visits the great libraries of the world, the use of the internet is a vital means of accessing the literature, and an electronic journal like “*Historia Constitucional*” provides valuable access to materials that would otherwise not be available. I am sure that this is true of many other people who wish to know what is happening in academia.

Professor Vile, thank you very much for your answers. I am sure it will be of great interest for all the readers of this journal (I trust the questions will be interesting as well).

MJCV: Thank you for asking me. I have enjoyed answering your questions. They have made me think again about issues of great importance.