For the 2010 Hamlyn Lectures, Alan Paterson explores different facets of three key institutions in a democracy: lawyers, access to justice and the judiciary. In the case of lawyers he asks whether professionalism is now in terminal decline. To examine access to justice, he discusses past and present crises in legal aid and potential endgames, and in relation to judges he examines possible mechanisms for enhancing judicial accountability. In demonstrating that the benign paternalism of lawyers in determining the public good with respect to such issues is no longer unchallenged, he argues that the future roles of lawyers, access to justice and the judiciary will emerge only from dialogues with other stakeholders claiming to speak for the public interest.

ALAN PATERSON is Professor of Law and Director of the Centre for Professional Legal Studies at Strathclyde University. He is also the Chair of the International Legal Aid Group. As research adviser to the Scottish Legal Aid Board he has been responsible for the training and monitoring aspects of the peer review programme of quality assurance for legal aid lawyers in Scotland. He served as a member of the Council of the Law Society of Scotland from 2000 to 2008, and of the Judicial Appointments Board for Scotland from 2002 to 2008. In 2008 he was appointed as an inaugural member of the Scottish Legal Complaints Commission, and in the following year he was awarded the OBE for services to legal education and the law.
LAWYERS AND THE PUBLIC GOOD
Democracy in Action?

ALAN PATERSON
To Michael
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THE HAMLYN TRUST

The Hamlyn Trust owes its existence today to the will of the late Miss Emma Warburton Hamlyn of Torquay, who died in 1941 at the age of 80. She came of an old and well-known Devon family. Her father, William Bussell Hamlyn, practised in Torquay as a solicitor and J.P. for many years, and it seems likely that Miss Hamlyn founded the trust in his memory. Emma Hamlyn was a woman of strong character, intelligent and cultured, well-versed in literature, music and art, and a lover of her country. She travelled extensively in Europe and Egypt, and apparently took considerable interest in the law and ethnology of the countries and cultures that she visited. An account of Miss Hamlyn by Professor Chantal Stebbings of the University of Exeter (one of the Hamlyn trustees) may be found, under the title ‘The Hamlyn Legacy’, in volume 42 of the published lectures.

Miss Hamlyn bequeathed the residue of her estate on trust in terms which it seems were her own. The wording was thought to be vague, and the will was taken to the Chancery Division of the High Court, which in November 1948 approved a Scheme for the administration of the trust. Paragraph 3 of the Scheme, which follows Miss Hamlyn's own wording, is as follows:

The object of the charity is the furtherance by lectures or otherwise among the Common People of the United
THE HAMLYN TRUST

Kingdom of Great Britain and Northern Ireland of the knowledge of the Comparative Jurisprudence and Ethnology of the Chief European countries including the United Kingdom, and the circumstances of the growth of such jurisprudence to the Intent that the Common People of the United Kingdom may realise the privileges which in law and custom they enjoy in comparison with other European Peoples and realising and appreciating such privileges may recognise the responsibilities and obligations attaching to them.

The Trustees are to include the Vice-Chancellor of the University of Exeter, representatives of the Universities of London, Leeds, Glasgow, Belfast and Wales, and persons co-opted. At present there are eight Trustees

Professor N. Burrows, The University of Glasgow
Professor I.R. Davies, Swansea University
Ms Clare Dyer
Professor C. Stebbings [representing the Vice-Chancellor of the University of Exeter]
Professor R. Halson, University of Leeds
Professor J. Morison, Queen's University, Belfast
The Rt Hon. Lord Justice Sedley
Professor A. Sherr, Institute of Advanced Legal Studies, University of London (Chair)

From the outset it was decided that the objects of the Trust could be best achieved by means of an annual course of public lectures of outstanding interest and quality by eminent lecturers, and by their subsequent publication and distribution to a
wider audience. The first of the Lectures were delivered by the
Rt Hon. Lord Justice Denning (as he then was) in 1949. Since
then there has been an unbroken series of annual Lectures
published until 2005 by Sweet & Maxwell and from 2006 by
Cambridge University Press. A complete list of the Lectures
may be found on pages xv to xviii. In 2005 the Trustees decided
to supplement the Lectures with an annual Hamlyn Seminar,
normally held at the Institute of Advanced Legal Studies in the
University of London, to mark the publication of the Lectures
in printed book form. The Trustees have also, from time to
time, provided financial support for a variety of projects
which, in various ways, have disseminated knowledge or have
promoted to a wider public understanding of the law.

This is the 62nd series of lectures which was delivered
by Professor Alan Paterson in three different locations. The
first took place at the Playfair Library Old College, University
of Edinburgh on 1st December 2010. The second was due to be
held at the McCance Lecture Theatre University of Strathclyde
Glasgow on 7th December 2010. Snow closed the University
and the whole of Glasgow on that day and the Lecture was
postponed to 1st March 2011. The third lecture was held at the
Beveridge Hall, Senate House, University of London on 14th
December 2010 and was chaired by Lord Hope of Craighead,
Deputy President of the Supreme Court. The Board of Trustees
would like to record its appreciation to Professor Paterson
himself and also to Edinburgh, Strathclyde and London
Universities who generously hosted these Lectures. It was a
good year for snow and each occasion brought some uncer-
tainty about the weather. In true form the Hamlyn lecturer
moved effortlessly around the nations both intellectually and geographically, coped with being snowed off and finishing late, bringing a new look at Lawyers and the Public Good.

December 2010, London
AVROM SHERR
Institute of Advanced Legal Studies
Chair of the Trustees
THE HAMLYN LECTURES

1949 Freedom under the Law by the Rt Hon. Lord Denning
1950 The Inheritance of the Common Law by Richard O’Sullivan
1951 The Rational Strength of English Law by Professor F. H. Lawson
1952 English Law and the Moral Law by Professor A. L. Goodhart
1953 The Queen’s Peace by Sir Carleton Kemp Allen
1954 Executive Discretion and Judicial Control by Professor C. J. Hamson
1955 The Proof of Guilt by Professor Glanville Williams
1956 Trial by Jury by the Rt Hon. Lord Devlin
1957 Protection from Power under English Law by the Rt Hon. Lord MacDermott
1958 The Sanctity of Contracts in English Law by Professor Sir David Hughes Parry
1959 Judge and Jurist in the Reign of Victoria by C. H. S. Fifoot
1960 The Common Law in India by M. C. Setalvad
1961 British Justice: The Scottish Contribution by Professor Sir Thomas Smith
1962 Lawyer and Litigant in England by the Rt Hon. Sir Robert Megarry
1963 Crime and the Criminal Law by the Baroness Wootton of Abinger
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1982 The Quest for Security: Employees, Tenants, Wives by Professor Tony Honoré
1983 Hamlyn Revisited: The British Legal System Today by Lord Hailsham of St Marylebone
1984 The Development of Consumer Law and Policy – Bold Spirits and Timorous Souls by Sir Gordon Borrie
1985 Law and Order by Professor Ralf Dahrendorf
1986 The Fabric of English Civil Justice by Sir Jack Jacob
1987 Pragmatism and Theory in English Law by Professor P. S. Atiyah
1988 Justification and Excuse in the Criminal Law by Professor J. C. Smith
1989 Protection of the Public – A New Challenge by the Rt Hon. Lord Justice Woolf
1990 The United Kingdom and Human Rights by Dr Claire Palley
1991 Introducing a European Legal Order by Gordon Slynn
1992 Speech and Respect by Professor Richard Abel
1993 The Administration of Justice by Lord Mackay of Clashfern
1994 Blackstone’s Tower: The English Law School by Professor William Twining
1995 From the Test Tube to the Coffin: Choice and Regulation in Private Life by the Hon. Mrs Justice Hale
1996 Turning Points of the Common Law by the Rt Hon. the Lord Cooke of Thorndon
1997 Commercial Law in the Next Millennium by Professor Roy Goode
THE HAMLYN LECTURES

1998  Freedom, Law and Justice by the Rt Hon. Lord Justice Sedley
1999  The State of Justice by Professor Michael Zander QC
2000  Does the United Kingdom still have a Constitution? by Professor Anthony King
2001  Human Rights, Serious Crime and Criminal Procedure by Professor Andrew Ashworth QC
2002  Legal Conundrums in our Brave New World by Baroness Kennedy of the Shaws
2003  Judicial Activism by the Hon. Justice Michael Kirby AC CMG
2004  Rights at Work: Global, European and British Perspectives by Sir Bob Hepple QC, FBA
2005  Can Human Rights Survive? by Professor Conor Gearty
2006  The Sovereignty of Law: The European Way by Sir Francis Jacobs KCMG, QC
2007  The Prisoners’ Dilemma by Professor Nicola Lacey
2008  Judging Civil Justice by Professor Dame Hazel Genn
2009  Widening Horizons: The Influence of Comparative Law and International Law on Domestic Law by Lord Bingham of Cornhill
ACKNOWLEDGEMENTS

To be asked to deliver the Hamlyn Lectures is a major honour for any academic. To be asked as a Scots legal academic to deliver them is also a rare honour. Professor Sir Neil MacCormick experienced that honour before I did but due to illness was prevented from delivering his lectures. Lord Bingham of Cornhill did deliver his lectures but tragically also suffered an untimely death shortly thereafter. As will be clear from the text of my lectures I owed a significant debt to each of them. To Neil for supervising my doctoral thesis on the Law Lords forty years ago and to Tom for the insights which he afforded to me two years ago as to the role of the Law Lords in their final decade, when he was the presiding Law Lord.

I am greatly indebted to the Hamlyn Trustees for the invitation to deliver the 2010 lectures, to Professor Kim Economides, Chairman of the Trustees, who first brooked the topic and to Professor Avrom Sherr, his successor, who supported me throughout the eighteen months of roller-coaster preparation leading up to the lectures. I was exceedingly fortunate to follow so shortly in Professor Dame Hazel Genn's footsteps and to benefit from frequent discussions with her as to how best to meet the challenges entailed in the lectures. Nothing was too much trouble for her, whether it was the full text of her lectures and powerpoints or advice as to possible audiences for the lectures.

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ACKNOWLEDGEMENTS

The first lecture was given in the Playfair Library, the jewel in the crown of the Old Quad, Edinburgh University where in the sixties I first studied law. Professor Douglas Brodie, Head of the Edinburgh Law School, was the generous host who secured the venue, funded the excellent dinner and proffered the assistance of Lorna Gallacher as a very efficient event organiser. The lecture was admirably chaired by Lord Hamilton, Lord President of the Court of Session. Pride of place, however, must go to the audience of eighty doughty individuals who braved the snow to join us on that occasion, being rewarded for their pains by one of the first showings of video extracts from the oral hearing in the JFS appeal before the Supreme Court.

The second lecture was meant to be at Strathclyde University a week later but this time the elements defeated the audience and it had to be postponed by several weeks. The second lecture in chronological terms therefore was in the Beveridge Hall, Senate House, the University of London, thanks to the efforts of Professor Avrom Sherr, Director of the Institute of Advanced Legal Studies and to his immensely helpful team of Eliza Boudier and Belinda Crothers. Lord Hope, the Deputy President of the Supreme Court and Chancellor of my own university, chaired the lecture with charm and insight and the splendid dinner was provided by the Hamlyn Trustees and Cambridge University Press.

The final lecture was delivered at the McCance Lecture Theatre, Strathclyde University, organised twice over by the ever patient and supportive Fiona Lynn and chaired by Professor Jim McDonald, the Principal of the University and the splendid host and provider of the subsequent dinner.
ACKNOWLEDGEMENTS

The key to the delivery of a major lecture series is the strength of the ‘home team’. Here I was exceedingly fortunate to have the very generous support of my Head of School, Professor Mark Poustie, the help of our shared PA, Carol Hutton, and the invaluable assistance of the technical support team Craig Grant, David Sams and Sharon Ennis and of several very enthusiastic and diligent research assistants – Danielle McLaughlin, Darren Murdoch, Emma Boffey and Paul Ferrie. However, the strongest team needs an audience, and I was particularly touched at the number of friends, whether from near or far (the latter including Michael and Ruth Browde, Peter van den Biggelaar, Ulrike Schulz and Leny de Groot), colleagues and others who made the time to attend the lectures.

To turn three lectures into a coherent manuscript requires the input of many willing minds. To the admirable staff of Cambridge University Press, Finola O’Sullivan, Richard Woodham, Lyn Flight and Daniel Dunlavey the thanks of an over-anxious author are clearly due. To the Parliamentary Archives for permission to reproduce two photographs from the final year of the House of Lords Appellate Committee thanks are also due. In composing the text I have benefited immensely from the input of many individuals to different aspects of my thinking which has ultimately appeared in the book. In addition to Honours students and research interviewees (primarily Law Lords and counsel) too numerous to mention over the years, special thanks should go to Stephen Bailey, John Bell, Michael Browde, Brice Dickson, David Feldman, Hazel Genn, Tamara Goriely, William Holligan, Colin Lancaster, Kate Malleson, Neil McIntosh, Neil MacCormick, Lindsay Montgomery, Richard Moorhead, Chris Paterson, Russell
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Pearce, Jenny Rowe, Avrom Sherr, Roger Smith, Richard Susskind, Adam Tomkins and Michael Zander.

Finally, I must thank my longsuffering family. My children, Christopher, Rachel and Michael, provided much needed therapy in frequent trips to London whilst Alison, my wife, not only attended all the lectures (as did my sister Jill and my friend Duncan) but coped with the stress associated with their preparation, delivery and publication with characteristic generosity of spirit.

July 2011, Glasgow

ALAN PATERSON
Strathclyde University