

## LAWYERS AND THE PUBLIC GOOD

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



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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

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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.

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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

## THE HAMLYN TRUST

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 uncertainty about the weather. In true form the Hamlyn lecturer

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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

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- 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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- 1964 Law and Lawyers in the United States by Dean Erwin N. Griswold
- 1965 New Law for a New World? by the Rt Hon. Lord Tangley
- 1966 Other People's Law by the Rt Hon. Lord Kilbrandon
- 1967 The Contribution of English Law to South African Law: and the Rule of Law in South Africa by the Hon. O. D. Schreiner
- 1968 Justice in the Welfare State by Professor H. Street
- 1969 The British Tradition in Canadian Law by the Hon. Bora Laskin
- 1970 The English Judge by Henry Cecil
- 1971 Punishment, Prison and the Public by Professor Sir Rupert Cross
- 1972 Labour and the Law by Professor Sir Otto Kahn-Freund
- 1973 Maladministration and its Remedies by Sir Kenneth Wheare
- 1974 English Law – the New Dimension by the Rt Hon. Lord Scarman
- 1975 The Land and the Development; or, The Turmoil and the Torment by Sir Desmond Heap
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- 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
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- 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

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- 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.

## 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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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*