

as genocide (chapter 13). Martin's contribution is valuable because it examines how the role of the victim in domestic and international law may be different.

The final two chapters consider issues which have dogged courts in the UK systems for some time. First, Ohlin considers how ICL should approach joint criminal enterprises (chapter 14). Joint enterprises – i.e. where a number of people agree to commit an offence – have proved rather problematic in Common Law systems, particularly where one party goes “too far” and commits a crime beyond the scope of the original agreement. Ohlin's analysis is refreshing, and useful beyond the ICL context. Finally, Newman considers the defences of duress and necessity in ICL (chapter 15). Again, these defences have proved problematic in Scotland and England and Wales, so Newman's analysis is helpful on the domestic level.

This brief survey of the coverage of *Rethinking Criminal Law Theory* has indicated that the various chapters – despite concentrating primarily on Canadian law – are useful to UK readers. There is a further reason why readers interested in Scots and English criminal law should take note of this important text. The UK's systems of criminal law all suffer to varying degrees from incoherence and a lack of principle (with Scots law seeming the most amateurish). Profiting from the experience of those in other, similar, jurisdictions is always a good idea. Reading texts like this is thus always an extremely worthwhile exercise.

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Alan Paterson, LAWYERS AND THE PUBLIC GOOD: DEMOCRACY IN ACTION?

Cambridge: Cambridge University Press (www.cambridge.org), The Hamlyn Lectures, 62nd Series, 2011. xxii + 218 pp. ISBN 978110762687. £17.99.

In 2001 I began my LLB at the place of useful learning in Glasgow. One first year course in the Strathclyde curriculum was “Law and the Legal Process”, which featured a series of lectures from Professor Alan Paterson on the issue of unmet legal need. Fast forward a decade and you will find a book based on a series of lectures he delivered in 2010 and 2011, under the auspices of the Hamlyn Trust, on topics not dissimilar to that which I studied ten years before.

The substance of the book divides into three chapters based on the enquiring and provocative lecture topics of “Professionalism re-assessed: what now for lawyers?”, “Access to justice: whither legal aid?” and “Judges and the public good: reflections on the last Law Lords”. No doubt owing to the book's development from a series of orations, it reads effortlessly. The topics raised might be challenging, but they are far from impenetrable. A curious layman should not be frightened to pick up the text for fear it will be beyond his ken. Rather, it is the complacent lawyer who should be worried about what a layman might think after reading the text.

Paterson's “iconoclastic” claim that “legal institutions are too important in a modern democracy to be left to lawyers alone” (1) is woven throughout the book. His (re)assessment of professionalism, a subject he knows well (see Paterson and Ritchie, *Law, Practice and Conduct for Solicitors* (2006)), draws on the work of cutting-edge thinkers such as Richards, Moorhead and Susskind and his former collaborator and fellow Hamlyn Lecturer Dame Hazel Genn (see *Paths to Justice: Scotland* (Hart Publishing: 2001)). Legal professionals will be relieved that law's place as a profession is pragmatically and persuasively defended. Paterson analyses the

professional compact, setting out and critiquing a professional's obligations of expertise, access (as gatekeepers to the legal system), service and public protection against the benefits of status, reasonable rewards, restricted competition and autonomy. An acceptance of George Bernard Shaw's analysis of professions as conspiracies against the laity this is not. It is also decidedly not acquiescent in the legal profession as it stands, but it does explain that the profession may at times have seemed static because nothing changed for long enough to allow people to forget it had ever been any different (16).

This is not just a book for dreamers and navel-gazers. In addition to a defence of the profession from simplistic analogies with plumbers or baked bean purveyors (12), Paterson also offers the practising lawyer the tricolon of, "Cash-flow, cash-flow, cash-flow" which (with reference to market trends and pressures) "should be printed on every fee-earner's desk" (55). Further demonstrating the book's wide appeal, law schools and those in university management ought to have more than a passing interest in the analysis of law schools' role in determining how many law graduates emerge from university. His assertion that there are too many law schools in Scotland will raise as many sceptical eyebrows as it does murmurs of assent. Another audience, namely the customers of law schools, will latch onto his acknowledgement that some law graduates might need to give realistic consideration to salaries not in excess of £30,000 for "poverty legal services" (26-27). This is unlikely to be what students had in mind at the outset of legal studies.

The coverage of the first chapter is huge. How will the new world order of Advanced Business Structures (ABS) look? Should the representative and regulatory functions of the Scottish profession, stemming from s 1 of the Solicitors (Scotland) Act 1980, be split? Can the profession seriously maintain its claims of expertise when this is essentially still based on a two-year traineeship and no genuine peer-review or robust (re-)accreditation processes that are found in other disciplines (35-37)? What is the extent of a solicitor's duty beyond the clear duties to client and court (41)? One could continue, but only one further point shall be highlighted, as something of a sting in the tail: "Lawyers have always needed clients, but ironically the advent of ABS and new providers in the market place means that the public may no longer need the profession – unless, of course, it can adapt" (58).

Following an earlier reference to the profession's role of facilitating access to the legal system in general, Paterson then focuses on access to justice. Taking a narrow view of this term, thus side-stepping the wider potential benefit of access to justice by simplifying the law as a whole, Paterson looks at "access to affordable publicly funded legal assistance," which a UK audience knows as legal aid. Readers will not be surprised that access to justice is too important to leave to lawyers alone: the opportunity to criticise the composition of the Gill Review on Civil Justice (Scottish Civil Courts Review, 2009) on that basis is not missed (62).

It may be that this chapter is the most severable for certain readers. Lawyers not engaged with legal aid work may find it less engaging for that reason. That would be a shame, especially as there is no divine reason for any cosy *status quo* to remain. Paterson's analysis of legal aid's post-World War II development and the theoretical justification for state support reminds readers just how different legal aid could have looked. This is a timely counterpoint to (primarily English) governmental assertion, as embodied in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, that any reforms to legal aid are simply to return it to its roots (65 and 74). The comparison between Scotland and England and Wales on issues such as eligibility for legal aid, franchising and state salaried lawyers makes fascinating reading. Scotland avoided high-profile English debacles, yet somehow still "delivered more access to justice, on a non-cash limited basis and at a lesser per capita cost than the rest of the United Kingdom" (100). Some speculation of what the future might look like is also made, with an acknowledgement that any new money is most likely to be sought from non-tax sources, which

realistically leaves the client or the profession on the hook. If clients are to be looked to, conditional or contingent fees or legal expenses insurance might be needed (107-109), whereas the profession might be asked for the provision of *pro bono* services (which ties in with the duty argued for in the previous chapter (41)) or the contribution of a levy to opt out from *pro bono* work (109-112). Any new world where there is a challenge of integrating supply and demand also requires a consideration of new providers. Neither modesty nor conventions of reviewing prevent me from putting forward Aberdeen's student law clinic (of which I am faculty director) for consideration alongside the Strathclyde model under Donald Nicolson's stewardship which Paterson expressly mentions (116). One thing missed in terms of new providers, showing the inherent difficulty of soothsaying, is a perceived gap now filled by a private prosecution specialist (see Law Society Gazette, 26 April 2012 *Private prosecution pioneer opens up as LDP*). Why is there a need for this? Budget cuts mean combating fraud is not getting enough attention from government lawyers, or at least one business model hopes this is the case.

From one subject of great importance, to another: judges. Threads from previous chapters can be found in the analysis of judges' role in a properly functioning democracy, such as another swipe at the Gill Review and a consideration of who defines the role and remit of McKenzie friends, being situations where judges or system insiders should not be left to define the public interest (127-128). Paterson's starting point is that the judiciary has made certain inroads into the powers of the legislature and executive in recent years, through an expansion of legal remedies, a growth in judicial review and the implications of human rights and devolution. For law graduates (and students), much of this chapter will chime with jurisprudence classes on attitudes of judges and questions like: "Who guards the guardians?" Paterson offers a digestible chunk that can serve as both useful refresher and first port of call.

This is a timely, affordable and comprehensive text. There might be some repetition of key points (virtually the same quote from Jonathan Sumption QC is found twice (at 49 and 161)), but this serves to hammer home points in the manner of an effective didactic lecturer. It may also surrender the provenance of the book, but not to its detriment. Lawyers of all creeds, students and interested observers (including politicians and judges) will all find something of interest in it.

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Didi Herman, AN UNFORTUNATE COINCIDENCE: JEWS, JEWISHNESS AND ENGLISH LAW

Oxford: Oxford University Press (www.oup.com), 2011. xiv and 193 pp. ISBN 9780199229765. £36.99.

The history of Jewish experiences of English law is an important subject which has not yet received the scholarly attention it deserves. In this book, Herman seeks to "begin mapping the terrain of judicial representations of Jews and Jewishness" by examining the language of judgments in reported cases in the superior courts since the turn of the twentieth century. After an introductory chapter setting out the arguments of the book, she turns to explore the views expressed by judges of Jewish "character" in a number of cases spanning the century.