THE DAVID HUME INSTITUTE

Are Lawyers Parasites?

Presidential Address of The David Hume Institute

8 March 2001

The Rt. Hon. the Lord Mackay of Clashfern KT, PC

Hume Occasional Paper No. 59

The David Hume Institute
21 George Square
Edinburgh EH8 9LD

ISBN 1 870482 60 3

Printed by D & J Croal Ltd, Haddington.

Are Lawyers Parasites?

Presidential Address of The David Hume Institute

8 March 2001

The Rt. Hon. the Lord Mackay of Clashfern KT, PC

THE DAVID HUME INSTITUTE

2001

The Institute gratefully acknowledges the sponsorship of this publication by The Royal Bank of Scotland.

Foreword

The David Hume Institute has had the good fortune to have enjoyed an unbroken run of eminent people who have served a term as our President. In chronological order, these include Professor George Stigler (1984-87), Judge Thijmen Koopmans (1988-91), Judge David Edward (1992-95), and Sir Samuel Brittan (1996-1999). Lord Mackay of Clashfern was therefore a very obvious choice as our next President.

This choice was particularly apposite given that the two themes of law and economics are central to The David Hume Institute's work and that, over recent years, we have devoted a significant part of our effort to examining the efficiency of various aspects of the justice system. As recently as this past summer, we held a conference on aspects of legal procedural reform. The papers from this conference were subsequently published in the *Hume Papers on Public Policy* series as an issue entitled 'The Settlement of Legal Disputes'. Other published titles in this series including 'Access to Justice', 'Justice and Money', and 'The Reform of Civil Justice' also reflect the Institute's interest in this area. As will immediately be clear to the reader of Lord Mackay's Presidential Address, Lord Mackay has much to say on this theme and, indeed, as a most successful reforming Lord Chancellor has contributed much to defining the current system of justice.

This lecture was delivered to an attentive capacity audience, both attracted by Lord Mackay's outstanding reputation and intrigued by the well-chosen title of the lecture. Those present were, without exception, stimulated and invigorated by the arguments put forward. The reader of the text, published here, will be equally rewarded by a carefully argued analysis of the economic and social benefits of lawyers. The David Hume Institute is delighted to be able to publish this lecture as a *Hume Occasional Paper*. As always in our publications, it is necessary to make clear that the Institute holds no collective view or opinion upon the issues raised, the views expressed being those of the author alone.

Brian G M Main
Director
June 2001

The Rt. Hon. the Lord Mackay of Clashfern KT, PC

Lord Mackay is one of the most eminent lawyers of his generation. He started his career as a mathematician, having been first a lecturer in mathematics at the University of St Andrews and subsequently a Major Scholar and then Senior Scholar in Mathematics at Trinity College, Cambridge. In 1955, having gained an LLB from the University of Edinburgh, he was admitted to the Faculty of Advocates and within ten years was appointed as a QC. He served variously as Sheriff Principal, Vice Dean and then Dean of the Faculty of Advocates, before becoming Lord Advocate of Scotland in 1979. In 1984 he was appointed as a judge in the Court of Session and in 1987 attained the highest legal office in the land, as Lord High Chancellor of Great Britain. He held this post for ten years, a period marked by the successful introduction of many reforms to the legal process. Lord Mackay became President of The David Hume Institute in 1999.

ARE LAWYERS PARASITES?

The Rt. Hon. the Lord Mackay of Clashfern KT, PC[1]

Some years ago I was a guest at the American Bar Association Conference in Atlanta, Georgia. The Vice President of the United States, Dan Quayle, himself a lawyer, had indicated a wish to address the plenary session of the conference. It was my privilege to be able to hear his address. He explained that he had been asked by the President to chair a group examining the economic performance of the United States and he had reached the conclusion that one of the factors inhibiting economic progress by the United States was the very large number of lawyers who worked and were rewarded for that work by those who are economically active in the country and that this was a drain on the country's economy, different from and more burdensome than the legal systems of the competitors of the United States in world markets. Such a message presented to such an audience required a degree of courage and adroitness in a politician which I had to admire.

One of his subsidiary contentions was that in the United States the cost rule used in the United Kingdom should be adopted under which, generally speaking, the loser had to bear the costs of the litigation. He believed that this rule had the effect of preventing unmeritorious actions being raised.

The then President of the American Bar Association, who was not in the chair of the meeting, decided that a response was called for and he came from the body of the hall and delivered a brief and reasonably respectful rejoinder to the Vice President's address in which, among other things he said that he was not in favour of importing the British cost rule to the United States as this had a dampening effect on litigation.

I was invited to a lunch following that meeting that was addressed by a gentleman practising as a lawyer in Atlanta who also wrote a column for one of the Atlanta newspapers. A former attorney general described this gentleman as a person of whom the lawyers say he is a journalist and the journalists say he is a lawyer.

[1] Lord Mackay would like to thank Ian Cruse, Library Clerk at the House of Lords, for his invaluable assistance in the preparation of this paper.

This gentleman's response in his speech at the lunch to the Vice President's address was to say: "some people say there are too many lawyers in the United States. I have to say that there are so few lawyers in the United States that people cannot have their own lawyer and have to share lawyers and this can be very unhygienic". He was of course referring to the conflicts of interests that can arise.

The challenge of that address has stayed with me and drawing near, as I now am, to the end of a life devoted to the practice of the law in a variety of different positions, I felt it was a challenge that might be suitably addressed in the prestigious setting of this distinguished institute. Originally "parasite" came from the Greek word "parasitos" which is literally one who eats beside another, that is to say, at the table of, or at least at the expense of another. In biology this is now applied to an animal or plant which lives in or upon another organism and draws its nutriment directly from it. I think that in modern parlance applied to a person, it means one who receives support and sustenance from another without giving any or an adequate return.

We are all familiar with quotations from the Bible, from Shakespeare and from many others tending to denigrate the legal profession. Are these justified?

I suppose a very small community such as a family with one person who is acknowledged as its head and whose authority is respected by all its members could regulate its daily life by referring any issue of doubt for ad hoc decision by the head. And even in advanced and complicated modern societies we can find instances of this way of controlling a unit. For example, the conditions under which a cabinet minister should be required to resign are not stipulated expressly and in detail, so far as I know, in any document. There is a document which sets out in ever growing detail the duties and responsibilities of ministers but even with such a document the decision on whether or not an individual cabinet minister should lose his position remains with the Prime Minister. When a particular minister resigns there often follows demand for the rules governing the conduct of ministers to be tightened up, in other words, made even more elaborate.

Where a community develops beyond the possibility of being controlled by a recognised head in this way, a necessity arises for rules to be formulated by which the conduct of members of the

community will be regulated. These rules may be written or unwritten but they are intended to cover the variety of situations which may occur in the life of a member of the community. Where a difference of opinion arises between members of the community the resort will be had to these rules to determine the issue. If the rule in question is very clearly expressed and applies to the situation both disputants may be willing to accept and agree a result, but if this is not so, some means has to be found for resolving the dispute. In earlier times this might be by force but where this method of dispute resolution was resorted to the terms of the relevant rule became irrelevant. We see the same phenomenon today, for example, in international affairs. Although there is a substantial body of international law where nations come into dispute, they are often not ready to have their dispute resolved on the basis of an application of the law but resort to force. Is this a desirable situation? Would a service which avoids such developments be valuable? Such a system requires two parts. First of all, a part which sets out the rules either in writing or otherwise in some way to which resort may be had to ascertain the import of the rule when a dispute arises and secondly, requires a mechanism by which the application of the rule to the particular factual situation which has arisen can be determined authoritatively in a way binding and enforceable against all the parties to the dispute. Except in very special circumstances, both these mechanisms are required and a society in which both exist and operate to a satisfactory degree can be described as operating within the rule of law.

Let me take these two parts in turn. A system is required for formulating rules. One method of formulating rules is to consider individual situations as they arise, decide how they are to be resolved giving reasons which are then capable of application to similar situations arising thereafter and distinguishing situations which are not sufficiently similar to lead to the same result. If decisions are made on individual cases without giving reasons the system can be said to be arbitrary in the sense that all will depend on the individual judgement in each case and no rule of law will then exist. The second system is the formulation of rules which is done without reference to any particular case and which are then used to decide particular cases as they arise. For example, the Ten Commandments are an old and simple example of this system.

Let us consider the first system. One could have a situation in which any member of the community could perform the role of decision making but it would certainly be necessary to have someone who could formulate reasons for the judgement in a way capable of defining its scope with regard to future cases. One can see the development of this system in Exodus, Chapter 18, Verse 13 to Verse 26 where Moses is observed by his father-in-law taking the whole day to judge individual cases that were brought before him. I don't know how many take advice from their fathers-in-law but Moses did so and created a number of judges who were "able men, such as feared God, men of truth, hating covetousness". They judged the people at all seasons; the hard cases they brought to Moses, but every small matter they judged themselves. In Israel this system operated along with formulated rules. If our system depends to any extent on reasoned decisions for its development the demands made on the judges certainly require considerable ability. This was certainly emphasised in the passage I have quoted,

The second system requires formulation of general rules and the individual cases are decided in terms of the rules. The more complicated the community in which the rules are to apply, the more elaborate must be the machinery for stating these rules.

In theory any articulate person could formulate rules but in a developed society if the rules are to be of general application they require to take account of many different circumstances, including the way in which the system has operated up until the time of formulation of the new rule. I think it can fairly be claimed that expertise in the formulation of rules is a highly desirable quality in those who ultimately have responsibility for their form.

If proof of this is required I would cite the situation in which eminent judges have sought to enunciate rules which were intended by them for general application. On the whole these have not been particularly successful. There are of course outstanding examples of success but the generality is, I fear, in the other direction. I would therefore take it as reasonably clear that expertise in the formulation of enactments is a necessary part of a successful system of enacted law.

Incidentally, I think it is worth remarking that the preparation of bills including their amendment during the parliamentary process contributes considerably to the development of the underlying policy. To take the example of a government bill, the policy which it is desired

to be enacted will have been formulated by the relevant minister or ministers in a document, possibly a white paper, before the decision is taken to introduce legislation and then the relevant departmental officials will instruct lawyers to prepare the bill. The precision which is required in the bill which reduces the policy to writing in detail often requires a clarity in the policy not attained in the earlier paper. For example, a skilled draftsman will want to know what is required in a variety of situations which his experience tells him may arise and he also has to consider in preparing his bill the relationship of it to other measures. The departmental lawyers will be familiar with the enacted law for which the department has policy responsibility and also with the relevant court decisions relating to it and they will draw all of this to the attention of the draftsman who is a general expert in draftsmanship rather than in the particular area of legislation with which the department is concerned and it is the draftsman's job to prepare a coherent document fitting in to the pre-existing legislation and court decisions giving effect to the policy desired by the ministers in all the circumstances that can be envisaged to which it may be called upon to apply. The art of doing so in a reasonably intelligible form is not given to everyone. It is an extremely valuable talent and I must confess to my admiration for those who have it. I have had experience of working closely with the present First Parliamentary Counsel and I have a profound admiration for the clarity with which he was able to express my policy thoughts.

Of course, Acts of Parliament are a very special type of literature requiring in the reader considerable concentration. And certainly it is possible to glean from the statutes passages which seem absurd and can provoke laughter on a first reading and frustration in an attempt to understand the passage on the second or third reading. I do not believe that it is right to attribute these difficulties to failures on the part of parliamentary counsel. Often the subject matters for which they are seeking to deal are highly complex. I instance the taxing statutes particularly. I spent some time on a committee set up by the late Ian MacLeod for simplification of the taxing statutes and I have to confess that the system was considerably more complicated when I came off the committee than it was when the committee was set up. Often reading these statutes is greatly assisted by an understanding of the schemes with which they are intended to deal. The ingenuity of tax

advisers in developing ways of minimising the tax burden of their clients manifests often a high level of inventiveness and to counter that by a provision which covers the invented scheme requires a similar degree of inventiveness or at least of ability to describe the results of inventiveness. So far, I hope I have convinced you that expertise in the drafting of statutes is necessary for a system based on enacted law and since I do not believe that parliamentary counsel are particularly well rewarded, having regard to the time it takes to develop their expertise, I think they could hardly be described as not giving adequate return for the support they receive.

Perhaps it is well to mention that the Scottish Parliament appears to be having difficulty in this department in a way which has required the redrafting of bills. I do not attribute this to any failure on the part of the draftsmanship available to the Scottish Executive, but rather to the teething troubles associated with the setting up of any new system. Indeed I have personal experience of the high standards of the team serving the Scottish Executive as they were in my office when I was Lord Advocate. But the existence of these troubles does point, I think, to the importance, of and indeed the necessity for draftsmanship skills if a legislature is to be successful.

In a democratic system such as ours the enacted law will be subject to a process of scrutiny before being finally enacted. This gives rise to amendments to the bill presented and these amendments require to be produced within a relatively short timetable which again puts expertise at a premium. The system of issuing draft bills before the parliamentary process of enactment begins is a useful improvement but so far has not obviated need for amendment during the parliamentary consideration.

Apart from legislation enacted by parliament we are now faced by a large volume of legislation enacted under the authority of parliament by ministers and other authorities authorised to enact delegated legislation. I believe it is equally important that that legislation is drafted to a high standard since inadequacies in it can produce serious difficulties for those affected.

I now turn to the second part of what I have described as necessary for the rule of law namely, authoritative decision on the application of the rules to particular circumstances. To fulfil this requirement we have our courts staffed by judges and supporting officials.

The quality of judgement as I mentioned in the reference to Moses' father-in- law's advice is a general quality and I suppose that the jury system is an illustration of the fact that the judges who apply the law to particular circumstances need not be lawyers. However, if one has a non-lawyer as judge the system must inform him or her of what the relevant law is and if it is not clear, what the issues or meanings are which have to be resolved before the case in question can be decided. In theory this is possible but the practical difficulty and time involved in having non-lawyers as judges would present a formidable obstacle to the efficiency of the system.

Perhaps I can illustrate from an experience I had in my early time as Lord Chancellor. Up until that time there had been no patent judge in the Court of Appeal, so far as I know, and patents were often the subject of consideration in the Court of Appeal. I thought, and I think this idea had the support of my senior judicial colleagues, that it would be worth inviting other members of the Chancery Division other than the single patent judge, to deal with patent cases at first instance so that a pool of patent expertise might be available for the Court of Appeal. When this was tried it was soon apparent that the length of time required to initiate judges not familiar with the relevant law into the system that regulated patents could be a considerable impediment to the efficiency with which the case could be conducted. Obviously, judicial talent absorbed new ideas at different rates and if a judicial system as a whole is to be efficient it is necessary that the law does not become too fragmented. If the law in different subject areas is not integrated by general principles specialisation in the profession and the judiciary will become necessary to a degree that will become uneconomic. However, what I have said demonstrates, I think, the need for judges to be reasonably knowledgeable in the law in their subject areas.

In the light of these considerations, I conclude that it is necessary in a system operating the rule of law to have persons knowledgeable and experienced in the law as the judges in most cases although there is room for modification of that requirement in matters where factual issues are likely to be the most important in determining the outcome.

But is it necessary to have appeals? Why cannot the matter stop at the decision of the judge of first instance.

The system I have described depends upon the law being

derived from words in the usual case written words either in previous judgements or in enacted law. But words are not absolutely exact in the sense in which number and mathematical formulae are exact. They are capable in variation of meaning according to the context and there is also room for difference of opinion about the facts disclosed by evidence of witnesses. It has as a matter of practical policy usually been accepted that decisions on issues of fact made by a judge of first instance should generally be accepted since he or she has had the advantage of seeing and hearing the witnesses whereas on appeal generally the judges are confined to a written record of the evidence. On the other hand, where issues arise about the meaning of words the judge of first instance has no particular advantage and the decision is likely to be more influential as affecting other cases than a decision on the facts of the particular case. These considerations have lead most systems operating the rule of law to allow an appeal on questions of law to a higher court containing, usually, a greater number of judges than would be used at first instance. The most economical system which is the system adopted in the United Kingdom is to have a single judge of first instance, and for the reasons I have given, I believe this is necessary, with an appellate bench of three. If the case is clear-cut an appeal is not strictly necessary and it is certainly possible to introduce a requirement for leave. This operates in some cases in Scotland and more generally now in the English system. Where the volume of cases is high and differences of opinion can occur in courts of equivalent jurisdiction there is justification on the same basis for having a second appeal tier as we have in the United Kingdom, subject again in certain case, to a leave requirement. Although it is arguable whether this is necessary, I do consider that having regard to the different jurisdictions, England, Scotland and Northern Ireland, operating in many cases the same or similar statutory provisions there is very strong argument for having a second appellate tier. So far then, I hope to have demonstrated that it is necessary for the operation of the rule of law to have judges who are lawyers to decide the issues that may arise between parties on the application of the rules of law to the circumstances of their particular case with authority to enforce the result of that decision on the parties whether they agree or not.

But why can parties not just put their cases to the judges and let them decide? Strictly speaking, it is possible in practically all cases for an individual litigant to conduct his or her case without

legal assistance. Theoretically therefore, the lawyer to assist is only in place if the litigant wishes such assistance. No lawyer can insist on having his services used and therefore it is, I think, right to say that those who assist the courts by representing litigants in cases before the courts are there because the litigants feel their services are necessary for the purposes of adequate presentation of their cases. If the litigant has means to pay it is a matter between the litigant and the lawyer how much the lawyer will receive. Of course if the litigant wishes a particular lawyer he may have to accept that lawyer's terms but if there is a willingness on the part of the litigant to consider more than one lawyer he may have scope for substantial negotiation on terms. A price-fixing arrangement between lawyers would, I think, not be permissible except that as a condition of practice those who have rights of audience in court have an obligation to represent any litigant for a reasonable fee and that may in practice amount to the establishment of a minimum fee although again, if the litigant does not wish to pay that he has the opportunity to conduct the case himself.

I suggest, therefore, that lawyers who represent litigants in court are necessary because their services are only requested when litigants wish that, and where the litigant considers that the fee which the lawyer charges is worth paying for the service which the lawyer is prepared to give.

Complications in this simple argument may occur if there is any obligation imposed by the system for the litigant to take on lawyers which he, left to himself, would not judge to be necessary and I think it is important that stipulations for unnecessary lawyers should not be part of the system if my title question is to be answered in the negative. I believe that in recent years substantial progress has been made in the direction of removing unnecessary lawyers.

In this connection the report published yesterday by the Office of Fair Trading is relevant. On such a reading as I have been able to give it so far, I think most of the ground it covers was covered in my Green Papers in 1989 which raised a fair storm at the time. I make just two points. A person who spends his day in Court cannot at the same time be available to make enquiries, see clients at any time of the day and make all the subsidiary arrangements necessary for a substantial case to come on and run smoothly. This is the essential

reason for the separation of roles between the two main branches of the legal profession. In common law jurisdictions where there is no legal separation, there is invariably a practical separation. On the other hand, a lawyer who deals only with fairly short cases in court may be able also to run an office, as many solicitors do in Scotland. The present practice on this aspect is therefore to my mind a reasonable one so long as it is not too rigid.

A one-stop shop is asked for. Again, this was raised in 1989. There are difficulties about Chinese walls, and matters of legal professional privilege and other concerns but I do believe they could be overcome.

These subjects have aroused the interest of distinguished economists and I particularly commend for your attention the papers published on this subject by this Institute.

As I mentioned already, in this country generally the rule applies that the expenses of the litigation are to be borne by the losing party. These costs include the fees paid by the winning party to the lawyers that represented that party in the litigation. In order to ascertain the amount of this liability it is obvious that where remuneration paid to lawyers varies from one lawyer to another the losing party should not be obliged to pay unnecessarily high fees which the winning party pays to his or her lawyer and the system of taxation, as it is called, is used to deal with this matter. Generally speaking the rule is that the fee paid by the successful party to his lawyer will be allowed only to the extent that the taxing authority considers it to be reasonable so unless the services rendered are, in the judgement of the taxing authority, worth the amount paid the taxing authority will make a deduction in respect of the liability of the losing party so that what the losing party pays is only the amount which the taxing authority judges was reasonable.

An aspect of this matter which has concerned me over the years and concerns me still is that the skill of the advocate in presenting his client's case may well have an effect on the outcome. The judge's duty is to reach the right conclusion in the light of the representations made to him by or on behalf of the parties but judges are human and with the best will in the world they may be more affected by a skilful presentation than by a less skilful presentation. A client who has the means may be willing to pay the higher fee requested by an exceptionally able advocate in the hope

that this may help to achieve a better result. While I believe the difference in result is likely to be marginal this is a consideration which elevates so-called fashionable counsel to a high demand and therefore the possibility of asking for higher fees. One reads in the newspapers of particular members of the Bar who are said to earn very large sums. This is an argument often abused to justify the claim that these lawyers are parasitic for compared with other professionals such as doctors and teachers they are being paid what appear to be extravagant amounts. If a client insisted on the application of the so-called cabrank rule this situation would not, I think, arise but even when it does I think the answer must be that insofar as the client is paying the large fee that is in question the client considers that a proper return in the form of the advocate's service is being given and this negates the idea that the advocate is parasitic on the client in question.

This brings me to another topic closely related to what I have just discussed. Namely, the no-win, no-fee system. In the United States, generally, a system of contingency fees operates in which the lawyer for the successful litigant receives as a fee a predetermined portion of the damages awarded if the case succeeds. Where damages are large the fee as calculated may bear no relation to any reasonable fee for the work actually done and as damages are awarded in the United States by juries there is at least a suspicion that the jury appreciates the nature of the fee system sufficiently to take this into account in the size of the award. This may be a factor tending to inflate awards in that country. There has been in operation in Scotland, what has been called a speculative fee system, or what I have called in introducing it in England and Wales a conditional fee system. As introduced it provides that the fee which is payable if the client is successful is up to twice the fee that would be payable if the client was to pay the fee in any event. The client pays nothing unless he is successful. The idea is that on this basis and assuming the level of fees is reasonable the lawyer could afford to take on cases with a 50% chance of success which is a reasonable basis for raising litigation in my view. When I introduced the conditional fee I did it on the basis that the costs recovered from the unsuccessful party would not be affected by the conditional fee arrangement. This has now been altered so that the fee so fixed is recoverable from the losing party in the litigation. I believed that my system was the fairer although in any

event since the maximum uplift is to double the fee that would be payable ordinarily only cases with at least 50% chance of success would be likely to be taken. On the other hand, under the United States system, since no costs are incurred by the plaintiff who loses and the rewards of success may be considerably greater than the value of the work undertaken there is no practical limit implied in the arrangements in relation to the probability of success which the cases pursued may have. Since cases which may be pursued and lost by plaintiffs do create substantial costs for the defendants which are irrecoverable one can see that the arrangements by which lawyers are paid in the United States have a parasitic element possibly in them due to the possibility of weak cases being pursued against defendants without the opportunity of recoupment.

I mentioned that a system of law developed on individual judgements is an alternative to a system of statute or enacted law in the basis on which the society is regulated. In our system both types co-exist. The old Scottish doctrine was that "judges do not make law but the parlement allenarlie". However, the act of deciding the case, whether covered by statute or not, having regard to our doctrine of precedent does make law for the future as the decision will apply to any similar case arising in the future.

Whilst in our system the judges are utilised for the purpose of deciding cases and by the way in which they give judgement, with full reasons, decide also, subject to possible cases at higher level in the judiciary, the law for the future, I cannot think of a more economical way of developing the law so far as expenditure incurred by the State is concerned. Indeed, insofar as judges develop the law, particularly the civil law, they do so at the expense of the parties who are obliged to pay fees for the use of court facilities that are intended to ultimately defray the cost of these facilities, including judges' salaries save to the extent to which the fees are waived because of the means of the individual concerned.

So far I have dealt with lawyers who are judges and lawyers who participate in litigation. There are two important classes still to be considered. The first of these includes those who give advice and carry out legal transactions, for example, company amalgamations, the formation of contracts, patent and the like. These include lawyers employed by government, local authorities, statutory bodies and companies. These all receive remunerations for their services from

their client or employer and I assume that the client or employer is satisfied that the remuneration paid is commensurate with the services received. I do not know of any way in which a lawyer can force a client not involved in litigation to pay for his or her services unless the client wishes the services and wishes to pay for them at the rate accepted when the arrangements are made. In this connection, since this lecture is being sponsored by the Royal Bank of Scotland, I feel constrained to mention that they kindly instructed me at the time of the amalgamation with the National Commercial Bank of Scotland. The Royal Bank of Scotland was created by Royal Charter, a status which no-one wished to forego, particularly having regard to its long history. There was some doubt whether the Companies Act procedure applied to a corporation created by Royal Charter. The amalgamation of banks requires to take effect, for obvious reasons, on a specific date. If the Companies Act procedures for amalgamation did not apply the only way that could be seen for effecting the necessary amalgamation was by a private act of parliament. No-one could tell with absolute certainty at what date this might happen if parliament did agree. Accordingly, it was decided, and I believe that it was in accordance with advice I tendered, that the Companies Act procedure should be used because a fixed date could be obtained in that way and then in case there was any doubt about the construction of the relevant provisions of the Companies Act in which we operated the matter should be confirmed by an act of parliament. I hope the remuneration I received in respect of this operation did not constitute me a parasite of the Royal Bank of Scotland although I fear that their sponsorship of this lecture may well do so.

The group of lawyers I finally want to mention are the academic lawyers who have the function of teaching and research as well as undertaking any other function which they may be invited to undertake. Some such appointments were part-time allowing the incumbent to practice in the ordinary way although with the added distinction of being the university professor. However, I intend to devote my attention now to the academic lawyer and the service he renders in return for the modest remuneration he receives in that capacity. If, as I have suggested already lawyers are needed to allow the rule of law to prevail as the best way of regulating our affairs and infinitely better than settling them by violence then it is necessary

for those coming into the profession to receive suitable instruction.

What about the research side of their work? Research in this connection includes the writing of text books and the general study of legal principles which is extremely helpful to judges and other members of the practising profession. Judges and practitioners are usually concerned with particular cases and to have broader implications drawn out by academic research can assist in the proper development of the law, its justice and efficiency.

I have sought to analyse the position of the main sections of the legal profession so as to answer honestly and frankly the question I have proposed. On the basis I have set out, I am convinced that the services given by the legal profession are highly necessary for a just and peaceful society and that these services in our country and under the arrangements that we use are not rewarded in a way which is incommensurate with their value.

I have not expressly dealt with legal aid. In the nature of legal aid it is the State rather than the client who foots the bill and until recent developments there was very little overall control possible on the budget. However there were in place procedures seeking to test that payments sought by lawyers under the scheme were appropriate and not exorbitant. In a scheme of that kind there are inevitably anomalies and particular cases that raise public concern and successive Lord Chancellors and Secretaries to State have sought to deal with these matters. But on the whole, I believe that the State received reasonable value for the disbursement but the systems did not allow the same degree of control over the legal aid budget as was possible for example on the budget of the courts. I attempted to evolve a system that would deal with this problem and my successor has I believe adopted the principles that I enunciated and is taking them forward.

At the conclusion of a life devoted to the legal profession I found it comforting that having undertaken this analysis with as open a mind as I could bring to the issue I feel able to conclude that lawyers in general, and I hope this lawyer in particular, are not parasites, so long as the profession is not artificially protected against their client being able to stipulate for what he wants in the shape of legal assistance and obtaining value for the money he pays for it.

The David Hume Institute

The David Hume Institute was registered in January 1985 as a company limited by guarantee: its registration number in Scotland is 91239. It is recognised as a Charity by the Inland Revenue.

The objects of the Institute are to promote discourse and research on economic and legal aspects of public policy. It has no political affiliations.

The Hume Occasional Paper series presents papers by members of the Institute, by those who have lectured to it and by those who have contributed to "in-house" projects. A selected list of Occasional Papers follows:

54 Working with the Scottish Parliament: Judicial Aspects of Devolution *Lord Hope of Craighead*

55 The Start of a New Song *Vernon Bogdanor*

56 Report on the Economic Aspects of Political Independence *David Simpson, Brian G Main, Alan Peacock, and Fabian Zuleeg*

57 Agenda for the Scottish Parliament *Roy Goode, Russel Griggs, Hector MacQueen, Brian G M Main, Hugh Morison, Lindsay Paterson, Jeremy Rowan Robertson*

58 The European Union and the Nation State (The Hume Lecture 2000) *Professor Tommaso Padoa-Schioppa*

THE DAVID HUME INSTITUTE

HONORARY PRESIDENT (1999-)

The Rt. Hon the Lord Mackay of Clashfern KT, PC

HONORARY VICE-PRESIDENTS

Professor James Buchanan, Nobel Laureate in Economics
Professor Francesco Forte
Professor Neil MacCormick, FBA, FRSE
Mr Allan Massie

BOARD OF TRUSTEES

Mr Robert Bertram WS
Mr Andrew Ferguson
Mr Fred Johnston CBE
Mr Nick Kuenssberg
Miss Eileen Mackay CB
Professor Duncan Maclennan CBE
Professor Hector MacQueen, FRSE
Professor John Murray QC
Mrs Susan Rice
Sir John Shaw CBE, FRSE (Chairman)
Professor David Simpson

HONORARY TRUSTEES

Mrs Catherine Blight
Sir Gerald Elliot, FRSE
Lady Mackenzie-Stuart
Professor Sir Alan Peacock DSC, FBA, FRSE

DIRECTOR

Professor Brian Main, FRSE

REGISTERED OFFICE

21 George Square, Edinburgh EH8 9LD
(Registered in Scotland No. 91239)
Tel: 0131 650 4633. Fax: 0131 667 9111
Enquiries should be addressed to the Secretary