



Alan Peacock dissenting...

Essays on the life and work of the
founder of The David Hume Institute



Alan Peacock dissenting



**Essays in memory of the founder of
The David Hume Institute**



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Foreword

In the year of the 30th anniversary of the David Hume Institute, it is a deep disappointment to be celebrating without the company of its founder, Sir Alan Peacock, who died last year at the age of 92. On the evidence of the friends and former colleagues who have contributed essays in his memory to this volume, he would have added culture and humour as well as intellectual stimulation to the occasion.

In the paper he wrote in 1983 proposing the foundation of a new institute he acknowledged that there was no shortage of such bodies already – both inside and outside universities. The gap in the market, he believed, was for an institute which would be independent of government funding, located outside London so that it could take a distinctively non-metropolitan view and unafraid to challenge established thinking. In proposing that the new institute have ‘a firm intellectual foundation in the study of the links between economics and the law,’ he was not seeking to limit its scope. Indeed, as this book makes clear, his own interests were extraordinarily wide. He was a difficult man to categorise. He started his adult life as a Liberal, but quickly lost sympathy with the Liberal Party. He was an adviser to Labour ministers, but scathing about those who were unwilling to modify their views in the light of the evidence. He was chosen by Mrs Margaret Thatcher to chair a committee looking at the financing of the BBC, but came back with an answer she neither expected nor wanted. Coming up with the ‘wrong answer’ was something of a Peacock specialism. He characterised the criticism of the cost of one study he undertook as ‘the survey would have been cheap at the price if it had come to the right conclusion.’ He refused to be a ‘gun for hire.’

He chose to name the institute after David Hume because he hoped it would live up to the principles of the great Enlightenment philosopher in ‘proportioning its beliefs to the evidence.’ Thirty years later we aspire still to live up to that principle and also to the standards of Alan Peacock.

Ray Perman
Director
The David Hume Institute
May 2015

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Stewart Sutherland, Lord Sutherland of Houndwood, is a former Principal of the University of Edinburgh and President of the Royal Society of Edinburgh.

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Polymath with a strong belief in natural liberty

George Peden

Alan Peacock was a leading liberal economist who made major contributions in the field of public finance. He improved understanding of the forces underlying the growth of the public sector; clarified the liberal approach to welfare economics; and applied it to a number of fields, notably the financing of the arts, heritage and broadcasting. Nurtured in the Scottish tradition of political economy, he had a commitment to the doctrine of ‘natural liberty,’ as Adam Smith called it. He recognised that the state and the market were alternative methods of allocating resources, and believed that, as far as possible, individuals should be left to take the important decisions affecting their lives. He had broad intellectual interests, including political science and law. His publications were designed to communicate ideas to a wide spectrum of audiences through books, academic papers, policy pamphlets, and articles in periodicals and newspapers. His purpose as co-founder of the David Hume Institute was to provide an alternative to existing ‘think tanks,’ which he regarded as being too concentrated in London.

He was born at Ryton-on-Tyne, County Durham, on 26 June 1922, the second child of Alexander Peacock, a lecturer in Zoology at Armstrong College, Newcastle-upon-Tyne, who was appointed to a chair at University College Dundee four years later. Alan was educated at Grove Academy, Broughty Ferry, where he quickly adopted a Scottish identity, and Dundee High School. He completed a war degree (equivalent to an Ordinary degree) in Economics and History at St Andrews before being called up to the Royal Navy in 1942. He had first to do a period of sea time as an Ordinary Seaman and the experience of life on the lower-deck gave him intimate acquaintance with, and sympathy for, a broad range of society. His knowledge of German led to him being employed in naval intelligence, serving as an Acting Sub-Lieutenant, Royal Navy Volunteer Reserve (Special Branch) aboard numerous ships, intercepting, deciphering and interpreting enemy signals. In 1943 he survived the torpedoing of the destroyer *Limbourne*, when about 100 of the crew perished. Alan was wounded but went below deck to see what he could do for others less fortunate than himself. After survivor’s leave he served on Arctic convoys. In 1945 he was awarded the Distinguished Service Cross for ‘skill, resourcefulness and determination on special service with the Home Fleet.’ In 1944 he married Margaret Astell Burt, a graduate of St Andrews who was then

serving in the Woman's Royal Naval Service. They were both 21 years old. Their first son, David, was born the day before Alan was demobbed in October 1945. Richard followed in 1947 and Helen in 1950.

Alan returned to St Andrews in 1945 to complete his studies, graduating with First Class Honours in Economics and Political Science in 1947, and was immediately appointed to a junior lectureship in Economics. A year later he successfully applied for a lectureship at the London School of Economics and Political Science (LSE), and in 1951, at the early age of 29, he was promoted to Reader in Public Finance. In 1956 he was offered the chair of Commercial and Political Economy and Mercantile Law at Edinburgh University. Alan indicated

As Alan's inaugural lecture at Edinburgh made clear, he was very much a Keynesian liberal in the 1950s – economic stability would not be realised automatically by the market system

his intention of bringing his new department up to date by having the title of the chair changed to Professor of Economic Science. His impact is recorded by Keith Lumsden in his essay in this volume.

During this meteoric rise Alan was active as an adviser to the Liberal party. In 1949, he was invited to serve on a committee to examine a plan for what would now be called negative income tax as the fairest way to allocate income transfers, and he gave

evidence to the Royal Commission on the Taxation of Profits and Income in 1951. Drawing on this experience he published his first book, *The Economics of National Insurance* (1952), in which he showed that the insurance element was tenuous at best and made a strong case for a negative income tax. In 1953 he became a member of the Unservile State Group, an amalgam of independent liberals, like himself, and committed Liberal party members. Most were academics, but the group included Jo Grimond, soon to become Liberal leader in the House of Commons, with whom Alan became closely associated. The Group aimed to provide a sound basis of liberal principles for Liberal party policies, and eventually a co-operative volume, *The Unservile State: Essays in Liberty and Welfare*, appeared in 1957. Alan's contribution, 'The Welfare Society,' advocated the abolition of housing subsidies and the introduction of some form of tax relief to parents who chose to educate their children privately. He believed the state should provide individuals with financial support for access to health, housing and education, but he thought that these services need not be provided by the public sector; on the contrary, he hoped to encourage alternative sources to provide competition for existing institutions. He became a member of the Advisory Council of the Institute of

Economic Affairs, and he and Jack Wiseman were invited by the IEA's Editorial Director, Arthur Seldon, to develop ideas on the finance of education. The outcome was a Hobart Paper, *Education for Democrats* (1964), which advocated vouchers that would be used specifically by parents to pay fees to schools of their choice. The intention was to improve access to education, particularly in the case of poor families. However, the scheme was rejected by a Liberal party that, in Alan's view, had deserted economic liberalism. Henceforth he would offer advice elsewhere.

As Alan's inaugural lecture at Edinburgh made clear, he was very much a Keynesian liberal in the 1950s, in that he believed that economic stability would not be realised automatically by the market system. However, he was concerned with how economic stability could be achieved without increasing the size of the public sector. In a path-breaking study, *The Growth of Public Expenditure in the United Kingdom* (1961), he and Jack Wiseman showed that the public sector's share of gross national product increased from 9 per cent in 1890 to 37 per cent in 1955. Wars had a displacement effect, in that they made higher taxation politically acceptable, and thereby made higher expenditure on social and other services possible when hostilities ceased. The increase in the public sector was hard to reverse, and indeed, by the time a second edition of the book appeared in 1967, public expenditure as a percentage of national income had begun an upward trend even in peacetime. Alan was familiar with developments in public choice theory in the 1950s and visited the University of Virginia in 1958, where he gave a lecture defending Keynes's reputation as a liberal, pointing out that Keynes had abhorred state socialism and large-scale nationalisation.

Although Alan transformed the department at Edinburgh he was less successful in wider university politics. In particular, he failed in a bid to have a second chair advertised because, he believed, the Principal, Sir Edward Appleton, a physicist, had no interest in Economics. An approach from the new University of York to take up the chair of Economics there in 1962 was attractive as a chance to make a fresh start. At York he had the advantage of being the only founding professor to have already held a chair, and he was the first deputy vice-chancellor from 1963 to 1969. As the Department of Economics was small he decided it should focus on public finance and related fields, and Jack Wiseman came from LSE to run York's Institute of Social and Economic Research. Alan enjoyed a particularly active period of research once his term as deputy vice-chancellor was over. In 1970 he took a six-month sabbatical at Turin University, the beginning of a long connection with Italy, where public finance is a major field of economics. He was interested in the coercive implications of Paretian welfare economics, and in 1975 he published (with Charles K. Rowley) one of his most important books, *Welfare*

Economics: a Liberal Restatement (1975), which asserted a liberal hierarchy of economic freedoms that was at odds with the contractarian approach of John Rawls' theory of justice and the public choice Paretianism of James Buchanan and Gordon Tullock. For Peacock and Rowley, good sense and commitment to democracy on the part of individuals re-negotiating a social contract should not be assumed. On the contrary, envy and corruption are to be expected. Hence, in their view, the principle of equality before the law ranks above redistributive justice. The 1970s also saw Alan making major contributions to what is now called cultural economics by applying liberal principles to state funding of the arts, a field in which there was no lack of special interest groups (see Ruth Towse's essay).

By this time he was becoming a major public figure. He was a member of the Kilbrandon Royal Commission on the Constitution in 1971-1973, when, typically, he was a dissentient voice (see Hector MacQueen's essay). In 1973 he began a three-year secondment to the Department of Trade and Industry (DTI) as Chief Economic Adviser and Deputy Secretary. In February 1974 the incoming Labour government split the functions of the DTI between three new departments: the Department of Prices and Consumer Protection; the Department of Trade, and the Department of Industry, with the last providing common services, including economic advice, to its sister departments. Tony Benn, the Secretary of State for Industry in 1974-75, recorded in his diary that Alan was 'utterly wedded to laissez-faire' and difficult to work with, but accepted that he was what Tony Crosland called a 'progressive right-winger.' For his part, Alan found it difficult to work for a minister who, in his view, adopted the principle that if the facts did not conform to his preferred diagnosis of the country's economic troubles, so much the worse for the facts. Alan's relations with Peter Shore, the Secretary of State for Trade in 1974-76, were better. Tam Dalyell recollected asking Shore: 'How are you getting on with Alan? He's a liberal and certainly no socialist.' Shore replied: 'He gives me often unpalatable advice which may be a healthy antidote to Nicky Kaldor's.' (Kaldor, Professor of Economics at Cambridge, was the government's principal economic adviser.) Alan drew on his experience of Whitehall to edit a collection of his essays, *Economic Analysis of Government* (1979), which Keith Joseph told Dalyell was a work that had influenced him while serving in Margaret Thatcher's government. In the same year Alan was elected a Fellow of the British Academy.

Meanwhile he had moved from York to the independent University College at Buckingham, initially as Professor of Economics in January 1978, but with a view to becoming Principal in the autumn of 1980. He found that there was no effective system of budgeting and accounting in place, and that the college was on the brink of bankruptcy. He secured the necessary changes in

administration before taking over as Principal and Buckingham flourished under his leadership, receiving its royal charter from the Queen in 1983. He retired in 1984 and he and Margaret moved back to Edinburgh. He was immediately made Research Professor of Public Finance at Heriot-Watt University. He was the first Executive Director of the David Hume Institute, in 1985-90, and was elected a Fellow of the Royal Society of Edinburgh in 1989.

In 1985-86 he chaired the Home Office Committee on Financing the BBC (see Chris Carter's essay). The Prime Minister, Margaret Thatcher, was thought to favour abolishing the licence fee, and replacing it with advertising, but the Peacock Report instead proposed direct subscription, in line with Alan's belief in competition and consumer sovereignty. The Report recognised that direct consumer payment for programmes was not yet technically feasible and recommended retention of the licence fee in the short term, but set a long-term goal of a broadcasting market with an indefinite number of channels. Reaction from people who thought they knew better than consumers what was good for them was predictably hostile, but Alan was never reluctant to offend vested interests who exercised patronage. He

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was himself part of the Arts establishment, being chairman of the Scottish Arts Council, and member of Arts Council of Great Britain, from 1986 to 1992. His other activities as one of the good and the great included being a member of the Secretary of State for Scotland's Panel of Economic Advisers from 1987 to 1991, and going to Moscow in 1992 as chairman of the UN Advisory Mission on Social Protection in the Transition to a Market Economy.

His last major book on economics was *Public Choice Analysis in Historical Perspective* (1992), which was the printed form of the four Raffaele Mattioli Lectures, which he gave at Bocconi University, Milan, in 1989. He defended the value of the history of economic thought; criticised theories of growth in public expenditure that ignored the political process, and drew on the insights of David Hume and Adam Smith on human nature to deepen understanding of bureaucracy. He continued to write extensively, publishing a series of semi-autobiographical books which were marked by humour and understanding of the human condition. *Paying the Piper: Culture, Music and Money* (1993) offered a perceptive insight into public policies towards the Arts; *The Enigmatic Sailor: Memoirs of a Seagoing Intelligence Officer* (2003) was a rare account of how Bletchley Park's code breaking was used operationally;

Anxious to Do Good: Learning How to be an Economist the Hard Way (2010) covered his career until his breach with the Liberal party; and *Defying Decrepitude: a Personal Memoir* (2013) was an idiosyncratic account of how he and Margaret coped with old age. His last journal article appeared in *Economic Affairs* in February 2014, 65 years after his first, in *Economica*, and on the same subject: the place of national insurance in public finance. It was my good fortune to be his collaborator in this last academic project and I learned a lot about and from him during convivial lunches as well as the more serious business of drafting.

Alan was outspoken in controversy, but kindly and considerate to colleagues and students. Reviewing his publications, one is struck by how many were collaborative, reflecting his ability to be a team player. His CV, with moves from St Andrews to LSE, and from Edinburgh to York, and then to Buckingham, reflects his preference for the new and modern over the traditional. He was much more than an economist. While a professor at Edinburgh he studied musical composition under the composer Hans Gál, and later published some pieces of his own. He loved the theatre. He was a connoisseur of wine. He was fluent in Italian as well as German. His conversation was wide-ranging. He was a worthy successor of the Enlightenment figures he so much admired.

Alan Peacock dissenting: the problem of devolution

Hector MacQueen

As a fresher in the Law Faculty at Edinburgh University in the autumn of 1974, I had to write a short tutorial essay about the Kilbrandon Report on the Constitution, published a year before. That was probably the first time I came across the name of Alan Peacock. As a member of the Royal Commission that produced the report, he, together with Lord Crowther-Hunt, had published as its second volume a Memorandum of Dissent. That title scarcely does justice to what was actually, as the authors noted, 'a largely self-contained alternative report.'¹ Over some 250 pages they set out a scheme of constitutional reform which was not limited to Scottish and Welsh devolution, but applied to the whole of the United Kingdom. Indeed the memorandum developed an analysis of the effects of UK membership of the Common Market from 1 January 1973 which, the authors thought, 'would have a major impact on the working of our main institutions of government.'² In consequence they believed 'it makes no sense today to seek to move 'sovereignty' downwards when in more and more subjects it is actually moving upwards – to Brussels.'³ They also anticipated – or were perhaps the first to formulate – what came to be known the West Lothian question:⁴

We cannot believe it is right or acceptable that the Westminster Parliament should be precluded from legislating for Scotland and Wales in a wide range of subjects (including education, housing and health) while at the same time, about 100 Scottish and Welsh M.P.s at Westminster would have a full share in legislating in these same matters for England alone . . .⁵

The dissentient pair argued for a scheme of devolution across the United Kingdom, with England in particular to be sub-divided into five regions that could be built from the then existing 'outposts' of central government and regional health and water authorities. To the powers of these authorities should be added the powers which the Scottish and Welsh Offices already enjoyed in relation to education and housing, together with transport, police and fire services. All the authorities would also have planning powers in relation to, not only the traditional town and country questions, but also economic and social matters more generally. Each would have an Assembly

elected by way of the single transferable vote system of proportional representation 'so we can be sure that minorities will be fully represented – which is particularly important in those areas where recent voting patterns suggest one party could be in a perpetual majority.'⁶ The Assemblies would have power to make 'ordinances – which in many respects will be similar to the bye-law making power of local authorities;⁷ that is, be concerned with good government, general welfare and the suppression of nuisances within their area. While these powers would have to be subject to general UK legislation and policies, the assemblies and authorities would also recommend to the United Kingdom Government and Parliament such additions to, or

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changes in, existing legislation and general policies as appear to be necessary and desirable.'⁸ The regional governments should have some independent revenue raising powers: for example by way of a supplementary income tax; a low rate *ad valorem* retail sales tax additional to nationally levied excise duties and VAT; and motor and fuel taxes transferred from central government. Each region's freedom to determine its own expenditure patterns was

essential to the scheme, with central government's role being confined to the control of the total amount of spending by the regional governments.

All this has come strongly back to mind in the discussion of a revised constitutional settlement following the Scottish Independence Referendum held on 18 September 2014. The Memorandum made other points too which, although not so immediately resonant with the post-referendum debate, have certainly had echoes in other, but still relatively recent, constitutional discussions in the United Kingdom: the possible introduction of proportional representation for elections to the House of Commons; reform of the House of Lords to bring in representatives of the regional authorities, with a primary function of the second chamber being at least the delay of measures unduly limiting regional governments; the introduction of a Constitutional Court to adjudicate on the vires of regional government actions;⁹ and public funding of political parties.

In a separate note Alan laid out the principles informing his dissent: equality of political rights for all citizens of the UK; regional participation in government which did not decrease the powers already devolved to Scotland and Wales; better allocation of national resources if regions had a measure of fiscal independence; and the rights of individuals to make the major decisions

affecting their lives, with governments in general needing to do much more to make its citizens less reliant on its support. Alongside Lord Crowther-Hunt, he also made the important point that the scheme of devolution proposed by the Kilbrandon majority 'at best would not result in any significant reduction in the burdens on Whitehall and Westminster; and, indeed, . . . is all too likely in our view to increase these burdens still further.'¹⁰ Experience from 1999 certainly suggests that partial devolution has added significantly to the complexity of the business of government in Britain, albeit that a not insignificant factor in that complexity is the ignorance in much of both Whitehall and Westminster of what devolution actually entails for them as much as for the devolved territories.¹¹

For the rest of his life Alan maintained opposition to devolution that did not embrace the whole of the UK, and that also failed to consider it as part of the totality of government and governance in the country.¹² On that basis he would surely have been severely critical of the Smith Commission proposals for further devolution in Scotland only, especially when it brought into play both tax and welfare powers; and he would also, I think, have disliked the quite separate attempt by the Conservative Party to deal with the West Lothian question by some system or other of 'English votes for English laws' in the Westminster Parliament.¹³

There were – and are – however at least two major difficulties with the grand over-arching scheme which Alan and Crowther-Hunt proposed in 1973. The first is the popular rejection of regional governments in England, apart from the London Assembly. However wrong-headed the basis for such rejection may be, it is too widespread and deep-rooted to be simply overridden. But the more significant difficulty, at least for present purposes, is that England (which for these purposes incorporates Wales), Scotland and Northern Ireland are each long-established distinct jurisdictions within the UK, which in matters of law, is not, and never has been, a unitary state. While Wales and Welsh law were finally subsumed within the jurisdiction of English law through the Laws in Wales Acts passed by the English Parliament between 1535 and 1542, the Union with Ireland in 1800 continued the laws and courts in existence in Ireland at that time subject only to an appeal to the House of Lords as a court. The Government of Ireland Act 1920, by which Northern Ireland was created with a Parliament empowered to make laws, provided that 'All existing laws, institutions, and authorities in Ireland, whether judicial, administrative, or ministerial . . . shall, except as otherwise provided by this Act, continue as if this Act had not passed, but with the modifications necessary for adapting them to this Act.' While Northern Ireland's many vicissitudes since 1920 have led from time to time to the suspension and replacement of its legislature, its laws and courts have

remained distinct from those of other parts of the UK apart from the final appeal to (now) the UK Supreme Court.

In the case of Scotland, Article XVIII of the 1707 Anglo-Scottish Union agreement provided for the continuation of Scots law after the Union, 'excepting only the Laws concerning Regulation of Trade, Customs and Excises,' which were to 'be the same in Scotland, from and after the Union as in England.' Legislative change to other Scots laws was allowed under the Article, but in matters of 'private right' such change had to be for the evident utility of the Scottish people. Only in matters of 'public right' might the aim be simply to make the law the same throughout the UK.¹⁴ Article XIX laid down that the principal Scottish courts, the Court of Session and the High Court of Justiciary, should 'remain in all time coming' as they were then constituted, subject only to such regulations for the better administration of justice as the new British Parliament might choose to make. The Article also stated that all the other Scottish courts should remain, 'but subject to Alterations by the Parliament of Great Britain.' Finally, Scottish cases were not to be dealt with in the English courts in Westminster-hall. (This did not cover appeals to the House of Lords, which came about after and outside, but not against, the conclusion of the 1707 Union.) There was of course no need for similar provisions to protect the English courts or laws from Scottish take-over. While through the following three centuries there has been much amendment and indeed repeal of parts of the Act of Union under which the surviving 1707 Articles have statutory force today, Articles XVIII and XIX remain untouched; and there have been occasional indications from the Scottish courts that in their perspective at least these Articles are indeed inviolable.¹⁵

Alan and Lord Crowther-Hunt did not deal with Northern Ireland (although they thought their scheme could be extended to include the province¹⁶); but I think their regional assemblies making ordinances having the character of local authority bye-laws fall somewhat short of what the people of Scotland and (in the event) Northern Ireland can legitimately look for given the legal context with which their history has provided them. The Memorandum did in a sentence cite 'the present separate criminal law' of Scotland as an example of a matter which might be within the policy-making scope of the region's assembly, being one of the 'occasions when an Area has special needs or special aspirations which are not catered either implicitly or explicitly by United Kingdom legislation or general policies.'¹⁷ The other example given of such a need or aspiration was the role of the Welsh language in Wales. But these two examples are simply not commensurate in terms of their social and political significance.

Further, referring only to criminal law completely bypasses another instance of a matter which by definition is not the subject of UK legislation: civil, or private, law in Scotland –

... the body of principles and doctrines which determine personal status and relations, which regulate the acquisition and enjoyment of property and its transfer between the living or its transmission from the dead, which define and control contractual and other obligations, and which provide for the enforcement of rights and the remedying of wrongs ... matters which inevitably touch the lives of all citizens at many points from the cradle to the grave ...¹⁸

It is not the case, as a footnote in the Memorandum of Dissent put it, that the authors' proposed Scottish Assembly and Government would, relative to their counterparts elsewhere in the UK, 'have a still wider range of *administrative* functions because of the *special* nature of Scots law.'¹⁹ Scots law is not of a special nature; it is simply different from English law in content, and administered by different courts deploying their own remedies and procedures. Moreover, the differences between Scots and English criminal and private law in particular are substantial, and so have legislative rather than merely administrative significance. Hence the pre-devolution practice of having specific Westminster legislation on Scots law demarcated with '(Scotland)' in the Act's titles, or, within Acts also applying to England and Wales, specifically Scottish parts or, at the very least, 'application to Scotland' sections. Responsibility for such Scottish legislation before 1999 lay mainly with the Scottish Office and the Lord Advocate (then the chief UK Government Law Officer in Scotland). But before 1999 there was a serious problem in getting time at Westminster to consider, never mind pass, specifically Scottish legislation. It could hardly be argued politically that the best response to this problem was to abolish the Scottish legal system altogether (much though some Whitehall departments might have liked that). That would have been of at least doubtful legality within the context of the 1707 Union. Indeed it would also have been contrary to the Peacockian principle that existing powers in Scotland and Wales should not be decreased.²⁰ On this basis as well as the more prosaic grounds of governmental efficiency and the need to ensure that the law in Scotland was at least as responsive to social change and need as in other UK jurisdictions, the devolved assembly there needed – and needs – to have power to legislate not only in criminal but also in many significant areas of civil law without having to conform to some as yet unidentified legislative norm set down by Westminster.²¹

That once conceded, it also becomes clear that Scottish devolution cannot but be different from devolution to regional authorities in England. It is practically unthinkable that such authorities should have the power to legislate in such a way that the present unity of English civil and criminal law could be lost or diminished. True, in so far as that unity encompassed Wales

after 1535, it has begun to lessen since the Welsh Assembly gained significant law-making powers under the Government of Wales Act 2006. Lord Hope spoke deliberately of 'Welsh law' in a Supreme Court case in 2012,²² and the Law Commission of England & Wales too is, under its present Welsh chairman, taking seriously its responsibilities to the law-makers of the Welsh Assembly as well as the Westminster Parliament.²³ There is also a movement for recognition of Wales as a jurisdiction in the legal sense that holds good for England with Wales at present as well as for Scotland and Northern Ireland.²⁴ At least some historical continuity justifies what seems to be happening with Wales: it is unlikely, however, that a legislative devolutionary division of

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England can be achieved by a revival of Wessex, Mercia, and the other ancient kingdoms of the Anglo-Saxon era.²⁵

None of this is intended to assert that there cannot be devolution within England because of English law; nor is it intended to deny the possibility of devising a scheme of English votes for English laws without creating a devolved English

Parliament. My argument is simply that a basically uniform scheme of devolution within the UK along the lines to which Alan Peacock remained committed from 1973 on would not and will not work. This is because the history that produced the UK has also left us with distinct jurisdictions and laws within that otherwise united realm. The dissolution of one or more of these legal systems is altogether too high a price to pay for the achievement of a new constitutional dispensation.²⁶ Again, that is not to say that moving towards harmonisation and, indeed, unification of laws within the Union is a bad thing. Such a process has been going on since at least 1707, especially in fields of 'single market' or commercial law such as intellectual property and insurance. It is ongoing within the European Union, and has also taken place in federations such as the USA, Canada and Australia. These processes in both the UK and the European Union are ones in which I have been happy, indeed proud, to take part over the last twenty years.²⁷ But they are not susceptible to short or even medium term fixes.

When first I proposed the title 'Alan Peacock dissenting' for this piece, I had in mind to write, not only about devolution, but also about some of his other battles with received wisdom over the years on matters such as climate change, arts and heritage funding, sustainable development and welfare. The depth and insight of his take on devolution left me room only to tackle that; and I do not suppose for a moment that he would have been persuaded by any

of the criticisms I have just offered against his position. Alan relished controversy with those with whom he disagreed, the sense of combat in meetings or open floor debates possibly heightened by his being sometimes unable to make out what his opponents were saying because of the deafness in one ear that resulted from the perforation of an eardrum at birth. The walking stick on which latterly he leaned and which he occasionally flourished could give him a somewhat belligerent air on these occasions. If therefore some (especially Presidents of the British Academy and the Royal Society of Edinburgh) thought of him as a turbulent priest, for me and many others to whom I was introduced by Alan over the years, he was quite simply one of the finest minds and most generous personalities that we ever encountered. Any debate was always, in what is said to be Hume's phrase about the pursuit of truth, an argument amongst friends. That is the spirit I want to invoke here. Alan's light never flickered or faded, and now in memory it remains still and always bright.

What price civil justice?

Brian Main

Working with Alan Peacock was never boring. Where his energy came from I never knew, but it never ceased to amaze me. Unnervingly often, he would interject into a conversation the innocent question: ‘Have you seen my new book?’ only to proffer a copy recently off the press. He left the university sector before the Research Excellence Framework became such a focus of our concerns, but Alan was made for such a world – excellent research and impact galore.

I did not get to know him personally until I started to work with the David Hume Institute in the early 1990s. Of course, as one of the outstanding economists of his generation, he was already well known to me by reputation. In 1956 he had been the youngest Professor of Economics ever appointed at the University of Edinburgh. Somewhat unimpressed by what he found there, and never much inclined to speak about the period, he left for the University of York in 1962. However, such was his impact on the Edinburgh Economics Department that when I arrived there in 1976 he was still regarded with huge reverence. Our paths crossed when he returned to Edinburgh in retirement after an illustrious career in academia and as a policy advisor to government. Ably supported by Sir Gerald Elliot, he set up The David Hume Institute (DHI) in 1985.

Alan’s enthusiasm drew me in. In 1992, I contributed a paper on Remuneration Committees to the DHI, and by 1995 I found myself as co-Director of the DHI along with Hector MacQueen. After Hector stepped down in 1999 to become Dean of the Faculty of Law, I continued as Director until 2005. The Institute’s activities were wide ranging over this period and, no matter what topic we were focused on, I found myself constantly benefiting from Alan’s advice. The record of the Institute’s activity over this period has been documented in the publication that marked its 25th anniversary¹ and I will not attempt to rehearse that here. In this chapter, I have chosen to focus on one topic from the period, namely The David Hume Institute’s analysis and related policy discussion of the Civil Justice system.² I do this because it is a topic on which Alan and I worked together. More importantly, it is a topic that offers an insight into the type of economic analysis that motivated Alan and illustrates the nature of his contribution to economics. It lies quite far from the econometric analysis on which I based much of my own career in economics (an approach with which Alan did not even try to hide his

impatience!) It characterises Alan's approach to research, which involved the scrutiny of the relevant basic descriptive data and a lot of careful economic thinking – informed by a belief that the price system could have a useful role to play, even in areas where at first sight it may appear unsuited.

Most economists believe in the usefulness of the pricing system. Alan is often unfairly characterised as believing that prices should be used everywhere and at all times. As his chairmanship of the committee on the financing of the BBC (the Peacock Committee) subsequently revealed, this would be unfair.³ However, Alan did firmly believe that there are many spheres of social and economic activity where some reference to the price system could improve both allocation (who gets what) and efficiency (doing the most with the available resources). For Alan, the fact that something was designated as 'public sector' activity was never seen as reason to close the economist's toolbox – far from it. He felt it was precisely here that some modicum of economic analysis could yield substantial dividends for society.

Economics and the system of civil justice

The importance of the civil justice system to the economic well-being of a country is easily overlooked but, in truth, difficult to exaggerate. The ability to have a commercial dispute fairly and effectively resolved at reasonable cost stands behind all business agreements. Most business relationships remain free of disputes. Of those that do come unstuck, the vast majority are resolved through private negotiation with no recourse to lawyers. Of the relative few that end up in the formal legal dispute resolution process, extremely few of these ever reach a judge, settling instead out of court. Nevertheless, in all of this it is a fact that any formal or informal contractual arrangement reached in the course of business stands in the shadow of the law – it being always possible to resort to the judicial system. It is this knowledge that gives business people the confidence to enter readily into business agreements. The civil justice system is the unseen lubricant facilitating an economy's commercial activity.

It does so at a cost, and a cost that has been seen to rise markedly of late. A theme that recurs in much of Alan Peacock's work – both on Public Finance and on the Economics of Culture – is that a relative rise in expenditure in certain labour intensive areas of the economy is unavoidable. These areas, such as civil justice, lack the capital-labour substitution opportunities common in manufacturing. On the other hand, labour costs cannot adjust downwards, because of the earning opportunities available to talented individuals elsewhere in the economy and the need to keep wages competitive. As a result, relative costs rise. As productivity rises elsewhere in the economy, the earnings of talented individuals must keep pace. This drives relative costs up. Alan was always careful to credit William Baumol with the

original insight, but Alan made it very much his own and it formed an integral part of his analysis over his career, going all the way back to his early years at the London School of Economics. A favourite example of his was to point to the orchestra and ask whether playing a particular symphony faster would really represent a productivity gain. While improvements in information technology have afforded opportunities to substitute capital for labour in the administration of civil justice procedures, for much of its operation there remains no substitute for the labour intensive process of argument and counterargument. It is largely in these processes that one must look for efficiency gains if the rise in costs is not to price civil litigation out of the reach of many.

Before assessing the opportunities for procedural reform, however, it is essential to first confront the particular nature of the service under consideration. It is what economists term a 'credence good.' It is a professional service that for many infrequent users is bought as a matter of faith, on trust. It stands in marked contrast to many of our retail shopping experiences, where we find ourselves repeatedly and frequently purchasing similar items. In these circumstances, consumers are well placed to accumulate information as to the reliability and overall value of such goods and services. Even in the case of infrequently purchased but homogeneous items such as cars, the standardised nature of the product allows reference to consumer reports that evaluate the product and inform any purchase decision.

However, the exact nature, duration and expense of resolving a civil legal dispute is uncertain in many circumstances and, owing to the often idiosyncratic nature of the situation, obvious comparators are not readily available. The infrequent litigant, therefore, purchases the service in act of faith, relying on the professional standards of their legal team to see them right. Legal services are therefore in the realm of accountants, dentists, doctors, and a whole range of other professions where there is a role for a professional body in regulating standards and behaviours.

A further consideration regarding the product specification of civil dispute resolution is its public good aspect. As indicated above, most business transactions and negotiations take place in the shadow of the law. The existence of well-established precedents makes such a system more effective, as people can anticipate how things will turn out and thereby avoid unnecessary expense and delay in resolving disputes. However, in a dynamic and developing economy new situations constantly arise and, absent an appropriate precedent, will need to be fully considered by the judicial process. This thereby creates new precedents and serves as a benefit to all who come after – a positive externality. It follows that a public subsidy is justified in such

key cases, as the benefit is felt not just by the parties to the dispute, but also by a much wider community of users.

Juggling these various considerations in the pursuit of a better way forward led us to recommend an emphasis on increased information, enhanced choice of approach, and greater product diversity in those approaches. Fully accepting the need for a regulated and publicly subsidised system, the challenge was in finding ways to keep transaction costs low and to encourage product innovation. We went on to investigate the scope for varying the structure of costs and the choice of fee structure (the loser pays system adding considerable uncertainty to the litigant's expected expense). We also considered offering a choice regarding the procedural complexity. In all of this, we recognised that public subsidy remains a vital part of the system and, indeed, we made a plea for judicial capacity (judges, courtrooms and so on) to be more responsive to market pressure (as often revealed in delay). We also highlighted the distributional considerations that underpin much of the public subsidy in the area. The combination of an imperfect capital market and risk-

He had a remarkable capacity for energising others to work on topics that he had identified as ripe for economic analysis

aversion means that for many people perfectly valid complaints can go unresolved if there is no public subsidy. However, here too, choice and new ways of doing things offer the prospect of keeping costs down (in the face of the inexorably rising cost pressures identified by Baumol and Peacock).

To many outside observers the legal system is an area of conservatism and convention that is difficult to change. Such a view, while not uncommon, is very far from the truth. Bars on advertising and restrictions on representation (who can appear in which court) had long since been substantially relaxed. At the time we were writing, around 2000, the civil justice system had recently seen a wide range of innovations either recently instituted or under active discussion. These include alternative dispute resolution, conditional fees (no-win-no-fee), contingent fees, fast-track procedures, judicial case management, legal expenses insurance, and so on.

Of course, Alan's contribution to thinking in this area was not limited to his own writings. He had a remarkable capacity for energising others to work on topics that he had identified as ripe for economic analysis. In founding The David Hume Institute along with Sir Gerald Elliot, Alan always intended it as a vehicle for such activity. In his own words from 1985, it was to be an 'Institute that concentrates, though not exclusively, on forging links between economists and the law . . .' As a flavour of the work of The David Hume

Institute in the field of civil justice that preceded the work discussed in this Chapter, I would particularly like to acknowledge:

- *Symposium on Commercial Litigation in Scotland*. (November 1988).
- *The Future of Legal Systems*, Presidential Address by Judge Thijmen Koopmans, (November 1989), published as Hume Occasional Paper No 13
- *The Role of Law in the Rule of Law*, The Presidential Address by Judge David A O Edward. (November 1993), published as Hume Occasional Paper No 42.
- *The Costs of Justice*, (Conference, May 1994), proceedings published as Hume Occasional Paper No 43.
- *Access to Justice*, Hume Papers on Public Policy Vol.4, No. 4, 1996.
- *The Reform of Civil Justice* (Conference, June 1998), proceedings published as Hume Papers on Public Policy, Vol. 5 No.4, 1998.
- *Commercial Law*, (November 1998) lecture by Professor Roy Goode.
- *The Settlement of Legal Disputes* (Conference, May 2000), proceedings published as Hume Papers on Public Policy, Vol. 8, No. 3, 2001.
- *Corporate Governance and the Reform of Company Law*, Hume Papers on Public Policy, Vol. 8, No. 1, 2000
- *Are Lawyers Parasites?* Presidential Address Lord Mackay of Clashfern (March 2001), published as Hume Occasional Paper No. 59.

All are now available online at The David Hume Institute website.

There was also an ESRC sponsored research programme⁴ in the area that examined in some technical detail the impact of a range of cost-shifting rules. This compared the UK's loser-pays rule with the American system, and analysed the impact of mechanisms to expedite out-of-court settlement such as 'offers to settle' or 'payment into court' – variously by the claimant or by the defendant. Revisiting the area in 2015, one finds that the momentum for change and innovation is unabated. In England and Wales, recent innovations include: adjusting the rules on success fees (related to conditional fee arrangements where the legal team underwrite the legal expenses of the litigant); prohibiting legal insurance premiums from being shifted to the losing party; extending the use of damages-based fee arrangements (contingent fees); introducing qualified one-way cost shifting that allows a personal injury claimant to cap any exposure to the fees of a successful defendant; and much more.

Similarly, in Scotland consideration is currently being given to: providing specialty courts such as a national personal injury court; developing specialty courts in the area of energy and natural resources; creating a new tier of sheriff courts (for cases with low value and low complexity); limiting access to

the Court of Session to higher value claims, and to finding new ways to encourage alternative dispute resolution. This is an area of continuous change and development. It is also one where such change would be usefully informed by the type of economic analysis so favoured by Alan.

Personal Reflection

In addition to the “Have you seen my new book?” type of interjection, Alan also had a charming habit of prefacing his stories with the query “Have I ever told you about . . . ?” Such was his wealth of experience over a long and productive career that I was invariably able to answer that I had not heard this particular story. Of course, I was always the wiser after hearing this new tale with the pearl of wisdom that invariably lay at its heart.

One day, near the end of his life, I was fortunate enough to be able to persuade Alan to join me for lunch. I brought along a young economist colleague with whom I was working. Alan was by then quite frail but that vital intellectual spark burned as fiercely as ever. Over that lunch, I saw my young colleague sit in amazement as Alan rolled out various stories relating to his professional career as an economist. We started with the story of his having received a personal correspondence course in economics from the famous Cambridge economist, Arthur Pigou. This happened while Alan was serving on a Royal Navy destroyer, during what was to his distinguished World War II service.⁵ From there, we went on to discuss his interactions with the famous figures from his time as a lecturer at the LSE in the 1950s (Roy Allen, Henry Phelps Brown, Ronald Coase, Friedrich Hayek, James Meade, Frank Paish, Lionel Robbins, and Basil Yamey). Then on (with a diplomatic silence regarding Edinburgh) to his time at the newly created Department of Economics at the University of York, where he formed productive working relationships with Jack Wiseman, Alan Maynard, Keith Shaw, and John Williamson.

Laughter around the table was loudest when we were regaled with an account of his time on secondment as an Economic Advisor at the Department of Industry in the mid-1970s. There, due to change of administration, he found himself working for Tony Benn who had been appointed as Secretary of State for Industry in the new Labour Government. The phrase ‘chalk and cheese’ might well have been invented for that pairing. Nevertheless, Alan managed to rub along with his minister.

Alan once explained his life’s mission as an economist in a book of reminiscences entitled *Anxious to do Good*. In everything he did one could see him applying an expert grasp on economics in an effort to engage with the world he found around him – always with an eye to making things better. The world could do with more economists of that temper. He was a joy to know and is sadly missed.

The dismal science of paying the piper

Ruth Towse

'As Milton Friedman used to say, being a government economic adviser entails teaching Economics 1 to intelligent people. In the case of culture it is a matter of trying to convince intelligent and sceptical colleagues that government support for cultural activities involves an opportunity cost' (Peacock, 2004b: 177)

Alan Peacock wrote extensively on a range of topics in cultural economics and was a prominent and long-serving contributor of academic articles in the field, for which he was made the first Distinguished Fellow of the Association for Cultural Economics International in 1996. He also had a lifetime involvement with the administration and practice of the arts, media and heritage in which he tried hard to practise what he preached. In his autobiographical *Paying the Piper* (1993) he described his lifelong interest and personal involvement in music and commitment to applying economics to the world of the arts as expert adviser, committee chairman and arts administrator. He was Chairman of the Committee on Financing the BBC, which reported in 1986 (and led to his knighthood), Chairman of the Scottish Arts Council and ex officio a member of the Arts Council of Great Britain from 1986 to 1992. Prior to these high profile public positions, he had been Chairman of the Arts Council of Great Britain's National Enquiry into Orchestral Resources (ORE) that reported in 1970 and he also had acted as consultant for the Performing Rights Society (PRS), advising on their charges to the BBC, resulting in what still stands as a major piece of empirical research on the economics of copyright (Peacock and Weir, 1975).

These activities all presented opportunities to confront theory with practice and 'convert' practitioners who were not only unfamiliar with the economist's way of thinking but often positively hostile to the doctrines of what Alan loved to call the 'dismal science.' Early on he had regaled the ORE Committee with an economic analysis of the role of subsidy: 'The existence of a subsidy to orchestras implies that money is diverted from private pockets to public use and this money would be spent in an entirely different way than

would be the case if subsidy did not exist.’ (Peacock, 1993:60). The prevailing arguments for subsidy to music by the profession and by the Arts Council (see King and Blaug, 1976) were that musicians were the best judge of orchestral provision and that funding should follow their decisions. Alan, however, was not willing to be ‘captured:’ as he told the Committee ‘those who organise concerts should not be surprised if authorities disbursing the funds insist on some clear statement of the concert budget and some form of accountability, if only as a protection to the taxpayer who is footing the bill.’ *Paying the Piper* concentrates on music; however, his work on the performing arts in general and on museums, built heritage and broadcasting have been perhaps even more influential in cultural economics. In this chapter, I show how Alan’s expertise in welfare economics, public finance and the economics of government informed both his theoretical work in cultural economics and his work in advising on and administering the arts.

Peacock and the performing arts

During the 1960s, the ‘economics of the arts,’ the forerunner to cultural economics, was mostly about the subsidised performing arts. The formative book by Baumol and Bowen (1966) *Performing Arts: The Economic Dilemma* set the research agenda for decades to follow. Widely recognised as the pioneering work in the subject, it elicited an early response from Alan. The central argument – which came to be called the ‘Cost Disease’ – was that the arts could not increase productivity through technical progress as could other sectors of the economy because there were ‘fixed factors’ of performers – and performance is labour-intensive. That made the arts increasingly expensive to produce and without financial support from sponsorship or subsidy, prices would have to rise faster than the retail price index and demand would inevitably fall. Alan criticised this thesis by questioning whether the Cost Disease was as damaging as claimed and, secondly, he believed Baumol and Bowen’s case for public support was weaker than they implied. This difference was not just about magnitudes, it was also about the underlying political economy and their respective views about the role of government in the arts: Baumol, tending more to views somewhat left of centre, was more ready to embrace state involvement than Alan, the classical liberal. Baumol and Bowen implicitly assumed that maintaining the existing supply in terms of quantity and quality of the arts was the objective of government policy, while Alan argued that people’s preferences about what and how they consume the arts should be given priority over some expert, elitist view of the arts as promulgated by an arts council or department of culture.

The economic case for government intervention in the arts, as in other areas of the economy, rests on market failure – the inability of the price mechanism to efficiently allocate resources due to the presence of positive

externalities, spill-over effects and even of public goods. Government subsidy can correct for market failure by encouraging greater output than the market would provide; however, the issue of how great the distortion is, and hence the amount of subsidy required, can only be solved by cost benefit-type calculations since theory does not provide a clear indication. Moreover, as Alan had pointed out to the ORE, those making the case for public support to the arts must recognise that other areas of public expenditure, such as sports or education, might produce greater benefits per unit of cost and the same rule must apply all round – the lesson of opportunity cost. While these are efficiency arguments about the allocation of resources, Alan also recognised the case for government intervention on the equity grounds of equality of opportunity. Baumol and Bowen (1966) had advanced another argument for subsidy on the grounds that performing arts traditions should be preserved for future generations: without their support by the present generation, later

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have been cheap
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the right conclusion’*

generations would not be able to make effective choices. Alan argued that this redistribution of the present to future generations was regressive as they would be wealthier and moreover, we have no understanding of their tastes (Peacock, 1969: 331) – the same point that he developed in his analysis of the economics of heritage (see the following chapter by Ilde Rizzo).

The Cost Disease was perceived by arts organisations and arts councils as providing convincing ‘proof’ of the case for arts subsidy and the Arts Council commissioned Alan to look for evidence of it in England. This was a major undertaking as arts statistics were almost non-existent in the 1970s, something Alan had earlier set about trying to rectify (Peacock, 1973). The approach he and his research team took was to collect data from the accounts of a selection of organisations subsidised by the Arts Council (opera, ballet, orchestras and theatre companies) and to use the data to form indices that allocated the cost inflation to labour and the other inputs. Following Baumol and Bowen, it was believed that a large proportion of the costs of running performing arts organisations was fees and wages to artistic personnel. That turned out to be the case for orchestras, but theatrical performances required inputs of other ‘ordinary’ labour and materials as well as artistic personnel and those costs were rising fast in the wider economy and dominated the rise in costs of staged productions. In fact, the research found that payments to artistic personnel had actually fallen in real terms in relation to those of other workers (something that Baumol and Bowen’s own research had found in the USA and reported in the 1966 book). The resulting

report by Peacock, Shoesmith and Milner (1982) was disappointing news for the Arts Council which was also shocked at the cost of this thorough research: Alan frequently quoted the response: 'the survey would have been cheap at the price if it had come to the right conclusion' (Peacock, 1993: 93). He liked to poke fun at what he called 'bespoke analysis,' that is, delivering the 'right' results; another favourite phrase in this context was 'the economist as a hired gun.'

Despite being part of the arts establishment¹ himself, Alan had a healthy scepticism of it and in particular of centralised financial support for the arts; moreover, he believed demand-side rather than supply-side subsidy should be the focus of cultural policy. He favoured decentralisation of arts subsidy (as he did for education and other state provision) and empowering those less well-off through the issue of vouchers that would enable consumer sovereignty to decide what 'art' should be rather than leave it to 'a paternalistic cultural monopoly,' such as the Arts Council. Instead of receiving subsidy directly from the Arts Council, an arts organisation would charge a commercial price and obtain the subsidy by retrieving the value of the voucher.² This, he believed, would make arts organisations more responsive to the demands of the public and, in order to maintain a check on their 'appropriate' use, the voucher could be restricted to a list of eligible arts organisations. Alan later accepted that there were difficulties in administering vouchers for the arts (unlike those for children's education, which is compulsory). But he also came to understand that the main objection on the part of Arts Councils to vouchers was because they would lose the power of patronage to arts organisations (Peacock, 1993:128-30).

Performing rights and composers' earnings

Another piece of empirical work that Alan undertook in the 1970s (this time as a consultant) was advising the Performing Rights Society (PRS) on the licence fee it charged the BBC for music performed on radio and television. PRS licenses public performance of music in both live and recorded form on behalf of composers and music publishers and distributes revenues from licence fees to them; broadcasting is a major source of income for PRS and for composers. The BBC, at the time the main broadcaster of music, and the PRS, which has a monopoly of administering the performing right, had failed to agree the fee and the dispute was referred to the Performing Right Tribunal. The commission led to the publication of Peacock and Weir's book (1975) *Composer in the Marketplace*, a pioneering study in the economics of copyright administration and composers' earnings that is still highly regarded today.

Being a membership organisation, PRS was concerned about the low earnings of many of its composer members and the striking inequality of their distributions to them (something that has not changed in the interim) as well

as about the increasing use of home taping which enabled unauthorised copying. To address these matters, Peacock and Weir, in what was probably the first undertaking of its kind, surveyed composers to discover the sources of their earnings; they also considered how they might be compensated for private home-taping, recommending the introduction of a 'blank tape' levy (which the UK government steadfastly refused to introduce). With regard to the BBC licence fee, Alan advised PRS to alter the basis on which it was charged from the number of BBC licence holders to the BBC's licence revenue – from a specific to an *ad valorem* tax, as he put it (Peacock, 1993: 110-1). This advice was accepted by the PRS and subsequently by the Tribunal.

Alan's economic analyses of copyright law as a means of overcoming the public good nature of music and of the natural monopoly nature of copyright administration by collecting societies were all far ahead of their time. He recognised that collecting societies required regulation and laid out a 'code of good practice' for it (Peacock, 1979: 146). He later revisited these topics in MacQueen and Peacock (1995), in which the analysis of the processes by which composers could implement their rights was extended, taking both legal and economic issues into account.

Broadcasting and the BBC licence

As Chairman of the Committee on Financing the British Broadcasting Corporation (BBC), Alan again relied on first principles of welfare economics and public finance as the basis for his thinking about the economics of broadcasting, which in the mid 1980s was relatively new (see Chris Carter's chapter).³ The BBC monopoly, which was in its early days justified by the public good nature of terrestrial broadcasting, by the 1980s was maintained in the teeth of advances in broadcasting technologies and business models for both radio and television. There was a functioning market in broadcasting, but competition was not on a 'level playing field' with the BBC financed by the licence fee, while commercial broadcasters had to rely on advertising, and cable and satellite broadcasting was already developing. Again, Alan's first objective was to bring consumer sovereignty to the fore. As he wrote: '... just as war is too important a matter to be left to the generals and economic policy too important to be left to economists, broadcasting aims are too important to be left to those who do the broadcasting' (Peacock, 1986: 3).

Although opening the market up fully to competition appeared to many people to be the obvious solution, Alan understood the public goods nature of public service broadcasting (PSB) in which the BBC was the leader. Finance solely though the market would lead to under-provision of external and public goods benefits, such as forging national identity and maintaining quality standards. The Peacock Committee believed it was necessary for PSB to be supplied on a non-commercial basis (Peacock, 2004a). Moreover, there would

be no guarantee that a free market would provide universal good quality transmission to rural areas. The committee therefore recommended the licence fee be retained and linked to the Retail Price Index while noting that provision of PSB did not require it to be supplied by the BBC.

Reflecting later on the experience, Alan wrote that he had considered the possibility of using some sort of voucher akin to that described above for performing arts to offer viewers a direct means of financing PSB (Peacock, 1997: 306). In the same vein, he considered the possibility of a privatised BBC governed by a private non-profit membership organisation similar to the National Trust. He also thought the 'cosy duopoly' between the ITC (Independent Television Commission) and the BBC, inhibited 'free entry' into the 'broadcasting business'.

Alan had a consistent position on the political economy of the arts and broadcasting. He did not believe the free market led to the best result for the public or for the state but he queried the amount of subsidy and the way it was managed (Peacock, 2000, 2001). While accepting the case for some public support, however, he questioned whether this necessitated public provision; he also considered incentives to public bodies, such as the Arts Council and the BBC, to encourage amore effective response to taxpayer and consumer preferences.

Conclusion

Alan Peacock made an immense and sustained contribution to cultural economics. His approach was always consistent and rooted in his overall view of political economy and the economic role of the state. He found common threads in the economics of the performing arts, museums and heritage and broadcasting which formed the basis of his stance on cultural policy. His work in cultural economics was part and parcel of his work in other branches of economics, which made it all the more valuable in keeping up high standards in the field. His great love of the arts, and especially of music, as testified in *Paying the Piper*, no doubt made cultural economics attractive to him but he did not let his heart rule his head. He applied his profound understanding of welfare economics, public finance and public choice theory to every topic on which he wrote and backed his theoretical work with detailed empirical evidence. These qualities were in turn applied in all the areas in which he acted as adviser or administrator. At the same time, he was able to stand back and assess the relatively limited effect he felt economics had in policy-making (Peacock, 2004b) – a lesson to us all not to take ourselves too seriously.

A ‘naughty’ cultural economist

Ilde Rizzo

Many distinguished economists have been involved in cultural economics but Alan Peacock, as Ruth Towse outlined in the previous chapter, may be considered *primus inter pares* because he has contributed to more areas of cultural economics than any of the others. Far from attempting to offer a full account of such a huge work,¹ I am going to concentrate on cultural heritage. Certainly, he was a precursor in applying economic principles to such a field, having produced the first article in professional economics, raising interest in heritage as an economic issue (Peacock, 1978). He continued to be involved in the subject for almost thirty-five years, until very recently (Peacock, 2013). His contribution to cultural economics is essentially grounded in his profound expertise in public finance and the economics of government, deeply shaped by his liberal views and enriched by his wide experience in government and non-governmental organisations. Thus, his work is not only academic, but also able to combine theory and practice and his arguments, based on a rigorous economic analysis, are offered with a very personal and provocative style.

He was personally devoted to the arts, as it is widely described in his first autobiographic book *Paying the Piper* (1993), mainly accounting for his involvement with music; and he was convinced that the arts and the related economic problems deserved to be at the forefront of public discussion. In such a perspective, he always tried to go beyond academic borders, explaining his arguments in an understandable form, using examples and anecdotes, spiced with his caustic humour. In trying to reduce the scepticism against what could be perceived as an undue intrusion of economics into the cultural domain, he never acted as an ‘hired gun’ and he was always engaged to show that economists can provide ‘credible’ advice (Peacock, 2004), “with insights into how to value cultural goods, the claim of the public sector to look after them and how to align policy with public preferences.”² Certainly, participating in ‘hot’ debates on cultural matters with his innovative and controversial ideas laid down with his provocative style, Alan was not looking for easy ‘consensus’ nor trying to escape unpopularity with the heritage establishment and art pundits. He seemed to enjoy all this!

Such an attitude can be easily seen, among the other things, in his thorough analysis of the decision-making process underlying cultural heritage policy design and implementation, and in his investigation of the role of

experts – or ‘cognoscenti’ as he labels them – in such a process. His basic assumption is that ‘a heritage policy cannot be the exclusive province of the producers of heritage services, however much consumers/taxpayers rely on experts to excite their interest in their heritage and to improve their appreciation of it’ (Peacock, 1997: 234). His analysis was pioneering and contributed to put this issue on the forefront of the economic debate on heritage public policies (Rizzo – Mignosa, 2013).

Alan accepted that the market is not able to ensure a socially desirable output of goods and services related to cultural heritage and, therefore, that the aim of maximising consumers’ welfare may require public action to improve the information and education of the public, to help finance or even to provide heritage services. But he also was very well aware that, in practice, the efficiency and effectiveness of public action, involving regulation as well as direct and indirect spending, cannot be taken for granted, stressing also that the methods of financing as well as the ways of providing heritage services make a difference in their ability to satisfy demand. In fact, he claimed that when the public sector is involved in the conservation and management of cultural heritage as well as in the provision of the related services, public decisions tend to be self-referential, i.e. supply-oriented. As a result, they are more likely to represent producers’ interests rather than being demand-oriented. Instead, his basic value judgment was that heritage services are provided to benefit the ‘consumers,’ that is, those who enjoy heritage services, and that they are the best judges of their own interests, thus ruling out ‘the establishment of some overarching authority, deciding from above what the groundlings below are to be instructed to enjoy’ (Peacock, 2005).

Being very concerned about the ‘public failure,’ because of its effects on the allocation and the distribution of resources, having the assumption of consumer sovereignty as his initial value judgment, he paid great attention to the public choice aspects of the public decision-making process concerning cultural heritage policy design and implementation. He identified a major weakness in such a process as the elitist and self-referential role played by the experts hired by the government both in the process of heritage identification and conservation as well as in their activity as directors of museums, galleries and, more generally of heritage institutions.

In his British Academy Keynes Lecture in 1994, he clearly pointed out that ‘a large proportion of artefacts are not produced with the idea of reminding us of our past . . . They become identified as heritage goods usually by archaeologists and historians who have obtained some form of official recognition or public acceptance of their status as experts in determining their artistic or historical significance.’ (Peacock, 1994: 8). Through regulation (i.e. listing) experts affect the stock of heritage both in quantitative and qualitative terms and their decisions on the type of conservation impact on

the allocation and the distribution of resources in the field. Experts may have contrasting views on orders of priority concerning the extent and the type of intervention and Alan offers clear evidence of this, using Panmure House – the last residence of Adam Smith in Edinburgh³ – as an example (Peacock, 2013). In their judgement they are not ‘neutral,’ but aim at maximising their reputation with their peers, not necessarily at pursuing the ‘public interest’ – rarely leaving space for sound economic reasoning. Thus, he regarded ‘as essential that economists will retain a watching brief on those who claim that their expertise entitles them to pride of place in policy decisions. If we do not continue to demonstrate that their judgments of value are arbitrary, then we must not be surprised if they continue to invent the economics for themselves’ (Peacock, 2006: 1139).

Alan claimed strongly that, in deciding what ought to be conserved and how, as well as in the provision of cultural heritage services, ‘cognoscenti,’ even nowadays, tend to suffer the fallacy of undervaluing resource constraints. They follow Ruskin’s attempt to put a ring-fence round artistic creation so as to exempt it from the analysis of its ‘opportunity cost’ (Peacock, 1997). The consequence is that the concept of heritage is extended, following a somehow ‘moral’ commitment to preserve everything which experts evaluate as worthy, leading to long-term unsustainable heritage policies. Nor did Alan undervalue the negative effects of such ‘conservationism’ on the possibility of increasing the heritage stock with contemporary artefacts and of encouraging public appreciation of the new additions.

Alan was very well aware that modifying such an approach was a difficult task since experts’ field of expertise had a particular *aura* which overawes those who have to regulate their activity. Thus they usually succeed in becoming influential in contrasting government proposals for radical changes – involving more rigorous control of public expenditure – knowing that politicians are particularly vulnerable to accusations of ‘philistinism’ (Peacock, Rizzo, 2008). However, such awareness did not discourage him from going ahead in contrasting such a patrician approach: he supported a controversial ‘workable heritage policy,’ aimed at conserving only ‘representative historical artefacts,’ e. g. some ‘sustainable’ level of heritage which can be compared with alternative uses of resources as perceived and determined by society. While recognising a role for experts in giving advice

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on the composition of representative heritage, he was very clear in saying that the optimal expenditure or the regulatory regime cannot be uniquely determined by an inventory of artefacts drawn up by them. The final decision on the size of any heritage budget must lie with government, which cannot ignore voters' opinion when it comes to decide on the pattern of public expenditure. Alan also fiercely criticised the self-referential attitude of 'cognoscenti' at international level – claiming that Unesco, in its 'magisterial statements' on World Heritage Sites tended to disregard the general public while being influenced by pressure groups, through Non-Governmental Organisations, often represented on its advisory bodies. Not to mention that it is very hard to find out what objective criteria underlie the inclusion of a site into the World Heritage list (Frey and Steiner, 2011).

Alan's fierce critique of the elitist attitude of international experts clearly comes up in the hot debate raised by the Unesco threat to remove World Heritage status from Edinburgh: his description of bureaucrats of international organisations who 'have a habit of descending like visiting deities on unsuspecting member countries to judge their conduct,' is illuminating. 'In South America such visiting dignitaries are known cynically and amusingly as *paracaidistas* (parachutists).' (Peacock, 2008). Again, in Alan's view, what is at stake is "who should decide, not merely advise, on what we should preserve of the built environment." He contended that with such a threat, as a reaction to the planning decisions by the City of Edinburgh Council on developments in the New Town, Unesco went beyond advice-giving and pretended that its prescription about environmental preservation was like the Ten Commandments, trying to constraint national policymakers in their decisions about which heritage activities to support. Instead, in his view:

It is the public who provide the resources by entrance fees, subscriptions and donations or by the taxes they pay. They have the right to be satisfied that their money is well spent, but it is difficult to believe that the public will regard Unesco judgments on present-day policies, imperfect though they may be, as making an iota of difference.

Shifting attention to the national level, Alan was interested in fiscal and institutional arrangements to 'empower' voters/taxpayers with respect to the overwhelming influence of experts. He supported devolution, as a means of increasing the accountability of government, considering also that the links between regional/local communities and heritage are very close. Moreover, he was very much in favour of increasing citizen participation, for instance, through the appointments of 'lay' persons on the governing bodies of museums and galleries and their heritage equivalents, allowing citizens who are active in heritage matters to vote for their own representatives within

these bodies. Alan also assigned great importance to private/non-profit arrangements as alternative solutions to the public production of heritage services – such as the National Trust in England and Wales and its counterpart the National Trust for Scotland – enhancing market mechanisms for charging and enjoying only indirect public support through tax expenditure rather than direct funding.

Alan did not spare criticism toward experts in their role as directors of museums and galleries, claiming that they are guided by the ethos and practices of fellow professions rather than by public taste, i.e. those who pay a large part of the resource provided to them. Experts advocating the necessity of public funding, tend to maintain the *status quo*, trying to escape any form of evaluation of their activity from the public, being only concerned with maintaining their reputation with their peer group. How can this approach be justified in political terms? Thus, he was concerned to point to the ways in

*The Victoria & Albert
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police and returned!*

which museums and galleries, ‘often considered as the modern equivalent of holy temples in which articles of iconic significance are guarded by an exclusive priesthood,’ (Peacock, Rizzo, 2008: 73) may change their identity.

Alan’s first contribution on museums and galleries was in 1974 (Peacock, Godfrey, 1974). He had already supported the very controversial idea, at that time,

that museums and galleries should charge entrance fees, as an incentive toward competition and better services. Moreover, to contrast the self-referential approach of museum and gallery directors (and, in general, of heritage services producers) and to enhance their accountability, he strongly claimed that whenever taxpayers’ money was used, information and some form of evaluation were called for (Peacock, 2003). In such a perspective, he stressed relevant differences across heritage service producers, pointing out that where the ‘arms’ length’ principle is at work, detailed accounts and projections are part of the activities of publicly funded heritage providers – Scottish Heritage being quoted as a ‘virtuous’ example – while ‘cultural accounting’ is unsatisfactory where a centralised system is at work.

At the same time, he was in favour of ‘de-accessioning’ as a means to generate funds, so that museums selling those works of art, which are not essential to their artistic ‘core’ interests, might use the proceeding to enlarge collections through new acquisitions, or for better conservation of the existing stock. Nor did he undervalue the positive impact that de-accessioning might exert on the international market for cultural artefacts, with the caution of imposing restrictions to all the relevant historical artefacts, i.e. ‘national

treasures.’ Thus, he strongly criticised the ‘Prado disease’ – leading museum directors preferring to have a growing stock of artefacts in the basement rather than selling the less representative items to enhance their collection. To show the fallacy of such an approach, he used amusing anecdotes showing ‘the laxity of inventory controls,’ such as the case of the ‘Victoria & Albert museum which did not know that a Tenier was missing until it was found by the police and returned!’ (Peacock, 1998: 17). Alan was aware of the legal and institutional constraints which directors usually used as a shield to oppose a flexible approach for the sale and purchase of heritage items and he was not surprised. Why should they be willing to undertake commercial transactions which would put them under public scrutiny, particularly if they are allowed to devote the proceeds of sale to the purchase of other artefacts, deflecting judgment away from their professional reputation and skills? Relying on public funding does not provide any incentive in such a direction. As was his style, using the ‘Prado disease’ argument and stressing that crisis situations call for ‘radical measures,’ he entered the ‘hot’ debate raised by the Duke of Sutherland’s wish to sell his Titians, which had been on loan to the National Gallery of Scotland, and get the tax relief by leaving the Titians in the National Gallery. He clearly pointed out the perverse distributional effects of granting tax concessions to the super-rich. De-accessioning would have allowed for a more reasonable and equitable solution (Peacock, 2008b).

I have tried to sketch Alan Peacock’s pioneering views on the role played by experts in the public decision-making process underlying cultural heritage policy design and implementation, although I have not done justice to his outstanding contribution to cultural economics. Overall, he stood as a rare combination of independent thinker, distinguished professional economist, well-known public figure and committed art lover; therefore, it is not surprising that his work has deeply influenced cultural economics in the last forty years and will continue to do so in the future. There has been a general improvement in the accountability of heritage producers since he started investigating heritage policies and suggesting ways to enhance their responsiveness to the public. He recognised this and, while he continued to tease them, he can also be accredited with having contributed to positive changes of attitude. Hopefully, the ample evidence Alan provided on the relevance of economic advice for the design of reasoned cultural policies will also be a good incentive to increasingly apply the ‘dismal science – as he liked to label economics – to the cultural sector. Following his example, cultural economists have to be careful observers of the real world, in addition to being skilled in modelling and statistical analysis.

A libertarian manifesto: the Peacock Committee and the BBC

Chris Carter

One of Sir Alan's most significant roles was his chairmanship of the Peacock Committee, which was to lead directly to dramatic and far-reaching changes in British broadcasting. As the 1980s progressed it became increasingly clear that radio and television were in the midst of a sea-change. While the nature of the upheaval was obscure and many of the consequences unforeseen, it was obvious that the combination of a shift in the political environment, technological innovation and the early manifestations of globalisation were going to disrupt what had hitherto been a stable and comparatively benign environment. Debates raged as to the likely nature and scope of the changes. Reading transcripts of the annual McTaggart lectures from the early to mid 1980s one gains a sense of a broadcasting community anticipating the winds of change.

Broadcasting was no stranger to scrutiny, having been the subject of Royal Commissions in both the 1960s (Pilkington) and the 1970s (Annan). Both of these committees, while taking notably different views, largely confined themselves to a consideration of the social and cultural aspects of broadcasting. But on 27 March 1985 Leon Brittan, Home Secretary, took a very different tack when he announced the formation of a new committee to investigate financing the BBC. The terms of reference were to examine the effects of introducing advertising or sponsorship on the BBC and to 'consider any proposals for securing income from the consumer other than through the licence fee'¹. This clause was, as we shall see, liberally interpreted.

Alan Peacock, who was appointed to chair the committee, was an eminent academic economist and university executive with experience of working as Chief Economic Advisor at the Department of Trade and Industry. He recalled:

Leon Brittan decided that one of the important qualifications was whether the chair was experienced in dealing with government and had previous experience of the BBC. In the 1970s I did because I was chair of a curious study on the future financing on the London orchestras, which was a real problem because the government financing was a tremendous discrimination against the regions. Orchestras were in turmoil. The BBC Symphony Orchestra was in an especially favourable position – they didn't have to cover their costs

and they were employees of the BBC, whereas other London orchestras were run as workers cooperatives. I'd already had dealings with the BBC over this, the way they worked, way they dealt with enquiries . . . so this is the kind of kind of background.²

The Peacock Committee differed in two important regards from its immediate predecessors: firstly, it was not a Royal Commission and therefore was expected to report on a much shorter timetable; and it was far more interested in the economics of broadcasting rather than social or cultural issues. Robert Eagle was the civil servant seconded to act as secretary to the committee. As a physics PhD he possessed expertise in how technology was changing the possibilities for broadcasting.

The question essentially was 'should the BBC be financed by the licence?' which is pretty much how it was perceived. And one assumes that the answer that was expected was, 'no, it shouldn't be financed by the licence fee' and by putting in a free market economist and backing him up with quite a few either conservative-leaning or free market people (balancing them, of course, there were people like Alastair Hetherington and Judith Chalmers), I imagine the expectation was that was that they would deliver the result that was expected.³

Eagle's reflections on the expectations of the committee resonated with the feeling at the time that the Peacock Committee was expected to end the licence fee and that it was merely an exercise to legitimate a decision that had already been taken. Margaret Thatcher was a known opponent of the licence fee, which she characterised as a 'poll tax backed up by criminal sanctions' and had suggested to Alasdair Milne, Director-General of the BBC, that the BBC should fund itself through advertising.⁴ Her disdain for the licence fee was at least matched by her increasing scepticism about the BBC as an organisation, viewing it as biased against the Conservatives. The mid 1980s marked the high noon of Thatcherism, which enjoyed an unassailable parliamentary majority, and those in Conservative circles felt that it was time to do something about the BBC.

The committee comprised Alan Peacock, Samuel Brittan, Judith Chalmers, Jeremy Hardie, Alastair Hetherington, Lord Quinton and Peter Reynolds. While not a member of the committee, Peter Jay, former ambassador to Washington, had a significant input relating to his ideas on electronic publishing. Chalmers, a BBC journalist, Hetherington – a former editor of the *Guardian* and Controller of BBC Scotland – and Hardie, an SDP activist, represented liberal opinion, while the other members were either closely associated with either free market economics or Conservative politics. Samuel

Brittan, *Financial Times* columnist and brother of the Home Secretary, writing shortly after the report had been submitted, recalled:

From the start it was clear that the committee could be divided very roughly into three groups. There were Peacock and myself, who were inclined towards market provision of goods and services and who had been stimulated by Peter Jay's writings. But market economics is so little understood that it was mistakenly identified outside the committee, and even initially inside it, with (a) enthusiasm for advertising finance, (b) support for commercial pressure groups, and (c) desire to please a Thatcher Government. At the other end were Hetherington and Judith Chalmers, the television and radio journalist, who were keen to preserve the achievements of British broadcasting and suspicious of market ideology. But Hetherington, who had felt the rough side of BBC authoritarianism in his period as Scottish Controller, was – as his interest in subscription showed – far from a dug-in defender of the *status quo*. He had also the great advantage of enjoying the confidence of Chalmers who, in the friendliest way, distrusted Professor Peacock's, and event more my own, intentions. The third and middle group consisted of Lord Quinton, the philosopher and President of Trinity College, Oxford, Sir Peter Reynolds, Chairman of Rank Hovis McDougall and Jeremy Hardie, economist turned businessman and SDP candidate. These three were not committed either to the existing institutions or to any recommended alternatives; they were thus the swing votes on the committee.⁵

The extent to which the committee was dominated by a single viewpoint is open to debate, but there is little doubt that it was a manifestation of government discomfort with BBC. David Elstein in his McTaggart lecture recalled the spirit of the time: "Whatever the rights and wrongs of the conflicts between broadcasters and politicians in the 1980s, I have no doubt about which side initiated hostilities. Indeed, the appointment of the Peacock Committee was openly flaunted at the time as a means of disciplining the BBC . . . [it was] the most blatantly packed of any of the seven such committees of enquiry over the decades."⁶

The process and ideas

The committee met on more than twenty occasions over the course of the year and received numerous submissions of evidence. It also made various visits to the BBC and other broadcasters, including visits overseas, where among other things Silvio Berlusconi failed to show up for a scheduled

meeting. It was clear from the outset that the committee was working to the limits of its brief. Robert Eagle recalled:

The very last line of the terms of reference says 'to consider any proposals for securing income from the consumer other than through the licence fee.' That last line was the brook through which the committee waded, way outside what I think were the kind of general terms of reference that were expected to home in on the BBC. In fact, what it did was to range right across the whole gamut of broadcasting, to use that line to enable it to do so.⁷

The Peacock Committee members interpreted their remit very widely and the study spanned the entirety of broadcasting. Robert Eagle was comfortable that the committee operated within its brief, but others saw 'this committee, composed of serious men and women with strong opinions working under a lively leader, had ventured well beyond their terms of reference and set off a general debate on all broadcasting matters.'⁸

As we have noted, there was a strong orientation on the committee towards free market economics, although Alan Peacock was very clear that he was neither a conservative nor a placeman ready to serve up a foregone conclusion. Anyone who knew him would have realised that such an outcome was unthinkable. Robert Eagle:

Several things surprised me. Alan, himself, was a great delight. We used to have races into the office. He was always very efficient and wanted everything organised on one day, so he would leave his home in Edinburgh and I'd leave my home in Streatham, and we would race into the office, I always got there first, I was only six miles away. He would always come into my office first before he went to his own, slinging his bag down on the table, light a cigar and tell me what he'd been thinking about on the plane. And these were always kind of mega thoughts. I would be rash and would argue with him and he would tell me why I was wrong. And one day I thought 'this is not right; here am I young and a civil servant, it's not my position to argue with this economist, I'm going to shut up.' So, the next time he came in and gave me his views I said 'very interesting.' And he looked for a while and said 'well, go on then, argue!' So, I would. And I think that was his way of testing out how a non-economist would respond to the arguments he was putting. It was quite hard work talking to these guys but that was very interesting.⁹

Two broad ideas that underpinned his approach:

1. The desirability of free markets.

A major figure in Alan Peacock's intellectual life was Ronald Coase, later a Nobel Laureate. While Peacock had been a student of political economy at the University of St Andrews, Coase worked at the Dundee School of Economics, which taught the University of London external programme in economics. Later, after the war Coase and Peacock were colleagues at the London School of Economics, where Peacock noted:

It wasn't really until I was very much more deeply engaged in this subject [economics of broadcasting] because I was chairing this committee, I realised that at LSE I'd been part of a group of people who'd been involved in the evolution of micro-economics in a practical sort of way and of course Ronnie's ideas are fundamental to this. He had an instinctive understanding of economics and the application of theory without having studied advanced mathematics. He was a great digger, stories about his typist coming with him with her typewriter on her knees in archives in mysterious parts of London were legion. He did a very good study about the Post Office and his broadcasting study was fundamental. I read and corresponded with him.¹⁰

Early in his career Coase had written about the economics of broadcasting and these were ideas that shaped some of Peacock's thinking. He rejected the notion that broadcasting was a natural monopoly, and following Coase in relation to competition, argued:

In the long run monopolies are always eroded, therefore freedom of entry into the business was much more important than competition and you would have to prove that freedom of entry was impossible to be able to show that the BBC, even if it was a monopoly, mustn't necessarily be run by a public body.¹¹

The freedom of entry issue had two clear implications: first, in terms of public service broadcasting, Peacock argued that this should not be the preserve of the BBC but should be opened up more widely; second, that the near oligopoly enjoyed by the BBC and ITV on the production of television should be challenged by allowing independent producers to produce programmes to be broadcast by the BBC and ITV.

2. The desirability of consumer sovereignty.

A consumer revolution was taking place in 1980s Britain and the ideas of the moment resonated closely with work that Alan Peacock had been

championing for many years. He had a deep aversion to the Reithian tradition in broadcasting, viewing it as elitist and patronising. He characterised this approach as that of a 'cultural patrician' out of touch with consumer choice. In effect, he wanted to turn broadcasting on its head by giving primacy to the wishes of consumers, rather than the broadcasting elite. If free markets were driving the ideas behind the Peacock Committee, the process was largely overseen by Alan Peacock, as chair, Robert Eagle, as secretary, and Samuel Brittan: 'Alan with cigar in mouth, of course, was the driving force. I started the first advance but he would be the main writer.'

Eagle adds:

Sam Britten was very strong and active, he wanted all the papers biked out to him as soon as they arrived and he made a lot of very positive contributions. Lord Quinton was fascinating because he was this kind of bigger brain . . . I think Sam perceived that he would come up with this brilliant line and then right at the last minute Lord Quinton would show why philosophically it wouldn't work. So, they were terrified that he was going to scupper the ideas by picking them apart, but he didn't. In terms of applying his bigger brain he never did. I think he would have if he thought anything was going off course but he must have been happy with the way it was going so he went along with it. I think the real drivers were Alan Peacock, principally, and Sam secondly.¹²

The deliberations were punctuated with a series of tense meetings with the BBC. Alasdair Milne, the Director-General, had a fractious meeting, which was characterised by the committee as a disastrous performance:

Alastair Milne was not properly briefed and I was very sorry for him. He came and took the old BBC line of 'we know, we don't have to listen to anyone else about these things' and that created the wrong impression . . . and of course he got crucified. Alastair Hetherington and broadcasting people like Judith Chalmers were astonished. I felt very sorry for him and always felt that he got a raw deal. The BBC also did not co-operate fully. We had a public meeting which was a disaster because, quite rightly, some of the public said we're only being regarded here as a captive audience and we are not allowed to ask questions.¹³

Much was made of Alasdair Milne's appearance in front of the committee. For instance, when asked, 'how much of the BBC's output was public service broadcasting?' his response was, 'all of it!' Yet it is a mistake to focus on Milne's performance, as behind the scenes the BBC proved to be extremely

shrewd strategically. In particular, Patricia Hodgson proved to be an able diplomat in linking the BBC into government, while Brian Wenham mounted a successful defence of the BBC's position. As Seaton and McNicholas put it, 'from the BBC's point of view there was a paradox: in order to "win" the BBC had to appear not to. For if the report was "in favour" of the BBC, its findings would be dismissed as irrelevant.'¹⁴ In strategic terms a report that was about the funding of the BBC turned its attention to the organisation of the entire broadcasting sector, which took much of the attention away from the BBC.

The outcome and reaction

Peacock's Committee straddled the tenure of two Home Secretaries who represented very different sections of the Conservative Party: while Leon Brittan embodied the radical Thatcherite right, Douglas Hurd was the quintessential patrician Tory. This captured the tension within the 1980s Conservative Party: the radical right wanted to reduce the importance and power of the BBC, whereas patricians rather liked the BBC but felt that it required reform. Peacock described meeting Douglas Hurd to discuss the report, with Hurd becoming increasingly fligid and agitated before declaring that this amounted to a licence for pornography.

All I knew was that his civil servants had presented him with a document saying what they thought of the report, which I never saw, so I went in one down. Now I knew this sort of behaviour, I had seen it when I had been in the DTI, so I thought 'well we'll have to do a guessing game what the sticking point was, surely it will be about the licence fee or something' . . . But I never guessed what the first question would be. He put it in a very nice way, he virtually said 'your report suggests that there should be no rules about broadcasting, about the contents of programmes, you know, pornography – anything like that.' And I said, 'I am not sure it was quite like that minister.'¹⁵

For Alan Peacock the issue was consumer sovereignty – customers should be able to watch whatever they wanted to watch. In his memoirs, Nigel Lawson, Chancellor of the Exchequer at the time of the Peacock Committee, approvingly described the Peacock Report as a 'libertarian manifesto.'¹⁶ The key argument in the report was: 'British broadcasting should move towards a sophisticated market system based on consumer sovereignty. That is, a system which recognises that viewers and listeners are the best ultimate judges of their own interest, which they can best satisfy if they have the option of purchasing the broadcasting services they require from as many alternative sources of supply as possible.'

The major recommendations of the report were:

1. Retain the Licence Fee:

This central recommendation came as a shock to many who were expecting the committee to recommend that the BBC should fund itself through advertising. Jeremy Hardie, a member of the committee, recalled:

I think the econometric forecasting was important, not actually because it showed a decline in advertising, but because it presented you very firmly in the face with the fact that if the BBC was going to take advertising, and if that was going to be of a quantum sufficient to replace the licence fee, then something very substantial was going to happen to players in this market . . . there would be a terrible financial problem which would fall on somebody . . . this would change the whole thing. So you then had to go to the big questions, which are 'What's all this for, anyway?' . . . And I was quite surprised, it really became a non-question very, very early on.¹⁷

Alan Peacock recalled:

we had a long discussion on this issue, and the various alternatives that were suggested. There's the old adage in public finance that if you're going to have a tax, use an old tax and there's no doubt that is what the licence fee was. But we had one remaining question which was, we did agree that there were elements, such as the provision of public service broadcasting, which might require finance that in general people would accept, non-commercial things that might in the long-run pay off but over such a long period.¹⁸

Given the role of the poll tax in precipitating the fall of Margaret Thatcher in 1990; Alan Peacock's observation about 'old taxes' was a prescient one. Peacock recalled meeting Mrs Thatcher and unveiling the report:

The seat where I had to sit was a little chair. I looked at this chair and said 'Prime Minister, is that the stool of penance?' I learnt a great thing about Thatcher. She made the jokes. She was very witty, but had no sense of humour. And I should have realised this because shortly before, Nigel [Lawson] had arrived late and she looked around and said 'Oh Nigel, it was always the boy that lived nearest the school who came late, wasn't it?' She really went for the BBC but it was quite interesting just to see this gladiatorial display.¹⁹

In ruling out advertising for the BBC, the committee, in effect, assured the continuation of the licence fee, although it added the qualification that it could be used to fund public service broadcasting in general and was not specific to the BBC. The committee also recommended that the licence fee should be index linked to inflation as a means of exerting some financial control on the BBC. The licence, in effect, shielded the BBC from overt commercial pressures and the continuation of it meant that the BBC was to some extent protected from radical change. As one senior BBC executive put it, 'The licence fee is the umbilical cord between the BBC and the State.'

2. Require 40 per cent of programming on the BBC / ITV to be produced by independent producers.

As we discussed above, Alan Peacock was heavily influenced by Ronald Coase's central idea, the importance of reducing the barriers to entry in a market. Channel 4 had been established a few years before and was a publisher rather than producer of programmes; the programmes were largely made by independent ('indie') production companies who were commissioned by Channel 4. Peacock was keen for the BBC and ITV to be opened up such that the 'indie' sector could make programmes for them. This was a radical suggestion that had clear implications for the types of programmes made and consequences for the internal organisation of the BBC and ITV.

3. Part-privatisation of the BBC

The committee was unconvinced by Alasdair Milne's claim that all of the BBC's output was public service broadcasting and recommended that BBC Radio One and Two should be privatised. In addition to raising money for the Treasury, the committee felt that there was no reason for these channels to be in public hands. This led to an interesting battle within the Conservative Party, where supporters of the BBC, such as David Mellor, Minister responsible for the 1990 Broadcasting Act, recognised that if the BBC started to be broken up, it would be more difficult to justify the licence fee on the grounds of why should someone who enjoys Radio One be prepared to pay a licence fee which funds opera, if the BBC is no longer providing Radio One.²⁰

4. Auction of ITV licences

The committee recommended that the ITV regional licences should be opened up to competitive tender through a blind auction process. Subject to some controls around 'value for money' to the viewer, the licence would be awarded to the highest bidder. Greg Dyke recalled: 'As an afterthought he [Peacock] suggested that the next time the ITV franchises were to be awarded they should be auctioned to the highest bidder. Everyone laughed at the

suggestion, with the exception of Mrs Thatcher, who decided to implement it.’²¹

The Legacy

Peacock is a name that probably does not register with modern television executives or broadcasters, yet in many important ways the Peacock Committee shaped the modern British broadcasting world. This is a curious outcome as the report was not favourably received on its publication and threatened to gather dust on the shelf of a government archive. Yet the thinking behind the report pushed commercial imperatives and consumer sovereignty to the centre stage of British broadcasting and was to have profound implications. Major recommendations from the Peacock Committee were enshrined in the 1990 Broadcasting Act, most notably, that 25 per cent of programming on the BBC and ITV should be commissioned from ‘indie’ producers and that ITV regional licences should be auctioned.

The opening up of the BBC and ITV to independent production has undoubtedly led to the creation of new television genres, especially around factual entertainment and reality TV. It has also led to the creation of global television formats, in which Britain has emerged as a market leader. The ‘indie’ sector in Britain has been a source of innovation and creative entrepreneurship, in a way imagined by Alan Peacock’s ‘Coasian’ vision for broadcasting. Anecdotally, the UK currently accounts for about half of the global market in television formats.

The auctioning of the ITV licences embraced elements of farce from the outset. In some regions, licences were acquired very cheaply, while others were bought at vast expense, as Greg Dyke comments: ‘Two companies who discovered they had no opposition, Central and Scottish, bid just £2,000 a year for their franchises and won them, while others like TVS and Television South bid £59 million and £16 million respectively and were ruled out by the ITC for having bid too much.’²²

What the auction did was, in effect, to privilege commercialism over the production of high quality television. In time, it led to the consolidation of ITV through mergers and acquisitions and the loss of programming capacity in different regions in the UK. From a television point of view, the auctions set in train a series of events that greatly diminished ITV companies as creative organisations and led to the near exit by ITV from important programme genres, such as current affairs.

The BBC emerged out of the process with its funding mechanism – the licence fee – intact and without any of its activities privatised, as the 1990 Broadcasting Act did not follow the recommendation to privatise Radio One and Two. Yet in many important respects a different BBC was to emerge post-Peacock. While the BBC old guard may have successfully defended it against

Peacock, they were soon displaced by a new guard who ushered in an era where the language of markets and choice became central. John Birt joined the BBC from LWT and instituted a number of market reforms that dramatically changed central elements of the BBC,²³ such as the independence of producers, how resources were distributed, how journalism was conducted and how programmes were costed. Birt's BBC, while controversial, grasped the importance of digital television and has become a global leader in its provision.

In the three decades since the Peacock Committee was convened broadcasting has changed beyond all recognition. The British broadcasting eco-system changed dramatically following Peacock. These were economic ideas that mattered and had important effects. Some of the themes that Peacock grappled with are strangely familiar: questions about the BBC's funding, the quality of television, the future of news and current affairs, the viability of commercial television. The Peacock Committee's legacy was to place the importance of markets and consumers at the centre of British broadcasting. For sure, this has led to many important developments – especially in the independent sector – and it also highlighted the limits of markets for cultural products. It established the concept of consumer sovereignty as a challenger to what Peacock had viewed as a prevailing patrician broadcasting culture. Customer choice is now a foundation stone of modern broadcasting. Peacock was asking fundamental questions of broadcasting at the dawn of a new era; he was iconoclastic, independent and intellectually ambitious. These qualities will be much needed across a realm of policy challenges in the twentieth century. These sensibilities should be Alan Peacock's legacy.

The increasing price of ignorance

Stewart Sutherland

The story is told of the president of an American university who was accosted at Commencement by two proud parents. 'Elmer,' they said, 'has been very happy in his time here and after graduating with a high grade point average is going to join a doctoral programme at Princeton. Thank you for all you have done for him. Just one question,' they tentatively added, 'why is it so expensive to go to college?'

To which the reply came: 'If you think knowledge is expensive, try ignorance.'

Alan appreciated the wit as well as the sharpness of that story. I know, because I shared it with him a number of years ago. However, his reply was just as pointed. The real questions are, 'Who pays for it, and how? There are no free goods.' How appropriate for one of our leading economists who was also one of the earliest vice-chancellors of Britain's first independent (ie self-funding) higher education establishments, the University of Buckingham.

This short essay will offer one answer to Alan's questions.

In its earliest days, Buckingham was regarded with suspicion and worse by the large tranche of UK universities who were dependent on state funding, supplemented in a few cases by some endowments and, as they could attract them, significant numbers of overseas students paying 'full' fees. The post-Robbins tap had pretty well dried up and the historic basis of Universities Grant Committee (UGC) funding – last year plus x per cent – had been stopped in its tracks by the policies of Keith Joseph, implemented with formulaic mathematical precision by UGC Chairman Ted Parkes. The outcome was ten years of 'efficiency savings' of two per cent per annum. In due course, and strictly off the record, even Department of Education ministers and senior civil servants stopped protesting at the 'cut by any other name' comments from battle-hardened vice-chancellors.

The evaluation of the impact of all that belongs to another day. What is certain is that the implementation of the policies which followed – giving the polytechnics university status and the right to award degrees, plus gradually increasing the age-participation rate to the now politically shared fifty per cent target – simply honed to dangerous levels the point of Alan's questions: Who pays and how?

Buckingham, backed with a relevant charter and statutory powers, had its own answers: private sources, and to a very great extent, student fees. In the

state supported sector, the number of students and universities grew dramatically. The then Committee of Vice-Chancellors and Principals represented fifty-five universities when I first joined it in 1986: its successor, Universities UK, now has over 160 members. It did not take a Nobel Prize in economics to see the inevitable consequences – an insupportable burden on public expenditure. Successive election manifestos promising ‘no fees’ were run up the flagpole only to be sheepishly taken down again with the responsibilities of office. Statutory routes refined the financial impact – the UGC became devolved university funding councils with diminished financial independence; research funding became largely a competitive matter rather than a formulaic allocation, administered by research councils; and universities became ingenious in their pursuit of alternative funds and funding sources. And yet, the public purse continued to show signs of buckling under the financial pressure.

In due course, the Blair Government replaced its pre-manifesto banner of ‘No fees’ with the introduction of a student contribution to the cost of their course. The inevitable then followed step by step and the current Coalition Government accepted what many saw as the draconian proposals of Lord Browne’s Report in 2012. This lifted fees to a maximum of £9,000 per annum and recommended a repayment system, whose different thresholds were intended to ensure a return to the public purse over thirty years, sufficient to cover costs, but related to earning power. There were a number of assumptions in this package, which were not tested adequately by ministers, and the scheme shows signs of not bringing the intended return and therefore not dealing adequately with matter of the financial sustainability of our higher education system.

There were two critically important assumptions which the last Government got wrong. The first is that the policy would be in the long run self-financing, and that the repayment rules would bring a return to the Treasury. To say the least there were very deep reservations about this, and the Labour Party proposed the reduction of the maximum fee to £6,000 per annum, with the shortfall to universities being met by effectively hypothecating the savings from a reduction in tax relief to pensions of ‘high earners’ for this purpose. It was not only vice-chancellors who were sceptical about how much faith to put in this commitment.

The second mistaken assumption was about behaviour. Clearly the department and the responsible Minister, David Willetts, believed that universities would accept the principle that £9,000 was an upper limit to fees, to be used comparatively sparingly by a few universities on a few high-demand courses. I wonder how many vice-chancellors were asked about that before the policy was announced? There was in fact a third major assumption much publicised by those opposed to the proposals which turned out to be

mistaken. It was argued that such a significant rise in fees would deter students from less well off backgrounds and that the admissions of such students, especially by front-rank universities would fall dramatically. This has not turned out to be the case. Thus of the many assumptions made by the Government in implementing the Browne proposals two of the major three show bad judgement in policy creation.

In order to deal with the second of these, there was a rolling series of changes made to the specifics of policy, of which the most important was to

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lift the cap on student numbers, and therefore on the cost of the loans system. This gave to universities a freedom and a financial lever to increase income which they deployed with relish.

Two further points before I turn to my proposals for funding the university system. The first is that the Browne proposals were commissioned to deal with the English university system. The consequences of having a different system in Scotland, for example, are assessed by some on a scale from embarrassing to unjust, by others as a grandstanding piece of 'Wha's like us.' Certainly the story is not yet ended, and my major proposals are such that they could be applied also in Scotland. The second comment is an ironical aside. Sir Keith Joseph fought, unsuccessfully, to convert student support into student vouchers, whose intent matched the element of the Browne Report to introduce market disciplines into the 'services' supplied by universities to their 'customers.' That was a step too far at that time, not least because some believed that it would reduce government power over universities. The power would be in the hands of the students.

A largely unnoticed subtlety of the last Government's implementation of the Browne proposals was the initial success in combining off-loading costs onto the students, and retaining control over the universities, by allocating only so many loan-supported places to each university and course, and retaining the power to vary this. Keith Joseph would have been amazed by the ease with which this was achieved, but as a true-blue marketeer, he may have had reservations about the continuing government control over university planning horizons – more of this anon.

In summary, there has been over the last half-century and more a number of significant changes to the ways in which universities are funded, commensurate with the changes in the system. To illustrate the latter point: in 1945-6 the age-participation rate of 18-20-year-olds going to university was

two-and-a-half per cent. When I matriculated in 1959 it was seven per cent. Following the implementation of the Robbins Report, by 1970 it was 14 per cent, in the 1990s, after granting university status to polytechnics and many colleges, the percentage expanded from an actual 25 per cent to an aspirational 50 per cent. The latter is well within sight. The costs of doing this have included the scrapping of the automatic entitlement to living support grants, and the introduction of student fees as outlined above.

One change noticeably absent from the main agenda, however, was the loosening of state control of the universities. Indeed the control of overall planning and student number targets became increasingly *dirigiste*, symbolised by the change from a UGC ethos to a funding councils planning, accountability and regulation regime.

However, almost unnoticed have been the implications of the Government soft-shoe shuffle when it was realised that practically all university course would be provided at a fee of £9,000. The cap on students eligible for student loans was lifted by giving universities the right to recruit beyond initial target figures. The potential of this was recognised in practice immediately by the best recruiting universities, but little notice was taken of the implications for university autonomy to plan their own academic profile and future development. Doubtless the good reason for that was a realisation that the cap could be re-imposed by constraining the availability of loans as quickly as it had been lifted. Thus the old adage that he who pays the piper calls the tune has been, almost by subterfuge, changed to he who owns the loan book to students still calls the tune even if in effect the student now pays the piper.

This is undoubtedly true, but only if the fund to provide student loans is self-financing. The current and strong weight of opinion is that it is not, and the Labour Party for example argues that a shortfall of £10 billion will build up. This will be a charge to the state, ie the taxpayer, and therefore we are back to the beginning with a vastly expanded system of higher education, and a significant public debt. Alan Peacock's question about 'who pays?' still receives the answer, 'to a significant degree, the taxpayer.' For both the Labour Party and the Conservative Party, that is not the intended answer. The intention of the Blair Government in introducing fees, and of successive Governments in increasing them had been to remove the 'burden' from the public purse. The best informed projections suggest that this will not be the outcome, and if the Treasury knows better it should publish the relevant calculations.

I wish to propose an alternative direction for universities to take. At the core of this will be the possibility of combining greater autonomy for universities with the responsibility of devising a viable governance and funding system. Autonomy cannot be divorced from responsibility. The

approach of both major parties seems to be to add additional responsibility to the universities while continuing to restrict autonomy.

The current relationship between universities and government is basically that of *Oliver Twist*: 'Please sir can I have some more?' Increasingly some universities have been able to diversify funding sources so that the formulaic input from government has been reduced as a percentage of total spend. The off-loading of teaching costs onto student fees although not total has changed the balance. Vice-chancellors will argue about this, but by and large the costs of humanities and social science courses are covered by the fees charged to students. (Of course, if universities want to provide more small group and tutorial systems then that will raise the cost to them, but I am inclined to think that a university which cannot provide, for example, a good law degree programme costing less than £9,000 per annum should be re-examining its assumptions.) Since this can constitute up to 60 per cent of the teaching costs of a multi-faculty institution, the question should surely arise, 'What place does the government have, if any in this part of the business?'

My proposal is that in this at least, the universities should point out that the taxpayer no longer pays the piper, and should proclaim a unilateral declaration of independence (UDI). The key relationship here is between university and student. In raising fees to £9,000 the Government has effectively elided itself from the process and redefined the relationship between Government and universities. The price universities should extract is the relevant degree of autonomy.

It is important to be clear, however, that the autonomy here is not the mythical autonomy 'to do what we like'. It is the autonomy to take full responsibility for devising and implementing policy and strategy for the future: it is the autonomy to enter into a proper relationship with its students, and the autonomy, as I shall outline, to redefine the relationship between government and universities as a contractual one between free-standing bodies, rather than a supplicants one between funder and spender. Now I concede immediately that so far my proposal may more obviously work for some faculties than for others. The London School of Economics in which Alan worked earlier in his career is a prime example of such a collection of disciplines.

There remain three large issues which would trouble most vice-chancellors: access to loans for their students; funding for science, engineering and medical courses which would not be adequately covered by the current going rate of £9,000 per year; and the costs of maintaining high standards of research, particularly in these same subjects.

Let us review these issues. The principle of access to student loans for students in independent or non-taxpayer funded institutions has already been conceded – not least in relation to students of the University of Buckingham.

There is available an easily adapted mechanism of making loans available to students on courses approved for degree awarding purposes. This could operate whatever self-funding student loan scheme is in operation.

A more radical approach might be developed by universities as they come to savour real independence. They could negotiate with major banks or financial institutions to create a loan system for their own undergraduates. There should certainly be sufficient common interest to be the basis of such discussions. It is certainly the case that the costs of science, engineering and medical courses are much higher than the equivalent humanities and social science courses. They are already subsidised by the taxpayer. I see no reason at all why this should not be continued for universities which are independent in the sense I am outlining.

It is rather the case that the relationship would be different. Instead of government subsidies or grants to cover the extra cost of educating an engineer or a physicist, there would be a contractual relationship, in which the university and the government agree terms for say, a ten year rolling contract to provide a set number of places in electronics for a set price. This would set the costs to government at a level agreeable to the university to make such provision at the appropriate quality. It would be open to the university to provide additional places at full cost should they so wish – as applies to the large number of overseas students from outside the EU already in the system. This would also have the advantage of requiring the government to put a financial value on the subjects which it deems to be essential to the future of the country.

The advantages are clear: universities plan and provide for their own future, and governments plan and provide also for national needs. This is not rocket science, this is currently how the provision of places for medical students – a joint responsibility of universities and health boards – operates. The difference is that the proposed new relationship is clearly contractual on both sides.

The third area requiring elucidation is the support of research – especially in the equivalent high-cost disciplines. We are fortunate in that we already have in place an exceptionally well-developed system which could do the job. This is a combination of three sources of research funding: the research

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councils; the voluntary sector – most notably the major foundations such as the Wellcome – and industry. The last of these might expand with the increasing awareness that there is not a default government budget to be fought over in this context.

Some of my more faint-hearted colleagues have expressed the worry that any institution declaring UDI would fall out of favour in relation to these matters which would require Government opt-in to the contractual negotiations. I have to say that I cannot imagine a research council refusing to consider bids from Cambridge or Imperial, nor a loans system already open to students from the University of Buckingham, refusing to offer loans to students from Oxford or Newcastle.

Thus in reply to Alan's questions about 'who pays?' and 'how?' I suggest that we first pause and look at the question of the relationship between universities and government, move it to a contractual rather than a supplicatory basis and give universities the opportunity to use their ingenuity in exploiting the new structure to enrich their educational provision. This latter would certainly include providing student support for less well-off but talented young people. The great private universities of North America have shown us the way on that one.

Two concluding points: all of this has had as its premise that we are dealing with not-for-profit institutions, though it has to be accepted that it could well apply beyond that range. The most recent context for developing these proposals, has been the huge financial re-shaping to higher education in England, but it is equally applicable to Scottish Higher Education.

The aims and limits of economic law

David Edward

Alan Peacock was not one of those 'who saw their future in the excitements and quick returns which appeared to be derived from macro-economic model building and associated crystal gazing.'¹ His interest lay above all in relating economic research to problems of policy and the relationship between economics and law. So, as a tribute to a rather special friend who gave me support and encouragement at an earlier stage in my life, I offer some thoughts about what is now called economic law.

The idea that there should be such a field of law is relatively recent – at least in Britain. It formed no part of the legal syllabus when I was a law student and no consideration was given to the economic implications of law. Businessmen agreed to share markets as a matter of course and it was considered right and desirable that manufacturers should, by contract, impose a uniform resale price for their goods, so that the price of a Mars Bar was the same in Shoreditch and Stornoway. It was not until Edward Heath's Resale Prices Act of 1964 that all resale price agreements were declared, in principle, to be against the public interest. Even then, it was not obvious to the public why this should be so.

For present purposes I take economic law to be the body of law (notably but not exclusively competition law) that is intended to condition the behaviour of economic actors. The economic actors in question include governments, since the law on state aids and public procurement (which is an aspect of competition law) are directed at conduct on the part of government or government agencies that distorts competition. So economic law embraces a wide spectrum of human activity.

Law and legal institutions provide the infrastructure upon which (or the context within which) economic activity is carried on. This has been so for centuries in the case of patent and copyright law, trade marks and passing off. Effective and efficient economic activity needs to be underpinned by effective and efficient legal institutions, as is shown in a negative way, by unwillingness to invest in countries that do not have effective and efficient legal institutions, such as China (at least in relation to the protection of intellectual property), Russia and some of the African and South American economies. The system of Investment Dispute Settlement through arbitration, now much criticised in the context of TTIP², was designed to overcome the disincentive to invest in countries with a defective legal system.

Economic law is designed as much to condition behaviour as to prescribe results or impose penalties. This is characteristic of other types of law that have developed in the latter part of the twentieth century – for example, the laws against discrimination on grounds of gender or race. Ideally, such laws will not need to be applied because people will refrain from behaving in a way that would attract the law’s attention.

The concept of law as a means of conditioning human behaviour echoes the approach of James Madison, ‘the father of the US Constitution.’ Madison’s approach reflected the thought of those who taught him, two of whom were Scottish ministers – notably John Witherspoon, President of Princeton and one of the signatories of the Declaration of Independence, whose statue stands at the entrance of the University of the West of Scotland. Their premise was that man is essentially sinful but capable of good actions or, as Madison put it: ‘As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust; so there are other qualities in human nature, which justify a certain portion of esteem and confidence.’

This led to his designing a constitution based on ‘checks and balances’ between political institutions and political actors.³ Those who lament the gridlock that, from time to time, overcomes American political life tend to forget that tension between the institutions of government is part of the constitutional scheme.

A comparable line of thought was pursued a hundred years later by the Scottish lawyer and politician, James (Viscount) Bryce,⁴ whose writings played a major part in the design of the Australian constitution (amongst others). It proceeds, to some extent, upon the same premises as to human behaviour, but reaches a different type of conclusion:

Of the many analogies that have been remarked between Law in the Physical and Law in the Moral World, none is more familiar than that derived from the Newtonian astronomy, which shows us two forces always operative in our solar system. One force draws the planets towards the sun as the centre of the system, the other disposes them to fly off from it into space. So in politics, we may call the tendency which draws men or groups of men together into one organised community and keeps them there a Centripetal force, and that which makes men, or groups, break away and disperse, a Centrifugal. A political Constitution or frame of government, as the complex totality of laws embodying the principles and rules whereby the community is organised, governed and held together, is exposed to the action of both these forces. . . [T]he history of every community and every constitution may be regarded as a struggle between the action of these two forces, that which draws together and that which pushes apart,

that which unites and that which dissevers. . . [L]egal institutions and formulae do not belong to a sphere of abstract theory but to a concrete world of fact. Their soundness is not merely a logical but also a practical soundness, that is to say, institutions and rules must represent and be suited to the particular phenomena they have to deal with in a particular country. . . [T]he best way of strengthening in the long run the centripetal tendencies has been to give so much recognition and play to the centrifugal as may disarm them, and may allow the causes which make for unity to operate quietly without exciting antagonism.⁵

Applying this line of thought to economic law, the first task of the rule-maker is to identify what are the 'forces' that are likely to promote, and those that are likely to hamper, the economic result that is thought to be desirable. Having identified those forces, the rule-maker must put in place the mechanisms by which the positive forces can be put to work and the negative forces restrained.

The market economy presupposes that competition between economic operators is a positive force and should be encouraged. On the other hand, experience suggests that unrestricted competition may produce undesirable results. Survival of the strongest and most ruthless is not necessarily the same, nor as economically desirable, as survival of the fittest. If the positive forces of competition are to work, competition must be fair, and the conditions of competition must not (in the words of the EU Treaty) be 'distorted,' whether by the actions of economic actors or by those of states.

It is now generally accepted (in the western liberal democracies at least) that two basic rules are required to achieve the benefits of competition while restraining the potentially harmful effects of unrestricted competition. The rules are stated with extreme brevity in the US Sherman Antitrust Act of 1890 and, with variants in their definition, in the EU Treaty and in the UK Competition Act 1998.

The rules are, first, that anti-competitive agreements and practices between economic operators should be outlawed and, second, that economically powerful operators should not be allowed to 'monopolise' the market (the Sherman Act) or 'abuse a dominant position' (the EU Treaty and the UK Competition Act). In order to ensure observance of these rules, antitrust or competition regulators are invested with powers to investigate, to issue orders and, in some cases, to impose financial penalties. Such powers are liable to be misunderstood or misused, so the activities of the regulators must themselves be subject to control by the courts. It is only if these checks and balances are put in place *and* work effectively that the desired economic good will result.

So far, so good. But a number of questions remain unanswered and, to some extent, still unasked. For example: what is the proper line of demarcation between the role of the legislator, the role of the regulator and the role of the judge? Is it the function of the regulator to regulate the market or simply to regulate the conduct of those who operate in the market? Who is to decide whether competition should give way to moral considerations (e.g. prohibition or control of abortion services or lotteries) or to social considerations (e.g. the availability of health care or legal services, or the right to strike)?

A striking illustration of the underlying problem is found in the Decision of the European Commission in the *Microsoft* case⁶ and earlier by the *IBM* case which never reached the stage of a Decision. (The current proceedings against Google may raise the same problem.)

IBM was alleged to be dominant in the market for mainframe computers and Microsoft in the market for software operating systems. Each of them had competitors who produced, or wanted to produce, products that would work, in IBM's case, with their Central Processing Unit (e.g. printers and disk drives), in Microsoft's, with Windows (e.g. media players). The effectiveness of such competing products depended, or was alleged to depend, on the competitors knowing certain precise details about IBM's or Microsoft's systems, which IBM and Microsoft refused to disclose. The issue was whether such refusal was an 'abuse' of IBM's or Microsoft's dominant position. This raised the question whether a dominant undertaking should be required by law to disclose information to competitors in order to enable them to compete with it.

From one point of view, the answer should be positive since the purpose of the law is to promote competition and the presence on the market of a dominant undertaking diminishes or inhibits the free play of competition. So a dominant undertaking should be required, even at a cost to itself, to help towards the creation of a more competitive market. This implies that the regulator must take a view as to what a more competitive market should look like, and that regulation can and should be deployed to that end.

From another point of view, competition law is intended to promote innovation and inventiveness and this will not necessarily be achieved by requiring successful undertakings to make available to their competitors the fruits of their innovation and inventiveness. The presence on the market of a

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dominant undertaking may be attributable to a range of possible causes, including the incompetence of the competitors. Moreover, dominance can be transitory as IBM, which had concentrated on mainframe computers, found out when the personal computer entered the market. It is no part of the function of the regulator to second-guess – far less attempt to direct – the workings of the market.

Who is to decide which of these points of view is correct and according to what criteria? In the US the problem will probably be resolved in the long run by the courts, though they do not always agree; in the EU by the European Commission, subject to a limited form of judicial review; and in the UK (now) by the new Competition and Markets Authority, subject to appeal on the merits to the Competition Appeal Tribunal. The scope for the legislator to influence the choice is, in practice, minimal and the tendency, in the UK at least, is to remove such decisions from the scope of political decision-making. Meanwhile, an enormous volume of regulations, case law, academic and professional commentary and economic analysis has built up – much of it impenetrable to the layman and fully understood only by the specialist.

Nevertheless, it is important that, at the very least, the well-informed and interested layman should be able to tell whether the regulators and the courts are solely concerned with policing bad behaviour on the part of businessmen – particularly large corporations that have sufficient market power to manipulate the way the market works – or whether they should have a wider and more ambitious agenda to intervene and regulate the way the market works.

It is both an advantage and a disadvantage that the basic statutory or treaty texts are brief and are couched in rather simple, non-technical language. But the question arises whether regulators and judges should confine themselves to applying and enforcing the text as it stands or should, on the other hand, import additional economic, moral or social criteria to supplement the text. Thus, 'economic law' is not a fixed, but a variable concept. Its meaning will depend on who is using the expression and in what context. In particular, those who use it may or may not agree as to what the laws of economics require. This is shown all too clearly in the current debate about the role of the regulator in financial markets.

Assuming that economic law means the body of law that is designed to condition the conduct of economic actors, the law-maker will be motivated and guided by a variety of considerations – political (what are the limits of the possible?), social or moral (who should benefit and what desirable or undesirable social results may follow?) and economic (what is likely to be the economic result and what result will be economically the most efficient?) The choice will not be dictated, nor should it be dictated, exclusively by economic criteria. Law and legal theory provide no definitive answers nor, I would

contend, do any supposed laws of economics. There is, as lawyers say, a margin of appreciation and no workable system of economic law can operate without it. The question that needs to be considered, case by case, is to whom the exercise of 'appreciation' properly belongs – the legislator, the executive, the regulator, the judiciary or the opinion of economists, moralists or social scientists?

What matters is that law-makers should be clear about the objectives they wish to pursue and put in place regulatory and other mechanisms that are appropriate to achieve them. These mechanisms should be transparent, objective and impartial. So they must include the checks and balances necessary to avoid arbitrary exercise of regulatory power. But good law and good mechanisms will not, by themselves produce economic good. That depends on human beings.

How he influenced my career

Keith Lumsden

The winds of change swept through the Department of Political Economy, University of Edinburgh in 1957-58 with the arrival of the new Professor, Alan Peacock. Economics as a science had arrived. The history of economic thought gave way to Paul Samuelson's *Economics*. New faculty members were appointed, young American economists were visitors, an Economics Society was founded in the Honours class, reading parties went to The Burn, a beautiful country house near Edzell used by the university. Social evenings with sherry emerged, including visits to Alan's house where we met Margaret and the three children. There was a buzz in the new home of the Economics Department in George Square. Sir Alexander Gray, Alan's predecessor, was a visitor at one of the social evenings and, in his opinion, the sherry glasses were too small. He stated that if I were to leave one of the bottles with him it would save me coming back continuously with refills. I complied and was greatly amused to see him having the glass refilled by one of my fellow students – from a different bottle!

Close bonds grew up with members of the class of '59 and every ten years a reunion has taken place in Edinburgh with almost all of the '59 graduates attending. Alan had been the principal guest at each one.

Alan's influence extended beyond the UK shores. He encouraged me and many others to continue to study economics in the US, where exciting developments in the subject were emerging. My research, which was concerned with the absence of rigour in how economists dealt with one of their principal activities, teaching, prompted an invitation from The Esmée Fairbairn Trust to prepare a paper on economics education in the UK and how it might be improved. The paper suggested a large-scale research project on existing practices to attempt to identify and measure the contribution of difference pedagogies. The paper was given by the trustees to Alan for his review. The Esmée Fairbairn Trust, along with many others, had a very high regard for Alan and they endorsed his recommendations, which included asking me to return to the UK to head the research project. The Economics Education Project was the start of a long series of studies, the development of innovative pedagogies, and rigorous testing instruments, and the launching of executive programmes and company training courses, all of which contributed eventually to the establishment of Edinburgh Business School, the

Graduate School of Business at Heriot-Watt University, and the launch of the world's largest distance learning MBA programme. By January 2015, Edinburgh Business had over 12,000 active students studying in 154 countries in five languages with 17,500 alumni.

Alan had returned to Edinburgh when Edinburgh Business School was born and he was invited to join the board and to become an honorary professor. He accepted and also became co-author of one of our elective courses on Government and Industry. Alan felt that his honorary professorship should be accompanied by publications and over the following 25 years he continued to write. His last publication was *Defying Decrepitude: A Personal Memoir*.

I visited Alan in St Raphael's Care Home a few days before he died. His sense of humour had never been better. 'This is the last chance saloon,' he told

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me. He observed that his room, while small, was large enough to accommodate his piano and, although on the ground floor with no view, he anticipated being moved upstairs to a larger room. 'The turnover rate in the place is quite rapid,' he observed with a chuckle. While he often spoke about how much he had admired our efforts to have Heriot-Watt University accept the concept of a distance learning degree and how we overcame established practices, one favourite recollection

concerned our 'tea lady.' We ran intensive executive programmes with tea breaks in the morning and afternoon, but not always at the same hours. The arrangement we had with our tea lady involved a telephone call first thing telling her the professor of the day's preferences. She lived five minutes away, arrived on demand, served tea/coffee and went home after clearing up. It was a perfect arrangement for everyone. Then came the day when, in tears, she informed me she had been told by the university she had to retire as she was 65. There were no retirement rules for consultants, however, so I made her a consultant. Alan liked to recall that story. He stated also he had additional material to add to *Defying Decrepitude* – another two chapters. One was to talk about the wonderful care he was receiving from the staff at St Raphael's Care Home and the second to describe his fellow inmates. 'They don't talk,' said Alan, 'they just emerge at meal times, eat then scuttle back to their rooms.' Alan was planning to visit Edinburgh Business School via Adam Smith's Panmure House, accompanied by Gavin Kennedy, the week he died. He was

coming for lunch. 'Tell Keith I don't want his usual tongue, ham and smoked salmon with salads. I want a curry!' We enjoyed the curry, but we missed Alan.

Serendipity pursued and, in large part, determined my career and much of that serendipity included elements of Alan. He influenced my colleague, Professor Alex Scott, in a different way...



Edinburgh Business School authors in November 1995: Alan Peacock is in the front row on the left, Keith Lumsden front row centre. *Photograph: Murray McBey Photography*

Peacock and Wagner's Law

Alex Scott

It was in 1997 that Alan approached me with two questions. The first related to some thoughts he had about the research into Wagner's Law and the second was to get my view on a piece of music he had written for classical guitar with me in mind. On the first question I can do no better than quote the Abstract from the article we subsequently published.

Wagner's 'Law of Increasing State Activity' has recently been subjected to intensive use of recondite econometric testing procedures. An examination of the relevant articles reveals ignorance both of Wagner's definition of 'State Activity' and of his insistence that he was not engaged in prediction. Consequently, the omission of public enterprises contained in Wagner's definition leads to a model misspecification and the object of testing his hypothesis remains obscure.

Being a true scholar, and understanding German, Alan had gone back to the original writings of Wagner and discovered that the interpretations of his ideas were misleading. The reason Alan approached me was that he was unsure of how to criticise the large number of econometric studies carried out on Wagner's Law, most of which he considered to be worthless. So I took the latest 21 articles and tabulated them according to definitions of the dependent and independent variables, data sources used, choice of specification and econometric technique; when presented in this way it was clear that the studies had little in common and certainly did not amount to a research programme. In fact they looked like a series of opportunistic studies dictated by what data were available and what techniques looked likely to produce results vaguely related to Wagner's original concept.

Alan sent the resulting paper to the late Professor Charles Rowley, Director of the Locke Institute and editor of *Public Finance*, who came back with an unusual response. He reckoned that there was no point in putting the article out to referees because they would be the very people we were criticising. After the article was published ('The Curious Attraction of Wagner's Law' *Public Choice* Vol 102 Nos 1-2 January 2000) we waited for a response. But there was none; instead, econometric studies of Wagner's Law have continued to be published. Such is academic life. Alan, of course, just laughed out loud.

On the second question, I studied and played Alan's composition; he was a highly accomplished musician who could play both viola and clarinet and had studied composition under Hans Gal. He asked for my reaction so I gave him my highly learned opinion: 'there are not enough high notes.' It was at that point I discovered that while Alan was perfectly happy to defend his academic writings against vociferous criticism, even the mildest aspersion cast on his musical compositions invoked the full power of his majestic rage. A few weeks later, to my astonishment and relief, he came back with a revised version and I received the greatest compliment of my life. 'You might just have had a point,' he said. Below, in his own handwriting (I have the original), is the front page and final page of 'A song from my youth haunts me' (also demonstrating his German scholarship) and the final page showing where he changed an A to A sharp. It can also be seen that he did indeed put in some 'high notes' and generated a piece of considerable complexity. It is a mark of his intellect that he could 'hear' the music and spotted that the A should be sharpened. Time goes on and it was not until Alan was in St Raphael's that I realised he had not heard the piece for many years; I prepared it for his last visit to Edinburgh Business School but he died a few days before.

A SOLO FROM MY YOUTH HAUNTS ME
FOR GUITAR SOLO

Aus der Jugendzeit , aus der Jugendzeit
Klingt ein Lied mir immerdar

- Friedrich Rückert 1788 - 1866

Handwritten notes and signatures:
- A sharp
- *Alan*
- *Alan*

The image displays a handwritten musical score consisting of five systems of staves. The notation is written in black ink on white paper. The first system features a treble clef, a key signature of one sharp (F#), and a 4/4 time signature. It contains a melodic line with eighth and sixteenth notes, and a bass line with chords and some accidentals. The second system continues the melodic and harmonic development. The third system shows a more complex melodic line with some slurs and accents. The fourth system includes a treble clef, a key signature of one sharp, and a 4/4 time signature, with a melodic line and a bass line that includes a double bar line and some accidentals. The fifth system is a single staff with a treble clef, a key signature of one sharp, and a 4/4 time signature, containing a melodic line with a double bar line and some accidentals. The notation is somewhat sketchy and appears to be a working draft.

Anxious to do good for others

Gavin Kennedy

I first met Alan Peacock in 1978 at the South Queensferry plant of Hewlett-Packard, where The Esmée Fairbairn Research Centre (TEFRC) at Heriot-Watt University held the annual finals of its UK Schools computer game: 'Running the British Economy.' I had recently heard of TEFRC's inter-active computer game and was invited along to see how real-world public finance and macro-economics could be taught, replacing traditional university 'chalk and talk' methods. I spent a lot of time that day with Alan, convivially sampling the red wines (on which he was well informed), while we discussed the problems of teaching real-world public finance in universities (of which he was even better informed). I knew he had co-edited with Richard Musgrave, *Classics in the Theory of Public Finance* (1958), introducing English speaking, monolingual macro-specialists on both sides of the Atlantic to the Italian classics (he was fluent in both Italian and German). He added more studies in public finance (with Jack Wiseman: *The Growth of Public Expenditure in the UK 1890-1955*) detailing the seemingly inexorable increase in public spending, driven by the needs of post-war recovery and public welfare.

I was struck that afternoon by Alan's approach to the practical problems of implementing cross-party commitments to political, needs-led public expenditure that ignored other practical ways by which such goals might be achieved. This was not the first and certainly not the last occasion in which Alan Peacock stood out against ideological (for or against) pressure for solving problems without considering evidenced-based alternative ways to finance public expenditure. Throughout his public life, Alan Peacock stood up for evidence-based practical solutions to problems, untainted by conformity with prior-decided, politically-tainted, fixed opinions.

Of course, I was unaware of what I came to realise, many years later, Alan's consistent characteristic in his public involvements with public controversies, across the many fields of his interests. He thought first and avoided pre-determined political theories. I listened attentively to his views because, at the time, I was teaching Public Finance to Honours students at Strathclyde University, using Richard Musgrave's US textbook. I also had a research interest in Cold War defence finance. Our first meeting set the tone of our relationship for the next 36 years. He was a veritable window onto how governments and public bodies actually functioned, and I was his enthusiastic

listener and reader of his numerous published works and the many more he recommended.

Shortly afterwards (1985) I moved to Heriot-Watt University as Professor of Defence Finance in the Department of Accountancy and Finance, and also joined Alan as a colleague at The Esmée Fairbairn Research Centre, which later dissolved when it founded Heriot-Watt's new Edinburgh Business School (1989). We spent many hours discussing our mutual interests in political economy and also Alan's several prominent roles in high-level public affairs.

Alan was a great raconteur about the people he had met and worked with in his professorial appointments at Edinburgh, York, LSE and Buckingham universities and at EBS. He had been closely involved in policy research for the post-war Liberal Party and in part-time and secondment for research and advice for the civil service. He knew many of the leading UK, European and US

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economists veritable stars for their scholarly works. Irreverent faculty gossip of their political (never sexual!) foibles slipped out effortlessly when Alan was in full flow, often imitating individuals in credible American, German and Italian accents for things they had said in his presence.

For example, Paul Samuelson, the American author of the world's most influential post-war economics textbook, shrugged off the extremely high cost (by UK standards) of his wife's US medical treatment, with a boast that his 'Spanish royalties will pay for all that!' Harry Johnston was also a rich source of amusing anecdotes about when he held a prestigious chair in Chicago University, while hopping back and forth to the London School of Economics, to conduct a full teaching-load and still managing to publish several hundred scholarly papers in the world's top professional journals. Harry considered English economists to be lazy.

Alan, however, was always discreet about his war service in the Royal Navy, but as the years went by he seemed to regard me as a sort of honorary sailor, for my school-days at the London Nautical School and after reading my books on Captain Bligh, of mutiny fame, and Captain Cook. Alan spoke very little about his distinguished wartime service as a Lieutenant on a Royal Navy destroyer in the Arctic 1942-5, for which he was awarded the Distinguished Service Cross (DSC). To his abiding irritation, given what he and shipmates had endured in their dangerous Arctic voyages to earn their medals, he grumbled at having to correct various university printers, who listed his wartime DSC as a 'DSc' degree instead.

He left a cryptic clue to the nature of his wartime experience in the title of his autobiographical essay, *The Enigmatic Sailor*, published in 2003, though at the time, I completely missed its significance. However, in 2010, in his autobiographical *Anxious to do Good* (2010), he disclosed his Arctic intelligence work when he described himself, 'then only 20, transformed from being an immature university student into a practised hand at puzzling out the meaning of encoded messages while a sea-going naval intelligence officer' on behalf of Bletchley Park and the then highly secret 'Enigma' project.

Alan was fluent in German and Italian and until last time I visited him two days before he passed away, often spoke enthusiastically about the minutiae of German opera – even of specific chords. He long realised that I knew absolutely nothing about the music he so passionately cared about, though I always listened as attentively as I could, because I knew how much it meant to him. When his hands became too arthritic to play and, what he called irreverently his 'cell' in the care-home, was too small to accommodate his beloved piano, a light dimmed in his eyes and, near the end, that light appeared to have gone altogether.

He commented occasionally that some of his former wartime shipmates contacted him asking for his help. These incidents showed Alan at his typically caring best. When one of his fellow crew members was grievously embarrassed by a tearful granddaughter, who had visited Naval Records to look up her grandfather's war service, but did not find his name rostered on any of the ships he had mentioned, he asked Alan to look into the 'error' of his missing name. Typically, Alan leapt into action with his usual righteous determination, phoned and visited the Admiralty, and spoke to a young man in his mid-20s, who, in Alan's words, had never endured anything like what his men had lived through at his age over 40 years before. Typically, Alan escalated his enquiries up the ranks to be told by a senior officer that a war-time administrative order not to list the names of men who had worked for intelligence on board specific ships was still in force. Alan forcefully demanded to have this oversight rectified because it was only of interest to the good men concerned, who had done their duty but were now experiencing avoidable embarrassments in front of their families. Eventually good sense prevailed. Alan told me of other interventions on behalf of others of his men similarly embarrassed – one involving 'unlisted' seamen who had not received their appropriate Arctic service medals. Alan said grumpily how he had intervened only to seek justice on his men's behalf.

These and other incidents brought out Alan's rarely seen, but real protective anger, on issues great and small. He tended to react forcefully when he perceived breaches of what he regarded as appropriate conduct. For example, I was among senior colleagues who attended the signing ceremony for the establishment of the Edinburgh Business School in 1987. The party

was very late back from the university Principal's office where the legal documents were signed and a celebratory glass of wine was drunk. This kept Alan and other academic colleagues, clerical and junior academic staff, waiting for well over an hour past the scheduled time for our celebratory lunch in EBS. I was first back and took the full brunt of Alan's ire. Unlike Captain Bligh, who chastised anybody very loudly and publically in front of officers and crew, Alan took me aside to a corner and made his views explicitly clear, especially as the others had still not turned up. It was an uncomfortable experience, particularly as I was the first back by a good 20 minutes!

As usual, Alan's anger diminished suddenly after he had made his point, returning him to his normal, perfectly balanced civility. I witnessed many

He quickly sent off a note to the Permanent Secretary suggesting that he resurrect Alan's first paper, advising the then Labour Government in 1946 to do the same thing. He was delighted to receive by return of post a lovely appreciative letter

similar episodes over the years, particularly with regard to the temporary storage of his academic papers, which he left in various places. Unfortunately, in Alan's view, impatient hosts, did not always treat his boxes with respect. Where Alan believed that breaches of mannerly protocols of appropriate behaviour had occurred they provoked his outrage from his firm sense of proper conduct. He would fume, but in a flash return to his normal self-control.

Alan spent a not inconsiderable time through his senior professorial years encouraging young academics to pursue activities that would enhance their promotion prospects and also quietly lobbied on their behalf to their seniors. I saw this at close range with a number of both young and established academics, whom he helped discreetly. When I approached retirement, I discussed with Alan my academic interest in Adam Smith. Alan loaned many of his books and papers and we often spent time discussing their finer points. Out of the blue, close to my retirement date in 2005, Palgrave-Macmillan invited me to send them my proposed book's outline. I suspected Alan had mentioned my Smith project to a Palgrave editor, whom he no doubt just happened to know. After this a pattern commenced of Alan reading many draft chapters and articles and commenting on them. These sessions initiated an increasingly frequent series of informal but intellectually stimulating meetings, which we continued up to August 2014.

After Margaret, his wartime bride and mother of their children, died in 2011, he continued to live in their flat in the Grange, Edinburgh. Later, while

we both had some walking mobility we met at the nearby 'Earthy' café that was equidistant between our homes for coffee and discussions. Unfortunately, when Alan and I had lost our limited physical mobility we switched to my taking a family-lift or a taxi to his St. Raphael's care-home. Our drinking days were over by then, though Alan in his care-home was always pleased to receive a half-dozen, small bottles of Stella Artois, which I unobtrusively brought in for him. Our discussions continued at the same mutually attentive pace of every one or two days. I noticed that, unlike before, Alan regularly dozed off momentarily while he was speaking, and as sharply he would wake-up and carry on where he had left off, which behaviour I put down to his medication.

Alan remained a lively speaker, full of relevant (and sometimes irreverent) stories. I noticed once, he had a small piece of paper with a short-list on of what looked like topics he intended to talk about, or as often, ask about, alongside a book or two, or some paper he had written from his abundant files, and which he considered I should read and invariably prepare for a discussion at our next meeting. He also loved it when an old academic colleague visited him and discoursed for an hour or two. In one such discussion Alan mentioned that Thomas Chalmers, the charismatic, 19th-century preacher, was buried a few hundred yards away in Marchmont cemetery. He recommended that I visit Chalmers' grave and also read his book on Smithian political economy. Next time we met he was delighted that I brought along a copy of Chalmers' textbook with paper bookmarks in several pages where Chalmers commented on Adam Smith, which we then discussed. That was Alan to the end, the tutor, teacher and educator.

At St Raphael's Care Home he increasingly required constant attention and physical support, though that did not stop him escorting me slowly to the front door, introducing me to anybody we passed. Sometimes we sat outside in the south-facing sunshine, waiting for my lift. He had lost a great deal of weight after leaving his Grange flat but he displayed no less enthusiasm for whatever he wanted to discuss.

One major concern of his was for the safe disposal of his accumulation of academic papers and reports from his lifetime of public service. He had arranged for them to be deposited at St. Andrews University, where Alan's father, Alexander Peacock, had been Professor of Zoology, and where Alan had studied for his own Bachelor's degree. He was very proud of his father's fieldwork during WW1, conducted under difficult trench-war conditions, which resulted in his finding the causes of 'trench fever.' This careful fieldwork eventually reduced the appalling death rates among the troops in the water-sodden trenches. Among Alan's many papers there is one with his typically cryptic title: *The Peacock versus the louse (pediculus humanus*

corporis): one soldier's contribution to combating trench fever in the First World War, written for The Royal College of Physicians of Edinburgh in 2010.

Among scores of other papers, there is Alan's first paper in 1946 as an economic advisor to the civil service, in which he advocated (with a colleague) the merging of the National Insurance Scheme with Income Tax. The Coalition Government mooted in the press in 2014 that it was considering merging the two taxes and this news coincided with my arrival that morning for our almost daily meetings. Alan was in good form and visibly excited at the merger reports. He quickly sent off a note to the Permanent Secretary of the relevant department, suggesting that he resurrect Alan's first paper, advising the then Labour Government in 1946 to do the same thing. He was delighted to receive by return of post a lovely appreciative letter.

Alan's output of mainly autobiographical short books was also laden with his comments on current policy issues and on committees on which he served, sometimes necessitating his resort to minority reports. He was principled, and insistent on evidence-based choices, not influenced by ideology of left or right. Politically Alan remained a classical Liberal, rarer today than ever before. He was never satisfied with merely proposing diluted concessions to satisfy the bland over the brave. Mostly, his advice disappointed governments of the day. One case, for example, disappointed Prime Minister Margaret Thatcher, who wanted a clear rebuttal of the case for a publicly funded BBC. Alan's view of the evidence fell short of Mrs. Thatcher's ambitions, though subsequent events might show that Alan was both prescient and broadly right. He had contributory and chairing roles on several official committees, addressing his main passions of policies for culture and the arts. He illustrated his evidence-based approach in his co-authored book, Alan Peacock and Ilde Rizzo: *The Heritage Game: economics, policy and practice* (Oxford University Press, 2008), which would be beneficial reading for people appointed to or charged with changing such committees.

Alan wrote very well, as illustrated in *Defying Decrepitude: a personal memoir* (2013). It is typical of his self-effacing, defiant style and his mocking irreverence for one's fate. That is probably a clue to his survival after his ship was torpedoed in 1943. He just got on with it, as he had to when later he realised his committee members were, in his considered view, captured by those who disregarded the evidence that he plainly set before them. The last thing on his mind would have been to curry favour with those who had implicit patronage and who could withhold it if he voted against their judgments. Of his growing decrepitude there was no choice for him but mocking defiance to the inevitable end. He told me in those last weeks that he was already preparing additional chapters for a new edition of the book.

Typically, at our last meeting, while he was recovering from a second fall, he urged me to read a couple of his books from his library, one on Samuel

Johnson and the other the autobiography of John Stuart Mill. Both men defied their contemporary conventions, though Mill probably better exemplified the strict moral standing to which Alan aspired. We also discussed some arcane details of navigation and spherical trigonometry and why it took so long to discover how to measure longitude (here my attendance in the 1950s at London Nautical School came in handy).

Next day, we had a short telephone conversation to confirm our next meeting, which had to be postponed because Alan had fallen again (for which, typically, he profusely apologised!) That re-arranged meeting never took place. When I rang his room next morning to check with the care-home's switchboard, I was told that Alan had passed away at 4.30 am.

I was distraught and sat in my study to be alone. At some point I looked through the many books he had given me over the years. Finally, on picking up *Anxious to do Good: learning to be an economist the hard way* (2010), (the key to Alan lies in the adjectives), I was struck by what he had written on the copy he had presented to me: 'For Gavin who knows what it means to plough your own furrow, from Alan.'

In a sentence, that summed Alan's professional life, Kipling-like with 'triumphs and disasters,' but in the balance, while he was ploughing his own well-defined furrows, Alan ultimately had more triumphs than disasters with, I am sure, more to come retrospectively. He seemed to me to not just be someone who did good for a lot of those he knew; he was genuinely anxious to do good for others.

Select bibliography of Alan Peacock

Alan Peacock's published output was prodigious, and the compilation of a complete bibliography will be a major task for another occasion. A starting point is provided by the bibliography prepared for the festschrift in Alan's honour published in 1985: *Public choice, public finance and public policy*, edited by D Greenaway and G K Shaw (Blackwell, 1985). This lists 20 books, monographs and pamphlets; ten edited works and translations from German; 12 contributions to official reports and enquiries; and 139 articles (the earliest published in 1949, and many thereafter in German, French and Italian) in journals and book collections. He still had thirty more highly productive years to live. Indeed, until very near the end he contemplated a second edition of his last book, aptly entitled *Defying decrepitude*, and there has already been at least one posthumous publication. Two collections of his papers were published: *The economic analysis of government and related themes* (Martin Robertson, 1979) and *The political economy of economic freedom* (Elgar, 1997). These may give some indication of what he regarded as the most significant amongst his essays to at least the later date. His publications for The David Hume Institute can be traced through the Institute's website: <http://www.davidhumeinstitute.com/publications.html>.

The list which follows is primarily based on the books and papers which, when he died, he himself still held, fortuitously or otherwise. This is supplemented by reference to the 1985 bibliography, the two sets of selected papers (* indicates that the piece in question appears in the 1979 set, ** in the 1997 set), the catalogues of the National Library of Scotland and Edinburgh University Library, and the publications list of The David Hume Institute. Also included are some of the rather more personal memoirs that he began to publish in the last twenty years or so of his long and fruitful life. These say much about the philosophy which underpinned his actions as well as his writings and also about the variegated experiences through which that philosophy was developed and crystallised. It has not always been possible to supply details such as pagination. The list takes no account of Alan's numerous op-ed pieces and letters to the editor in newspapers, especially *The Times*, although cuttings and copies of many of these are preserved amongst the papers now deposited in St Andrews University Library.

1951

'Sur la théorie des dépenses publiques,' *Économie Appliquée*, 427-445.

1952

The economics of national insurance, William Hodge.

1954

National insurance and social accounting (with Harold C Edey), Hutchinson's University Library; 2nd edn 1959; 3rd edn (with Ronald Cooper also) 1967; reprinted 2003.

'Public finance in the welfare state,' *The Banker*, 1-8.

1955

'Economic theory and the concept of an optimum population,' in J B Cragg and N W Pirie (eds), *The numbers of man and animals* (Oliver & Boyd), 1-12 (with discussion).

1956

'The finance of state education in the United Kingdom' (with Jack Wiseman), in *Year Book of Education, 1956*.

1957

'The economics of national superannuation,' *Three Banks Review* 3-21
From political economy to economic science (inaugural lecture), *University of Edinburgh Journal*, 249-257.

1958

Classics in the theory of public finance (with Richard A Musgrave, eds.) Macmillan; 4th impression 1967.

The national income of Tanganyika, 1952-54 (with Douglas G M Dosser), HMSO.

'Monetary policy and central bank organisation,' *Scottish Bankers Magazine*, 3-11.

1959

'The public sector and the theory of economic growth,' *Scottish Journal of Political Economy* 7, 1-12.

1960

Report of the commission of enquiry into the natural resources and population trends of the colony of Fiji (Commission member). Legislative Council of Fiji Council Paper no 1. Suva, Fiji.

1961

The growth of public expenditure in the United Kingdom (with Jack Wiseman) Princeton University Press; 2nd edition, Allen & Unwin, 1967

The welfare society. Unservile State Papers No 2.

1962

A survey of education within the framework of social and economic development in Afghanistan (member of Mission and contributor). UNESCO.

1963

Public expenditure: appraisal and control (with D J Robertson, eds), Oliver & Boyd.

'Economics of a net wealth tax for Britain,' *British Tax Review*, 388-399.

1964

Education for democrats (with Jack Wiseman), Institute of Economic Affairs, Hobart Papers No 25.

1965

Government finance and economic development: papers and proceedings of the third Study Conference on problems of economic development organised by the Development Department of OECD, Organisation for Economic Co-operation and Development.

1967

'Consumption taxes and compensatory finance' (with John Williamson), *Economic Journal*, 77, 27-47.

1968

Educational finance: its sources and uses in the United Kingdom, Oliver & Boyd.

'Public patronage and music: an economist's view,' *Three Banks Review*, 1-19.

'The welfare state and the redistribution of income' (with J R Shannon), *Westminster Bank Review*, unpaginated.

'The new doctors' dilemma' (with G K Shaw), *Lloyds Bank Review*, 26-38.

1969

Quantitative analysis in public finance (assisted by D Biehl). Praeger.

Economic aspects of student unrest, Institute of Economic Affairs.

'Justifying the subsidy,' *Opera*, 376-378.

1971

Fiscal policy and the employment problem in less developed countries (with G K Shaw) OECD.

The economic theory of fiscal policy, Allen & Unwin.

The political economy of public spending, The Mercantile Credit Lecture, 2 November 1971, University of Reading.

1972

*'Welfare economics and the public regulation of natural monopoly' (with Charles K Rowley), *Journal of Public Economics* 1, 227-244.

1973

Royal Commission on the Constitution 1969-1973 volume II: memorandum of dissent (with Lord Crowther-Hunt), HMSO.

'Welfare economics and the public regulation of natural monopoly: a reply' (with Charles K Rowley), *Journal of Public Economics*, 2, 97-100.

'An economic analysis of the British tax-credit proposals' (with Alan Maynard), in *Conference on Proposals for a Tax-Credit System*, 11-24. Institute of Fiscal Studies.

'Cost-benefit analysis and the political control of public investment,' in J N Wolfe (ed), *Cost Benefit and Cost Effectiveness*, 17-29. Allen & Unwin.

1974

'The economics of museums and galleries' (with Christine Godfrey), *Lloyd's Bank Review* 17-28.

1975

The composer in the market place (with Ronald Weir) Faber.

Welfare economics: a liberal restatement (with Charles K Rowley) Martin Robertson.

'International linkage models and the public sector' (with Martin Ricketts), *Public Finance*, 30, 289-312.

1976

The economic theory of fiscal policy, 2nd edition Allen and Unwin.

1977

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1978

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'Combined defence and international economic cooperation' (with Keith Hartley), *The World Economy*, 1, 327-339.

1979

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*'The limitations of public goods theory: the lighthouse revisited' in Peter Bohley and Georg Tolkemitt (eds), *Wirtschaftswissenschaft als Grundlage staatlichen Handelns: Heinz haller zum 65. Geburtstag*, 105-114. J C B Mohr (Paul Siebeck) Tübingen. Not in 1985 bibliography.

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**'Fiscal theory and the market for tax reform,' in F Forte and K Roskamp (eds), *The reform of tax systems*. Wayne State University Press, Detroit.

1981

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The public sector borrowing requirement (with G K Shaw), University College of Buckingham Occasional Papers in Economics No 1.

'Inter-governmental fiscal relations in a unitary state: the example of the United Kingdom' (with Martin Ricketts), in Fritz Neumark (ed), *Handbuch der Finanzwissenschaft*, 53-68. J C B Mohr (Paul Siebeck), Tübingen.

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'Model building and fiscal policy: then and now,' *Finanzarchiv*, 39, 43-52.

1982

Inflation and the performed arts (with Eddie Shoemith and Geoffrey Miller), Arts Council of Great Britain.

Probably contemporaneous: 'Economics, inflation and the performing arts,' in *Inflation in the Arts*, 107-[photocopy incomplete], University College of Buckingham.

1983

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Institute, 1996); and (2) *Argument amongst friends: twenty five years of sceptical inquiry*, ed Nick Kuenssberg (The David Hume Institute, 2011). Not in 1985 bibliography.

**'The disaffection of the taxpayer,' *Atlantic Economic Journal*, 11, 6-15.

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The regulation game: how British and West German companies bargain with government (ed). Blackwell.

'Privatisation in perspective,' *Three Banks Review*, no 144, 3-25.

'Is there a public debt "problem" in developed countries?,' in *Public finance and public debt: proceedings of the 40th congress of the International Institute of Public Finance*, Wayne State University Press, Detroit.

1985

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1986

The political economy of pension provision (with Norman Barry), David Hume Institute Occasional Paper No 2.

Making sense of broadcasting finance, Robbins Lecture, University of Stirling, 9 October 1986.

Libertà economica e pensiero liberale contemporaneo, Torino.

'Der Nationalökonom als Berater der Wirtschafts- und Finanzpolitik,' *Wirtschaftspolitische Blätter* 5, 638-650.

1987

***The politics of investigating broadcasting finance*, Edinburgh University Press.

David Hume in unserer Zeit (with Ernst Topitsch), Verlag Wirtschaft und Finanzen GmbH.

Cultural economics and the finance of the arts, Esmee Fairbairn Lecture 1987, University of Lancaster.

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1989

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German neo-liberals and the social market economy, Macmillan for the Trade Policy Research Centre.

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The trials of setting up in the university business and the funding problems, La Trobe University, Australia.

1990

'Identifying and applying norms for subsidies to industry' in Ronald Gerritse (ed) *Producer subsidies*, 20-31. Institute for Research on Public Expenditure. Pinter.

1991

Corporate takeovers and the public interest: report of an inquiry conducted for the Joseph Rowntree Foundation by the David Hume Institute (with Graham Bannock) Aberdeen University Press.

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Takeovers and industrial policy: a defence (with Graham Bannock) David Hume Institute.

Public choice analysis in historical perspective, Cambridge University Press.

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**'The credibility of economic advice to government,' *Economic Journal* 102, 1213-1222.

1993

Paying the piper, Edinburgh University Press.

**'Foreword to David Hume's *Political Discourses*,' in Douglas Mair (ed), *The Scottish tradition in economic thought*, 233-248. Aberdeen University Press.

1994

Cultural economics and cultural policies (with Ilde Rizzo, eds.), Kluwer.

A future for the past: the political economy of heritage, David Hume Institute Occasional Paper No 44 (draft of 1994 British Academy Keynes Lecture delivered on 27 October 1994 at The British Academy and on 5 December 1994 at The Royal Society of Edinburgh.)

'Welfare economics and public subsidies to the arts,' *Journal of Cultural Economics*, 18, 151-161.

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Notes and references

Page 15: Alan Peacock dissenting: the problem of devolution

¹ Royal Commission on the Constitution 1969-1973 Volume II Memorandum of Dissent by Lord Crowther-Hunt and Professor A T Peacock, October 1973, Cmnd 5460-I, p ix para 3.

² Ibid, p viii para 2(e); and see further Chapter III.

³ Ibid, p viii para 2(g)(i). The contrary idea that sovereignty is not 'monocular' but can be and is frequently shared was a favourite theme of the late Neil MacCormick, formerly a Vice President of the David Hume Institute: see his *Questioning Sovereignty* (1999).

⁴ The phrase 'West Lothian question' is apparently to be attributed to Enoch Powell, who used it to encapsulate Tam Dalyell's repeated reference in Parliamentary debates on the Scotland Bill of the later 1970s to the problem of why he as MP for West Lothian should be entitled to vote on matters affecting Blackburn, Lancashire, when that area's MP would be unable to vote on matters affecting the town of Blackburn in Dalyell's West Lothian constituency. See further Dalyell's autobiography, *The Importance of Being Awkward* (2011) chapter 8. It is said that the general question was first raised by Gladstone during the Irish Home Rule debates in 1886.

⁵ Memorandum of Dissent, p viii para 2(g)(iii).

⁶ Ibid, p 101 para 249.

⁷ Ibid, p 98 para 242.

⁸ Ibid, p 89 para 219.

⁹ Quite inappropriately it was proposed that this Constitutional Court be a division of the High Court of England & Wales: *ibid*, p 119 para 308.

¹⁰ Ibid, p viii para 2(g)(iv).

¹¹ As a trivial example, I have had to explain to an English MP on a Westminster Parliamentary committee that consumer law is not a matter within the legislative competence of the Scottish Parliament: see Hansard, 11 February 2014, Consumer Rights Bill Committee, col 21 question 44 (accessible at <http://www.publications.parliament.uk/pa/cm201314/cmpublic/consumer/140211/am/140211s01.htm>).

¹² See e.g. *The Devise of Devolution* (Hume Occasional Paper No 50, 1996); 'The political economy of devolution: the British case,' in *The Political Economy of Economic Freedom* (Edward Elgar, 1997), chapter 19; 'The distraught geometry of asymmetric devolution' in *Calling Scotland to Account: Policy Options for Spending and Taxation* (Policy Institute, Edinburgh, 2001), 64-67.

¹³ The acronym 'EVEL' is awkward for proponents of the cause.

¹⁴ For the meanings of public and private right see Hector MacQueen, 'Public law, private law, and national identity,' in Cormac Mac Amlaigh, Claudio Michelon, and Neil Walker (eds), *After Public Law* (Oxford, 2013) 168-198, 177-184.

¹⁵ *MacCormick v Lord Advocate* 1953 SC 396 at 412 (Lord President Cooper); *Gibson v Lord Advocate* 1975 SC 136 at 144 (Lord Keith).

¹⁶ Memorandum of Dissent, p 107 note 1.

¹⁷ *Ibid*, p 90 para 220.

¹⁸ Lord Cooper of Culross, *Selected Papers 1922-1954* (1957), 174.

¹⁹ Memorandum of Dissent, p 91 note 1 (emphasis supplied).

²⁰ See above, text between notes 9 and 10.

²¹ Local government within Scotland is another example of an important area in which the Scottish polity has been quite distinct from its England & Wales counterpart because so it was in 1707, so it remained in 1999, and so it continues in 2015. Like private and criminal law, local government is not so much devolved as never reserved.

²² *Local Government Byelaws (Wales) Bill 2012 (Reference by Attorney General for England and Wales)* [2012] UKSC 53 para 71.

²³ See e.g. the publication of its Twelfth Programme of Law Reform in Welsh (Y Ddeuddedfed Rhaglen O Ddiwygio'r Gyfraith) as well as English; and see also paras 1.10-1.13, 1.16, 2.9-2.12, 2.20-2.22

(http://lawcommission.justice.gov.uk/docs/lc354_twelfth_programme_welsh.pdf).

²⁴ Theodore Huckle, 'Wales a jurisdiction? Society of Legal Scholars Centenary Lecture 15 November 2012,' *The Reporter: The Newsletter of the Society of Legal Scholars*, no 46, Spring 2013, 5-10.

²⁵ It may be worth noting here that the gavelkind of the kingdom of Kent survived until abolished by the Administration of Estates Act 1925, section 45(1).

²⁶ Compare the asymmetric and 'rolling' devolution within Spain, where the Código Civil of 1889 provides a generally applicable private law but each of the autonomous regions recognised by the Constitución española of 1978 that had its own private law at that point may continue to develop and codify it. Catalonia provides an especially noticeable example of this: see Antoni Vaquer 'Spain' in *Elgar Encyclopedia of Comparative Law*, 2nd edn (ed Jan M Smits), 2012.

²⁷ In the European context, as a member from 1995 to 2003 of the Commission on European Contract Law and, from 1999 to 2008, of the Study Group on a European Civil Code; in the UK context, as a Scottish Law Commissioner working on joint projects with the Law Commission of England & Wales since 2009.

Page 22: What price civil justice?

¹ See *Argument Among Friends: Twenty Five Years of Sceptical Enquiry* edited by Nick Kuenssberg, David Hume Institute, 2010.

² This work is best summarised in *What Price Civil Justice?* Institute for Economic Affairs Hobart Paper 139. London, 2000.

³ During 1984 to 1986, Alan Peacock served as Chairman of the Committee on the Financing of the BBC (Peacock Committee). This is the subject of a separate Chapter in this publication.

⁴ Economic Experiments and Access to Justice. ESRC Grant R000237392.

⁵ His destroyer, *Limbourne*, was torpedoed in 1943 and he was one of the few survivors. In 1945, Alan was awarded the DSC for services to Naval Intelligence during the war.

Page 28: The dismal science of paying the piper

This chapter draws on an earlier assessment of Peacock's contribution to cultural economics in Towse (2005)

¹ The 'greatish and the goodish' as he called them!

² Peacock and Wiseman (1964) had first proposed vouchers for education.

³ Though Coase had written on the topic (Coase, 1948, 1966).

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Page 34: A 'naughty' cultural economist

¹ A thorough analysis is offered by Towse (2005)

² Quoted from the foreword to Miers (2006).

³ Panmure House was recently bought by Heriott-Watt University to be used for academic and educational purposes.

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Page 40: A Libertarian Manifesto: the Peacock Committee and the BBC

- ¹ Cmnd. 9824: 1.
- ² Sir Alan Peacock, interview, December 2010.
- ³ Robert Eagle, interview, August 2012.
- ⁴ Fitzwalter 2008.
- ⁵ Samuel Brittan 1987: 6-7.
- ⁶ Elstein, 1991: 149
- ⁷ Robert Eagle, interview August 2012.
- ⁸ Hurd, 2003: 331.
- ⁹ Robert Eagle, Interview, August 2012.
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- ¹¹ Alan Peacock, Interview, December 2010.
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- ¹⁵ Alan Peacock, Interview, December 2010.
- ¹⁶ Lawson, 1992: 721.
- ¹⁷ Jeremy Hardie, 2005, in 'Conference Witness Testimonies,' printed in O'Malley and Jones, 2009: 226-227.
- ¹⁸ Sir Alan Peacock, interview, December 2010.
- ¹⁹ Sir Alan Peacock, interview, December 2010.
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- ²¹ Greg Dyke, 2005: 111.
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Page 57: The aims and limits of economic law

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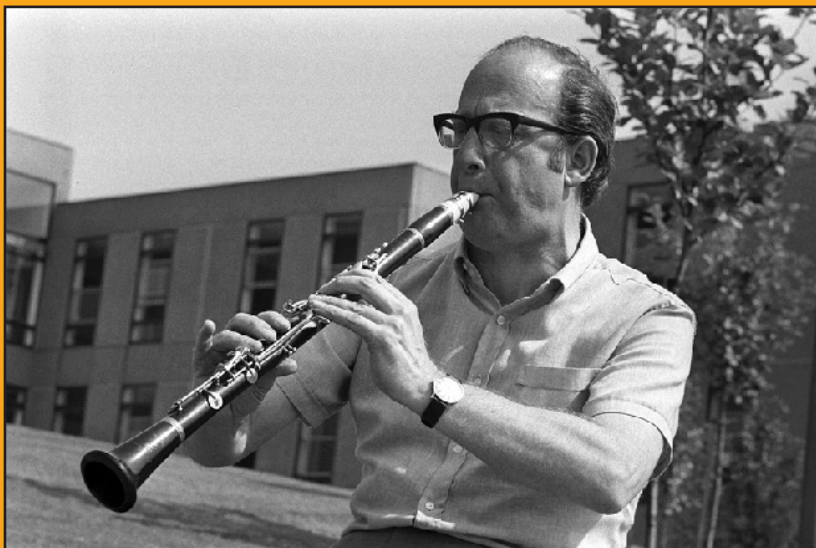
² The Transatlantic Trade and Investment Partnership, currently (May 2015) being negotiated between the United States and the European Union,

³ See generally Garrett Ward Sheldon *The Political Philosophy of James Madison* Johns Hopkins University Press 2001, Chapter One, and particularly *The Federalist* Paper Number LI.

⁴ A towering figure of the late 19th and early 20th centuries, buried in the Grange Cemetery, of whom Queen Victoria said that he was 'one of the best informed men on all subjects I have ever met.'

⁵ James Bryce, 'The Action of Centripetal and Centrifugal Forces on Political Constitutions' in *Studies in History and Jurisprudence*, Oxford (1901), page 216 ff, at pages 217, 218 and 220.

⁶ Case COMP/C-3/37.792 Microsoft. See also the judgment of the Court of First Instance in Case T-201/04 of 17th September 2007.



Alan Peacock was a difficult man to categorise – sailor, code-breaker, economist, academic, civil servant, polemicist, writer, composer and musician. He started his adult life as a Liberal, but quickly lost sympathy with the Liberal Party. He was an adviser to Labour ministers, but scathing about those who were unwilling to modify their views in the light of the evidence. He was chosen by Mrs Margaret Thatcher to chair a committee looking at the financing of the BBC, but came back with an answer she neither expected nor wanted. Coming up with the ‘wrong answer’ was something of a Peacock specialism.

In this book some of those who knew and worked with this remarkable man give their impressions of the life, work and legacy of Sir Alan Peacock.



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