

## *SOCIAL HISTORY AND LAW REFORM*

By O.R. McGregor

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*Social History and Law Reform* is the thirty-first series of The Hamlyn Lectures published under the auspices of the Hamlyn Trust. The purpose of the Trust is:

... the furtherance ... of the knowledge of the Comparative Jurisprudence and the Ethnology of the chief European countries including the United Kingdom, and the circumstances of the growth of such jurisprudence to the intent that the Common People of the United Kingdom may realize the privileges which in law and custom they enjoy in comparison with other European Peoples.

Professor Lord McGregor of Durris, the second layman to deliver a Hamlyn Lecture, presented *Social History and Law Reform* in February 1980 at the University of Kent at Canterbury. The objects of the lecture were: to reflect on the present relation of law and other social sciences; to examine the ways some Victorian reformers approached the problem of law reform and social change; and to examine recent developments in two areas of direct concern to the common people: debt and family law.

Considered first in terms of the obligations of the Trust, I am of the opinion that Professor McGregor has failed to fulfill the trust objectives. His treatment of law reform and social change is not likely to further the knowledge of the "Common People" to whom the lecture was to be directed. As a law student with a background of sorts in British history, I found at least some parts of his lecture difficult to comprehend on a first reading, inferring, somewhat arbitrarily, that the "Common People" would share my difficulty. Further, the lecture lacked a comparison with the European countries, with the result being the "Common People" would not be aware of "the privileges they enjoy in comparison", a key objective of the Trust.

However, one must consider the book in terms other than fulfillment of the purposes of the Trust. Professor McGregor has undertaken a very broad subject. Obviously, at best, he can provide only a cursory overview in a volume that consists of six short chapters and a brief conclusion.

Chapter One deals with the recent trend towards interdisciplinary research. Professor McGregor applauds the increase in the discussion of law in a social and economic context. This growth in the awareness of law as a social force, and thus worthy of study as a social science, is attributed to a number of factors which Professor McGregor briefly canvasses. Whether the trend toward socio-legal research should be orientated toward theory or "fact gathering" is discussed by McGregor who aligns himself with the fact gatherers on the basis that "facts are handy". He feels facts upon which reform or theory may be founded are desperately needed.

The second chapter deals with the need for a social history of legal institutions that relates legal change to the social structure and is not a mere technical history of British law. Professor McGregor is appalled that no

adequate history text exists. He views this deficiency as a major factor in the general public's lack of knowledge of the legal system. Professor McGregor takes the stance that without a knowledge of the past, a knowledge of the present and a vision for the future are unattainable.

Chapter Three is a review of a nineteenth century reform body, the National Association for the Promotion of Social Science. The breadth and significance of the legal reform achieved by its members is noted by McGregor. He also notes that this reform was the result of viewing the legal system as a part of the social-economic structure. The chapter is illustrative of the great potential of legal reform when viewed in the social context.

The contribution of Sir John Macdonell to law reform through statistical analysis is the subject of Chapter Four, with emphasis on the value of Macdonell's critical analysis of the statistics gathered. McGregor finds Macdonell's work valuable in that it provided the legal system with knowledge of its own procedures thereby encouraging the doing of justice. McGregor also believes this analysis provided the necessary information to assist the public in making informed political decisions.

The remaining two chapters deal with debt and marriage breakdown as examples of the response of the law to social change. These areas were chosen to illustrate McGregor's theory on the basis that they constituted areas of civil law with which the "Common People" were most likely to be familiar. There is a discussion of the history of law in each of the particular areas during which change is noted and reasons given. For example, McGregor notes the change in orientation regarding debt from virtually automatic imprisonment of the debtor to the present where in no circumstances may a debtor be imprisoned. Professor McGregor concludes the lecture with a plea "for a social history of law and a continuous flow of statistical and other types of intelligence about the working of the institutions of justice".

The basic premise of the book is valid: to promote law reform today the history of the law in a social context must be understood. However, the length of the book does not allow for much more than a criticism of the failure to wed an understanding of social history with the drive for legal reform. Overall, the value of the book is primarily limited to legal reformers, and then only as a starting point from which to orientate one's self. The book does leave one desiring a comprehensive treatment of legal history within the socio-economic context, but the price to be paid to awaken this desire, \$21.00, is too costly.