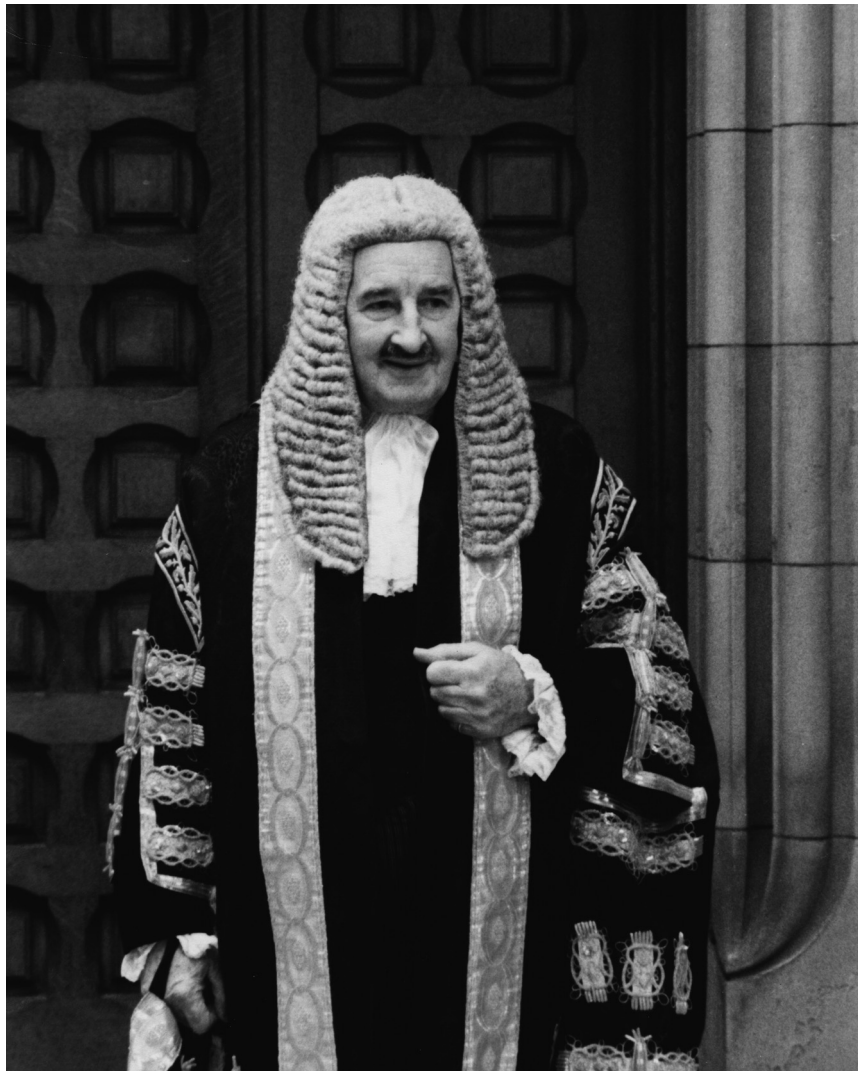

SIR ROBERT MEGARRY

Robert Edgar Megarry
1910–2006

ROBERT EDGAR ('TED') MEGARRY had a career in the law unmatched in its distinction, breadth and diversity. He not only achieved an outstanding reputation as a practising barrister and then, for nearly twenty years, as a High Court judge, but also made what has rightly been described as an 'immeasurable' contribution to the law as scholar, teacher and author.[1]

Family and youth

Megarry was born in Croydon on 1 June 1910, the elder son of Robert Lindsay Megarry and Irene Clark (daughter of Major-General E. G. Clark, Bengal Staff Corps). Robert Lindsay Megarry came from an old Ulster family[2] but (contrary to statements in some newspaper obituaries) was not a 'Belfast solicitor'. In fact R. L. Megarry spent most of his youth in Eastbourne, was educated at Trinity Hall, Cambridge, took first class honours in both parts of the Law Tripos, was called to the Bar by the

[1] By his judicial colleague Sir Martin Nourse at the Memorial Service at Lincoln's Inn Chapel, 12 March 2007.

[2] R. L. Megarry's father, the Revd James Megarry, graduated in Experimental Science at Belfast in 1869, took an LLB and LLD (1873) and became a Priest in the Church of England, serving latterly in Eastbourne. Robert Lindsay (a distant kinsman, whose name is perpetuated as a given name of Ted Megarry's father and eldest daughter) was a linen merchant who makes an appearance in the Law Reports as the innocent but defrauded party in a leading House of Lords decision on the extent to which mistake as to identity can nullify a contract: *Cundy v. Lindsay* (1878) 3 App.Cas. 459.

Proceedings of the British Academy, **153**, 293–322.

Inner Temple in 1904, and then for a short time practised from chambers in Lincoln's Inn. But much the longest part of his working life was spent in the Civil Service, first in the Elementary Education Branches of the Board of Education and then in the Air Ministry. He retired at age 60 as an Assistant Secretary, his work at International Conferences on Air Law marked by the award of the OBE.

The young Ted Megarry was sent to The Limes preparatory school in Croydon, and thence to Lancing College in Sussex, the school founded by Nathaniel Woodard in 1848 and dedicated to educating boys in the traditions of the Tractarian movement. It appears that Megarry flourished in the civilised, supportive and mature atmosphere to which the school aspired: he became Captain of his House and a School Prefect, made lucid and thoughtful speeches at the school's debating society, and was outstandingly successful on the games field. Lancing had a strong musical tradition—the singer Peter Pears was a contemporary—which seems to have had a lasting impact on the young Megarry. To the end of his life he remained actively committed to the school and involved in its affairs, serving as President of the Lancing Club and, for nearly a quarter of a century, as chairman of the Friends of Lancing Chapel. He was especially effective in the long process of bringing about the completion of the School's magnificent Victorian gothic chapel.[3]

Leaving Lancing in March 1929 Megarry was evidently undeterred by the depiction of a schoolmaster's life given by another Lancing alumnus, Evelyn Waugh, in his first novel, *Decline and Fall*, published the previous year. Like Waugh, Megarry taught for a while at Aston Clinton Park School in Buckinghamshire. But Aston Clinton seems to have been a much better ordered establishment than the North Wales school that had served as the main model for *Decline and Fall*. To Megarry the experience was of great value. He discovered not only that he liked teaching but also that his pupils had much to teach him: long before student 'feedback' and 'lecture assessments' became features of academic life Megarry required his pupils to write reports about his effectiveness as a teacher.

[3] See the sumptuously illustrated *Lancing College, a Portrait*, by J. Tomlinson (Lancing, 1998), described by Megarry in his Foreword as 'a remarkable book about a remarkable school'.

Cambridge undergraduate, articled clerk and law 'crammer'

Megarry entered Trinity Hall, Cambridge (a College 'specially designed' by its founder for the study of law[4]) in 1929. His academic record was not distinguished. Third classes in Part I of the Law Tripos and in the LLB were not redeemed by a lower second in Part II of the Tripos. Only a person of unusual discernment would have predicted that a quarter of a century later Megarry's scholarly attainments would be recognised by conferment of the Cambridge LLD[5] (not to mention the Fellowship of the British Academy in 1970 and the award of a string of honorary degrees[6] and other marks of distinction). Of course, there is no necessary correlation between intellectual ability and examination performance—the Cambridge Tripos examiners of the period did not detect the outstanding abilities of another remarkably cerebral English judge, Patrick Devlin[7]— and it is fair to say that Megarry had apparently not stood out academically at school. Yet the real explanation for Megarry's poor performance appears to be that he found the teaching in the Cambridge Law Faculty of the time uninspiring and even boring—'a lesson in how not to do it' as he sometimes put it in private.[8] The tall and strikingly handsome young man evidently found extra-curricular activities more congenial. He played football and tennis for his college, and—writing under the pseudonym 'John Davidson', apparently in an attempt to prevent his tutors from discovering how he was spending his time—became Music Critic of *Varsity*. He persuaded record companies to send him large numbers of disks for review; and these, supplemented by a collection of miniature scores and played on an acoustic gramophone complete with horn and fibre needles which had to be sharpened after every five-minute side, formed the basis of a collection that Megarry continued to enjoy as a young man-about-Chelsea in the 1930s. His enthusiasm for music was to be life-long: the many hours he was to spend writing and preparing

[4] *Cambridge University Calendar 1933–4*, p. 321.
[5] In November 1959.
[6] From the Universities of Hull (1963), Nottingham (1979), Osgoode Hall (1982), London (1988) and Essex (1991).
[7] Lord Devlin (who was elected FBA in 1963) took lower seconds in both History and Law.
[8] Trinity Hall had at the time three Directors of Studies in Law: D. T. Oliver (elected 1920 and at the time also Librarian; father of Lord Oliver of Aylmerton), J. W. C. Turner, MC (elected 1926, and at the time also Bursar) and T. Ellis Lewis, Ph.D. (elected 1932).

cases far into the night were usually spent in the company of Mozart, Wagner, Bruckner or Mahler (but not Verdi or Puccini).

In August 1932 Megarry entered into Articles of Clerkship with a solicitor. Few found these apprenticeships an altogether inspiring experience: much depended on the relationship between Principal and Clerk, and such evidence as there is suggests that Megarry's experience was gained in small firms with elderly partners and perhaps rather restricted practices.[9] He later recorded how as 'a faltering articled clerk, with the ink barely dry on his articles' he was impelled towards his initial brush with the notoriously complex Rent Acts by his Principal's 'invincible repugnance *quoad haec*';[10] and this scarcely suggests that the solicitor in question displayed great enthusiasm for discharging his duty to instruct the apprentice-clerk in the skills required in a solicitor's practice.

To obtain admission to the roll of Solicitors of the Supreme Court it was also necessary to pass examinations; and these were, paradoxically, set at a much more demanding level than those for intending barristers (albeit the Bar is traditionally regarded as the 'learned' branch of the legal profession). Private firms of 'crammers' came into existence to meet demand, and Megarry enrolled for a six-month course—a 'short course' of four months was available for those pressed for time—at the most highly regarded of these, Messrs Gibson & Weldon.[11] In October 1935 he was admitted a solicitor. But he was never to practise as such. Instead he joined the staff at Gibson's.[12] Many years later, in his Presidential Address to the Society of Public Teachers of Law,[13] he made it clear that in doing so he saw himself as joining an elite: the hard-working Gibson's tutors[14]—

[9] Megarry's Principals practised in Lavender Hill, Battersea and in Ironmonger Lane in the City: information supplied by the Solicitors' Regulation Authority.

[10] *Megarry on the Rent Acts* (tenth edn., 1967), Preface.

[11] Gibson & Weldon—who claimed that they were not 'crammers' but rather intensive teachers—also provided tuition for the Bar examinations: see generally R. H. Kersley, *Gibson's 1876–1962, a Chapter in Legal Education* (London, 1973).

[12] It is possible that financial considerations were influential: a junior lecturer in Gibson's would earn £350 (£15,000 in year 2005 values indexed using the retail prices index) whereas an assistant in private practice would start at between £150 to £250. As in private practice, the equity partners earned far more: in the five years preceding the outbreak of the Second World War the senior partner in Gibson & Weldon took £10,000 per annum (nearly half a million pounds indexed to the retail prices index) out of the firm: R. H. Kersley, *Gibson's 1876–1962, a Chapter in Legal Education* (1973), p. 19.

[13] *Law as Taught and Law as Practised* (1967), 9 JSPTL 176, 186.

[14] Gibson's staff were required to give up to three lectures a day, had a heavy burden of marking the tests regularly administered to students, and were prohibited from preparing their lectures in the firm's time: R. H. Kersley, *Gibson's 1876–1962*, *a Chapter in Legal Education* (1973), p. 53.

who at the time included a future Lord Chief Justice of England[15]—were 'remarkable for [the] high proportion of sheer teaching ability'. This was (so Megarry claimed) because in appointing lecturers Gibson's believed only one question to be relevant: 'can he teach?' Some of the audience—overwhelmingly university teachers—may have been discomfited by his aside that this question was 'not sufficiently often asked elsewhere',[16] and even more so when he revealed that the foundation for his belief in the excellence of the Gibson's staff was an attitude survey of his fellow students who were asked to assess lecturers on the single criterion: 'How useful is he to me in preparing for the examination?'

Throughout his life Megarry remained an unapologetic believer in the value of the lecture. For him 'that most ancient method of instruction' should be a 'performance' transporting the student to a world where ideas in the law were put forward in 'forceful and coherent terms' by lecturers able to experiment and even to be inaccurate and repetitive in order the better to enthuse listeners. Again taking the risk of annoying some in his audience,[17] Megarry asserted that there were some lecturers who could make even 'the most enthralling subject dull and repellent',[18] and that for these incompetents the lecture could provide comforting insulation against criticism. But even at the beginning of his teaching career Megarry did not confine himself to oral exposition of the law. It was during his time at Gibson's that he published his first book: *An Introduction to the Rent Acts: a Concise Account*,[19] a mere seventy pages in the Gibson's tradition of 'compression and selection' (or, as it might be said, explanation of the principles of this notoriously complex and enormously important area of the law). In characteristically mannered language Megarry dedicated the book to 'the Draftsmen of the Acts with Awe and Affection and to the County Court Bench with a Sympathy as

[15] J. P. Widgery (1911–81). Widgery had entered articles immediately on leaving school at the age of 16. Like Megarry he never practised as a solicitor. After the Second World War, he was called to the Bar by Lincoln's Inn.

[16] Note the findings of F. Cownie, *Legal Academics, Culture and Identities* (Oxford, 2004), p. 86 that three quarters of the respondents to a survey conducted in 2001/2 'had no hesitation in identifying the publication of significant amounts of research as the primary factor' marking out someone as likely to become a professor of law (this being assumed to be the pinnacle of academic success) and concluding that 'institutionally, in old universities particularly, teaching was not valued in terms of promotion' and that even in new universities 'good teaching could only get you so far up the promotion ladder . . .'.

[17] 'The Law Lecture', Presidential Address to the Holdsworth Club, Birmingham University, 1969–70.

[18] *Law as Taught and Law as Practised* (1967) 9 JSPTL 176.

[19] Law Notes Lending Library, 1939.

Profound as it is Respectful'. The book, greatly expanded, was to become an authoritative and comprehensive text, described by a reviewer as 'not only a work of learning but a work of art. In its elegant economy of language, irradiated with flashes of wit, in its sure grasp of principle, in its deft handling of multitudinous authorities [it is] in a class by itself.'[20] So it remained, through eleven editions, until Parliament finally repudiated the policy of seeking directly to control rent levels.

The Second World War: broader horizons

The undergraduate Megarry had been a keen member of the Cambridge University Air Squadron and qualified as a Royal Air Force pilot. The 29-year-old solicitor seemed thus destined to become one of the 'few', so many of whom were to be killed in the Battle of Britain. But happily it was not to be: a Medical Board rejected him for active service, apparently because he had perforated ear drums. In 1940 Megarry became a temporary civil servant in the Ministry of Supply,[21] based in Shell-Mex House on the Strand.[22] There he was identified by a colleague well placed to assess such matters as 'frighteningly clever'.[23] His closest colleagues as Principals in the Ministry were Douglas Logan[24] (a lawyer, at the time Fellow of Trinity College, Cambridge, later to become Principal of the University of London) and William Dale (who had abandoned articles with a Hull solicitor to be called to the bar and was to become a distinguished and long-serving member of the Government Legal Service).[25] Their immediate superiors were Douglas (later Lord) Jay, and Oliver (later Lord) Franks.[26] Logan and Dale may well have influenced Megarry in deciding to seek a future rather different from that of a law lecturer. Megarry became (notwithstanding his undistinguished academic record)

[20] 'JWW' (1961) 25 Conv. (NS) 447.
[21] Division SS2D.
[22] Information from Megarry's Law Society Record provided by the Solicitors' Regulation Authority.
[23] John Wyndham (later Baron Egremont), long serving Private Secretary to Harold Macmillan (who from 1940 to 1942 was Parliamentary Secretary in the Ministry of Supply): see Egremont: *Wyndham and Children First* (1968), p. 74.
[24] Later Sir Douglas Logan (1910–87).
[25] Later Sir William Dale (1906–2000): he remained a close friend of Megarry for the rest of his life. It appears that the two shared an addiction to practical jokes.
[26] In 1940 Jay, Fellow of All Souls College, Oxford, was an Assistant Secretary, and Franks a Principal Assistant Secretary.

a Member of the Cambridge University Law Faculty and for two years he somehow found the time to give supervisions.[27] The decisive step came in 1941: he had his name removed from the Roll of Solicitors, and entered Lincoln's Inn (of which he was to become Treasurer forty years later). He was awarded a Certificate of Honour in the Bar final examination and, in 1944, was called to the Bar. On his release from the Civil Service in 1946 he joined the well-regarded Chancery chambers at 9 Old Square, Lincoln's Inn,[28] headed by Michael Albery, but for many associated with the name of Gavin Simonds.[29]

Arthur Goodhart and the *Law Quarterly Review*

A. L. Goodhart, editor of the prestigious *Law Quarterly Review* (*LQR*) since 1926 and latterly Professor of Jurisprudence at Oxford, had been one of those who encouraged Megarry to seek call to the Bar and he even offered to support Megarry financially during his early years in practice.[30] That offer was declined, but Goodhart's support in other ways was of great importance in setting Megarry's future course. In 1939 (while Megarry was still at Gibson's) the *LQR* published his substantial and learned article on the recondite topic of *Perpetuities and the Cy-Près Doctrine after 1925*;[31] and in 1940 he became a regular contributor. Over the years he was to write many full length articles, some probing obscure and difficult areas of legal history,[32] some analysing the legal background to topics of great contemporary social interest,[33] and others subjecting matter of topical, if perhaps technical, concern (such as the circumstances in which those on military service could validly dispose of property by a

[27] In 1945 he was appointed a Sub-Lector at Trinity College. It appears that he also acted as an examiner for the Faculty in 1945: information supplied by the Solicitors' Regulation Authority.
[28] Some five years earlier he had been promoted Assistant Secretary—the grade reached, after much longer service, by his father.
[29] A judge of the High Court, Chancery Division, 1937–44; Lord of Appeal in Ordinary 1944; Lord Chancellor 1951–4. Megarry had a high opinion of Simonds: 'difficult to say whether Simonds will come to be regarded as being in the first rank of equity lawyers, or just missing it; but on any footing he stands very high': see R. F. V. Heuston, *Lives of the Lord Chancellors 1940–1970* (Oxford, 1987), p. 145.
[30] See the obituary by Nicholas Merriman, QC (Megarry's son-in-law), *The Independent*, 26 Oct. 2006.
[31] (1939) 55 LQR 422.
[32] e.g. *Shelley's Case and the Doctrine of Very Heir* (1944), 60 LQR 372.
[33] e.g. *The Deserted Wife's Right to Occupy the Matrimonial Home* (1962), 68 LQR 379; see further below, p. 305.

will not executed in accordance with the formalities prescribed by statute) to closer and a more informed historical analysis than had been given by the courts.[34] But (as Lord Hoffmann has written) it was Megarry's many notes on recent court decisions which in many ways constituted 'the ideal vehicle for Megarry's stylish but meticulous learning'.[35] These notes, confined to half or three-quarters of a page, were based on analysis of the law and rarely strayed into discussion of the merits of the policy to which the law gave effect. Megarry followed the pattern established by Goodhart: the concise notes should go 'straight to the heart of the matter'.[36] Some were contributed by eminences such as Sir William Holdsworth, OM, FBA and Sir Percy Winfield, FBA, but throughout the Second World War Megarry somehow found the time to contribute more than any other author.

Megarry also contributed many book reviews to the *LQR* and these were sometimes marked by an acerbic candour unlikely to please the often highly placed authors. In 1940, for example, he reviewed the *Land Registration Act, 1925*, a work intended to be authoritative, written by the Chief Land Registrar Sir Charles Fortescue-Brickdale and his successor in that office Sir John Stewart Wallace. But Megarry's review began with the crisp statement that the book was 'a disappointment' in large part because it failed to take account of the 'considerable volume of legal literature on land registration' in the previous fifteen years. In 1944 Megarry criticised a new edition of H. G. Hanbury's *Modern Equity* on the ground that the 'promise of the first edition had outrun performance'.[37] The 'verve and sparkle of that edition made it easy to forgive its faults'; but the time had come for students, faced with the choice between Hanbury and rival works, to 'prefer solid worth to brilliant unreliability'. A detailed exposure of numerous errors was followed by the complaint that the book was often difficult to understand, the 'clarity and intelligibility' that mattered 'more to the average student than anything else' were frequently missing while the reader who expected 'the obscure to be made plain'

[34] *Actual Military Service, and Soldiers' Privileged Wills* (1941), 57 LQR 481 demonstrating that the decision *In re Gibson* [1941] P. 118 (refusing to grant probate of the informal will made by an officer in the Army Dental Corps killed in his own home in an air raid) had misapplied the Roman Law doctrine whereby only soldiers 'in expeditione' were entitled to make a what is called a 'privileged' will. Eventually, the Court of Appeal (in *re Wingham* [1949] P 187 citing Megarry's article) put the law on a rational footing).

[35] (2007), 123 LQR 1.

[36] The description is taken from A. M. Honoré's entry for Goodhart in the *Oxford Dictionary of National Biography*.

[37] (1944), 60 LQR 87.

would 'too often find the plain made obscure'. (These strictures apparently did not carry much weight with those who, in 1949, elected Hanbury to the Vinerian Chair of English Law at Oxford.) But although Megarry was a stern critic he was ready with enthusiastic praise when this was appropriate.[38]

Megarry's position in relation to the *LQR* was formally recognised by appointment as Assistant Editor in 1944 and as Book Review Editor in 1945. He continued to hold those appointments until his appointment to the bench in 1967. The influence which he exercised through his articles and case notes was immense: to quote Lord Hoffmann again, the *Law Quarterly Review* probably contained 'the quintessence of what made [Megarry] such a distinguished legal writer'.[39]

Practice at the Chancery Bar, writing and teaching

A specialist field—with special problems for the new entrant

Life for any newly called barrister in the years immediately following the end of the Second World War was not financially easy: Megarry had been warned that he should not expect to earn more than £50 a year[40] for some considerable time. His work for the *LQR* was not lavishly remunerated and the fact that he had chosen to practise from chambers in Lincoln's Inn, the home of the specialist Chancery Bar,[41] perhaps made it more difficult for him than some others to earn a significant income from the practice of the law in his early years. This is because Chancery work was not only often seen as something of a mystery accessible only to those with long experience but was also associated largely (although by no

[38] e.g. Megarry's review of J. T. Farrand's *Contents of a Conveyance* (1963), 79 LQR 384, described the book as 'the most refreshing and lively publication on conveyancing that has appeared for a long time', and recognised that the (young) author had 'at one leap become a real force in the property world'.

[39] (2007), 123 LQR 1.

[40] Less than £1,400 in 2005 values indexed by reference to Retail Prices.

[41] Megarry's last article in the *Law Quarterly Review* (*The Vice-Chancellors* (1982), 98 LQR 370), rightly described by R. F. V. Heuston, *Lives of the Lord Chancellors 1940–1970* (1987), p. 228 as 'magisterial', is a mine of information about the distinctive practice and procedure of the Chancery Court and the Chancery Division of the Supreme Court created in 1873. It traces the history of the office of Vice-Chancellor from its nineteenth-century origins into the twentieth-century (when 'Vice-Chancellor' became the title for the Head of the Chancery Division of the Supreme Court, the office which—with slight variations of title—Megarry was to hold from 1976 to 1982: see below, p. 317).

means exclusively) with cases involving substantial assets. The young and inexperienced barrister on the common-law side could 'cut his teeth' on some of the wide range of criminal or county court work requiring advocacy skills, but the opportunities for his Chancery contemporary were more restricted. The fact that the traditional property-related work of the Chancery Division had been adversely affected by social and economic changes was also a factor: in post-War Britain there were fewer large landed estates, and trusts of the traditional pattern often had disastrous tax disadvantages. So there were fewer old-fashioned marriage settlements to draft, fewer entails to bar, and fewer resettlements designed to keep family property in the same hands for another generation. Eventually, the gap in Chancery work was filled: the potential of discretionary trusts as a means of minimising taxation was rapidly appreciated, and then the development (first by the skills and ingenuity of a handful of especially gifted barristers and then under a statutory procedure created by the Variation of Trusts Act 1958) of methods for converting old-style trusts into tax-efficient vehicles for wealth preservation became a substantial source of business. But that boom in variation and other 'tax-planning' work was still in the future.

The benefits of authorship

Writing and teaching were among the traditional ways in which newly called Barristers supplemented earnings from meagre practices, and Megarry was exceptionally well qualified for both these activities. Presumably it was his experience as a lecturer at Gibson's which had helped him gain appointments as Director of the Law Society's Refresher Courses for solicitors returning from war service and as an Assistant Reader in the Inns of Court. And, as we have seen, he had during his time at Gibson's written and published a short expository text on the Rent Acts for which many solicitors were no doubt extremely grateful. He had also started work on a manuscript which, twenty years later, was to constitute the foundation for one of the outstanding works of legal scholarship of the twentieth century, *The Law of Real Property.*[42] But that was to come later. During the war years he had seen that there was a gap in the market for a students' text on Land Law which would be 'primarily intended' (as he put it) 'for the examination candidate whose main anxi-

[42] Written jointly with Professor Sir William Wade, QC, FBA: the first edition was published in 1957, see below.

ety is not whether he will head the list but whether he will appear in it at all'. As the Second World War moved to an end he decided (the noise and destruction of renewed German aerial bombardment notwithstanding[43]) to draw on his existing manuscript to meet the need. The *Manual of the Law of Real Property* (London, 1946) was the result. Its aim was severely utilitarian. Megarry had, ever since his own 'first unwilling introduction to the law of real property', believed that 'the chief difficulty of the average student [was] that of understanding what it is all about'; and the *Manual* was intended to provide the reader with the means of mastering as quickly as possible the language in which the complex ideas embodied in the legal structure were expressed. The *Manual* accordingly gave great attention, not only to clarity of exposition but also to the system of headings and sub-headings, 'so important as a focus both for initial comprehension and for ultimate revision'.[44] The book was immediately successful; and sixty years later it is still (albeit with a different editor[45]) meeting the needs that Megarry had identified.

Megarry then repeated the success with another book. In 1947 he published a new edition—the twenty-second—of the venerable *Snell's Principles of Equity* (London, 1947).[46] Equity and 'Chancery' had fusty and gloomy associations; and Megarry admitted that he had never 'seen a book on equity bring a happy smile to a reader's lips'. But he did not seek to modify the 'sternly practical' approach adopted since 1915 by the book's previous editor (a partner in Gibson & Weldon[47]); and reliability, clarity and accuracy took priority over any attempt at development of doctrine or rationalisation. Hence, although Megarry accepted that the traditional distinction between law and equity (the latter prevailing in case of conflict) was 'indefensible in a modern legal system', the fact that the distinction was embedded in the understanding of trusts and related

[43] Attacks by German 'flying bombs' began in June 1944; and in September 1944 the first of more than a thousand German rockets hit Britain. Hence the acknowledgement given in the Preface to *A Manual of the Law of Real Property* to a Mrs Costin for typing the book 'from shorthand notes made with a pencil which the London noises of 1944 and 1945 never caused to hesitate or waver'. It appears that at this period Megarry's Civil Service duties allowed him time for writing and teaching.

[44] This last quotation is taken from the introduction to the seventh edition (by Megarry and Professor M. P. Thompson, 1993) but well expresses Megarry's consistently applied philosophy.

[45] A. J. Oakley (eighth edn., 2002).

[46] *Snell's Principles of Equity*, by Edmund Henry Turner Snell, was published in 1868. All subsequent editions were the work of editors.

[47] H. G. Rivington (who was a partner for nearly fifty years down to 1948) and had undertaken the seventeenth to twenty-second editions (1915 to 1939) of *Snell*: see R. H. Kersley, *Gibson's 1876–1962, A Chapter in Legal Education* (1973), p. 16.

concepts would make it extremely difficult to explain what trusts and other creatures of equity were about if the duality approach were abandoned. For him that was a sufficient justification for retaining the traditional approach. The fact that *Snell's Equity* (now in its thirty-first edition)[48] is still extensively used by judges, practitioners and students,[49] reflects the wisdom of Megarry's decision to avoid radical change while adapting the exposition to take account of the many developments that occurred over the years to come.

Expanding areas of legal practice

Megarry's writing and lecturing brought him far more than the income from royalties and lecture fees: in the distasteful language of modern marketing it helped create a 'brand' amongst the solicitors who provide barristers with the great bulk of their work. The Rent Acts, Land Law and Trusts were all of great practical importance to solicitors. Megarry's books helped promote his standing as an authority; and this was reinforced by the fact that his lectures made him much more than a name to many. The flow of work, managed by his clerk Albert Dimmock,[50] increased accordingly. But Megarry also seized the opportunity to move into newly emerging or expanding areas of legal practice, especially the greatly extended state control of land use under the post-war town and country planning legislation,[51] and the increased legislative intervention in the contractual relationship of landlord and tenant.[52] This was to enter a world removed from that of the traditional Chancery barrister and there was no tradition confining these areas of practice to the Chancery Bar—indeed, Megarry's former Gibson's colleague John Widgery was one of those who built up a flourishing Planning practice from common-law chambers. But Megarry accepted the competitive challenge enthusi-

[48] Megarry was joined by P. V. Baker (now His Honour Paul Baker, QC) for the twenty-fourth to the twenty-seventh edition (1973). Baker remained editor, jointly with others, of the twenty-eighth (1982) and twenty-ninth (1990) editions. The most recent edition (the thirty-first, 2005) is the work of John McGhee, QC and seven other contributors: supplements are available from <www.maitlandchambers.com/snell>.

[49] Although competition in the degree student market has grown over the years.

[50] Dimmock may not have fully appreciated the long term and indirect benefits which followed from these activities outside normal practice: he was to complain that Megarry had 'too much interest in legal matters which are unremunerative': see the Deposition in TNA file Crim 2371/1 (1954).

[51] Megarry had given public notice of his interest in this subject by the publication of *Lectures on the Town and Country Planning Act 1947* (London, 1949).

[52] Notably by the Rent Acts (on which Megarry had written the standard text).

astically, even though the work could involve much travelling to distant and unattractive county courts and to unglamorous municipal premises to appear before an Inspector who did not even claim to be a lawyer. Moreover, unlike some barristers of the time, Megarry was business-like and efficient, keeping well-organised files and indices of his Opinions and other papers. All this helped him build a reputation as an outstandingly effective advocate before tribunals at all levels. He evidently had a genius for clarifying complex issues and then ensuring that his points had struck home: 'make sure the Inspector gets it in his note book' was his oft-repeated advice to those seeking to emulate his success in planning cases. By the early 1950s his practice was secure and extensive, but he continued to lecture.[53]

Property law and the general public

In the post-war world, the belief that Chancery lawyers dealt exclusively with esoteric doctrines remote from the daily lives of ordinary people may have remained widespread but was increasingly becoming remote from the reality. Megarry explained one of the main contemporary issues in a talk broadcast on the BBC's Third Programme:[54] 'millions of married men believed that they were the sole owners of the houses they lived in, and millions of wives had no suspicion that their husbands might be wrong'. This was because the law had long insisted that property rights could only be created in certain formalised ways, and at the time[55] (not least because of the practices of Building Societies and other lenders) this often meant that the husband was the sole legal owner of the matrimonial home and in consequence solely entitled to the substantial gains, magnified by the phenomenon of gearing or leverage, resulting from appreciating property values. Even worse, the law seemed to do little to protect the wife if the husband borrowed more money, mortgaging or remortgaging the house as security for the loan. The courts did their best to deal with the problem, often by invoking notions of 'equity' and 'trust' in a way that surprised traditionalists, but, as Megarry pointed out, the desire to do justice in the individual case was not easy to reconcile with the need for legal coherence. In his view, novel doctrines such as the so-called 'deserted wife's equity' (often associated with the name of Lord

[53] He was successively Assistant Reader and Reader in Equity in the Inns of Court from 1946 to 1971.

[54] In the long running *Law in Action* series: see below, p. 306.

[55] See S. M. Cretney, *Family Law in the Twentieth Century, a History* (Oxford, 2005), pp. 114–41.

Denning) created 'far greater problems' than they solved. Did the new doctrines mean, for example, that husband and wife were to be equally entitled to half the other's savings or earnings? Megarry was convinced that these were matters of policy for the legislature and not for decision by individual members of the judiciary. He saw a real danger that judicial 'creativity' would in fact provide 'an easy path of transition whereby a wife's general matrimonial rights *in personam* to be protected against her husband' were 'transformed into a right *in rem* adhering to the matrimonial home and its contents'.[56] That could put the whole structure of property ownership at risk, irretrievably damaging the security of innocent purchasers who could find themselves subject to adverse interests of which they had no knowledge. In the event—but not until 1965[57]—the House of Lords restored the doctrinal purity of property law, and the legislature attempted (not at first wholly successfully) to create procedures which could protect the legitimate interests, not only of spouses but of everyone buying property.

The successful barrister, author and public figure

By the early 1950s Megarry's position seemed enviable and impregnable. In 1948 his standing and repute at the Bar had been recognised by his election to the General Council of the Bar. His own practice was substantial and secure. He was widely regarded by practitioners and academics in the legal profession as an outstanding and authoritative voice. Work for the BBC's successful *Law in Action* series demonstrated that his communication skills were effective for a large lay audience,[58] just as they were for his professional peers; and his concern that the integrity of the legal structure should not be compromised did not conceal the fact that he was committed to achieving just solutions. All this was recognised in 1952 by his

[56] This argument had been fully deployed in one of Megarry's most impressive pieces of legal writing: *The Deserted Wife's Right to Occupy the Matrimonial Home* (1952), 68 LQR 379. from which this quotation is taken.

[57] *National Provincial Bank Ltd. v. Ainsworth* [1965] AC 1175.

[58] Megarry served as consultant to the *Law in Action* series from 1953 to 1966. Lectures by him and others were published: see *The Law in Action, a Series of Broadcast Talks*, with a foreword by Lord Asquith of Bishopstone (London, 1954). His skills in making the law interesting were again to be demonstrated in the *Hamlyn Lectures, Lawyer and Litigant in England* (1962) which were funded from the estate of Miss Emma Warburton Hamlyn (d. 1941, aged 80) with the object of promoting among the 'Common People' of the United Kingdom a realisation of 'the privileges which in law and custom they enjoy in comparison with other European People' so that 'realising and appreciating such privileges they might recognise the responsibilities and obligations attaching to them'.

appointment as one of the first members of the Lord Chancellor's Law Reform Committee,[59] where he served in extremely distinguished company.[60] Although the Law Reform Committee had limitations as an effective instrument of law reform,[61] nothing could better demonstrate that Megarry had 'arrived' than this appointment (after only six years in practice). But his success had been purchased at a high price; and in the same year his whole future was to be put seriously at risk.

Tried at the Old Bailey—and acquitted

In 1952 the Inland Revenue noticed that Megarry had not included in his return some small amounts of interest on his Post Office Savings Account. Many other taxpayers made the same venial mistake. But when Megarry looked at all the papers he realised that this was not the only omission. He immediately admitted that his returns had been 'grossly incorrect' and seriously understated his income from practice, writing and lecturing. The Revenue launched a full investigation and it emerged that more than a third of his earnings had been omitted from the returns.[62] Revenue practice in cases in which the taxpayer had been incompetent rather than dishonest was often simply to impose substantial penalties in addition to collecting the unpaid tax. Megarry told the Inspector that he had been 'totally immersed in his legal work' and had been seriously ill as a result of having been under such great pressure. But the Revenue decided to prosecute him under the Perjury Act 1911,[63] alleging that he knew his returns had been false. At the Old Bailey trial in February 1954 his clerk told the jury that Megarry was 'the most overworked man' for whom he had ever worked; and prosecuting counsel conceded that he was a 'desperately hard worked man at all material times'. At the close of the

[59] The Committee, established by Lord Chancellor Simonds, in 1952 was the successor to the Law Revision Committee set up in 1934 by Lord Chancellor Sankey. Megarry was to serve until 1973, and was involved in 19 out of the 22 Reports the Committee produced. For an appreciation of its work, see M. C. Blair [1982] CJQ 64, 289.

[60] Lord Goddard LCJ, Lord Asquith of Bishopstone, Sir Patrick Devlin, Kenneth Diplock and Gerald Gardiner were amongst those appointed in 1952.

[61] Not least that it was (in the words of Lord Gardiner LC in 1971) composed of 'busy judges, barristers, solicitors and academic lawyers who only met about once a month at 4.30 after a day in court' and had no substantial secretariat: see R. F. V. Heuston, *Lives of the Lord Chancellors 1940–1970* (1987), pp 228–30.

[62] As a result he had underpaid tax of some £3,000 (perhaps £60,000 in year 2005 values).

[63] s. 5(b) This account draws on the account of the Old Bailey trial in *The Times*, 16 Feb. 1954, and on the depositions preserved in The National Archives, file Crim 2371/1 (1954).

prosecution case the judge told the jury that, whilst there might well have been matters calling for investigation, the jury should stop the case unless they could say with absolute certainty that Megarry had known the returns were false. The jury did stop the case, and returned a 'not guilty' verdict. Had they not done so the consequences for Megarry's professional career would have been disastrous.[64] Megarry had of course to pay the tax and penalties, not to mention the no doubt substantial accountants' fees incurred in dealing with the investigation. Some of those close to him believe that the experience of being on the wrong side of the law haunted him for the rest of his life.

Recovery

Megarry and Wade

It may be that the shock of prosecution was one of the factors leading Megarry to realise that he could no longer carry the burdens of a busy practice and scholarly authorship unaided. In particular, his plan to develop the pre-war manuscript from which his *Manual* had already been drawn into a full-scale and authoritative text, equally useful to practitioners, academic lawyers, and the ambitious and able student at degree and graduate level, was not one that he could execute unaided. Fortunately, H. W. R. ('Bill') Wade, then Fellow of Trinity College and Lecturer in the Cambridge Law Faculty, was prepared to lend his formidable talents as a property lawyer to the project. It appears that over several years Wade made this a first call on his time; and *Megarry and Wade's Law of Real Property* (London, 1957) was completed at the end of 1956, and published the following year.[65] The authors emphasised that this was emphatically a work of joint authorship: each of the authors had covered the

[64] Even as it was, some colleagues were said to have found it 'unseemly' for his defence to have implied that his wife and clerk bore some responsibility for the errors: see Sir L. Blom Cooper, QC, Obituary, *The Guardian*, 19 Oct. 2006.

[65] The Preface is dated 'New Year's Day, 1957'. The copy sent to the printers was apparently produced on 'mounted sheets' based on two 'cannibalised' copies of pages from the *Manual* pasted onto enormous sheets of paper and surrounded with manuscript insertions and emendations: Sir Jack Beatson, 'Henry William Rawson Wade 1918–2004' *Proceedings of the British Academy*, 150: *Biographical Memoirs of Fellows, VI* (2008), 287–310. Anyone unfamiliar with the 'mounted sheet' process would find the photostat of an amended page from Megarry's *Rent Acts* (preserved as Exhibit 8 amongst the depositions in The National Archive file Crim 2371/1 (1954) of bibliographic interest, not least as demonstrating the skills required of printers in the days before authors were expected to deliver camera-ready (or at least 'polished') copy.

whole text 'in close detail'. Whilst most of Megarry's pre-war manuscript was incorporated, the two authors had together revised and updated it, weaving much new material into the text, and systematically explaining the historical development of the law (covering topics of little contemporary relevance such as the rule against double possibilities, the functions of trustees to preserve contingent remainders and the common law rules of descent) and also analysing how the developed principles of law and equity governed such contemporary problems as the need to protect the interests of the vulnerable in the family home. *Megarry and Wade* immediately became 'the land lawyers' bible',[66] 'a resort for every serious student of the law and the vade mecum of every land law practitioner'.[67]

Megarry, QC

Fortunately for Megarry the prosecution seems to have had little effect on his career at the Bar. Only two years after his appearance in the dock at the Old Bailey, Lord Chancellor Kilmuir gave Megarry 'silk' (i.e. the rank and dignity of Queen's Counsel). This meant that he earned higher fees,[68] and (perhaps more important) eased the pressures of practice: at that time, a QC could not appear in court without the assistance of a 'junior'; and was not allowed to engage in some of the more burdensome routine drafting work that might form a large part of a Chancery junior's work.

The *Law Reports* provide striking examples of how the technicalities of Chancery law could impinge on everyday life, not least in the remarkable case of *Re Cole: a Bankrupt* where Megarry represented the wife of a once apparently wealthy businessman bankrupted for a spectacularly large sum.[69] The issue for the Court of Appeal was whether the furniture in the matrimonial home belonged to the husband (in which case it would be sold for the benefit of his creditors) or to the wife, and that turned on whether the husband's acts in taking his wife from room to room, pointing to the furniture and telling her 'it's all yours' constituted a 'delivery' sufficient to transfer the legal title to her. Megarry (who would no doubt have been personally unsympathetic to laxity in relation to property

[66] Beatson, 'Henry William Rawson Wade 1918–2004'.
[67] Sir Martin Nourse, Address at Megarry's Memorial Service, Lincoln's Inn Chapel, 12 March 2007.
[68] In his 1962 Hamlyn Lectures, *Lawyer and Litigant in England*, Megarry estimated that a 'rising junior' would gross £2,500 a year, a 'flourishing junior' £6,000 and a 'flourishing silk' £15,000 per annum (perhaps £35,000, £90,000 and £220,000 respectively in year 2005 values).
[69] [1964] Ch. 175.

transfers) presented a vigorous and learned argument, including an analysis of the feudal law governing transfer of land by livery of seisin, only to have his 'remarkable submission' (albeit 'clearly and cogently presented') rejected by the Court as 'unsupported by authority and . . . entirely heterodox'. It has indeed been suggested that Megarry's advocacy was sometimes ineffective because (in sharp contrast to his *LQR* notes) the wood sometimes became obscured by the trees. And on occasion Megarry's manner apparently irritated some of those before whom he had to appear. One Lord Justice of Appeal is said to have claimed that he was well placed to testify to Megarry's pedagogic skills having been one of his class of three for several days.

High Court Judge

In 1967 the reforming Labour Lord Chancellor, Gerald Gardiner, recommended the appointment of the 56-year-old Megarry, after eleven years in silk, to the High Court bench. He soon demonstrated his commitment to a scholarly approach to the exercise of his judicial office. Late on an August Friday afternoon Counsel appeared before Megarry (sitting as the 'vacation judge') to seek a writ *ne exeat regno*. This procedure had apparently not been successfully invoked since the nineteenth century. The consequences would have been drastic: the alleged debtor would have been prevented from leaving the country and perhaps committed to prison unless and until he provided security for payment of the amount claimed. Megarry sat until 6 p.m. and evidently spent the weekend on detailed research into the history of this procedure.[70] He then heard further argument from the applicant's legal team and immediately delivered a judgment covering nearly twenty pages exploring the history of the writ as far back as Tudor times. His decision was, first, that the procedure did still exist but, secondly, that it would be inappropriate for it to be used in the case before him. It is fair to say that many judges (especially if sitting as 'vacation judge') would have been content to reach a brisk decision on the second ground.

The fact that Megarry had been not only a practising barrister but also a scholar and prolific author did create some possible difficulties. He did not accept the convenient notion that in the English 'adversarial' pro-

[70] *Felton and Another v. Callis* [1969] 1 QB 200, 203 'with such resources as were available for week-end research'.

cedure it is for the parties to ensure they have put before the judge all the material they wish to be considered, thus leaving it to the judge simply to decide between the arguments which they have chosen to present. But he was meticulous in upholding the principle that justice requires that the parties should be given the opportunity of considering any material that the judge's own researches uncovered. Again, as an author Megarry had inevitably expressed opinions in books and articles about issues of law relevant to the cases that came before him, and equally inevitably advocates would press the relevant passages on him. But Megarry had no doubt that there was a clear distinction between academic and judicial authority. He explained:

> . . . words in a book written or subscribed to by an author who is or becomes a judge have the same value as words written by any other reputable author, neither more nor less. The process of authorship is entirely different from that of judicial decision. The author, no doubt, has the benefit of a broad and comprehensive survey of his chosen subject as a whole, together with a lengthy period of gestation, and intermittent opportunities for reconsideration. But he is exposed to the peril of yielding to preconceptions, and he lacks the advantage of that impact and sharpening of focus which the detailed facts of a particular case bring to the judge. Above all, he has to form his ideas without the aid of the purifying ordeal of skilled argument on the specific facts of a contested case. Argued law is tough law. This is as true today as it was in 1409 . . . I would . . . give credit to the words of any reputable author in book or article as expressing tenable and arguable ideas, as fertilisers of thought, and as conveniently expressing the fruits of research in print, often in apt and persuasive language. But I would do no more than that . . .[71]

He did continue himself to participate in two editions of *Megarry and Wade*,[72] but he entrusted new editions of his other books to editors, and he no longer contributed on current issues to the *Law Quarterly Review.*[73] No one could question the propriety of High Court Judges giving lectures, and Megarry continued to demonstrate his mastery of this form and used it to particular effect in lectures on primarily historical themes.[74]

[71] *Cordell v. Second Clanfield Properties Ltd* [1969] 2 Ch. 9, 16–17; and see the discussion in Megarry's Child & Co. Lecture, *Judges and Judging* (1977).

[72] He and Wade were jointly responsible for the fourth and fifth editions published in 1975 and 1984. Charles Harpum was sole editor of the sixth edition, published in 2000.

[73] 'The Vice-Chancellors' (1982) 98 LQR 370, is an historical account of the office.

[74] For example, *Inns Ancient and Modern* (The Selden Society Lecture for 1971, published 1972): see below, p. 320.

Judicial restraint in a permissive society

In 1972, exceptionally, Megarry used a lecture to express his views on controversial social issues.[75] In 'Law and Lawyers in a Permissive Society' he claimed, in vivid and colourful language, that the expression 'permissive society' had come to mean a society in which each claimed the right to do what he wanted, irrespective of the distress or injury to others or the burden they have to bear. The lecture might well be taken as an indication that this particular judge held right-wing views and was certainly unsympathetic to so-called progressive causes. That may indeed be true. But Megarry believed a judge's personal philosophy to be irrelevant to the performance of his judicial functions: the judge's duty was to apply the law, whatever his personal views about the policy to which it gave effect.[76]

Megarry's approach is well illustrated by the case of *Malone v. Metropolitan Police Commissioner*,[77] in which he refused to grant a declaration that police telephone-tapping was illegal. His starting point was the classic understanding of the rule of law as expounded by Dicey and others: 'England . . . is not a country where everything is forbidden except what is expressly permitted: it is a country where everything is permitted except what is expressly forbidden.' The court could indeed make binding declarations but only in relation to matters justiciable in the English courts—legal or equitable rights rather than moral, social or political matters. True, the practice of telephone tapping might infringe the European Convention on Human Rights,[78] but at the time the Convention was no more than a treaty, not justiciable in England. Megarry commented that it was not possible to feel any pride in the state of the law which he was obliged to administer.

Although Megarry was a judge of conservative inclinations (he was, for example, reluctant to accept the need for what he regarded as unnecessary procedural change in the Chancery Division) it would be quite wrong to see him as an unrepentant reactionary, determined to fossilise

[75] The *Riddell Lecture* given to the Institute of Legal Executives in March 1972, as reported in *The Times*, 23 March 1972.

[76] Megarry was also concerned that legal concepts (such as 'natural justice') should not be misunderstood: justice 'is far from being a "natural" concept. The closer one goes to a state of nature the less justice does one find. Justice, and with it natural justice, is in truth an elaborate and artificial product of civilization which varies with different civilizations': *McInnes v. Onslow Fane* [1978] 3 All ER 211, 219.

[77] [1979] Ch. 344.

[78] In *Malone v. UK* (1987) 7EHRR 14 the European Court on Human Rights held that it did infringe the claimant's convention rights. The United Kingdom legislated to regulate the practice.

the law. Provided the necessary sub-stratum on which jurisdiction could be founded was present he was quite prepared to assist, albeit with caution, in the evolution and development of the law. For example, equity had as long ago as the sixteenth century treated breach of confidence as potentially justifying intervention by means of the grant of an injunction against behaviour which could be regarded as unconscionable. In the twentieth century this became a powerful weapon in disputes about trade secrets, for example, and Megarry faced with an inventor's application to stop the manufacture of mopeds said to be based on his designs redefined what he believed to be the elements of the 'pure equitable doctrine' of breach of confidence; and that formulation has been much invoked in later cases,[79] including cases where a remedy is sought not only against those who knowingly break confidences but also against third parties (including the press). But the same case demonstrates his cautious approach: there was (he held) insufficient evidence to justify the grant of an interlocutory injunction stopping production before all the evidence had been heard. Accordingly, the application would be rejected, but only on terms that the manufacturers would put aside royalty payments to be paid to the applicant if at the end of the process he could make out his case.

The judge, the rule of law, and the rule of the jungle

Megarry's attitude of judicial restraint is now often regarded as dated (and the enactment of the Human Rights Act in 1998, requiring judges to take decisions on broad issues such as what is and what is not 'necessary in a democratic society'[80] would seem to have significantly expanded the judicial role).[81] But restraint may have been especially desirable at a time when the traditional concept of the rule of law seemed increasingly to be at risk from those who refused, on ideological grounds, to accept any obligation to observe it. In 1973, for example, Megarry had to deal with a situation in which a number of councillors in the Clay Cross district of Derbyshire 'flagrantly defied the law' and were determined to 'continue to defy it'.[82] A much less straightforward situation had come before him the

[79] See *Coco v. Clark* [1969] RPC 41—a case of considerable importance in the trend to legal protection of privacy.

[80] In the interests of a number of other specified factors, such as public safety.

[81] Megarry took the conventional view that a person's 'right' in the strict sense had to be correlative to a duty enforceable against another: see *McInnes v. Onslow Fane* [1978] 3 All ER 211 ('right to work').

[82] The words are those of Lord Denning MR in the case of *Asher v. Secretary of State for the Environment* [1974] Ch. 208, 221. The Court of Appeal upheld Megarry's decision rejecting a claim by the councillors as 'vexatious.'

previous year. The *Midland Cold Storage* case was about an inter-union dispute:[83] one union 'blacked' a cold store in London's docklands which employed members of a different union, causing disastrous losses to the business. The employers got an order from the National Industrial Relations Court (NIRC) created by the 1971 Industrial Relations Act and hated by elements in the organised labour movement. The union did not comply with the NIRC order, and the employers believed it had no intention of complying with any orders made by that court. So the employers sought an order in the Chancery Division on the grounds of illegal conspiracy, apparently believing that no ideological grounds could prevent the union from recognising an injunction granted by the High Court. Megarry made no secret of his view of the merits:

> The defendants seek . . . either to have the [members of the rival union] thrown out of their jobs so that they may be taken by dock workers or else to destroy the jobs altogether by forcing the [employers] into insolvency. It is a simple case of a group of men using their strength to take something for the group which is not and never has been theirs . . . This is the law of the jungle; for the law of the jungle is not law, but force . . . It is the weak who will go to the wall, both employers and employees.

Yet, Megarry concluded, he could not make the order the employers sought: the Industrial Relations Act had given the Industrial Court exclusive power to deal with such issues; and his duty was 'loyally to obey Parliament'. In the event, the Industrial Relations Court did commit the five dockers to prison for disobedience to its order,[84] but the House of Lords was to provide the means whereby they could properly be released.[85]

Issues involving Trade Unions continued to come before Megarry: he insisted that Unions should comply with the procedural requirements which the law imposed in pursuance of achieving fairness in their internal affairs.[86] Towards the end of his service in the High Court, *Cowan v. Scargill*[87] (on the surface a straightforward issue about the investment

[83] [1972] Ch. 630.

[84] See *The Times*, 22 July 1972.

[85] 'The Dockers' Cases of 1972', Appendix 1 to *Lord Hailsham, A Life*, by G. Lewis (1997) throws some light on events. In 1975 Megarry took a similarly cautious approach in refusing to grant an injunction to men in the newspaper industry threatened with dismissal; there were (he held) insufficient grounds justifying a departure from the principle that the courts will not order specific performance of a contract for personal services: *Chappell v. Times Newspapers* [1975] 1 WLR 482.

[86] See *Leary v. National Union of Vehicle Builders* [1971] 1 Ch. 34 (concerning an area organiser not present at meetings discussing his position, and given no opportunity of meeting any case against him).

[87] [1985] 1 Ch. 270.

policy of the Miners Pension Fund) attracted much publicity. The union, led by Arthur Scargill, and at the time engaged in a vigorous campaign to protect coal mining in this country, wanted to stop the trustees investing overseas or in companies directly competing with the coal industry. The union did not appear by counsel, but Scargill acted as a courteous and competent advocate. However, the legal principle was clear: trustees had to do what was in the interests of all their beneficiaries, past and present. That meant, in principle, investing in whatever provided the best return; and the union's desire to increase investment in British businesses could not override that duty. Scargill was reported as saying after the case that he was 'disappointed but not surprised' that a British court had once again given 'a decision against the interests of working people'.[88] Possibly, some years later, he would have been reassured that a similar ruling was given when the Bishop of Oxford sought to question the investment policy of the Church Commissioners.[89]

Fact finding

The great majority of the cases coming before Megarry were much less likely to arouse public interest. Of those, many involved questions of fact rather than law. Here Megarry was almost always meticulous and expert—whether in physically piecing together the forty fragments into which a confused elderly widow had torn her will,[90] or (as in the difficult case of *St. Edmundsbury and Ipswich Diocesan Board of Finance*[91]) deciding whether a right of way extended to use by vehicles—a question which depended in part on the conflicting evidence of no fewer than forty witnesses.[92] But in the Chancery Division questions of trust and property law, often extremely complex, are common; and here Megarry's powers of analysis were unrivalled.[93] His most celebrated decision is unquestionably

[88] *The Times*, 18 April 1984.

[89] *Harries v. Church Commissioners* [1992] 1 WLR 1241.

[90] 'Judge solves a jigsaw puzzle with torn will': *The Times*, 6 Feb. 1973. Had the widow been at the time capable of forming the necessary *animus revocandi* the will would have been revoked even if later physically reassembled.

[91] [1973] 1 WLR 1572.

[92] This case also involved a difficult point of law about the interpretation of language used to reserve a right of way. Very unusually, the Court of Appeal was to hold that Megarry's interpretation of the law had been incorrect.

[93] They are seen very clearly in the decisions dealing with the consequences of an industrialist's decision to endow a Chair of Pharmacology through the medium of a complex scheme intended to minimise taxation and preserve for the future the marketability of the company's shares:

that in *Tito v. Waddell (No 2)*:[94] a claim by the inhabitants of Ocean Island for compensation for the damage running into many millions of pounds which they claimed to have suffered as a result of British Government sponsored phosphate extraction. The court made a three week visit to the area; the hearings took altogether 206 days; and eventually Megarry delivered a judgment of more than 100,000 words (which he had written out in longhand, taking days to do so). A great variety of points of law was discussed in great detail, and Megarry (perhaps influenced by his frequently expressed belief that the most important person in the court room is the person who is about to lose) was perhaps more tolerant than most judges would have been in allowing the islanders to amend the pleadings even at a very late stage in the case. The decision was that the islanders had no legal entitlement to compensation; but Megarry made it plain that he considered that a responsible government would make proper provision for them.

Prisoner of precedent?

The litigation process is probably not apt to resolve issues of the kind presented by the *Ocean Islanders* case; and Megarry's reputation is much better served by cases such as *Coco v. Clark* (see above), and *Ross v. Caunters.*[95] This latter case established the important point (subsequently confirmed by the House of Lords, albeit on different grounds[96]) that a person who suffered financial loss as the result of a solicitor's negligence may recover compensation.[97] The justice of such a decision may seem self-evident; finding a path to it by a legitimate process of legal reasoning rather than mere invocations of justice and equity can be much more difficult. And sometimes there is no way of reaching such a solution, for even legislation specifically designed to remedy a particular injustice may

Vandervell v. IRC [1967] 2 AC 291*; Re Vandervell's Trusts (No 2)* [1974] Ch 29. The outcome was fiscally disastrous, and required hearings before the High Court and Court of Appeal (twice) and the House of Lords. Megarry's analysis in *Re Vandervell's Trusts (No 2)* [1974] Ch 29 is extremely skilful, and although Lord Denning MR and his colleagues in the Court of Appeal did not adopt it, their decision not to do so seems to have been based more on an intuitive feeling that the settlor had been treated unfairly than on any close analysis of the law.

[94] [1977] Ch. 106.

[95] [1980] 1 Ch. 297.

[96] *White v. Jones* [1995] 2 AC 207.

[97] In that case not specifically warning the testator that the witnesses should not include anyone intended to take a benefit under the will or the spouse of such a person.

not always be effective to do so. For example, Megarry had been a powerful advocate of the need for legislation (in preference to case law) as the means of protecting claims to the family home,[98] but it soon became apparent[99] that whilst legislation could have 'brought certainty and clarity into what was a confused and contentious field' the Matrimonial Homes Act 1967 had not done so.[100] More than a decade was to pass before the defects were cured.

Megarry has been criticised for being a 'prisoner of precedent' and also for 'long-windedness' and even for having 'a penchant for red herrings'.[101] It is certainly true that many of his judgments are lengthy and learned, yet Megarry 'reserved' judgment comparatively rarely. It has also been said that 'he had no single central vision of the law's changing role in society'.[102] Yet he (and many of his contemporaries) would have been surprised to hear it suggested that such a vision was requisite or even desirable in a judge—especially a judge usually deciding cases at first instance. As Sir Martin Nourse put it,[103] 'when you get to the end of a Megarry judgment, you have the feeling that the decision, however long it may have taken to get there, was both correct and in accordance with the merits. There have been very few judges of whom the same can be said.' It is certainly true that Megarry was 'no Denning',[104] but he might not have regarded that as a necessarily unfavourable assessment. Megarry certainly yielded to no one in his commitment to finding just solutions and his skill in doing so.

Head of Division: Vice-Chancellor[105]

Although most of Megarry's reported judgments are of cases at first instance, his appointment as Vice-Chancellor[106] made him Head of the

[98] See above, p. 305.
[99] *Wroth v. Tyler* [1974] Ch. 30.
[100] See Cretney, *Family Law in the Twentieth Century*, pp. 130–1.
[101] *The Times*, 16 Oct. 2006.
[102] *The Times*, 16 Oct. 2006.
[103] Sir Martin Nourse, Address at Megarry's Memorial Service, Lincoln's Inn Chapel, 12 March 2007.
[104] *The Times*, 16 Oct. 2006.
[105] See Megarry's article *The Vice-Chancellors* (1982), 98 LQR 370. Megarry lived to see the further change effected by the Constitutional Reform Act 2005 which redesignated the office 'Chancellor of the High Court' and renamed the existing century old Supreme Court of England and Wales the 'Superior Courts of England and Wales'.
[106] See above, note 105.

Chancery Division,[107] a role comparable in those days to that of Lord Chief Justice in relation to the Queen's Bench Division and the President in relation to the Family Division. Trends in judicial administration (stemming originally from restructuring effected by the Courts Act 1971) have over the years greatly increased the emphasis on management in the courts, and Heads of Division have had to carry a steadily increasing burden in terms of such matters as considering judicial appointments, dealing with procedural reform, responding on behalf of the Division to proposals for changes in the law, and so on. Of its nature, much of this work (and especially the 'pastoral' care of the other judges of the Division) is done in private; but Sir Martin Nourse[108] has recorded that:[109]

> In everything which affected our well-being, whether it was some personal problem or a point of procedure or practice which needed to be settled, he was concerned and accessible. It was a pleasure to go and see him in his room . . ., he probably in a cardigan and carpet slippers, with open law reports and text books piled one on top of another all over his huge desk. With his clerk . . . he kept a light but firm touch on the workings of the Division.

But Megarry's (very considerable) contribution as a judge to the development of English law was made almost exclusively as a trial judge in the Chancery Division (rather than as a judge hearing appeals in the Court of Appeal or House of Lords); and it seems surprising that so distinguished a lawyer was never promoted further in the judicial hierarchy.[110] There has inevitably been speculation about the reasons for this;[111] but it seems that at the end of the 1970s Megarry was in fact offered promotion to be a Lord Justice of Appeal and declined.[112] It is possible that he felt he could make a better contribution to the administration of justice by

[107] Megarry (unlike his successors) did not in practice often sit in the Court of Appeal, notwithstanding the fact that as Head of Division he was a member of that Court.

[108] A Judge of the High Court, Chancery Division, 1980–5 (i.e. Megarry's last five years as Vice-Chancellor); subsequently Lord Justice of Appeal.

[109] Address at Megarry's Memorial Service, Lincoln's Inn Chapel, 12 March 2007.

[110] For Megarry's role as Head of the Chancery Division (Vice-Chancellor of the Chancery Division 1976–81, Vice-Chancellor of the Supreme Court 1982–5) see above. Megarry was appointed a Privy Councillor in 1978 and until he reached the age of 80 heard appeals as a Member of its Judicial Committee.

[111] '. . . the failure of any further advancement in the judicial hierarchy did look suspiciously like a blockage from the old-boy network. The fact that he spent his war in the civil service rather than the armed forces probably did not help' (Sir Louis Blom-Cooper, QC, *The Guardian*, 19 Oct. 2006).

[112] Private information from a member of the family.

sitting as a single judge at the head of a Division than as one member of a collegial tribunal of three or five.

The 'Diversions'

Megarry had lightened the tedium he experienced in the lecture rooms and libraries of Cambridge by collecting examples of judicial wit, striking curiosity, extraordinary incident and bizarre behaviour. Over the years, the collection (organised and collated with his characteristic efficiency) grew, and Megarry drew on it to produce *Miscellany-at-Law* (Oxford, 1955) described as 'a diversion for lawyers and others'. A *Second Miscellany* followed (Oxford, 1973).[113] Almost unbelievably, in 2005 the 95-year-old Megarry published a third in the series under the title *A New Miscellany-at-Law* (Oxford, 2005). All have been the salvation of lecturers seeking to enliven the exposition of a technical area of the law and of the many after-dinner speakers who lacked Megarry's own legendary skill in that difficult art-form. But the *Miscellanies* are far more than scholarly anthologies of amusing anecdotes: many passages in all three volumes prompt serious reflection on the nature and effectiveness of the legal process. The American scholar and lexicographer, Professor Bryan A. Garner, and a team of assistants had, with the support of the three Megarry daughters, devoted nearly a year to bringing the project from typescript to publication; and it was fitting that Professor Garner should have read an extract from the *New Miscellany* at a crowded Memorial Service held on 12 March 2007 in the chapel of the Inn which Megarry so greatly loved.

Megarry's contribution to the law

Megarry had a large and lucrative professional practice in a notoriously competitive profession. He attained all but the very highest judicial office. He wrote major works of legal scholarship, and it may be that his reputation as a scholar and author will survive the inevitable dimming over time of his reputation as a judge. But it is at least arguable that his most

[113] In 1969 Megarry published *Arabinesque at Law* (1969), in effect a scholarly edition of some of the 'more remarkable dicta of Serjeant Arabin' (said to be a byword for eccentricity of utterance') uttered in Arabin's judicial capacity at the Old Bailey in the 1840s.

remarkable (albeit least directly enduring) achievement was as a law teacher, using that word in its broadest sense. As Hubert Picarda, QC, has put it:

> Generations of law students who listened to [his] lectures under the auspices of the Council of Legal Education were privileged to hear a star performer . . . [They] knew they were getting pearls of wisdom succinctly and memorably delivered by a master of the law . . . Commonwealth students in particular were invariably keen metaphorically to touch the mantle of this great lawyer and teacher, whose approachability 'reflected the man . . .'

Megarry's lectures were not restricted to law students: he excelled equally in the difficult art of the prestigious 'public' lecture such as his 1977 Child & Co Lecture on *Judges and Judging,* his 1966 Presidential Address to the Society of Public Teachers of Law, *Law as Taught and Law as Practised*, and his Selden Society Lecture *Inns Ancient and Modern*. It was not only audiences of his fellow countrymen who were the beneficiaries: the Selden Society Lecture was described as 'a revised and somewhat amplified version' of the lecture given on 14 July 1971 during the visit of the American Bar Association to London, and that lecture was wonderfully adapted to the interests of the visitors.[114] Rather unusually for an English barrister of the period, Megarry took six months away from his practice in 1960 to become a visiting professor at the New York University School of Law; and he subsequently made many visits to North America, Australia, New Zealand, and to Kenya, Tanzania and Nigeria. Honours in the form of degrees, commemorative lectures in North America, and Life Membership of both the Canadian Bar Association and the American Law Institute are too numerous to set out in full in a memoir of this kind.[115] Megarry loved the law and he loved to communicate his love for it.

Megarry, the human being

At Cambridge, Megarry had met Iris Davies, the daughter of a Glamorgan tailor. To contemporaries, she was an outstandingly vivid character with a sparkling and vibrant personality. To the surprise of

[114] The published version, subtitled 'A Topographical and Historical Introduction to the Inns of Court, Inns of Chancery, and Serjeants' Inns' is a substantial work of nearly sixty pages plus a bibliography, a map, numerous fine photographs and other illustrations.
[115] A list can be found in *Who's Who*, 2006.

some, she chose Megarry from a large number of other suitors,[116] and they married in 1936. The marriage lasted for sixty-five years until her death, after a long and distressing illness during which Megarry cared for her devotedly, in 2001. She is remembered as a woman of 'delightful disposition' with 'striking chestnut hair' and a 'beautiful complexion'.[117] Iris Megarry gave up her career in the youth-employment service on the birth of the couple's first child, and then devoted herself unstintingly to her family and to her husband's professional career, not only accompanying him on his many travels, trying to organise the family's financial affairs, but also doing a great deal of (sometimes unacknowledged) editorial work on his books and articles.[118] There were three daughters of the marriage, one of whom (Lindsay) became a barrister, contributed to her father's books, and practised for nearly ten years before moving into law teaching.[119] It may have been that Megarry was a somewhat formidable parent, but it seems that in his later years he became more relaxed and delighted in the company of his seven grandchildren. He certainly had always had a great sense of fun. Megarry's professional earnings eventually enabled the family to live in the style appropriate to the most successful of the middle classes: he drove a vintage Rolls Royce, and in 1953 the family was able to move into the large house on the edge of Richmond Park[120] which was to be their home for the next twenty years.[121] But life remained in some respects austere: for example, the house did not have central heating. And although Megarry described his recreations in *Who's Who* as 'heterogeneous' there was little of the sybaritic in the holidays in the family motor-home spent for preference near waterfalls in the Scandinavia which he preferred to Southern Europe. Yet he was an enthusiastic and knowledgeable oenophile, chairing the Lincoln's Inn Wine Committee for more than twenty years,[122] insisting that his young daughters should learn about wine by tasting it, and (characteristically) endowing a fund to provide wine for the Lancing Staff Annual Dinner. But perhaps—with Lancing and others—it was with his own time and skill

[116] Private information.
[117] Sir Martin Nourse, Address at Megarry's Memorial Service, Lincoln's Inn Chapel, 12 March 2007.
[118] Iris Megarry also published at least one book review (of *Court Circular,* by Sewell Stokes) in the *Law Quarterly Review* (1950), 66 LQR 412.
[119] The other daughters are Susanna and Jacquetta (herself an author, albeit not of legal texts).
[120] 3 Fife Road, London SW14.
[121] In 1973 Megarry and his wife moved into a flat in Lincoln's Inn.
[122] Sir Martin Nourse's address at the Lincoln's Inn Memorial Service includes an account of Megarry's skilled administration of the Inn's cellar and of his preferences.

that Megarry was at his most generous: even until very late in his long life Megarry would not willingly decline any invitation to talk to law students, and on every such occasion (as indeed with his almost countless after-dinner and other speeches to those interested in the law) the experience was one which few of those present would ever forget.[123] Sir Robert Megarry died on 11 October 2006.

STEPHEN CRETNEY
Fellow of the Academy

Note. I am most grateful to Sir Robert Megarry's daughter, Mrs Lindsay Merriman, who gave me a great deal of information about family and other matters, and to her sisters. The archivist of Lancing College, Mrs Anne Drewery, provided me with much information from the archives in her care, which seem a model which other educational institutions would do well to emulate. Jeremy Tomlinson, Secretary of the Friends of Lancing Chapel, not only provided me with a copy of his book, *Lancing College, a Portrait* (1998) but also provided me with a great deal of insightful information about Megarry's relationship with the school which evidently meant so much to him. The Archivist of Trinity Hall, Cambridge, provided me with information from the college archives about Megarry's record and his relationship with the college.

The following read drafts of this memoir at various stages in its composition: Professor Chris Barton, the Hon. Mr Justice Beatson, FBA, Sir Louis Blom-Cooper, QC, Mr Michael Essayan, QC, Professor Julian Farrand, QC, Professor Bryan A. Garner, the Rt Hon. Sir Peter Gibson, Professor Cyril Glasser, Mr Guy Holborn, Sir Thomas Legg, QC, Professor Mark McGinness, the Rt Hon. Sir Martin Nourse, Mr Hubert Picarda, QC, Mr Frederic Reynold, QC, Professor F. M. B. Reynolds, QC, FBA, and the Rt Hon. Lord Justice Sedley. I am grateful to them all for their comments information and advice.

Indexation of monetary values has been done by reference to L. H. Officer, <http://www.measuringworth.com/>accessed 9 June 2007.

[123] Another example was his scrupulous help during 1976 in revising and consolidating the British Academy's Bye-Laws, together with Professor S. C. F. Milsom, and during subsequent revisions.