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Preface

While writing this book I had the aid of students past and present who expressed their feelings. I mainly wanted information on student reaction to their education. I already knew the answer. The first year was horrible, second and third years were boring and a waste of time. More than one said the third year should be abolished.

The initial impulse for the book came from a question by a student. I had claimed in a class of Comparative Law that the legal culture of judges largely determined their reasoning and the outcome of a case, not necessarily justice or settled law. I gave extreme examples from 20th century England, 19th century France, 20th century South Africa, and medieval Germany where in a particular case the judicial reasoning bound by the culture was absurd, where the judges knew their decision was unjust or inappropriate, and where they were not compelled so to decide. The student asked how this could be. I answered that the force of tradition is so strong that those involved with it are blinkered. The answer did not convince. I added then that American legal education was absurd, had long been so, but continued to exist in its present form. The class was stirred up, many showing agreement, none disagreement, and I was asked to permit an examination question on the subject. Clearly the issue was of consequence to the students.

I had published two articles on the subject in the Journal of Legal Education, a publication that is provided free to law professors but otherwise is largely unknown, as it was to my students. A colleague once remarked that my arguments there were correct but would change nothing. I agree. This book is an attempt to reach a wider readership. I also have a second strong and equally important aim: to introduce students to aspects of law that they will not come across in the standard law school curriculum. What they do not have access to in formal teaching is as important to understanding law (in my view) as the

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1 See Alan Watson, Roman Law and Comparative Law (Athens, GA., 1991), pp. 221 ff.
compulsory and standard optional classes. Of course I have to choose from examples. But I hope readers will get a glimpse of aspects of law that are usually denied to law students. I feel no shame in admitting that a great deal of my material comes, sometimes very directly, from previous publications of mine. Why not? I am writing for a very different audience that will not be acquainted with my writings. Not only that, I cannot totally separate my intellectual life from my experience of life. Moreover, we all assume that law is founded somehow on social reality: but it is a product of the human imagination. Often reality and imagination do not mesh. Hence comes, in large measure, the fascination of law.

I wish to emphasize the above. This book is studded or even stuffed with examples of law that have nothing to do with American law or with courses in American law schools. And that is precisely my point. Law school experience is too limited and excludes so much that is vital to appreciating the complexity of law. To give an example that will not surface in this book, I believe that my course on 'Law in the Gospels' is the only one in the U.S. (or, I think, elsewhere). How shameful. The Gospels are replete with law, and an understanding of what is going on in them is greatly enhanced by an appreciation of rabbinic and (to a lesser extent) Roman law. I teach from neither a Jewish nor a Christian perspective, and I have large classes. Perhaps wrongly, I believe my students come away with a greater understanding of law in everyday life, law's pervasiveness, its connection with the mores of a community, and the importance of non-state law. I believe that the law in the Gospels provides great insight into "law in action."

Of course, the examples in this book are not meant to indicate possible course offerings, but only to suggest what is outside of the standard courses, and is significant for understanding the nature of law. The longest and perhaps most complicated chapter in the book examines the impact in academia of three distinguished American scholars whose work is deeply and obviously flawed. My aim is not to demonstrate their weaknesses but to indicate the gullibility of law professors who accept with admiration their approaches and conclusions. I would like this book to be a contribution to American legal education. If I am accurate then American legal scholarship is deeply skewed. If I am mistaken I deserve to be excluded permanently from law teaching.

For some years, I have considered writing on the phenomenon of long continuing unsuitable legal education with chapters on ancient Rome, early Byzantium, 16th century Europe, 17th and mid-20th century Scotland. I have no overall explanation for the phenomenon but will say a little at the end of the book.
I emphasize that nothing I say denigrates the intellect, teaching skills or dedication of American law professors. My objection is solely to the system from which the professors themselves terminally suffer. How it came into being is one issue. Why it continues to exist is another, and more important. The flaws are obvious and well-known. The explanation is the pervasive but little recognized effect of tradition in legal evolution.

This book is not what I had planned. My aim was to follow up on my two critical articles on legal education. I have spent my career in libraries when not in classrooms. I had criticisms about legal education but I was quite unprepared for the outpouring of disquiet of the system from students, practitioners, adjunct professors, legal writing instructors and others. Apart from traditional law school professors, no one had anything good to say about the system. No one. Many wanted law school to prepare more for practice – not my standpoint – but I became involved with people's views for the very first time in my academic career. I have been forced to learn a lot. And I am grateful.²