

From the Bag

David Daube

Peter Stein

DAVID DAUBE HAS a special place among the world's legal historians. His name is not a household word among lawyers generally, unless they happen to have studied law at Oxford or Berkeley. Even among some specialists in legal history, his name is unfamiliar, since he took little note of the history of the common law. This lack of name-recognition is due in part to the unusual scope of his interests.

His professional specialism was Roman law, but he wrote as much or more on the law of the Bible. Both these fields require special linguistic skills, Latin, Greek, and Hebrew, and several modern languages. Daube's linguistic equipment for these fields was unparalleled. Perhaps the characteristic feature of his work is that he never took himself too seriously. All his arguments, however serious in substance, as the essay reprinted here exemplifies, are presented light-heartedly.

Daube was born in 1909 in Freiburg-im-Breisgau on the Rhine and brought up in the orthodox Jewish tradition. He took his doctorate in law at the University of Göttingen in

1932, but was advised, in view of the advent of the Nazis, to emigrate immediately to England, where he took a Ph.D. at Cambridge. He rapidly learned colloquial English, although he always retained a heavily accented way of speaking, and acquired a deep familiarity with the classics of English literature. In any discussion he could always illustrate his point with a pertinent passage.

He taught Roman law first at Cambridge and for four years at the University of Aberdeen in Scotland, before being appointed in 1955 to the Regius Chair of Civil Law at Oxford, where he became a Fellow of All Souls College. In 1970 he became the first Director of the Robbins Hebraic and Roman Law Collection at the University of California Law School in Berkeley, and he lived in the Bay Area until his death earlier this year.

Daube published some two hundred articles, some of considerable length, on aspects of Roman law and of Biblical law and its interpretation in Rabbinical tradition. Those on Roman law were republished in two volumes in Frankfurt-am-Main in 1991 and those on

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Talmudic law in Berkeley in 1992. He also published some monographs, several of which grew out of lectures, but he avoided the treatise or text-book, dealing with a large area of law with a grand sweep. He was interested in the New Testament as much as in the Old and practically originated the study of Rabbinical culture in the New Testament. Probably his most cited work is the "New Testament and Rabbinic Judaism," published in 1956.

For Daube the only way of learning about a historical system of law was to take a particular problem that aroused one's curiosity and see how it was dealt with in the ancient sources. Then we would learn whether the ancients used the categories that we use or thought in a different way altogether. Sometimes where the latter conclusion was reached, we found half-hidden echoes still surviving today.

At one point he became interested in nursery rhymes. He heard one of his sons reciting "Humpty Dumpty sat on a wall," and he asked who Humpty Dumpty was. The reply was an egg, for that is how children's books depicted him. Daube sensed from the rhythm of the line that he must have been something with a more bumpy shape than an egg. Even-

tually his researches showed that Humpty Dumpty was a *testudo* or siege engine, shaped like a turtle, which was used by the Royalist forces besieging Gloucester during the seventeenth century English Civil War.

Daube recognized patterns that, once established, recur in a particular tradition, for example, "The exodus pattern in the Bible" (1963). He paid much attention to the forms in which legislation is expressed, their tenaciousness and power of survival even when transplanted to alien soil, as in "Forms of Roman legislation" (1956).

He liked to identify the original social setting in which a rule was first enunciated, and got much pleasure from tracing the ancient antecedents of modern ideas. Among his works are discussions of "Civil Disobedience in Antiquity" (1972), of "Biblical landmarks in the struggle for Women's Rights" (1978) and of the ancient Greek origins of detective fiction. His originality resides in seeing aspects that have long gone unnoticed but which, as soon as they are spelled out, make the reader say, "of course, that must be so." The article on the self-understood is of this type.

