



DAVID DAUBE

*Walter Stoneman*

# David Daube

## 1909–1999

DAVID DAUBE, who died in California on 24 February 1999, at the age of ninety, was one of the last surviving refugee scholars from Nazi Germany who made such an impact on the intellectual life of Britain and the United States in the postwar period.

He was born in Freiburg im Breisgau on 9 February 1909, the second son of Jakob Daube, a wine-merchant, and his wife Selma Asher, who came from a scholarly and artistic family of Nordlingen near Rothenburg. The Daube family were Orthodox Jews, who had originally lived in France and came to Germany in the sixteenth century, settling first at Königsbach, near Karlsruhe, and later moving to Freiburg. They lived comfortably in Goethestrasse 35, then, as now, a pleasant street. David attended the Berthold-Gymnasium in Freiburg and entered the Law Faculty at Freiburg University. He was interested in legal history and became a private pupil of the great Roman law scholar Otto Lenel, by then retired from his chair in Strasburg and living in Freiburg (at Holbeinstrasse 5, about seven minutes walk away from the Daube household).

Lenel's two main achievements within Roman law were his reconstruction of the praetor's edict, which listed the various remedies available to litigants, and the *Palingenesia iuris civilis*, which took the fragments of classical juristic writing, mainly from the second and third centuries, collected in Justinian's sixth-century Digest, and put them back into their original context. Both areas fascinated David, although perhaps he never treated the texts with quite the same reverence as Lenel. The latter

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presumed that the texts had been transmitted relatively unchanged to the sixth century and was suspicious of the interpolation-hunting which was much in vogue in the period between the two world wars. David recounted how, during one of his visits, Lenel had shown him a postcard, which had just arrived from G. von Beseler, a leading interpolationist. Beseler used to stigmatise certain words as Byzantine, which had therefore to be treated as spurious in texts attributed to a classical Roman jurist. The card said simply '+ *considerare* R.I.P.' and was clearly designed to shock Lenel, who was not amused.

Among his regular teachers at the university David was impressed by the Roman lawyer, Wolfgang Kunkel. When Kunkel was appointed to a chair in Göttingen in 1929, David followed him. At Göttingen he was introduced to modern methods of biblical criticism by Johannes Hempel. When he told a teacher in his Orthodox congregation in Freiburg that he had become interested in source-criticism, he received the reply, 'If you must do it, do it like a surgeon who has to operate on his father.' In 1932 he took his doctorate under Kunkel, '*mit Auszeichnung*', the subject of his dissertation being a topic of biblical rather than Roman law: *Das Blutrecht im Alten Testament*. Some forty years later, when he wrote to ask for an official attestation of his Göttingen doctorate, he was told that the relevant page had been torn from the register during the Nazi period!

When Hitler came to power in 1933, it was Lenel who advised David to emigrate to England and provided him with a letter of introduction to H. F. Jolowicz, then Professor of Roman Law at University College London. Jolowicz immediately passed him on to W. W. Buckland, Regius Professor of Civil Law at Cambridge and Fellow (and also President or Vice-Master) of Gonville and Caius College. Buckland was then seventy-three and at the height of his powers (he was to continue in office until he was eighty-five). He quickly took Lenel's place as a revered father-figure for David. Until he arrived in England, David did not speak a word of English and at first they had to communicate in French; fortunately Buckland had been at school in France and Daube had spent some time at French-speaking rabbinical schools. He enrolled as a research student at Caius under Buckland and by 1935 he had taken his Cambridge Ph.D., this time on a Roman law topic, the third chapter of the *lex Aquilia*, the statute dealing with patrimonial loss. Chapter I provided that one who killed another's slave or animal should pay its highest value in the previous year. Chapter III dealt with forms of loss other than the killing of slaves and animals and was generally understood to impose a penalty based on the highest value in the previous thirty days. This chapter had been the

subject of a study by Jolowicz,<sup>1</sup> which was reviewed by Lenel.<sup>2</sup> Daube argued that originally it dealt with injury, short of death, to slaves and animals, the penalty being based on the loss that emerged in the thirty days following the injury. It was only when the chapter was applied to inanimate objects that it was understood as referring to the thirty days before the injury.<sup>3</sup>

In 1936 he married Herta Babette Aufseesser and they had three sons, Jonathan, Benjamin, and Michael. Benjamin was named after David's elder brother, Benni, the author of *Zu den Rechtsproblemen in Aischylos' Agamemnon* (1938), who died of tuberculosis in 1946, but who remained a huge presence throughout David's life. In 1938 David was elected an Unofficial Tapp Fellow of Caius and much enjoyed the company of a group of younger resident fellows, with whom he played Mah Jongg. Indeed when it was clear that he had to get his parents and brother and his wife's parents out of Germany, it was one of this group, Philip Grierson, who flew over to Germany, negotiated the relevant permits and brought them to England, Buckland providing the necessary financial guarantees. David's parents settled in London, and he was proud that his mother was able to do factory work which during the war qualified her for extra cheese rations. His college fellowship was reported in the German press and he received many heart-rending requests from young Jewish scholars asking for his help to enable them to come to England. In later life he admitted that he occasionally certified that he knew people whom he had never met, so that they could get away.

At the outbreak of war he was briefly interned in the Isle of Man and then allowed to return to Cambridge. He was attracted by its tradition of Jewish-Christian cooperation in the study of the origins of Christianity. Having met Professor C. H. Dodd at a tea party, he was invited to join his New Testament Seminar. He had enormous respect for Dodd's learning and later co-edited a Festschrift in his honour. He was also influenced by Professor F. S. Marsh, another specialist in early Christian history, who read his drafts, as did Professor S. A. Cook, Regius Professor of Hebrew and also a Fellow of Caius.

His first book, *Studies in Biblical Law*, dedicated to Buckland, appeared in 1947, although the preface was dated March 1944. The title page contained the line which characterised so much of his later work;

<sup>1</sup> *Law Quarterly Review*, 38 (1922), 220 ff.

<sup>2</sup> *Zeitschrift der Savigny-Stiftung*, rom Abt. 43, 575 ff.

<sup>3</sup> *Law Quarterly Review*, 52 (1936), 253–68. David Cohen and Dieter Simon, eds., *The Collected Roman Law Studies* (Frankfurt am Main, 1991), pp. 3–18.

'Would'st thou read Riddles, and their Explanation?' In the opening chapter, on Law in the Narratives, he discusses whether ancient law arose out of religion, as Maine had suggested. The legal historian must go beyond the Bible and see what features are peculiar to the Bible and what are typical of all ancient law. He must remember that 'a good deal of what is commonly described as the religious character of Biblical law was not from the beginning inherent in that law but is due to the very special theological tendencies of the authors of the Bible' (p. 2). The conclusion must be that the idea that originally law was not distinguished from religion was a simplification and consequently we should be 'giving much attention to details and putting less trust in general impressions' (p. 3). In the remaining four chapters he put this lesson into practice in tracing the growth of some central legal doctrines. They dealt respectively with Codes and Codas in the Pentateuch, the Lex Talionis, Communal responsibility and *Summum ius-summa iniuria* (the use and abuse of strict legal forms). He cites the use of formalist criteria in the story of Joseph and the search for his cup in his brothers' baggage, and suggests that it represents a step in the rationalisation of evidence through the replacement of 'formalistic proof by a freer, more liberal assessment of evidence' (p. 257).

In 1946, David was made a University Lecturer in the Law Faculty, to teach Roman law, and gave up his fellowship at Caius, although in 1974 he became an Honorary Fellow. His contribution to Roman law continued in parallel with his biblical studies. 1948 saw the publication of two highly original studies of the Roman law of delict. In 'On the use of the term *damnum*',<sup>4</sup> he argued at length that in antiquity *damnum* always meant 'loss' rather than 'damage'. In '*Ne quid infamandi causa fiat*',<sup>5</sup> he demonstrated how the delict of *iniuria*, which originally dealt with physical injury, came also to cover cases of defamation.

In the same period he published three studies which set new standards in the scholarly analysis of the formative period of Jewish jurisprudence. 'The Civil law of the Mishna: the Arrangement of the Three Gates'<sup>6</sup> analysed the balance achieved by the Rabbis between the biblical sources and their own systematising in the context of the cultural and political environment in which they worked. 'Rabbinic Methods of Interpretation

<sup>4</sup> *Studi Solazzi* (Naples, 1948), 93–156 (*Coll. Studies*, 279–339).

<sup>5</sup> *Atti del Congresso di Verona, 1948* (Milan, 1951), III, 413–50 (*Coll. Studies*, 465–500).

<sup>6</sup> *Tulane Law Review*, 18 (1944), 351–407. Calum Carmichael, ed., *Collected Works* (Berkeley, 1992), I, 257–304.

and Hellenistic Rhetoric',<sup>7</sup> a study which has provoked much discussion, explored the influence of Hellenistic rhetoric on the hermeneutic rules adopted by the Rabbis and their practice of statutory interpretation. 'Negligence in the Early Talmudic Law of Contract (*Pešī'ah*)'<sup>8</sup> addressed an issue appreciated by all Romanists: the historical development of standards of contractual liability. Through an analysis, in part of the Hebrew term conventionally translated as 'negligence', and the incidence of its various forms in different strata of the tradition, he demonstrated a movement from a form of strict liability in the period of the Mishnah to negligence in that of the Talmud.

David ensured that, while reading widely in English literature, he never lost his German heritage. His eldest son, Jonathan, recalls that his father insisted on their speaking German in the streets of wartime Cambridge during the Second World War, and retained a love of Wagner. David's knowledge of English became perfect, although he always spoke it with a strong German accent. He had the gift of combining a sensitive appreciation of the special features of a national culture with extraordinary objectivity. One of his earliest essays to be printed in English was 'Shakespeare on aliens learning English', published by Heffers in 1942. For one who was so steeped in rabbinical learning, his openness to the non-Jewish world was almost unique. He used sometimes to describe himself as orthopractic rather than orthodox, since for him what was important was that the traditional practices should be maintained by some Jews at least.

In 1951, David was appointed to the newly-established Chair of Jurisprudence, which included the teaching of Roman law, at Aberdeen University. The Principal of Aberdeen, Sir Thomas Taylor, himself a lawyer, was anxious to revive the law faculty and was looking for a scholar with wide historical interests. David's Aberdeen Inaugural Lecture, on 'The Scales of Justice', was based on a dazzling variety of sources.<sup>9</sup>

His health had never been good; he seemed to be continually using an inhaler, and his respiratory problems were not helped by the Aberdeen climate and the fact that he strictly observed the Orthodox practice which forbade taking transport on the Sabbath. This meant that he had to trudge, often for considerable distances, to committee meetings, which

<sup>7</sup> Hebrew Union College Annual, 22 (1949), 239–64 (*Coll. Works*, I, 333–55).

<sup>8</sup> *Festschrift Fritz Schulz* (1951), I, 124–47 (*Coll. Works*, I, 305–332).

<sup>9</sup> *Juridical Review*, 63 (1951), 109–29 (*Coll. Studies*, 447–63).

were frequently held on Saturday mornings. Early in 1952 he spent some time at a Swiss clinic to recover his strength. Nevertheless he enjoyed Aberdeen, which he found refreshingly different from Cambridge, and succeeded in establishing a tradition of Roman law study there, which has persisted to this day.

David found it difficult to resist invitations to give lectures at other universities and two of his most seminal books were based on lectures given during his Aberdeen period. In *Forms of Roman Legislation* (Oxford, 1956), based partly on a lecture at UCL, he sought to introduce to law the technique of form criticism, which he had already used in biblical study. Each form has its own 'setting in life', which expresses its original communal need and which it tends to retain even when transferred to a new setting. He compared the original functions of the two forms 'if a man does this, he shall suffer a penalty' and 'whoever does this, shall suffer a penalty'. The first form, common in early legislation, tells a story of something which has not yet happened; the second refers to a category; it is more abstract and detached.

*The New Testament and Rabbinic Judaism* was based on the Jordan Lectures in Comparative Religion given at the University of London in 1952. It was published in 1956 and included much material derived from his contributions to the Dodd seminar. He combined form criticism and rabbinic scholarship, in, for example, his comparison of legislative and narrative forms. As usual, he avoided broad general discussions and concentrated on specific points examined microscopically.

The Aberdeen period was shortlived. In 1954 H. F. Jolowicz, who had moved from London to Oxford, died suddenly and David was appointed to succeed him in the Regius Chair of Civil Law, which was attached to a Fellowship of All Souls College. Jolowicz's predecessor, Francis de Zulueta, was still living in the Oxford area. He had met David soon after his arrival in England and later remarked that if he had been alive in Renaissance Italy, Michelangelo would surely have chosen him as the model for 'the young David'. De Zulueta had generously transferred his private collection of Roman law books to Aberdeen to help David's work. David now expressed his gratitude by editing a volume of *Studies in the Roman law of Sale* in honour of De Zulueta, although by the time it appeared in 1959, it had to be in his memory. David's own contribution on 'Certainty of Price', was typically nuanced and subtle. It was one of a series of articles on aspects of the contract of sale in Roman law, which appeared at this time, stimulated by his teaching of the relevant Digest texts ('Generalisations in

D. 18. 1',<sup>10</sup> 'Purchase of a Prospective Haul',<sup>11</sup> 'Three notes on D. 18. 1, conclusion of Sale',<sup>12</sup> 'Sale of Inheritance and Merger of Rights',<sup>13</sup> 'Condition prevented from materialising'<sup>14</sup>).

Oxford offered David a wider stage than Aberdeen, Roman law being a compulsory subject not only in Law Moderations but also in Schools. His Oxford Inaugural Lecture was on 'The defence of superior orders in Roman law',<sup>15</sup> and set the Roman discussions against the background of Greek tragedy. His lively and amusing lectures to undergraduates soon established him as something of a cult figure and he became a person of influence among his colleagues in the Law Faculty. Whenever there was a vacancy for a college teacher in law, he lobbied energetically, and frequently successfully, for a Roman lawyer to be appointed. In 1957 he was elected to the British Academy.

For relaxation he investigated the origin of nursery rhymes. For example, in children's books Humpty Dumpty is often depicted as an egg, but when he heard one of his sons reciting it, David sensed from the rhythm of the verse that he had to be something more 'bumpy' and showed (or as he would have written 'shewed' since that was how Buckland wrote the word) that Humpty Dumpty was a giant siege engine in the form of a tortoise, used by the Royalist forces besieging the city of Gloucester during the Civil War (in 1643). He published the results of his nursery rhyme studies merely over his initials in a series of notes in the *Oxford Magazine* for 1956, but some colleagues immediately recognised the characteristic style.

Whereas the fifties seemed propitious for David, the sixties were personally unhappy. His marriage broke down and was dissolved in 1964. The place of Roman law in the curriculum came under attack in the Law Faculty. He moved into an over-heated room in All Souls College, from which he would escape by travelling to exotic places. Post-cards would arrive, for example from Samarkand: 'They are very keen on Roman law here in Uzbekistan!' He began to make short visits to the United States, which he much enjoyed. At Berkeley in 1961 a topic of faculty discussion was the case of an intelligence officer who gave away secrets 'seduced by

<sup>10</sup> *Studi Arangio-Ruiz*, I (Naples 1952), 185–200 (*Coll. Studies*, 527–40).

<sup>11</sup> *Studi Paoli* (Florence 1955), 203–9 (*Coll. Studies*, 553–60).

<sup>12</sup> *Law Quarterly Review*, 73 (1957), 379–98 (*Coll. Studies*, 603–23).

<sup>13</sup> *Zeitschrift der Savigny-Stiftung (rom. Abt.)*, 74 (1957), 234–315, (*Coll. Studies*, 649–722).

<sup>14</sup> *Tijdschrift voor Rechtsgeschiedenis*, 28 (1960), 271–96 (*Coll. Studies*, 995–1016).

<sup>15</sup> Oxford 1956, reprinted in *Law Quarterly Review*, 72 (1956), 494 ff. and in *Coll. Studies*, 579–602.



a Polish blond'. On remarking that that was a respectable reason, he received a corrective note from the Dean, to whom he replied, 'I too have met nice Polish girls / but luckily with raven curls. / Your story causes me to wonder / what might have passed had they been blonder.'

David had re-established relations with German colleagues soon after the end of the war, although, even when contributing to the *Zeitschrift der Savigny-Stiftung*, he usually wrote in English. His major Roman law contribution was, however, in German, taking up a subject that Lenel had made his own, '*Zur Palingenesie einiger Klassikerfragmente*'.<sup>16</sup>

The invitation to give the Gifford Lectures in Edinburgh for 1962 and 1963 was a great incentive to putting his biblical ideas in order. His subject was 'The deed and the doer in the Bible'. The lectures were never published in book form, although most of them found their way into print as articles. Since he frequently referred to them in other articles at the time, the outline of the lectures that David prepared is printed here in an appendix. The Gifford Lectures were the nearest David came to a comprehensive treatment of a broad subject; in general he eschewed synthetic accounts and concentrated on details which illustrated the general points he wanted to convey.

In the mid-sixties David deepened his familiarity with American academic life. Two of his sons were settled in North America, Jonathan in New England and Benjamin in Toronto (Michael would settle in Western Australia). David was a Senior Fellow of Yale in 1962 and Ford Professor of Political Science at Berkeley in 1964. In California he got to know Helen Smelser (née Margolis), whom he had first met in England (on a train from Oxford to London). She proved to be the magnet that made him return frequently to the Bay Area in the next few years and introduced him to the world of psychoanalysis. They eventually married in 1986. It was while he was in Berkeley that he prepared the Riddell Memorial Lectures, which he delivered in the University of Newcastle upon Tyne in November 1965 and published the same year (dedicated to Helen). The subject was one which pre-occupied David for much of his life, *Collaboration with Tyranny in Rabbinic law*. How should a community of Jews react when confronted by the demand of a non-Jewish government to surrender a man to be put to death when refusal will involve the extermination of the whole community? He was later to return to this theme, with particular reference to the New Testament, in

<sup>16</sup> *Zeitschrift der Savigny-Stiftung, rom Abt*, 76 (1959), 149–264 (*Coll. Studies*, 789–897).

his last published book *Appeasement or Resistance and other essays on New Testament Judaism* (Berkeley, 1987).

*The Exodus pattern in the Bible*, which appeared in 1963, as one of the first All Souls Studies, shows how the exodus story set a pattern which determined the thinking of both Old and New Testament writers. Three stages should be distinguished: 'there is the ancient social practice, there is the exodus depicting God as acting in conformity with that practice, and there is social practice advancing under the stimulus of the story' (p. 16). According to law and custom, a Hebrew slave had to be held under certain conditions: his nearest relative had the right and duty to redeem him or he might buy back his own freedom; he was to be released after a definite period. The authors of the Exodus story represented Pharaoh as flouting these established social regulations and God as making him comply with them.

*The Sudden in the Scriptures* (Leiden, 1964) analyses the various words used to describe suddenness and is in two parts, first the Old Testament and Rabbinic Literature and then the New Testament (rather more than half of the book). The first part develops some points made in the Robert Waley Cohen Memorial Lecture in 1963 on 'Suddenness and Awe'.

In 1966 David gave the fifth annual St Paul's Lecture, under the auspices of the London Diocesan Council for Christian-Jewish Understanding, on 'He that cometh'. The first part was on Hezekiah as a Messianic figure, who had considerable unnoticed influence on New Testament writers. The second part was on the institution of the Eucharist and its relation to the Passover-eve meal. Traditionally the company set aside a piece of unleavened bread, thought to represent the Messiah and called Aphiqoman, 'the Coming One'. With the words, 'this is my body' Jesus announced that the Messiah had arrived in his own person. The ritual of eating 'the Coming One' must precede the institution of the Eucharist, the fulfilment of an ancient expectation.

David did not discuss the wine and suggested that he might deal with that problem on another occasion. In 1974, when he was settled in California, he returned to St Paul's to give the thirteenth lecture on 'Wine in the Bible'. It was again in two parts. The first discussed the incidents of drunkenness recorded in the Old Testament and the sympathetic way they are treated in the Wisdom literature. In the second part of the lecture he returned to the elements of the Eucharist. The wine was not as significant as the bread, which identified Jesus as the Messiah, but its likening to blood would have been understood by those at the meal and specifically

looked forward to Jesus' impending death. The subsequent pairing of the bread and wine, as both forecasting tragedy, was non-Jewish.

In Roman law, he took advantage of the invitation of the Cambridge Faculty of Classics to deliver the Gray Lectures in 1966 on *Roman Law: linguistic, social and philosophical aspects*.<sup>17</sup> In the first section he deals with the relationship between the verb and the agent noun and action noun. The agent noun typically does not cover the whole range of the verb but a specialised or professional part of it, e.g., the Latin *sponsor* or English undertaker.

The second section concentrates on economic realities. 'The systematic coherence and conceptual smoothness' of Roman law have induced scholars 'to forget about the rugged realities behind the facade' (p. 65). He pours scorn on the notion that in classical law, chapter III of the *lex Aquilia* made one who merely injures another's thing liable for the full value and not merely, as he himself held, for the difference between the full and the reduced value. Further, it was believed that the Romans had a horror of intestacy, but the emphasis on wills in legal texts reflects the doings of the 'haves' in society, whereas the 'have-nots', the vast majority, never thought of making a will at all. The texts cited in favour of the notion do not refer to intestacy. For example, *intestatus vivit* in Plautus' *Curculio*, 621 ff., means not 'intestate' but 'without testicles'. Similarly, the son in the power of his father could not own property of his own, but for the 'have-nots' this was a meaningless rule.

The use of 'dodges' to avoid the operation of legal rules in order to help a friend or relation was a favourite topic for David. Preserving a poor debtor from infamy by paying part of the debt and having it returned several times was analysed with obvious relish, as was the legislation to protect the 'non-tipper', where the law seems to prevent a man from harming himself by an excess of generosity but really aims to help those who have no wish to be overgenerous. Under the heading 'Philosophical aspects', he discussed standards of liability (*dolus, culpa, casus*) and the relationship between negligence and intent.

Berkeley was trying to lure him to settle permanently. Once he had passed sixty, he could retire on a small pension from Oxford, but it was difficult to make the definitive break with Britain (whose citizenship he never renounced). Then in November 1969 he revealed an exciting development. The Berkeley Law school had been left an enormous endowment (originally estimated as twelve and a half million dollars) for 'Canon, Jewish,

<sup>17</sup> (Edinburgh, 1969).

Islamic and Roman law'. As he wrote in a letter, 'A library will be built, with the most up-to-date research centre in the world attached to it . . . I am urged to take charge of this development, together with Kuttner (and of course John Noonan who is already here). This time it will be more difficult to say No.'

He said Yes and in 1970 became Director of the Robbins Hebraic and Roman Law Collections and Professor-in-Residence at the School of Law at Berkeley, appointments that he held until 1981, when he became Emeritus. He settled in a tiny flat near North Beach in San Francisco, rose early and walked to the East Bay bus terminal to take the bus to Berkeley. The drivers knew him well; one always greeted him with 'Good morning, Dr Einstein'. Only when the Bay bridge was damaged by an earthquake was his commuting interrupted, when he set off home but had to return to his room in the library and told colleagues that he considered it his duty to guard the books against looters. His son Jonathan, who spoke with him by telephone in the middle of the night, found him completely unruffled.

His lectures on Roman law—and now also on Talmudic law—achieved the cult status in Berkeley that they had enjoyed in Oxford. His student audiences waited expectantly for their hilarious and indiscreet anecdotes. He was fascinated by the prevailing hippy culture, grew his hair long and abandoned wearing ties (although he always wore a dark suit). Current concerns were reflected in his writing, as in 'Biblical Landmarks in the struggle for Women's Rights'.<sup>18</sup> About this time he gave up his Orthodox practices. Of course he enjoyed being considered 'a character', but any student who was seriously interested in the subject received tremendous support.

David returned regularly to England. When the Oxford Centre for Postgraduate Hebrew Studies, under Dr David Patterson, was set up in 1973, he was delighted to become the Centre's first Honorary Fellow and to give the Inaugural Lecture on 'Ancient Hebrew Fables'.<sup>19</sup> Later when a paper he had prepared for a conference on Medical and Genetic Ethics (a topic in which he took an interest in retirement) could not be given, it was published by the Centre.

Even when settled in California, he maintained his contacts with Germany. The newly established University of Konstanz had made him a Visiting Professor of History in 1966, a post that he retained until 1978. He bought a flat in Konstanz and made a point of going there each spring. Several studies appeared in German in *Konstanzer Universitätsreden*,

<sup>18</sup> *Juridical Review*, 90 (1978), 177 ff.

<sup>19</sup> (Oxford, 1973).

such as *Typologie im Werk des Flavius Josephus* (1977). His writing in German was usually more solemn in tone than that in English.<sup>20</sup> In 1977 he gave the Presidential Address to the Classical Association in Liverpool on *the Duty of Procreation*.<sup>21</sup> He showed that there was no biblical authority for such a duty. ('Be fruitful and multiply' is a blessing not a command.) The duty was introduced for political reasons in classical antiquity and was then taken over by both Rabbis and Church Fathers.

In 1981 he published, under the title *Ancient Jewish Law*, three inaugural lectures which had been delivered at the University of Judaism at Los Angeles, as part of an undergraduate course which aimed to integrate the teaching of Judaica into the teaching of Western thought. The subjects were (1) Conversion to Judaism and early Christianity, intended for a general audience, (2) Error and Ignorance as excuses for crime, for the academic staff, and (3) The form is the message, addressed to lawyers.

Although he could never bring himself to write a sustained 'text-book' type work, his interests broadened somewhat in the Berkeley period and he wrote about topics that applied to many aspects of legal history. For example, 'The Self-Understood in Legal History', appeared in both English and German.<sup>22</sup> His subject was 'something so much taken for granted that you do not bother to reflect on it or even refer to it'. His opening example was from the then current Statutes of All Souls College, which contained the words, 'No woman shall become a member of the College'. This was one of the latest additions, because until this century the rejection of women was so much a matter of course that no one thought of formalising it. Typically David could not resist adding, 'One day, with further advance of molecular biology and brain transplants, yet another clause will be appended to keep out monkeys. At the moment, as their participation in academic life does not enter consciousness even to a minimal extent, they are contemplated by no rules express or tacit.'

Latterly he concentrated on the field he had discovered, New Testament Judaism. In his eighties he took up the case of Judas Iscariot and argued strongly that Matthew's account (27. 3 ff.) of his genuine con-

<sup>20</sup> Compare 'Greek Forerunners of Simenon', *California Law Review*, 68 (1980), 301 ff., with 'Die Geburt der Detektivgeschichte aus dem Geist der Rhetorik', *Konstanzer Universitätsreden*, 123 (1983).

<sup>21</sup> (Edinburgh, 1977).

<sup>22</sup> *Juridical Review*, 85 (1973), 125–34; *Zeitschrift der Savigny Stiftung, rom. Abt.*, 98 (1973), 1–13; also reprinted in *The Green Bag*, 2, 2nd ser. (1999), 413–19.

trition, leading to self-punishment by hanging, was to be preferred to that in Acts (1. 16 ff).<sup>23</sup>

In the mid 1970s David received a number of Festschriften, reflecting his varied interests. Alan Watson edited *Daube Noster* (Edinburgh, 1974), which contained studies on legal history, predominantly Roman law. In the same year Bernard Jackson edited a special issue of the *Journal of Jewish Studies* in his honour under the title *Studies in Jewish Legal History*. Ernst Bammel, C. K. Barrett, and W. D. Davies edited *Donum Gentilicium: New Testament Studies in honour of David Daube* (Oxford, 1978). In the preface to the latter, W. D. Davies noted the characteristics of his work: ‘a hawklike capacity to pounce upon the essentials of a text or a discussion, a subtlety rooted in a Rabbinic tradition, a scrupulous thoroughness typical of a German training, and an encyclopedic and imaginative awareness of first century Judaism’.

To mark the occasion of his eightieth birthday in 1989, celebratory symposia were held both in Berkeley, at the Graduate Theological Union, and in Oxford, at the Centre for Postgraduate Hebrew Studies.<sup>24</sup> He was able not only to attend but to contribute to both. At Oxford he gave an entrancing talk on Esther from a single sheet of notes that appeared to be no larger than a postage stamp.

Since his studies were widely dispersed, often in obscure periodicals and Festschriften, it became essential to bring them together. *The Collected Roman Law Studies*, edited by David Cohen and Dieter Simon, were published in two volumes by the Max Planck Institut für europäische Rechtsgeschichte in Frankfurt am Main in 1991 and the following year the Robbins Collection began the publication of his *Collected Works* with a volume of Studies on Talmudic Law, edited by Calum Carmichael.

David received honorary doctorates, usually of law, from Edinburgh 1960, Paris 1963, Leicester 1964, Hebrew Union College 1971, Munich 1972, Cambridge 1981, Göttingen (dr.phil.) 1987, Graduate Theological Union, Berkeley 1988, and Aberdeen in 1990. The last became a family celebration. Thereafter his health did not allow him to accept further offers of honorary degrees, such as from Harvard. He was a member of the Göttingen and Bavarian Academies, the Royal Irish Academy (1970), and the American Academy of Arts and Sciences (1971).

David Daube’s contribution to the intellectual life of his two adopted

<sup>23</sup> *California Law Review*, 82 (1994), 95 ff.; *Rechtshistorisches Journal*, 13 (1994), 307 ff.; *Israel Law Review*, 29 (1995), 9 ff.

<sup>24</sup> Published together as *Essays on Law and Religion*, edited by Calum Carmichael (Robbins Collection, Berkeley, 1993).

countries was a product both of his enthusiasm for scholarship and of the vast range of his expertise. It is fair to say that without his work Roman law would hardly have survived at all in British law faculties. He was au fond (a favourite expression of his) a traditional German Gelehrte, with a highly disciplined approach to his work, but he brought an unusual exuberance to his studies. He could not wait to share his results, especially with his pupils, whom he held in thrall and to whom his devotion was total. His sympathy and understanding of their situation was constant and extended to their families, whom he treated as his own. Although his criticism of their work could be razor-sharp, it was delivered in such a kindly way that it amounted to stimulus and encouragement; an ingenious suggestion, however implausible, always received extravagant praise. He encouraged boldness and originality and particularly seemed to enjoy correcting his own previous results in print.

What perhaps distinguished him from other scholars was his sense of the absurd and his ‘quirky’ sense of fun. Once in Aberdeen he claimed that he could bring the word ‘locust’ into every lecture of a course without the students noticing anything unusual. When the topic was legal formality, he observed that formal language tends to be associated with important transactions, such as transfer of land, but not with everyday trivia; so, when at home we see a pudding on the table with a pot of yellow liquid beside it, we do not remark ‘Lo! Custard.’

Although he eschewed abstractions, David could, by placing the details of a single text under a microscope, produce a completely new way of looking at a whole subject. He was especially sensitive to recurring patterns of thought which crossed traditional boundaries, while fully aware that the transfer of an idea from one area to another is hardly ever devoid of complications and apt to produce incongruity. Many of his insights seemed to be almost intuitive, but had probably matured in his capacious memory. His fascination with textual forms and with the origins of particular words and phrases (limericks particularly intrigued him) sometimes suggested that his interests were primarily philological, but he specifically rejected that view.<sup>25</sup> His world was full of puzzles, which no one had previously noticed, waiting to be identified and solved.<sup>26</sup>

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<sup>25</sup> ‘Zukunftsmusik: some desirable lines of exploration in the New Testament field’, *Bulletin of the John Rylands Library of Manchester*, 68 (1985), 53.

<sup>26</sup> I am grateful to Jonathan Daube, Calum Carmichael, Bernard Jackson, and Alan Rodger for comment and advice.

## Appendix

Outline of the Gifford Lectures in Edinburgh, 1962–3.

### THE DEED AND THE DOER IN THE BIBLE

#### 1. CAUSATION

(a) The role of God: he instructs man; works inside his mind; instigates him; puts a stumbling-block in his way; uses him as his instrument.

(b) Indirect causation in Early Law: difficulties of evidence; special interest of law-givers; dangerous things and actions; causation and intent.

(c) The New Testament: the crucifixion: Jews and Romans.

(d) Language: the semitic causative.

#### 2. INTENT

(a) Law: difficulties of evidence. 'Thou shalt not covet.' Disregard of intent for the sake of system-making or of restoration of balance.

(b) Some verbs: 'to sin', 'to murder', 'to slay', 'to smite'.

(c) Old Testament definitions of the intentional and the unintentional.

(d) The New Testament: a good heart; law and morality; comparing the disparate.

#### 3. ERROR AND IGNORANCE

(a) Error and accident: interest of poets and interest of lawgivers. Levitical system concerning ignorance; extension to accident and confusion.

(b) Ignorance: Lack of information and lack of understanding; 'Father forgive them.'

#### 4. PASSIONS

(a) Early Law: fight and murder.

(b) Some states: drunkenness; zeal: wrath; madness; love.

(c) Rash vows.

#### 5. NEGLIGENCE

(a) Religion: neglect of God; his will; the hour; 'to forget'; 'to sleep'; 'to guard'; 'to remember'; 'to watch'; Negligent transgressions.

(b) Law: difficulties of evidence; contract; damage to property; cautions.

#### 6. INTELLECTUAL AUTHORSHIP

(a) Two aspects: the instigator and the result; the instigator and the agent.

(b) Internal intellectual authorship.

(c) Two special situations: legitimate instigation to offence. The instigator shoulders responsibility.

#### 7. ATTEMPT

(a) A frequent setting: self-defence; intervention by God and punishment; the high priest's servant.

(b) Punishability: cases in the codes and not in the codes; false witness.

(c) Language: 'to think'; 'to seek'; 'to speak'; 'to prepare'; 'to devise'; 'to hope'; 'evil'; infinitive; modern Hebrew 'to attempt'; testing and tempting; testing man and testing God.



## 8. COLLECTIVES

(a) Typical Offences: various groupings; political-social development; personification and metaphor.

(b) Action of a collective: universality; emanation; generality; prominent part; dominant part; characteristic part; representation; association; the problem of exceptions.

(c) Communal punishment and ruler punishment.

## 9. WOMEN

(a) From servitude to double standard: early law of adultery: Sarah and Bathsheba; Deuteronomic reform; adulterer and adulteress in one family: Reuben and Absalom; harsh treatment: Tamar and the faithless people; modern climate: the adulteress in John, Susannah, Proverbs, and Sirach.

(b) The addressees in Old and New Testament Laws.

(c) Typical offences: witchcraft; idolatry; seduction.

(d) Bilingual marriages.

## 10. AFTER THE DEED

Escape; Denial; Defiance; Bad conscience; Repentance; Confession; Habituation and Relapse; Revulsion; Self-judgment; Judas.

