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0521438179 - Judges, Legislators and Professors: Chapters in European Legal History

R. C. van Caenegem

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JUDGES, LEGISLATORS  
AND PROFESSORS

CHAPTERS IN EUROPEAN  
LEGAL HISTORY

GOODHART LECTURES  
1984–1985

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# JUDGES, LEGISLATORS AND PROFESSORS

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LEGAL HISTORY

R. C. VAN CAENEGEM

PROFESSOR OF MEDIEVAL AND LEGAL HISTORY  
IN THE UNIVERSITY OF GHENT



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*Magistro Sociisque  
Domus Sancti Petri  
In Academia Cantabrigiensi*

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## PREFACE

This little book is based on a series of lectures given in the academic year 1984–85 at Cambridge, where I was living as Goodhart Professor. They were given to graduate students in law, as part of the LL.M. course in the Faculty of Law. Being based on lectures for students this book does not claim to be a work of profound research. On the other hand, the fact that the students were law graduates meant that I could raise issues in European legal history of a certain complexity not discussed in any exhaustive way in the learned literature. It also meant that I could assume an acquaintance with legal history and thus turn the course into a discussion instead of a monologue, and many issues prompted in this book were first mooted by students' questions. Since my listeners came from the continent of Europe, as well as Great Britain and the United States of America, I had sometimes to explain certain rather elementary facts of the history of the civil law to those who had grown up in the common law and vice versa. It is hoped that the reader will show understanding for this: a course on the history of European law, comprising England as well as the Continent, has, by its very nature, to take account of certain communication problems between the members of these two great families. I hope the reader will not be surprised to find that legal developments in the United States are touched upon from time to time: although England and America are separated by an ocean, the fact that they basically share the same legal system naturally

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## *Preface*

leads the historian of England's law to be interested in its American 'transplant'.

I have been inspired to turn my lecture notes into a book by the interest of several colleagues in Cambridge, by the example of one of my predecessors in the Goodhart Professorship, John N. Hazard, who dedicated a copy of his own Goodhart lectures, *Managing Change in the USSR*, to the Goodhart Lodge 'as encouragement to those fellows who came after him to try their hand at a volume', and finally by the knowledge that it was A. L. Goodhart's desire that his Professorship would lead to the publication of a series of lectures.

The Goodhart Professorship in Legal Science was founded in the University of Cambridge in honour of Arthur Lehman Goodhart (died 1978), who devoted his life to the study of law. Although an American citizen, he made a brilliant academic career in England, where, after studying at Cambridge, he became one of the leading legal authors and teachers of this century. He was, among many other things, Professor of Jurisprudence in the University of Oxford and for many decades editor of the *Law Quarterly Review*. I hope it is not too bold to express the belief that he would have found the following comparative-historical pages, which freely move between America, the British Isles and continental Europe, interesting and to his liking.

I owe a particular debt of gratitude to Peter Stein, Regius Professor of Civil Law in the University of Cambridge, who kindly undertook to read the whole manuscript and made numerous useful suggestions and observations, and to the Master and Fellows of Peterhouse, whose hospitality I enjoyed as visiting fellow in 1984–1985. I also warmly thank Dr Daniel Lambrecht for his help in the compilation of the index.

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R. C. VAN CAENEGEM