CHAPTER I

THRESHOLD

1. About the Title

WRITING this short book has been easy, in the sense that it has written itself throughout my lifetime, as a function of my work as a lawyer, a public official, and an occasional magistrate[1].

What has been difficult, however, was to find a title. It could just as easily have been "everything that I know about the law", or "everything you should not ignore about the law", "the law in practice", "practical suggestions for lawyers", or "truth and lies about the law".

In the end, though, a classic won me over: "An Introduction to Law." Maybe I chose this title because my first book in 1962 was entitled "Introduction to Administrative Law," and this one is its counterpoint, after having worked in the legal field for more than forty years. I could also imagine having added a subtitle to "An Introduction to Law," such as "Theory and Practice," or, if it were not uncomfortably long, something like:

AN INTRODUCTION TO LAW

For Lawyers and Non-Lawyers
A Unified Version of Common Law and Continental European Law.
Public and Private Law.
National, Supranational, and International Law.

Can such a small book fulfill such high aspirations? The answer is a rather resounding "no," but I still want to try.

[1] Perhaps unfairly, I have not added "as a professor" to the list.

2. A Book for Those Who are Lawyers and Those Who are Not

Why such an ambitious (sub-)title? Throughout the years, I have learned a few basic things about what the law is and how we practice it. I have seen that many of my colleagues from different legal systems and experiences share these same views, at least in terms of their overarching principles. Nothing in this book is novel, nothing is original.

The problem, however, is that in teaching these common principles in postgraduate courses, both in Latin America and in Europe, they do *not* form part of the common knowledge and experience of the lawyers in attendance. While there are just a few basic issues, they wind up surprising lawyers who have not heard about them before, and those who acknowledge that such issues exist do not understand that they are the usual fare of the legal profession.

This problem results from the fact that lawyers across the globe think that their law degree proves at least a rudimentary knowledge of the law. Unfortunately, confusing a formal act - such as receiving a diploma - with knowing basic facts, tenets, or aspects of law is a fundamental mistake: the type of mistake that will follow the lawyer throughout his life, until it is corrected through practical training.

3. A Minimal Bibliography

Law is, above all else, an intellectual activity. It requires reflection, creativity, and debate. For this reason, even if we do not agree with all or part of them, some books have to be read just to keep the mind sharp. While we mention some such books in the *Epilogue*, it is worthwhile to point out that a universal book for this purpose is JHERING's *Scherz und Ernst in der Jurisprudenz* (1880)[2]. For those conversant in Spanish, there are also some interesting books[3]. In reality, any intellectually challenging book should be useful … and I would like to count this book among those ranks.

---

[2] Other of his books are, of course, a must. For those interested in this broad subject, two would seem essential: *Der Kampf um's Recht* (1889), and *Der Zweck in Recht* (1877).

[3] NIETO, ALEJANDRO, *El arbitrio judicial*, Barcelona, Ariel, 2000; El dorso metalegal de las resoluciones judiciales, in the collection in honour of Jesús Gonzáles Pérez, *La protección jurídica del ciudadano*, Madrid, Civitas, 1993, vol. I; *Las limitaciones del conocimiento jurídico*, Universidad Complutense, Madrid, 2001.

As a final note, as is customary in my country, I refer to authors from different epochs and legal systems, although, for this edition, I have slightly emphasized books published in English[4].

4. Skip Chapters and Pages

It is important to read this, or any other book, for that matter, in a non-systematic way. Order does not help to maintain focus or concentration, as we are more attentive when not reading in a linear way. This is because we can read more, with better results, and for a longer time, if we keep our minds busy. If we try to give our minds systematic food, order, or planning, we doze off with complacency[5].

Instead, the goal is to focus on any idea that seems new, odd, or simply wrong, because it is not the act of reading itself that is enriching, but rather the act of developing thoughts based on that reading. Keeping this in mind, it should be noted that I have purposely repeated a few things in this book, while other things seem to be repeated, but are not. The latter are similar, but not equal. The former I consider to be very important and worth remembering. Things that are merely alike are used to stress to the reader some nuances and details[6].

5. Philosophy and Methodology

I have spent my entire life confident that there should be a single unified philosophy in law, but, as of yet, have only been able to discern a certain methodology[7]. Along the way, though, I have been surprised by the unex-

---

NIETO, ALEJANDRO / FERNÁNDEZ, TOMÁS-RAMÓN, *El Derecho y el revés*, Barcelona, Ariel, 1998.

[4] I have also de-emphasized books in Spanish.

[5] While nature may or may not have an absolutely perfect system, the qualities of that system do not translate into our perception. It is better to acquire, according to LEIBNIZ, the wise conscience of our own limitations.

[6] Since the book is short, there is no such thing as "getting lost". Try Chapter X and then Chapter II; skip Chapters III and IV, as they are boring (but do read them some day). Do not forget Chapter V: *read it now*. The *Epilogue* should interest you only if you wonder how and why I wrote this book. If not, skip that too.

[7] See my book: *El método en derecho. Aprender, enseñar, escribir, crear, hacer*, Madrid, Civitas, 1988, 4nd reprint 2001. Also at www.gordillo.com, www.gordillo.org.ar

pected harmony between the method and the substance of supposedly conflicting theories of law. While I still have not fallen upon a legal philosophy[8], I can now state with conviction that the law consists of three elements: *reality (facts)*, *values*, and *norms*.

Between these three components, there exists a hierarchy. Reality plays the primary role because, without it, the rest of our perceptions and analyses are useless. Then, as between values and norms, values hold a higher status. Norms, as rules and regulations, cannot contradict values, as legal and judicial principles and general legal concepts.

Following this schema, if the application of a norm leads to an unfair[9] result, then it is not the law that has failed, but the judge, whether he be a magistrate, lawyer, practitioner, or public servant.

6. Law and Furniture

An old philosopher told me once that the law is like the furniture of a house: you can rearrange it in different ways, but you always have the same pieces of furniture and the same house. With that limitation in mind, consider this book *An Introduction to Law* as my decoration of the common home.

---

[8] Even so, I suggest something in Chapter X, § 10, "Towards a Synthesis of Philosophical Conflicts".

[9] Impractical, inconvenient, useless, dangerous, unreasonable, you name it: a bad result.