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Professor Joseph McKnight, Jurist and Historian

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PROFESSOR JOSEPH MCKNIGHT, JURIST AND HISTORIAN

*A reflection by Alexander McCall Smith**

THIS is a personal tribute rather than a legal essay of the sort that may be penned for a law review or a *Festschrift*. A legal essay can be a difficult thing to write; a tribute of this nature, by contrast, requires little effort and is a pleasant task indeed. There is no need for footnotes, nor references of any sort, nor is there any fear that any reader is likely to disagree sharply with any of the points made—such is the affection in which Professor Joseph W. McKnight was held; such is the warmth of our memories of this remarkable man.

I remember my first meeting with Joe McKnight, although I confess that I remember not one word of what he said on that occasion. That is mostly owing to the fact that it was a long time ago—over forty years—and while I remember some of the things said to me in those days, a great deal has disappeared from memory. It was in Edinburgh, and I was a graduate student in the Faculty of Law. I was studying under a renowned scholar of Roman Law, probably one of the greatest living authorities on the subject, Professor Alan Watson. This is where a footnote—were there to be any—might mention that Alan Watson subsequently left Scotland and became a professor at the University of Georgia, where he continued to profess Roman Law and write an extraordinary series of learned works on the subject in all its complexity and glory. Apart from his profound civilian scholarship, there were two things of particular note about Alan Watson: (a) he was a superb host, and threw legendary parties, and (b) he knew everybody who had an interest in any aspect of Roman legal history. So, of course, he knew Joe McKnight, and when Joe was in the U.K. that year he invited him to Edinburgh to give a lecture.

Now this is where memory fails. Although I distinctly remember meeting Joe—and I remember the exact lecture theatre in which the meeting took place—I recall nothing about the lecture, not even its title. One might imagine that the title of a lecture might stick somewhere in the recesses of the mind, even if the content did not, but this was not the case. At least I can say, though, that I have attended a lecture by Joe McKnight and might possibly even get away with saying that I was taught by him. After all, I soon forgot just about everything that I was ever taught by my

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law professors anyway; but that is what education surely is all about: it enables you to start learning things yourself.

The years passed. In 1988, thanks to an invitation from the then Dean, Paul Rogers, I had the privilege of spending six months as a visiting professor at SMU, one of the most enjoyable and rewarding experiences of my academic career. During this period I was able to renew my acquaintance with Joe and Mimi, and also make a number of lasting friendships. It also enabled me to plan a collaboration with the late Dan Shuman that in due course led to the publication of a book on the doctrine of limitations and the prosecution of old crimes. I also worked closely with a number of other colleagues, including Tom Mayo and Bill Bridge. One of the things that united us all, of course, was our admiration and affection for Joe McKnight.

Ten years later, in 1998, I returned as a visiting professor, and again on this visit I saw a great deal of Joe and Mimi. I had just written a novel at that point, the first volume of what has become an eighteen-volume series (so far), *The No 1 Ladies Detective Agency*. The first book had just been published in the U.K., and we had a launch at the McKnight house on nearby Rankin Street. We had about thirty people present, I think, and, as usual, the McKnights were generous hosts. I dedicated that first book to them, and since then, now that the books are extensively published in the United States, I have often been asked at book signings why I dedicated a book about detection in Botswana to a Texas law professor and his wife. I usually reply that the full story is just too complicated to tell but that we were very close friends.

That is the background to what I now wish to write, which is an encomium to a man whom I, and many hundreds, even thousands, of others hold in the highest regard. Reflecting on my admiration for him, I think that a starting point for it is his naval service during the Second World War. The passage of time has taken most of those veterans from our midst, but I often find myself thinking of their example and their courage. What a narrow escape western civilization had in those crucial few years and how readily and uncomplainingly did Joe's generation save us. Of course the term "western civilization" is one that may be disparaged, or even excoriated, these days, but I am still quite happy to use it because—just like the rule of law—it is a concept that we know all about when we *don't* see it.

Then there was the fact that Joe was a Rhodes Scholar. This was an honour that not only spoke to his ability but that also gave rise to his close association with Oxford. That continued throughout his life, and there will be more than a few readers of this who will remember visiting the McKnights in the house that they used to rent regularly in Oxford over the summer.

Joe knew all about English law, of course, but at heart he was a civilian jurist with an interest in those special legal systems where both common law and civil law systems intersect. The classic examples of these so-called

“mixed” systems are those of Quebec, Louisiana, and South Africa, but this group also includes Scotland and jurisdictions such as Texas, where historical Romanist influences have had an impact on legal institutions. One of Joe’s great interests was matrimonial property law in these systems and in the civilian legal tradition more generally, but he also had a strong interest in many other aspects of the *ius civile* and its jurists. This is where his bibliophile background came into prominence and where he played such a major part in the development of the great legal historical collection at SMU.

Over the centuries in which Roman Law was the basis of European law (prior to the age of codification), there were published countless tracts in Latin on what was called the *ius commune*—the common law of Europe. These started with the earliest commentaries on Justinian’s *Corpus Iuris Civilis* emanating from the Glossators and Post-Glossators of the great Italian universities, and they continued with numerous works of a more specialised and increasingly sophisticated nature. These were weighty tomes indeed, in every sense, and Joe acquired many of them over the years from various dealers in Europe. He treasured these books, and he would restore them himself, rebinding them in the private workshop he had in his house in Dallas. Then they would be lodged in the collection in SMU, thus making the Law Library there one of the best repositories of this aspect of our legal heritage. It was a labour of love and an important part of the great heritage he leaves behind him.

But there is so much more that he leaves behind. His work was an example of what might be called humanist legal scholarship—a form of legal scholarship in which close attention is paid to the historical factors that moulded the development of the law. Humanist legal scholarship enables us to see the law as an entity developing over time, and this makes it possible for us to understand the social and intellectual grounding of rules in a much more profound way. It also reminds us of something that is an important quality in any legal system of standing: wisdom. We live in a time when wisdom is being discredited in various ways in favour of the superficial and the shallow. Surely that will work to our peril.

Joe McKnight’s life work professed a quite other set of values: attention to the past and the lessons it can teach us, both as lawyers and as citizens. He reminded us, too, of courtesy; of respect for all; and of the importance of fundamental decency. He reminded us of all that without ever having to say a word about any of it—a mark, I think, of true greatness. Speaking now as an outsider, a Scotsman, I must say that in my mind he represents to me all the good that the United States has stood for in the past and for which it still stands.