This book is a collection of tools for thinking about legal questions. It attempts to gather the most interesting ideas one learns about in law school—or should learn, or might wish to have learned—and explain them in plain language with lots of examples of how they work. The result is a kind of user's guide meant to be helpful to a wide range of people: law students, lawyers, scholars, and anyone else with an interest in the legal system. An alternative title for the book, *Thinking Like a Law Professor*, might have been more descriptive but was rejected by the focus groups as ambiguous, as it might be construed as a threat rather than a promise.

That is a short account of this book and its purpose. A more detailed one has to begin with the way law usually is taught, which often seems to me to be upside down. There are, in general, two sorts of things one learns at a law school. First, there are lots of legal rules—principles that tell you whether a contract is valid, for example, or when people have to pay for accidents they cause, or what the difference is between murder and manslaughter. Second, there are tools for thinking about legal problems—ideas such as the prisoner's dilemma, or the differences between rules and standards, or the notion of a baseline problem, or the problem of hindsight bias. Some of them are old matters of jurisprudence; a larger share have been imported into the law schools more recently from other disciplines, such as economics or psychology. In either event, these tools for thought are by far the more interesting, useful, and fun part of a legal education. They enable you to see more deeply into all sorts of questions, old and new, and say better, more penetrating things about them.

The problem is that law schools generally don't teach those tools carefully or systematically. One might imagine it otherwise: law school courses could be organized around tools rather than legal subjects, so that in the first year everyone would take a course on the prisoner's dilemma and other ideas from game theory, a little course on rules and standards, a course on cognitive psychology, and so on, and in each of those classes one would learn, along the way, a bit about contract law, a bit about tort law, and a bit about all the other major subjects. But instead law school is carved up the other way around: by legal topics, not by tools. There

are courses on contract law, on tort law, and on all the other topics that become familiar; tools for thought are then mentioned here and there while those subjects are studied. Law tends to be taught, in other words, as if legal rules were the most important things one could learn, and as if the tools for thinking about them were valuable but secondary—nice to know if someone happens to explain them, but nothing urgent.

There might well be good reasons for teaching law this way, but a side effect is that most students never really gain the knowledge of the tools that ought to be the largest payoff of the enterprise. It is hard to see why the tools are valuable, much less to master them, unless you see lots of examples of how they make different areas of law easier to understand. But that only happens if the teachers of different subjects coordinate what they say—if the torts teacher explains how the prisoner's dilemma works in that area of law, and the contracts teacher explains it in contracts class, and the teacher of property law explains it there. This generally isn't done. Law teachers don't coordinate their efforts much, and they have different views about what's worth saying in class, so many of the best tools for thought are likely to be mentioned just once or twice during law school—or maybe not at all—and the student ends up never getting the hang of them.

In effect the tools become the property of an inadvertent cognoscenti. Nobody means to keep the ideas behind them secret, but nobody takes the trouble to fill everyone in about them, either. The good stuff is hidden accidentally and randomly—some of it in a course over here, some of it in the library over there, perhaps in an article that not one law student in a thousand (and not one professor in a hundred) reads. And then there is all the work done outside the law schools by economists, political scientists, and cognitive psychologists that has value for people thinking about legal problems. The small share of it that would be of most interest to a student or to a generalist lawyer or law professor—the portion that amounts to a helpful analytical tool, or to an instructive or charming illustration of the use of one—is not always easy to find.

This book is meant as a corrective to the problems just sketched. So far it might sound like an aid for law students, and it is indeed meant to help them; when new recruits ask me what they might read during the summer before law school, I never have been sure what to suggest.[1] But it also is meant for others interested in law, whether professional or amateur. This is the book I would have liked to have read before I went to law school, when I understood almost none of what it explains. But it also is the book I would have liked to have read when I got *out* of law school, at

which time I understood about half of it. It even is a book I'd like to have had at various earlier points during my teaching career, as when I wasn't sure about the meaning of a stag hunt or the conjunction paradox.

Now a few disclaimers. First, a book like this can only introduce tools for thought; there is more to say about each of them—usually much more—than can be conveyed in a short chapter. Specialists on the subjects treated here will have no trouble finding imprecisions or omissions. But the goal of the project is merely to say enough about the tools to give you a good sense of their power and to get you started using them on your own. Suggestions for further reading appear at the end of most of the chapters, and those, along with the endnotes (with which they usually overlap), will give you plenty of places to go for more if the chapters have succeeded in stimulating your curiosity.

Second, I said earlier that this book tries to present in one place the most valuable tools for thinking about the law. Now I have to grant that the success of the effort is only partial, for there are plenty of important legal ideas that the book doesn't discuss. It is limited to tools for thought that lend themselves to this format—ideas that can be introduced effectively with a bunch of good examples in a short chapter. Some of the notable omissions include ideas from moral theory, from critical legal studies, and from legal realism (the last one especially hurts, since it is an area where I like to write). I don't discuss theories of constitutional interpretation, either, because they don't have the kind of versatility that the other tools do. They don't illuminate lots of different corners of the law; their value is confined to the area for which they are designed. Not coincidentally, they usually get covered pretty well in law schools, making treatment of them here less worthwhile.

A danger in leaving out these topics is that the book might be viewed as disparaging them by implication. A large share of the ideas offered in this book are economic in their origins. This isn't meant to imply that economic or utilitarian approaches to law are the only valuable ones (a position I have argued against elsewhere at some length).[2] I merely claim that they are very helpful and that they invite an introductory treatment of this sort. Everything will be fine as long as the reader kindly remembers that the book doesn't claim to be a complete collection of the helpful tools for thinking about legal problems. It purports to be a useful start.

Finally, even among ideas that lend themselves to the format of this book, I am conscious of much that I have left out. A chapter on textualism and alternatives to it was left on the cutting-room floor, along with one about social norms. And as I prepare to send the manuscript to the

publisher, I already am running across other ideas that I wish I had managed to include. But the book already is longer than it was meant to be, and I console myself with the thought that some of the omissions may become fodder for a later edition if the first one finds an audience.

The book consists of thirty-one chapters grouped into five parts. The first concerns incentives: the effects that legal decisions have on the choices people make afterwards. The second part is about trust, cooperation, and other problems that arise when people work together. The third part takes up subjects from jurisprudence; it introduces some classic tools for thinking about how courts make decisions—rules and standards, slippery slopes, and the like. The fourth part, on cognitive psychology, discusses ways that people may act irrationally (or, as Richard Thaler would say, "quasi rationally") and the implications for law.[3] Last comes a part on ways to look at problems of proof that are common to many different legal subjects. The sorting of the topics into these bins is somewhat arbitrary, and they certainly can be enjoyed out of order. But the later chapters sometimes refer to earlier ones when there are connections to be made, so reading them in the order given will probably be most satisfying.

A final note at my copyeditor's request: I sought to write this book in the clearest possible English. I naturally encountered the problem of choosing a pronoun to refer to someone who could be male or female. I dealt with this by treating the masculine pronoun as referring to anyone of either sex; I find the other, newer ways of handling the problem too self-conscious to bear. I know others have different views, and am sorry for the annoyance that my inclusive use of "he" and "him" may cause them.