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University of Michigan Law School

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The
Thomas M. Cooley
Lectures

Twelfth Series

Law and Processes of Social Change
In United States History

JAMES WILLARD HURST
Professor of Law, University of Wisconsin

4:15 P.M.
November 9, 10, 11, 12, and 13, 1959
Hutchins Hall, Room 100 — Ann Arbor, Michigan
Thomas M. Cooley was one of the three members of the first faculty of The University of Michigan Law School, when it was organized in 1859. In 1864 he became a justice of the Supreme Court of Michigan, and held that office until 1885, continuing also as a member of the Law Faculty. In 1871 he became Dean of the Law School. In addition to his duties on the bench and in the class room, he made many important contributions to legal literature. His treatises on "Constitutional Limitations" and on "Torts" were among the legal classics of his day and were known and read throughout the United States. At the time of his death in 1898, it may fairly be said that he was the most distinguished legal scholar that the State of Michigan had produced.

For the purpose of stimulating research and presenting its results in the form of public lectures, the faculty of The University of Michigan Law School established the Thomas M. Cooley Lectureship in honor of its first great legal scholar. This was made possible through the William W. Cook Endowment for Legal Research.
PROSPECT

The Subjects of Legal History

1. Legal history needs a philosophy.
2. The distinctive features of law in United States history have included insistence on the legitimate monopoly of force, on constitutionalism, procedural regularity and resources allocation.
3. Legal history is both a specialty and a part of general history.
4. A specific example illustrates that a particular episode may have relevance to varied facets of the social history of law.

LECTURE I

Drift and Direction

1. Change tended to predominate over stability in United States history, and unpurposed drift over directed policy.
2. Two cases and a case-statute sequence exemplify relations of drift and direction in our legal history.
3. The general social context of our growth shaped the distinctive features of our legal order, as well as the tendency for change to prevail over stability in social relations.
4. We tend to exaggerate the importance of conflict or conscious direction in our legal history; though change was constant, open-ended, irreversible, most of it proceeded by drift, under the impact of cultural cumulation, social context and pace of growth.
5. Functional demands of social organization exerted strong influence on our legal development; born partly of insight and purpose, the demands of function nonetheless tended to be narrow and intense in focus, and so further to limit the scope of broad policy making.

LECTURE II

Initiative and Response

1. The example of milk regulation suggests ways in which law encouraged men to initiate fresh policy and to build support for stable patterns of behavior.
2. Man's evolution showed his capacity to extend his direction of his life, and man found meaning in this growth, which our legal history sought to realize despite conflicts with unresolved issues of our egalitarian faith and our pragmatic approach to affairs.
3. The ideas of form and substance and of generals and particulars, and of the possible creative tensions within these pairs, are useful to explore how law fostered purposeful initiative in public policy.
4. The forms of legal process, in creative tension with substantive purpose and feeling, helped generate purposed initiative by attracting desire, cultivating awareness, economizing effort and legitimizing will.
5. The interplay in legal process of general and particular aspects of experience helped generate purposed initiative by cultivating men’s awareness and legitimating their will.

LECTURE III

Leverage and Support

1. The chapters of Wisconsin General Acts, 1853, exemplify law’s functions in providing leverage for new policy and support for going institutions.
2. Law drew on its possession of force and its utility in resource allocation for its leverage and support functions.
3. Our legal and social tradition legitimated the leverage use of law, and despite tensions over the role of the market and the problems of leadership in an egalitarian society, law had material leverage effects—by legitimizing choice, legitimizing sources of dissent and criticism, fostering the growth and use of knowledge, and providing means for more rationalized public policy making.
4. Law provided support for necessary or useful social functions by structuring relations or situations to maintain desired momentum, to reduce friction and to create inducements to action.

LECTURE IV

Force and Fruition

1. The law concerned itself with the legitimacy of a wide range of secular compulsions upon will, symbolized in the law regarding treason and riot, non-violent associated action, and individual deviations from social standards.
2. The law’s assertion of its legitimate monopoly of ultimate secular force fulfilled useful social functions.
3. The law’s force created special problems in the control of government itself, reflected in aspects of the separation of powers, civil control of the military, separation of church and state, and limits upon accepted means of political combat.
4. The trend in our legal history minimized force, and moved rather by structuring situations to produce results by response to the rational requirements of function or the emotional pull of values defined and supported in law.

LECTURE V

200 Years of Lawyers

1. Lawyers’ work did not reflect all aspects of law in United States history, but the work of no other group has so much expressed the distinctive contributions of legal order to social order.
2. The lawyer in this society was a man of three roles—earning a living, practicing an ordered body of special knowledge and skills, and fulfilling the responsibilities of a profession.
3. In their three roles, lawyers contributed to the forces of drift, of functional imperative, and of purposed policy in United States history; a central problem of professional training was whether the bar might become more effective to increase the relative weight of reason and disciplined feeling in the conduct of the commonwealth.
PROSPECT
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Drift and Direction
MONDAY, NOVEMBER 9, 1959

LECTURE II
Initiative and Response
TUESDAY, NOVEMBER 10, 1959

LECTURE III
Leverage and Support
WEDNESDAY, NOVEMBER 11, 1959

LECTURE IV
Force and Fruition
THURSDAY, NOVEMBER 12, 1959

LECTURE V
200 Years of Lawyers
FRIDAY, NOVEMBER 13, 1959
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