

The Transformation of American Law, 1780 - 1860
Morton J. Horwitz

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Morton Horwitz's Transformation of American Law documents the significant changes in American law between 1780 and 1860. His work traces the emergence of the American legal system from a moralistic to an economic foundation. The English common law, used in America before the American Revolution, favored agricultural property interests and stifled industrial growth. When American entrepreneurs looked to the courts to protect their investments, they demanded a reinterpretation of Blackstone's common law. These cases provided legal intellectuals with the opportunity to develop a uniquely American code of law. New interpretations of property rights and commercial laws allowed entrepreneurs to benefit from legal decisions at the same time the judiciary sought to become less political and more scientific. Horwitz shows how these merging agendas brought about a legal formalism and curtailed the political and redistributive functions of law. He delineates the progression by citing specific anti-legislative decisions regarding tort and contract law that promoted laissez-faire economic policy. The result of this transformation was a new judicial power that encouraged social change and economic progress.

Horwitz describes how the American courts moved away from traditional common law decisions in his analysis of the concept of property. The American economy was based on growth and progress; therefore it required laws that supported a competitive, commercial economy. The English common law promoted anti-developmental theory that held owners accountable for any improvements they made on their land. This idea supported a static economy with strictly regulated competition, which Americans were not willing to accept. Horwitz shows how the decisions in cases challenging the mill acts were indicative of the movement away from English common

law. The mill acts defended the right of the mill owner “to impair the value of adjoining land for an essentially private purpose, so long as compensation was provided” (Horwitz 51). These acts protected the entrepreneurs by enabling industry to progress with fewer restrictions. The courts upheld the mill acts because they were essential for social progress. The mill acts allowed for a break from English common law and allowed judges freedom to reinterpret the law so it benefited American interests. The mill acts’ principles were applied to other commercial ventures in order to protect the value of property improvements and foster economic growth.

The new position of the courts on the dynamic value of property created problems in the application of the common law to other American issues. For instance, the common “law of nuisance provided an almost exclusive remedy for indirect interference with property rights . . . [so] the American courts had created a variety of legal doctrines whose primary effect was to enforce those injured by economic activities to bear the cost of these improvements” (71). Horwitz cites a series of collision and master/slave cases to show how the gradual change took place in the interpretation of nuisance laws. He finds the courts’ needed to allow injured parties to go uncompensated for personal and property injuries in order to ensure future economic development. If each personal and property injury were compensated, industrial ventures would go bankrupt. The redefinition of property and increased judicial freedom to reinterpret common law created an opportunity for the strong, dynamic and powerful factions to gain influence over the courts and the weaker groups in society.

The changes in the concept of property and the emerging supportive relationship between entrepreneurs and the government led to issues regarding whether property

rights or public privilege should control competition. The state and the courts subscribed to the philosophy that property ownership entailed many risks for which they could offer no protection. Horwitz shows how the *Charles River Bridge* case continued “the changing conceptions of the nature of property” (132). In an under-developed country with little available capital, grants of monopoly privileges were necessary to promote private investment. As original charters gave exclusivity to outmoded transportation, courts acknowledged the inadequacies of these prohibitive laws. In the *Charles River Bridge* case, the bridge proprietors sued a newly chartered bridge company for damages due to “competitive injury” (46). According to common law, “long use” was evidence of an original lost grant. The Massachusetts court rejected this prescriptive claim, which was upheld in the United States Supreme Court on the basis that prescriptive cases could not be adopted in America because they were “founded on feudal rights” (47). The court’s decision to treat the act of incorporation “as nothing more than a license to exist” exemplifies judicial independence from common law standards (137). Companies sponsoring bridges, canals, and turnpikes faced serious financial loss and used every legal and political weapon available to stop competition. These commercial cases created a need for judges and juries to agree on a policy that favored competition and supported economic development.

Horwitz identifies the rise commercial law cases as the catalyst for the next major shift in American law. As American markets became more extensive and uniform many parties entering into contracts did so without the benefit of being face to face. The courts sought to prevent issues by establishing a set of objective rules that would assure legal certainty and predictability. The role of the government was not to ensure equity but to

enforce the willed transactions that parties thought to be to their advantage. Juries, routinely finding for the victim, were prohibitive to the changes needed to gain the confidence of entrepreneurs. In order to accomplish a pro-economic transition, judges restricted the power of juries by carefully instructing them in the law, allowed re-trials to overturn jury decisions, and settled cases in judges' chambers. Judges facilitated legal changes by allowing stacked juries, and later by dismissing juries altogether. Horwitz emphasized "the subjugation of juries was necessary not only to control particular verdicts but also to develop a uniform and predictable body of judge-made commercial rules" (143). The judiciary was increasing its power by accommodating economic growth. Entrepreneurs and the judiciary, driven by self-interest, were benefiting from the new court rulings.

Horwitz concludes his argument with the significance of the Court's findings in *Swift v. Tyson*. Tyson, a resident of New York, bought land from a speculator in Maine. The land sold to Tyson was not owned by the speculator so the actual sale of the land was fraudulent. The speculator quickly sold the bill of exchange to Swift, a Maine banker. Swift tried to collect on the debt and when Tyson refused, Swift sued Tyson in federal court. The New York federal court found in favor of Tyson and Swift appealed. The Supreme Court overturned the ruling and with the rationale "that in exercise of its diversity jurisdiction, the federal judiciary was not bound by state judicial decision but rather was free independently to decide the case" on "general principles of commercial law" (245). Horwitz explains how separating state statutes from state judicial decree allowed for courts to achieve legal formalism and "impose a procommercial national

legal order on unwilling state courts” (250). The court system had reached the pinnacle of its power by ratifying the forms of inequity that the market system produced.

The analysis of property, contractual and emerging commercial law show that individuals were subordinated to a more socially efficient system of law in which legal rules were emphasized rather than individual justice. The Transformation of American Law enables a teacher to explain the rationale behind legal decisions of the post-revolutionary period. America experienced astonishing economic growth which led to a transformation in American law. This transformation redefined the principles of Blackstone’s common law and asserted new American doctrines that supported a strong judiciary with the power to promote social and economic change. While students may not be able to access Horwitz’s work, they should study the *Charles River Bridge* case. In this case, Horwitz shows how law changed in order to meet the needs of an underdeveloped, market based economy. All of Horwitz’s reasons for the transformation of American law can be pulled out of an in-depth study of this one case. Teachers can show the aggressive position of the courts, the inability of the English common laws to provide adequate rulings in America, the call for a more systematic and scientific code of law, and the ability of the courts to rationalize their decisions as socially ameliorative.

Bibliography

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