SUMMARY
Cardozo is interested in how the outlooks on life affect the way judges make decisions. A judge must always use an objective standard of right and wrong and must rule within his limits, always adhering to precedence in the absence of a detriment to social welfare. Philosophy, history, tradition, and sociology all are forces which inform a judicial decision, although a judicial decision must be based upon the mores of the community at the present time. A judge sometimes acts as a legislator when he fills in the gaps in the laws. A judge must act in good conscience and reason, and maintain law and morals.

Lecture I: Introduction—The Method of Philosophy
Some principles have come together, not by chance, to regulate judge-made law. Everyone has a “stream of tendency” which gives us coherence and direction to thought and judges are not immune to such a tendency. They have forces, such as instincts, beliefs, and convictions, which result in a certain outlook on life that controls or guides their decision-making.

Sometimes all a judge is required to do is apply the constitution or a statute to a case, which may seem to make a judge’s job look unnecessary, but they must also serve as the “interpreter for the community” to harmonize results of cases and ensure that justice and logic are upheld. This is a great amount of power and may be subject to abuse, but it must be granted. Judges also employ *stare decisis* and apply precedent when looking to common law. The common law derives generalizations from particulars and these decisions should be treated as “working hypotheses” and not “final truths.” These rules are retested and reformulated gradually over time, so a seemingly unimportant change may indeed be larger in magnitude down the line.

The directive force of a principle may be exerted along the method of philosophy (logical progression), the method of evolution (line of historical development), the method of tradition (line of the customs of the community), and the method of sociology (the lines of justice, morals and social welfare). Either way, it is important to maintain uniformity in the courts and to exclude chance and favor.

Lecture II: The Methods of History, Tradition and Sociology
A principle expanded to the limit of logic may be counteracted by its tendency to confine itself within the limits of history, thus stressing the importance of the *method of history*. Often times, history makes the path of logic clear. Some conceptions of the law exist in their current form solely because of history and are not to be understood except as “historical growths.” History illuminates the past, and in doing so illuminates the present, and in illuminating the present, illuminates the future. Some times conceptions of law are unintelligible or arbitrary when they are separated from their past form and meaning. In order for these to be logical, one must consider their origins.

The *method of tradition*, or customs, means less today than it did before. We look to custom for the tests and standards that determine how established rules are applied, and we don’t look to it so much for the creation of new rules. “Life casts the moulds of conduct, which will some day become fixed as law. Law preserves the moulds, which have taken form and shape from life.”

Sometimes the *method of sociology* must be used when social needs demand a decision that calls for sacrificing history or custom. “The final cause of law is the welfare of society,” and a rule must justify its existence. The welfare of society must fix the path, direction, and distance of an existing rule that is to be extended or restricted. The method of sociology fills in the gaps and we apply it when we pursue logic, coherence, and consistency as the greater social values.

Statutes should not be viewed in a vacuum and abstract conceptions, like liberty and equality, should be placed in the context of the contemporary conditions. Statutes are designed to meet the
exigencies of the current time, while the constitution should be designed to last into the future. Standards should be objective, and should consider what one things another man of normal intellect and conscience would deem right.

Lecture III: The Method of Sociology. The Judge as a Legislator

The conception that the end of the law as determining the direction of its growth finds its instrument in the method of sociology. The philosophy of the common law is at bottom the philosophy of pragmatism, with its truth being relative and not absolute.

A judge must heed the mores of his day, but he must be mindful to direct the attainment of the moral end and its embodiment in legal forms. The judge must use the objective standard when evaluating right from wrong, otherwise the law is at risk of degenerating into a jurisprudence of sentiment, feeling, and whim. This objective standard should consider the standards of the community and the mores of the time.

Logic, history, custom, and utility, and accepted standards of right conduct all are forces which shape the progress of law. A judge must determine which of these forces should dominate in the case before him. In doing so, he must consider the social interests that will be impaired or promoted.

A judge’s role is somewhat akin to that of a legislator, although a judge legislates within tighter bounds. A judge’s role as legislator is to fill in the gaps in the law, whenever these may arise in a case, which Cardozo says hardly ever arises. A judge is under a duty to rule in a way that is not guilty or evil and he must rule within his bounds. If he fails to do so, he has committed a legal wrong and may be removed or punished. A judge is under a duty to “maintain a relation between law and morals, between the precepts of jurisprudence and those of reason and good conscience.” Someone has to be granted this power of interpretation, and the constitution has decided that it will be granted to judges, though they may not be perfect.

The method of sociology demands that when a judge is innovating and making decisions within his narrow bounds, he should search for social justice.


Conclusion.

When a situation arises where precedent and custom fail, “there is nothing to do except to have some impartial arbiter declare what fair and reasonable men, mindful of the habits of life of the community, and of the standards of justice and fair dealing prevalent among them, ought in such circumstances to do, with no rules except those of custom and conscience to regulate their conduct.” It is assumed that the decision reached from this method would not differ if the rule had been established before the situation arose. Law does not consider every conceivable situation and adjust itself accordingly—it is not perfect. Also, laws may change and cases may be overruled, but this is a risk that must be taken for those who rely on court decisions.

The adherence to precedent is very important. It should not be so rigid that a judge is hesitant to disavow a rule which is detrimental to the social welfare, but it should not be so flexible that a judge may rely upon precedent at his own will.

In most cases, the controversy turns upon the law’s application to the facts, where the judicial process consists of “search and comparison.” However, sometimes there is a small amount of cases where the decision will make a difference in the future of the law. These are the cases to which Cardozo is primarily referring to in this work.

The eccentricities of judges and their differing outlooks on life balance out because the good law continues and the errors in law will always erode away.