

LEGAL FOUNDATIONS OF CAPITALISM



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TO MY FRIEND
CHARLES R. CRANE

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PREFACE

The aim of this volume is to work out an evolutionary and behavioristic, or rather volitional, theory of value. It was commenced thirty-five years ago at Johns Hopkins University under my stimulating teacher, Richard T. Ely.

Thirty years ago I published a book under the name of *Distribution of Wealth* in which I tried to mix things that will not mix—the hedonic psychology of Böhm-Bawerk, and the legal rights and social relations which he had himself analyzed and then excluded from his great work on the psychological theory of value. Afterwards I had various opportunities for the investigation of labor problems and problems connected with the regulation and valuation of public utilities. This led to a testing of economic and legal theories in the drafting of bills as an assistant to legislative committees in Wisconsin.

It was this experience, shared by my students, that led directly to the theoretical problems of this book. We had to study the decisions of the courts, if the new laws were to be made constitutional, and that study ran into the central question, What do the courts mean by reasonable value? Somehow the answer was tied up with reasonable conduct. None of us could find much in the writings of economists except those of Professor Ely that threw light on the subject. From the court decisions it seemed that anything “reasonable” would be sustained, and so we had to use the words reasonable value, reasonable safety, reasonable wage, and fix up reasonable conduct for public officials and private citizens, whether we knew what it meant or not.

I had read Veblen’s brilliant criticisms, beginning in 1895, on the theories of the classical, socialistic, and psychological economists, and his suggestion that an evolutionary theory of value must be constructed out of the habits and customs of social life. But he had not studied the decisions of the courts which are based on these customs, and I went to work with my students digging directly out of the court decisions stretching over several hundred years the behavioristic theory of value on which they were working. We were puzzled, for we tried to reconcile the economists from Quesnay to Cassel with the lawyers from Coke to Taft. We found eventually that what we were really

working upon was not merely a theory of Reasonable Value but the Legal Foundations of Capitalism itself.

This work is essentially theoretical, dealing only with concepts derived from the decisions of the English and American courts, but with an eye on the concepts of leading economists from the Physiocrats to modern times. Another volume is in contemplation reviewing these theories of the economists and leading up to practical applications of a theory of Reasonable Value to current problems.

In these researches, I have had important assistance and criticism from Wesley C. Mitchell of Columbia University, Arthur L. Corbin of the Yale Law Faculty, and William H. Page of the Wisconsin University School of Law.

JOHN R. COMMONS.

UNIVERSITY OF WISCONSIN,
July, 1923.

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