

Speech on the life of Thomas McIntyre Cooley  
Presented By Tim Innes, Reference and Outreach Services Librarian  
Thomas M. Cooley Law School on the Occasion of the 2008 Biennial  
Reunion of The Cooley Family Association of America  
August 2, 2008, Ann Arbor, MI.

Good morning, I want to first thank you for asking me here today and giving me an opportunity to talk about the extraordinary life and times of Thomas McIntyre Cooley. My name is Tim Innes, I am the Reference and Outreach Services Librarian at the Thomas M. Cooley Law School in Lansing Michigan, I have had the pleasure of working there for close to 15 years, I am also, however, a student there and entered the program in 2004, and will be graduating this coming December. Before I begin my narrative, let me tell you a little bit about the law school. It was founded in 1972, primarily through the efforts of Thomas E. Brennan, the former chief justice of the Michigan Supreme Court. We were given American Bar Association accreditation in 1976, we are the largest law school in the United States, with 3500 students, and unlike any other we operate, three campuses, In Lansing, Grand Rapids and Auburn Hills Michigan.

Ok, now lets begin our story Thomas McIntyre Cooley, was born on January 6<sup>th</sup> 1824, in the city of Attica New York, coming from a family of 15 children, his father, also named Thomas, had been a farmer in Massachusetts, and came to Western New York some twenty years before. The family was quite poor, but all 15 children, lived to maturity, which was very unusual in those days. As Cooley himself would say years later, the story of his early life was “really too hard to make it pleasant to dwell on”. He received some education in what in

those days were called the “common schools” until the age of 14, and then attended Attica Academy a private school which taught classical Greek and Latin,. He paid for this education himself, through hard manual labor.

I want to divert a little bit because as you recall I wanted to talk a little bit about not just his life, but also about the times in which he lived. One of the striking things about that time, and I think it is especially true for upstate and western New York, was this veneration for all things classical, we first see this in the enormous number of cities founded in New York, in the late 18<sup>th</sup> and 19<sup>th</sup> century that took their name from places in ancient Greece and Rome, his birth place, Attica, is an example, but there was also, Syracuse, Ithaca, Greece, Rome, Carthage, Corinth, Troy, Utica, Messene etc. This also manifested itself in styles of architecture, the most famous examples would be the Capitol and White House, furniture, and even fashion, this is sometimes called the Empire Style. This was the period when women began to wear those long slip dresses, because that was the style of the Roman matrons, and when men began to wear their hair short, the way they do today, to emulate the style in the Republican period of Rome, to be truly educated, as young Tom wanted to be, he would have to have a grounding in Greek and Latin.

At a very young age In 1840, 41, 42, he taught school for about 4 months each year, this makes sense because at that time, the school year did not follow the pattern we are used to today, often children, who all lived on farms, would go to school for two periods during the year, a few months in high summer, and a few months in deep winter, leaving the planting and harvesting seasons open so

they could help on the farm, but be even at an early age he was sure he wanted to be a lawyer, and at the age of only 19 he began to read the law, with Theron K. Strong in the city of Palmyra New York, Strong was a good guide but the reading of the law in those days was largely a self directed exercise, the standard practice in those times, and this is before most laws schools came into being, was for a young man to what they termed “read the law” with an experienced lawyer, in kind of apprentice system, and then when they were ready, they would take the bar and strike out on their own, that is what Thomas Cooley did and that is what Abraham Lincoln did.

Before we talk about the move to Michigan, I do want to touch on another historical movement of the 1820s and 30s, and that is what historians call the Second Great Awakening, this was a period when there was a tremendous outpouring of religious fervor, and western New York was at the epicenter of this movement, so much so that it was referred to as the “burned over district”, because it was burned over with religious fever, this was the time of huge outdoor revivalist meetings that could last for days, although primarily Methodists, Baptist and Presbyterian, this was the place that a number of religious and political movements were born, including the Church of Latter Day Saints, Joseph Smith discover his tablets near Palmyra, as I have just said Tom Cooley read the law there. The Millerites, they predicted that the second coming of Jesus would take place on October 22, 1844, and when he did not come, it became known as the “great disappointment” followers would later form the Seventh Day Adventists. The Spiritualist movements was born here, due to the

influence of the Fox sisters, the Shakers also had a strong presence, in addition strong social movements began here, including the anti-masons, and women's rights movement, this is where Elizabeth Cady Stanton, the suffragette was from, and Amelia Bloomer, who came from Homer New York, The Temperance movement as well as the Abolitionist movement were also very strong there.

So it was from this kind of boiling pot that Thomas Cooley decided to set out from in 1843, he decided to go west, he had wanted to go to Chicago, but found he only had the funds to make it part of the way there, and found himself in the city of Adrian Michigan. Now this story may or may not be true, because as some of you know, Chicago only had about 50 residents in 1830 and about 4,000 in 1840, and believe or not, Adrian was a bigger town, and one of the biggest in Michigan at that time. In any event, he was part of a mass migration to the State of Michigan that began with the opening of the Erie Canal in 1825, very, very few people lived in what would become the State of Michigan before that, As late as 1810, the non-Indian population of Michigan Territory was only 4,762. The late 1820s marked the start of steady, often spectacular, growth. The population increased from 31,639 people in 1830 to 212,267 in 1840 and 397,654 in 1850. Literally all these people came from New York or Pennsylvania, If you travel in upstate New York you will be amazed on how many of the town and county names have counterparts in Michigan.

Now back to our story, in Adrian he finished his study of the law in the offices of Tiffany and Beaman and also got a job as deputy county clerk, In January 1846, he was accepted into the Michigan Bar and that very same year

on December 30<sup>th</sup> he was married, to Mary Horton, a local Adrian girl, Tom was 22 and Mary was all of 16. Although driven and ambitious his first few years in practice were difficult, he was restless and jumped from place to place, in fact in the first ten years of their life together the young family would move four times, first he moved from Adrian to Tecumseh and formed a partnership with Mr. C. A. Tracy, but this partnership was shortly dissolved, then the family moved to Coldwater, where he formed a second partnership, that too did not work out, in 1848 he returned to Adrian, there he split his time between his practice and editing a Newspaper called the Adrian Watchtower, a democratic daily, and found success as the junior partner in the firm Beaman, Bucher & Cooley. In 1850 he was elected Court Commissioner and acting Court Recorder for Adrian. There is a wonderful book called, Lawyer Lincoln, which was actually written in the 1930's, that describes the kind of work a lawyer would be doing at that period in our history, and in fact, Lincoln was doing it not very far from Adrian, the surprising thing is that at its core, it really has not changed that much, things like estate planning, will disputes, title claims, personal injury claims, criminal cases, contract disputes, Tom Cooley's senior partners seem to have assigned him to a lot of debt collection cases, which apparently he did not care for.

And as if that was not enough, he bought with his father-in-law, a 100 acre farm and cultivated it. In 1853, having been married now seven years and having two young sons, he was still restless and he suddenly decided to relocate to Toledo Ohio there he formed a real estate business with a another Adrian man named W.J. Scott. Toledo, at that time was in the midst of real estate boom,

while there he made his first run for public office as Circuit Court Judge but was not successful. Once the Toledo housing boom cooled, it was back to Adrian and the law before the end of 1854.

One of those who knew him at this time in life, described him in the following way “He was noticeable for the unusual beauty of his head and face, [and] his delicate physique... His head though large, was of a marked intellectual type. He talked little but always clearly; his manner without being diffident was modest and gentle, yet brightly alive to the funny side of things. He was recognized as a man of more than common literary culture, and even charged with being a poet. Among lawyers he was known to be ready and skillful in legal office work, with no characteristics that would have induced the believe that his law practice would lead him to fame and fortune. His whole make up seemed literary rather than lawyerly” He wrote poems attacking war and slavery and celebrating the European revolutions of 1848. He also acquired a reputation as a "Progressive Democrat." But later helped organize the Free Soil Party in Michigan in 1848 and became a Republican in 1856. In 1857 he was chosen by the State Senate to compile the general statues of Michigan, a task which he completed in one year, in 58 he was appointed the Official Reporter for the Michigan Supreme Court, a position he held until 1864.

But for all these talents, most of those who would later write about his life agree, that right up until 1859, he simply was not happy in his career, even though by all accounts we was an excellent and successful attorney. One writer suggested that his restless nature did not give him the patience to take the time

to nurture an adequate client base, which you need for true success in that profession. Just to recap, he had practiced law, farming, edited a paper, had a real estate business, run for judge, along with many other things, and moved four times in the space of only 10 years.

But things were about to change for him, in 1859, the brand new Law School at the University of Michigan was founded, and invited him to become a professor, his days as a trial attorney were at an end. He moved from Adrian to Ann Arbor and remained there for the rest of his life his early days at the law school were not just about teaching, but he was named Dean of the Law Faculty, which is a little misleading, since there were only three professors, he would remain with school in one capacity or another until 1884. This was the period when most American Law Schools were founded, and its peculiar, unique and torturous Socratic method of teaching the law, was being worked out by Christopher Columbus Landell at Harvard, many of these new schools tried to induce him to come teach, including John Hopkins, Cornell, Columbia and several others, he declined, but during the years 1877-8-9 he delivered a series of memorable lectures at John Hopkins primary on Tort Law.

In 1865, while still a professor at U of M he began a new career when he was elected as a Justice to the Michigan Supreme Court on the Republican ticket, he would remain on the court through election, until 1885, when he was defeated, it is important to note that from time to time he presided over it, as its chief justice. It was during this 20 year period, that he wrote a number very important legal opinions, that would have an impact far beyond the borders of the

State, the Michigan Supreme Court would be recognized as one the best and most influential in the country. In 1869, the Michigan Supreme Court in a opinion written by Justice Cooley, order the desegregation of the Detroit Schools, nearly 90 years before *Brown v the Board of Education*, A man named Joseph Workman, a black Detroiter, had applied and was denied admission of his child to two whites only schools in the city, the schools had been segregated since the year 1842. But the State Legislature had recently passes a law that said “ all residents of any district shall have an equal right to attend any school therein” in Judge Cooley’s opinion, in *Workman v The Board of Education of Detroit* he wrote: “It cannot be seriously urged, that with this provision in force, the school board of any district which is subject to it, may make regulations which would exclude any residents of the district, from any of its schools, because of race or color or religious believe or personal peculiarities”. Some might say that he only enforcing the law but he would later write in his famous *Constitutional Limitations* that “Equality of rights, privileges, and capacities, unquestionably should be the aim of the law”. You can see a number of other patterns in his important decisions, for example in *Park Commission vs. Common Council of Detroit* we can see he strongly protected the rights of businesses and municipalities from the power of the legislature. He believed firmly in Judicial Review, which is the power of the courts to void a law of the legislature which it deems unconstitutional, which they did several times, this curbing of the power of legliature based on constitution grounds came up again and again in his opinions, as well as the other justices, as one author has said, the court was

constantly creating road blocks for the legislatures as if they were “mad dogs that needed to be penned in”. These ideas on curbing legislative power would lead to the publication of his treatise, *Constitutional Limitations and Legislative Power*, published in 1868, it would remain the leading book on the topic for generations and went through six printings by 1890, the book took a very dim view of the growing trend of government to fund private enterprises, the treatise put him in the top tier of legal scholars and in 1871, he was asked to review Blackstone’s *Commentaries*, by the year 1874 no lawyers’ library in the US was complete without a copy of Cooley’s *Blackstone and Constitutional Limitations*, in all his works he is wary of the power of government and how that power could be subverted for the benefit of a few against the interests of the many. In an 1879 lecture on city government he remarked that “poverty was never in so much danger of becoming master as when capital unjustly manipulates the legislation of the country”. This was the period in his life when he began to publish a lot of scholarly works on the law, between 1870 and 1885, a period of 15 years, while still a Professor and Justice on the Supreme Court he published 29 more books and scholarly articles, two of the most famous would be his works on *Torts* and *Taxation*. My favorite book is one published in 1885 as part of the *American Commonwealths* series, which is a short history of the state of Michigan, I would recommend it to anyone. It gives you a nice flavor for his style of writing, It is not very long and has a lot of great stories in it. If you have never read any 19<sup>th</sup> century histories, I mean it sounds dull, but historians, like Francis Parkman, Henry Adams and Prescott were wildly popular at the time and he this

work is very much in that, lively and ready style, especially Parkman's which I am sure Cooley must have read.

Now you would think this would be enough, but believe it or not in 1880's, Thomas Cooley went into the railroad business. Now the railroads were the most powerful economic entity in the country bare none, and produced a slew of colorful characters that were always fighting each other in court, and when they were not fighting each other they were conspiring with each other. In 1882, five railroads were accused by congress of keeping there freight prices artificially high. Cooley with three others was asked to form a ad hoc committee to determine if the rates were improper, none had experience in the business but as Justice Cooley had come down very hard on special priviges given railroads in Michigan, he had written three opinions against giving monopy power to the railroads, it was thought he would be tough on them. But by that time, Cooley's views had shifted significantly, both towards the railroads and big business in general. He now felt that monopoly like pools were in fact, taken as whole a benefit to the public. Many see this as the first indication of a growing conservatism, almost overnight, he became the voice of big railroad, he was the one they called to testify before Congress when calls where made to curtail their power, who better then this renowned legal scholar and justice. Perhaps it was this shift in thinking that led to his defeat for reelection to the court in 1885.

In 1887 Cooley was named receiver of the bankrupt Wabash railroad, this was done with the consent and urging of the railroads owner, the infamous Jay Gould. He threw himself wholly into running the railroad in every sense, and did

in fact put the railroad back in the black, and only relinquished his receivership when President Cleveland Appointed him to the Interstate Commerce Commission. The ICC was the first federal administrative agency, and only came about due to tremendous pressure, mostly from the Progressive movement in the west, who detested the railroad, to put some kind of regulation on them It was formed to prevent railroad pools or trade restraint, and to set up a system of uniform pricing. The railroads urged Cleveland, who, by the way, was the only Democratic to be elected as president between 1856 and 1912, to pick Cooley because they were of the opinion he would sympathetic to their interests. His appoint to the Commission, however was short lasted, less than two years, and its effectiveness was diminished greatly by key Supreme Court decisions, which at that time, was highly sympathetic to business interests. The reason for the shortness of his tenure was his health began to fail, in 1889 he began to suffer epileptic seizures, he became quite depressed and despondent, this situation was made considerably worse when in 1890, Mary, his wife of 44 years died. After her death he was never the same, and his mental condition worsened, and he found that he was simply unable to work they way he used to, he did not write any treatises during the last year of his life, but he did write a great number of addresses which were delivered by procey speakers. But after 1895 when his seizures became more frequent, he found he could no longer work at all, In September 1898 at the age 74 he died.

Thomas McIntyre Cooley was a man of his time, who spent his whole life within the borders of the 19<sup>th</sup> century, he lived in, and helped to shape, some its most profound and lasting judicial and intellectual accomplishments, he touched and was touched by some of the most important historical movements of his day, he was a man of tremendous energy and diverse talents, yet he was kind and soft spoken, he was a teacher, a judge, a farmer, a newspaper man, a real estate broker, a court reporter, a railroad executive and the first President of the Interstate Commerce Commission, and he was a legal scholar second to none, who had a profound effect on the jurisprudence of his day and ours, he was a man of honor, and no scandal ever touched his life, in an age of many vices, he seems to have had none, he was also a devoted husband and father, who in addition to all his other accomplishments, managed to raise six children, Eugene, who was a merchant in Lansing, and himself had six children, Edger who became an attorney in Bay City, and had four children, Charles who became an instructor in Biology and Sociology at the University of Michigan, and had one child, Thomas who became a physician; and two daughters Fannie who married a prominent Detroit attorney, and Mary who helped in his care during his declining years. It is hard to imagine how one person could have accomplished so much in 74 years, but he did accomplish all those things, and let his story be a lesson to use all, of what can be done in this life, when lived with vigor, and honor and grace.