On Evolution of Law, Legal Systems

By DOUG HARLAN

Speaking on “Freedom Under the Law” to a disappointingly small crowd last Monday evening, Dr. Friederich von Hayek spoke of the evolution of law and legal systems and proposed a theoretical change in the American governmental system.

Dr. Hayek, a native of Austria, currently a professor at the University of Chicago, and author of many outstanding books (including “The Road to Serfdom”), is a holder of doctorates in economics and law.

IN HIS SPEECH Dr. Hayek said that “the invention of legislation was the most far-reaching and important invention ever.” He traced the development of the definition of the word “law” and contrasted its early meaning with present day usage.

Originally law was defined by its character—“it was the internal form of a general abstract rule applicable to a number of future incidences—and not referring to specific instances.” It was a “general rule.”

“Today,” he said, “we have come to accept as law anything passed by a properly constituted authority.” Thus, law has become “specific orders.”

IN THE MIDDLE Ages, the conception that laws could be made by man was “bordering on the sacrreligious” he said. Dr. Hayek also pointed out that the Greeks and Romans considered “liberty and law to be inseparable—law protected all liberty and freedom.”

“Today,” he added, “law can clearly be made the instrument of the oppression of liberty.” Our constitution guarantees no restriction of freedom of speech, press, etc., except in accordance with the law—and Dr. Hayek suggested that the last phrase “makes the entire provision mutatory.”

The Germans were entirely free under Hitler—legally, at least according to the modern interpretation of law. The reason being that Hitler was legally in power and that edicts of the Reich were law; therefore oppression was “legal” in modern definition of law.

DR. HAYEK ADDED, “If we make it the aim of government to assist every individual according to individual problems, you leave no personal liberty.”

“All legal systems owe their development to judges,” he said. The judges are supposed to apply rules gradually and slowly, step...

(Continued on Page 9)
(Continued from Page 7) by step. The judge “is bound by precedent, and a mistake in judgment can never be corrected by legislation.”

Dr. Hayek also proposed a new type of government. It would include a bi-cameral legislature in which “one house is entitled to pass general rules while instruction to governmental agencies and control of existing administration is left to the other body.”

This confines the laying down of rules to one body and the giving of instructions to government to the other.