



City Research Online

City, University of London Institutional Repository

Citation: Townley, L. (2020). A History of America law - a review. *The Law Teacher*, doi: 10.1080/03069400.2020.1762328

This is the accepted version of the paper.

This version of the publication may differ from the final published version.

Permanent repository link: <https://openaccess.city.ac.uk/id/eprint/24259/>

Link to published version: <https://doi.org/10.1080/03069400.2020.1762328>

Copyright: City Research Online aims to make research outputs of City, University of London available to a wider audience. Copyright and Moral Rights remain with the author(s) and/or copyright holders. URLs from City Research Online may be freely distributed and linked to.

Reuse: Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

A History of American Law, by Lawrence M Friedman, Oxford University Press, 2019, 808 pp., £81 (paperback), ISBN 978-0190070885

This is the eagerly awaited fourth edition of Professor Friedman's seminal work on the history of American Law, the first edition of which was published in 1973. The book covers developments in American law from the Colonial period up to, and including, the twentieth century. What would appear to be a mammoth undertaking – both for author and reader alike – is accomplished through the adoption of a clear chronological structure with the emphasis on the separate legal histories of the 50 states (including the more mundane, but fascinating, workings of their respective legal systems) rather than on constitutional law and the jurisprudence of the Supreme Court. As such, this edition continues in the mould of the first, which was (and still is) considered to be a pioneering work, being the first monograph which sought to provide an overview of the history of the law and legal institutions of America.

This edition continues to reflect the author's position as one of the early exponents of the study of sociology of the law - where analytical techniques of the social sciences are deployed to facilitate the study of legal history. Often described as part lawyer, part historian and part sociologist, Professor Friedman considers the law to be but one aspect of the social experience. A mirror of society. He argues that the legal system depends upon, and is reflective of, the politics, culture and economics of the country in question. Hence the division of the legal narrative of the book into four eras of American history, each of which reflect seismic shifts in the political and social structures of society (namely: the Colonial era, the Revolutionary period to the Middle of the Nineteenth (1776 – 1850), post Revolution to the close of the nineteenth century (1850 – 1900) and the twentieth Century). This gives the reader a clear overview of how the vast subject matter – which considers not only the development of major areas of law at state-level, but also the growth of the legal culture (including the courts, the organised Bar, and the judiciary) - sits within the wider historical and societal contexts that are unique to America.

In addition to providing an authoritative overview of how the law evolved to reflect a changing society (areas covered include the law of personal status and social welfare (relating to wives, paupers and slaves); crime and punishment (including penal reform); the transformation of land law (including the introduction of the mortgage), and the regulation of business, commerce, labour, intellectual property, and taxation), the work also reflects on the development of the legal culture within the wider societal context. Of huge value to those teaching and studying legal history, are the sections on judges and courts through the different historical eras as well as the those on the development of legal literature and the system of legal education.

During the colonial era, there was a lack of published cases or readily accessible collections of American cases or statutes. Law books were also not published in America until the eighteenth century. As a result, early American practitioners seeking an up-to-date shortcut to the rules of law had to resort to English practice manuals. So, when an American edition of Blackstone's *Commentaries* were published on a subscription basis between 1771 - 2, 840 American subscribers ordered 1,557 sets at \$16 per set. This was considered to be an 'astonishing' response for the time (Page 71). Before law reporting was formalized through the publication of law reports in the late eighteenth century, judges also relied on shared manuscript notebooks – which were bound handwritten treatise containing legal rules and also notes of cases. One notable example being eleven bound manuscript notebooks covering the law of Delaware (Page 308).

It appears that Friedman has also traced the origins of the 'anti-lawyer' jokes that are so popular in American culture today. He notes how lawyers were few in number amongst the American settlers, with the Massachusetts Bay Colony prohibiting pleading for hire in 1641 (Page 63). Lawyers were

distrusted as part of the old regime and new colonies had no place for those claiming old privileges or speaking in esoteric language. Indeed, in Pennsylvania there was a saying 'There are no lawyers. Everyone is to tell his own case, or some friend for him ... Tis a happy country' (Page 63). However as society developed, lawyers became a necessary evil. The book contains many fascinating insights about how the practice of law developed from the small-town generalist – with most lawyers handling civil and criminal matters – to the prominent and elite law firms specializing in business law established in the big cities in the late nineteenth century (Page 551).

The development of legal education is also detailed - from the apprenticeship system in the eighteenth and early nineteenth centuries to the rise of the law schools and the emergence of the law school system as a pre-requisite for call to the Bar in American states. The appointment of Supreme Court Justice Joseph Story as a part-time professor at Harvard Law School in 1829 was followed by a rise in the number of students applying to the school. By 1844, 163 students attended the law school, which was considered to be a record number (Page 307).

Friedman's target audience for the book is stated to be the 'intelligent lay person' so while the book is not written solely for a legal audience, it is nevertheless a definitive starting point for an analysis of the present state of American history. It is also rich in footnotes and citations which are an invaluable source for law teachers and students wishing to undertake further study of the material covered in the book. The book is also superbly written and is a very accessible and highly enjoyable read. It is not surprising that the author is also an accomplished fiction writer because the gripping prose and indeed sense of humour evident throughout the work make it a pleasure to read, while not detracting in any way from its status as an important academic treatise and go-to for those teaching or studying the history of American law.

Lynne Townley
City Law School, City, University of London
© 2020 Lynne Townley