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Review of "Law in America: A Short History," by Lawrence M. Friedman

Abstract

[Excerpt] "Lawrence M. Friedman's *Law in America: A Short History* is a fascinating survey of the history of the American legal system. The book is written for both the legal professional and those interested in American legal history. Professor Friedman best summed up the book's tenor by saying "we cannot understand American law without understanding American legal culture." He then proceeds to explain the legal culture during three periods in our nation's history and how the legal system was shaped by those times."

Keywords

history, culture, legal system

Lawrence M. Friedman, *Law in America: A Short History* (Modern Library / Random House 2002). ISBN 0375506357 [144 pp. \$19.95. Hardbound, 1745 Broadway, New York, N.Y. 10019].

Lawrence M. Friedman's *Law in America: A Short History* is a fascinating survey of the history of the American legal system. The book is written for both the legal professional and those interested in American legal history. Professor Friedman best summed up the book's tenor by saying "we cannot understand American law without understanding American legal culture."¹ He then proceeds to explain the legal culture during three periods in our nation's history and how the legal system was shaped by those times.

Professor Friedman first discusses how the colonial period shaped the American legal system. He explains that the most powerful influence was the English legal system, mostly because that is the system with which the colonists were familiar.² Yet, because of distance from Great Britain and a different social structure, the colonial legal system took on an identity of its own. The Colonial legal system developed innovations, which were quite different from the British system. Slavery law being the most glaring, and according to Professor Friedman, the most embarrassing.³ American land and commercial law are other areas that took on a distinct identity to fit the colonial experience.⁴

Professor Friedman next turns to the nineteenth century and the interplay between the economy and the law. He begins by discussing how the laissez-faire perception of early America is a myth. He sets forth a nice discussion of how the state was involved in many areas of the economy from the nation's founding; enacting laws promoting, rather than regulating, economic growth.⁵ The promotion was through the development of infrastructure and a functioning court system to settle disputes.⁶

He continues his discussion of the nineteenth century by discussing curious innovations in the American legal system in the area of family law. This period saw innovations such as adoption, common-law marriage, child custody decided based on "the best interests of the child," and a married woman's right to own, buy, and sell land, enter into contracts, and

1. See Lawrence M. Friedman, *Law in America: A Short History* 14 (Modern Library / Random House 2002).

2. *Id.* at 24.

3. *Id.* at 26.

4. *Id.* at 30-31.

5. *Id.* at 39.

6. *Id.* at 40.

make wills.⁷ Professor Friedman also provides an interesting discussion concerning the development and evolution of American divorce law.⁸

Professor Friedman next discusses the developments during the nineteenth century in American law affecting and reacting to race relations in America, a period he refers to as “the skeleton in America’s closet.”⁹ He discusses not only slavery, but also the treatment of Chinese immigrants and American Indians.

Professor Friedman’s American crime and punishment discussion is very thought-provoking. This chapter spans the nineteenth and twentieth century. He begins by discussing how the “victimless crime” concept was foreign to the early American inhabitants.¹⁰ He discusses two significant innovations in America: the penitentiary system and urban police force, both of which had their origin in England, but grew and developed in America. The concept of parole, probation, “good time” credit and juvenile court evolved during the late nineteenth and early twentieth century. He delves into the death penalty, innovations to criminal procedure and the development of the victimless crime in America. He then continues a discussion of these same topics and how they evolved during the twentieth century. His discussion of American drug laws was particularly interesting.

Professor Friedman next turns to the rise of the American administrative-welfare state, which he calls “one of the most obvious and salient features of American law in the twentieth century.”¹¹ In this section, Professor Friedman sets forth how revolutionary legislation like the Interstate Commerce Commission Act, the Sherman Anti-Trust Act, and the Food and Drug Act changed the role law played in the economy, shifting from promoting to regulating trade. He continues by discussing the rise of product liability law, worker’s compensation, and the New Deal regulatory role the federal government assumed during the twentieth century. He ends this section by discussing the rise of the civil rights movement, defendant’s rights, voting rights, and privacy rights, which occurred during the second half of the twentieth century.

Professor Friedman concludes his book with a brief discussion of the evolution of the legal profession in this country, and some of the current issues facing the legal system today. He ends by stating that it is unlikely there will be a rolling back of the growth of the American legal system

7. *Id.* at 59-62.

8. *Id.* at 61-68.

9. *Id.* at 69.

10. *Id.* at 75.

11. *Id.* at 125.

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because “law is the glue that binds the cell of Leviathan’s body; and the body of society itself.”¹²

Law in America: A Short History is a wonderful survey of the American legal system. The book is an easy read and contains an extensive further reading list for those interested in exploring any of the fascinating topics Professor Friedman broaches in his book. This book is a must for those interested in the evolution of American legal history.

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12. *Id.* at 183.

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