

A HISTORY
OF
AMERICAN LAW

Third Edition

Lawrence M. Friedman

A TOUCHSTONE BOOK
Published by Simon & Schuster

New York London Toronto Sydney

CONTENTS

Preface to the Third Edition	ix
Prologue	xi

PART I

<i>The Beginnings: American Law in the Colonial Period</i>	1
--	---

The Skeleton of Colonial Law: The Courts • The Colonial Judicial System in the Eighteenth Century • Civil Procedure • Land Law • Succession at Death • Criminal Law • Government, Law, and the Economy • Commerce and Labor • Slavery • The Poor Laws • Statute and Common Law in the Colonial Period • The Legal Profession • The Literature of the Law

PART II

<i>From the Revolution to the Middle of the Nineteenth Century: 1776-1850</i>	63
---	----

CHAPTER 1

The Republic of Bees	65
----------------------	----

Revolutionary Ardor • Constitutions: Federal and State • The Judges • The Organization of Courts • Civil Procedure • The Law of Evidence

CHAPTER 2

Outposts of the Law: The Frontier and the Civil Law Fringe	105
--	-----

The Civil Law Fringe

CHAPTER 3

Law and the Economy: 1776-1850	120
--------------------------------	-----

Laissez-Faire and Its Limits • The Business Corporation

CHAPTER 4

The Law of Personal Status: Wives, Paupers, and Slaves	140
--	-----

Marriage and Divorce • Family Property • Adoption • Poor Laws and Social Welfare • Slavery and African Americans

CHAPTER 5

An American Law of Property	167
-----------------------------	-----

The Land: A National Treasure • The Law of Private Land • Boom and Bust: The Law of Mortgages • Succession: Wills and Trusts • Intellectual Property: Patents and Copyrights

CHAPTER 6

The Law of Commerce and Trade 189

A Federal Question: Admiralty and General Commerce • Sale of Goods
• Bankruptcy and Insolvency • Contract

CHAPTER 7

Crime and Punishment: And a Footnote on Tort 207

Penal Law and Penal Reform • The Substantive Law of Crimes
• The Crime of Punishment: The American Prison • A Footnote on Tort

CHAPTER 8

The Bar and Its Works 226

The Bar • Organization of the Bar • Legal Education • The Literature of
the Law

PART III

American Law to the Close of the Nineteenth Century 251

CHAPTER 1

Blood and Gold: Some Main Themes in the Law in the Last
Half of the Nineteenth Century 253

The New Era • Organic Law • State Constitutions • The West

CHAPTER 2

Judges and Courts: 1850–1900 279

The Judges • Judicial Organization

CHAPTER 3

Procedure and Practice: An Age of Reform 293

Mr. Field's Code • Appellate Courts • Codification and Reform

CHAPTER 4

The Land and Other Property 309

The Transformation of Land Law • The Public Land • Property Law
and the Dynasts • Landlord and Tenant • Mortgages • The Decline of
Dower • A Tangle of Titles • Intellectual Property: Patents, Copyrights,
and Trademarks

CHAPTER 5

Administrative Law and Regulation of Business 329

The Coming of the Bureaucrats • Regulating the Infrastructure: Banks, In-
surance, and Railroads • Occupational Licensing: And the Pull of Public
Health • The Great Antitrust Act

CHAPTER 6

Torts 350

	CONTENTS	vii
	CHAPTER 7	
The Underdogs: 1850-1900		367
The Dependent Poor • Family Law and the Status of Women • The Races		
	CHAPTER 8	
The Law of Corporations		390
Corporation Law: Freedoms and Restraints • A Discordant Addendum: The Municipal Corporation		
	CHAPTER 9	
Commerce, Labor, and Taxation		404
Contract • Negotiable Instruments • The Law of Sales • The Usury Laws • Insurance • Bankruptcy • Admiralty • Labor and Law • Federal Tax- ation • State and Local Tax • Death Taxes		
	CHAPTER 10	
Crime and Punishment		434
The Many Faces of Criminal Law • The Statute Law of Crimes • Crime, Crime Rates, Insanity, the Guilty Mind • Punishment and Correction • Victimless Crimes		
	CHAPTER 11	
The Legal Profession: The Training and Literature of Law		463
The Rise of the Law School • The Literature of the Law • Legal Periodi- cals and Casebooks		
	CHAPTER 12	
The Legal Profession: At Work		483
The Nimble Profession • Organization of the Bar • Admission to the Bar		
	PART IV	
<i>The Twentieth Century</i>		501
	CHAPTER 1	
Leviathan Comes of Age		503
Center and Periphery		
	CHAPTER 2	
The Growth of the Law		516
The Liability Explosion: Workers' Compensation • More Explosions: Tort Law • The Constitution, Rights, and Civil Liberties in the Twentieth Cen- tury • First Nations • Asian Americans • Hispanics • The Revolt of Otherness • Freedom of Speech • Religion and the Law		
	CHAPTER 3	
Internal Legal Culture in the Twentieth Century:		
Lawyers, Judges, and Law Books		538
Legal Ethics • The Organized Bar • Legal Education • Legal Literature • The Twentieth Century Bench		

CHAPTER 4

Regulation, Welfare, and the Rise of Environmental Law 554

• Land Use • Environment Law and the Environmental Movement • Intellectual Property • Regulation of Business • Business Law and the Law of Business

CHAPTER 5

Crime and Punishment in the Twentieth Century 567

Decriminalizing Sex and Vice • Defendants' Rights • The Death Penalty • Crime Waves and the National Response

CHAPTER 6

Family Law in the Twentieth Century 576

EPILOGUE

A Final Word 583

Bibliographical Essay 585

Index 595