



The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy (Oxford Paperbacks)

By Morton J. Horwitz

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When the first volume of Morton Horwitz's monumental history of American law appeared in 1977, it was universally acclaimed as one of the most significant works ever published in American legal history. *The New Republic* called it an "extremely valuable book." *Library Journal* praised it as "brilliant" and "convincing." And Eric Foner, in *The New York Review of Books*, wrote that "the issues it raises are indispensable for understanding nineteenth-century America." It won the coveted Bancroft Prize in American History and has since become the standard source on American law for the period between 1780 and 1860. Now, Horwitz presents *The Transformation of American Law, 1870 to 1960*, the long-awaited sequel that brings his sweeping history to completion.

In his pathbreaking first volume, Horwitz showed how economic conflicts helped transform law in antebellum America. Here, Horwitz picks up where he left off, tracing the struggle in American law between the entrenched legal orthodoxy and the Progressive movement, which arose in response to ever-increasing social and economic inequality. Horwitz introduces us to the people and events that fueled this contest between the Old Order and the New. We sit in on *Lochner v. New York* in 1905--where the new thinkers sought to undermine orthodox claims for the autonomy of law--and watch as Progressive thought first crystallized. We meet Oliver Wendell Holmes, Jr. and recognize the influence of his incisive ideas on the transformation of law in America. We witness the culmination of the Progressive challenge to orthodoxy with the emergence of Legal Realism in the 1920s and '30s, a movement closely allied with other intellectual trends of the day. And as postwar events unfold--the rise of totalitarianism abroad, the McCarthyism rampant in our own country, the astonishingly hostile academic reaction to *Brown v. Board of Education*--we come to understand that, rather than self-destructing as some historians have asserted, the Progressive movement was alive and well and forming the roots of the legal debates that still confront us today.

The Progressive legacy that this volume brings to life is an enduring one, one which continues to speak to us eloquently across nearly a century of American life. In telling its story, Horwitz strikes a balance between a traditional interpretation of history on the one hand, and an approach informed by the latest

historical theory on the other. Indeed, Horwitz's rich view of American history--as seen from a variety of perspectives--is undertaken in the same spirit as the Progressive attacks on an orthodoxy that believed law an objective, neutral entity.

The Transformation of American Law is a book certain to revise past thinking on the origins and evolution of law in our country. For anyone hoping to understand the structure of American law--or of America itself--this volume is indispensable.

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Editorial Review

From Library Journal

For anyone seriously interested in studying American legal history, this insightful and persuasive account of the development of American law from the late 19th century to the mid-20th century is required reading. Comparing and contrasting Progressive Legal Thought with its predecessor, Classical Legal Thought, Horwitz clearly proves the impossibility of understanding the development of the American legal system separate from the broader cultural context, domestically and internationally. Building on his equally impressive earlier volume (*The Transformation of American Law , 1780-1860 , LJ 2/15/77*), Horwitz provides lucid and challenging material on critical figures and events in the evolution of American law, such as Oliver Wendell Holmes, the *Lochner* decision, and Critical Legal Studies. Not everyone will agree with some of the conclusions, but this excellent work cannot be ignored. Especially recommended for upper-level graduate libraries.

- *Stephen K. Shaw, Northwest Nazarene Coll., Nampa, Id.*

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From Kirkus Reviews

In an important and long-awaited sequel to his classic *Transformation of American Law, 1780-1860* (1977), Horwitz tells how the Progressive movement--a program for political and economic as well as legal reform--transformed American legal thought from a search for impartial norms into a discipline that acknowledged the elasticity of its own rules and that borrowed the methodologies and some of the values of the social sciences. Horwitz describes the Progressive movement (and its progeny, the Legal Realism movement of the 1920's and 1930's) as an assault on "classical legal thought"--the view that the law constitutes an impartial body of rules administered by neutral arbiters. The author argues that centralization of the American economy--with the accompanying problems of urbanization, immigration, industrialism, and polarization of economic classes--led to a gradual reexamination of classical legal thought, particularly the bias in legal orthodoxy against redistribution of wealth. Horwitz describes how economic and, ultimately, social changes brought about by WW I put irresistible pressure on courts and legal scholars to bring jurisprudential thought into closer touch with America's rapidly changing society. But, Horwitz explains, it was the Supreme Court's controversial decision in *Lochner v. New York* (1905)--which invalidated a maximum-hours law for bakers on the grounds that it unconstitutionally interfered with the freedom of contract--that truly catalyzed the attacks of Progressive legal scholars on the claim that law was a politically neutral science. Through a discussion of the evolution of thought in specialized legal fields and problems, and by offering short sketches about the thought of influential figures of the period like Oliver Wendell Holmes and Legal Realists Karl Llewellyn and Jerome Frank, Horwitz demonstrates that the effect of the new thinking on American law was pervasive and lasting. Finally, he argues persuasively that the Legal Realist tradition has had an extensive effect on the development of American law in the post-WW II period. An excellent and significant reexamination of the work and impact of the Progressive and Realist legal thinkers. -- *Copyright ©1992, Kirkus Associates, LP. All rights reserved.*

Review

"A skillful mixture of narrative, apt quotation and case analysis."--*The New York Times Book Review*

"Horwitz has produced a magisterial and consistently insightful survey--which is often controversial and never dull--of the modern development of American law. Through politics, economics, and social history as much as law he reveals clearly how we came to where we are."--Norman Dorsen,

President, ACLU, 1976-1991

"A splendid analysis of the consequences of the American penchant for sharply separating law from politics. As Horwitz so wisely argues, our failure to learn the hard historical lesson that politics shapes law denies our own generation the opportunity to make effective moral choices through the law."--Kermit L. Hall, College of Law, University of Florida, Gainesville

"This is the most insightful summary of legal theory in the period."--Professor Jay M. Feinman, Rutgers School of Law

"A magisterial and consistently insightful survey--which is often controversial and never dull--of the modern development of American law. Through politics, economic, and social history as much as law he reveals clearly how we came to where we are."--Norman Dorsen, New York University School of Law

"Morton Horwitz has one subject--the relationship of law to politics in American history. In his second major work, he has used the same title, but has written a surprisingly different and equally wonderful book....The Transformation of American Law, 1870-1960 is that most important form of history, a dramatic story and a tract for our times."--Stanley N. Katz, President, American Council of Learned Societies

"An important and long-awaited sequel to Transformation of American Law, 1870-1960....An excellent and significant reexamination of the work and impact of the Progressive and Realist legal thinkers."--Kirkus Reviews

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