

Spring 1953

Law and Social Change in Contemporary Britain, by Wolfgang G. Friedmann

Stefan A. Riesenfeld
University of California, Berkeley

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Comparative and Foreign Law Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

Riesenfeld, Stefan A. (1953) "Law and Social Change in Contemporary Britain, by Wolfgang G. Friedmann," *Indiana Law Journal*: Vol. 28 : Iss. 3 , Article 7.

Available at: <https://www.repository.law.indiana.edu/ilj/vol28/iss3/7>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

LAW AND SOCIAL CHANGE IN CONTEMPORARY BRITAIN. By Wolfgang G. Friedmann. London: Stevens & Sons, Ltd. Pp. xxiv, 322. 37s. 6d.

Most jobs of law-men, whether practitioners or writers, require close range work. This engenders the threat of professional myopia as a serious occupational hazard. It brings, therefore, wholesome relief to find and read the work of a legal scholar who has the courage, if not audacity, to step back a few paces, take a good look and then paint a picture of what he saw. Of course, a canvas of this type is illuminating only if its creator is endowed with vision and, above all, knows how to handle his colors. Professor Friedmann exhibits all these qualities requi-

† Max Pam Professor of Comparative Law, University of Chicago Law School.

site for his undertaking. In addition he brings to his task an admirable professional equipment based on his rich experience gathered during a continental legal education, protracted *Wanderjahre* in Great Britain and Australia and his present tenure as professor of law at the University of Toronto.

In a comparatively slender volume the noted author attempts to "re-assess the function of law and legal institutions in the vastly changed social pattern of contemporary England" and to "assess the interrelation of law and social change in present-day British society." It is the avowed purpose and goal of Professor Friedmann to write a follow-up to Dicey's *Law and Public Opinion in England, during the Nineteenth Century* and to study the impact on the law and legal institutions produced by the transgression—or, in the opinion of the author, progression—from the Liberal State, the *Nachtwächterstaat* of unbridled capitalism, to the Welfare State, the Planned State of a social-democratic society.

The book, which actually is a loosely coordinated series of essays, is divided into four main parts: the common law in a changing society; the place of public law in contemporary English jurisprudence; statute law and the welfare state; and, finally, the planned state and the rule of law. As these headings indicate, the author's probing covers an immense field. All major phases and aspects of the social phenomenon called "law" are examined and re-appraised. Only a reading of the book can give a true impression of the astuteness with which basic trends are laid bare and seemingly haphazard and conflicting symptoms are correlated.

In ascertaining the latest metamorphoses of our fair lady Common Law, the author boldly and adroitly unveils the structural and functional changes which have come to pass in the venerable institutions of property, contract, tort, trust, corporate entity, criminal responsibility and freedom of trade as a result of the eclipse of the theories and policies which governed them during the period of laissez-faire ideology. The new role assumed by the State owing to its transformation into the modern social welfare state, with its "flood of social services, ministerial powers, administrative tribunals and public corporations," brought about a tremendous growth of, and placed new significance upon, that branch of the legal system which traditionally is designated as public law. The vastly extended boundary between public interest and private rights required re-definition and re-location. Old institutions, such as the public corporation, and old remedies, such as the extraordinary writs and the injunction, had to be adapted to the new needs and functions, and new doctrines and measures had to be accommodated by the existing legal machinery. All this is admirably spot-lighted and revealed by the author.

He bestows special and deserved attention to the new role of the statute as a principle means of social action through legal process and studies the results which flow from the process of interpretation from this shift in emphasis. The final part and chapter of Professor Friedmann's volume is devoted to the role of law in a planned society. It is clearly the climax of his investigation. The modern State acting, in the author's terms, as protector, as dispenser of social services, as industrial manager, as economic controller and as arbitrator not only must attribute new functions and meaning to the law but, of necessity, must itself assume a changed position within the legal order. Thus the re-definition of the legal status of public authorities emerges as the central legal problem of the planned but free society. Fresh tests for the differentiation between legitimate exercise and abuse of governmental power have to be shaped and the circumscription of scope of the new freedoms and their protection remains the eternal problem of the legal profession and, perhaps, the courts.

Professor Friedmann's book is unquestionably provocative and worth reading. It is certainly the befitting English counterpart and companion to similar though somewhat narrower studies in other systems, such as Léon Duguit's celebrated booklet *Les transformations générales du droit privé depuis le Code Napoléon* (2d ed. 1920), or René Savatier's more recent *Les métamorphoses économiques et sociales du droit civil d'aujourd'hui* (2d ed. 1952). There remains the thorny question of bias. One outstanding American reviewer has censured the author for being "tendentious without being frankly so,"¹ but at least two eminent English reviewers seem not to share this reproach. One states specifically that "readers will find no cause to complain that the book speaks with a tendentious political inflection"² while the other alludes merely to the "reforming zeal that stands out from the printed page" and acknowledges that Professor Friedmann is a "legal reformer, and it would appear, something of a social reformer too."³ Undoubtedly Professor Friedmann is in open sympathy with the aims and policies of the new order and he voices articulately the conviction that the law must be, and remain, in consonance with the basic social conceptions of the times. But while he shows impatience with attitudes which to him seem outmoded he does not lose sight of the function and the responsibility of the law as an arm of democracy. He never becomes a mere apologist for governmental action, although he is frankly skeptical of the law as an independent social force.

-
1. Jaffe, Book Review, 65 HARV. L. REV. 1264 (1952).
 2. Carr, Book Review, 4 STAN. L. REV. 616 (1952).
 3. Birkett, Book Review, 15 MOD. L. REV. 277 (1952).

To the American reader the book is interesting because its rich comparative content demonstrates how much of the progress in legal thought was developed on this side of the Atlantic and testifies to the sturdiness and vitality of modern domestic legal scholarship. The work thus has much greater significance than mere applicability to a *jus tertii* and should be incorporated into the recommended intellectual diet of American lawyers and, especially, law students.

Stefan A. Riesenfeld†