

ethnicity. Such confirmation is helpful, and, as indicated, fruitful research concerns may be generated by some of the articles.

Department of Political Science
University of Pittsburgh
at Greensburg

MYRON R. RUBINOFF

The Law in America: A History. By BERNARD SCHWARTZ. (New York: McGraw-Hill, 1974. Pp. 382. \$12.50.)

Americans have historically viewed both the law and its practitioners ambivalently. To begin, the American Revolution, observes Bernard Schwartz in *The Law in America*, was a "legal struggle" in which legal-minded patriots defied British law by first resisting the lawful levies of the crown and then launching a revolution against constituted authority. A half-century later, Jacksonian Americans railed against pompous lawyers who vested chartered privileges in "monster" banks, which were believed to wantonly oppress the toiling working-class. Most recently, legalist and layman alike writhed with anguish while a rogues' gallery of lawyers, including a dethroned president, stood tried and convicted of the crimes of Watergate.

But the very revilers of the Watergate masterminds rejoiced that the law had triumphed in the conviction of the "conspirators"; thus America had hurdled another obstacle in the testing of the Constitution. Like a modern Vergil, Bernard Schwartz in *The Law in America* journeys his readers across the rubble and through the vales of American legal history pointing out the tome-like refuse jettisoned along the way. Schwartz, however, is most intent explaining the evolving edifice of contemporary law. His method, in the expository fashion befitting his own legal background, is both topical and chronological. After explaining the evolution in the "new nation" of public law, private law, and the law governing institutions, Schwartz traces the path of the law through America's three jurisprudentially fecund periods: the "Gilded Age," the "New Deal," and the age of the "Warren Court."

Schwartz's thesis is almost blatantly simple. Holding up Justice Holmes's metaphorical "mirror," Schwartz contends that the law reflects — in fact to be effective must reflect — the history of the nation. Therefore, the changes that can be observed in the course of American history are more visible in the tomes of the law than in the metamorphosis of social and political institutions.

Schwartz reflects on numerous aspects of the evolving law. He stresses that in the nineteenth century tort law (the law of civil wrongs) was hitched to a "venture" interpretation of liability. Moreover, the law of personal damages, especially the "fellow servant rule" — which maintained that the individual who was free to choose his calling was also free to bear the risk associated with that calling — also impelled the interests of productivity. But, according to Schwartz, it was the transformations in contract law which exercised the greatest "liberating force" on the American economy. Therefore, following the Civil War the catalytic elements of tort and contract law reacted with the Fourteenth Amendment to the Constitution — which interpreted equality as due process — and fostered in Schwartz's words "galloping industrialization." Whereas social Darwinism kept the law sluggish in the social sphere, Schwartz believes that lawyers were overly inventive in inscribing the domain of the corporation. By the end of the century both the bench and the bar had abdicated their independence and coupled the profession to big business.

While the New Deal worked a revolution in interpreting the province for government intervention, it simultaneously promulgated a whole new region for the expansion of bureaucratization. Schwartz sees administrative law growing "like Topsy" after the Great Depression; the New Deal, he argues, had made government a haven for lawyers, while the commercialization of the legal profession continued unabated. One of the problems with the law today, maintains Schwartz, is that public skepticism with the incorporated legal profession has grown to the point where the law is questioned as an effective instrument for social order.

The trends in public administration, particularly at the federal level, have been equally disconcerting. Certainly, suggests Schwartz, the stretching of constitutionality in both Korea and Viet Nam and the growth of an "Imperial Presidency" under Johnson and Nixon, did little to allay public qualms. On the other hand, Schwartz is encouraged by the legacy of the Warren Court, which effected a broadening of protection in such important areas as equity and civil rights.

Unfortunately, it is difficult to see that Schwartz effectively uses the law to "mirror" American history. While he affords an interesting survey of the milestones in American legal history, he at best faintly illuminates the workings of historical forces. Schwartz's purview essentially ignores the hard fought ideological battles between Federalism and Republicanism which at times threatened to rend the delicate fabric of the "new nation." He equally spurns the concept of "mission"

which the historian Frederick Merk regarded as a crucial force shaping American institutions in the nineteenth century. Likewise he abjures the idea of "plenty" elucidated so ably by the late David Potter.

Furthermore, the author deals insubstantially with the molding pressures of urbanization, industrialization, and secularization. By the year 1820 the transportation revolution and nascent industrial urbanization were already exerting an impact on American society. As Sam Bass Warner points out in his book, *The Urban Wilderness*, America in the antebellum period was gripped by a virulent youthful stage of urbanization which thrust America out of the status imbued "deferential society" and into a contract-based society; the process shook loose the social, political, as well as the legal underpinnings of the preindustrial normative order. Consequently, American history, as the historian John Higham recently argued, can be interpreted as an effort to "get us together," to restore the ever eroding traditional base. Certainly, it is difficult, if not impossible, to sweep the terrain of American legal history, as Schwartz has attempted, without taking cognizance of the underlying ideological framework suggested above.

History Department
California State College
California, Pennsylvania

JOHN F. BAUMAN

This New Man, The American: The Beginnings of the American People. By JOHN C. MILLER. (New York: McGraw-Hill, 1974. Pp. xii, 719. \$15.00.)

For nearly forty years, John C. Miller has tutored his fellow countrymen on the origins of the American republic. A native Californian, Miller was educated at Harvard, and he carried a passionate devotion to American colonial history back to the west coast, where he became Stanford University's Robinson Professor of American History in 1950. In the course of his career, Miller has written fine biographies of Samuel Adams and of Alexander Hamilton. A unique contribution to the cause of American liberty, his study of the Alien and Sedition Acts, implicitly exposed the threat of McCarthyism in 1951. His other writings on American history from 1763 to 1815 have shaped a generation's thinking on the establishment of the world's first "new nation."