

THIRD EDITION

AMERICAN LAW AND LEGAL SYSTEMS

JAMES V. CALVI
SUSAN COLEMAN

American Law and Legal Systems

Third Edition

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*American Law
and
Legal Systems*

With love and gratitude

**To my wife Leesa and my daughters
Jennifer and Jessica**

and

In loving remembrance of

**my dear friend and cousin,
Norma Sue Mayben
(1956–1995)**

**and
my father,
John Buchanan Coleman
(1922–1993)**

Preface to Third Edition

One of the themes of *American Law and Legal Systems* is change. In looking back since the first edition appeared in 1989, it is apparent that the law has changed even in so short a period of time. One of the luxuries of having a third edition of a book is the ability to reflect on the changes that have occurred since the book was first written. Another is to clarify points which were not as lucid as they seemed at the time. At the same time, we hope that we have retained some of the down-to-earth language we thought essential to the understanding of law for introductory students. As always, it is for the reader to decide such questions.

The third edition of *American Law and Legal Systems* contains the usual attempt to update material to make it as current as possible. In addition, significant additions have been made. Chapter 2 (History of Law) has been expanded to include a section on Chinese socialist law. Chapter 6 (Constitutional Law) now includes a section on civil liberties. The topic of civil liberties had been prominently covered in the first edition but eliminated in the second. It is our hope that the inclusion of a brief civil liberties section will serve as a happy compromise.

Chapter 7 (Criminal Law) includes a new section on a neglected area of the law—juvenile justice. Chapter 9 (Torts) contains new material on the battle over tort reform in the United States. A section on intellectual property now appears in Chapter 11 (Property). Intellectual property is a rapidly changing area of the law especially in an era of international markets, trade

treaties, computer software, and worldwide webs. Finally, Chapter 12 (Family Law) raises new questions about the concept of family and its changing nature in American society.

We would like also to thank those people who have provided their continued support throughout the revision process. First, our families for being there with love and understanding. Next, our colleagues and friends in the Department of History and Political Science of West Texas A&M University. A special note of thanks to Marilyn Smith who proofread the final copy and provided her usual cheerful help when things came unglued. Our thanks to Sandra L. Quinn-Musgrove, Our Lady of the Lake University; Ronald D. Server, Prairie View A&M University; and James Marshall, Michigan State University who gave of their time by reviewing the manuscript.

As we have done in the two previous editions, we would like to conclude by thanking the wonderful people at Prentice Hall. Some of them are new and some have become like old friends, but all of them have been extraordinarily helpful over the years. First, we would like to thank Mike Bickstaff, Political Science editor, for his support and encouragement. We also want to thank Kim Gueterman, production editor, and Donna Mulder, copy editor, for all the help they provided.

Preface to Second Edition

When we wrote the first edition of *American Law and Legal Systems*, we did so because of our dissatisfaction with the textbooks then available for introduction to law courses. After reading the critiques of the first edition, we now understand more fully how difficult it is to write a book that fits the needs of everyone who teaches this course. That is one reason it is so nice to have a second edition. We were able to think about the comments of the book's reviewers and incorporate their suggestions and ideas. Naturally, we believe this will constitute a major improvement over the first edition.

In addition to the usual updating of material, we have added several new topics in the second edition. Included are sections on the punishment phase of the criminal justice system (Chapter 7) and on alternate dispute resolution (Chapter 4). We expanded the coverage of appellate courts to include additional discussion of the appellate process and the functions of appellate courts in the judicial system (Chapter 4). The chapter on constitutional law (Chapter 6) now includes a much broader range of constitutional issues and concepts. We feel the revision better reflects the field of constitutional law than did the more narrow First Amendment focus of the first edition. Finally, an appendix on legal research will benefit students whether the text is used for introductory law, criminal justice, business law, or legal assistant courses.

As with the first edition, there are many people to thank for their support. We would like to thank our families for their loving support. We would also like to thank the members of the History and Political Science Depart-

ment at West Texas State University for their personal and institutional backing, especially Marilyn Smith, our departmental secretary. We want to thank our students who had to endure our occasional inaccessibility while we hid in the library. We wish to thank the following professors who graciously reviewed the manuscript and provided invaluable suggestions for the second edition: Michael Johnson, Iowa Lakes Community College, and Joseph F. Schuster, Eastern Washington University.

Finally, we wish to express our appreciation to the people of Prentice Hall for the second chance this book represents. We would especially like to thank Karen Horton, Political Science editor. Karen was an absolute joy to work with and was always available to answer questions. A mere phone call to Karen never failed to generate added enthusiasm, energy, and determination for our task. We also thank Dolores Mars, Karen's assistant, Rob DeGeorge, production editor, and Diane Lange, copy editor, for all their good work on our behalf.

Preface to First Edition

We decided to write an introductory law book for a simple reason: We were dissatisfied with the existing choices. We felt that some introductory law books—often the ones written by lawyers—were too legalistic in their approach. These books often contained excerpts from Supreme Court cases and basically taught law the same way as their lawyer-authors had been taught law. Other introductory law books leaned too much toward social science in their orientation. We decided a more balanced approach was needed. We also wanted to write a book that could be easily understood by a layperson, but which had enough technical information to introduce the beginner to the intricacies of the law. To that end, we have included chapters that deal with what is commonly known as “everyday law”: contracts, wills, family law, and torts. We have included a glossary to call special attention to important legal terms and doctrines. We divided the chapters so that each of us could write in his or her own area of expertise. Consequently, the chapters dealing with the more technical aspects of the law were written by Susan Coleman, a licensed attorney; the chapters dealing with the social and political aspects of the law were written by Jim Calvi, an unlicensed political scientist. We reviewed each other’s chapters as they were written in order to achieve the necessary balance. We are happy to report that the incidents of bruised egos were minimal.

It is with heartfelt gratitude that we thank those people who helped us in this endeavor. Naturally, we want to thank our families, who put up with

us through endless rewrites and self-imposed deadlines—especially Sue Coleman, who helped compile the Index and Table of Cases. We would also like to thank our colleagues at West Texas State University for the personal and institutional support provided. We would especially like to thank Dr. Jim Woodyard of the Killgore Research Center, who displayed untiring effort and unending patience as we learned (and relearned) the deep, dark secrets of word processing and computer usage. It is no exaggeration to say that we could not have done it without him. We wish to thank the following professors who graciously reviewed the manuscript: Karl Andresen, University of Wisconsin-Eau Claire; Robert L. Bock, Western New England College; James Magee, University of Delaware; and Lee S. Weinberg, University of Pittsburgh.

We want to thank the people of Prentice Hall for their patience and understanding in leading two relative novices through the intricacies of book publishing. First, Karen Horton, Political Science editor, who gave us the opportunity to bring this idea to fruition. Second, Marjorie Shustak, who served as production editor and answered our numerous inquiries about the process. Third and finally, Nancy Morgan Andreola, copy editor, who showed us that we don't write nearly as well as we thought.

*American Law
and
Legal Systems*

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Introduction

In order to understand the American legal system, one must first come to terms with the question, What is law? Americans have always had ambivalent feelings about law. Our rhetoric is full of noble ideals such as “equal justice under law” and the “rule of law.” We pride ourselves on having a “government of laws, not men,” and on the assertion that “no one is above the law.” At the same time, disregard for the rule of law has been part of our political tradition. We are a nation born of violent revolution, and during our frontier period, vigilante groups often took the law into their own hands. Even in our own time we debate the role of civil disobedience in the civil rights, animal rights, abortion, and antinuclear movements. *Civil disobedience* is the belief that a person has a moral right to disregard an unjust law. In our own time the debate over the role of civil disobedience continues. In the 1960s the radical left believed ending the war in Vietnam or achieving civil rights for African-Americans justified the use of violence. In the 1990s the radical right uses similar arguments to justify violence against abortion clinics. Some paramilitary militia groups have even challenged the legitimacy of the government itself.

In many ways the questions we ask ourselves about the nature of law are the same ones we ask about our political system and about society at large. How do we account for the conflicting attitudes Americans have toward law? How can persons who are law abiding one minute turn into a lynch mob the next? How can a nation founded on the basis of its citizens’