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## Lawrence M. Friedman, Legal Historian



### **"The war against terrorism is a metaphor used to justify actions"**

Historian Lawrence M. Friedman (Chicago, 1930) is one of the main experts in the evolution of law in the United States. He has received numerous prizes and is author of several works, including *History of American Law* (1973), *The Horizontal Society* (1999) and *American Law in the 20th Century* (2003). His works have become a reference in the field of legal history. He was professor at the University of Wisconsin Law School and at Saint Louis University School of Law before joining the Stanford Law School faculty in 1968, where he is currently professor of law at the Stanford University Department of History and the Department of Political Science. During his visit to Barcelona he participated in the First ISA Forum of Sociology and gave a conference at the UAB Faculty of Law on 8 September.

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**- How would you describe the current situation of civil rights in the United States?**

- The situation is not bad, but it could be better. The administration for the last eight years has shown very little sensitivity to rights and it has gotten worse with the excuse of the war against terrorism. A lot of actions have been taken which I think are contrary to the constitutional rights of people. The most notorious case of course is Guantanamo Bay where men have been held without trial for up to six years. But the government pays as little attention as possible to any criticism on this issue. I think it's a very serious aspect with regard to what is supposed to be national security... In the end, however, there are only a small number of people directly affected by these actions. There is a debate, not just in the US, but all over the world with regard to what kinds of measures are necessary, or even desirable in the present situation. People now assume that it is perfectly normal to have security checks at airports or surveillance cameras in banks or other buildings. Thirty or forty years ago people would have considered these things a drastic invasion of their privacy, but they are simply accepted today. I think it is now a fact that we have become more accepting of these types of measures.

**- What effects has the famous Patriot Act had on the civil rights of Americans?**

- This is the basis for many of the actions the government claims it has the right to take. Again, the problem is the war on terrorism. In my opinion, much of it is completely misconceived. To say there is a war on terrorism is just a metaphor. There is no war. A war is Country A fighting Country B. We can talk about a war on drugs, a war on poverty or hunger... However, these are not really wars and neither is the war on terrorism. This has consequences because the government uses it to justify certain actions which can actually be taken during a real war. For example, it is perfectly acceptable to arrest enemies of the state, but during peace time it is not acceptable to arrest those who criticise government actions.

**- What influence does the situation of Guantanamo prisoners have on people?**

- In the US and most other countries, the vast majority of the population does not concern itself much with what happens to a small group of people. So we should be very grateful to a cadre of lawyers who truly believe in the rule of law and struggle to help these people. These are presumably dangerous enemies. Some might be, but most are not and the proof is that hundreds have simply been released. No trial, no charges... The whole episode was misconceived, and it was done for political reasons. There is an enormous political advantage in claiming that there is a serious danger and therefore the government is justified in taking all sorts of steps. And I am afraid most people simply accept it.

**- Do you think the situation can change with the new president, whether it is Obama or McCain?**

- Yes, it will certainly change. It'll change a bit with McCain, a lot with Obama. I am certain Obama will close down Guantanamo Bay and possibly McCain will too.

**- How can governments reinforce international law?**

- I don't know the answer to this question because, despite all that has happened in the last two generations, the notion of sovereignty is still enormously strong. Until more countries are willing to give up some of their sovereignty to international bodies, we will not get too far. Some progress has been made however. The idea of putting on trial in Hague people whose crimes were committed in Sierra Leone, Uganda, Yugoslavia, etc. is an enormous step in making international law a reality. But this is still a very small beginning.

**- What contributions has legal history made to social history?**

- Legal history is a very important part of social history. In fact, legal history is simply an aspect of social history. Particularly in Europe, traditional legal history has been a very dull, dogmatic field which treats law as if it existed in isolation from the rest of society. This is true mostly of the scholars who approach it from the law side. The social historians in Europe are very sophisticated. They base their work focusing on the essential point, which is that legal systems are a product of their societies and they move with society. There are examples in every field and I'll give you a very simple one. I'm very interested in family law. Hundreds of years ago, virtually no country recognised divorce. Today, every Western country - except Malta - recognises divorce. Each country has its own individual history, but there has been a common evolution. From treating marriage as something which cannot easily be broken to making divorce an available option. What lies behind this is not legal scholarship or logic; it's the sexual revolution and the revolution in the position of women, changes in family structures, etc. It is very clear that this is the product of social evolution and the legal changes simply follow.

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