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## Impact: How Law Affects Behavior, by Lawrence M. Friedman

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Book Review



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## Impact: How Law Affects Behavior, by Lawrence M. Friedman

### Abstract

H.L.A. Hart opens his seminal work *The Concept of Law* with the observation that “[f]ew questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question ‘What is law?’” Many of these serious thinkers have sought to determine what law is by answering the question: “Where does law come from?” Aristotle’s view of natural law holds that law originates in its connection to an eternal concept of supreme justice. John Austin, on the other hand, sought to distinguish the law from other types of coercive force by appealing to its origin in some sort of sovereign authority. More recently, law and society scholars have been similarly preoccupied with understanding the origins of law. The focus of their pursuit has been to establish an empirically informed understanding of the degree to which governmental structures and social forces outside the legal system, such as lobbying and social justice movements, influence the creation of laws and legal norms.

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## Book Review

***Impact: How Law Affects Behavior*, by  
Lawrence M. Friedman<sup>1</sup>**ARI ZUCKERBROT<sup>2</sup>

H.L.A. HART OPENS HIS SEMINAL WORK *The Concept of Law* with the observation that “[f]ew questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question ‘What is law?’”<sup>3</sup> Many of these serious thinkers have sought to determine what law is by answering the question: “Where does law come from?” Aristotle’s view of natural law holds that law originates in its connection to an eternal concept of supreme justice.<sup>4</sup> John Austin, on the other hand, sought to distinguish the law from other types of coercive force by appealing to its origin in some sort of sovereign authority.<sup>5</sup> More recently, law and society scholars have been similarly preoccupied with understanding the origins of law. The focus of their pursuit has been to establish an empirically informed understanding of the degree to which governmental structures and social forces outside the legal system, such as lobbying and social justice movements, influence the creation of laws and legal norms.<sup>6</sup>

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1. (Cambridge, Mass: Harvard University Press, 2016).
  2. JD/MBA Candidate (2019), Osgoode Hall Law School and the Schulich School of Business, Toronto, Canada.
  3. (Oxford: Oxford University Press, 1961) at 1.
  4. For a discussion of Aristotle’s views, see *e.g.* Tony Burns, “Aristotle and Natural Law” (1998) 19:2 *Hist Pol Thought* 142.
  5. Hart, *supra* note 3 at 20.
  6. Friedman discusses his own career and the work of his peers. Friedman, *supra* note 1 at 1.

Despite centuries of thought devoted to the origin of the law and how new laws arise, there has been little exploration of how laws, once created, influence our actions. In *Impact: How Law Affects Behavior*, Lawrence M. Friedman seeks to address that imbalance by asking the question: “Once you have a law, rule doctrine, or legal institution, what happens then?”<sup>7</sup> Friedman explores this question of “impact,” and examines “behavior tied causally, in some way or other, to some particular law, rule, doctrine, or institution.”<sup>8</sup>

Of course, we know a great deal about what Friedman calls *legal impact*—the impact of one law on the development of other laws within a legal system. The impact of past judicial decisions on the development of the common law, after all, is “what law students study in law school.”<sup>9</sup> Law students, however, are not routinely examined on the impact of laws *outside* of the legal system. In the world of law and society scholarship, academics have certainly tried to bridge this gap between the study of “formal law” and “law in action.”<sup>10</sup> Despite their efforts, research in this field tends to be confined to examining one particular instance of behavioural impact. Does capital punishment deter? Does legalization of recreational marijuana mean more people will drive under its influence? In *Impact*, Friedman goes where none of these thinkers have gone before: He pursues an understanding of the *nature* of impact, itself. What are the different ways that individuals and groups respond to laws? What determines their behaviour? What impacts “impact”?

Perhaps these questions had been avoided for so long because, until very recently, they were impossible to answer—there simply was not enough evidence to identify trends across different fields of law and different legal systems. Friedman, in fact, first attempted to broach the topic in two chapters of a book he wrote in 1975.<sup>11</sup> Today, however, the “sheer volume”<sup>12</sup> of disparate research in fields such as economics, criminology, psychology, sociology, political science, and anthropology is immense. By drawing on that forty-plus years of social science research, Friedman returns to bring about a “more contemporary, more comprehensive treatment of the subject.”<sup>13</sup> He builds a “conceptual framework”<sup>14</sup>

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7. *Ibid* at 2.

8. *Ibid*.

9. *Ibid* at 60.

10. *Ibid* at 2.

11. *Ibid* at ix. Friedman is referencing his earlier work, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975).

12. Friedman, *supra* note 1 at 250.

13. *Ibid* at ix.

14. *Ibid* at x.

around impact: How are laws received and by whom? What are the types of behavioural responses to laws? What are the motives behind these responses? The result of Friedman's effort is far more than mere categorization: He has created the blueprint for a subdiscipline of its own.

Friedman's framework begins with a discussion of the first link in the causal chain of impact: The message of the law must be communicated to an audience before any sort of behavioural response can occur.<sup>15</sup> Laws often have multiple messages and are directed towards multiple audiences. On one level, laws communicate a message to the general public, yet the same law can also direct a message to a specific group. For example, taxi drivers will likely know many of the details governing taxi licensing requirements, while a passenger or a member of the general public may not be aware that such regulation even exists.<sup>16</sup>

A law may also convey a separate message to the legal authorities and broader enforcement community whose role is to support the implementation of the law. As Friedman explains:

Making burglary a crime, for example, implies, obviously, a complicated message to police officers, prosecutors, judges, and perhaps also to juries, prison guards, wardens, and the like. Not to mention manufacturers of locks, bolts, and alarm systems, and it may be a factor, too, in peoples' decisions to keep at home a large, loud dog with big teeth instead of a kitten or a pet turtle.<sup>17</sup>

The messages that laws communicate to the world may not necessarily align with the intended message or "purpose" of the law. That is, in part, because they are recorded in inaccessible legal records like the *Income Tax Act*,<sup>18</sup> which even experts have difficulty deciphering. Their meaning warps as they are condensed into "directives, guides, manuals, brochures," or communicated *indirectly* through extra-governmental sources including schoolmates, friends, family, the media, or "information brokers," such as lawyers and accountants.<sup>19</sup>

Friedman cites a broad range of evidence to suggest that, when the message of a law is vague or complicated, it is "converted by the audience, either deliberately or unconsciously, into something more concrete, something easier to use."<sup>20</sup> He gives the example of speed limits in Rhode Island. In that state, as in most parts of the world, speed limits are posted on highway signs. To the

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15. *Ibid* at 4.

16. *Ibid* at 15-16.

17. *Ibid* at 7.

18. RSC 1985, c 1 (5th Supp).

19. *Ibid* at 7, 32.

20. *Ibid* at 29.

public, these speed limits *are* the law. But the Rhode Island statutory provision against speeding is actually more complex. It states: “No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.”<sup>21</sup> Going at a speed greater than the speed ‘limit,’ then, is only a *prima facie* indication that the driver was driving at an unreasonable or imprudent speed. To the jurist, the speed limit is a complicated standard of reasonableness and prudence. This message is further complicated by lived reality—drivers, subject to the law, and the police, enforcing the law, commonly understand that if someone drives slightly over the limit, they will not get a ticket. So, the message to the public is ultimately that the speed limit is “only an approximation.”<sup>22</sup> It is by recognizing these layers of messages communicated through a law that we can properly understand the behaviours that arise in response to it.

Friedman also proposes a typology of impact—classifications for the sorts of behavioural responses a law may evoke. He explains that any given law can lead to a variety of direct and indirect behaviours in a potentially infinite chain of causation. “People can respond to laws, rules, and orders. They can obey, they can disobey, they can ignore, they can evade. ... [W]e can talk in terms of use, nonuse, or misuse; also of avoidance, evasion, coping.”<sup>23</sup>

The impact of laws can also be *constitutive*:

It plays a role in the social construction of reality; it affects the way we think (and behave) by helping frame notions of basic facts and institutions: such institutions as marriage and divorce, employer and employee, what it means to ‘own’ something ... It is a factor in making people accept the world as it is. ... Unthinking behavior, then, would be part of the ripple effects of law.<sup>24</sup>

The last branch of Friedman’s framework explores the motivations behind different behavioural responses to law. He divides these motivations into three categories: punishment and rewards, peer pressure, and psychological factors. They can work together and reinforce each other, or they can exist in conflict, dampening each other’s influence on a law’s impact.<sup>25</sup>

Punishments include fines, custodial sentences, the death penalty, banishment, deportation, or loss of privileges (forfeiting a driver’s license, for

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21. RI Gen L § 31-14-1 (2013). For an explanation of this provision, see Friedman, *supra* note 1 at 30.

22. Friedman, *supra* note 1 at 31.

23. *Ibid* at 96.

24. *Ibid* at 217.

25. *Ibid* at 219-20.

example).<sup>26</sup> Rewards and incentives can include payouts to individuals by the state to encourage compliance or to channel behaviour in a certain direction (e.g. whistleblower rewards). They can also include allowances for people to legally withhold money that would otherwise go to the state (e.g. tax credits).<sup>27</sup>

The distinction between reward and punishment is not always clear. The same law phrased one way may seem punitive and phrased another way may seem to offer a reward.<sup>28</sup> For example, a law may say: 'Everyone must register by *x* date or be fined \$10.' The same law can also be phrased as: 'Those who register prior to *x* date can retain \$10.' Yet Friedman acknowledges that reward and punishment alone would not explain behaviour where "people comply with the law even when they do not expect to be caught and punished [or rewarded]."<sup>29</sup> Friedman identifies peer pressure and psychological motivations as being responsible for most law-abiding behaviour, especially when compliance is the norm and the risk of rewards or punishment are very low.

Recent research on peer pressure has demonstrated that "behavior can be influenced simply by an awareness of what other people do or don't do, think or don't think."<sup>30</sup> For example, an experiment tried to encourage hotel guests to reuse their towels by placing a sign outside their room. One group was shown a sign that read, "show... respect for nature" by reusing your towels. For a second group of visitors, the sign read: "Join your fellow guests in helping to save the environment." In the third, and most successful condition, the sign asked guests to "join the efforts of those who had stayed in that very room."<sup>31</sup> In another experiment, psychologist Johannes Feest watched drivers in Northern California approach a stop sign. Drivers who had a passenger in the car were more likely to make a complete stop at the stop sign than drivers who were alone.<sup>32</sup> These results were replicated in the context of jaywalkers in New York City. In that study, the researchers found that people were more likely to break the law and jaywalk if others around them were doing the same.<sup>33</sup>

Friedman's discussion of peer pressure seems especially prescient today in the context of the #MeToo movement and issues surrounding the use of the press and public pressure as a means to invoke change when the legal system

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26. *Ibid* at 102.

27. *Ibid* at 139-40.

28. *Ibid* at 145.

29. *Ibid* at 153.

30. *Ibid* at 182.

31. *Ibid*.

32. *Ibid* at 154.

33. *Ibid*.

has failed to do so adequately.<sup>34</sup> Friedman describes the use of stigma and shame as a method to channel behaviour towards a socially desirable end. He argues that it is most effective when there is a moral, normative, or religious consensus of what constitutes appropriate behaviour. That is why, he believes, it was especially common in colonial New England where “punishment was always a public affair.”<sup>35</sup> However, Friedman argues that, today, “[i]n theory, stigma and shame should not work well in complex modern societies, where there is less consensus about norms and where it is easy to escape from the heavy weight of peer group opinion.”<sup>36</sup> Yet, #MeToo has demonstrated that there can be a powerful normative consensus in modern society and that technology can spread this peer group opinion instantly around the world. It is clearer today than when Friedman published his work that advances in technology, such as social media, are transforming us into even more of a ‘global village.’

Friedman also notes that our behavioural responses to law are not only influenced by our perception of judgment by our peers, but also by psychological factors that include a “grab bag of various inner attitudes and moral issues, including what we often call conscience.”<sup>37</sup> These represent our own internal convictions that we should adhere to the law because of a moral position,<sup>38</sup> religiosity, superstition, tradition,<sup>39</sup> or a belief in the legitimacy of the law-making authority.<sup>40</sup>

Throughout *Impact*, Friedman does not hesitate to point out the inherent limitations in his endeavour. Namely, the forces that influence behavioural responses are so fluid and context-dependent that it is impossible to create general rules or predict how people will respond to any given piece of law. Causal forces are too complex to be able to ever accurately predict the types or intensity of impact that may emerge. Any attempt to do so, Friedman admits, would be at “some very high and perhaps useless level of abstraction.”<sup>41</sup> “Impact,” as Friedman says, “is a slippery, wriggly beast.”<sup>42</sup>

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34. See e.g. Catherine A MacKinnon, “#MeToo Has Done What the Law Could Not,” *The New York Times* (4 February 2018), online: <[www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html](http://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html)>.

35. Friedman, *supra* note 1 at 160.

36. *Ibid* at 160-61.

37. *Ibid* at 188.

38. *Ibid* at 205.

39. *Ibid* at 206.

40. *Ibid* at 188-89.

41. *Ibid* at 3.

42. *Ibid* at 68.



What, then, is the value of this conceptual framework? What will be the impact of *Impact*? In Friedman's view, as well as my own, it is perfectly fine that his framework may never reveal predictive rules or 'laws about laws.' By merely identifying the types of behavioural responses to laws and the motives behind those responses, Friedman challenges assumptions behind a formalistic approach to law-making that accepts a law's purpose as its result and ignores the reality that laws often create unintended impacts on behaviour. If lawmakers are aware of these dynamics, that awareness alone may be a tool with which they can draft more effective laws. This framework is also a valuable tool to understand social forces outside the law that elicit a range of responses that are similar to behavioural responses to the law. Perhaps we can better understand the impact of #MeToo, and movements that follow it, by comparing the behavioural responses they generate to how people respond to the law.

Conversely, by identifying what is different between the impact of social movements and the impact of the law, we can reveal what makes the law distinct from other social forces. In doing so, we can arrive at novel insights into the nature of law itself. Through *Impact*, then, Friedman reaffirms his place alongside Aristotle, Austin, Hart, and the many other serious thinkers engaged in this pursuit.