The purpose of this essay is to sketch out, very briefly, some of the main benchmarks, dates, events, and themes in the history of the law of the United States. Law is in some ways one of the most parochial of subjects. The laws of the various nations are very diverse; no two countries have the same legal system. The lawyer's work is usually restricted to the one country which has licensed him to practice. He is not ordinarily familiar with other kinds of law. Legal scholars, too, tend to have little knowledge of the law of other places. This is particularly true across the boundaries of the great families of law. American lawyers rarely know much about European law. The American legal system is uncommonly hard for outsiders to master, because it is divided into so many jurisdictions, and has been so little tamed by general codification. But there is much of great interest in this rich and diverse body of material, particularly from a historical perspective.

The Colonial Era

The territory which is now the United States was first settled by English-speaking people in the early 17th century. The main settlements were at least nominally subject to English rule; the Dutch colony in New York was seized by the British before 1700. British rule continued, of course, until the war of independence, which began in 1776. The period up till that year, the colonial period, is conventionally treated as a single period; but on closer analysis it was a time of great complexity. There were many different colonies, strung out along a narrow coastal strip. Communication among colonies was poor; communication with the mother country was even poorer, because of the immense and forbidding distance. British control was at first quite feeble; and the British, at least during the 17th century, did not yet have any consistent policy of empire. They had literally no idea how to govern far-off-lands.

For much of their history, then, a number of the colonies were virtually independent. Nevertheless, among groups of colonies, there were broad similarities. The legal systems of the southern colonies were more conservative, closer to English models, than those of the North. There were few cities in the
South. Agriculture was organized on the plantation system, and the labor force gradually consisted more and more of black slaves. In the North, land was more widely held, and slavery was never so important an aspect of the labor force. The living law of the northern colonies deviated greatly from law as it was practiced before the royal central courts in London. In the 17th century, there were few trained lawyers in the North. The leaders brought over with them, however, memories of English local law and custom. In Massachusetts Bay, perhaps the most influential of the colonies, the leaders were Puritans, whose ideology was a powerful influence on the law of the settlement. Massachusetts law in the 17th century was, from the English standpoint, almost unrecognizable. It was a kind of Creole dialect of the common law. The stuff out of which it was made, its vocabulary, so to speak, was basically English—after all, the colonists did not know any other legal system—but the English law was mixed up with many other elements. Some of the novelties derived from plain necessity. Life in an uncharted wilderness demanded legal arrangements that could not be contrived without altering the law of Stuart England.

Inevitably, the law of Massachusetts, compared to England, was stripped bare of artifice, streamlined, simplified. English law was terribly complicated. It was made up of many irrational, overlapping pieces, put together in a way that defies explanation, and that developed in the course of a long and delicate history. It would have been incredible to reproduce this system far off in a new land; and in fact this did not happen. But in the 18th century, the law, both North and South, drew somewhat closer to the English model. Partly, this took place because of British pressure, as England learned what an empire was, and how to run it. Partly the pressure to conform was a consequence of close commercial ties with Great Britain. Partly, the approach to English law was a matter of culture—many lawyers and judges were educated in England, and admired and accepted English ways. Nevertheless, in many ways, the law of the colonies remained far indeed from that of the British. To take one example, the rule of primogeniture (inheritance of land by the eldest son) was never in force in most northern colonies. In Massachusetts Bay, the eldest son, following Biblical practice, inherited a double portion; but only in the South was primogeniture the rule, and here too it was abolished shortly after independence.

In 1776, war broke out between colonies and mother country. The war ended with American independence. Since then two centuries have gone by. It has been an eventful period, but one hard to divide into “periods”. In 1787, a Constitution was adopted. The Civil War (1860–1865) doomed slavery. The power of the federal government has increased during each major war. The population expanded greatly in the 19th century, the country acquired vast new territory; industry and the rise of the cities brought about many new legal problems. The 20th century, here as elsewhere, has been the century of the welfare state; in the United States, the welfare state is particularly associated with the New Deal, in the 1930’s, and the presidency of Franklin Roosevelt.