

# Review

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Latin American Law: A History of Private Law and Institutions in Spanish America. By M. C. Mirow. Austin: University of Texas Press, 2004. 359 pp. ISBN 978-0-292-72142-5 (paperback).

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In the last ten years the interest of comparative lawyers in “mixed legal systems” has increased exponentially. However, not many people know that a major example in the world of mixed legal systems is the different Latin American legal systems. They are deeply influenced by various European civil traditions, and nowadays strongly exposed to the influence of the legal system of the United States. Notwithstanding their abundance of different legal influences, having at the same time to regulate a very different social and economic background, the importance of Latin American private law for comparative lawyers is still underappreciated. Mainly in western Europe there exists still today a genuine lack of research on these matters. Thanks to the work of Prof. Mirow, research and acknowledgment of Latin American law in international academic institutions will be facilitated and hopefully encouraged.

Mirow’s book not only recounts the legal history and actual development of Spanish-American private law, but provides also a very good list of references on these matters for further research. It is a very complete work that embraces all different “areas” of private law, from the examination of the different legal practices, to the education of lawyers, to the codification movements. The work also takes into consideration the different changes across five centuries concerning the social, economic, and political structure in Central and South America.

As the author affirms, “[the] book aims to provide a brief introduction to the history of private law and legal institutions in Spanish speaking Latin America from the colonial period to the twenty-first century” (p. xi). Yet the book is not written for legal

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historians only. It can also be an authentic “foundation” for comparative lawyers and practitioners who would like to have an overview of the different Latin American systems, and are interested in understanding “the place of law in contemporary Latin American society” (according to Lauren Benton of New York University).

Reading this book, lawyers, law students, and university professors can take a brief but complete look at the different classical areas and topics of private law in Latin American countries, such as systems of obligations, civil liability, tort law, or commercial and business related law. It is in fact a complete comparative study aiming towards an understanding of the past and the future of Latin American private law.

The book presents the Central and South American private law system and its evolution through a classical chronological approach, starting in the prologue describing the so-called “indigenous law,” for example Aztec law. The first part of the book continues in a chronological way, showing the “colonial period” and the beginnings of European influence on Latin American legal systems. The second part outlines the evolution of the system in relation to independence in the nineteenth century and the importance of the first “codification period.” The third part illustrates the actual evolution of Latin American law in the twentieth century. Within each part of the book, several related topics are researched and described: court systems, the legal profession, sources of law, personal status, land and inheritance, commercial law.

Each part also contains specific topics related to a historical period, such as slavery in the first part or codification in the second part. The prologue of the book is one of the most interesting parts of the work. Mirow describes briefly, but also in a complete and clear way, the legal organization of the Aztec state of Texcoco and the Texcocan supreme tribunal. He also reports Offner’s summary of the Texcocan legal system.<sup>1</sup> The description clearly shows the system of courts and laws under the Aztec Empire and how they worked in this ancient society. Mirow treats simultaneously the different components of this legal system, from the law of persons (like marriage) to property law.

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<sup>1</sup> See M. C. Mirow, *Latin American Law: A History of Private Law and Institutions in Spanish America* (Austin 2004), 2; J. Offner, *Law and Politics in Aztec Texcoco* (Cambridge 1983), 88–98.

At the end of his prologue, Mirow provides, in addition, some information on the Incas' law.<sup>2</sup>

The first part of the book focuses on the colonial period, starting with the period of the Spanish conquest of America. Mirow begins with an explanation of the background of Spanish private law in the fourteenth and fifteenth centuries, such as the Roman and canonical law taught in European universities.<sup>3</sup> He then shows how the Spanish conquerors divided the political structure and administration of Latin America, and how they organized the judicial system (the courts or *audiencias*) and general law enforcement.<sup>4</sup> In the fourth chapter he explains the sources of Latin American law under the new colonial organization.<sup>5</sup> In chapters five, six, and seven, he treats the most important topics of the "material" private law in this historical period; the law of persons, property law, and commercial law. Explaining differences in personal status and property law, he always considers the social, political, and economic life of the different Spanish American populations, such as the Mexicans for example, which he considers the most representative society on the continent. The chapter on commercial law explains different commercial matters ranging from obligation and contract to business associations.<sup>6</sup> The last two chapters of part one deal with slavery and the situation of the Indian "status."

The second part of the book discusses the new codification and "nation building" period of the nineteenth century in Latin America. Mirow outlines the path to independence and the new nation building in Gran Colombia, Chile, and Argentina<sup>7</sup> through the new French<sup>8</sup> and North American<sup>9</sup> influences. Next, in chapter eleven, he speaks of the new private law systems in the different independent nations of Central and South America after the Spanish period.<sup>10</sup> In the following chapters he treats the legal institutions created in the new separate republics, such as the new courts of justice. In chapter thirteen he treats the legal

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<sup>2</sup> Mirow (note 1), 6; S. F. Moore, *Power and Property in Inca Peru* (New York 1958), 92–125.

<sup>3</sup> Mirow (note 1), 16.

<sup>4</sup> Mirow (note 1), 21.

<sup>5</sup> Mirow (note 1), 48.

<sup>6</sup> Mirow (note 1), 71.

<sup>7</sup> On Argentina he also discusses the institution of the *caudillo*; see J. Adelman *Republic of Capital: Buenos Aires and the Legal Transformation of the Atlantic World* (Stanford 1999), 112.

<sup>8</sup> Via Napoleon and the *Code Civile* of 1804.

<sup>9</sup> Via the United States Constitution.

<sup>10</sup> Mirow (note 1), 102.

education of lawyers and their juridical background.<sup>11</sup> Chapter fourteen shows the new sources (public and private) of the new Latin American legal systems, and chapter fifteen focuses on the different new codifications, for example the Mexican (1870), Chilean (1855) and Argentine (1871). The following chapters (sixteen, seventeen, and eighteen) discuss different private law aspects of personal, property, and commercial law in the new codifications, corresponding to those Mirow discussed in the first part, on the colonial period.<sup>12</sup>

The third part moves towards the twentieth century in Latin America, and begins with an explanation of “migration” and “reception” of European legal models (such as the Italian and German models). Mirow also speaks about the introduction of many different international legal agreements and the first influences of modern North American Law. The following chapters (twenty and twenty-one) recount the actual juridical structure (the courts) in the different modern Central and South American countries and the legal education of lawyers. In chapter twenty-two Mirow presents the new materials for sources of law in the several new republics after the Second World War. Chapters twenty-three, twenty-four, and twenty-five investigate classical topics of private law: the law of persons, property, and commercial law, corresponding to discussions of earlier periods in the other two parts of the book. Chapter twenty-six treats an interesting matter that had a big role in all Latin American legal systems: the reform of land law. Mirow demonstrates the inequalities and differences in the possession of estates in Central and South America. He explains the significance of the *latifundista* and considers the social and economic situation of ordinary people, who had to work for landlords without having the opportunity to own estates themselves. He also delineates the history of what can be termed a “war of independence,” fought to achieve real redistribution of property for all citizens, beginning with the Mexican revolution of Emiliano Zapata, and continuing into the second half of the twentieth century. Chapter twenty-seven illustrates the new legal and economic problems of today, such as globalization, the new manner of global investment, and the Cuban “exception”<sup>13</sup> in modern Latin American legal organization. In the conclusion, Mirow reflects on the unfinished

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<sup>11</sup> Mirow (note 1), 117.

<sup>12</sup> Mirow (note 1), 142.

<sup>13</sup> Mirow (note 1), 232.

business of Latin American private law, torn between its European legal background and modern U.S. influence.<sup>14</sup>

Summarizing, this is a very fine and researched work that represents without doubt a classical “institutional” book on Latin American legal history and a perfect base for future research. A perfect instrument therefore, for an interested modern private lawyer, and doubtlessly a “classic” for the library of any private law institution.

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<sup>14</sup> Mirow (note 1), 239.