

### The Long Lingerin Shadow: Slavery, Race, and Law in the American Hemisphere

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## Review

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**Cottrol, Robert J.** *The Long Linger Shadow: Slavery, Race, and Law in the American Hemisphere.* University of Georgia Press, \$24.94 ISBN 978-0-8203-4431-7

### An Important Look at How Slavery and Law Interacted in the New World

History, as C. Vann Woodward reminded us on many occasions, is full of contradictions, ironies, and strange turns. In this impressive study of slavery, race, and law in the American Hemisphere from its European colonization to the present, contradictions and ironies abound. In fact they appear on almost every page. *The Long Linger Shadow* by Robert J. Cottrol, the Harold Paul Green Research Professor of Law and a professor of history and sociology at George Washington University, is the latest installment of the respected Studies in Legal History of the South series at the University of Georgia Press.

Cottrol examines the parallel legal histories of race relations in the United States, Brazil and seven Latin American nations that were once part of Spain's American empire (Argentina, Uruguay, Peru, Colombia, Costa Rica, Cuba, and the Dominican Republic). It is this "curious comparative odyssey," Cottrol says, "that is the focus of this book." "A Long Linger Shadow" is an apt metaphor if we consider race critical to the near five hundred-year development of the law in these three different legal traditions in the Americas. This comparative study leaves little question as to the validity of the claim. Cottrol divides his study into three parts within which three chapters compare and contrast slavery, race, and the law in three time frames, roughly coinciding with the colonial era, the nineteenth and early twentieth century, and the modern era.

Any writer exploring the differing Hispanic and Anglo legal systems must confront the path-breaking and controversial work of Frank Tannenbaum who in *Slave and Citizen: The Negro in the Americas*, (1946), highlighted the stark differences in Anglo-American and Hispanic legal systems' governing slavery. As Cottrol writes on page 7, Tannenbaum asserted that the law in Latin America

“protected the slave’s life, his right to maintain his family, and –perhaps most important for further race relations—his right to purchase his freedom through binding manumission contracts and his right to be recognized as a citizen and equal after attaining his freedom.” The Anglo-American legal tradition, on the other hand, provides a “stark contrast,” as it was “uniquely hostile to manumission, and it should be added, to the rights of free people of African descent.” Cottrol agrees with Tannenbaum that it was the harshness of the slave codes in the various Southern states that set the pattern for the rigid color line of the late nineteenth and early twentieth century in the United States.

Attitudes toward miscegenation were also profoundly different as reflected in cultural tradition and these differences were also reflected in the legal codes of each region. In Latin America racial mixing, while not encouraged, was viewed as an inevitable process, a kind of “continuum” instead of a “binary divide.” Thus as Cottrol writes on page 11, “The etiquette of race in many parts of Latin America would dictate that as a matter of courtesy, the unfortunate act of one’s African ancestry might be minimized or even overlooked in an inappropriate social setting. This stood in some contrast with the United States, where even when racial mixture was acknowledged . . . it was still within a context that rigorously divided the population into two groups, black and white.”

Many scholars, including Cottrol, have tested Tannenbaum’s findings in various ways and Cottrol, while expanding and extending his research far beyond Tannenbaum essentially agrees with his conclusions. Cottrol begins his study with a careful analysis of the *Las siete partidas*, the Castillian legal code as inherited and adapted from the Roman legal tradition in the 1300s. This code underpinned the legal tradition in Spain’s New World possessions and carried with it the idea that slavery was evil, unnatural, and the law should operate where possible, to accommodate slaves’ desire for freedom. The law (sanctioned by the Catholic Church) also recognized a slave as a member of the community--albeit a lower member—whose life and even honor and dignity were entitled to the law’s protection.

In contrast to the Latin American legal tradition with regard to slavery, laws in the United States both before and after the Civil War were based on the over-riding notion of black inferiority. “Slavery in the Cotton Kingdom,” Cottrol reminds us, “depended to a significant extent on justifying racial ideology. In a nation with strong democratic political practices and equally strong egalitarian social norms, the enslaved Negroes had to be made a people apart, a singular

exception to the American ideology that emphasized the equality of all men. To that end, slavery apologists in the antebellum South occupied their time writing elaborate treatises and vigorous polemics proclaiming both white supremacy and Negro inferiority. The law in the southern states would follow suit, prohibiting the education of blacks or restricting manumissions and attempting to inhibit the growth of a free Negro class. Educated Afro-Americans and successful free people of color were an embarrassment, a contradiction to the reigning ideology that stressed black incompetence and lack of fitness for free society" (43).

Yet in Latin America, as time went on, racial prejudice and the notion of "whiteness" as superior to "darkness" began to take hold, particularly among Latin American elites. The same was true of indigenous populations, who were seen as backward, uncivilized, and an overall impediment to national progress. Gradually, Social Darwinism and its implications for a new brand of "scientific racism," became more and more accepted in the late nineteenth century. Cottrol examines the active *blanqueamiento* (whitening) policies employed to attract European immigrants that many Latin American countries adopted in the hope of advancing industrial and commercial development. *Blanqueamiento* in the name of "progress and modernity" soon found its way into public policy, legislation, and even the constitutional provisions of many Latin American countries. Latin American elites adopted policies that actively sought to improve the nation's racial stock by successive interbreeding. Over time, the argument went, "the inferior races, particularly the blacks and mulattoes, would disappear, losers in a Darwinian struggle in which even a minority of superior European genes would prevail and create a new national population. It was an adaptation of eugenic theories that fitted comfortably with the demographic realities in many Latin American societies and with traditional Latin American notions that the African in indigenous races could be improved through mixture with the white race" (120). And yet, despite the "national whitening, Europeanization" policies "supported in the highest national levels" in Argentina and Uruguay, "neither nation would experience the kind of rigid exclusion that would be found in much of the United States in the beginning of the twentieth century. There was no body of laws prescribing segregation" (126).

After 1945, as Cottrol explains, "comparative history of race in the United States and Latin America would take an ironic turn. If the contradiction between slavery and racism and strong liberal and egalitarian norms of the United States had historically contributed to the development of a caste-like approach to race relations, those very norms would help bring about a more thoroughgoing civil

rights revolution in the United States than has occurred to date in Latin America. This revolution has included the development of a more effective body of antidiscrimination law and remedial policies, including often highly contested affirmative action measures" (13). Afro-American groups in Latin America, Cottrol reminds us, "are often, ironically enough, looking at the civil rights movement in the United States and the legal and social progress that it brought about as a potential model for their own struggles." Thus as Cottrol reminds us the United States has been the place where the "law has played the most unambiguous role both in constructing a racial hierarchy and in the struggle to dismantle it" (16).

The scope and the depth of this fine study are huge. Cottrol's mastery of the primary and secondary sources is truly impressive. The writing is also superb. Yet one area of inquiry that may have provided further depth to Cottrol's study would have been an examination of the law on the borders of Spain's vast receding empire in North America. Particularly relevant to this is Florida where the Spanish legacy of the law continued to influence race relations decades after Spain relinquished control. The work of Jane Landers, Dan Schafer, Larry Rivers, and Frank Marotti, explore this legal and cultural legacy in depth and demonstrate that in such matters as emancipation, marriage, and military service--at least in the first decade or two after American acquisition--Hispanic legal legacy and traditions lingered. But such caveats are minor when one considers the vast breadth of this study. *Long, Lingering Shadow* is a truly impressive piece of scholarship.

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