

Michel MORIN, *Introduction historique au droit romain, au droit français et au droit anglais*, Montréal, Thémis, 2004, 395 pages, ISBN 2-89400-193-2

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**Michel MORIN, *Introduction historique au droit romain, au droit français et au droit anglais*, Montréal, Thémis, 2004, 395 pages, ISBN 2-89400-193-2.**

The bijuridical environment of the Canadian legal system represents a genealogical tradition that is indebted to the evolution of law through Roman, French, and English contexts. Michel Morin has produced a valuable text that collates seventeen years of research and pedagogy at the universities of Ottawa and *Montréal*. Morin's voice is distinct and impassioned, reminding us of the relevancy of legal history for practicing lawyers. A clear vision of the origins and sources of legal history will help jurists appreciate the subtleties in our own legal system, and recognize that law is a product embedded within a specific culture. Michel Morin's new book is a welcomed addition for historians and jurists seeking a structured, organized presentation of the complexities inherent to our bijuridical culture.

Morin's text *Introduction historique* efficiently uses an analytical plan to organize the three eras of interests. Each era is comprised of three major subsections entitled: « Contexte historique », « Contexte juridique », and « Évolution du droit ». A fourth subsection concludes each chapter, elaborating on particular notions and detailing the development of penal law. This format allows Morin to illustrate the ongoing dialogues and engagement between societies and their legal institutions. This organizational structure reinforces the thesis and objectives of the book, namely that legal systems are indissolubly linked to their social origins.

In the *Contexte historique*, Morin describes the relevant dates and features of the society in general. This immersion into a community allows the reader to appreciate the economic situations and social needs that generated the legal norms. In the Roman era and the laws of the XII Tables, we are reminded of social organizations and slavery practices esoteric to our own times. We are faced with a population that is hierarchically differentiated by status as slaves, slaves who

have been liberated (*affranchis*), patricians, and plebeians. The status of an individual determines the application of legal norms specific to his class. Slaves who have been liberated can only marry within their groups, cannot possess lands nor have access to legal justice. Consequently, the *affranchis* are subservient to and dependent on their employers for protection and representation before the courts. This interdependence underscores the social relations of the early Roman era and is a fundamental notion to understanding the legal and juridical situations nascent to this historical period.

The class system of the Roman era reifies the power relations between the head of the family (*paterfamilias*), as the principal subject of law, and all others who are dependent on him. The *paterfamilias* possesses practically absolute power (*patria potestas*) over those subservient to him. This power manifests itself in acts such as the ceremony of *in mancipio*, whereby a subservient child is delivered to another to resolve a debt or obligation. Similarly, in an early form of the vindictorial system, penal sanctions can be mediated through compensations delivered to and negotiated by the *paterfamilias*. While these extreme forms of patriarchy are shocking to modern sensibilities, it is crucial to remember that the long struggle for the rights and legal status of women continues in our contemporary era.

From the social and historical contexts, Morin then introduces us to the juridical and institutional contexts of the era. It is in the *Contexte juridique* whereby Michel Morin shines as a detailed historian and astute scholar of legal history. These subsections are insightful contributions to the legislative and judicial domains with many discussions that lawyers will find of great interest. For example, in the Common Law section, Morin looks at the origins of the Parliament as assemblies steeped in the Feudal traditions. The term «Parlement», until the end of the 13<sup>th</sup> century, referred to the assemblies convoked by the king. These assemblies would periodically adopt declarations to resolve certain disputes in the application of customs among the participants. In effect, the *Magna Carta of 1215* was a revolt against the *Jean le Roi* (1199-1216) who had failed to

honor the convocation of assemblies and uphold certain established customs. Morin's lively text, insight, and clear prose introduces the reader to the emergence of various legal institutions, such as the trial jury, the house of commons, the role of judges in local courts and the formation of lawyers. While the task to document legal institutions through several centuries is always daunting, Michel Morin has created an organized and unified approach that will inspire future researchers to continue to explore the exciting domain of institutional history.

Finally, it is in the section entitled *Évolution du droit* that Michel Morin's peerless research has produced the most engaging parts of the book. Once the author has introduced the reader to the historical and institutional contexts of the era, he begins to derive the cogent dialogues between the two spheres. Laws and the institutional organs vested in its administration are transformed by the needs of social actors. The most prevalent examples of this dialogue can be seen in the early attempts to codify the Civil Code for the French Republic.

Morin reminds us that in the 15<sup>th</sup> century French civil law was eminently local, in that local customary principles were used to regulate and settle disputes. This cacophony of customary laws were difficult to administrate since the king was obliged to defend these unwritten principles. The danger was that within the same jurisdiction or district contradictory principles could be invoked. By 1498, Louis XII had ordered a process whereby representatives from the clergy, the nobility, and the public would, by vote, codify customary rules into written articles of law. The definitive text could then be invoked as legal principle and the development of legal principles was no longer an occult process. *Les usages*, as opposed to customs, remained unwritten and were used to complement and complete the law. To prove the existence of a *usage*, the court used a method known as an *enquête par turbe*, whereby ten local men would attest to the existence and application of these practices.

Just as the nation was a fractured collection of feudal domains, so too was the law in this early era. Morin traces the multiple attempts to produce a unified juridical system

that continued well into the 18<sup>th</sup> century. In effect, the history of the codification of French civil law is also the history of persistent attempts to unify the newly emergent nation state. France's national identity was intertwined with the ongoing struggle to codify and legitimate her national texts. This observation underpins Morin's thesis that juridical systems are not simply abstract collections of rules, but are eminently dependent on their social environment.

History is always a struggle between details and omissions. The legal history of Canada is a complex alloy of interactions between multiple sources of law and cultures. While it was beyond the scope of *Introduction historique au droit romain, au droit français et au droit anglais*, I eagerly await Morin's scholastic touch on the history of Canada's legal interactions with the aboriginal populace, particularly given the fact that he has written cogently and expertly in this area in previous journal publications. Nevertheless, I strongly recommend this text for both the casual reader interested in the historical genesis of our legal system or the dedicated legal historian who will continue to find fascinating details in this excellent book.

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