ABSTRACT

*Tierra y Libertad: The Social Function Doctrine and Land Reform in Latin America* examines the Social Function Doctrine in Latin American property law and its significance for 20th century agrarian reform movements. The modern doctrine emerged with the rise of the “social and democratic state” and “social constitutionalism” in Europe and Latin America, but research indicates that its almost universal adoption in Latin America owes a debt to disparate philosophies and histories in Latin America. Historical necessity created by enormous land inequality in the region catapulted the doctrine into its key role in justifying a land policy based on state intervention. The Social Function Doctrine imposes positive obligations on private landowners to make productive use of property or risk expropriation, and requires the state to enforce this obligation. While Spanish-language and European legal scholars have written extensively on the social function of property for almost a century, it has received little more than passing treatment in English-language legal scholarship.

We begin by examining the idea of property in the west, beginning with ancient Rome and its early efforts at land reform. In order to understand the historical need for the social function doctrine in Latin America, we briefly trace the history of land concentration in the region, beginning with the conquest and absorption of some indigenous land tenure regimes. We then examine the effect of the Enlightenment and the liberal conception of property that lay at the heart of the first democratic revolutions. In the beginning of the twentieth century, social and economic rights entered the lexicon of human rights, and the Social Function Doctrine emerged from the writings of the French jurist and political philosopher Leon Duguit.

Beginning with Mexico in 1917, nearly all Latin American countries incorporated the Social Function Doctrine into their constitutions, codes, laws and jurisprudence as the philosophical, moral, and legal justification for state actions to address land concentration. We trace these developments in key states in the region. Finally, we examine this resilient doctrine in light of contemporary developments in international law and development policy, including the recent ascendancy of neoliberalism and globalization.