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CAPÍTULO DÉCIMO TERCERO

LEGAL HISTORY TEACHING IN ENGLAND AND WALES

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SUMMARY: I. *Introduction*. II. *The Structure of Legal Education in England and Wales*. III. *How Legal History is Taught*. IV. *Future Directions.* V. *Conclusion.* VI. *Bibliography.*

I. INTRODUCTION

Legal *education* in English law has traditionally focused on legal *training*, in the sense of being vocational and practical; but with increasing pace over the last century, universities have become key players in law as an academic discipline and in supporting the wider legal system.[1] The most authoritative guide to the compulsory contents of a legal education, a joint statement by the professional bodies of solicitors and barristers, included: constitutional law, criminal law, tort law, contract law, land law, equity, and EU law,[2] alongside variable ranges of optional subjects. Legal history is unlikely to be studied

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The authors would particularly like to thank the editors, as well as Margot Calmar for her assistance with the text.

[1] Menis, Susanna, "The Liberal, the Vocational, and Legal Education", *Law Teacher*, vol. 54, issue 2, 2020, p. 285, describes a tension between prioritizing vocational education and a liberal arts approach within English legal training.

[2] Joint Statement by the Law Society and the General Council of the Bar, 1999, available at: *www.sra.org.uk/students/academic-stage.page* (last accessed: 14 February 2024).

as a separate course by many students. In addition to a university education involving a law degree, a significant number of practicing lawyers complete a different degree and then undertake a professional training course in one year. The latter is typically undertaken at providers with less focus on research about law, and more on vocational training. The focus of legal history education in England, such as it is, therefore takes the form of the universities teaching a law degree.

Despite being a common law system which nominally has no break with its own history, a dedicated course in legal history is not regarded as a core element of legal education in England and Wales. Nor are law, or legal history, generally regarded as "sciences". Neither the study nor practice of law are thought to be neutral and objective, based in a historically driven "system". Historical awareness as a source of experience and wisdom has been widely valued, but rarely with a sense of historical "truth" and certainly absent a sense of logical order that the term "legal science" usually connotes. Rather, a law degree is perceived as having a large part dedicated as an applied discipline, and legal history as the development of that discipline and its concepts. Insofar as the role of history is emphasized in legal training, it is an instrumentalist history with temporal context reduced to a minimum and which is used in examining precedents and case law for the principles formally lurking therein.

II. The Structure of Legal Education in England and Wales

First, perhaps surprisingly to those outside England and Wales, until relatively recently, aspiring lawyers could enter legal practice immediately after secondary education via an extended on-the-job training process. It was not until 1972 that a law degree (whether three year undergraduate or conversion after another degree) was required for legal practice as a solicitor or barrister;[3] even then, it was to be followed by a vocational training period (typically of a year) before traineeship as a lawyer. Since 2021, under the Solicitors Qualifying Examination (SQE), it has again been possible to qualify as a solicitor without a law degree of any kind. Part of the reasoning behind

[3] The Law Society introduced one year of compulsory attendance at university for trainee solicitors ("articled clerks") with no prior degree in 1922: section 2, Solicitors' Act 1922, but withdrew the requirement in 1962 in response to concerns that students were focusing on their university examinations at the expense of their professional examinations: The Students Regulation 1962.

this was that for many years it was widely assumed that English law was not an academic subject but a practical one. English law for use in the courts was best learnt on the job and through patient (and perhaps painful) experience. A prior degree was and is still very common, but whether in law or not, that prior study was at least initially perceived as a "liberal arts" education taken for its rigour, range or prestige, not for substantive legal knowledge.[4] It has traditionally been argued that a non-law degree may better equip future lawyers with valuable intellectual skills, notwithstanding that they will have to be acquainted with legal doctrine later.[5] However, by the time of the 1972 change, 85% of those becoming barristers had taken a law degree, suggesting that even without the introduction of the requirement the focus of new entrants was shifting to degree-based learning.[6]

It continues to be true today that a number of our senior judges did not read law. This includes the former President of the Supreme Court, Lord Neuberger, who studied Chemistry and then worked as a merchant banker, and another recently retired Justice of the Supreme Court, Lord Sumption, who read and then taught History at the University of Oxford. In an interview for Counsel Magazine in 2012, Lord Sumption said:

> …the problem is that we have a generation of lawyers, and this applies to solicitors as well as barristers, who are coming into the profession with much less in the way of general culture than their predecessors. It is very unfortunate, for example, that many of them cannot speak or read a single language other than their own. I think the difficult thing about practicing law is not the law but the facts. Most arguments which pretend to be about law are actually arguments about the correct analysis and categorization of the facts. Once you've understood them it's usually obvious what the answer is. The difficulty then becomes to reason your way in a respectable way towards it… This is why the study of something involving the analysis of evidence, like history or classics, or the study of a subject which comes close to pure

[4] See generally, Boon, Andrew and Webb, Julian, "Legal Education and Training in England and Wales: Back to the Future?", *Journal of Legal Education*, 2008, pp. 79-121; and Parker, C. F., "Whatever happened to Ormrod?", *Journal of the Society of Public Teachers of Law* (New Series), vol. 3, 1974, pp. 199-206. The University College of Wales, Aberystwyth, even required students to take a one-year foundation course in the arts or sciences before beginning their legal studies in the 1920s: Hazeltine, Harold D., "Forward Tendencies in English Legal Education", *Journal of the Society of Public Teachers*, vol. 1, issue 7, 1924.

[5] Twining, William, Blackstone's Tower, London, Sweet & Maxwell, 1994, p. 164.

[6] Brown, Lionel Neville, "The Ormrod Report", *Journal of the Society of Public Teachers of Law*, vol. 39, issue 39.

> logic, like mathematics, is at least as valuable a preparation for legal practice as the study of law. Appreciating how to fit legal principles to particular facts is a real skill. Understanding the social or business background to legal problems is essential. I'm not sure current law degrees train you for that, nor really are they designed to.[7]

Cultural, linguistic, evidential, and logic-based components are necessary to be a good advocate; they are also widely seen as important for a judge. However, the idea that a law degree does not develop those elements as well as a degree in history, classics or math's is open to significant doubt. In any case, each lawyer will be distinctive in various ways, with a mix of abilities and interests. In particular, it seems likely that, five or ten years into practice, having read law or some other subject will not have made much difference to the quality of that lawyer. The substantive knowledge will be far more specialized than law degrees can provide and the practical ability to get up to speed on new areas of law quickly will be essential.

From the 1970s, a degree of some kind became increasingly necessary for legal practice, and though that has been loosened somewhat today,[8] having a degree is likely to be the norm for some time at least. Prior to that, English law practitioners might or might not have degrees, but amongst the socio-economically advantaged, a degree would quite possibly have meant studying not law but classics, history or math's, followed by on the job training as a lawyer.[9] A key report in 1971[10] envisaged that a degree would be the usual qualification of the practicing lawyer, with an abbreviated legal training with a conversion certification for those having studied other subjects. The contents of the conversion process —most recently called a Graduate

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[7] Turvey, Stephen and Lawson, Matthew, "In conversation with Lord Sumption", *Counsel Magazine*, vol. 16, 8 July 2012.

[8] Solicitors' Regulation Authority, Solicitors' Qualifying Examination Briefing, 2020 outlines the qualification route implemented in 2021, which no longer requires a law degree, but does entail: a degree in any subject or equivalent level 6 qualification; a pass in both stages of the SQE assessment; two years' full-time (or equivalent) qualifying work experience; and a pass in character and suitability requirements. The Bar Standards Board continues to require either a law degree or a non-law degree (at a minimum of 2.:2 grade for either route) and the GDL.

[9] Prior to the 1972 reform, 10% of barristers had degrees in other subjects: (n 4), whilst many solicitors would have undertaken the one year of compulsory study required between 1922 and 1962: (n 2).

[10] Report of the Committee on Legal Education Command, "The «Ormrod Report»", 1971, p. 4595 [hereinafter Ormrod Report].

Diploma in Law— are not easily examined but are limited to a specified list of core subjects and skills and taught in one year.

It remains the case that legal education in England and Wales is generally shorter than in other European jurisdictions: until the recent SQE reforms it was possible to complete formal legal education in three and a half years, and now it is at least in theory possible to qualify as a solicitor after three years of formal education (in either case, a further two years of supervised vocational experience are required). In reality, such a short period is unlikely to lead to employment, but it is in theory possible. One consequence of the short nature of the standard undergraduate degree has been the development of the Master of Laws (LLM) degree: a one year taught master's degree often intended to add the breadth and diversification of subject area which is not possible in so brief an undergraduate education.[11] The significantly higher cost of studying at masters level in the UK prevents this from being a routine option for most law students, however.[12]

Law degrees in English (as opposed to Roman or canon) law have been offered at universities since the early nineteenth century, with a wider offering from the 1870s, and a proliferation in the mid-twentieth century. Prior to this, law students at Oxford and Cambridge were taught Roman law, usually instead of English law. After whatever university education a student had, the would-be practitioner would engage in further study, with different levels of formality, amongst his peers. One of the venues we know most about are the institutions for Barristers, the Inns of Court. The surviving examples are Middle Temple, Inner Temple, Gray's Inn, and Lincoln's Inn. These bodies grew out of guilds and were part of the differentiation of the common law courts from the clergy's role in ecclesiastical courts. At the Inns of Court,[13] the curriculum did traditionally focus on English law, but the training process was partly vocational and differed from the structure of a university degree. Its formation varied across the centuries, but at one

[11] For discussion, see Twining, William, Blackstone's Tower, London, Sweet & Maxwell, 1994.

[12] The annual fees for a master's degree vary, but are usually in the tens of thousands, and can reach over £30,000. Undergraduate degree fees are capped at £9,250 a year and there is much wider access to state-administered loans for the latter. Access to grants, as opposed to debt, to fund higher education has been largely phased out in England and Wales since 2010.

[13] See Baker, John, "The Third University of England. The Inns of Court and the Common-Law Tradition", *Selden Society*, 1990; Prest, Wilfrid R., *The Inns of Court under Elizabeth I and the Early Stuarts*, 2nd ed., Cambridge, Cambridge University Press, 2023.

point was a seven-year process, including a residency requirement. A formal examination to enter the bar was instituted in 1872.

It is well known amongst English legal historians that a sea-change was instigated by the lectures of the first university Professor of English Law, William Blackstone, at Oxford in 1753. Prior to that, there had been no professorship specializing in English law at an English university, with Roman ("Civil") law and Canon law being the main areas of teaching. Blackstone's lectures, published as his Commentaries, sought to set out English common law in a rational structure on the model of Justinian's *Institutes.* The intended audience was those "gentlemen" who would become future judges and politicians —but were "young and largely ignorant"—.[14] Change in university legal education was not immediate: Oxford itself did not establish a Law Faculty until many years later, but eventually Chairs in legal history followed at Cambridge, The University of London —later University College London (UCL), and King's College London (KCL) between 1800 and 1831—.[15] UCL was the first English university to establish a Law Faculty, in 1826, but it was not popular during the nineteenth century and produced few graduates.[16] A Select Committee on Legal Education established in 1846 truly began to change attitudes towards university education in Law. Comparison was made with German legal education, which was perceived as wide-ranging and rigorous, and English institutions were found wanting by comparison: jurisprudence, for instance, had not been taught in the Inns for decades.[17] The Committee declared that "No legal education worthy of the name, is at this moment to be had in either England or Ireland".[18] Institutions such as Oxford, Cambridge, UCL, and Manchester began to seriously think about how to teach law "scientifically" in line with emerging trends in general and legal philosophy.[19]

Legal history was regarded as a core subject in the early era of English law degrees, but as the degrees themselves were not necessarily well-attend-

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[14] Published as Commentaries on the Laws of England, Oxford, Clarendon Press, 1765; Cairns, John W., "Blackstone, an English institute: Legal Literature and the Rise of the Nation State", *Oxford Journal of Legal Studies*, 1984.

[15] Ireland, Richard W., "A Legal History of Legal History in England and Wales", *Folia luridica*, 2022.

[16] Twining, William, Blackstone's Tower… *cit.*, p. 25.

[17] HC Deb 7 April 1846, vol. 85, cols. 677-91 at 682.

[18] Report from the Select Committee on Legal Education, British Parliamentary Papers Vol X, 1846, no. 686.

[19] For the history of legal education in this period, see Baker, John, "University College and Legal Education 1826-1976", *Current Legal Problems*, 1977.

ed or clear in their purpose, this is not necessarily indicative of the importance of legal history in students' legal education. In the early twentieth century, a law degree was likely to involve the study of Roman law, jurisprudence, public international law, and English law, with the latter consisting of today's core subjects as well as procedure and evidence.[20] Large-scale structural changes were prompted by the Ormrod Report in 1971, which identified five core subjects which were to be essential in the training of lawyers as that process became increasingly degree-focused, and this list was later extended to the seven subjects identified above.[21] These subjects were selected based on existing practice: they were all already offered as a part of every law degree, and because of a perception that an adequate course of study could not do without them.[22] Whilst all of these subjects could be taught in a legal historical way, the focus on these as "core" subjects has in some sense given universities permission to neglect other areas,[23] with some arguing that modern Law Schools too rigidly adhere to that decades-old list.[24] Whilst it is not uncommon to criticize the consequences of the Ormrod Report, it undeniably formalized and provided a structure for legal education in England and Wales which had previously been lacking, especially in normalizing the study of law at degree level.

Roman law and legal history are, however, no longer regarded as key to an undergraduate legal education across England.[25] The existence of "core" subjects implies to some that they contain the content which every lawyer should know, and at least in the Graduate Diploma in Law, any significant study beyond those subjects is for later on-the-job work, rather than as part of a form of structured education. Expanding the list of core subjects, as

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[20] Hazeltine, Harold D., "The Present State of Legal Education in England", *Law Quarterly Review*, 1910.

[21] The original five were constitutional law, criminal law, land, contract, and tort, accompanied by some overall study of the English legal system as a structure. European Community law, now European Union law, was added in the 1990s and has not (yet) been removed.

[22] Ormrod Report, para. 49.

[23] Birks, Peter (ed.), *Pressing Problems in the Law*, vol. 2: *What are Law Schools for?*, Oxford, Oxford University Press, 1996, p. xii.

[24] Birks, Peter, "Compulsory Subjects: Will the Seven Foundations ever Crumble?", *Web Journal of Current Legal Issues*, 1995, p. 1.

[25] Wilson, John F., "A Survey of Legal Education in the United Kingdom", *Journal of the Society of Public Teachers of Law*, vol. 1, issue 44, 1966, p. 47 noted a significant decline in the importance attached to Roman law in both universities and professional qualifications at the date of writing, confirmed by a subsequent survey in 1974/5: Wilson, John F. and Marsh, Stan B., "A Second Survey of Legal Education", *Journal of the Society of Public Teachers of Law* (New Series), 1974-1975, vol. 13, pp. 239, 280 and 281.

some have advocated,[26] poses ongoing risks of over-rigidity and does not solve the problem of the inevitable neglect of some subjects in favor of what might be most fashionable at the time. In fact, the provisions are a little less formal than one might think, as there is almost no detail from the practitioners' bodies on what must be inside each of the subject headings. Different universities take very different views about what is enough to meet the core requirements of that course. There are certainly somewhere historical material, and even comparative material, included in teaching the "core". Perhaps more importantly, there are in many law faculties significant slots for optional courses beyond that core: something like seven compulsory subjects and seven optional ones being a common approach. Yet even amongst the optional subjects, as will be seen below, legal history does not feature strongly. Since law faculties can innovate freely outside the requirements of the core subjects, and the offering of subjects within law degrees is far more diverse now than prior to the Ormrod Report, any neglect of particular subject areas reflects social and market trends or a (perhaps vicious cycle of) lack of interest amongst the wider academic community, rather than a constraint imposed by regulators. The speed at which a three-year degree necessitates study, however, means that students inevitably focus on core doctrine, with using a single textbook rather than consulting primary materials in the form of case law and legislation, at the expense of deeper contextual understanding. They are, in any case, unlikely to be examined on the latter within the core subjects, even if they were inclined to explore wider material.

Insofar as legal history can be, and is, accommodated within the core subject areas, the common law method of reasoning necessarily involves some historical awareness in the use of precedent and case law. That process in teaching mirrors the process in legal practice. It is entirely normal for a court, when deciding a question of law, to refer to case law 150 years old, adjusting for formal legal change over that period. Some significant cases trace legal development over centuries to arrive at a modern answer, and this is particularly common when the apex court changes the law. The quality of that legal history is perhaps not at the highest level of academic rigour, though it is often impressive given the judges are rarely legal historians themselves. Academic engagement with legal history in teaching also tracks this use, and thus the quality also varies. Some introduce the histori-

[26] Twining, William, "Let's Talk: Framing Enquiry and Discussions about Legal Education", *Law Teacher*, 2015, vol. 49, p. 388.

cal issues cursorily, in an introductory paragraph. Others thread the non-legal context more fully into the timeline of how and why the law developed. Various advocates of legal history, including the influential Lord Denning, have argued that a legal historical study in universities is particularly valuable in developing thinking about legal reform.[27] However, the instrumental use of history amongst lawyers is often quite different to the historical methods used by legal historians.[28] Both historians and lawyers are in the habit of solving specific problems by reference to a particular body of knowledge, but the methodological assumptions underlying legal study (for instance, in respect of what constitutes an authoritative source) are not the same as those of history. This poses a challenge in teaching legal history within either a Law Faculty or a History Faculty.

III. How Legal History is Taught

In 1977, Sir John Baker surveyed legal history teaching at 28 UK universities (excluding polytechnics and Scotland) for the purposes of the 1979 British Legal History Conference.[29] In 1985, Michele Slatter and Richard Ireland produced a further report on legal history in the Law Faculties[30] in 32 universities and (then) polytechnics of the United Kingdom, based on a survey undertaken in 1983.[31] It described the teaching of legal history as in a "state of flux".[32] Many of the courses represented in their survey were recent additions, having been set up in the preceding decade, with Sussex, Reading, and Sheffield about to join or rejoin the ranks as of 1983.[33] In preparation for this

[27] Lord Denning, "The Universities and Law Reform", *Journal of the Society of Public Teachers*, 1949, p. 258, and for a more skeptical view of the value of legal history beyond providing an introduction to law, see Browne, Denis, "Some of Post-War Law Teaching", *Journal of the Society of Public Teachers of Law*, 1947, p. 19.

[28] Discussed at length in Gordon, Robert W., Taming the Past, Cambridge, Cambridge University Press, 2017.

[29] Baker, John, "The Teaching of English Legal History in the United Kingdom (excluding Scotland)", Discussion Paper Presented to the British Legal History Conference in Birmingham, 1979.

[30] The authors noted that consideration of the teaching of legal history in History or Social Science Faculties would have been excluded by their method.

[31] Slatter, Michele and Ireland, Richard, "Report on legal history in the universities and polytechnics of the United Kingdom", *Journal of Legal History*, vol. 6, issue 2, 1985, p. 214.

[32] *Id*.

[33] *Ibidem*, p. 219.

chapter, we also circulated a survey amongst UKHE institutions in respect of their teaching of legal history.

Out of 27 universities in England and Wales which responded to the 1985 survey, 21 offered at least one course in legal history.[34] These were generally third-year courses, with some second-year offerings, and in every case they were optional. Of those who did not offer legal history at all, the reasons given were lack of resources, lack of staff in the specialism, and a lack of interest from staff and students. Amongst those who did offer legal history, the course might not run every year, partly due to minimum student numbers being required.[35] Outside of Cambridge (there was no survey response from Oxford) the course size was likely to be around ten students, and rarely more than 20.[36] Courses were split into two equal camps: those which covered a general legal history from 1066 to c. 1900, and those which focused on a more specific period, with the modern era (1700-present) favored in the latter cases.[37] Unlike with the core subject areas, course content largely depended on staff interests, rather than any particular professional, external or pedagogical considerations.[38]

The core text for most general legal history courses has been the same since the 1970s. Although there had been valuable foundational texts for legal history since the late nineteenth century, the publication of the first edition of John Baker's *Introduction to English Legal History* in 1971 marked the production of the first student-facing textbook on the modern model. Now in its fifth edition,[39] it remains a, if not *the*, core text used by most general legal history courses in the jurisdiction. Baker's textbook, and the less student-facing work of Milsom[40] were the preferred general texts in the 1985 survey, with six out of 20 courses giving primary material to students.[41] It continues to be widely used and cited in both the teaching of legal history and in research work across the time it covers. This corresponds to the continued prevalence of private law within legal history teaching: Baker's textbook, and traditional legal history courses, tend to follow the outlines of English

[34] *Ibidem*, p. 216.

[35] *Id.*

[36] *Ibidem*, p. 217.

[37] *Ibidem*, p. 216.

[38] *Id.*

[39] Baker, John, *Introduction to English Legal History*, 5th ed., Oxford, Oxford University Press, 2019.

[40] Milsom, Stroud Francis Charles, *Historical Foundations of the Common Law*, 2nd ed., Butterworth, 1981.

[41] Slatter, Michele and Ireland, Richard, *op. cit.*, p. 217.

private law by focusing in particular on land law and trusts, and to perhaps a slightly lesser extent the law of obligations, essentially contract and tort. Public law may be treated as within the remit of general history, rather than legal history, and criminal law until recently was regarded by some prominent legal historians as lacking a history of any doctrinal significance.[42]

Teaching methods were fairly traditional at most universities in the 1985 survey, using lectures, seminars, and essay examinations.[43] However, legal education in England and Wales has developed in the context of a marked change in the landscape of UK Higher Education, particularly since 1992.[44] There has been a significant expansion in the number of universities,[45] and the size and diversity of both the student body and of teachers.[46] This has naturally impacted the ways in which universities in England and Wales approach teaching in law. This has not been limited to post-1992 universities, the impact is much wider, with historically traditional law faculties also adopting newer methods of teaching and assessment. One of the institutions represented by the authors of this chapter has recently undergone an extensive review of its LLB which has centered on principles of "active" learning, legal skills, and a wide range of "inclusive" assessments.[47] Active learning seeks to center the student rather than the teacher in learning. Lectures and seminars are designed to place more emphasis on developing students' skills than transmitting information with a number of seen and unseen tasks which focus on developing higher order skills of analysis, synthesis and evaluation.[48] Inclusive assessment acknowledges the significant

[42] Milsom, Stroud, *op. cit.*, p. 353.

[43] Slatter, Michele and Ireland, Richard, *op. cit.*, p. 219.

[44] Further and Higher Education Act 1992.

[45] The Act removed the distinction between universities and polytechnics, with 32 former polytechnics becoming universities in 1992, and a further 42 post-1992 universities have been founded since. Of the 116 universities in England and Wales, 77 were founded after 1992.

[46] Gibbs, Graham, "Reflections on the Changing Nature of Educational Development", *International Journal for Academic Development*, vol. 18, issue 1, 2013, p. 4; Boon, Andrew and Webb, Julian, *op. cit.*, 94, n. 52; Williams, Gareth, "The Market Route to Mass Higher Education: British Experience, 1979-1996", *Higher Education Policy*, 1997, vol. 10, p. 275.

[47] Bain, Katrin, "Inclusive assessment in higher education: what does the literature tell us on how to define and design inclusive assessments?", *Journal of Learning Development in Higher Education*, vol. 27, issue 1, 2023; Havelock, Rohan, "Law studies and active learning: friends not foes", *The Law Teacher*, 2013, vol. 47, p. 382.

[48] Bonwell, Charles C. and Eison, James A., Active Learning: Creating Excitement in the Classroom, ASHE-ERIC Education Report No. 1, Washington D. C., 1991; Hess, Gerald F., "Principle Three: Good Practice Encourages Active Learning", *Journal of Legal Education*, 1999, vol. 49, p. 401.

demographic changes in Higher Education and seeks to promote forms of assessment which do not exclude students based on their extraneous characteristics.[49] This development has been most pronounced in the core modules which are taught in "active" lectures and workshops, rather than the traditional lecture and seminar model, and assessment includes multiple-choice exams, portfolios, and reflective essays.

Legal history is not a core module in England and Wales in any university the authors were able to investigate; rather, it is taught as an optional module, often to final-year students. The respondents to our survey were generally happy with this *statu quo*, indeed, as noted above, most respondents thought that it was not desirable for legal history to be compulsory. Optional modules, including the legal history course proposed for the new LLB curriculum by one of the authors, are generally more traditional in their teaching and assessment. That is not to say that they are unaffected by pedagogical trends and the teaching is somewhat more guided by active learning principles than previously. The small group teaching in the proposed course includes a number of seen and unseen activities which focus on student engagement and developing their analytical and evaluative skills, such as class research tasks and close reading of primary sources. Another legal history course which has been delivered recently at the University of Nottingham has also adopted a similarly active approach to learning with students re-enacting medieval trials by ordeal or ceremonial conveyances.

It should also be noted that most legal actors at any one point in time would not know the broad picture of how other universities are teaching generally, and not in respect of legal history in particular. Of course, academics move institutions, colleagues act as external examiners for other institutions and talk with each other at conferences. By contrast, news of publications and the migration of academics for promotion, though still patchy, spreads much more quickly than changes to how subjects are taught. There have been surveys of teaching and other activities, as already mentioned, and in more recent decades there has been more research on how teaching of law and the work of legal academic's functions. But there is no institutional melting pot of teaching ideas.[50]

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[49] Tai, Jonna and Ajjawi, Rola, "How do students experience inclusive assessment? A critical review of contemporary literature", *International Journal of Inclusive Education*, 2024, published online 2021.

[50] Harris, Phil and Jones, Martin, "A survey of law schools in the United Kingdom, 1996", *The Law Teacher*, vol. 31, 1997, p. 38; Harris, Phil and Beinart, Sarah, "A survey of law schools in the United Kingdom, 2004", *The Law Teacher*, vol. 39, 2005, p. 299; Boon, Andrew and Webb, Julian, *op. cit.*, p. 79.

The Slatter and Ireland study in 1985 noted above found that legal history was not a prominent subject. There was no detectable bias towards particular styles of course or periods as a preference amongst students, nor was it possible to confirm anecdotal suggestions that legal history courses attract students less interested in professional law. Slatter and Ireland found that there was at least one staff member who identified legal history as their main subject of interest at each university teaching the subject, with some having up to three.[51] They noted that many of those teaching legal history had a legal background, which at least one respondent noted had an impact on historical methods and skills such as paleography. There was, as noted above, little indication of cross-fertilization with History Faculties.[52] Postgraduate study in the 1980s was limited outside of Cambridge and the LLM in London, with postgraduate research students at nine of the 20 universities.[53]

Twenty-two polytechnics were also included in Slatter and Ireland's survey, of which seven provided standalone legal history courses, a further four provided some legal history teaching within other units, whilst two more provided options which looked like legal history (*e. g.*, History of Crime and Punishment) but were not self-reported as such and were taught by staff outside Law. The overall responses were not markedly different to the universities as to course content, or resources, although there were fewer legal history specialist members of staff at the polytechnics.[54] There was, consistent with the vocational aims of polytechnics at the time, some suggestion that legal history ought to be taught only when integrated into other subjects, as it was of little practical use as a standalone subject.[55] All surviving former polytechnics and many of the former technical colleges are now full universities.

Our own survey was circulated widely but received responses in respect of fewer institutions than the surveys of the 1970s and 1980s: 11 institutions in total, in addition to two of the English institutions represented by the authors of this chapter. Unlike the 1985 survey, we included the teaching of Roman law under the umbrella heading of legal history, which has less impact when Scottish institutions are excluded, as here.[56] Some growth is notable in that, for instance, at the time of the 1985 survey, the Open Uni-

[51] Slatter, Michele and Ireland, Richard, *op. cit.*, p. 218.

[52] *Ibidem*, p. 219.

[53] *Id.*

[54] *Ibidem*, pp. 220 and 221.

[55] *Ibidem*, pp. 228 and 229.

[56] *Ibidem*, p. 215.

versity (OU) did not have a law faculty,[57] whilst in 2023 the OU is a strong contributor to the subject. It continues to be true that legal history courses tend to be optional, although Cambridge and Oxford each have a compulsory module in Roman law (at least for the time being). Staff numbers would appear to be more concentrated than in the 1980s, with the majority of respondents reporting between two and four legal historians at their institution. This concentration may reflect the fact that fewer institutions teach, and so prioritize in their hiring, legal history. It continues to be true that Law Faculties do not generally work with History or other faculties in teaching legal history, although there is some engagement. A number of English institutions not included in our survey[58] do teach joint-honors undergraduate degrees in Law and History, which do not necessarily involve legal history per se.

In our survey, seven of nine institutions had postgraduate research students undertaking legal historical projects. As a proportion, this suggests an increase in uptake at this level, probably correlating to the fact that most university jobs now require a doctoral degree, and because a PhD is likely to provide publishable material for an early career researcher's REF contribution.[59] Whilst legal history may be included in general LLM degrees, the University of Reading is noteworthy in that it offers an MA by Research in Legal History, as does UCL's in its LLM in Legal History. A number of universities have specific centers for legal historical research which are not necessarily directly tied to undergraduate teaching, including Cambridge, KCL, Bristol, and Exeter, a Centre for the History of Law and Governance established at Nottingham in 2023, and the legal biography project at the LSE.

The majority of the institutions surveyed had also introduced new legal history courses since the year 2000, which suggests that there is some appetite for them within Law Faculties. However, half of the survey respondents also reported that their institution had removed legal history courses in the same time period, suggesting that the overall number of courses may not have increased —rather, the course content likely fluctuates over time to reflect changing staff or new trends in teaching—. Fewer reported that their institution was likely to introduce any new legal history courses in the near future, and, reassuringly, none reported that their institution was likely to

[57] *Ibidem*, p. 216.

[58] For instance, SOAS, Essex, Canterbury, and Liverpool Hope.

[59] Ireland, Richard, *op. cit.*, p. 107, provides further detail from the authors' own experiences.

remove the subject area entirely. Only one respondent indicated that they felt legal history was less well-resourced than other subject areas in their institution. However, despite the diversity of research interests amongst those teaching at English and Welsh universities, the courses themselves exhibit limited diversity notwithstanding considerable diversity of research interests amongst legal historians in England and Wales, suggesting that there is less research-led teaching in legal history happening than in the 1980's.

The history of criminal law proved surprisingly popular given the traditional dominance of private law, with all institutions surveyed reporting that they taught it.[60] This may reflect the increased popularity of research and taught degrees in criminology, and student interest therein. A wider range of subjects was reflected in about half of the institutions surveyed teaching critical legal history, feminist legal history, courses focused on race or colonialism, and comparative legal history. The offering at Northumbria University, for instance, is explicitly centered on a "critical awareness of the role of law in society".[61] Sussex Law School will be launching a course in "Women's Modern Legal History" in the near future, which will be an optional empirical course linking with archival resources the university and local authority hold. This will revive legal history teaching there after a twenty-year absence. Methodology was also explicitly taught as a part of the course in the majority of institutions, as is some element of working with primary materials. This suggests an increased interest in, or awareness of, historical methods amongst legal history courses than in the 1980s. The digitization of materials must also contribute significantly to this, in making those materials easily accessible regardless of the availability of physical local archives. David Seipp's online Yearbook repository,[62] and the Anglo-American Legal Tradition digitization's,[63] must be singled out here as incredible achievements in this area.

A majority of respondents replied that legal history need not be taught as a compulsory undergraduate subject, but was a "nice to have", reflecting its continued place as an optional subject on most curricula. Anecdotal replies as to why students study legal history were consistent with past sur-

[60] This correlates with the findings in Ireland, Richard, *op. cit.*, pp. 107 and 108 at graduate research level.

[61] Northumbria University, LW6026 - Legal History, available at: *https://www.northumbria.ac.uk/study-at-northumbria/courses/law-llb-hons-uuslwz1?moduleslug=lw6026-legal-history&alttemplate=df847541-4f68-426a-8940-4c60ff4c5262&y=2023*.

[62] Medieval English Legal History. An Index and Paraphrase of Printed Year Book Reports, pp. 1268–1535, available at: *https://www.bu.edu/law/faculty-scholarship/legal-history-the-year-books/*.

[63] Anglo-American Legal Tradition, available at: *aalt.law.uh.edu*.

veys: it is regarded as a somewhat niche subject but appealed to those with a historical turn of mind and may not run in certain years due to a lack of students choosing it. This supports the ongoing accuracy of William Twining's claim that students tend to view subjects such as commercial law as "practical" and subjects like jurisprudence or legal history as "theoretical", with the latter viewed as less useful in securing and performing legal jobs.[64] This may be contrasted with the approach in jurisdictions where law and legal history are more likely to be regarded as "science", especially Germany.

IV. Future Directions

The concept of a "qualifying law degree" has recently been deprioritized again as a result of reforms to the solicitor qualification process in 2021. The intention of the latest reforms was to make access to the profession cheaper, and to remove barriers to entry. However, many have expressed concern that this undervalues the importance of the rigorous training in legal methods and materials developed in law faculties over the last two centuries. Law faculties across England and Wales continue to give considerable thought to what the implications of this change will be, but it is too soon to make general claims about its impact. The response from within legal academia has generally been one of concern that the examination element of the SQE will lead students and their teachers to an unreasonably narrow focus on passing that exam at the expense of a wider social, political, and economic understanding of law.[65] One response to the change, however, could be to diversify assessment methods, and/or the curriculum as a whole, which would provide scope to integrate more legal historical teaching as well as other subjects to give students a wider view. We may also see some return to the model from the older generations, where more students prioritize a less–professionally focused degree such as history or math's as their first area of study, knowing that they can accumulate doctrinal legal knowledge at a later stage. It is worth noting in this context that many students who take law degrees do not go on to any form of legal practice: the Law Society statistics indicate that although 21,650 students were admitted to law degrees in 2020-1, only 6,981 people

[64] Twining, William, *Blackstone's Tower… cit.*, p. 84.

[65] See *e. g.*, Mason, Luke, "Squeezing the Jurisprudence out of the SRA's Super Exam", *The Law Teacher*, vol. 52, 2018, p. 409; Guth, Jessica and Dutton, Kathryn, "SQE-ezed out: SRA, Status and Stasis", *The Law Teacher*, vol. 52, 2018, p. 425 considers access to the profession; Waters, Ben, "The Solicitors Qualification Examination", *The Law Teacher*, vol. 52, 2018, p. 519 is more positive about the opportunities which may emerge.

were admitted as solicitors in the same year. Whilst these numbers represent different cohorts, the numbers are fairly consistent year to year and suggest that less than one third of students taking law degrees become solicitors.[66]

The competition amongst institutions for the fee's income of students, especially international students, is also likely to continue to impact their choices as to what kind of legal education is offered. The impact of Brexit and access to EU students, the still-ongoing impact of Covid-19, and high rates of inflation will all also inevitably affect the funds available to universities, and in turn their hiring choices and subject offerings in general. Legal history, as discussed above, does not have a core role in the curriculum at many English and Welsh universities, and may struggle to justify itself as an important discipline within a neoliberal university sector which prioritizes, inter alia, instrumentalism in law teaching. It is difficult, in the current landscape, to justify the study of legal history as a valuable end in itself, and as a valuable part of a liberal education.[67] However, new approaches to legal history which emphasize the value of legal history in helping to shape the future, for instance through the lens of a global perspective, decolonization, or connecting with local community, offer opportunities to emphasize the merit and centrality of legal history to the undergraduate law curriculum.

1. *Global and Critical Legal History*

Whilst the growth of law faculties was originally based on the needs of the profession, and the desire that lawyers have formal, scientific, legal training, legal history in the twenty-first century can offer something which performs a different role within the curriculum. Alongside the core doc-

[66] The Bar Standards Board does not provide equivalent statistics due to the difference in stages of its training process, but average enrolment on the Bar Professional Training Course is around 1,600 students a year, with pass rates across providers varying significantly: Bar Standards Board Research Team, "Bar Training 2023: Statistics on enrolment, results, and student progression by course provider", Bar Standards Board, December 2023, available at: *https://www.barstandardsboard.org.uk/static/9ba40e8e-6e04-46fe-98c1ab4128bc008f/Bar-Training-2023-Statistics-by-course-providerfinal.pdf* (last accessed: 13 February 2024).

[67] In respect of Roman law and this challenge, see van den Berge, Lukas, "Aims and Methods of Legal History", in Special Issue Progress in Legal Scholarship, History, Snel, Marnixm; Taekema, Sanne and van Dijck, Gijs (eds.), *Law and Method*, vol. 1, 2024; du Plessis, Paul J., "Thinking like a lawyer: The case for Roman law", *Acta Universitatis Lodziensis*, Folia Iuridica, vol. 99, 2022, p. 165; Hallebeek, Jan, "Teaching Roman law in the 21st century: A note on legal-historical education in the Netherlands", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, vol. 137, issue 1, 2020, p. 194.

trinal knowledge required for the practicing lawyer, it can offer a critical perspective by exposing the contingency of our law, and this is particularly valuable in the context of globalization and decolonization. This argument has been around for a long time, and, for instance, informed the founding of the European Society for Comparative Legal History in 2009.[68] A recent vocal advocate for this approach to legal history has been Russell Sandberg, who emphasizes the role of this critical function in the context of undergraduate legal education.[69] Seen this way, legal history shares many values with comparative law, in that both help the student develop an understanding of law which goes beyond the contingent features of their present, national, legal system.[70] Traditionally, the teaching of Roman law has served a key function in many jurisdictions by providing a shared framework of legal reasoning. For instance, as well as the study of the *ius commune*, Roman law can be contrasted with common law in order to create the analytical framework of "legal families", which is used to recognize historically contingent similarities and differences amongst national legal systems.[71] In modern legal historical teaching, the examination of law in different times and places is more likely to emphasize (and even celebrate) diversity and difference, as well as conflict and oppression, rather than the emphasis on consensual or value-free similarity implied by the idea of "families".

One of the authors of the present chapter has been developing a pedagogy which seeks to explore legal history in a more methodologically and culturally diverse way through the lens of a "global legal history".[72] A trend towards incorporating "global law" into the curriculum, however defined,[73] provides opportunities to explore law comparatively across time and space.

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[68] Of which two of the authors are members, one its President.

[69] Sandberg, Russell, *Subversive Legal History*, Routledge, 2021.

[70] See for instance Husa, Jaakko, "Turning the Curriculum Upside Down: Comparative Law as an Educational Tool for Constructing Pluralistic Legal Mind", *German Law Journal*, vol. 10, 2009, p. 913; Ibbetson, David, "Comparative legal history: A methodology", in *Making Legal History: Approaches and Methodologies*, Musson, A. and Stebbings, C. (eds.), Cambridge, Cambridge University Press, 2012, pp. 131-145; Dyson, Matthew, "Comparative legal history: methodology for morphology", in Moréteau, Olivier; Masferrer, Aniceto and Modéer, A. Kjell (eds), *Comparative Legal History*, Edward Elgar Publishing, 2019.

[71] Most famously set out in David, René and Brierley, John E. C., *Major Legal Systems in the World Today*, 3rd ed., Simon & Schuster, 1985.

[72] Eldridge, Lorren, "Opportunities in Teaching Global Legal History" in Derry, Caroline and Howells, Carol (eds.), *Legal History in the Curriculum*, Routledge, forthcoming; Duve, Thomas, "What is Global Legal History?", Comparative Legal History, 2020, vol. 8, issue 2, p. 73.

[73] Valcke, Catherine, "Global Law Teaching", *Journal of Legal Education*, vol. 54, 2004, p. 160 explores the question of definition here.

In the words of Catherine Valcke: "a global outlook can serve to uncover or highlight the genealogical roots of the domestic legal system. Many legal systems are genealogically interrelated due mainly to colonialism or transplantation".[74] If global law is seen this way, legal history must be an inherent part of it, and the interest in global law amongst law faculties is a clear opportunity to reassert the role of legal history in the curriculum.

Legal history has a particular role to play in highlighting that the concept of a nation state and a national legal system are relatively recent developments, in part the product of the great European codifications of the eighteenth and nineteenth centuries,[75] and in part the result of the reorganization of the globe as territorial control of colonized places declined in favor of global trade paradigms.[76] Legal history courses in common law jurisdictions are particularly valuable in demonstrating that the apparent gulf between codified and uncodified legal systems is predicated on a commitment to a species of nationalism which was particularly prevalent in the nineteenth century and which utilized a specific understanding of "rationalism" in pursuit of that goal. Prior to that period, and to some extent overlapping with it, notions of "Germanic" or "Roman" legal families which had very little regard to nation state borders as they exist today were used to conceptualize scholars' understanding of both past and present law.[77] Through this lens, the modern turn to the global is a re-assertion of the norm prior to the Congress of Vienna in 1814-1815.

Legal history also has an obvious and important place in conversations about decolonization currently taking place within law faculties.[78] "Decolonization" is not amenable to one simple definition but can be loosely described

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[74] *Ibidem*, p. 168.

[75] Discussed in Rückert, Joachim, "The Invention of National Legal History", in Pihlajamäki, Heikki; Dubber, Markus D. and Godfrey, Mark (eds), *The Oxford Handbook of European Legal History*, Oxford, Oxford University Press, 2018.

[76] Discussed throughout Adebisi, Foluke, *Decolonisation and Legal Knowledge*, University of Bristol Press, 2023, but see esp. pp. 10-22, 49, 82.

[77] For instance, in the work of Friedrich Carl von Savigny, or in England, Sir Henry Maine: Zimmermann, Reinhard, "Savigny's Legacy: Legal History, Comparative Law, and the Emergence of a European Legal Science", *Law Quarterly Review*, 1996, vol. 112, p. 576; Haferkamp, Hans-Peterm, "The Science of Private Law and the State in Nineteenth Century Germany", in Jansen, Nikls and Michaels, Ralf (eds.), *Beyond the State: Rethinking Private Law*, Mohr Siebeck, 2008; Eldridge, Lorren, "The Early Village Community Debate", *Law and the Medieval Village Community*, Routledge, 2023.

[78] "Decolonising the curriculum" is itself a potentially problematic popular notion: Adebisi, Foluke, *op. cit.*, pp. vi, 128-129. This section is heavily influenced by the work of Professor Adebisi in general.

as an ongoing process which interrogates and challenges power structures which persist today and are derived from practices which emerged during colonial expansion and territorial control. This includes, for instance, structural racism, but also a broader commodification of human life in general, and a denial of the value of subjective experience in favor of supposedly objective definitions orientated towards the protection and accumulation of capital. For instance, in English law the hypothetical "man on the Clapham omnibus" was used to indicate that which an ordinary, reasonable, person would do.[79] Impliedly, that ordinary, reasonable, person, was originally conceived as a white, property owning, Victorian man. Decolonial scholars argue that such "objective" European legal concepts have been and are used to perpetuate such power structures, causing ongoing social injustice as well as other system-wide problems such as climate breakdown.

Whilst Patrick Glenn once noted that history may be jettisoned during times of reform as associated with past corruption or injustice,[80] engaging with history with an awareness of past injustice can also be a part of the process of reorientating our thinking through the process of decolonization. Inspecting and understanding the past is an important part of decolonization insofar as it reveals the origins and power dynamics of existing structural injustices.[81] Decolonization also provides opportunities to decenter particular perspectives and be more open-minded about the scope for change: in much the same way, the great legal historian F. W. Maitland once taught English lawyers that studying legal history showed them their hands were not tied when it came to reshaping the law in the future.[82] Legal history plays a key role in stimulating legal imagination by revealing the contingency of our legal premises.

Using legal history in this way might mean looking beyond the national to the global, as discussed above, or considering how key concepts have been interpreted differently across time and space. A decolonial perspective challenges the idea of law as an objective legal science and reveals how European legal ideas of objectivity have been used to eliminate perspectives derived from other knowledge systems. A part of this is emphasizing that law, and society, change over time and that legal actors are embedded

[79] Coined in the case of *McQuire v Western Morning News* [1903] 2 KB 100 at p. 109 per Collins MR.

[80] Glenn, Patrick H., *Legal Traditions of the World*, 5th ed., Oxford, Oxford University Press, 2014, p. 18.

[81] Adebisi, Foluke, *op. cit.*, pp. 138-140.

[82] Frederick W Maitland, "Maitland to AV Dicey, c. July 1896" quoted in C. H. S. Fifoot, *Frederic William Maitland*, Cambridge, Harvard University Press, 1971, p. 143.

in historical, political, and cultural contexts. Legal history has a valuable role to play in this area in producing and reexamining historical narratives through this decolonial lens. Teaching students this kind of legal history enriches their understanding of other, traditionally doctrinal, aspects of the curriculum as well as equipping them with critical thinking skills which are useful in multiple contexts.

One example of this which does not currently play a significant role in legal history teaching in England and Wales, but does so more in, for instance, Canada, is the inclusion of indigenous[83] knowledge systems within the legal history curriculum. In European legal systems, for instance, the concept of "property" is broadly defined in relation to private property, exclusionary rights, and an individualistic focus on the property-owning person. Consideration of practices in other times and places reveals the contingency of this conception: many African systems prioritize relational conceptions,[84] whilst in a number of knowledge systems around the world, natural phenomena such as rivers have a kind of personhood which precludes thinking of them as property in the European sense.[85] Legal history teaching can engage with how these conceptions have conflicted and been prioritized. For instance, English and Welsh legal history teaching could consider the key Australian case of *Cooper* v *Stuart*,[86] which held that land already occupied by Australians was "*terra nullius*" and susceptible to occupation by British colonizers until it was overruled in favor of a concept of native title in *Mabo* v *Queensland (No 2)*.[87] This in turn sheds light on how modern law functions, and how it might be changed in a diverse range of fields: not just in property law, but medical law (where debates exist over body parts as property), immigration law (which is used to perpetuate abstractions of wealth and dispossession), and economic structures more broadly.[88]

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[83] The concept of "indigeneity" may itself also be problematic, if it is used to define communities by reference to colonization and at the expense of recognizing their social complexity: Adebisi, Foluke, *op. cit.*, p. 86.

[84] Some are summarized *ibidem*, p. 87.

[85] See for example O'Donnell, Erin L. and Talbot-Jones, Julia "Creating legal rights for rivers", *Ecology and Society*, vol. 23, issue 1, 2018, p. 7, which refers to Australia, New Zealand, and India.

[86] [1889] 14 App Cas 286. Similar cases exist in other territories occupied by the British Empire, for instance *In re Southern Rhodesia* [1919] Appeal Cases 211; the "discovery doctrine" in the USA discussed in *Johnson v McIntosh* (1823) 21 U.S. (8 Wheat.) 543.

[87] [1992] HCA 23.

[88] For further aspects, see Flood, John, "Legal Education, Globalization, and the New Imperialism", in Cownie, Fiona (ed.), *The Law School - Global Issues*, Local Questions, 1999; Gane, Christopher and Huang, Robin Hui (eds.), *Legal Education in the Global Context – Op-*

2. *Local Legal History*

English legal history has traditionally been taught with a focus on doctrinal and internal legal history, which are most commonly thought of as national. The responses to our survey suggest that growing attention is now being paid to teaching external legal history and highlighting the important role that legal history can play in understanding how socio-legal factors impact legal development in a way which is far less national.[89] One aspect of this is the trend towards teaching more critical and global legal history discussed above, another which was revealed by our survey is a potential shift towards the teaching of local or regional legal history. That two institutions represented by respondents to our survey, including one represented by an author of this chapter, are teaching, or proposing to teach, aspects of local legal history as part of their courses could represent an emerging, and perhaps welcome, shift towards the local.

Local history is the study of people and their place.[90] It has often been described as largely concerned with the origins, growth, and changing nature of these places and the people who formed communities within them.[91] The study of English local history is generally understood to have begun with medieval chroniclers but really evolved in the context of a post-reformation desire to formulate a distinct English national identity. However, for practical reasons, enquiries tended to be limited to individual counties or smaller regions.[92] From the nineteenth century, professional historians based in universities tended to focus on the general and political history of the nation, with the role of local history limited to that of evidence for larger, national trends.[93] Whilst this is clearly an important role for local history it should not be limited to this: local history has much to tell us about the lives and experiences of those in the past on its own terms. With the establishment of the Department for English Local History at the University of Leicester in 1948,[94] local history was able to foster greater academic

portunities and Challenges, London, Routledge, 2016; Twining, William, "Let's Talk: Framing Enquiry and Discussions about Legal Education", *Law Teacher*, vol. 49, 2015, p. 388.

[89] Handler, Philip, "Legal History", in Watkins, Dawn (ed.), *Research Methods in Law*, London, vol. 103, 2018, pp. 104-109.

[90] Dymond, David, *Researching and Writing History. A Guide for Local Historians*, 3rd ed., Lancaster, 2009, p. 1.

[91] Tiller, Kate, *English Local History*, Woodbridge, 2020, p. 2.

[92] Beckett, John, *Writing Local History*, Manchester, 2007, pp. 4 and 5.

[93] *Ibidem*, p. 5.

[94] The Department is now the Centre for Local and Regional History: available at: *https://le.ac.uk/english-local-history* (last accessed: 9 April 2024).

credibility, and in the twenty-first century, the opportunities to research and study local history have never been stronger.[95]

Much like general English history, the grand narrative of English legal history has also been national. This is perhaps best represented today by Baker's textbook, mentioned above: *Introduction to English Legal History*. It tells the story of the historical development of English law through a doctrinal lens focused on the royal courts at Westminster. This is unsurprising given broader national trends in both legal and historical scholarship from the nineteenth century, and the nature of the sources. In his 1888 inaugural lecture at Cambridge, when Maitland asked: "Why the history of English Law is not written?", the problem was fundamentally two-fold. First, the study of English law in universities was a relatively recent phenomenon, as explained above. And, second, from the thirteenth century onwards, the sheer volume of legal records created and preserved was overwhelming: Maitland thought "perhaps no man will ever read them all".[96] When Baker revisited the question at his own inaugural lecture in 1998, he reached a similar conclusion by highlighting the importance of editing manuscript sources and lamenting the limited progress made since Maitland's time.[97] Significant progress has been made, notably by Baker himself,[98] in this endeavor in the 25 or so years since, yet, understandably, the focus has remained national. Furthermore, the sources of English local legal history present difficulties for legal historians beyond the quantity of underutilized national material. One of the most challenging aspects is the sheer number of local courts —C. W. Brooks estimated that there were 12,000 manorial courts in the early modern period— and it is possible that the records that do survive are not representative.[99] That being said, there is evidence that legal historians are starting to give more consideration to the importance of local courts and the local issues to the historical development of English law.[100]

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[95] Beckett, John, *op. cit.*, pp. 2-5.

[96] Reprinted in Fisher, H. A. L. (ed.), *Collected papers of Frederic William Maitland. Downing Professor of the Laws of England*, Cambridge, 1911, vol. 1, p. 480.

[97] Baker, J. H., "Why the history of English law has not been finished?", *Cambridge Law Journal*, vol. 59, 2000, p. 62.

[98] Ibbetson, David, "The renaissance of English Legal History", *Cambridge Law Journal*, 2021, 80, S1, s91, s105.

[99] Brooks, C. W., *Pettyfoggers and Vipers of the Commonwealth: the 'lower branch' of the legal profession in early modern England*, Cambridge, 1986, 306, n. 21.

[100] For example, a recent discovery concerning the legal history of debt from a local court in Lincoln has recently been noted by Baker: Baker, J. H., "Indebitatus Assumpsit in 1447", *Cambridge Law Journal*, vol. 80, 2021, p. 39; and Eldridge L., *Law and the Medieval Village Community*, Routledge, 2023 is one of a number of publications exploring the role of custom in

Although many sources of local history are inherently legal,[101] the teaching of local history has generally been undertaken outside of law faculties. The Universities of Cambridge and Oxford offer undergraduate certificates in local history as part of their continuing education programmed,[102] but most local history teaching (and research) takes place in History Faculties. This teaching tends to cluster around those Faculties with research centers for local history. For example, Lancaster University, which has a Regional History Centre, offers a final year optional undergraduate option on the history of Lancaster,[103] with more offering postgraduate degrees in local history.[104]

At Northumbria University local legal history provides depth to a wider course, wherein legal history is taught in the national context but with students having the "scope to examine the local legal history of the north-east of England, particularly in the nineteenth and early twentieth centuries".[105] The role of local legal history in a proposed legal history course at the University of Manchester is more pronounced. The city of Manchester sits within the historic palatine county of Lancashire. From 1351, the county Palatine of Lancaster had its own chancery and its own justices independent of the royal courts in Westminster.[106] The palatine jurisdiction in Lancaster continued in some form until 1972 when the Lancaster Court of

local courts in English law. The Open University Law School also hosted a conference in November 2023 entitled "Legal histories, local histories".

[101] Court records, etc.

[102] University of Cambridge, Institute of Continuing Education, Undergraduate Certificate in Local History: Evaluating the Past through British Local History, available at: *https://www.ice.cam.ac.uk/course/undergraduate-certificate-local-history-evaluating-past-through-british-local-history* (last accessed: 5 April 2024); University of Oxford, Department for Continuing Education, Study local history online, available at: *https://www.ice.cam.ac.uk/course/undergraduate-certificate-local-history-evaluating-past-through-british-local-history* (last accessed: 5 April 2024).

[103] Lancaster University, Regional History Centre, available at: *https://www.lancaster.ac.uk/study/undergraduate/courses/history-ba-hons-v100/2025/#structure* (last accessed: 8 April 2024).

[104] For example Lancaster University has a Postgraduate Diploma in Regional and Local History: available at: *https://www.lancaster.ac.uk/study/postgraduate/postgraduate-courses/regional-and-local-history-distance-learning-pgcert/2024/* (last accessed: 5 April 2024). Similar Diploma or master's Level courses are also offered by the History Faculties at the Universities of Birmingham, Keele, Leicester, and Oxford among others.

[105] Northumbria University, LW6026 - Legal History, available at: *https://www.northumbria.ac.uk/study-at-northumbria/courses/law-llb-hons-uuslwz1?moduleslug=lw6026-legal-history&alttemplate=df847541-4f68-426a-8940-4c60ff4c5262&y=2023* (last accessed: 2 April 2024).

[106] Somerville, Robert, "Duchy and County Palatine of Lancaster", *Transactions of the Historic Society of Lancashire and Cheshire*, 1951, vol. 103, pp. 59-67.

Chancery was finally merged with the High Court.[107] The proposed course at Manchester is thematic rather than purely doctrinal. The course is to be taught within the context of broader English legal history but with a conscious focus on the local geographical and jurisdictional context of Lancashire and of the North of England more broadly. For example, the North of England's Danish legal inheritance is considered, as is the structure and records of the Palatine courts, and legal education is taught by assessing the careers of Northern lawyers and judges.

A notable challenge for the teaching of local legal history, particularly in the pre-modern period, remains the sources. Most English legal history courses rely heavily on the invaluable printed source books edited firstly by Baker and Milsom, and now by Baker alone, their *Sources of English Legal History: Private Law to 1750* first appeared in 1986,[108] with a second edition in 2010,[109] and a new volume on public and criminal law was published in 2024.[110] The printed records of the Lancaster palatine courts are more limited,[111] and the proposed course is reliant on the archival research done by one of the lecturers.

Another important source of local history is physical history.[112] As we have touched on, English legal historians are blessed (and perhaps cursed) by the sheer volume of surviving legal historical manuscript material. We are also blessed by our surviving physical legal history. Westminster Hall, where the central courts sat from the thirteenth century to the nineteenth century, still forms a key part of the Palace of Westminster. The four Inns of Court continue to be involved in the education of barristers today. For those teaching in and near London, these physical monuments to our legal history are easily accessible as teaching tools which bring legal history to life. Our

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[107] Courts Act 1971, Schedule 5, Part I. The only judicial office to survive these reforms was that of the Vice Chancellor of the County Palatine of Lancaster (Courts Act 1971 s. 44 (1) (b), who since 1987 has been a High Court Judge with a supervisory role over Chancery business in the North of England.

[108] Baker, J. H. and Milsom, Stroud Francis Charles, *Sources of English Legal History: Private Law to 1750*, London, 1986.

[109] Baker, J. H., *Baker and Milsom Sources of English Legal History: Private Law to 1750,* 2nd ed., London, 2010.

[110] Baker, J. H., *Sources of English Legal History: Public Law to 1750,* Oxford, 2024.

[111] Of the 737 plea rolls from the Lancaster Court of Common Pleas only one has been edited and published: Parker, J. W. R. (ed), T*he Plea Rolls of the County Palatine of Lancaster: Roll 1*, New Series, Chetham Society, Manchester, 1928, 87. Significant work was done on the records of the Palatine courts by William Farrer. His manuscript notes survive in the Manchester Central Library: Manchester Archives and Local History, LI 50/30-32.

[112] Beckett, John, *op. cit.*, p. 1.

physical legal history is not limited to London: the proposed Manchester course, for instance, will include a trip to Lancaster Castle. The castle has a long and storied history. The surviving buildings include medieval cells, an eighteenth-century debtors' prison, male and female prisons, as well as two historic courts, one of which is still used on occasion today.

V. Conclusion

University education in England and Wales generally faces great challenges including, inter alia, an almost complete absence of government funding for teaching law (and most other subjects), political pressure in favor of some subjects and not others, and the wider economic and social constraints. The legal profession, itself a major draw for law students, is evolving, but remains intensely competitive and in parts, not as diverse as the wider population. These constraints cascade down to the teaching of law, and particularly the teaching of legal history. While intellectually its rigor and scholarship might be recognized, it is not as useful as a subject for students with limited choices and is not enforced as a mandatory subject by practitioner bodies or universities. Lighter forms of legal history do permeate legal teaching in England, with sources hundreds of years old still cited and binding through the system of precedent, but that engagement is focused on the legal dimensions of the cases. Similarly, with a largely unbroken history of legal sources, statute law from two centuries before is still common in some areas of law.

Wider social and intellectual movements might offer some new avenues. In particular, changing social trends, including a turn away from the national in favor of both more global and more local approaches, present opportunities for legal history to enrich the university curriculum. Set against a landscape where access to the profession is also changing, legal history can have a role in both a liberal arts perception of the law degree and in training professional lawyers. Both the global legal history and decolonial legal history approaches outlined here are arguably functional or teleological uses of legal history, not designed to value legal history as a doctrine which has inherent value in and of itself. This approach is in some sense required in the context of the neoliberal approach to university education which currently prevails in England and Wales: each area of study has to justify its ongoing existence on the curriculum in a context in which university resources are ever more strained, and students increasingly see their relationship with their educators through a consumer lens.

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