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PRELIMINARY STUDY ON THE DISCIPLINARY DEVELOPMENT OF LEGAL HISTORY

Academic dialogue plays a key role in the development of legal history. This volume is the result of an invitation to engage in dialogue extended to 21 legal historians from various jurisdictions. Throughout the chapters, the authors reflect on the state of the discipline within their respective contexts, identifying both the difficulties and the opportunities they face, while also presenting courses of action that can be analyzed from a comparative and global perspective.

This volume brings together the descriptions, reflections, and concerns of those whom the study of legal history has guided, and continues to guide, through university classrooms, archives, libraries, and private document collections. From these standpoints and based on the information they gain through their roles as educators and researchers, the authors examine the attention the discipline receives, the path legal history has followed, its place in academic curricula, whether it is mandatory or elective, the teaching methodology, course content, the institutions dedicated to the study of legal history, the academic conferences and events, textbooks and available bibliographies, the need for new approaches, and the challenges the discipline faces in their respective jurisdictions.

This preliminary study aims to guide the reader through the dialogue among the authors. This "conversation" is divided into five sections that help to analyze the disciplinary development of legal history. First, it explores the interest that legal history awakens. Second, it addresses the way the discipline is taught and its place within the academic curricula. Third, it examines how legal history is researched. Fourth, it deals with the spaces where the discipline is developed and cultivated including institutes, events, and publications. Fifth, it presents the main challenges faced by the discipline, as expressed in the dialogue among the contributors. Lastly, though no less importantly, final considerations are offered regarding the future of the legal-historical discipline.

I. Interest in Legal History

The interest that legal history generates in universities and academic communities provides a starting point for the authors. For instance, Rosario Po-

lotto, representing Argentina, and Fupeng Li with Xinran Liu, representing China, point out that the discipline faces challenges and setbacks. Similarly, Roberto Cerón Reyes and Claudio Barahona Gallardo from Chile state that "[legal history] periodically faces criticism and challenges that question its usefulness, or at least its contribution to student training". Jacqueline Blanco Blanco, writing about Colombia, notes that the discipline "is not a priority" and that its importance has yet to be understood as a means to transcend a legal education overly focused on practical training. Alfredo de Jesus Dal Molin Flores, from Brazil, highlights a prevailing "new technocratic spirit" as a barrier. Along these lines, Guido Rossi, writing on Scotland, refers to a tension between the "old" and the "new," while Aldo Andrea Cassi points to a growing interest in more professionally oriented education in Italy, which is perceived as more suitable for training future lawyers and cultivating a problem-solving orientation. In turn, Lorren Eldridge, Matthew Dyson, and Ashley Hannay from England and Wales, and Laetitia Guerlain form France, describe a relocation towards an auxiliary subject or as merely a methodological or introductory tool, a trend also observed by Mia Korpiola from Finland. In France, according to Guerlain, legal history has been relegated to the status of a "general culture" subject, useful primarily for students preparing for a public competitive examination that include this kind of knowledge (*e.g.*, judicial exams). This trend noted by Guerlain can also be identified in other jurisdictions.

Other contributors emphasize different factors. For example, the lack of dialogue among those engaged in legal history is a key issue. Adrian J. Cabrera Bibilonia attributes the decline of interest in legal history in Cuba to the "end of academic events," which led to a "distance and lack of dialogue among the various groups of legal history professors in the country". In contrast, in some jurisdictions, like Poland, the interest in legal history is tied to the political background of the region, where the discipline has been used as a legitimation tool to lay the foundations of new legal systems. In this context, Tomasz Kucharski notes that legal history in Poland has a long-standing tradition and that the 1945 post-socialist period was particularly favorable for the "exuberant development of legal history". The discipline was considered a "safe" academic field, and at the same time was aligned with the Marxist historical dialectic concepts. This helps explain why, today, around 300 people in Poland are dedicated to legal history research and teaching, including emeritus professors and doctoral candidates. Finally, in Paraguay, according to Herib Caballero Campos, legal history "does not occupy an important place," as in Mexico, where, according to Oscar Cruz Barney, there is "little institutional interest in its promotion".

Not everything is discouraging for legal history, however. Some authors, such as Matthew Mirow of the United States of America, highlight the interest that legal history holds in terms of research, and the significant and substantial work being carried out within certain research centers. Faustino Martínez Martínez, from Spain, also takes an optimistic stance, when describing "an excellent state of health within the community of legal historians, engaged in an ongoing and enriching dialogue with neighboring or related disciplines, and maintaining strong partnerships with foreign universities". In the case of England and Wales, Eldridge, Dyson, and Hannay emphasize the indispensable nature of legal history in legal systems based on common law where it serves as an interpretive tool, while Kucharski draws attention to the bast tradition of legal history in Poland.

II. Teaching Legal History and its Place in Academic Curricula

The debate over whether or not to include legal history in academic curricula is a recurring topic on the international stage. Martínez Martínez suggests that in Spain there is "a certain contradiction between reality and aspiration, between what currently exists and what would be ideal for improving student training and the self-fulfillment of professors". However, the same author notes that legal historians must reconcile their aspirations with "a university reality that is what it is, not what we wish it to be".

The political context of each jurisdiction and ongoing changes in the professional landscape directly impact the place that legal history occupies within academic programs. There is considerable variation in the level of interest the discipline currently gathers and in how legal education models allocate space for different subjects. In this regard, some jurisdictions like Poland, as noted by Kucharski, have curricula tied to the need of regional economic and administrative integration, based on the legal changes from the EU membership, that have led to a focus on teaching current legislation at the expense of understanding the historical roots of law.

The contributions in this volume present a wide range of situations. These vary depending on the jurisdiction, whether the university is public or private, older or newer, or whether its profile leans more towards a professional training. The menu varies from the inclusion of legal history as a mandatory subject in universities in Argentina, Brazil, Chile, China, Italy, France, Finland, Mexico, Poland, and Spain to its offering as an elective course in other universities in Argentina, China, Colombia, England

and Wales, Germany and Scotland. In between are universities where the number of hours allocated to legal history has been reduced, as reported by Cassi (Italy) and Kucharski (Poland), with its content being increasingly scattered across various subjects, as observed by Cabrera Bibiloni (Cuba) and Caballero Campos (Paraguay). In some institutions, the subject is only taught at the postgraduate level, either in master's or doctoral programs, as exemplified by Rossi for Scotland.

Throughout the chapters in this volume attention is also given to legal history being a propaedeutic subject. Guerlain (France) and Korpiola (Finland) both refer to historical-legal content being often taught by professors that are not legal historians. This issue is also highlighted by Korpiola and Cabrera Bibiloni (Cuba), along with the variety of names under which the discipline appears in different jurisdictions and academic curricula.

The discipline holds particular value in jurisdictions that follow the common law system. Eldridge, Dyson, and Hannay explain that in England and Wales, the use of legal history becomes essential because the reasoning method required by this legal system inherently demands a historical awareness when applying precedent and case law. In this sense, the authors highlight how certain significant cases map legal developments across the centuries, leading to contemporary rulings.

All the contributions in this volume agree that legal history should be a subject of study in all law degree curricula. As for the content taught on the subjects labeled as "Legal History," or in those that have received "a share" of historical-legal topics, the authors observe considerable diversity. In this context, the volume highlights the wide range of topics, geographical areas, and time periods that constitute the subject matter of legal history courses. In some jurisdictions, what is taught largely depends on the preferences, specialization, and research experience of the instructors responsible for the courses, as noted by Eldridge, Dyson, and Hannay for England and Wales, and by Li and Liu for China.

The subjects covered in legal history courses vary significantly across jurisdictions. Course content may revolve around the history of ancient law, medieval and modern law, or "General Legal History," the History of Spanish Indiano Law, European and American codification in the nineteenth century, constitutionalism in Latin America, institutional histories of various jurisdictions, sources of law in different periods, the evolution of legal systems, legal ideas, gender issues, the history of justice, administrative history, state-building, the history of human rights, the history of judicial administration, labor law history, family law history, commercial law history, among others. In some jurisdictions, content is more focused on the history

of public law. Blanco Blanco, for Colombia, provides an example of this emphasis on the public sphere, while Rossi informs on several courses on the history of private law in Scotland, and Eldridge, Dyson, and Hannay do similarly for England and Wales. Li and Liu note that in China courses are taught from the perspective of global legal history, with emphasis on cross-cultural legal comparisons, the study of legal traditions, the history of legal exchanges, and historical patterns of legal globalization in different regions. Korpiola explains that in Finland, comparative legal history is studied, while Kucharski notes that this approach is gaining popularity in Poland.

Most of the contributions devote substantial attention to legal historiography and legal history education. For example, Rossi mentions a significant line of research pursued by some private lawyers in Scotland in recent decades, particularly since the 1980s. These scholars have attempted to systematize private law by providing a doctrinal foundation for its historical development, one that can rationally explain and outline its current form. In this context, the author lists a number of prominent researchers, along with their works and academic activities.

One concern shared by several authors is how legal history should be taught, both in terms of content and teaching methodology. Christoph G. Paulus, writing on Germany, believes that young students should first be introduced to law as a cultural phenomenon. Cerón Reyes and Barahona Gallardo, writing on Chile, suggest taking a practical approach and focusing on those aspects that offer "a contrast or recurrence with issues that are currently causing concern". Similarly, Korpiola, writing on Finland, advocates for a teaching approach based on case resolution, encouraging debate, and the use of theatrical techniques. Eldridge, Dyson, and Hannay, in the context of England and Wales, promote a learning methodology that gives students a more active role, placing greater emphasis on the development of their skills rather than on the mere transmission of information. They recommend a range of tasks that focus on higher-order skills such as analysis, synthesis, and evaluation. This should be carried out through in-class research activities and detailed reading of primary sources. Kucharski, in Poland, echoes this approach by suggesting that instructors should develop class plans, curated readings, and other materials including cases to be analyzed and other assignments. Guerlain and Mirow describe how legal historians are trained in France and the United States of America, respectively, with the latter also discussing the research fellowships available and the importance of participating in academic events.

III. Legal-Historical Research

The inclusion of legal history in academic curricula does not always go in hand with academic research. As Eldridge, Dyson, and Hannay point out, in England and Wales, research in legal history is strong, while teaching is relatively weak. Several universities have specific centers dedicated to legal-historical research that are not necessarily directly linked to undergraduate teaching. Similarly, Guerlain notes that although research in legal history is increasingly active in France, with methods and topics evolving rapidly, the institutional situation of the discipline remains a concern.

Research is being vigorously pursued in most jurisdictions, producing collective works, monographs, and journal articles that attract significant interest. Blanco Blanco reports that Colombia has "strong research figures," focusing on topics such as the history of constitutionalism, the history of the social order and its relationship with criminal law, the history of the armed conflict, including analyses of institutional crises and the judicial and criminal systems and the history of minority rights, among others. Mirow observes that in the United States of America, legal history is an attractive area of research, with "great and substantial work" being done within specific research hubs, for example, at the University of Wisconsin Law School, which "has a long tradition of prominent legal historians focused on the social history of law and how it interacts with society". Within the institutional context, particularly the American Society for Legal History, he lists various topics currently being researched: the legal aspects of slavery, family, gender, crime, violence, indigenous communities, subordinated populations, constitutional rights, and administrative structures. There are fewer studies on private law, commercial law, and the legal history of the colonial period or of the United States of America prior to the Civil War in the mid-nineteenth century. Mirow provides a detailed account of how legal historians are trained in the United States of America, a subject also addressed by Guerlain in the French context, who notes that in France, research in legal history is currently very active and often critical.

Vibrant communities of legal historians exist in certain jurisdictions. For instance, Kucharski highlights that in Poland, the legal history community is particularly strong in research. Among the topics being explored are: parliamentary political dynamics, the complex organizational structure of the judiciary system between the sixteenth and eighteenth centuries, the history of Polish and European constitutionalism from the late eighteenth century to the first half of the twentieth century, the judicial and administrative

system of the nineteenth century, self-governance and legal professions, the development of criminal law in the nineteenth and twentieth centuries, civil law during the same period, and codification.

IV. Institutions, Academic Events, and Publications

This volume gathers information on the institutions that bring together legal historians across various jurisdictions, the local and international academic events in which they participate, and the publications that reflect the cultivation of the discipline, in the latter case, including manuals, monographs, book chapters, collections, and legal journals featuring historical-legal articles. Regarding manuals, Li and Liu (for China) and Kucharski (for Poland) offer an in-depth review of their content.

The panorama described by various authors in this volume is quite diverse. For example, the research emphasis from jurisdictions that have dedicated institutions, journals, and specialized conferences or workshops in the discipline, to others with minimal connection to academic exchange, as lamented by Cabrera Bibiloni for Cuba, where the "end of academic events led to isolation and a lack of dialogue among the various groups of legal history professors across the country". There is a wide range of forums where legal historians come together. This volume references the main platforms in which the discipline is cultivated, as mentioned by the contributors: the American Society for Legal History (United States of America), the Society of Legal History (France), the Polish Society for Legal History, the Research Institute of Legal History (Argentina), the Brazilian Institute of Legal History, the China Institute of Legal History, the Colombian Institute of Legal History, the Scottish Legal History Group, the Spanish Society for the History of Law, the Italian Society of Legal History, and the Historic Studies Research Institute of the National Autonomous University of Mexico (UNAM), where the Mexican Association of Legal History was recently founded.

The authors also comment on the presence of specialized journals in various jurisdictions. These academic forums are fundamental to the disciplinary development of legal history and foster interaction among scholars. They also provide an opportunity to share results of ongoing monographic work. Journals offer a space to disseminate research findings, both local and international, commonly being English the language used.

V. Challenges in Legal History

Most of the contributions in this volume externalize the need to face the challenges. The authors identify recurring issues related to fostering dialogue with other fields and subjects, promoting institutional initiatives, adopting new approaches, modifying teaching methods, and achieving internationalization.

Regarding dialogue with other fields and subjects, Flores speaks from Brazil of "new transversal perspectives," while Cerón Reyes and Barahona Gallardo suggest enriching legal history through Critical Legal History, Cultural Studies, or Cultural History, and engaging with other legal subjects "as a survival strategy within a university environment that is increasingly focused on professional training". In this regard, the Chilean authors refer to the need of approximation with scholars teaching and researching in procedural law, commercial law, labor law, and tax law, among others. Polotto, for Argentina, recommends interaction with dogmatic legal sciences and other disciplines such as social history, the history of justice, and political science. Guerlain, writing about France, adds economics, philosophy, sociology, anthropology, and literature to this list. Blanco Blanco, from Colombia, emphasizes that an interdisciplinary approach supports a deeper understanding of the multiple social and cultural factors, providing regional legal history research and integrative observation of legal history as examples. According to the Colombian author, "legal history has the opportunity to reveal the details that portray the state of the social order, in which law acts as an essential component because it accounts for the acts of justice that the people and its victims demand".

As for the need to promote institutional initiatives, Flores (Brazil) emphasizes the importance of communication between traditional legitimizing strategies, such as historical and geographical institutes, and new strategies emerging from postgraduate law programs. He also highlights the "need for a more robust institutional policy to develop didactic materials, particularly student manuals, so as not to make appear paradoxical a stance that advocates for historical-legal content in university courses while failing to defend the space it occupies in the national publishing market to which it is linked".

In terms of adopting new approaches, most contributors emphasize the importance of examining legal history from multiple angles. References are made to comparative legal history, critical legal history, and global legal history. These approaches can help identify legal transplants, legal connections, and the circulation of ideas. Authors such as Eldridge, Dyson, and Hannay, Korpiola, Guerlain, Martínez Martínez, and Kucharski all

insist on this in their chapters. Eldridge, Dyson, and Hannay propose new perspectives that highlight the value of legal history in shaping the future. They point to global perspectives, decolonization, and engagement with local communities. These approaches, they argue, provide opportunities to emphasize the importance and prominence of legal history in undergraduate law programs. Legal history, like comparative law, helps students develop a legal understanding that goes beyond the specific features of their national legal systems. These authors argue that examining law across different periods and places is more likely to emphizise (and even celebrate) diversity and difference, as well as conflict and oppression, rather than focusing on consensual or value-neutral similarity, as implied in the notion of "legal families". They also stress the importance of a decolonial approach, which critically examines and challenges enduring power structures rooted in colonial expansion and territorial control. According to these authors, such a perspective disputes the idea of law as an objective legal science and reveals how European notions of legal objectivity have been used to silence other systems of knowledge.

Regarding the improvement in teaching methodology, it is worth returning to the authors who addressed this issue in their chapters. There is clear emphasis on the topic in the proposals of Paulus, Cerón Reyes and Barahona Gallardo, Korpiola, Eldridge, Dyson and Hannay, and Kucharski. These proposals focus on making students more active learners, encouraging critical thinking and analysis, engaging with real-world contexts, and preparing for the challenges they will face as future lawyers, regardless of the area of expertise they choose. Kucharski argues that without fundamental changes, legal history cannot fulfill the objectives of modern legal education, and that greater emphasis should be given to didactic materials with a reduction on the amount of factual information students are expected to memorize, and a shift toward teaching based on primary sources, such as historical judicial decisions, precedents, and landmark legal disputes, insisting that legal history must teach students how to work with sources and solve legal problems using historical dilemmas.

Other proposals also mention the teaching objectives. Guerlain suggests promoting epistemological debates on the methodology of legal history, in which legal historians can productively employ methods from the humanities and social sciences without abandoning their disciplinary identity or technical expertise. Rossi, meanwhile, asserts that the challenge that legal historians face today is to demonstrate that legal history remains a legal (and not merely historical) subject, valuable in its own right, and capable

of contributing to the education of future jurists. He believes this challenge must be addressed both through teaching and through research. Martínez Martínez, writing about Spain, advocates for curricular reform: restoring year-long courses, revitalizing oral instruction, and eliminating "useless and frustrating final semester papers". He proposes establishing centralized, general, common frameworks to enable the creation of analogous curricula based on a shared legal vision. He also calls for minimizing the subject being elective, reserving specialization for master's and postgraduate programs. In his view, "the undergraduate degree should be designed to provide a general, comprehensive, global, and theoretically robust education", and within this vision, historical disciplines play a central role.

Regarding the need for internationalization, it is essential for legal historians to establish collaborations with foreign researchers and to participate in comparative projects. This idea is supported by Cabrera Bibiloni, who argues that one of the challenges facing the discipline in Cuba is precisely the lack of communication and dialogue among legal historians. Cruz Barney, writing about Mexico, emphasizes the importance of institutional positions and support systems that allow the field to flourish and evolve, echoing a similar point made by Flores regarding Brazil. This contrasts with the situation described by Caballero Campos in Paraguay, where the discipline is not yet fully established. He recommends increasing the number of research projects and broadening the range of topics being explored.

VI. Final Considerations on the Future of the Discipline

This volume demonstrates that there are common threads among jurisdictions when it comes to the question of legal history's place in academia. It also shows that different jurisdictions share similar realities regarding the inclusion of the discipline in academic curricula, the methods through which knowledge is conveyed, and the content that is developed. These reflections on the disciplinary state of legal history inevitably lead the reader to reconsider fundamental questions related to who, when, where, and how. Caroline Derry and Carol Howells rightly point out that curricula must be designed in response to the tension between the needs and expectations of future lawyers and other legal professionals, while also providing quality education to those who may not ultimately enter the legal profession. It is also important to note that it is precisely within these shifting and uncertain objectives of legal

education that legal history must find its place: as a subject that dispels false certainties and inspires the development of critical thinking.[1]

A wide range of perspectives fills the pages of this volume when addressing those fundamental questions, allowing room for both optimistic views and expressions of concern. What all positions share is the conviction that the discipline faces challenges that must be confronted in ways clearly articulated throughout most chapters. At the same time, the volume reveals that circumstances vary significantly from one jurisdiction to another; there are vast differences in the structures supporting research and teaching in this field, and a variety of nuances in both the situations described and the solutions proposed.

Some authors express concern. For instance, Korpiola notes that in Finland there are no guarantees that legal history will continue to be seen as relevant or important, since not all courses are compulsory and the discipline is increasingly confined to postgraduate and doctoral levels. Guerlain states that the situation of the discipline in France is fragile, due to the predominance of public and private law and the limited number of teaching positions available. Although Kucharski refers to the number of professors and researchers dedicated to legal history in Poland, he foresees an unfortunate outlook for the discipline due to several trends, such as the reduction of courses and instructional hours, especially when compared to other law subjects that are more practice-oriented and draw greater interest. He attributes this to an "almost irrational aversion" to legal history among legal specialists, as well as to the outdated and inadequate programs and methodology by which the subject is taught. He also highlights the fragmentation of the legal history community, which hinders the development of national and international research cooperation, the creation of research teams, and the execution of joint publication initiatives. Eldridge, Dyson, and Hannay also take up these concerns, describing a context where university resources are increasingly limited, and students increasingly perceive their relationship with faculty through a consumer lens.

Other authors are more optimistic. Li and Liu are hopeful when they report that in China, over the past decade, legal history has acquired new momentum and opportunities. For example, in 2023, the *Opinions on Strengthening Legal Education and Research on Legal Theory in the New Era* were issued, explicitly positioning jurisprudence and legal history as "fundamental subjects," even prioritizing them over other specialized legal fields and leading

[1] Derry, Caroline and Howells, Carol, *Legal History in the Curriculum: Comparative Perspectives, Critical Approaches and Future Directions*, London, Routledge, 2025, p. 6.

the authors to predict that legal history will not face an existential crisis in the near future. Mirow expresses a similar view from the United States of America, asserting that "there is room for more legal historians within these subfields and room for legal historians to explore less-traveled paths in U.S. legal history". Eldridge, Dyson, and Hannay argue that shifting social trends, such as a move away from the national toward both more global and more localized approaches, offer opportunities for legal history to enrich the university curriculum.

Sharing concerns and highlighting diverging perspectives helps to open the way for strategies to defend the strength and continuity of the discipline within academic curricula. At the same time, the task of identifying key areas of value and attention helps preserve what is working, improve what is lacking, and reframe the path forward, thus securing legal history's continued relevance in both academic and institutional spaces. In short, the challenges revealed in this volume revolve around resistance to interdisciplinarity, the adoption of new approaches, pedagogical renewal, and institutional recognition. All of these challenges can be met through coordinated and creative strategies, which will succeed insofar as legal historians demonstrate adaptability, openness to dialogue with other disciplines, and responsiveness to change.

Legal history, as a discipline, faces a future that is ambivalent but hopeful, provided that the challenges identified in this volume are met with determination. These challenges can help overcome the marginalization of legal history within curricula, the pressure of technocratic approaches, the lack of institutional interest in some jurisdictions, and the fragmentation of academic communities. They can also push educators and researchers out of their "comfort zones," encouraging reflection and action toward new methodological directions such as comparative legal history, global legal history, critical legal history, and engagement with other disciplines (*e.g.*, sociology, anthropology, literature, philosophy, economics).

Academic dialogue must always prevail. The unfavorable conditions described here should serve to ignite academic debate that enables the advancement of a discipline that is essential for educating reflective and critical jurists, jurists capable of understanding law as a historical and social construct, of grasping the complexities of the contemporary legal world, and, in so doing, of illuminating current legal frameworks and proposing the reforms demanded by today's society.

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