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## A LEGAL HISTORY OF LEGAL HISTORY IN ENGLAND AND WALES

**Abstract.** This article explores the development of the study of legal history as a subject in the law schools of England and Wales. It outlines changes in university education more generally, and in legal scholarship in particular and how those changes impact the particular subject under study. Drawing on empirical studies and personal reflections relating to past experience it concludes by speculating on potential different outcomes, both positive and negative, which may emerge when the universities of England and Wales emerge from the uncertainty of the COVID-19 pandemic, during which the piece was written.

**Keywords:** legal education, legal history, universities, England and Wales, legal scholarship.

## HISTORIA PRAWA HISTORII PRAWA W ANGLII I WALII

**Streszczenie.** W artykule przedstawiany jest rozwój nauki historii prawa jako przedmiotu nauczanego na angielskich i walijskich wydziałach prawa. Wskazuje się w nim ogólnie na przemiany edukacji uniwersyteckiej, a w szczególności na zmiany zachodzące w zakresie nauki prawa, a także na to, jak te zmiany wpływają na poszczególne przedmioty studiów. Opierając się na badaniach empirycznych oraz osobistych przemyśleniach związanych z własnymi doświadczeniami, artykuł kończy się przedstawieniem przypuszczeń dotyczących możliwych konsekwencji, tak pozytywnych jak i negatywnych, które mogą ujawnić się, gdy uniwersytety w Anglii i Walii wydobędą się z niepewności okresu pandemii COVID-19, w trakcie której artykuł został napisany.

**Słowa kluczowe:** edukacja prawnicza, historia prawa, uniwersytety, Anglia i Walia, nauka prawa.

There are some apparent paradoxes in writing of the role of legal history in relation to the common law tradition. The common law is, in its essence, retrospective: the system of precedent relies on the principle of the “good old law” where judicial innovation is generally frowned upon and the wisdom of earlier authorities invoked to solve contemporary problems. Not only were ancient cases cited, but medieval texts such as Bracton might be discussed in appropriate

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instances, whilst until recently the citation of the work of a living jurist was considered a solecism. Yet that is not to say that common lawyers are all, at heart, legal historians; indeed there would seem to be an essential contradiction in the investigation of past by exponents of these two disciplines. The lawyer arguing his or her case will look to the past to support his contentions for the law as it stands, or should stand, at the present. The aim is avowedly what theoretical historians would caption, and often condemn, as “Whiggism.”<sup>1</sup> For legal historians the task is of a different nature. Discussions have continued amongst academics for years as to what the essential characteristics of “legal history” might be: doctrinal or contextual camps, to use admittedly imprecise terms, have held different views as to whether the true focus should be on the development of legal norms or on the question of where those norms came from and went to (the reader may be alarmed to learn that my own work was once described as “not really legal history”). Yet legal historians have, I think, this in common: they want to study what the law and its institutions meant to the time in which they developed rather than what they mean, or can be made to mean, at the present day. Invocation of precedent and legal history, then, have different rationales: they are associated in the same way as cookery is related to agriculture.

The other anomaly which the history of the common law discloses is that despite its status as a supposed towering monument to reason, a status often proclaimed by its practitioners, it has, until relatively recently, not been the subject of university study. The law of England (we will use the usual terminology here though it is not without difficulty<sup>2</sup>) was learned in practice, a skill to be handed down by those who had mastered it, rather than discussed in abstract in the Senior Common Room. It is true that a gentleman might have made the acquaintance of Justinian during his student years, as he might of Cicero or Virgil, but common law was a different matter altogether. The gulf between the law as a professional rather than an academic sphere was proclaimed on both sides, by the distinguished scholar as well as the eminent judge.<sup>3</sup>

It is true that things began to change when William Blackstone gave lectures in Oxford on the law of England in 1753, and was appointed to the Vinerian

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<sup>1</sup> The phrase was coined by Herbert Butterfield in his influential *The Whig Interpretation of History* (Butterfield 1931). Not all legal historians avoid the “Whig” approach but it is generally regarded amongst them as a methodological failing rather than a professional requirement. Whilst the tracing of developments which lead to a contemporary doctrine or state of affairs is a legitimate exercise, to understand the past as a teleological unfolding, a growth directed to the end of the present is to ignore or confuse its meaning in its own time for its own participants.

<sup>2</sup> The story of the assimilation of Welsh Law to that of England is a complex and protracted one, but found its most influential expression in Henry VIII’s Acts of Union of 1536 and 1543. For a full discussion see Watkin (2012).

<sup>3</sup> Even when I started teaching law over forty years ago there was the scent of the idea that law, like motor maintenance, was not really a subject which should share a corridor with departments which taught philosophy or the liberal arts.

Chair five years later. His celebrated *Commentaries on the Laws of England* was published in the following decade. Other universities followed suit: Cambridge established the Downing Chair in 1800, and University College and King's College London began courses in 1826 and 1831 respectively. Yet even so it must be said that these developments, important as they certainly were, did not open the floodgates to mass undergraduate study of tenures, estates and felony. It was not until the reform of the legal system and of legal education in the nineteenth century that the question of teaching law as a university subject attained a degree of urgency and significant support. The Select Committee on Legal Education, established in 1846, found that the existing provision of university tuition in law was extremely limited. The Committee stressed the need for university training, not for the professional elements of legal study which would be provided by a "special institution," but to elucidate its "scientific" and "philosophical" aspects. The major initiatives which followed came from Oxford and Cambridge, but law was also taught at Manchester from 1872. In 1891 the Gresham Committee looked again at the provision of law teaching in London, and other universities followed thereafter, Liverpool in 1892 and the London School of Economics in 1895.<sup>4</sup> In the twentieth century many more Law Schools were established within universities, the process increasing significantly with the expansion of the British higher education sector after the reforms of 1992. By then Law was an attractive degree subject for student applicants and changes in professional admission requirements made "qualifying law degrees" a usual starting point in the training of both barristers and solicitors, although as I write this latter has ceased to be a graduate-only profession following a change in regulations.

So far we have seen that law was late in achieving the status of a recognised university discipline, but have said nothing of the development of legal history as a branch of that discipline. It was, no doubt, true that some elements of historical analysis would have been essential to an understanding of the characteristics of the legal system or the otherwise baffling structure and terminology of land law and it is probably in such settings that historical elements first began to permeate the university curriculum more widely. But there was also in the nineteenth century an engagement with the history of law at a much deeper scholarly level. The Selden Society was founded in 1887 and its volumes continue to represent the best of original, source-based legal historical studies of English law.<sup>5</sup> The publication

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<sup>4</sup> See *The Ormrod Committee* (1971, 9). This report contains a useful chapter on the history of legal education, which has also drawn a more specialist academic literature. See, for example Twining 1994. For the nineteenth century developments in legal education see in particular Polden (2010, 1201–1211). For the material relating to Aberystwyth discussed in this article see further Chapter 1 in the volume relating to that Law School currently in preparation by C. Harding, J. Williams and R.W. Ireland.

<sup>5</sup> The Stair Society, founded in 1934, performs a similar function in respect of Scots Law, whilst the Welsh Legal History Society published its first volume in 2001. The publications of this

in 1895 of Pollock and Maitland's *History of English Law Before the Time of Edward I* was a landmark and it still merits its place on the shelves (and not merely for display) of every serious legal historian.

The outgrowth of expertise from the older universities was inevitable in the newer ones, for those who went on to teach law in an academic environment had themselves been, inevitably, trained in a strictly limited number of institutions. It would be an enormous task, tedious to both reader and the writer, to investigate the development of courses at every individual university. I will, however, say a little about the teaching of legal history at Aberystwyth, not simply because it is the one which I know best, but also because, as we will see, it played a not insignificant role in nurturing the development of the discipline more generally. The passing on of the educational torch was evident from the inception of the law school at what was then the University College of Wales, Aberystwyth in 1901. One of the initial Professors of Law, Jethro Brown, had been a protégé of Maitland's at Cambridge and dedicated his inaugural lecture to his mentor. Paradoxically, but importantly, in 1911, after Brown had left for a distinguished career in his native Australia, the compulsory course in Roman Law, with its attendant requirement of a knowledge of Latin and in itself a legacy of the Oxbridge system, was made optional at Aberystwyth and a new course on the History of English Law was introduced. The inaugural lecture in this subject was given by the visiting Dr (later Sir) William Holdsworth, another name of considerable eminence in the development of the discipline. I pause at the title of the new course to remind readers that although English Law had been incorporated into Wales in the reign of Henry VIII, medieval Welsh law had itself become the subject of scholarly investigation in the nineteenth century. Such a development was not ignored in what was then the only law school in Wales and had been considered in visiting lectures by the eminent legal historians Edward Jenks and Paul (later Sir Paul) Vinogradoff in 1903 and 1904 respectively. English legal history remained the subject on the syllabus as the undergraduate course, however. One John Van Druten was appointed principally to teach the subject in 1924, though he is better known now as a playwright, whose adaptation of Christopher Isherwood's Berlin stories, *I Am A Camera*, later formed the basis of the Oscar-winning film *Cabaret*. There was still considerable interest in Welsh native law in the 1920s, as in 1928 special celebrations and a commemorative volume marked a millennium since Hywel Dda, the king by whose name the laws are known, had visited Rome.<sup>6</sup>

With an increase in the number of municipal universities in the early twentieth century and a subsequent wave of expansion in the higher education

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latter often comprise collections of articles, though editions of source materials form the basis of some volumes.

<sup>6</sup> For more details see Jenkins (2003). For Van Druten see Williams (2003). Aberystwyth would also later employ G.D.G. Hall, whose edition of the medieval text *Glanvill* remains the standard reference for the work.

sector in the 1960's the pool of graduates who might seek an academic career in law expanded, though appointments from the ancient universities remained common. Other developments at the same time had an impact on the work of legal historians. There was, within History faculties, an increased enthusiasm for "social history," a concentration on the lives of people outside the political elite. Such "history from below" explored amongst other areas issues of criminality and social protest. The movement spread into the consciousness and methodology of some teachers within law departments. It also led to debates, alluded to earlier, about exactly what constituted "legal history." There were questions too, when conferences began to be held which attracted those who taught in both disciplines, about the relative merits of the historical approach to teaching law, and the legal approach to teaching history. Such debates are less frequently staged in the present day, with the impression being given that the area can welcome all approaches. I suspect, however, that divisions between different types of teaching of the history of "legal" material (and different conceptions of what that term means) remain, and those differences are to be found to some extent at an institutional as well as an individual level. To this possibility I will return later.

The growth of the constituency teaching and learning legal history led to, and in its turn was boosted by, the development of literature directed to that end. Works by Plucknett and Potter were being relied on, alongside those Maitland and Holdsworth, well into the 1970s. The publication of John (later Sir John) Baker's *Introduction to English Legal History*, the relatively slim first edition of which was published in 1971 was, in this respect, a major landmark, providing a student text which was wide-ranging in its temporal scope and took account of recent scholarship. Other such student-directed texts followed, such as A.H. Manchester's *A Modern Legal History of England and Wales 1750–1950* from 1980, as well as a substantial flourishing of more specialised (both in their chronological focus and/or doctrinal focus) monographs. Journals too featured research articles and *The Journal of Legal History* was established in 1980.

It is from this exciting early period that we gain our first detailed analysis of the extent to which legal history had established itself within the British university system. John Baker circulated questionnaires to twenty eight university law faculties in England, Wales and Northern Ireland in 1977 and produced a brief typed discussion paper based on the findings. "21 of the 28 faculties consulted offer optional courses in legal history (taken in the 2<sup>nd</sup> or 3<sup>rd</sup> year of study)," he found, and 8 (including 3 of the 21) offer legal history as part of a compulsory 1<sup>st</sup>-year introduction to English law and the legal system. In total "about 3 students in 7 study some legal history in their academic courses, but only 1 or 2 in 7 take a full course." Undergraduate courses fell into two categories: the broad survey of legal development and the narrower focus on modern legal history. Baker also noted that a number of these courses had been started in the 1970s. Incidentally, he noted, lectures at the Bar on the subject had ended in 1978 (Baker 1979).

Baker's initiative led to a further analysis, conducted by Michelle Slatter and myself for the 1983 British Legal History Conference and subsequently published in the *Journal of Legal History* (Slatter, Ireland 1985). This survey included polytechnics as well as universities and also included Scotland, although the results for that country will not be discussed here given the focus of this article. Readers unfamiliar with the British tertiary education structure should note that polytechnics were institutions which could award, amongst other qualifications, degrees under the auspices of the Council For National Academic Awards, before becoming universities and awarding degrees in their own right after 1992. The questionnaire was sent to Law Departments in some forty universities in total, attracting thirty-two replies. It analysed only the separate courses in the subject, excluding historical elements in other substantive courses and, as had Baker, did not address Roman Law courses. Of course the recipient targets excluded, save anecdotally, discussion of the extent of teaching of matters which could have a "legal" dimension in History or other departments. Nonetheless it showed legal history teaching to be in good health. In the university Law departments in England and Wales 21 of the 27 responding institutions offered their own legal history courses to undergraduates, invariably as optional elements of the degree scheme. 10 of the courses were of the "general" extended nature, whilst of the rest the period after 1700 formed the basis of the majority, whilst 4 covered earlier periods. Baker's text was the most used, with Manchester's the only other to figure to any extent. Whilst the number of courses on offer seems encouraging, take-up by students was rather mixed, with some institutions struggling to attract students to the option whilst others reported healthy numbers, there being no apparent correlation between the temporal focus of the course and its popularity. An interest in history generally was seen, unsurprisingly, as a dominant factor in student choice as was the attraction of a course which provided a change from the more orthodox substantive legal curriculum, one respondent memorably remarking that the option attracted the "drop-outs and antis" (Slatter, Ireland 1985, 218).

The returns of polytechnics revealed that out of the twenty-two which responded, out of twenty-three surveyed, 7 ran discrete options in legal history whilst 5, including one of these, provided sub-course units. Interestingly two others provided the opportunity for law students which, in the words of our report, did not constitute "legal history" as such, but "at least plough a parallel furrow." I wonder a little at these words now, since they again raise the definitional problem mentioned at the outset of this article. One of the polytechnic courses, for example, was devoted to the history of crime and punishment and was taught by staff outside the law department (as was a course at Warwick university which in itself contained elements drawn from this area). It may be, a point to which I will return in the conclusion to this article, that this particular area, which has grown



considerably in interest the years since this survey, needs to be reconsidered in its relation to the categories there considered. I at least have now changed my mind as to the appropriate boundaries of the discipline.

If there were encouraging signs, in some places at least<sup>7</sup>, of a vigorous interest in learning legal history in Law departments, there was also an interest in research and publication in the area at around the same time. Conferences attracting academics to meet, deliver papers and exchange ideas, were not unknown to the subject; a meeting in 1913 in London had resulted in the publication of *Essays in Legal History* in the same year. Yet that seems to have been the last such specialist collaboration. In July 1972, however, Aberystwyth (and in particular Dafydd Jenkins and Edmund Fryde) took the initiative and hosted a conference, which attracted some 61 paying participants and in its turn resulted in the publication of *Legal History Studies 1972* by The University of Wales Press. The creation of a Continuation Committee led to the regular gathering of the British Legal History Conference, held in various locations every two years, which attracts a multitude of scholars in the discipline from all over the world. Those who have attended the event in recent years will be amazed to find that the Registration fee for the Aberystwyth event, which ran over four days, was the princely sum of 50 pence, whilst accommodation and meals were estimated to cost around £8.00. The subsequent volume could be obtained for £2.35, post free.<sup>8</sup> It is perhaps inevitable that the history of the conference itself, its contents and participants, have now been subjected to scholarly analysis.<sup>9</sup>

Dafydd Jenkins also took a leading role in a series of meetings to bring scholars together to discuss Welsh medieval law, which followed from a conference to discuss the Law of Women, convened by Morfydd Owen in 1970 (Jenkins 2003, 44). The meetings continue to the present under the title of the Seminar Cyfraith Hywel and attracts participants from Wales and elsewhere. One of the bonuses of the interest in the area is the publication of more scholarly works which make this fascinating subject available to a wider readership. Worthy, perhaps, of particular mention is Jenkins's *Hywel Dda: The Law*, which can (and should!) be read by those who have no previous background in the law and legal system of medieval Wales. The legal history of Wales more generally was greatly served by the publication of Thomas Glyn Watkin's *The Legal History of Wales*, the first edition

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<sup>7</sup> Modesty forbids me from identifying the course on medieval law which could attract a student audience of around 90 persons to lectures in the 1980s!

<sup>8</sup> For details of all the material in this paragraph see Jenkins (2003). The Conference was held at Dublin in 2003, being incorporated into the "British and Irish Legal History Conference" for that event. It was due to be held, with the collaboration of the Irish Legal History Society in Belfast in 2021 but the coronavirus pandemic has led to the postponement of that event until 2022.

<sup>9</sup> In addition to the paper by Dafydd Jenkins an address on these matters was given to the 2007 conference at Oxford by the eminent legal historian Patrick Polden, though it was unpublished. I am grateful for his help.

of which emerged in 2007. There is now no excuse for legal historians to ignore the Welsh experience.

The title of this article promised a history of legal history in England and Wales. Yet no more recent survey than those I have discussed above has, to the best of my knowledge, been conducted in the years which followed. The impact of COVID-19, still rampant at the time of writing, on British universities remains to be seen, but it may be considerable and may extend even to the breadth of syllabuses offered in particular institutions. A survey conducted in 2019 might have assisted in the writing of this piece, one conducted in, say, 2025 might be even more revealing. If we are to gauge the current state of the discipline in the universities (and in particular the Law Schools) of that jurisdiction then we have to rely on observation and anecdote. I do not, accordingly, claim too much for the objectivity of all the remarks which follow and still less am I able to predict the future of the discipline.

Let us begin with a positive note. The revolution sparked by the internet has had an impact on the study of legal history as it has on the rest of the world. Digitisation of primary source material has had enormous advantages for scholars, particularly those who live and work far from the archival repositories which hold the originals. David Seipp's online provision of yearbook material<sup>10</sup>, or the vast repository of the Anglo-American Legal Tradition site<sup>11</sup>, for example, allow access to sources which would have seemed impossible only a relatively short while ago. Early printed books, statutes, pictorial images and almost everything else can now be made available by a click or a tap: the long train journey and the limp sandwich are no longer a precondition of scholarly engagement with the law of the past. Access to material has been made easier and more democratic, though the meaning, context and use of that material still demand the scholar's skill and judgment. Particular societies may have a web presence promoting legal-historical study<sup>12</sup>, whilst blog posts and online fora, including social media connections, allow not only an engagement with the work of other researchers in the area but also the facilitation of contact with them. Twitter has become, particularly, to judge from my own experience during the pandemic, a substitute for the conference bar for the exchange of ideas, interests and contacts.

Another positive development has been the growth of legal historical research, particularly amongst graduate students and early-career academics. Baker largely excluded information on postgraduate research from his survey on the legitimate

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<sup>10</sup> *Medieval English Legal History. An Index and Paraphrase of Printed Year Book Reports, 1268–1535*, <https://www.bu.edu/law/faculty-scholarship/legal-history-the-year-books/>, Accessed 4 January, 2021.

<sup>11</sup> *Anglo-American Legal Tradition*, [aalt.law.uh.edu](http://aalt.law.uh.edu), Accessed 4 January, 2021.

<sup>12</sup> Given my desire to include Welsh material here I feel bound to mention <http://welshlegal-history.org/> and <http://cyfraith-hywel.cymru.ac.uk/index.php>, but many other interesting sites are to be found, of course, by recourse to a search engine.



basis that such work was as likely to be carried on in History as in Law faculties.<sup>13</sup> The Slatter and Ireland survey similarly concentrated on undergraduate courses and, as I have said, no contemporary survey exists to substantiate this claim that there has been an increase. Yet it seems to me that the number of students completing research at Master's or Doctoral level has increased significantly. Firstly the gap, as we will suggest later, between the subject matter of research in Law and History departments has narrowed and new and attractive fields of inquiry established. Secondly I think that changes in university education have promoted this trend towards research degrees. With a greater proportion of the population of England and Wales graduating from universities the need to stand out, particularly in those who seek to pursue an academic career has increased.<sup>14</sup> Moreover the demands on even a newly-appointed lecturer to contribute to her department's research profile (now, since the introduction of the Research Assessment Exercise and subsequently Research Excellence Framework, an important measurable "audit" with real-world implications for both institutions and individuals) means that a Ph.D., which can be drawn upon for immediate publications ("hitting the ground running" in the jargon) becomes a particularly valuable asset in a job applicant. Those from other countries, or other disciplines, may find that a rather strange statement. But a doctorate was not an expected or indeed a usual qualification for law teachers in the past. I have always suspected that young, bright lawyers were snapped up early by universities, eager to exploit their enthusiasm before they realised that their degree might yield rather greater financial rewards in other spheres of employment. Whatever the reason it became increasingly clear to me over the last two decades or so that at graduation the more senior (in both age and position) members of the Department mostly turned out decorated by relatively humble strips of silk or fur, being increasingly upstaged by the magnificent robes sported by more recent appointees!

Many of the theses I have supervised or examined over the last ten years or so have taken as their subject aspects of the history of crime and punishment. This is, of course, a self-selecting sample, as this is an area in which I work. Yet I suspect that it is also an area which has witnessed a real growth, at both undergraduate and postgraduate level. There are a number of reasons which may explain this trend. It was noted earlier that a pioneering course along these lines had been noted in a polytechnic in the 1983 survey and it may be that the expansion of the university sector has seen a greater openness to the social sciences which has spread throughout the sector as a whole. Criminology would seem to be a popular student choice and has been adopted within older law schools as an alternative to traditional law degrees, which,

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<sup>13</sup> Baker did note the taught Postgraduate courses at Cambridge and London.

<sup>14</sup> I see that the first research degree on a legal history subject which I supervised was completed in 1984. It was a weighty and scholarly dissertation which was submitted as an LL.M. Today I think it might even have been worthy of a doctorate.

it must be said, no longer offer the guarantee of a career path which once they did. Aberystwyth's Law Department became a Department of Law and Criminology in 2005 and a course entitled "A History of Criminology" was introduced as part of the new syllabus. At the same time History scholarship has continued to investigate social-historical topics, including the history of crime, and it is now difficult to conceive of a history syllabus which does not incorporate such an approach. Theoretical analysis of the state and its powers has also had an impact across a range of disciplines, with works such as Michel Foucault's *Discipline and Punish* having an influence beyond a rather specialist audience of prison historians. If this seems to speak of an increased fluidity across disciplinary boundaries then that, while true, is not absolute. There are many, I suspect, who regard themselves as "legal historians" who would cavil at the idea that the label should be attached to someone writing about social attitudes to riots or to popular extra-judicial punishment rituals. Whether this attitude is articulated or not it seems clear to me that there is a noticeable difference between the background, methodology and profile of those who attend a Crime Historians meeting and those at a British Legal History Conference. Almost as a token of its arrival as an established discipline "Historical Criminology," the title which seems to have become attached to this area of interest, has now developed its own introspective turn, with scholars investigating its nature as well as its objects.<sup>15</sup>

But not everything in the legal-historical garden is lovely. COVID-19 is having, and will have, effects as yet unknowable on the British university sector. Already before the pandemic some universities were looking to trim

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<sup>15</sup> See, for example Yeomans (2018), Churchill (2018) and Lawrence (2018). The "crime historians" and "historical criminologists," in my experience, tend to be (though these are not universal characteristics) younger and to work in newer institutions than the traditional "legal historians." As one who attends both kinds of conference I attach no value judgment to the distinction. As to whether it can be drawn at all, well that depends on the individual and the purpose. I don't worry about labels but about quality, but I concede that a cosy "broad church" attitude would overlook the very real difference between the study of nineteenth century prison conditions and the doctrinal development of medieval land law. I'm interested in both, but that may indicate a butterfly mentality rather than a theoretical position. For what it's worth, I think that land law, as has as much to offer social historians as crime (it's an offer some have gratefully accepted), whilst crime historians might benefit from a greater involvement with medieval ideas. For some points here see Ireland (2015). I should add one further observation at this point. There are now, I think, more women involved in both of these areas than there were forty years ago and this is clearly a change to be welcomed. Whether this simply reflects a general trend in academic life or is more specifically related to this subject matter, I cannot say. Nor indeed, in default of empirical evidence, am I able to state whether such a change has led to differences of approach to the discipline. There is no doubt that an increased concentration on gender, race, colonialism, as well as a greater engagement with political and social theory is evident in more recent teaching and research. Whilst such developments seem to reach across university disciplines more widely, they seem to have a very real importance for those interested in law, crime and their social framework.

budgets and cut expenditure. It may seem strange to suggest that any particular area of scholarship would suffer more than any other in the light of these more general trends. Yet I think it might, particularly in respect of teaching within law schools. As Departments of law pull in their horns they will inevitably focus on “core” teaching areas, those required for professional exemption purposes and expansion of the syllabus beyond those legal monoliths will probably (and naturally) concentrate on subjects which will appear more eye-catching and contemporary. Moreover, teaching at universities now makes more use of those on short-term contracts, while older entrenched members of the profession retire. The individual enthusiasm for the subject which the 1983 survey showed to be so important for its introduction to a syllabus and the time needed to devise and consolidate new courses are not assisted by a system facing economic retrenchment. I may be pessimistic and mistaken in these assumptions, but they represent a genuine, rather than a self-serving, concern. When I took early retirement from Aberystwyth, where, as we have seen, legal history was introduced as an undergraduate course in 1911, I knew that the medieval course I had taught for nearly forty years would go with me. This was not because of hostility or lack of interest, but simply a matter of practical necessity.<sup>16</sup> It may be that other courses, particularly those of a more traditional nature, will meet the same fate.<sup>17</sup>

This is mere speculation. There is another, more positive, way of looking at the future of legal history as a discipline. I suspect, though I do not know, that it may grow in significance within history faculties, as interdisciplinarity continues to be a goal within academic life. Yet the subject need not be handed completely to colleagues outside the law school. Given that the supply of law graduates in England and Wales may continue to outstrip the demand of the traditional legal professions, a bold and confident approach to the subject, by individual teachers and by those who run departments and universities may seek to position the study of the history of law as part of a wider, more analytical approach to the totality of legal study, as indeed was its proclaimed role when it was first establishing itself. A sense of perspective, a nuanced understanding of cause and effect and of the motors and processes of legal change, could be better promoted as deepening the range of transferable skills so valuable to the modern law graduate. We need to point out the advantages of studying legal

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<sup>16</sup> Welsh medieval law teaching had been unavailable to law students at Aberystwyth some years earlier on the retirement of Professor J.B. Smith. It retains a toehold at Swansea University. At Aberystwyth a course combining the history of crime, punishment and criminology remains on the syllabus, itself representing the turn towards this area of interest addressed in this article. I don't want to sound too personally distressed here, since teaching in these other areas was itself pioneered at Aberystwyth by myself!

<sup>17</sup> For attempts to identify and engage with challenges for the future of legal education more generally see Denvir (2020).

history, stressing its centrality to a real understanding of the law and the society within which it operates, rather than see it as a “niche” interest or the luxury of more expansive times.<sup>18</sup>

For as long as law is taught in universities its history will necessarily be of interest to scholars, for no-one with a real interest in the law can fail to grasp the importance of where it comes from. Legal rules are constructions of individuals and individuals, to be understood fully, must be historically situated. For some this interest will be functional and perfunctory (“what was the intention of parliament?”) but others will wish to go further and deeper. Such an exercise will be prompted not merely by a desire to demonstrate that academic lawyers are rather more than the mechanics of a morally dubious trade which some more traditional university types considered them when they first appeared in the Senior Common Rooms. The history of law is rich and fascinating, but it is also important. The large, excited and scholarly assemblies at legal history conferences testify to these characteristics. The publication of this special edition of the current journal and the warmth of the international contacts which make it possible only serve to underline them.

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<sup>18</sup> This paper was completed before the publication of Russell Sandberg’s book *Subversive Legal History: A Manifesto for the Future of Legal History*. Sandberg argues for the centrality of historical analysis in Law Schools. I can only hope that such a position will become a reality in the future.

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