

William & Mary Law Review

Volume 23 (1981-1982)
Issue 4 *Legal History Symposium*

Article 2

May 1982

Introduction to Legal History Symposium

John Bernard Corr

Follow this and additional works at: <https://scholarship.law.wm.edu/wmlr>



Part of the [Legal History Commons](#)

Repository Citation

John Bernard Corr, *Introduction to Legal History Symposium*, 23 Wm. & Mary L. Rev. 567 (1982), <https://scholarship.law.wm.edu/wmlr/vol23/iss4/2>

Copyright c 1982 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmlr>

WILLIAM AND MARY LAW REVIEW

VOLUME 23

SUMMER 1982

NUMBER 4

INTRODUCTION

JOHN B. CORR*

The opportunity to write an introduction to William and Mary's Legal History Symposium is the sort of chance no opinionated student of legal history can easily ignore. Even a few years' flailing at the field is typically sufficient to engender notions that one understands its problems and can elaborate upon them at length. Fortified with such notions, I would like to address one problem of legal history with which I have wrestled for the last two years. It goes to the question of what teaching legal history can be expected to do for law students, or what lasting value can be derived from courses in the area.

In one way it may be unnecessary to "sell" legal history to lawyers, for the experience of the last decade has been one of growing support for increasing the exposure of law students to the field. Attempts to "broaden" legal training have brought in their wake an enthusiasm for areas such as legal history that can only be described as heartening, provided that expectations for what the discipline can do are realistic. That expectations can be excessive, however, may be demonstrated by recounting a personal experience—my own first uncertain contact with legal history and its perceived role in a law school curriculum.

My experience occurred only a few years ago, when I used the

* Assistant Professor of Law, Marshall-Wythe School of Law, College of William and Mary. B.A., M.A., John Carroll University; Ph.D., Kent State University; J.D., Georgetown University.

services of the Association of American Law Schools, including their annual job interview convention in Chicago, to enter the legal teaching profession. While filling out that part of the standardized form where applicants indicate preferences as to subject matter areas in which to teach, I included legal history among my courses of choice. Although free of any formal training in the topic, I was blithely confident that degrees in history and law qualified me at least to begin learning about the area.

Whatever that approach may have lacked in careful thought, it proved to be beneficial to my job prospects. A surprising number of schools had concluded that they needed someone to work in legal history, and over the course of the convention I was questioned at length by faculty representatives eager to fill what they saw as a hole in their curriculum. Indeed, so great was the enthusiasm of many law school representatives, most of whom also had no prior experience with legal history, that I began to wonder if even an extraordinary effort in the classroom would suffice to meet their imposing expectations for a legal history course. At the extreme, those expectations were encapsulated in the remarks of one interviewer, who stood out for the intensity of her approach to legal history. After she described her school's proposed legal history course as, essentially, a cornerstone of the curriculum, I suggested that perhaps less should be expected from a single offering in a field outside standard law courses. She took issue, explaining that her husband, who practiced antitrust law and read legal history for relaxation, got a new idea for his practice from every history book he read.¹ Unusual examples, of course, may misrepresent as much as they dramatize, but I think that my experience in Chicago suggests a need for some discussion of what we who work in legal history think we can realistically contribute to legal training, and how best we can do it.

For starters, we cannot produce mini-historians. Training in history is not something to be done on the cheap, as baggage attached to law. Indeed, as has been pointed out many times, the nature of

1. Historians, of course, generally have not shared lawyers' enthusiasm for the field. My own graduate training probably was typical of that accorded embryonic historians, in that no serious assessment of law as a dynamic force in history ever was attempted. Economics, politics, geography, and ideas all were permitted to play upon the stage, but law was treated, if at all, as a product, and a minor one at that, of the interplay of other forces.

legal training and historical training are almost antithetical, and legal history itself is something of a hybrid.² Moreover, the goals of graduate training in history—familiarity with the subject matter and existing literature, and proficiency in techniques of historical research and analysis—cannot be duplicated in legal history courses in law schools, whose students typically arrive with limited backgrounds in history and whose libraries and related research facilities necessarily emphasize other subjects. Thus, the goals of such courses must be scaled to the resources. While different goals may be chosen, choices have to be made, and the selection of one approach to legal history certainly will reduce the exposure of law students to other facets of the historical experience. What, then, should be the approach to teaching legal history?

A course emphasizing transmission of historical data probably is the least desirable approach. Although the subject matter, presented in a narrative fashion, almost certainly would retain student interest, the approach would be at cross purposes with the rest of legal education, which encourages a more aggressive approach by law students and seeks to teach them to think independently. For different reasons, courses built around practical experience in historical research and writing also are less desirable. There is, in the first instance, a need to have a body of historical/legal materials available for students to dig in, and even if that prerequisite is satisfied there is the prospect that insufficient time will be available in a single course to indoctrinate students in the necessarily different research methods of history. Further, even if all of the above objectives could be accomplished, it is hard to see how the experience of a law student will have been broadened in any lasting way. Lawyers rarely have occasion to do research in history, and the benefit of having done it once will drain away as the memory of the experience fades.

What remains is the prospect of teaching law students to think—but this time as historians. No one can deny that lawyers and historians can look at a particular piece of material, such as a judicial opinion, through different eyes. Exposure to a different approach, a different mode of analysis, can only be beneficial to students whose legal training is indoctrination in a particular method

2. See, e.g., Orth, *Doing Legal History*, 14 *IR. JUR.* 114 (1979).

of thought, almost to the exclusion of other, non-lawyerly ways of thinking. Historical resources need not be extensive for such a course, and the willingness of students to open their minds to other ways of thinking is more important than their prior formal training in history. Most important, the benefits can be both practical and lasting. Future lawyers will recognize, on those occasions when they must search old cases, that an ability to place the cases in historical perspective can only enhance the effect of traditional legal analysis. In addition, every time a lawyer reads a published work in history, he will read it through more critical eyes, reinforcing his educational experience as he enjoys the greater satisfaction of more informed reading. Not a bad result, even if it produces no new ideas for an antitrust practice.

Legal historians will recognize that I have not suggested anything new. Moreover, whatever I believe about the utility of legal history courses that emphasize transmission of data and theories, or one-time exercises in research, there obviously is a great deal to be said for trying different approaches. What I hope I have suggested, however, is that legal history in a law school curriculum is a fragile, delicate vehicle for broadening the horizons of law students. If it carries too heavy a burden of expectations—if lawyers expect it to produce the well-rounded approach to human experience which laymen seek in the field of history—a legal history course may break down under the weight of such an ambitious goal. If the focus is on the more modest aim of demonstrating that other ways of thinking exist and are useful as well as intellectually rewarding, however, the ambitious goal of broadening the outlook of our students may come a bit closer to fruition. That would be a fine return on a necessarily modest investment in legal history.