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A History of Legal History Courses Offered in American Law Schools

by JOAN SIDNEY HOWLAND*

"History compels us to fasten on abiding issues, and rescues us from the temporary and transient."¹

I INTRODUCTION

Of the 202 law schools presently approved by the American Bar Association ("ABA"), 177 offer at least one, if not several, legal history courses.² Their course titles, which go far beyond the expected appellations of "American Legal History" and "Anglo-American Legal History," reflect the richness and depth of these offerings. To name just a few, the cornucopia of currently-available options includes: "American Legal History: Law and Social Reform Movements" (Harvard); "Legal History: Transnational Imperial Contexts" (Virginia); "American Indian Legal History" (Minnesota); "British Legal History: From the Celts to the Industrial Age, 1-1890 CE" (Georgetown); and "Bloodfeuds" (Michigan).

Although legal history in some form has been taught since the first American law schools were established more than 200 years

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¹ LORD ACTON, A LECTURE ON THE STUDY OF HISTORY DELIVERED AT CAMBRIDGE, JUNE 11, 1895, at 5 (1896).

² These statistics were compiled in April 2013 from the information found on law school web sites.

ago, the present halcyon period is the result of an arduous, often controversial, evolution.³

II

LEGAL HISTORY COURSES FROM 1776 TO 1870

One could argue that legal history courses were the core of the first curricula in American law schools. By the late 1770s, professorships in law had been funded at four well-established colleges.⁴ These early law professorships did not (and were not meant to) offer a comprehensive education for those aspiring to become members of the bar.⁵ Students such as future U.S. Supreme Court Chief Justice John Marshall, who studied at the College of William and Mary under George Wythe for less than a year before becoming a practicing lawyer,⁶ received only minimal instruction in legal theory.

The lack of opportunity for rigorous training, fueled by the "market pressures" of an increasing number of young men who wanted a more in-depth legal education but who lacked the funds to travel across the Atlantic to study at the Inns of Court,⁷ led to the founding of approximately 20 private law schools within a span of less than 50 years.⁸ Although these institutions were unable to confer degrees, they frequently offered robust curriculums with classroom instruction on a wide range of legal topics as well as skills training in the form of moot courts.

³ In many ways, the history of legal history courses in American law schools is illustrative of the cyclical nature of curricular trends in legal education. While legal history courses have flourished during periods of flexibility and experimentation, they have languished or vanished altogether during times of more constricted approaches to instruction.

⁴ The College of William and Mary established the first professorship in law in 1779. A quick succession of similar law professorships were established at the University of Pennsylvania (1790), Columbia University (1794), and Transylvania University (1799). See ALFRED Z. REED, *TRAINING FOR THE PUBLIC PROFESSION OF LAW* 423 (1921).

⁵ Ralph Michael Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*, 57 CHI.-KENT L. REV. 429, 442 (1981).

⁶ R. KENT NEWMYER, *JOHN MARSHALL AND THE HEROIC AGE OF THE SUPREME COURT* 31-32 (2001).

⁷ *Id.*

⁸ Reed, *supra* note 4, at 431-33.

The Litchfield Law School, founded in 1784 by Tapping Reeve in Litchfield, Connecticut, was one of the most successful of these private enterprises. The school's 14-month curriculum consisted of approximately 16 lecture topics⁹ based on Blackstone's *Commentaries*, the seminal tome that has been described as "the first comprehensive account of England's legal past . . . where the past, the present, and the future of the law were merged into a single object of contemplation."¹⁰ Readings assigned to complement the lectures included Hale's *History of the Common Law*, which, although more general and less reflective than the *Commentaries*, was similarly an attempt to teach law through English legal history. When Harvard Law School was founded in 1817, the curriculum and materials used were very similar to those employed at Litchfield. This has led Professor Robert W. Gordon to contend that when Harvard developed its law school's curriculum, "every course was partly a legal history course."¹¹

Although most lawyers still primarily received their legal training through the "desultory method of private reading and office apprenticeships,"¹² the number of university-connected and private American law schools had increased to 15 by 1850, 21 by 1860, and 31 by 1870.¹³ Many of these law schools required only one year of study for graduation, but a growing number were adopting a two-year curriculum.¹⁴

Under either scenario, however, there was little room for innovation or expansion of the course of study. Instruction method and the topics covered had changed little since the early 1800s, except for the introduction of the "text-book method," which was characterized by minimal lecture, memorization, and recitation.¹⁵ Harvard,

⁹ *Id.* at 453.

¹⁰ D.J. Boorstin, *Tradition and Method in Legal History*, 54 HARV. L. REV. 424, 425 n.3 (1941).

¹¹ Robert W. Gordon, *Historicism in Legal History*, 90 YALE L.J. 1017, 1051 (1981). See also Jonathan Rose, *Studying the Past: The Nature and Development of Legal History as an Academic Discipline*, 31 J. LEGAL HIST. 101, 123 (2010).

¹² ALBERT J. HARNO, *LEGAL EDUCATION IN THE UNITED STATES: A REPORT PREPARED FOR THE SURVEY OF THE LEGAL PROFESSION* 52 (1953).

¹³ *Id.* at 51.

¹⁴ LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 609 (2d ed. 1985) [hereinafter *American Law*].

¹⁵ *Id.* at 610.

which by 1845 was regarded as the country's leading law school, had increasingly taken on the attributes of a trade school with an almost total absence of exploratory instruction, curricular innovation, and intellectual stimulation.¹⁶ Certainly a course as enlightening as legal history had no place in most law schools during the period prior to and immediately after the Civil War.

III

LEGAL HISTORY COURSES FROM 1870 TO 1900

As the 1870s opened and the United States became a solidly reunited, forward-looking country, many disciplines in higher education were reevaluating and expanding their intellectual boundaries.¹⁷ Yale was one of the first law schools to offer electives or "borderland" classes such as "Patents," "Canon Law," and "Railroad Law."¹⁸ Students entering the school in 1874 were required to take "History of American Law" and "International Law," along with more traditional offerings.

Meanwhile, some 100 hundred miles away in Cambridge, Massachusetts, under the recently-appointed and visionary Christopher Columbus Langdell, Harvard Law School revolutionized legal education by introducing the case method of teaching law and revitalizing the classroom experience through the almost exclusive use of Socratic instruction.¹⁹ During his 20-year tenure as dean, Langdell revamped the curriculum by adding such modern courses as "Partnership and Corporations" (1875), "Conflict of Laws" (1879), and "Damages" (1893). Although the curriculum still primarily focused on the technical aspects of law, special courses gradually were added, including perhaps the first course entitled simply "Legal History," offered on a somewhat irregular basis beginning in 1886.²⁰

In 1891, a report published by William T. Harris, the U.S. Commissioner of Education, devoted nearly 300 pages to a thorough

¹⁶ ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 15 n.46 (1983).

¹⁷ American Law, *supra* note 14, at 611.

¹⁸ Reed, *supra* note 4, at 299.

¹⁹ American Law, *supra* note 14, at 611.

²⁰ THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL, 1817-1917, at 76-77 (1917).

analysis of legal education, both domestically and in a select number of foreign jurisdictions.²¹ The report postulated that the curricula of America's 56 law schools were primarily "confined to the branches of practical private law which a student finds of use in the first years of his practice."²² The report went on to assert: "The various subjects of history and theory of law and government appear to be neglected, except in three or four schools. . . . The history of American law and English law is taught by lectures in perhaps six schools."²³

The report included a section entitled "Courses of Study in Law Schools in 1891; Statistics, subjects taught, text-books used, and time allotted, as far as reported in the catalogues of the institutions. . . ."²⁴ According to this data, 10 law schools had legal history courses, with a few institutions, including Columbia, Cornell, and Harvard, having multiple course offerings. The majority of courses were titled with some variant of "History of American Constitutional Law" or "History of European (or British) Constitutional Law." The University of Michigan offered three third-year ("post-graduate") courses: "History of Treaties," "History of Real Property," and "History of the Common Law." Yale required all first-year law students to take a course with the intriguing title "Native History," in addition to offering graduate courses in "Early History of Real Property" and "Political Science and History." The first-year curriculum at DePauw University's law school included a course entitled "Sources of Law and Philosophy of Legal History."

The report concluded with three recommendations for improving legal education, one of which was: "A system of electives, now found necessary in almost every branch of education by reason of the extent of human learning . . . in which students shall be required in addition to the usual course[s] in private law . . . to pursue at

²¹ REPORT OF THE COMMISSIONER OF EDUCATION FOR THE YEAR 1890-91 (1894). The chapter on "Legal Education in the United States" spans pages 376-445 and includes an analysis of the legal education systems of Australia, Canada, China, Europe, Japan, and "Spanish America." Of special interest is the discussion of legal education in Japan, which noted that the Imperial University's four-year program in law included courses in the history of legal institutions in Japan, the history of French law, and the history of German law.

²² *Id.* at 378.

²³ *Id.* at 379.

²⁴ *Id.* at 414.

least a certain number of subjects in public law, international law, [and] the history and theory of the law. . . ."²⁵

IV

LEGAL HISTORY COURSES FROM 1900 TO 1945

An unfortunate consequence of the traditional case method is that it inhibits a broad and multi-dimensional approach to questions beyond the simple law of the case.²⁶ Yet American law schools at the beginning of the 20th century embraced the process so enthusiastically and unimaginably that a general narrowing, rather than expansion, of the legal educational experience occurred. In his remarks at the 1915 Annual Meeting of the Association of American Law Schools ("AALS"), Publications Committee Chair Ernest G. Lorenzen of the University of Minnesota Law School decried the lack of legal educators who were willing to embrace new and broader approaches to the study of law:

Take Legal History. Counting an average of five professors to each of the fifty faculties represented in the Association, we should have some two hundred and fifty scholars devoting themselves to legal scholarship as a profession. Yet, judging from the books published, the essays published, and the courses offered, it may be said with little exaggeration nobody writes, nobody teaches, nobody studies, Legal History.²⁷

Professor Lorenzen was not the only member of the legal academy to challenge the traditions of legal education and scholarship that had evolved from heresy to gospel since Langdell had joined the Harvard law faculty in 1869. By the 1920s and 1930s, the faculties of Columbia, Harvard, and Yale, along with other elite schools with robust curricula and productive faculties, were actively involved in curricular reform projects. Although the abandonment of the case method was a radical step few schools seemed willing to contemplate, the writings of Roscoe Pound,²⁸ Wesley Newcomb

²⁵ *Id.* at 385.

²⁶ Stein, *supra* note 5, at 454.

²⁷ *Meeting of the Association of American Law Schools—1915*, 4 AM. L. SCH. REV. 65, 79 (1916).

²⁸ Roscoe Pound, *The Scope and Purpose of Sociological Jurisprudence*, 24 HARV. L. REV. 591 (1911).

Hohfeld,²⁹ and John H. Wigmore³⁰ stimulated broad and cross-institutional discussion about sociological jurisprudence as well as “the importance of bringing legal educational methods more into line with the modern ideas as to the nature and function of the law.”³¹

Although legal educators and members of the practicing bar were undoubtedly watching the elite law schools’ forays into educational reform with a mixture of skepticism and wariness, there also was intense curiosity about these unconventional efforts. The *Chicago Legal Times*, for example, published as a news item an excerpt from Roscoe Pound’s annual dean’s report to President Abbott L. Lowell of Harvard University. Under the headline “Need of Professorships,” the text reads: “Dean Roscoe Pound . . . makes an urgent plea for more professorships in the Harvard Law School in the field[s] of criminal law, legislation, judicial organization and administration and of legal history.”³²

One significant development during the period between the two World Wars stems from Columbia Law School’s comprehensive study of legal education, which was conducted with “the view of devising, and putting into effect, plans for . . . improvement.”³³ This project resulted in the systematic revision of Columbia’s curriculum and general approach to legal education. The goal was to produce a curriculum that was relevant to the routine practice of law as well as a broadening of the educational experience. As part of this effort, Columbia took the radical step in the Fall 1928 semester of introducing a required first-year course in legal history entitled “Development of Legal Institutions.” The course dealt with

the history of English courts; the reception of the common law and the development of the law through custom, precedent and legislation; and the

²⁹ Wesley Newcomb Hohfeld, *A Vital School of Jurisprudence and Law: Have American Universities Awakened to the Enlarged Opportunities and Responsibilities of the Present Day?*, 14 ASS’N AM. L. SCHOOLS HANDBOOK 76 (1914).

³⁰ John H. Wigmore, *Nova Methodus Discendae Docendaeque Jurisprudentiae*, 30 HARV. L. REV. 812 (1917).

³¹ COMMITTEE OF THE FACULTY OF THE HARVARD LAW SCHOOL, REPORT OF CERTAIN RECENT TENDENCIES IN LAW SCHOOL TEACHING 9 (1932) [hereinafter *Recent Tendencies*].

³² *Need of Professorships in Criminal Law, Legislation, Judicial Organization and Administration and Legal History*, 57 CHI. LEGAL NEWS 303, 303 (Apr. 9, 1925).

³³ FACULTY OF LAW OF COLUMBIA UNIVERSITY, SUMMARY OF STUDIES IN LEGAL EDUCATION 5 (1928).

effects of social and economic factors on the growth of law, as illustrated by the criminal law of early New England and by the development of the theory of corporate personality in the English common law.³⁴

Columbia's "experiment" garnered grudging praise from students:

The background acquired by the students appears to have proved useful in many other courses, and the students themselves, although it is said that they do not particularly like the [legal history] course while taking it, appear to recognize in their second and third years that it was of great value to them.³⁵

Inspired by the innovations at Columbia, Harvard embarked on its own curriculum study during the 1931-32 academic year. Although a faculty committee conducted an extensive evaluation of the published literature on legal education, it focused most of its "investigation" on the law schools at Columbia and Yale.³⁶ An informative table in the committee's final report indicates that Columbia was the only one of the three law schools to offer a legal history course as part of the three-year degree program.³⁷ However, for students who wished to pursue graduate courses in law under the category "Legal history and comparative law," Columbia, Yale, and Harvard offered three, four, and 10 courses, respectively.³⁸

Over the next several years, Harvard developed a curriculum rich with seminars and small classes to respond to unique student interests. In the 1939-40 academic year, Harvard introduced a new course taught by historian Daniel J. Boorstin, who was then an instructor at Harvard University teaching in both the history department and the law school. Seeking to "place legal history squarely within the frame of the life of a given time,"³⁹ Boorstin focused his class on the Industrial Revolution in England from 1750 to 1850.⁴⁰

³⁴ Recent Tendencies, *supra* note 31, at 20-21. The University of Virginia was one of the few, if perhaps the only, additional law school to have a legal history requirement, although the course was taken in a student's third year of study rather than the first year. See ALFRED Z. REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA 231 (1928).

³⁵ Recent Tendencies, *supra* note 31, at 20-21.

³⁶ *Id.* at 11-12.

³⁷ *Id.* at 70-72.

³⁸ *Id.* at 59.

³⁹ ESTHER BROWN, LAWYERS, LAW SCHOOLS, AND THE PUBLIC SERVICE 148 (1948).

⁴⁰ *Id.*

The attempts at curricular and administrative reform at elite schools in the 1920s and 1930s had mixed results. Unfortunately, even those reforms that were successful had little effect on legal education generally, except perhaps at the "two dozen leading schools."⁴¹

In the decade immediately before the outbreak of World War II, a significant movement, focused on developing a more practical or "functional" approach to legal education, surfaced. This effort was aimed at better preparing law students to work in business, government, social services, and other non-law firm environments. As a proponent of this approach, the Northwestern University law school faculty redesigned its curriculum, developing a "formal classroom [period of instruction for] two years," to be followed by "laboratory studies" for one or two more years.⁴² Courses in the first-year curriculum were divided into three general subject areas: 1) Constitutional Government; 2) Agencies of Business; and 3) Judicial Process.

In describing his law school's new program, Dean Leon Green noted that the first course offered within the Judicial Process segment was "designed to show the growth of the judicial process. . . . Here legal history is at a premium."⁴³ Therefore, although legal history was not added as a singular course in the first-year curriculum, the Northwestern faculty obviously recognized that the topic was important enough for a heavy emphasis.

V

LEGAL HISTORY COURSES FROM 1945 TO 1970

After World War II, law schools scrambled to accommodate the needs of returning veterans, who either wanted to quickly complete their interrupted legal educations or, for those who had not even started their professional training, accelerate the educational process. There was little inclination among law school faculties for either reflection on, or experimentation with, curricular content.

⁴¹ Stevens, *supra* note 16, at 163 (citing ESTHER BROWN, *LAWYERS AND THE PROMOTION OF JUSTICE* 86 (1938)). For a good discussion of critical developments in legal education in the 1920s and 1930s, see generally Stevens, *supra* note 16, at 153-71.

⁴² Leon Green, *A New Program in Legal Education*, 17 A.B.A. J. 299 (1931).

⁴³ *Id.* at 300.

In 1948, Esther Lucile Brown, Director of the Department of Studies in the Professions at the Russell Sage Foundation, published a study of legal education entitled "Lawyers, Law Schools, and the Public Service."⁴⁴ Her data and conclusions were based on visits she made to 23 law schools between 1939 and 1941, before her efforts were interrupted by the entry of the United States into World War II. However, little in legal education had changed in the course of seven years, and Dr. Brown's astute insights and cautionary observations reflected an accurate picture of legal education at the mid-point of the 20th century.

In examining the adequacy of law school curricula to prepare students to become informed, reflective, and competent members of the legal profession, Dr. Brown quoted Professor David F. Cavers of the Harvard Law School:

The American law school has neglected the development of that sense of the past, that perspective in time, which can be conveniently labeled "history". . . . The significance of history to law lies in its disclosure of the interaction of law and the social matrix in which it is formed. Cases reveal in a fragmentary way the adjustments in law; they are sorry clues to the forces which brought those adjustments about.⁴⁵

Generally critical of the lack of vision law schools displayed in failing to promote legal history within their curriculums, Dr. Brown commented:

If . . . legal history was offered to students as something which is essential to the intelligent self-consciousness of the lawyer in modern society—if they were pointed to the importance of understanding the process of legal adjustment to a changing economic order—then they would conclude that legal history is a rich field in which to work.⁴⁶

Dr. Brown's propositions fell on the deaf ears of both law professors and the students enrolled in their institutions. In the late 1940s, "the major [law] schools were suffering from a kind of intellectual ennui, the state of the schools outside the elite and middle-level circles was even less enviable."⁴⁷ John G. Hervey, the former law

⁴⁴ Brown, *supra* note 39.

⁴⁵ *Id.* at 146 (quoting David F. Cavers, *Education: The Law School's New Objective* 4-5 (paper presented to the Juristic Society, Mar. 26, 1941)).

⁴⁶ *Id.* at 150.

⁴⁷ Stevens, *supra* note 16, at 210.

dean at Temple University and the University of Oklahoma and adviser to the ABA Council of the Section of Legal Education and Admissions to the Bar, observed:

The curricula [in ABA accredited law schools is] fairly well standardized . . . the curricula have been fashioned largely around the subjects in which the graduates of the school must be examined for admission to practice. By and large, the law students have pressed for the “bread and butter” courses and the subjects specified in the rules for admission to practice. The law schools have tended, because of limited funds, inadequate facilities, and lethargy, to yield to the pressures.⁴⁸

Dean Hervey went on to insist: “There is need for further experimentation in course offerings and teaching techniques . . . the call for distinctive programs was never louder.”⁴⁹

Although legal education may have been in a malaise in regard to curricular innovation in the years immediately following World War II, the growth in quality law schools was impressive. Between 1945 and 1959, 24 law schools were accredited by the ABA. The number of students graduating and entering the legal profession was also burgeoning, which understandably brought legal education to the attention of the state bar organizations.

In 1947, for example, the Board of Governors of the State Bar of California appointed a committee of three non-California lawyers to study the scope and quality of legal education being offered by the state’s 15 law schools. The committee examined the administrative structure, quality of faculty and students, finances, and curriculum of each institution. Its final report, issued in 1949 and titled “Legal Education and Admissions to the Bar in California,”⁵⁰ reflected the committee’s significant concerns about the standardization and narrowness of the curriculums in all of the law schools, regardless of size or stature. In a chapter called “The Present Status of Legal Education in California,” the committee commented:

The number, character, and arrangement of courses in any law school must depend on a variety of factors peculiar to that school. . . . [It is not] the function of this Survey to attempt a solution of the dilemma which

⁴⁸ LOWELL S. NICHOLSON, *THE LAW SCHOOLS IN THE UNITED STATES* 21 (1958) (quoting ABA Survey of the Legal Profession).

⁴⁹ *Id.*

⁵⁰ REPORT OF THE SPECIAL SURVEY BOARD, *LEGAL EDUCATION AND ADMISSIONS TO THE BAR IN CALIFORNIA* (1949).

perennially confronts American legal education: Whether to emphasize so-called practical subjects and thus run the danger of degenerating to mere trade school standards, or to emphasize legal history and theory, regarding the study of law as simply one aspect of the study of the *universitas* of knowledge with which an institution of higher learning must be primarily concerned. The resolution of this dilemma can come only by continued, intelligent, and free experimentation. . . .⁵¹

The report further observed:

The almost complete standardization of curricula in most of the California [law] schools comes as something of a shock to any outside observer. That shock is accentuated by the fact that only two of the California law schools, California and the University of San Francisco, have a course on Jurisprudence, while only one, San Francisco Law School, has a course on Legal History. If the law is to remain a learned profession in California, this state of affairs cannot continue.⁵²

In the late 1940s and 1950s, the elite schools were once again the outliers in promoting legal history as a core elective within their curriculums. In 1949, the Harvard Law School faculty approved yet another reorganization of its curriculum. The revised course plan included "American Legal History," a two-credit elective to be taught in the first semester of the second year. In anticipation of teaching this course, Professor Mark De Wolfe Howe collected and published the materials that needed to be "brought together with the immediate purpose of meeting the needs of [the] course."⁵³

Howe's preface indicates that he hoped his compilation would encourage the study of American legal history for both scholarly and academic purposes. He also acknowledged that the materials he compiled were far from comprehensive and suggested that a larger corpus could be developed with the contributions of many other legal scholars. He closed his introductory remarks with the prophetic words, "[The preparation of a compilation] will only be possible if a generation of scholars is at long last born which finds productive fascination in the history of American law. It is my hope

⁵¹ *Id.* at 55-56.

⁵² *Id.* at 55.

⁵³ MARK DE WOLFE HOWE, READINGS IN AMERICAN LEGAL HISTORY iii (1949). For an evaluation of this compilation, see Willard Hurst, *Book Review*, 63 HARV. L. REV. 553 (1950).

that the publication of this volume will do something to encourage that fascination."⁵⁴

In May 1956, the Yale Law School completed a curriculum overhaul that introduced specific elective courses determined to be of "cultural significance to a well-educated lawyer."⁵⁵ These electives included courses in "American Legal History" and "English Legal History" which, as acknowledged by the Curriculum Committee, were "awkwardly lumped together" in a cluster with "Comparative Law" and "Soviet Law."⁵⁶ Recognizing that senior faculty might be reluctant to substitute teaching seminars for teaching "certain standard courses," the Curriculum Committee commented, "One practical pull of [teaching] . . . seminars over courses will be the absence of blue books."⁵⁷

In 1950, Willard Hurst had identified American legal history as "a newcomer to the law curriculum"⁵⁸ and, indeed, he could have added that legal history in general had not been a particularly consistent resident within the curriculum either. However, by the 1960s, with the increased acceptance of the elective system, legal history courses had become a steadfast, if not particularly frequent, fixture in legal education.

A study conducted during the 1961-62 academic year revealed that of 115 law schools surveyed, 31 included a course on "Legal History" in their curricula.⁵⁹ These courses covered a wide range of focus, including "English Legal History," "American Legal History," "Comparative Legal History," and legal history as the core to an introduction of legal process.

Only one school—the University of Virginia—included a legal history course as a requirement for graduation. Ten schools offered legal history courses in the first year as a vehicle to introduce en-

⁵⁴ Howe, *supra* note 53, at iv.

⁵⁵ YALE LAW SCHOOL, SECOND INTERIM REPORT OF THE CURRICULUM COMMITTEE TO THE FACULTY ON THE NEW CURRICULUM (AS ADOPTED BY THE FACULTY, MAY 22, 1956) 17 (1956).

⁵⁶ *Id.*

⁵⁷ *Id.* at 19.

⁵⁸ Hurst, *supra* note 53, at 553.

⁵⁹ Edward D. Re, *Legal History Courses in American Law Schools*, 13 AM. U. L. REV. 45, 47 (1963). The study circulated surveys to the 132 law schools accredited by the ABA in 1961. The 115 schools that responded represented an 85.8% response rate.

tering students to legal principles within a historical context. However, the survey results indicated that most legal history courses were taught as third-year electives.⁶⁰ Of those schools that did not include legal history courses within their curricula, the principal reason for the omission was that "their curriculum was already overcrowded, and there was too much pressure for more 'practical courses.'"⁶¹

In reporting the survey results, Professor Edward D. Re concluded realistically, "The importance attributed by some law schools to the place of Legal History in their curricula may be regarded as discouraging."⁶² He went on to say: "The statistics and comments speak for themselves. They do not portray a picture that would please those who are convinced of the importance of legal history in molding legal scholarship and a well-educated bench and bar."⁶³

Within two years of the publication of Professor Re's survey, historian Daniel J. Boorstin voiced a similar lament:

Despite the enormous investment in American law schools within universities, and the unprecedented proliferation of books about American law for practitioners, American legal history remains a Dark Continent. . . . [An] explanation is the increasing professionalization of American law schools, and . . . their myopic preoccupation with what is in current demand by practitioners. Decades pass, and, while lawyers, judges, and law professors repeat platitudes about their glorious professional past, they find no respectable place for legal history in their extensive curricula. Future historians will marvel that our society could have put the custody of our institutions into the hands of a profession with no historical perspective.⁶⁴

VI

LEGAL HISTORY COURSES FROM 1970 TO 1990

In the 1970s, a proliferation of legal history courses emerged at American law schools. In 1973, Professor Joseph H. Smith of Colum-

⁶⁰ *Id.* at 48.

⁶¹ *Id.* at 64.

⁶² *Id.*

⁶³ *Id.* at 65.

⁶⁴ DANIEL BOORSTIN, *THE AMERICANS: THE NATIONAL EXPERIENCE* 444 (1965). See also Calvin Woodward, *History, Legal History, and Legal Education*, 53 VA. L. REV. 89 (1967).

bia Law School, then Chair of the AALS Section on Legal History, compiled a report based on the results of a survey he had circulated to all of the law school faculty members of the Section regarding legal education and the extent to which legal history courses were present in their curriculums.⁶⁵ Although the usefulness of the report is diminished by his failure to disclose the number of questionnaires distributed or the percentage returned, the report did provide valuable and encouraging data.⁶⁶

Seventy-one of the 99 law schools represented by respondents indicated that a legal history course was offered within their curricula. The overwhelming majority of these courses were optional upper-division courses, although five law schools reported that completion of a legal history course was a degree requirement. In six of the responding schools, "legal history [was] one of from three to six perspective courses from which the student must elect one."⁶⁷ General legal history courses (touching on both American and English legal history) and strictly English legal history courses made up the largest percentage of the course offerings. Reflecting growing curricular and scholarly interest, 40 schools reported offering an American legal history course.⁶⁸ An abbreviated follow-up survey, published in 1976, confirmed the growing popularity of legal history with an even wider range of specialized courses, especially on aspects of American legal history.⁶⁹

The reasons behind this swell in interest, which continued well into the 1980s,⁷⁰ may be partly attributed to the growing number

⁶⁵ JOSEPH H. SMITH, REPORT ON THE TEACHING OF LEGAL HISTORY IN THE LAW SCHOOL (1973). See also David Raack, *Some Reflections on the Role of Legal History in Legal Education*, 26 DUQ. L. REV. 893, 895 (1988).

⁶⁶ *Id.* at 895.

⁶⁷ Smith, *supra* note 65, at 41a.

⁶⁸ Raack, *supra* note 65, at 896 n.13.

⁶⁹ Lawrence M. Friedman, *American Legal History: Past and Present*, 34 J. LEGAL EDUC. 563, 563 (1984) [hereinafter *Past and Present*]. See also Raack, *supra* note 65, at 899.

⁷⁰ See WILLIAM B. POWERS, A STUDY OF CONTEMPORARY LAW SCHOOL CURRICULA (1986). This survey of law school curricula from 1984 to 1986 includes data on the frequency with which various electives were offered. However, legal history was placed in the same general category as legal theory and philosophy. Therefore, although the data could be interpreted to confirm a significant presence of legal history electives at American law schools in the 1980s, the survey categories are too

of law schools. Twenty-nine additional schools received ABA approval between 1970 and 1989. The competition for developing innovative and intellectually stimulating curriculums that appealed to the needs and curiosities of both faculty and students increased dramatically. Most law schools, especially the well-established institutions, reduced the number of required courses in favor of providing students with elective course options that allowed for more intimate learning experiences and skills-training, including research and writing.⁷¹ Perhaps, however, the most obvious reason that legal history had matured by the late 1980s is that the synergy between the various approaches to the discipline had led to richer and more sophisticated scholarship.

VII CONCLUSION

Reflecting on the reasons that legal history is now taught in almost all American law schools, the most compelling is the groundbreaking work of a large corpus of stellar scholars since 1990. In addition, the emphasis on cross-disciplinary scholarship throughout the legal academy, especially at law schools connected to larger research universities, has served as a positive force in energizing legal history scholars and in incentivizing law school administrators to support these scholars' efforts. All of these factors have combined to inspire more academicians to pursue legal history as an intellectual focus and to attract more students interested in exploring legal principles beyond those concepts necessary for bar examinations or general practice purposes.

As legal education enters the second decade of the 21st century, legal history courses, after more than 200 years of challenges and successes, are finally flourishing, to the benefit of both the legal profession and society as a whole.

broad to support any definite conclusions. Nevertheless, in a 1984 article, another commentator declared that the field was "booming." See Past and Present, *supra* note 69, at 563.

⁷¹ As a result, another reason for the growing popularity of legal history seminars was that they often fulfilled a law school's upper-division writing requirement.