DOI: 10.15691/0719-9112Vol10n2a2

Legal History in the US and Latin America: Explaining a Methodological Divide

Historia del Derecho en Estados Unidos y América Latina: Explicando una División Metodológica

JUAN I. WILSON*

Abstract

Legal history is practiced differently in Latin America and the United States. While US legal history strives to be a form of social critique, questioning the role of law in producing and legitimizing social hierarchies, legal history in Latin America has mostly been developed as a form of antiquarianism. This paper attempts to describe the historical and theoretical reasons that explain this methodological divide, including the role that lawyers have played in either opening the field of law to the social sciences or insulating it from other disciplines.

Keywords: *Legal History; Methodology; Social Sciences; Critical Legal Studies; Lawyers; Latin America*.

Resumen

La historia del derecho se practica de maneras diferentes en Latinoamérica y Estados Unidos. Mientras que la historia del derecho en Estados Unidos intenta establecerse como una forma de crítica social, cuestionando el rol del derecho en producir y legitimar jerarquías sociales, la historia del derecho en Latinoamérica ha sido mayormente desarrollada como una forma de anticuarismo.

Palabras clave: *historia del derecho; metodología; ciencias sociales; estudios críticos del derecho; juristas; Latinoamérica*.

* The University of Chicago, Illinois, USA (jiwilson@uchicago.edu). ORCID: https://orcid.org/0000-0001-6716-0584. Article received on June 1, 2022 and accepted for publication on August 18, 2022.

How to cite this article:
WILSON, Juan I. (2022). "Legal History in the US and Latin America: Explaining a Methodological Divide", *Latin American Legal Studies*, Vol. 10 Nº 2, pp. 7-60.

> [F]rom a practical point of view, history is only a means, and one of the least of the means, of mastering a tool [law] […] its use is mainly negative and skeptical […] its chief good is to burst inflated explanations.
>
> Oliver Wendell Holmes, "Law in Science and Science in Law" (1899).

From its inception, the relationship between law and history has been fraught. Law is normative and atemporal, while history purports to be factual and time-bound. The contrast is such that modern historical consciousness and practice are said to be rooted in a revolt against the authority of antique legal texts (e.g., the *Corpus Iuris Civilis*). When philosophers took imperial claims to universality and contrasted them to empirical evidence about the past, antiquity's dominance over late medieval politics was eroded, and modern historicity was born.[1]

The category of *legal history*, therefore, appears at first sight like an oxymoron. This is how legal history has sometimes been approached in the United States. At least since the publication of Morton Horwitz's *The Transformation of American Law, 1780-1860* in 1977, and probably since Charles Beard's *An Economic Interpretation of the Constitution of the United States* in 1913, US legal history has been practiced with the purpose of demystifying and denaturalizing legal rules, showing them as the contingent product of particular economic interests, political inclinations, or social hierarchies.[2] The historians that later participated in *Critical Legal Studies* movement, for all their criticism of Marxist functionalism, did not fundamentally deviate from that goal.[3] The sources that critical legal scholars used were different, their conception of law was broader, but the main disagreement between "Crits" and "Marxists" was about "society," not law, the extent to which social structures and social phenomena are constructed, contingent, and thus not easily separated from legal phenomena.[4]

[1] FASOLT (2004).

[2] Despite all the criticism that nowadays is thrown against Charles Beard's crude materialism, Beard was one of the most important and influential historians of his generation. See, NOVICK (1988).

[3] The most influential version of this critique is GORDON (1984).

[4] For a short explanation of this disagreement, see, PARKER (2016) and DESAUTELS-STEIN & MOYN (2021).

Save for some noteworthy exceptions, legal history in Latin America has not traveled the "critical history" path. Instead, it has survived as a sort of reactionary discipline, constantly tying the meaning of present statutes to the authority of past texts. "By a strange inversion," as Fasolt would claim, "history began to embody the very authority it had so valiantly sought to overturn."[5] Legal texts from past periods are supposed to give us a key to the meaning of contemporary legal institutions, but it is never quite clear exactly what that key is. That this perspective is still dominant in Latin American legal academia can be confirmed by even a cursory look at the articles published in some of Latin America's leading legal history journals, while most articles of a recent collective volume dealing with the meaning of legal history still give pride of place to the role legal history has in the education of practicing lawyers.[6]

In what follows, I will try to explain the reasons for such a methodological divide, as well as the merits and limitations of each of these methodologies. While I talk about Latin American legal history, I will generally use this term in reference to history about Latin America legal institutions written in Latin America. Historical scholarship about Latin American legal institutions written in the US will sometimes be mentioned, but it constitutes a slightly different category, with its own virtues and limitations. I will mostly comment on this last group of works when I discuss recent changes in Latin American legal scholarship.

I. The Insularity of Latin American Legal History

Unlike US Legal History, Latin American legal history has suffered from some significant institutional constraints which have hindered its theoretical and methodological evolution. The most salient one is that the discipline has been cultivated almost exclusively by lawyers, inside law schools, and with future lawyers in mind. This has burdened legal history with a narrow and very technical understanding of the law and a limited view of the function of legal institutions.

[5] Fasolt (2004), p. 27.

[6] See the last issues of *Revista de Historia del Derecho (Argentina)*, 60 (2020), *Revista Mexicana de Historia del Derecho*, 40 (2019), *Anuario Mexicano de Historia del Derecho*, 22 (2010), *Revista Chilena de Historia del Derecho*, 25 (2017), *Revista de Estudios Histórico–Jurídicos*, no. 43, 2 (2021). The great majority of the articles published in these journals deal with the content and meaning of past legal texts, while their connection to contemporary law is unstated and unclear. Also, most of the articles have been written by lawyers who have no specific training in history. Maybe because of these features one can see a lack of publishing continuity in several of these journals, a sign of disciplinary or methodological decay. The edited volume mentioned is Mijangos (2020).

Classic Spanish works of legal history such as Rafael Altamira's *Historia del Derecho Español* (1903), Galo Sánchez's *Curso de Historia del Derecho* (1932), Alfonso García-Gallo's *Manual de Historia del Derecho Español* (1934) and Silvio Zavala's *Instituciones Jurídicas en la Conquista de América* (Zavala is Mexican, but his work was written in Spain in 1935) had a major influence within the Latin American academia and created a school of thought that would determine the shape legal history for decades to come.[7] These works, for all their merits in uncovering important archival sources (especially for the colonial period), had the problem of confounding history with antiquarianism, the exposition of legal sources with their analysis, and the description of a legal system with the description of social relations.[8] As an example, for the colonial period, legal history gave too much importance to the justice of the Iberoamerican Institutions (i.e., *derecho indiano*) over the material injustice of colonial society.[9] Social historians, weary of such rosy narratives, have justly denounced legal history and its institutional analysis as little more than conservative mystification, a consequence of the inherent conservatism of legal professionals.[10]

Partly motivated by the social historians' critique, colonial legal history in the last couple of decades has moved towards a more nuanced understanding of the role of law within colonial society.[11] Why did this criticism not lead to a dismissal of colonial legal history altogether, or at least to its exile from history departments, is hard to understand, but any explanation should consider the importance of legal documents for the writing of colonial history. While it is common for historians to write contemporary social history without quoting a single judicial case or notary

[7] According to Alfonso García-Gallo, before the publication of Sánchez's *Curso*, there was no general introduction to the subject of legal history in Spain, or at least no book dealing with the subject with a minimum of "scientific standards and critical rigor." See, GARCIA-GALLO (1961), p. 4.

[8] Later examples of this type of historiography can be found in three relatively recent historiographical reviews: ARENAL (2006), MIJANGOS (2011), and LEVAGGI (2018). In Mexico, there is a rich scholarship that has criticized legal history for putting too much emphasis on statutes instead of actual practice when discussing the process of land disentailments in Mexico. See KOURI (2002) and MARINO (2006), p. 176 and accompanying note.

[9] Nevertheless, none of this Spanish works quoted was as naïve as the English version (or translation) of the "law as justice" argument, most clearly developed in HANKE (1949).

[10] A classic in the line of more "nuanced" institutional analysis, interrogating the local and real effects of legal and religious institutions, is GIBSON (1964). In the preface to the Spanish translation of his work *The Fall of Natural Man*, Anthony Pagden gives a brief perspective of the cultural war underlying the analysis of colonial legal sources. See, PAGDEN (1988).

[11] Regarding colonial legal history, the most influential works remain BORAH (1983), CLAVERO (1994), HERZOG (2003), HERZOG (2015), OWENSBY (2008), YANNAKAKIS (2008), and PREMO (2017). For a good sample of these nuanced version of colonial legal history, see two recent edited volumes: DUVE & PIHLAJAMÄKI (2015) and ROSS & OWENSBY (2018).

record, that would be almost impossible for colonial historians nowadays. Frequent contact with legal documents and procedural intricacies may have aided colonial historians in developing a multifaceted understanding of legal phenomena.

Historical skepticism about the law did not disappear, however, but was passed over to social historians of the modern period. Consequently, modern legal history scholarship is today virtually non-existent within history departments in Latin America, and the writing of contemporary history very rarely addresses questions of law and legal practice. This may be partly due to the influence that the French *Annales* school and its materialist approach had on Latin American scholarship, which contrasts with the little attention that *Annales* school received in the United States during its age of prime.[12] It is no secret that the historians associated with the *Annales* school, with their emphasis on geography, demography, food, health, and long-term economic trends, cared very little about the minutiae of the law. On the other hand, Marxist approaches to social history and the influence of *dependentista* thought relegated law to a peripheral phenomenon subject to global economic trends, the constellation of class relations, and the local force of capitalist modernization.[13]

This division between a legal history indifferent to social relations and social history skeptic of legal structures was an unexpected outcome. In Latin America, legal history was born as a critical discipline akin to the newly minted "sociology" that developed around the same period, also in law schools.[14] Comtean and Spencerian positivism and their evolutionary interpretation of human institutions took hold everywhere in Latin America, especially in the minds of politicians and

[12] For a description of the *Annales* school and its global influence see BURKE (2013), esp. pp. 94–101.

[13] For the complications that scholars have found in articulating a Marxist legal theory, see, HOLDREN & TUCKER (2020). On the influence of *dependentista* theory on Mexican historiography, see GALVARRIATO (1999), pp. 8–9. In Chile, Gabriel Salazar has described a school of "Chilean *Classic* Marxist historiography," a movement of historians between the 1950s and the 1980s that reinterpreted Chilean national history in traditional Marxist key. This group includes the works of Julio César Jobet, Hernán Ramírez, Marcelo Segall, Jorge Barría and Luis Vitale. *See* SALAZAR (2017), p. 47. This has also influenced some social historians of Latin America writing from the US. For examples of modern skepticism about the role of law in social processes, see, FRENCH (2004). See also the focus on violence and power and the very little regard paid to the law in GRANDIN & JOSEPH (2010). In their theoretical introduction, GILLINGHAM & SMITH, (2014), p. 5, quote Joseph and Nuggent approvingly in order to create some awkward dichotomies, such as: state's power derive[s] not from its laws, its institutions, its armed forces, or even its broad capitalist underpinnings, but rather from 'the centuries-long cultural process which was embodied in the forms, routines, rituals, and discourses of rule'." I confess I do not know how one can clearly differentiate "centuries-long forms, rituals, and routines" from law and legal institutions.

[14] BAZANT (1982), p. 154.

state bureaucrats who saw in social science a key to government and administration.[15] At the turn of the century legal history was seen as a new subject and method, not just as the interpretation of old texts, but as a discipline tracing the interaction between legal and social evolution. Legal history and sociology together allowed intellectuals to grasp how institutions adapt and mutate in line with a certain "national character."[16]

As far as I am aware, the first legal courses with an explicit sociological and historical focus in Latin America were taught at Universidad de Chile's Law School during the last decade of the nineteenth century. In Mexico, change came later. Explicit incorporation of "social sciences" as part of the law curriculum happened only in 1907.[17] Even three years later Justo Sierra –the intellectual father of the newly created National University– would warn about the need for an urgent reform of the *Escuela de Jurisprudencia*, an institution that had become "simple and pragmatic, with no other purpose than creating court lawyers."[18] Sierra wanted the law school to become a space for critical thought and thus put history, economy, politics, and sociology at the core of legal education.[19] Yet, despite the existence of a handful of Mexican lawyers interested in history, philosophy, and anthropology, they were not very influential within the law school.[20]

Chile's precociousness in combining law and social sciences was due to Puerto Rican lawyer and philosopher Eugenio María de Hostos and Chilean lawyer Valentín Letelier. Both scholars were active in Chile even before Carlos Octavio Bunge started teaching "sociology" in Argentina (Bunge was a generation younger than Letelier).[21] Although Universidad de Chile's law school courses kept their

[15] HALE (1986).

[16] See, as an example, LETELIER (1887) and LETELIER (1900).

[17] BAZANT (1982), p. 159.

[18] VALADÉS (2014); ARCE (1982), p. 229.

[19] ARCE (1982).

[20] See, for example, the case of the later famous Andrés Molina Enríquez. As a lawyer interested in anthropology, history, and sociology, he worked at the National Museum. His most influential book, *Los grandes problemas nacionales* (1909), was not widely read at the time of its publication. It was instead made famous in 1912, by the dean of the *Escuela de Jurisprudencia* Luis Cabrera, who was also Molina Enríquez's friend. KOURÍ (2009), p. 11.

[21] Letelier's popularity and authority as a social scientist can be seen not only in the amount of international praise his work received at their time of publication (see, GALDAMES, 1938, p. 399), but also using some circumstantial evidence. For example, Letelier was the only Latin American (and one of the only Spanish speaking scholars) included in the *Comité d'honneur* of the "Congress for the Instruction in the Social Sciences" in 1900, and the only Latin American member of the *Institut Internacional de Sociologie* in 1903. See, U. S. BUREAU OF EDUCATION (1901), p. 1460 and POSADA

traditional names (Hostos taught "Constitutional Law" in 1890, and Letelier became Professor of "Administrative Law" in 1888) the theoretical framework and approach they used to teach these courses were new. Hostos had just published a sociology book called *Moral Social* (1888) and was working on a theory if history that was to be published under the name *Geografía Evolutiva* in 1895 (Letelier would praise the book in a review).[22] On the other hand, as early as 1887 Letelier had advocated for the elimination of "the stupid [*sic*] teaching of roman law and the useless teaching of canonical law, and their replacement by a broader discipline, the history of legislation."[23] He promoted the inclusion of "sociology as an introduction to every subject of law and politics or, if people feel scared by that word, then the teaching of political science," an approach he followed in his own teaching.[24] He reiterated his critiques and concerns in 1895 in a compilation of his works titled *La Lucha por la Cultura*.[25] The methodological change in legal education he advocated for was crystallized in a major curricular reform approved by the Law School in 1902, which included "legal history" as a core subject.[26] The results of this change

(1903), p. 517-518. After 1911 he became full-time professor at Universidad Nacional de la Plata in Argentina, the University of Rio de Janeiro conferred upon him the title of Honorary Professor (1919) (*see*, FUENZALIDA (1919), p. 112) and he was made member of the *Societé Academique d'Histoire Internacionale* (see the testimony of his daughter in the newspaper, *La Nación*, October 6, 1991, 6).

[22] HOSTOS (1904), p. 268.

[23] LETELIER (1895) p. 260.

[24] Or so it seems judging by the contents and bibliography of his book "Lessons on Administrative Law" and the letters he shared with other legal scholars outside Chile. See, LETELIER (1907) and his letters to Pedro Dorado Montero in "Valentín Letelier a Pedro Dorado Montero", January 9 (1895), *Universidad de Salamanca, Digital Collection*. Valentín Letelier congratulates him on the translation of Ludwig Gumplowicz's *Philosophisches Staatsrecht*. He also manifests his agreement with Dorado's notes, makes some comments on Glumpovicz's other works and assures him he will use that translation as a text for his students.

[25] LETELIER (1895) p. 260. Letelier complained about the passivity of legal scholars who had not given this matter any attention and, on the contrary, had contributed to the "decay of legal studies" by eliminating a course called "science of legislation" and distorting the teaching of the courses on "legal philosophy" and "political economy." See, LETELIER (1895) p. 254.

[26] Letelier's influence in this reform has not only been acknowledged by following professors of legal history. See, DE ÁVILA (1984), p. 31: "El primer curso de historia del derecho se estableció en la Universidad de Chile con la reforma de 1902, a instancias de D. Valentín Letelier, quien fue el redactor de su programa. El título del curso: *Historia general del derecho especialmente en sus relaciones con el derecho chileno* muestra a las claras la índole que tenía, es decir, que estaba inspirado totalmente en el positivismo sociológico tan de moda en ese tiempo." One should also consider that Letelier was at different points during the late 19th and early 20th century a member of the Council of Public Instruction, an honor that not only meant he was generally praised by his peers, but meant he worked closely with the rector in directing the University. He in fact was a member of the Council of Public Instruction when the Law School program was reformed. See, GALDAMES (1938), p. 504 and BARROS BORGOÑO (1902). Nevertheless, Galdames mistakenly claims that Letelier was first

could be seen in the law thesis Letelier directed and the thematic interests of his students.[27]

It is hard to pinpoint the moment when the tide turned, and legal history in Latin America acquired its contemporary conservative or anti-theoretical character. There is probably no single explanation but a mix of causes. In Chile and Argentina, contact with Spanish scholars was crucial, especially with scholars that were prominent during the decades of *franquismo*. According to Alamiro de Ávila Martel, a long-term legal history professor at the law school and first-hand witness of this change, up until the early 1930s Universidad de Chile's "Legal History" course was divided into "legal sociology" and "the history of legislation". It was a group of professors and scholars tightly connected to Spain, like Ricardo Levene in Argentina and Aníbal Bascuñán Valdés (a student of Rafael Altamira and Galo Sánchez) in Chile who pushed hardest for a "depuration of the subject":

> What our goal was is easy to explain: since we considered legal history to be an essential subject in the formation of legal professionals, we wanted legal history to focus explicitly on the legal past of our own country […]. Starting in the 1930s the course syllabus was amended many times […] until we arrived at a complete depuration of the subject matter. In this last reorganization, made in 1977, we finally gave the subject its proper content. Two yearlong courses on legal history, the first one dedicated exclusively to the history of Spanish law, starting with Spain's prehistory, and Castilian law since the 10th century; the second, dedicated to the history of *indiano* law and Chile's national legal system.[28]

elected as a member of the Council in 1901. See, however, the University Decree No. 2559, October 6, 1893, accepting Valentin Letelier's resignation as a member of the Council of Public Instruction in *Anales de la Universidad de Chile*, 86 (1893), p. 266. DE HOSTOS, LETELIER, BAÑADOS (1889), p. 80. It can be seen that the proposed reform was organized in courses that lasted a whole year and that a "social science" course is included for each year (1º: "Philosophy of Law"; 2º: "Legal History"; 3º: "Political Science"; 4º: "Political Economy"; 5º: "Science of Law and Institutions", which replaced what in the original proposal was to be called "sociology" and which Letelier preferred to divide in these five different subjects).

[27] See, FUENZALIDA (1919), p. 115: "Never has a professorship in our country had a greater social influence […] the theses on administrative law written at that time were very numerous, and in them may be observed the influence he exerted and the essentially scientific tendency of the learned instructor. A full page would not hold the list of them. […] The time must come in which the history of our higher education will be written, and then must be seen how broad and efficient was that educational work of twenty-three years (1888-1911)."

[28] DE ÁVILA (1984), pp. 32-34.

While the works of Levene and Bascuñán are prior to the *franquista* years, it is noteworthy that de Ávila mentions 1977 –a year in the midst of Pinochet's dictatorship, with the Law School intervened by the military– as the year when their project for the teaching of legal history came to fruition. The military's hostility to anything resembling a "social science" cannot be overstated.

Equally relevant to legal history's anti-theoretical turn in Latin America is the reaction against Marxist legal skepticism and the intellectual discredit of positivism during the 30s.[29] There was also the need to legitimize the study of law as a "scientific" endeavor, a practice that could be studied self-referentially, that is, with independence from other disciplines such as economics or sociology (ironically, that was exactly the "empiricist" agenda Letelier had pushed against at the turn of the century). Not that history had a developed sense of method at the time beyond the Rankean demand that historians scour the archives and describe the past *wie es eigentlich gewesen ist*. It had not.[30] Because of this lack of theoretical conscience, historically minded lawyers could practice legal history with the same historicist (or empiricist) approach used by non-legal historians and remain content with their findings without giving them a second thought.

Distance from the social sciences also meant that legal history in Latin America would dedicate itself primarily to the colonial period, a trend that is still visible today. Compared to colonial legal historiography, legal history works about the 19th century are still few, and those about the 20th century are almost non-existent.[31] At first, this may have seemed a good division of labor since sociology, economics, and political science had less to say about the colonial past. Nevertheless, it significantly diminished legal history's relevance for law students, and it further isolated the discipline from debates in the emerging social sciences.

A possible exception to this general state of the discipline was (and still is) constitutional history. Constitutional historians have dealt with a wide range of topics that have deserved the attention of historians and social scientists outside legal academia *stricto sensu*, including the meaning of Constitutional proclamations during Latin America's wars of independence, the influence of the 1812 Cádiz Constitution on Latin American constitutionalism, the stability of the Chilean Constitution of 1833, the effects of anticlerical "reform laws" on the Mexican

[29] HALE (1986).

[30] For the state of historical method during the interwar period, see, NOVICK (1988).

[31] For a similar observation, see, MIJANGOS (2011).

Constitution of 1857, and the nature of Chilean parliamentarism.[32] This history has grown immensely during the last two decades, showing great innovation in its sources and its conclusions. Nevertheless, the great bulk of these works has remained confined within the methods of intellectual, conceptual, or political "great-man" history. There is still a dearth of histories detailing how citizens and specific identity-based groups dealt with constitutional precepts, how they incorporated them into their political practice, and how they affected their self-definition.[33] As in other areas of legal history, this is particularly true for the 20th century.

Thankfully, the few contemporary legal history works dealing with the late 19th century and the 20th century have begun to overcome traditional isolationist practice and engage in a broader disciplinary conversation. A younger generation of legal historians and historically minded legal sociologists and anthropologists has strived to produce works that, while using the law as a vantage point, engage with questions commonly associated with social, political, cultural, and economic history. The most important pioneer within this group was Andrés Lira González's and his work *Comunidades indígenas frente a la Ciudad de México* (1983), a book based on his PhD dissertation in history from SUNY Stony Brook. Lira, a lawyer from UNAM, wrote a history explaining how indigenous communities, with their specific neighborhoods, institutions, and economic goods, survived legally within Mexico City throughout the 19th century, decades after a statute had formally dissolved these *comunidades*.[34] It remains an example of legal history at its best, using legal analysis to illuminate the social, cultural, and political aspects of a misunderstood historical process.

Given the complexity of the enterprise, Lira's model of legal history has not always been followed by historians of the 19th and 20th centuries. Most histories dealing with legal institutions in Latin America remain either formalistic in the understanding of law or skeptical about law's influence.[35] Nevertheless, the

[32] ÁVILA (2002), PORTILLO VALDÉS (2006), EDWARDS (1936), HEISE (1982), GARCÍA (1906), MOLINA (1906).

[33] Exceptions in Spanish can be found in the previous footnote. As examples of English histories dealing with politico-constitutional practices on the ground, see, GUARDINO (2005) and CAPLAN (2010).

[34] LIRA (1983). Another good example along these lines is FRANCO (1997).

[35] For an example of sophisticated skepticism about legal causality or the role of law in producing social change, see, HOLSTON (1991) and FRENCH (2004). Notwithstanding their skepticism, both authors emphasize the ideological role of legal institutions. A more formalist (or "internalist")

proportion of history works using the law to address broader historical questions (beyond explaining the meaning of old statutes) has risen steadily. Legal history books on the 19th and 20th centuries are opening discussions on a wide range of topics, such as the legal imaginaries of citizenship in Mexico, the political uses of law by the Church during the *Reforma* period, the continuous use of the *Code Noir* in revolutionary Haiti, the defense of colonial *fueros* by Black slaves and Indians during Colombia's wars of independence, the precarity of Black legal freedom in pre-abolition Brazil and post-abolition Cuba, the changing perceptions of crime and criminal law in Mexico, the relationship between family law and social stratification in Chile, the practical process of land disentailment within Mexican *pueblos*, the relationship between *jefes politicos* and citizens' pleas during the *Porfiriato*, the role of the judiciary and administrative agencies in implementing the Mexican agrarian reform, and the legal production of informality in Brazilian *favelas*, to mention just some of the most prominent.[36]

What appears problematic from the lawyer's perspective is that none of these works were produced by law school faculty, even though some of these authors hold degrees in law. Moreover, most of these works are written in English by US historians of Latin America or based on Ph.D. dissertations written by Latin American scholars studying in the US. This scholarship is therefore not the result of a methodological evolution in Latin American legal thought. They have proliferated outside legal academia, influenced by a tradition of US legal history in constant dialogue with other social sciences. While salutary for Latin American scholarship, this tradition is not without its shortcomings. It is to the main features of this US-style of legal history and its limits that we now turn.

II. US Legal History as Social Science and Critique

While it is conventional to credit James Willard Hurst and the Wisconsin School of Law with giving US legal history its contemporary shape, it would be hard to understand the different trajectories of US and Latin American legal history without acknowledging the influence that Oliver Wendell Holmes had on US legal thought, particularly his famous dictum that the *common law* is not "logic" but

analysis may be seen in some recent works dealing with the history of Mexico's Supreme Court jurisprudence. See, for example, Suarez-Potts (2012), James (2014).

[36] Escalante (1992); Mijangos (2015); Ghachem (2012); Echeverri (2016); Chalhoub (2012); Scott (2005); Piccato (2001); Speckman (2002); Milanich (2009); Kourí (2004); Falcón (2015); Baitenmann (2020); Fischer (2008).

"experience."[37] From an institutional perspective, the genealogy from Holmes to Hurst is clear enough. Holmes' Supreme Court term ended in 1932, and he was succeeded by Benjamin Cardozo, who defended an extreme version of Holmes' legal realism.[38] At the time, Cardozo constituted the liberal block inside the Court, together with Louis Brandeis and Harlan Fiske Stone. John Willard Hurst was a law clerk to Justice Brandeis during the Cardozo years and a research assistant to Felix Frankfurter. Frankfurter would replace Cardozo in the Supreme Court after his death.

Hurst's connection to the legacy of Oliver Wendell Holmes, legal realism, and pragmatist philosophy is relevant. It was precisely this tradition of thought that made US legal history permeable to the social sciences while keeping a distance from *Annales* school influence, as well as from some variants of Marxism that were popular in Latin America, variants that describe the law as causally irrelevant for the process of social change.[39] As Grey and Parker have emphasized, Holmes's legal pragmatism positioned him in opposition to neo-Kantian legal philosophers –who tried to explain the law in terms of a system– and conservative legal scholars who stressed historical continuity as the basis of law.[40] His use of history as "experience" intends to show that "common law doctrine cannot be accounted for in terms of morals/logic" and that "common law doctrine should not be venerated for its deep historical continuity."[41] The pragmatist framework, therefore, provided US legal history with a critical tool to understand the law in terms of interests, policy, and biases, and thus to reflect on the reciprocal relationship between "law" and "society," a movement to which Hurst and the Madison Law School contributed a great deal. If Charles Beard could be accused of being too crude in his analysis of class interest in the making of the US Constitution, it is nevertheless true that US legal history, while moving away from a simple class framework, has been relentless in exposing racism, gender discrimination, and cognitive biases, as some of the true

[37] On the founding role of James Willard Hurst, see, GORDON (1975), PARKER (2016), DESAUTELS-STEIN & MOYN (2021). The quote comes from the famous first paragraph of Holmes' book *The Common Law*. HOLMES (1881).

[38] For an explanation of the connection between Holmes and Cardozo and their links to philosophical pragmatism, see URSIN (2013) and GREY (2014). Cardozo famously described judges as "legislators in robes." CARDOZO (1921).

[39] For a description of pragmatism's opposition to "systematic" European philosophy (and the resulting inferiority complex), see, PARKER (2003). For a more positive description, opposing "systematic" philosophers to "edifying" philosophers like John Dewey, see RORTY (1979).

[40] GREY (1989) and PARKER (2003).

[41] PARKER (2003), p. 70.

motives underneath the evolution of legal institutions. Unlike what we see in Latin America, legal history in the US has not been focused on the analysis of colonial institutions or on continuities between the colonial and the national period. US legal historians do not think that mastery of Roman law or old English law is indispensable to understanding the true meaning of contemporary legal institutions. In true Holmesian fashion, their role has been to question "inflated and unreal expectations, which collapse at the touch of history," denying that legal change can be understood as the development of internal logic.[42] Done this way, legal history strives to free the present from the grasp of the past. Its role is that of critique.

Still, the differences between Latin American and US legal history did not stem solely from pragmatism or different exposures to French or Marxist influence. Legal history in the US has benefited from an institutional design that pushes lawyers aspiring to a career in academia to obtain a doctoral degree in something other than law. Trained by professional historians, legal history scholars in the US assumed a significant part of the mentality, methodology, and expectations of the historical profession. They began to use legal analysis to address some of history's central concerns. Morton Horwitz, probably the most influential US legal historian of the second half of the 20th century, is a case in point. In return, the dialogue between legal theory and social sciences has opened the field of legal history to non-lawyer historians. For example, of the eighteen recipients of the *Cromwell Book Prize* granted by the American Society for Legal History since 2004, twelve do not hold a JD.[43] Nothing comparable has happened in the field of Latin American legal history.

Nevertheless, US legal history has paid a cost for its close connection with history and social sciences. It has become prone to postmodernism. The influence of the Critical Legal Studies movement on legal history, especially through the work of Robert Gordon, precipitated a critique of "legal functionalism" and its division of "law" and "society."[44] Keeping with the epistemological relativism and skepticism

[42] HOLMES (1899).

[43] The William Nelson Cromwell Foundation Book Prize is awarded annually by the American Society for Legal History to the best book in the field of American legal history by an early career scholar. This tendency shows a generational change. The John Phillip Reid Book Award, which is awarded annually by the American Society for Legal History for the best monograph in Anglo-American legal history by a "mid-career or senior scholar," has been mostly granted to historians who hold a JD (thirteen out of sixteen awardees). For the list of titles awarded, visit: aslh.net/award_type/prizes/

[44] Critical Legal Studies emerged partly as a critical response to the "Law and Society's" empiricist turn, TOMLINS (2012), p. 156.

of the American pragmatist tradition, but deeply influenced contemporary social theory, Gordon would argue that "society" is as much a contingent product of human practice as "the law." A distinction between the two spheres is untenable, he claimed, not only because they are co-constitutive (a soft critique of the distinction), but because there is no way one can describe social relations without using legal categories that always exist at their core.[45] Moreover, Gordon underscored Critical Legal Studies' commitment to law's radical indeterminacy, and with it a rejection of any causal role for law "in the long-run."[46] The result, according to recent critiques, has been an overemphasis on the "contingency" of social and legal structures and the "agency" of historical subjects, to the detriment of the very real constraints that those structures create on social and political action. Legal history has thus become a domesticated form of critical thought that limits itself to explaining how things (structures, institutions) "could have been different" instead of explaining why they were not.[47]

I am not sure this is a totally fair description of Gordon's legal philosophy (or, for that matter, of Hartog's, Tushnet's, or Cover's, to name other prominent legal historians that made central contributions to the field in the 80s).[48] Sure, many critical legal historians do share a common interest with some social history on "the counterfactual trajectories, the roads not taken." Yet their emphasis on the constitutive role of legal norms, the performative force of legitimating ideologies and symbolic ritualism, and the influence of legal institutions on consciousness leaves plenty of space for an analysis of legal causality (i.e., the importance of law in the production of social outcomes). This analysis will surely be full of mediations that explain how general legal norms are sifted through various local institutions, communities of interpretation, social resistance, and strategic manipulation.[49] Causality won't be as straightforward as it was within functionalist interpretations of the law. Still, introducing complexity in explanations of socio-legal processes is not the same as renouncing any form of causal explanation or embracing the absolute contingency of social results. Within critical legal history, the causal role of law is underdetermined but is not inexistent. As a result, it has been the critical legal

[45] GORDON (1984), esp. pp. 101 ff.

[46] On the paradoxes that these claims create for Critical Legal History, see TOMLINS (2012)

[47] This critique has more recently and forcefully been made by DESAUTELS-STEIN and MOYN (2021).

[48] TUSHNET (1983), COVER (1983), HARTOG (1985).

[49] GORDON (1984), esp. pp. 119. See also COVER (1983) and HARTOG (1985).

historians who have most forcefully defended the relative autonomy of legal discourse against the twin threats of formalism and realist dissolution.[50]

If we go beyond the realm of legal and historical theory and pay attention to actual histories written by legal historians, it would be unfair to say that there is a lack of attention to "structural constraints" and an excessive emphasis on "agency" and "contingency." William Forbath's *Law and the Shaping of the American Labor Movement* (1991) has sometimes been criticized for giving too central a role to legal determination.[51] Cristopher Tomlins's *Law, Labor, and Ideology in the Early American Republic* (1993) emphasized ways in which workers were disadvantaged by specific legal provisions but also law's general ideological role in legitimating a hierarchical social order.[52] The latter role has been sophisticatedly explored in several articles by Reva Siegel, where she analyses how law perpetuates status differences based on gender even when changes in legal language make this continuity less visible (a phenomenon she calls "preservation through transformation").[53] Amy Dru Stanley expands this claim in *From Bondage to Contract* (1998) explaining how the contractual principles of freedom and self-ownership bypassed the question of women's citizenship and created continuities with slavery in the south through the commodification of labor.[54] Jonathan Levy's *Freaks of Fortune* (2012) takes the idea of self-ownership as the basis of a history tracing the emergence of risk and finance in the US and its consequences for both federal state-building and the immiseration of people on the ground.[55] A starker contrast between federal law and people's experience when dealing with local institutions can be seen in William Novak's *The People's Welfare* (1996), questioning normal laissez-faire interpretations of the period.[56] This method of opposition between state (or federal) and local law has been perfected in Laura Edward's *The People and their Peace* (2009), where the law on the ground operates in ways that are contradictory and invisible to formally trained lawyers and lawmakers.[57] Deep into 20th century historiography, books like Risa Goluboff's *The Lost Promise of Civil Rights* (2009) or Laura Weinrib's *The Taming*

[50] For an analysis of the debate around law's *relative* autonomy, see, TOMLINS (2007).

[51] FORBATH (1991). For a recent version of this critique, see HOLDREN & TUCKER (2020), p. 1154.

[52] TOMLINS (1993).

[53] SIEGEL (1995), SIEGEL (1997).

[54] STANLEY (1998).

[55] LEVY (2012)

[56] NOVAK (1996).

[57] EDWARDS (2009).

of Free Speech (2016) have emphasized how the conquest of rights in courts watered down worker's broader claims for economic equality and the right to strike.[58]

The list of legal history works could go on. What these histories have in common is that they take a central legal development, one that in many ways may be seen as emancipatory, and then proceed to highlight some of their darker social consequences. They cast doubt on triumphalist discourses of legal and institutional "progress," without falling into the idea of "legal indeterminacy" nor depriving law of a causal role. In many ways, these works have heeded Holmes's call to use history as a tool to burst inflated explanations. Doesn't this approach help us understand the structural constraints imposed on legal institutions in the past and thus help us reckon with the constraints imposed on us by contemporary institutions? Many of these works suggest that "things could have been different." This does not preclude them from recognizing that they weren't different and trying to explain why. Against a tradition that sees in law nothing but a continuation of politics or, even worse, a superfluous decoration to the actual political struggle underneath, legal historians have emphasized the relative autonomy of law and its centrality as an independent variable in the development of social and political conflicts. Moreover, they have also shown how legal discourse has sometimes obscured the conditions of oppression and the existence of alternative historical paths. Can Latin American legal historians learn anything from this historiography? And are there any limitations that legal historians should be aware of?

Conclusion: Contingency and Legal Causality in Latin American History

That legal histories written in the US have sometimes been able to overcome the theoretical limitations of critical legal history does not mean that the association of law and history does not sometimes produce some form of "domesticated social theory." For one, not all legal historians are interested in theorizing about the social impact of legal institutions, or the material causes of legal change, even if a certain theory about the nature and function of law is implicit in their writing. The problem then is that legal histories that show no explicit theoretical position get easily confused with social or cultural histories that use legal sources (judicial or notary records, contracts, lawsuits, etc.) to prove some historical claim, but do not deal with the history of law, legal practice, or legal institutions *per se*.

[58] Goluboff (2007), Weinrib (2016).

Yet there is value in distinguishing these two types of histories. While "theoretically silent" histories of law and legal practice may be sometimes shunned as a form of antiquarianism, they are less likely to be naïve about the social role of law, mainly, because many of them don't really discuss the interaction between legal institutions and the non-legal world, even if it would be good that they did. On the other hand, cultural and social histories that use the law as a source, if they don't make conscious use of a certain theory of law and society (whether they make it explicit or not), will risk reading their sources in ways that distort our understanding of social processes and historical explanation.

One common misconception is a certain reductionism in socio-legal history that sees any interaction between oppressed people (enslaved, indigenous, women, and working-class actors) and legal institutions as a form of "resistance." This is especially true in histories of slave or indigenous litigation, where evidence of claims filled in a court of law is taken as proof of an individual's "agency," agency then taken as synonymous with "resistance" to an unjust social order. As Walter Johnson has rightly pointed out in relation to debates about slavery:

> The term "agency" smuggles a notion of the universality of a liberal notion of selfhood, with its emphasis on independence and choice, right into the middle of a conversation about slavery against which that supposedly natural (at least for white men) condition was originally defined. By applying the jargon of self-determination and choice to the historical condition of civil objectification and choicelessness, historians have, not surprisingly, ended up in a mess. They have, in the first instance, ended up with what is a more-or-less rational choice model of human being, and shoved to the side in the process a consideration of human-ness lived outside the conventions of liberal agency […]. And out of this misleading entanglement of the categories of "humanity" and (liberal) "agency" has emerged a strange syllogism in which the bare fact (as opposed to the self-conscious assertion) of enslaved "humanity" has come to be seen as "resistance" to slavery.[59]

As Johnson points out, such decontextualized definition of "agency" has several shortcomings. For one, it eliminates the possibility of disagreement and contradiction within groups of oppressed subjects, since supposedly all of them are always intent on "resistance". It also minimizes the different reasons why people could make use of legal institutions, beyond trying to "subvert" the social order. In

[59] JOHNSON (2003), p. 115.

other words, this approach takes the position of the "oppressed" person as an overarching category: every gesture or action of the oppressed person should be read as intimately connected with its condition of oppression and as an attempt to overcome it. Finally, such a weak understanding of agency limits our capacity to grasp the political meaning of oppressed people's actions. Since every free volition and act is a form of "resistance" the differences between advocating for systemic reform, advancing a personal interest, or killing some members of the master class are all flattened as fundamentally equal.[60]

In Latin American history, this understanding of agency poses at least two possible risks. In its worst versions, emphasis on "legal agency" can end up painting a very lenient image of colonial rule, praising the existence of legal institutions as avenues for justice and social mobility.[61] In its non-colonial version, "agency" has given some Latin American social historiography a distinctive defeatist flavor. The point of this history is to recount the "heroism of the oppressed," to highlight their political imagination, and ultimately to conclude that, due to forces beyond their control, those popular emancipatory movements could not enact the change they aspired to. The movements were "defeated," not crushed by concrete historical agents but by an abstraction, whether we name it "capital," "imperialism," or "the state," The irony is that the more historians tend to underscore "agency" as the master category to understand social history, the less they can grasp the difference between structural and conjunctural constraints that led to defeat. As Desautels-Stein and Moyn have recently pointed out:

> The critical tools have come to serve all comers only insofar as they have been reduced to the repetitious lesson that law sometimes matters in establishing outcomes that could have been different. Bracketing politics momentarily, is that even an intellectually valuable demonstration to perform over and over?[62]

It is at this point that modern legal history can provide a useful tool for analysis. First, a concrete understanding of the legal process and the routine work of legal institutions will allow scholars to reduce the level of abstraction and produce more detailed historical explanations. They can point to the fact that things "could

[60] JOHNSON (2003).

[61] Ironically, the emphasis on agency (supposedly a progressive approach) ends up looking a lot like the conservative histories written by Alfonso García Gallo or Bernardino Bravo Lira. See, BRAVO (2010).

[62] DESAUTELS-STEIN & MOYN (2021), p. 309.

have been different," while also explaining why they were not. By detailing the operation and uses of such entities as investment instruments, mortgages, jurisdictional disputes, peace treaties, regulatory agencies, local courts, municipal governments, etc., concepts such as "capital," "empire," and "state" can be demystified. Their mysterious operation will appear more and more as the result of concrete decisions made by flesh-and-bone human beings, people with particular agendas, powers, and limitations.

Second, if legal history is to be more than the history of "contingency," we need to understand how the law has contributed to the creation of the present structure of social relations and to the limitations that we face when we attempt to change them. A recent line of legal scholarship has described this project as a mix of law and political economy. Their goal is to issue a critique of the role that law has played in the creation of contemporary capitalist relations or, to put it in better terms, to describe the "part [that] law plays in the production and reproduction of the class relations that are characteristic of capitalist societies."[63] Weary of the Critical Legal Studies' aversion to Marxism, legal theorists have begun to resurrect the possibility of articulating a Marxist theory of law.[64] If the critique is to be effective, however, it cannot be grounded on an understanding of capitalism as a universal and ahistorical social formation. For each specific social formation, historical analysis is needed to explain the relationship that has developed between legality and social structure.[65] Latin American legal history may contribute a unique perspective to this debate due to a number of features that give capitalism in Latin America a particular appearance *vis-à-vis* its North Atlantic iterations: urban informality, extreme income inequality, extractivism, economic dependency, and the weight of private relationships over public power, are just some of those factors that are constituted by law and while they also limit law's application.

Finally, if legal history is to have any relevance at all in Latin America, it must remain (or become) a critical endeavor. I mean relevant not even as a contribution to the social sciences in general, but as a modest tool for lawyers and other operators of the legal system. Legal history should help us denaturalize our current institutional arrangements and encourage us to think about alternative paths not taken. It should also help us to ground our abstract categories of analysis, and thus

[63] HUNT (1996) in PATTERSON (2010), p. 350.

[64] See, BLALOCK (2015), AKBAR (2018), AKBAR (2020), HOLDREN & TUCKER (2020); HUNTER (2021); DESAUTELS-STEIN & MOYN (2021), TOMLINS (2021), BLALOCK (2022).

[65] HOLDREN & TUCKER (2020), p. 1151.

simplify causal explanations. This has nothing to do with legal history as practiced today in Latin America. If US legal history has tried to introduce contingency into the normative structures of the present, Latin American legal history has become the opposite. It has exacerbated the dominance of the present by the past. It has glorified an excavation of the past for the past's sake. It suffers from an urge to connect every modern institution to a mirror image in the colonial period. Where history should produce doubt, legal history in Latin America strives to create certainty. It assures us that nothing has fundamentally changed in five hundred or maybe two thousand years. True, the insistence on contingency and causal indeterminacy makes political action irrelevant and is thus politically paralyzing. There is little comfort in daydreaming about things that could have been. There is even less comfort in believing that things will remain always fundamentally the same. Those who daydream about the past may one day wake up to understand the present. But if all that legal history can offer is the promise of constant repetition, then why should anyone be surprised to see it confined to the peripheral and irrelevant place it occupies in Latin America today?

Bibliography Cited

Akbar, Amna A. (2018). "Toward a Radical Imagination of Law." *New York University Law Review* 93 (3): 76.

Akbar, Amna A. (2020). "Demands for a Democratic Political Economy Responses." *Harvard Law Review Forum* 134 (2): 90–118.

Arce, Francisco (1982). "El inicio de una nueva era, 1910-1945," in Arce, Francisco; Mílada Bazant; Anne Staples; Dorothy Tanck de Estrada; and Josefina Zoraida Vázquez. *Historia de las Profesiones en México*. Ciudad de México: El Colegio de México.

Arenal, Jaime del (2006). "La escuela 'mexicana' de historiadores del derecho." *Anuario Mexicano de Historia Del Derecho* XVIII: 57–76.

Ávila, Alfredo (2002). *En Nombre de La Nación : La Formación Del Gobierno Representativo En México, 1808-1824*. Array. México: Taurus : CIDE.

Baitenmann, Helga (2020). *Matters of Justice: Pueblos, the Judiciary, and Agrarian Reform in Revolutionary Mexico*, Lincoln: University of Nebraska Press.

Barros Borgoño, Manuel (1902). "Memoria del rector de la Universidad correspondiente al año 1901," in *Anales de la Universidad de Chile* 110: 121-159.

Bazant, Milada (1982). "La República Restaurada y el Porfiriato," in Arce, Francisco; Mílada Bazant; Anne Staples; Dorothy Tanck de Estrada; and Josefina Zoraida Vázquez. *Historia de las Profesiones en México*. Ciudad de México: El Colegio de México.

Blalock, Corinne (2015). "Neoliberalism and the Crisis of Legal Theory." *Law and Contemporary Problems* 77 (4): 33.

Blalock, Corinne (2022). "Introduction: Law and the Critique of Capitalism." *South Atlantic Quarterly* 121 (2): 223–37. https://doi.org/10.1215/00382876-9663562.

Borah, Woodrow Wilson (1983). *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real*. Berkeley: University of California Press.

Bravo, Bernardino (2010). "El más antiguo Estado de derecho en Europa y en América (siglos XI al XXI)." *Anuario de historia del derecho español* 80: 132.

Burke, Peter (2013). *The French Historical Revolution: Annales School 1929–1989*. New York: John Wiley & Sons.

Caplan, Karen Deborah (2010). *Indigenous Citizens: Local Liberalism in Early National Oaxaca and Yucatán*. Stanford: Stanford University Press.

Cardozo, Benjamin N. (1921). *The Nature of the Judicial Process,*. New Haven: Yale University Press.

Chalhoub, Sidney (2012). *A Força Da Escravidão : Ilegalidade e Costume No Brasil Oitocentista*. São Paulo, SP: Companhia das Letras.

Clavero, Bartolomé (1994). *Derecho indígena y cultura constitucional en América*. México, DF: Siglo Veintiuno Editores.

COVER, Robert M. (1983). "Foreword: Nomos and Narrative. The Supreme Court 1982 Term." *Harvard Law Review* 97 (Issue1): 4–68.

DE ÁVILA MARTEL, Alamiro (1984). "La enseñanza de la historia del derecho español en la Universidad de Chile." *Revista de Derecho de la Pontificia Universidad Católica de Valparaíso* 8: 31-38.

DE HOSTOS, Eugenio María (1904). *Tratado de Sociología*. Madrid: Impr. Bailly-Bailliere e Hijos.

DE HOSTOS, Eugenio María; LETELIER, Valentín & BAÑADOS, Julio (1889). *Reforma de la Enseñanza del Derecho. Trabajos publicados en La Libertad Electoral*. Santiago de Chile: Impr. de la Libertad Electoral.

DESAUTELS-STEIN, Justin & MOYN, Samuel (2021). "On the Domestication of Critical Legal History." *History and Theory* 60 (2): 296–310. https://doi.org/10.1111/hith.12208.

DUVE, Thomas & PIHLAJAMÄKI, Heikki (2015). *New Horizons in Spanish Colonial Law: Contributions to Transnational Early Modern Legal History*. Frankfurt am Main: Max Planck Institute for European Legal History.

ECHEVERRI, Marcela (2016). *Indian and Slave Royalists in the Age of Revolution: Reform, Revolution, and Royalism in the Northern Andes, 1780-1825*. New York: Cambridge University Press.

EDWARDS, Alberto. 1936. *La Fronda Aristocrática En Chile*. Santiago de Chile: Ediciones Ercilla.

EDWARDS, Laura F. (2009). *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South*. Chapel Hill: University of North Carolina Press.

ENRÍQUEZ, Andrés Molina (1906). *La reforma y Juárez: estudio histórico-sociológico*. Tip. de la viuda de F. Diaz de León.

ESCALANTE GONZALBO, Fernando (1992). *Ciudadanos imaginarios: memorial de los afanes y desventuras de la virtud y apología del vicio triunfante en la República Mexicana: tratado de moral pública*. México, D.F.: El Colegio de México.

FALCÓN, Romana (2015). *El jefe político: un dominio negociado en el mundo rural del Estado de México, 1856-1911*. México, D.F.: El Colegio de México.

FASOLT, Constantin (2004). *The Limits of History*. Chicago: University of Chicago Press.

FISCHER, Brodwyn M. (2008). *A Poverty of Rights: Citizenship and Inequality in Twentieth-Century Rio de Janeiro*. Stanford: Stanford University Press.

FORBATH, William E. (1991). *Law and the Shaping of the American Labor Movement*. Cambridge, Mass.: Harvard University Press.

FRANCO MENDOZA, Moisés (1997). *La Ley y La Costumbre En La Cañada de Los Once Pueblos*. Colección Cultura Purépecha. Zamora, Michoacán: El Colegio de Michoacán.

FRENCH, John D. (2004). *Drowning in Laws: Labor Law and Brazilian Political Culture*. Chapel Hill: University of North Carolina Press.

FUENZALIDA GRANDÓN, Alejandro (1919). "Don Valentín Letelier and his Intellectual Work" in *Inter-America*, 3: 112-120.

GALDAMES, Luis (1938). *Valentín Letelier y su Obra*. Santiago de Chile: Imprenta Universitaria.

GALVARRIATO, Aurora Gómez (1999). *La industria textil en México*. El Colegio de Michoacán.

GARCÍA-GALLO, Alfonso (1961). "Galo Sánchez." *Anuario de Historia del Derecho Español* 31: 1-8.

GARCÍA GRANADOS, Ricardo (1906). *La Constitución de 1857 y Las Leyes de Reforma En México : Estudio Histórico-Sociológico*. México: Tip. Económica.

GHACHEM, Malick W. (2012). *The Old Regime and the Haitian Revolution*. Cambridge: Cambridge University Press.

GIBSON, Charles (1964). *The Aztecs under Spanish Rule; a History of the Indians of the Valley of Mexico, 1519-1810*. Stanford: Stanford University Press.

GOLUBOFF, Risa Lauren (2007). *The Lost Promise of Civil Rights*. Cambridge: Harvard University Press.

GORDON, Robert W. (1975). "Introduction: J. Willard Hurst and the Common Law Tradition in American Legal Historiography Essay." *Law & Society Review* 10 (1): 9-56.

GORDON, Robert W. (1984). "Critical Legal Histories." *Stanford Law Review* 36 (1/2): 57-125. https://doi.org/10.2307/1228681.

GRANDIN, Greg, & G. M. Joseph (2010). *A Century of Revolution: Insurgent and Counterinsurgent Violence during Latin America's Long Cold War*. Durham: Duke University Press.

GREY, Thomas C. (1989). "Holmes and Legal Pragmatism." *Stanford Law Review* 41 (4): 787-870. https://doi.org/10.2307/1228740.

GREY, Thomas C. (2014). *Formalism and Pragmatism in American Law*. Leiden: Brill.

GUARDINO, Peter F. (2005). *The Time of Liberty: Popular Political Culture in Oaxaca, 1750-1850*. Durham: Duke University Press.

HALE, Charles A. (1986). "Political and Social Ideas in Latin America, 1870–1930." In *The Cambridge History of Latin America*, edited by Leslie Bethell, Cambridge: Cambridge University Press.

HANKE, Lewis (1949). *The Spanish Struggle for Justice in the Conquest of America*. Philadelphia: University of Pennsylvania Press.

HARTOG, Hendrik (1985). "Pigs and Positivism." *Wisconsin Law Review* 1985 (4): 899-936.

HEISE González, Julio (1900). *El Período Parlamentario, 1861-1925*. Santiago de Chile: Editorial Universitaria.

HERZOG, Tamar (2003). *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America*. New Haven: Yale University Press.

HERZOG, Tamar (2015). *Frontiers of Possession: Spain and Portugal in Europe and the Americas*. Cambridge, Massachusetts: Harvard University Press.

HOLDREN, Nate & TUCKER, Eric (2020). "Marxist Theories of Law Past and Present: A Meditation Occasioned by the 25th Anniversary of Law, Labor, and Ideology." *Law & Social Inquiry* 45 (4): 1142-69. https://doi.org/10.1017/lsi.2020.23.

HOLMES, Oliver Wendell (1881). *The Common Law*. Boston: Little, Brown..

HOLMES, Oliver Wendell (1899). "Law in Science and Science in Law." *Harvard Law Review* 12 (7): 443-63. https://doi.org/10.2307/1321177.

HOLSTON, James (1991). "The Misrule of Law: Land and Usurpation in Brazil." *Comparative Studies in Society and History* 33 (4): 695–725.

HUNT, Alan (1996). "Marxist Theory of Law." In *A Companion to Philosophy of Law and Legal Theory*, 2nd Ed., edited by Dennis Patterson. 2010. Oxford: Wiley-Blackwell.

HUNTER, Rob (2021). "Critical Legal Studies and Marx's Critique: A Reappraisal." *Yale Journal of Law & the Humanities* 31 (2): 389-412.

JAMES, T. M. (2014). *Mexico's Supreme Court: Between Liberal Individual Rights and Revolutionary Social Rights, 1867-1934*. Albuquerque: University of New Mexico Press.

JOHNSON, Walter (2003). "On Agency." *Journal of Social History* 37 (1): 113-24.

KOURI, E. H. (2002). "Interpreting the Expropriation of Indian Pueblo Lands in Porfirian Mexico: The Unexamined Legacies of Andres Molina Enriquez." *Hispanic American Historical Review* 82 (1): 69-118. https://doi.org/10.1215/00182168-82-1-69.

KOURI, E. H. (2004). *A Pueblo Divided: Business, Property, and Community in Papantla, Mexico*. Stanford: Stanford University Press.

KOURI, E. H. (2009). "Introducción. Vida e impacto de un libro," in Emilio Kourí (ed.), En busca de Molina Enríquez. Cien años de los grandes problemas nacionales. Ciudad de México: El Colegio de México.

LETELIER, Valentín (1887). *De la Ciencia Política en Chile*. Santiago de Chile: Impr. Gutenberg.

LETELIER, Valentín (1900). *La Evolución de la Historia*. Santiago: Imprenta Cervantes.

LETELIER, Valentín (1907). *Apuntaciones de Derecho Administrativo. Clases de 1904*. Santiago de Chile: Imprenta Chile

LEVAGGI, Abelardo (2018). "An Itinerary on Latin-American Legal Historiography." *Comparative Legal History* 6 (1): 2–14. https://doi.org/10.1080/2049677X.2018.1469270.

LEVY, Jonathan (2012). *Freaks of Fortune : The Emerging World of Capitalism and Risk in America*. Cambridge, Mass.: Harvard University Press.

LIRA GONZÁLEZ, Andrés (1983). *Comunidades indígenas frente a la Ciudad de México: Tenochtitlan y Tlatelolco, sus pueblos y barrios, 1812-1919*. México, D.F.: Colegio de México.

MARINO, Daniela (2006). "La modernidad a juicio: los pueblos de Huixquilucan en la transición jurídica (Estado de México, 1856-1911." México, D.F.: El Colegio de Mexico.

MIJANGOS, Pablo (2011). *El nuevo pasado jurídico mexicano: una revisión de la historiografía jurídica mexicana durante los últimos 20 años*. Madrid: Universidad Carlos III de Madrid.

MIJANGOS, Pablo (2015). *The Lawyer of the Church : Bishop Clemente de Jesús Munguía and the Clerical Response to the Mexican Liberal Reforma*. Lincoln: University of Nebraska Press.

MIJANGOS, Pablo (2020). *Historia Del Derecho, ¿Para Qué?* Valencia: Tirant lo Blanch.

MILANICH, Nara B. (2009). *Children of Fate: Childhood, Class, and the State in Chile, 1850-1930*. Durham: Duke University Press.

NOVAK, William J. (1996). *The People's Welfare : Law and Regulation in Nineteenth-Century America*. Studies in Legal History. Chapel Hill: University of North Carolina Press.

NOVICK, Peter. (1988). *That Noble Dream : The "Objectivity Question" and the American Historical Profession*. Cambridge: Cambridge University Press.

OWENSBY, Brian Philip. (2008). *Empire of Law and Indian Justice in Colonial Mexico*. Stanford: Stanford University Press.

PAGDEN, Anthony (1988). *La caída del hombre: el indio americano y los orígenes de la etnología comparativa*. Madrid: Alianza Editorial.

PARKER, Kunal (2003). "The History of Experience: On the Historical Imagination of Oliver Wendell Holmes, Jr." *PoLAR: Political Legal Anthropology Review* 26 (2): 60-85. https://doi.org/10.1525/pol.2003.26.2.60.

PARKER, Kunal (n/a). "Writing Legal History Then and Now: A Brief Reflection." *American Journal of Legal History* 56 (1): 168–78. https://doi.org/10.1093/ajlh/njv018.

PICCATO, Pablo (2001). *City of Suspects: Crime in Mexico City, 1900-1931*. Durham: Duke University Press.

POSADA, Adolfo (1903). "Sociología" in *La Lectura: Revista de Ciencias y Artes*, 3 (2): 517-520.

PORTILLO VALDÉS, José María (2006). *Crisis Atlántica : Autonomía e Independencia En La Crisis de La Monarquía Hispana*. Madrid: Marcial Pons.

PREMO, Bianca (2017). *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire*. New York: Oxford University Press.

RORTY, Richard (1979). *Philosophy and the Mirror of Nature*. Princeton: Princeton University Press.

ROSS, Richard J., & OWENSBY, Brian P. (2018). *Justice in a New World: Negotiating Legal Intelligibility in British, Iberian, and Indigenous America*. New York: New York University Press.

SALAZAR, Gabriel (2017). *La historia desde abajo y desde adentro*. Barcelona: Taurus.

SCOTT, Rebecca J. (2005). *Degrees of Freedom: Louisiana and Cuba after Slavery*. Cambridge: Belknap Press of Harvard University Press.

SIEGEL, Reva (1997). "Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action." *Stanford Law Review* 49 (5): 1111-48. https://doi.org/10.2307/1229249.

SIEGEL, Reva B. (1995). "The Rule of Love: Wife Beating as Prerogative and Privacy." *Yale Law Journal* 105 (8): 2117-2208.

SPECKMAN GUERRA, Elisa (2002). *Crimen y Castigo : Legislación Penal, Interpretaciones de La Criminalidad y Administración de Justicia, Ciudad de México, 1872-1910*. México, D.F.: El Colegio de México.

STANLEY, Amy Dru (1998). *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation*. Cambridge: Cambridge University Press.

SUAREZ-POTTS, William J. (2012). *The Making of Law: The Supreme Court and Labor Legislation in Mexico, 1875-1931*. Stanford: Stanford University Press.

TOMLINS, Christopher L. (1993). *Law, Labor, and Ideology in the Early American Republic*. Cambridge: Cambridge University Press.

TOMLINS, Christopher L. (2007). "How Autonomous Is Law?" *Annual Review of Law and Social Science* 3 (1): 45-68. https://doi.org/10.1146/annurev.lawsocsci.3.081806.112741.

TOMLINS, Christopher L. (2012). "What Is Left of the Law and Society Paradigm after Critique? Revisiting Gordon's 'Critical Legal Histories.'" *Law & Social Inquiry* 37 (1): 155-66. https://doi.org/10.1111/j.1747-4469.2011.01280.x.

TOMLINS, Christopher L. (2021). "Past Prescient", *University of Colorado Law Review* 92 (4): 1129-1150.

TUSHNET, Mark. (1983). "Is there a Marxist Theory of Law?" *Nomos* 26: 171-88.

UNITED STATES BUREAU OF EDUCATION (1901). *Report of the Commissioner of Education 1899-1900*, Chapter XXVIII: Sociology at the Paris Exposition of 1900.

URSIN, Edmund (2013). "Holmes, Cardozo, and the Legal Realists: Early Incarnations of Legal Pragmatism and Enterprise Liability." *San Diego Law Review* 50 (3): 537-588.

VALADÉS, Diego (2014). "Justo Sierra y la fundación de la universidad," in Homero Vásquez Ramos (ed.), *Cátedra Nacional de Derecho Jorge Carpizo. Reflexiones Constitucionales*. Ciudad de México: UNAM, Instituto de Investigaciones Jurídicas.

WEINRIB, Laura M. (2016). *The Taming of Free Speech: America's Civil Liberties Compromise*. Cambridge: Harvard University Press.

YANNAKAKIS, Yanna (2008). *The Art of Being In-between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca*. Durham: Duke University Press.