

The first Cuban university chair of legal history: notes for its study

Abstract

The present article approaches the University Chair of General History of Spanish Law, created at Havana University during the end of the 19th century, when Cuba was still under Spanish colonial rule. At first, the insertion of this subject was because of its inclusion in the University study program approved in the Iberian Peninsula, which were extended to the Island. Nevertheless, this process was also due to a series of factors such as the modernization of university education, the development of nationalist currents and the influence of the Historical School of Law. The article will analyze the particular conditions that led to the interest in historical-legal studies in Cuba, as well as the program of the subject matter and the work of the professors who held the ownership of the mentioned University Chair.

Keywords: legal history, Cuba, nineteenth century, Cuban legal science

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Introduction

Nineteenth century encloses an essential epoch in order to outline Cuban legal culture. As far as legal science is concerned, this century is signed by a noticeable influence of scientific advances and new philosophical currents that arose in the rest of the western world, which entered the Island by the hand of a prominent local oligarchy, which had its sight set on the European bourgeois ideology. In the university sector, some tendencies that aimed at the modernization of legal education would become visible and an important debate would be generated in relation to it. Although this phenomenon would be an echo of similar perceptible positions in the Spanish metropolis, in Cuba it would be motivated by endemic causes. After the secularization of university education in 1842, under the influence of trends such as the one marked by the Historical School of Law, the first bibliographical expressions of a historical-legal vision would appear in the Island. Finally, in 1883, Legal History would be included as an academic discipline. Curiously, the origins and development of Legal History in Cuba, seen as a scientific subject, has not been addressed at all within Cuban historiography. In this sense, it is quite difficult to find works or any kind of references, not even during the pre-revolutionary period, closer in time to the nineteenth century. Our purpose will be to analyze the determining factors in the emergence and evolution of legal-historical studies during the mentioned phase, emphasizing the Chair of General Legal History, created in the light of the Gamazo academic program.

Cuban nineteenth century encompasses a rich universe, which unfortunately is relative few explored in all its complexity. In the Island, Legal History's destiny (as well as legal education in general) would be irredeemably tied to the vicissitudes occurred in Spain. Due to Cuba's colonial condition, practically the same curricula that were in effect in the peninsular metropolis would be applied in the Island. Practically the same bibliography would be used and even the consolidation of historical-legal studies would arise in both cases in the midst of very similar circumstances. Given that the main Cuban influences in terms of science and legal education came from La Madre Patria, General Legal History would not be inserted in academic programs until 1883, year in which it was parallel established at the

Iberian Peninsula. However, this process in Cuba was not a simple reflection of the Spanish one; therefore, it had its own peculiarities and was the result of a palpably changing scientific discourse. Those are the reasons why the origins and development of the discipline that concerns us has to be examined in a dialectical relationship with a series of social, economic and political circumstances, framed in a specific historical scenario and determined by concrete cultural trends. While it is true that this will be the central point of our analysis, as well as the work of Professors José María céspedes Y Orellano and Juan Francisco O'Farril y Chappotín, it will be necessary to observe the historiographical background, which highlights the work of Antonio Prudencio lopez, author of one of the first manuals in the continent.

In addition to the interest that our subject may have for Cuban historiography, we think that its repercussion is not restricted to an eminently localist level, but that its interest could transcend the Latin American context. The present article can contribute to glimpse some essential keys of the emergence and development of the History of Law in Latin America, because, despite of being projected on a European legal experience, Havana University's Chair would be one of the first that were created in the whole region. In this sense, every effort to rescue and preserve Latin American tradition and legal culture is indispensable, now more than ever.

The royal and pontifical university of saint jerome of havana, legal education before secularization process

The Royal and Pontifical University of Saint Jerome of Havana, the first university built on Cuba, were officially founded on January 5, 1728. For its creation, it was necessary the Royal Decree dictated by Philip V and the Papal Bull issued by Innocent XIII, at that time Supreme Pontiff and Sovereign of Spain, respectively. In its beginnings the university was under the auspices of the Dominicans of San Juan de Letrán's convent and in what refers to legal studies, it had a Faculty of Canons and a Faculty of Laws. With regard to this last aspect, it should be noted that apart from the clerical administration, private schools proliferated, too, with royal special license to carry

out legal education. The creation of these centers was undoubtedly because the house of high studies lacked the necessary infrastructure to accommodate all those who aspired to enter its classrooms, more if we consider that legal studies were particularly coveted by the Creole youth. José Gutiérrez De La Concha, who was the Island's Captain General, recorded the existence of two private schools in Havana and Puerto Príncipe that offered courses in order to facilitate the access to high studies. Besides these establishments, there were Chairs of Civil and Canonical Jurisprudence in the conciliar seminars, both at the capital and Santiago de Cuba, which were dependent of Havana University.¹ Like the great majority of peninsular or American universities at that time, the Royal and Pontifical University of Saint Jerome of Havana had as one of its missions to supply the Catholic Church with clergymen experts in the different branches of knowledge offered in its classrooms and thus these graduates could join the different ecclesiastic positions and other functions.² The fact that the University was in the hands of a religious order brought, among other consequences, that it was permeated by the most ancient scholastic conceptions and by an enormous dogmatic rigidity in terms of the knowledge transmitted and the authors read. This, of course, was detrimental to the quality of the teaching provided, which turned its back on rational thinking and the most novel advances in the scientific field. Even the Cuban clergy detected this situation. In the second half of the eighteenth century Fray Juan chacón, Havana University's rector, tried unsuccessfully to modernize the study plans, advocating the insertion of Mathematics and Experimental Physics. Prelate José Agustín Caballero, theologian, philosopher and pioneer of Cartesian doctrines in the island, promoted years later a free education that echoed "good literature and essential knowledge of science and arts"; capable of stepping up to the level in which human knowledge was at that time.³ To this, we must add the important work later performed by Bishop Juan José Díaz de Espada y Fernández de Landa, whose achievements include giving an immeasurable boost to the Royal and Conciliar Seminary College of San Carlos and San Ambrosio. This institution, in which the lessons were not taught in Latin but in Castilian, was essential in the introduction and dissemination of Enlightenment thought in Cuba and managed to acquire a great reputation to the point of overshadowing Havana University.⁴

Obviously, this generalized backwardness in the university sphere had a direct impact on the area of Jurisprudence. During Havana University's initial years, legal teaching was marked by a predominance of Roman law over the national Law, which in this context we analyze must be understood as Spanish Law, if we take into account Cuba's colonial status. Roman law's preponderance would provoke a reaction within some sectors of Cuban intellectual world, being one of the most transcendent expressions the satire published in verses by Professor Prudencio Hechavarría y O'Gavan.⁵ There was no intention to disparage the legacy of ancient Rome's juriconsults at all, but rather to make clear that *Corpus Juris Civilis* could not be the epicenter of modern jurist's forging process. It was necessary to encourage the teaching of past and present national Law, as well as dabble in historical and philosophical reflection, for the sake of a solid formation with truly scientific foundations. The existing deficient education was more than evident in the practice of the profession. So notorious were such flaws that in 1834, *La Aurora*, a journal from the Province Matanzas, published a poem entitled *Rábula*, which exposed both the moral and professional deterioration of lawyers in the framework of their tasks.⁶

One aspect to be taken into consideration is that, in addition

to these essentially academic questions, the island had long been developing profound political, social and cultural changes with the impetus of a Creole oligarchy that was gaining more and more strength. This powerful social class, better known as *sacarocracia* or *plantocracia*, was imbued with the principles of liberalism and wielded a conception of progress strongly linked to scientific knowledge. As a result, this elite group of plantation mentality would enhance the idea of collocating knowledge in function of the development of forces and means of production, especially sugar, which had reached very high numbers to the point of becoming Cuban economy's main export line.⁷ These conditions would stimulate the flowering of scientific and rational thought within Cuban intellectual circles. One of the most cultured and illustrious exponents of this movement was Francisco Arango y Parreño, who summarized the cardinal points of the ideology defended by the *sacarocracia* in his *Speech on Havana Agriculture and the means to foment it*.⁸ In 1825, the Intendant of Finance Claudio Martínez de Pinillos entrusted him to draft a Study Plan for the Island of Cuba, which showed some reform criteria that were in perfect agreement with the ideas we already referred.¹

It was clearly visible that the winds of change were blowing and the process of modernization would have to arrive, eventually, under the premises indicated. Not only did students need to be trained by the most advanced scientific knowledge of the time in order to leave behind the backwardness of scholasticism, but also the oligarch class pushed with insistence in pursuit of its mercantile interests. Finally, in 1842, a reform approved in Spain would be extended to Cuba. This reform would entail the Havana University secularization, which from "Royal and Pontifical" came to be called "Royal and Literary" and would be subject to government control. Thus, a "centralizing and bureaucratizing modernization of the high education structure" was established, influenced by the Napoleonic patterns of teaching reform. That implied a tendency towards uniformity and laicization of all branches of the Public Administration, a condition that Spanish education flaunted long time ago, in part due to the demands of the liberal sectors.² In relation to Jurisprudence field, it would bring important advances for Cuban legal science and would collocate the foundations of historical-legal studies in the island, as will be discussed in the following section.

The beginning of historical-legal studies in Cuba. the work of professor Antonio Prudencio Lopez

As we stated in the previous section, the year 1842 is the one that served as the threshold for the arrival of modernity in Cuban university classrooms. Although it would not be until a few decades later that Legal History of Law was introduced as an independent subject, the origins of historical-legal studies in Cuba can be determined because of those illustrated reforms. The reform echoed many of the criteria that demanded to combine practical skills and theoretical reflection, in the same way that it was intended that students were able to venture into other epistemological branches that were useful for the purposes of the exercise of their profession, whether they were related to their area of knowledge or not. In that order, it was essential for students to enter the fields of disciplines such as History and Philosophy, just to mention some. In this context, the influence of authors not only from

¹Francisco AP. *Plan de Estudios*. La Habana: Imprenta, Encuadernación, Rayados y Efectos de Escritorio de Howson y Heines; 1889. p. 547 and following.

²Elena HS. *La Universidad de La Habana*. 81 p.

the Iberian Peninsula but also from other European countries began to reach the island. Those authors were generally quite read in Spain and through metropolitan mediation achieved certain notoriety within Cuban academic circles.

When referring to historical-legal studies, one of the most representative figures of the early nineteenth century was Friedrich Carl von Savigny, founder of the so-called German Historical School of Law and key name in the configuration of Legal History, seen as the discipline we know today. According to Savigny, Law should be considered as a historical product and as one of the many distinctive elements of a community, such as traditions and language. Law was an organic entity that resided in the spirit of the people and evolved along with it independently of the legislator's action.⁹ Hence, he insisted on the relevance of approaching any precept or legal concept always from a historical perspective, something that would establish the budgets for the construction of a proper, rich and effective national Law, based on a solid scientific background.³ The Historical School's postulates were expanding considerably throughout the European continent and Spain, metropolis of Cuba, could not be apart from this phenomenon. From the illustrated reform of 1842, which compound Faculties of Laws and Canons into a single Faculty of Jurisprudence, the tendency to vindicate History in an instrumental key in function of legal dogmatic became clearly visible. Because of this idea, which represented one of the central notions of Savigny's program, the different subjects contained in the academic plan would incorporate a historical background, in order to later delve into theoretical and practical assumptions. This is how matters such as Elements and History and Roman law and Elements and History of Spanish Civil and Commercial Law, just to name a few, started to be imparted.

At this point, it is necessary to insert one of the exponents of the Historical School of Law in France and an influential author in both Spain and Cuba. We refer to Jean Luois Eugène Lerminier. From a very young age this author felt identified with Savigny's historicist approach, at the point of getting his doctorate in 1827 with a dissertation on the treatise the German professor had written about possession.¹⁰ Lerminier, in open opposition to the exegetical methodology that prevailed at that time in France, maintained a distinction between Law and legislation, arguing that Law existed in the conscience of man and in the life of peoples and that it manifested and developed in History. Law expressed itself through a series of symbols and images, interwoven with morality and religion and its formal externalization would depend on many factors such as the state of material and cultural development of each community, being the custom the main source during the earliest ages of civilization.¹¹ Consequently, legislation, embodied in modern codes, came to be just one of the many Law's forms of expression, in this case corresponding to the time in question. However, this could not be seen in isolation from the cultural heritage, the processes and phenomena that had preceded it, but should be understood as a continuation and complement of them.⁴ For these reasons, Lerminier claimed that Law had to be studied from the philosophical and from the historical perspective, because only then, by the apprehension of these two substantial constituent elements, an exhaustive knowledge of its essence could be obtained.⁵

In 1842, Lerminier's Introduction to Legal History was declared in Spain as "a useful book for public education" by the General

Directorate of Studies, which meant that it should be taken into account for such purposes in preference to others. This work even came to be used as a textbook by Professor Juan Antonio Monleón in the introductory course he imparted at Salamanca University.¹² As expected, Lerminier's book would get to be considerably diffused in Cuba, which was attested by José de la Luz y Caballero¹³ and the works of some other the authors that will be attended in this article. Another influential author among Cuban jurists during nineteenth century was undoubtedly the German philosopher Karl Christian Friedrich Krause, whose works made deep impact in the island, mostly through his Spanish admirers. Antonio Bachiller y Morales is one of the most authentic examples. Some of his contemporaries like José Manuel Mestre¹⁴ and José Martí¹⁵ confirmed Bachiller's affiliation to Krause's postulates, but it was also evident to discover it by reading his notable Course of Natural Law,¹⁶ which was full of references to Heinrich Ahrens, one of Krause's followers, who managed to transpose many of his philosophical ideas to Jurisprudence's area. Indeed, after the reform of 1863 the Course of Natural Law written by Ahrens¹⁷ became the principal textbook for Legal Philosophy Chair, being in charge José Manuel Mestre, who had been very close to Bachiller y Morales and Nicolás Azcárate, another Krause's sympathizer.¹⁸

In the time that concerns us, regarding the historical-legal studies stands out the name of Antonio Prudencio López, Professor of History and Elements of Roman Law, who would get to be, designated Dean of the Law Faculty at Havana University. This teacher was notoriously influenced by the ideas of Savigny and Lerminier. Like these two European authors, he sustained that positive Law had two central elements, one historical and the other philosophical, so its total apprehension depended on the concatenation of both elements.¹⁹ Antonio Prudencio López did not confuse Law with an artificial product that embodied the conscious work of the legislator: rather he understood it as a spontaneous phenomenon that was imminent to the human and the social phenomenon. Law was a regulatory order that emerged from below, resulting from the interaction of men and observed by them in the dynamics of their relationships and their lives. According to these criteria, Law was far from being associated with the dictates of any political power entity, so he pondered custom as the supreme legal manifestation and considered the written norm just only one of its externalization pathways, typical of a further phase advanced within its historical development.⁶

In 1864, Antonio Prudencio López published his Historical Review of Overseas Law, under the assumption that it was the first Cuban work of this kind to see the light.²⁰ This text contained synthesis that focused on exposing briefly and succinctly the elementary milestones of the overseas legislation's historical evolution. Although there was a special emphasis on the Compilation of the Laws of the Indies, there was also a space dedicated to other Spanish nineteenth-century normative sources such as the Commercial Code of 1829 and the Law of Commercial Procedure of 1830. This book, with just over ninety pages, not only covered the overseas laws but also directed its attention towards the political and administrative institutions of the colonial power, taking into account the institutions located both in the metropolis and in American lands. As expected, there was a section reserved to the political-administrative organization in Cuba.

The work by Antonio Prudencio López has some ideological viewpoints that today could be questioned attacked, such as the lack of criticism on certain norms or metropolitan institutions. In his books, many arguments are set in a very kind and naive way, especially

³Friedrich CS. *De la vocación de nuestra época para la legislación y la ciencia del Derecho*. 81 p.

⁴Lerminier JLE. *Introducción General a la Historia del Derecho*. p. 334-335.

⁵Lerminier JLE. *Introducción General a la Historia del Derecho*. p. 37-38.

⁶Antonio PL. *Oración Inaugural sobre el Derecho*. 6 p.

those that refer to the regulation of the status of the indigenous legal condition and the commendations,⁷ ignoring the atrocities and vexations they had to go through during the process of conquest and colonization. For the rest, the text in question is not devoid of merits and fulfills its purpose, which was to provide students with a book that complemented the lessons of History and Institutions of Spanish Law with historical news of the overseas Law. The efforts shown in order to develop a content absent from the legal studies at Havana University until that moment, cannot but be applauded. One point we cannot fail to emphasize is that we are possibly witnessing one of the first manuals of Legal History in Latin America. It is interesting that the text written by Antonio Prudencio López appeared more than a decade before the Course of Peruvian Legal History, written by Román Alzamora,²¹ reputed as the first textbook of its kind in the continent, which we will refer to in the following section. This is not the appropriate scope to determine if the Cuban professor's text was the first Latin American manual of Legal History because sustaining such a statement would require entering into a series of details that would separate us from this article's principal objective. It is possible to use as a contrary argument the fact that Alzamora's work was originated within the framework of a Chair devoted exclusively to the study of Legal History while López provided a book that was a complement to another subject and not to an independent discipline. Likewise, it could be reasoned that Alzamora's manual was dedicated to the Peruvian historical national Law, while López focused on a non-national legal system, which could not even be understood as Latin American, but neither as Spanish in its more strict sense. In short, this topic could be subject to a much deeper analysis and could generate a very enriching debate. Now, independently of this, the text redacted by Antonio Prudencio López must be taken into account when studying the legal historiography of Latin American region.

The chair of general history of Spanish law: the labor of José María céspedes y Orellano and Juan Francisco O'Farrill y Chappotín

The Chair of General History of Spanish Law was not created at the University of Havana until 1883, by virtue of the Gamazo academic program, which had been approved in Spain that same year. As we already affirmed, during the phase between the 1842 reform and the end of Spanish colonial rule, in 1898, the same curricula valid in the metropolis would be implemented in the island with specific modifications made generally for reasons of adaptability. Besides, the texts and authors from the Iberian Peninsula would necessarily nourish insular legal teaching. For this reason, it is impossible to analyze the development of historical-legal studies in Cuba during the nineteenth century without looking at the Mediterranean.

Professor Manuel Martínez Neira indicates that interest in Legal History, in Spain, was due precisely to the interest aroused towards Spanish national Law. "The study of Spanish Law, also called royal or national, could not be previous to codification but historical, because it meant an enormous effort of search, order and synthesis of a thousand-year-old legislation, that went back to the Liber."²² Although before the eighteenth century the intellectual preoccupations of the peninsular jurists turned almost completely towards the classical Roman and canonical texts, after the historical moment pointed out, historical studies on Spanish Law began to proliferate. These were motivated by the rise of Enlightenment movement and received an ostensible institutional support from scientific corporations like the Royal

Academy of History, which enjoyed the auspices of the Monarchy.²³ Finally; a new study program was approved in 1883, promoted by Germán Gamazo, Minister of Development. This program inserted some new features such as a preparatory course that contained six subjects and was General History of Spanish Law among these subjects, configured as an autonomous discipline of voluntary assistance.⁸ In words of historian Rafael Altamira y Crevea,²⁴ this Legal History was nothing but a direct heir of the History of Civil Law that was previously taught in Spanish universities, principally focused on the so-called external History sources, more than on the internal sources.⁹

On January 16, 1884, a Royal Decree restructured legal studies again, being promoted this time by the new Minister of Development, Ángel Carvajal y Fernández de Córdoba, Marquess of Sardual. In regard with General Legal History, as the most significant change, the discipline became a final study matter; hence, it could not be examined without having previously completed all the subjects of the degree. Another interesting fact is that to obtain the Doctorate, it was required to pass a group of historical disciplines, such as Civil and Criminal Institutions of Ancient and Modern Peoples and Political Institutions of Ancient and Modern Peoples.¹⁰ The Sardeal's Plan was ephemeral, too and a new program replaced it in August 14, 1884. Actually, this new program did not really imply serious alterations for General Legal History and welcomed a good number of historical subjects, highlighting Public Law Institutions of Ancient and Modern Peoples and Private Law Institutions of Ancient and Modern Peoples.¹¹

Consequently, under Spanish legislation, a Legal History Chair was established in Cuba, which became one of the first of its kind in Latin America, possibly the second one. The first university in the continent to open a legal History Chair was San Marcos University, in Peru, in 1875, being Román Alzamora the professor in charge.²⁵ From this teacher's pen came out a manual we already alluded, a manual that destined most of its pages to the historical evolution of Peruvian legal institutions and norms, but that also took care of dedicating some chapters to the Spanish Law and the political-legal organization of the Incas. But in all cases, Cuba had a Legal History Chair even long before some countries of the continent such as Argentina, Chile and Mexico, where these Chairs came to flourish at the beginning of the twentieth century. It is necessary to consider that we are talking about an era in which positivism was in full state of effervescence and its methodology, typical of Natural Sciences, reached to penetrate that field of knowledge we know today as Social Sciences. Hence, the positive analysis of social phenomena, including those of a legal nature, demanded a view through the prism of History, since this was the laboratory in which these phenomena could be observed in their constant dynamic of transformation and restructuring. As a result, Havana University witnessed the growing tendency to conceive History as the basis to examine legal institutions from a scientific point of view. That is why during the last decades of nineteenth century many professors gave space to the historical explanation as a prelude to the theoretical and doctrinal assumptions of their respective subjects. There we have the cases of José Antonio González Lanuza,²⁶

⁸Martínez Neira Manuel. *Los orígenes de la Historia del Derecho en la universidad española*. p. 96–97.

⁹Altamira Rafael. *La Enseñanza de la Historia*. Librería de Victoriano Suárez: Madrid; 1895. 454 p.

¹⁰Martínez Neira Manuel. *Los orígenes de la Historia del Derecho en la universidad española*. 98 p.

¹¹Martínez Neira Manuel. *Los orígenes de la Historia del Derecho en la universidad española*. p. 99–100.

⁷Antonio PL. *Reseña histórica del Derecho de Ultramar*. 36 p.

Professor of Criminal Law and Ricardo Dolz y Arango,²⁷ Professor of Procedural Law. In the same way, Antonio Sánchez de Bustamante y Sirvén, perhaps the most famous Cuban jurist worldwide pondered the historical method in the first volume of his Treatise of International Private Law, rather than to unearth “scientific curiosities” in order to “theoretically build organisms that achieve the greatest possible perfection.”²⁸

In relation to the Chair of General History of Spanish Law, during the period between its opening and the cessation of colonial Spanish domination, two professors were consecutively in front of it. We are talking about José María Céspedes y Orellano and Juan Francisco O’Farril y Chappotín. As far as we know, none of these teachers wrote any manual or general work in order to impart the discipline. Fortunately, there are several works of their authorship that allows us to infer some of the methodological lines followed by them, as well as the scope and purpose given to the discipline. The first professor we mentioned is José María Céspedes y Orellano, who was born in Bayamo on April 10, 1829. He obtained his bachelor degree in Jurisprudence from Havana University in 1852 and achieved his doctor’s degree in 1856. Years later, he would occupy the Chair of Criminal Law and Civil and Criminal Procedures, replacing Antonio Zambrana,²⁹ and writing a manual on procedural matters.³⁰ After the outbreak of the independence war, he would settle for a few years in Costa Rica, a country that would receive a large number of Cuban families fleeing from belligerence and in which he developed an important academic activity. Céspedes y Orellano had the opportunity to join the Saint Thomas University, where he held the Chairs of International Law, Public Law, Roman law and Rational Philosophy. So significant was his work in Costa Rica and so high was its impact that he is recognized as the introducer of the positivist philosophy in that country.¹² Indeed, he always showed great admiration towards the figure of Auguste Comte and the philosophical system he created, which he considered superior to the rest of the existing currents. About positivist method, Céspedes asserted it was “a philosophy based on real and proven facts, would be more respectable and more credible for the generality of men, than the one which relies only on metaphysical hypotheses, even if they are created by the most exalted geniuses from Germany.”¹³

Once the war ended, José María Céspedes returned to Cuba and was able to rejoin Havana University. Before he occupied Legal History Chair, he would teach Comparative Legislation. When teaching this subject, he proposed to expand its limits towards the confines of the critical History of the social state and the norms that had ruled the ancient peoples of the East, of Greece and Rome. All these aspects should necessarily be redirected to the study of the critical History of the social state and the norms that governed modern societies. In order to fulfill the itinerary outlined, one point he emphasized was that it was indispensable to resort to Legal Philosophy, since all this wealth of knowledge should be based on solid and accurate principles.¹⁴

If we analyze these last words, it is possible to recognize the role granted to historical lecture by Céspedes. A vital issue in his thought was that every glance at the legal past had to be justified and could

¹²Armando VA. *El Doctor Zambrana*. In: José S, editor. Costa Rica: Editorial Universidad Estatal a Distancia; 2006. p. 37–38.

¹³Orellano C, MaríaM. *El Comtismo. Discursos, escritos y artículos*. La Habana: Establecimiento Tipográfico, Teniente Rey; 1895. 282 p.

¹⁴Orellano C, María J. *Discurso de Apertura de la Cátedra de Legislación Comparada en la Universidad de La Habana en el Año Académico de 1880 a 1881. Discursos, escritos y artículos*. 2 p.

not obey banal and unsuccessful purposes. History could not mere by as a simple display of erudition. Nobody should evoke it with the vague desire to fill pages, because its indiscriminate use did nothing but denote an inability to generate own and general ideas.¹⁵ Céspedes understood that all knowledge was profitable, but it was impossible to cover it entirely. Therefore, it was prudent to focus on knowledge that, regardless of their nature or object, was the most useful and indispensable for the optimal performance of the legal profession.¹⁶ However, these opinions did not imply the rejection of the historical-legal perspective at all, but on the contrary, he never stopped stressing that Law had to be observed under History’s lens, “ascending to its concrete origins and descending to its always infinite and relative ethnic evolutions.”¹⁷

José María Céspedes y Orellano was aware that historicity was a feature inherent to the legal phenomenon, so this one could not be conceived isolated from the society that brought it to life. In that regard, he declared: Law, like everything that refers to man, is subject to successive and constant changes and transformations. Otherwise, perfection would not be understood, nor would progress become a law of humanity Law has been formed as languages, slowly and by virtue of growing and different needs in each social group. In addition, if human nature must be taken into account to study and understand the motive of determinations and individual and social acts, its inconstancy and relativity must not and cannot be forgotten.¹⁸ Law, the way it was expressed, understood and produced, depended on a series of conditions attached not only to each historical moment, but also to some circumstantial factors that are related to the context in which it developed.

The laws that the different human societies formulated for their government, in time and space, have had to respond to the progressive state of the community and to the particular development of individual aptitudes. Civil justice and criminal justice, indispensable to maintain the bond of union and to tighten it could not be the same in all times or in all groups. The laws have undergone the necessary and consequent transformations to the periodic and constant evolutions of the being they are applied on. These rules of common life are the natural product of the internal and external conditions of the associates.¹⁹ Up to this point, we have been able to identify some of the main guidelines of José María Céspedes y Orellano’s thinking and his historicist vision about the legal phenomenon. The criteria that we have exposed allow us to assert that his conception about Legal History was very close to disquisitions of sociological nature. He perceived Law as an order that was a natural result of the social relations and human coexistence whose manifestations varied according to the different phases of historical development. Therefore, sustained the presence of a legal regime even in the bosom of the most primitive societies, in which

¹⁵Orellano C, María J. *Abuso de la Historia. Discursos, escritos y artículos*. p. 435–436.

¹⁶Disertación leída en la sesión de apertura de la Academia de Derecho en la Real Universidad de La Habana por el Doctor Don José María Céspedes y Orellano, Catedrático Numerario de la Facultad de Derecho, celebrada el día 7 de noviembre de 1886. sobre la siguiente tesis: El Derecho, su clasificación y sus relaciones con las otras ciencias, La Habana, Imprenta del gobierno y Capitanía General por SM; 1886. 4 p.

¹⁷Disertación leída en la sesión de apertura de la Academia de Derecho. 5 p.

¹⁸Disertación leída en la sesión de apertura de la Academia de Derecho. p. 11–12.

¹⁹Orellano C, María J. *Antropología y Derecho Penal. Revista Cubana. Periódico Mensual de Ciencias, Filosofía: Literatura y Bellas Artes; 1885. 13 p.*

both Public Law and Private Law relations were held, although in a rudimentary state. In fact, in that type of relations Céspedes found the germinal expressions of modern era's legal dynamics.²⁰ Another feature to take into account in this regard is that when defining Public Law and Private Law of ancient and modern peoples, Céspedes considered them, respectively, as a general History of their government systems, their constitutions and its codes, in the case of the first, while understood the second one as the History of its civil institutions.²¹

The professor who substituted Céspedes in 1891 was, as we already said, Juan Francisco O'Farrill y Chappotín, who, in addition to being a university professor, would be part of President Tomás Estrada Palma's Cabinet during the first years of the Republic, once independence was achieved. O'Farrill's work shows an inclination towards the History of legislation and institutions, as we can see in his conference on Roman Spain, which also appealed the importance of Roman Public Law as a carrier of informative principles of modern Political Science.²² Another of his fundamental works was contained in his speech to obtain the Doctorate in Law, which addressed Law's theoretical and historical foundations. Particularly in this speech, O'Farrill defended the philosophical approach, but especially the historical, when facing legal studies from any edge. In the study of the Law, embracing the historical element, regardless of the philosophical one, is to ignore its extraordinary importance; and on the contrary, to disregard the always respectable teachings of History is to forget that destiny of humanity is realized in time and that events have a direct influence on its constitution, its aspirations and tendencies. Philosophy has the Law's theory, History has its practice and both must be considered as indispensable for science's progress.²³

According to Juan Francisco O'Farrill, History was precisely the proper place to find the foundation of every institution. It was only by delving into the most remote temporal confines how it was possible to glance at the causes that had conditioned their origin and their subsequent evolution. Moreover, the provisions of positive Law even "when in many cases they do not have a higher origin than the Law formed by men, they nevertheless find their existence justified by the social needs they come to satisfy."²⁴ However, this retrospective exercise proposed by Professor O'Farrill could not be limited simply to the establishment of causalities. It had to go further and consequently should encourage a thorough examination of the characteristics of the institution. It should help measure the results and consequences that had historically brought their practical application and all this would necessarily lead to the formation of a critical judgment about the institution that was the object of the analysis.²⁵

Previously we lamented the fact that neither Céspedes nor O'Farrill had apparently written a manual or a general work directed at the

²⁰Disertación leída en la sesión de apertura de la Academia de Derecho. p. 14–15.

²¹Disertación leída en la sesión de apertura de la Academia de Derecho. p. 17–18.

²²Francisco OJ. *La España romana. Discurso leído en la Apertura del 10º curso de la Academia de Derecho*. La Habana: Imprenta y Papelería La Universal de Ruiz y Hermano; 1895. p. 10–11.

²³*Discurso para el doctorado en Derecho, sección del Civil y el Canónico, leído y sostenido el 18 de junio de 1884 por el Ldo. Juan Francisco O'Farrill y Chappotín*. La Habana: Establecimiento Tipográfico de Soler Álvarez y Compañía; 1884. 6 p.

²⁴*Discurso para el doctorado en Derecho, sección del Civil y el Canónico*. 7 p.

²⁵*Discurso para el doctorado en Derecho, sección del Civil y el Canónico*. 32 p.

teaching of the subject General History of Spanish Law. However, the second one did publish the program followed by him for such purposes, which gives us at least the syllabuses and the structure of the course.²⁶ According to what is documented in the referred program, the subject consisted of one hundred two lessons. The first six lessons were aimed at conceptual and methodological issues, which addressed the theories of authors such as Savigny and Giambattista Vico. The following lessons were dedicated to the historical evolution of Spanish legislation and institutions from antiquity to modern times. The point that we must emphasize is that the last lessons focused on ultramarine legislation from the beginning of the colonization process until the nineteenth century. In these last sections, there was particular reference to Cuba, mostly emphasizing the validity of some of the Spanish codes in the island's territory.

The Spanish colonial rule on the island would cease in 1898 and after a brief period of American military intervention the Republic of Cuba would be born in 1902. The achievement of independence and the establishment of the new republican order brought consequences not only in the political sphere but also in the cultural and intellectual. Havana University would undergo profound transformations that began with the replacement of the curricula that existed during the last stage of the colonial regime. Although this did not mean the suppression of historical-legal studies, it did imply the disappearance of the subject General History of Spanish Law. Historical-legal disciplines would proliferate throughout the first half of the twentieth century, but decades would pass before a general History of Cuban Law appeared in the country's university classrooms.

Conclusion

As we indicated from the introduction of this article, the origin and development of Legal History in Cuba as a scientific discipline was a subject ignored by national scholars throughout the twentieth century. In the most recent decades, this phenomenon could be justified, among other reasons, by the lack of interest that historical-legal studies arouse nowadays, something that is not exclusive of Cuban context, not even of Latin American one. Regarding with the dawn of twentieth century, a possible explanation could be the new republican scenario in which a national culture and a new legal science were intended to be built. For that reason, it was avoided to go back to the immediate colonial past and certain elusive attitudes to Spain are generated, not so much in the way of rejection as in the interest of overcoming past experiences and looking towards the future. The fact is that both legal historiography and legal science during the nineteenth century remain to this day a little explored territory. It is true that nineteenth-century Cuban legal historiography, especially the one developed within the framework of the Chair of General History of Spanish Law by its holders, was projected on a legal reality very different from the Island's. Its academic pretensions and its submission to the centralized control of the educational institutional structure of the Metropolis kept it apart from a series of events that in principle should have been the object of its interest. We speak, for example, about the historiography produced by the Creole oligarchy since the previous century with a marked ideological and identity claim or the intense historiographical debate rose in the second half of the nineteenth century. Despite the mentioned issues, no relevance should be subtracted from nineteenth-century legal historiography, because it showed a considerable

²⁶Francisco OJ. *Programa de Historia General del Derecho Español*. La Habana: Imprenta y Papelería La Universal de Ruiz y Hermano; 1892.

scientific level attached to the transcendental doctrinal currents of its time, giving us an overview of the mentality and ideological affiliation of its cultivators. These years that corresponded to the opening of the Chair of General History of Spanish Law was specially fundamental in the forging of a new generation of jurists who, during the first half of the twentieth century, would be at the vanguard of Latin American legal science. There are plenty of reasons to keep digging into the topic that has occupied us and there are still many of its edges that are waiting to be unraveled.

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Conflict of interest

Author declares there is no conflict of interest.

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