Asian Journal of Law and Society (2024), **11**, 225–226
doi:10.1017/als.2024.21

CAMBRIDGE UNIVERSITY PRESS

EDITORIAL

Foreword

Taisu Zhang

Yale Law School

The study of legal history has always faced a certain kind of identity crisis. Overlapping within both legal scholarship and historical research, it naturally takes on features from both fields: from history, a focus on archives and source analysis; from legal scholarship, an analytical tendency to centre the law's functions and significance. To make things even more complicated, the dominant trend in historical legal scholarship has, over the past several decades, been decisively towards interdisciplinarity across the social sciences. Theories and methodologies from sociology, political science, economics, and critical theory have all played major roles in shaping how legal scholars frame their historical inquiries. As a result, legal history is now one of the true interdisciplinary hubs in historical research, a sort of focal point where numerous intellectual traditions have overlapped and interacted. On the one hand, this is intellectually exciting and rich, but on the other, it has prevented legal history from easily defining its own core paradigms and boundaries. What ties it all together is, of course, a shared interest in laws and legal institutions, but beyond that, the field is bewilderingly multidimensional.

Furthermore, comparative analysis—across both time and space—has become a major theme of legal historical scholarship over the past few decades. This is, in part, because of the relatively standardised form of law and legal institutions. The central concept of law as formalised rules issued by the state gives it a degree of commonality across otherwise wildly different historical contexts. There is very little in common, socially or politically, between Han Dynasty China and the Roman Empire, but their laws have a certain amount of functional and formal similarity, so that a comparison of Han and Roman law becomes intuitive and intelligible. Good comparative analysis generally requires that the things being compared share enough in common so that their differences are analytically meaningful. The relatively standardised form of law is inherently capable of providing that, perhaps more so than many other concepts central to sociopolitical analysis—state, society, economy, religion, and so on.

The collection of articles in this special issue on legal history displays both of these characteristics. They are, on the one hand, heavily engaged with questions, methods, and intellectual frameworks projected onto historical materials from well beyond their immediate epistemic boundaries. When these articles grapple with how to define legal knowledge, how to understand the sociopolitical functions of free speech, or how to think comparatively about the functions of censors and inspectors, they are forced to take on conceptual frameworks and theoretical models that must be grafted onto their historical sources from external domains. This need to explicitly engage with outside theory distinguishes nearly all of these articles from most articles published in purely historical journals—and yet the outside theories they engage with are wildly divergent.

On the other hand, most of the articles are also explicitly comparative, either comparing different geographic jurisdictions or comparing the same jurisdiction across time. In both cases, they must anchor their comparisons in the similarities of the laws and legal institutions that operate in all comparative sets. In some cases, this similarity is formal, derived from the formal continuity of laws across time, even as the sociopolitical functionality of that law changes. In other cases, especially when cross-regional comparisons are involved, the similarities themselves are necessarily functional in nature, anchoring comparisons and contrasts of other functional features.

This special issue, therefore, captures much of the methodological diversity and comparative range that characterises the entire domain of legal history. This was very much by design: Li Chen and I, serving as co-editors of the issue, hoped to produce a slice of China or East Asia-centric legal historical scholarship that reflected the broader qualities of its field. The question, then, is whether it still "hangs together" in some intellectual sense, enough so that a reader can get more out of the entire collection than if they had simply read each individual article in a disaggregated way.

We think the answer is yes. There is more that ties these articles together than just their shared interest in East Asia (or China) or their common focus on law. The latter, in particular, creates analytical connections between articles that their authors probably did not intend when initially drafting them. For example, any study of judicial practices or lawyering must necessarily rely on certain assumptions about the general role of the state in local affairs, which itself necessarily depends on how the state internally monitors and regulates its local actors. Studies of speech law or health law make very little sense unless they also assume certain patterns of political expression and judicial enforcement. Studies of political mores and social norms related to the law similarly must grapple with the expressive functions of the law and how they are received by society. The interconnectivity of these issues does not vary much across time and space: they all centre around the core institution of the state in abstract but common ways, even as the form and function of the state itself may fundamentally differ between, say, the Roman Empire and Qing China.

In fact, it is precisely the enormous substantive variation in the subject matter on display here that truly highlights the probably inescapable analytical sinews that tie them together, and therefore define legal history as a field. A special issue that covers roughly 2000 years of time and legal jurisdictions on three different continents will nonetheless find its article components dealing with interconnected issues of state expression, institutional function, principal-agent problems, and social reception.

What this all suggests is, perhaps, that "law" is an analytically thicker concept than just "formal state-issued rules"—or rather that the very idea of "formal state-issued rules" is already functionally thick and complex enough that it is inherently its own epistemological field, even if the immediate tools scholars bring to study it are as varied as the entire range of the social sciences. Legal history is, therefore, necessarily a study of law just as much as it is necessarily a study of history, and it takes on all of the analytical features and richness that otherwise define legal scholarship. It would be inadequate to simply treat it as a subfield of history. Instead, like legal scholarship in general, it is one of those "nexus fields" that inherently rejects disciplinary purity.

Cite this article: Zhang T (2024). Foreword. *Asian Journal of Law and Society* **11**, 225–226. https://doi.org/10.1017/als.2024.21