

An Endless Web of Jurists for the Development
of Comparative Legal History:
John H. Wigmore, the Committee on Legal
History of the AALS, and the Continental Legal
History Series

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This Article is offered to Reinhard Zimmermann on his seventieth birthday and is published in this special issue of the *Tulane European and Civil Law Forum* that celebrates the life and work of a unique jurist. The *oeuvre* of Zimmermann—similarly to the earlier effort by John H. Wigmore—has inspired generations of scholars from across the globe, inviting them to look at the evolution of law across time and space.

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I. INTRODUCTION

Comparative legal history gained momentum during the first decades of the twentieth century on both sides of the Atlantic Ocean. Interest for that field of study emerged in the common and the civil law worlds, alike. A number of actors and their specific endeavors can help trace that interest in comparative legal history. This Article explores one of those pioneering efforts, gestated in the Americas while offering a transatlantic and transsystemic dialogue. John H. Wigmore (1863-1943) advocated vividly for the disciplinary value of comparative legal history, and his interests were fueled by the activities of the Committee on Legal History (LH Committee) (1905-1927) of the Association of American Law Schools (AALS). Wigmore and the LH Committee were able to gestate a forum for transatlantic and transsystemic dialogue by securing the publication of the *Continental Legal History Series* (CLH Series) in the period 1912-1928. That series of monographs gathered primarily English-language translations of texts by leading legal historians and comparatists, and as the title indicated, it focused on European continental legal history. The CLH Series offered a laboratory for comparative legal history and represented an effort to overcome vernacular approaches to the evolution of law in different jurisdictions.

Comparative legal historical exercises can serve as tools to foster dialogue amongst actors.¹ This Article subscribes to a definition that understands comparative legal history as the autonomous discipline that studies external and/or internal aspects of law necessarily across different time periods and jurisdictions.² A comparative legal historical study

1. This Article limits its scope to the twentieth century. Efforts to develop comparative legal history can be traced beyond that century, however.

2. AGUSTÍN PARISE, OWNERSHIP PARADIGMS IN AMERICAN CIVIL LAW JURISDICTIONS: MANIFESTATIONS OF THE SHIFTS IN THE LEGISLATION OF LOUISIANA, CHILE, AND ARGENTINA (16TH-20TH CENTURIES) 31 (2017). Different definitions have been offered for comparative legal history. See, for example, Charles Donahue, Jr., *Comparative Legal History in North America*, 65

needs to comply with both requirements: a study of an aspect of the law in at least two different time periods and at least in two different jurisdictions. Comparative legal historical studies require research across the vertical and horizontal axes, accordingly. It should be noted that the circulation of ideas or the flow of legal paradigms can only be fully grasped by using a comparative legal historical approach. Esin Öricü already observed that vertical and horizontal comparisons are needed when tracing normative transfers.³ Comparative legal historians do not undertake pure legal history or pure comparative law. The product of their research experience—that benefits from the techniques and approaches used in both disciplines—is more than the mere addition of the two building blocks; it provides a means to understand the evolution of legal science across time and space in a collegiate way. Comparisons in time and space can help unveil *why* events took place and not only *what* events took place,⁴ and also help to identify a precedent (where an aspect of law may *originate*), a subsequent (where an aspect of law may *lead*), and a concordance or difference (degrees of *parallelism*).⁵ This autonomous discipline may likewise assist in better understanding, characterizing, and differentiating local law.⁶ Comparative legal historians do not assume that law consists of watertight compartments wherein each jurisdiction experienced its own events, while they do acknowledge that current systems result from a blend of previous solutions.⁷

Wigmore and the members of the LH Committee, as this Article aims to demonstrate, were pioneers in advocating for the development of

TIJDSCHRIFT VOOR RECHTSGESCHIEDENIS 1, 11 (1997); David Ibbetson, *The Challenges of Comparative Legal History*, 1 COMPARATIVE LEGAL HISTORY 1, 3 (2013); and Heikki Pihlajamäki, *Comparative Contexts in Legal History: Are We All Comparatists Now?*, in THE METHOD AND CULTURE OF COMPARATIVE LAW: ESSAYS IN HONOUR OF MARK VAN HOECKE 121, 129-130 (Maurice Adams & Dirk Heirbaut eds. 2014).

3. A. Esin Öricü, *Methodology of Comparative Law*, in ELGAR ENCYCLOPEDIA OF COMPARATIVE LAW 442, 451 (Jan M. Smits ed. 2006).

4. See Ibbetson, *supra* note 2, at 2.

5. See Agustín Parise, *La imperiosa remisión al derecho comparado en las investigaciones de carácter jurídico*, 4:6 REVISTA UNIVERSITARIA LA LEY 36 (2002) (where the scope is limited to comparative law).

6. Alfonso García-Gallo, *Bases para una programación de la enseñanza de la Historia del Derecho y en especial de la del Derecho Indiano*, in ALFONSO GARCÍA-GALLO, LOS ORÍGENES ESPAÑOLES DE LAS INSTITUCIONES AMERICANAS: ESTUDIOS DE DERECHO INDIANO 1069, 1078 (1987).

7. See James Gordley, *Comparative Law and Legal History*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 754, 763 (Mathias Reimann & Reinhard Zimmermann eds. 2008).

comparative legal history. They were based in the U.S., yet they interacted with a plethora of actors in multiple jurisdictions. This Article is divided into four parts. First, this Article focuses on Wigmore, who can be considered the main architect behind the transatlantic and transsystemic dialogue. The interests of this actor, both in comparative law and legal history, are addressed in this part. Attention is also devoted to the network of scholars that he was able to nurture due to his ample interaction with other disciplines. Second, this Article elaborates on the life of the LH Committee. Different stages can be noted in the activities of that group of scholars, resulting in a diversity of doctrinal output. Further, the LH Committee was also a fundamental player for the development of the dialogue, inviting for experiences from the civil law world within a common law habitat. The local and global context in which the LH Committee operated is also explored in this part, to further contextualize the dialogue. Third, this Article explores the publication of the CLH Series. That series helped develop comparative legal history, having been commissioned as part of the work of the LH Committee. The different volumes in the series invited for a transatlantic and transsystemic dialogue amongst scholars, covering civil law systems and being ignited in the common law. That series likewise offered an early example of interaction between legal traditions, involving different leading authors. Finally, this Article alerts on the visibility and impact of the entire publication project. The Article presents the results of the coding of 115 book reviews of the different volumes of the CLH Series that were published on both sides of the Atlantic Ocean during the period 1912-1933. Indeed, this Article shows that renowned forums informed their readership of the existence and contents of the different volumes. This Article will therefore highlight that collegiate efforts can help disseminate knowledge while fostering the characteristics of an autonomous discipline.

II. JOHN H. WIGMORE AND A MOSAIC OF INTERESTS⁸

Wigmore can be considered a jurist.⁹ He is probably amongst the greatest exponents of legal science in the U.S. and can be numbered

8. Aspects of this Part were previously presented, in Spanish, in Agustín Parise, *John H. Wigmore (1863-1943): Un mosaico que ilustra sobre el desarrollo del estudio comparado de la historia del derecho*, 82 REVISTA DE DERECHO DE LA UNIVERSIDAD CATÓLICA DE PERÚ 205 (2019).

9. Albert Kocourek, *John Henry Wigmore*, 24(1) THE GREEN BAG 3 (1912).

amongst the most prolific, even worldwide, at his time.¹⁰ He was deemed a genius and a member of the aristocracy of intellectuals, being once referred to as the “scholar of our dreams.”¹¹ Wigmore can be considered an intellectual giant, although that statement may be subject to debate. Indeed, in the area of comparative law, for example, some authors claimed that Wigmore’s contribution was directed more at popularizing comparative law and not so much at formulating new paradigms and ideas.¹² Wigmore gained worldwide recognition due to his *opus magnum* on the law of evidence.¹³ Other aspects of his production, however, are seldom read today, such as his writings on comparative law.¹⁴ It is indisputable that what he could have said about the interaction of comparative law and legal history would not go unnoticed at his time before the local and foreign legal community.

This unique jurist was born in San Francisco on March 4, 1863, and died in Chicago on April 20, 1943.¹⁵ His life story is very rich. Wigmore studied at Harvard University and practiced law in Boston for two years. In 1889, he immediately accepted a position to teach Anglo-American law at Keio University in Japan.¹⁶ He returned to the U.S. in 1893 and was associated with Northwestern University for approximately fifty years, as a professor, dean, and dean emeritus.¹⁷ He belonged to a multitude of clubs and societies,¹⁸ receiving honors at national (e.g., American Bar Association Gold Medal) and international levels (e.g.,

On the life of Wigmore, *see* the comprehensive study in WILLIAM R. ROALFE, JOHN HENRY WIGMORE: SCHOLAR AND REFORMER (1977) (attention to the CLH Series in that volume is mainly limited to the accounts at 87-90). *See also* the more recent study in ANDREW PORWANCHER, JOHN HENRY WIGMORE AND THE RULES OF EVIDENCE: THE HIDDEN ORIGINS OF MODERN LAW (2017) at chapter 1.

10. James A. Rahl & Kurt Schwerin, *Northwestern University School of Law. A Short History*, 55 NW. U. L. REV. 127, 146 (1960).

11. Evan A. Evans, *On Behalf of the Bench*, 34 J. CRIM. L. & CRIMINOLOGY 75, 76 (1943).

12. Annelise Riles, *Encountering Amateurism: John Henry Wigmore and the Uses of American Formalism*, in *Rethinking the Masters of Comparative Law* 94, 95 (Annelise Riles ed. 2001).

13. For the first edition of that work *see*, JOHN H. WIGMORE, 1-4 A TREATISE ON THE SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW INCLUDING THE STATUTES AND JUDICIAL DECISION OF ALL JURISDICTIONS OF THE UNITED STATES (1904-1905).

14. Riles, *supra* note 12, at 95.

15. Thomas F. Konop et al., *Committee on Memorials*, in ASSOCIATION OF AMERICAN LAW SCHOOLS 1943 HANDBOOK 219, 238-239 (1943).

16. Note, *Chronology of the Career of John Henry Wigmore*, 32 J. CRIM. L. & CRIMINOLOGY 261, 261 (1941); and Paul D. Carrington, *The Missionary Diocese of Chicago*, 44 J. LEGAL EDUC. 467, 483 (1994).

17. Carrington, *supra* note 16, at 484; and Konop et al., *supra* note 15, at 238-239.

18. Riles, *supra* note 12, at 95, 120.

Knight of the Legion of Honor, France; Order of the Sacred Treasure, Japan).¹⁹ His membership to the International Academy of Comparative Law²⁰ and his early efforts to create the American Law Institute²¹ ought to be specially mentioned. Although not all his output is scientific in nature, it has been estimated that his *corpora* was comprised of over 900 works, including speeches, law review articles, monographs, pamphlets, and translations.²²

The life and work of Wigmore are of interest. He had attained a broad formation, crossing areas of law and daily life. He was referred to as an *encyclopedia of strange learning*, with an unusual and unexpected command of linguistics, and having attained artistic achievements.²³ He was an unusual man, transitioning from writing a fugue to giving a master class in law.²⁴ He thought that young lawyers should be initiated in their legal culture.²⁵ That culture shaped a large number of the tesserae of the mosaic he was able to build during his lifetime:²⁶ In his early work, Wigmore advocated for a relationship between new and old, customs and law, past and present.²⁷ His approach to law was in line with that of legal scholars in Europe,²⁸ hence distinguishing himself from several of his U.S. counterparts.

19. Note, *supra* note 16, at 261-262; and Nathan W. MacChesney, *John H. Wigmore. A Personal Appreciation*, 32 J. CRIM. L. & CRIMINOLOGY 285, 286 (1941).

20. David S. Clark, *American Participation in the Development of the International Academy of Comparative Law and Its First Two Hague Congresses*, 54 Supplement AM. J. COMP. L. 1, 11, 16 (2006).

21. Timothy G. Kearley, *From Rome to the Restatement: S.P. Scott, Fred Blume, Clyde Pharr, and Roman Law in Early Twentieth-Century America*, 108 LAW LIBR. J. 55, 66 (2016).

22. Joel Fishman & Joshua Boston, *John Henry Wigmore (1863-1943): A Sesquicentennial Appreciation*, 6 UNBOUND 9, 9 (2013); and William R. Roalfe, *John Henry Wigmore 1863-1943*, 54 NW. U. L. REV. 445, 445 (1963).

23. Kocourek, *supra* note 9, at 4. John H. Wigmore was a piano composer and wrote poetry, for example. See also, Fishman & Boston, *supra* note 22, at 15; and Konop et al., *supra* note 15, at 241.

24. Kocourek, *supra* note 9, at 4.

25. Robert P. Burns, *A Wistful Retrospective on Wigmore and his Prescriptions for Illinois Evidence Law*, 100 NW. U. L. REV. 131, 135 (2006).

26. The idea of a mosaic is also present in the writings of Carlos Petit, when he indicates that Wigmore elaborated a mosaic with the different contributions that were included in one of the series he edited. See Carlos Petit, *Altamira en Chicago*, in RAFAEL ALTAMIRA, SPAIN, SOURCES AND DEVELOPMENT OF LAW xi, xiii-xiv (2018).

27. Riles, *supra* note 12, at 106.

28. Mathias Reimann, *A Career in Itself: The German Professoriate as a Model for American Legal Academia*, in THE RECEPTION OF CONTINENTAL IDEAS IN THE COMMON LAW WORLD 1820-1920 165, 202 (Mathias Reimann ed. 1993).

A. *Comparative Law*

Comparative law and legal history, on occasions amalgamated into the study of comparative legal history, were recurring tesserae in the mosaic that Wigmore elaborated. Courses in comparative law began to emerge in the curriculum of U.S. universities in the late nineteenth century.²⁹ Wigmore had alerted in 1897, in the pages of the *Harvard Law Review*, that “the place in legal science of the subject commonly spoken of as Comparative Law is not easy to settle. Its settlement depends more or less on the analysis and grouping that one adopts for the various parts of legal science as a whole.”³⁰ Wigmore, similarly to other comparatists of that time, considered that the discipline included legal history, legal philosophy, and ethnology.³¹ The expert on evidence was recognized worldwide as a comparative law scholar and was able to use his influence to promote the discipline. For example, he was a founding board member of the Comparative Law Bureau in 1907, operating under the umbrella of the American Bar Association;³² and he occupied important places in the comparative law congresses held in the Hague in 1932 and 1937 due to his writings, his command of languages, and his extensive network.³³

Wigmore gained interest first in comparative law and only later in the law of evidence. Comparative law, therefore, was able to percolate into his writings from an early period.³⁴ For example, William Searle Holdsworth stated in 1934 that Wigmore’s treatise on evidence was “the product of years of study and reflection, and are illuminated by the light of history, analysis, and the comparison of the laws of different countries.”³⁵ Once more, from London in 1943, in the pages of the *Law*

29. Gail J. Hupper, *The Rise of an Academic Doctorate in Law: Origins through World War II*, 49 AM. J. LEGAL HIST. 1, 11-12 (2007). On the development of comparative law in the U.S. during the first half of the twentieth century, see generally David S. Clark, *The Modern Development of American Comparative Law: 1904-1945*, 54 AM. J. COMP. L. 587 (2007).

30. John H. Wigmore, *I-The Pledge-Idea: A Study in Comparative Legal Ideas*, 10 HARV. L. REV. 321, 321 (1897).

31. Clark, *supra* note 29, at 609.

32. *Id.* at 591 and 608. On the early years of the Bureau, see generally David S. Clark, *Establishing Comparative Law in the United States: The First Fifty Years*, 4 WASH. U. GLOBAL STUD. L. REV. 583 (2005); and Clark, *supra* note 29.

33. Clark, *supra* note 20, at 15; Clark, *supra* note 29, at 613; and Roalfe, *supra* note 22, at 450.

34. *Id.* at 446. In Wigmore’s words: “[. . .] while living in Japan, the author came under the spell of what is called Comparative Law.” JOHN H. WIGMORE, 1 A PANORAMA OF THE WORLD’S LEGAL SYSTEMS xv (1928).

35. William S. Holdsworth, *Wigmore as a Legal Historian*, 29 ILL. L. REV. 448, 453 (1934).

Quarterly Review, Holdsworth argued that Wigmore was a *maestro* of U.S. law, of English and Anglo-American legal history, and of comparative law.³⁶ He even stated that the treatise on evidence was a great book because of Wigmore's early studies in legal history and comparative law.³⁷

Wigmore and Roscoe Pound were the U.S. comparatists that had attained the most notable reputation worldwide.³⁸ It should be noted, however, that Wigmore's approach to comparative law was not free from criticism. For example, twenty-first century studies have deemed his approach to comparative law as amateur.³⁹ That amateurish approach did not deprive him from vividly pointing out in 1931 that "the study of comparative legal ideas, and of their evolution, is a fascinating one,"⁴⁰ thus emphasizing his interest in both history and legal comparison. He added that he was surprised by the paucity of monographs and articles that genuinely dealt with comparative law.⁴¹ Thus, he stated that when looking at English, German, or French comparative law journals and at the Dutch legal history journal, it was difficult to find papers that developed comparative studies of legal ideas in different systems; there was practically nothing about their evolution.⁴² There he explained that comparative law implied:

[...] tracing of an identical or similar idea or institution through all or many systems, with a view to discovering its differences and likenesses in various systems, the reasons for those variations, and the nature and limits of the inherent and invariable idea, if any—in short, the evolution of the idea or institution, universally considered.⁴³

Tracing the evolution of law was paramount for the understanding that Wigmore had of comparative law. For example, towards the end of his life, in 1941, Wigmore published the monograph entitled *A Kaleidoscope of Justice*,⁴⁴ in which he showed his continued interest in comparative law.⁴⁵ The subtitle of that work is revealing, as it reads: "containing

36. William S. Holdsworth, *Notes*, 59 LAW QUARTERLY REVIEW 289, 289 (1943).

37. *Id.*

38. Clark, *supra* note 20, at 10.

39. Riles, *supra* note 12.

40. John H. Wigmore, *Jottings on Comparative Legal Ideas and Institutions*, 6 TUL. L. REV. 48, 48 (1931).

41. *Id.* at 49.

42. *Id.* at 49-50.

43. *Id.* at 51.

44. JOHN H. WIGMORE, *A KALEIDOSCOPE OF JUSTICE CONTAINING AUTHENTIC ACCOUNTS OF TRIAL SCENES FROM ALL TIMES AND CLIMES* (1941).

45. Fishman & Boston, *supra* note 22, at 11.

authentic accounts of trial scenes from all times and climes [i.e., regions].” It is possible to perceive that Wigmore invited for the exploration on the two axes, the vertical and the horizontal, hence dealing with different times and places. The kaleidoscope, then, was made up of different elements (e.g., community, type of government, members of the court). All these changed according to time and place.⁴⁶ This book broadened the scope of study by including the social background in which a legal system operated, looking at legal phenomena from the point of view of their social implications and not merely from a technical point of view.⁴⁷ That work was deemed an exercise of comparative anthropology, a comparative study of cultures; and it was further said that the work of Wigmore was known to sociologists who were interested in that broad view of social sciences.⁴⁸ However, as the author himself noted in the preface, the work did not aim to be scientific, rather it was intended as a “book of informational entertainment.”⁴⁹

B. *Legal History*

Wigmore had a clear interest in legal history.⁵⁰ One of his first works, presented in three installments in 1894⁵¹ and published in the *Harvard Law Review* offered a historical evolution of tort law. That work was very well received by contemporary jurists, such as Oliver Wendell Holmes, Jr.⁵² Wigmore’s interest in the interaction of legal history and comparative law is palpable in another contribution to the 1897 *Harvard Law Review*, also in three installments.⁵³ That work, on the evolution of the law of pledge in various cultures, was highly regarded by many

46. WIGMORE, *supra* note 44, at v-vi.

47. Alfred R. Lindesmith, *Law and Sociology*, 32 J. CRIM. L. & CRIMINOLOGY 276, 277 (1941).

48. *Id.*

49. WIGMORE, *supra* note 44, at v.

50. A look at a selection of his works, prepared in 1934, yielded at least ten pieces that revealed a legal historical value in their titles. See Note, *Selected Wigmore Bibliography*, 29 ILL. L. REV. 491 (1934).

51. John H. Wigmore, *Responsibility for Tortious Acts: Its History*, 7 HARV. L. REV. 315 (1894); John H. Wigmore, *Responsibility for Tortious Acts: Its History-II*, 7 HARV. L. REV. 383 (1894); and John H. Wigmore, *Responsibility for Tortious Acts: Its History-III*, 7 HARV. L. REV. 441 (1894).

52. Fishman & Boston, *supra* note 22, at 12.

53. John H. Wigmore, *I-The Pledge-Idea: A Study in Comparative Legal Ideas*, 10 HARV. L. REV. 321 (1897); John H. Wigmore, *The Pledge-Idea: A Study in Comparative Legal Ideas-II*, 10 HARV. L. REV. 389 (1897); and John H. Wigmore, *The Pledge-Idea: A Study in Comparative Legal Ideas-III*, 11 HARV. L. REV. 18 (1897).

scholars and can be considered a pioneer work of comparative legal history.⁵⁴

An early work that helps to unveil the common thread in the activities of Wigmore is found in the *Select Essays in Anglo-American Legal History*. That three-volume work was co-edited by Wigmore and published between 1907 and 1909.⁵⁵ The editors were able to group valuable modern writings on the history of English and U.S. law.⁵⁶ In those lines, the editors indicated that “true conservatism, and an intelligent progress, must alike be based on historical knowledge.”⁵⁷ The *Select Essays* aimed to systematize the approach to common law, expressing in writing the foundations of law.⁵⁸ Accordingly, one of the primary ideas behind the *Select Essays* was to make accessible a collection of legal historical writings that were apparently not readily available in U.S. libraries.⁵⁹ A review of the *Select Essays*, published in the *Yale Law Journal* in 1908, noted that “the essays stand for a profound research into the depths of the sources of Anglo-American legal history.”⁶⁰

Wigmore worked with Albert Kocourek on the *Evolution of Law* series, also published in three installments, between 1915 and 1918.⁶¹ That work merits special attention since it was considered as a first-class advancement for legal education.⁶² A review published in the pages of the 1915 *Yale Law Journal* indicated that the “appearance of this series is an evidence of the increased attention which is very recently being given to the study of comparative legal history.”⁶³ Another review, in another

54. Carrington, *supra* note 16, at 485; and Holdsworth, *supra* note 35, at 452.

55. 1 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY (Ernst Freund et al. eds. 1907); 2 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY (Ernst Freund et al. eds. 1908); and 3 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY (Ernst Freund et al. eds. 1909).

56. Edward Lindsey, *Contributions to Legal Education*, 32 J. CRIM. L. & CRIMINOLOGY 278, 279-280 (1941).

57. 1 SELECT ESSAYS, *supra* note 55, at vi.

58. Héctor Domínguez Benito, *Frederick Pollock en París, o la naturaleza conflictiva del derecho comparado*, 55 REVISTA DE HISTORIA DEL DERECHO, 91, 111 (2018).

59. *Id.*

60. W.J.L., Jr. *Book Review*, 18 YALE L.J. 140, 140 (1908).

61. 1 EVOLUTION OF LAW: SELECT READINGS ON THE ORIGIN AND DEVELOPMENT OF LEGAL INSTITUTIONS. SOURCES OF ANCIENT AND PRIMITIVE LAW (Albert Kocourek & John H. Wigmore comp. 1915); 2 EVOLUTION OF LAW: SELECT READINGS ON THE ORIGIN AND DEVELOPMENT OF LEGAL INSTITUTIONS. PRIMITIVE AND ANCIENT LEGAL INSTITUTIONS (Albert Kocourek & John H. Wigmore comp. 1915); and 3 EVOLUTION OF LAW: SELECT READINGS ON THE ORIGIN AND DEVELOPMENT OF LEGAL INSTITUTIONS. FORMATIVE INFLUENCES OF LEGAL DEVELOPMENT (Albert Kocourek & John H. Wigmore comp. 1918).

62. Lindsey, *supra* note 56, at 279.

63. *Book Review*, 25 YALE L.J. 164, 165 (1915).

forum in 1919, indicated that the series qualified as a comparative study of legal ethnology.⁶⁴ Further, that same year, Albion W. Small, one of the forerunners of sociology in the U.S., claimed that the series offered a museum of socio-legal categories, being important and worth reading by students of sociology.⁶⁵ The series may qualify as an exponent of evolutionism, and Holmes, Arthur Corbin, and Wigmore used evolutionary theories, for example, trying to explain the development of common law in the U.S. across time.⁶⁶ Wigmore's ideas were assimilated to Darwinism, and the *Evolution of Law* series was considered an example of legal Darwinism.⁶⁷ Charles Darwin's theory had indeed left its mark on common law jurisdictions, and Henry J. Sumner Maine had already developed a theory of the evolution of law after reading Darwin and in communion with the philosophy of the German Historical School.⁶⁸ Wigmore and Kocourek argued in the first volume of that series that:

It need hardly be said to any one whose vision has extended to genetic and comparative knowledge of the institutions of society, that the present is not understood without information concerning the past, and that the future must remain a greater enigma than it is, without an attempt to penetrate the course of evolution.⁶⁹

The *Evolution of Law* series gathered essays describing the effects that various environmental factors (e.g., geophysics, economics, race, religion, politics) had on the law.⁷⁰ Thus, the essays anticipated what would only later begin to be explored as part of social biology.⁷¹ In one of the series' chapters, entitled *Planetary Theory of the Law's Evolution*, Wigmore argued for "a truth to be kept in mind is that the evolution in Law, as in other cosmic facts, is always the result of *conflict of forces*."⁷²

64. David Werner Amram, *Book Review*, 67 U. PA. L. REV. 85, 87 (1919).

65. Albion W. Small, *Book Review*, 24 AMERICAN JOURNAL OF SOCIOLOGY 584, 599 (1919).

66. Corjo Jansen, *Charles Robert Darwin (1809-1882), het privaatrecht en de rechtswetenschap*, 84:21 NEDERLANDS JURISTENBLAD 1320 (2009); and M.B.W. Sinclair, *Evolution in Law: Second Thoughts*, 71 U. DETROIT MERCY L. REV. 31, 56 (1993).

67. E. Donald Elliott, *The Evolutionary Tradition in Jurisprudence*, 85 COLUM. L. REV. 38, 50 (1985); and Michael S. Fried, *The Evolution of Legal Concepts: The Memetic Perspective*, 39 JURIMETRICS JOURNAL 291, 304 (1999).

68. Jansen, *supra* note 66.

69. 1 EVOLUTION OF LAW, *supra* note 61, at viii.

70. Elliott, *supra* note 67, at 47.

71. *Id.* at 48-50.

72. John H. Wigmore, *Planetary Theory of the Law's Evolution*, in 3 EVOLUTION OF LAW: SELECT READINGS ON THE ORIGIN AND DEVELOPMENT OF LEGAL INSTITUTIONS. FORMATIVE

Law was constantly adapting to changes in the environment and, thus, was represented in a given culture at a given time as the product of a balance between the forces of society.⁷³ In Wigmore's words, "the evolution of legal ideas is affected by a large number of forces, great and small, acting oppositely or in harmony, some here and some there, in the different parts of law, in different countries, and at different times."⁷⁴ He further added that it is impossible to trace the evolution of a legal institution when ignoring that it is a body in motion generated by a force.⁷⁵ It is possible to argue that Wigmore attempted to link external pressures with abstract notions to appreciate how law could mutate.⁷⁶ A 1919 review indicated that Wigmore's chapter was the most modern and thought-provoking contribution of the volume, since it related legal science with other sciences and emphasized the fundamental fact of the close interaction between the phenomena of life, which the author ingeniously compared with the forces underlying the solar system.⁷⁷ The colorful mosaic that Wigmore built turns palpable with such a statement.

C. Openness

Wigmore was open to dialogue and was able to add diverse tesserae to his mosaic. He further knew how to cultivate close ties with jurists beyond the borders of the U.S. In his time, legal scholars led a reception of European continental ideas in the common law world.⁷⁸ In those lines, Wigmore engaged in conversation and epistolary exchanges with various colleagues, acquiring the status of a world-renowned figure.⁷⁹ Those dialogues are valuable sources for appreciating the mosaic developed by Wigmore. For example, a letter he sent to Rafael Altamira y Crevea, dated April 17, 1911, read that "just as today, general biology is the

INFLUENCES OF LEGAL DEVELOPMENT 531, 531 (Albert Kocourek & John H. Wigmore comp. 1918) (emphasis in the original).

73. Elliott, *supra* note 67, at 48-49; and Fried, *supra* note 67, at 304). A study pointed that this work of Wigmore "did not prove persuasive among his contemporaries." John R. Schmidhauser, *Power, Legal Imperialism, and Dependency*, 23 LAW AND SOCIETY REVIEW 857, 864 (1989).

74. Wigmore, *supra* note 72, at 536.

75. *Id.* at 541.

76. Steven Wilf, *The Invention of Legal Primitivism*, 10 THEORETICAL INQUIRIES L. 485, 504 (2009).

77. Amram, *supra* note 64, at 88.

78. Mathias Reimann, *Introduction: Patterns of Reception, in THE RECEPTION OF CONTINENTAL IDEAS IN THE COMMON LAW WORLD 1820-1920* 7, 16 (Mathias Reimann ed. 1993) (as indicated in the title, covering the period 1820-1920).

79. Konop et al., *supra* note 15, at 241; Andrew Porwancher, *Book Review*, 34 LAW AND HISTORY REVIEW 819, 820 (2016); and Riles, *supra* note 12, at 97.

introduction to the study of anthropology, so the time is at hand when a broad view of the organic development of European law will be considered a natural preliminary to the study of the life of each individual national law.”⁸⁰

These dialogues helped introduce the works of foreign jurists in the U.S.⁸¹ They helped in engaging the U.S. narrative with the great masters of legal science, history, and philosophy from the European continent.⁸² Yet, the circulation of legal ideas was not unidirectional, with dialogue circulating towards Europe. This circulation became evident when, in the pages of the 1923 *Tijdschrift voor Rechtsgeschiedenis*, Wigmore argued that, works by Frank M. Eastman and Frederic B. Crossley reminded European jurists of kaleidoscopic experiences in early America with different legal systems of the European continent, such as England, France, the Netherlands, Spain, and Sweden.⁸³ In that same forum, he added that “these close relations, in earlier times, of Continental with modern American law ought to stimulate on both sides of the Atlantic a mutual interest in the comparative history of law.”⁸⁴

The dialogue in which Wigmore engaged was fruitful. For example, in 1927, Holdsworth argued that all students of English law, comparative law, legal history, and philosophy of law were indebted to Wigmore for the series he published and the writings he made available.⁸⁵ Once more, in 1934, Holdsworth stated that Wigmore possessed a broad understanding of foreign systems and was able to use it to elucidate the history of Anglo-American law: his work reflected that history requires comparison.⁸⁶ Kocourek also praised the dialogue that Wigmore was able to foster. Wigmore’s colleague and co-author stated that making the great masters of legal science, history, and continental philosophy accessible to the U.S. legal community was perhaps Wigmore’s greatest achievement, an achievement that would be best valued a century later.⁸⁷

In an era of marked specialization, Wigmore nurtured an enriching interaction with other disciplines.⁸⁸ He found relevance in disciplines

80. Petit, *supra* note 26, at lxiii.

81. Konop et al., *supra* note 15, at 241.

82. Kocourek, *supra* note 9, at 5.

83. John H. Wigmore, *The Literature of Legal History in the United States, 1920-1922*, 4 *TIJDSCHRIFT VOOR RECHTSGESCHIEDENIS* 339 (1923).

84. *Id.* at 344.

85. WILLIAM S. HOLDSWORTH, *SOME LESSONS FROM OUR LEGAL HISTORY* 190 (1928).

86. Holdsworth, *supra* note 35, at 448.

87. Kocourek, *supra* note 9, at 5.

88. Winfred Overholser, *A Tribute to John H. Wigmore*, 32 *J. CRIM. L. & CRIMINOLOGY* 290, 290 (1941).

beyond law and demonstrated a thorough understanding of human sciences, which, he believed, could provide light to and be of benefit for the law.⁸⁹ For example, Wigmore was a pioneer in the interaction between law and geography.⁹⁰ It was in this area that he published a map of the world's legal systems in 1929. In his own words, "a system of law is a body of rules covering the elemental institutions of social life, developed by the thought of a professional class, and connected into a sort of corporeal unity by a certain logical and social consistency."⁹¹ Another early example is provided by his interest in criminology. Wigmore was one of the founders of the American Institute of Criminal Law and Criminology in 1909, from where he advocated for cooperation between lawyers and other scientists to improve criminal law and the administration of justice.⁹² Wigmore was a man with many interests and devoted full attention to the meaning of legal texts, although he understood that this meaning was the result of culture and politics. It can be said, therefore, that Wigmore was an empiricist *avant la lettre*.⁹³ Harlan F. Stone argued in the pages of the 1921 *Yale Law Journal* that Wigmore's work stimulated thought and generated discussion.⁹⁴ Wigmore's interests covered everything that connected with the law⁹⁵ and his approach to other disciplines did not free him from criticism.⁹⁶

Wigmore can be deemed a champion of comparative legal history. His work—as that of other important actors—has been subject to criticism and deserves detailed attention, highlighting both strengths and

89. Sheldon Glueck, *John H. Wigmore. Pioneer*, 32 J. CRIM. L. & CRIMINOLOGY 267, 267 (1941).

90. The early literature includes efforts by, amongst others, Francis C. Murphy, Rutherford C. Platt, Hans Weigert, and Gilbert White. See Hari M. Osofsky, *A Law and Geography Perspective on the New Haven School*, 32 YALE J. INT'L. L. 421, 427 (2007).

91. John H. Wigmore, *A Map of the World's Law*, 19 GEOGRAPHICAL REVIEW 114, 114 (1929).

92. T. Ward Frampton, *Predisposition and Positivism: The Forgotten Foundations of the Entrapment Doctrine*, 103 J. CRIM. L. & CRIMINOLOGY 111, 123-124 (2013).

93. Carrington, *supra* note 16, at 515.

94. Harlan F. Stone, *Book Review*, 30 YALE L.J. 30(5), 536, 539 (1921).

95. Joel D. Hunter, *The Legal Clinic of Northwestern University School of Law*, 32 J. CRIM. L. & CRIMINOLOGY 272, 272 (1941).

96. For example, it was noted that Wigmore's ideas were influenced by psychiatry and the writings of Sigmund Freud. In that context, Wigmore supported judicial skepticism about women as witnesses in cases of sexual crimes, arguing that an accusation for sex offense cases should not come before a jury unless a qualified physician examined the social history and mental makeup of the complainant. The current view discredits Wigmore's position, it should be stressed. John E.B. Myers, *Allegations of Child Sexual Abuse in Custody and Visitation Litigation: Recommendations for Improved Fact Finding and Child Protection*, 28 J. FAM. L. 1, 25-26 (1989).

weaknesses. Law is a social science that is subject to mutation, and the actors that trigger those changes can be often identified. There is merit in reconstructing the activities of main actors behind those changes, helping to develop valuable contexts.⁹⁷ Wigmore was an important actor for the development of comparative legal history. He was a jurist that engaged in a dialogue that crossed time and space, interacting with colleagues in different jurisdictions on different topics. The life and work of actors like Wigmore help to leave ostracism behind and build bridges that can generate synergy and foster the development of science.

III. THE COMMITTEE ON LEGAL HISTORY OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS

It is often the dissatisfaction with a local solution or situation that triggers comparatists and historians to look for better alternatives in other systems and time periods.⁹⁸ This pursuit helps in transforming lawyers into jurists: the latter do not limit their studies to the current law as it is, and, naked of a scientific and social context. On the contrary, among other qualities, jurists seek to trace the origins and reception that the different legal institutions had in different regions and time periods.⁹⁹

The Committee on Legal History of the AALS gathered a number of jurists during its years of operation. Wigmore was one of those jurists and acted predominately as the chairman and leader of that group. The efforts of those jurists led to an enriching experience of transatlantic and transsystemic dialogue during the first decades of the twentieth century: a dialogue that was materialized through the publication of the different volumes of the CLH Series. The proceedings of the annual meetings of the AALS¹⁰⁰ are a valuable repository when tracing the presence of comparative legal history at that time and place. An incursion into the proceedings indeed helps to unveil the life and work of the LH Committee.

The life of the LH Committee can be divided into four stages. Moving across those periods helps to visualize the activities that fostered a transatlantic and transsystemic dialogue amongst jurists. Efforts started

97. See generally Agustín Parise, *Estudios biográficos de alcance ius-historiográfico: reflexiones sobre nuevas tendencias y líneas de trabajo*, 46 REVISTA DE HISTORIA DEL DERECHO 159 (2013).

98. KONRAD ZWEIGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW 34 (3d ed, Tony Weir trans., 1998) (with especial attention on comparative law).

99. Parise, *supra* note 5, at 37.

100. The first annual meeting was held on August 21, 1901. See generally 1900 AALS PROCEEDINGS (1900-1901).

with a period of *gestation* in which members of the LH Committee took stock of their environment, to be followed by a period in which jurists acknowledged the need to deal with *otherness*. Other systems, jurisdictions, and time periods merited the attention of the LH Committee, in that second stage. The Great War ultimately forced an *interlude* in the activities of the LH Committee, as it would have been expected; while the life of the group started to fade and to reach a *finale* towards the last years of the 1920s.

A. *Gestation*

The *gestation* of the LH Committee and its activities can be linked to Wigmore. The 1905 proceedings indicated that the champion of comparative legal history submitted a memorial regarding the promotion of historical studies and research.¹⁰¹ That “quite lengthy”¹⁰² memorial ignited the interest in other members of the AALS, since it provided multiple arguments in favor of developing the study of legal history at U.S. law schools.¹⁰³ Wigmore likewise called for a mapping of topics that merited further research,¹⁰⁴ predicting that work would follow. In those lines, he called for the gathering of “the most valuable”¹⁰⁵ writings on the field. That early call also welcomed comparative legal history, since Wigmore alerted on the need to “investigate the possibility of translating some of the greatest works of writers on continental jurisprudence.”¹⁰⁶ The AALS executive committee was quick in resolving that a committee should be appointed to explore the publication of original scholarship and translations.¹⁰⁷ Wigmore, Ernst Freund, and William E. Mikell were appointed members of that initial LH Committee on August 22, 1905.¹⁰⁸

The 1906 proceedings included the first report of the LH Committee.¹⁰⁹ There, the jurists asked the AALS to approve the reprinting of a list of selected writings on Anglo-American legal

101. 1905 AALS PROCEEDINGS 15 (1905). Wigmore was on the other side of the Atlantic during that annual meeting, but had already addressed those recommendations in the congress at St. Louis. *See id.* at 17.

102. *Id.* at 15.

103. *Id.* at 16.

104. *Id.*

105. *Id.* at 17.

106. *Id.*

107. *Id.* at 15.

108. *Id.* at 39; and 1906 AALS PROCEEDINGS 173 (1906).

109. The name was *Committee on the Study of Legal History*. *See* 1906 AALS PROCEEDINGS, *supra* note 108, at 173.

history.¹¹⁰ The LH Committee envisioned the previously referred *Select Essays*,¹¹¹ and they expected AALS members to promote the use of the series amongst the different schools.¹¹² Finally, in that report they also indicated how they would move forward with that endeavor, together with the reasons for their recommendations.¹¹³ They noted that “the study of the history of the various branches of law is now much obstructed by the virtual inaccessibility of a great amount of important material, which exists in print, but is through several circumstances practically going to waste.”¹¹⁴ The report ended with the list of readings that the LH Committee had selected,¹¹⁵ preceded by a reinforcing statement: “it is because this part of our history is likely otherwise to be buried from general professional knowledge that we earnestly desire to re-present it to the profession in this accessible form.”¹¹⁶

A number of events indicate that dialogue was taking place by 1907. For example, the AALS Treasurer’s Report showed that the LH Committee was engaging in epistolary exchanges.¹¹⁷ Further, George W. Kirchwey mentioned that he had approached Richard S. Woodward of the Carnegie Institution seeking for funds to be diverted from the natural sciences to human sciences, namely law.¹¹⁸ Woodward approved the publication of translations of leading legal literature, including works on legal and foreign law, which could be deemed a *corpus juris orbis terrarium*, providing sources of knowledge and inspiration to U.S. lawyers and law students.¹¹⁹ The 1907 report of the LH Committee indicated that the first volume of the *Select Essays* had been completed, and that they expected AALS members would “now take measures [. . .] to use the volumes to encourage vigorously the study of our legal history.”¹²⁰ In those lines, they asked members to invite their schools to subscribe to the volume,¹²¹ making evident a plea that would be recurrent during the lifetime of the LH Committee. They further mentioned that words of praise to the volume had arrived from the UK and U.S., from

110. *Id.*

111. *See* discussion *supra* subpart II.B.

112. 1906 AALS PROCEEDINGS, *supra* note 108, at 173.

113. *Id.* at 173-174.

114. *Id.* at 174.

115. *Id.* at 177-189.

116. *Id.* at 176.

117. 1907 AALS PROCEEDINGS 21 (1907).

118. *Id.* at 49.

119. *Id.* at 49-50.

120. *Id.* at 57-58.

121. *Id.* at 59.

academics and practitioners.¹²² They also offered suggestions on how to use the volume in law schools, and likewise invited suggestions on how to improve the subsequent volumes.¹²³ The idea was indeed not only to publish, but more importantly, to develop legal history.

B. *Otherness*

The LH Committee actively started to deal with *otherness* in 1909. After all, an exclusive focus on the Anglo-American legal discourse would have limited their efforts to develop comparative legal history.¹²⁴ That year, the report of the LH Committee suggested not extending the *Select Essay* series beyond three volumes.¹²⁵ The report invited, however, to “continu[e] the work in a collateral field, namely, Continental legal history;”¹²⁶ and, in those lines, members acknowledged that there had been a notable increase in the interest of scholars towards comparative law.¹²⁷ The LH Committee added that multiple ongoing efforts were related to European continental law, such as those led by the Comparative Law Bureau of the American Bar Association and the Civic Federation Conferences on Uniform Legislation.¹²⁸ There was evidently a movement towards engaging in dialogue with others.

The literature encountered a *lacuna*, however. The LH Committee alerted in the 1909 report that there were no materials on continental legal history in English. Further, they mentioned that the vernacular legal literature would benefit from exploring events in Europe.¹²⁹ Developments across the Atlantic could serve as a laboratory of study, hence offering new perspectives and enlightening the evolution of U.S. law.¹³⁰ Yet, dialogue was needed to successfully attain the publication of what would be referred to as the CLH Series. The report, therefore,

122. *Id.* at 58.

123. *Id.*

124. In addition, as stated by Wigmore in a letter to Little, Brown and Company, dated May 22, 1909, “there is hardly enough material [for a fourth volume of the *Select Essays*, and] because the specific market needs a rest.” John Henry Wigmore (1863-1943) Papers, Northwestern University Archives (hereinafter, Wigmore Personal Papers), Box 85, Folder 09.

125. 1909 AALS PROCEEDINGS 36 (1909).

126. *Id.* at 37. In a letter to William Reynolds Vance, dated November 18, 1909, Wigmore showed his eagerness to move in that direction. There he stated to the secretary of the AALS that: “The Law School Association voted to appoint the Committee on the Study of Legal History to continue its labors along Continental lines [. . .] and Lorenzen and I are anxious to be able to make some plans.” Wigmore Personal Papers, Box 198, Folder 06.

127. 1909 AALS PROCEEDINGS, *supra* note 125, at 37.

128. *Id.*

129. *Id.*

130. *Id.*

mentioned that publishers and authors would be interested and that members of the law schools could undertake the translations.¹³¹ There was a call towards attaining synergy in efforts, since strength could derive from a transatlantic and transsystemic dialogue.

The CLH Series was on its way by 1910.¹³² The LH Committee reported that a contract was signed with Little, Brown and Company on December 3, 1909, for the publication of the series, at no expense for the AALS.¹³³ That report stated that the volumes would be thematic (i.e., commercial law, criminal law, influence of Roman law and modern continental law, and schools of legal thought since the Middle Ages) and geographical (i.e., France, Germany, Italy, Spain).¹³⁴ That plan was ultimately not followed, as it is described later in this Article.¹³⁵ Members of the LH Committee considered the volume on influence of Roman law and modern continental law of special importance.¹³⁶ Yet, there was no suitable existing work. Amongst the options, they were inclined to “make a composite volume out of several short essays, on the plan of the Anglo-American series.”¹³⁷ In that regard, they engaged in a vivid dialogue by sending letters to U.S. scholars¹³⁸ and to twenty-five continental professors to inquire for suggestions of essays.¹³⁹ The LH Committee was working at full speed, since members had also identified a number of translators.¹⁴⁰ They did mention, however, that more volunteers were needed, especially in the German language.¹⁴¹ The 1910 report ended with references to the value of English-language translations, not only for U.S. students, but also for those who mastered the original languages. They pointed to the custom of translating to the vernacular in Europe and that on that side of the Atlantic, scholars at universities tended to act as translators. Finally, they bluntly stated that “it is time that we cease to be

131. *Id.* at 38.

132. Wigmore, however, indicated in a letter to Little, Brown and Company, dated January 17, 1910, that “it will of course be two years before any of the books are really ready.” Wigmore Personal Papers, Box 85, Folder 10.

133. 1910 AALS PROCEEDINGS 43 (1910). *See also* the copy of the contract at Wigmore Personal Papers, Box 198, Folder 09.

134. 1910 AALS PROCEEDINGS, *supra* note 133, at 44.

135. *See infra* subpart IV.B

136. 1910 AALS PROCEEDINGS, *supra* note 133, at 44.

137. *Id.* at 44-45.

138. For example, Wigmore outreached to Walter F. Dodd seeking suggestions of texts to translate. In a letter dated April 21, 1910, Dodd pointed to works on French and Spanish legal history. Wigmore Personal Papers, Box 198, Folder 06.

139. 1910 AALS PROCEEDINGS, *supra* note 133, at 45.

140. *Id.* at 47.

141. *Id.* at 48.

insular in this respect, and become cosmopolitan.”¹⁴² The efforts by the LH Committee were in line with those undertaken by other working groups of the AALS. For example, also in 1910, efforts were being devoted by Wigmore and others (including Pound) to translate continental works on jurisprudence.¹⁴³ The dialogue with *otherness* was therefore present even beyond comparative legal history.

Dialogue continued to nurture before the outbreak of the Great War. For example, the 1911 Treasurer’s Report of the AALS indicated that the LH Committee had incurred costs of postage.¹⁴⁴ The LH Committee itself reported that same year that their work had reached a culminating point, as depicted in a prospectus of the CLH Series that had been circulated during the annual meeting.¹⁴⁵ They once more encouraged AALS members to show interest in the forthcoming work,¹⁴⁶ since Volume 1 of the CLH Series had been published in 1912. The 1912 report of the LH Committee made the transatlantic and transsystemic dialogue evident. They informed that “each volume [of the CLH Series] will be prefixed by an introduction from an American and English legal scholar,”¹⁴⁷ and then provided a list of renowned scholars that had been identified for that end.¹⁴⁸ As this Article will later show,¹⁴⁹ the dialogue was materialized by providing prefatory remarks coming from the common law world and substantive contributions coming in their vast majority from the civil law world.

C. *Interlude*

The Great War forced an *interlude* in the activities of the LH Committee. The group was silent in 1916, 1919, and 1920. There were no annual meetings in 1917 or 1918. Furthermore, the 1915 report indicated that no volume was published in the CLH Series during the past year,¹⁵⁰ while the 1921 report confirmed that “during the war, no

142. *Id.*

143. *Id.* at 50-51.

144. 1911 AALS PROCEEDINGS 19 (1911).

145. *Id.* at 22.

146. Similar plea was made in the report of the Committee on the Study of Legal Philosophy and Jurisprudence. *Id.* at 23.

147. 1912 AALS PROCEEDINGS 50 (1912).

148. *Id.*

149. *See infra* Part IV.

150. 1915 AALS PROCEEDINGS 54 (1915).

work was done.”¹⁵¹ Several AALS members were involved in the military conflict. For example, Wigmore was called for active duty and placed in Washington D.C.¹⁵² At that time, he drafted legislation that aimed to shield, through the temporary suspension of legal proceedings, those members of the U.S. military forces who participated in the conflict and could potentially face claims in U.S. courts while in service.¹⁵³

Committee members advocated for the value of the CLH Series, showcasing the ongoing dialogue. Those efforts had an early impact on scholars, as reflected in the proceedings of the 1914 annual meeting, which took place in December 1914 after the outbreak of the Great War. That year, a paper was presented by Wesley Newcomb Hohfeld, who included in his words a reference to Volume 1 of the CLH Series, even citing passages of the *Editorial Preface*.¹⁵⁴ Another example of the efforts to showcase the dialogue is found in the way members referred to the LH Committee. In 1915, Ernest G. Lorenzen referred to the “Committee on Continental Legal Series,”¹⁵⁵ and in a critical manner stated that very few people in the U.S. devoted efforts to legal history. In his provoking words, Lorenzen claimed that “with little exaggeration nobody writes, nobody teaches, nobody studies, Legal History.”¹⁵⁶ That was a call for more attention towards the discipline, a manner to trigger interest in the output of the LH Committee and its dialogue.

Legal history was not completely dormant in the activities of the AALS during those dramatic years. A round table took place, for example, addressing the place and content of legal history courses in the curriculum, together with a program for research in that field.¹⁵⁷ Legal history was also present in a paper read by Kocourek¹⁵⁸ at the annual meeting, dealing with teaching of jurisprudence; while, in the discussion that followed by Joseph W. Drake, the CLH Series was even

151. 1921 AALS PROCEEDINGS 42 (1921). Further, Wigmore stated in a letter dated January 10, 1922, to the editor of the *Law Quarterly Review*, that “the war suspended our work.” Wigmore Personal Papers, Box 198, Folder 06.

152. Fred L. Borch, *Civilian Lawyers Join the Department: The Story of the First Civilian Attorneys Given Direct Commissions in the Corps*, 2013-MAY ARMY LAW. 1, 3 (2013); and Carrington, *supra* note 16, at 502.

153. Craig L. Reinold, *The Soldiers’ and Sailors’ Civil Relief Act: Due Process for Those Who Defend Due Process*, 1995-DEC ARMY LAW. 64, 66 (1995).

154. 1914 AALS PROCEEDINGS 84-85 (1914).

155. 1915 AALS PROCEEDINGS, *supra* note 150, at 54.

156. *Id.* at 55.

157. 1919 AALS PROCEEDINGS 20 (1919).

158. *Id.* at 121.

mentioned.¹⁵⁹ References to the CLH Series can be found again in the annual meeting, soon after the Great War. In 1920, a report dealing with the four-year curriculum stated that the CLH Series had provided the tools to further include subjects in the curriculum (e.g., Roman law, legal history, jurisprudence). Members of that committee vehemently stated that: “it is only our curriculum that is undeveloped. We simply have not *chosen* to teach them [n.b., referring to the above mentioned courses]. We *can* teach them. The materials in English are abundant.”¹⁶⁰ The *lacuna* was starting to disappear due to the dialogue in which Wigmore and his colleagues were engaging.

D. *Finale*

Members of the LH Committee devoted their final efforts to disseminate the materialization of their dialogue. Their activities reached a *finale* in the 1920s, a time when the CLH Series and the LH Committee could be deemed synonyms. AALS members had started to point that the LH Committee could be discharged,¹⁶¹ since the completion of the CLH Series seemed to indicate that its *raison d’être* had been fulfilled.

The LH Committee devoted its final years mainly to publish the remaining volumes of the CLH Series and to inspire the use of its output by scholars in the U.S. and beyond. Accordingly, the 1922 report offered an update of the different volumes; and, as many other reports, included a plea for support: “it is hoped that all Law School libraries are properly equipped with adequate sets of the Continental Legal History Series.”¹⁶² The following year, the 1923 report repeated the plea for support, offered an update on the status of the volumes,¹⁶³ and showed the efforts of members to engage in further dialogue. For example, AALS members were informed that Wigmore had visited Paul Huvelin—the jurist commissioned to write the volume on commercial law—in his home near Reims, France to secure a commitment.¹⁶⁴ Further, that report

159. *Id.* at 130.

160. 1920 AALS PROCEEDINGS 220 (1920) (emphasis in the original).

161. *See*, for example, the statements by Wigmore on the sentiments of AALS members towards the LH Committee and the Committee on Jurisprudence and Legal Philosophy. 1923 AALS PROCEEDINGS 112-113 (1923).

162. 1922 AALS PROCEEDINGS 43 (1922). Wigmore noted, as early as 1910, that the CLH Series had no commercial interests. In a letter to Little, Brown and Company, dated May 2, 1910, Wigmore stated that: “it is not supposed that this [CLH] series would be a money-maker. It is undertaken in the interest of the profession.” Wigmore Personal Papers, Box 85, Folder 10.

163. 1923 AALS PROCEEDINGS, *supra* note 161, at 38-39.

164. *Id.* at 39.

addressed recent developments in the field, mentioning amongst others, the relevance of the *Journal d' Histoire du Droit*, placing it in the “field of Comparative Legal History.”¹⁶⁵ Another report followed in 1924, this time read *viva voce* by Wigmore. On that occasion, he addressed the reports on legal history and legal philosophy back-to-back, stating he could summarize them in “two minutes.”¹⁶⁶ He then offered an update on the CLH Series and further pointed to the merits of the Netherlands *Journal of the History of Law*, inviting for dialogue with European literature.¹⁶⁷

Members of the LH Committee devoted tireless efforts to disseminate the results of their work¹⁶⁸ and to engage in dialogue with *otherness*. In those lines, Wigmore made new pleas in 1925 for AALS members to support the CLH Series, triggering a reaction from President Orrin K. McMurray, who invited to explore a change in the AALS Constitution that could compel schools to buy the volumes before becoming members.¹⁶⁹ Wigmore reported that year that the volume on civil procedure had expanded the dialogue, since it had additional chapters dealing with more jurisdictions and languages.¹⁷⁰ One year later, the 1926 report showed once more how the LH Committee tried to engage in dialogue, since it referred to the visit of Holdsworth to the U.S. during the spring of 1927 as a Julius Rosenthal Foundation Lecturer.¹⁷¹

The activities of the LH Committee came to an end in 1927. The report that year informed that the volume on civil procedure was finally in print,¹⁷² hence completing the CLH Series. The LH Committee concluded by stating that “unless therefore some substitute for that volume [on commercial law] can be suggested to the Committee at this meeting, the Committee (appointed in 1909) recommends that it be now discharged.”¹⁷³ That statement brought the life of the LH Committee to an end.¹⁷⁴ Wigmore, together with all members, had been able to engage in a transatlantic and transsystemic dialogue with other jurists, and their

165. *Id.* at 40.

166. 1924 AALS PROCEEDINGS 101 (1924).

167. *Id.* at 102.

168. *See*, for example, the earlier plea for support at 1921 AALS PROCEEDINGS, *supra* note 151, at 43.

169. 1925 AALS PROCEEDINGS 90-91 (1925).

170. *Id.* at 116.

171. 1926 AALS PROCEEDINGS 97 (1926).

172. 1927 AALS PROCEEDINGS 119 (1927).

173. *Id.* *See also* ROALFE, *supra* note 9, at 90.

174. *See* the 1934 account on the life of the LH Committee, by Marion R. Kirkwood, at 1934 AALS PROCEEDINGS 30 (1934).

prolific dialogue resulted in publications that helped develop comparative legal history. The focus was first devoted to Anglo-American legal history and then expanded to the history of European continental legal systems. The activities of the LH Committee did come to an end, yet they found a successor in further efforts ignited by the AALS. For example, round tables continued to offer a forum for legal historians within the AALS; while interaction with the American Historical Association nucleated several scholars interested in the field since the 1930s.¹⁷⁵ A special committee on legal history was appointed also that decade, again including Wigmore,¹⁷⁶ and leading to the establishment of the American Legal History Society.¹⁷⁷ It can be therefore claimed that the *seed fell on good soil, where it produced a crop*.

IV. THE CONTINENTAL LEGAL HISTORY SERIES

The publication of the *Continental Legal History Series* helped materialize the efforts of the LH Committee towards the development of comparative legal history. This ten-volume book series,¹⁷⁸ published between 1912 and 1928, was co-edited by Wigmore and gathered primarily English-language translations of texts by leading legal historians and comparatists. It represented an effort to offer a broad panorama of the evolution of legal history in different jurisdictions, in an “English dress.”¹⁷⁹ The CLH Series focused on continental systems, yet was motivated by efforts ignited in the common law world. Further, it offered an early example of academic dialogue between legal traditions, even offering a transatlantic bridge. Above all, the CLH Series should be considered a forum that offered a laboratory for comparative legal

175. See, for example, 1932 AALS PROCEEDINGS 108-110, 127 (1932).

176. See, for example, *id.* at 116; and 1933 AALS PROCEEDINGS 11 (1933).

177. See, for example, 1932 AALS PROCEEDINGS, *supra* note 175, at 127; 1933 AALS PROCEEDINGS, *supra* note 176, at 123; and 1934 AALS PROCEEDINGS, *supra* note 174, at 33-34. This society should not be confused with the American Society for Legal History, to be founded in 1956.

178. The CLH Series had initially aimed to publish eleven volumes. See *infra* note 204, and accompanying text.

179. Frederick Parker Walton stressed that the AALS “earned the gratitude of all students of law, young and old, by the publication of these books in their English dress.” Frederick Parker Walton, *Introduction to this Volume*, in CARLO CALISSE, A HISTORY OF ITALIAN LAW xlv, xlv (8 The Continental Legal History Series 1928).

history to develop, being “symptomatic of a widening of the lawyer’s horizon.”¹⁸⁰

The ten volumes of the CLH Series were targeted to readers on both sides of the Atlantic. The work was published in Boston by Little, Brown and Company; and the publication effort was to appear contemporaneously in England and America,¹⁸¹ involving John Murray Publishers from London. A broad dialogue was present from the very start of the publication endeavor. As mentioned by Wigmore in a letter to Altamira y Crevea, dated April 8, 1911, one of the intentions of the champion of comparative legal history was to introduce European authors to the U.S. readership.¹⁸² A similar statement was then shared with all readers in the *General Introduction to the Series*, when the editors stated that they were “satisfied with the privilege of having introduced these authors and their translators to the public.”¹⁸³ Volumes benefited from being part of a series, since readers could move at ease across volumes, similarly to the roaming that takes place when using encyclopedias.¹⁸⁴ Interest in the CLH Series ultimately triggered the reprinting of volumes during the second half of the twentieth century.¹⁸⁵ After all, scholars kept benefiting from the contents of the volumes. For example, from the U.S., David S. Clark described the volumes as “extremely useful”¹⁸⁶ in 2009; while from the other side of the Atlantic, in Scotland, Hector MacQueen stated in 1986 that the volumes of the CLH Series had been until that time “the only major works of that type [on European legal history].”¹⁸⁷

180. Frederick Parker Walton, *Introduction*, in ALFRED FOUILLÉE ET AL., MODERN FRENCH LEGAL PHILOSOPHY lxi, lxi (1916).

181. *Reviews*, 48 LAW JOURNAL 104, 105 (1913).

182. In Wigmore’s words: “Certainly we should take great pleasure in introducing your name to America.” Petit, *supra* note 26, at lxi.

183. Editorial Committee, *Continental Legal History Series General Introduction to the Series*, in A GENERAL SURVEY OF EVENTS, SOURCES, PERSONS AND MOVEMENTS IN CONTINENTAL LEGAL HISTORY xi, xv (1 The Continental Legal History Series 1912) (hereinafter, General Introduction).

184. Carlos Petit, *John H. Wigmore and European Culture in the Progressive Era*, 16 CLIO@THÉMIS (2019), available at <https://publications-prairial.fr/cliothemis/index.php?id=541> (last visited Nov. 4, 2021) at 6.

185. Clark, *supra* note 29, at 608; Paul A. Rothman, *Fred B. Rothman & Co.*, 11 LEGAL REFERENCE SERVICES QUARTERLY 67, 69 (1992); and *Reprints of Legal Classics Published by the Lawbook Exchange, Ltd.*, in JOHN TRAYNER, LATIN PHRASES AND MAXIMS: COLLECTED FROM THE INSTITUTIONAL AND OTHER WRITERS ON SCOTCH LAW i (1861, reprint 2001).

186. David S. Clark, *American Law Schools in the Age of Globalization: A Comparative Perspective*, 61 RUTGERS L. REV. 1037, 1041 (2009).

187. Hector MacQueen, *Book Review*, 7 J. LEGAL HIST. 236, 236 (1986). MacQueen added on that occasion, however, that those volumes were “massive and somewhat [a] forbidding

Wigmore was the chairperson of the editorial committee of the CLH Series during the lifetime of the project. The members of the editorial committee belonged to the common law world, as expected from a project published under the auspices of the AALS. Members changed during the sixteen-year-lifetime of the publication project and included Drake, Freund, Charles H. Huberich, Lorenzen, Mikell, and Munroe Smith.¹⁸⁸ Wigmore was—in light of the information presented earlier in this Article—perhaps the best person to lead the efforts towards the completion of the CLH Series. Wigmore and his co-editors recurred to translations of continental texts in their quest to attain the development of historical and comparative studies.¹⁸⁹ The use of translations enabled the CLH Series to reach a captive English-reading audience who had no other means to access these sources of knowledge. Further, the translations could also unite readers in other languages who could use English as a new target language.¹⁹⁰

Prefatory remarks to the different volumes alerted readers of the value of comparative legal historical studies. All volumes included first the *General Introduction to the Series*, a place where the transatlantic and transsystemic dialogue was clearly present. That text started with an appropriate and familiar quote by Frederic William Maitland: “All history [. . .] is but a seamless web; and he who endeavors to tell but a piece of it must feel that his first sentence tears the fabric.”¹⁹¹ The editorial committee immediately added that “this seamless web of our own legal history unites us inseparably to the history of Western and Southern Europe.”¹⁹² Readers were reminded that, in the eyes of the editorial committee, the time was ripe for comparative legal historical

collection not particularly designed with the needs of the undergraduate in mind and now more than half a century old.” *Id.*

188. Members were involved in all volumes, with the exception of:

- Munroe Smith, who joined for volumes 2 and 5 (1913-1914).
- Charles H. Huberich, who joined for volumes 1, 3, and 5 (1912-1913). Letters from Wigmore to Huberich, sent in the period December 1912-February 1913, indicate that their relationship was not optimal at that time, due to the lack of response from Huberich to his obligations in the CLH Series. Wigmore Personal Papers, Box 198, Folder 06.
- Joseph W. Drake, who joined for volumes 4, 6, 7, 8, 9, and 11 (1915-1916, 1918, 1927, and 1928).

189. Carrington, *supra* note 16, at 484.

190. Wigmore undertook other editorial and translation efforts by means of the *Modern Criminal Science Series* and the *Modern Legal Philosophy Series*, for example. See the list of series in the Appendix to Petit, *supra* note 184, at 13-14.

191. General Introduction, *supra* note 183, at xi.

192. *Id.*

studies.¹⁹³ There was value in the prefatory remarks. Holdsworth, in the previously mentioned 1943 contribution to the *Law Quarterly Review*, noted that Wigmore's "prefaces to many of the volumes of the Continental Legal History Series stress the importance of comparative legal history."¹⁹⁴ The U.S. jurist indeed valued comparative legal history, and stated it in the prefatory remarks to the volumes of the CLH Series. For example, in Volume 3, Wigmore invited to compare the legal history of French and English law;¹⁹⁵ while in Volume 6, he pointed that the legal history of criminal law required knowledge of other aspects, such as moral and religious conditions and customs.¹⁹⁶ Wigmore's interests were even more palpable in volume 1. There he alerted that comparative legal historical studies must articulate the results of their efforts with that of others contemporary expressions, with the aim of identifying similarities or differences, while overcoming the limitations that arise from experiences that may be limited to national or local scopes. Furthermore, those studies may help achieve a better understanding, characterization, and differentiation of local legal systems. In Wigmore's words,

The outlook beyond local and national law has opened. We desire to understand the growth of our own law as a part of that legal life which nations have in common, [. . .]. To satisfy this desire, the internal legal history of the chief countries must, of course, be studied individually.¹⁹⁷

Comparative legal historical studies required elaborations that could not be assembled at once in a single study. There was, therefore, a need to reach out for a broad collaboration, where existing local studies could serve that purpose.¹⁹⁸ In Wigmore's words, the content of Volume 1 "is found in the solid historical achievements of the past generation [. . .] Not until the rise of the historical school, a century ago, could such a volume (in the modern spirit) have been conceived, and not until the present generation has the fruition of those labors been adequate for this

193. *Id.* at xii.

194. Holdsworth, *supra* note 36, at 289.

195. John H. Wigmore, *Editorial Prefatory Note*, in JEAN BRISSAUD, A HISTORY OF FRENCH PRIVATE LAW xxvii, xxviii (3 The Continental Legal History Series 1912).

196. John H. Wigmore, *Editorial Preface*, in CARL LUDWIG VON BAR ET AL., A HISTORY OF CONTINENTAL CRIMINAL LAW xxix, xxx (6 The Continental Legal History Series 1916).

197. John H. Wigmore, *Editorial Preface to this Volume*, in A GENERAL SURVEY OF EVENTS, SOURCES, PERSONS AND MOVEMENTS IN CONTINENTAL LEGAL HISTORY xxxiii, xxxiii (1 The Continental Legal History Series 1912).

198. *See*, on this aspect of comparative legal history, PARISE, *supra* note 2, at 21-22.

purpose.”¹⁹⁹ In that same volume, Wigmore further stressed that events at different times and places could be recurrent and should not be considered watertight compartments.²⁰⁰ The aforementioned excerpts show that the CLH Series offered a rich example of comparative legal history in action.

A. Content

The CLH Series was a transatlantic endeavor that lived through the Great War and the interwar period. Its volumes addressed various aspects of the history of continental law, including seminal aspects of substantive and procedural law, accounts of fundamental contextual events, and biographies of notable jurists. An enriching transsystemic dialogue took place within the different volumes since, as mentioned above, prefatory remarks were written by common law scholars, while substantive contributions were written in their vast majority by civil law scholars.²⁰¹ The transatlantic dialogue was also present in the different volumes, as clearly depicted by the place of origin of the numerous contributing authors.

Resilience seems to be a characteristic of this publication project. The LH Committee had an original publication plan,²⁰² yet it could not be followed due to different reasons. Wigmore had pointed to the need for flexibility in planning the CLH Series, from an early start. For example, in a letter dated May 9, 1910, Wigmore mentioned to the members of the LH Committee that “there is no likelihood that we shall have to make practical plans for all [volumes] immediately, and the practical arrangements for subsequent volumes could be made as soon as we see how the series succeeds upon its first launching.”²⁰³ Ultimately, the numeration of volumes could not follow a chronological order, since some volumes were delayed more than others. The CLH Series had initially aimed to publish eleven volumes, and that number was made public in several reports and promotional materials.²⁰⁴ However, Volume 10 on commercial law was cancelled due to the death of Huvelin, the leading author. Table 1 below offers an overview of all volumes in the

199. Wigmore, *supra* note 197, at xxxiii.

200. *Id.* at xlii.

201. Volume 2 of the CLH Series offered an exception to this distribution.

202. See *supra* note 134, and accompanying text. See also the letters from Wigmore to Little, Brown and Company, dated May 2, 1910 and May, 18 1910, in which he explains changes in the proposed structure of the CLH Series. Wigmore Personal Papers, Box 85, Folder 10.

203. Wigmore Personal Papers, Box 198, Folder 06.

204. Incorrect references to eleven volumes are recurrent in the literature.

CLH Series, including year of publication,²⁰⁵ volume number, title, and number of pages.²⁰⁶

Table 1. Volumes in the CLH Series

1912, Volume 1. <i>A General Survey of Events, Sources, Persons and Movements in Continental Legal History</i> , 754 pp.
1912, Volume 3. <i>A History of French Private Law</i> , 922 pp.
1913, Volume 5. <i>A History of Continental Criminal Procedure with Special Reference to France</i> , 640 pp.
1914, Volume 2. <i>Great Jurists of the World</i> , 607 pp. ²⁰⁷
1915, Volume 9. <i>A History of French Public Law</i> , 581 pp.
1916, Volume 6. <i>A History of Continental Criminal Law</i> , 561 pp.
1918, Volume 4. <i>A History of Germanic Private Law</i> , 785 pp.
1918, Volume 11. <i>The Progress of Continental Law in the Nineteenth Century</i> , 558 pp.
1927, Volume 7. <i>A History of Continental Civil Procedure</i> , 948 pp.
1928, Volume 8. <i>A History of Italian Law</i> , 827 pp.

Volumes in the series can be clustered in three groups for the purpose of analyzing the diverse output of the project. *Panoptical* volumes aimed to offer readers an overarching introduction to seminal events, actors, and ideas. *Jurisdictional* volumes focused, as the name indicates, in jurisdictions. These volumes dealt mainly with the law in France, Germany (and other Germanic territories), and Italy. Finally, *thematic* volumes dealt with specific areas of the law. This final group dealt with criminal law, and with criminal and civil procedure. The account below follows the year of publication of volumes within each cluster.

1. Panoptical

Panoptical volumes dealt with seminal events, actors, and ideas in the history of continental European law. Volume 1 offered a general survey, a *vademecum*, paving the way for the volumes that would follow. References to this volume are abundant in the literature, not only during the first half of the twentieth century. The volume included the extremely

205. It was not possible to identify the month of publication of the volumes. Accordingly, within a same year, the order follows the volume number.

206. Authors are addressed *infra* at subpart IV.B.

207. The London edition was published in 1913 and made no reference to the CLH Series. The Boston edition referred to this volume as being an “extra volume. By arrangement with John Murray.” See GREAT JURISTS OF THE WORLD i (2 The Continental Legal History Series, John Macdonell & Edward Manson eds. 1914).

broad period that extends from the ruling of Justinian until the emergence of Feudalism, and then individually addressed elements of the legal history of Italy, France, Germany, Netherlands, Switzerland, Scandinavia, Spain,²⁰⁸ and canon law. Wigmore had devoted countless efforts to standardize the presentation of the volume, even triggering criticisms of having *invented* some passages in order to adapt them to his audience and cultural environment.²⁰⁹ Wigmore mentioned in a letter to the LH Committee, dated February 13, 1911, that “the details of the construction of his volume have been tedious; for no such thing apparently exists in any European language, in the compass of one volume.”²¹⁰

Volume 2 focused on twenty-six actors²¹¹ behind paradigmatic shifts that law experienced through time. Authors, different from those in other volumes, were mainly coming from the common law world. This offered a special approach to the biographical information presented for each jurist, many of them having performed activities in the civil law arena. The volume welcomed a transsystemic dialogue between civil and common law, and its content continued to be valued, well into the twentieth century.²¹² That volume also included portraits of jurists,²¹³ being in line with the “pictorial method” that Wigmore advocated for—in an innovative way—in his teaching materials.²¹⁴

208. Finding an author for Spain was very challenging. *See generally* Petit, *supra* note 26. For example, Wigmore addressed that point in a letter to the LH Committee, dated February 13, 1911 that to identify a suitable work for Spain, “perhaps we may have to put an advertisement in the daily newspapers.” Wigmore Personal Papers, Box 198, Folder 06.

209. Petit, *supra* note 184, at 5-6.

210. Wigmore Personal Papers, Box 198, Folder 06.

211. Entries were provided in the following order (and spelling): Gaius, Papinian, Domitius Ulpian, Bartolus, Andrea Alciati, Jacques Cujas, Albericus Gentilis, Francis Bacon, Hugo Grotius, John Selden, Thomas Hobbes, Richard Zouche, Jean Baptiste Colbert, Gottfried Wilhelm von Leibnitz, Samuel von Pufendorf, Giovanni Battista Vico, Cornelius van Bynkershoek, Montesquieu, Robert Joseph Pothier, Emerich De Vattel, Beccaria, William Scott, Jeremy Bentham, Carl Joseph Anton Mittermaier, Friedrich Carl von Savigny, and Rudolph von Ihering.

212. *See, for example,* the reference to the volume in M.H. Hoeflich, *Edward Gibbon, Roman Lawyer*, 39 AM. J. COMP. L. 803, 808 (1991).

213. Wigmore had envisioned an “edition de luxe” of volume 1, with portraits. *See* a letter to the LH Committee, dated October 12, 1911. Wigmore Personal Papers, Box 198, Folder 06. *See also* ROALFE, *supra* note 9, at 88.

214. Lindsey, *supra* note 56, at 279. Wigmore pointed to the use of images to teach comparative law and legal history. *See, for example,* John H. Wigmore, *A New Way of Teaching Comparative Law*, 1926 JOURNAL OF THE SOCIETY OF PUBLIC TEACHERS OF LAW 6 (1926).

Volume 11 zoomed into the nineteenth century. It focused on three paradigmatic shifts²¹⁵: mutations in law due to new social and political conditions, efforts towards attaining national codification, and efforts towards the unification of private law.²¹⁶ This volume had been prepared before the Great War,²¹⁷ and hence the last part was indeed *avant-garde*, even serving as a very early precursor to the harmonization efforts that took the stage in Europe since the last decades of the twentieth century. A review published in 1919 *Law Quarterly Review* already pointed to the early outcome of such efforts, since it stated that “the history of the unification of law so far is one of much effort and little accomplishment.”²¹⁸ The volume offered a panoptical approach that, in the words of a scholar, “wish[ed] to get to the heart of the Nineteenth Century.”²¹⁹ The pages of the *Harvard Law Review* mentioned that Volume 11 should be deemed the most useful in a useful series for U.S. readership.²²⁰ For example, the contribution by Léon Duguit, perhaps the most cited by the literature, had been deemed “a book in itself and deserves the most careful reading by American lawyers.”²²¹ Other parts of that volume were even cited by courts of law, such as the reference to the chapter by Georges Ripert on the unification of maritime law made by the U.S. Supreme Court in 1934.²²² These three volumes succeeded in offering a panoptical view, turning into useful tools of the trade.

2. Jurisdictional

Jurisdictional volumes dealt with a number of geographical spaces that were deemed by the editors as the “central fields, leaving the history in other countries to be touched so far as might be incidentally possible.”²²³ Volume 3 invited readers to explore the private law of

215. See the presentation of the three shifts in John H. Wigmore, *Editorial Preface*, in *THE PROGRESS OF CONTINENTAL LAW IN THE NINETEENTH CENTURY* xxix (11 The Continental Legal History Series 1918).

216. Each of the three parts of the volume dealt with a different shift.

217. 1921 AALS PROCEEDINGS, *supra* note 151, at 42-43.

218. H.J.R., *Book Review*, 35 *LAW QUARTERLY REVIEW* 199, 200 (1919).

219. William H. Lloyd, *Book Review*, 68 *U. PA. L. REV.* 407, 408 (1920).

220. R.P., *Book Review*, 34 *HARV. L. REV.* 221, 221 (1920).

221. *Id.*

222. *Detroit Trust Co., Trustee, v. Thomas Barlum*, 293 U.S. 21, 50 (1934).

223. General Introduction, *supra* note 183, at xiii.

This approach can be subject to criticism, calling for further elaborations on why one jurisdiction was selected over others. Furthermore, that approach could overshadow national diversity in Europe. See the analysis in Petit, *supra* note 184, at 9-10.

A lack of attention for other jurisdictions and systems was noted at that time. For example, Wigmore received a letter, dated January 26, 1923, by which Nicolas P. Aglmides offered to

France. The volume offered a general introduction and then dealt individually with main pillars of private law: family, property, obligations, successions, matrimonial regimes, and legal capacity. The content of the volume was placed within the broader European context, and as Wigmore noted in the *Editorial Prefatory Note*, “the large canvas thus used by Brissaud [i.e., the author] enables him to depict constantly the broad background of European legal life, in which France and England are seen to be the important foreground but never the whole of the picture.”²²⁴ Comparison and contrast are of the essence in comparative legal historical endeavors,²²⁵ and the volume was praised in that sense by scholars. For example, Holmes said in a letter to Frederick Pollock, dated December 15, 1912, that “the book itself strikes me as making one feel and realize the evolution of law and correspondence of change to change of circumstances more than any history I ever read.”²²⁶

Volume 9 invited to continue exploring France, yet looking at public law. The volume included an introduction on the origins of the state that was followed by a historical account of substantive aspects of public law, stretching from primitive times, and crossing through the Roman, barbarian, feudal, and monarchical periods, to end with the revolutionary period. Attention in that volume was also devoted to the place of the Church. A 1915 review in the *Yale Law Journal* stressed the value of the volume for “every student of comparative and historical jurisprudence.”²²⁷ The volume seemed to fill a *lacuna* in the literature, well into the twentieth century, since, for example, the comparatist René David referred to it as a recommended reading in English, as late as 1958.²²⁸

contribute to the CLH Series, expanding the scope, since “such a series cannot be complete if the Mohammedan [sic] law is omitted.” Wigmore Personal Papers, Box 198, Folder 06.

224. Wigmore, *supra* note 195, at xxix. Wigmore alerted about that special value, in a letter to the members of the LH Committee, dated May 2, 1910. There he stated that he had “no hesitation in saying that we must select the Brissand [sic], if the publishers can afford it. His frequent comparisons with English Law (seisin, mortgage, etc. etc.) are invaluable for our purpose, [. . .] his private law [section] is vastly superior; it has no second.” (emphasis in the original) Wigmore Personal Papers, Box 198, Folder 06.

225. William S. Holdsworth, *Introduction*, in JEAN BRISSAUD, A HISTORY OF FRENCH PRIVATE LAW xxxiii, xxxiv (3 The Continental Legal History Series 1912).

226. HOLMES-POLLOCK LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND SIR FREDERICK POLLOCK 1874-1932 205 (Mark DeWolfe Howe ed. 1942). Oliver Wendell Holmes, Jr. had been critical of the translation in that same letter. *See also* ROALFE, *supra* note 9, at 87.

227. G.E.S., *Book Review*, 24 YALE L.J. 440, 440 (1915).

228. RENÉ DAVID & HENRY P. DE VRIES, THE FRENCH LEGAL SYSTEM: AN INTRODUCTION TO CIVIL LAW SYSTEMS 16, 40 (1958).

Volume 4 shifted the attention to Germanic private law.²²⁹ There the author presented the general traits of Germanic private law, and then dealt with the law of persons, the law of things, the law of obligations, family law, and the law of successions, hence resembling to a great extent the structure of the BGB. The introduction by Paul Vinogradoff to the volume was deemed “as a valuable contribution to the scanty literature in English upon the theory of possession,”²³⁰ to which Germanic scholars, such as Friedrich Carl von Savigny and Rudolf von Jhering, had offered ground-breaking ideas. After all, Vinogradoff possessed a remarkable knowledge of English and continental legal history.²³¹ That volume—as other sister volumes in the CLH Series—filled a gap in the English-language literature, and references to it were included in works by authoritative comparatists. For example, Max Rheinstein stated in 1959 that Volume 4 was the only English translation of the numerous treatises on German legal history.²³²

Volume 8—which was delayed for a number of years—dealt with various aspects of Italian legal history. Different from other volumes in the CLH Series, the author covered in one single and extensive volume²³³ public law in general, criminal law, and private law.²³⁴ As mentioned by Layton B. Register in his *Editorial Preface* to that volume, “public and criminal law are treated according to historic periods. [While in the book on] Private Law, this method is abandoned in favor of a division according to subject matter.”²³⁵ Further, that volume addressed topical issues of private law since the unification of Italy (*Risorgimento*). Codification was one of those recurring issues and its evolution is still in the legislative agendas of many jurisdictions, undergoing revision,

229. The translator of the volume opted for Germanic and pointed to the presence of a “wide range of comparative references to various bodies of Germanic law.” *Translator’s Note*, in RUDOLF HUEBNER, *A HISTORY OF GERMANIC PRIVATE LAW* li, lii (4 The Continental Legal History Series 1918).

230. Orrin K. McMurray, *Book Review*, 10 J. AM. INST. CRIM. L. & CRIMINOLOGY 308, 310 (1919).

231. See generally, the recent study in Lorren Eldridge, *Gone and Forgotten: Vinogradoff’s Historical Jurisprudence*, LEGAL STUDIES 1 (2021). doi:10.1017/lst.2020.41.

232. Max Rheinstein, *The Approach to German Law*, 34 IND. L.J. 546, 546 (1959).

233. The volume was subject to critical reviews. See, for example, J.B. Thayer, *Book Review*, 23 ILL. L. REV. 743 (1929).

234. The volume was an ensemble of previous works by the author, namely an 1895 book on criminal law and a 1903 three-volume work on the history of Italian law (divided in sources, public law, and private law). See Layton B. Register, *Editorial Preface*, in CARLO CALISSE, *A HISTORY OF ITALIAN LAW* xxxix, xl (8 The Continental Legal History Series 1928).

235. *Id.* at xli.

decodification, or recodification. In the lucid words of the author of that volume:

Even when confined within the covers of codes, law continues to develop by following the course of social change, until that point is reached, foretold by the historical school, when, as codified, it no longer corresponds to the interests of the society which it should serve. At that point arises the necessity of revision and reform, in order to re-establish between the law and its purpose the relationship which has been lost and which is a necessary condition of a useful and even possible application.²³⁶

3. Thematic

Thematic volumes dealt with criminal law and with criminal and civil procedure. As mentioned earlier in this paper,²³⁷ a further volume (i.e., Volume 10) was meant to deal with commercial law, yet it was never published,²³⁸ leaving a gap in the English-language literature. The content of the three thematic volumes was grouped “partly by topics and partly by countries,”²³⁹ to avoid duplication of common ground. Volume 5 dealt with criminal procedure, and devoted special attention to France. It included introductory aspects (e.g., types of procedure), to be followed by the exploration of the topic in France across three periods: 1200s to 1600s, late 1600s and 1700s, and since the French Revolution. The volume also addressed other jurisdictions, from Europe (e.g., Italy Spain, the Netherlands) and beyond (e.g., Egypt, South America, Japan); hence offering a perspective that exceeded continental systems. The comprehensive bibliography that the volume provided was praised in the literature, since it aimed to offer an account of the *status quaestionis*.²⁴⁰ The volume extended an invitation to engage in dialogue, and in words of Norman Maclaren Trenholme, in the *Introduction* to the volume:

The spirit of legal reform is everywhere present in the United States and will bring about important changes in criminal procedure. These should be based on broad comparative study of existing systems such as can only be

236. CARLO CALISSE, A HISTORY OF ITALIAN LAW 793-794 (8 The Continental Legal History Series 1928).

237. See *supra* note 204, and accompanying text.

238. Paul Huvelin had been commissioned to write that volume and died without completing the work. Wigmore had engaged with him on several occasions, and “reminded him that the world needed far more a history of commercial law, and that he was marked out as its one hope for that task in the present generation.” John H. Wigmore, *Paul Louis Huvelin*, 19 ILL. L. R. 337, 338 (1925).

239. General Introduction, *supra* note 183, at xiii.

240. James W. Garner, *Book Review*, 8 AM. POL. SCI. REV. 110, 111 (1914).

gained from a work like this. Let the chapters from Esmein, Garraud, and Mittermaier that follow be read with care and attention, and a cosmopolitan and international viewpoint of criminal procedure is bound to result and to react beneficially on national prejudices.²⁴¹

Volume 6 continued looking at criminal law, yet this time attending substantive aspects and with a special focus on Germanic law. In a first part, the volume offered an overview of the evolution of criminal law, starting in Rome, looking at developments beyond the Germanic umbrella, such as those that took place in Scandinavia, France, the Netherlands, and Belgium. That broad outlook benefited from works by a multiplicity of authors.²⁴² In a second part, the volume delved into the theories of criminal law, tracing back to accounts from Greek and Roman times. The volume was enriched with an appendix including a critique to the theory of criminal law. The quality of that final contribution by Carl Ludwig von Bar was praised by reviewers,²⁴³ and the editors of the volume acknowledged that “it belong[ed] more naturally in the ‘Modern Criminal Science Series,’”²⁴⁴ hence reflecting the synergy amongst sister series gestated around the tireless efforts of Wigmore.

Volume 7 introduced readers to the history of civil procedure. It aimed to foster dialogue by making sources available in English, since language barriers could be deemed “almost insurmountable”²⁴⁵ in the U.S. at that time. The volume first presented a number of formative principles of civil procedure. It then dealt with the Germanic, Roman, Romano-Canonical, and modern continental procedures. The diversity in the origin of authors secured a diversity of jurisdictions subject to analysis (e.g., Austria, France, Germany, Italy, Sweden). The U.S. readership welcomed the volume,²⁴⁶ while—as mentioned by Harold D.

241. Norman Maclaren Trenholme, *Introduction*, in ADHÉMAR ESMEIN, A HISTORY OF CONTINENTAL CRIMINAL PROCEDURE WITH SPECIAL REFERENCE TO FRANCE xxxiii, xl (5 The Continental Legal History Series 1913). In similar lines, a reviewer stated that the volume could “be studied with some profit by those who are dissatisfied, not to say disgusted, with the results of our own [US] procedure.” Garner, *supra* note 240, at 111.

242. For example, as noted by Wigmore in that volume, “for the Netherlands, the section on the history to the 1800s was taken from [a work by] Professor G. A. Van Hamel.” Wigmore, *supra* note 196, at xxxiv.

243. See, for example, David Werner Amram, *Book Review*, 67 U. PA. L. REV. 88, 88 (1919).

244. CARL LUDWIG VON BAR ET AL., A HISTORY OF CONTINENTAL CRIMINAL LAW 498 (6 The Continental Legal History Series 1916).

245. Edson R. Sunderland, *Book Review*, 27 MICH. L. REV. 362, 363 (1929).

246. Ernst C. Stiefel & James R. Maxeiner, *Civil Justice Reform in the United States—Opportunity for Learning from ‘Civilized’ European Procedure Instead of Continued Isolation?*, 42 AM. J. COMP. L. 147, 150 (1994).

Hazeltine—readers in the common law world would be especially interested in the history of the Romano-Canonical procedure.²⁴⁷ The volume is currently deemed a “classic”²⁴⁸ in that area of study, having filled a gap in the literature.

All volumes in the CLH Series could serve as handbooks. They are rich in content and cover events, actors, ideas, and areas of the law in several jurisdictions and time places. A transatlantic and transsystemic dialogue took place during the completion of the publication project. That dialogue, furthermore, paved the way for the development of comparative legal history and was likewise an invitation for further dialogue to emerge.

B. Actors

The CLH Series offered an amalgam of writings by world-renowned scholars, from the civil and common law worlds, from both sides of the Atlantic Ocean. The transsystemic dialogue was clearly present in the contents of the different volumes²⁴⁹ and took place between the actors involved in the publication project. These actors can be considered the stonemasons behind the CLH Series, being even possible to ultimately speak of a *Dream Team* of comparative legal historians. Wigmore, once more, was behind such a team, playing a fundamental role in the selection of actors, since the vast majority were part of the network that developed around him and the LH Committee. The personal papers of Wigmore unveil his close interaction with the different actors.²⁵⁰ Epistles and visits that relate to the CLH Series can be traced back to the time when the LH Committee started to engage in dialogue with *otherness*.²⁵¹

247. H.D. Hazeltine, *Comparative Studies in the History of Civil Procedure*, 1928 J. SOC'Y PUB. TCHRS. L. 12, 15-16 (1928).

248. For example, it was deemed a classic work in the pages of the *Cornell Law Review* in 2005. See Amalia D. Kessler, *Our Inquisitorial Tradition: Equity Procedure, Due Process, and the Search for an Alternative to the Adversarial*, 90 CORNELL L. REV. 1181, 1187 (2005), n. 25.

249. For example, Robert Warden Lee, then Dean of Law at McGill University, stated in 1917 that the CLH Series went “some way towards disseminating knowledge of legal systems other than the Common Law.” R.W. Lee, *Looking Forward*, 30 HARV. L. REV. 792, 800 (1917).

250. The personal papers encapsulate the dialogue of Wigmore with actors on both sides of the Atlantic. Many of those actors were actively involved as authors or reviewers of the different volumes of the CLH Series. This Article helps to place the different actors within the web that Wigmore nurtured. Further microstudies could attend the interaction of the different actors within the web.

251. See discussion *supra* subpart III.B. Further, see, for example, the valuable study in Petit, *supra* note 26, especially at xii-xiii, xix.

Networks play a fundamental role for the development of comparative legal history. The collection and dissemination of knowledge is not only a demanding adventure, it is also the result of teamwork.²⁵² Wigmore had a broad network and fostered extensive connections with able hands in and beyond the U.S.²⁵³ A plurality of actors were invited to join the laboratory for comparative legal history that the CLH Series offered. The *General Introduction to the Series* acknowledged that teamwork was of paramount importance for the accomplishment of the project. In the words of the editorial committee, the selection of authors was possible thanks to “numerous scholarly advisers in many European universities [who offered] valuable suggestions towards choice of the works.”²⁵⁴ The editorial committee also stressed their gratitude to authors, translators, and publishers, and further mentioned that library holdings were “found indispensable”²⁵⁵ in the research undertaken for the preparation of the CLH Series.

Teamwork amongst able actors was of the essence for the completion of the publication project. This subpart offers a catalogue of actors, placing them in three groups according to their contribution to the project: *prefatory remarks*, *substantive contributions*, and *translations*. The clustering of volumes into *panoptical*, *jurisdictional*, and *thematic* is also followed within the groups in this subpart, together with the year of publication within each cluster. This catalogue of actors shows the breadth of the network that Wigmore and the LH Committee were able to develop and nurture.

1. Prefatory Remarks

Common law scholars authored the prefatory remarks to the different volumes. They therefore offered a common law approach to topics and events that had been shaped mainly in the civil law world. The panoptical volumes included remarks by renowned scholars. Volume 1 included an editorial preface by Wigmore, as expected from the leading actor in this project. That text was followed by two introductions: one by Holmes and another by Edward Jenks from the Law Society of

252. Gerard-René de Groot & Agustín Parise, *Anthoine de Saint-Joseph: A Nineteenth-Century Paladin for the Development of Comparative Legislation*, in TEN DEFINITIEVE RECHT DOENDE . . . LOUIS BERKVEN'S AMICORUM 70, 92 (Bram van Hofstraeten et al. eds. 2018).

253. A sample of Wigmore's network is offered by the list of contributors to a volume that commemorated his 25 years of service at Northwestern University. See CELEBRATION LEGAL ESSAYS vii-xi (Albert Kocourek ed. 1919).

254. General Introduction, *supra* note 183, at xiv.

255. *Id.*

England.²⁵⁶ Volume 2 continued with the transatlantic approach, yet added a new dialogue, this time with the judiciary. That volume included an editorial preface by John Macdonell from the British Academy and an introduction by Van Vechten Veeder, a U.S. District Court Judge of New York. Volume 11 included once more an editorial preface by Wigmore and two introductions: one by Edwin M. Borchard from Yale and another by Pollock.

The transatlantic origin of prefatory remarks was also evident in jurisdictional volumes. Accordingly, Volume 3 included an editorial prefatory note by Wigmore and an introduction by Holdsworth from Oxford. In addition, it included translator's remarks with useful explanations. Volume 9 included an editorial preface by Freund from Chicago, and introductions by Hazeltine from Cambridge and by Westel W. Willoughby, a political scientist from Johns Hopkins.²⁵⁷ There was dialogue with other disciplines, something not rare for projects led by Wigmore.²⁵⁸ Volume 4 included an editorial preface by Lorenzen from Yale; and introductions by Vinogradoff from Oxford and by William E. Walz from Maine. These texts were followed by a translator's note. Finally, Volume 8 included an editorial preface by Register from Pennsylvania. Further, it included two introductions: one by Frederick Parker Walton, at that time living in Oxford, and previously at Cairo and McGill, and another by Hessel E. Yntema from Columbia.

Thematic volumes included prefatory remarks mainly from the Americas.²⁵⁹ Volume 5 included an editorial preface by Mikell from Pennsylvania, and introductions by Trenholme, a historian from Missouri, and William Renwick Riddell, a Justice of the Supreme Court of Ontario. That volume included a preface by the author to the translation. Volume 6 included an editorial preface and an editorial note,

256. Wigmore corresponded extensively with Holmes, spanning through the years 1888 to 1932. See G. Edward White, *Holmes as Correspondent*, 43 VAND. L. REV. 1707, 1711 (1990). See also Andrew Porwancher, *The Justice and the Dean: Oliver Wendell Holmes, Jr. and John Henry Wigmore*, 37 J. SUP. CT. HIST. 266 (2012).

257. A letter from Wigmore to Thomas Reed Powell, dated September 30, 1913, showed that Frank Johnson Goodnow first, and Powell thereafter, had been invited to write prefatory remarks for that volume. Wigmore Personal Papers, Box 198, Folder 06.

258. Westel W. Willoughby stated in his prefatory remarks that: "in no other work available in English is there to be found an account comparable in learning to that which Brissaud has given us of the steps by which, from the earliest times, the political institutions of France have come into being" (Westel W. Willoughby, *Introduction to this Volume*, in JEAN BRISSAUD, A HISTORY OF FRENCH PUBLIC LAW xlvi, liii (9 The Continental Legal History Series 1915).

259. Wigmore indicated in a letter dated January 10, 1922, that Walter Phillimore (Baron Phillimore of Shiplake) had been invited to write the prefatory remarks for the truncated volume 10. Wigmore Personal Papers, Box 198, Folder 06.

both by Wigmore, and introductions by Riddell²⁶⁰ and Edwin Roulette Keedy from Pennsylvania. That volume, in similar lines with the previous one, included a preface by the author to the translation. Finally, Volume 7 included an editorial preface by Robert Wyness Millar from Northwestern, and introductions by Holdsworth and Samuel Williston from Harvard.²⁶¹ That volume was able to return to the transatlantic approach.

There was a clear diversity amongst the authors of prefatory remarks. Authors wrote from both sides of the Atlantic, and included professors, practitioners, and members of the judiciary. Further, authors included legal experts and scholars of other scientific fields. Wigmore's broad dialogue was therefore evident in the arrangement of prefatory remarks. It is worth noting that only three authors contributed with more than one prefatory remark, these being Holdsworth, Riddell, and—as expected—Wigmore.

2. Substantive Contributions

Actors in this publication project also included authors of substantive contributions. The vast majority of contributions came from the civil law world and had to be translated into English language. Further, most volumes identified a leading author, though in several volumes it was possible to identify other contributing authors only by going through the different prefatory remarks or sections.

Panoptical volumes were marked by a diversity of authors, since, after all, multiple approaches and perspectives were sought for. Volume 1 was edited by Wigmore,²⁶² and as the cover page indicated, it included excerpts from various European authors. The table of contents pointed to thirteen authors,²⁶³ yet footnotes throughout the volume referred to

260. Luke Owen Pike had been commissioned to write that introduction, yet the work was not completed due to his death. See John H. Wigmore, *Editorial Note*, in CARL LUDWIG VON BAR ET AL., *A HISTORY OF CONTINENTAL CRIMINAL LAW* xli, xli (6 The Continental Legal History Series 1916).

261. A letter from Wigmore, dated November 21, 1924, indicated that Baron Shaw of Dunfermline and John Salmond had been invited to write prefatory remarks for that volume. Another letter, from Robert Wyness Millar, dated May 22, 1925, extended an invitation to Alfred E. Randall. Wigmore Personal Papers, Box 198, Folder 06.

262. Wigmore, *supra* note 197, at xxxiii, n. 1.

263. The table of contents mentioned the following contributors: Rafael Altamira y Crevea, Carlo Calisse, Jean Brissaud, Heinrich Brunner, Ebbe Hertzberg, Eugen Huber, Frederic William Maitland, Richard Schroeder, Heinrich Siegel, Otto Stobbe, Joost Adriaan van Hamel, Roderich von Stintzing, and Heinrich Zoepel.

excerpts by other authors,²⁶⁴ hence expanding the number of actors involved in the volume. Most authors in that volume had been trained in the civil law world and their writings had gained undisputed authority. Volume 2 was edited by Macdonell and Edward Manson of the Society of Comparative Legislation. All fourteen contributors,²⁶⁵ but two,²⁶⁶ were British and thirteen wrote from the common law world,²⁶⁷ hence offering an unique approach when compared with other volumes in the CLH Series. Volume 11 was edited by Wigmore²⁶⁸ and included contributions by fifteen authors from both sides of the Atlantic.²⁶⁹ This volume alone could be considered a testament of a time period, including writings by thought-provoking authors, such as Duguit, who challenged existing understandings of private law by advocating for a social function of property.²⁷⁰ In the words of Wigmore, in a letter to the LH Committee dated March 31, 1914, the work of Duguit was “just our compass.”²⁷¹

Jurisdictional volumes took a different approach, and followed the work of a leading author for each area subject to study. Accordingly, Volumes 3 and 9 reproduced seminal works on French law by Jean Brissaud from Toulouse. Volume 4 moved the focus to Germanic law and offered writings by Rudolf Huebner from Giessen; while Volume 8—which was the last to be published and was notably delayed—offered

264. See, for example, the reference to excerpts of a work by Marcel Planiol in the French chapter on codification (A GENERAL SURVEY OF EVENTS, SOURCES, PERSONS AND MOVEMENTS IN CONTINENTAL LEGAL HISTORY 274 (1 The Continental Legal History Series 1912)).

265. i.e., Noeman Bentwick, Thomas Bridgwater, Edwin Charles Clark, Henry Anselm de Colyar, James E. G. de Montmorency (four entries), Levin Goldschmidt, Courtenay Ilbert, James Crawford Ledlie (two entries), John Macdonell (two entries), Edward Manson, Coleman Phillipson (seven entries), Michael Rafferty, William Rattigan (two entries), and John Maxcy Zane.

266. Goldschmidt was German and was deceased at the time of publication of Volume 2. The entry was translated from German and had been first published in 1867 (GREAT JURISTS OF THE WORLD, *supra* note 207, at 544). John Maxcy Zane was born in the US state of Illinois (6 WHO’S WHO IN CHICAGO AND ILLINOIS 1121 (John W. Leonard & Albert Nelson Marquis eds. 1936)).

267. Several entries had been published in the pages of the *Journal of the Society of Comparative Legislation* (John Macdonell, *Editorial Preface*, in GREAT JURISTS OF THE WORLD xxi, xxi (2 The Continental Legal History Series, John Macdonell & Edward Manson eds. 1914)). See, for example, the entry on Beccaria at Thomas Rawling Bridgwater, *Cæsar Bonesana, Marquis Di Beccaria*, 8 *Journal of the Society of Comparative Legislation* 219 (1907).

268. This can be concluded from the contents of n. 1, at Wigmore, *supra* note 215, at xxxiii.

269. i.e., Alejandro Álvarez, Simeon Eben Baldwin, Joseph Charmont, Georg Cohn, Léon Duguit, Eugène Gaudemet, Friedrich Meili, Otfried Nippold, Ivan Perich, Edmond Picard, Paul Samuel Reinsch, Georges Ripert, Alfredo Rocco, Icilio Vanni, and Wigmore.

270. See, for example, PARISE, *supra* note 2, at 192-198.

271. Wigmore Personal Papers, Box 198, Folder 06.

writings on Italian law by Carlo Calisse from Rome. This volume, as with others in the CLH Series, was not limited to translations of already published materials. Here, for example, the Italian professor and politician wrote sections that were intended exclusively for inclusion in the volume.²⁷²

Thematic volumes referred in the cover pages to leading authors, yet several composite parts by other authors can be found across the different volumes. Volume 5 offered a translation of writings on criminal procedure by Adhémar Esmein from Paris.²⁷³ The look beyond France in that volume was mainly attained by reproducing texts from François Garraud from Lyon and Carl Josef Anton Mittermaier from Heidelberg,²⁷⁴ two authors who were not mentioned on the cover page. Volume 6 offered a translation of writings by von Bar from Göttingen, and the cover page, different from that of the previous volume, did refer to “and others.” Indeed, writings on criminal law by eight European scholars²⁷⁵ were included together with the main text by von Bar. Further, Wigmore, in his capacity as editor of the volume, indicated that he had elaborated some sections, building on the authority of those authors.²⁷⁶ Volume 7 offered a translation of texts by Arthur Engelmann from Breslau and other ten scholars,²⁷⁷ mainly writing from the civil law world. That volume was edited and translated by Millar,²⁷⁸ who also wrote substantive contributions on the area of civil procedure and was a leading advocate for the comparative study of that area of law in the

272. See, for example, CALISSE, *supra* note 236, at 3, especially n. 1.

273. Adhémar Esmein rewrote portions of his original manuscript in light of the research undertaken by Frederick Pollock, Maitland, James Bradley Thayer, and William Searle Holdsworth on the history of criminal procedure in England. See Adhémar Esmein, *Author's Preface to this Translation*, in ADHÉMAR ESMEIN, A HISTORY OF CONTINENTAL CRIMINAL PROCEDURE WITH SPECIAL REFERENCE TO FRANCE xlv, xlv (5 The Continental Legal History Series 1913).

274. See also, Garner, *supra* note 240, at 110-111.

275. i.e., Ernest Désiré Glasson, François Garraud, Heinrich Pfenninger, Christian Ludvig Ernst Stemann, Gerard Anton van Hamel, Lorenz von Stein, Ladislav von Thót, and Leopold August Warnkönig.

276. See, for example, sections on Switzerland in which the editor of the volume claimed to be the author, having found authority in the writings of Pfenninger. Wigmore, *supra* note 196, at xxxiv; and VON BAR ET AL., *supra* note 244, at 142, 297.

277. i.e., Giuseppe Chiovenda (two contributions), Thore Engströmer, Glasson, Rudolf Herrmann, Millar (four contributions), Lanciotto Rossi, Giuseppe Salvioli, Johann Christoph Schwartz, Wilhelm Uppström (two contributions), and von Stein.

278. Wigmore noted, in a letter to Martin M. Gridley, dated October 31, 1927, that “Mr. Millar has had the cordial cooperation of a number of Continental jurists.” Wigmore Personal Papers, Box 198, Folder 06.

1920s and 1930s.²⁷⁹ Wigmore was omnipresent in this and other volumes of the CLH Series. For example, the editor-translator stated that:

he [would not] omit to mention the heavy indebtedness which this volume [7] is under to Professor Wigmore, Chairman of the Editorial Committee. Not only is his the conception of this Series and of this volume as part of the Series, but it was his discerning judgment that selected the work of Engelmann as a basis, provided for its supplementation by Herrmann, discovered the possibilities afforded by the work of Uppström, and proposed the inclusion of a chapter from Glasson's "Histoire."²⁸⁰

Substantive contributions engaged in an enriching dialogue. Texts that had been authored in different jurisdictions and time periods were selected for inclusion in the different volumes, and, when required, translated into English language. Sixty-three authors of substantive contributions were credited overtly across the ten volumes, while five of those authors were present in more than one volume (i.e., Brissaud, Calisse, Garraud, Ernest Désiré Glasson, and Lorenz von Stein). Substantive contributions, in similar lines with the majority of the legal products at that time, were the resulting output of members of what could be deemed *a gentlemen's club*. Women would still have to wait several decades to break into these academic circles and to be finally able to join and enhance the activities of networks of comparative legal historians across jurisdictions.

3. Translations

Translations are tools of trade that play a fundamental role in the development of legal science.²⁸¹ The CLH Series offered a practical example of the transfer of legal knowledge not only across jurisdictions, but also across legal systems. That transfer required the elaboration of translations to fully achieve its potential, enabling the effective reception of legal knowledge in jurisdictions that did not share the same vernacular means of communication.²⁸² English translations were needed to fully meet the objective of Wigmore and of the LH Committee, since

279. Stiefel & Maxeiner, *supra* note 246, at 150.

280. Robert Wyness Millar, *Editorial Preface*, in ARTHUR ENGELMANN ET AL., A HISTORY OF CONTINENTAL CIVIL PROCEDURE xxxvii, li (7 The Continental Legal History Series 1927).

281. Agustín Parise, *The Concordancias of Saint-Joseph: A Nineteenth-Century Spanish Translation of the Louisiana Civil Code*, 9 JOURNAL OF CIVIL LAW STUDIES 287, 312 (2016).

282. *See*, for example, the use of translations for nineteenth-century codification endeavours, in Agustín Parise, *A Translator's Toolbox: The Law, Moreau-Lislet's Library, and the Presence of Multilingual Dictionaries in Nineteenth-Century Louisiana*, 76 LA. L. REV. 1163, 1171 (2016).

otherwise the much sought for dialogue would have not taken place.²⁸³ Wigmore was well aware of the need for translations. Hence, from the very conception of the CLH Series, he had worked autonomously in translations.²⁸⁴ The *General Introduction to the Series* pointed to the importance of translators, stating that “without their labors this [CLH] Series would have been a fruitless dream.”²⁸⁵ Those prefatory remarks further mentioned that “accomplishments, legal and linguistic, needed for a task of this sort are indeed exacting; and suitable translators are here no less needful and no more numerous than suitable authors.”²⁸⁶ In those lines, in May, 1910, Wigmore had stated that it had “not been easy to find competent translators;”²⁸⁷ and a few months later he added that “the work of translation is a tedious and engrossing one, let me add that the work in this [CLH] series which I have undertaken requires thus far half a day to do five pages, or, probably four full months if I worked continuously six days in the week.”²⁸⁸

All volumes included a general list of translators. As expected, translators changed during the sixteen-year-lifetime of the publication project and included Thomas S. Bell, Ernest Bruncken, Alfonso de Salvio, Tiemen de Vries, James W. Garner, Rapelje Howell, John Lisle, Lorenzen (n.b., also a member of the editorial committee), Millar, Francis S. Philbrick, Register, John Simpson, John Walgren, and—once more—Wigmore.²⁸⁹ The vast majority of translators were affiliated with

283. The personal papers of Wigmore include correspondence with Little, Brown and Company, in which Wigmore advocated for the financial compensation that translators should receive for their work. *See generally* Wigmore Personal Papers, Box 85, Folder 10.

284. Wigmore stated in a letter to Little, Brown and Company, dated May 22, 1909, “I have myself begun the translation of two such works [on European legal history]”. In that same epistle, he stated: “I am going on with my own translations in any case.” Wigmore Personal Papers, Box 85, Folder 09.

285. *General Introduction*, *supra* note 183, at xv.

286. *Id.* at xiv.

287. Letter from Wigmore to Little, Brown and Company, dated May 2, 1910. Wigmore Personal Papers, Box 85, Folder 10.

288. Letter from Wigmore to Little, Brown and Company, dated October 24, 1910. Wigmore Personal Papers, Box 85, Folder 10.

289. Members were involved in all volumes, with the exception of:

- Ernest G. Lorenzen, who did not join for volumes 7 and 8 (1927-1928).
- Layton B. Register, who joined for volumes 4, 6, 7, 8, 9, and 11 (1915-1916, 1918, 1927, and 1928).
- Ernest Bruncken, who joined for volumes 7 and 8 (1927-1928).
- Alfonso de Salvio, who joined for volumes 7 and 8 (1927-1928).
- Tiemen de Vries, who joined for volumes 7 and 8 (1927-1928).

law schools in the U.S.,²⁹⁰ yet experts from other disciplines were also invited to join the team, showing the willingness of Wigmore and his colleagues to engage in academic dialogue. For example, Garner was a political scientist, de Salvio taught romance languages, and de Vries taught modern languages.

Volumes in the CLH Series also pointed to specific translators that were involved in specific volumes and that ultimately enabled the transatlantic and transsystemic dialogue. Panoptical volumes presented challenges for translators and editors due to the multiplicity of authors of substantive contributions. Volume 1 mentioned the translation work of Howell, Philbrick, Walgren, and Wigmore, and the *Editorial Preface* linked each translator to his corresponding work in that volume, while offering biographical information on those important actors.²⁹¹ Volume 2 required limited intervention of translators, since all contributors but one were native English speakers. Accordingly, the entry by Levin Goldschmidt on Mittermaier required translation and was completed by Victor von Borosini.²⁹² Volume 11, finally, mentioned the translation work of Register and Bruncken.²⁹³

Jurisdictional volumes pointed to single translators. Howell was mentioned as translator for Volume 3, though “in the work of finding suitable equivalents for such words the translator ha[d] been very greatly assisted”²⁹⁴ by Wigmore. Volume 9 was translated by Garner, while the equivalent work for Volume 4 was done by Philbrick.²⁹⁵ Volume 8, the final volume in the CLH Series, was translated by Register. That volume had been commissioned originally to Lisle, and in that regard, the

290. Wigmore stated in a letter to Little, Brown and Company, dated December 7, 1909, that the translators of the CLH Series “will presumably be all professors in some university.” There was no reference to what discipline they would teach. Wigmore Personal Papers, Box 85, Folder 09.

291. Wigmore, *supra* note 197, at xxxix-xl.

292. GREAT JURISTS OF THE WORLD, *supra* note 207, at 544.

293. Promotional materials for the CLH Series only mentioned Register, hence suggesting that Bruncken was invited to join at a later stage. *See*, for example, THE PROGRESS OF CONTINENTAL LAW IN THE NINETEENTH CENTURY ii (11 The Continental Legal History Series 1918).

294. *Translator’s Remarks*, in JEAN BRISSAUD, A HISTORY OF FRENCH PRIVATE LAW xliii, xliiii (3 The Continental Legal History Series 1912).

295. Wigmore had considered other translators for this volume, showing his eagerness to move on. As stated in letters dated October 13, 1910 and November 9, 1910, Wigmore had considered Huberich and Thomas S. Bell. Wigmore Personal Papers, Box 198, Folder 06.

translator stated that “had an heroic death not taken him, this would have been his volume.”²⁹⁶

Thematic volumes offered further translations. Volume 5 indicated on the cover page that the translation was completed by Simpson; yet, the *Editorial Preface* to that volume indicated that Bell undertook the translation of the sections by Mittermaier.²⁹⁷ Volume 6, likewise, pointed to one specific translator on the cover page, though it did mention “and others.” Bell took the leading role,²⁹⁸ while Walgren, de Salvio, Millar, and de Vries also translated sections in that volume. This volume indeed offered an example of collaborative efforts towards a common goal. Finally, Volume 7 was translated by Millar. Acting also as editor, Millar stated that “unlike the other composite histories of this [CLH] Series; the present is attended with such advantages or disadvantages as proceed from the fact that the work of translation has been done by a single hand.”²⁹⁹

Creation and adaptation were present in the work of the translators involved in the ten volumes of the CLH Series. It is possible to claim, in this context, that “a translation, in effect, is a new creation,”³⁰⁰ as mentioned by Kocourek in a book review of Volume 8. The resulting translations attained a degree of uniformity within the multi-volume series, merging texts with different provenance into a common English-language narrative, subscribing to a common editorial approach, under the scrutiny of Wigmore.³⁰¹ Source texts—in such a series—could ultimately suffer alterations in order to attain uniformity across volumes, reaching a degree of standardization.³⁰² Wigmore had alerted, in a letter to the LH Committee, dated October 12, 1911, that it was “absolutely indispensable” that the work of the translators ought to be revised before sending the manuscripts to the printer, since “no one who is so steeped in

296. Register, *supra* note 234, at xliii. A letter from William W. Smithers informed Wigmore, on June 25, 1915, that John Lisle had drowned at Atlantic City on June 20. Wigmore Personal Papers, Box 198, Folder 06.

297. William W. Mikell, *Editorial Preface*, in ADHÉMAR ESMEIN, A HISTORY OF CONTINENTAL CRIMINAL PROCEDURE WITH SPECIAL REFERENCE TO FRANCE xxv, xxvii (5 The Continental Legal History Series 1913).

298. Wigmore, *supra* note 196, at xxxviii.

299. Millar, *supra* note 280, at 1.

300. Albert Koucourk [sic], *Book Review*, 27 MICH. L. REV. 721, 724 (1929).

301. See, for example, Petit, *supra* note 26, at xiii; and Carlos Petit, *Lombroso en Chicago. Presencias europeas en la Modern Criminal Science Americana*, 36 QUADERNI FIORENTINI 801, 855 (2007) (when analyzing a sister series).

302. See, for example, the study by Petit on the Spanish chapter included in Volume 1 (Petit, *supra* note 26). See also, Petit, *supra* note 184, at 4.

the foreign language as to do it justice can at the same time do quite justice to the English [. . .] some other critical mind must peruse the MS and freely revise it.”³⁰³

V. THE VISIBILITY AND IMPACT OF THE WEB OF JURISTS

Law journals³⁰⁴ informed the legal community on both sides of the Atlantic about the life of the CLH Series and of the efforts of Wigmore and the LH Committee. Journals offer a public forum where networks can be formed and nurtured,³⁰⁵ growing around the publication of research findings and the discussion amongst peers, ultimately reaching intellectual consensus within a specific discipline.³⁰⁶ Journals, furthermore, play a paramount role for the development of legal science³⁰⁷ and can well be considered laboratories where legal theory and practice interact.³⁰⁸ After all, journals were conceived as a means to attain a common narrative around norms.³⁰⁹ These repositories can be considered valuable sources since readers can find with ease information they consider relevant.³¹⁰ Further, these periodicals can be considered mirrors of the cultural and social changes that shape society, tracking

303. Wigmore Personal Papers, Box 198, Folder 06.

304. *Law review* and *law journal* are dealt as synonyms in this Article.

305. On the evolution of law journals, *see generally*, 16 QUADERNI FIORENTINI (1987) (dealing with Italian law journals in the period 1865-1945); LA CULTURE DES REVUES JURIDIQUES FRANCAISES (A.J. Arnaud ed. 1988); LA REVISTA JURÍDICA EN LA CULTURA CONTEMPORÁNEA (Victor Tau Anzoátegui ed. 1997); and JURISTISCHE ZEITSCHRIFTEN IN EUROPA (Michael Stolleis & Thomas Simon eds. 2006).

In the U.S., studies addressed specific journals and engaged in discussion on the merits of student-edited law journals. *See*, the evolution of the literature across time, in for example, *American Law Periodicals*, 2 ALB. L.J. 445 (1870); Michael L. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739 (1985); Roger C. Cramton, “The Most Remarkable Institution”: *The American Law Review*, 36 J. LEGAL EDUC. 1 (1986); and Ross E. Davies, *The Original Law Journals*, 12 GREEN BAG 2d 187 (2009).

306. YLVA LINDHOLM-ROMANTSCHUK, SCHOLARLY BOOK REVIEWING IN THE SOCIAL SCIENCES AND HUMANITIES: THE FLOW OF IDEAS WITHIN AND AMONG DISCIPLINES 55 (1998).

307. *See generally* Agustín Parise, *Las Revistas Jurídicas en el Ámbito Universitario: Foros de Expresión y Laboratorios de Escritura*, 15 ACADEMIA 123 (2010).

308. Paolo Grossi, *Las revistas jurídicas: un vacío historiográfico que es necesario colmar*, in LA REVISTA JURÍDICA EN LA CULTURA CONTEMPORÁNEA 21, 24 (Victor Tau Anzoátegui ed. 1997).

309. CARLOS PETIT, DERECHO POR ENTREGAS. ESTUDIOS SOBRE PRENSA Y REVISTAS EN LA ESPAÑA LIBERAL 13 (2020).

310. Abelardo Levaggi, *El Código Penal argentino de 1922 comentado por el diario La Nación (1917-1924)*, 82 REVISTA DE DERECHO DE LA UNIVERSIDAD CATÓLICA DE PERÚ 9, 10-11 (2019).

developments across time.³¹¹ Accordingly, different volumes of law journals can display the evolution of different legal ideas and institutions.³¹² It has been even claimed that law journals can disseminate ideas and in that process shape the development of law.³¹³

The visibility and impact of the CLH Series can be sensed by an exploration of 115³¹⁴ book reviews of the ten volumes, from both sides of the Atlantic, that were published between 1912 and 1933.³¹⁵ Studies on legal culture can benefit from the existence of digital archives that allow for a holistic approach to the contents of law journals.³¹⁶ The attention to

311. Sebastiaan Vandenbergae, *They Entered without any Rumour. Human Rights in the Belgian Legal Periodicals*, 4 GOETTINGEN JOURNAL OF INTERNATIONAL LAW 291, 292 (2012).

312. María Rosa Pugliese, *Las revistas jurídicas: un instrumento didáctico para el estudio de la evolución del derecho en la Argentina*, 25 ACADEMIA 75, 79 (2015).

313. See generally SEBASTIAAN VANDENBOGAERDE, VECTOREN VAN HET RECHT: GESCHIEDENIS VAN DE BELGISCHE JURIDISCHE TIJDSCHRIFTEN (2018); Sebastiaan Vandenbergae, *From Mirror to Vector. An Impossible Step?*, 37 CAHIERS DU CRHIDI (2015); and Sebastiaan Vandenbergae, *Belgian Legal Journals (17th-20th Century). Legal, Political and Cultural Challenges. Introduction*, 37 CAHIERS DU CRHIDI 2015.

314. See the list of book reviews in the Annex to this Article. Reviews are identified by volume, journal, and year of publication. Names of reviewers or their initials are mentioned when available. Three of the 115 book reviews addressed jointly two volumes. Those reviews are therefore included in both volumes when identifying the number of reviews per volume. Those reviews are:

- Book Review, 47 AM. L. REV. 315 (1913) (reviewed Volumes 1 and 3).

- J.H.D., *Book Review*, 11 MICH. L. REV. 342 (1912-1913) (reviewed Volumes 1 and 3).

- Book Review, 146 THE LAW TIMES 368 (1919) (reviewed Volumes 4 and 11).

315. The list includes standard reviews, short notes on the volumes, and more extensive contributions that could be currently deemed as review articles. The list excludes references in the books-received sections when announcements have no accompanying text (e.g., *Books Received*, 25 YALE L.J. 684 (1916)). The list is limited to book reviews in English language. Reviews in other languages may call for additional observations on the transatlantic and transsystemic dialogue.

The titles of the CLH Series and of its different volumes were searched in the journal databases of *WestlawNext* and *HeinOnline*, and completed on September 3, 2020, using the institutional account of Maastricht University (the Netherlands). This list does not claim to be exhaustive since reviews might have included typos or excluded terms. That aspect is immaterial, however, since this Article aims to inform on the visibility and impact, by offering a snapshot. The presence of more reviews may only add in the diversity and not on the visibility or impact that has been already attested for. The period 1912-1933 is framed by the earliest and latest reviews that the author identified in the abovementioned databases.

316. Sean Latham & Robert Scholes, *The Rise of Periodical Studies*, 121 PMLA 517 (2006).

For example, network analysis was applied to the circulation of legal ideas between France and Italy during the *Belle Époque*, looking at book reviews. See Nader Hakim & Annamaria Monti, *Histoire de la de la pensée juridique et analyse bibliométrique: l'exemple de la circulation des idées entre la France et l'Italie à la Belle Époque*, 14 CLIO@THÉMIS (2018), available at <https://publications-prairial.fr/cliiothemis/index.php?id=763> (last visited Nov. 4, 2021).

the CLH Series in those book reviews unveils an impact on the legal narrative and transatlantic readership.³¹⁷ Book reviews have two clear functions: to be informative and evaluative.³¹⁸ They are scholarly entities that generate and disseminate new scientific knowledge³¹⁹ while helping to visualize the process by which law is shaped and developed. Book reviews, likewise, keep authors informed of recent developments and can offer a fertile ground for scholarly debate.³²⁰ Further, they can fulfill an important function for the development of library collections, since studies indicate that “there is a positive correlation between the number of book reviews that an individual title receives and the number of libraries that purchase that title for their collections.”³²¹ Ultimately, book reviews have gained a place of pre-eminence within the scholarly communication process, offering a forum to assess critically new ideas and approaches.³²²

The presence of book reviews in the field of law merits more attention.³²³ These scholarly entities occupy a significant space within the pages of journals vis-à-vis others sections (e.g., articles) and may unveil information on the role of editors as gatekeepers of knowledge,³²⁴ reporting on new scholarly developments that can be of interest for their readership.³²⁵ Book reviews tend to be positive.³²⁶ Prior studies on book reviews pointed that authors are more positive than fully negative and prefer to mitigate their negative comments when writing reviews of

317. This Article therefore contests the 2011 statement that argued that “no adequate discussion of the impact, if any, of either the Continental Legal History Series or the Modern Legal Philosophy series is available, perhaps, because there was none.” John Henry Schlegel, *American Legal Theory and American Legal Education: A Snake Swallowing its Tail?*, 12 GERMAN L.J. 67, 76 n. 51 (2011).

318. GIROLAMO TESSUTO, INVESTIGATING ENGLISH LEGAL GENRES IN ACADEMIC AND PROFESSIONAL CONTEXTS 231 (2012).

319. Amanda Spink et al., *Use of Scholarly Book Reviews: Implications for Electronic Publishing and Scholarly Communication*, 49 JOURNAL OF THE AMERICAN SOCIETY FOR INFORMATION SCIENCE 364, 364 (1998).

320. *Id.*

321. Juris Dilevko et al., *Investigating the Value of Scholarly Book Reviews for the Work of Academic Reference Librarians*, 32 THE JOURNAL OF ACADEMIC LIBRARIANSHIP 452, 453 (2006).

322. *Id.*

323. TESSUTO, *supra* note 318, at 230.

324. On the discretionary power of editors in deciding which books ought to be reviewed, see Matthew L. Jordy et al., *Book Reviews As a Tool for Assessing Publisher Reputation*, 60 COLLEGE & RESEARCH LIBRARIES 132, 134 (1999).

325. TESSUTO, *supra* note 318, at 231.

326. “Book reviews tend to be positive” beyond this specific study (Jordy et al., *supra* note 324, at 134).

books dealing with law and other social sciences and humanities, especially if reviews were solicited, because it could be implied that editors considered those books of merit.³²⁷

The coding of the 115 book reviews calls for five general observations on the visibility and impact of the CLH Series. A first observation points to the forums that informed about the existence of the different volumes. A look into the different book reviews makes evident that well-circulated journals alerted readers of the existence and contents of the CLH Series. These periodicals, on both sides of the Atlantic, devoted pages in their book review sections to inform the readership about the dialogue Wigmore and his colleagues had attained through the CLH Series. The list of journals is notable, including important forums such as those offered in the U.S. by journals at Harvard, Yale, Columbia, and University of Pennsylvania. The forums in the UK were likewise important, including the *Law Quarterly Review*, the *Juridical Review*, and the *Cambridge Law Journal*. Further, the mosaic of interests of Wigmore and his dialogue with other disciplines was also reflected across the different reviews. For example, six reviews were published beyond law journals, stretching to political science, finding a place in the pages of the *American Political Science Review*. Wigmore—as previously mentioned—was open to dialogue and the members of his extensive network clearly welcomed products that related to his tireless and broad efforts.

A second observation points to the frequency of the book reviews. All reviews but two³²⁸ were available for readers within two years of publication of the volumes, occasionally being preceded by notes informing about the reception of copies by the editors.³²⁹ The attention devoted to the CLH Series by book review editors did not fade with time, something remarkable for a project that extended for sixteen years, crossing through the Great War. There was an ongoing relationship between the CLH Series and the editors of different journals, something that could well be related to the endless web of jurists that developed

327. TESSUTO, *supra* note 318, at 271. Further studies should explore if reviews of the CLH Series were solicited and if the publishers or editors took any active role in seeking for reviews, other than sending copies to editors, as it was customary.

328. Volume 6 (1916) was reviewed in David Werner Amram, *Book Review*, 67 U. PA. L. REV. 85 (1919); while Volume 8 (1928) was reviewed in Max Radin, *Book Review*, 19 A.B.A. J. 38 (1933).

329. For example, Volume 8 was mentioned in the pages of the *Michigan Law Review* as a recent publication (*Books Received*, 27 MICH. L. REV. 121 (1928)), to be followed by a book review in the same volume of that journal (Koucourk [sic], *supra* note 300).

around Wigmore. Some volumes received more attention than others, as it would be expected in such an ambitious series, crossing across time and space. Chart 1 below, shows the distribution of book reviews across the ten volumes, oscillating from a minimum of eight to a maximum of sixteen reviews per volume. It is possible to perceive two early peaks in the number of reviews, followed by a decline that finally stabilized. The initial peaks could be explained by the novelty and the panoptical scope of those volumes.

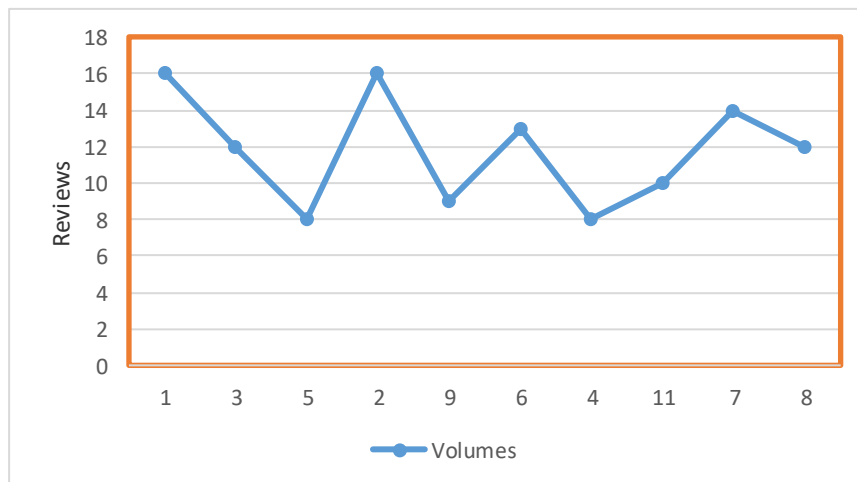


Chart 1. Reviews per Volume (in chronological order)

Accordingly, Volumes 1 and 2 were reviewed sixteen times, while Volumes 4 and 5 were reviewed only eight times. Something can be said also of the attention devoted by specific journals, on both sides of the Atlantic. On the one hand, in the U.S., the *Illinois Law Review* of Northwestern University and the *University of Pennsylvania Law Review* led in the number of reviews, informing on the merits and weaknesses of nine³³⁰ of the ten volumes of the CLH Series. Wigmore would most probably have been pleased with the attention devoted to the different volumes by the school where he worked for so many decades. Those journals were followed, still within the U.S., by the *American Law Review*, the *Columbia Law Review*, and the *Harvard Law Review*, which included reviews of eight volumes each. On the other hand, in the UK, *The Law Times* reviewed nine volumes,³³¹ while the *Juridical Review*

330. It was not possible to identify reviews for Volume 5 in either of the two reviews.

331. It was not possible to identify a review for Volume 7.

and the *Law Quarterly Review* reviewed five and six volumes, respectively. The frequency of the book reviews points to the fact that readers were kept informed of the existence and contents of the CLH Series, on both sides of the Atlantic and, once more, in leading forums.

A third observation points to the authors of different book reviews. It was not possible to ascertain the name of the reviewer in fifty-six percent of the book reviews. There was no reference to authorship in forty-two³³² reviews; while twenty-three³³³ reviews only indicated initials of the reviewers, occasionally making it possible to deduce the names of the authors.³³⁴ Forty-one authors were clearly linked to the book reviews; whereas eleven³³⁵ authors wrote more than one review, hence recurring in their efforts of informing about the different building blocks of the CLH Series. A number of reviewers were part of Wigmore's network, some even being co-authors with him. For example, Kocourek co-authored several works with Wigmore³³⁶ and wrote reviews of three volumes of the CLH Series.³³⁷ Some reviewers participated in volumes of the CLH Series, elaborating prefatory remarks, substantive contributions, or translations. For example, Borchard wrote book reviews of Volumes 1 and 4 and also wrote an introduction for Volume 11. Along similar lines, Jenks wrote a review of Volume 7, and before that, he wrote an introduction to Volume 1 and was the co-editor of Volume 2. Further, Philbrick wrote a review of Volume 8 while he was a translator in the CLH Series, with active participation in Volumes 1 and 4. Wigmore's network was evident when looking at names behind the reviews.

332. The following reviews are counted only once: *Book Review*, 47 AM. L. REV. 315 (1913) (reviewed Volumes 1 and 3); and *Book Review*, 146 THE LAW TIMES 368 (1919) (reviewed Volumes 4 and 11).

333. The following review is counted only once: J.H.D., *Book Review*, 11 MICH. L. REV. 342 (1912-1913) (reviewed Volumes 1 and 3).

334. It is possible to deduce the authorship of some reviews. For example, a review of Volume 1 of the CLH Series was signed by "H.J. Randall" (30 LAW QUARTERLY REVIEW 222 (1914)). That same journal then offered reviews signed by "H.J.R." for volume 2 (30 LAW QUARTERLY REVIEW 359 (1914)), Volume 5 (31 LAW QUARTERLY REVIEW 346 (1915)), and volume 11 (35 LAW QUARTERLY REVIEW 199 (1919)). It is highly probable that Henry John Randall was the author of all four reviews.

On occasions these deductions can prove to be incorrect. See, for example, *supra* note 348, and accompanying text.

335. i.e., Edwin M. Borchard, B.C., J.H.D., Harold Dexter Hazeltine, George Elliott Howard, Albert Kocourek, William H. Lloyd, Orrin K. McMurray, Max Radin, Randall, and Edson R. Sunderland. This list includes also authors that signed with initials only, but that it is possible to deduce their authorship.

336. See *supra* note 61, and accompanying text.

337. i.e., reviews of volumes 1, 8, and 11 of the CLH Series.

A fourth observation points to the merits and weaknesses of the volumes. In the vast majority, book reviews were positive, confirming the results of previous studies.³³⁸ Most book reviews pointed to the value of bridging the existing gaps in the English language literature. Likewise, they alerted readers of the prestige of authors and of the diversity and richness of topics addressed in the different volumes. These scholarly entities also highlighted the challenging work of translators and the efforts devoted to inform the readership of events in other jurisdictions and time periods. Book reviews were ultimately able to showcase the transatlantic and transsystemic dialogue that resulted from the web of jurists. The CLH Series, as attested by several reviewers, offered a bridge between the civil and common law worlds. For example, as indicated by Charles E. Clark in the pages of the 1928 *Yale Law Journal*, Volume 7 was “one of the last volumes of the notable Continental Legal History Series [. . .]. It not only maintains the very high standards set by the others but it has a special interest of its own. It opens to American lawyers and legal scholars an almost unknown field of study.”³³⁹ As expected, some reviews were negative or, at least, included negative remarks on the merits of the volumes. For example, Walter Ashburner stated, in the 1929 *Journal of Comparative Legislation and International Law*, that Volume 8 was “a long and complicated book. There are nearly 900 closely printed pages. It requires some study to make out its constituent parts and to attribute them to their several learned authors.”³⁴⁰ Another example is found in the pages of the 1929 *ABA Journal*, since it was there stated that Volume 7:

is a mine of information and suggestion, [yet] it is not the sort of mine that can be stripped with a steam shovel. The rock in which the mineral is imbedded is too hard. Strange nomenclature, unfamiliar processes and situations, the illusive atmosphere of foreign traditions, and the rapid shifting from one land and one age to another, require from the reader the closest attention. Furthermore, the style of continental legal writing tends towards a severity of logic and a brevity and abstractness of statement which is not often found among common law writers who base their texts upon the concrete authority of special cases.³⁴¹

338. See *supra* note 326, and accompanying text.

339. Charles E. Clark, *Book Review*, 37 *YALE L.J.* 680, 680 (1928).

340. Walter Ashburner, *Book Review*, 11 *J. COMP. LEGIS. & INT'L L.* 3d ser. 168, 168 (1929).

341. Edson R. Sunderland, *Book Review*, 15 *A.B.A. J.* 35, 36 (1929).

A fifth observation points to limitations in the value of book reviews as a means to explore the visibility and impact of monographs. There are, after all, limitations to the use of book reviews to visualize the impact of the CLH Series. For example, reviewers could have responded to friendship or may have been biased if they were part of the web of jurists. The previously mentioned *gentlemen's club* could have had gravitation over the reviews.³⁴² A contagion effect cannot be discarded, since a positive spill over amongst reviews and volumes could have taken place. Conversely, to mitigate such statements, it is important to acknowledge the importance of academic integrity. Further, book review editors would have been silent about the volumes if they believed the contents did not merit the attention by their readership. Another limitation relates to the frequency of reviews of other books. Further studies should place the reviews of the CLH Series within the specific context of that time period. For example, it is useful to identify which books were reviewed in those same forums and with what frequency. That information could help better contextualize the visibility and impact of the work of Wigmore and his web of jurists.

Wigmore took interest in book reviews of his work,³⁴³ and his personal papers point to the preservation of reviews.³⁴⁴ In line with this interest, the LH Committee addressed in their reports the attention that book reviews devoted to the CLH Series and even stated in 1914 that “reviewers are usually kittle-cattle.”³⁴⁵ Book reviews, being scholarly entities, could attest to the fact that the readership, on both sides of the Atlantic, was informed of the existence and contents of the CLH Series. As reflected in this Article, readers were indeed made aware that the volumes were the output of able hands and of renowned experts in the different fields. The CLH Series could not be ignored, therefore. Leading journals on both sides of the Atlantic devoted attention to the CLH

342. See discussion *supra* subpart IV.B.2.

343. He also preserved letters that praised the CLH Series. For example, his personal papers preserve a letter dated September 27, 1912, from Borchard at the Library of Congress, praising volume 1. Wigmore Personal Papers, Box 198, Folder 06.

344. See, for example, the reviews of the *Modern Criminal Science Series* as preserved in his personal papers. See Petit, *supra* note 184, at 10, where the author states that: “Cf. Wigmore Papers, box 204, folder 2. Here is the prospectus of the series (ca. 1913) with a list of its nine volumes (the translator is indicated) and fragments of praiseworthy reviews; the one quoted was published in the New York Herald.” See also *id.* at 12.

345. The 1914 Report of the LH Committee also stated that: “the remarks of certain reviewers lead to the following explanations” and later stated that “the reviewers of the Criminal Procedure volume have almost all missed its two most valuable additions” (emphasis in the original). Wigmore Personal Papers, Box 198, Folder 06.

Series, through the sixteen years lifetime of the project, mainly rendering positive opinions. Wigmore and the LH Committee embarked in a transatlantic and transsystemic adventure that involved a web of jurists. The different book reviews ultimately showcased the resulting dialogue.

VI. CLOSING REMARKS

Comparative legal history may assist in understanding that law is a social science that is subject to change. After all, law aims to present the experiences and the *ethos* of a society, and to achieve that goal it may benefit from texts drafted in other latitudes, in other languages, and in other time periods.³⁴⁶ The *ethos* of a specific society, *mutatis mutandis*, may also be replicated in other societies, and the researcher may face a local *ethos* that encapsulates global elements. Wigmore and the members of his endless web of jurists may have well subscribed to this statement.

It is possible to take snapshots of seminal actors and their activities at different times and places. This may help to contextualize the environment in which actors interact. Likewise, snapshots may help better understand the activities of actors, together with their efforts and products. They can further unveil enriching dialogues amongst actors. This Article offers a snapshot of Wigmore, the LH Committee, and the web of jurists that developed around the CLH Series. The snapshot centers on the first decades of the twentieth century, alerting on a transatlantic and transsystemic dialogue that favored the development of comparative legal history, in the U.S. and beyond.

This Article consists of four building blocks. Attention is first devoted to Wigmore, who can be deemed a champion of comparative legal history, since he devoted tireless efforts to develop this autonomous discipline. He had an early interest for legal history and comparative law, and was open to dialogue with *otherness*. Wigmore was a world-renowned jurist at his time, and was perhaps the most suitable person to lead the efforts of the LH Committee towards attaining a transatlantic and transsystemic dialogue. He had a broad background that helped him elaborate a colorful mosaic of interests during his lifetime and that helped him nurture a network that was fundamental to secure the successful completion of the CLH Series. Wigmore, above all, helped to build bridges amongst actors, systems, and jurisdictions, ultimately fostering the development of legal science.

346. AGUSTÍN PARISE, HISTORIA DE LA CODIFICACIÓN CIVIL DEL ESTADO DE LUISIANA Y SU INFLUENCIA EN EL CÓDIGO CIVIL ARGENTINO 376 (2013).

The LH Committee is the second building block of this Article. The AALS showed an early interest for comparative legal history, and created a forum where that interest could be further explored. The LH Committee was the resulting forum, and the proceedings of the annual meetings of the AALS help reconstruct the efforts of the scholars involved in the early development of comparative legal history. The efforts of the LH Committee—led by Wigmore—pointed towards leaving ostracism behind, broadening the approach to law in the U.S. Members first looked at their own environment, hence devoting efforts to study the Anglo-American heritage. They then moved towards other jurisdictions and systems, and after two decades could claim that their efforts had provided the legal community in the U.S. and beyond with an array of sources in English language for the study of comparative legal history.

The CLH Series is the third building block of this Article. This publication project can be considered a gateway to the study of comparative legal history for English-language readership. Further, it can be deemed a notable scientific *opus*³⁴⁷ that fostered dialogue amongst systems and jurisdictions. The ten volume book series was the main output of the LH Committee and was co-edited by Wigmore. It gathered primarily English-language translations of texts by leading legal historians and comparatists, covering continental systems while being motivated by efforts ignited in the common law world. Accordingly, the contents of the different volumes filled a *lacuna* in the legal literature. Volumes can be clustered in three groups: (i) *panoptical*, that aimed to offer readers an overarching introduction to seminal events, actors, and ideas; (ii) *jurisdictional*, that dealt mainly with the law in France, Germany (and other Germanic territories), and Italy; and (iii) *thematic*, that dealt with specific areas of the law (i.e., criminal law, criminal procedure, and civil procedure). The CLH Series resulted in an enriching dialogue that involved numerous actors on both sides of the Atlantic during the first decades of the twentieth century. Actors contributed to the volumes by means of prefatory remarks, substantive contributions, and translations. Above all, the CLH Series should be considered a forum that offered a laboratory for an early disciplinary development of comparative legal history.

Readers on both sides of the Atlantic were informed of the existence and contents of the CLH Series by means of book reviews.

347. Petit, *supra* note 26, at lviii.

These scholarly entities offer the fourth building block of this Article since they can help assess the visibility and impact of the CLH Series and of the efforts of Wigmore and the LH Committee. The coding of 115 book reviews that were published between 1912 and 1933, and that dealt with the different volumes of the CLH Series called for five general observations. The observations dealt with different aspects of the reviews: the forum they offered, the frequency in which they were published, and their authors. As expected, observations also dealt with the merits and weaknesses of the volumes as depicted in the different reviews. A final observation dealt with the limitations in the use of reviews as a tool to assess the visibility and impact of the CLH Series. The coding of book reviews confirmed that the readership of leading journals on both sides of the Atlantic was made aware of the existence of the CLH Series through the lifetime of the project.

The snapshot offered by this Article should generate awareness on two further points. On the one hand, it should alert that networks and their collective efforts can help disseminate knowledge while developing a discipline. As this Article aims to demonstrate, the endless web of jurists that developed around the efforts of Wigmore was able to help in the development of comparative legal history. On the other hand, it should alert that publication projects can serve as academic bridges amongst jurisdictions and systems. The LH Committee and the resulting CLH Series were indeed transatlantic bridges between the continental system and the common law on both sides of the Atlantic. They offered an example of how networks developed, of how dialogue took place during the first decades of the twentieth century.

VII. ANNEX: LIST OF BOOK REVIEWS (1912-1933)

VOLUME 1 (1912)

1. *American Political Science Review*, 1912, Vol. 6, 645-648, Edwin M. Borchard
2. *Maine Law Review*, 1912, Vol. 6, 55, W.E. Walz
3. *The Green Bag*, 1912, Vol. 24, 486-487
4. *Yale Law Journal*, 1912, Vol. 22, 176-177, S.E.B.
5. *American Law Review*, 1913, Vol. 47, 315 [n.b., reviewed jointly with Volume 3]
6. *Columbia Law Review*, 1913, Vol. 13, 270-272, George Burton Adams

7. *Harvard Law Review*, 1913, Vol. 26, 766- 767, C.H.H.³⁴⁸
8. *Illinois Law Review*, 1913, Vol. 7, 523-528, Albert Kocourek
9. *Law Magazine and Review*, 1913, Vol. 38, 239
10. *Michigan Law Review*, 1913, Vol. 11, 342-345, J.H.D [n.b., reviewed jointly with Volume 3]
11. *Scottish Law Review*, 1913, Vol. 29, 109-111
12. *The Central Law Journal*, 1913, Vol. 76, 434-435, Charles F. Krone
13. *The Law Journal*, 1913, Vol. 48, 105
14. *The Law Times*, 1913, Vol. 134, 416-418, B.C.
15. *University of Pennsylvania Law Review*, 1913, Vol. 61, 214, W.H.L.
16. *Law Quarterly Review*, 1914, Vol. 30, 222-232, H.J. Randall

VOLUME 3 (1912)

1. *Yale Law Journal*, 1912, Vol. 22, 170-172, C.P.S.
2. *American Law Review*, 1913, Vol. 47, 315 [n.b., reviewed jointly with Volume 1]
3. *American Law Review*, 1913, Vol. 47, 472-474
4. *American Political Science Review*, 1913, Vol. 7, 493-494
5. *Columbia Law Review*, 1913, Vol. 13, 272-273, Paul Fuller, Jr.
6. *Harvard Law Review*, 1913, Vol. 26, 562, E.R.J.
7. *Juridical Review*, Edinburgh, 1913, Vol. 25, 88-89
8. *Law Magazine and Review*, 1913, Vol. 38, 375-376
9. *Michigan Law Review*, 1913, Vol. 11, 342-345, J.H.D [n.b., reviewed jointly with Volume 1]
10. *The Law Times*, 1913, Vol. 134, 434
11. *University of Pennsylvania Law Review*, 1913, Vol. 61, 279-281, W.W. Smithers
12. *Illinois Law Review*, 1915, Vol. 9, 445-446, Victor J. West

VOLUME 5 (1913)

1. *Yale Law Journal*, 1913, Vol. 23, 103-104, H.S.
2. *American Law Review*, 1914, Vol. 48, 946-947

348. The *Harvard Law Review* informed Wigmore, in a letter dated September 20, 1913, that the reviewer was Charles H. Haskins. Wigmore had incorrectly thought that Huberich had written that review and had drafted a letter to Huberich, dated September 22 (that was ultimately never sent), in which he pointed to dissatisfaction with the content of that book review. Wigmore Personal Papers, Box 198, Folder 06.

3. *American Political Science Review*, 1914, Vol. 8, 110-112, James W. Garner
4. *Harvard Law Review*, 1914, Vol. 27, 294-295, J.H.B.
5. *Juridical Review*, Edinburgh, 1914, Vol. 26, 229-230
6. *Law Magazine and Review*, 1914, Vol. 39, 366-367
7. *The Law Times*, 1914, Vol. 137, 367
8. *Law Quarterly Review*, 1915, Vol. 31, 346-348, H.J.R.

VOLUME 2 (1914)³⁴⁹

1. *Solicitors' Journal and Weekly Reporter*, 1913, Vol. 58, 7-8
2. *The Law Journal*, 1913, Vol. 48, 714
3. *American Political Science Review*, 1914, Vol. 8, 698-699, Jesse E. Reeves
4. *Harvard Law Review*, 1914, Vol. 27, 697, S.W.
5. *Journal of the Society of Comparative Legislation*, 1914, Vol. 14, 276-279, T.B.
6. *Juridical Review*, Edinburgh, 1914, Vol. 26, 114-115
7. *Law Magazine and Review*, 1914, Vol. 39, 236-237
8. *Law Quarterly Review*, 1914, Vol. 30, 359-361, H.J.R.
9. *Michigan Law Review*, 1914, Vol. 12, 708, J.H.D.
10. *Scottish Law Review*, 1914, Vol. 30, 66-67
11. *The Central Law Journal*, 1914, Vol. 79, 140
12. *The Law Times*, 1914, Vol. 136, 387-388, B.C.
13. *University of Pennsylvania Law Review*, 1914, Vol. 62, 583, W.L.H.
14. *Yale Law Journal*, 1914, Vol. 23, 704
15. *Illinois Law Review*, 1915, Vol. 10, 153-156, Clarence E. Eldridge
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