The internationalization and globalization of the law has been one of the greatest challenges to the modern nation state. The Maastricht Treaty 1992 emphasized the diversities of the member states in the EU regarding language, history and culture. In late modern jurisprudence the disciplines legal history and comparative law, representing the perspectives of time and space within the law, have increasingly interacted towards a merge. In Europe as well as in the U.S. the field of comparative legal history has been introduced in the curriculum at many law schools, and the need is great for theoretical and methodological discourses and for class material in this field.

The legal historians at the Faculty of Law at Lund University Sweden arranged in 2009 together with European and American colleagues an international workshop on the topic How to Teach European Comparative Legal History. The papers at this workshop are published in this volume. It not only gives interesting theoretical perspectives. It also contributes to the description of the state of art of this expanding and dynamic discipline within the law. Participants at the meeting at Lund met in June 2010 in Valencia Spain to inaugurate the European Society for Comparative Legal History (ESCLH).

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Spanish Legal History: A need for its Comparative Approach

1. An Introduction to the Legal History Teaching in Spain.

Legal History teaching in Spain has a long tradition in the university curricula, more specifically in the Faculties of Law. The first legal history chair was set up in 1873.¹ Later on, other two Royal Decrees were issued establishing legal history as an independent discipline within the law curricula studies.² Although on several occasions legal history as a law curriculum discipline could have disappeared, fortunately this has never happened.³ Hence legal history has been taught in Spain for almost a century and a half.

In part because legislation enshrined a field called “History of Law and of the Institutions” thereby creating many chairs all over the country, particularly in the last forty years, Spanish legal historians have flourished and spread considerably. There therefore exist today in Spain many scholars who deal exclusively with legal history, both doing research and teaching.

Spanish history has witnessed a long legal development which goes from the period of its legal Romanization until today.⁴ Interestingly enough, it has been

² Royal Decree on September 2, 1873, and on August 14, 1884 (on this matter, see AGUILERA BARCHET, A.: Introducción jurídica a la Historia del Derecho, Madrid, 1994, p. 23).
³ In this regard, it is remarkable that legal history was not abrogated in the context of the global reform process of the university curricula which took place in 1987, particularly considering the fact that in the Committee in charge of the legal reform there was no legal historian at all. Despite of it, the legislation which laid down the criteria to elaborate the law curriculum maintained the legal history as a compulsory course (see the Royal Decree 140/1987, 27th September; see also the Reformas de las enseñanzas universitarias, Título Licenciado en Derecho, Madrid, 1988, pp. 23-45). Later on, the legal reform concerning the law curriculum approved the compulsory character of the legal history course, granting to universities the possibility of introducing other optional courses dealing with legal history (see the Royal Decree 1424/1990, 26th October).
⁴ An interesting question to pose is at what time Spanish legal history really begins. There are different views among legal historiography. Some state that it begins with the Roman conquest (218 B.C.), others with the Visigothic period (476 or 568 A.D.), and others with the Constitution of Cadiz (1812). They give all different arguments to defend their own views. I think it is better to start from the beginning, than is, before the Romanization of the Iberian Peninsula, since it will enable us to cover the history of Roman law in Spain which constituted an important characteristic not only of Spanish legal tradition but also of civil law countries.
said—although not always recognized by non-Spanish scholars—that Spanish legal history is one of the most instructive, oldest and richest legal tradition which has ever existed, a statement which could have been hardly written by a Spanish scholar. Considering at least that Spanish legal history should cover all laws made and applied in the territories that have formed part of the current Spain throughout history, it is clear that Spanish legal history is quite long and rich, as will be seen.

One may ask what has been, is and will be the role of the European Comparative perspective in reaching Spanish legal history. In answering this question I will divide the paper into three parts. First, I will explain what has happened in the past; second, I will turn to what, in my view, should be done about it; and third, I will conclude by saying what I think will probably happen.

2. What Has Happened

In general terms, it could be said that Spanish legal historians have not paid much attention to the European context in which Spanish legal history was born and developed over the centuries. A brief look at the considerable number of Spanish legal history handbooks would be enough to realize that their authors

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SPANISH LEGAL HISTORY

were not very concerned with the European or comparative perspective. Several reasons can explain this fact.

The most important one is that, with only a few exceptions Spanish legal historiography has barely explored Spanish legal history from a European or comparative perspective. Scholars have tended to teach the results of their research, and generally speaking, each scholar has been researching only reaching usually reflects the main research interests of the scholars who cultivate a specific scientific field.

When the first books containing the European perspective were written and published outside Spain, Spanish legal historians' concerns mainly revolved around the medieval legal sources, particularly the local charters and customs or
Antonio García y García started an important task of editing and commenting on canon law sources in 1973 in Spain and other European countries. He also participated in many national and international conferences and published in different canon law and legal history journals until the end of the last century. In 1999, a selection of his scattered works dealing with the *ius commune* were collected and re-edited.

Both the research and teaching of Antonio Pérez Martín, whose PhD supervisor had already shown interest in the European legal tradition, were particularly focused on the *ius commune's* legal sources and literature, taking the European perspective in mind from the very beginning. Working at the Institute Max-Planck for European Legal History (Frankfurt am Main, Germany) for ten years, he published several works in which legal development was approached within the European context. Once back in Spain, as a professor of legal history at the University of Murcia, Pérez Martín's academic activity followed the same line. Regarding his research projects, he continued...
publishing on the *ius commune* and its reception in the Spanish kingdoms, organizing some conferences and joint projects in which he encouraged and involved other remarkable scholars from Spain and other European countries.

Two conferences held in 1985 deserve to be mentioned: the 1st International Symposium of the *Ius commune* Institute Pérez Martín held in Murcia on April 26-28, and a Seminar J. Cerdá Ruiz-Funes and P. Salvador Codorch held in Barcelona, on the current developments of the study of the history of private law, in which Pérez Martín gave an interesting paper on the study of the reception of the *ius commune* in Spain. Ten years later, in 1995, Pérez Martín held another conference in Murcia to celebrate the 7th Centennial of the death of Jacobo de las Leyes, who is— in Pérez Martín's view— the author of the Fuero Real and Siete Partidas.

Pérez Martín also created the *Instituto de Historia del Derecho Europeo*, along with a legal history journal called *Glosas: Revista de Historia del Derecho Europeo*, where several Spanish and non-Spanish legal historians published between 1988 and 1996 articles about the *ius commune*, European legal history and Spanish legal history from a European perspective. Concerning his teaching, Pérez Martín was most probably the first legal historian who taught European legal history as an optional course for some years. Furthermore, Pérez Martín's lectures on Spanish legal history clearly reflected his European or *ius commune* approach to the history of Spanish law.

In addition to Antonio García y García and Antonio Pérez Martín, other legal historians who paid a considerable attention to either the *ius commune* or the European perspective should be mentioned.

José Lainde Abadía, published in 1980s several works about the reception of the *ius commune* in the Iberian Peninsula, the Spanish Monarchy from a European perspective, as well as the Spanish and European legal historiography. In 1992 he published a book on the history of criminal law looking from different cultural perspectives. It is also worth mentioning his Spanish legal history handbooks, which contained a theoretical and conceptual approach to legal development applicable not only to Spain but also to other European and non-European countries.

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25 The papers presented in this conference were published in the volume 3-6 of *Glosas*.
Aquino Iglesias Ferreiros, professor of legal history at the University of Barcelona, along with the publication of some articles on the reception of the *ius commune* in the Iberian Peninsula, particularly in Catalonia, organized several conferences called *Dret Comú i Catalunya* with the participation of prestigious Spanish and non-Spanish legal historians. Along with the reception of *ius commune* in Spain, a topic that other legal historians have explored, studied, and published, other topics have been approached comparatively: some contributions on legal historiography, feudalism, the creation of law in the Middle ages, and parliaments and royal power, universities, legal doctrine, some private law institutions, Indian law, and the history of the European Union, among others.

During the last twenty years some legal historians have made considerable efforts to approach the development of criminal law from a European or comparative perspective, as the Spanish historiography shows.

Tomás y Valiente was probably the first who made a considerable effort in this...
of Spanish criminal law, 59 and an article on the codification of French criminal law, both from a European perspective. In 2005 two other papers were published, one on the influence of the canon law and theology over the modern criminal law science in Europe, 60 the other on a comparative approach to the humiliating punishments in the Spanish and German constitutionalism. 61 In 2009 a comparative legal history research was published, presenting not just the historical development of an institution from a European or comparative perspective, but describing its evolution in different jurisdictions belonging to both the civil law and common law traditions. More specifically, the book analyzed the disqualification from holding public office in the European and Anglo-American criminal tradition. 62 In 2009 and 2010 I published two papers set in the Anglo-American context, 63 presenting English versions of the outcomes accomplished in previous works dealing with the history of Spanish criminal law from a comparative perspective. 64

59 Tomás y Valiente, Francisco: El Derecho penal de la Monarquía absoluta (siglos XVI-XVIII), Ed. Tecnos, Madrid, 1969 (2nd edit., 1992). Tomás y Valiente asserted to have knowledge of the works written by Schaffstein, Friedrich: Die Europäische Strafrechtswissenschaft im Zeitalter des Humanismus (Gottingen, 1954), although he used the Spanish version (La Ciencia europea del Derecho penal en la época del Humanismo, Madrid, 1957), translated by Mª Rodríguez Devesa. Surprisingly enough, he did not seem to know about Schaffstein’s main work (Die allgemeinen Lehren vom Verbrechen in ihrer Entstehung durch die Auseinandersetzung mit den Verbrechen der alten Rechtsleben, 1930-36, by Verlag Aalen, 1986-9, though Tomás y Valiente’s book presents such a similar methodological approach to that of Schaffstein’s Die allgemeinen Lehren... that it makes me think that Tomás y Valiente did know that book and used it in writing his Derecho penal de la Monarquía absoluta (on this matter, see Masferrer, “El ius commune...”)


The constitutionalism or history of Spanish constitutions (1808-1978) has been studied in comparative perspective by some scholars, not all of them legal historians. In this regard, García de Enterría explored the influence of the French revolution in the making of the European public law. It is also worthwhile to note the contribution of authors like Bartolomé Clavero, Varela Sanz, Garriga and Lorente, Petit, Álvarez Alonso, Portillo Valdés, and Blanco Valdés, who have all been publishing interesting works that seek to link the history of Spanish constitutionalism within the European or Anglo-American context. Some of these authors have published frequently in the *Historia Constitucional*, a constitutional history journal, created in 2000, that usually approaches topics on foreign legal texts and literature.

Some general topics like the Liberal political system have been also analyzed comparatively. The same can be said concerning the Spanish monarchy, the separation of powers.

Despite all the efforts made by the aforementioned scholars to approach the Spanish constitutional history from a comparative perspective, there are no handbooks on this subject adopting the comparative approach. This is particularly surprising when there have been authors whose profound knowledge would have enabled them to do it successfully. This would be the case of Bartolomé Clavero, and Joaquín Varela promised to publish a comparative constitutional history some years ago, but we are still waiting for it. Meanwhile, some constitutional lawyers have published interesting historical introductions to constitutional law whose approach is more comparative than those which have been written by legal historians.

The same could be said of handbooks on Spanish legal history. Despite the efforts made, the efforts made by some legal historians to deal with the *ius commune* and its reception, or to approach some aspects of the legal development comparatively, Spanish legal history handbooks have barely paid attention to the *ius commune* and seem to ignore the European perspective.

There are also some exceptions in this regard. Jose A. Escudero's handbook, for instance, inasmuch as it tends to describe the main institutions taking into account Spanish and foreign literature, following their creation and historical development within a broader context than the Spanish one. This is particularly clear in its treatment of some institutions like feudalism, royal power, municipalities, parliaments, Indian laws, etc.

The same can be said — although to a lesser extent — regarding Tomás y Valiente's handbook, though it does not contain legal institutions as Escudero's handbook does. However, it does treat the *ius commune* and its development much better and more extensively than any other — perhaps, except one — Spanish legal history handbook.

Emma Montanos made an effort to describe a panoramic view of Spanish legal history from a European perspective.

The main source of the European approach to Spanish legal history teaching is the emergence and reception of *ius commune*, and, to a lesser extent, the codification movement that would not be clearly explained without resorting to

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40 VARELA SANZ, Joaquín: "La Monarquía en el pensamiento del Benjamín Constant (Inglatera como modelo)", *Revista de Estudios Constitucionales* 10 (1991); Varela Sanz edited the *Texto básico de la Historia constitucional comparada* (Madrid, CEPC, 1998), where one can find the Spanish version of the main sources of the Continental and Anglo-American constitutionalism.


43 ÁLVAREZ ALONSO, Clara: "Un Rey, una Ley, una Religión (Gótico y Constitución histórica en el debate constitucional gaditano)". *Historia Constitucional* (revista electrónica), n. 1, 2000.


46 See http://www.historiaconstitucional.com/index.php/historiaceuropean/index. The current Director of this journal is Joaquín Varela Sanz-Carpegna.


the French and German codifications. Leaving aside the *ius commune* and the codification movement, and despite the research projects of few legal historians, it would not be true to state that Spanish legal history has been traditionally taught from a European or comparative perspective. Moreover, only a few universities in Spain have offered optional courses on European legal history. In fact, as far as I know, these courses have only been offered at the universities of Murcia and Illes Balears (in Majorca), in the former taught by Antonio Pérez Martín, in the latter by Romain Piña Homs.

Spanish case is quite the opposite to some other European countries, such as Belgium, which have to some extent lacked a national legal history. Political and historical reasons explain the different path followed by Belgium, whose legal historians have tended to write more on European legal history than on their own national legal tradition, and the same could be said about other European countries whose small size led their legal historians to look beyond their own national borders.

Some may think that Spain belongs to the group of the big European countries like France, Germany and Italy, among others, whose legal traditions are rich enough to "ignore" a bit the European legal context, particularly considering that their legal histories constitute an important part of the European legal tradition. This may be partly true but should not justify, however, a narrow-minded approach to national legal history, since any national legal tradition can be only explained within a geographical context which goes beyond the national boundaries. In my view, it is undeniable that an important part of the European legal tradition, particularly as cultural and scientific realities, cannot be confined to the political circumstances which caused the boundaries to move from one place to another over the centuries.

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77. To that purpose the following handbook was written, published and recommended to the students enrolled in that course; PINA HOMS, R.: *Fundamentos jurídicos de Europa. Apuntes para una Historia del Derecho europeo*. Palma de Mallorca, 2001; as far as we know, this is the only European legal history handbook which until today has been published in Spain.
79. See, for example, some books written by CAELEGEM R. VAN: judges, legislators and professors: *chapters in European legal history*. Cambridge, 1987; An historical introduction to western constitutional law. Cambridge, 1995; European law in the past and the future. Unity and diversity over two millennia. Cambridge, 2002; on this matter, see Dirk Heirbaud’s article contained in this volume (with the title “European comparative legal history as a necessity: the Belgian experience”), particularly its first part entitled “The impossibility of a national legal history in Belgium”.
80. On this matter, see Helmke Pihlajamäki’s article in this volume (in this volume) according to which a distinction between small and big countries should be made; while the latter already have a grand history of their own and thus there is less need of looking beyond the borders, in smaller countries the situation is the opposite.
meaning. In other words, although it is undeniable that law is constantly developing, there would be no legal security or certainty if it had no continuity at all. The people would never know what the law says. For this reason, although legal certainty will not ever be entirely attained, the validity of law constitutes an important notion and tool to grant a minimum degree of stability to the law. Consequently, citizens feel legally secure when they know for sure that, because some legal sources and institutions are “in force”, they will be applied by courts if a legal dispute arises.

The law requires a certain degree of stability, without that law becomes meaningless. A key route for this is that once it has been promulgated in the form of legislation and comes into force, that law becomes valid and accepted to regulate future cases and situations. Nonetheless, nobody can deny that, in fact, such a legal norm or regulation belongs to the past, since it was enacted in the past and according to a historical, social, economic and cultural context. This is precisely the meaning of the expression “historicity of law” because legal sources are promulgated or approved at a moment which belongs to history, although they remain in force unless they are explicitly suppressed or implicitly abrogated (e.g., by falling in disuse).

b) Legal History and Comparative Law? A Comparative Approach to Legal History

As noted above—and according to the historicity of law—the law belongs to the past, since it was made in the past and according to a historical, social, economic and cultural context. It is precisely such historical, social, economic and cultural context which, going beyond national boundaries, makes the comparative approach absolutely necessary. In the case of Spain or any other European country, the European perspective is unavoidable. The resort to Comparative law is not just a means to contrast a national legal history with others, so that students may broaden their knowledge on legal culture. It is not just a matter of relating two disciplines (legal history and comparative law) which should assist and support each other. It is something more. The problem is that the comparative approach constitutes a necessary—not just an optional—requirement to deal with legal history; otherwise, legal history would not be real legal history because both law and history need such comparative approach. In this regard, to talk about the relationship between legal history and comparative law is somehow redundant and would be a tautology because legal history itself brings with it the comparative approach. This does not imply denying that there are different ways of approaching legal tradition comparatively. Let us briefly describe some reasons which demonstrate to what extent it is true that a comparative approach constitutes a necessary requirement to study any legal tradition.

First, any legal historian should take seriously the comparative approach for no legal history of a particular jurisdiction can be considered a self-contained and self-sufficient legal order, disconnected or isolated from others which were made and developed within the same or similar historical, social, economic and cultural context. Hence, we can talk about the civil law tradition and the common law tradition, belonging both to the Western legal traditions.

Second, the existence of such Western legal traditions implies some common features whose reception and validity in different jurisdictions could not be explained unless legal history goes beyond the national boundaries. Cultural movements and other historical realities like feudalism, seigniorial regime, the emergence of the royal power, municipalities and parliaments, the jus commune, the Enlightenment and the legal codification cannot—and should not—be explained just from a national perspective. Otherwise, the historical reality would be considerably distorted. In this regard, it has been claimed that the falseness of the traditional view of the English common law as an exceptional legal tradition, independent from the European jus commune legal science.

A prestigious legal historian rightly stated that lawyers “applied a mixed legal system whose components were on the one hand local statutes and customs

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82 On the relationship between legal history and comparative law (or vice versa), which has become a classical topic, see the recent work written by GORDLEY, James: "Comparative Law and Legal History", The Oxford Handbook of Comparative Law (ed. by Matthias Reimann and Reinhard Zimmermann). Oxford University Press, 2006, pp. 753–773.


and on the other hand the law books of Justinian and the Canon Law”. And the same has been recognized by some common-law legal historians.35

Third, if different jurisdictions were born and developed within the same cultural context, as, for example, the Western legal traditions, it is reasonable to think about the existence of exchanges of legal components or particularities between jurisdictions. In this regard, it has been said that "no legal tradition is a purely native growth".36 I could not agree more with Donlan, who, recognizing that "significant and explicit legal hybridity was, in fact, the norm across Europe before the nineteenth century", states clearly that "the failure to acknowledge legal hybridity and diffusion both distorts the past and obscures our understanding of the present. This neglect is arguably most significant in the Anglo-American legal traditions".37 In this regard, the notion of legal transplant was conceived in the last century—and has been used and developed until today—38 as a way to express that "borrowing is the name of the legal game and is the most prominent means of legal change".39

Hence, to research and teach legal history without taking into account such a comparative approach would be a considerable mistake, with deplorable consequences for both legal historians (in their research and teaching) and law students. It would certainly deprive the latter of a clear understanding of the current law to which they devote several years in the law school.

36 See, for example, DONALD, C. Jr.: "Ius commune, canon law, and common law in England" Indiana Law Review 66 (1992), p. 1748: "In the realm of basic principles, organizing ideas, techniques of argumentation, and habits of thought, the parallels are sufficiently great that one might want to call the common law simply a variant, admittedly an eccentric variant, of the multitude of legal systems that ultimately derive from the ius commune"; and DONLAN, Sean Patrick: "The Debt is Forgotten: A Compendious View of Arthur Brome, c1756–1803", vol 13,3 (September 2000) Electronic Journal of Comparative Law (available at http://www.ejcl.org/133/art133-3.pdf).

**c) How Spanish Legal History Should Be Taught**

Any national legal history should be approached comparatively. Thus, questions as to whether legal history needs to be European to be comparative, or whether it needs to be comparative to be European, are pointless. I maintain that legal history needs to be comparative anyway: whether it is European, Anglo-American, or Spanish. Otherwise, it would not be real legal history.

Consequently, I understand that it should not be necessary to add the expression "comparative" or "European" to the legal history of any European jurisdiction since such "European" or "comparative" approach should be taken for granted, being assumed just by the fact of dealing with legal history. In this regard, I wonder whether there is today in Europe any legal historian who really thinks that it is possible to teach legal history without the European perspective, or that it is possible to teach legal history without the comparative approach. They are probably a rare breed indeed.

The Spanish legal history clearly reveals that it is not possible to reconstruct the history of Spanish law without resorting to both the European and comparative perspectives. A Spanish law student enrolled in a legal history course should acquire a minimum degree of knowledge about the making and development of both legal sources and legal institutions from a comparative perspective, including both the European legal tradition and the Anglo-American legal tradition (devoting logically to the former more time than to the latter though).41

In teaching Spanish legal history, several aspects should be approached comparatively.42

**aa) Historical periods**

In describing the historical development of law in Spain—like in other European countries—it is not surprising to realize the parallels between the Spanish and the European, historical periods as well as the existence of common, cultural movements. Many legal historians—though not all of them—have divided Spanish legal history into the following epochs:

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31 In practice, nonetheless, it is well known that the lack of time makes it difficult to deal with both the history of legal sources and the history of legal institutions.
32 This part of the article has been heavily drawn from my own experience in teaching Spanish legal history (see MAFERRER, Anceto: Spanish Legal Traditions: A Comparative Legal History Outline. Madrid, Dykinson, 2009, 429 pp.).
aaa) Ancient times
This epoch includes the Primitive Spain (up to 218 B.C.) and the Roman conquest (218 B.C.—476 AD). What is referred to as Primitive Spain stretches from the beginnings of civilization in the Spanish Peninsula until the arrival of the Romans in the third century BC. The Law of this period is referred to as Archaic or Primitive Law. The Romanization of the Peninsula began in the year 218 BC. The Romanization period comprises the time of the Roman conquest of the Peninsula, beginning with the disembarkation of Roman soldiers in Ampurias (Emporia) in the year 218 BC, until the year 476 AD.

bbb) The Middle Ages
This epoch contains various periods: Early High and Late Middle Ages:
- The earliest stage is the Visigothic period, which has two phases:
  - The Gallic phase (from the year 476 until the year 568).
  - The Hispanic phase (from the year 568 until the year 711).
  - The Muslim invasion of the Peninsula began in the year 711.
  - Muslim Law was completely different from the legal systems that had existed on the Peninsula before the invasion. During this period of occupation the Roman legal traditions persisted, as we will see, although in intimate coexistence with Germanic Law (through the legal texts of the Visigoths).
  - This period also saw the elaboration of the first collections of Canon law. The Reconquest began before the middle of the eighth century (Covadonga Battle, 722). It is a common opinion among historians that the Middle Ages began at this moment. So, the strict Middle Ages are divided into...
    - Early Middle Ages, which designates the period between the 8th century and the 11th century, and the
    - Late Middle Ages, which covers the period from the 11th century to the 15th century (1469).

ccc) The Early Modern Age
The start of this period coincides with the reign of the Catholic Monarchs at the end of the fifteenth century (19th October 1469, Isabel and Fernando's marriage) and lasts until 1812.

ddd) The Modern Age (or Constitutional epoch)
The final phase starts in the nineteenth century with the collapse of the ancien régime. This is the phase in which a Constitutional regime begins and is later consolidated. The first Spanish Constitution was promulgated on 19th March 1812, (known as the Cádiz Constitution), which set up a new political system:

liberal regime or Constitutional regime, state or nation. (By comparison, from 1808 Constitution was granted by the French King José Bonaparte but not freely assumed by the Spanish nation.)

As is evident, the main features of the law in the majority of these periods are common to all over the European countries: the pre-Roman (or Primitive) laws; the first Romanization of many European countries; the influence of the Germanic laws; the impact of Canon law (also by adopting Roman laws — "Ecclesia vitit secundum legem romanam" —, but somewhat modifying it); the second Romanization (or its commune) all over Europe from 11th century onwards, being first developed by the school of glossators (11th-13th centuries), and then the post-glossators or commentators (14th-15th centuries), the school of the Codex Pandectarum (16th-17th centuries), the natural law theory of the Enlightenment (18th century); the nationalization of law through its codification (19th century); the process of de-codification, the creation of the European Union and the attempts to codify the European private law by elaborating drafts to harmonize the law from different jurisdictions which somehow share the same legal tradition, based mainly upon the old, European ius commune (20th-21st centuries).

bbb) Common European tendencies and shifts
Besides the parallel, historical periods between the Spanish and the European legal histories, the comparative approach is also highly convenient in analyzing some important tendencies or shifts to which both the law both in Spain and in Europe went through. In this regard, and concerning the History of legal sources, it is important to emphasize:

aaa) The decisive role and influence of Roman law
The law in Spain, like in other European countries, was particularly influenced by Roman law, first the Post-classical and vulgar, from the Roman conquest until the downfall of the West Roman Empire in 476 AD,39 later the emergence

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of the *ius commune* or Classical both Roman law and Canon law, and the reception and development of them—with varieties in the different European jurisdictions from 11th to 18th centuries). Such tendency is common to all the European jurisdictions.

(b) Shift from a local, customary law to a law based upon territorial, legal enactments. While the law of some periods (Pre-Roman epoch, Early and High Middle Ages) was based on custom, from the Late Middle Ages onwards the law started to be based upon legal enactments. This shift took place substantially in the Late Middle Ages because of the legal enactments emanating from the monarch and the parliaments (Corréa). Legislation did not generally abolish customary law, but customs lost protagonism. Consequently, the late medieval law was characterized by the preservation of the early medieval customs and the emergence of legislation coming from the monarch and parliaments. This shift brought with it two other common tendencies, experiencing the law two important changes concerning its: 

(b.1) validity, going from the local to the territorial (or general) one and (b.2) making, going from a private (or popular) to an official one through legal enactments.

In the Early Middle Ages the law was essentially local in origin and application, being this trait a clear consequence of the customary nature of law. Nonetheless, several institutions emerged in the early Middle Ages (Curia Regia, Councils and Assemblies of Peace and Truce of God), would constitute important exceptions

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66 One example of these methods was the *ordalía* that allowed God to be called upon as a witness in trials. The most famous of these, *Ordalía* had the revealing name of the "red hot iron" ("hierro candente", in Spanish).

67 All over Europe from 11th century onwards, law was first developed by the school of glossators (11th–13th centuries), and then the post-glossators or commentators (14th–15th centuries), the school of the new moderate jurist (16th–17th centuries), the natural law theory of the Enlightenment (18th century), the national law and legal positivism; the French School of Positivism and the German Historical School of Law (19th century), etc.
The notion and historical development of natural law is complex and belongs more to the European context than to the Spanish one. There are different conceptions of natural law. However, roughly speaking, natural law or the law of nature (lex naturalis, in Latin) is a theory that posits the existence of a law whose content is set by nature and that therefore has universal validity. The expression *natural law* is sometimes opposed to the positive law of a given political community, society, or nation-state, thus can function as a standard by which to criticize that law. So man-made law would be only legitimate in so much as it respects the divinely created natural order of things.

In the Middle Ages, the main contribution on the natural law was done by Aquinas. According to him, the natural law is a participation in the eternal law. Eternal law, for Aquinas, is that rational plan whereby all creation is ordered; natural law is the way that the human being "participates" in the eternal law. While non-rational beings partake in eternal law only by being determined by it – their non-free action results from their determinate natures, natures the existence of which results from God's will in accordance with God's eternal plan – rational beings like us are able to grasp our share in the eternal law and freely act on it. It is this feature of the natural law that justifies, on Aquinas' view, our calling the natural law "law." Law, as Aquinas defines it, is a rule of action put into place by one who takes care of the community: and as God takes care of the entire universe, God's choice to bring into existence beings who can act freely and in accordance with principles of reason is enough to justify our thinking of those principles of reason as law.

While the scholastic model of natural justice posited the existence of a natural law that reflected the harmonious essence of the divine, the rationalist (or philosophical) model proposed a system of natural laws based on reason (following the philosophy of Descartes). According to this rationalist model, laws could be written in manner that could be considered the fruit of pure reason. Such laws could be valid for all time and among all nationalities (with periodic revisions over time to account for linguistic variations). The philosophical conception of a rational natural law was intimately connected with the idea of the superiority of written law over all other sources. Written law displaced custom.

The political events that convulsed Europe at the end of the eighteenth century and the beginning of the 19th century favoured the adoption and the spread of new and unfamiliar ideas of different kinds among certain sectors of Spanish society, while at the same time provoking rejection amongst other sectors. The differences among these ideas can perhaps be said to originate with the strong influence that humanism exerted over "ius commune", to the point where it enabled the development of a theoretical basis for a juridical system that was separate from that derived from the scholastic theories of natural law.

In Spain, the working class male was given the vote in 1868, while women were finally extended this right in 1931.
useful to clarify the shift which the law underwent from the Early to the Late Middle Ages, a shift whose context was clearly European.

The majority of the changes of the law in the Late Middle Ages were caused by the emergence of several political institutions without which the law had probably remained as it was in the Early Middle Ages, and from which emerged other relevant institutions. The main political institutions emerging in Europe between the 12th and 13th centuries were:

- The monarchy;
- The city, from which emerged the merchant class;
- The Parliament.

Within this political, social and economic context, two important things concerning the legal development happened all over Europe:

- the creation of universities, where law was one of the three original university degrees; and
- the emergence and reception of ius commune in all the European jurisdictions.

It would not be wrong to affirm that the discovery of the Justinian Compilation by Ugo in the 11th century and the subsequent progressive study and reception of the Corpus Iuris Civilis and the Corpus Iuris Canonici in Europe were not only the most relevant aspect of the High and Late medieval law. They marked a shift that would last until the 19th century and still influences contemporary law. But, most important, they represent the most important event of the European legal tradition. Again, the rediscovery of Roman law (or Justinian Compilation) by the end of the 11th century was a unique event in legal history and would mark the future of European law. Shadowy figures with unusual names like Pepus and Iriusini began to reach the law of the ancient Romans at Bologna.

In short, the ius commune was a legal science based on Roman Law, Canon law and Lombardian feudal law, which was valid and in force throughout Europe with the exception of England to some extent. That ius commune would not have been possible without its legal sources (Corpus Iuris Civilis and the Corpus Iuris Canonici), is indeed true. However, it is also true that it would neither have existed without universities, where the jurists received not only the legal education based upon the afore-mentioned legal sources, but also the legal methods which enabled them to apply the Roman and Canon rules and principles in different chronological periods and geographical contexts. This explains why the ius commune was, first of all, a legal science and a law of jurists, since nobody else was able to manage it.

Justinian Compilation consisted of four parts: the Institutes, an introduction to Roman law originally written for first year law students; the Codex, containing imperial legislation from the second to the sixth centuries; the Digest, a compilation of excerpts from the writings of the Roman jurists; and finally, the Novellae, a compilation of Justinian’s legislation. The Digest was of fundamentally important for understanding the intricacies of Roman law. The excerpts from the Roman jurists contain defined terms, discussed theoretical difficulties, cited court cases, and made the mass of legislation found in the Codex understandable and, therefore, usable. Without the Digest, Roman law would have had little influence for European legal systems of the Middle Ages.

The jurists in Bologna recovered the key text of Roman law, the Digest, in stages during the late eleventh and early twelfth centuries. These Bolognese jurists were the first to recognize the importance of the Digest, and, like their Humanist successors in the 15th century, they must have searched for manuscripts copies of it. The law that they taught was late imperial law that had been compiled by the Emperor Justinian in the 6th century. This codification, the Corpus iuris civilis, yielded the material for teaching Roman Law in the 11th century. Its doctrines provided medieval jurists with a sophisticated model for contracts, rules of procedure, family law, testamentary, and a strong monarchial constitutional system. Six hundred years after his death, Justinian’s name became synonymous for legislator and codifier.

As Peter Stein affirmed in his book entitled Roman Law in the History of Europe, what explains how a legal compilation of the 6th century can provide the needed legal rule for completely different geographical and chronological contexts is the fact that the Corpus iuris civilis was, for the jurists, like a legal supermarket, from which they could take what they needed, and applied it after a proper legal interpretation to update or adapt such old legal provision to the present social, economic and political context.
Such *ius commune*, or common law, co-existed with the particular law of every European kingdom or jurisdiction, called *ius proprium*. As a result, from the Late Middle Ages to the Modern Ages, there was a duality between the *ius commune* and *ius proprium*. This duality, which was consolidated during the reception of *ius commune* all over Europe, explains the situation of the law in the different European kingdoms up until the codification period (19th century).

The characteristics of *ius commune* could be summed up as follows:

- It was based upon the *corpus iuris* (*Corpus Iuris Civitatis* and the *Corpus Iuris Canonici*).
- It was scientifically developed by jurists through a legal doctrine with its ideology, methodology and different legal schools: glossators and commentators (*ius iuris civilis*, *ius gallicum*, *ius romanum*, *ius modernum*), etc.,
- It was a legal science common to all Western Europe (*Respublica Christiana*), different from that of other religions (Jews and Muslims), of Eastern Europe (*Byzantine law*/*Orthodox Church*), or of England (which had its own *common law*).
- It was a law technically sophisticated (a law of jurists who have studied it at the University).
- It was composed of three different elements (Roman law, the Canon law and the Lombardian feudal law) which were strongly connected and worked together (particularly the Roman law and Canon law). With canon law, Roman law formed the medieval *ius commune* of Western Europe. To separate the two legal systems would be artificial and even misleading. Both laws were taught in law schools throughout Christendom, students studied both laws as a part of their legal education, and the medieval jurisprudence can only be understood with knowledge of each. The vocabulary and structures of Roman and canon law shaped academic and secular law.
- It was dynamic, being able to adopt other legal orders and transform them (it is the case of the feudal law, the commercial law, or the statutory law).
- It was different from the *ius proprium* (laws of the kingdoms: customs, privileges, royal law, municipal law, etc.), but co-existed with, and influenced them.

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Spanish Legal History

- Latin was its main language, being also the official university language. The language of medieval legal Latin creates significant problems for the modern reader.
- It strongly influenced the current law and institutions. If the social, political and cultural context in which law and legal institutions developed was not just Spanish, French, German, Dutch, etc., but European, it would be wrong to approach legal development just from a national perspective.
- What should be said about some Early-medieval legal institutions? It would be also wrong to think that there was a break up between the early and the late Middle Ages. We would be mistaken by not keeping in mind the existence and survival of the two different early medieval legal regimes, namely, the seignorial regime and the municipal regime. In fact, the cities had arisen in the Early Middle Ages, constituting the alternative to the seignorial regime. And this did not occur just in Spain, but in many other European countries.
- What about the feudal system? Did it exist still in the Late Middle Ages? The answer will depend upon which is understood by the expression “feudalism”. According to its economic conception, feudalism would remain up to the French revolution; according to its juridico-institutional conception, feudalism would have collapsed with the emergence of the monarchy in the 13th century; according to its social conception, some feudal institutions could be witnessed in the Late Middle Ages and even in the Early Modern Age.

Anyway, it would be erroneous not to bear in mind what has been said regarding the social, economic, legal and political context of the Early Middle Ages, forgetting about the seignorial regime, the municipal regime and the possible survival of some feudal institutions. In fact, without keeping them in mind it would be rather difficult to understand the emergence of the monarchy, the development and autonomy of the cities, the rise of the merchant class and the origin of the Parliaments, etc., since the emergence and development of all these realities are strongly connected.

If not, try to explain how the monarch could have managed to affirm his authority before the nobility without resorting to the cities and the Roman law; how the Parliament could have originated without the previous existence of the cities; how the cities could have developed their autonomy without the rise of the merchants and the royal support; how the *ius commune* could have been so appealing and successful without the existence of cities which needed an urban law, or without the support of the king; who, in turn, saw his legitimacy and public authority reinforced.

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On this matter, see the bibliography cited in the footnote n. 37.
how the _ius commune_ could have developed without universities; how universities, created at the beginning by the Church, could have emerged without the social and economic stability provided by the municipal environment, and later survived without the royal support; etc. To understand properly the shift of the law from the Early to the Late Middle Ages is convenient to observe the mutual relationship between all the afore-mentioned institutions within the European context.\(^{113}\)

\*(dd)* The necessary, comparative approach to any legal tradition with a plurality of laws: One of the features of the European legal traditions is the existence of a plurality of laws within each jurisdiction. In other words, the legal tradition of any European jurisdiction consisted of a plurality of laws whose study and analysis require a comparative approach.

Such plurality of laws—or legal pluralism—\(^{114}\) does not refer just to the aforementioned duality between _ius commune_ and _ius proprium_ (or _ius propria_).\(^{115}\) In Spain, for example, the variety of legal sources of the different kingdoms was, like in other European territories, considerable. In exploring and describing such complexity, a comparative approach is highly recommended. Otherwise, it would be difficult to capture a clear picture of the different Spanish legal traditions. In doing so, the legal systems of Castile, Catalonia, Aragon, Valencia, Majorca, Navarre and Basque territories (Guipúzcoa, Alava and Vizcaya) need to be analyzed from different aspects, resolving all of them around the plurality of legal sources:

- a) brief presentation of the main legal sources;
- b) the _Cortes_ and the King as lawmakers;
- c) the role of the _ius commune_ in the different Spanish legal traditions;
- d) The enforcement of the law in a juridical system of divergent legal sources: the hierarchy of legal sources; and
- e) the role of the judicial precedent and legal doctrine in developing law and legal science.

\(^{113}\) In this regard, it is particularly useful to analyze the whole development from the royal perspective, since the monarchy eventually needed to deal with the cities (the merchants and the municipal regime), the nobility (seignorial regime), the clergy (seignorial regime and the Church), the universities and the _ius commune_ (upon which his legislative and political power was grounded).

\(^{114}\) I used both expressions—plurality of laws or legal pluralism—as synonymous, although some authors tend to distinguish between these concepts on this matter; see DONLAN, "All this together make up our Common Law": legal hybridity in England and Ireland, 1704–1804", and some of the bibliographical references concerning this matter contained in Donlan's article.

\(^{115}\) As said, the _ius commune_, or common law, co-existed with the particular law of every European kingdom or jurisdiction, called _ius proprium_. As a result, from the Late Middle Ages to the Modern Ages, there was a duality between the _ius commune_ and _ius proprium_.

Applying the comparative approach to the Spanish mixed legal system constitutes a necessary requirement to appreciate a plurality of laws and legal traditions in force as of today. Although these legal traditions underwent a significant process of legal unification, it is important to keep in mind that in Spain legal unification never was entirely achieved.

Leaving aside political and ideological tendencies, the historical approach of Spanish Law shows the existence of diverse cultures—Christian, Muslim, and Jewish, and different ethnic groups that populated the Iberian Peninsula. Spain was—and is—an aggregation of different regions, diverse populations and languages, with historical struggles to maintain a centralized national "Spanish" State in the face of cultural pluralism.\(^{116}\) When the Spanish occupied the New World, for example, they also recognized Indian laws and courts. On August 6, 1555, Emperor Don Carlos (Charles V) and Queen Dona Juana issued a decree that "ordered and commanded" that "the laws and good customs" of Indians, along with their "usages and customs," must "be kept and enforced." This principle, firmly accepted in Spanish Indian Law, was lost when new states emerged in Latin America following the period of revolutions.\(^{117}\)

In short, a Spanish Legal History which, ignoring the cultural history of Spain, would not emphasize an ongoing struggle between local autonomy and central authority, would not be consistent enough. The comparative approach cannot be avoided for juridical pluralism requires necessarily a comparative approach. In this regard, a Spanish legal history handbook should include at least three levels of comparative perspective: the Spanish level, comparing the different legal traditions within the Iberian Peninsula; the European level, comparing and analyzing the duality _ius proprium_ and _ius commune_, looking at the diverse kinds of reception of the latter to both the Spanish and European contexts; and the Anglo-American level, considering and contrasting it with the European legal tradition.

The reader may think that, considering the short amount of time available

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\(^{116}\) CROW, John A.: _Spain: The Root and the Flower_, 1985; in this sense, it has been said that following the complete reconquest of Spain by Christians in 1492, the national legal system that emerged was based on beliefs "that there was a natural law binding on all people and peoples whatever they might be," and there was "a variety of human observance, all of it permissible so long as it did not conflict with natural law and _ius gentium,"_ "a common body of law and custom that might be found in the practices of all peoples" (BORAHA, Woodward: _Justice by Innovation: the General Indian Courts of Colonial Mexico and the Legal Aside of the Half-Real 6_, 1983). It has also recognized that, when Christians took control of Spain, "Medinos were allowed to live under their own law and custom and so resort to their own courts for matters concerning themselves" (SEED, Patricia: _Ceremonies of Possession in Europe's Conquests of the New World 1492–1610_, 1995, pp. 69, 80).

\(^{117}\) JUANEU, Donald: _"The Light of Dead Stars,"_ 11, _American Indian L. Rev. 1_, 13.
to teach a legal history course, such a comparative perspective is unrealistic. It may be true, but it depends on how deep the comparative approach is employed. Sometimes, it would be enough to state explicitly that some historical process, cultural movement or legal institution are common to all Europe, and it is not just a Spanish, French or Belgian reality. Other times, it would be useful to add something else; for example, in dealing with the creation of the medieval parliaments (Cortes) in Spain, it could be added that "the representative assemblies received different names throughout Europe. While in the Anglo-Saxon territories were used the expression "Parliament", in Spain it was known as Cortes (General Estates, in France and in the Low Countries; Diet, in Germany) (...). Since the beginning of the 12th century, and due to the development of urban life in Western Europe, the bourgeoisie became a social and economical power aware of their common interests, and united by mutual protection and supporting defence. Thus both the king and this new social class of traders and merchants recognized the convenience of allowing the cities' representatives to take part in the royal assemblies, in which they could give advice and financial support to the king. It was, then, a matter of mutual interest."  

Let me give another example. When lecturing law students, I usually explain that the bourgeoisie formed social groups characterised by its particular legal and social status. Throughout Spain, the bourgeoisie was known by the denomination of ciudadanos (citizens). In Catalonia and Valencia they were sometimes called burgueses (bourgeois), and in Leon and Castile with the special name of hombres buenos de las ciudades y villas (good men of the cities and villages). Having said this, I usually add that "in the rest of Europe the names also differed from region to region. In England they received the name of commons; and in France, since the 14th century, they were called common estate or Third estate. During the 13th century, the sessions of the extraordinary assemblies of the royal Curia became "estate assemblies" or Parlamientos (Parliaments). The participation of the Third estate in public life was clearly backed up by the growing economical power of the bourgeoisie. Since the 12th century, the bourgeoisie entered into the extraordinary Curias of all Western Europe, being this access admitted in Spain faster than any other European country."  

I do not think it is matter of having much time available for lecturing. It is rather a matter of keeping constantly in mind the comparative approach, teaching — in my case — Spanish legal history within the European perspective. My teaching experience shows me that law students get interested in legal history inasmuch as they discover its real interest, if they feel the necessity to know it. In pursuing so, the comparative approach is really helpful. For this reason, every year I start my first lecture asking why a law student has to deal with legal history. My answer is as follows: 

"On November 23, 1880, an outstanding American lawyer and scholar named Oliver Wendell Holmes, giving a Lowell Lecture at Harvard Law School, stated: 

"The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and it tends to become. We must alternatingly consult history and existing theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work our desired results, depend very much upon its past."

(Oliver Wendell Holmes. The Common Law and Other Writings, Birmingham, The Legal Classics Library, 1881).

The statement that the life of the law has not been logic; it has been experience, is clear enough to realise to which extent it is important to know what the law has been in order to understand what the law is in the present. It is the knowledge of our legal past what enables us to have a better understanding of our present legal institutions (...)."

18 It would also be clarifying to add a terminological explanation of the expression "parliament" to avoid possible misunderstandings. Since the English expression "courts" refers to the tribunals, and not to the Spanish "Parlamientos" or "Cortes", it is important not to confuse the Spanish "Cortes" with the English "courts". The expression "Parliament" was first mentioned in Ireland in the 13th century, following closely on their appearance in England. The word parliamentum means "parley" or "discussion" (in its proper English sense), and seems to have been a newfangled term for the long established colloquies between kings and their leading lay and ecclesiastical subjects. It acquired additional significance during the disputes between Henry III and his barons (1258-65)." (MASFERRE, Spanish Legal Traditions: A Comparative Legal History Outline, p.142).
Our Western Civilization witnesses two main legal traditions whose knowledge is highly convenient for any law student: the civil law and the common law tradition. The former is also called the "Continental" or "European" legal system, while the latter is also called the "Anglo-American" legal system. While the European countries, besides United Kingdom, South and Central America, as well as many Asian territories belong to civil law tradition, England, USA, Canada, Australia and New Zealand belong to common law tradition.

Only history can explain the existence of these two different legal traditions. Only history can show their main characteristics. Only history can give reason of their development and present state. This has always been so, it is now so, and it will always be so, no matter whether legal history will be taught in the future as a compulsory law course or not.  

I have seen several times to which extent this answer captures students' attention from the first day, installing in them an open and positive disposition to know about the Spanish legal history from a comparative approach.

4. Concluding Considerations: What will Probably Happen

Although it is hard to predict what will happen in the future with the Spanish legal history, I do have the conviction — and not just the desire — that a comparative approach will help considerably. This is more than wishful thinking; it is a prediction based upon the facts and the current context of the Spanish legal history scholarship.

It is true that traditionally Spanish legal history has not really come close to a comparative or European perspective, but it is also true that the contributions written by some legal historians in this regard in the last thirty years have possessed a scientific consistency which goes beyond the common standards. One could be surprised that this literature has not have much influence over the Spanish legal history teaching. That is partly true, since some legal historians have been teaching not only the Spanish legal history course from a European perspective, but also a European legal history course. For example, a course on "Legal history of the European Union" ("Historia Jurídica de la Integración Europea", in Spanish) has been offered and taught by a legal historian, Rogelio Pérez-Bustamante, at the University of Rey Juan Carlos (Madrid) for some years until today.

Furthermore, I have seen the synopsis of some legal history courses taught today in some Spanish law schools. Looking at their content, they could be called European legal history rather than Spanish legal history. In some universities, the title of the course has been even modified, being called just "legal history" instead of "Spanish legal history". I do not have time now to give concrete examples revealing this move towards the comparative approach, but it is true and understandable considering the current tendency of young — and not that young — legal historians to spend time abroad doing research, and who, back to Spain, tend to look at the Spanish legal tradition from a comparative perspective, using a foreign literature which enables them to write, publish and teach consequently in accordance to their comparative legal mind.

Other factor which is — and will be — encouraging Spanish legal historians to teach legal history from a comparative perspective is the introduction of teaching innovation programs. One of these consists in teaching in English courses towards a law degree. Not only Erasmus students from all over Europe are attracted to spend time (a semester or a year) enrolled in Spanish universities. Spanish students are also given the chance to add some special distinction to a law degree otherwise held by many other law students, enabling them to keep open other professional doors in a broader geographical context, that is, beyond the Spanish borders.

The first Spanish law school which implemented a law degree in English was that of the University of Valencia, where I have taught the Spanish legal history course (in English) in the last three years. During these years, I have realized that to teach a legal history course in English constitutes a challenge which encourages the lecturer to go beyond the national boundaries, since both the lecturer and the students are expecting something more than teaching and learning a strict national legal history. Alongside the Spanish legal history course (which is compulsory), I have also been giving an optional course entitled "History of Codes and Constitutions" devoted to the constitutionalism and the codification movement from a comparative perspective, including both the Continental and the Anglo-American legal traditions. It seems to me that students enjoyed these courses mainly because of the comparative perspective, and it is clear to me that the majority of them like comparative legal history. They are fully aware that

120 MASFERRER, Spanish Legal Traditions: A Comparative Legal History Outline, p.16.
121 See the footnote n. 77 and its main text, which shows the Spanish universities that offer a course on European legal history, as well as the lecturers who teach it: University of Murcia (Antonio Pérez Martín) and University of Illes Balears, Majorca (Rómán Pita Homo).
122 Topic upon which he has published extensively (see the bibliographical references contained in the footnote n. 44).
123 This has occurred, for example, in the University of Navarre.
they are attending a course on comparative legal history, and not just on legal
history or just on comparative law. In my view, it is a course on legal history
because I take for granted the comparative approach; otherwise—as said—, it
would not be a real or consistent legal history course. 128

This year the law school of the University of Castilla-La Mancha has offered
a similar course called “Comparative legal systems” (“Sistemas Jurídicos Com-
parados”, in Spanish). The course is taught in English by Sara Granda (who has
spent time doing research in the UK and in the USA). This year also the law
school of the University Rey Juan Carlos (Madrid) has offered a course called
“Comparative history of legal institutions”, which has been taught in English
by Gabriela Cobo del Rosal (who has also spent time abroad doing research).
Next year the law school of the University of Navarre will offer an optional
course called Comparative history of legal institutions (“Historia comparada de
las instituciones jurídicas”, in Spanish), which will be taught by Rafael García
Pérez (who has been abroad several times France, Italy and USA).

I am sure that, in the near future, optional courses like these will proliferate,
and the compulsory course on Spanish legal history will be taught much more
comparatively than it has been done in the past. My prediction is optimistic:
Spanish legal historians will be more comparative in both doing research and
teaching, so our contribution to the law student’s education will be greater
than ever. But this will require the student’s active engagement with interactive
methodological systems of legal education whose goodness and positive results
I have already tested and appreciated in the last three years.

128 Most probably my view on this matter is due mainly to the stays abroad I have made in the last
ten years: Visiting Professor at Tanzania Law School (January–February 2010), Visiting Scholar at
Melbourne Law School (January–February 2010 and July–September 2008), Visiting Scholar at
Harvard Law School (2006–07), Herbert Smith Visiting Professor at Cambridge University (UK,
February–July 2005), and Fellow Researcher at Max-Planck Institute for European Legal History
(Frankfurt/Main, Germany, May–August, 2006–02). I’m very grateful to Matt Dyson (UK) and
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