Teaching constitutional history today: human rights, authoritarian legacies, and the role of the judiciary

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Introduction

Constitutional history has attracted the attention of researchers from various disciplines, such as law, history, political science, sociology, and international relations. It is a well-established academic area, with research topics, varied approaches, and a much-debated methodology[1]. However, there has been little theoretical and methodological reflection on the teaching of constitutional history, especially in law schools[2].

Based on the subject of this dossier, this article aims to think about the teaching of constitutional history from the perspective of legal educations, especially in the Brazilian context. This article aims to think about the teaching of constitutional history from the perspective of legal education, especially in the Brazilian context[3]. There is a lively debate about the disciplinary position of legal history and the pedagogical advantages of historical study for the academic formation of jurists[4]. Thus, the purpose of this text is to discuss the important role played by constitutional history in law schools and the study of judicial decisions as a pedagogical tool.

This article adopts a perspective of teaching constitutional history through the connection between constitutionalism and Brazilian authoritarian experiences. In this sense, judicial decisions can be an interesting tool for reflecting on how the judiciary understands the debate on political transitions, human rights violations, memory, and political amnesty.

Initially, we intend to highlight constitutional history's critical function and what pedagogical-academic gains there may be in teaching this subject within law schools. Next, we will analyze judicial decisions as a possible teaching object, above all by addressing the context of contemporary constitutional history.

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The critical function of constitutional history

Constitutional history is a multidisciplinary field encompassing various methodologies and approaches. Its teaching and research are beyond any specific faculty or department. However, in defending a critical approach to constitutional history, our point of observation is internal to law faculties and concerns legal education. The critical perspective can offer its most significant potential in the legal space because of the traditional problems of legal teaching (formalism, dogmatism, abstraction) and the historical understanding that jurists generally adopt (anachronistic, evolutionist, linear).

Professor Ricardo Fonseca reviewed the legal history field in Brazil to understand the absence of this discipline in Brazilian legal education during the 19th century and much of the 20th century[5]. For Fonseca, this absence is linked, among other factors, to the vicissitudes of the national political and legal formation. In Brazil, considering the traces of political continuity after independence – unlike the countries of Spanish America – the use of historical discourse to legitimize national identity was not central. A second possible reason lies in the centrality of the discipline of Roman law, which possibly prevented the flourishing and consolidation of legal history as a legal discipline for a long time[6].

Nevertheless, even in some law schools that created the subject of legal history at some point, its teaching perspective and materials carried on an academic tradition that developed historical-legal study as a «ratification of dogmatics»[7]. In that context, the teaching of the history of law was uncritical and served to reproduce some of the legitimization strategies indicated by António Hespanha, i.e., through tradition/naturalization or the idea of progress[8]. Legal history would then demonstrate that a legal concept belonged to the «nature of things» and had existed since antiquity, which ended up hiding the distinction between terminological continuity and semantic discontinuity. It could also be used to make the present sacred through a vision that places it as something inevitable and the end point of a line constructed retrospectively[9].

When we think about constitutional history, the picture becomes even more complicated, considering that the teaching of legal history has long taken private law as its central axis. If we consider some early works on Brazilian constitutional history[10], we noticed they were not concerned with the basic theoretical-methodological requirements of the contemporary historiographical *métier*.

According to Fonseca's analysis, the academic landscape has undergone a significant transformation. While the author once characterized it as an academic "desert", the past two decades have witnessed a proliferation of disciplines, themes, sources, and approaches in legal and constitutional history. This "explosion" of academic works and research centers has revolutionized the field[11]. However, there is still much to be done in order to completely revitalized how jurists deal with the past, whether in research or teaching.

Some works have tried to draw attention to these problems in two different areas: the use of history by jurists when analyzing the contemporary legal system and methodological errors made by legal historians.

In a classic text on socio-legal research in Brazil, Professor Luciano Oliveira warns law students, "Don't talk about the Code of Hammurabi!"[12]. The aim was to avoid «the usual historical incursions that usually precede the approach to the subject in the present»[13] in the form of the recurrent "historical introductions"[14], exemplified by the usual "jumps" between historical periods that are very different from each other and which only have the purpose of justifying the contemporary law by attesting that the concept has existed since time immemorial. The use here is instrumental and follows an evolutionism and anachronism approach, which reinforces the mythological belief in current legal dogma[15].

This attitude does not take methodological issues seriously. It is a kind of methodological impurity based on low-quality textbooks[16]. However, as Fonseca and Paixão's work seeks to highlight, the theoretical-methodological aspects are central to constitutional historiography[17]. Every step is crucial to the development of the research, from the selection of sources to the adjustment of the timeframe, from the theoretical framework to the type of analysis. The lack of awareness about the theoretical-methodological dimension generates another drawback: the proliferation of legal history textbooks purporting to produce "great syntheses"[18] based on "great events" or "great characters"[19], which do not incorporate the basic requirements of historical research.

This academic production – not just textbooks but also articles and theses – has three more methodological problems.

The first is the lack of primary sources or, at most, the use of only legislative sources[20]. In the first case, there is the circular reproduction of theoretical common sense, i.e., the replication of statements with no empirical basis. In the other case, when one reduces constitutional history to a mere description of constitutional texts, we end up with a static and formalistic view. Even when using doctrinal sources, like books and articles, it is crucial to engage in a more refined methodological reflection and not simply accepting author's ideas at face value. The absence of primary sources is specifically problematic regarding constitutional history, characterized by a plural typology of sources[21].

The second problem is the failure to engage with historiography[22]. When jurists include "historical introductions" to their textbooks, they rarely discuss academic research. In general, there is a lack of knowledge about the state of the art on the studied subject. At most, there is a reference to some dated historiographical work without putting it into perspective based on more recent productions. By failing to use primary sources or incorporate recent academic research, one can only reproduce, once again, the discourse of common sense.

The last of these problems refers to a «constitutionalism of absence» in Brazil[23]. Often, one portrays constitutional history as a history of failures, disappointments, and the lack of effectiveness of constitutional norms[24]. What is wrong with this assumption? Reducing constitutional history to such moments becomes a methodological trap, as it «prevents the memory of the constitutional past»[25], «eternalizes what it intends to denounce»[26], and ultimately constitutes an anachronistic and simplistic stance[27]. As Professor Menelick de Carvalho Netto points out, «The traditions of any political-legal community are always

plural»[28]. Understanding the repressive apparatuses of authoritarian regimes is significant, but it is also necessary to highlight the discourses and practices of resistance.

Given this context, what role can constitutional history play in the legal education? Two legal historians stand out for their influence on the Brazilian community on this subject: António Manuel Hespanha and Paolo Grossi[29]. Both have considered not only the tools and methodological concerns of the discipline but also the epistemological contributions that legal history can provide as a subject in law school. In this sense, legal history can play an important «critical function» or «subversive role» in law schools[30].

For Hespanha, legal history constitutes a formative, critical, and reflective form of knowledge. Unlike dogmatics, which seeks to create certainties, legal history aims to «problematize the implicit and uncritical assumption of dogmatic disciplines, that is, that the law of our days is rational, necessary, and definitive»[31]. In this sense, legal history plays a role in relativizing legal mythologies[32].

This pedagogical goal requires, according to Hespanha, the adoption of some scientific strategies. Firstly, it is necessary to instill a robust methodological conscience about the writing of constitutional history, that is, the deconstruction of the naive conception that historical narrative is reduced to a simplistic account of what «really happened.» In this sense, historians need to be aware of the «poietic character» of their intellectual activity, of how their «mental processes shape historical reality», and that this creative process is socially and culturally rooted[33].

The second strategy is to understand that the object of legal history is «law in society»[34]. As a product of society, law plays an essential disciplinary role, but at the same time, its production is conditioned by a complex set of social layers. Considering law in society also points to a critique of the teleological interpretation of the constitutional phenomenon. The present is not the result of a progressive evolutionary line towards the apogee but merely a «random arrangement», the product of historical contingencies[35]. The past has its autonomy and differences[36].

Contextualization then becomes fundamental[37]. Legal history can help us understand that law belongs to a dimension of society since it is the historian's task to place legal texts – «the emerging summit of a submerged continent» – in their historical context, with all their richness and complexity[38]. Legal history can also contribute to comparing and contrasting different values, visions, and worlds, thereby highlighting an attitude of estrangement and openness to experiences outside the present[39].

We could add one last contribution from legal history: the teaching of history can help in the fight against denialism or ideological revisionism. The discipline's potential for critical reflection can help identify legal arguments that distort knowledge of the past in a double sense, either by resorting to outright lies (denialism) or selectively appropriating proven facts without contextualization (ideological revisionism)[40].

This role is especially relevant in constitutional history, which works more closely with issues such as authoritarian regimes, human rights violations, and the state of exception. Although the idea of historical truth is complex and "provisional", it rep-

resents a powerful tool for criticism[41]. The teaching of constitutional history can help denounce the real motivation behind denialism and ideological revisionism: «erasing, silencing and hiding the facticity of the past» and «imposing unique and authoritarian meanings on history and life»[42].

Judicial decisions and their role in teaching constitutional history

The critical function of constitutional history presented above can contribute to discussing one of the primary sources used in legal education: judicial decisions. Judges' opinions and rulings – especially from supreme courts and constitutional courts – are among the most important legal materials in law courses.

In the realm of constitutional history, we can understand judicial sources from various points of view. Judicial decisions can serve as primary sources for historians, as a factual basis for their historiographical representation, and as a resource for legal teaching. Court cases can be thought of in their institutional dimension – studying justice, its organization, and its agents – and their social and political dimension, that is, by understanding social conflicts, including those of groups that have been forgotten or marginalized by official history. From this perspective, judicial decisions are excellent resources for teaching constitutional history and demonstrating the dynamics of legal experience[43].

Another possible perspective for using judicial decisions in legal history classes that is equally relevant to legal education from a critical approach is the understanding of judicial decisions as spaces for constructing constitutional memory[44]. In such situations, history plays a relevant role in the judges' legal arguments, which makes identifying the uses and abuses of the past a fruitful field of study[45].

This observation raises several interesting questions for discussion in the classroom: Should judges be concerned with the past? Is history part of judicial reasoning? What is the difference between the judge's approach and that of the historian? What is the link between memory and constitutional interpretation?

The discussion about teaching constitutional history cannot renounce one premise: we teach legal history in the present time. In other words, the repertoire of past legal experiences is inseparable from understanding contemporary history. Of course, looking to the past requires careful and detailed use of historical sources, always with an awareness of the alterity that marks the encounter with these sources. In the wise expression of Moses Finley, referring to the history of classical antiquity, the past presents itself to the historian as a territory that is «desperately foreign»[46].

However, the historical operation takes place in the present. This disjunction between temporal dimensions is constitutive of the historian's activity. It would be no different in relation to law, and especially in relation to constitutionalism. Its history refers to the past but communicates with the present.

Talking about constitutionalism means, among other things, discussing issues related to the rule of law, fundamental rights, coexistence between peoples and nations, and the status of international human rights protection standards. This is a contempo-

rary requirement following the course of the 20th century, marked by catastrophes and atrocities and the attempt to build a system – deeply anchored in legal categories – to protect human dignity[47].

Aside from the legal instruments conceived in the post-war context – treaties, conventions, international organizations – there is an important historical element for understanding the dilemmas of contemporary constitutionalism: the role of trials of those accused of serious human rights violations. In various scenarios, the activity of judges and courts has been at the center of disputes over the meaning of human rights[48].

Notoriously, there have been several emblematic criminal judgments since the Nuremberg trials. In 1961, the process against Adolf Eichmann in Jerusalem brought to the public arena, with global interest, the question of responsibility for atrocities committed during the conflict between 1939 and 1945. Not only was the trial remarkable, but so was its press coverage. Hannah Arendt's book, written from reports produced for the New Yorker magazine[49], is one of the most influential non-fiction works of the period after World War II – the expression "banality of evil" has become part of the political and historical repertoire of contemporary times[50].

In the 1980s and 1990s, at a time of redefinition of collaborationism in occupied France and new research into the Vichy regime, there were trials related to the atrocities committed by French and German government agents during the war. The criminal cases involving Klaus Barbie, Maurice Papon, and Paul Touvier were widely reported[51]. In all of them, there were charges of crimes against humanity – which made the trials possible, given the *non-applicability of statutory limitations*.

In the 1980s, several Latin American countries that had been under military dictatorships went through processes of re-democratization[52]. In this context, important lawsuits were filed to hold political and military agents accountable for serious human rights violations. The country that experienced this judicialization most intensely was Argentina. This movement began in 1985 with the famous *Juicio a las Juntas*, which brought the leaders of dictatorial governments to the dock. There were various developments, including establishing rules that granted amnesty to those convicted. However, from the 21st century onwards, these rules were considered unconstitutional, and criminal liability for agents of the regime was resumed, with numerous prosecutions and convictions[53].

Another court decision would have significant repercussions concerning Latin American dictatorships. In 1998, former Chilean dictator Augusto Pinochet was detained under an international arrest warrant issued by Spanish magistrate Baltasar Garzón. The accusation against Pinochet was about the various acts of human rights violations committed against Spanish citizens living in Chile during the years of the military regime. Pinochet was traveling in the UK, and the British authorities served the arrest warrant in October 1998. Pinochet remained in prison until 2000, and he could return to his home country only after several discussions about possible immunity linked to the office of President of the Republic[54].

Finally, it is worth noting that the Inter-American Court of Human Rights has built up a solid body of rulings on the se-

verity of violations committed by national states in cases of political persecution of opponents, either by rejecting the granting of pardons and amnesties to military personnel, politicians, and agents of the national security system, or by emphasizing the seriousness of conduct such as forced disappearance and execution. The impact of the judgments varies from country to country. Nevertheless, it is impossible to remain indifferent to the decisions that have condemned several Latin American countries, including Peru, Brazil, Chile, Uruguay, El Salvador, Honduras, Guatemala, Colombia, Paraguay, and Argentina[55].

In many of these cases, a historically new concept is being used in the judicial arena: *crimes against humanity*. This conceptualization marks a transformation in classic criminal law and, of course, in the very act of judging. Although the defendants are determined and individualized, their conduct involves an unprecedented dimension: the gravity of the acts committed affects humanity as a whole[56].

The constant activity of creating categories and concepts inherent to the very existence of law finds a new field after this provision on crimes against humanity. Related instruments emerge, equally necessary for exercising jurisdiction in these situations. This is the case with the notion of non-applicability of statutory limitations, which is central to international human rights law. The extent and depth of the crimes committed against the so-called *jus cogens* of international human rights law evoke the need to put aside a fiction inherent in law practice. The statute of limitations, one of how the law relates to the passage of time, must give way to the persistence of violations over time as an instrument capable of enabling perpetrators to be held accountable, even if belatedly[57].

Another vital mechanism, built on Latin American countries' harrowing experience with the dictatorships of the second half of the 20th century, is *permanent crime*. This is a crucial conceptual innovation for the correct legal framing of the situation of the disappeared – the victims of authoritarian regimes whose fate is unknown, a practice that has become sadly common in Latin American dictatorships[58].

These examples show that a contemporary understanding of human rights involves perceiving the connection between law and trauma. In Shoshana Felman's precise description:

> In an era in which trials – televised and broadcast – ceased to be a matter of exclusive interest to jurists and penetrated and increasingly invaded culture, literature, art, politics, and the deliberations of public life of society at large, the hidden link between trauma and law has gradually become more visible and more dramatically apparent[59].

Two consequences follow from this statement. The first, already highlighted, concerns the undeniable presence of historical elements linked to human rights violations in contemporary times. The second, which interests us here because of its impact on the teaching of constitutional history, involves the centrality of judicial processes and legal institutions. The protection of human rights, as well as the possibility of holding to account agents and governments involved in serious atrocities committed in times of war or during authoritarian regimes, are increasingly dependent on the functioning of judicial bodies. Moreover, trials with the characteristic of exemplarity are emerging – in the public

sphere, media coverage, and political arena. Contemporary legal experience places a unique centrality on trials as they assume the dimension of trauma. As Paul Ricoeur said, they bear the mark of the «exemplarity of the singular»[60].

Memory and history in the Brazilian Supreme Court: the amnesty debate

There is a factor that should be highlighted in this centrality of the courts when discussing emblematic cases. An attitude of caution, criticism and detachment is crucial when it comes to the rationale behind the decisions, the assumptions adopted by the actors in the judicial process, and the role of the courts in contemporary society. As Niklas Luhmann states, the courts are at the center of the legal system in modern society. Courts are required to always produce decisions, using elements belonging to the legal system itself. This leads to intense and constant textual creation[61].

A key task for law schools is to build a critical culture concerning the textual work of judges and courts. This is indeed one of the main tasks of research in law, at any level of learning, from the beginning of undergraduate courses to postgraduate activities. As pointed out by Pietro Costa, researchers need to maintain a «strategy of suspicion» about the documents which are subjected to the scrutiny of legal history. Cautiously reading sources, distrusting assumptions, seeking to understand the explicit and unexplained premises of judgments – all of this belongs to the research skills of a constitutional and legal historian[62].

This applies especially to *decisions by domestic judicial systems which disregard the guidance of the emblematic post-war rulings mentioned above*. A significant example comes from Brazil.

The pace and timing of transitional justice measures are different in each country that overcomes an authoritarian regime. Many factors come into play when it comes to the definition and timing of these measures: among them are the ability of politicians from the dictatorial regime to hold political power in a democratic context, the method of transition from dictatorship to democracy, the role of the judiciary and the extent to which there is pressure from civil society to hold agents of the regime accountable. On the Brazilian side, in the early years of democracy a predominant discourse praised a "peaceful" transition from dictatorship to democracy, claiming that a sort of pact between political forces emerged to overcome the authoritarian regime[63].

Even though this description lost strength in the years following the end of the dictatorship, it still had some impact on various institutional domains in Brazilian society, including the judiciary. The Brazilian Supreme Court heard an original brought by the Brazilian Bar Association case in 2008, which sought a ruling from the court that could support criminal liability for officers of the dictatorship who committed serious human rights violations (particularly cases of disappearance, execution, and torture). But the Supreme Court ruled in 2010 that these acts may not be prosecuted, based on an interpretation of the Brazilian Constitution enacted after the dictatorship (in 1988) as a pact, and granting full validity to an amnesty law that

was passed by the National Congress during the military dictatorship (in 1979)[64].

It is worth briefly highlighting a few quotes from the ruling. The teaching of constitutional history can help deconstruct the judges' historical and conceptual representations, especially regarding the legal institute of amnesty.

For the rapporteur of the case, Justice Eros Grau, the interpretation of constitutional norms must consider the historical background of the amnesty law's enactment. What would be this historical context? According to Grau, it was the «conciliated transition», which was «smooth due to certain commitments» and promoted the absolution of all, «some acquitting themselves». He claimed that to say otherwise would mean to ignore history[65].

This argument about the importance of the "historical context" and the possible existence of a "pact" between civil society and the military was followed by several other justices of the court. Justice Carmen Lúcia argued that «society spoke loudly about the bill, which became the so-called amnesty law», adding that this law was the subject of «wide-ranging debate and express and specific manifestations by the main personalities then involved in the process of the so-called liberalization». Likewise, Justice Celso de Mello held that the amnesty «was unequivocally bilateral (and reciprocal)» due to the «effective cooperation and active participation of civil society and the militant opposition». Justice Ellen Gracie even spoke of «sufficiently documented history» to describe the amnesty as «reconciliation and forgiveness». For his part, Justice Gilmar Mendes argued that reciprocal amnesty was an instrument for a «pacted» constitution, «presenting itself as a means of overcoming the friend/enemy distinction». Justice Cezar Peluso said that the amnesty was an agreement resulting from the «concord of the Brazilian people»[66].

The Supreme Court's ruling was intensely criticized in academic circles as soon as it was released. A large body of literature exists on the topic, which led to a great deal of research in undergraduate and postgraduate law courses in Brazil. A further significant development took place. A few months after the Supreme Court's ruling was issued (April, 2010), the Inter-American Court of Human Rights examined Brazil's stance on the disappeared of the military regime for the first time. The ruling in the Gomes Lund case ("Guerrilha do Araguaia") came out in November 2010, clearly establishing the impossibility of invoking amnesty laws to avoid prosecuting agents accused of crimes against humanity. In 2018, a new ruling by the Inter-American Court of Human Rights, in the Vladimir Herzog case, reaffirmed this guideline.

Several appeals were lodged against the Supreme Court's ruling, but none were decided until April 2024, at the closing of this piece. In 2014, a political party filed a lawsuit similar to that of 2008, also pending in the Supreme Court[67].

Does constitutional history make any contribution to understanding this issue?

Firstly, by broadening our knowledge of the subject, the study of constitutional history can dispel some interpretations. The concept of amnesty appears as a privileged point of observation in Brazilian history. In the republican era, thirty-eight political amnesties were granted, almost a third of them during the period 1945-1964. In some cases, amnesty represented a means

of neutralizing the criminalization of political opponents, being associated with the struggle for democracy and the defense of individual rights[68].

However, these measures were far from being a form of justice or reparation for violated rights. In at least three episodes – 1945, 1956 and 1961 – amnesty was granted to state agents guilty of common crimes, political crimes and crimes of responsibility. On other occasions, amnesty also acted as a form of repression. In 1969, the military junta that ruled Brazil rescinded the amnesty granted in 1961 to military personnel expelled for political reasons since 1934. Such episodes confirm the complexity of the amnesty concept; a notion that lies in the realm of tension between law and politics and has multiple faces[69].

Secondly, studying constitutional history can reveal some of the contradictions and weaknesses in the traditional discourse on amnesty. It is still perceived by part of society as a sovereign act of the state that "perpetually silences" the criminal process or as a measure of "pacification of the Brazilian family" and "forgiveness" of crimes committed[70]. This was one of the main arguments of the Brazilian Supreme Court in ADPF 153, as seen above.

Reflecting on the issue further, we need to challenge the direct connection between amnesty and the ideals of oblivion, pacification, and forgiveness. Portraying amnesty as forgetting raises the question: to what extent is it possible to have a commanded amnesia? This inquiry unveils the paradox of an obligation which is based on a clause such as «you must not forget to forget»[71]. The cost of this enforced silence is a loss of understanding of the context since victim and oppressor become side by side in the same measure of clemency. Equating political opposition with a crime against humanity undermines democracy.

Appealing to pacification contains other contradictions. As soon as a dictatorship can be portrayed as a civil war with "two sides", peace naturally appears as something virtuous and necessary, and conflict and dissent become seen as bad for democracy. Following this reasoning, the case for criminal accountability comes across as revenge. The "pacification of the Brazilian family" argument thus aims to create an imaginary national political unity. However, like Paul Ricœur points out in the case of crimes committed by state officials, wouldn't the problem with this unity be to «erase from official memory the examples of crimes that could protect the future from the failures of the past?»[72].

And finally, forgiveness. A remission of wrongs is also an image used to describe amnesty. But is it possible to have an anonymous and generic forgiveness? Is it the state or the victim-citizen who forgives? Even this association requires a shift in meaning, because, unlike what amnesty traditionally calls for, forgiveness presupposes memory, since it demands recognition of an offense[73]. Forgiveness that purports to be generic, without identifying the officers responsible for the dictatorship's serious human rights violations, is unlikely to bring justice to the victims. Thus, the logic of forgiveness – unconditional, asymmetrical, unrestricted – ends up being incompatible with an act of amnesty passed by the very regime responsible for the atrocities committed against its citizens.

Conclusion

Judicial rulings therefore play an ambiguous role in teaching constitutional history: on the one hand, their centrality to the understanding and analysis of contemporary constitutionalism is clear. On the other hand, it becomes evident, by observing the Brazilian Supreme Court's ruling on amnesty, that the justice system itself can be an instrument for disregarding crucial aspects of constitutionalism, such as the protection of fundamental rights and human dignity.

This is why it is essential to apply the «strategy of suspicion» proposed by Pietro Costa. We need to scrutinize, unveil and criticize the presuppositions – both explicit and unexplained – of judicial rulings. This is a core responsibility for constitutional history and must be taken seriously by those responsible for teaching it in law schools.

Both research and the teaching of legal history relate to current debates about the place of history in contemporary times. Authors such as François Hartog, Serge Gruzinski and Nicolas Offenstadt discuss the role of the historian in current society. The uses of history by extremist political ideologies, the emergence of negationist currents regarding the atrocities of the past, all this has led historians to call for a public dimension to historical knowledge[74].

All these thoughts highlight the key importance attached to the connection between history and present times. As we know, a large and thought-provoking body of literature exists on the interplay between the judge and the historian[75]. The works that deal with this connection always emphasize the differences and approximations between judicial activity and historical research. We don't intend to delve into this fascinating debate here, but it is interesting to point out an aspect stressed by Paul Ricoeur: judge and historian share the same deontology. Both professions have impartiality as their goal and horizon[76]. In this sense, Hartog points out that both are «third parties» who keep this close connection with the duty of impartiality[77].

However, as Ricoeur points out, judges have a crucial difference from historians. The judge needs to decide, he needs to finish analyzing the case. There is a time limit that must be fulfilled. For the historian, there is a greater openness: the writing of history is constantly being re-elaborated. The community of historians – and even readers – is constantly renewing methods, techniques and forms of research. And new sources can always be discovered. Writing is therefore not finished.

Such constant questioning of history can take place in a range of institutional and social environments. But there is one space from which it cannot be absent: the university. Law students also need to be part of this continuous movement of knowledge and criticism of history. According to Ricoeur, it is «an unlimited process of revision that makes the writing of history a perpetual rewriting»[78]. Professors, researchers, and students of legal history – and particularly constitutional history – are responsible for keeping this endless rewriting alive.

[1] On this subject, see the articles that appear in the dossier on constitutional history of the *Giornale di Storia Costituzionale (19, 1/2020) and the Rejur - Revista Jurídica da Ufersa (v. 6, n. 12, 2022)*. See also J. V. Suanzes-Carpegna, *Historia e historiografía constitucionales*, Madrid, Editorial Trotta, 2015; A. M. Hespanha, *Questões de etiqueta jurídica: se, como e por que a história constitucional é uma história jurídica*, in J. M. Carvalho, A. P. Campos (org.), *Perspectivas da cidadania no Brasil Império*, Rio de Janeiro, Editora Civilização Brasileira, 2011. In the Brazilian context, see A. Koerner, *Sobre a história constitucional*, in «Estudos Históricos», v. 29, n. 58, 2016; C. Paixão, *Percursos da história constitucional: parâmetros, possibilidades e fontes*, in C. Paixão; C. Paiva (edited by), *História Constitucional Brasileira: da Primeira República à Constituição de 1988*, São Paulo, Almedina, 2023.

[2] We could argue the same for Legal History in general. For an exception, see R. Jarvis (edited by), *Teaching Legal History. Comparative perspectives*, London, Wildy, Simmonds & Hill Publishing, 2014. The volume discusses issues related to Constitutional History, such as "Legal History and the U.S. Constitutional History", "Legal History and the Government", and "Legal History and Human Rights".

[3] The authors are grateful to Claudia Paiva Carvalho, Ana Carolina Couto, Francisco Rogério Pinto and Fernando Henrique Honorato, who read the first draft of the paper and made valuable comments.

[4] For the North American context, see R. Jarvis, (edited by), *Teaching Legal History. Comparative perspectives*, cit.

[5] R. M. Fonseca, *O deserto e o vulcão - Reflexões e avaliações sobre a História do Direito no Brasil,* in «Forum Historiae Iuris», June 2012, pp. 6-11.

[6] Fonseca, *O deserto e o vulcão - Reflexões e avaliações sobre a História do Direito no Brasil*, cit.

[7] Fonseca, *O deserto e o vulcão - Reflexões e avaliações sobre a História do Direito no Brasil*, cit., pp. 12-13.

[8] A. M. Hespanha, *Cultura Jurídica Europeia. Síntese de um milénio*, Coimbra, Almedina, 2019, pp. 14-23; A. M. Hespanha, *Legal History and Legal Education*, in «Rechtsgeschichte – Legal History», n. 04, 2004, pp. 41-45.

[9] Hespanha, *Cultura Jurídica Europeia. Síntese de um milénio*, cit., Hespanha, *Legal History and Legal Education*, cit.

[10] F. Freire, *História constitucional da República dos Estados Unidos do Brasil*, Rio de Janeiro, Typografia Moreira Maximino, 1894; A. Roure, *Formação constitucional do Brasil*, Rio de Janeiro, Typographia do Jornal do Commercio, de Rodrigues & C., 1914; A. Leal, *História Constitucional do Brazil*, Rio de Janeiro, Imprensa Nacional, 1915; M. Barcellos, *Evolução constitucional do Brasil*, Rio de Janeiro, Imprensa Nacional, 1933; W. M. Ferreira, *História do direito constitucional brasileiro*, São Paulo, Max Limonad, 1954.

[11] Fonseca, *O deserto e o vulcão - Reflexões e avaliações sobre a História do Direito no Brasil*, cit., pp. 5, 24.

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