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Using Oral Methods for European Legal History: Methods, Sources, Projects

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There is no need to justify the use of oral testimony in the field of contemporary (legal) history, and recourse to this genre of historical sources is not exclusive to contemporary (legal) historians. The institutionalisation of oral history as a sub-discipline began in the US during the 1960s with the establishment of the Oral History Association in 1966 and its journal *Oral History Review* in 1973. In Europe, during this period a variety of approaches emerged, pioneered by the English tradition of oral history led by Paul Thompson during the 1970s.¹ In »The voice of the past«, the founder of the journal *Oral History* (1969) and the Oral History society in the UK called for a more scientific status for the discipline, engaging in a methodological and substantive dialogue with other social sciences, in particular sociology and anthropology. The aim was to study the practice of preserving the testimony of common people – not just the »great men« of the elites – in their everyday lives. These studies were to include not just »historical moments« and »hard facts«, but also emotions and experiences. The process of historicizing the personal lived experiences of social actors requires the mediation of social scientists; by generating various types of oral testimony these scholars create meaningful insights that can be used, like any other historical source, to interpret the larger structures and historical trends of a particular period and space.²

We are delighted and honoured to edit this focus section on the use of oral history for research on contemporary European legal history. In doing so, we can include a British contribution that stems directly from this pioneering European tradition: the Parliament Oral History Project. In this first contribution, Emma Peplow and Priscilla Pivatto, who are responsible for this ambitious project, provide us with some of the key reflections from this tradition applied to an institution of near mythical status in European legal history: the British Parliament. They describe not only the

methodological principles and operational choices for this project on the life stories of UK Members of Parliament (MPs), but also focus on a particular example of legal and historical relevance: the approval of the bill permitting abortion. Further information on this project can be found in their recent monograph, where they thematically and chronologically analyse the political lives of MPs.³ The politicians were interviewed within the framework of a formal project managed by both a historian (Peplow holds a PhD in history from the London School of Economics and Political Science) and a lawyer (Priscilla Pivatto holds a PhD in public law from the University of São Paulo). The project has been running for nearly a decade, and there are structural reasons for it to continue on a permanent basis, given the growing number of actors it has analysed.

After this strongly institutionalised project covering a venerable establishment, the second contribution focuses on an oral history of a much younger institution: the European Parliament. Contrary to what might be expected, this project was not initiated by the institution itself, with the intent to glorify its past. It is, rather, a modest – but valuable – bottom-up, private initiative without institutional support. It was set in motion by a particular type of actor in parliamentary life: retired top civil servants of the European Parliament. They inject continuity into an institution where the main actors, the Members of the European Parliament, are regularly changing, even if few of them remain in office for a long time. The contribution is written by Alfredo de Feo, former Director of the library and archives of the European Parliament, and Michael Shackleton (PhD in international studies, University of Warwick), formerly responsible for the European Parliament TV Channel. Both have previously done research and teaching on the European Parliament. They present an overview of how useful a modest project like this can be for researching certain key legal issues

1 THOMPSON (1988).

2 WALLENBORN (2006).

3 PELOW/PIVATTO (2020).

in the short, but intense, life of the Parliament. They focus on the role of soft law and informal politics in inter-institutional relations (scrutiny of the Commission, parliamentary majorities) in the expansion of the key functions of the institution, which has only been directly elected since 1979. They provide just a small example of the more detailed chapters that can be read in their 2019 co-edited monograph, where they and other top former civil servants use oral interviews with MEPs to analyse some of the key moments in the history of the European Parliament and its contribution to the development of the European Union.⁴ This »history from below« is also a »history from within«; this allows us to re-visit key moments through the eyes of those who experienced them, the MEPs, and first-hand observers, the civil servants of the Parliament.

Of course, legal history research on the European project should not omit the history of European courts, which are further key actors alongside parliaments and executives. The final two contributions of this focus section address them. The first is a comparative project designed by Nina-Louisa Arold Lorenz (JSD Stanford). In her doctoral and postdoctoral research, she collected more than 50 interviews with judges, advocates general and senior administrative staff of the European Court of Human Rights in Strasbourg (established in 1959) and the Court of Justice of the European Union in Luxembourg (1952).⁵ Her project aimed to uncover the European human rights cultures of both European courts in order to understand how a complementarity can exist between two Courts that have evolved in parallel for more than 60 years, although they operate in separate legal spheres that prevent direct legal interactions between them. The methodological approach here is very different because of the applied nature of the research, which used oral testimonies to enquire about this particular topic and did not intend to make the content of the interviews accessible or public. In a way, this is the typical approach of social scientists, who make use of structured interviews as a complementary source to test various research hypotheses.⁶ These interviews are elaborated after a systematic analysis of available written sources,

such as, in this particular case, the judgments related to human rights in both courts. Dr Lorenz attempted to deconstruct the thick notion of »legal culture« through structured interviews about ideas, values, expectations and attitudes of the actors that make the institution.

But as shown by the second article presented here about an apex court, the Spanish Constitutional Court, historians and lawyers may use oral history not just for research, but also for constructing and elaborating a broader public memory of key legal institutions in a democratic state. This is the great ambition of two Spanish professors of administrative and constitutional law, Miguel Beltrán (University of Castilla-La Mancha) and Daniel Sarmiento (Complutense University Madrid). Their aim is to preserve the testimony of the first judges of the Spanish Constitutional Court and enquire as to the origins of this young court (established in 1980) through the creation of a documentary.⁷ This is yet another initiative from below and without much internal institutional support, although Beltrán had served as law clerk at the Court and Sarmiento in a similar function at the European Court of Justice. They developed the project to fill a research gap by focusing on the historical origins of the Court and its founding, which is often a decisive period for any institution, with important organisational choices, which are path-dependent beyond this formative period. In a way, these two scholars made methodological choices very much in line with what is now being experimented with and used in the growing field of public history, where non-professional historians aim to elaborate the memory and history of the past in the public sphere.

We hope that readers will agree that these four distinct projects show the benefits that legal historians can reap from the use of oral sources. This might simply involve structured interviews for specific topics for exclusive use, the creation of oral archives with life stories from key legal actors for public access or projects in which oral testimonies serve for memorial purposes and documentaries. Oral history can also facilitate the preservation of public and private written sources, most importantly private papers (diaries, agendas, personal

4 DE FEO/SHACKLETON (2019).

5 AROLD LORENZ (2007); AROLD LORENZ/GROSSOT/PETURSSON (2013).

6 DELLA PORTA (2010).

7 BELTRÁN/SARMIENTO (2017).

notes), which can help to advance our understanding of the past. Taken seriously, oral history, and more broadly public history, can serve to complement legal historians' use of qualitative data and the more recent trend towards quantitative methods, such as using big data as developed in the field of digital humanities. The »voices of the past« are of fundamental importance for contemporary legal history and provide us with a variety of uses, as illustrated by the four projects presented in this focus section. But it should be emphasised that these are not conclusive. Legal historians can draw upon many further approaches and traditions. The French school of oral history of the public administration, for example, has for nearly two decades provided both new insights on methods and practices of oral history for the study of law-making institutions in government and other executive bodies.⁸ Indeed, any oral history programme will

have to start by taking stock of these various traditions and methods before customising its own approach based on its own research object and scientific endeavour.

We are extremely grateful to our contributors. Three of the following four contributions were presented at a workshop in February 2018, organised by what was then the »Max Planck Institute for European Legal History« on the use of oral sources for the study of European legal institutions. The recent change in name to »Max Planck Institute for Legal History and Legal Theory« is but a reminder that institutions constantly evolve, their personnel changes and institutional memories can fade away quickly. Oral histories are the historian's tool to prevent them from falling into obscurity once and for all. ■

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8 DESCAMPS (2006); DESCAMPS (2019).