

PAPER PROPOSAL

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PAPER PROPOSAL TITLE

Digital resources for the study of Spanish Law during the 19th Century: the formation of a database of judicial jurisprudence of the Spanish Supreme Court until the promulgation of the Civil Code in 1889.

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ABSTRACT (150-300 words)

The analysis of sources for the study of Spanish Law in 19th Century presents many advantages in relation to previous periods, mainly due to the number of printed sources available and because the typography used is quite similar to the one we use today. However, one of its drawbacks, especially in relation to legal sources, is that the volume of information increased exponentially throughout the century because of the establishment of one of the constituent principles of the liberal regime in the countries belonging to the Civil Law System: the publicity of the law.

During this century, the bases of current archival and documentation techniques began to be laid in order to make easier consulting published legal sources, but the forms of cataloguing at that time were not always the most effective for retrieving the information. Today, many of these sources have been digitized and published openly, but the way for searching for information have not changed substantially since the 19th century. In other words, we have changed the physical format for the virtual one, but the form of consultation has hardly evolved. It is necessary to begin to develop new tools, based on a deep knowledge of the past, which in this case will be provided by the legal historians, with the support of experts in documentation and new technologies. This will improve the method of consultation and open the door to new research.

In this sense, at the Universidad Pontificia Comillas de Madrid we have been working for three years on the formation of a database on historical judicial jurisprudence — fundamentally in civil matters — of the Spanish Supreme Court in the 19th century, on the basis of the judicial jurisprudence reports that were carried out in the period, especially those formed by José María Pantoja for the famous *Revista General de Legislación y Jurisprudencia*.

PAPER SUBMISSION (up to 1200 palabras):

On January 1st, 2004, the “Boletín Oficial del Estado”, the official Gazette of Spain, under the direction of Julio Seage, published digitally, openly and free of charge, all of its

documentary collections. This project brought together the historical collections in database called GAZETA, a name that refers to the "Gaceta de Madrid", the first Spanish publication of official information. Initially, this historical database only included the funds between 1898 and 1967; but fifteen years later, it facilitates access to around 1,450,000 documents, which contain the provisions and news that were published in the different official newspapers between 1661 and 1959.

This database is an enormously useful tool for legal historians who want to deepen their knowledge of the 19th and 20th Centuries. However, the consultation poses some problems. Some of them are related to the Gaceta's nature itself, because not all the provisions of the time were published in this collection, a difficulty that would be solved by the digital publication of the *Colección legislativa de España*, in one of the many of the denominations it received. Other problems are related to the database design. Setting aside the unequal quality of digitisation of the documents, the incorporation of records has been based on the historical indexes of the publication, which are not always effective in recovering information, especially if we bear in mind that documentary science and the legal-political order itself were in full construction at the time when the indexes were created.

One of the contents of *Gaceta de Madrid* whose consultation is truly complex is that relating to the judicial jurisprudence established in the judgments of the Spanish Supreme Court. Mostly, the published judgments don't have a short description. The only thing indicated in the majority of titles is "Sentence". It is also not possible to search by the date on which the decision was issued. In other words, the only way to recover a sentence is to know exactly when it was published in the *Gaceta*. In this way, most of the researchers who want to deepen their knowledge of nineteenth-century jurisprudence continue to consult the collections, official and private, available in physical format, as our ancestors did.

However, in order to understand the true role played by judicial jurisprudence in the formation of the Law of the countries with a Civil Law system, it is absolutely necessary to have technological tools that allow us to analyse information in mass. Despite the fact that in these countries judicial jurisprudence is not usually considered a Source of Law in a formal sense, but, especially in the 19th Century, it contributed decisively to dismantling institutions belonging to the Old Regime; to adapting historical legislation to the liberal context; to delimiting the new institutions whose implementation posed innumerable difficulties; and even to creating new institutions in the face of the insufficiency of written laws. Only in this way will we be able to determine the true role of the judicial jurisprudence had in these countries at the time of forming the legal concepts and categories, especially the ones related with Civil Law. In addition, the comparative analysis of judgments will make it possible to analyse the dismantling of the model of jurisdictional justice and the progressive establishment of a model of legal justice. The Spanish case is particularly interesting. During the reign of Isabella II there was the establishment of the

cassation appeal in Spain, whose origins date back to Royal Decree of 4 November 1838, which established the nullity appeal, although until the Civil Procedure Law of 1855 will not be established a civil cassation in a strict sense. But it was not until 1889 that our Civil Code was promulgated, which, on the other hand, did not achieve the much desired (by liberals) unity of legislation, perpetuating a system of plurality of particular civil laws in different Spanish territories, which are known as "Derechos forales".

First of all, it is necessary to reflect on the way in which all judicial decisions were made known to society. The budget for all forms of publicity of the decisions and actions of the public authorities is based on the existence of an "institutional structure that (makes) it possible to formulate and communicate them". From the normative point of view, historiography has paid greater attention to the publicity of legal enactments, while the publicity of judgments has been treated only marginally. Therefore, before proposing a reorganisation of the instruments for consulting judicial jurisprudence, we must understand the process of establishing the publication of judgments. Thus, on August 17th, 1839, for the first time, a judgement dictated in an appeal for nullity by the Supreme Court of Spain was published in the *Gaceta de Madrid*. When the *Colección de Decretos* became the *Colección Legislativa de España* by the Royal Decree of 6 March 1846, the decisions and reasoned judgments of both the Royal Council and the Supreme Court of Justice, dispersed among laws, decrees, Royal orders and regulations, were incorporated into it; and by the Royal Decree of 6 June 1856, they were placed separately and in order of dates, after the chronological and alphabetical indexes of the normative provisions. By the Royal Order of 1 July 1860, the *Colección Legislativa* divided its contents into four annual volumes: two with the legal provisions, one with judgments of the Supreme Court of Justice and another with the resolutions of the Council of State. Finally, from 1874, in view of the volume of resolutions due to the increase in matters subject to cassation, they were no longer published in the *Gaceta de Madrid*, making the *Colección Legislativa* the only official publication in which jurisprudence would be collected until 1985. In addition, together with the official publications, very interesting particular initiatives arose and contributed greatly to the dissemination of judicial jurisprudence. Particularly noteworthy is the work carried out by the *Revista General de Legislación y Jurisprudencia*, which published its own collection of judicial jurisprudence since 1860, and whose consultation was facilitated by several Judicial Reports (Repertorios) prepared by José María Pantoja y Agudo, on the following matters: civil (1838-1882), criminal (1870-1887) and administrative (1846-1868).

This is a very brief summary of the origin of a research project in which, for more than three years, a team made up of legal historians, professors of positive law, computer engineers and professors of librarianship and documentation, have been working at the Universidad Pontificia Comillas de Madrid, with the help of some volunteer students, to form a database that allows consultation and analysis as a whole of the judgments issued by the Supreme Court, at least until the promulgation of Civil Code in 1889. We are about

to conclude the first phase of this project, which has focused on the design of a database, with a basic structure, composed of all the judgements issued during the reign of Isabella II of Spain. I hope I can share our first conclusions and all the difficulties we have faced in our process and explain the design of this tool, in the Conference “Digital Methods and Resources in Legal History”, organized by an institution as prestigious as the Max Planck Institute for European Legal History.

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