



## INTRODUCTION

**Celebrating Bob Gordon's  
*Taming the Past***

Ariela J. Gross\* &amp; Susanna L. Blumenthal†

Bob Gordon's most famous article, *Critical Legal Histories*, published in the pages of the *Stanford Law Review* in 1984,<sup>1</sup> was an instant classic, and it is not too much of an exaggeration to say that it redefined the field of legal history and set the agenda for two generations of legal historians. The article is nonetheless but a piece of Gordon's wide-ranging and hugely influential body of scholarship on critical historicism, a representative sampling of which has been gathered together in the volume *Taming the Past: Essays on Law in History and History in Law*.<sup>2</sup> As numerous speakers at the Stanford Law School conference marking its publication noted, the sum of the work is even greater than its parts, making us see his influence in a new light altogether. With generosity and enthusiasm for the creative potential of legal history and historians, Gordon has shown us the many ways history animates, disturbs, challenges, and upends received wisdom, especially the view that things have always been and must always be a certain way. It is the untamable past that electrifies Gordon's essays, from his brilliant disquisitions on scholars from F.W. Maitland to Owen Fiss, to his penetrating critiques of originalism on today's U.S. Supreme Court and the uses of history in legal regimes confronting a shameful past.

*Taming the Past* speaks to legal practitioners as well as the academy, as Gordon reminds us that "the historicized past poses a perpetual threat to the legal rationalizations of the present."<sup>3</sup> The volume "tracks [Gordon's] central focus on

---

\* John B. & Alice R. Sharp Professor of Law & History, University of Southern California Gould School of Law; 2017-2018 Fellow at the Center for the Advanced Study of the Behavioral Sciences, Stanford University.

† William Prosser Professor of Law, Professor of History, and Co-director of the Program in Law and History, University of Minnesota.

1. Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57 (1984).

2. ROBERT W. GORDON, *TAMING THE PAST: ESSAYS ON LAW IN HISTORY AND HISTORY IN LAW* (2017).

3. ROBERT W. GORDON, *Introduction* to *TAMING THE PAST*, *supra* note 2, at 5.

the history of legal thought, especially the complex relationships among law, legal practice, and the American state from 1870 through the present.”<sup>4</sup> It is divided into three parts, which respectively concern the common law tradition in legal historiography, particularly as embodied by Oliver Wendell Holmes; legal historians; and history and historicism in legal history and argument.

All of the Reflections raise important questions about how much is truly contingent and how much is structurally determined; about what in legal culture and professionalism is worth preserving and elaborating; and about how legal historians can further the pursuit of justice by telling critical stories about the past and the present. Susanna Blumenthal takes as her topic the metaphor of the untamable dragon of legal history from Holmes’s *Path of the Law*<sup>5</sup> and meditates on the model Gordon offered of what it means to be a legal historian. Ariela Gross focuses on Gordon’s essay *Undoing Historical Injustice*,<sup>6</sup> considering it in light of recent controversies over remembering and redressing the slave past. Roy Kreitner takes an institutional perspective on political economy that draws on Gordonian insights about the indeterminacy of law. Sara Mayeux applies critical historicism to a contemporary case in which legal actors are using historical narratives to shape their legal arguments. Kunal Parker takes stock of a central feature of Gordon’s critical legal historicism: historical contingency in legal history. Claire Priest returns to the early Americanist legal historians Gordon wrote about in the 1980s and 1990s and suggests that Gordon’s generosity may have obscured the limitations of their approaches. David Rabban offers a reassessment of Gordon’s work on the history of nineteenth century U.S. legal historiography, reflecting on the implications and broader significance of scholarly modelings of the relationship between law and history. Reva Siegel engages with the relationship between critical historicism and the pursuit of justice for subordinated people, arguing that structural determinacy is stronger than Gordon suggested. And in his Final Remarks, John Witt reflects on the relationship between Gordon’s ideas of the constitutiveness and contingency of law on the one hand and the law’s legitimacy or lack thereof on the other, arguing that in fact law’s legitimacy rests on far more than just its autonomy.

Together, the Reflections make plain the myriad ways Gordon’s writings on law in history and history in law have shaped, and continue to shape, the vibrant field of legal history. While they can only hint at the riches to be found in the pages of *Taming the Past*, they testify to the vital importance in the past, present, and future of Gordon’s ongoing work as a scholar, teacher, and critic of legal thought and practice.

---

4. John Fabian Witt & Sarah Barringer Gordon, *Foreword to Taming the Past*, *supra* note 2, at x.

5. O.W. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457 (1897).

6. GORDON, *Undoing Historical Injustice*, in *TAMING THE PAST*, *supra* note 2.