ARTUR LIS

Legal Archaeology and Contemporary Legal Practice

Abstract

This paper identifies conditions for using legal archaeology in contemporary legal practice and education. A critical reading of selected scholarship in legal history, legal aesthetics and legal education supports the argument that the field can inform contextual evaluation of evidence and scrutiny of the material and symbolic conditions of institutional action. The analysis distinguishes an object's function, the representation of authority and its social reception. Judicial space, authentication and ritual illustrate the possibilities and limits of historical comparison, including its relevance to digitalisation. A teaching model combines source criticism, functional comparison and reasoned recommendations, with participant observation proposed for future evaluation. The conclusions are theoretical and methodological; the paper reports neither original fieldwork nor demonstrated educational outcomes.

KEYWORDS: legal archaeology, legal culture, legal aesthetics, legal education, legal practice, materiality of law

ARTUR LIS – PhD in law, John Paul II Catholic University of Lublin, e-mail: arturlis@kul.pl, ORCID – 0000-0003-4613-0671.

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1 Introduction

What can the study of an old courtroom, a seal or an oath contribute to the work of a contemporary lawyer? The question concerns more than the preservation of an academic subject. It asks what counts as practical legal knowledge and whether professional competence includes understanding how institutions organise encounters with those subject to their authority. Legal archaeology offers a useful perspective because it connects legal arrangements with objects, places and actions through which they became operative. Its contribution requires explanation, however: the historical importance of an artefact does not by itself establish its usefulness in present legal practice.

The Polish discussion has a substantial historical foundation in Witold Maisel's work on Polish and European legal archaeology.[1] Danuta Janicka has more recently examined the educational uses of material legal heritage.[2] Building on that discussion, the present article asks how the study of such sources can be translated into identifiable professional tasks without treating its educational benefits as already demonstrated.

The familiar opposition between theoretical and practical legal education is insufficient to answer that question. Learning how to identify an applicable provision is indispensable; deciding what evidence supports its application and recognising obstacles to participation also require judgement. Historical enquiry may contribute to these activities when it makes the relationship between evidence and interpretation explicit. Conversely, a lecture on symbols can remain intellectually passive even if its subject matter is humanistic. The relevant distinction therefore concerns the quality of learning and reasoning, rather than a fixed division between useful doctrinal subjects and non-useful historical ones. Kocemba and Stambulski's study of judicial and prosecutorial trainees illustrates the ambiguity: respondents frequently called for more

1 Witold Maisel, *Archeologia prawna Polski* (Warszawa–Poznań: Państwowe Wydawnictwo Naukowe, 1982); Witold Maisel, *Archeologia prawna Europy* (Warszawa–Poznań: Państwowe Wydawnictwo Naukowe, 1989).

2 Danuta Janicka, "Materialne dziedzictwo prawne i jego wykorzystanie w edukacji prawniczej. Walory wykładu z polskiej archeologii prawnej" *Krakowskie Studia z Historii Państwa i Prawa*, No. 1 (2024).

practical university teaching, but often left the meaning of practical education unspecified.[3]

The central claim advanced here is conditional. Legal archaeology can contribute to practice by training contextual evaluation of evidence and by identifying material and symbolic arrangements that deserve legal scrutiny. This contribution depends on three requirements: the reconstruction must be supported by sources; historical explanation must be distinguished from contemporary evaluation; and any proposed professional or educational benefit must be specified in terms that permit examination. The claim is more limited than the proposition that material heritage necessarily produces trust, ethical conduct or attachment to the rule of law.

The method is a problem-oriented critical reading of selected scholarship. Sources from legal history, archaeology, legal aesthetics and legal education are selected for their relevance to evidence, institutional communication and professional judgement. This is not a systematic review or an international survey of curricula. The contribution consists in connecting source criticism to professional tasks and an assessable teaching sequence. The examples develop analytical questions from the literature; they are not new archaeological investigations. Contemporary comparisons concern functions rather than presumed lines of uninterrupted institutional descent.

Three questions structure the analysis: what distinguishes legal archaeology from neighbouring approaches; what material and ritual sources can establish about legal authority; and how those distinctions can inform practice and education. Participant observation is considered as a method for future evaluation, not as a method employed in this paper.

2 | The Scope and Evidential Discipline of Legal Archaeology

In the Polish tradition, legal archaeology encompasses material remains serving legal functions, signs, official attributes and documented ritual forms. Maisel nevertheless qualified its scope in relation to disciplines

3 Karolina Kocemba, Michał Stambulski, *Dydaktyka ma znaczenie. Aplikacja sędziowska i prokuratorska w Polsce* (Wrocław: Centrum Edukacji Prawniczej i Teorii Społecznej, Inicjatywa Wydawnicza „Chiazm", 2020), 28–29.

such as sigillography and diplomatics.[4] The term is used here for enquiry into material legal culture and documented legal action, including their intersections with those disciplines. A standing courthouse can be relevant without having been excavated. This scope does not make every historical investigation of a legal rule an archaeological enquiry.

Emma Nottingham distinguishes several relationships between law and archaeology and asks when archaeological language identifies a research approach rather than a metaphor.[5] This distinction is essential. Reconstructing a dispute from documents and interpreting material remains can both be called legal archaeology in different scholarly contexts, but their evidential operations need to be specified. The present analysis concerns material legal culture and documented forms of action.

Nottingham's study of case-based legal archaeology makes the methodological difference clearer. It reconstructs the circumstances of litigation through sources extending beyond published judgments and proposes stages of investigation from initial selection to interpretation and final analysis.[6] Its emphasis on unexpected findings challenges a reconstruction that merely confirms an established account. The framework proposed below shares this openness but addresses a different evidential problem: how to establish the legal function of an object, place or action. A common name therefore indicates a possible exchange of methods, not an identity of research objects or procedures.

A further distinction concerns the law governing archaeology, including excavation, ownership of finds and heritage protection. Zeidler and Trzciński's

4 Witold Maisel, "Archeologia prawnicza (Zarys problematyki)" *Czasopismo Prawno-Historyczne*, No. 2 (1967): 14–15. For a broader account of signs of authority and law, encompassing material objects and legal ritual and emphasising their context and connections with neighbouring disciplines, see Józef Szymański, *Nauki pomocnicze historii*, 6th ed. (Warszawa: Wydawnictwo Naukowe PWN, 2004), 535–537. For the role of the auxiliary sciences of history in the examination and criticism of historical sources, see Władysław Semkowicz, *Encyklopedia nauk pomocniczych historii*, 2nd ed. (Kraków: Universitas, 2011), 9, 11–13.

5 Emma Nottingham, "Law and Archaeology," [in:] *Law and Humanities*, ed. Daniel Newman, Russell Sandberg (London: Anthem Press, 2024), introduction, "Legal Archaeology – Methodology or Metaphor?" (online preview).

6 Emma Nottingham, "Digging into Legal Archaeology: A Methodology for Case Study Research" *Journal of Law and Society*, 49, suppl. 1 (2022): S18–S19, S22, S24, S27.

Wykład prawa dla archeologów addresses this interface.[7] Legal archaeology instead asks what material evidence reveals about legal arrangements. The enquiries intersect when the reconstruction of an object's significance informs a heritage assessment. Historical significance and the fulfilment of a contemporary statutory condition nevertheless remain separate propositions.

The international discussion broadens the possible subject matter. Kevin P. Smith and Andrew Reynolds advocate investigation beyond the written records of literate states, encompassing governance, punishment, exclusion, standards and property.[8] This corrects a selection confined to prestigious buildings and insignia: legal ordering also concerns ordinary exchange and contested access. Their approach should not simply be equated with Maisel's programme. It makes the existence of legal ordering in societies without familiar state institutions a research question, rather than requiring those institutions as a starting point.

For the purposes of this article, four evidential operations are proposed. First, identify the object or practice and establish its provenance, date, alterations and degree of preservation. A restored monument, a later replica and a contemporary depiction do not offer interchangeable evidence. Secondly, reconstruct its legal function by relating the material to documentary, iconographic or other contextual sources. Thirdly, test alternative explanations: a room may have served several purposes, and an object bearing an emblem may have commemorated authority rather than exercised it. Finally, state the limits of the conclusion, including missing evidence and the distance between the object's original setting and its present display.

Maisel supplies a concrete example: a stone cross erected by a killer as part of reconciliation must be distinguished from one erected by the victim's family as a memorial.[9] Similar appearance does not establish the same legal function. More generally, a plan may prescribe an arrangement without showing how it was used, and a ceremonial description may record an ideal sequence rather than an event. Where a ritual survives through text or image, the analysis must

7 Kamil Zeidler, Maciej Trzciński, *Wykład prawa dla archeologów* (Warszawa: Wolters Kluwer, 2009).

8 Kevin P. Smith, Andrew Reynolds, "Introduction: The Archaeology of Legal Culture" *World Archaeology*, No. 5 (2013): 687–692. For Maisel's state-centred scope, see Maisel, "Archeologia prawnicza," 18.

9 Maisel, "Archeologia prawnicza," 17.

identify that medium and its conventions instead of treating the reconstructed action as directly observed.

Preservation creates a further limit: institutional collections cannot be assumed to represent experiences omitted from official records. The absence of a monument likewise cannot establish the absence of legal ordering. Conclusions must reflect the surviving evidence, including its gaps. The field's contribution therefore lies in relating material traces to legal functions through source criticism and interdisciplinary cooperation; it need not rest on a claim to explain all institutional authority.

3 | Material Culture and the Limits of Legal Legitimacy

Legal aesthetics connects historical objects with the representation of law. Kamil Zeidler's *Estetyka prawa* includes legal archaeology, legal symbols and the trial as spectacle; his earlier study distinguishes internal and external approaches to legal aesthetics.[10] These perspectives direct attention both to representations of law and to aesthetic features within legal activity. They do not establish that a solemn or coherent representation is just.

The present analysis therefore distinguishes three questions. What legal function did the object or action perform? What image of authority did it communicate or seek to communicate? How did particular audiences receive that image? Evidence sufficient for one question may be insufficient for another. A municipal emblem may identify an institution, while a ceremonial arrangement may display rank. Neither observation establishes that the public trusted the institution or regarded the hierarchy as legitimate. Claims about reception require additional evidence, such as accounts of use, disputes, resistance or participants' testimony.

The relationship between law and myth provides a further line of enquiry. Jolanta Jabłońska-Bonca's *Prawo w kręgu mitów* is an important point of

10 Kamil Zeidler, *Estetyka prawa* (Gdańsk–Warszawa: Wydawnictwo Uniwersytetu Gdańskiego-Wolters Kluwer, 2018), contents, secs. 6.1, 6.3 and 6.6; Kamil Zeidler, "Estetyka prawa – ujęcie zewnętrzne i wewnętrzne," [in:] *Integracja zewnętrzna i wewnętrzna nauk prawnych*, pt. 2, ed. Małgorzata Król, Adam Bartczak, Monika Zalewska (Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2014), 62–65.

reference in this discussion, also acknowledged by Zeidler.[11] The proposition advanced here is that institutional representations should be examined for what they disclose and what they leave unexamined. An appearance of continuity can obscure change; a representation of impartiality can coexist with unequal opportunities to speak. Whether this occurs in a particular setting remains an evidential question.

This distinction changes the treatment of punishment. Smith and Reynolds include places of punishment and exclusion within the archaeology of legal culture.[12] The analytical consequence is that making authority visible and justifying its exercise are separate matters. A punitive object should prompt enquiry into sanction, audience and status, including the position of the person punished. Its communicative force cannot itself supply a justification for the practice.

Legal ritual requires a similarly differentiated account. A gesture can identify an office-holder, order participation, authenticate an action or express a commitment. Whether failure to perform it affected legal validity depends on the relevant normative arrangement. An oath does not become legally binding simply because it is solemn, and a judgment does not acquire authority solely through ceremonial performance. The study of historical legal forms must therefore distinguish constitutive formalities, evidential acts and conventions of conduct. Their functions may overlap, but that overlap has to be demonstrated in the particular setting.

The distinction has consequences for contemporary evaluation. Formal validity concerns the requirements of the applicable legal order. Empirical legitimacy concerns attitudes towards an institution's authority. Normative justification concerns the reasons for considering an arrangement acceptable. These questions cannot be answered by a single observation about visibility. An institution can be recognisable without being trusted, and trusted without meeting an appropriate standard of justice. Legal archaeology contributes by supplying evidence and exposing assumptions; the standards used to evaluate a present arrangement must be independently defended.

11 Jolanta Jabłońska-Bonca, *Prawo w kręgu mitów* (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 1995). For the acknowledgement of this connection, see Zeidler, *Estetyka prawa*, introduction, note 10.

12 Smith, Reynolds, "Introduction", 690–691.

4 | From Historical Objects to Professional Judgement

Practical relevance can be specified through the reasoning required by a task. Three analytical examples concern judicial space, authentication and institutional roles. In each, historical enquiry identifies a problem while contemporary legal analysis determines its present significance. The examples are illustrative applications of the framework rather than findings from field investigations.

Judicial space provides the first example. Linda Mulcahy's *Legal Architecture* connects the setting of the trial with justice, due process and participation.[13] Entrances, barriers, seating and audience space can be investigated alongside records of use to establish how a historical courtroom organised legal roles. An arrangement that appears hierarchical to a present observer should not be assigned a uniform meaning across periods or jurisdictions.

Judicial space need not take the form of a dedicated building. Oskar Kanecki's account of the *kopa* courts in the Grand Duchy of Lithuania describes designated outdoor assembly sites, commonly near churches and less often near manor houses. Convening at an undesignated site could be challenged as unlawful, although inspection of traces of an offence could require moving elsewhere.[14] This example shows why visibility, territorial accessibility and the legally recognised place of adjudication must be examined together. A surviving site requires documentary interpretation before its procedural significance can be established; conversely, the absence of a courthouse does not imply the absence of an organised judicial setting.

The professional comparison asks whether a party can hear, understand, address the court and communicate with a representative. Spatial arrangements may be relevant without determining the legal answer. Article 6 of the European Convention on Human Rights provides an independent reference for fair and public proceedings within its scope and for specified

13 Linda Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law* (Abingdon: Routledge, 2011).

14 Oskar Kanecki, "Sądy kopne w Wielkim Księstwie Litewskim" *Prawo i Więź*, No. 2 (2026): 563.

defence guarantees in criminal cases.[15] Historical architecture helps identify arrangements requiring scrutiny; applicable law supplies the legal standard.

Consider a hypothetical room in which a partition limits contact between a party and counsel. An adequate assessment would distinguish the arrangement, evidence of its effects, the reasons for its use and applicable legal requirements, then examine alternatives. The archaeological contribution is the habit of investigating spatial organisation. It does not establish that every partition is impermissible or that its removal would resolve all problems of participation.

Instruments of authentication provide a second example, at the boundary with sigillography and diplomatics. Maisel primarily assigned seals to the relevant auxiliary discipline, while allowing that legal archaeology could not disregard them entirely.[16] The proposed exercise concerns that intersection. The matrix, an impression, the document bearing it and a later reproduction must be distinguished. Institutional attribution and the legal consequences of use raise separate questions. A recognisable emblem cannot alone establish that an act was issued by an authorised person.

For present practice, the transferable operation is the separation of appearance, provenance and authority. A lawyer considering a document should identify which feature supports which proposition, seek corroboration and state what remains uncertain. This is particularly relevant when an image of an object is offered as evidence of the object itself. A photograph may show an inscription but not establish authenticity, material composition or the circumstances in which it was made. The value of historical training lies in disciplined questioning, not in conferring archaeological expertise on a lawyer or displacing procedural rules on evidence.

Official dress supplies the third example, drawing on its place in Maisel's classification of legal forms.[17] The proposed exercise distinguishes identifying an office from establishing its holder's legal competence. Students can examine whether a convention assists identification and orderly participation or imposes an unjustified barrier. Familiarity is an inadequate justification, just as historical origin is an inadequate objection. The same

15 Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, ETS no. 5, art. 6, https://www.echr.coe.int/documents/d/echr/convention_ENG.

16 Maisel, "Archeologia prawnicza", 14–15.

17 Ibidem, 19–20.

distinction can inform the analysis of oaths: expressing a commitment and complying with it are different matters.

These examples identify the contribution and its limits. Legal archaeology informs questions, source evaluation and institutional recommendations. Applicable law and contemporary evidence remain necessary to assess a present practice. In heritage work, reconstructing legal significance may assist a conservator, curator or adviser, but it does not replace specialist assessment of protection or ownership.

5 | Digital Mediation and the Transformation of Legal Communication

Digitalisation brings the preceding questions into a different setting. It is misleading to describe that setting simply as a disappearance of materiality. Remote proceedings still depend on rooms, screens, microphones and the placement of bodies, while electronic transactions depend on devices and technical infrastructure. What changes is how participants encounter one another and recognise institutional actions. The appropriate research question is which functions have been relocated, which have been redesigned and which have become difficult to perform.

Richard Susskind's *Tomorrow's Lawyers* addresses professional change, online courts and the preparation of future lawyers.[18] This agenda makes historical comparison relevant to the functions that changing arrangements are expected to perform: authenticating an act, organising participation or communicating a decision. The proposal here is to evaluate those functions rather than measure success by the retention of traditional symbols.

Jabłońska-Bonca's study of remote and traditional hearings supplies a documented contemporary example. Its empirical material includes observations of remote civil hearings conducted by a student research group in 2022; the article records difficulties involving connection, audibility and participation.[19] These observations direct attention to the conditions under which an institutional encounter takes place. They do not demonstrate that

18 Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future*, 3rd ed. (Oxford: Oxford University Press, 2023), chaps. 14 and 18–19.

19 Jolanta Jabłońska-Bonca, "Wejście do sali rozpraw. Analiza porównawcza norm zachowania uczestników rozprawy zdalnej i tradycyjnej" *Prawo i Więź*, No. 2 (2023): 77–78, 86–87.

remote hearings are inherently inferior. Comparing entry into a courthouse with admission to a remote hearing instead raises a question about how participants recognise their roles and the commencement of proceedings.

The professional assessment should address intelligibility, participation and accountability. Can the participant identify the decision-maker and distinguish an official communication from an unauthorised one? Can the participant follow the proceeding, obtain help and indicate a failure of communication? Is it clear when an action has been completed and how to challenge its outcome? These are proposed questions for evaluation, not claims that all digital systems fail them. They can be translated into observations and user tasks rather than inferred from an interface's visual resemblance to a courthouse.

Historical comparison can reveal an unnoticed assumption. A familiar gesture may have marked a procedural transition whose function could be fulfilled through another convention. Conversely, retaining an emblem may leave a user uncertain about institutional responsibility. The comparison concerns function, not legal identity: a digital confirmation and a historical seal have different technical and legal foundations.

Both gains and losses remain open to investigation. Remote access may reduce travel burdens while introducing difficulties associated with communication, privacy or support. Historical analogy cannot establish their extent. Observation, accessibility assessment and participants' evidence are required. Legal archaeology can guide the questions; evaluation of a particular system requires methods appropriate to its users.

6 Legal Education and the Assessment of Learning

Legal education offers a setting in which the proposed contribution can be tested. Kocemba and Stambulski distinguish the benefits attributed to active professional training from the civic and critical capacities that university education should develop.[20] Their findings concern trainees' accounts of a particular institutional setting; they do not establish that a teaching method has the same effects everywhere. They nevertheless sharpen the question for legal archaeology: does teaching invite reasoned enquiry into institutional

20 Kocemba, Stambulski, *Dydaktyka ma znaczenie*, 31–33.

practices, or merely substitute images of monuments for propositions to be memorised?

Wojciech Zomerski's analysis of juristic scientism questions whether passive memorisation fulfils either vocational or civic educational aims, while acknowledging limits to the representativeness of the studies discussed.[21] The implication developed here is that professional and humanistic education can share a requirement to justify interpretations, recognise uncertainty and answer objections. This is an argument about learning design, not evidence that all law faculties follow one model.

An additional subject has an opportunity cost in a limited curriculum. A proportionate proposal is a module within legal history, legal theory or professional ethics, connected to a doctrinal course. A separate course may be justified by staff expertise, collections and research priorities. Neither arrangement is effective merely because its subject is humanistic.

A relevant precedent for working with objects is Amanda Perry-Kessaris's Pop-Up Museum of Legal Objects project. Researchers used selected artefacts and model-making to develop and communicate socio-legal questions; the account also draws on participant feedback.[22] It provides a documented example of objects structuring collaborative enquiry. Its participants and purposes differ from those of an undergraduate course, so it cannot by itself establish the effectiveness of the module proposed here. The transferable teaching principle is to require students to explain what an object enables them to ask and what evidence their answer still needs.

The proposed module comprises five stages. First, students examine an object or site alongside reliable historical documentation and a source addressing its legal function. They record observations, inferences and missing information separately. Where direct access is unavailable, an accessible reproduction can be used if its limitations are identified. Secondly, students reconstruct the institutional setting and normative framework, distinguish prescription from performance and test a competing interpretation. Evidence that weakens the initial account must be addressed.

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21 Wojciech Zomerski, "Poland's Rule-of-Law Crisis Revisited: The Story of Juristic Scientism" *International Journal of Constitutional Law*, advance online publication, 6 July 2026, sec. 5.

22 Amanda Perry-Kessaris, "The Pop-Up Museum of Legal Objects Project: An Experiment in 'Socio-Legal Design'" *Northern Ireland Legal Quarterly*, No. 3 (2017): 226–229.

Thirdly, students compare the reconstructed function with a present problem, such as participation in a hearing or document authentication. They explain the limits of the comparison, identify contemporary legal questions and specify what further evidence is required. Fourthly, they prepare a reasoned recommendation for a defined recipient, considering an alternative and the limits of their expertise. Finally, another student challenges the evidential basis or implications of the recommendation, after which the author revises it and explains any change of position.

Assessment should address source criticism, the separation of evidence and inference, legal accuracy, alternatives and clarity of reasoning. Justified uncertainty should count as a strength; enthusiasm for heritage should not determine the mark. The contribution proposed here is a sequence through which the educational potential of material legal heritage could be investigated in assessed work.

Participant observation could examine the learning process, provided that the researcher's role and interpretative involvement are made explicit.[23] A future study could investigate how students move from description to inference, handle conflicting sources and respond to challenges. An instructor's impression that a visit was engaging would not establish learning. Observation can illuminate the process without, by itself, demonstrating improvement or its cause.

The protocol should specify the setting, sessions, observer's role and recording method, while allowing unexpected events to be documented. Fieldnotes should separate interaction from interpretation and retain counterexamples. Where teaching and research roles overlap, voluntary research participation, confidentiality and independence from grading require care. Declining research participation must not reduce educational opportunities. These are proposals for future research; no such study is reported here.

Evaluation should combine process evidence with assessed work, for example through comparable unfamiliar tasks before and after the module, a common rubric and independent marking where feasible. A comparison group could help assess alternative explanations for change. Small cohorts, self-selection and observer effects would constrain generalisation. Findings

23 Martyn Hammersley, Paul Atkinson, *Ethnography: Principles in Practice*, 4th ed. (London: Routledge, 2019).

that show increased factual knowledge without improved reasoning would warrant revising the module rather than claiming success on both measures.

7 Conclusions

Legal archaeology can contribute to contemporary practice when source criticism informs identifiable professional questions. An object's function, its representation of authority and the reception of that representation require different evidence; historical explanation cannot replace contemporary legal and normative assessment.

The proposed applications concern investigating provenance, examining participation and justifying institutional recommendations. The teaching module connects these tasks through contextual reconstruction, functional comparison and revision following challenge. Participant observation and assessed student work could test its operation; improved professional conduct or civic commitment remains an outcome to be investigated.

This conditional argument locates historical and humanistic enquiry within professional formation. Its practical value lies in disciplined questions about institutional forms and their effects, rather than in the preservation of those forms for their own sake.

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