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We're All Historical Researchers Now: The Impact of Dobbs on Legal Research Instruction

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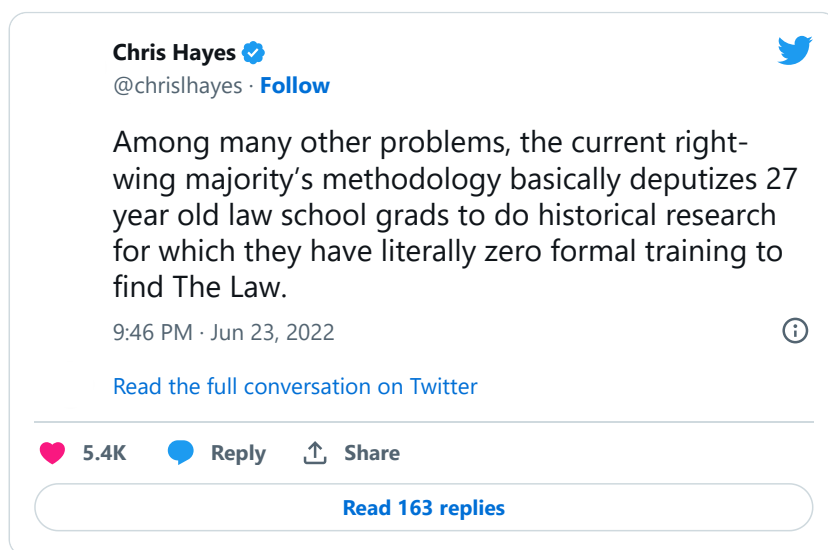
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We're All Historical Researchers Now: The Impact of Dobbs on Legal Research Instruction

Posted on July 5, 2022 by [Olivia Smith Schlinck](#)

Congratulations, it's July, which means you have officially survived what may very well be considered the most consequential Supreme Court term in the history of the United States. Simply existing in this country over the past few weeks (months? years?) feels like trying to swim through rapidly drying concrete. Avoiding the news is impossible if for no other reason than the direct impact so much of the news of late has on the job of a law librarian. Imagine teaching a legal research class at the end of this past SCOTUS sitting? I'll spare you the image because I did, and yes, it sucked. Note to self: do not teach a summer class in the month of June.

I suppose I should add a disclaimer before I go further: I am a progressive, pro-choice person. I would say that I *disagree* with the recent opinions from the Court—*N.Y. Rifle & Pistol Ass'n v. Bruen* and *Dobbs v. Jackson Women's Health Organization* chief among them—if not for the fact that *disagree* is not nearly a strong enough word for how I feel. I have spent the better part of the past two weeks fluctuating between fury, despair, hopelessness, and numbness fueled mostly by incessant social media doomscrolling. But still, there remains the fleeting curiosity, the occasional glimmer of inspiration hidden in the gloom. Ironically, one of those moments came for me during said doomscrolling in the form of a tweet from MSNBC host Chris Hayes: “Among many other problems, the current right-wing majority’s methodology basically deputizes 27 year old law school grads to do historical research for which they have literally zero formal training to find The Law.”



The first thing I did when reading this tweet was, naturally, look at the replies. Regardless of your own political stance, I encourage you to pause now and read them. To summarize, some people seem to believe that law school thoroughly teaches not only *legal* research but also *historical* research. *stares in law librarian*

After a good laugh sponsored by the reply guys, I started to think more about Hayes' point. He's right; law grads overwhelmingly have no formal training in historical research (let alone basic legal research). Still, the court of

late is leaning heavily on the *history and tradition* line of reasoning; the majority opinions in *Dobbs*, *N.Y. Rifle & Pistol Ass’n*, and *Kennedy v. Bremerton School District* (overturning the *Lemon* test for determining church-state separation in favor of a history-based approach to Establishment Clause cases) all invoke the phrase. Historians have pointed out that the history and tradition relied upon by the court is [“shocking,” “amateurish,” “false,” and “intellectually dishonest and poorly argued.”](#)

This problem is not unique to right-wing lawyering, of course. Most law schools churn out conservative Federalist society members alongside progressive future public defenders, all of whom take the same required classes and have access to the same research training.

If the courts are going to rely on historical arguments to decide issues of Constitutional rights, is it perhaps time that law schools decide to teach historical legal research? And if the answer is yes, where would this change make the greatest impact? T14 law schools. For better or worse, [SCOTUS clerks come overwhelmingly from schools with the highest U.S. News rankings](#); Yale creates the most clerks, with Harvard, Chicago, Stanford, NYU, and Michigan following behind. Notably, T14 schools are less likely to require standalone legal research classes taught by law librarians.^[1] It’s time to change that.

Trying to fight the machine that is SCOTUS feels impossible and can be disengaging for some people. I get it. But let’s think about what power and privilege we have and how we can channel them into justice. I think we can use the recent opinions to push law school administrations into requiring more legal research instruction so that legal academia produces lawyers that are prepared for making sound historical arguments and debunking bad historical research. After all, [the leaders of these prestigious universities have spoken out against the *Dobbs* decision](#). They want to effect change, and here is one way for them to do just that.

This is playing the long game, of course. Obtaining the faculty approvals necessary for curricular change takes time, and even after that approval law students must matriculate, take the course(s), graduate, take the bar exam, clerk at a Federal Court of Appeals (perhaps even more than one), and *then* apply to the Court. We’re talking 6 years at a minimum. But Republicans and conservative lawyers spent 50 years working on overturning *Roe*. 6 years is manageable for some small change in the direction of this country, no?

[1] See, e.g., Caroline L. Osborne, *The State of Legal Research Education: A Survey of First-Year Legal Research Programs, or Why Johnny and Jane Cannot Research*, 108 LAW LIBR. J. 403, 409 (2016) (“less than one-quarter of the top 25 law schools require a class focused solely on legal research.”).

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