

The Longing for Comparative Legal History

**Notes on the Second Biennial Conference of the ‘European Society for Comparative Legal History’
(Amsterdam – VU University – 9-10 July 2012),**

Entitled

‘Comparative Legal History: Definitions and Challenges’

by

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If the Inaugural Conference of the ‘European Society for Comparative Legal History’ (ESCLH), held in Valencia from July 5-6, 2010, was a surprising success – considering the short notice given by organizers to those who might have been willing to participate – then two years later the Second Biennial Congress of the ESCLH once again attracted more participants than was expected. This conference was held in Amsterdam (VU University) on the 9th and 10th July 2012, with the title ‘Comparative Legal History: Definitions and Challenges’. It attracted 110 scholars from 30 jurisdictions, including countries from all Continents (albeit that most delegates were drawn from Europe and America).

If one were to seek the reasons for these successes, several explanations might be offered. But it is undeniable that a need for a comparative approach to legal history has emerged, and legal historians are becoming more and more aware of the great insights that may be had from the reconstruction of law throughout history from a comparative perspective. This reflects the position prior to the 19th-century codification movement, when legal history, born as an academic field, started to focus upon ‘national’ boundaries out of political – rather than legal or scientific – motives.

This national approach to legal history gave rise to the emergence of “many organisations and conferences in the field of legal history, but these either cater to a niche, like meetings of specialists in the history of canon law, or they are national. For example, there is a British legal history conference, Deutsche Rechtshistorikertage, the Journées d’histoire du droit of the Société d’histoire du droit and so on. This is actually to be expected given that law is not mathematics; one plus one is two anywhere in the world, but legal rules may be very different. For example, while some countries in Europe now allow same sex ‘marriages’, others do not. Given this, it is understandable that legal history is still to a large extent organized along national lines. However, the reality is that law today is not just national, it is also European. Some of us will even say that is too rapidly becoming European. For example, there is now the draft common frame of reference for the law of obligations which looks like a European codification in disguise to some. Whether one likes this or not, it is true that law today goes beyond national boundaries, just as it did in the past. Thus, legal historians should do the same and, in fact, they have been doing so. Since 1990 many handbooks of European legal history have been published, but what was lacking was a European-wide organization and European-wide conferences. True, we can see an opening up of some of the national conferences. The Deutsche Rechtshistorikertage, the British Legal History Conference and the Journées d’histoire du droit have been welcoming speakers and participants from outside the French-speaking, German-speaking or English-speaking worlds.

However, this has not led to European meetings, because we can see that currently two circuits are at work – a Northern and a Southern one. Thus, you may meet a Swede at a British Legal History Conference or a Rechtshistorikertag, but not at the Journées d’histoire du droit, whereas a Spaniard can be found there, but not, for example, at the British Legal History Conference (...). We think it is time to bridge the gap and to bring the two together.” (Dirk Heirbaut, Opening Address, ESCLH Inaugural Conference, Valencia, 5 July 2010).

That was partly what the group of legal historians had in mind when, on 5 December 2009 (St Nicholas’ Eve) in The Hague, they created the ESCLH, which “was born out of frustration with the narrow nationalism and geographical segregation of legal history in contemporary European scholarship and professional organizations.” The ESCLH was founded to encourage legal historians to take a wider view:

“The Society aims, of course, to promote comparative legal history, the explicit comparison of legal ideas and institutions in two or more legal traditions. We acknowledge, too, that comparative law and legal history (internal or external) are fundamentally related. Both comparativists and legal historians are travelers: the one in space, the other in time. If only to establish context to more restricted research, legal historians should always look beyond the spatial borders and jurisdictional boundaries – including our present national legal systems – that are themselves products of the past. This isn’t merely useful background information. Legal history in general, and European legal history in particular, was fundamentally plural, a dynamic interaction of multifarious common and particular laws. Legal historians shouldn’t ignore this.” (<http://esclh.blogspot.com.es/p/about-esclh.html>).

That association, which is limited neither to Europeans nor to European legal history, is now thriving. All activities and projects of the ESCLH are aimed at the promotion of comparative legal history, including its biennial conferences that serve this purpose. As said, the ESCLH has held two biennial conferences. The first was in Valencia (Spain, 2010). The second, most recently, was in Amsterdam (the Netherlands, 2012). Another is scheduled for Macerata (Italy, 2014).

The Second ESCLH Conference, under the heading “Definitions and Challenges”, strove to delineate the landmarks which fruitful legal historical comparison requires, and to trace the specific problems that a comparative-historical approach of the various branches of law may encounter. That was the theme of the keynote address on Monday 9th July, the parallel sessions ‘Definitions and Challenges’ (9th and 10th July), and the plenary panel discussion on Tuesday 10th July.

Besides these purposes, the Conference also aimed to present investigations into specific areas of law where legal historical comparison has proven fruitful. What these investigations had in common was that they did not depart from normative legal concepts (which sometimes only appear to be comparable) but from functional problems of a more factual, meta-juridical nature. The first was ‘Fascist Criminal Law’ (co-ordinated by Stephen Skinner, University of Exeter), and the second was ‘Corporate law’ (co-ordinated by Dave De Ruyscher, University of Antwerp).

The keynote address was delivered by Professor David Ibbetson (University of Cambridge, UK), with the title “The Challenges of Comparative Legal History.” In his address, Ibbetson recognized that while legal history and comparative law are in

themselves difficult, comparative legal history presents even greater problems. Legal history is problematic because the sources are not always easy to find, and they are not always easy to interpret. Comparative law presents other issues; even for those with the linguistic capability to read the materials, understanding them against the background of what is not being said is challenging. Consequently, “comparative legal history is doubly difficult, especially once we move away from the nineteenth-century supposition that legal change is simply a reflection of economic or social change. It is easy to wonder whether it can be done at all.”

According to Prof. Ibbetson, these challenges cannot be properly tackled without keeping in mind three ideas:

“First of all, we need the humility to recognise that none of us can do it on our own. It needs to be done collaboratively, by individuals with expertise in the history of their own systems and a sympathy for others’ systems, who agree in advance what questions are being asked and what methods might be used to answer them, and who are not afraid to be unoriginal if the alternative is adopting provocative new standpoints which are unsound.

Secondly, we must not be too ambitious from the start. It can be easier to see the bigger picture than the minutiae, though the details making up the bigger picture cannot be ignored; and we need to recognise the important role played by indeterminacy in the development of the law.

Thirdly, there may be areas in which comparisons can be achieved more easily than others, and different methods may be appropriate to different areas.” (David Ibbetson, Keynote Address, Second ESCLH Conference, Amsterdam, 9th July 2012).

In the Plenary Panel Discussion held a day later, on Tuesday, Professors Dirk Heirbaut (University of Ghent), Kjell Å Modéer (University of Lund), Jonathan Rose (Arizona State University) and Wouter Veraart (VU University) made several comments and raised some questions to Ibbetson’s Keynote Address.

Kjell Å Modéer supported Ibbetson’s idea concerning the necessity of collaborative comparative works. He adopted the following position:

“Comparative legal history needs dialogues with colleagues within the legal system one wishes to study. We all remember the criticism Patrick Glenn received when he published his very ambitious and initially well-received one volume work on *Legal Traditions of the World* in 2000. Representatives from every tradition represented in his book criticized him for not really having understood the traditions described in his book. He had compared the traditions from an outsider’s perspective. And the outsider is investigating the system with different perspectives from the insider. It’s the core of Pierre Legrand’s didactic article *European Legal Systems are not Converging*. You must have the ambition to understand the cognitive structures of the foreign system you want to study. Glenn based his study on the outsider’s view. The only traditions the francophone Canadian Patrick Glenn had described properly were the civil law and common law traditions. So what we learn from Patrick Glenn’s comparative and challenging enterprise is that the next time it will be realized representatives from all the traditions or cultures to be described have to be involved (...). But, as Kaarlo Tuori has described, even if you have different perspectives given by the **national legal cultures** there is another important **transnational perspective of the deep structures of the law**, a meta-perspective which is connecting the legal systems and identifies the similarities with other national systems. So: A comparison between two or more national legal cultures identifies the differences, and a study of the deep structures of the law identifies the similarities.”

Mod er concluded by recognizing that “comparative legal history is really a work in progress. That’s why discourses at conferences like the one we are just experiencing are so important for all of us involved.” (Kjell   Mod er, Comments to David Ibbetson’s Keynote Address at the Second ESCLH’s Conference, Amsterdam, 10th July, 2012).

Jonathan Rose generally agreed with Prof Ibbetson’s lecture. He had two comments though:

“First, as Professor Ibbetson has pointed out, Comparative Legal History involves being an outsider looking in. But in doing so, it is important to remember that there are different ways of thinking about law. Legal education is the foundational influence in how one thinks about law, and legal training varies significantly in different legal systems. Thus, except when one studies his or her own legal system, we are all outsiders looking in when studying or comparing another legal system, its institutions, doctrines, and concepts. This is not a barrier to Comparative Legal History, but a further challenge and a needed sensitivity. Second, by its nature, legal history is a form of intellectual history and thus Comparative Legal History is different from Comparative Law or Comparative History. To understand it and do it, you need to be familiar with the sources, language and nature of the legal systems under study as well the social, political and economic context of the relevant phenomena in each system for the relevant period. As Maitland counseled, you need to understand each system on its own terms in a particular time.” (Jonathan Rose, Comments to David Ibbetson’s Keynote Address at the Second ESCLH’s Conference, Amsterdam, 10th July, 2012)

According to Dirk Heirbaut, Ibbetson’s idea whereby Comparative Legal History involves being an outsider looking in, may be seen differently in a jurisdiction whose legal tradition is no longer its own due to a legal transplant. For example, in Belgium the French Revolution and Napoleon abolished the old law and replaced it with French law. This had alienated Belgian lawyers from their own legal history.

A careful examination of the ‘Parallel Sessions Programme’ (see Appendix 2) reveals not only the variety of themes and topics of the papers delivered, but also their broad chronological and geographical scope. In addition to several sessions dealing with the definition and challenges of comparative legal history, and the aforementioned panels on Fascist Criminal law and Corporate law, others touched upon themes like Private law, Constitutional law, Criminal law, legal procedure, International law, colonial law, reception and legal transplants, and legal education and legal culture.

After the abovementioned ‘Plenary Panel Session’, the Conference came to the end with its ‘Plenary Closing Session’. During the course of this Jan Hallebeek, as Chairman of the Organizing Committee, and Aniceto Masferrer, as President of the ESCLH, delivered brief addresses, congratulating and thanking the organizers as well as the participants of the Second ESCLH Biannual Conference.

At the Conference dinner, two toasts were made by two members of the ‘International Advisory Board’ of the ESCLH (Dick Helmholz, who gave the *pre-dinner laudatio*, and Kjell   Mod er, who gave the *post-dinner laudatio*). They both expressed how impressed they were at looking the ESCLH: “Our Society is well established after just a couple of years of existence. ESCLH is really a rocket in the sky of European legal science,” stated Mod er. He added: “All 120 members of this young society have, by

committing themselves as members to the aim of the society, demonstrated that there really is a need for scientific discourses on comparative legal history, not only (1) to bring in historical perspectives to the analysis of the valid law – a comparison in *time*, but also (2) to make comparisons with other legal systems in a politically as well technologically increasingly transparent and globalized legal world – a comparison in *space*.” (Kjell Å Modéer, Dinner Address to the Participants of the ESCLH Conference, VU Amsterdam, July 9, 2012).

The pleasant and informal atmosphere of the Conference at this dinner allowed Modéer to be rhetorical, resorting to a US metaphor:

“So, we put the question: Can’t we, like the Americans, create a European Society of our own? And a week after president Obama’s victory in the presidential election we joined his rhetoric and declared: Yes, we can!”

He concluded by stating:

“And here we are in Amsterdam, mid-July 2012! Well organized with a conference of our own with more than 100 participants coming from 30 countries, with a journal of our own, and a treasurer of our own! (...). We are looking into the future with confidence, prepared to take all sorts of initiatives in strengthening our society. My spontaneous initiative this night is to thank the Executive Council for a great job resulting in a great conference, and to propose a toast for our society. *Vivat, crescat, floreat!*”

It is true that in two years the ESCLH has developed in a considerable way, fixing its legal personality, launching its blog (<http://esclh.blogspot.com.es/>)¹, increasing the number of its members, organizing two ESCLH Conferences and undertaking academic projects like the one entitled ‘Western Legal Traditions’. It has also created its official Journal (‘Comparative Legal History’), and the first ESCLH *Van Caenegem Prize* competition.

However, this is not due to the merit of the ESCLH founders,² the members of its current ‘Executive Council’,³ or of those who are part of its ‘International Advisory Board’.⁴ The ESCLH’s success just reflects – as the title of these Notes says – ‘the current move towards comparative legal history’. Otherwise, no legal historian would be willing to join this Society; no comparative legal history blog would draw the attention of scholars; nobody would be willing to attend a comparative legal history conference or to participate in a comparative legal history project; and, more importantly, no legal historian would even imagine the possibility of launching a comparative legal history journal, and no publisher would have been willing to embark in such enterprise.

¹ The ESCLH Blog was designed, launched and run by Seán Patrick Donlan until July 2012, when Stefania Gialdroni was appointed (by the Executive Council) as the ESCLH Blogmaster.

² Seán Patrick Donlan (secretary-general), Jan Hallebeek (vice-president), Dirk Heirbaut (vice-president), Aniceto Masferrer (president) and Remco van Rhee (vice-president). The first Treasurer was Leandro Martínez Peñas.

³ Matt Dyson (secretary-general), Jan Hallebeek (vice-president), Dirk Heirbaut (vice-president), Aniceto Masferrer (president) and Remco van Rhee (vice-president), Seán Patrick Donlan. The current Treasurer is Juan B. Cañizares Navarro.

⁴ Thomas Duve, Richard Helmholz, David Ibbetson, Antonio Pérez Martín and Kjell Å Modéer (chairman).

This move towards comparative legal history is the successor of a nationalist, discriminatory approach to legal history, linked to certain views of legal history, in which the most prominent one is the Koschaker-Wieacker myth of legal history:

“It can be summarised as follows: first we had Rome, then we had some barbarians who are not really interesting for a lawyer, so don’t bother; around 1100 things change and we can have the hit parade of great lawyers: 1100 to 1500 the Italians dominate the charts, 1500-1600 the French, 1600-1700 the Dutch, 1700-1900 the Germans, and finally the Americans, but let’s not dwell on that. In this view of legal history Southern Europe becomes irrelevant after 1500, and a country like Spain, where we now find ourselves, is not really worth mentioning.

Other parts of Europe are also left out of the picture: for example, Central and Eastern Europe are barely, if at all, mentioned. In 1970, not mentioning countries like Spain, Portugal, Greece, Poland, Hungary etc. may have been justified, because these countries did not belong to the European Community and were dictatorships. At that time there may have been a justification for calling a combined legal history of the EC’s democracies European. Given that almost everyone in Europe has become a member or a partner of the EU, this is no longer possible. In fact, for a younger generation this is self-evident. The ‘Forum of Young Legal Historians’ has been meeting all over Europe. The strange thing is that, once these younger people become established, they no longer have a European forum, hence the ESCLH, a European society for legal history, for all of Europe and also for the colleagues outside Europe.” (Dirk Heirbaut, Opening Address, ESCLH Inaugural Conference, Valencia, 5 July 2010)

This nationalist, discriminatory approach to legal history in Europe explains the success of the ESCLH, and why legal historians from the former European, ‘discriminated’ countries have welcome the ESCLH with particular determination and enthusiasm (Belgium, Bulgaria, Denmark, Estonia, Finland, Hungary, Lithuania, Netherlands, Norway, Poland, Romania, Spain, Sweden, etc.).

As it was said in the ‘Plenary Opening Session’ of the Conference, “the ESCLH is neither a wish nor just an idea, but a reality and a fascinating project (...). The ESCLH is in our hands and will be what we want it to be. We shall all build it and develop it. There is much to be done, and that depends on us, each and every one of us. The more we are, the better our society will be and the further it will go; and this can be applied to all which has already been done (increase of members, more people attending our conferences and involved in the Blog, taking part in Projects, etc.). Things are always done by determined people, by people who are willing to turn an idea into a reality, as it happened with the creation of the ESCLH, and as will be the case in its growth and development.” (Plenary Opening Session, Address by Aniceto Masferrer, President of the ESCLH, Amsterdam, Monday, 9th July 2012)

An important undertaking of the ESCLH in promoting comparative legal history all over the world is the launching of its official journal, *Comparative Legal History* (CLH), an international and comparative review of law and history. Its Articles, written in English, “explore both ‘internal’ legal history (doctrinal and disciplinary developments in the law) and ‘external’ legal history (legal ideas and institutions in wider contexts). Rooted in the complexity of the various Western legal traditions worldwide, the journal will also investigate other laws and customs from around the globe. Comparisons may be either temporal or geographical and both legal and other law-like normative traditions will be considered. Scholarship on comparative and trans-

national historiography, including trans-disciplinary approaches, is particularly welcome.” (<http://www.hartjournals.co.uk/clh/index.html>)

The journal will be published, both online and in print, twice a year, appearing in the spring and the autumn. Articles and reviews are already being submitted,⁵ so contributors’ applications are most welcome.⁶

In considering the possibility of submitting Articles to this Journal, contributors should keep in mind that CLH’s understanding of comparative legal history is *broadly conceived*, so the research of many legal historians would perfectly fit with the aim of the Journal.⁷

Besides, a special arrangement between the ESCLH and Hart has been made to ensure that, beginning next year, ESCLH membership fees will include a subscription to CLH.⁸

Another project linked to the ESCLH is the elaboration of a Euro-casebook in the University of Maastricht’s Ius Commune Casebook Series, published by Hart Publishing (UK). It is a collaborative casebook on the Western legal traditions: text and materials, led by Seán Patrick Donlan (University of Limerick), Remco van Rhee (Maastricht University) and Aniceto Masferrer (University of Valencia). Its dozen or so contributors hail from ten nations across Europe and North America. Roughly half of the work consists of original texts, and the other half reproduces extracts drawn largely from secondary sources. Primary sources will be noted and some may be posted on a website linked to the book. In general, the work will serve as an historical and comparative introduction to the Western legal traditions, including Britain, Ireland, and Scandinavia. An introductory text, designed to be suitable for undergraduate students without any legal training, it will give priority to external rather than internal legal

⁵ To submit an article, please contact Editor Seán Patrick Donlan (sean.donlan@ul.ie) or Articles Editor Heikki Pihlajamäki (heikki.pihlajamaki@helsinki.fi). The optimal length for articles is between 7500 to 15000 words, including footnotes. Shorter submissions will be considered for our 'Short Articles' section. All articles are submitted to double blind peer review. To propose a review, please contact Reviews Editor Agustin Parise (agustin.parise@maastrichtuniversity.nl). Book reviews will generally range from 1500 to 2500 words. Review articles will also be considered.

⁶ Potential contributors should pay special attention to the ‘Notes for Contributors’ (Appendix 3). In particular, contributors whose first language is not English are *strongly* advised to have their papers edited by native Anglophone scholars *in advance* of their submission to ensure a clear presentation of their ideas and an accurate appraisal of their work.

⁷ In this regard, this broad conception of comparative legal history may include: 1) focus on any substantive area of comparative legal history: public law, criminal law, commercial law, private law, etc. Articles may centre on ‘internal’ legal history, exploring doctrinal and disciplinary developments in the law, or on ‘external’ legal history, setting legal ideas and institutions in a wider social and historical context; 2) involve both temporal and geographical comparison. Contributors may explore the ancient world or the recent past, the historical East or West or the global North or South. Articles may involve Western and non-Western traditions, all internally diverse, and state laws and non-state norms, including a wide variety of customary traditions, from around the world. Indeed, the complex origins of all legal traditions often makes research in single modern systems comparative as layers of autochthonous and borrowed laws and norms are uncovered; and 3) discuss and develop comparative and historiographical theory and methodology. Indeed, in addition to crossing boundaries of time and space, the journal promotes, as appropriate, an interdisciplinary ethos that bridges disciplinary boundaries. The theory and method of the humanities, the social sciences, etc. may all be relevant to our work.

⁸ The Hart website also has information on the Editors (both the Editorial Staff and International Editorial Board), an Email alert service of the 'Table of Contents', and subscriptions.

history. Essential themes include, e.g., the interplay of the *iura propria* and *iura communia*, legal institutions, the legal profession, legal science, the sources of law, the political and social context, especially the growth of the state, etc. The areas of law treated in the chapters include, e.g., Commercial law, Criminal law, Private law, Procedural law, Public law, etc. The chapters are focused on both common and divergent legal solutions, concepts and principles that exemplify the Western legal traditions. Although these may favour the dominant legal traditions of Europe, they are not limited to them.

In addition to promoting a number of projects, the ESCLH blog alerts readers, whether or not members, to relevant events and publications in legal history.

One may think that comparative legal history constitutes just an ephemeral new fashion in the study of legal history. I do not think so. The nationalistic approach to legal history has been both an ephemeral and non-scientific way to do research and teach legal history. In fact, “the resort to comparative law is not just a means to contrast a national legal history with others, so that students may broaden their knowledge on legal culture. It is not just a matter of relating two disciplines (legal history and comparative law) which should assist and support one another. It is something more. The problem is that the comparative approach constitutes a necessary – not just an optional – requirement to deal with legal history. Otherwise, legal history would not be real legal history, because both law and history need such a comparative approach. In this regard, to talk about the relationship between legal history and comparative law is somehow redundant and would be a tautology because legal history itself brings with it the comparative approach.”⁹

Having said that, there are of course many ways to approach legal history comparatively, and each legal historian has to find his or her own. That is precisely the purpose of the ESCLH, a European society for legal historians who are aware of the need to reconstruct the law of the past in a comparative way.

⁹ Masferrer, A., “Spanish Legal History: A Need for its Comparative Approach”, Kjell Å. Modéer and Per Nilsén (eds.), *How to Teach European Comparative Legal History* (Workshop, Faculty of Law, Lund University, 19-20 August 2009), Lund, 2011, pp. 107-142.

APPENDIX 1

Second Biennial Conference
of the
European Society for Comparative Legal History
entitled
“COMPARATIVE LEGAL HISTORY: DEFINITIONS AND CHALLENGES”

Amsterdam – VU University – 9-10 July 2012

PROGRAM

Monday, 9 July 2012

10.00-12.30	ESCLH Executive Committee Meeting (Initium 2A-45)
12.00-13.30	Registration (Conference Desk, Main Building)
12.00-13.30	Coffee/tea (Reception Hall Campus Side, Main Building)
12.45-13.15	General Assembly members ESCLH (Auditorium)
13.30-14.00	Plenary Opening Session (Auditorium, Main Building) Address by Aniceto Masferrer, President of the ESCLH Address by Eberhard van der Laan, Mayor of Amsterdam
14.00-14.45	Plenary Session: Keynote Address by David Ibbetson, Regius Professor of Civil Law at the University of Cambridge (Auditorium, Main Building)
15.00-16.30	Parallel Sessions (Main Building)
16.40-16.55	Coffee/tea (Reception Hall Campus Side, Main Building)
17.00-18.30	Parallel Sessions (Main Building)
18.45-19.45	Drinks (Hortus Botanicus)
20.00-22.30	Conference Dinner-Bufferet (The Basket)

Tuesday, 10 July 2012

08.30	Conference Desk (Main Building) opens
09.00-10.30	Parallel Sessions (Main Building)
10.40-11.10	Coffee/tea (Reception Hall Campus Side, Main Building)
11.20-12.50	Parallel Sessions (Main Building)
13.00-13.35	Plenary Panel Discussion (Auditorium, Main Building) - Dirk Heirbaut, Professor of Legal History, Univ. Ghent - Kjell Å Modéer, Em. Professor of Legal History, Univ. Lund - Jonathan Rose, Professor of Law, Arizona State University - Wouter Veraart (chairman), Professor of Legal Philosophy, VU University
13.45-13.45	Plenary Closing Session (Auditorium, Main Building)
14.10-15.30	Lunch (Oliver's at the Zuidas)
18.00-20.00	Round Trip of the Amsterdam Canals (City Centre)

APPENDIX 2

PARALLEL SESSIONS PROGRAMME

Monday, 9 July 2012, 15.00-16.30

1. DEFINITIONS AND CHALLENGES I (VENUE: MAIN BUILDING 2A05)

Reflexions on the methodological problems of comparative legal history, specifically the comparativeness of concepts derived from Roman law.

- Chair: Kjell Å Modéer (University of Lund)
- Arne Jarrick & Maria Wallenberg Bondesson (Stockholm University) - Flexible comparativeness. Towards better cultural-historical methods for the study of law codes and other aspects of human culture.
- Barbara Biscotti (University of Milano-Bicocca) - The challenge of definitions between Roman tradition and contemporary law. Fluid law or liquid law?
- Andreja Katančević (International Max Planck Research School for Comparative Legal History) - Roman and modern legal terminology. Temptations and dangers.
- Harry Dondorp (VU University Amsterdam) - A medieval problem of prescription which could not be solved by the Roman rules for prescription.

2. FASCIST CRIMINAL LAW I: ITALIAN FASCISM AND CRIMINAL LAW: MEANINGS AND DISTINCTIONS (VENUE: MAIN BUILDING 2A06)

These papers address fundamental questions about the particularities of criminal law and criminal justice under Italian Fascism. The papers engage with the question of Fascist criminal law's distinctiveness, in terms of its foundations and its relationship with other periods in Italian history and other legal orders.

- Chair: Stephen Skinner (University of Exeter)
- Luigi Lacchè (University of Macerata) - Justice and politics in Italian fascist criminal law.
- Michael Livingstone (Rutgers-Camden School of Law) - Criminal law, racial law, fascist law. Was the fascist era really a 'parenthesis' for the Italian legal system?
- Emilia Musumeci (University of Catania) - The positivist school of criminology and fascist criminal law. A squandered legacy?
- Diego Nunes (University of Macerata) - Extradition in fascist Italy (1922-1943) and in Brazil of Getúlio Vargas (1930-1945) between the ascension of 'fascist criminal law' and the survival of the liberal tradition of criminal law.

3. CORPORATE LAW I: LAW IN CONTEXT, JURIDIFICATION, STATE AS CORPORATION (VENUE: MAIN BUILDING 4A04)

- Chair: Dave De ruyscher (University of Antwerp)
- Bruno Debaenst (University of Ghent) - The process of juridification of labor accidents in a comparative legal historical perspective.
- Juliana Latifi (University Justicia, Tirana) - Law on commercial companies. The past and present. Albania case.
- Stefano Vinci (University of Bari Aldo Moro, Taranto) - The legislation of social security for the workers during the Fascism in Italy.
- Olga Achón (University of Barcelona) - Anti nomadism laws. The comunitarization of the labor relations in Spain.

4. CONSTITUTIONAL LAW, 19TH – 20TH CENTURIES (VENUE: MAIN BUILDING 5A02)

- Chair: Heikki Pihlajamäki (University of Helsinki)
- Judit Beke-Martos (Eötvös Loránd University Budapest) - A comparison of the American presidential inauguration and the Hungarian coronation. Power-transferring procedures and ceremonial legitimization (1867-1918).
- Riccardo Cavallo (University of Catania) - Fascist legal theory through the eyes of the German jurist Hermann Heller.
- Nir Kedar (Bar-Ilan University) - Comparative legal history in action. The story of the absent Israeli Constitution.
- George Devenish (University of KwaZulu-Natal) - Cutting the apron strings. A comparison between the two manifestations of decolonisation in the South African constitutional experience.

5. LEGAL PROCEDURE AND LITIGATION, MIDDLE AGES AND 20TH CENTURY (VENUE: MAIN BUILDING 5A06)

- Chair: Remco van Rhee (Maastricht University)
- Jonathan Rose (Arizona State University) - Maintenance in medieval England.
- Jukka Kekkonen (University of Helsinki) - Judicial repression after Finnish (1918) and Spanish (1936-1939) civil wars. A comparative analysis.
- Natalie Davidson (Tel Aviv University) - The Swiss and German holocaust litigation. Two roads for transnational structural reform.
- Dovilė Sagatienė (Mykolas Romeris University) - The independence of judges in Soviet Lithuania in 1940-41.

Monday, 9 July 2012, 17.00-18.30

1. DEFINITIONS AND CHALLENGES II (VENUE: MAIN BUILDING 2A05)

Comparativeness of notions and concepts: examples from the constitutional and private law of the 19th and 20th centuries: laesio majestatis, constitutionalism, direct democracy and real security.

- Chair: Jonathan Rose (Arizona State University)
- Bram Delbecke (Catholic University Louvain) - Comparative legal history and modern constitutionalism.
- Manuel Gutan (University Lucian Blaga of Sibiu) - The challenges of comparative constitutional history in contemporary Romania.
- László Komáromi (Pázmány Péter Catholic University Budapest) - Popular rights between the World Wars. The case of Germany and Estonia.
- Tomislav Karlović (University of Zagreb) - Definition of *fiducia* and its influence in comparative legal perspective.

2. FASCIST CRIMINAL LAW II: FASCIST CRIMINAL LAW AND DEMOCRACY. CONTINUITIES AND TENSIONS (VENUE: MAIN BUILDING 2A06)

This panel engages with the relationships among criminal law, justice and democracy, after and in relation to Fascism. The papers consider Italian experience after the Second World War, both in its domestic specificity and comparatively, as well as other examples of constructing criminal justice between democratic and anti-democratic principles.

- Chair: Luigi Lacchè (University of Macerata)
- Stephen Skinner (University of Exeter) - Fascist law or good law? The Italian Penal Code and academic commentary after 1943.
- Michela Ponzani (Deutsches Historisches Institut in Rom) - A contradictory transition. Post-war trials against fascist collaborators and partisans in Italy after 1945.
- Marin Sedman (University of Tartu) - Non-democratic penal law in a democratic state. Estonian experience with the instrument of military penal law, 1918-1940.
- Ely Aharonson (University of Haifa) - Determinate sentencing in Europe and America. A Comparative historical analysis.

3. CORPORATE LAW II: CORPORATION, INTERNAL ORGANIZATION, COMPARATIVE METHOD (LAW IN CONTEXT) (VENUE: MAIN BUILDING 4A04)

- Chair: Albrecht Cordes (Goethe University Frankfurt/M)
- Matthijs de Jongh (Supreme Court, The Hague) & Stefania Gialdroni (Roma Tre) - The relation between shareholders and board in the English East India Company, the Dutch VOC and the French Compagnie d'Indes Orientales.
- Ron Harris (Tel Aviv University) - The Birth of the Corporation: East and West.
- Andreas Fleckner (MPI für ausländisches und internationales Privatrecht, Hamburg) - Comparative Company Law History - Methods, Techniques, Approaches.

4. LAW AND COLONIES, 19TH-20TH CENTURIES (VENUE: MAIN BUILDING 5A02)

- Chair: Adolfo Giuliani (Università di Perugia)
- Seán Patrick Donlan (University of Limerick) - Laws and norms in Spanish West Florida, c. 1803-1810.
- Marie Seong-Hak Kim (St. Cloud State University/Collegium de Lyon) - Customizing customary law. Custom and legal change in European and East Asian history.
- Ananda Burra (University of Michigan) - International legal personality in a comparative frame. Anti-colonial agency and the permanent mandates commission's individual right to petition.
- Judith Rowbotham (Nottingham Trent University) - The good of the people is the greatest law (Cicero). Modifying European concepts of crime and punishment for colonial consumption.

5. FEUDAL LAW, FAMILY LAW AND LAW OF SUCCESSION (VENUE: MAIN BUILDING 5A06)

- Chair: Harry Willekens (University of Hildesheim)
- Elia Marzal (ESADE Law School Barcelona) - The recognition of freedom of movement to seignory peasants and the 'política forera' of the Leonese kings.
- Marek Stus (Jagiellonian University Kraków) - Revolution in the shackles of tradition. Matrimonial property law in the legal policy of the European countries in the 20th century.
- Marita Carnelley (University of KwaZulu-Natal) - The laws relating to adultery, comparing the development of the South African Common Law Principles with the development in English law.
- Mia Korpiola (Helsinki Collegium for Advanced Studies) - Experimenting with transplantation. Primogeniture and *fideicommissum* in early modern Sweden and Russia.

Tuesday, 10 July 2012, 9.00-10.30

1. DEFINITIONS AND CHALLENGES III (VENUE: MAIN BUILDING 2A05)

Comparativeness of notions and concepts: examples from family law. Teaching comparative legal history.

- Chair: Seán Patrick Donlan (University of Limerick)
- Ethan Zadoff (Medieval Academy of America) - Therefore a man shall leave his father and mother and be joined to his wife: Medieval Jewish marriage and comparative legal studies.

- Harry Willekens (University of Hildesheim) - Comparing Roman family law to contemporary Western family law. Does it make sense and what can it teach us?
- Agustín Parise (University of Buenos Aires/Maastricht University) - Comparative legal history and Latin-American legal education. Expanding definitions and challenges to the New World.
- Henrik Forshamm (Universities of Helsinki and Uppsala) - Who ought to teach comparative legal history?

2. FASCIST CRIMINAL LAW III: CRIMINAL LAW IN NAZI GERMANY AND OCCUPIED STATES (VENUE: MAIN BUILDING 2A06)

This set of papers address criminal law in the context of National Socialism, in Germany and in systems under Nazi occupation or control. The panellists discuss the conceptual construction and problematization of Nazi criminal law, as well as its influence and content in other national contexts.

- Chair: Michael Livingstone (Rutgers-Camden School of Law)
- David Fraser (University of Nottingham) - Criminal law and the criminal state. Periodizing national socialist legality.
- Damian Jagusz (University of Gdansk) - German Acts on substantive criminal law in the Polish system in the period of occupation vs. the standards of international law.
- Sebastiaan Vandenberghe (Ghent University) - Legal periodicals as German propaganda. The *Juristenblad* in Belgium.

3. CORPORATE LAW III: ANGLO-SAXON COMPANY AND CORPORATE LAW, LAW IN CONTEXT (VENUE: MAIN BUILDING 4A04)

- Chair: Andreas Fleckner (MPI für ausländisches und internationales Privatrecht, Hamburg)
- Markus Kari (University of Helsinki) - The arrival of prospectus and the creation of English and U.S. primary market regulation.
- Michael Nash (Les Roches Gruyere University of Applied Sciences) - Sonnenfeld revisited. Issues of selection and succession in corporate governance (20th Century).
- Anna Klimaszczyńska (University of Gdańsk) - Napoleon's bankruptcy law on the Polish lands.

4. TRADITION AND LEGAL REFORM IN THE SPANISH MODERN AGE: FOREIGN INFLUENCES AND COLONIAL IMPACT (VENUE: MAIN BUILDING 5A02)

How did legal reform develop in the Spanish Modern Age? This question is discussed, focusing on the dichotomy between traditional elements and the new, foreign influences, coming mainly from Europe, as well as its impact in the Latin-American colonies.

- Chair: Dirk Heirbaut (Ghent University)
- Heikki Pihlajamäki (University of Helsinki) - Comparing British and Spanish colonial legislation in early modern America.
- Juan B. Cañizares (University of Cardenal Herrera – CEU) - The penalty of *argolla* vs the penalty of *carcan*. Tradition and reform in the Spanish and French criminal-law codifications.
- Aniceto Masferrer (University of Valencia) - The Spanish criminal-law codification: Its influences and colonial Impact.
- Matthew Dyson (University of Cambridge) - Unearthing Spanish unjust enrichment. Old roots and new shoots for legal development.
- Olivier Moréteau (Louisiana State University) - Abrogation Clauses, Peripheral Provisions, and their Impact on the Concept of Code: Comparing Codification in France, Louisiana, and California.

5. CONCEPTS OF PRIVATE LAW (VENUE: MAIN BUILDING 5A06)

Comparison of various concepts of private law from the early modern period to the present day: contributory negligence, damages, possessory remedies, limitations periods.

- Chair: Harry Dondorp (VU University Amsterdam)
- Emanuel van Dongen (Maastricht University) - The consequences of contributory negligence for delictual liability in the early modern period. A comparative legal-historical study.
- Janwillem Oosterhuis (Maastricht University) - The identical origins of damages in Common Law and Civil Law. Damages in nineteenth century commercial legal practice.
- Anna Taitlin (Australian National University, O'Connor, Canberra) - Possession and Ownership in the Civil Law and at Common Law in a Historical Perspective.
- Annalisa Triggiano (Salerno University) - Limitation periods in legal history.

Tuesday, 10 July 2012, 11.20-12.50

1. FASCIST CRIMINAL LAW IV: THE DEVELOPMENT OF 'FASCIST' CRIMINAL LAW IN SPAIN, ROMANIA AND JAPAN (VENUE: MAIN BUILDING 2A05)

This panel engages with the development of 'fascist' criminal law in three different systems but with shared concerns: the influence of fascist ideology and practice on the development of criminal law; and the discursive significance of criminal law in understanding fascistic violence and control.

- Chair: David Fraser (University of Nottingham)
- Alberto Muro (University of Extremadura) - The ideology underlying the two attempts to reform the Spanish criminal code between 1932 and 1944.
- Cosmin Sebastian Cercel (University of Bucharest /University of Paris 1) – “The state must be defended”. Punishing sedition in interwar Romania.
- Hiromi Sasamoto-Collins (University of Edinburgh) - Facilitating fascism? The Japanese peace preservation law (1925-45).
- Gabriela Cobo (Universidad Rey Juan Carlos) - The first fascist criminal code in Spain studied in the context of the historical Spanish criminal codification process.

2. CORPORATE LAW IV: CONTRACT AND DEFAULT RULES, IUS COMMUNE AND ROMAN LAW (VENUE: MAIN BUILDING 2A06)

- Chair: Jan Hallebeek (VU University Amsterdam)
- Franz-Stefan Meissel (University of Vienna) - Dealing with uncertainty: standards of liability in partnership contracts in classical Roman law and the challenge of *ius controversum* for comparative legal history.
- Albrecht Cordes (Goethe University Frankfurt/M) - How to distill a normative order from non-normative sources.
- Annamaria Monti (University Bocconi, Milan) - Corporate law in comparative perspective: the point of view of 19th-20th century legal doctrine.

3. RECEPTION AND LEGAL TRANSPLANT (VENUE: MAIN BUILDING 4A04)

- Chair: Seán Patrick Donlan (University of Limerick)
- Kun Fan (Chinese University of Hong Kong) - Globalization of arbitration. A transnational institution struggling with local traditions. The case of arbitration transplant in China.
- Carlos Amunategui (Pontificia Universidad Católica de Chile) - Andrés Bello and the Japanese Civil Code. A case of romanizing the Romans.
- Dmitry Poldnikov (National Research University Higher School of Economics, Moscow) - Reception of Roman law. A provocative concept for German and Russian legal history?
- Amos Israel-Vleeschhouwer (Tel Aviv University) - The potential contribution and challenge of religious law. The example of legal history in Jewish legal responses to international law.

4. LEGAL EDUCATION AND LEGAL CULTURE (VENUE: MAIN BUILDING 5A02)

- Chair: Judith Rowbotham (Nottingham Trent University)
- Dolores Freda (Università degli Studi di Napoli “Federico II”) - Legal education in Europe between the Middle Ages and the Early-Modern Period: two experiences in comparison.
- Dalibor Cepulo (University of Zagreb) - Experiences from periphery. Teaching of General Legal History and National Legal History at the Faculty of Law in Zagreb since 1868.
- Marko Petrak (University of Zagreb) - Comparisons of Roman law in the 20th century.
- Karlijn van Blom (Tilburg Law School) - The use of foreign sources of law, a historical approach.

5. INTERNATIONAL LAW (VENUE: MAIN BUILDING 5A06)

- Chair: Hylkje de Jong (VU University Amsterdam)
- Frederik Dhondt (Ghent University) - On the legal justification of power politics. Balance thinking in European diplomatic practice, 18th Century and post-1945.
- Elisabetta Flocchi Malaspina (University of Genova) – The role of Vattel's *Le droit des gens* in the XIX century.
- Lára Magnúsdóttir (University of Iceland) - A history of (dis)obedience. A non-democratic controversy in Western politics.
- Adolfo Giuliani (Università di Perugia) - Legal history and comparative legal history

APPENDIX 3

COMPARATIVE LEGAL HISTORY

an international and comparative review of law and history

ABOUT THE JOURNAL

Comparative Legal History is an international and comparative review of law and history.

- Articles will explore both ‘internal’ legal history (doctrinal and disciplinary developments in the law) and ‘external’ legal history (legal ideas and institutions in wider contexts).
- Rooted in the complexity of the various Western legal traditions worldwide, the journal will also investigate other laws and customs from around the globe.
- Comparisons may be either temporal or geographical and both legal and other law-like normative traditions will be considered.
- Scholarship on comparative and trans-national historiography, including trans-disciplinary approaches, is particularly welcome.

The Editors welcome scholarly submissions in the English language.

- The optimal length for articles is between 7500 to 15000 words, *including footnotes*. Shorter submissions will be considered for our ‘Short Articles’ section. All articles are submitted to double blind peer review.
- Book reviews will generally range from 1500 to 2500 words. Review articles will also be considered.

The journal is published, both online and in print, twice a year, appearing in the spring and the autumn.

Comparative Legal History is the official journal of the *European Society for Comparative Legal History* (ESCLH, <http://esclh.blogspot.com/>).

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