

# European Society for Comparative Legal History

# Third Biennial Conference

## TRADITIONS AND CHANGES

Programme

Macerata, ITALY  
8 - 9 July 2014



## 8 July 2014

8:30

### Opening of conference desk for registration of participants

MAIN HALL / DEPARTMENT OF LAW UNIVERSITY OF MACERATA / PIAGGIA DELL'UNIVERSITÀ, 2

9:15-9:45

### Plenary Opening Session

AULA MAGNA / DEPARTMENT OF LAW UNIVERSITY OF MACERATA / PIAGGIA DELL'UNIVERSITÀ, 2

Address by **LUIGI LACCHÈ** / Rector of the University of Macerata

Address by **ERMANNIO CALZOLAI** / Head of the Department of Law, University of Macerata

Address by **ANICETO MASFERRER** / President of the ESCLH

9:45-10:45

### Plenary Session Key Note

AULA MAGNA / DEPARTMENT OF LAW UNIVERSITY OF MACERATA / PIAGGIA DELL'UNIVERSITÀ, 2

**STOLLEIS MICHAEL**

J. W. Goethe University, Frankfurt am M., Germany

**Plenary speaker**

*Traditions and Changes and the Role of Legal History*

11:00-11:15

### Coffee break

POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

11:30-13:00

### Panel 1a

#### Custom, Tradition, and Change in Anglophone Legal History: Case Studies and Commentary

**CLASSROOM** VIOLET 3 (AULA VIOLA 3) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

**TOMLINS CHRISTOPHER** / University of California, Irvine, California, USA

**JAFFE JAMES** / University of Wisconsin, Whitewater, Wisconsin, USA

*British Justice and the Village Tribunal in Colonial India*

**LIEBERMANN DAVID** / University of California, Berkeley, California, USA

*Custom vs. Code in English Legal Thought: an Historical Case Study of "Tradition" and "Change"*

**TOMLINS CHRISTOPHER** / University of California, Irvine, California, USA

*Invented Traditions and Legal Change: Ideas and Applications*

Chair

### Panel 1b

#### Legal Education between Tradition and Change

**CLASSROOM** YELLOW (AULA GIALLA) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

**PIHLAJAMAKI HEIKKI** / University of Helsinki, Finland

**DOKMANOVIC MISO** / Ss. Cyril and Methodius University, Skopje, Macedonia

*Between Tradition and Change: Teaching Legal History in South East Europe after Bologna Process*

**MONTI ANNA MARIA** / Bocconi University, Milan, Italy

*'Tradition' and 'Changes' in the Teaching of Law in Europe: the Turning of the 20<sup>th</sup> Century*

**RISTIKIVI MERIKE** / University of Tartu, Estonia

*Changing the Traditions of Legal Profession: First Female Lawyers in Estonia (1918–1940)*

Chair

### Panel 1c

#### Legal Education between Tradition and Change

**CLASSROOM** RED 2 (AULA ROSSA 2) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

**MURAVYEVA MARIANNA** / Oxford Brookes University, United Kingdom

**MUKHEIBIR ANDRE** / Nelson Mandela Metropolitan University, Port Elizabeth, South Africa

*Actio popularis – past, present and future*

**PAIXAO CRISTIANO** / University of Brasilia, Brazil

*Constitutional History, transitional Justice and legal Tradition: Amnesty Laws and constitutional Change in Brazil and Chile*

**VAN DONGEN EMANUEL** / University of Utrecht, The Netherlands

*The Humanistic Contribution to the Problem of Contributory Negligence in Western Legal Tradition:*

*Continuity or Change?*

Chair

13:00-14:15

### Light Lunch

14:30-16:00

### Panel 2a

#### Civil Law Codification: Tradition and Change

**CLASSROOM** VIOLET 3 (AULA VIOLA 3) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

**DYSON MATTHEW** / Trinity College, Cambridge, United Kingdom

**CEPULO DALIBOR** / University of Zagreb, Croatia

*The Austrian general civil code as legal irritant in the Croatian-Slavonian legal system (1853 – 1946):*

*the clash with tradition*

**FORSHAMN HENRIK** / University of Uppsala, Sweden

*Nordic Jurist Meetings and the Issue of the Codification of Private Law*

**LATIFI JULIANA** / Justicia University, Tirana, Albania

*Return to Civil Law Family: Novelty, tradition and changes in Albanian Civil Code*

Chair

### Panel 2b

#### Private Law between Tradition and Change

**CLASSROOM** YELLOW (AULA GIALLA) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

**HEIRBAUT DIRK** / University of Ghent, Belgium

**ANDRZEJEWSKI JAN** / Adam Mickiewicz University, Poznań, Poland

*Laesio enormis returns. Second Life of Ancient Rule in Modern Legal Systems.*

**POLDNIKOV DMITRY** / Higher School of Economics, Moscow, Russian Confederation

*"Scientification" and Voluntary Reception of Continental Legal Tradition in Russia (ca. 1850 to 1900)*

**WILLEKENS HARRY** / University of Hildesheim, Germany

*Capitalism and Testamentary Freedom: the Strange Case of (relative) Legal Continuity in a context of*

*(radical) Economic Change*

Chair

### Panel 2c

#### Property Law: Tradition and Change

**CLASSROOM** RED 2 (AULA ROSSA 2) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

**LIVINGSTON MICHAEL** / Rutgers Law School, Camden, New Jersey, USA

**PARISE AGUSTIN** / University of Maastricht, The Netherlands

*Breaking with Tradition by Welcoming Change: The Reception of the Social Function Paradigm in American*

*Civil Law Jurisdictions during the early 20<sup>th</sup> century*

**PETRAK MARKO** / University of Zagreb, Croatia

*Retraditionalisation as a Change: Roman Foundations of Post communist Property Law*

**TODOROVIC MILJANA** / University of Belgrade, Serbia

*Property Law in Serbia between Tradition and Change: the long Continuity of the 'tapu' System after the*

*Introduction of the 1844 Civil Code*

Chair

16:00-16:15

### Coffee break

16:15-17:45

### Panel 3a

#### Criminal Law: Changes and Tradition in Comparison

**CLASSROOM** VIOLET 3 (AULA VIOLA 3) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

**MASFERRER ANICETO** / University of Valencia, Spain

**DYSON MATTHEW** / Trinity College, Cambridge, United Kingdom

*Patterns of Development between Tort and Crime in Europe since 1900*

**MURAVYEVA MARIANNA** / Oxford Brookes University, United Kingdom

*Adapting to the West?: European Legal Traditions in Early Modern Russian Criminal Law*

**PIFFERI MICHELE** / University of Ferrara, Italy

*New Penology and Legal Traditions: Cultural Variations in the Criminalization Process between the 19<sup>th</sup> and*

*the 20<sup>th</sup> centuries*

Chair

### Panel 3b

#### Tradition and Change in Labour Law

**CLASSROOM** YELLOW (AULA GIALLA) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

**KUMLIEN MATS** / University of Uppsala, Sweden

**AMOROSI VIRGINIA** / University of Naples Federico II, Italy

*Comparing Labour Problems: a Modern Method for a Modern Legal Topic in the early 20<sup>th</sup> century*

**DEBAENST BRUNO** / University of Ghent, Belgium

*Trapped between tradition and change? The long Transition of Industrial Tribunals into Labour Courts*

*in Belgium (1810-1970)*

**LO CASCIO DANIELE** / University of Bari Aldo Moro, Italy

*The Spanish Labour Law in the 1900 between Tradition and Change*

Chair

### Panel 3c

#### Custom and Tradition

**CLASSROOM** RED 2 (AULA ROSSA 2) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

**LIEBERMANN DAVID** / University of California, Berkeley, California, USA

**BEKE-MARTOS JUDIT** / Friedrich Schiller University, Jena, Germany

*An Unbalanced Affair: The Relationship between Custom and Tradition*

**DONLAN SEÁN PATRICK** / University of Limerick, Ireland

*Culture and Custom in Spanish West Florida, c1803-1810*

**SWANEPOEL PAUL** / University of KwaZulu-Natal, Durban, South Africa

*Colonial Judges, Administrative Officers and Indirect Rule in East Africa: a War of Ideas*

Chair

### Panel 3d

#### Western Tradition? Europe, Euro-centrism and Europeanization

**CLASSROOM** BLUE (AULA BLU) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

**PAIXAO CRISTIANO** / University of Brasilia, Brazil

**JAGUSZ DAMIAN** / University of Gdansk, Poland

*Foreign solutions in the Polish legal order in the years 1918-1939. The restoration of the system after*

*regaining the independence*

**NAGY NOEMI** / University of Pécs, Hungary

*Western vs. Eastern European Perspectives towards Language Minorities and Linguistic Rights – then and now*

**SASAMOTO-COLLINS HIROMI** / University of Edinburgh, United Kingdom

*The Legal Construction of Gender and Sovereign Power in Early Meiji Japan*

Chair

17:45-18:30

### ESCLH Annual General Assembly

### ESCLH Annual Report

### Van Caenegem Award

**CLASSROOM** BLUE (AULA BLU) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

20:00-22:30

### Gala Dinner

SOCIETÀ FILARMONICO DRAMMATICA / VIA ANTONIO GRAMSCI, 30



Conference desk opens

POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

ESCLH Elections

POLLING STATION OPENING FROM 8:30 TO 12:30 AT CONFERENCE DESK

AULA MAGNA / DEPARTMENT OF LAW UNIVERSITY OF MACERATA / PIAGGIA DELL'UNIVERSITÀ, 2

Panel 4a

Slavery, Freedom and the Law in Portugal and Brazil (18<sup>th</sup> and 19<sup>th</sup> centuries)

**CLASSROOM** VIOLET 3 (AULA VIOLA 3) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

MASSIMO MECCARELLI / University of Macerata, Italy

ARMOND DIAS PAES MARIANA / University of São Paulo, Brazil

*“Legal blasphemies”: Property Rights and Contractual Capacity of Brazilian Slaves (1860-1888)*

GALLOTTI MAMIGONIAN BEATRIZ / Federal University of Santa Catarina, Brazil

*Between Legal Reasons and Political Considerations: The Rights of Africans to Citizenship in Nineteenth-Century Brazil in Atlantic Perspective*

NOGUEIRA DA SILVA ANA CRISTINA / New University of Lisbon, Portugal

*Law and Abolition of Slavery in Portuguese Legal Narratives (18<sup>th</sup>-19<sup>th</sup> centuries)*

Panel 4b

European Legal Traditions in Comparison

**CLASSROOM** YELLOW (AULA GIALLA) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

ERMANNO CALZOLAIO / University of Macerata, Italy

BISCOTTI BARBARA / University of Milan Bicocca, Italy

*Things and Goods. For a Conceptual History of What is Common*

GALEDEK MICHAL / University of Gdańsk, Poland

KLIMASZEWSKA ANNA MARIA / University of Gdańsk, Poland

*Earthquakes of Polish Legal Tradition*

VINCI STEFANO / University of Bari Aldo Moro, Italy

*The Napoleonic Codes and the jurisprudential Tradition in the 19<sup>th</sup> century in Europe*

Panel 4c

Scholars between Tradition and Change

**CLASSROOM** RED 2 (AULA ROSSA 2) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

GIULIANI ADOLFO / University of Perugia, Italy

ERKKILÄ VILLE / University of Helsinki, Finland

*Franz Wieacker and the Tradition of Virtues in Historiography*

GILTAI JACOB / University of Helsinki, Finland

*Fritz Schulz (1879-1957): Reinventing the Principles of Roman Law*

TUORI KAIUS / University of Helsinki, Finland

*Reformulating the Roman Legal Tradition in Exile*

VAN NIFTERIK GUSTAAF / University of Amsterdam, The Netherlands

*Ulrik Huber on Fundamental Laws*

Panel 4d

Trade, Capitalism and Common Goods

**CLASSROOM** BLUE (AULA BLU) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

FRASER DAVID / University of Nottingham, United Kingdom

MINALE VALERIO MASSIMO / Bocconi University, Milan, Italy

*Materials for a History of the Byzantine Trade Law: about Eparchikon Biblion Vi.6. The Silk Road and the Concept of Globalization*

OOSTERHUIS JANWILLEM / University of Maastricht, The Netherlands

*Will the CESL really stimulate Cross-Border Trade? The Effect of the 1861 Common German Commercial Code on Cross-Border Trade*

PIHLAJAMAKI HEIKKI / University of Helsinki, Finland

*Commercial law cases in the Swedish town courts of early Seventeenth century: some initial observations*

VERESS EMOD / Sapientia Hungarian University of Transylvania, Cluj-Napoca, Babeş-Bolyai University,

Cluj-Napoca, Romania

*From Capitalism to Capitalism through Utopia: Key Changes in Company Law in Eastern Europe*

10:45-11:00

Coffee break

11:00-12:45

Panel 5a

Swedish Legal Models in a Changing Europe

**CLASSROOM** VIOLET 3 (AULA VIOLA 3) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

MODÉER KJELL ÅKE / University of Lund, Sweden

HOPMAN SUUS / University of Uppsala, Sweden

*The Role of Defence Counsel in Sweden and the Netherlands. A Comparative Historical Study*

KUMLIEN MATS / University of Uppsala, Sweden

*The Making of Administrative Law(s). Continental and Swedish Traditions in Question*

SUNNOVIST MARTIN / University of Lund, Sweden

*The Principles lex posterior, lex specialis and lex superior – tria juncta in uno?*

WENNSTRÖM Bo / University of Uppsala, Sweden

*Change - Integrity in Transition*

Panel 5b

Legal Traditions in Comparisons

**CLASSROOM** YELLOW (AULA GIALLA) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

SKINNER STEPHEN / University of Exeter, United Kingdom

GIULIANI ADOLFO / University of Perugia, Italy

*Two Faces of Tradition*

HEIRBAUT DIRK / University of Ghent, Belgium

*Does a National Belgian Legal Tradition exist?*

KEDAR NIR / Sapir Academic College, Israel

*Tradition and Change in Israeli Legal History*

MANKO RAFAEL / University of Amsterdam, The Netherlands

*Four Paradoxes of the Socialist Legal Tradition*

Panel 5c

The French Codification of Criminal Law and its Influence in Spain and Central Europe

**CLASSROOM** RED 2 (AULA ROSSA 2) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

CARLOTTA LATINI / University of Camerino, Italy

CAÑIZARES NAVARRO JUAN / University CEU Cardenal Herrera, Spain

*The Code pénal of 1810 in the Spanish Penal Code of 1822. Status quaestionis*

CARTUYVELS YVES / Université Saint-Louis, Brussels, Belgium

MASFERRER ANICETO / University of Valencia, Spain

*The Fundaments of the Modern Penal Codification: a Socio-historical Analysis*

HÄRTER KARL / Max-Planck-Institute for European Legal History, Frankfurt am M., Germany

*The Influence of the French Criminal Code of 1810 on the Development of Criminal Law in Central Europe*

POVEDA VELASCO IGNACIO MARIA / University of Sao Paulo, Brazil

*The Criminal Code of the Brazilian Empire in 1830 and its Vaunted Originality*

13:00-14:15

Light Lunch

14:30-16:15

Panel 6a

Comparative Racial Laws: The Italian and European Experience

**CLASSROOM** VIOLET 3 (AULA VIOLA 3) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

MICHAEL STOLLEIS / J. W. Goethe University, Frankfurt am M., Germany

DE CRISTOFARO ERNESTO / University of Catania, Italy

*Are Defence of Descent and Defence of Race the Same Thing? An Itinerary from Penal Code to Racial Laws*

FRASER DAVID / University of Nottingham, United Kingdom

*Capitalism, Jews, Law: Prolegomena to a Critical Legal History of the Shoah*

LIVINGSTON MICHAEL / Rutgers Law School, Camden, New Jersey, USA

*The Italian Race Laws: An Aberration or a New Norm*

SKINNER STEPHEN / University of Exeter, United Kingdom

*Fascist Vilification and Democratic Sedition: Criminal Law, Legal Certainty and Repression in the 1920s-30s*

Panel 6b

Constitutional Law: vouching for the Tradition and driving the Change

**CLASSROOM** YELLOW (AULA GIALLA) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

NOGUEIRA DA SILVA ANA CRISTINA / New University of Lisbon, Portugal

BLUZMA VALDIS / University Turība, Riga, Latvia

*The Formation of Elements of Parliamentarism and Constitutionalism at Territory of Latvia in Middle Ages and Early Modern Times (13<sup>th</sup> – 15<sup>th</sup> century)*

FIORAVANTI MARCO / University of Rome Tor Vergata, Italy

*From People To Constitution. Inventing Democracy in the French Revolution*

GUTAN MANUEL / Lucian Blaga University of Sibiu, Romania

*The Weaknesses of the Romanian Constitutional Tradition or a Constitutional Present in Quest for a Constitutional Past*

KOMAROMI LASZLO / Pázmány Péter Catholic University, Budapest, Hungary

*Establishment, Evolution and Interaction of Direct Democratic Traditions*

Panel 6c

Common Law between Tradition and Change

**CLASSROOM** RED 2 (AULA ROSSA 2) / POLO DIDATTICO PANTALEONI / VIA DELLA PESCHERIA VECCHIA

DONLAN SEÁN PATRICK / University of Limerick, Ireland

HARBECKE DAVID / Max-Planck-Institute for European Legal History, Frankfurt am M., Germany

*Uncertainty's Progressive Dimension: Chancery's Challenge to the Common Law*

KENNEDY CHLOE / University of Edinburgh, United Kingdom

*Common Law and the Scottish Moral Tradition*

MOHR THOMAS / University College Dublin, Ireland

*Irish Nationalism and the Common Law Tradition*

TATE JOSHUA / SMU Dedman School of Law, Dallas, Texas, USA

*Episcopal Power and Royal Jurisdiction in Anger in England*

16:15-16:30

Coffee break

16:30-18:00

ESCLH Election results

Plenary Session Key Note and Discussion

AULA MAGNA / DEPARTMENT OF LAW UNIVERSITY OF MACERATA / PIAGGIA DELL'UNIVERSITÀ, 2

BENTON LAUREN

New York University, USA

Plenary speaker

*Under the Protection of British Law: Empire and the Early 19<sup>th</sup> century Origins of*

*the Responsibility to Protect*

**ORGANISING COMMITTEE** Antonella Bettoni, Ermanno Calzolaio, Ninfa Contigiani, Adolfo Giuliani, Luigi Lacchè / *chairman*, Carlotta Latini, Paolo Marchetti, Giuseppe Mecca, Massimo Meccarelli, Monica Stronati, Laura Vagni T. +39 0733 258 4336

**This Conference is realised through the support of** Chair of European Legal History and Comparative Civil Procedure, Faculty of Law, Maastricht University

European Society for Comparative Legal History Hart Publishing Springer Verlag

*Carima Foundation Chamber of Commerce, Industry and Craftsmanship of Macerata Province*

*Department of Law, University of Macerata Chair of Legal History, Department of Law, University of Macerata*

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