

Ius Commune Conference 2020

Workshop: Comparative Legal History 2020

Thursday, 26 November (14.00 – 18.00)

Participants

Theme: Ius Commune in the Making: Paradigmatic Shifts in the History of Private Law

The workshops on ‘Comparative Legal History–Ius Commune in the Making’ aim to reveal and understand the nature and effects of various legal formants in the development of law. Indeed, forces of legal formants are too often lost or hidden beneath a superficiality of commonalities. History is a living laboratory. In the past, we explored the role of legal actors (Edinburgh 2014), legal sources (Maastricht 2016), force of local laws (Utrecht 2017), methods and dynamics of law (Amsterdam 2018), and networks (Leuven, 2019).

The current Workshop aims to explore the impact of paradigmatic shifts in the history of private law. Kuhn offered ground-breaking ideas on scientific paradigms in his work *The Structure of Scientific Revolutions* (1962). According to, a scientific paradigm is an achievement that is ‘sufficiently unprecedented to attract an enduring group of adherents away from competing modes of scientific activity’ and ‘sufficiently open-ended to leave all sorts of problems for the redefined group of practitioners to resolve.’ Legal scholars have entered the playfield. Legal paradigms are fundamental in legal reasoning, and consequently present in the legal narrative throughout history. Examples of paradigm-changes are omnipresent. On a grand scale, one may identify, amongst many others, the (re)discovery of the Digest, the appearance of Ramism, and the enlightened shift towards codifications around 1800. Likewise, on a micro-level, one is able to identify fundamental shifts in paradigms, such as the development of unjustified enrichment with Grotius or the *Rechtsgeschaeft* with von Savigny.

We need to understand our paradigmatic shifts, and thus our law. As always, calls for change may be heard, from within or from outside the legal domain. History is a necessity, as it offers us the opportunity to identify and analyse paradigmatic shifts. We seek to identify the nature of these paradigms and their changes. Many of these changes have not happened overnight, but came to be constructed in the course of the legal narrative. Reasons and motivations for change may be highlighted, and reveal the contextual formants, like prevailing ideologies, in time and space.

This workshop invites to address theories, doctrines, and sources of law that experienced such a paradigmatic shift, its interpretation or application in the various domains of law and society. This workshop aims therefore to highlight some of those tipping points throughout the history of private law. Different periods, that of Roman law, the learned ius commune, nineteenth-century codification, and the more recent efforts towards a European private law harmonization will offer insights on the impact of paradigmatic shifts in the history of private law. Law in the making can be better explained by a look into the impact of paradigmatic shifts at different times and places.

Organizing Committee

Harry Dondorp, Wouter Druwé, Michael Milo, Pim Oosterhuis, and Agustín Parise.

- 14.00 – 14.10 **Agustín Parise** (Maastricht University)
Introductory Remarks on Paradigms and Law in the Making
- Chair**
Panel 1: **Michael Milo** (Utrecht University)
- 14.10 – 14.25 **Nikitas Hatzimihail** (University of Cyprus)
The Savignian Moment in Private International Law
- 14.25 – 14.40 **Antonia Waltermann** (Maastricht University) and **Jaap Hage** (Maastricht University)
From (Free) Will to Attribution and Distribution
- 14.40 – 15.00 Plenary discussion
- 15.00 – 15.20 **Coffee break**
- Chair**
Panel 2: **Wouter Druwé** (KU Leuven)
- 15.20 – 15.35 **David Magalhães** (University of Coimbra)
Transfer of Ownership by Consent. A Paradigmatic Shift That Took Place Twice in the History of Private Law
- 15.35 – 15.50 **Paolo Astorri** (University of Copenhagen)
The Reform of Clandestine Marriage Law in Sixteenth-Century Lutheran Saxony
- 15.50 – 16.05 **Merel van de Poel** (Erasmus University Rotterdam)
The Death of the Public-Private Law Divide: The Impact of Only Recent History
- 16.05 – 16.30 Plenary discussion
- 16.30 – 16.40 Break
- Chair**
Panel 3: **Harry Dondorp** (VU)
- 16.40 – 16.55 **Joaquín Reyes** (University of Edinburgh/Universidad Finis Terrae)
Revolutionary Scholasticism: The Just Price and the Reshaping of the Normative Structure of Contract Law
- 16.55 – 17.10 **João de Oliveira Galdes** (University of Lisbon)
Unilateral Promises, Abstraction and the Law of Obligations in Europe
- 17.10 – 17.25 **María Ithurria** (University of Edinburgh)
The Rise of an Alternative Model of Seller's Liability
- 17.25 – 17.50 Plenary discussion
- 17.50 – 18.00 **Pim Oosterhuis** (Maastricht University)
Concluding Remarks