

# Ius Commune Conference 2023

## Workshop: Comparative Legal History 2023

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Thursday, 11 May (14.00 - 18.00)

### Theme: Ius Commune in the Making: Innovation in the History of 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), networks (Leuven, 2019), paradigmatic shifts (Maastricht, online 2020), and great debates in the history of law (Maastricht, online 2021).

The current workshop aims to explore how the (practical) concept of innovation ties in with conceptualizations of law. Innovation is a buzzword, these days. Challenges big as well as small of our contemporary world (such as ecological decline, energy, shortage in raw materials) are calling for innovation on technical and scientific levels, as well as on the normative levels of law. Innovation in technique and science (e.g. robotization) likewise has called for innovation in law. Innovation is a term that ultimately signifies making something new, to improve the existing, and it suggests that at least the existing does not meet the standards required, let alone that the past will reveal solutions.

Is it true that law needs this type of innovation in order to address these and similar issues? What are the implications of (calls for) innovation in law? History has seen factual challenges, and these have obviously confronted law. Foremost examples are ubiquitous: the emergence of the *cognitio extraordinaria* in Roman times or the emergence of equity in the common law. Further examples can be found in the high middle ages and in early modern times, with the rise of long-distance trade, financing and insurance and the construction of techniques like bills of exchange and bearer documents; industrialization, mechanical transport and the rise of the consumer society has triggered the law of obligations to adapt liability doctrines, duties to protect; various individual and common property arrangements were used to protect or exploit land.

These responses were not just ‘innovations,’ but reveal a detailed fabric of variety. They were sometimes top down, sometimes bottom up; sometimes borrowed from traditional Roman law, sometimes developed in natural law, canon law or indigenous law; sometimes indeed rather new, but at the same time using traditional legal elements; the same old concepts may be considered useless as well as valuable; reasoning may have been strict or lenient, and even in a mode of reasoning called strict or legalistic, sometimes creative new turns may be seen.

This workshop aims to highlight those particular moments in time in which needs for change were heard and addressed in law. We need to understand and be aware of these innovative changes that took place in the past, and hence understand how law reacted. History is a necessity, as it offers us the opportunity to identify and analyse change. We seek to identify the nature of these innovations and the changes they entailed in the law.

Reasons and motivations for changes may be highlighted, and reveal the contextual formants, like prevailing ideologies, in time and space.

**Organizing Committee:**

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

14.00 – 14.10 **Michael Milo** (Utrecht University)  
*Introductory remarks*

**Panel 1**

Chair: **Harry Dondorp** (VU)

14.10 – 14.25 **Piotr Alexandrowicz** (Poznań Society for the Advancement of Arts and Sciences)  
*The Petrification of Ius Commune in Print: The Examination of Early Modern Editions of Canon Law Sources*

14.25 – 14.40 **Raffaella Bianchi Riva** (University of Milan)  
*Change in Law in Changing Society. The Debate over Social Reactions to Legal Reforms in the Middle Ages and Early Modern Period*

14.40 – 14.55 **Elisabetta Fusar Poli** (University of Brescia)  
*Change in Law in Changing Society. Spreading the Image, Protecting Privacy, Shaping Identity in '800-'900*

14.55 – 15.15 **Plenary discussion**

15.15 – 15.30 **Coffee break**

**Panel 2**

Chair: **Agustín Parise** (Maastricht University)

15.30 – 15.45 **Pieter-Schalk Bothma** (Cape Bar)  
*Innovation save the Trust*

15.45 – 16.00 **Gabriel Faustino Santos** (Università degli Studi di Macerata)  
*Railway Accidents and the Civil Liability: An Essay on the Case-Law of Italy and Spain between the 19th and Early 20th Centuries*

16.00 – 16.15 **Mark Lunney** (King's College London)  
*Survival of Actions and Bereavement: the South Australian Experiment with Solatium Damages*

16.15 – 16.35 **Plenary discussion**

16.35 – 16.50 **Coffee break**

### **Panel 3**

Chair: **Michael Milo** (Utrecht University)

- 16.50 – 17.05 **Céline Joisten** (University of Liège)  
*The Emergence of Mechanisms to Take Account of Risk and Uncertainty within Causation in Tort Law*
- 17.05 – 17.20 **Colm Peter McGrath** (King's College London)  
*Innovating Healthcare Liability (or not!) for Treatment of Infectious Diseases in Civil and Common Law*
- 17.20 – 17.35 **Laura Kadile** (University of Latvia)  
*Obtaining Patient's Consent in Latvian Healthcare: Past, Present, and Future*
- 17.35 – 17.55 **Plenary discussion**
- 17.55 – 18.00 **Pim Oosterhuis** (Maastricht University)  
*Concluding Remarks*