

# Ius Commune Conference 2024

## Workshop: Ius Commune in the Making: Manifestations of Nature in Law

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Thursday, 28 November (14.00 – 18.00)

Room

Participants

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 (2014), legal sources (2016), force of local laws (2017), methods and dynamics of law (2018), networks (2019), paradigmatic shifts (2020), great debates in the history of law (2021), and the concept of innovation in law (2023).

Nature rises prominently in law, especially these days. It manifests itself in the shape of climate, environment, ecology, biodiversity, protection of species, and much more, in legislation and case law (e.g. ECHR 9 April 2024). Scholarly debate engages in this topic, in which empirical and scientific methodologies contribute to a highly detailed legal fabric, with political arena and *populus* highly divided. Nature and its manifestations are positioned as an object of normative arrangement of humans. Geographic areas are as natural objects attributed to humans and juristic persons, or are themselves constructed as subjects. Human actions in these natural domains are regulated in the perspective of sustainability. Nature is, so to speak, still taken in legal custody, as a preconceived and rather impoverished image of reality. We do have to use our senses more and to fuel law through our hearts and minds.

History offers images of nature (φύσις) and its manifestations in law (νόμος), a landscape of so many formants. Traditionally nature is considered the prime source of all things, the *Rerum Magna Parens*. Natural law coexists with consensual law (both religious and secular), offering sound principles, universal and unchangeable, based on rational capabilities. Nature can be found in concepts and system, in principles and reasoning, in various times and places, through its existence in foundational texts, also beyond law. Examples include, in Roman law, the *concept* of person, being endowed by nature with freedom (Inst.1.3.1). Grotius influentially qualified things as “whatever is external to man and in any way useful to man” (Inleidinge, 2.1.3). The centrality of the person and its subjective rights are manifest, at least since early modern times. Not just nature’s existence in foundational scholarly texts, but also in more mundane, but often poetical texts of custom, case law, even legislation, where nature may appear in its wild variety. Montesquieu was not the first to take climate and environment seriously in law (*L’Esprit des Lois*, ch 14-18). A very cold climate sets the scene, makes the condition for a Frisian widow to sell or pledge her husband’s heritage, in the interest of the fatherless child (2nd Frisian *londriucht*). Nor is it just customary or learned law in the western tradition. The step towards anthropology is small – all animals have emotional intelligence similar to that of humans, noted Hoebel (*The Law of Primitive Man*, 69), and it needs not even to be written nor to be law. The earth may not even exist, according to Chatwin “until [one] could see and sing it – just as in the Dreamtime, the country had not existed until the

Ancestors sang it" (Schreiner, According to Aboriginal Law, 66). Observation and understanding are key. Surely, there is more between Tohu wa-bohu and Whanganui's personality.

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

14.10 – 14.25 **Morad El Kadmiri** (University of Warwick)  
*Natural Law and (Non-)Comparison: Cosmopolitanism and the Paradoxical Negation of Alterity*

14.25 – 14.40 **Jo Badisco** (Hasselt University)  
*From Nature to Law: Is Ascribing 'Natural Law' to Classical Greek Philosophy an Anachronism?*

14.40 – 14.55 **Michael Milo** (Utrecht University)  
*Whatever is external to man, in any way useful to man. Observations on Nature in the Normative Order of Grotius' Institutions*

14.55 – 15.15 **Plenary discussion**

15.15 – 15.30 **Coffee break**

#### **Panel 2**

**Chair: Pim Oosterhuis** (Maastricht University)

15.30 – 15.45 **Edo Schoone** (University of Hasselt, Environmental Law Unit/Centre for Environmental Studies)  
*Hunting Seasons and Nature Values: Archival Chronicles and Executive Regulations as Legal Formants*

15.45 – 16.00 **Sarah Papa** (Leibniz Universität Hannover)  
*Commons in the New World: Conflicts over Natural Resource in 18th Century Portuguese America*

16.00 – 16.15 **David Schorr** (Tel Aviv University)  
*Nature versus the Common Law: Nature as a Legal Formant in the Water Law of the British World*

16.15 – 16.35 **Plenary discussion**

16.35 – 16.50 **Coffee break**

#### **Panel 3**

**Chair: Harry Dondorp** (Free University Amsterdam)

16.50 – 17.05 **Agustín Parise** (Maastricht University)  
*The Sixteenth-Century Valladolid Debate as a Laboratory for the Status of Human Embryos*

- 17.05 – 17.20 **C.J. (Niels) de Bruijn** (KU Leuven/Maastricht University)  
*'This Right by Nature Belongs to All'. Poverty as Justification for Theft from a Legal Historical Perspective*
- 17.20 – 17.35 **Pim Oosterhuis** (Maastricht University)  
*Sexual Crimes, Changing Morality between the late 19th and 20th Centuries and the Dutch Supreme Court*
- 17.35 – 17.55 **Plenary discussion**
- 17.55 – 18.00 **Pim Oosterhuis** (Maastricht University)  
*Concluding Remarks*