

האוניברסיטה העברית בירושלים
The Hebrew University of Jerusalem 

הפקולטה למשפטים

Third International Congress

of the

World Society of Mixed Jurisdiction Jurists

METHODOLOGY AND INNOVATION IN MIXED LEGAL SYSTEMS

20-23 June 2011

at the

Hebrew University of Jerusalem, Israel

Mixed legal systems, both the classical mixed jurisdictions combining common law and civilian law and more exotic hybrids, are increasingly important touchstones for comparative law. The Third Congress of the *World Society of Mixed Jurisdiction Jurists* focuses on legal methodology and innovation in mixed systems in the twenty-first century: investigating past experiences, exploring present practices, and predicting future possibilities.

Program

Monday, 20 June

17:00-18:00 **Registration**, Lobby, Level 3

18:00-19:00 **Reception**, Open Balcony

19:00-20:30 **Opening Session** Room 501

Chair: Celia Fassberg, Hebrew University Law School, Israel

Greetings: Prof. Barak Medina, Dean, Hebrew University Law School, Israel

Opening Keynote:

Justice Eliezer Rivlin, Deputy President, Supreme Court of Israel
Israel as a Mixed Jurisdiction

Tuesday, 21 June Methodology

09:00-10:00 Room 501

Chair: Michael Karayanni, Hebrew University Law School, Israel

Keynote:

Professor Vernon Palmer, Thomas Pickles Professor of Law, Co-Director, Eason Weinmann Center for Comparative Law, Tulane Law School, USA

*Double Reasoning in Codified Mixed Systems:
Code and Case Law as Simultaneous Methods*

10:15-13:00 **Parallel Sessions I**

Session I.A Judicial Techniques Room 501

Chair: Lionel Smith, McGill University, Canada

Rosalie Jukier, McGill University, Canada

Judicial Methodology in the Mixed Legal System of Quebec

Gerrit Pienaar, North-West University, South Africa

The Methodology to Interpret Customary Land Tenure

Break

Santiago Legarre, Universidad Católica Argentina and CONICET

Precedent in Argentina

Mary Algero, Loyola University New Orleans College of Law, USA

Considering Precedent in Louisiana

John Lovett, Loyola University New Orleans College of Law, USA
Love, Loyalty and the Louisiana Civil Code: Rules and Discretion in a Mixed Jurisdiction

Session I.B The Dynamics of Diverse Systems Room 502

Chair: Daphna Kapeliuk, Radzyner School of Law, Interdisciplinary Centre (IDC), Herzliya, Israel

Markus Puder, Loyola University New Orleans College of Law, USA
Mixed Jurisdiction Dynamics in Federal-State Frameworks: American Court-Structure Federalism and Louisiana's Codal Core

Monika Pauknerová, Charles University, Prague; Institute of State and Law, Academy of Sciences of the Czech Republic
Unilateral Juridical Acts and Uniform Conflict-of-Law Rules

Break

Pavel Šturma, Charles University, Prague, Czech Republic
International Criminal Justice as a New Example of 'Mixed Jurisdictions'

Mónika Józson, Corvinus University of Budapest, Hungary
Unification of Private Law in Europe and the Use of 'Mixed Jurisdictions' as a Model for the New Civil Codes in the Central-Eastern European Member States of the EU

Salvatore Mancuso, University of Macau; Xiangtan University, PRC
Creating Mixed(?)Jurisdictions: Some Methodological Reflections on Legal Integration in the SADC Region

13:00-15:00 **Lunch sponsored by the Eason Weinmann Center for Comparative Law, Tulane Law School**
Dining Room, Level 2

Campus Tour

15:00-17:00 **Parallel Sessions II**
Session II.A Asia Room 501

Chair: John Lovett, Loyola University, USA

Lukas Heckendorn, Swiss Institute of Comparative Law
Innovation in a Hybrid System: The Example of Nepal

Yasunori Kasai, Otsuma University, Tokyo, Japan

Emi Matsumoto, Niigata University, Japan
Two Perspectives on Mixed Systems – Japan

Break

Ignazio Castellucci, University of Trento, Italy
Mixity in the Legal Systems of Hong Kong and Macau

Justin Holbrook, Widener Law School, USA

Mixed Jurisdictions and the Problem of Deontological Asymmetry - The Philippines

Session II.B Method and Substance: Selected Topics Room 403

Chair: Jacques Du Plessis, Stellenbosch University, South Africa

Eric Descheemaeker, University of Edinburgh, Scotland

Defamation and Truth: Scots and South African Law Compared

Tamar Gidron, College of Management Law School, Israel

Max Loubser, University of Stellenbosch, South Africa

Liability of the State and Public Bodies for Negligence: A Comparative View of Israeli and South African Law

Break

P.J.W. Schutte, North-West University, South Africa

The Characteristics of an Abstract System for Transfer of Property in South African Law as Distinguished from a Causal System

Adam Hofri, Hebrew University Law School, Israel

Slow Rise: The Gradual Incorporation of the Express Private Trust in Israeli Law

Wednesday, 22 June Innovation

09:00-09:45 Room 501

Chair: Mauro Bussani, University of Trieste, Italy; Scientific Director, International Association of Legal Science (IALS- Unesco)

Keynote:

Professor Thomas Bennett, University of Cape Town, South Africa

Ubuntu: A New Doctrine of Equity in South African Law

10:00-13:00 **Parallel Sessions III**

Session III.A Innovation: Concepts and Contexts Room 501

Chair: Hector MacQueen, Scottish Law Commission

Elmarie van der Schyff, North-West University, South Africa

Innovation Through Mixing the Mixed: Determining the Probable Outcome of Introducing an Anglo-American Concept to the South African Roman-Dutch Based Property Concept

J.H.M. van Erp, Maastricht University; The Netherlands; Executive Committee of the International Association of Legal Sciences (IALS - UNESCO)

The Changing Structure of European Property Law: Subjects, Objects, Relations

Break

Melissa Castan, Monash University. Australia.

David Yarrow, Barrister and Monash University, Australia
Is Australia a Mixed Legal System? The Clash of Interpretive Positivism and Indigenous Tradition in Australian Property Law.

Ádám Fuglinszky, Eötvös Loránd University, Budapest, Hungary
Civil Liability in a Mixed Jurisdiction: Quebec and the Network of 'Ratio Communis'

Shael Herman, Professor Emeritus, Tulane Law School, USA;
Director, Academy of European Private Lawyers (Pavia)
Civil Recodification for an Anglophone Mixed Jurisdiction: A Bricoleur's Playbook

Session III.B The Mediterranean Room 502

Chair: Seán Donlan, University of Limerick, Ireland

Biagio Andò, University of Catania, Italy
Innovation and Tradition in Maltese Law

Nikitas Hatzimihail, University of Cyprus
Reconstructing Mixity: Sources of Law and Legal Method in Cyprus

Break

Marta Infantino, Faculty of Law, University of Trieste, Italy
The Italian Legal Recipe: Basic Ingredients and the Bustle of Time

Antonios E. Platsas, University of Derby, UK
The Enigmatic but Unique Nature of the Israeli Legal System

Guy Carmi, Advocate, Radzyner School of Law, Interdisciplinary Center (IDC) Herzliya, Israel
Rethinking Israel's Classification as a Mixed Legal System

13:00-15:00 **Lunch break and tour of Botanical Gardens**

15:00-16:30 **Parallel Sessions IV**

Session IV.A Innovation in Constitutional and Administrative Law
Room 501

Chair: Shimon Shetreet, Hebrew University Law School

Francois Venter, North-West University, South Africa
South Africa: A Diceyan Rechtsstaat ?

Margit Cohn, Hebrew University Law School, Israel
Pure or Mixed? The Evolution of the Grounds of Judicial Review in British and Israeli Administrative Law

Haim Sandberg, College of Management Law School, Israel

'Negotiating' with the Legislator – Strategic Analysis of a New Weak-Form Israeli Pattern of Constitutional Judicial Review

Session IV.B Innovation: Selected Topics Room 502

Chair: Adam Hofri, Hebrew University Law School, Israel

Christa Rautenbach, North-West University, South Africa

Willemien du Plessis, North-West University, South Africa

Interaction between South African Family Laws: Judicial Innovatio or Confusio

Robert Leckey, McGill University, Canada

Complicating the Study of Mixed Jurisdictions: Quebec's Recognition of Lesbian Parenting

Jacques Matthee, North-West University, South Africa

African Customary Values in the Context of South African Criminal Values: Has There Been a Change in Judicial Policy since 1996?

Thursday, 23 June Mixed Systems and Institutions

09:00 – 10:00 **Session V Universities and Scholars Room 405**

Chair: Margit Cohn, Hebrew University Law School, Israel

Stephen A. Smith, McGill University, Canada

Comparative Legal Scholarship as Ordinary Legal Scholarship

Seán Donlan, University of Limerick, Ireland

*“The Mediterranean is not even a single sea”:
Mediterranean hybridity, comparative law, and the social sciences’*

Break

10:30-11:30 **Closing Keynote: Room 405**

Chair: Vernon Palmer, Tulane Law School, USA

Professor Mauro Bussani, University of Trieste, Italy; Scientific Director, International Association of Legal Science (IALS- Unesco)

Mixed Approaches to Mixed Jurisdictions

11:45-13:00 **Lunch** Lobby, Level 4

14:00-16:00 **Tour of the Supreme Court** (bus leaving Mount Scopus at 13:15, returning at end of tour)

17:30-18:30 **WSMJJ business meeting** Room 405

19:00

Closing Reception and Dinner Dining Room, Level 2

The Conference is co-sponsored by:

The Hebrew University of Jerusalem, Faculty of Law

The Hebrew University Authority for Research and Development

Harry and Michael Sacher Institute for Legislative Research and Comparative Law,
Faculty of Law, Hebrew University of Jerusalem

The Eason Weinmann Center for Comparative Law, Tulane Law School

The International Association of Legal Science

Organising Committee

Vernon Valentine Palmer, Tulane University, USA (WSMJJ President)

Hector MacQueen, University of Edinburgh, Scotland (WSMJJ Vice President)

Jacques Du Plessis, Stellenbosch University, South Africa (WSMJJ Vice President)

Efrén Rivera-Ramos, University of Puerto Rico (WSMJJ Vice President)

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Seán Donlan, University of Limerick, Ireland

Xavier Blanc-Jouvan, University of Paris 1, Panthéon-Sorbonne, France

Symeon Symeonides, Willamette College of Law, USA

Reinhard Zimmermann, Max Planck Institute for Private Law, Hamburg, Germany

Celia Wasserstein Fassberg, Hebrew University of Jerusalem, Israel (WSMJJ
Secretary- General)