



# ***WORLD SOCIETY OF MIXED JURISDICTION JURISTS***

## **CALL FOR PAPERS**

The Third International Congress of the World Society of Mixed Jurisdiction Jurists will be held between the 20<sup>th</sup> June 2011 and the 23<sup>rd</sup> June 2011 at the Hebrew University of Jerusalem in Israel.

The theme of the Congress is  
**METHODOLOGY AND INNOVATION IN MIXED LEGAL SYSTEMS**

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.

Proposals for papers on any of the following topics are welcome. Proposals may be submitted by jurists from any jurisdiction, and by members and non-members of the Society alike.

### **1. Methodology:**

- a. What judicial methods are used in private law?
  - 1) Do judges adopt the continental/civilian model (deduction and analogical reasoning from texts), the Anglo-American/common law model (case by case reasoning), another model, or a hybrid approach? Are different methods used concurrently or alternatively? If so, how? Is there a significant difference between the methods used with respect to codal interpretation and ordinary statutory interpretation?
  - 2) Have other models been important, e.g., non-Western or customary approaches to judicial method? How do these work?

- b. Are the methods of judges any different in public law disputes (constitutional and/or statutory)? Have public law methods influenced the private law approach, or vice versa?
- c. What is the role of judicial decisions?
  - 1) What is the *de jure* and the *de facto* status of precedent? How do the decisions of higher courts impact on lower courts? Is *stare decisis*, *jurisprudence constante*, or some other original or hybrid approach employed?
  - 2) Is there any quantitative or qualitative difference between the use of precedent in different areas of codified law, or between codified and non-codified statute law? If *stare decisis* is used, do codes affect its application (e.g., in the distinction between *ratio decidendi* and *obiter dicta*, in the identification and application of the *ratio*, in the use of *obiter*, in the style of judicial writing, etc.)?
  - 3) Is there any difference between the way in which mixed systems overrule or deviate from case law - or justify doing so - and the way in which Anglo-American/common law and continental/civilian jurisdictions do this?
  - 4) Does *stare decisis*, or particular applications of it, arouse ideological debates over the nature of the system? Does the presence of codes or of doctrine affect its perceived appropriateness? How does its use affect perceptions about the role of codes and doctrine?
- d. What methods of legislative drafting and interpretation are used?
  - 1) How do the methods of legislative drafting reflect the parent traditions? Are new methods produced? What drafting methods are used in ordinary legislation, in code revision and in law reform respectively? When is it thought appropriate to use which type of legislative technique and which type of drafting method?
  - 2) Has a mixed drafting or legislative technique emerged in the classical mixed jurisdictions? Have other traditions been influential, e.g., non-Western or customary approaches?

## 2. Innovation:

- a. Local sources
  - 1) Does mixity in itself serve to encourage innovation?
  - 2) How explicit is judicial innovation? How appropriate is it thought to be? How does this result from or affect the public perception of the role of the courts?

- 3) Is the 'constitutionalisation' of private law a significant impetus to judicial innovation? To what extent does creativity emerge in the guise of 'public policy' or 'equity'?
  - 4) Have innovative solutions emerged from interaction with non-Western, customary, or 'personal law' rules and institutions?
  - 5) When innovation occurs, does it consist in a mere rearrangement of components from different traditions or does it produce something entirely new? What examples may shed light on this question?
- b. The use of comparative law
- 1) To what extent is comparative law used by judges, legislators, and scholars? Is there any difference in the way it is used by each? Is comparison confined to the major parent legal traditions, influenced by other mixed systems, or more free-ranging?
  - 2) To what extent are foreign ideas accepted in cases of first impression? Are legal principles freely transplanted and, if so, how are they used: i.e., as interpretative tools, as inspiration for new rules, as evidence of what is generally accepted? Is the use of foreign sources acknowledged or concealed? How is their use explained or justified?
  - 3) Is the use of comparative law in mixed systems different, either quantitatively or qualitatively, from its use in non-mixed systems? Is its use in the classical mixed jurisdictions different from that in other hybrids?
- c. Institutional innovation
- 1) What is the comparative history of legal education in the mixed systems? In what ways have curricular structures and pedagogical methods been specially developed for teaching law? What has been the effect of developing, or not developing, such special teaching methods? What advantages and disadvantages may be claimed for 'trans-systemic' teaching, especially dual curricula and double law-degree structures in the classical mixed jurisdictions?
  - 2) How have the different parent traditions influenced court structures and methodology, e.g., where the Anglo-American tradition is present, has its characteristic court structure and system of review changed and if so, how?
  - 3) In the classical mixed jurisdictions, to what extent have Anglo-American procedural mechanisms left a visible imprint on continental law? To what extent have they dominated the substantive rights and revised the maxim that continental law subordinates the remedy to the right? Have continental thinking and sources had any impact on civil or criminal procedure?

- 4) In other mixed systems: Where the procedure and substance derive from different sources, what is the relation between them? Have non-Western traditions had an impact on civil or criminal procedure? Have non-Western procedural traditions had an impact on substantive law?

### 3. Methodology and Innovation in Selected Areas:

Family law  
Tort  
Contract and/or Commercial Law  
Property  
Constitutional reordering of private law  
Criminal law

Proposals for papers addressing any of these topics may be submitted to the Secretary-General of the Society: Prof. Celia Fassberg ([mscelia@mscc.huji.ac.il](mailto:mscelia@mscc.huji.ac.il))

Proposals should be submitted by 1<sup>st</sup> May, 2010. They should not exceed 500 words and should be accompanied by a curriculum vitae of one page only. The Planning Committee will make its selection by 1<sup>st</sup> August, 2010. The time allocated for delivery of papers will be no longer than 20 minutes. Papers delivered at the conference will be considered for publication in the conference proceedings. The Society regrets that it cannot guarantee publication of all papers delivered and cannot cover travel expenses of participants in the congress.

For further information, please contact the Secretary-General of the Society at [mscelia@mscc.huji.ac.il](mailto:mscelia@mscc.huji.ac.il)

We look forward to seeing you next year in Jerusalem.

#### Planning Committee

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