

# Civil Law, Common Law, Customary Law

*Annual Report, 2022*

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## **Final Report: January 2022—September 2022**

A highly significant division in present-day Europe is between two types of legal system: the Continental with foundations in Civil Law (law with an ultimately Roman law basis), and English Common Law. Both trace their continuous history back to the twelfth century. The Civil Law, Common Law, Customary Law project re-evaluates this vital period in legal history, by comparing not just English Common Law and Continental Civil Law (or “Ius commune”), but also the customary laws crucially important in Continental Europe even beyond the twelfth century. Such laws shared many features with English law, and the comparison thus disrupts the simplistic English:Continental distinction. This report contains details of the activities of the project during its final months from January 2022—September 2022.



# Project Director

**Professor Hudson** has continued to run the administrative and academic elements of the Project, supervising the doctoral and post-doctoral researchers, as well as organising collaborative work. With Dr White, he organised the Project's closing workshop at the end of August 2022. His research and writing have concentrated on his monograph arising from the project, drafts of which were discussed at the closing workshop. The monograph will be submitted to press after it has been delivered as the Carlyle Lectures at the University of Oxford in January-February 2023. He has also completed a typescript of the summary article from the project, entitled: 'Legal Development in Europe: a view from 1190'. This again will be submitted to a journal after feedback derived from the Carlyle Lectures. He has also organised the work-in-progress sessions that are continuing each month after the end of the Project.







# Senior Researcher

**Professor Conte** completed the audio course “Legal History from a European Perspective”, with the help of David De Concilio. The course includes a number of podcasts recorded by researchers in the CLCLCL group, and some “guest podcast” offered by external scholars. The series is now freely available on the major open audio platforms, and two series of slides have been published to guide the listeners. The course is accessible via the CLCLCL website: <https://clicme.wp.st-andrews.ac.uk/legal-history-from-a-european-perspective/>.

Professor Conte presented some of the results of CLCLCL in a series of papers and talks given in four universities in California in spring 2022. As the leader of the French group based at the EHESS, Professor Conte is since 12/22 involved in the Erasmus Plus project Fontes aimed at fostering access to medieval legal sources for advanced students in law and history: <https://fontes.project.uj.edu.pl>.





# Researchers

## Postdoctoral Researchers

At the end of his contract with CLCLCL **Dr Cecchinato** took up a three-year Marie Skłodowska-Curie Global Fellowship. His research and writing have focused on his project monograph, entitled *The Ripening View. William Blackstone and the Exposition of English Law*. Individual chapters have been presented at workshops and lectures held at the University of Michigan in April 2022 and the University of Bologna in September 2022. The monograph will be submitted to press in Spring 2023, after feedback gathered from select specialists in the field. He organized a project-related workshop in Verona on Legal Literature and Practice. Canon Law and Roman Law with Prof Conte and Dr Stella. He has also integrated his work on Blackstone with a new line of research on Selden. This has led to a new chapter for his project-monograph, a paper at the British Legal History Conference, and a lecture series at the University of Roma Tre. In addition, his monograph on the constitutional purpose of Jefferson's readings in European legal history was published in the winter of 2021.



# Researchers



At the end of his contract with CLCLCL **Dr Eves** was appointed Assistant Professor in Law at the University of Nottingham. Dr Eves has finished work preparing his new edition and translation of 'Part one' of the *Très ancien coutumier* of Normandy and the book should now be in print. In August 2022 Dr Eves published an article in the *Jersey and Guernsey Law Review* discussing aspects of this new edition and translation. As the law of Jersey and Guernsey is based on the customary law of Normandy this article has a direct impact on law and legal practice in the Channel Islands. He has also finished work on an article on the nature of 'Part one' of the *Très ancien coutumier*, the aims of the authors/compilers of the text, and its relationship to intellectual developments in the Anglo-Norman legal world in relation to (amongst other things) the potential influence of Roman law on Anglo-Norman juristic texts and legal practice. This will be submitted to a journal following the publication of the edition and translation of 'Part one' of the *Très ancien coutumier* of Normandy, and in the meantime he will present the findings from the article to the 'Law and History Network' seminar series early in 2023. He also published a review of Russell Sandberg's *Subversive Legal History: A Manifesto for the Future of Legal Education* (Routledge, 2021). At Nottingham, Dr Eves has designed and is now teaching a medieval legal history module in the University of Nottingham School of Law ('the Creation of the Common Law: Power, Society, and Legal Change in England c. 1000–1250'). This course draws substantially on the findings of the CLCLCL project and makes extensive use of the online learning material produced during the project. This includes the online encyclopaedia of legal history and the course on 'dispossession'.







At the end of his contract with CLCLCL **Dr Stella** obtained a Research Fellowship in Medieval History at the University of Verona. Dr Stella has prepared and completed his annotated translation of the *Libri Feudorum*, which was submitted to Brill in February 2022 and will be published early in 2023. A second monograph, partly based on his doctoral studies on Italian rural communities, is due for publication at the same period. His current teaching in late medieval Europe draws substantially on his research within the CLCLCL project, especially concerning its comparative aspects. Dr Stella's current research in Verona is on the undated material of the Fondo Veneto I (Vatican Archives) and is a direct continuation of his research in the CLCLCL project; it aims to analyse and partially publish a massive amount of previously unknown judicial material on north-east Italy in the twelfth and thirteenth centuries. This research will help to clarify the connections between the development of learned law, its practical uses, and the legal consciousness of communities, pushing forward part of the CLCLCL findings. In December 2022 Dr Stella was invited to give a lecture at the University of Padua on his forthcoming monograph on the *Libri Feudorum*. He was recently invited to the University of Palermo for a visiting fellowship planned for May 2023, where he will be teaching in the Erasmus+ project *Fontes* based on his research on the sources for feudal law.





At the end of her contract with CLCLCL **Dr White** was appointed as a fixed-term Lecturer in the Department of History at Lancaster University, starting 1 September 2021. She submitted a full draft of her project monograph in April 2022, and it is currently under review for publication. She has also prepared an article, 'Legal Treatises in Twelfth-century England: Forms and Forensics', for submission to the *Law & History Review* (submission in December 2022), detailing her findings on procedural treatises during the CLCLCL project. Additionally, she was asked to contribute to the first volume of the Church Law History Consortium series (Routledge, ed. Stephen Coleman and Norman Doe, forthcoming spring 2023), for which she submitted a chapter on the development of medieval ecclesiastical law and its interaction with the English Common law, drawing on her research for CLCLCL. In her role at Lancaster University, she consistently draws on her post-doctoral research to inform her modules on English medieval history, and uses the resources created during the CLCLCL project, such as the Encyclopaedia of Legal Terms and the Dispossession podcast, as well as Emanuele Conte's 'Legal History from a European Perspective' series, to which she was a contributor. She has been invited to lecture on a recurring basis for the LLM in Canon Law in Cardiff, a postgraduate programme primarily undertaken by lawyers and staff in the Church of England, and likewise draws on her research from CLCLCL to inform her teaching on this degree. In October 2022, she contributed to a workshop on the influence of canon law on medieval procedural law at the University of Bergen, and following this, was invited to be part of the core research group for an upcoming project on the same. She was also recently invited to the University of Palermo to teach on the Erasmus+ project Fontes based on her research on procedural texts and sources for legal argument.







**Dr Armstrong** submitted his PhD on 1 April 2022. Between October 2021 and April 2022, his research was funded by a Royal Historical Society Centenary Fellowship at the Institute of Historical Research. His viva took place on 29 June 2022, and his examiners, Professor David Bates and Professor Simon MacLean, passed his thesis subject to minor corrections. These were completed by October and he graduated at the end of November. From 1 April 2022 to 30 September 2022, Dan was a postdoctoral researcher on the CLCLCL project. He undertook work on an article concerning Canon Law in Anglo-Norman England, which he is due to submit to *Historical Research* in the next couple of months. Dan also worked on the project website and has been involved in compiling the final report. Over the summer, he attended the Battle Conference for Anglo-Norman Studies and the Leeds International Medieval Congress.





# DOCTORAL RESEARCHERS

**Dr De Concilio** successfully passed his PhD oral examination on 10 January 2022 and graduated on 16 June 2022. He was appointed as a three-year Postdoctoral Researcher in the Department of Private Law and Critique of Law at the University of Padova, within the ERC Consolidator Grant 2020 ‘Migrating Commercial Law and Language (MICOLL): Rethinking Lex Mercatoria (11th-17th century)’ (grant no. 101002084), starting 1 March 2022. Between June and July 2022, Dr De Concilio spent a funded visiting period as a Robbins Fellow at the Robbins Collection, University of California, Berkeley. In October 2022, he published an article entitled ‘Soggettività e qualificazione del fatto. L’indagine del factum intrinsecum tra diritto e teologia nel XII secolo: due casi di studio e spunti per una ricerca’, *Historia et ius*, 22 (2022), paper no. 9, pp. 1-42. The same study was also given as a paper at Roma Tre University (January 2022) and the École française de Rome (February 2022). Dr De Concilio gave a paper called ‘From loci to regulae. The development of brocards and the Western European legal tradition (c.1160–c.1215)’ at the University of Ghent (January 2022) and another on ‘The argumentative use of Romano-canonical sources in late twelfth-century Anglo-Norman world and continental Europe: a comparative study’ at the International Congress of Medieval Canon Law, University of St Louis (July 2022). Finally, he participated at the two workshops held by CLCLCL: ‘Legal literature and practice. Canon law and Roman law perspectives’ (Verona, 9-11 June 2022) and the closing workshop (The Burn, Edzell, 28-30 August 2022).





# Researchers

**Cinnamon Ducasse** has continued work on her doctoral thesis, provisionally titled: 'An Orthodox Lawscape: Property, Heresy and The Spatial in the Novels of Justinian, with a view to their Twelfth-Century "Reception"'. Having completed a draft of the first and second chapters, this year she moved on to a period of research for a fourth chapter on twelfth-century 'reception' of sixth-century sources selected and analysed in the thesis. She currently writing up a third chapter addressing the legal meanings of the terms 'orthodox' and 'heretical' in the context of property disputes. Her findings regarding late Roman law were presented at Postgraduate Medieval Seminar in St Andrews in Spring and at the Tübingen-St. Andrews Postgraduate Conference on Late Antiquity in early Summer.







**Kim Thao Le** continued work on her doctoral thesis, a co-tutelle between St Andrews and Paris Nanterre, focusing on the role of suspicion in thirteenth-century English criminal law. After a period of parental leave, she also participated in the Project's closing workshop (The Burn, Edzell, 28-30 August 2022).





# Workshops

## VERONA

In June 2022, members of the CLCLCL project and collaborators from two other ERC-funded projects (in Padua and Palermo) gathered at Musella Winery and Country Relais in Verona for a workshop on “Legal Literature and Practice, Canon Law and Roman Law Perspectives”. The workshop opened with a keynote on “Academic Perspectives on Legal Literature and Practice” (Emanuele Conte). There were then four discussion sessions, in which the participants focused on the relationship between legal literature and practice in the Canon and Roman law traditions, highlighting further comparisons and testing new paths for future collaboration and cooperation between scholars from different disciplines and cultural backgrounds to outline new perspectives on legal literature. The workshop closed with a round table on “The Transmission of Juridical Knowledge Through Legal Literature. A conversation on new hypotheses for collaborative legal historical research”, stressing not only the historical dimensions of law but also the juridical dimensions of history. Between discussions, the participants continued to consider these ideas over coffee and walks at the winery, as well as a reception hosted by the wonderful staff at Musella.



# THE BURN

Members of the CLCLCL project, along with some long-standing collaborators, met for a closing workshop at The Burn, Edzell, in late August 2022. The workshop consisted of 6 sessions of varying forms. Very fruitful was a consideration of law before the chronological starting point of the project (c. 1050), conducted through a close analysis of the Fonthill Letter. The next four sessions drew on drafts of chapters of John Hudson's book summarising findings of the project as a basis for discussion. The final roundtable discussed both the overall outcomes of the project and possibilities for future collaboration. And interspersed with these were long walks and discussions in The Burn's beautiful grounds, a cricket match, and some table tennis matches that revealed some surprisingly competitive participants.





# CARLYLE LECTURES

In January and February 2023, Professor John Hudson will deliver the prestigious Carlyle Lectures at the University of Oxford. These will be from the basis of his forthcoming monograph.

**Custom,  
Common Law,  
and Civil Law**

**John Hudson**  
Professor of Legal History  
University of St. Andrews  
L. Bates Lea Global Professor of Law, Michigan Law

17th January—Maitland, Common Law and Civil Law  
24th January—Legal development in Europe: a view from the 1190s  
31st January—Legal learning and learning law in the twelfth and thirteenth centuries  
7th February—Genius or juristic accident? Policy, legal change and the early Common Law  
14th February—'Secreted in the interstices of procedure': actions, ideas, and legal change  
21st February—'Nolumus mutare...': further reflections

5pm, Tuesdays of Weeks 1-6, South School, Examination Schools

**The Carlyle Lectures 2023**

HISTORY  
OXFORD  
DPIR