

Prof. Luigi Lacchè

## First Week

Introduction. Why and how legal history can contribute to the training of the law student. The concept of historicity. Understanding different legal contexts

Academic year 2024-2025

# General Objectives

The aim of the course is **to introduce** students to the **complexity of a historical vision of law**. The unit seeks **to select some** of the main legal phenomena in the (European) history of law, providing the students with the information and skills needed to understand the historical roots of **civil and common law**.

**Expected results:** the course will try to extend the historical understanding of students as regards **other legal systems**, and developing in particular a **critical overview** of European legal traditions.

The course deals with the **basic aspects** of European legal history. **Following the comparative legal history approach**, it will present some key elements: among them, *ius commune*/Common Law traditions, legal Humanism, Natural Law, Law of Reason, Codifications, main legal trends and Schools, Criminal Law reforms.

The course will cover (if possible) the following subjects:

1 Introduction

2 Constitutive structures: Roman law. Customary Law. Canon Law

3 The *Ius commune* tradition: the birth of medieval Universities and legal science

4 Common Law: origins, features, dimensions. Equity system

5 Legal humanism. The concept of sovereignty

6 Natural Law and Law of Reason

7. Criminal Reform and Criminal Justice in the European Enlightenment. Consolidation, Code, Codification. The first Criminal Law codes: 1750-1810

8. Civil Codification of Law in Modern Europe: two examples. 1) Prussian General Code (1794)

9. 2) French Civil Code (1804). 1814-15: Dilemmas of Restoration. The controversy between Thibaut and Savigny in 1814. Legal science trends. Science of the Pandects. The Italian Civil Code (1865).

10. The Italian Criminal Law Codification process (1865-1889). Liberal foundations and positivist issues of Criminal Law in Italy

## **Practical aspects**

### **Exam: only written (100%)**

The examination, which will last 1 hour 45 minutes, consists in answering written (15 closed and 3 open) questions. During the written exam the student will be required to show that he/she knows and understands basic notions and concepts of Legal history and that he/she is able to use them as a critical tool to understand better the complexity of legal phenomena.

# Practical aspects

Students are required:

- 1) to attend classes;**
- 2) to use and study PPTs delivered by the teacher during classes (**See my LUISS University website**  
**→<https://learn.luiss.it/course/view.php?id=23778> →Storia del diritto (E) 2024-25)**  
**and their own personal notes;****



3) To study in–depth the textbook:  
Antonio Padoa Schioppa, **A History of  
Law in Europe. From the Early Middle  
Ages to the Twentieth Century,**  
Cambridge, Cambridge University Press,  
2018, **pages from 1 to 23; 71 to 293, 342  
to 574, 585 to 616.**

## Prerequisites

**An adequate knowledge of English is required to follow the lectures and to take the exam.**

## Teaching method

The Professor will give lectures in order **to present and explain the most important aspects of the course**. In addition to this, there will be organized tutorials and seminars for students, using papers and powerpoint presentations.

Two trainers, **Dr. Emilia Musumeci** and **Dr. Giuseppe Mecca**, will help the students to do research online. Specifically, some groups project will study special topics followed by a ppt presentation. In the weekly seminar, the students have to present and discuss orally the results of the research team.

**The Seminars will start on Monday 16<sup>th</sup> September 4,00-6,15 p.m. They will continue on all Mondays**

The papers, powerpoints and the presentations will be evaluated (**bonus: from 0 to 3 points**) for the final assessment (vote).

Our schedule

**Prof. Luigi Lacchè:**

Thursday: 5,00-7,00 p.m.

Friday: 8,30 – 10,45 a.m.

**Dr. Emilia Musumeci and Dr. Giuseppe Mecca,**

→ Seminar on Mondays, 4,00-6,15 p.m.

Why and how legal history can contribute to the training of the law student. The concept of historicity. Understanding different legal contexts

The course will offer an institutional viewpoint → main, basic, concepts and developments of LH

## Contents

The student has the possibility to be introduced to the main profiles of the European legal experience between the Middle Ages and the contemporary era. The peculiar features of ius commune legal world in the Middle ages and in the changed sceneries of the modern period will be illustrated. The course will then be centred on the outlining of a new conception of the legal order between the Natural Law theories and the Enlightenment and on its realisation which will be made in the 19th century by way of the affirmation of legal systems with codified law. Special attention will be given to the trends and the role of the juridical science

# Why legal history can contribute to the training of the law student

I give you at least three 'simple' reasons:

**1) A cultural reason:** can a law student ignore the roots and developments of his/her own legal tradition?

Only philosophy (*logos*), medicine and law (*nomos, ius*) share a so long tradition. Jurists must be proud of this origin and of this so rich heritage.

So, for a law student studying LH is a way to start to build up a real legal culture.

Let us not forget that law, before being a technique, is a **vision of the world**, a mentality. LH is very useful to reflect on this vision

2) **A methodological reason.** I'd like to recall the metaphor of the **point** and the **line**.

We can imagine history as a **line**. A line is composed of a series of points. Each point is a moment, a phase, a period etc.



We all live (hopefully 100 years...) in a certain period. A ('positive') lawyer can live and experience directly only a period.

You will work as jurists (advocates, judges, legal consultants, professors etc.) from about 2030 to 2075-2080... This is your 'point', your period.

Compared with the positive jurist, legal historian has only one privilege: he lives in one 'point' of the line but he can move, as he likes, along the line thanks to a specific methodology (he doesn't own a time machine!)

LH contributes to offer the correct methodology to move along the line: going back to Romans and Roman Law, to Normans and Common Law and so on. You can 'move' back and forth as you please.

From this point of view LH can be seen as a sort of 'laboratory' giving the possibility to know, through historical methodology, an extraordinary range of legal phenomena and experiences. In "your point" you can look 'only' at some specific and limited legal phenomena, conversely going along the line you can meet, know and understand a wide series of questions, themes, arguments etc.

It is a way to enlarge and enrich your legal culture (see point 1) and to 'live' indirectly many other legal experiences.

LH is a "space" allowing you to see how during the time human beings and their societies have attempted to find solutions for their problems.

LH approach can help nowadays positive jurists (and law students) to "relativize" the categories that they use and the related experiences. If today we use some ideas and tools, it doesn't mean it has always been like this.

3) This methodological awareness is none other than the **historicity of law**.

Historicity of legal phenomena does mean that legal concepts and experiences change according to the ages. Historicity shows how law changes (or doesn't change) over time and space according to social, economic, political transformations.

**Ex. Roman Law → its many lives with a lot of historical contexts, similarities but also specificities and differences.**

So we find that law does not come entirely from the state (**legal monism**), it is not all in the statute law. It does not resolve everything in the current situation, it is not uniform, it is not unique, it does not proceed along a path of unstoppable linear evolution, it is not always the same, it does not always have the same weight in all societies and in all experiences (**legal pluralism**).

LH helps law students to grasp

- 1) the complexity and breadth of the legal phenomenon;
- 2) its links and its relationships with reality;
- 3) obviously its historicity, its being in the long duration, **the relationship between law and society**

**Ius est ars boni et aequi** (Celsus, II century a.C). **Law is first of all a human and a social artifact**

In conclusion, my general goal will be achieved if - at the end of our course - you will be aware enough of these 3 basic aspects:

- 1) LH as one of the pillars of a good legal culture;
- 2) LH: the line and the point
- 3) LH to develop historicity seen as a lens to read the very complex relations between law and society over the time and the space (legal history involves comparison)

## **Intended learning outcomes** (according to Dublin descriptors)

### **Applying knowledge and understanding:**

The students will be able to:

- Analyze legal phenomena from a historical-legal point of view;
- Develop a comparative legal history approach;
- Be accustomed to concepts useful to understand in a better way current legal trends and changes (global and transnational law, pluralistic legal mind etc.)



## **Making judgements:**

The student will be able to analyze in-depth legal phenomena developing a critical understanding.

The student will be able to reflect and to discuss legal-historical key concepts.

## **Communications Skills:**

The student will understand major terms and concepts in order to communicate appropriately their ideas, proposals, analysis and critical reasoning in the field of legal history and legal culture.

## **Learning skills:**

The student will have some critical tools to understand a bit better why and how contemporary societies are marked by legal issues.