Focus: Genealogies of Laws and Justices

Baldissone, R.; de Wilde, M.

Riccardo Baldissone and Marc de Wilde

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A Jewish story represented the original happy human condition with the image of a garden. When Xenophon imported into Greek the Persian word *paradeiza*, which defined the imperial enclosed leisure garden, this representation took also the shape of a word: paradise. The Platonic and later Christian duplication of the world into a real and an ideal sphere turned the original garden into a metaphor of perfection. Hence, in our still Platonist split world the image of gardens fits well that one of justice, which is the ideal companion to real law.

Often the struggles for a more just law took justice as an ideal witness of a law yet to come. And yet, the idealization and singularization of justice always came at a price, which is similar to that one of an enclosed garden: it leaves the rest of the world outside. When Plato invented justice by turning a foundational narrative into a metaphysical principle, he confirmed the authoritarian priority of a pre-existing justification over the practices of negotiating a just deal. The same authoritarian priority grounds our contemporary construction of the lack of justice as the expression of the inevitable gap between real and ideal. The Judeo-Christian tradition, then revived in modern progressive thought, exploited the advantages of positing justice as the alter ego of reality. And yet, can we still afford the ethical, social and political costs of constructing law and justice as real and ideal dichotomic counterparts?

The essays collected in this special issue seek to explore the intertwining historical processes of production of ideals of justice and legal systems. They adopt genealogical approaches to the past that reveal the dichotomies of ideal and real, justice and law, as being themselves historically produced. As Foucault suggests, a genealogical listening to history would help finding behind things either no essence, or an essence fabricated in a piecemeal fashion from alien forms. This finding in turn allows the opening of new theoretical and political perspectives in the present. It is, thus, through an engagement with the past that the authoritarian priority of the ideal of justice over the reality of law can be questioned. This engagement with the past suggests that justice, which has time and again been elevated to the status of an unattainable Ideal, should perhaps no longer be postponed.

Legal history can serve as an ideological means for giving legitimacy to the present, but it can also function as a challenging medium that disrupts existing beliefs and distributions of power. The essays collected in this special issue focus on the questioning and generative potential of legal history for the present. In doing so, they go beyond the Platonic horizon: they show that, although ideals of

justice are at work in history, there are no ideals beyond history that guide our understanding of the past. Instead, the concepts we employ to explain and give meaning to the past are themselves contingent; they are constructed in the present and subject to historical change. The past is thus continuously created and recreated in ways that are meaningful to the present. Conversely, the present is disrupted and reformed through changing understandings and experiences of the past.

No one understood this better than Nietzsche. By tracing the genealogy of morals back to a continuing struggle over power, he deprived the present of its historical foundations. He politicized history, turning it into a realm of creative possibility. By showing that there were no timeless standards of good and evil by which historical progress could be measured, he laid a mine under the most widely held belief of his age – the belief that there were trans-historical Ideals that gave meaning to history. Although Nietzsche has been accused of provoking a devastating relativism, his genealogy contributed to bringing to light the political responsibilities involved in historical writing. It is in that sense that the essays collected here share a Nietzschean approach: they have left behind the belief in historical foundations, and are led by the notion that history is continuously recreated, and grounded in nothing but the historians' responsibility.

More specifically, the essays in this volume engage with four questions: first, how do Nietzschean approaches to history work and how can the task of re-creating the past be understood? Second, to what extent are legal systems generated and structured by "legal survivals" from the past? Third, how can works of literature contribute to giving a voice to a past that remains unacknowledged in the present? And, fourth, how can sovereignty, as the power (re)producing the dichotomy between real and ideal, law and justice, be itself understood as a product of history that is subject to historical change?

The special issue opens with an essay by Riccardo Baldissone and Marc de Wilde, which analyses Nietzschean genealogy and its legacy in the twentieth century. It shows how, in the wake of Nietzsche, a tradition of literary writers, historians and philosophers, attempted to reconceptualise the relation between present and past. Thus, authors such as Croce, Péguy, Borges, Benjamin and Foucault shared the belief that it was the historian's task to actively re-create and modify the past and, in the case of Benjamin and Foucault, not only to give it a new relevance in relation to the present, but also to do justice to a "tradition of the oppressed." In doing so, their aim was both to critically transform the present through a reconceptualization of the past, and to actively re-create the past in light of its contemporary stakes and relevance.

In their essays, Rafał Mańko and Raza Saeed address the question of legal survivals. Mańko shows how, after 1989, legal elites in Poland, in spite of embrac-

ing the new discourse of transformation, remained in the grip of legal survivals from the time of "actually existing socialism." This was true not only of legal norms and institutions, but also of attitudes and mentalities. For instance, "hyperpositivism," an extreme form of legal positivism mixed with elements of Marxism-Leninism, remained the dominant form of legal interpretation and was now applied in a neo-liberal context. As Mańko explains, it was the very attempt to suppress the past that caused its continuing influence upon the present. In a similar vein, Saeed shows how Pakistan's blasphemy laws can be considered legal survivals from the British colonial past. He explains how these laws were employed to counter the growing influence of Islam and reserve for the colonial state the right to govern the boundaries between religious communities. Ironically, today, these laws serve to facilitate the Islamisation of Pakistan's legal system, and are used to marginalize other religious communities. As Saeed concludes, these laws are seen as the embodiment of an ideal of justice that is itself continuously recreated in light of present beliefs and struggles for power.

Sidia Fiorato and Daniela Carpi, in their essays, explore the critical potential of literary works, in particular the gothic novel, for giving a voice to the past. Thus, in her reading of Wilkie Collins's *The Woman in White*, Fiorato shows how this novel engages with Victorian debates on the position of women and illegitimate children in a way that destabilizes existing social and legal relations. As Fiorato explains, the novel culminates in the churchyard scene with the churchyard becoming the site of a different kind of justice, where the boundaries between legitimacy and illegitimacy, reason and madness are renegotiated. In a similar vein, Carpi interprets the figure of the gothic garden as referring to the "historical sense" expressed by Eliot, Burke and Piranesi, that each present is built on the ruins of the past. Here, too, the garden serves as a site for contesting and renegotiating the law in light of its past. Thus, as Carpi explains, although the figure of the gothic garden suggests that the past may only survive in ruins, these ruins are seminal and fruitful because they serve as the root of subsequent transformations and future constructions.

Finally, Richard Joyce and Riccardo Baldissone, in their essays, confront the question of sovereignty. Comparing Hobbes's *Leviathan* with Milton's *Paradise Lost*, Joyce proposes a new reading of Hobbes's theory of sovereignty by emphasizing the power of promising which resides in the people and by which the sovereign is created. On Joyce's reading, sovereignty reflects the content the people themselves continually give to it, rather than being a determined reality that is beyond their power to shape. In his contribution, Baldissone proposes what he calls a "quasi-symptomatic" reading of Schmitt's concept of sovereignty. He argues that Schmitt's project of discovering a trans-historical concept of sovereignty should be interpreted as a powerful projection upon Western history of his

own experience and historical context, which was characterized by the deeply traumatic effects of World War I and the subsequent rise of authoritarianism. Baldissone underlines the continuities of such trans-historical projections with the very tradition that Schmitt intends to expose, and he invites us to take responsibility for our hermeneutic interventions upon the past by which historical meaning is actively (re-)created.