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Abstracts

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The presentation of the past for the future:
The nocturnal mediality of cinema (p. 15)

The article explores the theoretical implications involved in positing cinema as a nocturnal chronotopos. Cinematic images emerge out of the darkness of a movie theatre only once again to veer towards darkness, once the play of light and shadow on the screen has again ceased. The charm of cinematic representations resides in the fact that they make up an effervescent imaginary space. At the same time, cinema offers an enmeshment of the past and the future by virtue of the effects of presence it spectrally affords. Cinematic images arise from a past world and project a future spectatorship. It is precisely by producing a presence that re-presents this alignment of past and future, that cinema proves to be a nocturnal space-time between forgetting and remembering, once one has awoken from its manifestations.

Elisabeth Bronfen

The construction of time in a timeless present (p. 27)

The text tries to propose a concept of the present compatible with the assumptions of systems theory and to show its possible relevance. It should be a »modalized« present, interpreting past and future as non-actual »modes« of the present actual at the time and comparing them with other forms of non-actuality – starting from the study of temporal semantics in historical perspective. The sense of temporal categories arises then from the contraposition of different horizons of past and future – those of different presents, but also those that have not become actual, not even as possibilities. These very abstract reflections are then applied to the concrete topics of risk and of fashion, in order to show the necessity of a concept of present including also non-quantitative aspects.

Elena Esposito

Evolution or construction of time? (p. 37)

As there are no time-independent biological processes, time seems to be a biological phenomenon *katechen*. This statement is true not only for developmental or evolutionary transformations, which show specific temporal and spatial patterns, but for all known physiological, genetic or molecular-biological as well as ecological or populational processes. The remarkable time-dependency of all life-processes attracted the attention of biologists and philosophers – Whitehead's concept of actual entities which constitute the monad-like centre-points of his Leibnizian universe provide a perfect example. Despite the relevance of temporal descriptions, their methodological status in the sciences is often unclear.

The aim of this paper is to present at least some of the most important non-empirical aspects of any scientific treatment of temporal phenomena. Following a constructivist approach, the introduction of temporal language-particles is traced back to explicit contexts of human everyday life practices and action. »Time« is considered to represent a specific *façon de parler*, which allows us to deal with temporal aspects of processes and world-states, which themselves are the very subject-matter of scientific descriptions. Following this line of argument, the attempt to derive time as an epistemological precondition of subjective knowledge on grounds of biological descriptions in the perspective of an »evolutionary concept of knowledge« (*Evolutionäre Erkenntnistheorie*) is rejected by proving the pre-empirical, categorical status of temporal concepts. Accordingly, an evolutionary derivation of time is shown to be impossible: in contrast to naturalistic approaches, time is either to be understood as a condition of the possibility of knowledge itself (i.e. of scientific knowledge a fortiori) or it designates temporal aspects of natural processes, which are described in reference to the presupposed categories of knowledge. In both cases, »time« is neither a »natural« nor a biological object.

Mathias Gutmann

Future Machines: Time as an object
in the historical study of science (p. 51)

Science and technology scholars tend to emphasize space over time. Current studies in the history and sociology of laboratory practices mainly focus on the »spaces of knowledge« tied to and created by these practices, e.g. institutional settings, networks of human and non-human actors, visual and textual representations, etc. This paper argues in favour of a more dynamic, time-based understanding of science. Drawing on examples from the history of 19th century physiology, it suggests conceiving of experiments as machines that combine and contrast a variety of times: the time of the experimenter, the time of the model organism, the time of the instruments, the time of reading and writing, etc. It is true that historians of science have often dealt with the problem of time, in particular with concepts of time and time measuring. However, in these studies time often remained an exterior parameter of the natural and/or artificial phenomena and processes investigated by historical actors. The more recent work of authors such as Andrew Pickering and Hans-Jörg Rheinberger suggests conceiving of time as an operator built into the very functioning of »experimental systems.« Along these lines, the paper briefly discusses the semiotic and material culture of the pioneering experiments on the propagation speed of nerve stimulations carried out by the German physiologist Hermann von Helmholtz in the early 1850s. These experiments contributed in important ways to our understanding of physiological time as the »proper time« (*Eigenzeit*) of organic individuals. At the same time, they illustrate in an exemplary manner that the organization and management of time in its diversity is a crucial factor in the construction of scientific objects.

Henning Schmidgen

Why is there a direction of time? (p. 63)

A surprising finding of physics is that the ubiquitous observation of physical processes which are irreversible, like the dissolution of a substance in a liquid, have no counterpart in the microscopic laws in physics which indicate that time is directionless and allow for a reversal

of the direction of time. This seemingly negates our empirical observation that an open future contrasts with a fixed past. The existence of a direction or arrow of time is explained in modern physics as a statistical phenomenon: while at the microscopic level reversibility holds, at a macroscopic level the numbers of microscopic arrangements that correspond to one macroscopically observable state of the world are so vastly different that a statistical drift from less likely to more likely states turns into deterministic evolution. The direction of time is therefore an emergent phenomenon upon the advent of complexity in macroscopic physical systems. Various arguments have been raised against this picture, but can be shown to be either empirically irrelevant or, more interestingly, to be refuted by the coarse graining or summarizing of world information that is a key aspect of human perception – which finds its motivation in symmetries and almost constant quantities in physics.

Ulrich Schollwöck

The glaciers don't have time (p. 74)

Glaciers move rather slowly, but hazards like ice avalanches or outbursts of glacier lakes can cause death and devastation in a short time. Glaciers have always been considered as places of eternal snow and ice. The Swiss law only refers to the use of glaciers for civilization: Glaciers are classified as objects which have no owner, as soil unsuitable for cultivation and as public property in common use. Since the discovery of the Alps snow-capped summits and glaciers have been a huge attraction to visitors and alpinists. Global warming now undermines the myth of the eternal ice. In the last million years, ice ages and interglacial periods regularly alternated. In the highly complex climate system change has been characteristic. Glaciers are good natural indicators of climate variations. In the 16th to the 19th century the glacier tongues still came close to meadows and alpine villages. But around the year 1850 a massive glacier retreat began, interrupted only by short periods of stabilisation or advance. Since about 1988 the melting has dramatically accelerated. The exceptional summer heat of the year 2003 led to huge ice losses; glaciers and even high peaks appeared grey and brown. For several years the covering of winter snow has completely melted away on low-lying

glaciers. Scientists do not find any other plausible explanation for global warming than the increased greenhouse effect. If the warming trend continues the alpine glaciers will quickly disappear to a great extent. Water shortage, droughts, the rise of sea level, the weakening of the Gulf Stream and climate refugees are examples of possible consequences on a global scale. It seems that there is an urgent need and not much time left to undertake steps in climate protection by drastically reducing our emissions of carbon dioxide and other greenhouse gases.

Michael Büttler

Conversation with Gaius, Jurist in Asia Minor
Based on manuscripts left by Cn. Pompeius Mela
(part 2) (p. 80)

The only book that has survived the »classical age« of Roman law (between 50 B.C. and 250 A.D.) as the relic of an extremely productive period in legal history is the introduction to private law published by Gaius under the title *Institutiones* during the reign of the Emperor Marcus Aurelius. Our knowledge of this jurist who became more famous in his afterlife than amongst his contemporaries, having a considerable impact on codification in 18th and 19th century Europe, is extremely limited; thus the question arises: Who is Gaius? Theodor Mommsen, after collecting scarce evidence, pleaded for Gaius being a scholar in the remote provinces far from Rome – probably in Asia minor – being in close contact with a small but powerful group of Roman jurists. The text is a variant of this theory: »Conversation with Gaius« is scientific fiction at its best: abundant in material, most plausible in the setting – and maybe the best possible depiction of a scholarly chat in a paradise garden for all those who want to get into conversation with Gaius.

Johannes E. Spruit

A failed code – Reflections on the history of the
Theodosian codification (p. 112)

The Codex of Emperor Theodosius II, dating from the 5th century A.D., is generally considered to be a failed

piece of legislation; as a law book, however, it was quite successful. By looking at Theodosius' failure, this essay tries to establish general criteria for making a distinction between successful codification projects and unsuccessful ones. Instead of following a more traditional approach by telling the success story of a given codification, the study focuses on a »pathological« legal project. In the Eastern part of the Roman Empire, it lacked a sufficient amount of »internal«, intrinsic authority, because it encompassed too many out-dated laws while neglecting the binding character of the ones actually in force. By forgoing the establishment of a hierarchical order of norms, however, a codification's ability to function is severely diminished. In the Western half of the Empire the situation was somewhat different: here the *Codex Theodosianus* met with an unstable political situation; under these circumstances it never had a chance of functioning properly. After all, a codification is not a suitable remedy against the loss of political, i.e. »external« authority.

Inge Kroppenberg

Ex scientia et arte sua testificatur
On the specific status of the expert in medieval
judicial procedure (p. 127)

From the very beginning of Roman-canonist legal science, the expert has a specific status, not to be confused with the one of the witness. This is obvious from the way his statement is presented: it can stand alone; it can also be given in public. Why indeed impose secrecy upon an expert when he can (and probably will) consult with his colleagues about his conclusions and when, knowing he is to testify, everybody, including witnesses and litigants, has the opportunity to learn beforehand what the expert will present to the judge? Moreover, why should a second examination be demanded when the scientific nature of its content presupposes on the one hand very precise observation, and on the other trust in its origin? Trust is also what determines the second aspect of the expert's specific status, which is obvious from the content of his statement and a direct consequence of his function's essence. Where witnesses are asked to account only for facts they know from their senses (as indicated by the *causa dicti*), an expert is at liberty to infer from the facts observed what-

ever his previous and specialized knowledge allows him to: in this respect, he is more of a judge than of a witness.

Yves Mausen

The exiguous celebrity of *Causes* in the Spanish Enlightenment (p. 136)

The text attempts to describe the echo of Gayot de Pitaval's *Causes célèbres* in Spanish literature throughout the 18th century, and the variations of meaning (contexts and readings) that those ›famous legal cases‹ suffered. Benito Jerónimo Feijoo, who was undoubtedly one of the fathers or precursors of the Spanish Enlightenment, and other much less well-known writers (Barberi, Sánchez Sánchez) in the second half of the century, dismembered Pitaval's *Causes* and reused the fragments in order to give, besides many other moral and historical ›examples‹, a fascinating overview of human behaviour. The secrets of the heart (good and evil, right and wrong) could hence be opened to a generic public, wider than jurists; the former legal character of the *Causes* were just called up to sustain the certainty of the offered ›facts‹ and at the same time to consecrate the trial-like way to truth: the contest between reality and fallacy, the critical progress amid the shadows or the intimacy with personal secrets, could be attributes of justice, but also and above all were pursued by many reformers focused on such extended fields as historiography, legislation and social values.

Esteban Conde Naranjo

Pardoning in Nineteenth-Century Finland – At the Interface of Early Modern and Modern Criminal Law (p. 152)

During the last few years many new studies on the history of pardoning in the early modern period have questioned the old conception of pardoning merely as an expression of a ruler's mercy. Now, the system of pardoning is seen rather as an institutional framework for the condemned and the authorities to negotiate for the punishment. However, the 19th century pardoning systems

and practices still seem to be a reasonably uncovered area. This article shows that the pardoning practice of 19th century Finland still embodied features of early modern criminal law. Pardoning was used to take into account mitigating circumstances, the social capital of the petitioners was important for the outcome, and the procedure involved symbolism. On the other hand, modern features also appeared. Local community had lost its influence on the procedure, pardoning power was to a large extent delegated to the judicial authorities with clear guidelines, and fiscal interests were no longer involved in the pardoning system. The article also shows that the reforms carried out in the Finnish criminal law during the 19th century had a clear impact on the pardoning practice. Pardoning began to lose its significance. However, the pardoning system did not simply give way to the standards of modern criminal law. On the contrary, it functioned as an important transitional tool for modernizing the material criminal law.

Toomas Kotkas

The Fantasy Men (p. 169)

The remarkable success of the Anglo-American legal system in establishing stable, democratic societies throughout the globe contrasts with the catastrophic failure, over the centuries, of the legal systems of continental Europe. Nevertheless, nationalistic sentiment in South Africa and Scotland reacted to increasing Common Law influence with a paradoxical idealisation of the Civil Law system. The various discourses of *europäische Rechtsgeschichte* behind the ideology are set in their historical and cultural contexts. The nationalistic discourse of Savigny, which reduced the whole of European legal history to a *translatio studii* of Roman law from Italy to France to Holland to German apotheosis, gave way in the wake of two world wars and the Holocaust to the new discourse of the *ius commune*, a legal paradigm for a future European Union based not on the historical reality of three centuries of religious, political and juridical conflict, but on a fantasy world of European legal unity from the beginning of the modern period until the 19th century national codifications. This was the post-war narrative of Helmut Coing, which, failing to anticipate the eclipse of the British Empire, steadfastly contrasted the shared legal tradition

of continental Europe with the opposing system of the Anglo-American Common Law. With England now in the European Union the discourse has had to be modified. By exaggerating the importance of some minor and long-recognised continental influences on the Common Law, the contemporary discourse of the *ius commune europaeum* propagated by Reinhard Zimmermann succeeds in trumping the historical fantasy of a uniform continental legal past with the even more remote fantasy of a uniform continental and English legal culture. The old nationalist

programme of a return to the 17th–18th century Roman-Dutch law, imbibed by Zimmermann as a law professor in Apartheid South Africa, can thus be presented as an appeal to the pan-European legal inheritance. This discourse currently enjoys great success both as an authentic picture of the European legal past and as an attractive blueprint for the European legal future.

Douglas J. Osler