

# ANCIENT LEGISLATORS IN MODERN THOUGHT

## GUEST EDITORS' PREFACE

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### ABSTRACT

We introduce here the *Ethics and Politics* Focus on the presence, role and function of ancient lawmakers in modern thought. We explain the theoretical and historiographical issues explored by the articles, describe their content and summarize the results reached by the authors. We also propose some bibliographic references to recent and less recent texts of historiography that prepare, in our opinion, the reflection on this important topic.

### KEYWORDS

Ancient legislators, modern thought, history of historiography, legal and political thought, myth.

In this Focus, we want to reflect on the role of antiquity in modern thinkers. This is a theoretical and historiographical field that still fascinates historians, philosophers and jurists. We want to investigate this area by dwelling once again on the similarities and differences between “us and the ancients” (Canfora 2002). The literature on this subject is vast but not exhaustive. Within it, we intend to think about the use of the past (and in particular of ancient lawmakers and their myths) in the period from early modernity to the nineteenth century. We will deal with authors who, in different ways, have managed to hold together a multiplicity of knowledge: from philosophy to legal theory, from legal history to the history of political thought.

The influence of Plato, Aristotle and Polybius on modernity has been extensively studied. The myth of Athenian democracy and Roman mixed

government in the legal and political development of modernity has also been analysed in depth. The Roman Legal tradition of the so-called *Usus modernus Pandectarum* has also been widely explored. Our perspective, while benefiting from such a plural tradition of thought, does not simply want to look at the classics and their pedagogical role. Nor do we want to limit ourselves to comparing the law of the ancients with that of the moderns, which was at the heart of nineteenth-century legal theory. Instead, we want to focus on the figures of ancient lawmakers within modernity. Medieval law had already known the rediscovery of the classics, for example Aristotle, as an element of confirmation and consolidation of a knowledge that tended to be timeless and immobile. In the era that we can trace back to Machiavelli and Galileo, however, the use of, and the relationship with, the past changes radically. It progressively becomes a tool for critiquing the present. This impulse to think about the present together with the ancient legislators becomes a way of planning the future, even when this project contains ideological forcing of opposition to the past (Costa 2014).

It can be extremely useful to investigate how Lycurgus, Numa, Solon, Moses, Theseus, or Mahomet represented a reference for the construction and codification of the concept of freedom by the moderns. This investigation can make possible an original reading of the *querelle* on the comparison between ancients and moderns. This dispute has produced, as is known, multiple ideological controversies that have overlapped with historiographic ones (Guerci 1979). It is enough to think of the 19th-century myth of the democracy of the ancients, which on the one hand was exalted (in an instrumental way) as the most successful form of government, while on the other it was criticised as the antechamber of communism. One could also mention the 'black legend' of Sparta which, in the mid-19th century, was recognised as a communist suburb opposite Athens, the prototype of an open and tolerant city.

In a specular way, also in the nineteenth century, the (Manichean but no less effective) opposition developed between a moderate Solon, defender of small private property, and a barbaric and obscurantist Lycurgus. But this list could be much longer, mentioning how the figures of ancient legislators have represented for moderns both weapons to fight their political battles and an archive of ideas to build the new world: ancient problems and modern solutions (Di Bartolomeo 2014). The comparisons with ancient lawmakers and their myths flank and sometimes overlap with the Promethean planning of modern lawmakers. By questioning the constituent foundation, they free themselves from the shackles of time through an apparently paradoxical rewriting and re-appropriation of the past. And this is precisely one of the aspects that this collection of articles aims to address.

At every moment of caesura, whether historical or epistemological, there is a need to break with a tradition, whether real or imaginary, by retrieving different

and equally mythological experiences from the past. This phenomenon appeared in the early-modern break of the sixteenth century, through the seventeenth century and the scientific revolution, to the constituent moment of the eighteenth century on both sides of the Atlantic, to the Hegelian construction and deconstruction of myth and the utopia of the Bolsheviks. In all these historical moments, we can observe a similar desire to rewrite regimes of historicity (Hartog 2003; 2020).

In this Focus, we have brought together eight articles covering the period from late humanism to the first half of the twentieth century. Without claiming to be exhaustive, these articles aim to explore the presence, implicit or explicit, of ancient lawmakers in the political and legal thought of some major authors of Western thought. From the methodological point of view, some articles are united by the presentation of a "binomial", that of *one* legislator, of his role and function, and of *one* modern author, of his reception and processing. In this sense, we intend to focus on the specific status of the presence of a legislator in a particular work. Elsewhere, however, authors have chosen to conduct a less individualising investigation. For example, they have explored broader or lesser-known geographical and political contexts in the legal history of the modern world.

The Focus will open with a first section devoted to two of the major thinkers of late humanism and the Renaissance. In the first article, Alessandro Mulieri explores the popular theory of the legislator and his role as a founder in Marsilio da Padova. Del Lucchese's article analyses the image, role and function of Lycurgus in Machiavelli.

The Focus continues with an extensive section on the seventeenth and eighteenth centuries. Marta Libertà de Bastiani analyses the work of Baruch Spinoza and Jean-Jacques Rousseau. The investigation proceeds through the philosophy of Gianbattista Vico. This section closes with an articulate analysis by Marco Fioravanti into how the myth of classical Greece and Rome influenced French revolutionaries.

The last section of the Focus continues the exploration of some of the major thinkers of modernity, without neglecting the broader and less individualising analysis of a perhaps less investigated, but no less peripheral, context of Western legal thought. Nathaniel Boyd's article extends the study of the revolutionary period by widening it to the European context through reflection on Hegel's thought. The section continues with an article by Francesco Guarino on the relationship between the legislators of antiquity and the development of Russian constitutionalism in the nineteenth and twentieth centuries. The Focus concludes with an article by Isabelle Alfandary on the presence of the figure of Moses in Freud's works.

This *Monographica* of "Ethics and Politics", therefore, starting from early modernity and going through the multiple and changing relationships that it

established with the figures of ancient legislators, moves on to the metamorphoses of the reforming and revolutionary eighteenth century to arrive first at the nineteenth century, the century of History, made up of disappearances and re-emergences of the myth of the ancients, and finally at the twentieth century and its "new science", psychoanalysis. But the tensions that this path has revealed continue well beyond the twentieth century. *De nobis fabula narratur.*

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