

# Past, Pastness and the Broad Present: Changing Images of Time in Legal History

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## Abstract

"How does the *past* relate to the *present*? How is *being* related to *becoming*?"

This philosophical question confronted legal history when it emerged as an academic discipline in the early 19th century. F.K. Savigny, the mastermind of German legal science, posed this question (1804) because he believed that establishing a new legal science, one that would eventually dominate European legal thinking throughout the 19th century, required first clarifying a philosophical understanding of time.

This question has remained central to jurisprudence ever since. It extends beyond mere historiography because it underlies fundamental legal principles: the foundation of new institutions (how do they relate to the past?), the rationale for long-term legislation (can we control the future?), and the creation of new law (does the legislator create *ex nihilo*?). These core legal concepts cannot be properly understood without first grappling with the nature of time itself.

The aim of the proposed paper is to trace how legal science has evolved its understanding of time by offering three successive approaches, which I indicate as past, pastness, and broad-present:

(i) In the nineteenth century, scholars viewed the past as a pristine ideal, which they found in a mythical classical Rome, to be reconstructed for guidance, its linear and unbreakable connection to the present forming a cornerstone of legal science.

(ii) The twentieth century, influenced by scientific and philosophical breakthroughs, saw past and present merge into a "pastness" (a term coined by TS Eliot in 1914) that encompassed collective experiences and reflected a new understanding of law-making. This pastness suggested other views of intellectual creation, which altered the received understanding of linear time.

(iii) The twenty-first century has expanded this temporal awareness into what scholars call a "broad present" or "long-now"-which at any given time individuals try to make present (or represent) again.”

**Keywords:** time, pastness, representation, legal traditions, broad-present, long-now.

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