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Past, Present, and Future

F. R. Ankersmit

Introduction: Historicism

In the much renowned year of 1968 I spent my summer vacation in Bordeaux with acquaintances of my parents. They had a summer residence at the Bay of Arcachon, where we did a lot of swimming and sailing. One weekend the master of the house's brother paid us a visit. Self-evidently, the events of May 1968 were still very much on everyone's mind and therefore soon the occasion for a fierce dispute between the two brothers. And then something interesting happened. For both brothers related, almost as a matter of course, the events of May 1968 to the Second World War—which had ended a mere twenty-three years before—and in which both brothers had played quite different roles. The master of the house who had been an important man in the *macquis*—the French Resistance—had shown great courage and been rewarded for this with a high French decoration. His brother, however, had been a marine-officer under Admiral François Darlan and had thus collaborated with the Vichy regime. But the discussion did not end there. For from France in the Second World War the discussion moved straight away to the French Revolution, which was warmly defended by the “*macquis*-brother” while the “Vichy-brother” eloquently argued in favor of the *Ancien Régime*.

The debate was a wonderful example of what has often been referred to as “les deux Frances.” These “two Frances” are on either side of the deep fissure that the French Revolution has torn in French history since 1789. One could say that this fissure has made all of French history since 1789 contemporaneous with itself, in the sense that everything that was on one side of the fissure was immediately associated with everything else on that same side, regardless of its temporal distance. Temporal markers were simply dropped, so to say. By making past and

present contemporaneous with each other it was as if the French Revolution continued to live on in the present. Put differently, the suggestion was that the present is a product of the past thanks to the past's presence in the present. More specifically, the present is not a product of the past in the sense of having been *caused* by the past, but rather since events such as the French Revolution have the peculiar power of obliterating all temporal distinctions between later events. With the result that all of them, including the present, become somehow contemporary to the French Revolution and participate in *its* identity.¹

This is neither a new or original view. One might well say that the traditional German historicism of Johann Gottfried Herder, Leopold von Ranke, Wilhelm von Humboldt, and numerous others had argued this same claim since the end of the eighteenth century—though, admittedly, the emphases were a bit different from the French example above. Thus, Herder: “what I am, is what I have become. I have grown into what I am like a tree: the seed was there, but air, the soil and all the other elements around me had to contribute to form the seed, the fruit and the tree.”² Or think of Ranke: “in all things, at all times, it is the origin that is decisive. The first seed goes on to work continuously throughout the whole process of development, either consciously or unconsciously.”³ Or of Wilhelm Dilthey: “what a man is, only his history can tell him.”⁴ According to historicists, this is not only true of individual human beings, but also of civilizations, nations, peoples, institutions, and so on—in short of all that falls within the scope of historical investigation. Mandelbaum summarized the historicist thesis as:

Historicism is the belief that an adequate understanding of the nature of any phenomenon and an adequate assessment of its value are to be gained through considering it in terms of the place it occupied and the role it played within a process of development.⁵

This is the foundation and point of departure for all historical writing worthy of this name. And the idea always is that the past is carried along into the present—hence, it is contemporaneous with us—insofar as our past determines who we are. The past lives on in us; it is the historian's main responsibility and assignment to show in what way this is so in individual cases. Today, one sometimes speaks about the past as travelling together with us without our being aware of it, like a “stowaway” on some ship in Eelco Runia's powerful metaphor⁶—and this is then presented as a new and remarkable insight—but the idea is, in fact, as old as historicism itself.

It does not follow that the past should fix for once and for all who we are. For the past is open into three directions. In the first place, each year adds a new year to our past—thereby changing our identity to a smaller or greater extent. Recognizing this is all the more important now that we have to live together in our contemporary Western societies with large groups of immigrants. Under these circumstances it would be wrong to resist this necessity by saying, or implying, that our country had a fixed identity that should now be in danger of being disturbed by these newcomers. For the fact of the immigration of these newcomers and that of our wrestling with this fact are no less part of our (contemporary) history and, hence, of our national identity than things that happened to our nation in a remote past. The notion of identity is, basically, inclusivist and not exclusivist.

Second, it cannot be denied that there are parts of the past with which we cannot possibly identify ourselves any longer. Examples would be the Egypt of the Pharaohs or the Persia of Xerxes and Darius. Although it has to be admitted that even these remote pasts can be quite persistent and tend to die off very, very slowly. Moreover, under certain circumstances they can be resuscitated and regain a prominent place in our identities. Think of how the Battle on the Field of the Blackbirds (Battle of Kosovo) in 1389 was suddenly refurbished some six hundred years later during the conflicts in former Yugoslavia.

In the third place, the picture is complicated by the role that the writing of history may itself play in it. For me, I always find Burckhardt's statement deeply moving: "what was once jubilation and despair must now become knowledge" ("was einst Jubel und Jammer war, muss nun Erkenntnis werden")⁷. Hence, in the writing of history the happiness and the miseries of the people living in the past should be metamorphosed into objectivist knowledge of the past and must therefore be freed of its emotional content. This is where one might locate the "therapeutical value" that historical writing sometimes has. As Goethe once put it: "the writing of history is a way of getting rid of the burden of the past" ("Geschichte schreiben ist eine Art sich die Vergangenheit vom Halse zu schaffen"). The best example is French historical writing in the nineteenth century, to a large extent a continuous effort to digest the trauma of the French Revolution and its aftermath. And if François Furet is right in his *Penser la Révolution Française* of 1978, the assimilation of the trauma of 1789 into French history was completed only some two centuries after the event itself, that is, only in our own time. What psychoanalysis has to offer the traumatized person was thus given to the French nation by its historians.

The gap of the present

The historicist account of the past and of historical writing suggests a continuity between past, present and future. Since the past is retained in the present as what fixes our identity there can be no clear demarcation between past and present. And much the same is true for the present and the future. Our present identity will, to a large extent, determine how we shall behave in the future. The historicist conception of history tends to erase all clear boundaries between past, present, and future and to collate them into one all-encompassing continuum, a continuum denying to the present an autonomy of its own. Or, to put it metaphorically, the historicist conception of history leaves no room for there being in the guise of the present some kind of temporal vacuum, to be situated between the past and the future and itself being neither of them, but something basically different. Even more so, we could not even *think* of what content might be given to this notion of such a “vacuum” between past and present. Historicism thus seems to have the counterintuitive implication of making nonsense of the very notion of the present: for all we have are the past and the future, leaving no room for the present at all.

This must awaken our interest for how the German historian and philosopher of history Reinhart Koselleck succeeded in defining the present in such a way as to avoid this counterintuitive dissolution of the present into the past and the future by the historicist’s argument. His point of departure is the distinction between “*Erfahrungsraum*” and “*Erwartungshorizont*,” “the space of experience” and the “horizon of expectation”⁸. The former is the past made present, made accessible to us here and now, thus a potential object of memory, if not more; whereas the latter is the future pulled back within the present in the guise of wishes, desires, expectations, wonder, or curiosity that we may have with regard to the future. Above all, Koselleck insists that there exists a telling asymmetry between the two of them. For when discussing the former he quite deliberately speaks of the “*space* of experience,” insofar as the notion of space is suggestive of a space that be filled with different contents, without there being some specific order or hierarchy between these contents. As Koselleck nicely puts it, taking in the space of experience is much like looking through the glass of a washing machine and behind which we will then see the laundry being disorderly thrown around. This is basically different with the “*horizon* of expectation” since there we will have a very clear-cut separation between the present and the future, even though it may be true

that this horizon flies away from us just as fast as we approach it. It's always ahead of us.

The past thus seems to be open to the present—the borderline between them being always permeable—whereas the borderline between the present and the future is as sharp as a knife. The fact that we may well have our expectations of the future and that these will sometimes come true does not alter this. For there always exists the possibility of some unforeseen catastrophe condemning all our expectations about the future to the dustbin. However, we could not possibly think of some event radically undoing the continuity between past and present and the basic permeability of the borderline between the two of them. This is what Koselleck sees as the basic asymmetry between how we relate to the past, on the one hand, and the future, on the other. As he puts it:

... The space of experience and the horizon of expectation therefore cannot be unequivocally related to each other. When taken together they constitute the present as a temporal difference, since they present us with incommensurable characterizations of past and future. Intended or not, the relationship created by the two in their interaction, is therefore suggestive of a leap into the future.⁹

This quote may help explain the suggestion of a moment ago that the present, in agreement with Koselleck's conceptions, should be seen primarily as a "vacuum": it is such a vacuum since the present is, basically, the locus of its incommensurability with the past and the future. It is an empty place of which nothing can be said in addition to the mere observation that it marks the very moment of the incommensurability of the past and the future.

But Koselleck does not stop there—as we might have expected already from his claim that the incommensurability of past and present is suggestive of a leap into the future—and can, therefore, be tied to the moment of its discovery. In this way, the discovery of the present, as a category to be distinguished between the past and the future, can be situated in the West's history itself. Koselleck thinks here primarily of what he would later call "*die Sattelzeit*," the transition of the end of the eighteenth and the beginning of the nineteenth centuries from an agrarian prerevolutionary society to an industrialized world taking its first uncertain steps in the direction of modern democracy. The space of experience lost much of its meaning and practical value while the horizon of expectation was now more of an unknown than ever before. A gap opened up between the two of them—and this is how the present came into being as a category irreducible to either of them.

Koselleck's analysis is not without its paradoxes: historicism and the fascination with the past came into being simultaneously, although one would believe, following Koselleck's argument, that history—hence, the space of experience—had lost its relevance and been reduced to mere antiquarian significance. Koselleck does not really address the problem. The closest he comes to it is when he emphasizes (with Friedrich Schlegel) that progress is faster in some areas than in others, so that the present seems to be torn apart between a persistence of the past in some places and an anticipation of the future elsewhere.¹⁰ But I am not sure whether this argument will be of much help. For the only conclusion one may infer from it is that the irrelevance of the past announces itself in some domains of human endeavor sooner than in others. And this gives us no hold on the perplexing question of why history could become so popular at the very moment when “the space of experience” and “the horizon of expectation” began growing apart from each other. I return to this issue below.

Truth and reconciliation commissions

All the more reason, therefore, to see whether we can find help elsewhere in our effort to deal with the problem of what is at stake when the gap of the present opens up between the past and the future. Self-evidently, it is best to focus on historical examples in which the gap of the present, hence the gap separating the space of experience and the horizon of expectation, is deepest and seems unbridgeable. The first example to come to mind, is, obviously, the French Revolution—if only since Koselleck himself so directly related the coming into being of the gap between the past and the future to it. There is, however, a peculiarity of the French Revolution that makes it a less suitable example in the present context. I have in mind here the fact that the French revolutionaries did not want to separate past and future but, instead, to simply abolish the past. Which is, of course, a far more drastic gesture. Characteristic is the revolutionary calendar adopted in October 1793, beginning retrospectively with the abolishment of the monarchy on September 22, 1792. The revolutionaries wanted to start history anew, so to say, as if there had been no history prior to Year One of the revolutionary calendar. And, as is known from Pierre Rosanvallon's writings on French history, this was for the revolutionaries no mere manner of speaking, but their real intention.¹¹ However, as commonsense—and Freud—demands us to recognize: every attempt to abolish the past is doomed to failure. The repressed past made its entry soon again into nineteenth-century French historical writing,

reflecting on what was repressed by the Revolution and why. This gave us, or, rather, the nineteenth-century French, the separation of “the space of experience” and “the horizon of expectation” that Koselleck had had in mind, and the kind of historical writing and historical consciousness belonging to it. But, again, this is a “régime d’historicité,” to use François Hartog’s terminology,¹² that is basically different from that for which the French revolutionaries had aimed. Nevertheless, there is a lesson in all this. For it follows from the foregoing that it is possible to study the emergence of the present as the gap between the past and the future on the condition that the powers of the past are openly and candidly recognized.

This, then, is where the “régime d’historicité” at work in the so-called Truth and Reconciliation Commissions (TRCs) of the recent past differs basically from the one known from the French Revolution. The French revolutionaries laid the perpetrators of what they regarded as the crimes of the past under the guillotine—and could one take the idea of the abolition of the past more literally?—whereas these Truth and Reconciliation Commissions, as their very name suggests, aimed at a *reconciliation* with the past.

But before getting to the issue of the “régime d’historicité” exemplified by the TRCs a few things need to be said about them. Although worldwide some two dozen of these TRCs have been at work with more or less success, and although the Argentinian effort to come to terms with the crimes of the dictatorial regime of Jorge Rafael Videla is in several respects the most interesting,¹³ the South African TRC provides the best matrix for understanding them and for how they relate to the “régime d’historicité” of traditional historical writing.

Four years after having been released from prison in February 1990, Nelson Mandela became President of South Africa and ended the apartheid regime, which had been established in 1948. The end of apartheid elicited the new problem—experienced by all as such—of how to deal with South Africa’s violent past in a way that would be acceptable to all parties, decisive for the country’s future, and that would allow the country to recover from its wounds in a relatively peaceful way. The interim Constitution of 1993 expressed the nature of the problem well:

This Constitution provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful coexistence and development opportunities for all South Africans irrespective of colour, race, class, belief or sex. The pursuit of national unity, the well being of all South African citizens and peace, require reconciliation between the people of South Africa and the reconstruction of society.¹⁴

Observe, in the first sentence of this passage, the use of the metaphor of the bridge, which paradoxically combines both the *recognition of distance* with the promise of that *distance being overcome*. In fact, there is no better metaphor for expressing “the gap of the present” existing between the space of experience and the horizon of the expectation than that of the bridge. And this applies all the more so to South Africa during its transition from apartheid to a still indefinite, but hopefully better future. And between these two large continents of the past and the future—both so very different from each other—there is the narrow and shaky “bridge of the present” *connecting* the two of them, but no less *separating* them too. As may also become clear from this metaphor, we’d better not rush here, or make unexpected or pathetic movements, since this might upset the uncertain bridge on which we find ourselves, with the result that we plunge in the abyss after all. In sum, passing from the past to the future in a context like that of South Africa in the 1990s puts a premium on prolonging the present as much as possible. The longer the present can function as a kind of limbo between the past and the future—itself being part of neither of them—the better it is.

So, a plan needed to be drawn up for how to move from one end of the bridge to the other—and where the plan would not merely give the direction of the movement but be part of it as well, or, rather, its impulse-moment—which brings us to the South African Truth and Reconciliation Commission. A first step in the direction of the South African TRC had, in fact, been made already during the negotiations between the National Party of Prime Minister F. W. de Klerk and the ANC (African National Congress). Part of these negotiations concerned the problem of what would happen to people guilty of crimes committed during the apartheid regime. Initially no progress was made with the problem. But then Joe Slovo, the leader of the South African Communist Party, suggested the possibility of postponing a final decision on the issue to a later time, on the basis of the agreement promising “a general amnesty in which those seeking to benefit [from it] will disclose in full those activities from which they require an amnesty.”¹⁵ Since the amnesty issue is almost always an integral part of the assignment of TRCs, the compromise suggested by Slovo was an important first step in the direction of a South African TRC. Indeed, this first step proved to be decisive and in July 1995 Nelson Mandela signed the Promotion of National and Reconciliation Act formally instituting South Africa’s TRC. It was given a threefold mandate:

first it had to draw as complete a picture as possible of the nature, causes, and extent of gross violations of human rights committed during the period from 1

March 1960¹⁶ to the cut-off date contemplated in the Constitution, second it had to grant selective amnesties to perpetrators of politically motivated crimes on the condition that they disclosed the full truth about their crimes, and third, it had to make recommendations about appropriate reparations for the victims of apartheid.¹⁷

The third issue of appropriate reparations was never given much attention by the South African TRC, so that leaves us with the two first ones. Needless to say, there is a clear difference between the two mandates, insofar as the former had best be entrusted to the historian while it typically is the lawyer's task to decide about amnesties. Moreover, the Reconciliation Act's very formulation already seems to favor the latter to the former. For it explicitly requires the historian to leave out of their account crimes committed prior to March 1, 1960. However, it runs up against the historian's professional mind having to consider one and the same act committed on March 1, 1960 a crime and as not being a crime if committed one day before. History is inhospitable to such abrupt transitions; everything develops gradually in history. Superannuation, with all of the abruptness implied by it, is, on the contrary, part and parcel of the lawyer's way of thinking.¹⁸ The tendency to privilege lawyers was also clear from the fact that "no single historian was appointed commissioner or held a leading function in the TRC."¹⁹ This gives rise to the question of to what extent this juxtaposition of the discourse of history and that of law may have determined the results of the South African TRC and—no less important—whether any negative results could have been prevented if one had chosen a different regime between the two discourses. Or, to reformulate the question: what roles must be assigned to history and law, respectively, if we need to find our way, as well as possible, on the narrow and shaky "presentist" bridge connecting the space of the experience of the past with the horizon of the expectation of the future?

History and law in the South African TRC

There is a nearly unanimous consensus that "history" did not fare well in the TRC.²⁰ Not only were historians not invited to play a predominant role in the world of the TRC, and their contributions reduced to mere fact-finding, even more so, historians always looked at the whole enterprise with the greatest distrust. The hope of the Archbishop Desmond Tutu—who presided over the TRC—was that the TRC would offer a "road map for those who wish to travel in

our past,” they considered a naive illusion.²¹ For such road maps for the past do not exist, and people believing in them often think that simply having the facts about the past will give you such a road map. What are road maps, after all, other than the handy presentation of a number of geographical facts? But history is more than mere fact-finding, as the historians liked to point out. Moreover, the organizational structure adopted for the TRC still further marginalized the historical dimension, as will become clear from the following enumeration of its activities.

In the first place, there was the Human Rights Violation Committee (HRVC) hearing the testimonies of some 22,000 victims of the apartheid regime with a special focus on so-called window-cases and that were believed to be exemplary of the regime. Next, public hearings were organized in order to structure the collective memory of the past by forming “powerful epistemological myths about the primacy and authenticity of direct experience ... in recounting truth.”²² Second, and most prominent of all, was the Amnesty Commission (AC) whose task was to decide on some 7,000 requests for amnesty (only about 15% were granted). Though the AC did what it could, it was commonly regarded as having failed since it prosecuted almost exclusively the executors of the apartheid regime and not the political leaders who had installed it (with the exception of Adriaan Vlok, a former minister of justice). Finally, there was the Reparation and Rehabilitation Committee (R&RR) whose activities were of marginal significance. These three commissions were supported by the Investigation Unit (IU) and the Research Department (RD), manned by roughly seventy people. Originally their task was to write a new and revisionist history of South Africa since 1960, but they were soon swamped by requests for information from the HRVC and the AC and were thus unable to fulfill the task assigned to them. In fact, this is symbolic of the achievement of the TRC as a whole: no one can fail to be deeply impressed by the efforts of the TRC and, though it is hard to find hard proof for such a claim, few people will doubt that the country simply needed something like the TRC and that it reduced part of the hatred between South Africa’s black and white population. Nevertheless, even though the TRC had reconciliation in its very title, reconciliation is still a long way off, if ever it will come. Moreover, whatever the TRC actually achieved was done so by juridical rather than historical discourse. And that confronts us with the question whether the TRC did the right thing by privileging juridical to historical discourse.

In order to address that question it is best to start with the observation that both the lawyer and the historian have a professional interest for facts. Legal

cases are decided on the basis of facts. Historians use facts for creating an image or a picture of part of the past. A historical text is not a grocery list of facts, but historical facts selected, organized, and presented to the reader of the text in such a way as to suggest how we, according to the historian in question, should look at the past. In the context of the present discussion there is a peculiar ambivalence in this feature of historical writing. For, on the one hand, the historian's proposals for how we should look at the past have the effect of objectifying the past, of placing it at some distance from us. On the other hand, as is evident from historicism, historical writing relies on a *fabula de te narratur*, presenting its audiences with identity, hence, with who we *are* as the result of our history. Historical writing must have these effects, which may be unpalatable to the aims of TRCs. For in the former case the perpetrators of past crimes may find an excuse for their crimes in the fact that they were committed under different historical circumstances. To take an example, how could we condemn sixteenth-century judges for sending elderly women to the stake when everyone believed in the existence of witches? In the latter case, the subsuming of past crimes in our very identity is a standing invitation to continue them. So, the historical approach to what is at stake in TRCs prepares us for the unpleasant dilemma of either an untoward propensity to forgiveness or persistence in the wrongdoings of the past. Whatever option one prefers, the result seems to be unfortunate from the perspective of the aims of TRCs.

This brings me to the heart of the issue. If the discourse of history is apparently less appropriate for satisfactorily doing justice to the victims of a violent and oppressive regime, had we then not better turn to juridical discourse? And would that not require us to admire the wisdom of the organizers of the South African TRC when so openly and deliberately marginalizing the role of historians? Certainly, there is common ground between the two of them, as I said a moment ago, since both historians and lawyers will insist that facts have to be established as accurately as possible. But whereas facts are for the historian the basis for coming to a picture of the past, lawyers use them for pronouncing a sentence (or for disputing it). And there is a world of difference between the two. Historians possess no fixed rules for how to move from facts to the picture of the past presented to readers. One might even say that each historical text is a mere *proposal* for what such rules should look like in individual cases; in fact, each historical text could be read as saying what rules would have to be adopted for projecting as satisfactory as possible the past itself on the plane of (historical) language.²³ In the case of jurisdiction, however, the question is how the facts of the defendant's behavior, under a certain description of them, should be related

to the rules for punishable behavior, as defined by the appropriate paragraph in the penal code. The historian moves from facts to something (vaguely) general, that is to say some picture of the past; the lawyer moves in the *opposite* direction by applying the general rules of the penal code to the facts of an individual punishable action.

If this sketch of the relationship between historical and juridical discourse is basically correct, one may see here an explanation of why historical discourse would be an inconvenient encumbrance for the well-functioning of TRCs, which will end up almost inevitably with juridical discourse, as was the case with the South African TRC. It's like this. Historians professionally recognize the historicity of norms and values in religion, ethics, and law. They like to insist that in, for example, the Middle Ages, one thought differently about good and evil than nowadays. Think of Ian Hacking's *Rewriting the Soul* of 1998 having as its point of departure the fact that a forty-five-year-old man marrying a girl of fourteen was completely acceptable in the 1830s, whereas such a person would nowadays immediately be accused of pedophilia and statutory rape.²⁴ The recognition by historians of the historicity of norms and values may obviously be an encumbrance for the condemnation of what in our eyes went wrong in the past. This is different in jurisdiction even though, admittedly, the appeal to extenuating circumstances may have a somewhat similar effect there. The explanation is that in juridical discourse time has, in principle, no role to play. The lawyer is interested exclusively in whether the behavior of some person, under a certain description of it, falls within the scope of an article in the penal code and next, if so, what punitive measure should follow from this. Time is irrelevant in this context, with the sole, all-important exception of the issue of superannuation. The fact that superannuation is merely a matter of yes or no suggests already that time does not really enter into the considerations of the lawyer, and it concerns only the preliminary question of whether a certain case is within the lawyer's competency or not.

It is precisely at this point that TRCs face an all-decisive complication, namely, that of so-called transitional justice. TRCs typically come into being when one moves from one regime to a later one. For example, from the South African apartheid regime to that of the legal equality of races. And then crimes committed under the previous one cannot automatically be punished with an appeal to the legislation of the new regime. For it may well be that under the previous regime these crimes were not punishable, whereas the legislation of the new regime condemning them is later than these crimes and therefore not applicable to them. So, acquittal seems to be the only option, in agreement with the old rule: "nulla poena sine lege."

This evidently is wholly unacceptable in cases such as South Africa, Argentina or, for that matter, Hitler's genocide of the Jews. But for cases like these, an acceptable solution is easy to think of. One might say that there are actions that each reasonable person would condemn as criminal and are, therefore, punishable, even if they were not so under certain juridical dispensations (with the consequence that such juridical dispensations would have to be characterized as criminal themselves). In such cases, we speak of "crimes against humanity." And for three reasons not much need to be feared anymore from the argument about the historicization of norms and values mentioned a moment ago. First, if TRCs enter the scene, we always have to deal with crimes dating from a relatively recent past, and that automatically substantially minimizes the force of the historicization argument; the argument gathers strength only when large temporal differences come together with large differences in moral standards. Second, an appeal to Hans Kelsen's so-called Grund-norm or "basic norm" may even allow us to condemn the punishment of crimes that some juridical system itself leaves unpunished (e.g., the crimes committed by the Nazis against the Jews). A juridical system's basic norm can be defined as a basic norm that is recursively defined by all the rules of that system. From the perspective of such a basic norm such iniquities as the deprivation of the Jews of their most basic rights by the Nazi regime can be shown to involve an inconsistency between that deprivation and the rest of the legal system respecting such rights. And, lastly, there are numerous international treaties obliging criminal regimes, no less than others, to respect human rights. Against the background of these considerations the "*nulla poena sine lege*" argument is bound to lose much of its force.

Conclusion

Two threads can be discerned in my argument. In the first place, defining the past with Koselleck as the space of experience and the future as the horizon of expectation introduces a present that is both incompatible and incommensurable with the past and the future. In the second place, this relationship between past, present, and future can best be explored by an investigation of TRCs, since these must function in a context exemplifying most clearly the present's relationship to both the past and the future. It is their task to define a present that will be the nation's best guide for moving from a trouble past to a better future. Obviously, most, if not all human life, is an effort to cope with this transition from past to present and from the present to the future. But ordinarily the categories

of past, present, and future are so intimately intertwined that it is impossible to reconstruct how they relate to each other. Many philosophies of time, like those of Aristotle, St. Augustine, Husserl, Heidegger, Ricoeur, or Jameson capitalize on this seemingly inextricable knot of past, present, and future. What is so revolutionary about Koselleck's proposal—probably more revolutionary than he himself is aware of—is that he radically breaks with all these efforts to rob the present of its own characteristics by submerging it in one way or the other into the past and the future. Koselleck insists upon the basic asymmetry between the past and the future and is therefore able to rescue what is peculiar to the present. The task and the activities of the TRCs demonstrate how much Koselleck had been in the right about this.

More specifically, this is why TRCs consistently prefer juridical to historical discourse. The former enables them to stretch the present as much as possible, more precisely, for as long as the terms for superannuation allow them to do so. It may seem arbitrary, ridiculous, if not worse to the historian to fix the mandate of the South African TRC on March 1, 1960, but we should recognize that this is wholly in agreement with the logic of Koselleck's argument. As soon as the failure to recognize the asymmetry between the past and the future blurs the demarcations of the present, the present will be invaded by the past and the future, and *nothing* will be left of it. It is, however, the law, as decreed for a period of so-called transitional justice that succeeds in digging a safe place for the present under the overwhelming onslaughts on it by the past and the future.

It also follows that from the perspective of history and in historical discourse there is no present in the proper sense of the word; there is only the past and the future. The implication is that contemporary history, or what the Germans call "*Zeitgeschichte*," poses no specific problems of its own for the writing of history. It is often said that such problems should be occasioned by the fact that we can only write the history of what is at some historical distance from us.²⁵ But the argument makes sense only on the assumption that there should be a "present"—as *distant* and *distinct* from the past—functioning as the perspective from which the past is seen and analyzed. If the assumption were correct, then, indeed, there would be a problem with contemporary history. For, obviously, the present cannot offer a perspective on itself. I shall not deny that the writing of contemporary history has problems of its own. But historians have found solutions to them—as is clear already from the fact that contemporary history has become over the last few decades a much respected and flourishing subdiscipline. Think, moreover, of journalism. Are their writings not the *ne plus ultra* of

contemporary history? And do we not consider their writings most informative, nay, even indispensable for our orientation in the complex and rapidly changing world in which we are living? And do the newspapers of today not give us the history of yesterday and those of tomorrow that of what is still the future? So, is not justifiable to spin Croce's famous *dictum* that "all history is contemporary history" by saying that "all contemporary history is history"—nothing more and nothing less than that?

One last problem to address: in Koselleck the present is defined as the gap between the space of experience and the horizon of expectations. According to Koselleck, the discovery of this gap was contemporaneous with the discovery of history. Obviously, this is counterintuitive, to say the least, if we recall my argument of a moment ago that the present is not a historical category and that historical, or rather historicist, thought leaves no room for it. So how could the present, as a distinct temporal category, possibly come into being at precisely the moment when it lost its theoretical *raison d'être*? I must confess that I don't have a convincing explanation of this paradox right now. However, there may be two ways for dealing with the problem. One might think of the sociopsychological explanation that the loss of the present by the victory of the "régime d'historicité" of historicism causes an unconscious and subterranean yearning for the present, or for presentism. Another, more philosophical explanation could be that the most basic categories of human existence only come to us in binary opposites: life versus death, the gods versus humans, heaven and earth, good and evil, and so on. So, it might have been here: the present was discovered thanks to a conception of time leaving no room for it. Historicism eliminated the present, but precisely because of this forced it to find a refuge where it could continue to live on free from the threats of historicism. It's the kind of argument that will undoubtedly be welcomed by the structuralists and the dialecticians among us.

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