

**PROGRESS ON TRIAL:
HOW NATIONAL TIMESCAPES SHAPE
POSTCOLONIAL RECONCILIATION**

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**A thesis submitted to the Department of Government of the
London School of Economics and Political Science
for the degree of Doctor of Philosophy**

London, July 2021

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ABSTRACT

This thesis argues that it is our very idea of progress, codified in law, which obstructs real progress when it comes to postcolonial reconciliation. This affects three discourses: (1) the academic debate on the rectification of historical injustice; (2) legal theory and practice in the fields of constitutional law, international criminal law and international human rights law; (3) the intensifying activist struggle for recognition of historically marginalised groups. Drawing on the methods of archival research, legal analysis and normative critique, I establish a comparative analysis of how different countries deal with their colonial past to find out why full historical reconciliation is so difficult to achieve. Part I searches for the origins of the globally dominant conception of progress and locates them firmly within the history of the West. Chapter 1 argues that the historical injustice debate is stuck because both proponents and opponents of redress rely on the same conception of time: Liberal Time. Chapter 2 traces the emergence of inherently progressive Liberal Time back to the impact which Christianity, the French Revolution and industrialisation had on European intellectual history. Chapter 3 shows how Liberal Time spread worldwide when it became a justification and tool for European imperial expansion. The conclusion of part I is thus that the conception of time that built Empire also impedes its dissolution. Part II engages in a comparative discourse analysis of three major trials in which the liberal Western ideal of progress was challenged. The trials reveal a shared imaginary of progress, but also differences in how national timescapes shape historical reconciliation. Chapter 4 shows that Britain's cult of continuity makes the public acknowledgement of colonial wrongs comparatively easy. Chapter 5 posits that France's foundational revolutionary rupture makes a productive dialogue about the past virtually impossible. Chapter 6 suggests that the US offers a synthesis between rupture and continuity, when measuring American progress against the ideals of the American Revolution. Chapter 7 distils these findings into the following predicament: the Western promise of progress cannot be fulfilled so long as our institutions defend an idea of progress which is itself oppressive and exclusionary.

Acknowledgements

First, I am deeply indebted to my supervisors: After Lea Ypi encouraged me to apply to the LSE and Chandran Kukathas helped me settle into London's academic bubble, it was Katrin Flikschuh, whose extraordinary diligence, dedication and honesty made this ambitious thesis project a reality. Given such stellar support, all remaining imperfections are mine alone.

Many thanks to Annie Stilz for inviting me to Princeton in spring 2020 and the whole Princeton Politics community for making me feel welcome across the pond – even if the COVID-19 pandemic cut this enriching experience short.

I also benefited from great work experiences and would like to thank the team at LSE IDEAS, which exposed me to a stream of interesting encounters with academics and politicians; the London Library, which offered not only an oasis of calm, but also a wonderful community when I joined the Board of Trustees; and King's College London, where Paul Sagar allowed me to return to my alma mater with a fantastic teaching team.

Lastly, I would like to extend my heartfelt gratitude to friends and family without whom I would not have made it till the end: Thanks to David, who ran the Ideas Incubator workshop with me; to Sophia, who kept me company at the library and was always available for a neighbourhood meetup; to the Maughan Monsters, Valentina and Joseph, who made the hot summer of prospectus writing in 2018 remarkably enjoyable; to Max, who offered very helpful advice (and comic relief) at various stages of the PhD journey; to Eli and Theo for supporting me throughout the apocalypse of 2020 with endlessly uplifting video calls.

Above all, I have to thank Ingrid and Andreas for always being close enough to come over for a balcony chat; Roland, who witnessed all the tears, triumphs and tribulations of the PhD process and still supported me every single second; and, finally, my parents, Eleonora and Ferdinand, for their persistent idealism and encouragement. This thesis is dedicated to them.

*'Of course only a redeemed mankind is granted the fullness of its past—which is to say, only for a redeemed mankind has its past become citable in all its moments. Each moment it has lived becomes a citation à l'ordre du jour. And that day is Judgment Day.'*¹

¹ W. Benjamin, *Theses on the Philosophy of History* (Berlin, 1942), thesis IX.

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INTRODUCTION

On 13 October 1884, France was furious. 41 gentlemen from the world's leading nations had come together at Washington “for the purpose of fixing upon a meridian proper to be employed as a common zero of longitude and standard of time-reckoning throughout the globe” – and France had lost. Despite M. Lefaivre's passionate account of his country's “long and glorious past” in which France had “given sufficient proofs of her love of progress” to make Paris win the competition, the Prime Meridian was set at Greenwich, England.² The pendulums of public buildings, the rhythms of the railway, the lunchbreaks of the labourers of the world were set to the clock of the island nation that had become a global Empire. The French showed their disdain by consistently calling Greenwich Mean Time “the mean time of Paris retarded by nine minutes and 21 seconds” but had to accept defeat when they aligned with the British imperial metronome in 1911.³ For the delegates at this conference, time was a contested political issue. There was a clear link between time and power.

135 years later, on 19 June 2019, the New York Times' Magazine published a special edition starting the *1619 Project*, an ongoing investigation into America's past around one explosive claim: that the real story of the United States begins not in 1620, when the Mayflower arrived with the first European pilgrims at Plymouth Rock, but in 1619, when the first slave ship reached Jamestown. The seemingly small temporal change of just one year became the springboard for a

² At the crucial vote on the British proposal, 22 nations voted in favour and 2 abstained, France and Brazil. *International Meridian Conference Proceedings*, via <http://www.gutenberg.org/files/17759/17759-h/17759-h.htm>, accessed 29/09/19.

³ <http://www.thegreenwichmeridian.org/tgm/articles.php?article=10> , accessed 02/10/19.

wide-ranging debate on America's true founding. Could it be that instead of puritans fleeing the religious oppression of Old Europe to establish a new nation in liberty, the real Founders were slave traders and those who arrived in shackles – the ones who built the country in an epic struggle of suffering and exclusion? Was the country founded on virtue or vice? What did it mean to challenge the anchoring myth of such a diverse nation? The *Save American History Act* proposed by Senator Tom Cotton, who wanted to withdraw federal funding from state schools that taught the 1619 Project, suggests political disputes at the highest level. As in the case of France in 1884, the connection between time, narrative and power is worth exploring. All too often, we think of time as a neutral and universal scientific concept that is merely the background, not the object of politics. But that might be a mistake.

I want to suggest that time is an inescapable feature of postcolonial struggles for recognition, redress and reconciliation. The increasingly intense international debate on the reparation of historical injustice in the last two decades is a real-life struggle in which we can observe the interplay between politics and time. The trials about historical wrongs which we will explore initially seem to bring a long-suppressed past back into the present. But they do much more than that: the public controversies presented here actually allow us to rediscover past, present, future, and the links between them in order to assess our scheme of temporality as a whole. What is the right relationship between past, present and future? Where do we, as individuals or collectives, situate ourselves within the seemingly endless continuum of time? Do we get to choose our position or are we placed in the specific paragraph of a prefabricated story? If the latter, who fabricated this story and how? What, if anything, justified their doing so?

This thesis tries to answer such questions by investigating *how the West creates, spreads and maintains its own temporal order for its own political benefit*. I uncover this Western temporal order by way of analysing the historical injustice debate as a discourse implicitly premised on a particular conception of time. In this debate there are, of course, voices in favour of and voices against historical reparations. Yet the fundamental problem I identify is that they all base their arguments, hypotheses and predictions on the same notion of time: Liberal Time, crafted by our very specific European and imperial history. My core argument can thus be summarised as follows: *Why do we struggle to address historical injustice in our time? Precisely because it is our time*. It is the culturally contingent and endlessly manipulable progressive conception of time that we – Western academics, lawyers and politicians – work with, that impedes real dialogue with a plurality of pasts and a more nuanced understanding on how they affect the present. This is not just fascinating for historians. It matters to political theorists if our conception of time has harmed and continues to harm victims worldwide. We are now among those victims, if we are biased towards a temporal regime that *privileges the future and hides the past*. When judging the intertemporal disputes created by European imperialism, we should acknowledge that there is no single universal time. Instead, it is the contingently valid European product of progressive time that now obstructs our vision towards comprehensive repair. The time that built Empire obstructs its dissolution.

I. TERMINOLOGY

I will use the term “*timescape*” to designate a collective’s vision of time, history and the collective’s place in history. Like landscapes, timescapes are ecosystems constituted by some fixed elements (treaties, places or principles) and some moving parts (the stream of ideas carried forward by each new generation, the ruptures that occur when unexpected storms arrive). Timescapes are more than “regimes of historicity” (Hartog⁴), since they are not oriented towards the past, or “political temporalities” (Gokmenoglu⁵) since they are not merely political. Timescapes are social imaginaries by which a particular political, economic and cultural collective makes sense of its own historical experience. This means that within one historical system there can be multiple timescapes. As we shall see, their multiplicity and competition ultimately tests the strength of the larger (Western) temporal order.

The use of the term “*postcolonial*”, too, can be controversial. The usual critique is that we are not yet fully past colonialism and coloniality.⁶ Colonial structures persist wherever we look, from global investment patterns to refugee flows. And yet the most interesting, if generally overlooked, part of this word is arguably the syllable “post”. That “post” itself suggests a controlled line along which we move unidirectionally from past to present to future, each step being decisively “post” the one that “preceded” it.

⁴ F. Hartog, *Régimes d'historicité. Présentisme et expériences du temps* (Paris, Seuil, 2003).

⁵ B. Gokumenoglu, *Temporality and Social Movements: A Political Ethnography of Activism In Contemporary Turkey (2016-2018)*, doct. diss. (London, 2019)

⁶ See, for example. D. Chakabarty, “Postcoloniality and the Artifice of History: Who Speaks for ‘Indian’ Pasts?”, *Representations*, No. 37, Special Issue: Imperial Fantasies and Postcolonial Histories (Winter, 1992), 1-26.

Revolution, the defining feature of modern politics, is a recent dream that needs some explanation. Historically, revolution was synonymous with restoration. One would roll back to the proper state of affairs. Only from the eighteenth-century onwards revolution came to indicate the possibility of radically overhauling the establishment. The problem with this new vision, however, is that revolutions have two parts: liberation and foundation. The liberation of the enlightened individual from the oppressive forces of custom and tradition by abolishing old rules, on the one hand, and the construction of a new alternative universe, on the other hand. The trickiest part of revolutionising is moving from the first step to the next. In between, Arendt and radical democrats have suggested, is the unbridled power of modern politics.⁷ This revolutionary limbo can be dangerous – many a revolution has ended too early, in destruction rather than construction – but it is also the essence of revolutionary spirit. The liminal space between liberation and founding is the construction site of history. I mean this in a triple sense: first, it is the site where tangible political and social change occurs on the surface; second, it is the moment in which the very structure of history changes (Reinhart Koselleck would say that new layers and shapes are formed in the sediments of time⁸); third, it is the site in which man expresses his identity as a historical being capable of looking both backwards and forwards. This is why, for Europeans at least,⁹ the occurrence of revolution profoundly changed the way they saw both themselves as actors in (not of) history and as

⁷ H. Arendt, *On Revolution* (London, Penguin, 2006 [1963]).

⁸ R. Koselleck, *Zeitschichten: Studien zur Historik* (Berlin, Suhrkamp, 2003).

⁹ While early theorists of modern historicity like Karl Löwith or Hans Blumenberg operated comfortably within a framework of European references, Koselleck has already been criticised for reinforcing European visions of History. See V. Ogle, “Time, Temporality and the History of Capitalism”, *Past & Present*, Vol. 243, No. 1 (2019), 312-327.

agents who could shape the future of the world by predicting, taming, executing, shaping history as they saw fit. The men of revolutions are self-made men who thereby also make history. Let us bear this novelty in mind as we compare revolution with its alternatives.

The main alternative to revolution is “*reconciliation*”. This is all too often seen either as unduly strict punishment demanded by the overly zealous or as whitewashing acquiescence to the status quo in order to preserve established conservative interests. Catherine Lu has convincingly shown that neither of these two popular images do justice to the theoretical richness of reconciliation. She distinguishes between “three related forms of reconciliation: (1) interactional reconciliation, which responds to alienation arising between agents through their interactions; (2) structural reconciliation, which responds to the alienation that arises from the social and political practices and structures that mediate agents’ activities and relations; (3) and existential reconciliation, which responds to the internal or self-alienation of agents that typically accompanies some forms of relational and structural alienation.” Although popular narratives about reconciliation focus on interactional reconciliation between agents – for example, the displaced Cherokee tribe versus the Federal Government of the United States – Lu suggests that “the project of structural reconciliation is more normatively fundamental for addressing both interactional and existential forms of alienation. Reconciliation in response to political catastrophe should be understood as a regulative ideal [...] to create a mutually affirmable and affirmed social/political order that can support the flourishing of nonalienated agents.”¹⁰ Reconciliation goes beyond justice, when it becomes the opposite of alienation.

¹⁰ C. Lu, *Justice and Reconciliation in World Politics* (Cambridge, CUP, 2017), esp. chapters 5 and 7.

This is certainly a laudable ideal. Yet in my reading of the struggle for postcolonial reconciliation on the ground, that dream of postcolonial reconciliation without alienation is still a long way off, since the liberal temporal order alienates all those who cannot keep up with the predicament of progress.

II. METHODOLOGY

My methodology is unorthodox and might require a brief explanation. First, my work is primarily theoretical, but mixes a variety of methods used across the social sciences. The historical documents which you will see are the harvest of original archival research at the British National Archives in Kew, the Special Collections of the Firestone Library at Princeton University, and the digitally accessible collections of the French National Library and the French Ministry of Foreign Affairs.¹¹ The more recent documents include articles published in newspapers, magazines, blogs, as well as radio and television broadcasts and some contributions on social media. They form the basis of a critical reconstructive analysis of the main arguments traded in the public debate on historical injustice. The national debates take place against the backdrop of a certain national historical narrative, a distinctive way of dealing with history and a given society's place in it. Do all societies have their own "regime of historicity"? Perhaps not. Yet the societies I have selected – Britain, France and the United States – are defined by a firm vision of history which the powerful

¹¹ A full research trip Paris will have to wait until the current COVID-19 travel restrictions are lifted.

have consciously crafted (and contested) through the centuries. I try to capture its essence by looking at authors who have had a disproportionate impact on a nation's historical imagination, not only because their works had very high circulation rates, but often also because they were participants in the political apparatus. Mill and Tocqueville, for example, were not only members of parliament, but members who regularly expressed their views on colonialism. These narratives continue to be disseminated through the public education system and other channels of power.

The set of assumptions about the structure and value of time, coupled with ideas about the shape and ends of history and a society's place in it – what I collectively call a “national timescape” – is not only taught at schools, or discussed in public. National timescapes are ultimately sustained by the law. That is why I have chosen legal case studies to reveal them. I do not look at legal records like a jurist, but that can be an advantage. If we ask “What is the relationship between law and political theory?”, one plausible answer is that legal discourse is almost invariably an expression of power. A country's legal system reflects the priorities of the ruling class. Details such as who has access to legal discourse, how plaintiffs frame their case and how the court responds are often indicative of wider social structures. Can standardised legal processes do justice to history in all its complexity? Of course not. Some actors, relationships and facts will invariably be lost. But the way the West's established legal procedures define and select what counts as evidence, who counts as a plaintiff with a credible case and who can be accused as a perpetrator years after an injustice occurred reveals a lot about the established law's relationship to history. History is not merely the positive record of the past, but the wider field in which past, present and future form a whole. Western law is inseparable from historical consciousness. As we

will see, the court hearings suggest active deliberation on the respective nation's history, but also on the nation's place in (world) history, its historical character and its historical mission. It is at this level of analysis that public litigation at the highest courts becomes a way of contesting orthodox narratives about what belongs in a nation's story and what doesn't. This is important if we agree that political theory is "political" because it concerns itself with power in the broadest sense. The analysis of legal discourse offers a springboard for theoretical work that reveals and criticises the power structures which sustain it.

Strangely enough, such considerations have been discussed in empirical political science and legal theory – specialists on political transitions and transitional justice have been particularly prolific in this regard – but much less in political theory.¹² The political science literature, however, often focuses on the prosecution of heads of state or of specific groups (i.e. military juntas) as part of regime change.¹³ The International Criminal Court plays a significant role here,¹⁴ but more often than not, the cases admitted for trial concern war crimes and crimes against humanity perpetrated by non-Europeans – as if Europeans were not (or were *no longer*) capable of such atrocities. I am not interested in individual perpetrators, but in entire state administrations accused of human rights violations. When a citizen or (perhaps even more interestingly) a non-citizen

¹² An important exception is A. R. Murphy, "Trial Transcript as Political Theory: Principles and Performance in the Penn-Mead Case", *Political Theory*, Vol. 41, No. 6 (2013), 775-808.

¹³ E. L. Lutz & C. Reiger (eds.), *Prosecuting Heads of State* (Cambridge, CUP, 2009); G. Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, PUP, 2000); Laughland, *A history of political trials: from Charles I to Saddam Hussein* (Oxford, 2008); J. Meierhenrich, J., & D. Pendas, D. (eds.), *Political Trials in Theory and History* (Cambridge, CUP, 2017).

¹⁴ C.M. de Vos & C. Stahn (eds.), *Contested justice: the politics and practice of the International Criminal Court interventions* (Cambridge, CUP, 2015); C. Gegout, "The International Criminal Court: limits, potential and conditions for the promotion of justice and peace", *Third World Quarterly*, Vol. 34, No. 5 (2013), 800-818. For an interesting discussion of time at the ICC see: P. Akhavan, "Complementarity Conundrums: The ICC Clock in Transitional Times", *Journal of International Criminal Justice*, Vol. 14, No. 5 (2016), 1043–1059.

accuses an institutionalised authority of serious crimes, the state and its power are put on trial. If the accusations are serious enough, the trial reveals something about the self-conception of the state. It is this revelation I want to focus on. I won't focus on "regime change" because the term itself suggests that outside of tumultuous periods of change, there should be no challenges to state legitimacy. I do not think that there is any "before" and "after" political change, because regimes are constantly evolving. Against the statism that still pervades the literature on "democratic transitions", I want to uncover and reactivate challenges to authority – especially within the Western states that are all too often portrayed as "fully developed", i.e., no longer in need of transitional justice.¹⁵

My approach therefore falls into the growing scholarship in embedded, engaged and committed political theory.¹⁶ It is embedded, because abstract questions about matters like intergenerational collective agency or epistemic injustice are analysed in real-life debates whose outcome affects both political agenda-setting and legislation at the top, as well as the daily lives of citizens at the bottom. My method is in line with Herzog & Zacka's call for "political theory in an ethnographic key", with "ethnographic sensibility" conceived broadly to include not only immersive field work but also "being embedded in research sites for shorter visits" and "closely examining the texts and cultural artifacts they produce" as I have done in all three countries which are analysed in Part II. I join Herzog & Zacka in highlighting the potential benefits of such a

¹⁵ See ch. 1, section III.

¹⁶ M. Longo & B. Zacka, "Political Theory in an Ethnographic Key", *American Political Science Review*, Vol.113, No. 4 (2019), 1066-1070; L. Herzog & B. Zacka, "Fieldwork in Political Theory: Five Arguments for an Ethnographic Sensibility", *British Journal of Political Science*, 2019-04, Vol.49, No. 2 (2019), 763-784.

methodology: “It can help uncover the nature of situated normative demands (epistemic argument); diagnose obstacles encountered when responding to these demands (diagnostic argument); evaluate practices and institutions against a given set of values (evaluative argument); probe, question and refine our understanding of values (valuational argument); and uncover underlying social ontologies (ontological argument).”¹⁷ I would like to add that such ethnographic interest is by no means restricted to far-flung corners of the world. The additional value of uncovering the “underlying social ontologies” of one’s own social and political system is enormous.

My work is also engaged because I do not pretend to be neutral on any of these issues. Although both sides of the argument will usually be represented, I write with the conviction that political theory should indeed be political. My research should contribute to understanding what obstacles we face in the long struggle for historical reconciliation, not as a purely theoretical diagnosis, but as a step towards overcoming those obstacles in practice.

It might also be worth stating clearly what I am *not* going to do in this thesis. First, I am not primarily offering any responsibility tracing across time, especially not to specific persons. I am not going to designate a single guilty generation or localised group either. I am not going to assign blame directly. Second, I am not going to deal with the non-identity problem and similar technical dilemmas in intergenerational justice. Intergenerational communication and responsibility matters to my argument only insofar as the generations in question share a

¹⁷ L. Herzog & B. Zacka, *Fieldwork in Political Theory*, 764.

politico-cultural lifeworld with concomitant norms and expectations.¹⁸ Third, I am not going to offer any concrete policy recommendations to the problem of colonial injustice. In Part II we are going to look at different routes that different countries have taken to attempt historical reconciliation, but no choice will be made between them. Instead, I am offering a possible answer to the vexing question “Why can’t we overcome historical injustice even if we are self-consciously progressive?”. My suggestion is that the Western promise of progress cannot be fulfilled so long as our institutions defend an idea of progress which is itself oppressive and exclusionary.

Two methodological objections should be answered before we move on. First, the cosmopolitan objection against my use of the nation-state as the unit of analysis. This choice is the product of necessity. Legal systems and archives are still organised and maintained by national governments. We can turn this into an advantage though by analysing these formalised discourses as potentially questionable expressions of power.

Second, the constructivist objection that the historical documents I analyse are not the truth, but at most distortions, dissimulations or semblances of absolute truth. Here again, I don’t disagree in principle. I attempt to assess the impact of these historically crafted national timescapes on the revelation of uncomfortable historical truths. The most interesting question then is not “Is there any historical truth?” but “What happens in the different regimes of historicity when someone reveals historical evidence that does not fit with the socially

¹⁸ See A. Hampe-Nathaniel, “Communicative Punishment across Generations”, unpublished manuscript.

constructed idea of historical truth?”. Is that fact ignored, integrated or transformed to fit the customary patterns of public history? Are there any differences in the transformation of historical evidence depending on the national timescape? I believe there are differences. And it is the aim of this thesis to demonstrate them.

III. CHAPTER OVERVIEW

This thesis asks why we struggle to rectify historical injustice in our time. The answer is that we struggle precisely because our Western institutions measure progress through the lens of a historically contingent, Eurocentric notion of time, which, despite its liberal aspirations is actually oppressive and exclusionary. A specific notion of time structures our theoretical, political and legal attempts at rectification – and so long as this notion persists as an implicit assumption, we might not be able to deliver on the increasingly widespread promises of historical redress. This is elaborated in seven chapters, grouped into two parts.

Part I is about the relationship between time and Empire. Its overall argument is that the time which built Empire impedes its dissolution.

Chapter 1 introduces and criticises the concept of Liberal Time, a specific conception of historical time as linear, progressive and forward-looking. I argue that this specific version of time, used by both opponents and proponents of historical redress, might be at the root of our inability to take historical grievances seriously. It may seem unproblematic that a firm narrative sequence

between past, present and future underpins our political debate and legal order.¹⁹ It is, after all, past injustice that we are supposedly trying to rectify in the present in order to achieve future justice. A close study of the debate on historical injustice, however, reveals that this arc of historical time creates advantages and disadvantages in that debate. The critical analysis of the temporal assumptions sustaining our academic and political views on reparation will be split into three parts: Section I examines the most common arguments against historical redress to show that opponents of rectification generally use time to their advantage. Section II zooms in on the most influential argument against reparation - Jeremy Waldron's Supersession Thesis - to reveal that it relies on an extraordinarily progressive notion of time which ultimately favours the perpetrator of historical injustice. Although this conception of time serves his purpose, I argue that it is a trap, since it prevents Waldron from seeing historical injustice for what it really is. Section III asks whether the proponents of historical redress might be less constrained but shows that even they are ultimately trapped in the same temporal framework. I shall call this conceptual framework Liberal Time – and my suspicion is that the Western academic debate on historical injustice is in gridlock because we do not see, let alone escape that powerful temporal regime.

Chapter 2 looks for the origins of modern Liberal Time and finds them in the specificities of Europe's historical development. First, the spread of Christianity effected the first fundamental change from ancient, cyclical to modern, linear time. Then, the rise of the bourgeoisie, for whom "time is money", led to a re-evaluation from empty to valuable time. Last, the rupture of the French

¹⁹ P. Ricœur, *Temps et récit* (Paris, Seuil, 1983).

Revolution radically redefined the idea of earthly time as a field for the unfolding of man-made progress. Thus, the trinity of providence, productivity and progress, linked to very specific moments in the religious, economic and political history of the European continent, lies behind the open-ended, forward-looking, optimistic framework of Liberal Time. The dominant temporal discourse arising from European history is this: a supposedly abstract, but carefully crafted conception of universal historical time, measured and enforced by increasingly sophisticated clock time which records the unfolding of Man's Enlightenment in universal history. Until today, the institutional instantiations of European Liberal Time – from high courts to hourly work contracts - bear the marks of conflict, violence and domination. It is crucial to remember that the ostensibly scientific idea of World Standard Time, which conquered the world, rests on a story of provincial origins.

Chapter 3 examines the impact of Europe's temporal revolution on the wider world. After the successful scientific conquest of time itself had changed the daily habits and social structures of Europeans, the civilising wisdom of the clock and calendar was to be exported. Europe's imperial expansion was intimately linked with ideas about time, with Liberal Time once again being not merely the backdrop, but the shaper of political change. I identify two kinds of temporal relationships between European colonisers and non-European colonised peoples. The first is diachronic: Europe saw itself as "more advanced" on the ladder of historical time than the "backward" societies which "still" lived in earlier times. That temporal distance was a powerful ideological tool; it justified imperial intervention. The second relationship is synchronic, since the imperial

project relied on uniform time discipline. The contrast between these diachronic orders of subjection and synchronic systems of coordination seems enormous, and yet imperial theorists sought to resolve it through a polychronic vision of progress. The religiously inspired notion of the “civilising mission” keeps non-Europeans at bay while reinforcing the European privilege of being the chosen guardians of progress. Overall, Part I concludes that Liberal Time was and remains the justification, tool and end of modern Empires. It is the time that built Empire which now impedes its dissolution.

Part II looks at challenges to Liberal Time through the lens of public trials in three states which have professed their commitment to progress: Britain, France and the United States.

Chapter 4 opens with the Mau Mau trial in the United Kingdom, which reveals a specifically British view on the relationship between time and justice. I suggest that this relationship is characterised primarily by a cult of continuity. Like the two subsequent chapters, chapter 4 is divided into three parts: trial, tradition, and historical truth. Section I introduces the two *Mutua et al. v. FCO* trials (2011 and 2012) to analyse the legal discourse on redress for the Mau Mau veterans who suffered systematic torture during Kenya’s decolonisation. Section II links these initial findings to a broader intellectual tradition that prioritises the idea of historical continuity at all cost. Section III asks what this specific context of a national timescape characterised by the idea of continuity means for the revelation and incorporation of uncomfortable historical truths. The key sources here will be the parliamentary debates on the Hola Camp Massacre on 27 July 1959 and the Mau Mau settlement on 6 June 2013. After showing that the British

establishment is very adept at promoting a narrative of Britain as a continuous force for good in the world, despite colonial atrocities, I suggest that the British national timescape - characterised by an incessant quest for continuity - absorbs historical shocks reasonably well.

Chapter 5 contrasts the British approach with a very different strategy displayed at the trials of General Aussaresses in France. The veteran who exposed systematic torture during the Algerian War of independence was sued by the French League of Human Rights for “incitement to war crimes” which, for the League, represented a defamation of French Republican ideals. The French state’s willingness to defend those ideals – in all their revolutionary purity and all the way to the European Court of Human Rights – will be analysed in this chapter. Section I looks at the Aussaresses trials and the enormous public debate they unleashed when the state-sponsored silence on colonialism exploded. Section II investigates the intellectual conflicts that have divided France since its revolutionary watershed to show that it has become virtually impossible to think outside of the framework of a redemptive revolutionary timescape. The final section III asks what this means for the emergence of uncomfortable historical truths such as those revealed in Benjamin Stora’s presidential report on French colonial memory. My suggestion is that they are all but impossible to integrate into a tightly guarded official narrative which is characterised by the concept of a virtuous rupture. .

Chapter 6 looks at the limits of the American history-making by examining different challenges to the master narrative of New World progress. If France

focuses on rupture and Britain on continuity, the American case might combine the two: there is a tension between the radical (re)founding of “the first new nation” and the linear promise of continuous progress thereafter. I shall analyse this mighty tension between rupture and continuity in the usual three steps: First, I look at legal action that revealed and questioned the national historical myth, in this case the two recent Supreme Court battles around *McGirt v. Oklahoma* (2020) and *Shelby County v. Holder* (2013); Section II examines the 1619 Project as a public history initiative which aimed to criticise the hegemonic narrative, but ultimately highlighted the strength of the orthodox American timescape - characterised by novelty, exceptionalism and providential progress. Finally, Section III uses a congressional hearing on slavery reparations to explore the manifold possibilities for integrating discordant truth into the national timescape. In my reading, this timescape absorbs dissent reasonably well, but only if it is presented as a step towards fulfilling the revolutionary promise to form a “more perfect union”.

Chapter 7 distils these interdisciplinary explorations into the following predicament: the Western promise of progress cannot be fulfilled so long as our institutions defend an idea of progress which is itself oppressive and exclusionary. This affects not only the current theoretical debate on historical injustice, where I highlight the dangers of operating with historically tainted terms. It affects the implicit norms of “liberal transitology” built into the wider academic fields of transitional justice, peacebuilding and conflict resolution;²⁰ the

²⁰ N. Plätzer, “Civil Society As Domestication: Egyptian and Tunisian Uprisings beyond Liberal Transitology”, *Journal of International Affairs*, Vol. 68, No. 1 (New York, 2014), pp.255-265; H.J. Wierda, “Southern Europe, Eastern Europe, and Comparative Politics: “Transitology” and the Need for New Theory”, *East European politics and societies*, Vol.15, No.1

assumptions built into the law of succession, the law of restitution and the jurisprudence of the International Criminal Court.²¹ It also affects the explicit demands for postcolonial rectification which, as I analysed in the three case studies, need to be phrased in the dominant progressive terms to be successful. Ultimately, the all-encompassing expectation of progress does not lead to universal emancipation. On the contrary, when historically marginalised groups feel obliged to speak the language of their oppressors, something might get lost. Whether those lost experiences and lost conceptions of time can be recovered is still unknown. Ridding ourselves – and our institutions – of the problematic progress paradigm is a mighty feat. This dissertation takes a small step towards that goal by exposing the problem of Liberal Time as a problem which affects us all.

(2001), 485-501; A.K. Jarstad & T.D. Sisk, *From War to Democracy*. (Cambridge, CUP, 2008); N. Barma, *The Peacebuilding Puzzle: Political Order in Post-conflict States* (Cambridge, CUP, 2016); O. Richmond and J. Franks, *Liberal Peace Transitions: Between Statebuilding and Peacebuilding* (Edinburgh: Edinburgh University Press, 2009);

²¹ International public law and international criminal law have recently experienced their own historical turn. See chapters by Craven and Anghie in: A. Orford, F. Hoffmann & M. Clark (eds.), *The Oxford Handbook of the Theory of International Law* (Oxford, OUP, 2016); M. Craven, M. Fitzmaurice & M. Vogiatzi (eds.), *Time, History and International Law* (Leiden, Brill, 2007); M. Craven, *The Decolonization of International Law: State Succession and the Law of Treaties* (Oxford, OUP, 2007).

1. THE TEMPORAL TRAP OF LIBERALISM

“On ne dit plus ‘faux’, on préfère dire : ‘dépassé’. La coupure temporelle équivaut à une expulsion dogmatique.”²²

Time plays a central role in the debate on historical redress, since philosophers, politicians and lawyers focus on the discharge of rights and responsibilities that possibly persisted through time. This could seem unproblematic. It is after all, past injustice that we are supposedly trying to rectify in the present in order to achieve future justice. That narrative sequence between past, present and future underpins our political debate and legal order.²³ A close study of the debate on historical injustice, however, reveals that this arc of historical time creates advantages and disadvantages in that debate. Generally speaking, opponents of historical rectification need only to point to the long decades passed between the original injustice (say, the 1770 landing of the Captain Cook’s *Endeavour* in Australia’s Botany Bay) and the present reparation claim to diminish the significance of the latter. They are against reparation *because* of the passage of time. Proponents of rectification, by contrast, need to show that their cause matters *despite* the fact that so much time has passed since the original rights violation.

²² M. Serres, *Éclaircissements : entretiens avec Bruno Latour* (Paris, François Bourn, 1992), 79.

²³ P. Ricœur, *Temps et récit* (Paris, Seuil, 1983), Vol. 2.

If our conception of time is powerful enough to structure the debate in that way, we should examine it more closely. The critical analysis of the temporal assumptions sustaining our academic and political views on reparation will be split into three parts: Section I examines the most common arguments against historical redress to show that opponents of rectification generally use time to their advantage. Section II zooms in on the most influential argument against reparation - Jeremy Waldron's Supersession Thesis - to reveal that it relies on an extraordinarily progressive notion of time which ultimately favours the perpetrator of historical injustice. Although this conception of time serves his purpose, I argue that it is a trap, since it inhibits Waldron from seeing historical injustice for what it really is. Section III asks whether the proponents of historical redress might be less constrained conceptually but shows that even they are ultimately trapped in the same temporal framework. I shall call this conceptual framework Liberal Time – and my suspicion is that the Western academic debate on historical injustice is in gridlock because we do not see – let alone escape – that powerful temporal regime.

I. AGAINST RECTIFICATION

Let us first look at how opponents of historical redress in general use the passage of time to their advantage. Their arguments can be grouped into four families: Epistemic complications, complex agency, constructivist pacifism, historical change.

1. Epistemic complications

Marc Galanter counsels against digging too deep into the past, because we will never know enough to judge it like the present. If the collection of reliable evidence is already difficult when we try to settle disputes in the present, how could we, descendants of perpetrators and victims, have the epistemic hubris to judge crimes committed centuries ago, especially once we add the inescapable factors of biased and destroyed records? The basic epistemic asymmetry between a supposedly transparent present and the obscure past should make us abandon our hopes for intertemporal rectification.²⁴ Unless we can travel in time to witness the historical events in question, we have to rely on public records. These are patchy, biased and sometimes purposefully destroyed. Any attempt to correct this problem of insufficient information would require significant human and financial commitment. Galanter takes this obstacle as a starting point to argue that the law knows statutes of limitations and prescriptions precisely because politico-legal resources are limited. Trials and political programmes concerning past injustice are complex, costly and time-consuming. Progress will always be piecemeal, the dispensation of justice “rationed” and rectification partial. Instead of following an endless path towards historical truth, we should accept our epistemic limitations and move on into the future. As David Rieff points out, nothing prevents our historical excavations from being less biased than the historical record: “it is actually quite easy for nations or groups to ‘revise’ and rewrite their collective memories”, with these “exercises

²⁴ M. Galanter, “Righting Old Wrongs”, in: M. Minow (ed.), *Breaking the Cycles of Hatred: Memory, Law and Repair* (Princeton NJ, PUP, 2000).

in collective historical remembrance” all too often resembling “myth on one side and political propaganda on the other”.²⁵ Given the increasing number of conflicts in which there is no clear victor and the “inimical relationship in the aftermath of savage wars” between “truth, justice and peace”, he urges us to abandon the mirage of historical truth altogether and to opt instead for a peaceful “modus vivendi among civilisations”: “Far from political remembrance being a moral imperative, then, there will be times when such remembrance is what stands in the way.”²⁶ Epistemic sceptics abandon the muddled past in hope of a brighter future.

2. Complex agency

The change of agents and agency over time is another worry. It generally takes two forms. In the first version, critics develop the general epistemic critique further to argue that we cannot assign responsibility to any concrete agent, because we can never know with certainty who was the main perpetrator of a historical wrong and who were the additional agents intervening either to reinforce or to alleviate the wrong. If, for example, I am wrongly arrested by a racially profiling police corps, get sent to prison and later receive a rejection on a mortgage application because the bank does not like ex-convicts – who is really responsible for my suffering? The police officer who delivered the relevant training course, the officer who arrested me, the mortgage advisor who

²⁵ D. Rieff, *In Praise of Forgetting: Historical Memory and its Ironies* (New Haven, YUP, 2016), 32.

²⁶ Rieff, *In Praise of Forgetting*, 42.

recommended this bank, the bank employee? There could be many other additional agents between the original wrongdoing (the racist arrest) and the final result (the mortgage rejection). Chandran Kukathas and others are suggesting that we can never know with certainty how great or small the contribution of each agent was to my causal chain of suffering. This is not merely an epistemic problem; it is also a moral problem. What if we retrospectively assign responsibility to an innocent agent? Kukathas argues that it would be disrespectful to assign responsibility for misdeeds in the distant past because – even if we think we have identified the culprit – there are too many intervening agents in this muddled history to hold the rights and responsibilities of the original victim and wrongdoer constant. The sheer complexity and unpredictability of history produces such a long line of agents involved in a certain activity – e.g., the colonisation of Australia – that the risk of assigning rectificatory responsibility to an innocent third party is too high to attempt rectification at all.²⁷

The second version of the argument resting on the complexities of agency is not about *who* the relevant actors were but *whether they still exist*. It is an argument about the changing identities of actors over time. This can take a collective or individualistic form. Whether collective agents can persist over time is hotly debated since the continuous existence of those agents can be seen as a prerequisite for historical rectification.²⁸ The case of the indigenous tribes of the New World who were enslaved,

²⁷ C. Kukathas, “Responsibility for Past Injustice: How to shift the burden”, *Politics, Philosophy & Economics*, Vol. 2, No.2 (2003), 165-190.

²⁸ See C. List & P. Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford, OUP, 2011) and the applied discussions in Gosseries, A. & Meyer, L., *Intergenerational Justice* (Oxford, OUP, 2009).

expropriated and extinguished in genocides perpetrated by the Spanish and British Crowns, for example, would not qualify as a historical crime that can be redressed adequately, precisely because the death of these groups was so savagely clear-cut. Without continuous group agency, there is no beneficiary of redress. Most cases of historical injustice, however, are more complicated. If it can be shown, for instance, that the current descendants of black slaves in the US are not sufficiently similar to the group they descended from, their claim to reparations is weakened. Similarly, if the current descendants of British settlers in Australia or New Zealand, can be shown to have evolved so much as a group (through intermarriage, migration, cultural change...) that they are no longer properly connected to their ancestors, then the demand to rectify the crimes of those ancestors may be rejected more quickly. But where do we draw the line between “acceptable change” that preserves group identity and “excessive change” that destroys it? What happens when descendants of victims and perpetrators intermingle over time? Would a *mestizo* have only half a right to reparations? What if a descendant of a historically marginalised group benefits from the original injustice by becoming the author of a bestselling book on that crime? Is she equally entitled to reparations?

Finally, the problem of benefiting from injustice can be taken to a deeper, existential level with Derek Parfit’s Non-Identity Problem.²⁹ If

²⁹ The classic statement is in D. Parfit, *Reasons and Persons* (Oxford, OUP, 1987), 351-380. For more recent discussions of the problem, see O.J. Herstein “Historic Justice and the Non- Identity Problem: The Limitations of the Subsequent-Wrong Solution and towards a New Solution”, *Law and Philosophy*, Vol. 27, No. 5 (2008), 505-531.

the basic principle of rectification relies on the assumption that victim V would have been better off had the wrongful act A not occurred, but the claim is made by V's descendants, the absence of act A could also mean the absence of the particular descendants. A case in point is Mohamed Garne, a Franco-Algerian born after a gang rape during the Algerian War, who campaigned for colonial reparations under the banner "Français par le crime - J'accuse!".³⁰ Christopher Morris believes that this is impossible, because "in virtually all such cases, the argument for compensation fails. [...] Vn's very existence is conditional on A. The greater the effects of A on V, which we may assume are some increasing function of A's wrongness, the greater the certainty that Vn would not exist in the absence of A."³¹ The Non-Identity Problem, repeating itself and becoming more serious with every generation that follows a historical crime, is a way in which the passage of time could diminish the negative consequences of the crime (at least it has given life to new individuals) and with that our duty to rectify it (would anyone seriously advocate that full rectification to the status quo ante would entail the killing of descendants?). When it comes to the complexities of agency, time trumps crime.

3. Constructivist pacifism

The third critique of historical redress can be made in the seemingly conciliatory language of constructivism. Bruce Ackerman, for example, argues

³⁰ M. Garne. *Français par le crime - J'accuse!* (Paris, Harmattan, 2011).

³¹ C.W. Morris, "Existential Limits to the Rectification of Past Wrongs", *American Philosophical Quarterly*, Vol. 21, No 2 (1984), 175–182

that historical soul-searching poses a risk to community cohesion. As inconsistencies are exposed in the carefully crafted national narrative of progressive integration, old antagonisms might flare up and divide society further instead of uniting it behind virtuous cleanliness. The “quixotic quest” for the real past risks generating “endless rounds of recrimination” that plunge the society in question into a “spiral of incivility”.³² Of course, this rests on the unsubstantiated assumption that there is community cohesion in the first place. Some might say that this is begging the question: don’t claims for historical reparations usually indicate the absence of community cohesion? Nonetheless, the constructed stability paradigm dominates international (elite) politics. Policy handbooks and academic textbooks still present, regime change coupled with a new narrative to legitimise constructed order as the endpoint of transitional justice.³³ Peace is placed above justice.

David Rieff endorses that utilitarian hierarchy. His acclaimed *In praise of forgetting* is filled with examples of historical atrocities, and yet he recoils at the prospect of public investigations into and prosecution of the dark past. He warns that in our “therapeutic age”, where collective memorialization has become a moral and political duty, collective memory “has led to war rather than peace and to the determination to exact revenge rather than commit to the hard work of forgiveness.”³⁴ In the Balkans, Central Africa, India and Israel, the expositions of past crimes have, according to Rieff, led not to collective Enlightenment, but

³² B. Ackerman, *The Future of Liberal Revolution* (New Haven CT, YUP, 1992), 73, 98 and 81, respectively.

³³ R. Appleby, A. Omer and D. Little (eds.). *The Oxford handbook of religion, conflict, and peacebuilding* (New York, OUP, 2015); *United Nations Civil Affairs Handbook* (New York, 2013).³⁴ Rieff, *In Praise of Forgetting*, 127ff.

to cycles of ethnic and sectarian violence. If *Geschichtsanfarbeitung* does not lead to *Vergangenheitsbewältigung*, why engage in it in the first place? For the constructivists who value the present stability over any disingenuous or even dangerous discoveries about the past, forgetting is essential to surviving. To avoid social turmoil, we should *privilege and preserve the present order*. Future progress is more important than past justice. In the words of Northern Irish writer Edna Longley, the best thing for the divided peoples and divided histories of the world would be “raising a monument to Amnesia and forgetting where we put it.”³⁵

4. Historical change

The most prominent argument to make historical injustices fade with the passage of time is that “claims about justice and injustice must be responsive to changes in circumstances.”³⁶ According to Jeremy Waldron’s highly influential Supersession Thesis, these changes can be exogenous to a society or endogenous – the important point is that justice changes with them. Waldron’s general thesis is that “an act which counted as an injustice when it was committed in circumstances C1 may be transformed, [...] into a just situation if circumstances change in the meantime from C1 to C2. When this happens, I shall say the injustice has been superseded.”³⁷ The more time passes, the more circumstances change, the weaker the claim of the originally wronged party becomes -

³⁵ E. Longley’s public intervention at the 1998 bicentenary of the United Irish Rebellion, see <https://www.independent.co.uk/voices/sorry-is-not-enough-1107258.html>, accessed 12/12/2019.

³⁶ J. Waldron, “Superseding Historic Injustice”, *Ethics*, Vol.103, No. 1 (1992), 4-28.

³⁷ Waldron, *Superseding Historic Injustice*, 24.

until it is actually effaced. Here, it is not the change of evidence, actors or identities that matters. It is historical change at large in which ever new and flexible circumstances warrant a flexible conception of justice. Injustice can become justice as external circumstances change. Since this is the most time-sensitive argument of all those proposed against historical redress, we shall analyse it more closely in the next section.

Overall, however, it is important to record the following interim conclusion: academic arguments against redress tend to increase the distance between the past and the present, pushing the problem backwards into the obscurity of history. The present is clean, clear and, according to the critics of reparations, the appropriate site of justice.

II. THE MIRACLE OF SUPERSESSION

This section will examine Waldron's Supersession Thesis more closely to uncover the temporal assumptions that underpin it. Although Waldron professes that his theory is "not about time per se, but about change", that statement alone reveals a particular conception of time that is primarily characterised by the constant transformation of objects and characters.³⁸ A dual analysis of what counts as "real change" for Waldron – first on the normative,

³⁸ Whether time can exist independently of observable change is a matter of heated debate in the contemporary philosophy of time. See S. Shoemaker's classic "Time without change", in: LePoidevin & McBeath (eds.), *The Philosophy of Time* (Oxford, OUP, 1993). 63-80; B. Skow, "Why does time pass?", *Noûs*, Vol. 46, No.2 (2012), 223–42; J.D. Norton, "Time really passes", *Journal of Philosophical Studies*, Vol.13, No.4 (2010) and Callender, C. (ed.), *Time, Reality and Experience* (Cambridge, CUP, 2002).

then on the empirical level – suggests that Waldron, acclaimed authority on historical injustice, might be unable to see the true nature of historical injustice.

This section draws on three principal sources in order to better understand Waldron's views on colonisation, settler life and the frontier: The classic "Superseding Historic Injustice" (1992) and the restatement "Redressing Historic Injustice" (2002), but also an often overlooked paper on "Settlement, Return, and the Supersession Thesis" (2004) which he prepared for a conference on "Israeli Settlements and Related Cases," at Tel Aviv University.³⁹ It is here, in a comparison of the Israeli settlements on the West Bank and Gaza Strip with European settlement of New Zealand, that we see most clearly that Waldron is a child of Empire. Let us find out what really triggers supersession – and what the consequences are.

It is best to start with an example proposed by Waldron himself: "Suppose, [...] that in circumstances of plenty various groups on the savannah are legitimately in possession of their respective waterholes. One day, motivated purely by greed, members of group F descend on the waterhole, Hg, used and possessed by group G and insist on sharing that with them. (What is more, they do not allow reciprocity; they do not allow members of G to share the waterhole Hf, which was legitimately in the possession of the F.) That is an injustice. But then [...] circumstances change, and all the waterholes of the territory dry up except the one that originally belonged to G. The members of group F are already sharing that waterhole, Hg, on the basis of their earlier incursion. But now that

³⁹ Waldron, *Superseding Historic Injustice*, J. Waldron, "Redressing Historic Injustice", *University of Toronto Law Journal*, Vol. 52, No. 1 (2002), 135-160; J. Waldron "Settlement, Return and the Supersession Thesis", *Theoretical Inquiries in Law*, Vol. 5, No. 2 (2004), 237-268.

circumstances have changed, they are entitled to share that waterhole. Their use of Hg no longer counts as an injustice; it is now, in fact, part of what justice now requires.”⁴⁰

Although Waldron presents the argument in highly abstracted, exoticised form by using the imagery of undefined “groups”, “waterholes” and the “savannah”, this can easily be transposed to the concrete story of settler colonialism. Europeans arrive “motivated purely by greed”, descend on other people’s resources without granting them reciprocal access to the riches of the imperial centre, and still, when circumstances change (partly due to the actions of the settlers), the systematic exploitation of resources is not just acceptable (that would be worrying enough), but “what justice now requires”. My translation is not even needed, because there are more explicit publications, in which Waldron, talking about his native New Zealand writes: “A change in circumstances [...] might justify our [he’s writing from the perspective of the coloniser] forcing the aboriginal inhabitants of some territory to share their land with others [...] the same change in circumstances [...] can justify our saying that the others’ occupation of some of their lands, which was previously wrongful, may become morally permissible.”⁴¹ Confronted with the obvious criticism that this colonial apologism generates “a moral hazard - an incentive for wrongdoers to seize others’ lands, confident in the knowledge that if they hang on to them wrongfully for long enough their possession may eventually become rightful”, Waldron responds that “the argument [...] is not that the passage of time per se

⁴⁰ J. Waldron, “Superseding Historic Injustice”, *Ethics* (1992); J. Waldron, “Redressing Historic Injustice”, *The University of Toronto Law Journal*, Vol. 52, No. 1, Liberal Democracy and Tribal Peoples: Group Rights in Aotearoa/New Zealand (Winter, 2002), 152.

⁴¹ Waldron, *Superseding Historic Injustice*, 11.

supersedes all claims of injustice. Rather, it is that claims about justice must be responsive to changes in circumstances.”⁴²

This is peculiar for three reasons: first, it is not clear how exactly changing circumstances can turn an act that was wrongful at time t_1 morally permissible at time t_2 ; second, that supersession of injustice can only be automatic if it rests on a specific conception of time whose underlying assumptions Waldron fails to spell out; third, the relation between the Waldron’s normative claim about adaptive justice and his observations on the empirical circumstances of colonialism which justice supposedly adapts to is opaque. Let me elaborate on each of these three points.

A. A leap of justice?

The first worry with Waldron’s Supersession Thesis is that the underlying conception of justice is neither specified nor defended. How can the initial predatory act of the greedy group F be classified as an “injustice” at t_1 and then become “what justice now requires” at t_2 ? The change in circumstances is empirical - “all the waterholes of the territory dry up except the one that originally belonged to G” – but there seems to be a transformation of justice. How does this come about? Does it mean that the general act of attacking another group’s waterhole is unjust at t_1 (circumstances of plenty) but just at t_2 (circumstances of scarcity)? Or does it mean that the very same particular act of attacking a waterhole is unjust at t_1 and just at t_2 ? Under the second scenario, the same act counts as unjust at t_1 but as just at t_2 . If that really is Waldron’s

⁴² Waldron, *Superseding Historic Injustice*, 25.

proposition, how do we grapple with the idea that exactly the same act can be both just and unjust, depending merely on changed background conditions through the passage of time? Shouldn't an unjust act inscribed in history at t_1 continue to be unjust even if viewed from the later standpoint of t_2 ? Is this simply a matter of perspective? The attack on the waterhole could look unjust for observers at t_1 but just for observers at t_2 who are looking backwards at the original theft from their new circumstances of scarcity. What should be the standard of justice when classifying temporally dispersed acts, the norms of justice prevailing at the time when the act was originally committed or the norms of justice prevailing in the present moment of judgement? The debate on intertemporal justice among lawyers focuses on that tension.⁴³ Whether one or the other legal approach is chosen, it seems to me like the original injustice at t_1 persists. Whether we look at it from the perspective of reconstructed past circumstances or from our present circumstances, the injustice itself does not move. The original injustice may vary in importance from one time to the next, but its status as an injustice engraved in the historical record should not change. The original injustice as such persists through time. But Waldron suggests that, as a problem, it might disappear from our vision since the unjust act becomes a just act. That requires a very specific vision which Waldron seems to take for granted: a vision of history in which one segment of time (t_2) follows and completely supersedes another segment (t_1). T_1 can only be superseded if it can actually disappear in our vision of human history. But temporal supersession does not automatically entail normative supersession. To me, the essence of a

⁴³ This is particularly important for the Law of Succession but matters for all legal disputes in which the law or "common opinion" has changed between commission of the act and litigation. See M. Koskeniemi, *From Apology to Utopia: The structure of legal argument* (Cambridge, CUP, 2006) chs. 2 and 6.

historical rectification claim is that the wrongful act committed at t_1 does not simply disappear. The mere act of claiming compensation for a past injustice in the present seems to suggest that the past is not entirely gone. It may be helpful here to distinguish between time and the normativity of time. In one sense, everyone has moved beyond t_1 – time passes. But in another sense the normative relevance of t_1 can continue to resonate at t_2 . In normative terms, not everyone has moved beyond t_1 , a time segment that continues to live in the minds of the victims. It is the victors of history who have the chance of moving forward without looking back on their trail of destruction. And it is favourable to their position to assume that the past - the past of subaltern others – no longer exists. From his privileged position, *Waldron seems to have missed the very essence of a claim for historical rectification: that the past matters for the present.*

This omission is not necessarily an individual mistake. It is supported by and embedded in a long tradition of European thinking about time – a tradition that was spread worldwide to peoples with different conceptions of time. The historical evolution of this conception of time will be reconstructed in chapters 2 and 3. But Waldron’s thesis offers a good initial ground to excavate its core features and assumptions.

B. Does supersession rely on progress?

My second worry with Waldron is that he does not acknowledge that supersession requires a specific, progressive notion of time. While Waldron states that he is not interested in “time as such”, the passage of time as a measure of change seems crucial for the conversion of injustice into justice. The fact that supersession requires continuously changing circumstances to work its magic

points us towards the modern European construct of Liberal Time. Its core feature is that value is distributed unequally along a timeline on which past, present and future succeed each other in this (and only this) order. The value increases from left to right (if we want to read the Western way): The present is more important than the past and the future is more important than the present. This is because the past is closed, while the present is the site of action and the future holds the promise of even better action. Liberal Time is the measure of irreversible improvement along a linear axis of history.

Let me illustrate this priority of the present. Even when intergenerational justice is at stake, Waldron states his preference very clearly: “Justice may make reference to the past, through principles of desert and Lockean entitlement; but its primary focus is on the present — present-day people, present-day resources — and on the circumstances of the present inasmuch as they affect who should get what.”⁴⁴ This preference for the present is not explained or supported by any independent reasons, but repeated across various texts. In the paper on the Israeli-Palestinian conflict he highlights the “importance of focusing the concerns of justice on the here and now and the needs and deserts of whoever happens to be in a given territory irrespective of how they or their ancestors got there” without any further supporting arguments. He acknowledges, however, that his viewpoint may not be neutral: “I am sure there is a significant relation between my personal background as a migrant, my ancestral background as the descendant of a settler family, and this scepticism about the moral significance of who was where first.”⁴⁵ Justice for the inhabitants of postcolonial nations should, according to Waldron, be discussed “irrespective of how they or their

⁴⁴ Waldron, *Settlement, Return and the Supersession Thesis*, 246.

⁴⁵ Waldron, *Settlement, Return and the Supersession Thesis*, 239.

ancestors got there” because what matters is only “the here and now”. Late arrivals enjoy the benefit of doubt – or even stronger: the bliss of a clean slate. This is obviously beneficial to the current beneficiaries of questionable colonial pasts.⁴⁶ Waldron’s philosophy seems to be influenced by the frontier spirit of European settlers, but this view is so dominant that Waldron sees no reason to defend why “justice may make reference to the past” only in the context of disputes about “principles of desert and Lockean entitlement” – European property theories which arguably underpinned colonial practices.⁴⁷ In this strict delimitation of justice, indigenous peoples would have to express their rectificatory claims in the language of classical Liberalism. The range of legitimate reasons to return to the past is narrow.

Any proposed step beyond the Lockean confines is treated with deep suspicion. Waldron writes that “[...] there is a sort of unhealthy formalism about an argument that moves from the sociological proposition that 'the settlement was one of the historical grievances of a tribal people' to the conclusion that the particular tribal entities that suffered the violation should be the sole beneficiary of the settlement, notwithstanding the very different and attenuated position that those entities presently occupy in modern Māori society. And I think this formalism is the occupational hazard of those who simply cast around to find a

⁴⁶ Exactly which portion of the population of present-day postcolonial states can be said to benefit from the colonial past and what that means for the distribution of duties in such societies is a matter of normative and empirical debate. See D. Butt, “On benefiting from injustice”, *Canadian Journal of Philosophy*, 1 January 2007, Vol. 37, No. 1 (2007), 129-152, or for historical asset tracing see UCL’s project “Legacies of British slave-ownership”, via <https://www.ucl.ac.uk/lbs/>, accessed 8/2/20.

⁴⁷ B. Arneil, *John Locke and America: The Defence of English Colonialism* (Oxford, OUP, 1996) is the classic text. More recent scholarship tests the details of the collaborator thesis and applies it to different parts of the Empire; see, for example, J. Whitehead, “John Locke, Accumulation by Dispossession and the Governance of Colonial India”, *Journal of Contemporary Asia*, Vol. 42, No. 1 (2012); P. Corcoran, “John Locke on Native Right, Colonial Possession, and the Concept of Vacuum domicilium”, *The European Legacy: Toward New Paradigms* Vol. 23, No. 3 (2018).

way - any way will do - of sustaining the business of historic reparations without regard to the human circumstances of those they claim to be benefiting.”⁴⁸ Quite apart from the fact that the variety of demands for reparations cannot be pinned down to this reductive model (the claim that wronged tribes should be “the sole beneficiary of the settlement” is particularly narrow), Waldron’s emphasis on “the very different and attenuated position that those entities presently occupy” must be highlighted. Without giving any indication of why the presently occupied position is “different and attenuated”, it is assumed that “presently occupied” positions count for more than previously occupied positions. This would only work if we relied on the liberal story that the passage of time is a proxy for progress. The criticism of those who act “without regard to the human circumstances of those they claim to be benefiting”, could however, be redirected towards Waldron himself. In using the phrase “historical grievances”, he seems to assume that “human circumstances” means “present human circumstances”, to which such “historical” grievances would be foreign. But what if “human circumstances” included remnants of the past, that were still affecting the present? What if the historical grievances were also present grievances, if past and present coexisted in the term “human circumstances”? If the past were entirely irrelevant to the work of “those sustaining the business of historic reparations”, their business wouldn’t really be “historic” reparations but would more plausibly be a present project of redistribution. But if “human circumstances” included “past human circumstances”, the benefit could be enormous. In short, Waldron could be the one writing about reparations

⁴⁸ Waldron, *Redressing Historic Injustice*, 151.

“without regard to the human circumstances of those whom [reparations activists] claim to be benefitting”.

Waldron overlooks this possibility of multiple layers of time because he sees no reason to benefit a past that is long gone and uncivilised. He assumes that his reader is already in agreement with the Western assumption that the present is worth more than the past – presumably because the rule of historical progress implies that we are superior to those who came before us. It is hard to imagine many other reasons for ridiculing “those who simply cast around to find a way - any way will do - of sustaining the business of historic reparations” and rejecting outright “the absurdity of claims based on prehistorical first occupancy”. The priority of the present justifies such dismissive language. A present that does not have a very long past behind it, since – in classic colonial vocabulary – indigenous occupancy is “*pre*historic”; real history was initiated by the arrival of the colonists.⁴⁹ The phrase “any way will do” might also allude to radical methods outside the coloniser’s confines of legality.⁵⁰ In the benevolent course of colonial history, the only problems that matter are those within colonial historiography; the only ones that require solutions are those that are still present, i.e. have not been superseded by civilisational change.

Civilisation is the product of the factory of history. The Supersession Thesis rests on an almost mechanical vision of history as perpetual improvement. This

⁴⁹ See the discussion of origins in D. Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton, PUP, 2000) and more recently, P. Hämäläinen, *Lakota America: A New History of Indigenous Power* (New Haven, YUP, 2019).

⁵⁰ For alternative visions of human rights, see J. J. Guzmán, “Decolonizing Law and expanding Human Rights: Indigenous Conceptions and the Rights of Nature in Ecuador”, *Deusto Journal of Human Rights*, No. 4 (2019) 59-87; S. Hope, “Human Rights: Sometimes One Thought Too Many?”, *Jurisprudence*, Vol.7, No. 1 (2016), 111-126.

mechanism seems to be almost impossible to halt, let alone reverse, if we are to believe Waldron's repeated allusions to historical necessity and inevitability.

The most explicit statement comes in the form of a comparison between Israeli settlers on the West Bank and the Europeans who populated the New World: "There is a difference [...] in what the settlers are hoping time will accomplish in the Occupied Territories. [note that "time" is the grammatical subject of the subordinate clause!] It is the express aim of many of the settlers to expand — or to be the cause or occasion of the expansion — of the de jure boundaries of the State of Israel to include areas currently occupied by their settlements. [...] They are looking to expand their options, rather than responding sadly to a radical contraction of them." European settlers, by contrast are "stranded colonists, or the descendants of stranded colonists, abandoned by their homeland or abandoned by circumstances, who are now seeking to make the best of a bad situation and who are willing to share resources on a new and just basis with those who were in the territories when they arrived." This opposition builds on a crass misrepresentation of the agents of European imperial expansion. The first settlers in Australia were convicts sent overseas to make space in Britain's overcrowded prisons. After those, however, came the voluntary expatriation of labourers, merchants and investors who saw opportunities for enrichment. They were soon followed by the explicitly state-sponsored forces of civilisation: civil servants and clergymen.⁵¹ How any of these colonisers could have been "abandoned by their homeland" or "abandoned by circumstances" is not clear, even if we were able to understand what kind of circumstances Waldron is alluding to. How emigration to a resource-rich country with low economic and

⁵¹ R. Porter and W.R. Louis (eds.), *The Oxford History of the British Empire*, vol. III: The Nineteenth Century (Oxford, OUP, 2001), esp. chs. 24 and 25.

social competition could be seen as a “radical contraction” of options is another point on which Waldron fails to elaborate. A more serious problem is the characterisation of British settlers as people “seeking to make the best of a bad situation and who are willing to share resources on a new and just basis”. Why should the arrival of new people automatically lead to a “new” basis for justice? Why couldn’t they be asked to adapt to the lifestyles and jurisprudential norms of the original inhabitants? Is this because the “old” system of justice was impracticable on a large scale, because the Europeans didn’t understand it or because it did not suit their own priorities? The historical record does not corroborate Waldron’s reading of the arrival pact. Military expansion, genocide, resource monopolisation and legal discrimination against indigenous inhabitants do not display a willingness to “share resources on a new and just basis.” But what is most worrying in Waldron’s account is the weakening of historical responsibility as the sense of historical necessity is strengthened. In contrast to the Israeli settlers – “pioneers, spearheads of a movement that is one of conquest (or reconquest), a movement that may well involve the expulsion or ethnic cleansing of Palestinians in their vicinity”⁵² – settlers in Australia and New Zealand are, according to Waldron, “stranded”, brought there without will or colonial zeal. The distance between old and current “pioneers” is exaggerated. Yet this supposed *lack of will* is the crucial difference which in Waldron’s eyes, might mitigate the atrocities of colonialism.

Waldron’s chosen theoretical starting point for the arrival agreement between old and new inhabitants of the New World is Kant’s idea that we ought to enter into a civil union with our immediate neighbours, which Waldron calls the

⁵² Waldron, *Settlement, Return and the Supersession Thesis*, 256.

“Proximity Principle”.⁵³ Applied to the colonial world, Kant writes that we have the right to offer to engage in commerce with other peoples, but we are *not* authorised to forcefully “establish a civil union with them and bring these men (savages) into a rightful condition (as with the American Indians, the Hottentots, and the inhabitants of New Holland)” if the offer is turned down.⁵⁴ Waldron’s critique of Kant and defence of colonialism is revealing of his historical determinism, because he thinks that Kant’s prohibition “turns crucially on the voluntary nature of the would-be colonists’ presence”. For Waldron, “that applies clearly enough to the first generation of settlers, and maybe even the second. But today [the relevant site of justice], we are talking about people who are fourth- or fifth-generation descendants of the original voluntary colonists, and for these people - us, here and now - *there is little choice in the matter*. This is where we are settled - this is where we are - now we can say, in truth, *unavoidably side by side*. And that remains true *in spite of the violations* committed by our ancestors and in spite of the transparent illegitimacy of their justifications.”⁵⁵ The lack of historical voluntariness weakens the coloniser’s responsibility even for known rights violations; and the passage of time weakens the case for historical rectification since the will of the original perpetrators does not persist through time.

That leads us to a situation where the descendants of the colonisers are less guilty because they were brought to the (still heavily discriminating) postcolonial states against their will and where old injustices cannot be reversed because the descendants of stranded colonists have – like their forefathers - “nowhere else

⁵³ Waldron, *Redressing Historic Injustice*, 135ff.

⁵⁴ I. Kant, *Metaphysics of Morals*, trans. M. Gregor (Cambridge, CUP, 1991), 158.

⁵⁵ Waldron, *Redressing Historic Injustice*, 137, emphasis added.

to go”. “There is no question of the descendants of European settlers returning en masse to England or anywhere else”, Waldron writes, without even discussing potential options for resettlement. The lack of exit options is necessary to cement the idea that New World settlers are there to stay. Their option sets have been so limited by the course of history that instead of thinking about ideals of justice, they focused on “what works”. If that means demographic, economic, legal and political change according to the European model, so be it. They were forced to make the best out of a “bad situation”.

Even if these actions and their potential supersession by historical circumstances present “a frightening prospect for those to whom the initial injustice is done”, Waldron concludes that for his “hardworking colonists”, the Supersession Thesis “offers a measure of redemptive hope for those who participate in the settlements movement but who do so in spite of their awareness that they are doing something wrong.”⁵⁶ How one can systematically colonise a territory without noticing is difficult to fathom. But the lack of will, lack of exit options and lack of an external sense of justice to scrutinise one’s actions all point towards historical necessity. It is the determinism of Europe’s historical teleologies⁵⁷ that sustains Waldron’s defence of the idealised innocent coloniser.

To sum up this section: European change is positive and historically necessary change, which means that the present is more valuable than the past. Retrospective justice is misplaced. We would do better to make sure that the future continues to be an improvement over the present. We must ensure that the promise of progress is realised. These temporal assumptions are visible in

⁵⁶ Waldron, *Settlement, Return and the Supersession Thesis*, 250.

⁵⁷ The most thought-provoking recent overview is H. Trüper, D. Chakrabarty and S. Subrahmanyam (eds.), *Historical Teleologies in the Modern World* (London, Bloomsbury, 2015).

the strange empirical argument that Waldron makes to support his Supersession Thesis.

C. Normative or empirical progress?

The third worry is that Waldron's empirical arguments about colonialism emphasise his belief in progress, while distorting the violent record of colonialism. First of all, it is strange that he chooses to convince his readers of the Supersession Thesis by illustrating how the empirical circumstances of life in New Zealand have changed over time. This mirrors the purely empirical statement "circumstances change, and all the waterholes of the territory dry up except the one that originally belonged to G" in the savannah example. But just as in the savannah example, European colonialism in Waldron's reading seems to be a process that changes the norms of justice. There is a liberal normative assumption that the present is an improvement of the past. He specifies that the changes necessary for supersession could take four forms: demographic change, economic growth, legitimate expectations, political stability. I scrutinise each of them, since it is not clear how any of these changes or even their combination are sufficient to supersede the circumstances of justice that Waldron wants to forget.

When describing how much his native New Zealand had changed since the Treaty of Waitangi, Waldron writes: "The most striking change is in population: there is now a settled population - Māori, pakeha, and mixed-ancestry [...] - that is larger by a factor of about twenty than the population in (say) 1840. There is

no question of the descendants of European settlers returning en masse to England or anywhere else. [...] This, I think, has to make a difference to how we think about rights - even violated rights - that are alleged to have survived from that earlier era into the present.”⁵⁸ The logical transition between “larger by a factor of about twenty” and “make a difference to how we think about rights” is weak. Population increase in itself is not necessarily an argument for a new kind of justice – even if it is presented as irreversible. If the expanding population descends to a very large extent (83% according to the latest census⁵⁹) from European settlers, however, the suspicion arises that it is not numbers alone, but the identity of the new population that could shift frameworks of justice.⁶⁰ The preferences of the numerically and culturally predominant Europeans could be translated into the legal system.⁶¹ Importantly, legal changes do not mean that the arrival of Europeans and their comportment towards the Māori does not remain an outstanding issue of justice that needs to be addressed. It would mean, however, that the articulation and rectification of the issue *within* the legal system becomes more difficult.⁶² If that is the case, it would be “facts on the ground”, as Waldron writes, which should alter the conception of justice.

⁵⁸ Waldron, *Redressing Historic Injustice*, 151.

⁵⁹http://archive.stats.govt.nz/browse_for_stats/people_and_communities/households/changing-nz.aspx, accessed 28/11/19.

⁶⁰ See S. L. Morgensen, “The Biopolitics of Settler Colonialism: Right Here, Right Now”, *Journal of Settler Colonial Studies*, Vol. 1 (2011).

⁶¹ Western preferences have indeed been instrumental in designing the (post)imperial framework of international law together with its rules on state accountability. See J. von Bernstorff and P. Dann (eds.), *The Battle for International Law: South-North Perspectives on the Decolonization Era*. (Oxford, OUP, 2019); M. Koskenniemi, *The Gentle Civiliser of Nations* (Cambridge. CUP, 2001); N. Jørgensen, *The Responsibility of States for International Crimes* (Oxford, OUP, 2000).

⁶² As we shall see in chapters 4, 5 and 6, the constraints of Western law can be circumvented through extra-legal settlements.

These “facts on the ground” are not only biological, but also economic. Apart from the numerical superiority of New World settlers and their descendants, Waldron suggests that this group has initiated economic and technological change that should be welcomed. The paragraph in *Settlement, Return and the Supersession Thesis* is worth quoting in full: “[It is not merely justice which has changed but] the resources with which justice has to concern itself have also changed. European technology and farming, mining, and fishing methods have transformed out of all recognition the amount and the productivity of land and other resources available for use. Agriculture now supplements horticulture; mountainous hill country has become farmable; new species have been introduced; *modern* road, rail, and other infrastructure have developed; cities have been built (and most New Zealanders — Māori and Pākehā — live in cities); and the technology of a fully developed commercial society has replaced the *Neolithic* technology that characterized the thousand years or so of Māori occupation. In these different circumstances, it boggles belief to say that what justice requires in this territory now is anything like what justice required at the very beginning of European contact.”⁶³ At least three issues must be highlighted here: first, the extraordinary pride and candour with which Waldron writes that it was “European technology”, “the technology of a fully developed commercial society” which has “transformed out of all recognition the amount and productivity of land and other resources available for use”, without considering that the first occupants whose lifestyles were forcefully suppressed might not find any positive connotation in the phrase “out of all recognition”.

⁶³Waldron, *Settlement, Return and the Supersession Thesis*, 250. Emphasis added.

Second, it could only be deemed beneficial that native socio-economic structures are unrecognisable if these structures are outdated. This could be suggested by contrast between the words “modern” and “Neolithic”, which can arguably be seen as Western shorthand for something that is very old (precedes our 3000-year-old civilisation) and *therefore* undesirable. If Waldron were an expert on the Neolithic age or Māori economics, he would know that the Neolithic Revolution that led to sedentary agricultural patterns in the Levant and Europe around 10.000 BC did not occur in the same manner elsewhere. In fact, different geographic conditions accounted for the fact that itinerant, cyclical agriculture remained dominant almost everywhere outside the Great European Plain, including New Zealand. The historical label is misplaced, but the rhetorical result for a Western audience is the same. Anything from our civilisation (“modern road, rail, and other infrastructure”) is superior to the people, politics and products that preceded it. There is a temporal order in which “Neolithic”, “medieval” and “feudal” bear negative connotations, while words like “industrial” do not, simply because they are further ahead in the linear continuum of Western history. What matters is therefore not just any order of events but “certain sequences of circumstances”, as Waldron writes in another piece.⁶⁴ This is faithful to the stagist theories of Adam Smith and other enlightenment thinkers, who fuelled imperial expansion.⁶⁵ The novel introduction of “the technology of a fully developed commercial society” is thus better than “the Neolithic technology of “a thousand years or so” (note the

⁶⁴ Waldron, *Settlement, Return and the Supersession Thesis*, 245.

⁶⁵ A. Smith, *The Wealth of Nations* (1776), bk III: “According to the natural course of things, therefore, the greater part of the capital of every growing society is, first, directed to agriculture, afterwards to manufactures, and last of all to foreign commerce.” via <https://oll.libertyfund.org/titles/smith-an-inquiry-into-the-nature-and-causes-of-the-wealth-of-nations-cannan-ed-in-2-vols>. For a genealogy from Hutchinson to Condorcet, Spencer and Fukuyama, see M. Meek Lange, “Progress”, *Stanford Encyclopedia of Philosophy* (Winter 2019 Edition).

imprecision, denying the Māori entry into the meticulous accounting of the Western calendar), precisely because it is further ahead in the European sequence of historical development.

The phrase “fully developed” suggests a third feature of Waldron’s economic account: developmentalism. There is not just an increase in value when lifestyles are more “modern”; that value is underpinned by a concrete belief in improvement. Individuals, groups and states are born with the capacity to develop their faculties to the fullest; and Waldron picks up a classic strand of melioristic Enlightenment teleology when he writes that the European settlers have “transformed the amount and the productivity of land and other resources available for use.” The settlers used their will and skill to get the most out of their land. From Locke’s labour theory for pleasing the Lord by multiplying the Earth’s resources to Avery Kolers’ suggestion that the rightful owner of a territory is he who brings it to “plenitude”, this has long been a justification of colonialism.⁶⁶ Whether Waldron is conscious of the problematic aspects of his economic argument is not fully clear.

The third kind of change that could make historical injustice fade with time is legal change based on legitimate expectations. Waldron starts with “the possibility that people’s sentiments, affections, and expectations may change over time in relation to a given set of resources” and then specifies: “People who are in possession of certain resources become accustomed to their possessions, while people who have been dispossessed may find their sentimental attachment to what they have lost gradually dissipating.”⁶⁷ When one is in possession of

⁶⁶ Locke, *Second Treatise*; A. Kolers, *Land, Conflict, and Justice: A Political Theory of Territory* (Cambridge, CUP, 2009).

⁶⁷ Waldron, *Settlement, Return and the Supersession Thesis*, 260. This assumption of dissipating attachments is not supported by the facts. See the increasing number of restitution claims by

certain resources and the attachment is thereby continuously growing, the expectation of continuous benefit should be protected by the law. As Jeremy Bentham, whom Waldron cites, says: “In matters of property [...] hardship depends upon disappointment; disappointment upon expectation; expectation upon the dispensations, meaning the known dispensations of the law.”⁶⁸ The law should evolve as the distribution of property progresses.

When the legitimate expectations clash, some mechanism is needed to define who has priority. Waldron gives different answers in different papers, but as far as I can see, there are three criteria for deciding whose expectations are more important: sequence, need and productivity. All three are surprisingly empirical, even for an empiricist philosopher.

First, we might ask of the claimants: “Who was there first?” Waldron admits from his settler perspective that legitimate expectation arguments are “particularly convincing when, as in Locke’s account, they are associated with First Occupancy, for in a case of First Occupancy, the sentimental investment of the appropriator in the particular resource does not accrue at the expense of anyone else’s sentimental investment in that resource.”⁶⁹ If the European immigrants to New Zealand or any other colonial territory had indeed been the first occupants, this might be convincing. The census data of former British colonies does not include the native population for a considerable amount of time – until 1860 in the US and 1967 in Australia – but retrospective estimates

native inhabitants of the Americas and Australasia in the OHCHR database:
<https://juris.ohchr.org/>, accessed 8/2/20.

⁶⁸ Waldron, *Settlement, Return and the Supersession Thesis*, 263, and J. Waldron, “Supply Without Burthen Revisited” *Iowa Law Review*, 82: 1467 (1997).

⁶⁹ Waldron, *Settlement, Return and the Supersession Thesis*, 260.

and archaeological evidence show this assumption to be false in the vast majority of cases.⁷⁰

If Europeans are not the first occupants, there is a further question: “Who needs it most, the first occupant or the new arrival?”. At this point Waldron proposes an academic metaphor: If a person has an entitlement over a long time, then “at each of those times, the legitimacy of what she does depends on the appropriateness of her entitlement as a moral right at that time. Now, so long as circumstances remain unchanged or so long as any changes are broadly consonant with the necessary conditions for the legitimacy of her entitlement, the entitlement is, so to speak, renewed automatically. But if circumstances change radically in the way we have been envisaging, then continued application of her entitlement cannot be taken for granted. (It's like the automatic renewal of a library book until another reader puts in a request for it.)”⁷¹ This metaphor is inappropriate for the historical context. First, a book is not a vital resource, while arable land is. If I go without a library book for a few weeks, my life goes on as expected.⁷² If, however, a foreign property developer decides to bulldoze my land and my house disappears without my consent, my life is radically changed and my legitimate expectations are frustrated. Second, the library metaphor does not take into account that the other reader is in fact not a library member (let alone a considerate library member who pays his dues, returns his books on time and does not spread their papers out over two or three seats). In the reality of colonialism, the person “in need” of my book is more likely to be somebody who killed the librarian and hacked their way into the IT system to

⁷⁰ See <https://www.census.gov/newsroom/facts-for-features/2019/aian-month.html>, accessed 3/12/19.

⁷¹ Waldron, *Redressing Historic Injustice*, 154.

⁷² Of course, there are people whose livelihood depends on continuous access to books.

get access to my book. Despite these discrepancies, Waldron writes that “the significance of the sentimental investment cannot simply evaporate when we are dealing with something other than First Occupancy. Even when the possessor is not the first occupier — or *even when he has actually dispossessed someone else* — the attachment to the resource that he develops must still have (*or in time acquire*) some moral importance of its own.”⁷³

So the third question could be: “Who is more invested?”. If the attachment grows with time, “it is plausible to suggest that the case for sustaining the settlements grows stronger in proportion to the strength of the affection that the settlers and their descendants develop for the land.” Waldron does not specify why this should be “plausible”, but he does think he has a plausible answer for the dispossessed: “If something was taken from me decades ago, any claim that it now forms the emotional centre of my economic life becomes less credible.”⁷⁴ Waldron gives no defence of this claim. Why should economic life be criterial here? Why should the passage of time diminish economic or emotional attachment? Both might in fact grow over time – which would give the dispossessed a stronger claim than the settlers. The real problem lies with Waldron’s requirement of judgement. Why should anyone have to make their claims “credible” to an external judge? If the judge of credible claims is the same coloniser who exploited the claimant economically and emotionally, it is highly unlikely that the native occupant will ever be able to prove her commitment to a contested place.⁷⁵ When it comes to legitimate expectations, the only expectations that are legitimate are those that fit the Western frame.

⁷³ Waldron, *Settlement, Return and the Supersession Thesis*, 260. Emphasis added.

⁷⁴ Waldron, *Settlement, Return and the Supersession Thesis*, 261.

⁷⁵ D. Ivison, P. Patton & W. Sanders (eds.), *Political Theory and the Rights of Indigenous Peoples* (Cambridge, CUP, 2000).

The fourth and last kind of change that could make a difference to historical entitlements is political change. Waldron calls this “a beneficial change in the power balance”.⁷⁶ Like Hume, Waldron starts from the assumption of conflict: “people grab things and use them; they argue and fight over them; they try and defend what they have and take as much as they can from others.” This actually fits the real colonial situation better than his previous examples. “Over time”, Waldron admits, “the holdings determined in this way are going to be largely arbitrary.” Nevertheless, this is no reason for redistribution because “if any sort of stable pattern of possession emerges, then something like a peace dividend may be available. It may be possible for everyone to gain [...] by an agreement not to fight anymore over possessions.”⁷⁷ Imperialist dispossession is legitimised by the fact that after years of turmoil, some kind of stability might be possible. Once again, political progress is assumed, not demonstrated.

When discussing the Israeli case, Waldron goes deeper into the coloniser’s mindset. He does admit that “in principle, an occupying power has an obligation to respect existing property arrangements and not effect any major change until the occupation is regularised.” Why the occupation should be “regularised” is not explained. If the baseline circumstances C_0 are “very fragile and vulnerable either to the imposition of a new property regime or to the re-emergence of conflict over resources (a state of nature)”, Waldron writes, “a new equilibrium would have to be worked out” anyway. In this “state of nature” (another phrase pushing precolonial settlement outside the confines of modern civilisation), “a

⁷⁶ Waldron, *Settlement, Return and the Supersession Thesis*, 264.

⁷⁷ Waldron, *Settlement, Return and the Supersession Thesis*, 264.

group of settlers might play for control of certain resources in this region. Formally speaking, their move is unjust by reference to C_0 . And it may also be unjust with respect to whatever indeterminate, unstable, and unreliable version of C_0 — we will call it C_1 — prevails during the occupation. Still, the settlers may make their move with a view to affecting and constraining the interplay of forces that will eventually lead — *some years hence* — to a new and stable convention, C_2 , concerning property in the region.” If that stability is to last, the “grievances of persons or peoples” who suffered in this transition should then be treated as “mere historic sentiments, irrelevant to issues of justice.”⁷⁸

Why is Waldron so sure that “some years hence”, the interplay of forces “will eventually lead” to a “new and stable” order? Waldron’s teleological writing implies a belief in progress, unfolding neatly as time goes by. The political change he envisions even has a clear goal: “to move us away from fighting about who uses what and towards the benefits promised by a system of positive law and an orderly marketplace.”⁷⁹ These are evidently liberal capitalist criteria for progress for which there will be little competition from the prior occupants. These are also sidestepped by an important omission in the consequentialist argument: there is a gap between the duty to form a political society and the duty to form it in an orderly manner. An “orderly” political transition may include a public discussion, even prosecution of the past – as it did in Argentina, South Africa, Timor-Leste, and the Balkans.⁸⁰ It should, above all, include conscious agents. Waldron writes as if no individual or collective will, no man booking a cabin on

⁷⁸ Waldron, *Redressing Historic Injustice*, 141.

⁷⁹ Waldron, *Redressing Historic Injustice*, 141.

⁸⁰ See P. Hayner, *Unspeakable truths : Transitional Justice and the Challenge of Truth Commissions* (New York, Routledge, 2011) 2nd ed; R. Teitel, *Transitional Justice* (New York, OUP, 1999); L. Vinjamuri & J. Snyder, “Law and Politics in Transitional Justice”, *Annual Review of Political Science*, Vol.18 (2015), 303-327.

a ship and no government burning indigenous forests, had any concrete responsibility for their actions. By saying to the colonised that “our coexistence is to be treated as a brute fact”⁸¹, the coloniser asks us to set aside any considerations of retrospective responsibility and urges us to look towards a brighter future instead. Responsibility dissipates in the powerful story of progress. The mechanical determinism of the liberal vision of history hides great crimes with great elegance.

These four changes – demographic, economic, legal, political - are privileged in all three articles because “the facts that have changed are exactly the sort of facts one would expect to *make a difference* to the justice of a set of entitlements”. Of course, it is somewhat understandable that Waldron, an empiricist inspired by Hume and Locke, takes empirics into account when assessing the changing circumstances of justice. Waldron finds the cumulative power of these changes so important, however, that “it boggles belief to say that what justice requires in this territory now is anything like what justice required at the very beginning of European contact”. The big question raised by this last quote on belief is: “Whose belief?”. Whose viewpoint matters to assess the circumstances of justice? It is remarkable that the changes that matter are precisely those brought about by the European colonisation of the world – and that they work in favour of Waldron’s argument only if viewed from the coloniser’s perspective. Demographic, economic, legal and political change matters if and when it fits the sequence of Enlightenment meliorism – from savage chaos to civilised commerce. The flipside of the coin is not adequately discussed. Why not?

⁸¹ Waldron, *Redressing Historic Injustice*, 138.

Because it would tamper with the core assumption that colonial change is positive change.

D. The moral hazard objection

Let us now step back and consider the implications of Waldron's position as a whole. In the lively debate on the Supersession Thesis, the most powerful objection against supersession is that it incentivises imperialism. Once we understand Waldron's forward-looking, constructivist assumptions, it seems stronger than before. If the possibility of supersession is embedded in a progressive temporal framework that privileges the newcomer, the probability of crimes being superseded by circumstances increases. Let us first look at the objection, then at Waldron's defence and finally at the reasons why this defence fails.

The "moral hazard" objection has two versions: (1) the standard version is that a group could appropriate land or resources by unjust means and then simply wait until the circumstances have changed to a sufficient degree for the original injustice to fade. Waldron's Supersession Thesis would then be reassuring and even "redemptive" (his own term) for prospective colonisers. (2) The second version goes even further, since the previous section has sought to show that all the changes that are thought to make a difference to the balance of justice are precisely the changes usually entailed by colonialism. In this stronger version of the objection, colonisers would not only be reassured of their eventual impunity but would be encouraged to actively colonise at a greater speed and intensity. The new circumstances which turn past injustice into present justice are

produced by the unjust act itself. The reward for effective colonisation would be a form of compounded supersession.

Waldron first denies the weak standard version. Using the example of Israeli settlers who see themselves as “pioneers, spearheads of a movement that is one of conquest (or reconquest)”⁸², he writes that, if we know that violations of International Law or International Humanitarian Law are being contemplated, “our primary and most urgent obligation” is to prevent that unjust act. In fact, Waldron concedes “the despair associated with the anticipated operation of the Supersession Thesis [...] may heighten the case for blocking the injustice now, before it is superseded.”⁸³ This does not mean, however, that the author wants to abandon his Supersession Thesis once the injustice has indeed been committed. The peculiar reason given for this moral and temporal disjuncture is what Waldron calls “an offensive use of injustice as a means”.⁸⁴ He writes: “Suppose the best way to prevent a particularly hideous injustice would be to perpetrate another injustice [...] We have no choice but to do justice in and for that situation and let the incentives fall out as they may.”⁸⁵ Before the Supersession Thesis can be applied, we should stop it, but after it has come into play, we should not. This defence of inaction might be even stronger for the descendants of those colonisers. The colonisers’ descendants no longer conceive of themselves as active colonisers, he says, and are not required to intervene. Waldron makes them look like J.R. Seeley’s Britons who “conquered and

⁸² Waldron, *Settlement, Return and the Supersession Thesis*, 256. See D. Bell’s excellent essay collection *Reordering the World: Essays on Liberalism and Empire* (Princeton, PUP, 2016). ⁸³ Waldron, *Settlement, Return and the Supersession Thesis*, 252.

⁸⁴ Waldron, *Settlement, Return and the Supersession Thesis*, 253.

⁸⁵ Waldron, *Settlement, Return and the Supersession Thesis*, 253.

peopled half the world in a fit of absence of mind”⁸⁶, but once we see that descendants can also perpetuate colonial structures – unwittingly or wittingly - to consolidate their privilege, we face the second version of the moral hazard objection.

This stronger objection against incentivising colonialism takes into account what I will call “compounded supersession”. If an injustice occurs under circumstances C_1 , then the circumstances which would allow the supersession of that injustice, could not only be external – they could be circumstances *directly* produced by that injustice. At first, Waldron seems to focus on changes of the wider context, changes in circumstances not causally linked to the original injustice. A calculation which includes change that is produced directly by injustice, however, is a calculation which potentially encourages not just the initial injustice but further injustices. Contrary to some people’s expectations, this accumulation of injustice could actually diminish the responsibility to rectify the original injustice. Waldron accepts this hazard: “the change of circumstances referred to in the Supersession Thesis may include changes that are the immediate causal product of the very injustice originally complained of.”⁸⁷ If we take this further, new, but *related* injustices could be committed to consolidate the “changes in circumstances” alter the balance of justice. This runs counter to Waldron’s professed aversion to the “consequentialism of injustice”, but seems to be acceptable. If additional injustices are perpetrated to accelerate the supersession of the original injustice, how could that be a satisfactory outcome?

⁸⁶ J.R. Seeley, *The Expansion of England* (1883) 12, via <https://www.cambridge.org/core/books/expansion-of-england/B4A6BEF933EAAC4FF9B72E013AA46EAC>, accessed 1/12/19.

⁸⁷ Waldron, *Settlement, Return and the Supersession Thesis*, 243.

The combination of two injustices does not equal justice. Waldron claims that the Supersession Thesis is not “the prostitution of morality and justice to the claims of the tank, the bullet, and the bulldozer”, but a “realistic assessment of what we can do to improve our situation here and now”.⁸⁸ The possibility of compounding supersession in the name of progress, however, should make us reconsider the liberal temporal framework.

Like many other theories against redress based on historical change, Waldron’s leaps of supersession are underpinned by an extraordinarily optimistic notion of time, which comes close to equating the latter with continuous progress. It would only be worth upholding the lifestyles of Australia’s “honest settlers” today, if today were actually an improvement on 1770, just before the First Fleet landed in Botany Bay. The passage of time diminishes historical responsibility not just because of epistemic problems, the non-identity problem or the intervening agency of third parties, but also – and perhaps most importantly, because forward-looking Western culture relies on the promise that time cures all ills. A great amount of power and faith is placed in something as contingent as time and conceptions of temporality. Waldron’s argument has numerous political and legal equivalents, such as various forms of prescription or adverse possession. In the Common Law tradition, where the body of law adapts as men change their habits, this belief in a core principle of goodness that progressively unfolds is even more visible than in codified continental systems. The dominant temporal framework of modernity dictates that whoever is at the forefront of historical progress makes the rules and builds his future. *Liberal history favours the newcomer.*

⁸⁸ Waldron, *Settlement, Return and the Supersession Thesis*, 267.

In the next and final section, we will pivot towards Waldron's opponents, who favour historical rectification. The aim is to discover whether they think about time differently and, if so, in what way. I will engage with them much more briefly since they actually share a number of characteristics and assumptions with the sceptics of historical rectification.

III. IN FAVOUR OF RECTIFICATION

Do proponents of historical rectification take the past more seriously? There is certainly much deeper historical knowledge and a more explicit acknowledgement of the vicissitudes of history in their writings. Ta-Nehisi Coates's influential essay *The Case for Reparations*, for instance, is based on diligent archival research and personal interviews with descendants of African-American slaves.⁸⁹ The Reparations Coordinating Committee, of which Charles J. Ogletree is the chairman, has funded dozens of historical research projects to get to the root of racial discrimination in the US.⁹⁰ The 2012 legal battle over the torture claims of Mau Mau veterans was supported by extensive historical research.⁹¹ Yet it is remarkable that reparations activists worldwide have tended to couch their demands in the language of liberal progress. This language focuses on the

⁸⁹ <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>, accessed 27/07/21.

⁹⁰ <https://today.law.harvard.edu/feature/breaking-chain/>, accessed 27/07/21.

⁹¹ C. Elkins, "Alchemy of Evidence: Mau Mau, the British Empire, and the High Court of Justice", *Journal of imperial and Commonwealth history*, Vol.39, No. 5 (2011) 731-748.

present and future rather than the past. Academic arguments in favour of reparations tend to pull past injustice into the present. Here are some examples:

- (1) When Janna Thompson demands reparations for Australian aborigines, she uses the terminology of promise-making and promise-keeping, a fundamentally forward-looking act of restricting one's behaviour in the future. When she criticises settlers for having breached contracts and agreements that were initially made with the indigenous population, she criticises them for not having managed their future properly.⁹² The same kind of reasoning is at work in most texts on the Treaty of Waitangi (1840), which the British governor made with the Māori of New Zealand and the repeated legal disputes about Sioux land.⁹³ The problem of colonialism is distilled into a breach of contract. The postcolonial demand for reparation is often a complaint against a broken promise – but the criticism is that it was broken, not that the promise was made in the first place. Why was there a forward-looking contract in the first place? And why should we perpetuate this focus on the future?
- (2) Another line of argument refined by Sher, Boxill, Butt and Cohen defends reparations because rights are heritable across generations.⁹⁴ This refers not just to treaty rights, but to a child's right to subsistence or even to a sufficiently large inheritance. Here again, the past injustice matters only insofar as it is the source of injustice in the present.

⁹² J. Thompson, "Historical obligations", *Australasian Journal of Philosophy*, Vol. 78, No. 3 (2000), 334-345

⁹³ *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980).

⁹⁴ B. Boxill, "A Lockean Argument for Black Reparations", *The Journal of Ethics*, Vol.7 No. 1 (2003); G. Sher, "Transgenerational Compensation", *Philosophy & Public Affairs*, Vol.33 No. 2 (2005); D. Butt, "Inheriting Rights to Reparation: Compensatory Justice and the Passage of Time", *Ethical Perspectives*, Vol.20 (2013); A. Cohen, "Compensation for Historic Injustices: Completing the Boxill and Sher Argument", *Philosophy & Public Affairs*, Vol. 37, No.1 (2009).

- (3) The third option is a re-conceptualisation of historical duties in terms of the universal duty to assist those in need. Whatever we owe to the victims of historical injustice is not linked to any time-sensitive injustice but grounded in timeless universal justice. Richard Vernon, for example, defends this view in writing that “obligations termed ‘restitutive’ should not in many cases be seen as examples of special ties arising from historical connections [but] as local instances of universal requirements of justice, [this] does not require a theory of deep historical connection.”⁹⁵ Historical injustice is only a local instance of universal injustice. Here, the past falls out of the picture completely.
- (4) Similar mechanics are visible in the writings of structuralists. Structuralists like Catherine Lu suggest that historical injustice should be understood in the framework of wider structural injustice that allows for unjust interactions within and across generations.⁹⁶ This has important implications for our temporal order. Alasia Nuti, for example, announces that she wants to develop “an alternative framework to think about the theoretical and normative relation between past and present”, but ultimately reaches for the metaphor of the mechanic reproduction of history that turns historical injustice into structural injustice. Historical injustice, then, matters only insofar as “the reproduction of unjust history [...] shapes the background conditions in which some present wrongs occur and relations between agents are established”.⁹⁷ Is change possible? And if so, how? “Even in cases of significant structural change”, Lu writes,

⁹⁵ R. Vernon, “Against Restitution”, *Political Studies*, Vol. 51, No. 3 (2003), 554.

⁹⁶ C. Lu, “Colonialism as Structural Injustice: Historical Responsibility and Contemporary Redress”, *Journal of Political Philosophy*, Vol. 19, No. 3 (2011).

⁹⁷ A. Nuti, *Injustice and the reproduction of history: Structural Inequalities, Gender and Redress* (Cambridge, CUP, 2019), 5f.

“those who continue to occupy social positions of disadvantage or indignity based on the continued reproduction of structural injustices *may still* have particular rectificatory claims on participants of the contemporary unjust structure.”⁹⁸ That fact that she has to use the words “may” and “still” could suggest the persistence of the automatic assumption that structural change should be accompanied by altered duties of justice. Nonetheless, she ultimately describes the element persisting beyond the past into the present as a large impersonal structure, rather than the concrete event of past wrongdoing which persists for victims and allows claimants in modern courts to make their rectification claim. Instead of the persistence of precise injustices, it is the possible persistence of their context that should ground historical redress. Despite Lu’s innovative distinction between (timeless) justice and (temporally bound) reconciliation across generations, she ultimately advocates for the latter, slipping into the temporal mould that makes her reject “retrospective reparations” to ask readers to go “beyond reparations: toward structural transformation”.⁹⁹ The words “beyond” and “towards” suggest a spatio-temporal order in which we move away from the past and towards our goals. Although she takes great care to qualify her position and separate herself from purely utilitarian, consciously progressive, forward-looking arguments for redress, not even her diligently argued case is fully free of forward-looking temporal assumptions. Structuralists seem to have overlooked that they, too, operate in the structure of progressive time.

⁹⁸ C. Lu, *Justice and Reconciliation in World Politics* (Cambridge, CUP, 2017), 165f. Emphasis added.

⁹⁹ Lu, *Justice and Reconciliation in World*, 248-281.

(5) Finally, there are those proponents of historical redress who want us to focus on the future. The forward-looking linearity of “progressive” conceptions of historical rectification is particularly visible in the words of those academics and legislators who justify historical rectification as an instance of transitional justice.

Transitional justice, originally defined by Ruti Teitel as “the conception of justice associated with periods of political change”, has been extended to cover “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”.¹⁰⁰ Such mechanisms often combine backward-looking corrective justice (e.g. public trials) and forward-looking restorative justice (e.g. amnesties). I believe that the choice of the concept and toolkit of transitional justice reveals the deeply teleological, forward-looking nature of the Western conception of time.

When Andrew Valls asks us to consider racial justice in the US as an instance of transitional justice, for instance, he writes: “In the United States today, there remain many unresolved issues related to race, in particular issues that are legacies of past injustices toward African Americans. [...]. I argue [...] that transitional justice usually requires the backward-looking measures of prosecution, reparation, and acknowledgement, and [...] that by this standard the transformation that took place during the civil rights era in the United States was unjust, or, at least, remains incomplete.” To solve that problem of “incompleteness”, Valls surveys and endorses a number of measures which

¹⁰⁰ R. Teitel, *Transitional Justice* (Oxford, OUP, 2000).

should be undertaken by local and national authorities, “as ways of completing our transition to a racially just society”.¹⁰¹ This is matched by a 2021 resolution of the US Congress which “(1) affirms, on the 400th anniversary of the arrival of the first slave ship to the United States, that the Nation owes a long-overdue debt of remembrance to not only those who lived through the egregious injustices enumerated in this resolution, but also to their descendants; and (2) urges the establishment of a United States Commission on Truth, Racial Healing, and Transformation to properly acknowledge, memorialize, and be a catalyst for progress toward - (A) jettisoning the belief in a hierarchy of human value; (B) embracing our common humanity; and (C) permanently eliminating persistent racial inequities.”¹⁰²

Instead of being temporally discrete, or even outside of the “ordinary” flow of historical development, the choice of “transitional justice” as a (policy) framework to address historical wrongs is paradigmatic of the futuristic orientation of Liberal Time.

What is striking in the transitional justice framework is that the destination is already set. A goal is necessary since transitions are only transitions if we transition away from something and towards something else. In temporal terms, we transition from the past into the future, via a present which is the site of agency.¹⁰³ So what is the goal of such transitions? Is it the fulfilment of a previously made promise? Is it a collectively established goal or is it in some way

¹⁰¹ A. Valls, “Racial Justice as Transitional Justice,” *Polity*, Vol. 36, No. 1 (2003), 53.

¹⁰² HR Con. Res. 19 (2021), <https://www.congress.gov/bills/117th-congress/house-concurrent-resolution/19/text>, accessed 22/04/21.

¹⁰³ As we shall see in chapter 2, the human capacity to consciously project oneself into the future and design a “transition plan” to get to the desired goal is not universal, but a product of European social history.

imposed externally? If the latter, who imposed it and why? Most of the academic and political debate around transitional justice assumes that the goal is Western-style, stable democracy with a strong civil-society to hold government accountable. Non-European countries like South Africa, Chile or Timor-Leste are said to be transitioning to European democracy through “transitional tools” like truth commissions, trials, amnesties – often under the assistance (supervision) of Western institutions like the National Endowment for Democracy (NED). The societies in question are not doomed to remain barbaric; the pull of progress is supposed to be universal and inclusive. Even “established democracies” like Australia, Canada, New Zealand and the United States can and should use transitional justice mechanisms to better themselves. For Stephen Winter, who analysed the specificities of state redress for state-authorized historical injustice in those paradigmatic liberal settler colonies, this is a question of legitimacy. These liberal states are “profoundly burdened by their histories” since they “failed to meet their own standards of legitimacy”. We are going to encounter three “established democracies” who did fail to meet self-imposed standards and their efforts at historical rectification later in Part II.¹⁰⁴ Yet what matters for now is Winter’s assessment that “the legitimating account of state redress relinquishes neither progress nor civilization. Indeed, insofar as the theory is both potentially progressive (redress improves state legitimacy) and a theory of citizenship, it reproduces versions of both dynamics.”¹⁰⁵ Whether Western or non-Western, efforts to deal with past injustice within the framework of transitional justice are wedded to the future-oriented idea of progress.

¹⁰⁴ S. Winter, *Transitional Justice in established Democracies: A Political Theory* (Basingstoke, PalgraveMacmillan, 2014), 12.

¹⁰⁵ Winter, *Transitional Justice in established Democracies*, 89.

The moral standard to measure such progress - modern liberal democracy - is available to everyone and, this is crucial, everyone is expected to desire fulfilment of that standard. It is in this sense that the “transitional justice” paradigm of historical reparations replicates the demands of enlightened imperialism.

Ruti Teitel is one of the very few scholars who identify “transitional justice as liberal narrative”. Her characterisation, however, seems to be predominantly positive: “The liberal transition is distinguished by processes that illuminate the possibility of future choice. Transitional accounts hold the kernels of a liberal future foretold. The revelation of truth brings on the switch from the tragic past to the promise of a hopeful future. A catastrophe is somehow turned around, an awful fate averted. Transitional justice operates as this magical kind of switch: legal processes involve persons vested with transformative powers: judges, lawyers, commissioners, experts, witnesses with special access to privileged knowledge. Reckoning with the past enables the perception of a liberalising shift.”¹⁰⁶ That “liberalising shift”, however, relies on a specific conception of time which values future states as inherently better than what preceded them; presumably because regime change is expected to be regime change towards the Western ideal of liberal democracy. “In this sense”, Teitel writes, “narratives of transition are stories of progress, beginning with backward-looking reflection on the past, but always viewing it in light of the future.” That future-orientation which promises improvement by first understanding and then expressly rejecting the past. In Teitel’s assessment, “If the constructive fiction is that earlier awareness of the knowledge that has now been acquired might have averted the tragedy, a new society can be built on this claim. It is the change in political

¹⁰⁶ R. Teitel, *Globalizing Transitional Justice: Contemporary Essays* (New York, OUP, 2014), ch. 6.

knowledge that allows the move from an evil past to a sense of national redemption.[...] . There is a ritual disowning of previously secreted knowledge, a purging of the past, as well as an appropriation of a newly revealed truth, enabling a corrective return to the society's true nature. A new course is charted.”¹⁰⁷ The passage of time leads to the growth of knowledge. At some point, there is enough knowledge to “deal” with the past and move on. Crucially, this is not about novelty per se; it is about a “corrective return to society's true nature”. In her optimistic endorsement for future-oriented regime change, however, Teitel does not question the historical baseline conception of liberalism: the future will be better since it will be more liberal.

This optimism is borne out by the empirical literature on political transitions. The NED's *Journal of Democracy*, perhaps the most influential in the field, publishes not only *timelines* for democratic transitions but also “scientifically backed” pronouncements on the irreversibility of such transitions. In a famous 1997 article, for example, Adam Przeworski and Fernando Limongi affirmed: “[...] history gradually accumulates wealthy democracies, since every time a dictatorship happens to die in an affluent country, democracy is there to stay”.¹⁰⁸ When Western-style democracies deviate from this standard, it is called “democratic backsliding” - another spatio-temporal term which proudly illustrates the supposed superiority of liberal democracy. Paradoxically, such backsliding is often portrayed as a temporary deviation from the norm, which can be reversed, whereas the expansion of the norm itself cannot be reversed. Nancy Bermeo, to take a more recent example, writes in 2016 that

¹⁰⁷ Teitel, *Globalising Transitional Justice*, 109.

¹⁰⁸ A. Przeworski & F. Limongi, “Modernisation: Theory and Practice”, *Journal of Democracy* (1997), 158.

“contemporary forms of backsliding are especially vexing because they are legitimated by the very institutions democracy promoters prioritize but, overall, backsliding today reflects democracy’s advance and not its retreat.” Why should that be the case? Because “the current mix of backsliding [techniques] is more easily reversible than the past mix and successor dictatorships are shorter-lived and less authoritarian.”¹⁰⁹

In sum, five aspects of “historical justice as transitional justice” should be highlighted: (1) the term transition suggests movement; (2) that movement is directed towards a pre-defined endpoint, usually liberal democracy; (3) to reach the endpoint transitional justice offers a toolkit for corrective intervention: there is no creation as such, since we are merely correcting deviations from the norm; (4) those corrections are man-made, because Man makes his own history and (5) irreversible, since that history is teleological.

Conclusion

We have now encountered opponents and proponents of historical rectification. One important commonality is their orientation in time. Why do so many of these authors feel the need to focus on the future? Why are we looking forward in time even when we are talking about the past? And how can it be that both enemies and defenders of historical redress converge on this point?

My thesis is that we are operating in a biased temporal framework created and sustained by the European politico-legal establishment. As we have seen with Waldron and his opponents, that framework has six characteristics that may

¹⁰⁹ N. Bermeo, “On Democratic Backsliding”, *Journal of Democracy*, Vol. 27, No. 1 (2016), 5.

seem almost natural to us: (1) The schematisation of time is an open-ended line on which (2) unique, irreversible and irretrievable events in (3) past, present and future succeed each other in this order, (4) and value increases with proximity to the future because (5) the passage of time brings progress. The passage of time is the earthly measurement for the progressive unfolding of humankind. Since humankind is capable of self-improvement¹¹⁰, the future either *is* or *should be* better than the past. (6) The past is therefore an undesirable word. The past is uncivilised, the present is civilised - but never completely because the open future always leaves space for improvement.

Of course, there have been many damning critiques of this promise of progress, especially in response to the catastrophes of the twentieth century.¹¹¹ But as Amy Allen has admirably shown, even the critical figures of the Frankfurt School did not manage to shed their progressive assumptions.¹¹² The fundamentally forward-looking nature of our “regime of historicity”, as Hartog would call it,¹¹³ is ingrained so deeply in Western culture that it is very difficult to get rid of. The temporal distortions that I have tried to highlight in the academic debate on historical injustice are only the tip of the iceberg. What if the whole Western debate on reparations is underpinned by a notion of time which favours the coloniser?

The problem this poses for the rectification of historical injustice is enormous: why should we make the effort to look back and engage seriously with the past,

¹¹⁰ Either in the straightforward sense or in the Christian version, where original sin makes Man wicked, and the moral desire to escape it underwrites earthly efforts at individual and civilisational progress.

¹¹¹ See ch. 7.

¹¹² A. Allen, *The End of Progress: Decolonizing the Normative Foundations of Critical Theory* (New York, CUP, 2017).

¹¹³ F. Hartog, *Régimes d'historicité: présentisme et expériences du temps* (Paris, Seuil, 2003).

if the future is prioritised in almost everything we do? How can we give peoples of the past any legitimacy in our debates on justice, if even our debates on justice are forward-looking? And how exactly should a real dialogue with the past work if we have exported our very particular conceptions of time and history to the world, thereby suppressing valuable alternative ways of looking at the problem of intertemporal justice? Before we can attempt to answer any of these big questions, we should understand how the Western conception of time emerged in the historical context of European domestic development and international expansion. This will be the focus of chapters 2 and 3, respectively.

2. THE PROVINCIAL ORIGINS OF WORLD STANDARD TIME

“You see, my friend,” Mr. Bounderby put in, ‘we are the kind of people who know the value of time, and you are the kind of people who don’t know the value of time.’”¹¹⁴

How did we come to adopt the currently dominant notion of time? What we need to study here is the complex intersection between (1) the spread of physical time-pieces, (2) the internalisation of ever-changing temporal patterns by those who use these chronographs, (3) the appropriation, modification and creation of those patterns by political rulers, and (4) the integration of specific temporal patterns into the wider idea of history. Methodologically, this requires considerable two-way translation between empirical social science and social theory. On the whole, I agree with Heidegger that it is our inability to know our own time, the time when death comes for us, which fuels an anxious interest in any outward signs of temporal control.¹¹⁵ The form that this desire to tame time takes, however, can be varied and historically contingent – which is why it deserves deeper investigation. Thankfully the recently renewed interest in time among historians, sociologists and economists has led to some excellent examples of that interplay. Reinhart Koselleck did the conceptual groundwork by examining different layers of time (*Zeitschichten*) and how they interact in man-made history;¹¹⁶ François Hartog has identified a succession of different

¹¹⁴ C. Dickens, *Hard Times* (London, Penguin, 2018 [1854])

¹¹⁵ M. Heidegger, *Sein und Zeit* (Berlin, 1927)

¹¹⁶ R. Koselleck, *Vergangene Zukunft: Zur Semantik geschichtlicher Zeiten* (Berlin, Suhrkamp, 2017 [1989]) and R. Koselleck, *Zeitschichten* (Berlin, Suhrkamp, 2003).

“regimes of historicity” in the European imagination;¹¹⁷ Hartmut Rosa has asked questions about speed (“Is there really an acceleration of history?”) and analysed how different institutions of the modern state work with different temporal preferences;¹¹⁸ Christopher Clark has convincingly demonstrated how the exercise of power in German history is shaped by different notions of time.¹¹⁹ Nonetheless much work remains to be done – especially when it comes to the Anglo-Saxon historical imagination, where the shape of time is all too often taken for granted.

Why would a treasure hunt to the sources of our time matter for political theorists? I see at least three reasons: First, political theorists should know the full depth of the terms they are using, especially when a seemingly abstract concept is the product of concrete human practices. In the contemporary West we tend to think of time as a linear framework in which past, present and future succeed each other in that order. That framework is used for remembering the past, meeting in the present and planning for the future. Our calendar is an ordering system initially synchronised with cosmological change, and then fragmented further and further into 12 months, 52 seven-day weeks and 365 days. For us, these days have 24 equal hours, counted in two sets of 12, from noon to midnight. All of these features of time are illustrated by natural, mechanical and digital clocks in the public and private sphere. None of this is inevitable or universal. Glennie and Thrift remind us of the complexity of these

¹¹⁷ F. Hartog, *Régimes d'historicité: Présentisme et expériences du temps* (Paris, Seuil, 2003).

¹¹⁸ H. Rosa, *Beschleunigung: Zur Veränderung der Zeitstrukturen in der Moderne* (Berlin, Suhrkamp, 2005) and Rosa, *Resonanz: Eine Soziologie der Weltbeziehung* (Berlin, Suhrkamp, 2016).

¹¹⁹ C. Clark, *Time and Power: Visions of History in German politics from the Thirty-Years-War to the Third Reich* (Princeton, PUP, 2019).

practices: “We tend to experience its elements as components of an entire package, encompassing conventions about the units into which time is divided, the ways in which time is measured, counted, and signalled. Neither current practices nor changes in clock time over time can be considered to be ‘natural’. [...] Looking back to periods when alternative ways of defining clock time still co-existed alongside those that survived to be taken for granted nowadays, the components of clock time are much more clearly recognizable as these conventions.”¹²⁰ One such “alternative period” would be that marked by the republican calendar of the French revolution: the year was split into 12 newly named months, with 10-day weeks, 10-hour days and specially fabricated clocks which reflected the new decimal system (see figure 1).¹²¹ Like Russia’s change from the Julian to the Gregorian calendar after the 1917 revolution, this way of reordering time was a symbol of power.



Figure 1: Nouveau calendrier de la République française (1793)

¹²⁰ P. Glennie & N. Thrift, *Shaping the day Shaping the day: a history of timekeeping in England and Wales 1300-1800* (Oxford, OUP, 2009), 29.

¹²¹ E. Zerubavel, “The French Republican Calendar: A Case Study in the Sociology of Time”, *American Sociological Review*, Vol. 42, No. 3 (1977).

Second, engaging with the history of time and time-keeping is particularly important when these practices are expressive of power relations. If we don't want to abandon the "political" aspect of our discipline, we must enquire into the real constellations of power that are produced, sustained and changed by the conceptual and technological transformations in history. In the case of the evolution of Western time, it is not a coincidence that the Communards of 1871 started their rebellion by shooting at the public clocks of Paris. This was the culmination of almost 400 years of different social classes fighting for and about time.¹²² As we will see below, whoever controlled the system of time-reckoning, controlled the social order.

Third, Political Theory should be more embedded in the context of real human practices, if it is to offer any political guidance. The aim is to identify a political problem that is sustained by particular interpretations of the words "time", "history" and "progress" – that problem being an inability to understand the core of historical injustice (see chapter I) - and to offer the normative tools to dismantle these constructs.

The exact relationship between physical expressions of time, internalised time-consciousness and historical consciousness is still debated. Glennie and Thrift, authors of the largest evidence-based study of timekeeping in Western Europe, consider the issue so fraught that they have opted for a purely physical, rather than metaphysical approach: "First, we do not want to invest the passage of time with mystical qualities: for us, time is a resolutely material and mundane set of

¹²² This aspect of time is particularly well-documented in the Marxist literature. See J. Le Goff, *Time, Work and Culture in the Middle Ages*. Transl. A. Goldhammer. (Chicago, UCP, 1980); E.P. Thompson, *The Making of the English Working Class* (New York, Vintage Books, 1966) and Thompson, 'Time, Work-Discipline, and Industrial Capitalism', *Past & Present*, No. 38 (1967), 56-97.

procedures and practices of aggregation. Second, we do not believe that the passage of time takes on mysteriously different qualities in different cultures [...] Third, we want to count time as a historically variable process [...] Fourth, we see no reason to blame clock time for all the ills of the world. Indeed, it is possible to argue that the gradual putting into place of those procedures and practices of aggregation that for convenience we call ‘clock time’ has been as much a liberatory as an oppressive force. It has allowed as much it has disciplined. [...] We are convinced of the need for theoretically informed empirical work that can make clear what it is that is at stake.”¹²³ Although their materialistic reconstruction of time-keeping in Western Europe is impressive, I take issue with some of their methodological choices, especially the first and fourth rule:

I do not believe that theory can be abandoned when we study time because it is remarkable that the spread and increasing technical sophistication of timepieces in the modern era went hand in hand with a remarkable output of philosophical, psychological and anthropological works on time. As temporal indicators multiplied and entered the fabric of daily life, people seem to have felt the urge to give this practice meaning. The results produced by people as different as Tocqueville, Marx, Proust, Freud, Heidegger, Niebuhr, Cassirer, Löwith and Ricœur¹²⁴ are an integral part of the Western intellectual landscape. These thinkers influenced not only each other, but also social vocabularies and

¹²³ Glennie & Thrift, *Shaping the Day*, 14.

¹²⁴ A. de Tocqueville, *L'ancien régime et la révolution*. Edition revue et corrigée. Ed. J-P Mayer (Paris, Gallimard, 1967 [1856]), K. Marx, *Deutsche Ideologie* (1845); M. Proust, *À la recherche du temps perdu* (Paris, Gallimard, 1913-27) ; H. Bergson, *L'Évolution créatrice* (Paris, Félix Alcan, 1907); M. Heidegger, *Sein und Zeit* (Thübingen, 1927) ; S. Freud, *Das Unbehagen in der Kultur* (Vienna, 1930) ; R. Niebuhr, *Faith and history: a comparison of Christian and modern views of history* (New York, C. Scribner's Sons, 1949); E. Cassirer, *The philosophy of the Enlightenment*. transl. F.C. A. Koelln and J.P. Pettegrove (PUP, 1951); K. Löwith, *Meaning in History* (Chicago, UCP, 1970); and P. Ricœur, *Temps et récit*. 3 vols. (Paris, Gallimard, 1983-1991).

practices of political life. The prestige that came with the ownership of a personal wristwatch, for example, is only intelligible if we know about the association between watch ownership and modern bourgeois values such as self-control, productivity and predictability.¹²⁵ As different social classes were actively appropriating, fighting and changing patterns of time and history, they were aware of the wider ideological implications. The physical and normative evolution of our notions of time are intimately linked.

My second criticism of Glennie and Thrift's approach is that they make such furious efforts to push back against the "apocalyptic" critics of modern temporality¹²⁶ that they seem to forget that time was a tool of the powerful. Of course, they say they want to focus on everyday timekeeping among ordinary people. Their study's core is also geographically restrained to England and Wales. Maybe it is possible to tell a neutral or even positive story about timekeeping in the British Isles, especially if the authors stop their archival research before the Industrial Revolution is in full swing. But in writing that "time has been as much a liberatory as an oppressive force", they seem to gloss over the question of who benefitted and who did not. Modern European time, as I see it, has always been liberating for some and oppressive for many. In the enormous timespan they cover – 1300 to 1800 – Britain underwent drastic social transformations at home and abroad. None of this would have been possible without the help of (a) increasingly sophisticated, synchronised timepieces and (b) the progressive visions of historical mastery that came with them. The two together produced frighteningly formidable frameworks to penetrate and control the daily lives and minds of subjected classes at home and abroad. It is

¹²⁵ Landes, *Revolution in Time*, ch. 5.

¹²⁶ Glennie & Thrift, *Shaping the Day*, esp. ch. 2, 45-55.

therefore valuable to connect material with intellectual history to see the full extent to which Liberal Time has transformed human experience. Before we look at imperial expansion in the next chapter, we should try to understand the rather provincial origins of the powerful invention of world standard time. Europe's notion of time emerged from the specific religious, economic and political development of the continent. Three terms lead the inquiry: Christianity, bourgeoisie, revolution.

I. CHRISTIANITY

The spread of Christianity effected the first fundamental change from ancient, cyclical to modern, linear time. In ancient Greece and Rome, human history was cyclical. On the one hand, there was the eternal wisdom of the Gods and nature, on the other the messy realm of human affairs in which people, cities and Empires rose and fell. Human history was a multiplicity of stories, and the slate periodically wiped clean by cathartic nemesis. "For classical culture the world of change and becoming was intelligible and real insofar as it participated in the changeless world [...] time is the cycle of coming to be and falling away, of birth and death, of growth and decay."¹²⁷ From Aristotle ("It is in circular movement and cyclical coming-to-be that the absolutely necessary is to be found"¹²⁸) and Thucydides to Lucretius and the Stoics, the predominant thought was that "the chiefest members and parts of the world are destroyed and begotten anew".¹²⁹

¹²⁷ Niebuhr, *Faith and History*, 38.

¹²⁸ Aristotle, *On generation and corruption* (c. 350 BC), 338a, via http://classics.mit.edu/Aristotle/gener_corr.1.i.html, accessed 24/02/20.

¹²⁹ Lucretius. *On the Nature of Things*, bk V, 240.

If human life was cyclical, novelty or progress as we understand it were absent. Marcus Aurelius summarises this neatly in 80 AD: “The rational soul wanders round the whole world and through the encompassing void and gazes on infinite time and considers the periodic destructions and rebirths of the universe and reflects that our posterity will see nothing new and that our ancestors saw nothing that we have not seen.”¹³⁰ Human life is short, but the cosmos is infinite. “All things that owe their existence to men, such as works, deeds, and words, are perishable, infected, as it were, by the mortality of their authors. However, if mortals succeeded in endowing their works, deeds, and words with some permanence and in arresting their perishability, then these things would, to a degree at least, enter and be at home in the world of everlastingness, and the mortals themselves would find their place in the cosmos [...]”¹³¹

Historiography plays an important mediating role between the immortal cosmos and the mortal world. As Arendt highlights, it was the poet who would elevate great mortal deeds into the sphere of epic immortality: “Immortality is what nature possesses without effort and without anybody's assistance, and immortality is what the mortals therefore must try to achieve if they want to live up to the world into which they were born, to live up to the things which surround them and to whose company they are admitted for a short while. The connection between history and nature is therefore by no means an opposition. History receives into its remembrance those mortals who through deed and word have proved themselves worthy of nature, and their everlasting fame means that they, despite their mortality, may remain in the company of the things

¹³⁰ Marcus Aurelius, *Meditations*, Edited and translated by C. R. Haines. Loeb Classical Library 58. (Cambridge MA, HUP, 1916), xi, I.

¹³¹ H. Arendt, “On the concept of history: Ancient and Modern”, in: *Between Past and Future: Six exercises in political thought* (New York, Viking Press, 1961), 47.

that last forever.”¹³² What we need to remember here for the comparison with subsequent visions of human time is that mortal history had no meaning in itself. Meaning was conferred to some outstanding lives through elevation into the world of nature.

It was the arrival of Christianity that radically changed the European conception of time, history and human action. There was a democratisation of meaning as all Christian lives were endowed with significance by the divine Creator; and a new narrative structure helped humans escape the cyclicity of antiquity. The advent of Christianity introduced a single story with a beginning, middle and end – Christ’s birth, judgement and resurrection - which would serve as a model for all others. The Incarnation was the fulfilment of the Old Testament prophecies. History had come down to Earth and revealed its meaning. In St Augustine’s classic reworking of Jewish eschatology in *De civitate dei*, we see six ages of world history, which parallel the six days of the Creation and the six ages of the individual human life span. The Augustinian focus on the Creation and predestination splits time in two: on the one hand, there is the *saeculum* (the sphere of mortal human history), on the other the *saeculum saeculorum* (the never- ending century of centuries, or heavenly afterlife).¹³³ A clear temporal succession orders the world into (1) a pagan, godless past, (2) a present in which good and evil fight each other, sometimes in the form of warfare between members of the Divine and the Earthly city and (3) a future after the Final Judgement when it will be revealed who was chosen by God’s grace to join the sphere of immortality in endless love.¹³⁴ History has a definite *finis*, understood both ethically as

¹³² Arendt, *On the Concept of History*, 48.

¹³³ J. Wetzel, *Augustine’s City of God. A Critical Guide* (Cambridge, CUP, 2012), esp. P. Griffiths’chapter “Secularity and the saeculum”, 33-54.

¹³⁴ St Augustine, *De civitate dei*, bk xii.

“ultimate goal” and eschatologically as “end of times”. This shift from cycles to a timeline that includes a final judgment suddenly opens up the prospect of meaning in history.

Since neither our belonging to the City of God nor the ultimate meaning of historical events are apparent in the historical events themselves, however, humans begin to produce sophisticated philosophies of history to reveal the divine intentions behind mortal life.¹³⁵ Karl Löwith suggests that this Christian impulse guides philosophical history in the West: “To the Jews and Christians [...] history was primarily a history of salvation [...] The very existence of a philosophy of history and its quest for a meaning is due to the history of salvation; it emerged from the faith in an ultimate purpose.” That is why “History [...] is meaningful only by indicating some transcendent purpose beyond the actual facts.”¹³⁶ In the divine scheme of things, all events are connected. For Christians, every action, every moment, every life acquired a significance they had lacked in Antiquity, since the historical process might give an indication of its ultimate end. This is also one of the reasons why the character of historiography changed. After mere record-keeping of the great deeds of the present, the promise of salvation turned historians towards the interpretive reconstruction of developments to understand the past, present and even the future as a coherent whole. Here we have first an act of looking backwards (“When a historical movement has unfolded its consequences, we reflect on its first appearance, in order to determine the meaning of the whole”) and then the new practice of looking forward (“imagining its beginning and anticipating its

¹³⁵ K. Löwith, *Meaning in History: The Theological Implications of the Philosophy of History* (London, 1949) 5ff.

¹³⁶ Löwith, *Meaning in History*, 8ff.

end, we think of its meaning in terms of an ultimate purpose”). For the chosen people of Israel, the members of the City of God, (Isaiah 40-45 is the essential reference for all optimistic prognostication in modern history), everything points towards the future. The past matters only insofar as “the past is a promise to the future; consequently, the interpretation of the past becomes a prophecy in reverse, demonstrating the past as a meaningful ‘preparation’ for the future.”¹³⁷ The temporal horizon of ever-expanding Christendom is an eschatological future.

Even once the official narratives of the organised Church are replaced by new theories with new terminologies, “the Christian and post-Christian outlook on history is futuristic.” For example, the interplay of providence, process and progress is clearly visible in the Enlightenment teleologies of Condorcet, Kant or Hegel. The latter wrote in 1813: “Our intellectual striving aims at realizing the conviction that what was intended by eternal wisdom is actually accomplished in the domain of existent, active Spirit, as well as in that of mere Nature. Our mode of treating the subject is, in this aspect, theodicy, a justification of the ways of God [...]. Indeed, nowhere is such a harmonising view more pressingly demanded than in Universal History.”¹³⁸ This Universal History, according to Hegel, lets the *Weltgeist* travel from one chosen nation to the next, from one messiah to his successor. Politically speaking, this is an incredibly powerful set-up. Whoever can convince the others that he is the embodiment of the spirit of History is – like Napoleon¹³⁹ – unstoppable. The religious development of the European continent produced a shift from cyclical to linear history with a clear

¹³⁷ Löwith, *Meaning in History*, 15.

¹³⁸ Löwith, *Meaning in History*, 55.

¹³⁹ G.W.F. Hegel, *Phaenomenologie des Geistes* (Leipzig, 1807), ch. 6, via <http://www.gutenberg.org/ebooks/6698>, accessed 26/02/20.

beginning, a pivotal Day of Judgment and then, for the chosen and the saved, an open-ended conception of happiness. There are no limits to improvement and expansion.

II. BOURGEOISIE

The second shift is linked to economics. Urbanisation in the early modern era promoted not only a convergence of many dispersed times into the coordinated time that fuelled the commercial and industrial revolutions¹⁴⁰ - urbanisation created a class, the bourgeoisie, that led to a conceptual change *from empty to valuable time*.

David Landes has admirably traced the intellectual “Revolution in Time” that accompanied the spread of increasingly sophisticated timepieces as a new merchant class arose in Europe.¹⁴¹ While urbanisation and economic specialisation during the late Middle Ages had created a need for collective temporal coordination, the power to tell the time was long restricted to the town church, whose belfry chimed the rhythms of fieldwork, fasting and feasting to the inhabitants of the surrounding countryside. But the changing conditions of urban labour as traced by Jacques Le Goff “brought about a change in the measurement of time, which was indeed a change in time itself.”¹⁴² As merchant republics asserted themselves from the fourteenth century onwards, the

¹⁴⁰ See D. Landes, *Revolution in Time*, J. de Vries, “The Industrial Revolution and the Industrious Revolution”, *Journal of Economic History*, Vol. 54, No. 2, (1994), 249-270; I.B. Bartky, *Selling the True Time: Nineteenth-Century Timekeeping in America* (Stanford, SUP, 2000).

¹⁴¹ Landes, *Revolution in Time*, chs. 5-8.

¹⁴² Le Goff, “Merchant’s Time and Church’s Time in the Middle Ages”, 44.

ecclesiastical monopoly on time was questioned by increasingly powerful townhalls which put up their own clockfaces to mark the working day. Le Goff writes, “Merchants and artisans began replacing this Church time with a more accurately measured time useful for profane and secular tasks, clock time. The clocks which, everywhere, were erected opposite church bell towers, represent the great revolution of the communal movement in the time domain.”¹⁴³

The fourteenth-century crisis of inflation and decimation of workers by the Black death, however, led to the first urban conflicts around time. Workers wanted to work longer and more flexible hours - nocturnal work, previously considered heretical was legitimised by the Provost of Paris on 19 January 1322¹⁴⁴ - but burghers wanted more control. In response to a crisis of rising labour costs “employers sought to regulate the working day more closely to combat workers’ cheating in this area. It was at this time that the proliferation of work bells (*Werkglocken*) [...] occurred.” At Amiens, for example, “Philipp IV granted the request of the mayor and aldermen ‘that they might be permitted to issue an ordinance concerning the time when the workers of said city and its suburbs should go each morning to work, when they should eat and when they should return to work after eating; and also, in the evening, when they should quit work for the day; and that by the issuance of said ordinance, they might ring a bell which has been installed in the Belfry of the said city, which differs from other bells.’”¹⁴⁵

These new work schedules, however, were not accepted by everyone. The “new time”, as it was called, became the object of bitter social conflicts. Workers

¹⁴³ Le Goff, “Merchant’s Time and Church’s Time in the Middle Ages”, 36.

¹⁴⁴ Le Goff, “Merchant’s Time and Church’s Time in the Middle Ages”, 45.

¹⁴⁵ Royal proclamation of 21 April 1335. Le Goff, “Merchant’s Time and Church’s Time in the Middle Ages”, 46.

repeatedly organised strikes and uprisings to silence the “*Werkglocke*”. The records show that these protests were, at times, remarkably successful: In Ghent on 6 December 1349, for example, “the aldermen issued a proclamation ordering the weavers to return to the city within a week, but thereafter allowed them to start and stop work at the hours of their choosing.” At Th rouanne on 16 March 1367, the dean “promised ‘the workers, fullers and other mechanics’ to silence ‘forever the workers bell in order that no scandal or conflict be born in the city and church as a result of the ringing of a bell of this type.’”¹⁴⁶ In other cities, the bourgeoisie protected its interest by law: in Northern France, anyone who should “ring the bell to call for revolt against the king, the aldermen or the officer in charge of the bell” would face the death penalty.¹⁴⁷

The result of these struggles was the emergence of a new conception of time, entirely separate from its ecclesiastical predecessor. “Instead of a time linked to events, which made itself felt only episodically and sporadically”, Le Goff’s research suggests that “there arose a regular, normal time. Rather than the uncertain clerical hours of the church bells, there were certain hours spoken by the bourgeois [...]. Time was no longer associated with cataclysms or festivals but rather with daily life.”¹⁴⁸ I believe that this was a significant step towards the conception of time we are used to today, for three reasons: first, time was secularised; second, time was gradually democratised to the extent that public clockfaces like Venice’s lavish *torre dell’orologio* (constructed 1493) could be consulted by anyone; third, time was a measure of value, both in the instrumental

¹⁴⁶ Le Goff, “Labor Time in the “Crisis” of the Fourteenth Century: From Medieval Time to Modern Time”, in Le Goff, *Time, Work and Culture in the Middle Ages*. Transl. A. Goldhammer. (Chicago, UCP, 1980) 47.

¹⁴⁷ Le Goff, “Labor Time in the ‘Crisis’ of the Fourteenth Century: From Medieval Time to Modern Time”, 48.

¹⁴⁸ Le Goff, “Labor Time in the ‘Crisis’ of the Fourteenth Century: From Medieval Time to Modern Time”, 48.

sense of measuring valuable labour hours and in the intrinsic sense that time itself became something of value. And still, the revolution was not uniform. Each merchant town in Northern Italy, for instance, counted the two sets of 12 hours of the day differently; some starting at sunrise, others at sunset. Due to variation with the seasons and local custom, hours were unequally long.¹⁴⁹ There was still a multiplicity of times.

It was only once the commercial revolution facilitated by imperial expansion created a powerful merchant class which could scrutinise government, that individual men could afford to live in their own time by purchasing a personal pendulum or pocket watch. The pocket watch in particular became a sign of power. It signified independence, punctuality, precision, trustworthiness - the virtues of the self-made man.¹⁵⁰ That man produced his own temporal regime - the regime of capitalism - in which no hour must be left empty or wasted, because "time is money". Every minute must be put to productive use if labourers are paid by the hour and the race for innovation becomes fiercer with every new competitor.

Benjamin Franklin's advice, taken by Max Weber to be the essence of the Puritan Work Ethic, is instructive here: "Remember that time is money. He that can earn ten shillings a day by his labour, and goes abroad, or sits idle, one half of that day, though he spends but sixpence during his diversion or idleness, ought not to reckon that the only expense; he has really spent, rather thrown away, five shillings, besides. [...] After industry and frugality, nothing contributes more to

¹⁴⁹ Glennie & Thrift, *Shaping the Day*, ch. 3. "Not everyone lives in the same present".

¹⁵⁰ "Indeed, a general diffusion of clocks and watches is occurring (as one would expect) at the exact moment when the industrial revolution demanded a greater synchronization of labour. [...] A clock or watch was not only useful; it conferred prestige upon its owner, and a man might be willing to stretch his resources to obtain one." E.P. Thompson, "Time, Work- Discipline, and Industrial Capitalism", *Past & Present*, No. 38 (1967), 69.

the raising of a young man in the world than punctuality and justice in all his dealings.”¹⁵¹ Of course, there is still a religious element in this, since in the Puritan mindset every hour productively spent was a possibility to receive material signs of a favourable predestination. But the religious torment that dominated merchants in the trading centres of North-Western Europe also had profound effects on society at large.

When the social historian E.P. Thompson asked “How far, and in what ways, did this shift in time-sense affect labour discipline, and how far did it influence the inward apprehension of time of working people?” the results were astounding.¹⁵² In the course of only a century, from the Agrarian revolution of the 1740s via the Commercial Revolution of the 1780s until the Industrial Revolution’s success in the 1840s, working habits in North-Western Europe underwent a profound change. The task orientation of pre-capitalist societies (one works as long as it takes to complete a task; the tasks change with the seasons; there is little separation between work and “free time”¹⁵³) gave way to the strictest time-discipline, legitimated by the ideological elevation of “progress” and enforced, if necessary, with the baton of the factory’s overseer. “To the end that sloth and villany should be detected and the just and diligent rewarded”, an industrialist wrote in 1772, “I have thought meet to create an account of time by a Monitor, and do order and it is hereby ordered and declared

¹⁵¹ Benjamin Franklin as quoted in M. Weber, *Die protestantische Ethik und der Geist des Kapitalismus*, via <https://link.springer.com/book/10.1007/978-3-658-07432-6>, accessed 02/10/19.

¹⁵² Thompson, “Time, Work-Discipline, and Industrial Capitalism”. See also P. Glennie and N. Thrift, “Reworking E. P. Thompson’s `Time, Work-Discipline and Industrial Capitalism””, *Time & Society*, October 1996, Vol. 5, No. 3, pp.275-299.

¹⁵³ J. Rose, *Free Time* (Princeton, PUP, 2017); R. Goodin et al., *Discretionary Time: a new measure of freedom* (Cambridge, CUP, 2008). See also M. O’Malley’s scepticism about task orientation in “Time, Work and Task orientations. A critique of American historiography.”, *Time & Society*, Vol. 1, No. 3 (1992), 341-358.

[...] There will then be thirteen hours and a half neat service [...] This service must be calculated after all deductions for being at taverns, alehouses, coffee houses, breakfast, dinner, playing, sleeping, smoaking, singing, reading of news history, quarelling, contention, disputes or anything forreign to my business, any way loytering [...] no person upon the account doth reckon by any other clock, bell, watch or dyall but the Monitor's, which clock is never to be altered but by the clock-keeper."¹⁵⁴

Capitalists soon learnt that control of the clock conferred greater powers of exploitation. A factory boy from Dundee, who escaped during a strike, reveals the tricks of 1887: “The clocks at the factories were often put forward in the morning and back at night, and instead of being instruments for the measurement of time, they were used as cloaks for cheaterly and oppression. Though this was known amongst the hands, all were afraid to speak, and a workman then was afraid to carry a watch, as it was no uncommon event to dismiss any one who presumed to know too much about the science of horology.”¹⁵⁵

Foucault finds similar disciplinary practices in the manufactures of mercantilist France. Here, spatial distribution and temporal segmentation combine to get the most out of the disciplined body. The institutions of bourgeois violence – school, factory, hospital, prison, barracks – all follow and perfect the original patterns of the old European monastery. All these spaces, Foucault writes, are “closed-off, protected places of disciplinary monotony”. In the early factories of central France, there was a guardian who was allowed to open the gates “only

¹⁵⁴ *Law Book of the Crowley Iron Works*, as cited in Thompson, “Time, Work-Discipline, and Industrial Capitalism”, 81.

¹⁵⁵ *Chapters in the life of a Dundee factory boy*, as cited in Thompson, “Time, Work-Discipline, and Industrial Capitalism”, 86.

when the workers came back [from their break] and after the bell that announces the return to work had tolled; a quarter of an hour later nobody would have the right to enter or exit”. The factory, which “consciously resembles the convent, the fortress, the citadel” is a place where strict timekeeping helps to “concentrate the forces of production, to get the maximum amount of benefits and to neutralise any inconveniences (theft, interruptions, agitation, cabals)”.¹⁵⁶ Like in Thompson’s English cases, employers were visibly trying to capture their employees’ time – but not just any time: “the aim was to ensure a high quality of time: uninterrupted surveillance, pressure from the overseers and the annulation of anything that could distract show the desire to constitute a time that is entirely useful.”¹⁵⁷

Like in the medieval convent, where time was well-ordered in order to promote Christian virtue and accelerate salvation, industrial workplaces accelerated production through a strict timetable. According to Foucault, its three great elements – “establishing rhythms, constraining actors to specific predetermined tasks, managing the cycles of repetition”, were continuously improved by the dominant class of modernity. Importantly, the connection between Christian and capitalist rhythms persisted long beyond the initial shift from salvation to profit. The rulebook of one of the examined manufactures spelled out very clearly that the workers were labouring for two masters : “All persons who arrive at their workplace in the morning shall begin by washing their hands, offering their labour to God, making the sign of the cross and then proceed to work”. Even “measured and salaried” time had to be “free from impurity”.¹⁵⁸

¹⁵⁶ M. Foucault, *Surveiller et punir* (Paris, Gallimard, 1975), 153. ¹⁵⁷ M. Foucault, *Surveiller et punir* (Paris, Gallimard, 1975), 154. ¹⁵⁸ Foucault, *Surveiller et punir*, 154.

The widespread use of disciplinary rigour around time was not just aimed at the lower classes of workers. Anne Murphy, for instance, has applied Thompson's concept of time-discipline to the clerks of the Bank of England, the Kingdom's largest private white-collar employer in the eighteenth century. Her analysis reveals that as a consequence of the high "levels of specialization, co-ordination and scrutiny that were evident in the Bank's business", all types of specific tasks and breaks were "regulated by the clock" as well as by inspectors with pocket watches. But the clerks were not the only ones: "By restricting access to its various services to particular times, the Bank also imposed its time discipline on its customers and the investing public who went there to buy, sell and transfer shares or government securities and to collect their dividends. Symbolic of this were the large clocks which dominated the banking hall and hung on the external wall over the Bartholomew Lane entrance to the Transfer Offices." These clocks radiated authority, precision and trustworthiness. They also helped synchronise the City of London more widely, since the Bank "co-ordinated its own routines with the external time-specific routines of the City and the requirements of the bankers, brokers and notaries who used its services and wanted the right to interrogate its records."¹⁵⁹ Puritan (self)discipline, measured by the clock and the output per capitalist working day was visible across social classes.

This interaction between money, clock time and ideas about future-oriented "progress" was later exported worldwide (see chapter 3). Capitalist success relies on continuous innovation, ever-greater productivity and ever-larger markets.¹⁶⁰

¹⁵⁹ A.L. Murphy, "Clock-watching: work and working time at the late eighteenth-century Bank of England", *Past & Present*, no. 236 (2017) 101.

¹⁶⁰ See V.I. Lenin, *Imperialism: the highest stage of Capitalism*, via <https://www.marxists.org/archive/lenin/works/1916/imp-hsc/>, accessed 02/10/19.

Like the eschatological timeline of Christianity, the time of capitalism looks into the future – so much so, in fact, that the cult of capitalist prediction has created a market for trading “futures”. Rosa shows this to be ingrained in the capitalist necessity of being “one step ahead” of one’s competitors.¹⁶¹ Beckert goes even further in positing that the “temporal order of capitalism” relies on “imagined futures”, i.e. “fictional expectations about how the economy is going to evolve”. Without such fictional expectations about interest rates, profit and returns of investment, the risk for investors would be so high that decision-makers would be paralysed. Without forward-looking trust in forecasts – however fictional – what we call “the economy” (a network of expectations) could hardly exist.¹⁶² After the Christian shift from cyclical to linear time – the bourgeois shift from empty to valuable time sharpened the idea of European time as a tool for enrichment, exploitation and unlimited expansion.

III. REVOLUTION

The third and last step that turned time into the concept we know today is revolution. Ideas of emancipation, self-government and liberation had dominated the enlightened Republic of letters throughout the Early Modern period, but the French Revolution of 1789 completely changed the way Europeans thought about progress. Before the French Revolution, it was possible for people to compare one historical event to another in order to better

¹⁶¹ H. Rosa, *Beschleunigung*, 257-279.

¹⁶² J. Beckert, *Imagined Futures : Fictional Expectations and Capitalist Dynamics* (Cambridge MA, HUP, 2016). s

understand the present. Edward Gibbon, for example, published his *Decline and Fall of the Roman Empire* in 1776, just when the agitation of the 13 American colonies was at its peak. Showing the inhabitants of an increasingly strained British Empire how Rome had fallen, he was able to focus minds in London on the recovery of England, “the new Rome”. For an intellectual class steeped in classical culture, the analogies were obvious.¹⁶³ In the eighteenth century it was still perfectly possible to solve present political problems by reference to the past.

The French Revolution changed this transhistorical dialogue in a most radical manner. The theoretical debates on human rationality and perfectibility among Voltaire, Condorcet, Sieyès and the German Idealists were suddenly put into practice. The Revolution suggested that Man could replace Providence in knowing and changing World History. As Koselleck has convincingly shown, the utter novelty of a people taking their evolution into their own hands and starting a new story, led to a unique separation between the known and the unknown. Up until 1800, men had lived with a common treasure chest of historical references (stories, quotes, images, patterns) which could always be compared and contrasted according to the topos of *Historia Magistra Vitae*, and that knowledge made it possible to make predictions about the future: their three-dimensional, physical and metaphysical space of experience had informed their one-dimensional horizon of expectation. After centuries of reproduction with comparatively minor changes, suddenly the future was completely unknown. Koselleck captures this break with his concepts of *Erfahrungsraum* and

¹⁶³ See S. Goldhill, *Victorian Culture and Classical Antiquity* (Princeton, 2012); N. Vance, *The Victorians and Ancient Rome* (Oxford, 1997); S. Butler, *Britain and Its Empire in the Shadow of Rome* (London, 2012); C. Hagerman, *Britain's Imperial Muse* (Basingstoke, 2013).

Erwartungshorizont. This disjuncture between experience and expectation is, according to Koselleck the distinctive feature of modern historical consciousness.¹⁶⁴ The best contemporary expressions of the new sense of historical rupture come from the Revolution's aristocratic critics on both sides of the Channel:

Alexis de Tocqueville found this radical rupture with all established orders deeply unsettling: "I go back through from one century to the other until the furthest corners of Antiquity, but I do not see anything that resembles what I have before my eyes. Now that the past has ceased to illuminate the future, the spirit marches in darkness."¹⁶⁵ This unease is not divine; it is man-made. Half a century after the first shock, looking back at *L'Ancien régime et la révolution*, he captures the enormity of this historical rupture thus : "In 1789 the French have made the greatest effort which any people has ever embarked upon in order to, as it were, *cut their destiny in half*, and to separate by an abyss that which they had been until then, from who they wanted to be henceforth. With this objective in mind, they took all kinds of precautionary measures to avoid bringing anything from the past into their new condition. They imposed on themselves all kinds of constraints to fashion themselves different from their fathers; they did not forget anything to render themselves unrecognisable [...] I have undertaken to penetrate the core of this *ancien régime*, so close to us in terms of years passed,

¹⁶⁴ Koselleck, *Vergangene Zukunft*, essays 2 and 10.

¹⁶⁵ : « Les Français ont fait en 1789 le plus grand effort auquel se soit jamais livré aucun peuple, afin de couper pour ainsi dire en deux leur destinée, et de séparer par un abîme ce qu'ils avaient été jusque-là de ce qu'ils voulaient être désormais. Dans ce but, ils ont pris toutes sortes de précautions pour ne rien emporter du passé dans leur condition nouvelle; ils se sont imposé toutes sortes de contraintes pour se façonner autrement que leurs pères; ils n'ont rien oublié enfin pour se rendre méconnaissables. [...] J'ai entrepris de pénétrer jusqu'au cœur de cet ancien régime, si près de nous par le nombre des années, mais que la Révolution nous cache. »

A. Tocqueville, *De la démocratie en Amérique* (Paris, 1840) Part II, ch. 8, via <https://www.institutcoppet.org/wp-content/uploads/2012/01/De-la-d%C3%A9mocratie-en-Am%C3%A9rique.pdf>, accessed 01/06/19.

but so far because the Revolution hides it from us.”¹⁶⁶ The fact that the revolution is able to “hide” the newly named “Ancien” régime suggests the success of the people who “cut their destiny in half” in order to replace “who they were”, with “who they wanted to be”. It was the Enlightenment vision of history as a malleable process that allowed for the conceptual possibility of becoming the person or people one wishes to be.¹⁶⁷ And it was the organicism of European conservatives that made Edmund Burke pronounce a similar judgement of horror. Even though he watched from a comfortable distance, every word of his *Reflections on the Revolution in France* conveys the incredulity, misapprehension and outrage at the revolution. “It appears to me as if I were in a great crisis, of the affairs not of France alone but of all Europe, perhaps of more than Europe. All circumstances taken together, the French revolution is the most astonishing one that has ever happened. [...] *Everything seems out of nature* in this strange chaos.”¹⁶⁸ Burke’s conception of “nature” appears in the famous lament “The age of chivalry is gone. The age of logical tricksters, economists, and calculators has taken over, and the glory of Europe is extinguished forever.”¹⁶⁹ Age-old custom was replaced by a new chess board on which the new social classes make their unpredictable moves. “When ancient opinions and rules of life are taken away, the loss cannot possibly be estimated. From that moment we have no compass to govern us; nor can we clearly know what port we are steering to.”¹⁷⁰ Like Tocqueville, Edmund Burke is suddenly lost in time. The rupture with the past

¹⁶⁶ Tocqueville, *L’Ancien régime et la révolution*, preface.

¹⁶⁷ Cassirer, *Philosophy of the Enlightenment*, ch. V. “The conquest of the historical world”.

¹⁶⁸ E. Burke, *Reflections on the Revolution in France* (London, 1790), via https://www.google.co.uk/books/edition/Reflections_on_the_Revolution_in_France/u81bA AAAQAAJ?hl=en&gbpv=0, accessed 25/02/20.

¹⁶⁹ Burke, *Reflections*, 42.

¹⁷⁰ Burke, *Reflections*, 43.

seems complete, confirming Koselleck's thesis of a significant change in our conception of time.

The fact that there was “no compass”, however, was celebrated ferociously in French revolutionary circles. It found its most telling expression in a new Revolutionary calendar, marking the beginning of a new era. Taking up the central story of Christian time and refashioning it in Roman numerals – some backward looking was apparently still necessary - a new beginning was declared as the new “Era of liberty” was counted from the Founding of the Republic on 22 September 1792 onwards. The rapporteur presenting the Calendar Commission's work to the National Assembly explained the rationale behind the new time-reckoning system in effusive terms: “The prejudices of the throne and the Church, the lies of both, sully every page of the calendar which we use. You, dear committee, have reformed this calendar and replaced it with another, where time is measured by calculations that are more exact and symmetrical; this is not yet enough. The old habit of the Gregorian calendar has filled the memory of a people with a considerable number of images which they have long revered, and which until today lie at the source of religious errors. It is thus necessary to substitute these visions of ignorance with the realities of reason, to replace priestly prestige with the truth of nature.”¹⁷¹ Eviatar Zerubavel sees this calendar as an ideal case to show the extent to which temporal and historical frameworks

¹⁷¹ : « Les préjugés du trône et de l'église, les mensonges de l'un et de l'autre, souilloient chaque page du calendrier dont nous nous servions. Vous avez reformé se calendrier, vous lui en avez substitué un autre, où le temps est mesuré par des calculs plus exacts et plus symétriques ; ce n'est pas assez. Une longue habitude du calendrier grégorien a rempli la mémoire d'un peuple d'un nombre considérable d'images qu'il a long-temps révérees, et qui font encore aujourd'hui la source des erreurs religieuses ; il est donc nécessaire de substituer à ces visions de l'ignorance, les réalités de la raison et au prestige sacerdotal, la vérité de la nature. » *Rapport fait à la Convention nationale, dans la séance du 3 du second mois de la seconde année de la République française, au nom de la commission chargée de la confection du calendrier* ; par Fabre d'Eglantine ; via <https://books.google.com/books?id=vVtWj-W-KP8C&printsec=frontcover#v=onepage&q&f=false> , accessed 23/02/20.

are socially negotiated and constructed;¹⁷² while David Ciavatta uses it to explore the Hegelian tensions between universality and historicity in the self-fashioning of an event of “absolute freedom”.¹⁷³ In any event, the French Revolutionaries were aware of the historical rupture they produced and did not shy away from staging the event for everyone to see.

Idealists like Kant, Hegel and Fichte were perhaps more approving of the revolution than their counterparts, but still expressed awe at this new beginning.¹⁷⁴ Kant solved the riddle of Man making his own history by suggesting that the history of the future was not entirely unknown. On the contrary, the Revolution, a “Geschichtszeichen (signum rememorativum, demonstrativum, prognostikon)”, he declared, “can have no other cause than a moral predisposition in the human race.”¹⁷⁵ Man was a rational being and the revolution was a sign of reason in history. What happens next is crucial: Kant uses the “Vorzeichen”, extrapolates from it to make a prediction for the future, that “this expression of reason in action” has opened for Man “a perspective into a time without end.” This “unforgettable” event that “cannot be undone” shows that we need not be scared about the open future, but resolutely optimistic. The Enlightened appropriation of history as a setting for and simultaneous expression of freedom and authentic agency has dominated Western social theory ever since. For example, Friedrich Engels continued this line in 1878 when he specified that the “leap from the realm of necessity into

¹⁷² Zerubavel, “The French Republican Calendar”.

¹⁷³ D. Ciavatta, “The event of absolute freedom: Hegel on the French Revolution and its calendar”, *Philosophy and Social Criticism*, Vol. 40, No. 6 (2014), 577–605.

¹⁷⁴ I. Kant, *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis* (1793); G.W.F. Hegel, *Phänomenologie des Geistes* (Leipzig, 1807), ch. 6. A. La Vopa, “The Revelatory Moment: Fichte and the French Revolution”, *Central European History*, Vol. 22, No. 2, (1989), 130-159.

¹⁷⁵ I. Kant, *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis* (1793).

the realm of freedom” requires that “the objective alien forces that used to direct history” move “under the rule of Man himself”, because only then can their “self-initiated causes” also have the “effect wished for”.¹⁷⁶ Men no longer execute history but “make it themselves in full consciousness.” As man-made history continues, there will be ever more revolutions, ever more liberations, ever more ecstatic emancipations from the obscurities of tradition. Francis Fukuyama even went so far after the revolutions 1989 as to say that “it is against this background that the remarkable worldwide character of the current liberal revolution takes on a special significance. For it constitutes further evidence that there is a fundamental process at work that dictates a common evolutionary pattern for all human societies – in short, something like a Universal History of Mankind in the direction of liberal democracy.”¹⁷⁷ Even though our academic scepticism may make us wary of such exclamations, we can hardly deny that this last step, from the *history of Man* to *man-made history*, gave the Europeans an even greater feeling of temporal control than before. Indeed, it is notable that the system of counting years forward and backward from the Incarnation – total temporal control – was only adopted in the late nineteenth century, when European imperial expansion was at its peak. On that calendar change Arendt writes: “[...] now, for the first time, the history of mankind reaches back into an infinite past to which we can add at will and into which we can inquire further as it stretches ahead into an infinite future. This twofold infinity of past and

¹⁷⁶ “Die eigne Vergesellschaftung der Menschen, die ihnen bisher als von Natur und Geschichte aufgenötigt gegenüberstand, wird jetzt ihre freie Tat. Die objektiven, fremden Mächte, die bisher die Geschichte beherrschten, treten unter die Kontrolle der Menschen selbst. Erst von da an werden die Menschen ihre Geschichte mit vollem Bewusstsein selbst machen, erst von da an werden die von ihnen in Bewegung gesetzten gesellschaftlichen Ursachen vorwiegend und in stets steigendem Maß auch die von ihnen gewollten Wirkungen haben. Es ist der Sprung der Menschheit aus dem Reich der Notwendigkeit in das Reich der Freiheit.“, F. Engels: *Die Entwicklung des Sozialismus von der Utopie zur Wissenschaft*, via

http://www.mlwerke.de/me/me19/me19_210.htm, accessed 01/10/19.

¹⁷⁷ F. Fukuyama, *The End of History and the Last Man* (New York, 1992), 48ff.

future eliminates all notions of beginning and end, establishing Mankind in a potential earthly immortality.”¹⁷⁸ It is important to note that the promise of immortality, of an endless future was restricted to Europeans, while others were relegated to very different temporal regimes (see ch. 3).¹⁷⁹

Whether the changes put in motion by the Revolution were considered positive or negative, the new perspective in history is the same: the past is no longer reliable, a new era has begun and the future that people are now looking into is open-ended. As Niebuhr points out, “the modern interpretation of history does not understand the cycle of birth and death of civilisations and culture at all because its conception of the indeterminate possibilities in history leaves no room for death or judgment.”¹⁸⁰ This idea is actively discussed in Britain at several moments in the modern era, because this is a country in which no revolution comparable to the French or indeed the American reordering has taken place, but people are still attracted to the idea of an endlessly progressive history. Chapter 4 will examine in more detail why British political discourse venerated the *absence* of revolution¹⁸¹ – but for now it suffices to emphasize that Victorians were at pains to reconcile classical and Christian visions of historical development.

Under the banner of finding an “escape velocity” that would let Britain sidestep the cycles of growth and decay that had afflicted all previous Empires, politicians, economists and historians discussed at what speed the British Empire

¹⁷⁸ H. Arendt, “On the concept of history”.

¹⁷⁹ J. Fabian, *Time and the Other. How Anthropology makes its object* (New York, Columbia University Press, 1983); A. Zarakol (ed.), *Hierarchies in World Politics* (Cambridge, CUP, 2017).¹⁸⁰ Niebuhr, *Faith and History*, 216.

¹⁸¹ See chapter 4, section II.

had to develop in order to escape the final judgement.¹⁸² Like the contemporary watchmaker John Harrison, who – in responding to a royal competition - invented the mechanical escapement to build perpetual watches that did not have to be reset,¹⁸³ the British dream was to reposition itself in history such that the ancient course of history could be avoided. Two uniquely British advantages were repeatedly highlighted in the public debate: First, the British character was supposed to be more progressive than others: “The Anglo-Saxon has so far, chiefly owing to the mixture of blood in his veins, kept alive side by side both the military and the commercial spirit; and it is this unique combination of talents which offers the best hopes for the survival of the Anglo-Saxon as the fittest of humanity to defy the decaying process of time.”¹⁸⁴ Second, Britain would be able to stay at the forefront of modernity even without a revolution because it had its Empire, an outlet for social conflict and violence abroad. In his inaugural lecture at Oxford in 1870, John Ruskin, suggested that this was Britannia’s only way out: “She must found colonies as fast and as far as she is able.”⁸¹ Continuous expansion was the only way to avoid decline. J. B. Bury declared that “civilization has moved, is moving, and will move, in a desirable direction”, hiding the fact that “progress [...] the animating and controlling idea of western civilization” was often achieved at the expense of others, both European and non-European rivals.

¹⁸² D. Bell, *Reordering the World: Reordering the World : Essays on Liberalism and Empire* (Princeton,PUP, 2016), 119-147.

¹⁸³ This struggle for mechanical, material and metaphysical mastery of the world is captured in D. Sobel, *Longitude: the true story of a lone genius who solved the greatest scientific problem of his time* (New York, Walker, 1995).

¹⁸⁴ Bell, *Reordering the World*, 138f.

Conclusion

The trinity of providence, productivity and progress, then, linked to very specific moments in the religious, economic and political history of the European continent defines the open-ended, forward-looking, optimistic framework that I call “Liberal Time”. Of course, these changes faced serious social, political and academic resistance. For many, “progress” was deeply disorientating. We should also acknowledge that all three transitions were never fully completed, as the doubts of nihilism, existential philosophy and psychoanalysis demonstrate. Theories of temporal fragmentation, simultaneity and disorder coexisted with the clean narratives of the powerful line of progress.¹⁸⁵ This was especially the case in the tumultuous period between the Universal Exhibition in Paris 1889, showing off the possibilities of infinite progress, and the First World War, forcing minds to readjust to a potentially destructive future. Yet ultimately the dominant temporal discourse arising from European history is this: a supposedly abstract, but carefully crafted conception of universal time, measured and enforced by increasingly sophisticated timepieces which record the unfolding of Man’s enlightened decisions in endless universal history. Until today, the story of its emergence is all too often in triumphalist terms: “I would not want simply to say that time measurement and the mechanical clock made the modern world and gave the West primacy over the rest. *That they did.* But the clock in turn was part of a larger open, competitive Western attitude toward knowledge, science and exploration. Nothing like this attitude was to be found elsewhere. Attitude and theme came together, and we have all been the beneficiaries, including those civilizations and societies that are now learning and catching up. Vive l’heure! Et

¹⁸⁵ Is it mere coincidence that the doubts of Bergson, Freud, Proust or Heidegger arose precisely when bourgeois imperialist time-keeping was at its peak?

vive l'horloge!"¹⁸⁶ Landes might be right in thinking that open-ended European time has the potential to be liberating - but more often than not the institutional instantiations of European Liberal Time bear the marks of conflict. It is crucial to remember that this, the ostentatiously scientific idea which conquered the world, rests on a story of provincial origins.

¹⁸⁶ Landes, *Revolution in Time*, 29.

3. RHYTHMS OF EMPIRE

*“All hours of the twenty-four are alike to Orientals,
and their passenger traffic is regulated accordingly.”¹⁸⁷*

This chapter takes the problem of Liberal Time to the global level. In the previous chapter, I identified a specifically European way of thinking about historical development which was linear, meaningful and man-made. This chapter will show how Europe created, exported and maintained its own temporal order worldwide for its own political benefit. Methodologically, such a critical reconstruction requires a mixed use of published historical sources, secondary historiography and original archival research. The primary sources cited below are housed by the British National Archives at Kew. This leads to a multi-level, global account of the relationship between Liberal Time and Empire. That relationship, however, is by no means straightforward. My global examination will reveal that Liberal Time generated an important contradiction within the imperial project: synchronic systems of coordination rely on diachronic orders of subjection. This tension will be explained and analysed in three sections:

Section I explores the idea that Europeans were at the forefront of history-making, while others were “lagging behind”. In this context, the structure of

¹⁸⁷ Rudyard Kipling, *Kim* (London: Penguin, 1989 [1901]), 74.

interaction with non-Europeans was strictly diachronic. Europeans were located at one point in time – modernity – while others were either at another, earlier stage of development in the same timeline, or even outside of the modern temporal regime altogether. This diachronic order of separation allowed for hierarchy and intrusion: Europe was supposedly more advanced and therefore had a right to interfere with “developing nations” who seemed to require “development assistance”.¹⁸⁸

Section II identifies a conflicting desire for synchronicity between Europeans and non-Europeans. If European colonial powers wanted to extract maximum value from their colonies, timetables would have to be synchronised. Otherwise the global political economy of dispersed production lines, migrant labour and mobile law enforcement would not work. Moving from the micro to the macro level, such European interventions to bring their colonies “up to speed” included standardised factory hours, standardised railway timetables and standardised global time zones. This very practical synchronicity was particularly important for the functioning of the British Empire, but was also imposed by others.¹⁸⁹ The synchronic approach is clearly at odds with the desire to maintain a certain level of diachronicity in order to justify such international interventions in the first place.

Section III focuses on this contradictory combination of diachronicity and synchronicity. Since the declaration of diachronicity is used to justify imperial intervention, the real question is: *how much practical imperial synchronicity can be*

¹⁸⁸ M.N. Barnett & T.G. Weiss, *Humanitarianism in question: politics, power, ethics* (Ithaca, NY, Cornell UP, 2008).

¹⁸⁹ V. Ogle, “Whose Time Is It? The Pluralization of Time and the Global Condition, 1870s–1940s”, *The American Historical Review*, Vol. 118, No. 5 (2013), 1376–1402; M. O’Malley, *Keeping Watch: A History of American Time* (New York, Viking, 1990).

introduced without undermining the ideological foundation of imperial expansion? Up to a certain extent synchronicity enhances productivity, purpose and belonging in the Empire – the colonised are partaking in Western progress. When synchronicity is introduced too extensively or too forcefully, however, acts of resistance appear. The smashing of clocks, burning of factory timecards and sabotage of railway timetables were typically lauded by anti-colonial newspapers on the ground and registered woefully in the reports of the Colonial Office in London.¹⁹⁰ How could this tension be resolved? How could the Europeans maintain the delicate balance between subjecting the “backward” while still ensuring that everyone contributed to moving Europe “further ahead”? The most effective solution was a secularised version of the Christian redemption narrative in which the promotion of civilisation brought everyone closer to salvation. The chosen nation(s) instructed the “uncivilised” heathens to practice small acts of faith (e.g. making the freight train depart on time) in order to increase the likelihood of large-scale salvation (universal progress). I call this solution “effective” because, from the European point of view, it led to both desired outcomes: On the one hand, non-Europeans were fixed in “the not-yet of European historicism”, as Chakrabarty calls it,¹⁹¹ but on the other, they were simultaneously employing their zeal to fulfil the promise of universal progress. There was thus a synchronisation of dreams, even if these had different practical effects on participants in the global web of civilisation.

¹⁹⁰ G. Nanni, *The Colonisation of Time: Ritual, routine and resistance in the British Empire* (Manchester, UP, 2013), V. Ogle, *The Global Transformation of Time: 1870-1950* (Cambridge MA, HUP, 2015). ¹⁹¹ D. Chakrabarty, *Provincialising Europe*, p. 8.

I. DIACHRONIC ORDERS OF SUBJECTION

Europeans had a universalising vision, in which all ages were shrunk to dots on great historical maps and tables, mere stepping stones to the European form of civilisation.¹⁹² These histories were by their very nature teleological. From Bossuet to Condorcet, timelines promised progress for everyone. Thus, Condorcet finished his *Abstract for a Universal History of the Human Spirit* on a highly optimistic note: “If man can predict, almost with certainty, those appearances of which he understands the laws; if [...] the past enables him to foresee, with considerable probability, future appearances; why should we suppose it a chimerical undertaking to delineate, with some degree of truth, the picture of the future destiny of mankind from the results of its history? [...] Will not every nation one day arrive at the state of civilisation attained by those people who are most enlightened, most free, most exempt from prejudices, as the French, for instance, and the Anglo-Americans? Will not the slavery of countries subjected to kings, the barbarity of African tribes, and the ignorance of savages gradually vanish? Is there upon the face of the globe a single spot whose inhabitants are condemned by nature never to enjoy liberty, never to exercise their reason?”¹⁹³

Let me highlight two features of Condorcet’s promise: first, the

¹⁹² The classic treatment of such perspectives of governance is J. C. Scott’s *Seeing Like a State* (New Haven, CT, 1991).

¹⁹³ “Si l’homme peut prédire, avec une assurance presque entière les phénomènes dont il connaît les lois ; si, lors même qu’elles lui sont inconnues, il peut, d’après l’expérience du passé, prévoir, avec une grande probabilité, les événements de l’avenir ; pourquoi regarderait-on comme une entreprise chimérique, celle de tracer, avec quelque vraisemblance, le tableau des destinées futures de l’espèce humaine, d’après les résultats de son histoire ? [...] Nos espérances sur l’état à venir de l’espèce humaine peuvent se réduire à ces trois points importants : la destruction de l’inégalité entre les nations ; les progrès de l’égalité dans un même peuple ; enfin, le perfectionnement réel de l’homme. Toutes les nations doivent-elles se rapprocher un jour de l’état de civilisation où sont parvenus les peuples les plus éclairés, les plus libres, les plus affranchis de préjugés, tels que les Français et les Anglo-Américains ? Cette distance immense qui sépare ces peuples de la servitude des nations soumises à des rois, de la

European belief in scientific process. History, like everything else in the eighteenth-century imagination, is a process with a beginning, middle and end; certain causal patterns arise from observation and then – this is crucial – the educated can extrapolate from the beginning of a process how it will end, i.e. understanding of the past gives rise to predictions about the future. The end is the betterment of Mankind through learning, productivity and emancipation, which are assessed by the quasi-divine judgement of History itself. We have already encountered this kind of thinking with Kant in Chapter 2,¹⁹⁴ but it is worth stressing again how much this notion of progress relies on a linear conception of time in which the future is expected to be better than the past. This takes us to the second notable feature of Condorcet’s paragraph: the confidence with which he places “the French” and “the Anglo-Americans” at end of the timeline. These nations have supposedly achieved “the state of civilisation attained by those people who are most enlightened, most free, most exempt from prejudices”. Everybody else will “one day” (purposefully vague like the Christian Day of Judgement) “arrive” (as if everyone had willingly set out on a journey designed by the Europeans) at the end of universal history.

Enlightenment teleology, supported by the ethnographic science of the period, was not only temporal; there was a spatial element to it. There was a *conflation of geographic and temporal distance*. It is this idea which allowed the European explorers to report from the overseas voyages that they had seen “Mankind before the Fall”, “humanity in its infancy”.¹⁹⁵ The history of European political philosophy

barbarie des peuplades africaines, de l'ignorance des sauvages, doit-elle peu à peu s'évanouir ? Y a-t-il sur le globe des contrées dont la nature ait condamné les habitants à ne jamais jouir de la liberté, à ne jamais exercer leur raison ? » Marquis de Condorcet, *Esquisse d'un tableau historique des progrès de l'esprit humain* (Paris, 1793), ch. 10.

¹⁹⁴ See ch. 2, section III.

¹⁹⁵ A. Pagden, *European Encounters with the New World: From Renaissance to Romanticism* (New Haven, Yale University Press, 1993), 112ff.

would have been radically different without this idea that the distant Other was also living in a distant past.¹⁹⁶ The most influential example is perhaps John Locke. When he attempted to imagine a state preceding civil society, Locke did not have to rely on fantasy. Since his patron Lord Shaftesbury was involved in the British colonisation of North America, Locke was firmly embedded in the real infrastructure of imperialism. He owned extensive lands in South Carolina, became a member of the Lords Proprietors of South Carolina, joined the Council of Trades and Plantations and also worked part-time for the East India Company.¹⁹⁷ These everyday tasks were complemented by voracious reading of the travel accounts of his time. Locke's library included Jean de Léry's *Histoire d'un Voyage fait en la terre du Brésil* (1578), the Spanish Jesuit Cristobal d'Acuña's, *Relation de la Rivière des Amazones* (1682), the French Franciscan missionary Theodat-Gabriel Sagard's *Le Grand Voyage du Pays des Hurons* (1632) and *Histoire du Canada et Voyages* (1636), as well as *A New Survey of the West Indies* (1677) by the Englishman Thomas Gage.¹⁹⁸ It was this historical and intellectual context which gave rise to one of Locke's most famous sentences: "In the beginning all the world was America."¹⁹⁹

What does this mean exactly? Locke specifies that America "is *still* a pattern of the first ages in Asia and Europe" and thereby gives glimpses into long gone stages of human development.²⁰⁰ When asked "[...] where are, or ever were

¹⁹⁶ Living in the past, that is, while oddly and inconsistently also living contemporaneously with Europeans.

¹⁹⁷ M.B. Arneil, *All the world was America: John Locke and the American Indian*, doct. diss (University College London, 1992).

¹⁹⁸ W. G. Batz, "The Historical Anthropology of John Locke", *Journal of the History of Ideas* Vol. 35, No. 4 (1974), 664.

¹⁹⁹ J. Locke, *Two Treatises on Government. An Essay Concerning the True Original, Extent and End of Civil Government* (Cambridge, CUP, 1988 [1689]), §49.

²⁰⁰ Locke, *Second Treatise*, §108. It might be worth stressing to 21st century audiences that Asia is listed first since it precedes Europe in the classical theory of the five ages in which five Empires (e.g. Mesopotamia, Greece, Rome, Europe, America) represent improvement while moving westward. See George Berkeley's famous stanza: "Westward the course of Empire

there any men in such a state of nature [as the one of his political philosophy]?", Locke confidently replies that "governments all through the world, are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state."²⁰¹ The examples of "the promises and bargains for truck, &c. between the two men in the desert island, mentioned by Garcilasso de la Vega, in his *History of Peru* or between a Swiss and an Indian, in the woods of America [who] are perfectly in a state of nature" come directly from his wide anthropological reading. The state of nature of the famous contract theorists had a real equivalent, and this equivalent, this new Garden of Eden, could be visited in America. It coexisted with the more "advanced" state of civil society in Europe.

The travelogue of Joseph-Marie Degérando in 1800 is even more explicit when it comes to this fusion of space and time in the European learned imagination: "He who sails to the farthest corners of the globe, travels, in fact, *along the road of time*. He travels into the past. Every step he takes is a century passed. The islands he reaches are for him the cradle of human society [...] like ancient and majestic monuments from the origins of time."²⁰² On the same global map – there were places which were not sharing the same time. The continued coexistence of these different "islands of history", as the anthropologist Sahlins calls them,²⁰³ however, was important to the self-understanding of civilised Europeans, as we can see in Locke's hope that the world "never was, nor ever will be, without numbers of men in that state". Somebody would always be lagging behind. Due

takes its way / The first four acts already past / A fifth shall close the drama with the day /
Time's noblest offspring is the last.", via
<https://www.eighteenthcenturypoetry.org/works/o5157-w0840.shtml>, accessed 02/04/21.

²⁰¹ Locke, *Second Treatise*, §14.

²⁰² As cited in Pagden, *European Encounters with the New World*, 116f. Emphasis added.

²⁰³ M. Sahlins, *Islands of History* (Chicago, CUP, 1976).

to “uneven” or even “arrested” development, as policy-makers still like to say even now,²⁰⁴ the Spanish territories in the New World were living in the past, whereas the Europeans were already living in the present. The European notion of civilisation was structured by space-time.

There are two theoretical strands of European developmental thinking that should be disentangled here. On the one hand, there is the very visible postulate towards non-Europeans that “We Europeans are ahead and you are behind”; on the other, there is the related but separate idea that “You, faraway non-Europeans, are now where we were once.” The first idea is often supported by an account of material progress. From Smith to Kant and Croce, authors present evidence in support of European superiority by presenting the well-rehearsed story of permanent settlement, agriculture, urbanisation, commerce, and the widespread refinement of manners that comes with metropolitan lifestyles.²⁰⁵ As we saw in chapter 1, Waldron is among that group of liberals.²⁰⁶ Europe is at the end of that linear story and is therefore able to classify other regions by checking how many phases of the story they have completed. If, for example, a newly encountered people in North America is settled, but has not yet gone beyond the agricultural stage, they are “behind” the Europeans, who are “ahead”. Why there should be a line in the first place, and why that line should go from past to present to future is not explicitly defended.

²⁰⁴ M. Pröbsting, “Capitalism Today and the Law of Uneven Development: The Marxist Tradition and its Application in the Present Historic Period”, *Critique* (Glasgow), Vol.44, No. 4 (2016), 381-418; P. Ho, “Linking the insights of Smith, Marx, Young and Hirschman on the division of labour: implications for economic integration and uneven development”, *Cambridge Journal of Economics*, Vol. 40, No. 3 (2016), 913-939; G. Charnok & G. Starosta, “Towards a ‘Unified Field Theory’ of Uneven Development: Human Productive Subjectivity, Capital and the International”, *Global Society*, Vol. 32, No. 3 (2018), 324-343.

²⁰⁵ The best overview is still E.K. Bramsted & K.J. Melhuish (eds.), *Western liberalism : a history indocuments from Locke to Croce* (London, Longman, 1978).

²⁰⁶ See ch. 1, section I.

The second element of Europe’s temporal classification scheme is even more puzzling: the idea that *non-Europeans represented the infancy of humankind*. This is strange for three reasons. First, historically speaking, the discovery of their different lifestyles was not mediated through mythical stories, but through a live meeting in the flesh. Colonisers and colonised shared the same historical moment, and yet they were supposed to represent different stages of historical development, just like a boy standing next to his father. In the etching commemorating how Columbus tricked the Jamaican “Natives” into believing he had divine powers when he used a European almanac to predict a lunar eclipse (see fig. 2), for

example, Bloch’s phrase of “the simultaneity of the non-simultaneous”²⁰⁷ finds its full expression, since it unites “native time”



Figure 2: Columbus announcing the 1504 lunar eclipse to the natives of Jamaica

with European time while the commemorative act of painting adds yet another, third layer of time to the very same historical moment.

The second oddity of this distancing act is that non-Europeans might be “far away” and different in terms of human evolution, but at the same time partake in a shared humanity. Of course, the debates of the Salamanca School never

²⁰⁷ E. Bloch, *Das Prinzip Hoffnung* (Berlin, Suhrkamp, 1954-59); F. Schmieder, "Gleichzeitigkeit des Ungleichzeitigen", *Zeitschrift für kritische Sozialtheorie und Philosophie*, Vol. 4, No. 1-2 (2017), 325-363. <https://doi.org/10.1515/zksp-2017-0017>; A. Landwehr, "Von der Gleichzeitigkeit des Ungleichzeitigen", *Historische Zeitschrift*, Vol. 295, No. 1 (2012). See also the special issue of *Time & Society* dedicated to “Cultures of Non-Simultaneity”, Vol. 13, No. 1 (2004).

subsided fully, but the image of the boy and the father suggests that the boy carries within him the potential to grow and – one day - become a father himself. The Enlightenment theorists who underpinned the imperial project could have explicitly placed the “Natives” outside the confines of humanity, but that anthropological functionalism was at odds with the universal values of equality and a shared capacity for reason. There is thus a further tension between the difference of the people living “there and then” and the sameness of the Europeans living “here and now”. That tension is exploited in a third European practice which became a scientific discipline of its own: anthropology. If the distant peoples of this globe represent earlier stages of our own development, the reasoning went, why don’t we examine them scientifically in order to get clearer insights into our own history? To supplement traditional research in Europe’s archives, “fieldwork” emerged as the non-plus-ultra of scientific method. Travelling to the Caribbean, for example, and collecting biological specimens and material objects for comparative purposes, was time-travel in the service of modern politico-scientific taxonomies. The problem, of course, is that the non-Europeans who were first promised that they had the same potential to evolve as Europeans, then had to stay in their historical place for the comparison to work (see section III below).

This leads to a “denial of coevalness” which produces the curious problem of the “simultaneity of the non-simultaneous”, which Ernst Bloch famously introduced thus: “Not everyone is present in the same Now. They are present only externally [superficially] as they are visible today. That does not mean, however, that they are living simultaneously with others. Rather, they carry precedents with them, which intermingle with the present. Depending on where

someone stands physically, but also in terms of class, he has his times."²⁰⁸ Even without adopting Bloch's Marxist angle, the fact that "not everyone is present in the same Now" creates worrying tensions. Why are some people "stuck" in other times? Why are they denied presence in the present?²⁰⁹ How is that denial performed? Johannes Fabian's pathbreaking *Time and the Other*, which argues that "geopolitics has its ideological foundations in chronopolitics", offers some important answers to these questions.²¹⁰ The book highlights a temporal order in which non-Europeans were denied the possibility of evolving together with Europe. This is particularly striking when Europeans and non-Europeans meet in (neo)colonial settings. How can peoples who had communicated and cohabitated with European visitors in a shared present be relegated to the past as soon as these observers depart?

He starts with the historical statement that "the temporal discourse of anthropology as it was formed decisively under the paradigm of evolutionism rested on a conception of time that was not only secularised and naturalised but also thoroughly spatialised. Ever since [...] anthropology's efforts to construct relations with its Other by means of temporal devices implied an affirmation of difference as distance."²¹¹ This much we have already seen in the stagist theories of history examined above. The problem, however, arises when we realise that

²⁰⁸ "Ungleichzeitigkeit und die Pflicht zu ihrer Dialektik: Nicht alle sind im selben Jetzt da. Sie sind es nur äußerlich, dadurch, daß sie heute zu sehen sind. Damit aber leben sie noch nicht mit den anderen zugleich. Sie tragen vielmehr Früheres mit, das mischt sich ein. Je nachdem, wo einer leiblich, vor allem klassenhaft steht, hat er seine Zeiten. Ältere Zeiten als die heutigen wirken in älteren Schichten nach; leicht geht oder träumt es sich hier in ältere zurück." E. Bloch, *Erbschaft dieser Zeit* (Berlin, Suhrkamp, 1932), 104ff.

²⁰⁹ For an analysis of the problem of presence and absence in historical time, see B. Bevernage, "Time, Presence and Historical Injustice", *History and Theory*, Vol. 47 (2008), 149-16.

²¹⁰ Fabian, *Time and the Other*, 144.

²¹¹ Fabian, *Time and the Other*, 16.

many methods of many modern social sciences rely on such “allochronic” discourse. Our knowledge of other cultures depends on intense interaction with and inside them. For anthropologists, the problem is particularly pressing, which is why a peculiar strategy was invented to circumvent it: “The sharing of time that such interaction requires demands that ethnographers recognize the people whom they study as their coevals. However—and this is where the contradiction arises—when those same ethnographers represent their knowledge in teaching and writing, they do this in terms of a discourse that consistently places those who are talked about in a time other than that of the one who speaks.”²¹² The objectified inhabitants of the past are analysed by the self-proclaimed inhabitants of the present.

We may conclude that the picture which Europeans paint of their own interactions with the extra-European world is characterised by diachronicity. Europeans do not share the same time with other inhabitants of the world. The temporal distance between the time of Europeans and the time of others is marked in three ways: (1) non-Europeans illustrate earlier stages of historical development, which Europe has already outgrown; (2) the geographical distance which separates Europe from its colonies intensifies that temporal distance; (3) the narrative structure in which European travellers recount their encounters establishes the author as an agent in the present, while his passive “objects of analysis” are trapped in the past. That diachronic structure of interaction justified and perpetuated imperial subjection – and yet this is not the whole picture.

²¹² Fabian, *Time and the Other*, postscript.

II. SYNCHRONIC SYSTEMS OF COORDINATION

For the imperial enterprise to yield the desired economic and geopolitical results, life in the colonies had to be synchronised through international systems of temporal coordination. Moving from the micro and macro level, I will use some recent historical case studies to show that Europeans sought to bring their colonies “up to speed” through standardised working hours, standardised railway timetables and standardised global time zones. We would do well to remember Partha Chatterjee’s critique of the “dominant strand in modern historical thinking that imagines the social space of modernity as distributed in homogeneous empty time”. Chatterjee prefers to call it “the time of capital”, because “it is the same simultaneity experienced in homogeneous empty time that allows us to speak of the reality of such categories of political economy as prices, wages, markets, and so on. [...] Within its domain, capital allows for no resistance to its free movement. When it encounters an impediment, it thinks it has encountered another time - something out of pre-capital, something that belongs to the pre-modern. Such resistances to capital (or to modernity) are therefore understood as coming out of humanity’s past, something people should have left behind but somehow haven’t.”²¹³ Liberal Time, as I call it, is not just linked to a specific kind of politics. Valuable, manipulable and linear Liberal Time is firmly wedded to the economic system of capitalism. Hence the standardisation of working hours, railway timetables and global time zones is essential to ensuring the smooth running of imperial supply chains.

²¹³ P. Chatterjee, *The Politics of the Governed: Popular politics in most of the World* (New York: CUP, 2004), ch. 4: “The Nation in heterogenous Time”.

A. Working hours

Once European countries had synchronised their schedules, they sought to expand the new temporal efficiency of the industrial revolution to their colonies. In the context of Victorian “humanitarianism” and “trusteeship”, this meant that the “savages” should be taught to measure, manage and appreciate time – for their own benefit and, of course, that of the coloniser. This effort to instil “time-consciousness” and the “economy of time” in labourers has recently been studied in places as far-flung as slave plantations in the American Antebellum South and clearing houses in Bombay.

Justin Roberts’ study on *Slavery and the Enlightenment in the British Atlantic, 1750-1807*, for example, looks at plantation records which suggest that, as early as the mid-eighteenth century, “Time was a tool of discipline and an aid to measuring performance.” The planters, who “conceptualised time as a currency”, soon learnt that “the manipulation and organisation of work time and rest time [...] was the key to both improving an estate’s productivity and ameliorating the conditions of slavery.” This is surprising for two reasons. First, Roberts locates the beginning of imperial time discipline much earlier than the classic studies by E.P. Thompson and his successors suggest.²¹⁴ The argument is that time-management became part of the imperial project long before scientific advances had made accurate portable timekeepers available to the wider public. “In fact, clock-time discipline and the standardisation and numerical precision that we associate with the labour management techniques of early industrialisation were implemented on slave plantations decades before they transformed the early

²¹⁴ See ch. 2, section II.

factory labour systems.” Imperial agents, who transformed North-American and Caribbean plantations into a “factory in the field”, had priority, because they could test new techniques of social discipline on “virgin land”. America and other colonies became the laboratory in which the efficacy of European inventions could be tested and refined before they returned to European societies.

The second reason why Roberts’ analysis is surprising is that from the earliest days of colonisation, the same planters, who whipped their slaves for being too slow or “behind schedule”, thought that they were promoting the Enlightenment project of universal improvement. “The clock and the precise divisions and systematic ordering of the work day that it enabled” were, according to Roberts, “integral parts of an Enlightenment-driven improvement project that transformed the plantation system of the British Americas from the early eighteenth century through [to] the abolition of the slave trade in 1807.”²¹⁵

These practices of time discipline, backed by the ideology of liberal progress, became even more visible in nineteenth-century factories. On both sides of the Atlantic, we may observe E.P. Thompson’s thesis that temporality, time-sense and time-management were radically transformed by industrialisation. The sound of factory bells became as common as church bells in industrialising cities where workers of all classes were forced to register their working hours on timesheets and timecards. Punching in and out under the supervision of an overseer who, like planters, displayed a pocket watch to mark his power, these workers increasingly structured their days according to clock time, moving away

²¹⁵ J. Roberts, *Slavery and the Enlightenment in the British Atlantic, 1750-1807* (Cambridge, CUP, 2013), 27.

from more natural rhythms like sun or sleep.²¹⁶ Shift workers in Fordist factories who were detached from their natural needs and from the final product of their labour experienced double alienation. From the mid-nineteenth century onwards, time-management became a highly desirable skill in both managers and their staff. Until today managers are trained to guard against “time fraud”, the act by which an employee uses company time to perform tasks unrelated to the business – for example by taking extended smoking breaks. According to the American Payroll Association, American businesses lose on average 1.5% of their annual earnings to time fraud.²¹⁷ This shows to what extent the artificial time of clocks and calendars has been internalised and commodified in so-called “advanced economies”.

If working patterns on particular plantations and factory floors in the United States show the power of European notions of time at the micro-level, temporal reform as part of a general drive towards modernisation can be illustrated at the meso-level by the massive project of building national railway systems across the British Empire.

B. Railways

Like ports and telegraphs, railways were part of the large-scale imperial infrastructure that sought to keep the distant parts of the British world connected. The whole system relied on temporal coordination. The railway in

²¹⁶ M. O'Malley, “Time, Work and Task Orientation: A Critique of American Historiography”, *Time & Society*, Vol. 1, No. 3 (1992) 341-358 and O'Malley, *Keeping Watch*.

²¹⁷ <https://www.nettimesolutions.com/blog/time-clock-fraud-stealing-seconds-adds-up-to-major-workplace-issues> ; <https://timewellscheduled.com/time-theft/>; <https://www.epaysystems.com/time-theft-top-7-ways-employees-steal-time/>, accessed 15/03/21.

particular was not only a mechanical innovation; it brought a whole new lifestyle with it. Business, travel and politics could only be conducted across vast continents, if everyone agreed on a publicly coordinated relationship between time and space. As Giddens pointed out in *The Nation-State and Violence*, “A timetable is one of the most significant modern organisational devices, presuming and stimulating a regulation of social life by quantified time in a manner quite unknown to prior types of society. [...] A time-table is a time-space ordering device, which is at the heart of modern organizations.”²¹⁸ The railway timetable was the ultimate tool of social cohesion and synchronisation.

Let us look at two different territories – India and the United States – to learn how British railways transformed time and temporality. In India the approach was very much a top-down imposition of European technology. In 1881, the British governor of Bombay, James Fergusson, missed a train because he had failed to calculate his way through the web of simultaneously existing times applied by different railway lines, telegraph bureaus, and local town hall buildings across British India.²¹⁹ He decided to introduce an Indian Standard Time across the subcontinent. As Ritika Prasad explains, this involved “(i) replacing local time with that of the presidency/province served by a particular railway system; (ii) replacing presidency/province time with an all-India time; and (iii) ensuring that this all-India time was mathematically related to that of an internationally accepted base meridian at Greenwich.”²²⁰ This project however, was not just about increasing the efficiency gains of clock time. In the imagination of imperial

²¹⁸ A. Giddens, *The Nation-State and Violence* (London, Polity, 1985), 174.

²¹⁹ V. Ogle, “Whose Time Is It? The Pluralization of Time and the Global Condition, 1870s–1940s”, *The American Historical Review*, Vol. 118, No. 5 (2013)1376–1402.

²²⁰ R. Prasad, “Time-Sense, Railways and Temporality in Colonial India”, *Modern Asian Studies*, Vol. 47, No. 4 (2013), 1257.

administrators, universal coordination of clock time was also a policy tool to encourage Indians' progress through historical time: According to an official writing in 1846, railways were a "mighty engine of improvement" which would "cause the slumbering spirit of India to awake from the sleep of ages, the sleep of apathy, superstition, and prejudice." Railways became "a speedy mechanism to literally transport temporally backward societies into a normative historical modern."²²¹

Between 1853 (the first passenger train in India) and 1905 (the adoption of All-India Railway Time), scientists and civil servants across the British Empire collaborated to develop ever more precise systems of time-management.²²² For example, early railway timetables which were based on the 12-hour diurnal system, using "a.m." and "p.m." notations were reformed by the Canadian engineer Sanford Fleming, who in 1889 introduced the 24-hour notation. His 1889 memorandum highlights the importance of precise temporal coordination for modern economic systems: In Fleming's view, counting the hours from zero to twenty-four was necessary because 'the misprint of a single letter, a.m. for p.m. or vice versa will easily arise to cause inconvenience, loss of time, probably loss of property.'²²³ When Indian Standard Time (IST) was introduced across the subcontinent in 1919, nationalists complained that "Indian Standard Time", 5.30 hours "ahead" of GMT was not Indian enough, since it merely followed the time of the British. Mohandis Gandhi even published a critical piece entitled *Time Sense* discussing the "common charge" that Indians "have no sense of time" because "we are as a rule behind time"—an explicit reference to the diachronic

²²¹ R. Prasad, *Time-Sense, Railways and Temporality in Colonial India*, 1256.

²²² M. Goswami, *Producing India: From colonial economy to national space* (Chicago, CUP, 2004), chs.3 and 5.

²²³ R. Prasad, *Time-Sense, Railways and Temporality in Colonial India*, 1272.

rendering of the colonial regime. Gandhi stressed: “Someone who is too late is admittedly behind time. But it is equally true to say that one who is four hours before time is also behind time. [...] He may succeed in catching his train, but he will be behind time for many other things probably more important.”²²⁴ The problem of communication between Gandhi and the Governor boils down to the fact that Indians “still” experience multiple times, since “modern time” was imposed on them externally, while for the British standardised railway time has become the only time that matters. The Empire-building power of the railways can also be observed in the North America.

The United States, in their dual identity as a colonised and colonising community, received the impulse towards time reform from Britain but then promoted precision, punctuality and progress themselves via an ever-expanding railway network.²²⁵ Two recent studies by Ian Bartky and Michael O’Malley on time-keeping in nineteenth-century America suggest that the railroad was essential to American territorial expansion and its self-understanding as an inherently benevolent civilisation.²²⁶ “The railroad system of the United States”, Henry Poor proclaimed in 1852, “is destined to be one of the most potent

²²⁴ M. Gandhi, as cited in Prasad (2013), 1273. See also: B. G. Gokhale, “Gandhi and History”, *History and Theory*, Vol. 11, No. 2 (1972), 214-225.

²²⁵ Public time was complemented by personal timekeepers which conferred prestige and – as US emerged as an independent power on the world stage – also national pride. American-made watches in the 1850s transitioned from being a symbol of European prestige to an emblem of American ingenuity. In 1870 Appleton’s *Journal* encouraged individual watch ownership thus: “The American watch has eminent claims as the true republican heirloom - a triumph of industry in an age of industry, it symbolizes the progress and dignity of labour; a product of American enterprise, it is associated with the sentiment of patriotism; moderate in cost, it is accessible to the body of the people, and, thoroughly made, it is prepared for a lengthened future . . . When a hundred years have rolled away, and the continent is reclaimed to civilization, and telegraphs enclose the globe like a net, a white-haired man shall say: ‘My son, when I pass away I shall leave you this watch.’”, A. McCrossen, *Marking Modern Times: A History of Clocks, Watches, and Other Timekeepers in American Life* (Chicago, CUP, 2013), p.63.

²²⁶ M. O’Malley, *Keeping Watch: A History of American Time* (New York, Viking, 1990); I.R.Bartky, *Selling the True Time: Nineteenth-century timekeeping in America* (Stanford, SUP, 2000).

physical instruments in the onward course of the nation. Any improvement that will give to this mighty engine of civilisation increased safety, efficiency and order, should be promptly adopted.”²²⁷ In fact, the railway companies cooperated closely with the United States Coastal Survey to explore which regions they could extend to. Territorial expansion was fuelled by the extraordinary confidence which modern timepieces conferred: “What a miracle that a man can put within this little machine a spirit that measures the flight of time with greater accuracy than the unassisted intellect of the profoundest philosophy. [...] By means of a watch punctuality in all his duties – which in its perfection is one of the incommunicable attributes of Deity – is brought within the reach of Man.”²²⁸ Imperial expansion was a quasi-religious mission. As the rail network grew, the coordination of a dozen different local times became increasingly complicated. When two terrible train accidents occurred in 1853 due to errors in timekeeping, it was the beginning of a concerted national effort to improve time measurement and temporal coordination in America.

Scientific observatories proliferated around the country and literally started “selling the true time”, as Ian Bartky's book title suggests, to progressive public authorities and upwardly mobile individual customers. Time became a utility, publicly sold and exchanged – often at a high price since it promised nothing less than purchasable civilisation. “Observatory time”, O'Malley writes, was “something new; a utility, like gas or water, a tool for improving the morality of labourers, facilitating the movements of trade, and synchronising the economies of different regions.”²²⁹ This permitted some businesses to make considerable

²²⁷ Henry Poor, as cited in O'Malley, *Keeping Watch*, 73.

²²⁸ Edward Everett speaking at the Massachusetts Charitable Mechanics Association in 1837, as cited in O'Malley, *Keeping Watch*, 42.

²²⁹ O'Malley, *Keeping Watch*, 98.

gains. The astronomer Leonard Waldo, for example, was originally employed at the New Haven observatory, then founded a Horological Bureau at Yale's Winchester Observatory and finally formed the Standard Time Company, a joint stock enterprise organised to provide telegraphed time signals, like Western Union's.²³⁰ These private pioneers played a significant role in coordinating and disciplining American daily life – and they had an unexpectedly wide impact on the global temporal order. It was Waldo and his colleagues who lobbied the railway operators to adopt a single rational system of time-keeping across the North-American continent. “At noon on Sunday, 18 November 1883”, Bartky writes, “North American railroads created the modern era of public timekeeping. They discarded 49 different times by which they had been running freight and passenger trains and replaced them with five new ones. Known collectively as Standard Railway Time, these operating times differed from each other by exact hours across the continent and were indexed to the Royal Observatory at Greenwich's Meridian. They were the first elements in what would become the worldwide system of civil time zones that we now call Standard Time.”²³¹ It was no coincidence that it was the newly independent colonies of North America – which prolonged and perfected the imperial order to which they owed their birth. The more “advanced” a nation, the more profit – political and economic – it derived from temporal coordination.

²³⁰ O'Malley, *Keeping Watch*, 97.

²³¹ Bartky, *Selling the True Time*, 1.

C. Standardisation of time zones

At the highest political level we find the imperial project of dividing and classifying the entire globe according to a scientific grid of time zones. This fits the taxonomic desires of Europeans at the intellectual level, but also had enormously beneficial effects on the practical coordination of people and products moving in a global economy. Vanessa Ogle, who offers a rare comparative analysis of chronopolitics from various international viewpoints, has traced exactly how the reference points which we now take for granted were negotiated in a global struggle for time which accompanied the phase of High Imperialism.²³² Knowing the exact time in each colonial possession from the imperial centre and coordinating activities between colonies on the periphery was valued so highly by the European imperial powers that they even started temporal disputes between them. The International Meridian Conference in 1884, which we encountered in the introduction,²³³ was only the most dramatic of many diplomatic gatherings at which European imperial powers planned how to (re)order the world according to a scientific temporal grid. There were regular international conferences in which the “civilised” nations of Europe and North America defined the standards to which infrastructure and communications systems had to adjust the world over. The three most important developments in international temporal standardisations were: (1) the convergence of national times into regional times roughly along the lines of longitude, which greatly facilitated communications, trade and warfare; (2) the abovementioned International Meridian Conference in 1884, in which London’s power was immortalised by setting the Greenwich meridian as the heart of global time-

²³² Ogle, *The Global Transformation of Time*.

²³³ See introduction, 1.

keeping; (3) the process initiated by George Hudson of New Zealand in 1895 to optimise the working day with Daylight Saving Time. The last battle was the longest and remains incomplete, since the introduction of British Summer Time by Parliament in 1908 was not adopted by all nations with the same zeal as GMT. From the perspective of the imperial superpowers, the theoretical taming of time was the easy part – it was the implementation of such “civilised” visions of time on the ground which proved considerably more difficult.

A few examples from my original archival research at the British National Archives in Kew demonstrate the variety of ways in which Western time was first defined and then accepted, negotiated or resisted. The British government papers show that temporal standardisation was one of the main sources of contention between colonial governors and local populations. Between the mid-nineteenth and the mid-twentieth century, dispatches concerning disputes about time multiply continuously. They concern mostly the backlash to Europe’s efforts at standardising the national and international level of temporal synchronisation. In order of intensifying resistance to imperial timetables, I will show some correspondence from Barbados, India and Kenya.

The Colonial and Dominion Offices kept large tables offering a total Archimedean picture of time and its variations across the British Empire (see fig. 3). The fact that they were updated several times a year by dozens of civil servants exclusively focused on this task shows their importance to the British imperial system. The creation of such tables, and the wider temporal order they represented, however, required diplomatic skill and persistence.

KEEP ON TOP OF FILE. As at 15th March, 1944. (2) Amended by (18) & (30) 29

TABLE SHOWING STANDARD TIMES KEPT IN THE DOMINIONS IN RELATION TO LONDON TIME WITH FOOTNOTES SHOWING ALTERATIONS IN THE DOMINIONS DURING WAR TIME.

SLOW ON LONDON TIME			FAST ON LONDON TIME			
(1)	(2)	LONDON	(3)	(4)	(5)	(6)
CANADA (Ottawa)	NEWFOUNDLAND (St. John's)		SOUTHERN RHODESIA (Salisbury)	UNION OF S. AFRICA (Capetown and Pretoria)	AUSTRALIA (Canberra)	NEW ZEALAND (Wellington)
GREENWICH MEAN TIME (Noon)	7 a.m. (i.e., 5 hrs. slow on London)	12 noon	2 p.m. (i.e., 2 hrs. fast on London)	2 p.m. (i.e., 2 hrs. fast on London)	10 p.m. (i.e., 10 hrs. fast on London)	11.30 p.m. (i.e., 11 hrs. 30 m. fast on London)
BRITISH SUMMER TIME (Noon)	8 a.m. (i.e., 6 hrs. slow on London)	12 noon	1 p.m. (i.e., 1 hr. fast on London)	1 p.m. (i.e., 1 hr. fast on London)	9 p.m. (i.e., 9 hrs. fast on London)	10.30 p.m. (i.e., 10 hrs. 30 m. fast on London)
BRITISH DOUBLE SUMMER TIME (Noon)	5 a.m. (i.e., 7 hrs. slow on London)	12 noon	12 noon (i.e., same as London)	11 noon (i.e., same as London)	8 p.m. (i.e., 8 hrs. fast on London)	9.30 p.m. (i.e., 9 hrs. 30 m. fast on London)

(1) CANADA. Clocks have been advanced one hour until further notice. The following times should therefore be substituted for those shown above:
 C.M.T. 8 a.m. (i.e., 4 hrs. slow on London)
 B.S.T. 7 a.m. (i.e., 3 hrs. slow on London)
 D.B.S.T. 6 a.m. (i.e., 2 hrs. slow on London)

(2) NEWFOUNDLAND (Footnote 2). Normal time was restored in Newfoundland as from the 5th November, 1944. The times shown in Column 2 of the Table are therefore now in operation, except during the period between midnight on the second Sunday in May and midnight on the first Sunday in November in each year, when Daylight Saving Time of one hour will become effective.
 B.S.T. (noon) - 9 a.m. (i.e., 3 hours slow on London)
 D.B.S.T. (noon) - 8 a.m. (i.e., 4 hours slow on London).

(3) SOUTHERN RHODESIA. No daylight saving regulations are in operation. Times shown above are therefore correct.

(4) UNION OF S. AFRICA. Clocks have been advanced one hour until further notice. The following times should therefore be substituted for those shown above:
 C.M.T. 9 p.m. (i.e., 9 hrs. fast on London)
 B.S.T. 8 p.m. (i.e., 8 hrs. fast on London)
 D.B.S.T. 7 p.m. (i.e., 7 hrs. fast on London)

(5) AUSTRALIA. Clocks have been advanced 30 minutes until further notice. The following times should therefore be substituted for those shown above:
 C.M.T. 10.30 p.m. (i.e., 10 hrs. 30 m. fast on London)
 B.S.T. 11 p.m. (i.e., 11 hrs. fast on London)
 D.B.S.T. 10 p.m. (i.e., 10 hrs. fast on London)

(6) NEW ZEALAND. Clocks have been advanced 30 minutes until further notice. The following times should therefore be substituted for those shown above:
 C.M.T. 12 midnight (i.e., 12 hrs. fast on London)
 B.S.T. 11 p.m. (i.e., 11 hrs. fast on London)
 D.B.S.T. 10 p.m. (i.e., 10 hrs. fast on London)

Amendment circulated at (29).

Figure 3: Table showing Standard Time in the Dominions in relation to London Time (DO 35/1123)

In 1920 the Colonial Office sent out a circular asking for all colonies to report what the local time was at their main harbour. The colonial administration in Barbados – assisted by the local Royal Navy commander - replied swiftly and obediently, informing London precisely that “Local Mean Time is kept in this colony, the meridian passing through the Flag Staff on Rickett’s Battery, on the North Shore of Carlyle Bay which is in Latitude 13° 5’ 42” N - Longitude 59° 37’ 18” W.”²³⁴ This is the compliance London wanted to see.

On the Indian subcontinent, the confrontation was much more heated, and continued over several decades, as active local resistance repeatedly frustrated British plans to impose IST. Bombay illustrates the intricate interplay between temporal colonialism and temporal anticolonialism. An initial attempt in 1881 by the British governor to introduce IST – the reference point for which was Madras (Chennai), 1350 km to the East and therefore also roughly two hours ahead of Bombay – was met with widespread non-compliance. As the clockfaces

²³⁴ FO 286/725, National Archives, Letter of 1 Dec 1920.

of schools, cafés and private offices continued to show the original Bombay time, the result was an environment of multiple times that required knowledge not only of which time was kept where, but also of which time was followed by whom. After two years of strikes and complaints in the local newspaper - “Suppose I submit and keep Madras time, how am I to know that Jones and Smith do the same?” – the government relented.

In 1905 a renewed attempt by the British to put Bombay on IST elicited a similar reaction. By then, the populations of India’s Western cities had fused their local complaint with a larger nationalist, anti-colonial narrative. The *Kaiser-i-hind* newspaper was most explicit: “We are asked to forget our natural time, the same that we have been familiar with from times immemorial, and adopt the new ‘standard’ which the ingenuity of the Astronomer Royal [at Greenwich Observatory] has devised [...] Nobody has asked for artificial time!” The anti-IST protestors in Bombay saw very clearly how temporal synchronisation benefited the agents of British power such as the Chamber of Commerce, but rarely favoured local populations.

When Daylight Saving Time was to be introduced to maximise productivity in Kenya (a colony we will encounter again in chapter 4²³⁵) a long consultation began with the local tribes. The British committee charged with the task proposed three options: “(1) keeping the time as it is; (2) closing shops and

²³⁵ See ch. 4, section I.

offices half an hour earlier; (3) moving the clock forward half an hour.” Of these, (1) was a mere formality since the British had already decided to alter the time, as internal correspondence in the relevant Colonial Office file shows. Still, the records of oral and written consultations reveal that there was a multiplicity of opinions on the remaining two options. After having registered the different viewpoints of local chiefs, shopkeepers and

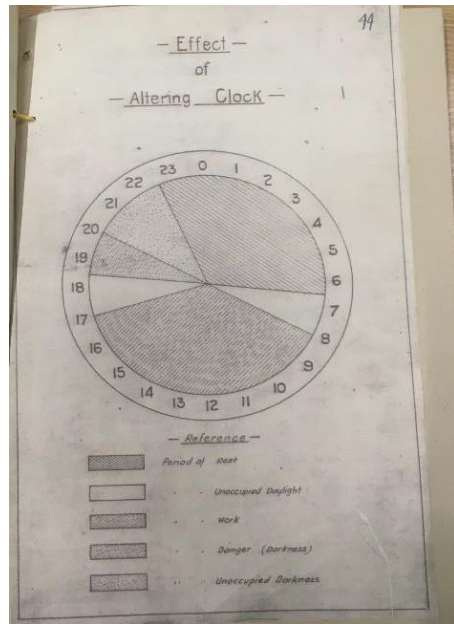


Figure 4: Effect of altering clock (CO 533/380/8)

farmers, the committee’s final report shows a complete lack of concern for local interests. First, they point to the Chairman of the Nairobi Chamber of Commerce, undoubtedly a government-friendly figure, who “stressed the fact that by altering the clock, the ‘danger period’, as he described it, between sunset and dinner would be satisfactorily reduced, while the hours of sleep remained undisturbed.” (see fig. 4). Then, they distance themselves from the term “danger-hour”, perhaps because it sounded foreign and even primitive. In a state of civilisation, there should be no danger-hour. The committee was nevertheless “unanimous in agreeing that the half hour period should be taken from this period rather than from the hours of sleep.” After all, the British needed well-rested labourers for their plantations, mines and infrastructure. But in the next paragraph a counterargument is raised: “It has been contended, though not before the Committee, that this ‘danger period’ is, on the contrary, a very important period of social intercourse in the tropics and that in effect any attempts to alter the clock would simply mean that the dinner hour would be postponed, and that the half hour would eventually be taken from the sleep

period”. The way in which this objection is presented illustrates the European belief in superiority. Instead of real engagement, the reader should content himself with exoticising language and a generalisation about life in “the tropics”. No names, no explanations are offered. “It has been contended” as passively and impersonally as possible and “not before the Committee”, the real authority, that the British might be making a mistake by interfering with the lives of others. Hearsay about mysterious customs – that is all which the subject peoples can muster in their defence. The British, by contrast, were able to use their comparative perspective across multiple colonies to scientifically assess that an adjustment to local customs was not needed: “The Committee, however, could get no evidence in support of this contention, but on the contrary the practice in Uganda, which, owing to its more westerly position, already has in effect the system suggested for Kenya, was cited. The dinner at Government House in Entebbe, for example, is exactly the same as the dinner hour at Government House in Nairobi, and no great inconvenience is felt in the consequent shortening of the ‘danger period’”.²³⁶

Why the protocol of “Government House”, rather than the real lives of Kenyans, should be chosen as a reference point is not explained. For British officials in Nairobi writing to British officials in London, this seemed beside the point. The committee did not hide its interest: “On the evidence before it, the Committee must come definitely to the conclusion that the whole of the European community in Nairobi who at present work until 5.0 p.m. [...] would welcome a measure that would, without reducing their working hours, enable them to obtain an extra half hour of daylight for recreation.”²³⁷ Native dissent

²³⁶ *Report of the Select Committee on Daylight Saving*, CO 533/380/8, National Archives, 4.

²³⁷ *Report of the Select Committee on Daylight Saving*, CO 533/380/8, National Archives, 6.

was squashed with the force of civilisation, and Kenya ultimately put its clocks forward by half an hour.²³⁸

We cannot but conclude from this overview that temporal standardisation was a highly political matter, of the utmost economic and strategic importance for Europeans but therefore also a prime target for anti-colonial acts of resistance. Overall, this section has shown that the functioning of Empires relied on synchronic systems of coordination, which served a double purpose: on the one hand, they facilitated international trade and labour migration; on the other they “civilised” non-Europeans who were deemed to be “lagging behind” European historical time and therefore had to be “brought forward” through the discipline of clock time.

III. POLYCHRONIC PROGRESS

The combination of diachronic theories of subjection and synchronic practices of coordination leads to a paradoxical tension: On the one hand, time is conceived as ‘universal’: clock time makes it possible to measure time in exactly the same way wherever you are in the world, because the British Greenwich meridian sets the universal clock. At the same time, there is the notion of different historical times – i.e. different stages of human development - which

²³⁸ The Acting Attorney General’s *Legal Report* of 22 June 1928 confirmed to London that the motion Alteration of the Time Bill, was passed on 11 June 1928, and would come into effect on 30 June 1928. It took only a month for the British to move the clock throughout the colony. CO 533/380/8, National Archives.

makes it possible for Europeans to travel geographically backwards in time.²³⁹ Is time the same everywhere, as clock time affirms, or are there simultaneously existing temporal differences as historical time seems to suggest?

As we have seen, the two visions of time are historically linked: People who were classified as “primitive” according to the standard of historical time were brought into more “advanced” stages of historical development when they reoriented their lives around “modern” clock time. There is a real risk, however, that successful modernisation through the clock will lead to demands, on the part of the colonised, to be reclassified in higher stages of historical time. This however, threatens the very basis of colonialism – the creed of (under)development.

I call it a “creed” because it plays nearly the same function in modern Empires as religion played in the Early Modern Empires. Those Empires – Spain, Portugal, and to some extent the Netherlands – made conversion to Christianity the aim and justification of imperial expansion. The idea was that Europeans were already living within the orbit of sacred biblical time, while non-Europeans had been left outside of it. Since there is no salvation outside of the sacred orbit, the “heathens” had to be brought into the story of Christianity. Until today, the Final Judgement remains the strongest image in the service of European superiority. In its secularised and naturalised version, “heathens” are relabelled as “savages” and it is one’s positionality in history which defines one’s prospect for salvation. Backwardness is sin, while forward-looking modernity is virtue. The sinfulness of backwardness stems from the apparent failure, even unwillingness to subject oneself to the reform projects that the Europeans

²³⁹ I am grateful to Katrin Flikschuh for highlighting this dissonance.

offered. A failure to make the most out of the time God has granted you on Earth - by sticking to an intense factory labour schedule, for instance - is seen as irreligious. You are wasting the gift of life – and also your capitalist employer’s money.

The desire to be modern is warmly greeted by the enlightened judges, especially if it is accompanied by the zeal of the convert, the desperate desire to catch up with those “further ahead” on the linear path of Christianity. Successive waves of secularisation have altered the vocabulary, but the logic remains the same. Instead of the question: “Have you been good enough?” the Lord of the new Final Judgement asks: “Have you been modern enough?”. If strict predestination is replaced with an enlightened belief in human perfectibility and self-improvement, the ultimate question in the Eurocentric judgement of world history is: “Have you *become* modern enough?”. It is the development towards something that matters most in the linear conception of Liberal Time – and, strangely enough, that development, however painful, however violent, is couched in the language of freedom. Following the path of Liberal Time is supposed to bring liberty.

The power of Europe’s normative claim to holding the key to modernity, like St Peter at the gates of Heaven, has been amply illustrated by the thoughtful works of Edward Said, Dipesh Chakrabarty and Gayatri Spivak.²⁴⁰ And still , we should ask ourselves: *why did Europeans think they had a right to enforce their historico-temporal order on the world?* For Europeans, progress was not something that happened *around* them, or even *to* them – progress was the world-historical change that

²⁴⁰ E. Said, *Culture and Imperialism* (London, 1993), esp. 16-25; R. Morris (ed.). *Can the Subaltern Speak? : Reflections on the History of an Idea* (New York, CUP, 2010); D. Chakrabarty, *Provincialising Europe* (Princeton, PUP, 2000).

happened *through* them. Europeans were warriors and guardians of progressive modernity. In their own understanding, Europeans had the power to “bring” progress to other peoples and “invite” them to partake in the fulfilment of a global historical project.

This, of course, requires a careful balancing act between postulating multiple lived times while upholding the single line of European historical time. Universal progress relies on particular pockets of polychronicity, the coexistence of different political temporal orders, different imagined timescapes. Two political proposals, 126 years apart, might give us more insights into the European vision of orchestrated polychronic progress.

In 1883 the chief theorist of the late Victorian British Empire, John Seeley, proposed that different colonies should be assigned different roles on the timeline of imperial politics. His lectures on *The Expansion of England* shaped the minds of many generations of civil servants, diplomats and governors with the following philosophy of Britain’s historical mission: “It is a favourite maxim of mine that history, while it should be scientific in its method, should pursue a practical object. That is, it should not merely gratify the reader's opinion about the past, but modify his view of the present and his forecast of the future. Now if this maxim be sound, *the history of England ought to end with something that might be called a moral*. Some large conclusion ought to arise out of it; it ought to exhibit the general tendency of English affairs in such a way as to set us thinking about the future and divining the destiny which is reserved for us. The more so because the part played by our country in the world certainly does not grow less prominent as history advances. Some countries, such as Holland and Sweden, might pardonably regard their history as in a manner wound up. [...] But

England has grown steadily greater and greater.”²⁴¹ This “practical” history already shares all the basic assumptions identified in our exploration of Liberal Time in Chapter 1: (1) human history is a linear system; (2) the system has meaning, “it ought to end with something that might be called a moral”; (3) some chosen country is at the forefront of history (“England has grown steadily greater and greater”, seemingly due to “the destiny which is reserved for us”), while others have already missed the train of time (Holland and Sweden); (4) this chosen country will not decline (it “certainly does not grow less prominent”); because (5) scientific observation of quasi-natural processes interlocks with eschatological divinations to show that “*the history of England ought to end with something that might be called a moral. Some large conclusion ought to arise out of it*”. The past informs the future, and we should be interested in the past only insofar as it “set[s] us thinking about the future”.

In an Empire as vast as Britain’s, however, not everyone shares the same position in history. In conformity with the abovementioned Enlightenment taxonomies, the British possessions formed a *multi-speed Empire*,²⁴² in which different degrees of advancement in time were illustrated by different geographical locations. Seeley fused time and space skilfully: “The [white settler] colonies and India are in opposite extremes. Whatever political maxims are applicable to one, are most inapplicable to the other. In the [white settler] colonies everything is brand-new. There you have the most progressive race put in the circumstances most

²⁴¹ J. Seeley, *The Expansion of England* (1883), lecture I, 2, via https://ia800906.us.archive.org/25/items/expansionofengla00seelrich/expansionofengla00seelrich_djvu.txt, accessed 28/09/19.

²⁴² A phrase recently taken up again with the idea of a “Multi-speed Europe”, defined as “the term used to describe the idea of a method of differentiated integration whereby common objectives are pursued by a group of EU countries both able and willing to advance, it being implied that the others will follow later.” https://eur-lex.europa.eu/summary/glossary/multispeed_europe.html, accessed 03/03/20.

favourable to progress. *There you have no past and an unbounded future.* Government and institutions are all ultra-English. All is liberty, industry, invention, innovation and as yet tranquillity. [...] But there is at the same time another Greater Britain, surpassing this in population though not in territory, and it is everything which this is not. *India is all past and, I may almost say, no future.* [...] All the oldest religions, all the oldest customs, petrified as it were. No form of popular government *as yet* possible. Everything which Europe, and still more the New World, has *outlived* still flourishing in full vigour.”²⁴³ In this multi-speed Empire, the Indian past coexisted with the British present and the American future. America was the laboratory of futuristic fantasies while Britain could confidently speak from “the here and now”, having progressed from India’s historico-spatial position in “the there and then”, as Fabian calls it.²⁴⁴ The British Empire was construed as a benevolent project to even-out levels of progress across the globe. The division of the world’s peoples into those of the past, present and future informed imperial policy. The ostensible aim of imperial government was therefore to bring everyone up to speed by exporting the future to backward peoples. While American settlers were given free reign because they had the potential to correct Europe’s mistakes, Indians, a nation of the past, were dominated with imperial practices that had long been outlawed in Europe. The barbarian colonies were an outlet for repressed European violence, while the progressive colonies enabled Europeans to imagine better versions of themselves.

²⁴³ J. Seeley, *The Expansion of England* (1883) lecture II, 51, via https://ia800906.us.archive.org/25/items/expansionofengla00seelrich/expansionofengla00seelrich_djvu.txt, accessed 28/09/19, emphasis added.

²⁴⁴ Fabian, *Time and the Other*, esp. ch. 2 entitled “Our time, their time, no time: co-evalnessdenied”.

Now, this international temporal order may be compared with a much more recent proposal by French president Nicolas Sarkozy, who, on a state visit to Senegal in 2009 gave an extraordinary speech inviting young Africans “to enter History”. “I have not come here, young Africans, to teach you any lesson”, President Sarkozy begins, but a few seconds later, an almost complete picture of the imperialist gospel of progress is revealed: “The tragedy of Africa is that the African Man has not yet sufficiently entered History. The African peasant, whose ideal in life has for thousands of years been to live in harmony with the seasons, to live in harmony with nature, that man knows only the eternal recurrence of time, rhythmically marked by the repetition of the same words and movements. In this imaginary where everything always recommences, there is no space for human adventure, *no space for the idea of progress*. In this universe in which nature commands everything, Man escapes the anxiety of History which torments modern Man, but thereby also remains immobile in an immutable order where everything already seems written in advance. That Man never *leaps towards the future*. Never does it occur to him to escape repetition in order to invent a destiny for himself. That is exactly where the problem of Africa lies (if I may say so as a friend of Africa). The challenge for Africa is to enter further into History.”²⁴⁵

This passage weaves together the temporality of everyday life with the larger forces of historical time to lay bare five fundamental tenets of imperialist history:

(1) There might be different local histories, but here is only one Hegelian History which records and guides the fate of the world’s nations. The “problem” of African Man is that even though he might think he has entered local histories,

²⁴⁵ N. Sarkozy, *Discours de Dakar*, 26 July 2009, via https://www.lemonde.fr/afrique/article/2007/11/09/le-discours-de-dakar_976786_3212.html, accessed 22/02/21.

he has not entered the right kind of history, a universal history defined by change. (2) For change to be possible at all, moments in time must be unique and irreversible. In contrast to cyclical conceptions of time, which do not allow for lasting causal change, the History of Europeans is linear, unidirectional and evolutionary. (3) Even if evolution is important and natural metaphors abound in European historiography, that History of change is clearly distinct from and superior to nature's cyclical rhythms, precisely because the non-repetition of Liberal Time allows for lasting historical change. (4) There are some non-European collectives who have "not yet" made the jump from primitive cycles to linear development. They live in the same calendar year but not in the same historical period. (5) These non-observers of Western time are grouped together, standardised and pathologised as inferior beings since they lack a defining human feature: the will to "invent a destiny" for themselves. By extension, the "problem" is not that Africans cannot partake in history; it is rather that they cannot muster "the will" to do so. Like so many European politicians before him, Sarkozy does not even consider the option that his audience has a will, but that it might be directed against the Europeans and their history.²⁴⁶ Instead, it is suggested that they have a weaker will or no will at all (both in the European conception of the term), since anyone with the capacity to will is assumed to will the same objectives as Europeans. It is in this regard that "Africans" are declared to be unable to make History: "The problem of Africa lies in ceasing to repeat endlessly in order to liberate itself from the myth of the eternal return". That

²⁴⁶ For an analysis of the "philosophical racism" of supposedly universal terms like "will" or "soul", see the K. Flikschuh, "Philosophical racism", *Proceedings of the Aristotelian Society*, Vol. 92, No. 1 (2018), 91-110 and C. Mills, *Black Rights/White Wrongs: The Critique of Racial Liberalism* (New York, OUP, 2017).

eternal return, the cyclical, naturalist, fatalist view of history should be abandoned by anyone who wants to “fully enter” real “History”.

What could be done to remedy this “problem” according to the representative of the colonising country? Mr Sarkozy suggests “finding a way to remain faithful to itself without remaining immobile” – mobility is essential – learning “to appreciate accession to the Universal not as a renouncement of what she [Africa] is, but as an accomplishment.” This “accession to the Universal” is facilitated by the enduring link to France, home of universal human rights: “The part of Europe which is within you is the fruit of a great sin of pride”, Sarkozy admits, but it is also “a call to liberty, to emancipation, to justice and equality between men and women.” The part of Europe which was violently implanted in a subject population is, the president concludes, “the call to Reason and universal conscience.”²⁴⁷ If History is the unfolding of Reason in global societal development, then entering hegemonic History is partaking in Reason while

²⁴⁷ N. Sarkozy, *Discours de Dakar*, 26 July 2009, via https://www.lemonde.fr/afrique/article/2007/11/09/le-discours-de-dakar_976786_3212.html, accessed 22/02/21. « Je ne suis pas venu, jeunes d'Afrique, vous donner des leçons. Je ne suis pas venu vous faire la morale. Mais je suis venu vous dire que la part d'Europe qui est en vous est le fruit d'un grand péché d'orgueil de l'Occident mais que cette part d'Europe en vous n'est pas indigne. Car elle est l'appel de la liberté, de l'émancipation et de la justice et de l'égalité entre les femmes et les hommes. Car elle est l'appel à la raison et à la conscience universelles. Le drame de l'Afrique, c'est que l'homme africain n'est pas assez entré dans l'histoire. Le paysan africain, qui depuis des millénaires, vit avec les saisons, dont l'idéal de vie est d'être en harmonie avec la nature, ne connaît que l'éternel recommencement du temps rythmé par la répétition sans fin des mêmes gestes et des mêmes paroles. Dans cet imaginaire où tout recommence toujours, il n'y a de place ni pour l'aventure humaine, ni pour l'idée de progrès. Dans cet univers où la nature commande tout, l'homme échappe à l'angoisse de l'histoire qui tenaille l'homme moderne mais l'homme reste immobile au milieu d'un ordre immuable où tout semble être écrit d'avance. Jamais l'homme ne s'élance vers l'avenir. Jamais il ne lui vient à l'idée de sortir de la répétition pour s'inventer un destin. Le problème de l'Afrique est de permettre à un ami de l'Afrique de le dire, il est là. Le défi de l'Afrique, c'est d'entrer davantage dans l'histoire. C'est de puiser en elle l'énergie, la force, l'envie, la volonté d'écouter et d'épouser sa propre histoire. Le problème de l'Afrique, c'est de cesser de toujours répéter, de toujours ressasser, de se libérer du mythe de l'éternel retour, c'est de prendre conscience que l'âge d'or qu'elle ne cesse de regretter, ne reviendra pas pour la raison qu'il n'a jamais existé. Le problème de l'Afrique, c'est qu'elle vit trop le présent dans la nostalgie du paradis perdu de l'enfance. [...] Le problème de l'Afrique, c'est de rester fidèle à elle-même sans rester immobile. Le défi de l'Afrique, c'est d'apprendre à regarder son accession à l'universel non comme un reniement de ce qu'elle est mais comme un accomplissement. »

following alternative, particularist histories is retrograde. Universalist Christian eschatology, naturalised, secularised and politicised, thus underpinned imperial triage and subjection.

Conclusion

This chapter has analysed the idea and practice of Liberal Time at the global level. It identified two kinds of relationship between European colonisers and non-European colonised peoples. The first is diachronic because Europe saw itself as “more advanced” on the ladder of historical development than the “backward” societies which “still” lived in earlier times. That temporal distance was a powerful ideological tool because it justified imperial intervention. The second relationship is synchronic, since the imperial project relied on uniform time discipline. The contrast between the two approaches seems enormous, and yet imperial theorists sought to resolve it through the religiously inspired notion of the “civilising mission”. This “white Man’s burden”, to use Kipling’s phrase,²⁴⁸ was supposedly based on the European privilege of being the chosen guardian of progress. In Part II of this thesis we shall see how this self- understanding of “progressive power”, a European “force for good” played out in the long run. By analysing present-day contestations of the original imperialist progress paradigm, we can test the strength and validity of the unique European claim to progress.

²⁴⁸ R. Kipling, *The white Man’s burden* (1899), via http://www.kiplingsociety.co.uk/poems_burden.htm, accessed 20/07/2021.

4. BRITAIN: THE CULT OF CONTINUITY

Doctor: "My friend, my friend, you are forgetting the Oriental character. How is [sic] it possible to have developed us, with our apathy and superstition? At least you have brought to us law and order. The unswerving British Justice and the Pax Britannica."

Flory: "Pox Britannica, doctor, Pox Britannica is its proper name. And in any case, whom is it pax for?"²⁴⁹

Liberal Time might be powerful, but thereby not necessarily monolithic. I have identified a number of variations and articulations of Liberal Time in different contexts. To see how established institutions build, promote and defend conceptions of progress, I will focus on the national institutions and vocabulary of three traditional imperial powers. The comparative analysis of national timescapes begins with Britain, the first and last of Europe's modern Empires. The vast imperial network which was gradually built up from early explorations of Newfoundland until it covered a quarter of the Earth's habitable surface at its late Victorian peak distinguished itself from competitor Empires through its agility. Just as it survived the secession of the American Colonies and the Napoleonic Wars with the "Swing to the East" in the late eighteenth century,²⁵⁰ the Crown's colonial officials generated economic production lines connecting

²⁴⁹ G. Orwell, *Burmese Days* (London, Penguin Modern Classics, 2009 [1934]), p. 40.

²⁵⁰ *Oxford History of the British Empire*. Vol. II: The eighteenth century, esp. P. J. Marshall, "Britain without America: A Second British Empire?", 576-595. See also: H.V. Bowen, *The Business of Empire: The East India Company and Imperial Britain, 1756-1833* (Cambridge, CUP, 2005).

Calcutta, Cape Town and the Suez Canal in the nineteenth century.²⁵¹ In the twentieth century, the British style of colonialism was characterised by a comparatively small footprint: economic ties preceded political connections, private investment from metropolitan capitalists alleviated the state purse and territories were secured and administered by fewer colonial officials per square mile than in any other colonial system. This flexibility also made the twentieth century retreat from Empire somewhat easier for Britain than for its competitors, but that does not mean that there was no friction. Imperial retreat was accompanied by great suffering, even large-scale criminal wrongdoing – and yet the British state apparatus tried its utmost not to rock the boat at home. From the “emancipation” of the Thirteen Colonies to the peaceful “transfer of power” in India, the dissolution of Empire was meant to look organic, slow, inevitable. Why?

This chapter seeks to find answers in the British tradition of progressive organicism. Like the two subsequent ones it will be divided into three parts: trial, tradition, and historical truth. More specifically, section I introduces the *Mutua et al. v. FCO* trials (2011 and 2012) to analyse the legal discourse on redress for the Mau Mau veterans who suffered systematic torture during Kenyan decolonisation. As already stated,²⁵² I do not pretend to analyse these trials as a trained lawyer would. My expertise and interest lie elsewhere: I investigate these

²⁵¹ If we agree, that is, with Robinson and Gallagher’s thesis of the periphery-driven “Imperialism of Free Trade”. The alternative would be Cain and Hopkins’ concept of “Gentlemanly Capitalism”, positing that it was the imperial centre, and more specifically London’s unique fusion between moneyed interests and Parliament, that fuelled the Empire. See J. Gallagher & R. Robinson, “The Imperialism of Free Trade”, *Economic History Review*, Vol.6, No. 1, (1953) 1-15; P.J. Cain & A.G. Hopkins, “Gentlemanly Capitalism and British Expansion Overseas I. The Old Colonial System, 1688-1850”, *Economic History Review*, Vol. 39, No. 4 (1986) 501-525; “Gentlemanly Capitalism and British Expansion Overseas II: New Imperialism, 1850-1945”, *Economic History Review*, Vol.40, No. 1 (1987) 1-26.

²⁵² See Introduction, section II.

legal records as discourse; a public discourse which reveals a specifically British view on the relationship between time and justice. Section II links these initial findings to a broader intellectual tradition that, as I argue, prioritises the idea of historical continuity at all cost. Section III asks what this specific context of a national timescape characterised by the idea of continuity means for the revelation and incorporation of uncomfortable historical truths. The key sources will be the parliamentary debates on the Hola Camp Massacre on 27 July 1959 and the Mau Mau settlement on 6 June 2013. By showing that the British establishment is very adept at promoting a narrative of Britain as a continuous force for good in the world, I suggest that the British national timescape - characterised by an incessant quest for continuity - absorbs historical shocks reasonably well.

I. TRIAL

Dozens of victims of British “counterinsurgency” or “law and order” operations have sued the British Government for damages, yet no legal battle revealed the structure and extent of the British timescape like *Mutua et al. v. FCO*, heard at the Royal Courts of Justice in 2011 and 2012. The claimants were five veterans of the Kenyan Mau Mau rebellion (1952-63), who had been illegally detained and tortured as part of the British counter-insurgency operations (COIN) during the Kenyan struggle for independence. This struggle had escalated continuously since the Colonial Secretary, Sir Evelyn Baring, proclaimed a State of Emergency on 20 October 1952, which allowed for “wide powers of arrest and detention of

suspected persons.”²⁵³ The most important directive in this context was the so-called Cowan Plan, an internally distributed document, explaining in great detail how suspicious individuals could be arrested without trial and distributed across detention camps in the country’s interior, where they would work for “rehabilitation”. John Cowan, senior Prisons Officer of the Mwea Camps, knew that this would include the systematic use of force – which he authorised in paragraph 182 of his memo: “(j) It is assumed that the party would obey this order (the order to proceed to the work site) but should they refuse they would be manhandled to the site of work and forced to carry out the task.” Mr Goudie, a coroner at the infamous Hola Camp, where this “manhandling” led to the death of 11 prisoners, translates Cowan’s instructions as “a carte blanche to use whatever force might prove necessary to ensure the performance of the task whether the detainees affected proved merely reluctant or completely obdurate.”²⁵⁴ The five veterans – Ndiku Mutua, Paulo Nzili, Wambugu Nyingi, Jane Muthoni Mara and Susan Ngondi - who appeared before the British High Court in July 2011 had suffered beatings, rape and mutilation in these camps. They therefore thought they had a claim to compensation from the British government even half a century after the alleged crimes had occurred.

Before we go any further into the details of their arguments, it must be said that the two rounds – 2011 and 2012 – of this legal action were very different. The first round was a dispute about the substance of British colonialism, while the

²⁵³ *Mutua et al. v. FCO* (2011), Approved Judgement, § 9, via <https://www.asser.nl/upload/documents/20130311T095828-mutua-v-ors-judgment%20judgment%2021-07-2011.pdf>, accessed 01/08/17.

²⁵⁴ Hansard, House of Commons, Hola Camp (Kenya) Report debate, 27 July 1959, c 182, via <https://api.parliament.uk/historic-hansard/commons/1959/jul/27/hola-camp-kenya-report>, accessed 15/01/19.

second round turned out to be a probe into the power of procedure in English law.

In 2011, the claimants, represented by Leigh Day, argued thus: “First, (1) it is said that the former liability of the Colonial Administration in Kenya simply devolved or was transferred, by operation of the Common Law, upon the UK Government at the time of independence in 1963. Secondly, (2) it is said that the UK Government is directly liable to the claimants, as a joint tortfeasor, with the Colonial Administration and the individual perpetrators of the tortious assaults, for having encouraged, procured, acquiesced in, or otherwise having been complicit in, the creation and maintenance of the “system” under which the claimants were mistreated. Such liability is said to arise out of the role of the military/security forces under the command of the British Commander-in-Chief. Thirdly, (3) it is alleged that the UK Government is similarly jointly liable, through the former Colonial Office, for the acts complained of, because of its role in the creation of the same system under which detainees were knowingly exposed to ill-treatment. Fourthly, (4) it is said that the UK Government is liable to the claimants (and to the third claimant in particular) as the result of an instruction, approval or authorisation of particular treatment of claimants given on 16 July 1957. Fifthly, and finally, (5) it is alleged that the UK Government is liable in negligence for breach of a Common Law duty of care in failing to put a stop to what it knew was the systemic use of torture and other violence upon detainees in the camps when it had a clear ability to do so.”²⁵⁵ Against those claims, the Foreign and Commonwealth Office did not deny that there was systematic torture in colonial Kenya or that the claimants were direct victims of

²⁵⁵ *Mutua et al. v. FCO* (2011), Approved Judgement, § 13.

such wrongdoing. However, the entity potentially responsible for those wrongdoings – the Colonial Government of Kenya – no longer existed. More specifically, the defence argued, (1) that the Colonial Government and Administration in Kenya was “separate and distinct“ from the UK Government and (2) that “it was only the former that could conceivably have been held liable for the torts at the time when they were committed”.²⁵⁶ For the lawyers of the FCO, there was no significant institutional link between London and Nairobi, and therefore no continuity of legal personhood or moral responsibility between the London-based Colonial Office of the 1950s and the Foreign and Commonwealth Office of the new millennium. By exploiting geographical distance first, and temporal distance later the defence thus argued that London had no shared moral responsibility with either the local Colonial administration in Kenya during the Mau Mau rebellion, or with its successor, the Government of Kenya, after the Independence Act of 1963. National self-determination for Kenya, included accepting the momentous task of cleaning up the debris and disorder created by somebody else.²⁵⁷

This was the same UK Government whose members, in 1959, had called the Overseas Civil Service “a Service of which the nation has reason to be proud”; whose MPs paid “tribute to my right hon. Friend the Colonial Secretary and to the Governor [who] are to be congratulated on the humane way in which they have handled this problem [the supposed problem of Kenyan independence fighters]”; the imperial system in which John Peel MP was applauded in the House of Commons for saying: “ [...] we who sit in the air-conditioned ease of

²⁵⁶ *Mutua et al. v. FCO* (2011), Approved Judgement, § 11.

²⁵⁷ See W. Benjamin, *Theses on the Philosophy of History* (1940), <https://folk.uib.no/hils/TBLR-B/Benjamin-History.pdf>, accessed 15/01/19.

this Chamber might remember occasionally the discomfort, danger and difficulties experienced by many dedicated members of the Colonial Service. While weakness must not be condoned, let us not forget how much we owe to the loyalty, courage and perseverance of people overseas, and how much the future of the Commonwealth still depends upon the continued demonstration of those qualities.”²⁵⁸ Given the wealth of historical evidence produced by the claimants to show that the UK Government – a temporally continuous institution - was considerably more involved in colonial activities in Kenya than it liked to admit in 2011, the judge rejected the defence.

In the appeal hearing of 2012, time played an even bigger role. Abandoning all attempts at arguing in terms of historical substance, the UK Government chose a procedural argument to defend itself against the historical damages claim. The Amended Defence of 2012 makes extensive use of the Limitation Act 1980 to argue that the Mau Mau veterans have simply exceeded the “special time limits in respect of wrongs causing personal injuries or death”, which are usually three years.²⁵⁹ The defending lawyer, Mr Mansfield QC, even does the maths for the audience: “The first allegations in respect of which the claims are brought begin with the arrest of the Third Claimant, Mr Nyingi, in December 1952. They end with the release of the Fifth Claimant, Mrs Ngondi (now deceased) in mid-1959. It seems to be common ground, therefore, that the primary limitation periods in respect of the claims by the Second to Fifth Claimants respectively ended in September 1960 (Mr Nzili), 3 March 1962 (Mr Nyingi) and on dates in 1963

²⁵⁸ All three statements from the HC Holo Camp debate, 27 July 1959 c. 195 ff., <https://api.parliament.uk/historic-hansard/commons/1959/jul/27/hola-camp-kenya-report>. ²⁵⁹ <https://www.legislation.gov.uk/ukpga/1980/58>, § 11.

(which are unclear) (Mrs Mara and the late Mrs Ngondi). The period of delay is, therefore, from between 1960/1963 to the issue of these proceedings on 23 June 2009, a period of approximately 50 years in duration. The events to be investigated at any trial would extend back to 1952 at least, a period of 60 years or more by the likely date of trial.”²⁶⁰ Without making any explicit judgement as to the invalidity of the claimants’ case, the government defence illustrates its power by meticulously quantifying the temporal delay. The summation of all the years in which the government was not threatened in its authority by a personal damages claim from the colonial period strengthens that very authority. The state’s authority seemingly grows with every uncontested minute. Some of these uncontested minutes were, of course, purposefully created by the government: in addition to the ordinary statutes of limitation in Britain, it was part of the “transfer of power” in East Africa that the newly independent Government of Kenya proscribed all collective gathering or activities of (former) members of the Mau Mau movement until 2003 – 40 years from the Act of Independence. That temporally defined restriction on the right of assembly certainly played its part in preventing Mau Mau veterans from mounting any collective action against either the Kenyan or the British state. The former colonial power gave itself a time of peace.²⁶¹ In this reading, every year that passes strengthens the (alleged) perpetrator and weakens the case of the victim. And yet, when brutalities of the colonial system can finally be contested in court, the government’s lawyer, Mr Mansfield QC, submits “that the period from independence in 1963 to 2003 was significant in giving rise to the *significant forensic*

²⁶⁰ *Mutua et al. v. FCO* (2012), Approved Judgement, § 11.

²⁶¹ Of course, there are practical reasons for prescription, above all the limited resources (staff, space, time) of the legal system. It is true that many valid, and perhaps more urgent cases, could never be heard if the judiciary assessed every single case that is brought before a court. This is also mentioned by some opponents of historical redress, as discussed in chapter 1.

prejudice which, he submits, the defendant now faces *and for which it is in no way responsible.*”²⁶² Was it really “in no way responsible” for the delay?

The UK government is not even attempting to answer this question (I will return to it below). Instead, the FCO lawyer’s main strategy of defence in this second trial is to talk as little as possible about the circumstances surrounding the alleged torts of 1956-59, and instead focus on the time between those torts and the present trial. The simplest, most natural argument is that “all relevant witnesses who would have been able to give evidence as to matters of ‘high policy’ from the civilian or military side are now dead.”²⁶³ The most important word here is “relevant”. Who counts as a “relevant witness”? The government points out that they include “the three Secretaries of State for the Colonies (Lyttleton, Lennox- Boyd and Macleod), the three Commanders in Chief (Erskine, Lathbury and Tapp), the Governor for the bulk of the emergency period (Baring), the principal Ministers and Civil Servants of the Colonial Administration and the principal Civil Servants in the Colonial Office.”²⁶⁴ It is remarkable that for the British administration “all relevant witnesses“ are the ones who designed and implemented abusive counter-insurgency operations to defend the Empire. Relevant are those willing – even in the face of the most damning evidence of administrative abuse of power for human rights violations – “to demonstrate more than one side to the story sought to be advanced on behalf of the claimants”. More than one side to the story, the history of direct orders of torture, could only be given by “witnesses from the highest echelons of government and the military who could explain the background to what had

²⁶² *Mutua et al. v. FCO* (2012), Approved Judgement, § 34. Emphasis added.

²⁶³ *Mutua et al. v. FCO* (2012), Approved Judgement, § 35.

²⁶⁴ *Mutua et al. v. FCO* (2012), Approved Judgement, § 61.

been written at the time.”²⁶⁵ Since that process is not possible in 2012, the government resisted the claimants’ desire for a full trial.

The fact that some of their victims – Mr Mutua, Mr Nzili etc. – are still alive and standing before them at the Royal Courts of Justice, ready to give testimony, does not even seem worthy of a comment.²⁶⁶ When the claimants point out that they have not only identified live witnesses in Kenya and the UK, but also gathered extensive documentary evidence of the period – sometimes penned by the “relevant witnesses” mentioned above – the government’s defendant stays firm: “No, a fair trial is not possible”, says the FCO, even as it acknowledges the existence of some documents and some witnesses, but the system of which the claimants complain has to be established from the bottom to the very top of government in the United Kingdom. That, it is argued, is no longer possible, nor therefore is a fair trial possible.²⁶⁷

Against this discourse of the inevitability of natural death and the ever increasing historical force of British institutions, the claimants invoke the power of the individual. Their best route to a full trial is to ask the Court, represented by Justice McCombe, to exercise its discretion under section 33 of the Limitation Act 1980 (“Discretionary exclusion of time limit for actions in respect of personal injuries or death”²⁶⁸) to permit the claims to proceed despite the usual statutes of limitations.

Let me underline that this is a state using its own legal system to protect itself and its historical ideology. The authority and standing of the British Civil

²⁶⁵ *Mutua et al. v. FCO* (2012), Approved Judgement, § 59.

²⁶⁶ M. Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford, OUP, 2007).

²⁶⁷ *Mutua et al. v. FCO* (2012), Approved Judgement, §34

²⁶⁸ Limitation Act (1980), s. 33, via <https://www.legislation.gov.uk/ukpga/1980/58>, accessed 10/01/21.

Service²⁶⁹ – including what was known as the Overseas Civil Service (OCS) – is at risk, if the government loses this argument. If the procedural objection to a full trial fails, a full investigation might reveal more than necessary. But revealing only exactly as much as necessary is a political imperative. This brings us to Achille Mbembe’s paradox of the archive: “On the one hand, there is no state without archives - without *its* archives. On the other hand, the very existence of the archive constitutes a constant threat to the state.” The main reason for this lies in the relationship between time and the state: “More than on its ability to recall, the power of the state rests on its ability to consume time, that is, to abolish the archive and anaesthetise the past. The act that creates the state is an act of ‘chronophagy’. It is a radical act because consuming the past makes it possible to be free from all debt. [...] This violence is defined in contrast to the very essence of the archive since the denial of the archive is equivalent to, *stricto sensu*, a denial of debt.”²⁷⁰ The archive is the state’s best defense – until the repository of information becomes a threat to existence.

In the Mau Mau scandal, we can observe the tipping point. In the first trial the state remained strong, arguing that it had fulfilled its historical mission by leading Kenya to full independence after a structured programme of political and economic modernisation. In the second hearing, however, the contradictions of British colonialism became apparent through the unexpected release of incriminating information which more than compensated for the absence of live witnesses. Was Britain a civiliser or torturer? What was its historical identity?

²⁶⁹ HC Hola Camp debate, 27 July 1959, c. 195 ff., <https://api.parliament.uk/historic-hansard/commons/1959/jul/27/hola-camp-kenya-report>, accessed 10/01/21.

²⁷⁰ A. Mbembe, “The Power of the Archive and its Limits” in Hamilton et al. (eds.), *Refiguring the Archive* (Dordrecht, Kluwer, 2002), 22-25. See also: J. Derrida, *Mal d’Archive : Une impression freudienne* (Paris, Galilée, 1995)

What was its mission? In the trial and the loud public debate which it generated, we observe the seesaw of British imperialism tipping back and forth between good and evil.

As a guide through this process of revelation, we can take the three most important questions posed by Justice McCombe.: (1) What (if anything) and when did the Colonial Office know? (2) Was there a system, some “common design” between the Colonial Office in London, the Colonial Government in Kenya and the local security forces? (3) Did the people in charge act promptly once they found out or was there a cover-up?

The first question can be answered without difficulty, since it was already answered by the parliamentarians in 1959.²⁷¹ Despite the wide geographic distance between London and the Governor’s office in Nairobi, let alone the detention camps on the Mwea plain, the imperial administration in London was very well informed. Just weeks before the Hola Camp Massacre, for instance, in which 11 detainees were murdered by British officers and one of the claimants of the 2011 trials suffered severe injuries, Mr. Sullivan, the Commander of the Camp wrote to his superiors in London: “As you know, I have for some time been anxious about a situation which has been developing at Hola where in the old closed camp there were 208 detainees [...] amongst whom were 66 able-bodied men who refused to work and from whom trouble has always been considered likely.” The Commissioner of Prisons went on to say: “The plans Mr. Cowan worked out could be undertaken by us but it would mean *the use of a certain degree of force in which operation someone might get hurt or even killed.* [...] I think this

²⁷¹ HC Hola Camp debate, 27 July 1959 ff., <https://api.parliament.uk/historic-hansard/commons/1959/jul/27/hola-camp-kenya-report>.

situation should be brought to the notice of the Security Council and a direction given on what policy should be adopted with these recalcitrant or unmanageable detainees.”²⁷² The officer on the ground foresaw that in the execution of the Cowan Plan “someone might get hurt or killed.” Mr Campbell, the Assistant Commissioner for Prisons, Mr Lewis, the Commissioner for Prisons and Mr Cusack, the Minister of Defence, all received the note but delayed their response in the hope that the tense situation in the colony would ease with time. Did they have a duty to act on that piece of information? What would have been the appropriate time to intervene?

The second question – about common design – flows from the first and was answered by the court. The remaining historical evidence shows a clear command structure from Whitehall to the Mwea plain. Dozens of military personnel and civil servants were engaged in almost daily communication to make the machine of Empire work. The judge in 2012 was convinced that “a persistent pattern of abusive treatment of detainees throughout the period of the emergency [was] brought to the knowledge of all levels of the Colonial and UK governments”.²⁷³ Although the British defence tried to perpetuate the myth of the soldier fighting on the frontier of civilisation without much instruction from the metropole, this is simply not an accurate representation of the sophisticated imperial system maintained by the OCS.

The most important question, however, is the third one: how much did the responsible actors know and what did they do to disseminate or suppress that

²⁷² Sullivans’ *Situation Report* of 14 February 1959. Telegram reprinted in *Conroy Report*, Presented at the HC Hola Camp debate, 27 July 1959 c. 210, <https://api.parliament.uk/historic-hansard/commons/1959/jul/27/hola-camp-kenya-report>, accessed 15/02/21.

²⁷³ *Mutua et al. v. FCO* (2012), Approved Judgement, §93.

knowledge? Here, the eerily meticulous FCO records give a clear indication of orchestrated whitewashing and cover-ups. A month after the Hola Camp Massacre in March, the Governor and Colonial Secretary exchanged the following telegrams on 29 April 1959 and 1 May 1959:

The Governor wrote to the Colonial Secretary on 29 April 1959: “As you know, I have in the past advised you to resist demands for a judicial enquiry. For this there have been, among others, two main reasons [...] (i) The prisons and rehabilitation staff in detainee camps have a hard and thankless task. A large scale and highly publicised enquiry would undoubtedly have a bad effect on their morale [...] (ii) The main aim of policy, both for political and humane reasons should, I have always felt, be to get the detainees down the ‘pipe-line’ and on to release after an adequate check [...] An enquiry of the nature already mentioned is bound to hold up this process [...] The Hola affair is by far the worst which has occurred in Kenya and troubles me greatly. [...] In these circumstances I think we should look carefully at our policy and actions for the future [...] Our main objective must therefore be to maintain Hola and its appendages.” The Colonial Secretary replied to the Governor, “We had also been turning over how best to meet the inevitable demand for an ‘impartial judicial enquiry’ with a bias to raking up muck which will break upon us as soon as the Hola verdict is announced [...] We agree with you that the aim of any enquiry should be to set Hola on its feet. An enquiry would not spotlight the tragedies but would overhaul the future administration of detention camps (but not prisons) where those who are virtually irreconcilable will stay with a view to ensuring that inspection and other arrangements are now in force to prevent a repetition of past tragedies” When this inquiry was mandated and the resulting *Conroy Report* was distributed to MPs, it emerged that key figures in the chain of command –

above all Mr Lewis and Mr Cusack were sent into early retirement. Without loss of their government pension, these men could stay in the comfort of their homes while parliamentarians could not force them to return for a disciplinary procedure. In addition to the disappearing documents, the British leadership practiced institutional memory management by physically removing individuals from office.

Some of these reports were already publicly accessible in 2009, when litigation began, but ultimately it was the tireless work of the historians on the claimants' team, which unveiled the extent to which the administration in 1959 had operated the same kind of history management in 1959 as they would 50 years later. Most surprisingly, it was established that the predecessors of the FCO had purposefully and systematically altered the evidence of British wrongdoing by removing up to 20,000 documents from 37 colonies at the time of decolonisation. These classified documents, which did not appear in the National Archives' official catalogue until 2012, were kept at an underground facility in Hanslope Park, which also houses MI5 and MI6 files. In Kenya's particular case, "some 294 boxes, containing about 1500 files, were returned to the UK. [...] They included Executive Council and War Council records, minutes of the Council of Ministers, Intelligence Committee minutes and minutes of the Complaints Coordinating Committee." – information that could hardly be "overlooked" as the government's defence argued at the 2012 court hearings.²⁷⁴ But the secret alternative archive at Hanslope Park was not the most

²⁷⁴ "Some of the documents considered by the historians at that stage emanated from the collection of papers (contained in some 300 boxes) at Hanslope Park *which had recently been discovered and had previously been overlooked in the defendant's initial searches* for relevant materials but in advance of formal disclosure in the action. Documents overlooked, *Mutua et al. v. FCO* (2012), Approved Judgement, §48, emphasis added.

objectionable part of the large-scale cover-up of the Ends of Empire. Some 13 boxes of additional “Top Secret” papers, containing sensitive material including intelligence reports, names of security officers and the like “became separated from the Hanslope archive at some time after they were reviewed during the 1980s and later destroyed.”¹⁶ Whitehall had planned and executed the systematic “disappearance” of potentially incriminating records from the colonial period.

When the newly independent Kenyans asked London for their administrative documents in 1967, 1974 and 1982, they were simply told that these papers were the property of Her Majesty’s Government, which would not return them. An internal note, however, revealed the following rationale: “The vast majority of the files concern the Emergency (e.g. intelligence reports and summaries, African associations, activities of Africans, unrest in districts etc. collective punishment, detainees and detention camps) [...] Many others are no doubt connected with the Mau Mau”.²⁷⁵ According to the *Cary Report*, a court-mandated investigation into the FCO’s documentation practices, these interactions with former colonies were standard political procedure. As the Empire was disintegrating after World War II, and while PM Macmillan broadcast his famous “Winds of Change” speech (1960), colonial officials worldwide were busy editing the historical record. A Colonial Office guidance telegram of 3 May 1961 on the “disposal of classified records and accountable documents” urged that successor governments should not be given papers which “might embarrass HMG or other Governments; might embarrass members of the police military forces, public servants or others e.g. police informers; might compromise sources of intelligence information; or might be used *unethically* by Ministers in the successor

²⁷⁵ FCO 31/211, Folio 4, National Archives.

Government.”²⁷⁶ This is an extraordinarily wide definition of what could be deleted from the ostensibly complete boxes that were shipped to former colonies as well as from the boxes that were sent to the officially complete National Archives in Kew. This practice is problematic for three reasons: it distorts the record of the past, restricts the possibility for political and scientific transparency in the present, and potentially limits the full exercise of civic rights in the future. Even the historians who were investigating human rights abuses on behalf of the court had not been able to “to take up the offer of full access by the time of the hearing”.²⁷⁷

Instead of a complete picture of their imperial past, most Britons nowadays are spoon-fed a national narrative of centuries-long sacrifice, civilisation and adventure in the British Empire. Those administrations which want to reap the social benefits of a coherent societal narrative without destroying their archive altogether have “sought to 'civilise' the ways in which the archive might be consumed”, writes Mbembe, “not by attempting to destroy its material substance but through the bias of commemoration. In this framework, the ultimate objective of commemoration is less to remember than to forget.” [...] This commemoration in classrooms, national museums, and the national media allows for a simple absorption of the myth of a liberal Empire. “Learning to forget is all the easier if, on the one hand, whatever is to be forgotten passes into folklore [...], and if, on the other hand, it becomes part of the universe of

²⁷⁶ *Cary Report On Release of the Colonial Administration Files* (2011)

<https://www.gov.uk/government/publications/cary-report-on-release-of-the-colonial-administration-files>, accessed 20/08/20.

²⁷⁷ “The defendant contends that it has fully and properly complied with its standard disclosure obligation under the Civil Procedure Rules and, to its credit, it has offered full access to the Hanslope material for the claimants’ advisers, including the historians. However, it had not been possible for the advisers to take up this opportunity of full access by the time of the hearing.” *Mutua et al. v. FCO* (2012), Approved Judgement, § 48.

commodification. Thus we pass from its consumption by a Leviathan seeking to liberate itself of all debt (that is, to acquire the right to exercise absolute violence) to its consumption by the masses - mass consumption.”²⁷⁸ The historic violence of the British state is now transformed by a national heritage industry which Historic England points out “is an important economic sector producing a total GVA of £31 billion and providing over 464,000 jobs.”²⁷⁹

The modern state is pure knowledge administration.²⁸⁰ What we have seen in this section is how a single lawsuit led to the mobilisation of the state’s full power with the ultimate aim of preserving the status quo. When there is a leak in the archive - an invitation to question the continuous national narrative of progress through conquest - the state will mobilise all its resources, to make sure it is managed correctly – with denials followed by apologetic investigation, followed by the absolute silence of a government check. “Kew’s playing field is weighted toward the historical winners rather than the losers, who together are overdetermined through the archival process of selection and exclusion of documents that was a hallmark of British colonial retreat and the subsequent maintenance of Britain’s records”, Elkins summarises. It should not come as a surprise, then, that “these same archives lend themselves to the re-creation of a carefully tended past.”²⁸¹ We now turn to some key figures in the British

²⁷⁸ Mbembe, *The Power of the Archive and its Limits*.

²⁷⁹ Historic England, *Heritage and the Economy 2019*, via <https://historicengland.org.uk/content/heritage-counts/pub/2019/heritage-and-the-economy-2019/>, accessed 05/02/2021.

²⁸⁰ A. Mbembe, *The Power of the Archive and its Limits*.

²⁸¹ Elkins, *Looking beyond Mau Mau*, 853.

intellectual tradition to understand what that “carefully tended past” might look like.

II. TRADITION

Official history in Britain has always underplayed moments of rupture to emphasise continuity. Even though there is some natural, politically inflected diversity of schools, British historiography is remarkably unified when it comes to the general structure, shape and direction of the nation’s history: British history is linear, forward-looking and remarkably stable. The Glorious Revolution of 1688, for instance, was ‘glorious’ because it was a restoration rather than a radical overhaul.²⁸² Even large-scale upheaval has been subsumed under the shared belief in incremental progress. What kind of progress does Britain enjoy or create? Where does it come from and where will it lead? How can an abrupt ending of Britain’s historical trajectory be avoided? These were pressing questions in Victorian England – when both Empire-building and historiography were at their peak – and remain important today.

In examining some of the most influential responses to these questions about British progress, I hope to unveil some important themes that characterise the British approach to history and history-making today. I propose three themes linked to three authors, and the three orthodox parts of time. The past weighs heavily on the other elements of time through the Burkean theme of inheritance; the present is a site of continuous and active improvement, as in Macaulay’s

²⁸² J.G.A. Pocock (ed.), *Three British Revolutions: 1641, 1688, 1776* (Princeton, PUP, 1980).

vision of civilisation as redemption; the future is usually anticipated with joy, because ever since Seeley, the belief in quasi-mechanical progress has remained strong. These themes connect the arguments of legal practitioners in the previous section with the words and actions of politicians in the next. They do not only provide the established vocabulary to talk about British history; they also frame the intellectual context in which contemporary battles for historical redress must be fought.

A. Past: The weight of inheritance

The most famous conservative characterisation of British history is undoubtedly Edmund Burke's: "You will observe that from Magna Charta to the Declaration of Right it has been the uniform policy of our constitution to claim and assert our liberties as an entailed inheritance that we have from our forefathers and are to transmit to our posterity—as an estate specially belonging to the people of this kingdom [...]. By this means our constitution preserves its unity in the great diversity of its parts. We have an inheritable crown, an inheritable peerage, and a House of Commons and a people inheriting privileges, franchises, and liberties from a long line of ancestors."²⁸³ Burke, who prefers the real achievements of Britain's long history to any abstract (continental) conception of rights, is a firm believer in British continuity. He sees the arc of history as a unified whole –

²⁸³ E. Burke, *Reflections on the Revolution in France* (London, Penguin, 1982 [1790]).

“People who never look back to their ancestors will not look forward to posterity” – and asks us to trust in the organic evolution of British civilisation. Against the abstractions of the French revolutionaries, or the new social classes clamouring for more rights in late Georgian and early Victorian Britain, he urges his audience to believe in organicism. It is not violent upheaval, but “the idea of inheritance” which provides “a sure principle of conservation and a sure principle of transmission, without at all excluding a principle of improvement”.

How can improvement be obtained without any conscious intervention in the course of history? The old, unwritten English Constitution “follows the pattern of nature” whereby “we receive, hold, and transmit (i) our government and our privileges in the same way as we enjoy and transmit (ii) our property and (iii) our lives. The (i) institutions of policy, the (ii) goods of fortune, and (iii) the gifts of providence are handed down to us, and from us, in the same course and order.” Even if that doesn’t sound nearly as promising as the great reform movements of revolutionary France, Haiti or the insurrectionaries of 1848, Burke insists that his, the traditional English method will ultimately get us further. Why? Because his theory of change is firmly grounded in the past, a past which has value because it frames our reaction to the present. For the aristocratic Burke, reverence for the past feeds a healthy scepticism towards radical change. This, he contends, is what saved Britain when France went astray: “Thanks to our sullen resistance to innovation”, he writes in his *Reflections on the Revolution in France*, “thanks to the cold sluggishness of our national character, we still bear the stamp of our forefathers. We have not, as I conceive, lost the generosity and dignity of thinking of the fourteenth century; nor as yet have we subtilised ourselves into savages. We are not the converts of Rousseau; we are not the

disciples of Voltaire; Helvetius has made no progress amongst us.”²⁸⁴ Burke repeatedly expresses general disagreement with the French way of breaking with the past: “With them it is a sufficient motive to destroy an old scheme of things, because it is an old one. As to the new, they are in no sort of fear with regard to the duration of a building run up in haste; because duration is no object to those who think little or nothing has been done before their time, and who place all their hopes in discovery.”²⁸⁵ Duration, however, matters a lot in Burke’s conception of history: If any old prejudices were delivered as part of the great intergenerational scheme of inheritance, he suggests that good Englishmen not only accept, but “cherish” them, “[...] and the longer they have lasted, and the more generally they have prevailed, the more we cherish them.”²⁸⁶ Layers of time slowly grow on top of each other until they build the solid rock of British history. We are to accept that past as a whole, with all its problems and benefits, because the generations that flourish and falter, passing on their inheritance in a quasi-natural ritual of transmission, are ultimately guided by Providence.

Britain’s inheritance is not merely weighty, but special. And with faith in that exceptionalism, the British can march through history with a level of confidence that other nations lack. “When antient opinions and rules of life are taken away, the loss cannot possibly be estimated. From that moment we have no compass to govern us; nor can we know distinctly to what port we steer”²⁸⁷ – this famous statement suggests more than anything else, perhaps, that the British do have a compass and do know what port to steer to. It is divine Providence that guides this old nation, gives meaning to the weight of history and the work of the

²⁸⁴ Burke, *Reflections*, 127.

²⁸⁵ Burke, *Reflections*, 130.

²⁸⁶ Burke, *Reflections*, 129.

²⁸⁷ Burke, *Reflections*, 116

generations who preceded us. There is no radical reordering of the British system of justice, no radical overhaul of history, because the time-honoured social order is sanctioned by Providence. The correct course to contentment is to change continuously, but with as little upheaval as possible. Nothing should get lost in the chain of inheritance which has given Britain a special role in world history.

B. Present: Actively civilising Whig history

Against this conservative vision, the more energetic, teleological, Whiggish tradition shifts the emphasis from the past to the present. The historians whom Herbert Butterfield famously accused of “emphasis[ing] certain principles of progress in the past and to produce a story which is the ratification if not the glorification of the present.”²⁸⁸ – Stubbs, Trevelyan and Macaulay²⁸⁹ – chart the progression of British liberty from the English Civil War to the Great Reform Act of 1832. For them, no economic downturn and no military defeat is fatal, since British history corrects itself to ensure improvement in the long run. Macaulay, for example, confidently wrote in 1841:

“It can easily be proved that, in our own land, the national wealth has, during at least six centuries, been almost uninterruptedly increasing; [...]

²⁸⁸ H. Butterfield, *The Whig Interpretation of History* (London, 1931), preface.

²⁸⁹ T.B. Macaulay, *The History of England* (London, 1848); W. Stubbs, *The constitutional History of England*, 3 vols, 5th ed. (Oxford, 1891-98); G.M. Trevelyan, *History of England* (London, Longman, 1973 [1926]). There is, of course, a more radical vision of Whig history – represented admirably by E.P. Thompson – which stresses Peterloo rather than Waterloo, the Miners’ Battle of Orgreave rather than Thatcher’s Big Bang. “History from below” gives voice to a different cast of historical actors

to keep the establishment’s triumphant narratives in check. And still it is possible to see remnants of teleological continuity in this alternative struggle too. Even if the focus may sometimes lie on different events or different actors the British narrative is characterised by an effort to connect the dots to form a neat historical timeline.

*This progress, having continued during many ages, became at length, about the middle of the eighteenth century, portentously rapid, and has proceeded, during the nineteenth, with accelerated velocity. In consequence partly of our geographical and partly of our moral position, we have, during several generations, been exempt from evils which have elsewhere impeded the efforts and destroyed the fruits of industry. While every part of the Continent, from Moscow to Lisbon, has been the theatre of bloody and devastating wars, no hostile standard has been seen here but as a trophy. While revolutions have taken place all around us, our government has never once been subverted by violence. [...] The consequence is that a change to which the history of the old world furnishes no parallel has taken place in our country.*²⁹⁰

Three points must be highlighted here: first, the long timespan. Macaulay's long historical arc of "at least six centuries" suggests a very broad vision of history, a history that can be taken as a whole.²⁹¹ Second, that historical whole has meaning. Meaning mustn't come from external divine Providence; the coherence of the story itself can provide insights and lessons (e.g., Britain prospers precisely because there is no real revolution). The secularisation of Christian eschatology discussed in chapter 2 is clearly apparent in this political reformulation. Third, the external historical narrative meets the internal structure of time. The "progress" which Macaulay observes like a physicist in a laboratory has not just "continued during many ages", but also become "portentously rapid" and has "proceeded" through the Victorian era "with accelerated velocity." The significance of the political concept of "history" is reinforced by the scientific,

²⁹⁰ Lord Macaulay, *The History of England* (London, 1848), via <http://www.gutenberg.org/files/1468/1468-h/1468-h.htm>, accessed 01/09/20.

²⁹¹ As modernists and postmodernists suggest in the twentieth century, See chapter 7.

mechanical vocabulary of “speed”²⁹². History in the nineteenth century is seen as a scientific process, whereby careful observation and targeted intervention can edit and enhance the desired result. The pride of the present connects past achievements to future possibilities – and that trust in continuity is supported further by a belief in exceptionalism that increases as we widen our lens to capture the imperial dimension of this tradition.

C. Future: The imperial machine

Sir John Seeley’s influential lectures on the *Expansion of England* are famous for their teleological drive, summarised in the proposition, encountered in chapter 3, that “the story [of the British Empire] ought to end with a moral”. And yet, I would like to focus on something different: the picture which Seeley draws of his opponents. His target are the historians and citizens who do not take the British Empire seriously enough, because they see it as an external fact rather than as a core political project. The opening of his first lecture is symptomatic: “There is something very characteristic in the indifference which we show towards this mighty phenomenon of the diffusion of our race and the expansion of our state. We seem, as it were, to have conquered and peopled half the world in a fit of absence of mind.” How could anyone conquer half the world “in a fit of absence of mind”? Or in a succession of, as Seeley repeatedly suggests, “accidents” and “facts”? “While we were doing it [imperial expansion]”, he suggests, the English weren’t thinking about it *systematically*, “nor have we even now ceased to think of ourselves as simply a race inhabiting an island off the

²⁹² D. Bell, *Reordering the World: Essays on Liberalism and Empire* (Princeton, PUP, 2005), esp. ch. 5: “Escape Velocity: Ancient History and the Empire of Time”, 119-147.

northern coast of the Continent of Europe.” Seeley, who is convinced that “the history of England lies not in England but in America and Asia”, is dismayed at such imperial reticence. And yet, the externalisation of Empire-building was a choice: “we did not allow it to affect our imaginations or in any degree to change our ways of thinking”.

This choice is highly significant. To me, it suggests that agency is underplayed in a vision of the Empire as a quasi-autonomous machine. The imperial machine requires no systematic direction from the state – it works even in spite of British sluggishness. Even Seeley, criticising others for their lack of moral commitment to the Empire, is not willing to place collective political agency at the heart of the imperial project: “So decided is the drift of our destiny towards the occupation of the New World that after we had created one Empire and lost it, a second grew up almost in our own despite.”²⁹³ It is not conscious volition but “the drift of our destiny” which decides that after the loss (again an impersonal biological term instead of something more human like “failure”) of the First British Empire in the West, a second, Eastern Empire would “grow up” (again, an organic simile) “almost in our own despite”. In contrast to the French state, which spelled out its imperial aims very systematically, the expansion of England was characterised by anti-systematicity. This has two advantages: first, it encouraged private economic and scientific ventures which reduced cost and risk for the state. Second, the proclaimed anti-systematicity of the British Empire

²⁹³ J. Seeley, *The Expansion of England* (1862), Lecture 1, via https://archive.org/stream/expansionofengla00seeluoft/expansionofengla00seeluoft_djvu.txt, accessed 20/01/19.

made it easier to manage setbacks since there was no standard against which to measure success.²⁹⁴

British imperialism was never a premeditated system, but the combined result of incremental individual actions. This conception of almost *accidental imperialism* remains useful to the British government until today. We have already seen in section I of this chapter that the FCO's defence lawyers were adamant that there was no systematic collaboration between the Colonial Office in London, the Colonial Government in Nairobi and the rural detention camps. This lack of systematicity breaks the chain of responsibility and weakens the plaintiff's charge of "common design" in the brutal suppression of the Mau Mau rebellion. We shall see in the final section III of this chapter that the Foreign Secretary William Hague also made use of this strategy in defending the compensation settlement as a temporary solution to an isolated "incident" of British imperial practice. The rejection of systematicity allows the British to protect themselves in the present while encouraging a focus on the future.

The different English historical schools have had varying impacts on the English legal system, but there are significant parallels between the incremental mode of English historiography and the traditional organicism of English Common Law. The lawyers and legislators involved in the Mau Mau affair followed in the footsteps of a deep-seated national historical imagination. This imagination is nurtured by an intellectual tradition which combines three elements: (1) A passive confidence in the stability and longevity of British institutions – with the

²⁹⁴ This is in great contrast to France and the United States, who publicly set themselves standards by which national progress was to be measured. See chapters 5 and 6.

monarchy playing a central role; (2) a self-understanding of Britain as a chosen actor in the historical present with special duties to spread its attained level of civilisation to those ‘fallen behind’ or with less experience; (3) a vivid belief that Britain is destined for open-ended progress, which – crucially - is coupled with a rejection of rationalist systematicity. What does this cultural heritage of exceptional historical continuity mean for the incorporation of uncomfortable historical truths?

III. TRUTH

Given the evidence we have seen so far, I suggest that in Britain’s malleable historical environment, uncomfortable truths which challenge the established narrative are absorbed comparatively easily. The trick is to admit that British history was never supposed to be perfectly neat or virtuous. The general direction may be progress, but some mistakes are bound to be made. An essential solution to this problem is the conception of history as a scientific learning process, where trial, error and improvement optimise and develop Britain’s institutions (as well as those nations under their ‘tutelage’). British history is bloody and fraught with setbacks. So are the French and American historical trajectories. But in great contrast to the nations which we are going to encounter in chapters 5 and 6, the British want continuity at all cost. No colonial drama – from the Bengal famine 1943 to the Windrush scandal 2018 – is big enough to rock the steady ship of British continuity. This (illusion of) continuity is achieved through quiet document management, incomplete transfers of power and late- imperial “development assistance”. All of these policy tools, accompanied, of

course, by rhetoric suggesting that the country is willing to learn from mistakes. British history is an omnivore, consuming everything under the cloak of continuity.

If we return to the Mau Mau case we shall see that the parliamentary debate in which Foreign Secretary William Hague presented and defended the extrajudicial settlement of claims, revives the three themes we have already encountered to make sense of this historical experience: a conservative veneration of British institutional heritage and values; variations on imperial risks and exceptional mistakes; a desire to look forward to a better future. The essential element leading from step 2 to step 3, from the past to the future, is the willingness to learn from mistakes.

Let us take a first look at Foreign Secretary William Hague's carefully scripted statement defending the Mau Mau Settlement in Parliament on 6 June 2013. It offers a good example of how to weave something as radical as forced historical (dis)closure into a pre-existing narrative. First, he acknowledges the facts of the case neutrally: "During the emergency period, widespread violence was committed by both sides, and most of the victims were Kenyan. Many thousands of Mau Mau members were killed, while the Mau Mau themselves were responsible for the deaths of over 2,000 people, including 200 casualties among the British regiments and police." Then comes the statement of regret, just short of an apology: "I would like to make it clear now and for the first time on behalf of Her Majesty's Government that we understand the pain and grievance felt by those who were involved in the events of the emergency in Kenya. The British Government recognises that Kenyans were subject to torture and other forms

of ill treatment at the hands of the colonial administration. The British Government sincerely regrets that these abuses took place and that they marred Kenya's progress towards independence. Torture and ill treatment are abhorrent violations of human dignity, which we unreservedly condemn." Then back to business: "We continue to deny liability on behalf of the Government and British taxpayers today for the actions of the colonial administration in respect of the claims, [...] We do not believe that claims relating to events that occurred overseas outside direct British jurisdiction more than 50 years ago can be resolved satisfactorily through the courts." Spatial and temporal distance seem to be equated with moral distance. This itself is part of a tradition of exoticisation and dehumanisation of societies on the far-flung edges of the Empire, which we encountered in chapter 3. And yet the government sees that further trials might risk more embarrassing revelations which could feed a growing public debate on the ghosts of Empire.²⁹⁵ The aim is therefore to shut down the historical crisis before it becomes too large and leaves a mark on the British story of steady progress: "I can announce today that the Government have now reached an agreement with Leigh Day, the solicitors acting on behalf of the claimants, in full and final settlement of their clients' claims. The agreement includes payment of a settlement sum in respect of 5,228 claimants, as well as a gross costs sum to the total value of £19.9 million. The Government will also support the construction of a memorial in Nairobi to the victims of torture and ill-treatment during the colonial era. The memorial will stand alongside others that are already being established in Kenya as the country continues to heal the wounds of the past. This settlement provides recognition of the suffering and injustice that took

²⁹⁵ See the success of Akala's *Natives* (London, 2019) and S. Sanghera's *Empireland* (London, 2021).

place in Kenya. The Government of Kenya, the Kenya Human Rights Commission and the Mau Mau War Veterans Association have long been in favour of a settlement, and it is my hope that the agreement now reached will receive wide support, will help draw a line under these events and will support reconciliation.”²⁹⁶ The British government wants to “draw a line” under these conflicts, and help Kenya with a one-off memorial as it “continues to heal the wounds of the past”, because the British supposedly don’t have any past that should heal. From the British perspective this settlement should close the inconvenient accounts of the past.

A discourse analysis of the parliamentary debate which followed Hague’s statement aims to show that the Foreign Secretary’s statement did indeed appease the upheaval caused by the shocking Mau Mau revelations. This illusion of continuity was achieved by strategic nods to the main tropes of British history:

A. The weight of a special inheritance

Let us begin with the British self-understanding as a long-standing beacon of justice, human rights and effective government. Both sides of the house make this clear in the following exchange between Foreign Secretary William Hague and Jeremy Corbyn (Labour):”it is important for us to recognise—as we do, across the House—that torture and inhuman and degrading treatment can never, and should never, be part of our response to any outrage, however terrible. That is because we uphold our own high standards of human rights, and also because

²⁹⁶ The Rt. Hon. William Hague, Foreign Secretary, Statement of Mau Mau Claims (Settlement), 6 June 2013, [https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims\(Settlement\)](https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims(Settlement)), accessed 15/01/21.

it is not an effective way in which to respond to any such outrages. It is very important that we express our own regret and acknowledge mistakes that were made, even though terrible acts were carried out on both sides.” Corbyn responds: “There are serious lessons to be learnt. When we deny rights and justice, when we deny democracy, when we use concentration camps, our actions reduce our ability to criticise anyone else for that fundamental denial of human rights. That lesson needs to be learnt not just from Kenya, but from other colonial wars in which equal brutality was employed by British forces.”²⁹⁷ The Foreign Secretary seems to find it important to “acknowledge express our own regret and acknowledge mistakes that were made” primarily “because we uphold our own high standards of human rights”. This is primarily a question of integrity, of coherence and credibility on the world stage. Corbyn points the finger deeper into the wound by stating that “When we deny rights and justice, when we deny democracy, when we use concentration camps, our actions reduce our ability to criticise anyone else for that fundamental denial of human rights.” The question doesn’t seem to concern human rights as such, but human rights as an essential component of the benevolent, civilised and civilising image that Britain has of itself. It is an image that is highly effective in foreign policy, if the illusion of integrity can be maintained. Falling below the most basic standards of human interaction by torturing illegally detained political prisoners, for Hague is not problematic because of any abstract violation of rights, but because “it is not an effective way” to deal with one’s colonial subjects. British values of justice, here, are not seen as a true moral standard, but as a convenient element in the foreign policy toolkit, which increases “our ability to criticise anyone else for that

²⁹⁷ The Rt. Hon. Jeremy Corbyn, HC Mau Mau Claims (Settlement), 6 June 2013, c 1696, via [https://hansard.parliament.uk/Commons/2013-06-](https://hansard.parliament.uk/Commons/2013-06-06/debates/1306064600005/MauMauClaims(Settlement))

[06/debates/1306064600005/MauMauClaims\(Settlement\)](https://hansard.parliament.uk/Commons/2013-06-06/debates/1306064600005/MauMauClaims(Settlement)), accessed 15/01/21.

fundamental denial of human rights”. Norms are invoked and instrumentalised to further political goals. Before we move on, it is important to highlight some of the qualifiers which Hague inserts to depict Kenya in the 1950s: he calls the independence movement “terrible” an “outrage” and stresses that “terrible acts were carried out on both sides”. A few lines later, he recognises the “British personnel which was called upon to serve in difficult and dangerous circumstances.” “Dangerous” because it was Africa or because the British colonial system had provoked a violent revolt of the colonised? The latter would be impossible to admit because “many members of the colonial service contributed to establishing the institutions that underpin Kenya today, and we acknowledge their contribution.”²⁹⁸ In only a few lines of parliamentary debate, we have a patriotic reference to British justice, to its “high standards” of human rights and to the admirable overseas civil servants who sacrificed themselves to share their European expertise and “establish the institutions that underpin Kenya today”. A long arc is drawn from the deep heritage of British rights to their overseas implementation by brave Britons and the resulting institutions on which modern Kenya is built.

This shared sense of purpose is reinforced by a remarkable cross-reference: In 2013, the Labour MP David Winnick refers to the other big debate on Kenya in 1959 and says: “Although I would not normally quote Enoch Powell [...] in the debate on 27 July 1959 on the murder of 11 African detainees, he said: ‘We cannot say, ‘We will have African standards in Africa, Asian standards in Asia and perhaps British standards here at home’...We cannot, we dare not, in Africa

²⁹⁸ The Rt. Hon. William Hague, Foreign Secretary, *Statement on Mau Mau Claims (Settlement)*, 6 June 2013, c 1692, via [https://hansard.parliament.uk/Commons/2013-06-](https://hansard.parliament.uk/Commons/2013-06-06/debates/1306064600005/MauMauClaims(Settlement))

[06/debates/1306064600005/MauMauClaims\(Settlement\)](https://hansard.parliament.uk/Commons/2013-06-06/debates/1306064600005/MauMauClaims(Settlement)), accessed 15/01/21.

of all places, fall below our own highest standards in the acceptance of responsibility.”²⁹⁹ This is a verbatim reference of a political opponent. The unity and continuity of the house of Commons on matters of imperial policy trumps partisanship. The internal reference to the tradition of the House suggests a certain moral continuity between politicians of different historical periods. This is the British credo of history as a continuous work in progress at its best.

B. An exceptional present

Against that continuity, the ideas of emergency and exception are used to characterise (even justify?) any behaviour that strays from the great British norms of justice. In the nocturnal emergency [!] debate on the Hola Camp Massacre in 1959 Christopher Armstrong, for example, urges his fellow parliamentarians to “keep a sense of perspective about the Hola incident”. More specifically, he says: “I would ask the House to consider carefully whether, from the point of view of the service itself, it is not fair to *compare this incident with a disaster such as an air crash or railway accident*, in which many people—often entirely innocent people—lose their lives due to a human error of judgment or a misunderstanding.”³⁰⁰ “Do you hit them on the head through an error of judgment?”,³⁰¹ the opposition shot back. And yet Armstrong is not the only one diminishing the importance of the “incident” by comparing it to “an air crash or a railway accident”. This metaphor is remarkable for three reasons: first, a locomotive is a machine inescapably

²⁹⁹ The Rt. Hon David Winnick, HC 6 June 2013, c 1698.

³⁰⁰ C. Armstrong (Con, Armagh), HC Hola Camp debate, 27 July 1959, c. 216, via <https://api.parliament.uk/historic-hansard/commons/1959/jul/27/hola-camp-kenya-report>, accessed 10/01/21.

³⁰¹ C. Pannell (Lab, Leeds West), HC Hola Camp debate, 27 July 1959, c. 204, via <https://api.parliament.uk/historic-hansard/commons/1959/jul/27/hola-camp-kenya-report>, accessed 10/01/21.

bound to the linear tracks of progress. It is going somewhere and that destination is predefined. The railway or plane cannot easily stop mid-air or turn around. Second, the mere fact that it is going somewhere is a feat of human invention and modern engineering. It is a sign of using nature (steam) to further human advancement, both in the narrow physical and in the broader civilisational sense. Third, this automatic, mechanical metaphor minimises human agency. Even if errors and “accidents” can occur, they are attributable to individual human mistakes rather than by design. Nobody would purposefully design a faulty railway system. On the contrary, as we saw in chapter 3, the rational railway timetables of the nineteenth century became symbols of the human power to conquer time and space.³⁰² This fits with the repeated rejections of systematicity or “common design” between offices in the trial on colonial torture. The fact that the British “security forces” built over a 100 detention camps and imprisoned a higher percentage of the “target population” in Kenya than in any other British colony (counterinsurgency operations were inflaming more than half of British dependencies after World War Two³⁰³) cannot have been part of a premeditated system to violate human rights.

Whenever things went wrong in Kenya, or indeed in other parts of the British Empire, the actions were labelled as “mistakes”. Crucially, mistakes cannot be continuous. They are temporally discrete deviations from the norm. An exceptionally “difficult” relationship with the subject population may require the proclamation of a “State of Emergency”, a state in which the “high standards”

³⁰² See chapter 3, section II.

³⁰³ D. French, *The British Way in Counter-Insurgency, 1945-1967* (Oxford; New York: Oxford University Press, 2012), p. 111. See also: rs, 1989); and M.Lazreg, *Torture and the Twilight of Empire: From Algiers to Baghdad* (Princeton, Princeton University Press, 2008); J. Newsinger, *British Counterinsurgency: From Palestine to Northern Ireland* (New York: (New York, Palgrave Macmillan, 2002).

of Britain's civilising mission are temporarily suspended. But even if mistakes cannot be continuous, risks can be. In extremis, imperial violence, can be rationalised as a "risk of doing business". Just like anybody boarding a train should know that there is a risk of mechanical accidents, so imperialists – and all those who hope to benefit from them – should rationally acknowledge that there is a risk of default. This extraordinary pragmatism about the reasonable risks of imperialism distinguishes Britain from other modern Empires. However objectionable on a moral level, it is this dispassionate pragmatism that also helps a future-oriented recovery after disaster.

C. Faith in the future

After the obligatory nod to Britain's inherited values and the framing of colonial injustice as temporary error, Members of Parliament on both sides of the isle, and in both parliamentary debates, stressed the importance of focusing on the future. "Although we should never forget history and, indeed, must always seek to learn from it", Hague declares, "*we should also look to the future*, strengthening a relationship that will promote the security and prosperity of both our nations. I trust that this settlement will support that process."³⁰⁴ Douglas Alexander, responds to Hague's statement with remarkable optimism: "It is right that current and future relations with Kenya are not overshadowed by the past. So, along with the Foreign Secretary, I hope that today's announcement will encourage even stronger ties between our two nations going forward, despite,

³⁰⁴ The Rt. Hon. W. Hague, Foreign Secretary, Mau Mau Claims (Settlement), 6 June 2013, col.1692, via [https://hansard.parliament.uk/Commons/2013-06-](https://hansard.parliament.uk/Commons/2013-06-06/debates/1306064600005/MauMauClaims(Settlement))

[06/debates/1306064600005/MauMauClaims\(Settlement\)](https://hansard.parliament.uk/Commons/2013-06-06/debates/1306064600005/MauMauClaims(Settlement)), accessed 15/01/21.

but not ignoring, our shared and, at times, troubled past.”³⁰⁵ What makes him think that “current and future relations with Kenya are not [or no longer] overshadowed by the past” and why is that “right”? Maybe because that shared past was “troubled” only “at times”? The eagerness to overcome the past and turn towards the future is apparent from the numerous questions which the Foreign Secretary received on this topic: “How does the Foreign Secretary intend to take the relationship with Kenya forward in the future?” asks Keith Vaz and “To what extent will this statement make it easier for our countries to co-operate, and to do so better than before, on issues of common interest?” adds Hugh Bayley. Hague, who thinks that the Mau Mau settlement “should remove one of the areas of contention between the UK and Kenya”, hopes that his public acknowledgement of brutal “mistakes” in Kenya “will smooth the path for our effective co-operation in the future”. This, of course, is also in Britain’s interest, since the “shadow of the past” is not limited to High Court litigation. There is a real price tag for postcolonial discord.

Kenya is still part of the global economic and military system which remains the strongest legacy of the British Empire.” “Today, we are bound together by commercial, security and personal links that benefit both our countries”, says Hague, “we are working together closely to build a more stable region [for example, combatting piracy in the Horn of Africa – just like the British Army has done since the 1880s]”. Bilateral trade between the UK and Kenya amounts to £1 billion each year, and around 200,000 Britons visit Kenya annually.”³⁰⁶

³⁰⁵ The Rt. Hon. D. Alexander, Mau Mau Claims (Settlement), 6 June 2013, c 1695, via [https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims\(Settlement\)](https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims(Settlement)), accessed 15/01/21.

³⁰⁶ The Rt. Hon. William Hague, Foreign Secretary, Mau Mau Claims (Settlement), 6 June 2013, col. 1693, via [https://hansard.parliament.uk/Commons/2013-06-](https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims(Settlement))

[https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims\(Settlement\)](https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims(Settlement)), accessed 15/01/21.

These figures could be seen as a quantitative illustration of the progress achieved so far, but also as a reminder of what is at stake if participants do not take up the continuous offer of improvement which is a key tenet of the British timescape. Looking towards the future is an essential part of the British attitude towards processing the past. This is why Hague closes with the hope that “over the coming years and decades” Anglo-Kenyan relations will “develop [...] in a true sense of partnership, with the new generations *moving on fully* from everything that happened in the colonial era.”³⁰⁷ The phrasing suggest that “new generations” can almost be equated with “moving on fully”. Even if this is difficult, and perhaps undesirable for Kenyans who want to commemorate their struggle for independence, it suggests a remarkably strong British faith in the power of the passage of time. As time passes, witnesses die, documents disappear and demands for redress weaken – but for those who are optimistic enough, this could be an opportunity for progress.

In the end, the three strands of the British historical tradition are tied together by Hague: “The ability to recognise error in the past but to build the strongest possible foundation for co-operation and friendship in the future are both hallmarks of our democracy. There is a strong tradition in this House going all the way back to the eighteenth century. In the 1780s, Edmund Burke called Governments to account for colonial misdeeds in India and sought to bring Warren Hastings to trial. There is a long and proud history of this House asserting itself on the errors [!] that have been made during our imperial rule of

³⁰⁷ The Rt. Hon. William Hague, Foreign Secretary, Mau Mau Claims (Settlement), 6 June 2013, col. 1699, via [https://hansard.parliament.uk/Commons/2013-06-](https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims(Settlement))

[06/debates/13060646000005/MauMauClaims\(Settlement\)](https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims(Settlement)), accessed 15/01/21.

other countries, and our recognition of these errors today is part of that long tradition.”³⁰⁸ The obligatory conservative nod to Burke (another internal reference within the House of Commons!), the “ability to recognise error in the past” and the commitment “to build the strongest possible foundation for co-operation and friendship in the future” are all portrayed as natural. If other countries had committed enough colonial “errors” to design a whole system to “process” them, that standardisation of history management would be worrying – not least because it would suggest that colonial crime was part and parcel of the imperial project. In Britain, however, this uncanny expertise in history management seems to be a source of reassurance.

Conclusion

The examination of the Mau Mau trial for historical redress (section I), the intellectual tradition of teleological history (section II) and the political fallout of the Mau Mau memory in the House of Commons (section III) all illustrate, each in their own way, three features of the British national timescape which I have found to be particularly salient and resistant throughout the ages: a monarchical belief in stability, an imperialistic appetite for risk-taking that might end in emergencies which have to be managed efficiently, and an almost unfettered Whiggish belief in England as a force for good in the world.

Not only the building of empires, but even the act of learning from their failures seems to be woven into the national historical tradition. Having a great number

³⁰⁸ The Rt. Hon. William Hague, Foreign Secretary, Statement of Mau Mau Claims (Settlement), 6 June 2013, col. 1698, [https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims\(Settlement\)](https://hansard.parliament.uk/Commons/2013-06-06/debates/13060646000005/MauMauClaims(Settlement)).

of colonies creates a great number of potential conflicts when the sun sets on the Empire. The British, however, have managed to craft a national timescape that seals fractures (at least superficially) and manages to incorporate almost any historical revelation into the national story of a calm people continuously progressing in world history.

5. FRANCE : REDEMPTION THROUGH RUPTURE

“S’il reste que c’est le temps qui amène progressivement l’oubli, l’oubli n’est pas sans altérer profondément la notion du temps. Il y a des erreurs optiques dans le temps comme il y en a dans l’espace.”³⁰⁹

The French colonial Empire, in contrast to the British, was never embraced wholeheartedly either by the incessantly changing governments or by the largely indifferent population. This is not only because, as Tocqueville observed, “land is the natural theatre of her power and glory [...] the sea has never excited, nor will it ever excite, those national sympathies and that sort of filial respect that navigating or commercial peoples have for it”.³¹⁰ Militarily inferior to the British from the Battle of Plassey (1757) to the Fashoda Incident (1898), the French focused their attention on a few key territories – Algeria, Lebanon, Indochina – and operated a wholly different style of colonial administration, which came at a much higher human and financial cost. The usual pattern was to replicate the French politico-legal tradition overseas, which meant reaching deep into the everyday lives of subjects through centralisation, standardisation and heavy law enforcement. Although Tocqueville was at pains to point out that “when it comes to the daily activities of colonists and colonial agents, “the Metropole neither can nor should control them” because “all the great colonising nations

³⁰⁹ M. Proust, *A la recherche du temps perdu* vol. 6 : Albertine disparue (Paris, Gallimard, Folio,1992 [1919]), 174.

³¹⁰ A. de Tocqueville, « *Quelques idées sur les causes qui s’opposent à ce que les Français aient de bonnes colonies* » (1833), transl. in : J. Pitts, *Tocqueville : Writings on Empire and Slavery* (Baltimore, JHUP,2003), 2f.

exercise this minimal control”,³¹¹ the French colonial model was about much more than the extraction of natural resources or labour. In addition to the geographic position and its administrative tradition, France was constrained by a powerful ideological force: the inescapable heritage of the 1789 Revolution. Given that it called itself “the home of Human Rights”, how could it disregard them in its international politics? Although the French Revolution could be construed as a motor of overseas expansion by subsuming brutal warfare under the banner of the “civilising mission”, the proselytising zeal of its missionaries was always haunted by the revolutionary paradox: can the promise of liberty justify terror? This chapter is about the “dirty war” in Algeria and the distinctively French response to the issues of historical injustice it raised.

Algeria was the French equivalent of British India, colonised early (1830) and tied to the mother country through a series of economic and cultural connections which far surpassed the links with other conquered territories. Algeria was not only a part of the French imagination – see Nerval and Flaubert³¹² – but officially incorporated into the territory of metropolitan France.³¹³ The brutal battles which the French army fought from 1954 to 1962 to keep Algeria, however, were hardly mentioned during the post-war boom period which the French like to call “les Trente glorieuses” (roughly 1945-1975). Preoccupied with economic and artistic progress, French textbooks lauded high-speed trains (TGV) and Nouvelle Vague cinema as expressions of the exceptional French genius, but remained silent on the history of the French

³¹¹ Tocqueville, *Quelques idées sur les causes qui s'opposent à ce que les Français aient de bonnes colonies*. 3.

³¹² E. Said. *Orientalism*. 25th anniversary edition (London, Penguin, 2007 [1978], ch. 4.

³¹³ This led to the tongue-in-cheek maxim “The Mediterranean is France’s greatest river.”

colonial Empire.³¹⁴ French decolonisation had not gone as planned. Unlike the British Commonwealth, which prolonged some of the British Crown's colonial ties, the former French colonies generally showed little interest in cooperation,³¹⁵ let alone gratitude – as the statesmen of the nineteenth century had expected.

In contrast to Britain, there was no public glorification of “the good old days of the Empire”, but there was no sufficiently critical analysis either. The “pieds-noirs”, French settlers in Algeria, made their first appearance in textbooks in 1971; but it was not until 1983, under President François Mitterrand, that public teaching about “les événements en Algérie” became obligatory. Bloody battles like the Massacre of Philippeville (173 killed, 2000 wounded) or the Battle of Algiers (3000 independence fighters “disappeared”) were simply labelled as “events” or “operations”, morally and legally neutral expressions which formed the cornerstone of the official culture of forgetting until 1999, when the term “Guerre d’Algérie” was approved by the Senate.³¹⁶ The real turning point in French memory politics, however, was 2002, when General Aussaresses – a key figure of the Algerian War - was taken to court by the League of Human Rights. This chapter will take the Aussaresses trial as a starting point for an analysis of French relationship with historical time. As in the previous chapter, there are three sections – trial, tradition, truth – in which I first look at the colonial General's trial; then investigate the intellectual conflicts that have divided France since its revolutionary watershed and finally, ask what this means for the emergence of uncomfortable historical truths which seem all but impossible to integrate into the nation's official narrative.

³¹⁴ <https://www.franceculture.fr/histoire/non-la-guerre-dalgerie-nest-pas-cachee-aux-eleves-mais-le-sort-des-harkis-oui>, accessed 20/09/20.

³¹⁵ Françafrique is an important exception.

³¹⁶ https://www.senat.fr/rap/198-499/198-499_mono.html#toc6, accessed 20/09/20.

I. TRIAL

It was only at the turn of the millennium that the French were confronted with their imperial past in the form of 82-year-old General Aussaresses, who had fought in the French counterinsurgency operations in Indochina (1946-1954) and Algeria (1954-1962). He wrote in his memoirs *Services spéciaux: Algérie 1955- 1957* (2000) that French colonialism was necessary to extend the civilising mission of the French Revolution worldwide.³¹⁷ Shocked by the publication of this autobiography, which described and defended all governmental techniques of French colonialism – including a widespread system of torture in French counterinsurgency operations - the French public watched in disbelief as the retired General said on national TV that he had killed 24 FLN fighters with his own hands during the Battle of Algiers.³¹⁸ Even after his raped prisoner, Louise Ighilahriz, and his superior, General Massu, revealed the scale of inhumane practices during the Algerian War,³¹⁹ Aussaresses insisted that he had done nothing but his patriotic duty. The French were vexed by new questions: could it be that the lauded “peacekeeping operations” in North Africa were the most cruel part of French colonialism? Had the French flag in fact spread suffering instead of progress? If so, how had it come to this? *How did France, the*

³¹⁷ https://www.lemonde.fr/afrique/article/2012/03/17/le-monde-relance-le-debat-sur-la-torture-en-Algérie_1669340_3212.html;
https://www.lemonde.fr/archives/article/2000/11/23/torture-en-Algérie-l-aveu-des-generaux_3625269_1819218.html, accessed 22/09/20.

³¹⁸ https://www.youtube.com/watch?v=UGrO0b4xDLU&ab_channel=InaHistoire, accessed 22/09/20.

³¹⁹ E.g., summary executions, electroshocks and family separations.
https://www.lemonde.fr/le-monde-2/article/2008/05/22/jacques-massu-le-general-repent_1048161_1004868.html, accessed 22/09/20.

first and purest of modern nations, forget its own revolutionary struggle against oppression and inhumanity?

The legal battle to suppress the circulation of Aussaresses' book reveals the enormous tensions that became apparent in France at this moment of national historical reckoning. Only a few months after publication, the *Ligue des Droits de l'Homme* (LDH), a powerful civil society organisation with the historic mission "to save the soul of France from great peril"³²⁰, took Aussaresses and his editors to court. There were public hearings in 2002, 2003 and 2004, before the dispute was resolved by the European Court of Human Rights (ECHR) in 2009. Before we enter the courtroom, however, we should take a closer look at the book which became the object of such fierce litigation.

Released on 3 May 2001 by *Éditions Plon*, this tell-all book on the twilight of French colonialism was initially limited to 25,000 copies, but went through multiple reprints, accompanied by extracts published in *Le Monde* which animated an unprecedented public debate. According to the publishers' blurb, Aussaresses – described as one of the French Republic's "best secret agents", "a living legend" and "a novelistic hero" – dared to tell an "often difficult truth [...] without any false shame or complacency" regarding the torture and summary executions in Algeria. It was "an essential testimony with momentous revelations".³²¹

³²⁰ Ligue des Droits de l'Homme, "Le Premier Manifeste de la LDH", via <https://www.ldh-france.org/1898-LE-PREMIER-MANIFESTE-DE-LA/>, accessed 22/02/21

³²¹ « De 1955 à 1957, la République française a dépêché en Algérie l'un de ses meilleurs agents secrets, Paul Aussaresses. Même si son nom est encore inconnu du grand public, dans les cercles très fermés des services spéciaux, cet ancien parachutiste de la France Libre, baroudeur de la guerre d'Indochine et fondateur du 11e choc (le bras armé du Sdece), était déjà considéré comme une légende vivante. Mais, sans l'avoir aucunement cherché, ce héros de roman se

These revelations described in graphic detail the frontline of French colonialism. Shortly after his arrival in Algeria, for example, Aussaresses summarised the situation: “One thing is clear : our mission imposes on us results which often require torture and summary executions.”³²² A few pages later he opened the torturer’s mind to the reader: “I felt neither hatred nor pity. It was an emergency and I had in my hands a man directly implicated in a terrorist act: any means were acceptable to make him speak. It was the circumstances which demanded it.”³²³ The “circumstances” which allegedly justified systematic detention and torture were those of a colony in which a privileged European elite (about 1 million) was endangered by a native struggle for independence. The FLN was kidnapping and killing civilians and – interestingly - invoked the language of the French Revolution to justify its “terror”.³²⁴ The FLN was turning against the coloniser on his own terms.

There were so many of those “terrorists”, wrote Aussaresses that it was “impossible to return them to the ordinary judicial circuit.”³²⁵ Consequently, he continued, “summary executions were an integral part of the inevitable tasks of maintaining order. [Against the FLN terror the French military] had established a counter-terror.”³²⁶ This exceptionally tense situation suspended any moral

trouva entraîné dans une mission qui allait s’avérer la plus difficile de toutes. L’objectif ? Lutter par tous les moyens contre la rébellion, et le terrorisme érigé en système par le FLN. [...] Sans fausse honte et sans complaisance, Paul Aussaresses ose dire une vérité souvent difficile, parle de la torture et des exécutions sommaires. Un témoignage essentiel, des révélations capitales. »³²² « (...) Une chose est claire : notre mission nous impose des résultats qui passent souvent par la torture et les exécutions sommaires. », Aussaresses, *Services Spéciaux*, 35.

³²³ « Il y avait urgence et j’avais sous la main un homme directement impliqué dans un acte terroriste : tous les moyens étaient bons pour le faire parler. C’étaient les circonstances qui voulaient ça. », Aussaresses, *Services Spéciaux*, 45.

³²⁴ See T.S. Johnson, *The French Revolution in the French-Algerian War (1954-1962): Historical analogy and the limits of French historical reason*. doct. diss. (New York, 2016)

³²⁵ « Il était impossible de les remettre dans le circuit judiciaire. Ils étaient trop nombreux et les rouages de la machine judiciaire se seraient grippés. », Aussaresses, *Services Spéciaux*, 153.

³²⁶ « Par conséquent, les exécutions sommaires faisaient partie intégrante des tâches inévitables de maintien de l’ordre. C’est pour ça que les militaires avaient été appelés. On avait instauré la contre-terreur, mais officieusement, bien sûr. » Aussaresses, *Services Spéciaux*, 155

limits: “It did not take me long to convince myself that these exceptional circumstances explained and justified their methods. [...] Torture became legitimate when urgency imposed itself.”³²⁷ Aussaresses did find these methods “surprising”, and yet he used the state of exception to torture “with disgust, certainly, but without remorse”.³²⁸

This publication led to a fierce legal dispute which on the surface concerned Aussaresses and his publishers’ freedom to express views that the General’s detractors considered an ignoble incitement to brutality. On a deeper level, however, the battle pitted those who thought that the book exposed necessary truths about the French past against those who saw the undermining of France’s historical narrative as a potential threat to the country’s internal cohesion and security.

Importantly, and in stark contrast to the British Mau Mau trial, the Algerian side was never consulted. Whereas the British conversation about colonialism was initiated by an external impulse – an international lawsuit against the British administration – France’s reckoning with colonialism was a peculiarly internal affair. A French publisher released the eyewitness account of a French soldier and French civil society organisations responded with a lawsuit. Although some French media outlets interviewed Algerian survivors of the war, no court called upon them as witnesses. This is revealing in itself. In a debate which ultimately

³²⁷ « Je ne tardai pas du reste à me convaincre que ces circonstances (N.B. : des circonstances exceptionnelles) expliquaient et justifiaient leurs méthodes. Car pour surprenante qu’elle fût, l’utilisation de cette forme de violence, inacceptable en des temps ordinaires, pouvait devenir inévitable dans une situation qui dépassait les bornes (...) La torture devenait légitime quand l’urgence s’imposait. » Aussaresses, *Services Spéciaux*, 30.

³²⁸ « Une petite minorité d’entre eux (N.B. : des soldats) l’a pratiquée, avec dégoût certes, mais sans regret », Aussaresses, *Services Spéciaux*, 32.

turned out to be about the role and standing of France in World History, France was its own judge. The legal battle extended over four rounds of litigation and only the last, taking place at the ECHR, offered an external opinion. Despite being slightly different from the British debate in terms of participants, I believe that this French debate about colonialism reveals important features of the French approach to historical time.

In the first of four trial rounds (2002), the plaintiffs were the *Ligue des Droits de l'Homme* (LDH), the *Mouvement contre le racisme et pour l'amitié des peuples* (MRAP) and the Christian advocacy group against detention and torture (ATAC). Their charges were twofold : first, Aussaresses' book was a distasteful and dangerous “incitement to torture” which should be banned from circulation; second, Aussaresses and his publishers, Olivier Orban and Xavier de Bartillat of Éditions Plon, were guilty of destabilising public order by releasing – and glorifying – testimonials which ran counter to French republican values enshrined in the 1789 *Declaration of the Rights of Man and Citizen* and all subsequent French constitutions. The legal basis for these charges was the Law on Press Freedom of 29 July 1881, which proscribed the incitement to war crimes and crimes against humanity, as well as “those who directly provoke crimes or offenses which undermine the fundamental interests of the nation”.³²⁹ The same law also

³²⁹ *Loi du 29 juillet 1881 relative à la liberté de la presse*. Chapitre V, Article 24 : « Seront punis de cinq ans d'emprisonnement et de 45 000 euros d'amende ceux qui, par l'un des moyens énoncés à l'article précédent, auront directement provoqué, dans le cas où cette provocation n'aurait pas été suivie d'effet, à commettre l'une des infractions suivantes : [...] 2° [...] Ceux qui, par les mêmes moyens, auront directement provoqué à l'un des crimes et délits portant atteinte aux intérêts fondamentaux de la nation prévus par le titre Ier du livre IV du code pénal, seront punis des mêmes peines.

Seront punis de la même peine ceux qui, par l'un des moyens énoncés en l'article 23, auront fait l'apologie des crimes visés au premier alinéa, des crimes de guerre, des crimes contre l'humanité ou des crimes et délits de collaboration avec l'ennemi. Seront punis des peines prévues par l'alinéa 1er ceux qui, par les mêmes moyens, auront provoqué directement aux actes de terrorisme prévus par le titre II du livre IV du code pénal, ou qui en auront fait l'apologie. [...] », via

<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000877119/2008-12-11/> , accessed 23/02/21.

suggested complicity and shared liability between the original author and his publisher.”³³⁰ This fits into a Republican tradition which defines and restricts the boundaries of acceptable public discourse. Aussaresses, Orban and Bartillat were thus collectively accused of encouraging crimes against humanity, via a publication which might “undermine the fundamental interests of the French nation.” This big claim had to be couched in the language of “press freedom” and “freedom of expression”, since the continental legal framework is less malleable than the Common Law system of torts. Nonetheless, I suggest that this is a clear case of public debate about historical injustice and its effects on the Western expectation of progress.

This is visible in the evolution of the dispute: initially, the LDH focused on the first, comparatively narrow, accusation: incitement to crimes against humanity via print publications. Over time, however, the charge of undermining “the fundamental interests of the French nation” became dominant. The highly publicised trial turned into public discussion on France’s fundamental interests and identity – above all, the French Republic’s promise to deliver progress for everyone. Publishing revelations about the French state’s actions in Algeria, where the system had clearly failed to deliver progress, can be contrary to the interests of the nation. At its core, Aussaresses’ story suggests that the French Republic is capable of the same violence it claims to have transcended in the

³³⁰ *Loi du 29 juillet 1881 relative à la liberté de la presse*, Article 23 : « Seront punis comme complices d'une action qualifiée crime ou délit ceux qui, soit par des discours, cris ou menaces proférés dans des lieux ou réunions publics, soit par des écrits, imprimés, dessins, gravures, peintures, emblèmes, images ou tout autre support de l'écrit, de la parole ou de l'image vendus ou distribués, mis en vente ou exposés dans des lieux ou réunions publics, soit par des placards ou des affiches exposés au regard du public, soit par tout moyen de communication au public par voie électronique, auront directement provoqué l'auteur ou les auteurs à commettre ladite action, si la provocation a été suivie d'effet. », via

<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000877119/2008-12-11/> , accessed 23/02/21.

1789 Declaration. The public front that united against the publishers labelled itself as republican and patriotic.

The publishers, too, described their work as public service, in the interest of the French nation. Why? First, they were merely exercising their freedom of expression under the 1881 Law on Press Freedom. Second, the publication of this book was not merely legal; it was a long-overdue testimony which – according to the publishers – was “necessary for our public debate” on the French past. The defendants’ interpretation of the “fundamental interests of the French nation” was very different from that of the plaintiffs.³³¹ On 25 January 2002, the court decided in favour of the plaintiffs. The General was fined 7,500 €; his two publishers paid 15,000 € each.

When the defendants appealed in 2003, the main question remained whether the book encouraged torture – but the stakes were raised by a deeper discussion of the limits of state power. The petitioning publishers argument had two parts: (1) that neither they nor the author of their book could be accused of war crimes, or even incitement to war crimes, since the very notion of war crimes did not exist in French national law, and (2) that the 1881 Law on Press Freedom guaranteed them a full right of expression, which included a right to reveal previously unheard testimony on the nation’s colonial wars. The absence of the notion of a war crime in French domestic law is in itself highly significant, since it suggests that in this uniform republic - “*une et indivisible*” - internal strife could never escalate to the level of war crimes.

³³¹ Founding Manifesto of the LDH, via <https://www.ldh-france.org/1898-LE-PREMIER-MANIFESTE-DE-LA/>, accessed 22/02/21.

Nonetheless, the LDH argued in response (1) that any reference to war crimes automatically refers to international public law; (2) that Aussaresses did not describe his acts neutrally, but repeatedly characterised torture as “necessary” and “legitimate”; (3) that the publishers, despite the disclaimer on potentially uncomfortable scenes, did not make a sufficient effort to distance themselves from the material they published. The court decided in favour of the LDH and against the publishers.

This autobiography was guilty of excusing crimes, which suggested a total absence of the French sense of justice in the colonies. The summary judgment reads: “The Court of Appeal considered that Mr Aussaresses justified, insistently, throughout the entire book, torture and summary executions, and made an effort to convince the reader that these proceedings were ‘legitimate’ and ‘inevitable’, thereby encouraging the reader to judge favourably those acts which objectively constitute war crimes.” Contrary to the idea that the French revolutionary ideal of universal justice is attainable by anyone in the world regardless of geographical location, and contrary to the Second French Republic’s promise, which annexed the Algerian coastal regions of Oran, Algiers and Constantine as fully-fledged *départements* on an equal footing with other units of the French Republic (1848), Aussaresses’ account suggested a total failure of justice in Algeria. “Justice is organised according to a model which corresponds to the metropole in peacetime. Here, however, we are in Algeria and a war is starting [...] The judicial system is not made for such exceptional circumstances.”³³² The contrasting pairs “Metropole-Algeria” and “peacetime-exceptional

³³² Aussaresses, *Services Spéciaux*, 35 and 154.

circumstances” suggested double standards that run counter to the French promise of universal justice. The fact that after 114 years of French colonisation “barbarism” had not merely survived, but was now afflicting the highest echelons of French law enforcement, gave reason to believe that there were real flaws in the French system which seemed to have delivered anything but progress.

The judge feared that this description of the past did not bode well for the present: “Paul Aussaresses detaches himself even less from his past when he suggests that such practices could once again be employed in situations of severe crisis; [he even says in his preface] ‘I often ask myself what would happen in a French town where every single day indiscriminate attacks would butcher innocent people. Would we not hear, after a few weeks, the highest authorities of the state demand that we put an end to this by any and all means?’”³³³ Aussaresses suggested that even nowadays the French republic could turn into a state of violence, instability and injustice. Aussaresses draws connections between past and present. and admits to the fragility of the French system of governance. It is this admission of imperfection (imperfection of a political system that presents itself as the perfect culmination of the Enlightenment) which lies at the heart of the dispute about the book. Little else could explain the reaction of the state apparatus which pronounced: “Considering that the historical interest of this piece of work is unquestionable, liberty of expression must be exercised within the limits of the law, and notably with respect to

³³³ (...) Paul Aussaresses se démarque d’autant moins de son passé qu’il laisse entendre que de telles pratiques pourraient à nouveau être employées dans des situations de crise grave ; qu’il dit en effet dans son avant-propos (page 10) : « (...) je me demande souvent ce qui se passerait aujourd’hui dans une ville française où, chaque jour, des attentats aveugles faucheraient des innocents. N’entendrait-on pas, au bout de quelques semaines, les plus hautes autorités de l’Etat exiger qu’on y mette fin par tous les moyens ? » ; Aussaresses, *Services Spéciaux*, 10., as cited in *Orban et autres c. LDH* (2003).

existing interdictions.”³³⁴ In the Aussaresses trial, the patriotic constraints which the law imposes on freedom of expression became more important than the freedom itself.

A second appeal to the French Court of Cassation (2004) had a similar result, but the court arrived at it through a different argument. The high court ruling, delivered on 7 December 2004, followed a rather expansive interpretation of the key term “incitement to crimes” and sided with the LDH: “The judges highlight that in multiple passages of his book, Paul Aussaresses mixes his account with comments on the usage of torture or on the practice of summary executions, which [...] tend to legitimate these practices and incite the reader to judge them favourably”. They also criticised the publishers directly for “not distancing themselves from the text at all and even glorifying its author by presenting him as a ‘living legend’”. The judges ruled “that by presenting acts that constitute war crimes as susceptible to justification, the writings must be considered to have legitimised and incited those crimes; [...] that the guilty intention can be deduced from the voluntary nature of the incriminated actions; [...] that, in fact, anyone who lays claim to the right to information, the foundation of the freedom of expression, is not bound to mix his exposition of reported facts with comments which justify universally renounced acts that are contrary to human dignity, nor is he bound to glorify those acts.”³³⁵

³³⁴ « Considérant que si l'intérêt historique de l'ouvrage est incontestable, la liberté d'expression doit s'exercer dans le cadre des limites fixées par la loi. » *LDH et autres c. Aussaresses* (2003).

³³⁵ Arrêt de la Cour de cassation, 7 décembre 2004, « Attendu que, pour reconnaître à certains des propos incriminés un caractère apologétique, l'arrêt énonce que l'apologie au sens de l'article 24, alinéa 3, de la loi sur la presse n'est pas synonyme d'éloge ni de provocation directe ; que les juges relèvent que, dans plusieurs passages de son livre, Paul Aussaresses assortit son récit de commentaires sur l'emploi de la torture ou la pratique des exécutions sommaires qui, au nom de l'efficacité, tendent à les légitimer et incitent à porter sur elles un jugement favorable; qu'ils retiennent encore que l'éditeur ne prend aucune distance vis-à-vis du texte et glorifie même son auteur en le présentant comme une 'légende vivante'; [...] Qu'en présentant comme susceptibles d'être justifiés des actes constitutifs de crimes de guerre, l'écrivain doit être

These three French trials all arrived at the same conclusion because they follow a similar pattern of reasoning. That pattern is predefined by the codified laws of the French Republic, which specify in great detail what freedom of expression may and may not entail. Apart from the actual legal frameworks in place, however, there is the more fluid question of the power of the French state to limit public discourse with the ostensible aim to preserve public order. This question became dominant in the final appeal at the European Court of Human Rights (2009).

Unconstrained by the legal conventions of the French Republic, the petitioners in *Orban et autres c. France* (2009) - now facing the whole French Republic rather than three civil society associations - asked for a reassessment of freedom of expression in France, while the French Republic clung to its powers. The trial turned into an interpretive exercise on how much press freedom a scarred society can bear.

The publishers' appeal rested on five sub-arguments, of which the last is the most significant for our purposes. Namely, the publishers argued they had “no intention” of violence or even incitement to human rights violations; instead, they pleaded that their wish had been to “inform, [...] reveal and contribute” to the illumination of “the black hole of French memory.” That kind of illumination was, according to them, “necessary in a democratic society”, in

considéré comme en ayant fait l'apologie ; Que l'intention coupable se déduit du caractère volontaire des agissements incriminés ; [...] Qu'en effet, celui qui se réclame du droit à l'information, fondement de la liberté d'expression, n'est pas tenu d'assortir l'exposé des faits qu'il rapporte de commentaires propres à justifier des actes contraires à la dignité humaine universellement réprouvés, ni de glorifier l'auteur de tels actes », via https://www.doctrine.fr/d/CEDH/HEJUD/CHAMBER/2009/CEDH001-90662?q=orban%20et%20autres%20c.%20france%202009&position=4&query_key=985fc2da69c0f196ee01307bd67309ea&original_query_key=985fc2da69c0f196ee01307bd67309ea&sourcePage=Search , accessed 23/02/21.

which the state *should* allow for the (re)surfacing of uncomfortable colonial truths.

What did the French Republic argue in response? That French courts were simply exercising their reasonable margin of manoeuvre, covering the three criteria that any intervention into fundamental rights must fulfil: foreseeability, necessity and proportionality. France made two key arguments in response to the complaint. It justified its intervention against the plaintiffs' freedom of expression as necessary, given that it was based on "an imperative social need" for tranquillity since "the memory of the conflict remains alive and painful"³³⁶. In this fragile context of unexamined, untreated collective wounds the state's intervention was proportional to the gravity of the publishers' act; since the publication of the book constituted "a disturbance to public order". The state is thus perfectly clear about its intentions: in the context of a nation that has not yet to come to grips with its colonial past, the publication of a text which sheds light on that obscure past constitutes a dangerous disturbance of public order – a superficial order which the state has sought to maintain by carefully controlling school curricula,³³⁷ public broadcasting and access to archives.³³⁸

³³⁶ ECHR, *Orban et autres c. France* (2009): "Le Gouvernement estime que la condamnation des requérants répondait à un 'besoin social impérieux, notamment parce que 'la mémoire des tortures pratiquées par certains militaires français reste encore très vive et douloureuse chez ceux qui les ont subies'" via <https://www.doctrine.fr/d/CEDH/HEJUD/CHAMBER/2009/CEDH001-90662>, accessed 01/03/21.

³³⁷ Law No. 2005-158 of 23 February 2005 regarding recognition of the Nation and national contribution in favour of the French repatriates, via <https://www.legifrance.gouv.fr/loda/id/JORFTEXT00000444898/?isSuggest=true>, accessed 23/07/21.

³³⁸ See an attempt by the Macron government in 2020 to restrict access to government documents from 1940 to 1970 classified as "secret" when these had previously been freely accessible to researchers: <https://histoirecoloniale.net/Des-historiens-protestent-contre-la-fermeture-de-l-acces-aux-archives.html>; <https://histoirecoloniale.net/Pour-l-acces-aux-archives-Un-nouveau-recours-depose-au-Conseil-d-Etat.html>, accessed 24/02/21.

The European court – which had granted France an exceptional margin of intervention on previous occasions³³⁹ – was sceptical of this defence. “In publishing this work, the petitioners have simply delivered this testimony to the public” (*Jersild v. Denmark* 1994). But the publication of a testimony of this kind – which, according to the publisher “contributes to [...] the understanding of the terrible complexity of an epoch which continues to inhabit our present” – undoubtedly inscribed itself in a “debate of general interest, a debate of singular importance for the collective memory”.³⁴⁰

The court highlighted one of the theses advanced by the French General, namely that “such practices did not merely occur; they took place with the support of the French authorities”. In the eyes of the court, “the fact that the author does not place any critical distance between himself and these atrocious practices and that, instead of expressing any regrets suggests that he acted within the framework of the mission which had been assigned to him, by simply accomplishing his duty, *constitutes an essential element of the testimony*. Under these circumstances, the reproach which the court of appeals of Paris made to the petitioners in their capacity as publishers, of not having distanced themselves from the account of General Aussaresses, could not be justified.”³⁴¹

Nonetheless, the court did not underestimate the declaration of the government according to which “the memory of torture practiced by certain members of the French military remains very much alive and painful among those who suffered

³³⁹ See *S.A.S. c. France* (2014) for the recognised “exception française”.

³⁴⁰ ECHR, *Orban et autres c. France* (2009), § 49.

³⁴¹ « [...] les requérants ont simplement livré ce témoignage au public (*Jersild précité*). Or la publication d’un témoignage de ce type – lequel, d’après l’éditeur, « contribue (...) à faire comprendre la terrible complexité d’une époque qui continue d’habiter notre présent » – s’inscrivait indubitablement dans un débat d’intérêt général d’une singulière importance pour la mémoire collective [...] Dans ces circonstances, le reproche fait par la cour d’appel de Paris aux requérants, en leur qualité d’éditeur, de ne pas avoir pris de distance par rapport au récit du général Aussaresses, ne saurait être justifié ». Emphasis added.

from it [torture]”. The court nevertheless found that, “as in the abovementioned cases of *Lehideux* and *Isomi* [...], the events recounted in the contentious publication occurred more than 40 years before its publication. [...] While it is certain that the contentious proposal in question has not lost its capacity to renew suffering, it is not appropriate to judge it with the degree of severity which could have been justified ten or twenty years earlier; *we must on the contrary address the issue with the distance of [the passage of] time*. As the court already emphasised in the *Lehideux* and *Isomi* judgments, this [exercise] is part of the effort that every country is called upon to make in order to debate its own history openly and calmly. [...] This is required by the pluralism, tolerance and openness without which there is no ‘democratic society.’”³⁴²

The ECHR therefore concluded that the publishers had indeed suffered a violation of their human right to freedom of expression. This infringement had been upheld by three French courts and defended until the last minute by the Republic. The fact that the system was so rigidly biased against the re-emergence of the colonial past might seem surprising at first. The *Aussaresses* trial itself was, of course, highly unusual. But in the end, it was the confluence of conflict and context which explains its oversized impact. Two factors rendered the trial

³⁴² « Pour autant, la Cour ne mésestime pas la déclaration du Gouvernement selon laquelle « la mémoire des tortures pratiquées par certains militaires français reste encore très vive et douloureuse chez ceux qui les ont subies ». Elle constate toutefois que, comme dans l'affaire *Lehideux et Isorni* précitée (§ 55 in fine), les événements évoqués dans l'ouvrage litigieux se sont produits plus de quarante ans avant sa publication. [...] s'il est certain que les propos litigieux dont il est question en l'espèce n'ont pas pour autant perdu leur capacité à raviver des souffrances, il n'est pas approprié de les juger avec le degré de sévérité qui pouvait se justifier dix ou vingt ans auparavant ; il faut au contraire les aborder avec le recul du temps. [...] cela participe des efforts que tout pays est appelé à fournir pour débattre ouvertement et sereinement de sa propre histoire. [...] ainsi le veulent le pluralisme, la tolérance et l'esprit d'ouverture sans lesquels il n'est pas de « société démocratique » (ibidem). Sanctionner un éditeur pour avoir aidé à la diffusion du témoignage d'un tiers sur des événements s'inscrivant dans l'histoire d'un pays entraverait gravement la contribution aux discussions de problèmes d'intérêt général et ne saurait se concevoir sans raisons particulièrement sérieuses» EHCR, *Orban et autres c. France* (2009).

particularly shocking to the French: First, the general French population did not know very much about the Algerian War. This was a direct consequence of limited archives, limited publications and limited educational curricula. The restricted release of information about the past has – for centuries – been the French state’s preferred tool to safeguard the present. Second, what the French saw from the book, the trial and the many public interventions of professional historians, suggested that Revolution and Terror might not be separable after all. The two problems are linked. Had the public known how brutal the colonial independence struggles of the French Empire had been, they might have lost faith in the foundational idea of modern France: that the Revolution of 1789 changed the world forever, and for the better. This innocent idea is examined in the next section.

II. TRADITION

The moment in which an oppressed people liberated itself by reconfiguring the entire national power structure in 1789 remains the cornerstone of the French historical imagination. Tocqueville’s sense of a watershed is highly characteristic: “In 1789 the French made the greatest effort which any people has ever embarked upon in order to, as it were, *cut their destiny in half*, and to separate by an abyss that which they had been until then, from whom they wanted to be henceforth.” The objective was to separate themselves from their past. “With this objective in mind”, Tocqueville continues, “they took all kinds of precautionary measures to *avoid bringing anything from the past into their new condition*. They imposed on themselves all kinds of constraints to fashion themselves

differently from their fathers; they did not forget anything to render themselves unrecognisable.” Nostalgic Tocqueville wants to cross that artificial “abyss” to “penetrate the core of this ancien regime, so close to us in terms of years passed, but so far because the Revolution hides it from us.”³⁴³ The fact that the revolution is able to “hide” the newly named “Ancien” regime suggests the success of the people who “cut their destiny in half” in order to replace “who they were” with “who they wanted to be”.³⁴⁴ It was the Enlightenment vision of history as a malleable process (see Chapter 2³⁴⁵) that allowed for the conceptual possibility of shaping one’s own national history by becoming the person or people one wishes to be.³⁴⁶ The rupture of the Revolution has defined French political discourse since then. Section A looks first at the French Revolution as a historical watershed that haunts political discourse on all sides; then at the relationship between revolution and colonialism. Section B shows how colonialism could be construed as a natural extension of the universal enlightenment proclaimed by the Revolution, before section C examines the serious tensions inherent in the post-revolutionary conception of France’s civilising mission.

³⁴³ : « Les Français ont fait en 1789 le plus grand effort auquel se soit jamais livré aucun peuple, afin de couper pour ainsi dire en deux leur destinée, et de séparer par un abîme ce qu'ils avaient été jusque-là de ce qu'ils voulaient être désormais. Dans ce but, ils ont pris toutes sortes de précautions pour ne rien emporter du passé dans leur condition nouvelle; ils se sont imposé toutes sortes de contraintes pour se façonner autrement que leurs pères; ils n'ont rien oublié enfin pour se rendre méconnaissables. [...] J'ai entrepris de pénétrer jusqu'au cœur de cet ancien régime, si près de nous par le nombre des années, mais que la Révolution nous cache. »

A. Tocqueville, *De la démocratie en Amérique* (Paris, 1840) Part II, ch. 8, via <https://www.institutcoppet.org/wp-content/uploads/2012/01/De-la-d%C3%A9mocratie-en-Am%C3%A9rique.pdf>, accessed 01/06/19.

³⁴⁴ A. Tocqueville, *L'Ancien Régime et la Révolution* (Paris, Gallimard, 1967 [1856]), preface.

³⁴⁵ See chapter 2, section III.

³⁴⁶ E. Cassirer, *Philosophy of the Enlightenment* (Princeton, PUP, 2009), esp. ch. 5: “The conquest of the historical world”.

A. The revolutionary watershed

The French Revolution became a cornerstone of French identity long before it was over. Historians, politicians and public figures on the right (from Tocqueville to Chirac) criticise that rupture, while the left (from Sieyès to Marcel Gauchet) elevates it to explain France's role as a pioneer in world history. On the right, the French Revolution has long been presented as a Jacobin conspiracy, with the Terror already starting on 14 July 1789 and carried through the ages by the so-called Rights of Man. These supposedly serve as little more than an excuse for violence - from the French Commune of 1871 all the way to the Soviet Gulags.³⁴⁷ On the left, by contrast, revolutionary memories are revived whenever political change is on the horizon. In the works of Antoine Casanova, Claude Mazauric, Michel Vovelle and hopeful politicians from Adolphe Thiers to Victor Hugo, the Revolution is a permanent call to action against fascism, imperialism and exploitation.³⁴⁸ The higher cause of liberation from bourgeois domination justifies the excesses of the Terror. This reading of French history as permanent revolution was particularly powerful in 1830, 1848, 1871 and 1968; it continues to be upheld by radical democrats like Etienne Balibar, who maintain that "It is the perpetual potential of popular revolution that makes progress possible."³⁴⁹

³⁴⁷ See R. Gildea, *The Past in French History* (New Haven, YUP, 1994), ch. 1: "Revolution".³⁴⁸ A. Casanova & C. Mazauric, *Vive la Révolution, 1789-1989* (Paris, Messidor, 1989); M. Vovelle, *La Révolution française. Images et récits, 1789-1799* (Paris, Messidor, 1986).

³⁴⁹ E. Balibar, "Marxism and the Idea of Revolution: the Messianic Moment in Marx", in: Trüper, Chakrabarty & Subrahmanyam (eds.), *Historical Teleologies in the Modern World*.

Between these two poles, there is a third camp, François Furet and Mona Ozouf's revisionism.³⁵⁰ The basic idea is that the endless disputes over the true nature of the Revolution are now over because France has progressed and joined post-ideological nations. The trick here is to satisfy both camps by splitting the Revolution into the Good Revolution of 1789 and the Bad Revolution of 1793. Even a cursory glance at Furet's supposedly neutral chapter on the Revolution in Pierre Nora's epochal *Lieux de Mémoire*, however, reveals that the Revolution – both good and bad - continues to mesmerise the French imagination: “If the Revolution is at the origin of the political civilisation in which we still live, 200 years after she appeared on the stage of History, it is primarily because she wanted it”, Furet writes. “Through the voices of her principal actors, and the act of a people, she [the Revolution] thought of herself as a foundational event, uniquely memorable: the regeneration of humanity through the liberty of the individual, finally conquered from the secular forces of oppression. Before her [the Revolution], the past is but an ‘Ancien Régime’, a lapidary expression which deletes from national memory all that which preceded her, feudalism and monarchy. It is thus she [the Revolution] which *comes to occupy the whole space of history as the necessary instrument of her redemption*. She is now the only one to be commemorated, celebrated, fêted – as if to conjure up indefinitely that which she abolished.”³⁵¹ The Revolution, which acquires consciousness and “thinks

³⁵⁰ F. Furet, *Penser la Révolution française* (Paris, 1978) ; F. Furet & M. Ozouf (eds.) *Dictionnaire critique de la Révolution française* (Paris, Flammarion, 1988).

³⁵¹ : « « Si la Révolution française est à l'origine de la civilisation politique ou nous vivons encore, deux cent ans après qu'elle est parue sur la scène de l'histoire, c'est d'abord, qu'elle l'a voulu. A travers la voix de ses principaux acteurs, et le geste d'un peuple, elle s'est pensée elle-même comme un événement fondateur, mémorable par excellence : régénération de l'humanité par la liberté de l'individu enfin conquise sur les puissances séculaires de l'oppression. Avant elle, le passé n'est qu'un « Ancien Régime », définition lapidaire qui efface de la mémoire nationale tout ce qui l'a précédée, féodalité et monarchie ensemble. C'est donc elle qui vient occuper tout l'espace de l'histoire comme l'instrument nécessaire de son rachat. Il n'y a plus qu'elle à remémorer, à fêter, à célébrer, comme pour conjurer sans cesse le retour de ce qu'elle

itself as a foundational event” to “regenerate humanity”, has acquired a historical personhood of its own. Note that the Revolution has become the grammatical subject of the sentences, suggesting self-awareness and reflection by the reflexive verbs “to constitute oneself”, “to think oneself”, and, of course, by the all-powerful phrase “because she wanted it”. After having designated everything that preceded her as an “Old regime”, she starts a new era in which she “occupies the whole space of history”. The French conception of past, present and future is coloured by an extraordinary event that seems to stand above history.

In contrast to the English Revolution, which ultimately strengthened the monarch, and the American Revolution, which was anti-monarchical but still deeply religious, the French Revolution is the first pure revolution, not reliant on any transcendent support. Or is it? Furet’s next paragraph suggests that the Revolution becomes its own religion: “With the French Revolution, the sacred has not merely been separated from the political; there is a transfer of functions from one to the other. The Church had entrusted her hand to the monarchy, and now she pays the price. But more profoundly and beyond the fate of institutions, the *Revolution delivers the actions of Man from all subordination and gives him full sovereignty over the final ends of history*: that is how the revolutionary involvement in politics enters the domain of the religious, by substituting its terrestrial offer for that of God. [...] It is this philosophical radicalism which is the most profound characteristic of the Revolution, the distinctive feature when compared with the English and American revolutions.”³⁵² Can this autonomous revolution have a will of its own?

a aboli. » F. Furet, « L’Ancien Régime et la Révolution », in : P. Nora (ed.), *Les lieux de mémoire*. Vol. II : La Nation (1997), 2302ff.

³⁵² « Avec la Révolution française, le religieux n’est pas seulement séparé du politique ; il s’opère un transfert de fonction de l’un à l’autre. L’Église avait mis sa main dans celle de la

Tocqueville most probably doubted it, but he still applied the “tabula rasa” principles of the Revolution to justify French colonialism in North Africa: Writing his *First Letter on Algeria* (1837), where he had seen “les Arabes de la Bible et des Patriarches”,³⁵³ he recommended the French shock therapy of “burning all written documents, administrative registers, original files or others which could have perpetuated the traces of what was done before us.” Wherever French imperialism goes, the past is abolished. The clean slate of the revolutionaries is then mixed with progressive developmentalism: “The conquest initiated a new era, and fearful of mixing the past and the present in an irrational manner, we even destroyed a great number of streets in Algiers, in order to rebuild them according to our method, and we gave French names to all those to whose subsistence we consented.”³⁵⁴ The desire to rebuild the world “according to our own method” went so far as to include a semiotic reorganisation of space and language. The colonisers copied the chronology of the revolutionaries and “initiated a new era” in which “a powerful and civilised people like ours exercises through its intellectual superiority alone an almost

monarchie, et elle en paie le prix. Mais plus profondément au-delà de ce qui arrive aux institutions, la Révolution délivre l'action des hommes de toute subordination et lui donne souveraineté entière sur les fins dernières de l'histoire : l'investissement politique révolutionnaire envahit par là le domaine du religieux, en substituant son offre terrestre à celle de Dieu. Inversement, la tradition catholique constitue le môle de la contre-révolution. C'est cette radicalité philosophique qui est le caractère le plus profond de la Révolution française, son trait distinctif par rapport aux révolutions anglaise et américaine. » Furet, *Révolution*, 2303.³⁵³ A. de Tocqueville, *Première lettre sur l'Algérie*, via http://classiques.uqac.ca/classiques/De_tocqueville_alexis/de_la_colonie_algerie/lettre_1_sur_algerie/lettre_1_sur_algerie.html, accessed 25/08/20.

³⁵⁴ : « [L'État décida de] brûler tous les documents écrits, registres administratifs, pièces authentiques ou autres, qui auraient pu perpétuer la trace de ce qui s'était fait avant nous. La conquête fut une nouvelle ère, et de peur de mêler d'une façon irrationnelle le passé au présent, nous détruisîmes même un grand nombre des rues d'Alger, afin de les rebâtir suivant notre méthode, et nous donnâmes des noms français à toutes celles que nous consentions à laisser subsister. » A. de Tocqueville, *Deuxième lettre sur l'Algérie*, via http://classiques.uqac.ca/classiques/De_tocqueville_alexis/de_la_colonie_algerie/lettre_sur_algerie/lettre_sur_algerie.html, accessed 26/08/20.

invincible influence upon such small barbarous groups.” The colonisers “educated” and “civilised” the “poor Arabs” by giving them a new present.³⁵⁵ They burnt all the “irrational” documents of the past, since the pre-revolutionary past was turned into a realm of irrationality by a Revolution which announced a new era of Reason.

Paul Ricœur highlights the shift from a political to a philosophical periodisation of history: “The modern epoch designates not only the present epoch, but *the epoch of the triumph of Reason*. [...] It is self-referential and self-validating [and] characterises itself as superior solely by laying claim to the present.”³⁵⁶ As discussed in chapter 1, the present has higher value than the past because the modern era equates the passage of time with improvement.³⁵⁷ “The French Revolution, mother of all ruptures” in Ricœur’s characterisation, has a unique role in the emergence of this modern, liberal vision of time, because it did not just change the future. It actually “opened a new future” in which the secularised promise of redemption could reach all men through a new socio-political order.³⁵⁸

Because the “new era” of the French could bring Enlightenment to all, it carried within it a justification for deep reform at home and expansionism abroad, which I will discuss below.

³⁵⁵ « On doit viser avant tout à ce que ces Arabes indépendants s'habituent à nous voir nous mêler de leurs affaires intérieures et se familiarisent avec nous. Car il faut bien s'imaginer qu'un peuple puissant et civilisé comme le nôtre exerce par le seul fait de la supériorité de ses lumières une influence presque invincible sur de petites peuplades à peu près barbares [...] », Tocqueville, *Deuxième lettre sur l'Algérie*.

³⁵⁶ « [...] l'époque moderne n'y désigne pas seulement l'époque présente, mais l'époque du triomphe de la raison. La périodisation est philosophique. Peut-on encore l'appeler chronologie ? En fait, la modernité est autovalorisante et autoréférentielle. Elle se caractérise elle-même comme époque supérieure en se désignant comme présente à ce titre unique. » Ricœur, *Mémoire, histoire, oubli*, 395. Emphasis added.

³⁵⁷ See ch. 1, section III.

³⁵⁸ See Ricœur on « [...] les promesses de rédemption déversées sur l'humanité à venir par la Révolution française, mère de toutes les ruptures. », *Histoire, mémoire, oubli*, 395f.

For now, we can only highlight that this promise of universal enlightenment set a high bar – perhaps too high for French international relations. Whenever things went awry, politicians were criticised for not exporting the authentic revolution. What the authentic revolution really is, remains to be resolved. And yet we can certainly say that almost any discussion of French history revolves around the triumph and trauma of the Revolution. Its inherent tensions between old and new, stability and movement make it almost impossible to think of French history as linear. The French timescape is characterised by rupture.

B. The paradox of enlightened expansionism

Is it justifiable to break fundamental human rights in a colonial operation which has the declared aim of spreading those human rights to the world? Can one civilise others with methods which (temporarily) contravene the norms of civilisation itself? The French have always been aware of the potential incompatibility between human rights and expansion. And yet there have been many different answers to the problem of revolutionary expansion. A fateful parliamentary debate on 28 July 1885, in which Prime Minister Jules Ferry made the case for French colonialism on “moral” grounds, will be our basis for illuminating this paradox.

According to Jules Ferry, “the policy of colonial expansion may be justified by three types of ideas: economic ideas, highly significant ideas about civilisation, and ideas of a political and patriotic nature.”³⁵⁹ In his speech he would like to focus

³⁵⁹ <https://www2.assemblee-nationale.fr/decouvrir-l-assemblee/histoire/grands-discours-parlementaires/jules-ferry-28-juillet-1885>, accessed 26/03/21.

on the second type, by answering “the humanitarian and civilising aspect of the question.” Let us start by listening to the first skirmishes in this debate:

Ferry: “We have to speak up more honestly: it must be said openly that the superior races do in fact have a right vis-à-vis inferior races.”

Maigne: “Oh! You dare say that in the country where the rights of Man were proclaimed!”

Guillotet: “This is the justification for slavery and the slave trade! [...]”

Ferry: “I repeat that the superior races have a right, because they also have a duty. They have the duty to civilise the inferior races.”

Fabre: “This is excessive! You end up abdicating the principles of 1789, of 1848 [...] you end up consecrating that the law of [monarchical] grace may replace the law of [republican] justice!”³⁶⁰

Here we see the open defence of racial hierarchies to support colonial expansion. We see the trick of refashioning the “right” of superior races as a “duty to civilise” supposedly inferior races. Colonialism is turned from a privilege of the powerful into a quasi-humanitarian duty which – crucially – could be compatible with the Revolution’s promise of universal enlightenment.

In a second step, the passage of Liberal Time has a role to play. “These duties [the duties of superior races]”, Ferry says, “have often been disregarded in the

³⁶⁰ <https://www2.assemblee-nationale.fr/decouvrir-l-assemblee/histoire/grands-discours-parlementaires/jules-ferry-28-juillet-1885>, accessed 26/03/21.

history of previous centuries. When the soldiers and explorers of the Spanish introduced slavery in Central America they certainly weren't accomplishing their duty as men of a superior race. But *in our days*, I maintain that the European nations deliver themselves of their superior duties of civilisation with magnanimity, grandeur and honesty."³⁶¹ In the dark, Early Modern past, conquerors did not recognise their duties, but in the modern present, illuminated by the French Revolution, the duties become clearly visible and then magnanimous nations fulfil them (in order to maintain their reputation and self-image as magnanimous). The transition to a new historical stage thus implies a transition to a new era of morality. The distancing from old-fashioned Spanish colonialism suggests that the passage of time engenders an increase in virtue, at least among the "civilised" peoples of the earth. That virtue must be shared: "Could you deny, could anyone deny that there is more justice, more material and moral order, more equity, more social virtues in North Africa since France made her conquest?", Ferry asks. "When we went to Algiers to destroy piracy and assure the liberty of commerce in the Mediterranean, did we do the work of crooks, of conquerors, of devastators?". No, the prime minister highlights civilisational advances by reference to "more material and moral order" - like Seeley before and Waldron after him. This advancement is the expression of France's unique role in the movement of History: "In the times in which we find ourselves, nations are great only through the activity that they develop; it is not through the *rayonnement* [influence, glow] of their institutions that they are great at this hour. [...] Shining our light into the world without acting, without getting into the affairs of the world, [...] living like this, for a great nation believe me,

³⁶¹ <https://www2.assemblee-nationale.fr/decouvrir-l-assemblee/histoire/grands-discours-parlementaires/jules-ferry-28-juillet-1885>, accessed 26/03/21.

amounts to abdicating, and in a shorter time than you could believe, it would be descending from the first place to the third or fourth. I cannot, I cannot, gentlemen, and nobody could, I imagine, envisage a like destiny for our country.” The fact that Ferry thinks he can envisage a destiny – any destiny at all – at this moment is testament to the profound transformation which the French Revolution effected with regards to the French (and ultimately Western) conception of time: time now became visible and foreseeable to the bare human eye (this is the secularisation of Providence, no external agency required). For Ferry and his colleagues of the *Parti Colonial*, France carries within it the power to shape History. That power, the republican colonialists suggest, should be used to emancipate less fortunate nations while also consolidating France’s position at “the first place” of History, at the forefront of progress.

Georges Clemenceau was not impressed by this usage of revolutionary heritage. For him, colonialism was not an extension, but an aberration of the achievements of 1789: “Is colonisation a duty of civilisation? [...] I don’t even want to judge the core of the thesis which has been presented here, which is nothing but a proclamation about the primacy of might over right. The history of France since the Revolution is a living protest against such unequal pretensions!”³⁶² This is the typical left critique of the misappropriation of the revolutionary imaginary to justify colonial excess. But is that classic objection from the French left enough?

³⁶² “La colonisation est-elle un devoir de civilisation? [...] Je ne veux pas juger au fond la thèse qui a été apportée ici et qui n’est pas autre chose que la proclamation de la primauté de la force sur le droit ; l’histoire de France depuis la Révolution est une vivante protestation contre cette inique prétention !”, G. Clemenceau, “La colonisation est-elle un devoir de civilisation ? », Assemblée nationale, 31 July 1885, via <https://www2.assemblee-nationale.fr/decouvrir-l-assemblee/histoire/grands-discours-parlementaires/georges-clemenceau-31-juillet-1885>, accessed 17/02/21.

C. The insufficiency of colonial critique

The leftist critique of the French civilising mission which ultimately grew into a (comparatively small) anti-colonial movement, culminated in Jean-Paul Sartre's preface to Frantz Fanon's *Wretched of the Earth*.³⁶³ Sartre writes: "Europeans, open this book and step inside. After a few steps into the night you will see some foreigners united around a fire, come closer, listen [...] a fire, which is not yours, illuminates them and warms them. You, at a respectful distance, you will feel ephemeral, transitional, nocturnal: each in turn; in this darkness from which a new dawn will rise, you are the zombies."³⁶⁴ The metaphorical pair of light and darkness returns, but this time to suggest that it is the Europeans whose turn has come to fall into the darkness of oblivion. The colonised who, by the mid-twentieth century, are warmed and illuminated by a fire which no longer emanates from Europe, are starting a revolt against the Empire of Enlightenment.

Before believing that the French have successfully identified the double standards that characterised the colonial project, however, we should remember that this deep criticism, which emerged after the Algerian War, had two important limits.

³⁶³ F. Fanon, *Les Damnés de la terre* (Paris, 1961).

³⁶⁴ « Européens, ouvrez ce livre, entrez-y. Après quelques pas dans la nuit vous verrez des étrangers réunis autour d'un feu, approchez, écoutez : [...] Les fils vous ignorent : un feu les éclaire et les réchauffe, qui n'est pas le vôtre. Vous, à distance respectueuse, vous vous sentirez furtifs, nocturnes, transis : chacun son tour ; dans ces ténèbres d'où va surgir une autre aurore, les zombies, c'est vous. » J.-P. Sartre, *Préface aux damnés de la terre* (Paris, 1961).

First, it is no secret that the most radical critiques of French colonialism did not come from within France, but from the very places France had sought to civilise. Albert Camus had experienced colonialism as a *pied-noir* in Algeria, Frantz Fanon had grown up in Martinique before moving to France, just like his compatriot Aimé Césaire; Achille Mbembe offered his *Critique of Black Reason* from Cameroon and Alain Mabanckou, who was recently invited to a prestigious lectureship at the Collège de France, writes critical novels which are firmly anchored in his Congolese experience.³⁶⁵ Most of these authors followed the French national curriculum like their metropolitan counterparts, but their geographically marginal positioning opened external perspectives in French history which are suppressed in the metropole. The force of that systematic suppression of discourses which could delegitimise the French state by questioning its philosophical foundation is highlighted by the relative temerity of the metropolitan anti-colonialists.

Second, it is essential to underline that the metropolitan anti-colonialists did not attack the core of French imperial ideology. The French left criticised only the *implementation* of the values of the Revolution, not those values themselves. If anything, it is the Catholic, monarchical right which regularly questions the principles of modern, secular republicanism. The left, however critical it has become in denouncing the effects of French colonialism, has not openly denied the singular importance of the French Revolution as a moral event. The expansion of French civilisation, then, is not evil in itself; what is regrettable are the methods employed to spread the gospel of 1789. This means that the

³⁶⁵ A. Camus, *L'étranger* (Paris, Gallimard, 1942) ; A. Césaire, *Discours sur le colonialisme* (Paris, Présence Africaine, 1962) ; A. Mbembe, *Critique de la raison nègre* (Paris, La Découverte, 2013) ; A. Mabanckou, *Les Petits-fils nègres de Vercingétorix* (Paris, Seuil. 2002).

proponents and opponents of French colonialism still meet on the common ground of venerating the Revolution that gave life to modern France. This indelible rupture which defines the French timescape severely limits criticism of the colonial project. The effects of this restricted space of historical action can be seen in the next section.

III. TRUTH

“With independence,” Todd Shepard writes, “Algeria became the first dramatic failure of French state institutions on French territory to convince people to identify themselves as French.”³⁶⁶ The Algerian War showed that the Republic is precisely not – “une et indivisible”, as all constitutions from 1791 to 1958 say. It showed that the colonial Republic had not brought liberty, equality and fraternity for all. It showed, above all perhaps, that France was not in command of “her” destiny. This is much more than a problem of public policy. In Pierre Nora’s famous phrase, Algeria was “our very own War of Secession., that is to say, a form of civil war and a moment of profound crisis for the national conscience.”³⁶⁷ Algerian Independence tore the national tissue apart, politically and psychologically, since it disproved some core assumptions about the French relationship with History. In this section I want to suggest that the re-emergence of uncomfortable historical truths is deeply problematic for French official history, since it is a history in which the national timescape is irreparably broken

³⁶⁶ T. Shepard *The Invention of Decolonization: The Algerian War and the Remaking of France* (Ithaca, Cornell University Press, (2006), 20.

³⁶⁷ « Puis vinrent les guerres coloniales et, plus grave encore, la guerre d’Algérie, notre guerre de Sécession à nous – c’est-à-dire une forme de guerre civile et de crise intense pour la conscience nationale. » ³⁶⁷ P. Nora, *Présent, Nation, Mémoire* (Paris, 2011), p. 9.

by the pivotal event of the French Revolution. There can be no aspiration to British continuity, because the whole point of the French Revolution is that it shows Man's capacity to break with his unjust past. That rejection is justified by exceptional enlightenment which allows Man to see and to build a new and better future. It is extremely difficult, however, to deliver perfection continuously. This section examines, in light of the collapse of French Algeria, (1) how the French state tries to maintain the illusion of perfection through systematically closing access to the past; (2) how mistakes in the present are minimised by minimising agency in the state apparatus, and lastly, (3) how the future is shaped by initiatives which recycle the language of the Revolution.

A. Rejecting the past

The French state manages its past through two institutions: archives and amnesties. Both help to create distance between past and the present, sometimes by total severance of the chains of information and responsibility.

The periodic use of amnesty laws is so widespread in France that entire research groups investigate this "national specificity".³⁶⁸ Since the Wars of Religion, every major change in French politics – from the uprisings of 1848 to the Paris Commune of 1871 and the barricades of 1968 - has been sealed with an amnesty. The regal prerogative has been democratised and practiced so abundantly,

³⁶⁸ See, for example, S. Gacon, *L'Amnistie: De la Commune à la guerre d'Algérie* (Paris, Seuil, 2002) ; J. Danet et al., *Prescription, amnistie et grâce en France* (Nantes, UP, 2006).

Ricœur writes, that it has become “a traditional political act”.³⁶⁹ In France, even breaking with the traditions of the past has become a tradition. In the case of the Algerian conflict, amnesty laws were issued in March 1962, April 1962 and December 1964. The laws were worded broadly to “grant amnesty regarding any acts committed within the framework of the peacekeeping operations against the Algerian insurrection.”³⁷⁰ This may calm matters temporarily but its long-term effects can be highly problematic. Amnesties prolong a state of exception: “Isn’t the defect of this imaginary unity that it deletes from official memory the examples of crimes which could have protected the future from the errors of the past? Isn’t it a matter of denying public opinion the benefits of disagreement, of condemning competing memories to an unhealthy subterranean life, of placing the relationship with the past outside of the field of forgiveness?”³⁷¹ Amnesty laws suppress not only condemnation, but healthy public debate. They are a legal way of sealing off the past. Has a duty to remember in France been replaced by a duty to forget? Such a commandment to forget, Ricœur responds, “would be the equivalent of forced amnesia. If it crossed the line between amnesty and amnesia [...], private and collective memory would be deprived of the *salutary identity crisis* which allows for a lucid reappropriation of the past and of its traumatic charge. The institution of amnesty can only respond to a plan of urgent societal therapy, under the sign of utility, not truth.”³⁷² By circumventing a

³⁶⁹ Ricœur, *Histoire, mémoire, oubli*, 588.

³⁷⁰ JORF, see also 2 articles: <https://www.cairn.info/revue-histoire-de-la-justice-2005-1-page-271.htm#no1> and https://www.jstor.org/stable/24274054?seq=1#metadata_info_tab_contents

³⁷¹ « Mais le défaut de cette unité imaginaire n’est-il pas d’effacer de la mémoire officielle les exemples de crimes susceptibles de protéger l’avenir des erreurs du passé et, en privant l’opinion publique des bienfaits du dissensus, de condamner les mémoires concurrentes à une vie souterraine malsaine (place le rapport au passé hors le champs du pardon) », P. Ricœur, *Histoire, mémoire, oubli*. 588.

³⁷² « Qu’en est-il dès lors du prétendu devoir d’oubli ? », asks Ricœur « [...] un tel commandement équivaudrait à une amnésie commandée. Si celle-ci pouvait aboutir ‘ et malheureusement rien ne fait obstacle au franchissement de la mince ligne de démarcation

“salutary identity crisis”, amnesties are supposed to preserve the purity of the present by suppressing the resurfacing of truth. Amnesty laws, however, are only one of France’s legal ways of rejecting the past.

Despite the existence of large archives, the historical documents of the French state are not easily accessible. First, there is the problem of declassification. In Britain, government papers have been released to the public since the Public Records Act of 1838. Since then, successive reforms in 1877, 1898, 1958 and 1967 have cut the declassification period from 50 to 30 years and, most recently in 2010, to 20 years.³⁷³ That means that even documents classified “confidential”, “secret” or “top secret” may be consulted by members of the public. Of course, the discovery of the “Migrated Archives” on the end of Empire, which I discussed in chapter 4,³⁷⁴ revealed that the British government had not released all declassified documentation to the public. And yet Britain’s public record management allows broad access in the name of transparency and accountability. In the United States, the vast majority of government papers are automatically declassified after 25 years. Executive Order 13526, revised under the Obama administration in 2009, even expanded the list of publicly accessible documents to include some records on national security and transnational crime. The rationale was publicly stated: “Our democratic principles require that the American people be informed of the activities of their Government. Also, our

entre amnistie et amnésie, la mémoire privée et collective serait privée de la salutaire crise d’identité permettant une réappropriation lucide du passé et de sa charge traumatique. En deçà de cette épreuve, l’institution de l’amnistie ne peut répondre qu’à un dessein de thérapie sociale d’urgence, sous le signe de l’utilité, non de la vérité. », P. Ricœur, *Histoire, mémoire, oubli*, 589.

³⁷³ <http://www.nationalarchives.gov.uk/information-management/legislation/public-records-act/history-of-pra/>, accessed 24/02/21.

³⁷⁴ See ch. 4, section I.

Nation's progress depends on the free flow of information both within the Government and to the American people.”³⁷⁵

In France, by contrast, the declassification term is either 25 or 50 years, depending on how “sensitive” the information contained in the document is. The National Archives can only be accessed upon approval of a prior written request and the Ministry of Foreign Affairs keeps a separate archive which is notoriously inaccessible, even to specialist historians.³⁷⁶ Despite public professions that “archives must be made fully accessible”, as stated in the 2008 Law on Archives,³⁷⁷ the state’s legislation has repeatedly restricted access to essential information. The colonial records of Madagascar, Indochina and Algeria, for example, were declassified around 2012 (50 years after the Evian Accords) and then reclassified through a General Inter-Ministerial Instruction on the Protection of National Defence Secrets in 2020.³⁷⁸ That instruction gave the state additional discretion, since it declared that (1) all internal documents created after 1934 would receive an a posteriori reclassification as “secret”, (2) the decolonisation documents had to be reclassified and released one by one while (3) not publishing the criteria along which such declassification and reclassification decisions would be made.

This, of course, squarely obstructs the work of historians, who will have to wait for years to obtain a complete file – if their file is deemed to be publishable. The Association of French Archivists (AAF), the Association of Contemporary Historians in Higher Education (AHCSR) and others quickly released a press

³⁷⁵ <https://obamawhitehouse.archives.gov/the-press-office/executive-order-classified-national-security-information> , accessed 24/02/21.

³⁷⁶ See, for example, the preface of Todd Shepard’s, *The Invention of Decolonization*.

³⁷⁷ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000019198529/> , accessed 24/02/21.

³⁷⁸ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042520705> , accessed 24/02/21.

statement in which they denounced the regulation's creation of "a category of non-publishable archives" constructed by the "arbitrary selection" of bureaucrats who "violate and disdain the law".³⁷⁹ Within a few weeks, the campaign, supported by the major newspapers, collected enough signatures to file a formal complaint with the *Conseil d'État*, France's supreme administrative court. According to this complaint, the Inter-Ministerial Instruction on the Protection of Defence secrets was "illegal" and should be annulled because it allows non-specialists to arbitrarily restrict how much historical information the public could access. This, according to the historians, infringes on article 15 of the foundational *Declaration of the Rights of Man and Citizen* of 1789 and violates article 10 of the European Convention on Human Rights.³⁸⁰ The issue is far from settled, but the battle lines are drawn very clearly: The state wants to ensure the "protection" of its historical secrets in the name of "public order", while researchers believe that the lifting of such protection will finally allow for an "informed" and perhaps "contradictory" examination of the nation's recent past. The Aussaresses trial, publishing previously unheard testimony, was a watershed in the story of modern France. Its long legal, cultural and political aftershocks reveal, each in their own way, how much had been hidden from public view.

³⁷⁹ <https://histoirecoloniale.net/Pour-l-acces-aux-archives-Un-nouveau-recours-depose-au-Conseil-d-Etat.html> , accessed 24/02/21.

³⁸⁰ Full text of the constitutional complaint: [https://histoirecoloniale.net/TMG/pdf/lire_le_recours_au_conseil_d_etat_sur_la_nouvelle_jgi_anonymise .pdf](https://histoirecoloniale.net/TMG/pdf/lire_le_recours_au_conseil_d_etat_sur_la_nouvelle_jgi_anonymise.pdf) , accessed 24/02/21.

B. Minimising agency in a present run by History

During the crisis of 1961/62, as French politicians from all camps realised that Algeria could not be retained, they offered neither values nor ammunition. Instead, they awkwardly apologised to the French people by altering the nature of history. Rather than suggesting, as usual, that France had a privileged position in History that allowed it to effect world-historical change, politicians of all stripes adopted “the notion that the historical category ‘decolonisation’ was a causal force with an all but irresistible momentum.”³⁸¹ This embrace of historical determinism allowed for a smoother exit in which responsibility and accountability were minimised for all actors. The mantra “le courant de l’histoire” (the tide/stream/current of history) became a catchphrase without further elaboration. Decolonisation simply became another inevitable stage of historical development. General de Gaulle’s famous address after the signing of the independence agreement in 1962 can be taken as an example:

“Throughout its life, France has traversed periods in which the general evolution of things required renewal from her, renewal failing which the penalty would be decline and death. [...] Such was the case when the Revolution installed liberty and equality in the interior, and intervention abroad, because democracy, competition and conversion responded to the political, economic and social character of the new period which was starting. That is certainly the case today too, because the era in which we find ourselves – an era which marks the acceleration of scientific and technological progress, the need for social improvement, the appearance of a host of new states and the ideological rivalry –

³⁸¹ Shepard, *Invention of Decolonization*, 6.

that era imposes on us, in our relations with others but also within ourselves – an immense renovation. The question now is to accomplish this mission without France ceasing to be France. In these demands there is nothing that is not necessary and at the same time worthy of France.”

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It seemed like history itself was guiding the ceasefire negotiations at Evian. France was receiving “requests”, “demands” and “missions” from history itself. This was both flattering and exonerating. On the one hand, France’s direct link to historical evolution underlined the special status of the nation that had engaged in national renewal for the sake of mankind. On the other hand, the mere execution of the demands of history could not be judged unfavourably by voters or international observers. Only History itself would be the final judge of French success. “History’ was no longer to be debated,” Shepard suggests, “its demands needed to be applied and Algeria decolonised.”³⁸³ By turning the rather descriptive term “décolonisation” into a historical category in its own right, the French had managed to circumvent their ethical dilemma: “In Algeria, as elsewhere, decolonisation now appeared as a whole consistent with a narrative of progress – the ongoing extension of national self-determination and its corollary values: liberty, equality, fraternity and the Rights of Man – that had begun with the French Revolution.”³⁸⁴

³⁸² General de Gaulle’s speech after the Evian Accords on 05/02/62: “La France, au long de sa vie, a traversé des époques où l’évolution générale requérait d’elle le renouvellement, sous peine de déclin et de mort. [...] C’est certainement le cas aujourd’hui, parce que l’ère où nous nous trouvons et que marque l’accélération du progrès scientifique et technique ; le besoin de promotion sociale, l’apparition d’une foule d’Etats nouveaux, la rivalité idéologique des Empires, nous imposent, au-dedans de nous-mêmes et dans nos rapports avec les autres, une immense rénovation. La question est de l’accomplir sans que la France cesse d’être la France. Je le dis une fois de plus, cette transformation implique d’inévitables remous en secourant quelque peu le navire. [...] En fait et en dépit de tout, nous voguons à pleine voile vers les buts que nous nous sommes fixés [...]». », via <https://fresques.ina.fr/de-gaulle/fiche-media/Gaule00075/discours-du-5-fevrier-1962.html>, accessed 28/0920.

³⁸³ Shepard, *Invention of Decolonization*, (2006), 82.

³⁸⁴ Shepard, *Invention of Decolonization* (2006), 6.

This highly effective conceptual trick returned when the revelations of the early 2000s sparked a new academic and legislative interest in the Algerian War. Although legislators on the left actively tried to introduce legal changes that would restore the importance of the Algerian experience to French history, the language employed betrays a curious lack of critical agency. The official name change from “évènements en Algérie” or “opérations de maintien d’ordre effectuées en Afrique du Nord” to “Guerre d’Algérie” in 1999, for example, is introduced as an act to catch up with the “slow evolution” of historical knowledge. “A quarter century has passed without full recognition of the sacrifices which our soldiers made in this conflict”, the bill opens, “this situation is rightly considered as a denial of what the veterans did out of duty to the nation”.³⁸⁵ Far from being an admission of historical guilt, this bill is framed as a fulfilment of patriotic duty.

After the Aussaresses revelations, a parliamentary commission formed in 2002 examined the possible introduction of “a National day of remembrance and reverence in honour of the memory of the civil and military victims of the Algerian War and the fighting in Morocco and Tunisia”.³⁸⁶ The report opens solemnly: “Forty years after the signing of the Evian Agreements, it is time for France to look her history in the face and to permit the work of memory to realise itself with the necessary rigour and serenity”, but it is astounding that two whole paragraphs are dedicated to assuring the readers that a national day of remembrance does not amount to celebrating a military defeat: On 19 March

³⁸⁵ <https://www.assemblee-nationale.fr/11/propositions/pion1558.asp>, accessed 24/02/21.

³⁸⁶ *Rapport no. 3527* (pour instaurer une Journée nationale du souvenir et de recueillement à la mémoire des victimes civiles et militaires de la guerre d’Algérie et des combats du Maroc et de Tunisie) par Mme Marie-Hélène Aubert, <http://www.assemblee-nationale.fr/11/rapports/r3527.asp>, accessed 29/09/20.

1962, the authors write, “the arms were silenced [silenced themselves], but the French army was not defeated. In proceeding, according to the Evian Agreements, with the application of the ceasefire on Algerian territory, France did not concede militarily. She merely undertook a political measure of decolonisation.”³⁸⁷ To “effect decolonisation” is apparently still not a military or political retreat, but a neutral act of dutifully following the demands of history. A similarly bizarre absence of agency can be observed when the authors urge the parliamentarians to accept the report’s recommendations in order for “the work of mourning and of memory to finally effect itself”. The repeated use of intransitive verbs suggests that there is no external actor. Memory works itself (and the French Republic) out of this uncomfortable impasse. France’s historical agency is inflated in moments of victory, but when the exceptional Republic suffers a defeat, agency is diminished. This is a way of diminishing the risk of blame and guilt, while preserving the idea of France’s special link with History. The “grande nation” looks to History for advice and will, if necessary, undergo the process of memory and commemoration like a dutiful patient. When the “tide of history” calls for decolonisation, the French “permit” (a very soft verb) that historical memory works its wonders.

³⁸⁷ : “Quarante ans après la signature des accords d’Evian, il est temps pour la France de regarder son histoire en face et de permettre au travail de mémoire de s’effectuer avec la rigueur et la sérénité nécessaires. [...] les armes se sont tues, mais l’armée française n’a pas été défaite. En procédant, conformément aux accords d’Evian, à l’application du cessez-le-feu sur le territoire algérien, la France ne s’incline pas militairement ; elle effectue une démarche politique de décolonisation.”

C. Shaping the future by recycling the Revolution

The latest round of the French dialogue with the past in the Macron era shows that memory hasn't completed its work yet – but also that an artificial acceleration of this project is ill-advised. Any modification of France's relationship with History must stay within the parameters defined by the Revolution.

The presidential campaign in 2017 was marked by Emmanuel Macron's surprise visit to Algiers. The candidate went further than anyone before him by saying: "I think it is unacceptable to glorify colonisation [...] It's a crime, a crime against humanity, a real barbarity [...] France installed the Rights of Man in Algeria, but she forgot to read them."³⁸⁸ It is indicative of the French collective trauma that even a totally new political player couldn't get around the traditional narrative that the French had brought human rights to North Africa. Macron's novel turn was that he said the French had "installed" Human Rights in Algeria, but had "forgotten to read them". The word "forgotten" is remarkably soft here, suggesting a temporary mistake rather than wilful disregard. Yet this wasn't enough to appease the outraged public who immediately called him "unpatriotic". The more "patriotic" version was offered by the right-wing Front National's Marine Le Pen, who first denied French responsibility in the Rafle du Vel d'Hiv of 1942 (where 13.000 Jews were rounded up by Parisian police to be sent to concentration camps)³⁸⁹, and then declared that "French colonialism has

³⁸⁸ E. Macron in Algiers : "Je pense qu'il est inadmissible de faire la glorification de la colonisation. [...] C'est un crime, c'est un crime contre l'humanité, c'est une vraie barbarie. [...] La France a installé les droits de l'homme en Algérie, mais elle a oublié de les lire », via http://www.liberation.fr/politiques/2017/02/15/en-Algerie-emmanuel-macron-qualifie-la-colonisation-francaise-de-crime-contre-l-humanite_1548723, accessed 03/08/18.

³⁸⁹ https://www.lemonde.fr/idees/article/2017/04/10/rafle-du-vel-d-hiv-la-faute-de-le-pen_5108861_3232.html, accessed 03/08/18.

brought great benefits, especially in Algeria.”³⁹⁰ The statement played to the sentiment of “nostalgérie”, an almost British idealisation of European life on the frontline of imperialism. This was so well received that Macron was ultimately forced to formally retract his critical statement.

Once in power, President Macron made further moves towards examining the Algerian trauma. In spring 2020, for example, he charged Benjamin Stora, a top specialist on Franco-Algerian memory cultures, to draft a report with new recommendations, because “for too long, the subject of colonisation and of the Algerian war has blocked the construction of a shared destiny in the Mediterranean.” The aim of that report is decidedly forward-looking: to allow the youth which “have no responsibility whatsoever for yesterday’s confrontations”, “those who now carry the future of our countries in their hands”, to “write their own history without stigma”.³⁹¹ Stora’s response to that request includes a call to open archives, to change history teaching in secondary schools and to establish a “Memories and Truth Commission” (many memories but only one truth!) similar to those used in democratic transitions from South Africa to Timor-Leste. In some sense, Macron wanted to start his own revolution, breaking with the past of silence and secrecy, in order to create a new, transparent and egalitarian future.

³⁹⁰ http://www.lepoint.fr/politique/marine-le-pen-la-colonisation-a-beaucoup-apporte-notamment-a-l-Algerie-19-04-2017-2120773_20.php, accessed 03/08/18.

³⁹¹ « Je souhaite m’inscrire dans une volonté nouvelle de réconciliation des peuples français et algériens. Le sujet de la colonisation et de la guerre d’Algérie a trop longtemps entravé la construction entre nos deux pays d’un destin commun en Méditerranée. Celles et ceux qui détiennent entre leurs mains l’avenir de l’Algérie et de la France n’ont aucune responsabilité dans les affrontements d’hier et ne peuvent en porter le poids. Le devoir de notre génération est de faire en sorte qu’ils n’en portent pas les stigmates pour écrire à leur tour leur histoire. »
B. Stora, *Rapport sur les questions mémorielles portant sur la colonisation et la guerre d’Algérie* (2021), <https://www.vie-publique.fr/sites/default/files/rapport/pdf/278186.pdf>, accessed 01/04/21.

But the President has learnt from the skirmishes of the campaign that any change must be phrased and framed in the values of the great Revolution. While Black Lives Matter activists were tearing down statues across the US and the UK, he proposed a different, state-led strategy for France: “I see us dividing ourselves on all matters and sometimes even losing the sense of our History. Reuniting around republican patriotism is a necessity. We are a nation in which every person – no matter their origins, their religion – has to find their place. Is this true across the world? No. [...] I tell you very clearly tonight, my dear compatriots, that the Republic will not efface any trace or any name from its history. The Republic will not remove any statue. Instead, we must lucidly look at our history together, all our histories, all our memories [...] We will no longer build our future in disorder. Without Republican order there is neither security nor liberty.”³⁹² When people have lost “the sense of our history” – because in France there should only be one sense - republican “rassemblement” becomes a political necessity. Against the fragmentation of memory (“communautarisme mémoriel”), the head of state proposes a state-led approach, in which French exceptionalism is enhanced by “building our future” within the existing order. It is this order which guarantees liberty and security because it is the order created by the foundational Revolution.

³⁹² « Je nous vois nous diviser pour tout et parfois perdre le sens de notre Histoire. Nous unir autour du patriotisme républicain est une nécessité. Nous sommes une Nation où chacun, quelles que soient ses origines, sa religion doit trouver sa place. Est-ce vrai partout et pour tout le monde ? Non.[...] . Je vous le dis très clairement ce soir mes chers compatriotes, la République n’effacera aucune trace ni aucun nom de son Histoire. La République ne déboulonnera pas de statue. Nous devons plutôt lucidement regarder ensemble toute notre Histoire, toutes nos mémoires, [...] Nous ne bâtissons pas davantage notre avenir dans le désordre. Sans ordre républicain, il n’y a ni sécurité, ni liberté. », Président E. Macron, « Adresse aux Français », 14/06/2020, via <https://www.elysee.fr/emmanuel-macron/2020/06/14/adresse-aux-francais-14-juin-2020> , accessed 09/02/2020.

Conclusion

To conclude this chapter, I would like to underline how different the French timescape is from the British. Instead of omnivorous continuity, French history is “cut in half” (Tocqueville) by the Revolution of 1789. It is the enduring influence of that Revolution, its vocabulary, imagery and institutions which make it so difficult to accept the ambivalent nature of the civilising mission. That makes the French timescape much less flexible than the British one. In Section I, I looked at the momentous trial of General Paul Aussaresses and his publishers who were accused of “incitement to war crimes” for having revealed the truth about torture during the Algerian War of Independence. The fundamental insight is that three French courts successively declared the accused parties guilty because they were showing the dark side of the French civilising mission, while the ECHR opined that the publishers were exercising their freedom of expression in a way that is “necessary in democratic societies”. The French state guards its past tightly because any revelation of injustice threatens the legitimacy of the progressive Republic. Section II captured the enduring force of the French Revolution on the French historical imagination and asked whether Enlightenment was compatible with Empire.³⁹³ An examination of historical parliamentary records suggested that it was not, although France continues to justify its foreign policy in those terms. The final section III asked what this enormous tension between a virtuous revolutionary rupture on the one hand, and a promise of perpetual progress on the other, mean for the emergence and absorption of uncomfortable truths. The conclusion is that France has great difficulties dealing with past injustice, because the national timescape continues

³⁹³ S. Muthu, *Enlightenment against Empire* (Princeton, PUP, 2003).

to be dominated by the revolutionary motif of Man rejecting his past to create a new, better history.

6. AMERICAN SYNTHESIS: PROGRESSIVELY REFOUNDING THE REPUBLIC

*“America, it is to thee,
Thou boasted land of liberty,—It is
to thee I raise my song,
Thou land of blood, and crime, and wrong.”*³⁹⁴

This chapter explores conceptions of Liberal Time in the context of real political debates about historical injustice in the United States. In these debates, I see the possibility of a synthesis between the French and British historical model. If France focuses on rupture and Britain on continuity, the American case is exciting because it might combine the two: there is a tension between the radical (re)founding of “the first new nation” and the linear promise of continuous progress thereafter. From the very beginning, the Founding Fathers stressed the unique nature of the American project: “Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world”, writes Madison in *Federalist* No. 14, “why is the experiment of an extended republic to be rejected, merely because it may comprise what is new? [...] Happily for America, happily, we trust, for the whole human race, they [the early settlers] pursued a new and more noble

³⁹⁴ James C. Whitfield, *America* (1853), in: K. Young (ed.), *African American Poetry: 250 Years of Struggle and Song: An Anthology of African American Poetry* (New York, 2020) 36f.

course.”³⁹⁵ In 1776, the Thirteen Colonies declared their independence from all systems of absolutism, imperialism and oppression. This anticolonial innocence was then enshrined in the 1787 constitution. Yet the image of a clean slate in world history sits uneasily with the facts of American history before and after the revolution. This hinges on the unique feature that the US is both a colony and a colonial power.

At least three persistently painful elements of the American past should be highlighted: (a) the institution and legacy of slavery,³⁹⁶ (b) the territorial conquest of the West, (c) the informal Empire of dependent territories, military bases and economic dominance that underpin America’s global hegemony today.³⁹⁷ Recent commentators like Greg Grandin have pointed out how all these elements were interlinked and carefully crafted into a universalist narrative of progress that was meant to conceal them all.³⁹⁸ Edward E. Baptist’s *The Half Has Never Been Told* (2016) and Adam Rothman’s *Slave Country* (2005) are the most important contributions showing how slavery became essential to the development of American capitalism and how politicians of all stripes decided to “protect and prolong” this institution through Indian Removal (1830) and active territorial

³⁹⁵ *The Federalist* no. 14, via https://avalon.law.yale.edu/18th_century/fed14.asp, accessed 25/02/20.

³⁹⁶ The moral problem of celebrating American republicanism while continuing slavery was noticed early on. The Baptist preacher and pamphleteer John Allan, for instance, wrote in 1774: “Blush ye pretended votaries for freedom! Ye trifling patriots! You are making a vain parade of being advocates for the liberties of mankind, who are thus making a mockery of your profession by trampling on the sacred natural rights and privileges of Africans; for while you are fasting, praying, nonimporting, nonexporting, remonstrating, resolving, and pleading for a restoration of your charter rights, you at the same time are continuing this lawless, cruel, inhuman and abominable practice of enslaving your fellow creatures!”, see B. Bailyn, *The Ideological Origins of the American Revolution*, Fiftieth Anniversary Edition (2018 [1968]), 230-36.

³⁹⁷ D. Immerwahr, *How to Hide an Empire* (New York, 2019); A. Rana, *Two Faces of American Freedom* (Cambridge MA, HUP, 2010).

³⁹⁸ G. Grandin, *The End of the Myth: From the Frontier to the Border Wall in the Mind of America* (New York, Macmillan, 2019).

expansion through expropriation of Native Americans.³⁹⁹ When it comes to the transition between step 2 (westward expansion) and step 3 (overseas imperialism), Aziz Rana is the most lucid guide. In his *Two Faces of American Freedom*, he writes: “The actual history of the sustained shift from settler to civic imagination over the first half of the twentieth century highlights the extent to which civic arguments were constructed by settler elites themselves. Ideas of American exceptionalism and universalism were at root the product of debates about how an essentially completed settler project could transform itself into a global power, especially against the backdrop of a closed frontier at home and both bloody European rivalries and non-white political assertiveness abroad.”⁴⁰⁰ Once the domestication of the “Wild West” faced its end at the Pacific, the *Turner Thesis* – America will be virtuous only as long as it has its “endlessly revitalising frontier” – required that the frontier of modern civilisation be expanded overseas.⁴⁰¹ US soldiers spread into all corners of the world that were “liberated” by American capitalism. Politicians of the American Century “reimagined the fundamental meaning of the national past” and “called on all communities within the country—regardless of their own histories of expropriation or enslavement—to participate in an ongoing narrative of American identity”, the narrative of an endless egalitarian promise.⁴⁰² This promise remained a political imperative even as America quietly acquired one colonial territory after the next, as Daniel Immerwahr traces in *How to Hide an*

³⁹⁹ E.E. Baptist, *The Half has never been told: Slavery and the making of American Capitalism* (New York, Basic Books, 2014); A. Rothman, *Slave Country: American Expansion and the Origins of the Deep South* (Cambridge MA, HUP, 2005).

⁴⁰⁰ A. Rana, *The Two Faces of American Freedom* (Cambridge MA, HUP, 2010), 30ff.

⁴⁰¹ J. M. Faragher, *Rereading Frederick Jackson Turner: "The Significance of the Frontier in American History" and Other Essays*. With commentary by John Mack Faragher (New Haven, YUP, 1994).⁴⁰² A. Rana, “Colonialism and Constitutional Memory”, *UC Irvine Law Review*, Vol. 5 (2015), 287.

Empire.⁴⁰³ Why did the empire have to be hidden from public view? Why were the American contradictions between freedom and oppression carried through every wave of expansion? Why could the revolutionary spirit of liberation not live on forever as America expanded its reach? And what happened to the imperative of continuous progress when the limits of its universalism were exposed?

We shall analyse this mighty tension between rupture and continuity in the usual three steps: In section I, we will look at legal action that revealed and questioned the national historical myth, in this case the two recent Supreme Court disputes around *McGirt v. Oklahoma* (2020) and *Shelby County v. Holder* (2013). Section II illuminates the American timescape further by analysing the 1619 Project as a public history initiative which highlighted the strength of the orthodox American timescape characterised by novelty, exceptionalism and providential progress. Finally, Section III explores the possibilities for integrating the discordant truth into this national timescape.

I. TRIAL

In contrast to the previous chapters, we are going to examine more than a single trial. This is not just due to the extraordinary richness of American self-examination in recent years, but also because of the special place which the law – and especially constitutional law – holds in the United States. The US Supreme

⁴⁰³ D. Immerwahr, *How to hide an Empire: A History of the Greater United States* (New York, Farrar, Straus & Giroux, 2019).

Court is not merely a court, it is the conscience of the nation.⁴⁰⁴ Guarding, explicating and reinterpreting the founding values of the 1787 Constitution, this court is at the heart of the process by which America constructs itself. Its judgements attract worldwide commentary and attention, often acting as an indicator for the socio-political state of the nation as a whole. In this first section we shall therefore look at two cases in which private citizens clashed with public bodies in order to demand the fulfilment of a historical promise. That promise, in both cases, was made by the Federal Government. Although the outcome of the trials is different – once in favour of the citizen, once in favour of the state – what interests us here is how the Supreme Court openly deliberates the significance of such historical promises. The first case is *McGirt v. Oklahoma* (2020); the second *Shelby County v. Holder* (2013). After an initial survey, we are going to draw the conclusions of both cases together to show the continuous power of progress (as idea and ideal) in American constitutional law.

A. McGirt v. Oklahoma

Petitioner Jimcy McGirt had been convicted of three serious offences by the state court of Oklahoma but then argued in post-conviction proceedings “that the State lacked jurisdiction to prosecute him because he is an enrolled member of the Seminole Nation of Oklahoma and his crimes took place on the Creek Reservation.” His appeal rested on the federal Major Crimes Act (MCA) which states that Indians who commit certain enumerated offenses against other Indians on Indian territory shall be subject to federal trials, since they are not

⁴⁰⁴ R. G. McCloskey, *The American Supreme Court*. 6th edition (Chicago, 2016 [1960]); M.J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York, OUP, 2004).

subordinate to the states. A previous decision in *Negonsott v. Samuels* (1993) confirmed that state courts generally have no power to try Indians for wrongs committed in “Indian Country”. The real question facing the Supreme Court was thus not whether McGirt had actually committed any of the offences but whether he had committed them in “Indian Country.” The historical boundaries of the Creek Reservation cover 41 per cent of present-day Oklahoma. Should that state and the federal government continue to respect the boundaries which it negotiated with the Native Americans after their forced relocation in 1832? Are the state’s actions today limited by what they promised in the nineteenth-century treaties with the Creeks (1830, 1832, 1833, 1866) or is there some reconfiguration of rights and duties as time passes? Can the federal government’s duties to respect the sovereignty of Native Land somehow be alleviated with the passage of time?

Justice Roberts, who admits that “the stakes are not insignificant”,⁴⁰⁵ answers this question of continuous and equal sovereignty for Indians with two further questions: (1) Did Congress establish a sovereign reservation for the Creeks? (2) Does that Indian reservation persist? The judge’s reasoning on the first question points towards the importance of beginnings in American constitutional law, especially for those who subscribe to the conservative legal philosophy of Originalism and the method of strict textualism. The court’s reflections on the second question indicate the persistent strength of Darwinian evolutionary theory in the new federal government’s dealings with old inhabitants of North America.

⁴⁰⁵ *McGirt v. Oklahoma*, 591 U.S. _ (2020), syllabus, § 1.

Let us start with the first question: *Did Congress establish a sovereign reservation for the Creeks?* Here, the historical evidence speaks for itself: all the treaties concluded between the federal government and the Creek nation include phrases that suggest that the cession of land east of the Mississippi would be compensated for with a “permanent home” for the tribes West of the Mississippi. For our purposes, however, it is interesting how Justice Gorsuch frames his exposition in terms of an intergenerational promise:

“On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever. In exchange for ceding ‘all their land, East of the Mississippi river,’ the U. S. government agreed by treaty that ‘[t]he Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians.’ [...] The government further promised that ‘[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves.’ [...] Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said other-wise, we hold the government to its word.”⁴⁰⁶

On the far end of the Trail of Tears there was a “promise” made by the US government. What exactly that promise could be, and whether its content was actually what the Creeks wanted is not specified. Two centuries later, the Supreme Court revitalised that promise by summarising the judgement in a single phrase: “we hold the government to its word.” This metaphor of

⁴⁰⁶ *McGirt v. Oklahoma*, 591 U.S. _ (2020), syllabus, §1.

collective, transhistorical and public promising invites further investigation. It is also worth asking: why now? Why should this court at this historical moment take the corrective action which was missing – or merely delayed? – before. Justice Gorsuch makes no effort to hide the fact that the federal government’s prolific record of promise-making was accompanied by an equally copious record of promise breaking: “While there can be no question that Congress established a reservation for the Creek Nation, it’s equally clear that Congress has since broken more than a few of its promises to the Tribe. Not least, the land described in the parties’ treaties, once undivided and held by the Tribe, is now fractured into pieces. While these pieces were initially distributed to Tribe members, many were sold and now belong to persons unaffiliated with the Nation.” The fracturing of the moral promise – enshrined in a series of contracts – is accompanied by the physical fracturing of the Indian territory. The first question then – did Congress establish a reservation? – is answered in the affirmative. But going beyond that, the decision’s tone is rather remonstrative. Why? Because with every broken promise, the credibility of the promisor breaks too. The Supreme Court feels compelled to “hold the government to its word”. Such honest corrections are deemed necessary to reinforce the credibility of the federal government at home and abroad.

The second question about the continuous existence of the Tribe and its land claim, is slightly trickier. Most of the treaties between the Federal Government and Native tribes include ominous clauses about the risk of natural changes in the Indian populations which might invalidate their claim to land. In the statute that precipitated the negotiations with the Creeks in 1830, for example, Congress

authorised the President “to assure the tribe [...] that the United States will forever secure and guaranty to them [...] the country so exchanged with them”. “[A]nd if they prefer it,” the bill continued, “the United States will cause a patent or grant to be made and executed to them for the same; *Provided always*, that such lands shall revert to the United States, if the Indians become extinct, or abandon the same”.⁴⁰⁷ In a subsequent agreement the right to self-government (and thereby federal trials) “guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby assigned to them.”

These kinds of clauses are not new. They appear and reappear in most Anglo-Saxon settler colonies. The settlers justified their presence through the myth of civilisational inferiority of non-Europeans and their territorial expansion through the natural depopulation of the Natives, who often contracted European diseases like smallpox. The legal affirmation of such myths until the end of the nineteenth century is already worrying. A much more serious problem, however, is that caveats like the two phrases cited above leave the door wide open for people who want to read them as a negative incentive to more, not less colonial violence. Again, if the firmness of agreements depends on the firmness of the tribe’s natural reproduction, the state has an interest in the physical decline of the tribe. Forced migration, natural depopulation through illness and even genocide would then become options to advance the interests of the new state. And this is exactly what happened on the imperial frontier of the ever-expanding United States.⁴⁰⁸ These kinds of perverse incentives can lead to consequences that violate the spirit of the original treaty.

⁴⁰⁷ Indian Removal Act of 1830, § 3, 4 Stat. 412

⁴⁰⁸ P. Hämäläinen, *Lakota America: A New History of Indigenous Power* (New Haven CT, YUP, 2019); F. Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (Chapel Hill, 2010 [1975]).

If they are not corrected soon enough, these unintended consequences may acquire a life of their own. This harm of perverse incentives and unintended consequences is particularly dangerous in the Common Law. If the legitimacy or very existence of a rule depends not only on its repeated enforcement, but also on its enactment over time, any act of non-compliance that goes unnoticed risks destabilizing the original law. If we talk about longer timespans (say, a century), the first few acts of non-compliance could multiply so freely that non-compliance could effectively become new custom. Any transgression is the seed of a new rule.

Legal scholarship and practice are still divided on how long it takes for a practice to change from use to custom.⁴⁰⁹ Yet this is not the most important question for political theorists. What we should focus on is: What happens if - contrary to the liberal paradigm of progress - social norms evolve in an increasingly unjust direction, so that the likelihood of the original injustice's being recognised as such decreases with time? Would that not counteract the victim's legitimate expectation to fight for justice in her legal system? For her, the *reliability of the legal system effectively diminishes over time*. The *harm of non-recognition* of injustice is an enormous risk in the Common Law tradition. Does that not add to the injustice she has suffered? The victim's increasing invisibility adds to the severity of the crime. Yet there is a paradox in rectifying this additional injustice: The longer a victim waits, the more convincing her complaint about increasing invisibility will be; but if she waits too long, she will not be able to make that complaint visible.

⁴⁰⁹ M. Koskenniemi, *From Apology to Utopia: The structure of legal argument* (Cambridge, CUP, 2006), ch. 6.4.

Justice Gorsuch is aware of this problem, but trusts that the American division of legal labour between the states and the federal government is an insurance mechanism against the abuse of state power through the mere passage of time:

“The Legislature wields significant constitutional authority when it comes to tribal relations, possessing even the authority to breach its own promises and treaties. [...] Under our Constitution, States have no authority to reduce federal reservations lying within their borders. Just imagine if they did. A State could encroach on the tribal boundaries or legal rights Congress provided, and, with enough time and patience, nullify the promises made in the name of the United States. That would be at odds with the Constitution, which entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and statutes are the ‘supreme Law of the Land.’ It would also leave tribal rights in the hands of the very neighbours who might be least inclined to respect them. [...] But wishes don’t make for laws.”⁴¹⁰

This passage of the *McGirt* decision is very explicit about arguments and methods where the mere passage of time legalises previously unjust acts.⁴¹¹ The passage of time in this (and many other Western legal systems) could solidify the position of the historical victor, by rendering previously illegitimate acts legitimate. This, of course, requires a linear conception of time, with time slices increasing in value as we move to the future. Despite this huge risk, the judge professes a profound faith in the institutions which protect the United States’ moral identity. For him, promises made “in the name of the United States”

⁴¹⁰ *McGirt v. Oklahoma*, 591 U.S. _ (2020), syllabus, III A.

⁴¹¹ This is obviously relevant to Waldron’s comments about supersession through the passage of time. Justice Gorsuch clearly identifies the “moral hazard objection”, discussed in chapter 1, when he writes: “A State could encroach on the tribal boundaries or legal rights Congress provided, and, with enough time and patience, nullify the promises made in the name of the United States.”

cannot be broken, because “that would be at odds with the Constitution”. The Constitution returns as the sacred text, foundational in legal, political and moral terms.

B. Shelby County v. Holder

In *Shelby County v. Holder* (2013), the Supreme Court was asked to decide whether section 5 of the Voting Rights Act of 1965 was still constitutional. The “still” is very important because the claim of Shelby County (Alabama) rested on two parts. One pointed to the unequal treatment of southern states to argue that this violated the constitutional principle of “equal sovereignty” between states. The other part questioned this unequal treatment further because the “exceptional circumstances” which justified exceptionally intrusive federal measures in 1960s Alabama – widespread race-based voter discrimination and disenfranchisement – no longer obtained in the twenty-first century. This was thus a critique against a time-bound measure, which had supposedly outlived the specific historical circumstances for which it had been designed.

Shelby County became the basis for a contest about broad, transhistorical principles. In contrast to more specific cases like *Farmer-Paellmann v. Fleetboston Financial Corp. et al.* (2002)⁴¹² and *Pigford v. Glickman* (1999),⁴¹³ *Shelby County*’s outcome affected not only an entire category of citizens currently living in the jurisdictions targeted by the Voting Rights Act; the decision affected all future

⁴¹² *Farmer-Paellmann v. Fleetboston Financial Corp. et al.* (2002); <https://edition.cnn.com/2002/LAW/03/26/slavery.reparations/>, Transcript of the first hearing at https://www.foxnews.com/projects/pdf/032702_reparations.pdf, accessed 01/10/20.

⁴¹³ *Pigford v. Glickman* (1999), <https://casetext.com/case/pigford-v-glickman-7> ; <https://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS20430.pdf>; https://www.nationalblackfarmersassociation.org/about_us, both accessed 30/09/20.

persons in those states who might be subjected to racial discrimination in the electoral process. It was therefore a judgement about the past (what did we promise?), the present (have we delivered on our promise?) and the future (have we come far enough to decide that this promise will no longer be needed in the future?). Let us attempt to answer these questions by focusing on the summary opinion delivered by Chief Justice Roberts on 25 June 2013:

“The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 of the Act required states to obtain federal permission before enacting any law related to voting—a drastic departure from basic principles of federalism. And §4 of the Act applied that requirement only to some States—an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, ‘an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.’ [...] As we explained in upholding the law, ‘exceptional conditions can justify legislative measures not otherwise appropriate.’ Id., at 334. Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years. [...] Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are now scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. By 2009, ‘the racial gap in voter registration and turnout [was] lower in the States originally covered by §5 than it [was] nationwide.’ [...] Since that time, Census Bureau data indicate that African American voter turnout has come to exceed white voter turnout in five of the six States originally covered by §5, with a gap in the sixth State of less

*than one half of one percent. [...] At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act's extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, 'the Act imposes current burdens and must be justified by current needs.'*⁴¹⁴

This is merely the summary of the court's reasoning, but we may already subject it to the three questions about the past, present and future of the American promise of progress.

What did we promise?

The 15th Amendment already promised in 1869 that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude.” That same amendment also authorised Congress to enforce the principle with “appropriate” legislation. Half a century later, the goal of race-blind enfranchisement had still not been achieved. The 1965 Voting Rights Act (VRA) was explicitly established “to enforce the fifteenth amendment”. It implicitly followed the language and reasoning of that constitutional amendment (especially in section 2 of the Act), and was an unusual piece of legislation since it departed from the principles of *equal sovereignty* between states. The particular measures outlined in section 4 (coverage formula to identify states “lagging behind”) and section 5 (requiring those covered jurisdictions to obtain “preclearance” from the Attorney General or the District Court of Washington

⁴¹⁴ *Shelby County v. Holder*, 570 U.S. 529 (2013), https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf, accessed 20/06/21.

D.C. before changing voting rules) were considered particularly intrusive. Why was this “strong medicine”, as Roberts calls it, justified at that particular time? Roberts explains: “Congress determined it was needed to address entrenched racial discrimination in voting, an insidious and pervasive evil. [...] Exceptional conditions can justify legislative measures not otherwise appropriate. [...] Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years”.⁴¹⁵

The simile of “medicine” is telling. Race-based voter discrimination is portrayed as an illness, an external “evil” that afflicts the American body politic. As the “exceptional condition” of the patient does not improve with the usual, mild measures, an exceptional regime of strong medicine is prescribed. As with all strong medication, the expectation in 1965 was that the treatment would be short, temporally restricted to only 5 years. The restrictions introduced by the Voting Rights Act were introduced to heal the American patient quickly – but recovery turned out to be slower than expected.

Have we delivered on our promise?

The restrictions of the 1965 Voting Rights Act were reaffirmed and renewed in 1970, 1975, 1982 and 2006. When it was first introduced, section 4 was seen as a *temporary* corrective measure. “Nearly 50 years later, they are still in effect”, Justice Roberts writes, “indeed, they have been made more stringent, and are now scheduled to last until 2031.” From the present point of view of a patient who can only dimly remember his exceptionally bad condition 50 years ago, this

⁴¹⁵ *Shelby County v. Holder*, 570 U.S. 529 (2013), § 1.

is too long. The extension of medical treatment suggests not only that his health has not improved enough since 1965, but also that full healing will not arrive anytime soon. The extension until 2031 suggests pessimism about the patient's overall health. Dismayed, the patient insists that he is feeling better, that his condition in 2013 cannot be compared with the critical emergency of 1965: "There is no denying, however, that the conditions that originally justified these measures no longer characterise voting in the covered jurisdictions. [...] African American voter turnout has come to exceed white voter turnout in five of the six States originally covered by § 5, with a gap in the sixth State of less than one half of one percent."⁴¹⁶

Like in the British and French trials, in which exceptional political measures were justified by a "state of emergency" or a "state of war"; the American patient was willing to accept the exceptionally strong medicine only for so long as he declared himself to feel exceptionally ill. Once he is no longer exceptionally ill, just ill, the assessment of available medicines should change too: "In 1966, the coverage formula was 'rational in both practice and theory.' [...] It looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both." "Coverage today", by contrast, "is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned for over 40 years. And voter registration and turnout numbers in covered States have risen dramatically. In 1965, the States could be divided into those with a recent history of voting tests and low voter registration and turnout and

⁴¹⁶ *Shelby County v. Holder*, 570 U.S. 529 (2013), § 5.

those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were.”⁴¹⁷ As a firm presentist, the patient does not want to be held back by old data. Instead, he insists his scars have already healed, “today the Nation is no longer divided along those lines”. That assessment of American social cohesion could certainly be disputed - including by current data⁴¹⁸ - but the American patient is already thinking of a future without any medication.

Have we come far enough to decide that this promise will no longer be needed in the future?

Have the changes initiated by the VRA had a sufficiently positive impact on American voter registration and participation to allow for even more positive extrapolations about the future? This is where the opinions of the majority and the minority diverge. Writing for the majority, Chief Justice Roberts declares that “Section 4 of the Voting Rights Act is unconstitutional; [because] its formula can *no longer* be used as a basis for subjecting jurisdictions to preclearance.” The two words “no longer” do all the work here. According to Roberts, the American patient was once ill enough to require disproportionately intrusive treatment – but this is no longer the case. While “voting discrimination still exists [...] the *exceptional emergency* of the 1960s has been overcome. Any new measures to

⁴¹⁷ *Shelby County v. Holder*, 570 U.S. 529 (2013), 3.

⁴¹⁸ Brookings Institution, <https://www.brookings.edu/policy2020/bigideas/why-we-need-reparations-for-black-americans/>, accessed 25/11/2020.

increase minority voter participation would have to respect the principle that ‘current burdens must be justified by current needs.’⁴¹⁹ It is important that this reasoning connects past, present and future on a typically liberal line whereby value increases as we approach the future. How could something as important as the future be guided by something as outdated as the past? American citizens are confident enough in their melioristic projections that they can abandon worries about “exceptional emergencies” and instead envisage a world in which exceptional interventions will no longer be needed.

Justice Ruth Bader Ginsburg penned a dissenting opinion, in which a less melioristic vision of historical development appears: “Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” She continues:

“The sad irony of today’s decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA’s success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. [...] With that belief, and the argument derived from it, history repeats itself. The same assumption—that the problem could be solved when particular methods of voting discrimination are identified and eliminated—was indulged and proved wrong repeatedly prior to the VRA’s enactment. Unlike prior statutes, which singled out particular tests or devices, the VRA is grounded in Congress’ recognition of the ‘variety and persistence’ of measures designed to impair minority voting rights. [...] In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence

⁴¹⁹ *Shelby County v. Holder*, 570 U.S. 529 (2013).

that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding.”⁴²⁰

We see a more pragmatic vision of historical development here: instead of automatic progress, it takes ingenuity and innovation to face the ever-changing winds of evil. Like a sturdy umbrella, the VRA protects American states from “backsliding” (back into the darkness of the past), and like a sturdy umbrella it can and should be used again whenever it rains – which, in the socio-political ecosystem of the United States, could be anytime. Ginsburg does not forget, however, that the VRA is not an umbrella like any other. It is more like a family heirloom or a Thanksgiving recipe, passed down through the generations, ready to be used whenever one misses the spirit of home: “The VRA is no ordinary legislation. It is extraordinary because Congress embarked on a mission long delayed and of extraordinary importance: to realise the purpose and promise of the Fifteenth Amendment. For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made.”⁴²¹

In America, “Progress once the subject of a dream” can be achieved. The power of that collective dream is so great that it affects the most disparate judicial decisions.

C. Progress in American constitutional theory

What should we make of the role of progress in American constitutional theory?

The two trials show two different outcomes - once in favour, once against

⁴²⁰ *Shelby County v. Holder*, 570 U.S. 529 (2013), Justice Ginsburg, dissenting opinion, 2.

⁴²¹ *Shelby County v. Holder*, 570 U.S. 529 (2013), Justice Ginsburg, dissenting opinion, 3.

historically marginalised groups - but in both cases the decision is in favour of the progress paradigm built into the American idea of the state.

In the case of Jimcy McGirt, the reasoning centred on President Andrew Jackson's promise of giving the Indians their own America (as if it wasn't theirs already) to pursue their own version of the American Dream (why not their own dream? And why does everyone need a future-focused dream?). In 1830 President Jackson defended his Indian Removal Act thus: "It will separate the Indians from immediate contact with settlements of whites; free them from the power of the States; enable them to pursue happiness in their own way and under their own rude institutions; will retard the progress of decay, which is lessening their numbers, and perhaps cause them gradually, under the protection of the Government and through the influence of good counsels, to cast off their savage habits and become an interesting, civilised, and Christian community."⁴²² Much of the language here is objectionable. Yet it seems to me that the main strategy of President Jackson was to defend Indian Removal by couching it in the language of progress – not just for the white settlers who would be able to advance westwards, but also for the Indians who could imitate other Americans by receiving "virgin land", pursuing self-government and building a "civilised" community directed by the goal of improvement. In order to allow this development, which could also "retard the progress of decay", the Federal Government set some boundaries for itself in the 1832 Treaty with the Creeks. Although it was not hidden that "the United States are desirous that the Creeks

⁴²² President Jackson's Message to Congress "On Indian Removal", December 6, 1830; Records of the United States Senate, 1789-1990; Record Group 46; Records of the United States Senate, 1789-1990; National Archives and Records Administration (NARA) via: https://www.nps.gov/museum/tmc/MANZ/handouts/Andrew_Jackson_Annual_Message.pdf, accessed 20/06/21.

should remove to the country west of the Mississippi, [...] at the expense of the United States” (Art. 12) the sovereignty of the new territory was established thus: “The Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves” (Art. 14). These kinds of assurance of non-interference were repeated in the 1866 Treaty in which “the United States guarantees them quiet possession of their country” and promised financial assistance “to enable the Creeks to occupy, restore, and improve their farms, and to make their nation independent and self-sustaining” (Art. 3). However mischievous its motives and however ignorant of the Creek social system the federal government was, it is remarkable that the treaties do promise the Indians that they, too, can live the American dream of political independence and economic growth.

A conviction of McGirt by the state of Oklahoma, rather than the federal government, however, would suggest a continuation of the inferior status of a tribe that – by now – should be respected as a grown-up, a self-governing entity, an governance unit enjoying “equal sovereignty” among other states. There are two promises by which the US government bound itself across time: one concerns its dealings with the Creek nation, where it repeatedly promised them the American dream of self-government; the other concerns a promise that America gave itself as early as 1776: that the newly liberated colonies would be virtuous, honest and enlightened. It is the second promise – the promise of staying true to the founding principles of the American Republic, which limits the scope for breaking the first promise with the Creeks as America evolves from a Republic into an Empire. The larger promise of world-historical progress

constrains (and gives weight) to all the smaller promises that America makes on its path to perfection.

Turning to Shelby County, a similar double bind can be identified. There is the initial promise of equality through the Declaration of Independence and then the correction and reaffirmation of that principle through the 15th Amendment to the Constitution which affirms after the Civil War and Emancipation that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude”. The VRA is a fulfilment of the promise of equal participation in the political process, but sections 4 and 5 suggest that the work is unfinished. 52 years later, the Supreme Court’s majority opines that the specific promise of race-blind enfranchisement has been fulfilled. The dissenting opinion penned by Ruth Bader-Ginsburg, by contrast, spells out very clearly that partial progress on the specific promise of 1965 cannot allow the federal government to be self-congratulatory or complacent about the larger promise of true equality between all citizens of the United States. The question “Have we come far enough?” can never be answered in the affirmative in a nation which – from the start – gave itself the objective not only of perfection, but of continuously striving to become “more perfect”.

My main conclusion from this legal section is that chances for historical redress in the US are framed and constrained by a conscious self-construction of America’s identity as progressive. There is an expectation of progress against which socio-political development are assessed, and this expectation is built into

the highest level of decision-making. Since the idea of progress is constitutive of the foundation of America (see chapter 3 and section II below), it should not surprise that it might be built into constitutional law.

Outside of constitutional law, however, there are constant reminders of the doubts, contradictions and failures of the American founding promise. One such reminder is the *1619 Project*, a radical overhaul of the American moral system proposed by an African American journalist. Her battle with established narratives of New World progress might give an indication of the strengths and weaknesses of the hegemonic system. This is what we now turn to.

II. TRADITION

A. Adapting the founding myth

The ongoing and intensifying debate on slavery reparations, and the role of African Americans in American history more widely, shows that reaching a unified commitment to engage critically with the failures of American progress is very difficult. Few recent media publications have agitated the American public like the *1619 Project*.⁴²³ Since its first appearance in the *New York Times Magazine* on 20 August 2019, mentions of the phrase “slavery reparations” in US media have increased seven-fold.⁴²⁴ Every single candidate in the Democratic

⁴²³ <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>, accessed 25/08/2020.

⁴²⁴ https://global-factiva-com.gate3.library.lse.ac.uk/ha/default.aspx#./!&_suid=1601712763361038818838951738943, accessed 01/10/20.

primaries for the 2020 Presidential election mentioned it at least once during their campaign. And arguably the most prolific individual user of the phrase “1619 Project” has been Donald J. Trump, who “hates” it.⁴²⁵ What is this project and why has it had such an enormous impact on the American reckoning with history? The project’s self-description is as follows: “The 1619 Project is an ongoing initiative from the *New York Times Magazine* that began in August 2019, the 400th anniversary of the beginning of American slavery. It aims to reframe the country’s history by placing the consequences of slavery and the contributions of black Americans at the very centre of our national narrative.”⁴²⁶ This project started as a special issue of the *New York Times Magazine* handed out for free on the streets of New York City to mark the 400th anniversary of the arrival of slaves in America. 17 essays, one interview and one photo essay online soon made it more interactive – and as public engagement intensified, the project was supplemented with podcasts, documentaries and even classroom packs and an alternative curriculum designed in collaboration with the Pulitzer Centre.⁴²⁷

The task was momentous: to consciously alter our historical vision by “reframing” the whole of American history around (a) a new starting date; (b) a new group of black founders and (c) the idea of bondage rather than liberty. Nothing could be further from the standard American narrative of continuous liberation from 1776. The authors even issued “a word of warning”: “There is gruesome material in these stories, material that readers will find disturbing. That

⁴²⁵ https://global-factiva-com.gate3.library.lse.ac.uk/ha/default.aspx#/?!&_suid=160171292850104612730147397801 ⁴²⁶ <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>, accessed 01/07/21.

⁴²⁷ <https://pulitzercenter.org/lesson-plan-grouping/1619-project-curriculum>, accessed 03/02/21.

is, unfortunately, as it must be. American history cannot be told truthfully without a clear vision of how inhuman and immoral the treatment of black Americans has been. By acknowledging this shameful history, by trying hard to understand its powerful influence on the present, perhaps we can prepare ourselves for a more just future. That is the hope of this project.”⁴²⁸ Like in the court judgements above, there is both disappointment and hope in this statement. But what is most interesting for me is the sense of historical necessity: The “gruesome” and “disturbing” material will be disturbing precisely because it will shake readers’ preconceived ideas of America and the goodness of American history. In this context, 400 years after the first slave ship landed on the new continent’s shores, the old story must be revisited. The content of the 1619 Project is “unfortunately, as it must be”. It is a public health warning before a cathartic exploration of the depths of the American self-understanding.

The 1619 Project’s main editor, Nikole Hannah-Jones, inaugurates this collective catharsis thus: “The United States is a nation founded on both an ideal and a lie.” The rest of her opening essay elaborates on that tension between America’s multiple histories: “Our Declaration of Independence, approved on July 4, 1776, proclaims that ‘all men are created equal’ and ‘endowed by their Creator with certain unalienable rights.’ But the white men who drafted those words did not believe them to be true for the hundreds of thousands of black people in their midst. ‘Life, Liberty and the pursuit of Happiness’ did not apply to fully one-fifth of the country. Yet despite being violently denied the freedom and justice promised to all, black Americans believed fervently in the American creed.

⁴²⁸ NYT, J. Silverstein, “Why we made the 1619 Project”, 20 Dec 2019, via <https://www.nytimes.com/interactive/2019/12/20/magazine/1619-intro.html>, accessed 13/08/20.

Through centuries of black resistance and protest, we have helped the country live up to its founding ideals. And not only for ourselves — black rights struggles paved the way for every other rights struggle, including women’s and gay rights, immigrant and disability rights. [...] What if America understood, finally, in this 400th year, that we have never been the problem but the solution?”⁴²⁹

The scepticism about the American founding myth which lies at the heart of the 1619 Project, is not entirely new. It follows in the footsteps of Frederick Douglass, who shocked his audience on 4 July 1852 by declaring “I say it with a sad sense of the disparity between us. I am not included within the pale of this glorious anniversary! Your high independence only reveals the immeasurable distance between us. The blessings in which you, this day, rejoice, are not enjoyed in common. The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me. The sunlight that brought life and healing to you, has brought stripes and death to me. This Fourth [of] July is yours, not mine.”⁴³⁰ It follows the path of James Baldwin, Malcom X, Toni Morrison and Ta-Nehisi Coates, who felt left out of the American story of progress and showed that another America exists behind the stars and stripes.⁴³¹ Baldwin, for instance, wrote in 1963 that “in spite of the Puritan-Yankee equation of virtue with well-being, Negroes had excellent reasons for doubting that money was made or kept by any very striking

⁴²⁹ Nikole Hannah-Jones, “Our democracy’s founding ideals were false when they were written. Black Americans have fought to make them true.”, via <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html>, accessed 30/07/21.

⁴³⁰ F. Douglass, What to the slave is the fourth of July, via https://masshumanities.org/files/programs/douglass/speech_abridged_med.pdf, accessed 01/10/20.

⁴³¹ From J. Baldwin, *The Fire Next Time* (London, 2017 [1963]) to I.X. Kendi, *How to be an antiracist* (New York, 2020).

adherence to the Christian virtues”. Instead, the entire political system perpetuated white privilege: “white people, who had robbed black people of their liberty and who profited by this theft every hour that they lived, had no moral ground on which to stand. They had the judges, the juries, the shotguns, the law—in a word, power. But it was a criminal power, to be feared but not respected, and to be outwitted in any way whatever. And those virtues preached but not practiced by the white world were merely another means of holding Negroes in subjection.”⁴³² The judges, the juries, and the law are exactly the hegemonic forces we encountered in section I. These institutions still manage America’s relationship with History, America’s relationship with itself. In this context, it is even more remarkable that a non-institutional actor, *The New York Times*, managed to provoke a public historical reckoning. The newspaper brought the idea of alternative Americas to an unprecedented level of readers. The controversy which followed revealed the strengths and weaknesses of America’s national mythology.

B. Testing the limits of progress

The public backlash to the 1619 Project was enormous. In the course of 12 months between June 2019 and June 2020, the American public sphere became even more politicised. At the elite level and on TV, there was a presidential campaign in which questions about race, reparations and historical justice surfaced like never before. At the street level, there were sustained protests in almost every major town, during which right-wing militia groups and liberals

⁴³² J. Baldwin, *The Fire Next Time*, (London, Penguin, 2017 [1963]), 28.

repeatedly clashed with law enforcement. The *Black Lives Matter* movement rose to particular strength, occupying state capitols and Washington's Lafayette Square, taking down statues which had become public symbols of historic oppression and discrimination. Let us survey this spontaneous release of political energy, while asking ourselves: Are these the limits of the American narrative?

On the one hand, Democratic Senator Kamala Harris praised the 1619 Project in a tweet stating "The #1619Project is a powerful and necessary reckoning of our history. We cannot understand and address the problems of today without speaking truth about how we got here."⁴³³ The 2020 Pulitzer Prize committee congratulated Nikole Hannah-Jones on her "historic win".⁴³⁴ Then came the specialist historians of the American Revolution – Gordon S. Wood, Sean Wilentz, Victoria Bynum, among others.⁴³⁵ They took issue with the 1619 Project's controversial statement that "Conveniently left out of our founding mythology is the fact that one of the primary reasons some of the colonists decided to declare their independence from Britain was because they wanted to protect the institution of slavery." These scientific disagreements – though unusually loud and public – were nothing compared to the enormous conservative backlash.

⁴³³ <https://twitter.com/kamalaharris/status/1162122797726015489?lang=en>, accessed 28/09/20.

⁴³⁴ <https://pulitzercenter.org/blog/nikole-hannah-jones-wins-pulitzer-prize-1619-project>, accessed 01/10/20.

⁴³⁵ G.S. Wood, *The Radicalism of the American Revolution* (New York, Alfred A. Knopf, 1992); S. Wilentz, *No Property in Man: Slavery and Antislavery at the Nation's Founding* (Cambridge MA, HUP, 2018); V. Bynum, *The Long Shadow of the Civil War: Southern Dissent and its Legacies* (Chapel Hill NC, University of North Carolina Press, 2010).

This ranges from moderate nostalgia – “I’ve always wanted children to be taught—as I was—that the United States was founded on July 4, 1776, with the declaration of those revolutionary ideals [...] Any other choice is divisive and arbitrary,[because] the timeless words and values of the Declaration of 1776, as distinct from its fallible, hypocritical author, are still worth uniting around as the moment our unfinished effort to form a more perfect union began.”⁴³⁶ – to the outrage of Newt Gingrich: “This is a huge undertaking with deep propaganda purposes. [...] The *Times* will seek to distribute it to schools, so young people can be taught to think of America as defined by slavery. [...] It is a terrific set up for a later demand for reparations [...] We do not need left-wing propaganda masquerading as ‘the truth’. The fact is: America was defined much more in 1776 and 1787 than in 1619.”⁴³⁷ As Californian schools adopted the 1619 curriculum and the culture wars deepened, Senator Tom Cotton drafted a bill “To prohibit Federal funds from being made available to teach the 1619 Project curriculum in elementary schools and secondary schools.” The key points of the rationale offered in support of this “Saving American History Act 2020” was that “(1) The true date of America’s founding is July 4, 1776” and that “(5) The 1619 Project is a racially divisive and revisionist account of history that threatens the integrity of the Union by denying the true principles on which it was founded.”⁴³⁸

President Trump supported this proposal and labelled *The New York Times*’ followers, “Marxists”, “racists” and “cultural revolutionists, like Mao”.⁴³⁹ When

⁴³⁶ C. Friedersdorf, “1776 Honors America’s Diversity in a Way 1619 Does not”, *The Atlantic*, 6 January 2020, via: <https://www.theatlantic.com/ideas/archive/2020/01/inclusive-case-1776-not-1619/604435/>, accessed 01/03/21.

⁴³⁷ N. Gingrich, “Is America really defined by Slavery?”, <https://www.newsweek.com/newt-gingrich-1619-project-slavery-america-1456307>, accessed 28/09/20.

⁴³⁸ <https://www.cotton.senate.gov/files/documents/200723%20Saving%20American%20History%20Act.pdf>, accessed 28/09/20.

⁴³⁹ <https://twitter.com/realDonaldTrump/status/1302586046551597061>, accessed 01/10/20.

asked to elaborate in an interview with Chris Wallace on 19 July 2020 the President said, “I just look at—I look at school. I watch, I read, look at the stuff. Now they want to change—1492, Columbus discovered America. You know, we grew up, you grew up, we all did, that's what we learned. Now they want to make it the 1619 Project. Where did that come from? What does it represent? I don't even know”.⁴⁴⁰ In order to protect the way Americans grow up, President Trump even announced the establishment of the “1776 Commission” to “defend the legacy of America’s founding, the virtue of America’s heroes, and the nobility of the American character.” This announcement staged in front of the National Archives contained all the pillars of the American timescape: foundationalism, exceptionalism, millenarianism, open-ended progress. Against the “Left-wing mobs [who] have torn down statues of our founders, desecrated our memorials, and carried out a campaign of violence and anarchy”, Trump – or his speechwriter - tells the American story in its most orthodox way:

“We want our sons and daughters to know that they are the citizens of the most exceptional nation in the history of the world. [...] To grow up in America is to live in a land where anything is possible, where anyone can rise, and where any dream can come true — all because of the immortal principles our nation’s founders inscribed nearly two and a half centuries ago [...] On this very day in 1787, our Founding Fathers signed the Constitution at Independence Hall in Philadelphia. It was the fulfilment of a thousand years of Western civilization. Our Constitution was the product of centuries of tradition, wisdom, and experience. No political document has done more to advance the human condition

⁴⁴⁰ Donald Trump interviewed on *Fox News on Sunday* with Chris Wallace, 19 July 2020, https://www.youtube.com/watch?v=W6XdPDOH1JA&ab_channel=FoxNews , accessed 20 July 2020.

or propel the engine of progress. [...] America's founding set in motion the unstoppable chain of events that abolished slavery, secured civil rights, defeated communism and fascism, and built the most fair, equal, and prosperous nation in human history."⁴⁴¹

On 19 January 2020, Trump's last full day in office, the 1776 Commission published its report. Drafted by a body without a single professional historian, this document enshrined the everyman's story of America: "Americans will never falter in defending the fundamental truths of human liberty proclaimed on July 4, 1776. We will—we must—always hold these truths. [...] This requires a restoration of American education, which can only be grounded on a history of those principles that is 'accurate, honest, unifying, inspiring, and ennobling.' And a rediscovery of our shared identity rooted in our founding principles is the path to a renewed American unity and a confident American future."⁴⁴² The words "Founders" and "Founding" appear 59 and 40 times, respectively – in only 45 pages. There is not a single page without the spectre of the Founding Fathers. This contrasts starkly with the palpable fear of a potential reversal of the traditional value system. The "main challenges to American Progress", for example, are listed without further comment as "slavery, progressivism, fascism, communism, race and identity politics."⁴⁴³ This summary of the fault lines of American historical thinking is almost comical, but the mere fact that this could be published with presidential approval should make us think. If the conservatives count "progressivism" among the core threats to national progress

⁴⁴¹ Remarks by President Trump at the White House Conference on American History, 17 September 2020, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-white-house-conference-american-history/>, accessed 28/09/20

⁴⁴² *The President's 1776 Commission Report*. [report revoked by President Biden as soon as he took up office in November 2020]

⁴⁴³ *The President's 1776 Commission Report*, ch. 2.

and the liberals defend emancipatory struggles in order to make good on the promise of American progress, what are the terminological and conceptual alternatives? Are American citizens and observers required to think and speak in the predefined patterns of progress? Why are more radical options unacceptable? These questions remain to be answered. But the upcoming 250th anniversary celebrations of the American Revolution in 2026 already look like a battleground for the soul of the nation. Will the patriotic, providential and progressive version of American history be reinforced or radically reset?

C. Reaffirming the master narrative

What does the controversy of the 1619 Project mean for the orthodox double story of the American Founding and subsequent progress? The 1619 Project attacked all the five fundamental elements of America's historical identity: (i) that the American colonies had been chosen by Providence and developed under its guiding plan; (ii) that the American Revolution had produced a radically new beginning, which confirmed its exceptional role as the rightful "Empire of Liberty" (Jefferson); (iii) that this beginning, consolidated through the Founding documents of the 1776 Declaration and the 1787 Constitution, had given posterity a moral mission (iv) that this moral mission of emancipation and improvement was universal; and finally (v) that the codified foundational creed acted as a standard against which the trajectory of American progress could be measured and, if necessary, corrected and improved. The revolutionary rupture creating a New World is followed by the extraordinary promise of perpetual progress. What progress really means has certainly changed over time – a

suburban home, gay marriage, or a black president, might be seen as progress for some. But *America is unique in having set its own standard of success*. Specific criteria that are not merely passed on like Britain's inheritance of the unwritten constitution, or confined to symbolism like in France. The United States have set a standard which is inescapable in American courts, legislatures, townhalls and schools. The exact words of the Declaration, in particular, penetrate almost any public document. Most importantly, that ubiquity, *the inescapability of the foundational creed commands action*. The founding documents are an invitation to examination, correction and improvement. And in contrast to British politicians, who profess to learn from history for their own sake, Americans learn from history for the sake of the upholding and fulfilling the promise of the Founding. That this promise can never be completely fulfilled is, of course, part of the attraction. The American conception of history as a perpetual work in progress invites everyone to take part in the project of building a better future.

The 1619 Project revealed, questioned and criticised a political mythology that had been centuries in the making. But in doing so, it did not reject the American historical project entirely. In fact, an examination of the interviews which Nikole Hannah-Jones, the project's director, gave to the media and educational institutions worldwide reveal her distinctly American intellectual context. When Hannah-Jones was asked about her original decision to start this project at the LSE US Centre, for instance, she said: "We are a young country, we don't get to celebrate the 400th anniversary of anything, I didn't want that date [1619] to just go by."⁴⁴⁴ Instead of the 1620 Mayflower Compact of the liberty-seeking

⁴⁴⁴ Nikole Hannah-Jones at the LSE US Centre on 05/10/20, <https://www.lse.ac.uk/Events/2020/10/202010051500/The-1619-Project-on-the-Legacy-of-Slavery-in-the-US>, accessed 23/07/21.

European pilgrims,⁴⁴⁵ she wanted to shine a light on the “Enslavement Compact” of 1619. The most important elements of this statement in the context of our analysis are the word “young” and “I didn’t want that date to just go by.” The first speaks to the European [!] tradition of characterising America as the “New World”, “virgin land” on which previously unheard-of social and economic patterns could emerge without the weight of history. In the larger scheme of world history, America was the youngest child.

In Berkeley’s classic poem *On the Prospect of Planting Arts and Learning in America* (1726), we may see the exceptional hope and excitement with which the European topos of *translatio imperii* is applied to the New World: “In happy climes, the seat of innocence, / Where nature guides and virtue rules, [...] There shall be sung another Golden Age, / The rise of Empire and of arts, / The good and great inspiring epic rage, / The wisest heads and noblest hearts. [...] Westward the course of Empire takes its way; / The four first Acts already past, / A fifth shall close the Drama with the day; / Time’s noblest offspring is the last.”⁴⁴⁶ Of course, the US is a “young country” in the constitutional sense. But

⁴⁴⁵John Quincy Adams opined in 1802 that this agreement signed on a ship was “the only instance in human history of that positive, original, social compact”. Until today, the international Society of Mayflower Descendants organises annual historical re-enactments of the Mayflower Landing. The compact reads: “In the name of God, Amen. We whose names are underwritten, the loyal subjects of our dread Sovereign Lord King James, by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, etc. Having undertaken for the Glory of God and advancement of the Christian Faith and Honour of our King and Country, a Voyage to plant the First Colony in the Northern Parts of Virginia, do by these presents solemnly and mutually in the presence of God and one of another, Covenant and Combine ourselves together in a Civil Body Politic, for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute and frame such just and equal Laws, Ordinances, Acts, Constitutions and Offices from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names at Cape Cod, the 11th of November, in the year of the reign of our Sovereign Lord King James, of England, France and Ireland the eighteenth, and of Scotland the fifty-fourth. Anno Domini 1620.” <https://www.themayflowersociety.org/>, accessed 11/02/21.

⁴⁴⁶G. Berkeley, *Verses on the Prospect of Planting Arts and Learning in America* (1726), via <http://www.berkeleyhistoricalsociety.org/history-notes/bishop-george-berkeley.html>, accessed 08/02/2021.

that does not mean at all that there was no American society and culture before. The fact that a black descendant of African slaves nowadays calls the US a “young country” is a testament to the ways in which American public history has (i) internalised the European gaze, (ii) taught European theories of modernity, but also (iii) turned this classification as a “new” country into a political asset. New countries can define themselves; they can define the dates that matter. The preachers of New England decided after the Boston Massacre of 5 March 1770 that they would hold annual commemorative services to mark of the first violent confrontation between Boston’s merchants and British troops. The sermons pronounced at those services quickly became one of the most important ways of instigating and organising the social movement which ultimately became the American Revolution. And just like these preachers, who did not want the date of the massacre to go unnoticed, Nikole Hannah-Jones started her project because she “didn’t want that date [1619] to just go by”. In the new world, you can make your own history.

In addition to the focus on (i) artificial beginnings and (ii) the American citizen’s power to shape history – his own and that of the world, there are three more features which the 1619 Project shares with orthodox American historiography: (iii) exceptionalism, (iv) progressivism and (v) universalist expansionism. When asked about American exceptionalism, Hannah-Jones responds: “I am obsessed with and appalled by the idea of exceptionalism. It is certainly exceptional to be founded on ideas [*quotes opening lines of the Declaration of Independence!*]. But it is more exceptional to sustain hypocrisy for so long.”⁴⁴⁷ Even when

⁴⁴⁷ Nikole Hannah-Jones at the LSE US Centre on 05/10/20, <https://www.lse.ac.uk/Events/2020/10/202010051500/The-1619-Project-on-the-Legacy-of-Slavery-in-the-US>, accessed 23/07/21.

highlighting serious flaws in the official version, she embraces the idea of exceptionalism. In fact, these very flaws built into the American political system from the start raise, according to her, an exceptional paradox: “What makes the US unique is [...] we’re the only country founded on slavery. We were a brand new country, we had a choice [...] and yet, the people who wrote the constitution were all slavers. That’s our founding paradox.” The return of the motif “brand new country” and the stark reminder “we had a choice”, indirectly raise expectations for improvement. But when this improvement only occurs incompletely – a new nation founded on liberty also relies on systematic oppression – the disappointed citizen calls it a “paradox”. We know through the historical studies of the past 50 years that there is no real paradox, at least no historical paradox: white liberty was sustained by black servitude.⁴⁴⁸

If there is no historical paradox, is there a moral paradox? Why did the authors of the constitution choose not to extend their commitment to Enlightenment values to everyone? The interviewee’s incredulity suggests that the founders should have known better, that America should have honoured its promise of progress. Her public admonishment, 234 years after the signing of the Constitution suggests that America has indeed moved on. Far from rejecting the founding promise of progress entirely, this journalist responds by assembling an all-black team to rehabilitate the role of American blacks in the success of America: “As much as I hope white readers will read it and have their minds blown”, she says, “I hope that black people will read it, and feel a sense of ownership over this country and a sense of pride in our resilience [...] I hope to

⁴⁴⁸ See, for example, E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York, Basic Books, 2014).

reframe the way we see ourselves in America.”⁴⁴⁹ This belated correction itself is a necessary element, almost a bridge, on America’s path to perfection.

The last building block that makes Hannah-Jones’ project more American than perhaps intended, is its global reach. With customary American confidence, she hopes that the 1619 Project will be a model for the world. When asked whether this public rewriting of national history is exportable, she says: “Yes, I encourage imitation and adaptation. There has been a propaganda campaign to downplay the role of slavery in the creation of European wealth. We have to grapple with slavery as a Northern hemisphere. We have to grapple with the centuries-long cover-up.”⁴⁵⁰ This thesis has already demonstrated that cover-ups were essential to metropolitan narratives about imperialism. Still, it is somewhat surprising to think that London or Paris would immediately look to Washington to receive policy advice. Seen from London, America is still the *enfant terrible*. And yet, this journalist – and all American academics I have talked to – profess optimistically that America’s new approach to “diverse” and “inclusive” history management can be exported to other countries. Expansionism is therefore the fifth and final feature of orthodox American history, which the alternative history of the 1619 Project shares.

What conclusion may we draw from this section? The alternative history of the 1619 Project is not as different from the hegemonic history as its creators might

⁴⁴⁹ New York Times, *How the 1619 Project came together* 19/08/19, via <https://www.nytimes.com/2019/08/18/reader-center/1619-project-slavery-jamestown.html>, accessed 04/04/21.

⁴⁵⁰ “The 1619 Project on the Legacy of Slavery in the US”, LSE US Centre event on 5 Oct 2020, <https://www.lse.ac.uk/Events/2020/10/202010051500/The-1619-Project-on-the-Legacy-of-Slavery-in-the-US>, accessed 07/10/20.

have hoped.⁴⁵¹ Even if the content and actors of this new story differ from the orthodox story, the structure is strikingly similar: the rupture of a new beginning is followed by a continuous struggle for progress. Of course, there is still the problem of consent. While many white Americans immigrated voluntarily and participated in American life voluntarily; early African Americans were imported like freight, their descendants forced to build the American economy against their will.⁴⁵² It is this element of coercion which is invoked to justify the rapidly proliferating calls for historical redress. The next section will return to “high politics” to analyse how recent legislative debates on America’s historical wrongs test the limits of the surprisingly strong official narrative.

III. TRUTH

Let’s test the strength and limits of the American timescape at the 2019 congressional hearing for House Resolution 40. The history of this bill is significant. Former Rep. John Conyers, Jr. first tried to introduce this bill in 1989. When faced with rejection, he continued to sponsor the bill every legislative session from 1989 to 2017. When he died in 2019, Congresswoman Sheila Jackson-Lee took up the cause. It was only then that the bill was finally given a hearing by the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties. The bill proposes “to address the fundamental injustice,

⁴⁵¹ The parallel between American activists and theorists of rectification are significant. Like the proponents of historical rectification examined in chapter 1, these activists are trapped in the same progressive paradigm as their opponents. See ch. 1, section III.

⁴⁵² The Great Migration, in which newly emancipated blacks travelled to the industrial cities of the North at the turn of the nineteenth century is an important exception. See the interactive maps at https://depts.washington.edu/moving1/map_black_migration.shtml, accessed 23/07/21.

cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to study and consider a national apology and proposal for reparations for the institution of slavery, its subsequent de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.”⁴⁵³

One could think that the mere establishment of a commission should not be too controversial. After all, the requested “national apology” was already offered by the House in 2010.⁴⁵⁴ The bill does not call for slavery reparations directly. And yet, the hearing on 19 June 2019 (Juneteenth), reveals how high the tensions are when confronting the “original sin” that haunts American progress. Although there are proponents and opponents of reparations at this hearing, the themes already identified in previous sections reappear. The distinctive angle of this discourse, however, makes for a somewhat external view on American progress. Judging from the statements made at this hearing, blacks were left out of the virtuous (re)founder promise in the past; left out of the progressive federal programmes that enabled upward mobility in the present; left out (disenfranchised, underrepresented) when it comes to building a better American future. And yet, it is remarkable how this high-level exchange among a broad mix of American citizens again reproduces the same teleological theme of improvement that might be the source of the problem.

⁴⁵³ HR 40, via <https://www.congress.gov/bill/116th-congress/house-bill/40>, accessed 04/01/2021.

⁴⁵⁴ S. Con. Res. 26, via <https://www.congress.gov/bill/111th-congress/senate-concurrent-resolution/26>, accessed 06/01/21. Importantly, the apology includes the following disclaimer: “Nothing in this resolution authorizes, supports, or serves as a settlement of any claim against the United States.”

The importance of the Founding and its transhistorical demands is established by Rep. Mike Johnson from the very start: “What we're going to discuss here today centres on a regrettable and shameful portion of American history. Slavery in America and elsewhere was a horrific injustice. The perpetuation of which was opposed to the founding ideals.”⁴⁵⁵ For him, slavery breaks “the central idea of America, what has been called the foundational creed, which is that ‘we boldly declare the self-evident truths that all men are created equal and we are created with the same inalienable rights.’”⁴⁵⁶ Yet if we look more closely, that central idea of America is not equality or individual liberty, but progress. Slavery is problematic, the Judiciary Committee’s Chair Jerrold Nadler specifies, because its legacies of discrimination, hate crime and poverty “all hold back our country's long standing efforts [...] to form a more perfect union”.⁴⁵⁷ Slavery is holding back a nation that is defined by constant movement and improvement. They don’t just want to be the perfect union. The United States aims to “form” (a very active verb) a “more perfect” union. Rep. Sheila Jackson Lee similarly suggests that racism “tainted the Founding and continues to persist”.⁴⁵⁸ The word “tainted” suggests that the Founding was otherwise clean – which is far from certain.⁴⁵⁹

The writer Ta-Nehisi Coates goes considerably further in his

⁴⁵⁵ Rep. Mike Johnson at 00:11:42 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁵⁶ Rep. Mike Johnson at 00:16:15 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁵⁷ Rep. Jerrold Nadler at 00:22:43 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁵⁸ Rep. Sheila Jackson Lee, at 00:24:00 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁵⁹ A. Rana, *Two Faces of American Freedom*; D. Stasiulis & N. Yuval-davis, *Unsettling Settler Societies: Articulations of Gender, Race, Ethnicity and Class* (Thousand Oaks CA, Sage, 1995); J. Greene (ed.) *Exclusionary Empire: English Liberty Overseas 1600-1900* (New York, CUP, 2010).

assessment before the committee, suggesting that exclusion in America was not a mistake, but a choice. Even once slavery officially ended in 1865, he writes, “this country could have extended its hallowed principles [...] to all, regardless of colour. But America had other principles in mind. And so, for a century after the civil war, black people were subjected to a relentless campaign of terror.”⁴⁶⁰ If America had a noble identity at the founding, the history that followed it is a history of missed opportunities to return to the original promise of America.

What kinds of opportunities were missed? The periods of reconstruction and renewal after the Civil War and the two World Wars loom particularly large as reminders of the US double standards. “Many of the bedrock policies that were designed to usher Americans into the middle class”, Jackson Lee explains, “[...] from the GI Bill [i.e. the Servicemen’s Readjustment Act of 1944] to social security [were] intentionally designed to exclude blacks”.⁴⁶¹ African Americans were systematically left out of American progress. The “left behind” community of African Americans is not behind other ethnic groups through their own choice – they seem to be the only group that rarely had a choice. Instead it was the overt policies of the federal government that acted as tools of exclusion. Only a select number of citizens could be saved by the American pull of progress – and blacks were not among them. The economist Julianne Malveaux agrees: “Congress has indifferently essentially side-lined Black people from the opportunities that they created for White people. That's why it's time now to talk

⁴⁶⁰ Ta-Nehisi Coates at 00:43:50 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁶¹ In Philip Roth’s *The Human Stain* (2000) the protagonist’s life story turns around when he lies about his race to benefit from the G.I. Bill’s free schooling.

about how to fix that.”⁴⁶² “The widespread assumption that everyone can pull themselves up by their bootstraps” is openly called “a lie, a falsehood”.⁴⁶³ But the federal government is not merely complicit in the oppression of a minority group, it is complicit in the prolongation of practices that were against the idealistic founding principles of its nation.

Even more remarkable then, is the desire to move on, to focus on the future. Joining forces with other groups “left behind” by government policies, Malveaux says: “Racism and enslavement was our original sin and we got to deal with reparations by dealing with that.”⁴⁶⁴ There seems to be an inextinguishable hope that America can still improve. Burgess Owens, a former footballer turned politician, accepts reparations not as a backward-looking, but as a forward-looking measure, a measure to rehabilitate the American dream: “We have a very special country that allows every generation to become better than the last. It has not ended or stopped until now.[...] let's pay reparation. That way we move past reparations. And then we will see: this country has given us greatness. [...] We've become successful like no other because of this great opportunity to live the American dream.”⁴⁶⁵ In this forward-looking argument reparations are attractive because they could eliminate doubt. As Eugene Sutton, Episcopal Bishop of Maryland, puts it: “It’s not about money. It's about being good.

⁴⁶² Julianne Malveaux, at 03:18:20 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁶³ Rev. Eugene Taylor Sutton, at 02: 40:58 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁶⁴ Julianne Malveaux, at 01:44:36 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁶⁵ Burgess Owens, at 01:17:03 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

There's been talk about our nation being a great nation. Or to make it great again, or the greatest nation of all. I'm more concerned about this nation being good. There is some unfinished business in this nation."⁴⁶⁶

This business can only be promoted through the spirit of revolution. Echoing the original revolutionaries of 1776 and all their successors from Abraham Lincoln to Martin Luther King, the witnesses repeatedly comment on their place in history, on the importance of this historical moment. "This hearing is urgent. It's historic", says Jackson-Lee. Danny Glover makes the parallels to the revolutionaries most explicit: "[...] In the moments when there were radical changes in this country [union leaders, civil rights leaders] raised the bar to our sense of revolutionary purpose".⁴⁶⁷ This sense of revolutionary purpose, so conspicuously absent in the British timescape, gives the actors of this drama have a double role as both historical actors and observers. They know where history should be going and can intervene to rectify America's position on a path to virtue. How else could we explain the statement: "This hearing is not on time, it's like overtime. It's more than time for us to deal with the injustices that African-American people not only have experienced in history but continue to experience"?⁴⁶⁸ If this meeting is overdue, that means there was a right moment for it. America has to catch up – catch up, as the trials above indicated, with its own desideratum of progress. America is behind its own plan for historical greatness, but fortunately, its enlightened citizens have a sense of their power

⁴⁶⁶ Rev. Eugene Taylor Sutton at 01:17:36 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁶⁷ Danny Glover, at 02:28:18 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁶⁸ Julianne Malveaux at 01:25:31 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

for correction. The persistent revolutionary optimism is summarised by this final plea: “I simply ask: why not? And why not now. If not all of us, then who?”⁴⁶⁹

Where does that persistent hope come from? Is it genuine? Do these activists, priests and lawyers actually believe that the good soul of America can be saved? Or are they using the language of virtue, improvement and progress because it is politically effective? Would it be fair to say that the unique context in which the American historical identity evolves constrains actors, however radical, to play within the rules and vocabulary of a set game?

Even as the case against American exceptionalism is mounting, it looks like the narrative of progress will not be abandoned. Of course, it could be argued, on the one hand, that the social tensions exacerbated by the Trump presidency, the COVID-19 pandemic and the Black Lives Matter movement have brought America to a tipping point where structural injustices can finally be addressed collectively. On the other hand, however, the American political tradition, with its set phrases and intense symbolism, seems remarkably resistant to change. Despite the fact that the Founding and its inheritance were fraught with problems, the only way left seems to be forward. Just like Lincoln claimed in 1861 that “no oppressed people will fight, and endure, as our fathers did, without the promise of something better”⁴⁷⁰, Barack Obama centred his 2008 speech on race relations around the notion of perfectibility. The presidential candidate professed “a firm conviction [...] that, working together, we can move beyond some of our old racial wounds, and that in fact we have no choice if we are to

⁴⁶⁹ Rep. Sheila Jackson Lee at 00:24:30 of the recorded Congressional hearing on H.R. 40 via <https://www.c-span.org/video/?461767-1/house-judiciary-subcommittee-examines-case-slavery-reparations>, accessed 05/01/21.

⁴⁷⁰ A. Lincoln, *Fragment on the Constitution* (1861), via <https://quod.lib.umich.edu/l/lincoln/lincoln4/1:264?rgn=div1;view=fulltext>, accessed 26/02/20.

continue on the path of a more perfect union.” That improvement should be by “embracing the burdens of our past *without* becoming victims of our past.” Regret, cynicism or fatalism were not allowed. Why? Because that would be un-American. In words reminiscent of the *Federalist*, Obama said: “America can change. That is the true genius of this nation. What we have already achieved gives us hope — the audacity to hope — for what we can and must achieve tomorrow. [...] This union may never be perfect, but generation after generation has shown that it can always be perfected. And as so many generations have come to realize over the course of the 221 years since a band of patriots signed that document right here in Philadelphia, that is where the perfection begins.”⁴⁷¹ A final reference to the founding moment of American liberty anchors the narrative arc. This arc echoes Martin Luther King’s dictum, “The arc of the moral universe is long, but it bends toward justice”, which Obama actually had stitched into a banner in the Oval Office. This structure of a clear beginning and an open, but decidedly positive ending is the unique characteristic of American historical discourse as I see it.

“In all of American life”, Ta-Nehisi Coates writes, “there is a bias toward the happy ending”.⁴⁷² The enormous impact which that idea of the happy ending has on the dissection of dark and unhappy pasts must be analysed further. My interim conclusion is that the imperative of progress does leave room for action; but the demands for change – including profound change like slavery reparations – must be formulated in the forward-looking optimistic narrative that binds the first explorers to MLK. In America there seems to be a tradition of recurrent

⁴⁷¹ B. Obama, *A more perfect union*, speech at Philadelphia on 18 March 2008, via <https://www.npr.org/templates/story/story.php?storyId=88478467&t=1585337612707>, accessed 25/03/20.

⁴⁷² T-N. Coates, *We were Eight Years in Power* (New York, 2017), 151.

revolution. As Arendt noticed very early on, this tradition keeps the civic spirit alive. But there are important boundaries which must not be crossed. Saying, as Baldwin and Coates have said, that there is no reason to hope for a better future, is unacceptable because it rejects the idea of America's virginal goodness. It suggests that the system might be not accidentally, but – as the reparations bill reads - “fundamentally” flawed. That would entail an abandonment of the America's exceptional claim to virtue. In the end, criticism may always be voiced in a very active public sphere – but it is the progressive timescape cultivated by the state which prevents a full reckoning with anything that could definitively disprove that progressivism.

Conclusion

“Lapses” from the American founding promise actually strengthen that promise. In the United States' public history, the English tradition of imperial “mistakes” and “exceptions” is combined with French civic religion - which makes for rude awakening when things go demonstrably wrong. As long as injustices are framed as “exceptions” to American progress, there is a willingness to deal with them, fix them - to protect the foundational promise - but when historical injustice is shown to be constitutive of the American experience, leading to a rejection of the very idea of America, the system strikes back. The progressive timescape cultivated by the US prevents a full reckoning with anything that could definitively disprove the melioristic narrative structure of American public life. Thus, the limit of American redress seems to be hope.

If you still have hope in America, you have a case. A case that must be framed in terms that echo the exceptional expectation that America will fulfil its millenarian promise of freedom, justice and equality for all. H.R. Con Res 116, the most recent piece of legislation proposed to mend America’s relationship with its own past, is in many ways a summary illustration of how piecemeal progress works in the American ecosystem. This resolution brings both chambers of the legislative together to resolve “That the Congress— (1) affirms on the 400th anniversary of the arrival of the first slave ship, the United States’ long overdue debt of remembrance to not only those who lived through the egregious injustices enumerated above, but also to their descendants; and (2) proposes a *United States Commission on Truth, Racial Healing, and Transformation* to properly acknowledge, memorialize, and be a catalyst for progress toward jettisoning the belief in a hierarchy of human value, embracing our common humanity, and permanently eliminating persistent racial inequities.”⁴⁷³ Unlike the Truth and Reconciliation Commissions in South Africa, Timor-Leste or Argentina, this Commission has already received a more progressive, more teleological task: “transformation”. Reconciliation could suggest stasis, but the original enlightenment nation must always be in movement. Like the British, the resolution’s signatories want to learn from the past and move on – but unlike in the British case, the desired destination is already set. The Commission, which will be “a catalyst for progress” will accelerate America’s reconciliation with itself. It is a tool for “permanently eliminating persistent racial inequities”, “jettisoning the belief in a hierarchy of human value, embracing our common humanity”.

⁴⁷³ House Con. Res. 116 “Urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation.”, introduced 04/06/20.

Whether it could actually achieve this aim is far from certain. But the promise of the Founding exerts such a gravitational pull in the American historical imagination that the Commission's destination is already set before it has taken off: The principle of progress in America ultimately requires a return to the beginning. That beginning is continuously revived through the language of the state (e.g., "Reconstruction") and popular culture: After the victory in World War II, Philip Roth wrote that "the clock of history [was] reset and a whole people's aims limited no longer by the past [...] There was a big belief in life and we were steered relentlessly in the direction of success; a better existence was going to be ours. The goal was to have goals, the aim to have aims."⁴⁷⁴ That requires an extraordinary amount of hope – but if you cannot muster that, your case for redress (however legitimate), will not be heard. In this particular timescape combining an exceptional origin with a continuous imperative of improvement, hopelessness is treason.

⁴⁷⁴ P. Roth, *American Pastoral* (London, Vintage Books, 1997), 40f.

7. DECOLONISING TIME?

“It is only our conception of time that makes us call the Last Judgement by that name; in fact it is a permanent court-martial.”⁴⁷⁵

Liberal Time is the dominant temporal framework of the West. In this framework, time is linear, unidirectional, meaningful in itself and modifiable by powerful agents. These agents’ actions, however, are constrained by the liberal imperative of progress, which suggests that the future should be better than the past. There is an unequal distribution of value across the liberal timeline which is biased towards the future. People and peoples who make claims of justice about the past are therefore at a disadvantage. Part I traced the genealogy of Liberal Time from the Christian villages of medieval Europe to bustling industrial cities and the mechanisms of subjection that sustained the global imperial system. Part II sought to show how this conceptual and institutional inheritance affects legal battles for recognition and rectification of colonial crimes. This final chapter seeks to assess to what extent we are trapped in the framework of Liberal Time – and whether there is any way out of it. The chapter has three sections: Section I examines what the historical material presented throughout this thesis means for the normative problem of the “temporal trap of liberalism”. Section II addresses methodological sceptics and makes the case for taking history seriously when we are trying to solve problems of historical

⁴⁷⁵ F. Kafka, *The Aphorisms* (New York, Schocken, 2015 [1931])

justice. Section III tries to escape the liberal trap by looking for alternatives to Liberal Time in both European and non-European traditions.

I. THE PROGRESS PARADIGM

The essence of Liberal Time is the assumption that man-made historical development is necessarily progressive. This leads to an expectant focus on the future and a devaluation of the past. In Liberal Time, the past is something we have to outgrow and leave behind. Even if we carefully preserve some traditions (as the British state sometimes does), the past should not infringe on our freedom of action in the present, let alone our plans for the future. This temporal bias has important implications for the debate on historical justice.

If we return to the chapter 1, we see Jeremy Waldron arguing against historical rectification on the basis that “claims about justice must be responsive to changes in circumstances.”⁴⁷⁶ The main point is that under the current, “modern” circumstances, full historical rectification is not just unfeasible, but undesirable. Three elements of the argument should be disentangled: First, the fundamentally Humean perspective on the “circumstances of justice”. For Hume, “the sense of justice is not founded on reason, or on the discovery of certain connexions and relations of ideas, which are eternal, immutable, and universally obligatory.” Instead, it was “a concern for our own, and the publick interest, which made us establish the laws of justice; and nothing can be more certain, than that it is not any relation of ideas, which gives us this concern, but

⁴⁷⁶ See ch. 1, section I.

our impressions and sentiments, without which every thing in nature is perfectly indifferent to us, and can never in the least affect us.” Given these origins of justice, more flexibility is required in adjudication: “For since it is confest, that [...] alteration [...] in the temper and circumstances of mankind, wou’d entirely alter our duties and obligations, ’tis necessary upon the common system, [...] to shew the change which this must produce in the relations and ideas.”⁴⁷⁷ For Hume and Waldron, justice should change “with the temper and circumstances of mankind”.

Second, even if we accept that justice should change with the circumstances, it is an open question whether those circumstances have changed for better or worse. In theory, any historical development could be either good or bad, but it looks as though for Waldron, changes in circumstances in the post-contact era of New Zealand (his case study) are historical changes for the better. Since the 1840 Treaty of Waitangi, which established European settlement on New Zealand, “European technology and farming, mining, and fishing methods have transformed out of all recognition the amount and the productivity of land and other resources available for use. Agriculture now supplements horticulture; [...] *modern* road, rail, and other infrastructure have developed; cities have been built (and most New Zealanders — Māori and Pākehā — live in cities); and the technology of a *fully developed commercial society* has replaced the *Neolithic* technology that characterized the thousand years or so of Māori occupation. In these different circumstances, it boggles belief to say that what justice requires in this territory now is anything like what justice required at the very beginning of

⁴⁷⁷ D. Hume, *Treatise on Human Nature* (Oxford, 1896 [1739]), via <https://oll.libertyfund.org/title/bigge-a-treatise-of-human-nature>, accessed 20/07/21.

European contact.”⁴⁷⁸ For Waldron, the linear growth towards “a fully developed commercial society” is so positive that it alters the balance of justice.

The crucial question that follows then is: positive for whom? From whose intellectual perspective and lived experience could the European “development” of New Zealand be seen as “positive”? It is rather likely that the Europeanisation of Māori New Zealand is good from the perspective of Europeans and their descendants, but not for others. For Waldron, the Māori’s participation in the flourishing of European modernity 18.000 kilometres away from the mother country (not their mother country, of course, but the original settlers’) should be seen as an achievement. Despite documented discrimination and extermination, the European colonial enterprise has yielded such good results that, on the whole, the Māori’s participation in European visions of “development”, “has to make a difference to how we think about rights - even violated rights - that are alleged to have survived from that earlier era into the present.”⁴⁷⁹ Waldron is not claiming that the Māori had no rights, nor that these rights were not violated by the colonisers. He questions the idea that the Māori’s “alleged” rights have “survived” from “that earlier era [totally undefined] into the present”. But how can even violated rights lose some of their power through the passage of time?

That requires a third step in the supersession argument: we should not just accept (1) that justice changes with the circumstances and (2) that those circumstances change for the better, but also – crucially - (3) that circumstances change for the better for everyone. Like many others, Waldron assumes that

⁴⁷⁸ Waldron, *Settlement, Return and the Supersession Thesis*, 250.

⁴⁷⁹ Waldron, *Redressing Historic Injustice*, 151.

European progress is universal progress. In the tidal wave of European modernisation rights “from that earlier era” should weaken or disappear because everyone benefits from progress. Why would you like to reclaim something from the past if the present is better? The original injustice becomes invisible under the assumption of universal progress. Waldron defended the first element of his argument at length, the second element indirectly and the third not at all. Using the shortcut of saying that the passage of time alters historical obligations of justice seemed to work just fine. Indeed, in the burgeoning academic and political debate about the supersession of historical injustice hardly anyone noticed. This reveals to what extent the conceptual link between historical development, Europeanisation and universal progress is entrenched, even in the minds of people who think about justice for a living.

A core insight from this thesis, however, is that for some people Western colonial progress is a disaster. The way European visions of civilisational development were imposed on non-Europeans through the medium of time-discipline and futuristic temporalities led to the extinction of invaluable lifestyles and traditions all over the world. Some of them were lost forever – in the name of progress. Others survived, but struggle to make themselves visible in a world biased against the “old-fashioned”, “traditional” and “primitive”.

The persistence of the past in the present is troubling from a Western perspective. In contrast to the repetitive cycles of “traditional” societies, the linear progress of Modernity demands a series of singular acts that add up to individual and collective improvement. Repeating the same act without improvement is not stable but retrograde. Modernity demands forward-looking movement. Relying on a past right that was infringed in the past to make claims

of justice in the present is thus doubly problematic. First, the claim is an uncomfortable reminder (to say the least) of the persistence of an uncomfortable past which descendants of European settlers have sought to overcome. It makes the project of Modernity look incomplete. Second, the claim is made for the wrong reason, looking backward rather than looking forward. Traditionalists and nostalgics look backward, but “fully developed” societies look forward.

This focus on forward-looking justice can be seen not only in the statements of the disproportionately powerful promoters of progress, but also in the those of their victims. The American legal disputes we encountered in chapter 6 reveal the strength of the European progress paradigm. In *McGirt v. Oklahoma* (2020), petitioner Jimcy McGirt asks the State of Oklahoma not to interfere with his life because his crimes were committed in “Indian Country”. The argument made before the US Supreme Court is not at all about his past misdeeds, or indeed about the Federal Government’s misdeeds when President Jackson signed the Indian Removal Act (1830) that forced all tribes East of the Mississippi to move westwards on the “Trail of Tears”. Instead, the petitioner in 2020 picked up the language of President Jackson, who painted the displacement as an invitation to partake in the American Dream:

“The waves of population and civilization are rolling to the westward [...] Doubtless it will be painful to leave the graves of their fathers; but what do they more than our ancestors did or than our children are now doing? To better their condition in an unknown land our forefathers left all that was dear in earthly objects. Our children by thousands yearly leave the land of their birth to seek new homes in distant regions. Does Humanity weep at these painful separations from everything, animate and inanimate, with

which the young heart has become entwined? Far from it. It is rather a source of joy that our country affords scope where our young population may range unconstrained in body or in mind, developing the power and facilities of Man in their highest perfection.”⁴⁸⁰

McGirt rejected interference from the government for modern and thoroughly American reasons. He did not mobilise any traditional attachments to his land; instead, he played the American game, citing countless broken treaties, highlighting his industrious activity as a self-made businessman and underlining his individual right to exercise his freedoms on his own (Indian) land.

The *1619 Project* took a similar approach in claiming that American Blacks, historically marginalised through systematic discrimination, were the real Americans. Without them, it is argued, America would lack the agricultural power, the relentless work ethic, the musical vibrancy and the sheer spirit of survival that supposedly characterise the country today. The participating writers and journalists adopted a new Founding date (4 August 1619, the arrival of the first slave ship; instead of the signing of the Mayflower Compact on 11 November 1620) and a new Liberation date (19 June 1865, Juneteenth, the emancipation of all slaves from internal colonial power, instead of the liberation from English dependency on 4 July 1776) – but ultimately preserved the basic structure of American time: founding-struggle-liberation-progress. When Nikole Hannah-Jones wrote in her controversial lead article, “Our democracy’s founding ideals were false when they were written. Black Americans have fought

⁴⁸⁰ President A. Jackson, *Message to Congress "On Indian Removal"*, 6 December 1830; Records of the United States Senate, 1789-1990; Record Group 46; NARA, via: https://www.nps.gov/museum/tmc/MANZ/handouts/Andrew_Jackson_Annual_Message.pdf, accessed 30/07/2020.

to make them true”,⁴⁸¹ this was not an attack on the basic conception of the United States as a force for progress; it was merely a recentring of the *agents* of American progress. The progress paradigm persists, both in the theoretical literature and in legal practice.

Once we learn – through the historical reconstruction of chapters 2 and 3 – that this progress paradigm is the result of European cultural, economic and political development, and, more importantly, the result of Europe’s imperialist interactions with the non-European world, the picture becomes even more complicated. If the European idea of liberal progress fuelled imperial expansion and was in turn strengthened by that expansion (for example, when Europeans sought to “prove” their civilisational superiority by comparisons with “natives”), it becomes doubtful that this conception of progress will help us overcome the historical injustices of colonialism. If the temporal conception that helped build Empire is also presumed to facilitate its dissolution, we may find ourselves in a dangerous temporal-cum-conceptual loop, unable conceptually to escape a temporal framework which we recognise has been the source of many wrongs.

The main contribution of the historical reconstruction offered in this thesis is thus that it destabilises normative arguments about historical injustice that rely, wittingly or otherwise, on the assumption of progress. Once that assumption is revealed as the product of a purposefully exclusionary past, we must ask: can we nonetheless continue to draw on it when thinking and talking about social inclusion through historical rectification?

⁴⁸¹ <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html>, accessed 18/07/2021.

II. TAINED TEMPORAL TERMS

The historical reconstruction and contextualisation of key concepts in the historical injustice debate might not convince everyone. “Why should normative theorists care about historical facts in the first place?”, critics like Hans-Johann Glock may ask.⁴⁸² Why should we be aware of the facts, and of the biased way in which these facts were presented?

First of all, some refinement of my methodological positioning might help. It has become common in Political Theory to distinguish between ideal and non-ideal theory. Laura Valentini has mapped the main ways of contrasting them: (i) full compliance vs. partial compliance theory; (ii) utopian vs. realistic theory; (iii) end-state vs. transitional theory.⁴⁸³ This thesis falls squarely within the non-ideal halves of these pairs. My analysis and suggestions assume only partial compliance on the part of historical actors and contemporary justice activists. It is a realistic, rather than utopian theory, to the extent that it uses real-world historical data and court cases to offer a realistic (often pessimistic) assessment of the prospects for historical rectification outside of the dominant Western framework. Most

⁴⁸² Hans-Johann Glock, one of the fiercest critics of historical contextualisation in the realm of philosophy, quips: “[T]he distinctively philosophical disputes concern not the empirical data themselves, but at most the relevance they have for such problems. The genuinely philosophical task is not to expand the corpus of empirical knowledge, but to organize what is known in a coherent manner. If there is a kernel of truth to this idea, it will apply to the cultural sciences with a vengeance. If even neuroscience cannot solve the mind-body problem by itself, cultural sciences like sociology and history will be completely out of their depths.

There is no reason why the empirical findings of these disciplines should possess greater potency for solving philosophical problems than those of the natural sciences. It is equally clear that such problems cannot be solved or dissolved simply by historical research into their origins.” H.J. Glock, “Analytic Philosophy and History: A Mismatch?”, *Mind*, Vol. 117, No. 468 (2008) 867-897.

⁴⁸³ L. Valentini, “Ideal vs. Non-ideal Theory: A Conceptual Map”, *Philosophy Compass*, No. 7 Vol. 9 (2012), 654–664.

importantly, my theoretical observations are necessarily limited to transitional theory. I am not proclaiming the total solution or total failure of the historical injustice problem. Rather, I am highlighting an enormously important obstacle that hinders our attempts at taking historical injustice seriously. This is also important if we want to be engaged political theorists. The world is very much a testing ground for non-ideal theory and we need to diversify our viewpoints if we want to understand where we are.

Identifying that obstacle requires historical research and reconstruction. Here again, I should clarify that I am deliberately combining the time-sensitive methods of the Cambridge School with less historicising approaches to show how intellectual developments of the past were incorporated by politicians and laws that influence our struggles today. The architecture of historical justice today is to a significant extent the product of past political and intellectual debates about imperialism, civilisation and development. Non-ideal theory can benefit from critical historical research.

Once we have accepted those methodological choices, we might still ask: why should political theorists care about imperial, technological, social or legal history? Without adopting the position of political realists, three reasons come to mind: First, to talk about anything properly one should know its history. Knowing how certain terms and ideas came about and entered our political vocabulary and imaginary guards us from misuse and misjudgement in the present. This does not “solve” the philosophical issues at stake in any given debate; it does help us, however, in agreeing on appropriate terms of engagement that avoid further conceptual injustice. The danger of knowingly or unknowingly operating with tainted temporal terms affects everyone. Exclusive, hierarchical

progress was and is essential to imperial and post-imperial politics. If we are truly committed to historical rectification, we should try to avoid reinforcing a framework that is itself part of the problem.

Second, Western legal systems operate under the developmentalist framework of Liberal Time. As we have seen in the three legal case studies from Britain, France and the United States, the progress paradigm is codified in law. That consolidation makes it very difficult to disentangle and challenge the basic premises of (neo)colonial behaviour. The remarkably recent “historical turn” in legal theory has led to the insight, in some circles, that international law was not Martti Koskenniemi’s “gentle civiliser of nations”, but much rather Matthew Craven’s instrument of historically conditioned oppression.⁴⁸⁴ Antony Anghie is most explicit about this: “Colonialism was central to the constitution of international law in that many of the basic doctrines of international law - including, most importantly, sovereignty doctrine - were forged out of the attempt to create a legal system that could account for relations between the European and non-European worlds in the colonial confrontation.”⁴⁸⁵ Western imperial domination and Western legal systems are mutually constitutive. It should not be surprising then, that undoing colonial relations by using a legal framework that was built to support them (as some of the plaintiffs tried in our case studies), is very difficult.

⁴⁸⁴ M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge, CUP, 2009); M. Craven, *The Decolonization of International Law: State Succession and the Law of Treaties* (Oxford, OUP, 2007). M. Craven, “Colonial Fragments: Decolonization, Concessions, and Acquired Rights” in: von Bernstorff, Jochen and Dann, Philipp, (eds.), *The Battle for International Law: South-North Perspectives on the Decolonization Era* (Oxford, OUP, 2019), 102-124.

⁴⁸⁵ A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, CUP, 2005), 3.

Third, the persistence of exclusionary visions of historical time could be seen as a structural historical injustice in itself. We have seen in the case study chapters that activists' demands for historical rectification are usually cast in the terms of the coloniser. Is that acceptable? What does that tell us about the powerful conceptual constraints for those seeking historical redress?

Before we move on, the classic objection of the ultra-progressives should be raised. The argument is essentially a defence of destructive progress: If some suffering is in the name of progress, that is still acceptable, so long as progress actually arrives. If it doesn't arrive, suffering should be temporally limited. But the essence of this orthodox Marxist view is that progress is not limited. Since the late eighteenth century, that march has been illustrated and described as a seemingly inevitable, unstoppable force.⁴⁸⁶ For such deterministic ultra-progressives, the march of progress has primacy. Optimism is certainly laudable in principle – but the accompanying obstinacy betrays a risk. Ultra-progressive historical materialists are not only illustrating the strength of the progressive model which I have sought to problematise as a pervasive issue of just redress. They are also illustrating the risks of domination and destruction that I have identified in the imperial expansion of Liberal Time. In this sense, the Marxist model, which may look to some like an attractive alternative to progressive Liberalism, is actually similarly problematic. The difference in vocabulary and vigour should not deceive us. The general aim of the ultra-progressives is to promote progress at all cost – including the loss of valuable forms of life and conceptual frameworks that do not fit ideological moulds.

⁴⁸⁶ A prime example is E. Bloch's *Das Prinzip Hoffnung* (Frankfurt, Suhrkamp, 1985).

Nonetheless, hope seems to persist even within the prison created by that hope of universal progress. Can that endure even once we have realised it is a prison? The next section will show how strong the cage of Liberal Time actually is.

III. POSSIBLE ALTERNATIVES

If Liberal Time is so problematic, what are the alternatives? How can we decolonise time? In looking for alternatives to our dominant temporal order, I attempt to find clues in the writings of (1) critics from within the European tradition and (2) critics from the colonies, but perhaps there is also (3) a third way of thinking about time that is totally unrelated to European notions of it. In this regard, the recent publication of alternative histories written from the viewpoint of indigenous people (e.g. Hämäläinen's *Lakota America*) could open up new perspectives. Nonetheless I should point out that none of these options necessarily lead to solutions. I am merely exploring possible options in the monumental project of decolonising time.

The first option focuses on non-linear visions of time that originated in the Western tradition. It was precisely at the peak of European history-making (in theory and practice), at the turn of the nineteenth century, that some of the most imaginative proposals to free ourselves from hegemonic History arose. Nietzsche, Benjamin, Bergson, Heidegger, to name only a few, questioned the linear shape of time and proposed various ways of undoing the trinity of past,

present and future.⁴⁸⁷ Benjamin, for instance, criticised this genteel order directly, since, for him, it left little room for deviation or radical human agency. The opening simile of his *Theses on the Philosophy of History* goes to the heart of the problem: “There was once, we know, an automaton constructed in such a way that it could respond to every move by a chess player with a countermove that would ensure the winning of the game. A puppet [...] sat before a chessboard placed on a large table. A system of mirrors created the illusion that this table was transparent on all sides. Actually, a hunchbacked dwarf—a master at chess—sat inside and guided the puppet's hand by means of strings. [...] The puppet, called "historical materialism," is to win all the time.”⁴⁸⁸ The historical process is not only artificially staged as automatic and rational, but most of all, it is self-centred and self-deceiving, imprisoning its actors in a “system of mirrors” that refuses access to any external truth. It should be acknowledged that Benjamin is focused on Marxist time, but insofar as teleological Marxist time is a child of the Enlightenment just like other versions of European teleology, including Liberal Time, this critique is pertinent for the whole project of problematising the European temporal order.⁴⁸⁹ For Benjamin, truth cannot be produced by an all-encompassing narrative. Instead, historical truth is fundamentally unpredictable. Most days, “the true image of the past flits by”, he writes. Sometimes, however, the past speaks to the present “as an image that flashes up at the moment of its recognisability, and is never seen again”⁴⁹⁰. The

⁴⁸⁷ F. Nietzsche, *Vom Nutzen und Nachteil der Geschichte* (Leipzig, 1893) W. Benjamin, *Thesen über den Begriff der Geschichte* (1940), via <https://www.uzh.ch/cmsssl/suz/dam/jcr:00000000-36d7-41d4-ffff-ffffa7cb2e14/benjamin.pdf>, accessed 26/06/21; H. Bergson, *Matière et mémoire* (Paris, 1896); M. Heidegger, *Sein und Zeit* (Berlin, 1927).

⁴⁸⁸ W. Benjamin, *Thesen über den Begriff der Geschichte* (1940), via <https://www.uzh.ch/cmsssl/suz/dam/jcr:00000000-36d7-41d4-ffff-ffffa7cb2e14/benjamin.pdf>, accessed 10/03/21, thesis I

⁴⁸⁹ See Chakrabarty, Subrahmanyam & Trüper (eds.), *Historical Teleologies in the Modern World*.

⁴⁹⁰ Benjamin, *Thesen über den Begriff der Geschichte*, thesis V.

traditional boundaries of historical time melt away as “images” flash up like a memory in a psychoanalytical session to illuminate the meaning of the present.⁴⁹¹ Benjamin even suggests that there could be “secret agreement between past and present generations”⁴⁹² according to which real, fragmented, unexpected acts across time have to be saved from the greed of larger systems. If that non-oppressive history can be saved from the systematising of Great Powers, critical thinkers like Benjamin might help.

The most important argument against this solution, however, is that these European thinkers were still products of their circumstances. Although the modernist and (post)structuralist critique of historical time unsettled and refocused the thinking of Western intellectual elites, they never managed to dethrone the original conception entirely. Why not? I think there are two possible answers: First, critical social theory from the Fin de siècle onwards never made it into the heart of power. For some reason, however successful in select social circles, they remained a view of outsiders and dissidents. Those in power generally benefit from the current arrangement. For them, the modernist adventures are exactly that – adventurous thought experiments that have little connection to how the world is (and should be) run. But there is also a less realist problem: Never having experienced alternatives to Liberal Time, even the most critical thinkers can only imagine by mental contortions what these alternatives might be. It takes intellectual audacity and imagination to imagine a world without Liberal Time, but without the lived experience of alternatives, the critical modernists might remain imprisoned in the progress paradigm.⁴⁹³

⁴⁹¹ On temporal fragmentation and memory see, for example, H. Bergson, *Matière et mémoire* (Paris, 1896).

⁴⁹² Benjamin, *Thesen über den Begriff der Geschichte*, thesis II.

⁴⁹³ Allen, *The End of Progress*.

The second option to find alternative, non-Western times, then, are people who have actually experienced the arrival of Liberal Time through colonisation. Recent historical reconstructions of how Western timekeeping and Western historiography were imposed on colonised peoples suggest that this (still understudied) practice was an essential component of Western imperialism.⁴⁹⁴ The main aim was to “synchronise” the “natives” with European economic rhythms while simultaneously “desynchronising” the political relationship by relegating non-Westerners to the past. Dipesh Chakrabarty famously protested against being relegated to “the waiting room of history”, while Partha Chatterjee sought to rethink “the nation in heterogenous time”, rather than accept “the dominant strand in modern historical thinking that imagines the social space of modernity as distributed in homogeneous empty time.” This European vision of time should be rejected since, for him, it is inherently oppressive: “Empty homogeneous time is the time of capital. Within its domain, capital allows for no resistance to its free movement. When it encounters an impediment, it thinks it has encountered another time--something out of pre-capital, something that belongs to the pre-modern.”⁴⁹⁵ Achille Mbembe offers another vision of what he calls “black time”. In contrast to (seemingly) well-ordered European time, “Black time is always arbitrary and provisional. It changes all the time and its forms are uncertain.”⁴⁹⁶ That uncertainty stems from the fact that the Black experience – of the labour market, the justice system – is not predictable. In contrast to Europeans, who enjoy the luxury of looking into the future with

⁴⁹⁴ Ogle, *The Global Transformation of Time*.

⁴⁹⁵ P. Chatterjee, “The nation in heterogenous time”, *Futures*, Vol. 37, No. 9 (2005), 925f.

⁴⁹⁶ Mbembe, *Critique de la raison nègre*, 179.

confidence, Blacks live in a framework of precarity that even translates into their very way of conceptualising time. The colonised did see that the Western promise of progress was not accompanied by tangible progress on the ground. But the response, for the most part, was surprisingly similar to that of the European modernists. Instead of going in search of lost time – suppressed visions of time – they responded to the coloniser in his own language. The language of the imperial capitals, but also the language of historicism, modernism, psychoanalysis, existentialism. The same theories of history which have originally justified colonisation ultimately seem to obstruct decolonisation.

If neither European nor extra-European alternatives to Liberal Time seem satisfactory – precisely because they reproduce some of the conceptual patterns and power asymmetries inherent in the Western conception of history - what should we do? If Liberal time became dominant through a series of historical contingencies, it should be possible to contest, even replace it with competing models. These models might be unearthed if we go in search of lost time (lost in the sense of hidden from view rather than gone forever), temporal schemes lost to the power of the coloniser. Pekka Hämäläinen, for instance, has offered an alternative history of the North American continent which is “decidedly a history of the Lakotas, written from sources that seek to convey their perspectives”. Those indigenous sources are remarkable. Hämäläinen’s primary sources are the indigenous *waníyetu iyáwapi* (“winter counts”) collected at the Smithsonian Institution and regional museums across North America.⁴⁹⁷ As

⁴⁹⁷ https://www.si.edu/object/lakota-winter-counts%3Ayt_V8aCRM9TtE . accessed 26/06/21.

illustrated by figure 5 below, these counts are buffalo hides on which every year is commemorated by a single pictogram drawn every winter. The pictograms overlap like layers of a snail's house to form a line that also emphasises the interaction between layers of time.⁴⁹⁸ The two ways of seeing any winter as a moment in time or as part of a cross-section that cuts through Koselleck's "sediments of time" gives a view on historical development that is underestimated in Western approaches to history and historicity. In structural terms, the narrative mode of the winter counts could still convey some form of linearity, but the mere possibility to imagine and experience historical time through the experience of non-Western actors is already very important.



Figure 5: Lone dog winter count, Sioux (N.A.702.5)

These winter counts, Hämäläinen sustains, “uncover how Lakotas shaped their histories through selective narration and how their understanding of the past and themselves changed over time. They most emphatically do not adhere to

⁴⁹⁸ <https://centerofthewest.org/2015/12/05/treasures-lone-dogs-winter-count/>, accessed 26/06/21.

Euro-American accounts of major historical events and developments. They open an alternative, counterhegemonic window into the American past, allowing us to observe native motives and meanings directly, without a foreign filter.”⁴⁹⁹ The archive of winter counts might be free of foreign filter (even though held at the Smithsonian), but I am not entirely sure that Hämäläinen’s account is free of such a filter.

In focusing on his target audience, who presumably only knows the dominant story of brave American men “opening” the “Wild West” through the relentless westward push of civilisation, Hämäläinen (inadvertently?) recycles some of the terminology and assumptions of that target audience. The justification for his alternative history, for example, is phrased as follows:

*“It is only in the last few decades that Native Americans have entered history as fully-fledged protagonists. Earlier, for centuries, Native people lingered in the recesses of the American imagination as a kind of dark matter of history. Scholars tended to look right through them into peoples and things that mattered more, that seemed to move history: conquistadors, monarchs, founding fathers; settler Empires, nation-states, global capitalist markets. The Indians were a hazy frontier backdrop, the necessary ‘Other’ whose menacing presence heightened the colonial drama of forging a new people in a new world.”*⁵⁰⁰

Of course, it is courageous to argue, as Hämäläinen does throughout the book, that the Lakotas are the real Americans, that instead of foreign kings and conquistadors, the native tribes of the Great Plains actually ran the show.

⁴⁹⁹ P. Hämäläinen, *Lakota America*, 8.

⁵⁰⁰ P. Hämäläinen, *Lakota America*, 7.

Nonetheless, he presents the historical meta-project of the book in terms that might undermine the unique features of the Lakota story – by phrasing it like many other demands for recognition of historically marginalised groups: Native Americans should go from “hazy frontier backdrop” to “fully-fledged protagonists”. The status as real historical agents would allow them to enter the Western vision of history, in which Man moves in time and consciously moves history forward through action. Although his position in the (post)imperial hierarchy is very different, Hämäläinen uses the orthodox vocabulary employed by European (post-)imperial politicians, like Nicolas Sarkozy, who – as we saw in chapter 3 – invited young Africans to “enter history”. In important ways, the Lakota historian is underlining the dominance of the orthodox story. The existence and agency of Lakota Americans should be shown and valued in public – but why such recognition should follow dominant patterns is not immediately clear. Could there be a way of demanding and receiving recognition outside of the cage of Western history, a way of going beyond Liberal Time and the order it has created?

Perhaps this hopeful question itself betrays my persistent desire to progress beyond progressive time. Could there be more ways of thinking about alternative temporal orders? Should there be? If we do identify them, it still remains to be seen whether these alternative temporal orders would themselves become oppressive. We should also face the possibility, however, that there might be nothing left in some parts of the world, because the colonisers were particularly “effective” in imposing their temporal order.⁵⁰¹ In that case, there is either no

⁵⁰¹ P. Hämäläinen, *Lakota America*, 10.

solution to be found or we haven't found it yet – that “yet” itself betraying the entrenched hope of progress. Could it be that we have reached a dead end? If so, can we accept that we are stuck? If not, we have a problem that proves my rendering of Liberal Time as pervasive and persistent.

And yet, there might be one more way of thinking about the temporal trap of Liberalism. When historically disadvantaged groups phrase their demands for rectification in terms of Western progress, is this *Liberal Time fighting back*? Is this Liberal Time turning against its makers, the machine escaping the control of the scientists who carefully ordered our universe? It is difficult to gauge whether the overtly progressive campaigns for historical rectification are progressive by choice or not. If the language and conceptual framework is a choice, we should ask: *Is the strategic use of the liberal framework acceptable if it leads to the desired result?* It is tempting to see the strategic appropriation of Liberal Time by the oppressed as a path to more recognition and even historical rectification. As we have seen in the case of the American *1619 Project*, the movement to revise standardised conceptions of progressive US history became incredibly influential. It reoriented the discussion on History, race and identity in America and some states have incorporated the *1619 Project* into their curricula. Nevertheless, this utilitarian framework might not be enough.

It might not be enough since the strategic use of the progress paradigm in turn confirms the power of that paradigm. The strategic use of the progress paradigm opens up very significant problems of conceptual imprisonment. Let us remind ourselves that the liberal notion of progress has a dark history in which calls for liberation were accompanied by systematic oppression and exclusion. Why

should the oppressive features of Western progress disappear now? If the terms of the liberal emancipation from historical injustice are already defined in advance, can we actually address historical injustice in all its specificities and fullness? *What gets lost* if we need to put the case in such restricted terms? What words, concepts and experiences are inarticulable in the language of Liberal Time? The rigid legal frameworks of the West might miss something, or force their constraints on justice claims that could be independently powerful in their own right.

Simon Hope's revelation about the Māori conception of rights comes to mind. "Post-contact history reveals a number of at times ingenious Māori attempts at casting their claims of right into modes of legitimation that might gain better traction with European audiences: monarchical and biblical modes in the nineteenth century; more liberal modes in more recent times", Hope writes. "Yet there is an increasingly audible sense among Māori that they should not have to do this, that the assertion of Māori special rights should be accepted as legitimate on its own terms."⁵⁰² Hope then offers a useful example of international claim-making, which uses the international legal architecture only strategically: "When, for example, Māori appeal to the Treaty of Waitangi [...], they resist the common Pākehā assumption that the Treaty *creates* special *contractual* rights for Māori. Māori view the Treaty as simply protecting whakapapa rights that would exist even if the Treaty had never been signed, and in doing so bend the Treaty mode to the shape of the whakapapa mode. Māori do the same on those occasions when they appeal to UN indigenous rights, detaching those rights from the universal grounding the UN language gives them."⁵⁰³ The growing confidence in

⁵⁰² Hope, *Human Rights: Sometimes One Thought Too Many?*, 118.

⁵⁰³ Hope, *Human Rights: Sometimes One Thought Too Many?*, 118.

a distinctively Māori mode of legitimation is a persistent and significant feature of modern Māori political argument. In that strategic form of argument, they lose something of their own linguistic heritage, but can – covertly – keep their underlying conception of rights. That might be effective for now, but if we really care about justice for historically marginalised peoples, we cannot but wonder: what would it be like if they did not have to switch codes to cloak their demands for justice in the language of the coloniser?

Conclusion

The main aim of this intertemporal and international journey has been to highlight to the promoters and pilgrims of progress that their vision is successful, but historically compromised. Liberal Time, driven by the ostentatious promise of emancipation and empowerment, is deeply linked to the hierarchical geopolitics of European expansionism. Section I has highlighted the pervasiveness of Liberal Time from academia to policy-making and legal reasoning. Section II has sought to demonstrate that Liberal Time's imperial history matters for theorists of justice because its assumptions and terminology inform the Western legal system, which therefore remains temporally biased. Section III has explored possible alternatives to Liberal Time proposed by European and non-European critics, but found them wanting. The West can no longer justify its monopoly on history-making. And yet, any solution to the problem must grapple with the extraordinary success of a temporal framework that still structures our courts, our classrooms and – it seems – even the critiques that set out to expose the hollowness of the basic premise of Liberal Time: perpetual progress.

CONCLUSION: TIME WILL TELL

Having arrived at the end of our journey through the history of the West and the Western idea of history, we mustn't discard time travel altogether. This conclusion will offer three parts in which we will be able to return to the past, imagine alternative histories for the present and even design the future. I will first provide a summary of the main findings of this doctoral dissertation; then comparisons and connections between my work and the existing literature, highlighting the distinctiveness of my contribution to the field; and third, some limitations which point us towards avenues for future research.

I. SUMMARY OF MAIN FINDINGS

This thesis has tried to show that it is our very idea of progress, codified in law, which obstructs real progress when it comes to postcolonial reconciliation. Drawing on the diverse methods of historical archival research, legal analysis and normative critique, I have provided a comparative analysis of how different countries deal with their colonial past in order to find out why full historical reconciliation is so difficult to achieve. In Part I, I searched for the origins of our conception of progress and located them firmly within the history of the West. Chapter 1 argued that the international debate on historical injustice is stuck because both proponents and opponents of redress rely on the same conception of time: Liberal Time. This is particularly visible in Jeremy Waldron's famous

Supersession Thesis, which posits that injustices can be superseded by changes in circumstances, changes in the historical context. Crucially, however, that implies that the new context must in some way be an improvement on the old. Historical change is all too often equated with progress. This is the core feature of the liberal conception of time which is biased towards a better future and discards the past. Chapter 2 traces the emergence of this inherently progressive Liberal Time back to key developments in European political and intellectual history. Three themes – the might of organised Christianity, the rise of the bourgeoisie, and the spectacle of the French Revolution – shaped European conceptions of time and history in a lasting manner. Instead of following the common conception of time as universal, I revealed the relatively provincial origins of World Standard Time. Chapter 3 went a step further to show how Liberal Time spread worldwide when it became a justification and tool of European imperial expansion. I identified an important tension, however, between diachronic orders of subjection – placing non-Europeans in distant stages of historical time – and synchronic systems of coordination, which were required to harmonise imperial trade and warfare. That tension leads to polychronic visions of progress, in which different historical times coexist in different geographical spaces to justify imperial intervention in the first place, while clock time promises equality for all. The risk of universal modernisation (which would obliterate imperial “trusteeship”) is managed by Europe fashioning itself as the guardian of the gate of progress. Inequality is perpetuated through time. The conclusion of part I was thus that the same time that built Empire now impedes its dissolution.

Part II switched gear and method. We moved back to the present for a comparative discourse analysis of three recent trials in which the Western ideal of progress is challenged. These trials, opportunities for public contestation and recognition, exposed a shared imaginary of progress across major imperial powers - but they also revealed differences in how national timescapes shape historical reconciliation. Chapter 4 showed that Britain's establishment subscribes to a cult of continuity which makes the public acknowledgement of colonial wrongs comparatively easy. Chapter 5 advanced that France's case is radically different. The revolutionary rupture at the foundation of modern France makes an honest, productive dialogue about the past virtually impossible. Archives are closed and dissident voices are silenced with the higher aim of preserving the myth of the enlightened revolution. The third case study in Chapter 6 suggested that the United States presents a synthesis between rupture and continuity. On the one hand, there is the powerful founding myth of a people breaking radically with all preceding historical patterns and, on the other hand, the promise of perpetual progress keeps the American public alert to the risk of historical "backsliding". The institutional practice of constantly measuring American progress against the ideals of the American Revolution is surprisingly effective at absorbing inevitable historical shocks. This left us with a final chapter 7 which distilled these findings into a progress paradox and drew out its implications for the future rectification of historical wrongs. In the end, my main finding is this: The time that built Empire impedes its dissolution - in the mind, on the street, in the courtroom. The legal systems which could empower marginalised groups are orienting their work along a fictional linear axis of time that can be as harmful as the original historical harm itself. We are thus imprisoned in the paradox of

progress: the Western promise of progress cannot be fulfilled so long as our institutions defend an idea of progress which is itself oppressive and exclusionary.

II. CONTRIBUTION TO THE FIELD

I believe to have made three distinctive contributions to the interdisciplinary literature which examines the problem of historical injustice. These contributions are both theoretical and methodological.

First, I have gone below the surface of the historical injustice debate to uncover its unacknowledged assumptions. In particular, I have attempted to show that most of the current historical injustice debate is based on specifically European assumptions about the nature and structure of time, history and historical action. This assumption is shared across the political spectrum and across national academic conventions.

Second, I have taken a comparative approach to demonstrate more broadly that time is highly political and should never be taken as a given. The successive advances in modern timekeeping were accompanied by ever more fine-grained political rhythms which allowed for the synchronisation of modern life as well as the unjust hierarchies of the diachronic age of Empires. The common understanding of time as a neutral scientific unit significantly underestimates the power of this variable in politics. My comparative analysis

has shown that the temporal variable has different effects in different contexts. Overall, however, we should be cautious whenever time, or the passage of time, might be used as a quasi-scientific explanation for political (in)action or even as an argument for or against historical justice.

Third and last, I am honoured to insert myself in the growing body of scholarship which questions rigid academic compartmentalisation and expands the purely abstract nature of Political Theory as a discipline.⁵⁰⁴ Longo, Zacka and Herzog have extolled the beneficial effects of enriching Political Theory with ethnography,⁵⁰⁵ but I go beyond ethnographic fieldwork to encourage the methodical observation of struggles for recognition that surround us every day. They play out in archives, courtrooms, museums and television studios – all places outside the natural habitat of political theorists. It is crucial that we leave the office to rediscover our problem from different angles. In broadening our lens, we can see where our accepted terms actually come from, how intellectual history is inseparable from political strategy and how the struggles for recognition which we have theorised actually play out in court. I have made use of my prior training to combine the methods of history, law and philosophy and hope that this will encourage more researchers to venture across disciplines, individually and collectively. The aim was and continues to be a new grounded and applied political theory which is embedded in the struggles of everyday politics.

⁵⁰⁴ M. Longo & B. Zacka, “Political Theory in an Ethnographic Key” *American Political Science Review*, Vol. 113, No. 4, (2019), 1066-1070.

⁵⁰⁵ L. Herzog & B. Zacka, “Fieldwork in Political Theory: Five Arguments for an Ethnographic Sensibility”, *British Journal of Political Science*, Vol. 49, No. 2 (2019), 763-784.

III. AVENUES FOR FUTURE RESEARCH

Of course, any academic endeavour has its limitations. This particular project was restricted not only by time constraints, but also by very limited access to state archives due to the COVID-19 pandemic. Instead of visiting the US National Archives, the National Museum of African American History and the French National Archives in person to experience the joys of archival immersion, I had to content myself with virtual tours and incompletely digitised files. A more exhaustive examination would not only reveal documents that facilitate the reconstruction of specific historical wrongs. Crucially, existing documents can also point towards missing documents.⁵⁰⁶ This could lead to more detailed reflection on how states build and guard, hide and reveal narratives about their national past. A deeper investigation into the national cultures of document preservation and information management could thus support historical redress in the future.

A further limitation is that only three countries were the object of closer examination. As explained in the introduction, these countries were chosen because they (a) had a significant colonial history and (b) self-identified as liberal nations who, if necessary (c) spread liberal values and governance systems through imperial expansion. Still, comparative studies on a larger scale will hopefully be able to survey more countries, each with their history and their historically evolved legal system. In identifying new targets of

⁵⁰⁶A. Farge, *Le goût de l'archive* (Paris, Points, 1981).

analysis, two groups of countries seem particularly important: First, states of the Global South, which, in many instances, were at the receiving end of European visions of history and often adopted (elements of) the coloniser's legal system. Although some work has already been done in the framework of the debates on transitional justice, a lot remains to be done.⁵⁰⁷ Second, the interest in time should justify an examination of the memory politics of Early Modern Empires. While I have focused only on the second wave of European imperialism (roughly 1750-1950), the first wave of European imperialism (roughly 1450-1650), spearheaded by Spain and Portugal, also produced lasting disputes about responsibility and redress. Spain, for instance, celebrated the 500th anniversary of Columbus's "discovery" of America with lavish nationwide ceremonies, while explicitly rejecting Mexico's demand for an official apology for the conquest, colonisation and genocide in Central America.⁵⁰⁸ The most interesting questions here would ask (i) whether the longer passage of time since the commission of historical wrongs has a significant impact on reparation claims and (ii) whether Empires that explicitly justified expansion on the grounds of Christianisation (conversion of lost souls) rather than along the secularised argument about civilisational progress fare differently when uncomfortable historical truths are revealed. I hope that these suggestions will point the way towards more comprehensive research in the future.

⁵⁰⁷ See the Eurocentric stance taken in B. Cannon, D. Pkalya & B. Maragia, "The International Criminal Court and Africa: Contextualising the Anti-ICC Narrative", *African Journal of International Criminal Justice* (2016) 6-29.

⁵⁰⁸ <https://elpais.com/ideas/2020-06-05/a-500-anos.html>. The largest newspaper of the Spanish-speaking world ran more than 20 articles on the 500 anniversary of "The Conquest", as it is called in Spain, in 1992.

Notwithstanding these necessary limitations, I hope I have been sufficiently clear about of the core claims of this thesis: We cannot fulfil the Western promise of progress as long as our institutions defend an idea of progress that is itself oppressive and exclusionary. It is the Western idea of progress, codified in law, which obstructs real progress when it comes to postcolonial reconciliation. The same time that built Empire also impedes its dissolution.

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