

## TRANSITIONAL JUSTICE AND HISTORIOGRAPHY: CHALLENGES, DILEMMAS AND POSSIBILITIES

BERBER BEVERNAGE\*

*The relationship between transitional justice and historiography is a complex and contested one. Many historians have pleaded for a greater engagement of their discipline in the field of transitional justice. However, many others have strongly criticised this sort of engagement. In this article, I argue that the evaluation of the relationship between transitional justice and the writing of history is strongly dependent on particular ways of conceiving the nature of both practices. I claim that both supporters and critics have predominantly focused on transitional justice's popular theses about 'reconciliation through truth telling' and about the 'healing force of remembering' or 'remembrance as justice'. Accordingly, they have defined the (potential) function of historiography in transitional justice in terms of a search for (objective) truth and/or as a struggle against forgetting. This approach is important but too restricted and one should also pay attention to another aspect: that of the 'politics of time' or 'historicisation'. I argue that a historicising discourse is often used in transitional justice in order to create or regulate people's notions of temporal 'distance' and in order to symbolically delimit the borders between past and present. This raises a number of questions about the ethics of the use of a historicising discourse in transitional justice.*

### I INTRODUCTION

The relationship between historiography and transitional justice is a complex and contested one. Many historians have pleaded for a greater engagement of their discipline in the field of transitional justice and several have put this into practice by, for example, serving as investigators in historical commissions or by functioning as expert witnesses in court cases. However, at the same time, many historians have strongly criticised this sort of engagement. In this article, I argue that the evaluation of the role, potential and desirability of the engagement of historiography in transitional justice has been strongly dependent on particular ways of conceiving the nature of historiography as well as particular ways of conceiving of transitional justice. I claim that both supporters and critics have predominantly focused on transitional

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\* MA, PhD (UGent), Assistant Professor at the Department of History at Ghent University in Belgium. The author would like to thank Estela Valverde, Michael Humphrey and Chris Lorenz for the many inspiring discussions and comments that helped him immensely in writing this article. This work was supported by the Interuniversity Attraction Pole Justice and Populations Project. For more information, see <<http://www.bejust.be/>>.

justice's popular theses about reconciliation through truth telling and about the healing force of remembering or remembrance as justice. Accordingly, they have defined the function of historiography in transitional justice practices in terms of a search for (objective) truth and/or as a struggle against forgetting.

This approach is important but too restricted and I argue that one should also pay attention to another feature of the relationship between historiography and transitional justice: that of a specific 'politics of time',<sup>1</sup> which one could call historicisation. I argue that historicising discourse is often used in transitional justice in order to create or regulate people's notions of 'temporal distance' and in order to symbolically delimit the borders between past and present. This raises a number of new ethical questions about the use of a historicising discourse in transitional justice.

I first discuss the way in which the evaluation of the relationship between historiography and transitional justice has revolved around ideas of truth versus lie or myth, and remembrance versus forgetting. After this, I explain my thesis about the importance of politics of time in transitional justice. Rather than trying to provide a closed set of final conclusions, this paper attempts to provide a fruitful starting point for further discussions on the potential role of historians and historiography in transitional justice.

## II TRUTH VERSUS MYTH

One obvious way in which historians seem to be able to contribute to transitional justice and broader attempts to deal with the legacy of violent pasts, is by establishing 'historical truth' and by deconstructing 'historical myths'. The idea that truth telling can contribute to reconciliation and nation-building, and can even be considered a form of (restorative) justice in itself, has been a very central one in the discussions and literature on transitional justice. It is one of the central theses that provides a *raison d'être* to the establishment of truth commissions (which may well be called the institutional flagships of transitional justice). Moreover, it also has been one of the underlying ideas that has sparked an increasing interest in so-called 'didactic legality'<sup>2</sup> among legal scholars, and it has provided some of the central arguments underlying the creation of so-called memory laws in several countries.<sup>3</sup> A right to (historical) truth has even increasingly

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<sup>1</sup> I use this expression in the way in which it is defined by Peter Osborne: 'a politics which takes the temporal structures of social practices as the specific objects of its transformative (or preservative) intent'. See P Osborne, *The Politics of Time: Modernity and Avant-Garde* (Verso, 1995) xii.

<sup>2</sup> On 'didactic legality', see: Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trial of the Holocaust* (Yale University Press, 2001); Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (Transaction Publishers, 2000).

<sup>3</sup> On 'memory laws', see Luigi Cajani, 'Criminal Laws on History: The Case of the European Union' (2011) 11 *Historein* 19.

emerged as an established part of international law.<sup>4</sup> All of this provides an obvious source of attraction to historians, many of whom consider the search for (objective) truth as their core business,<sup>5</sup> and see themselves as ‘myth breakers’.<sup>6</sup>

Organisations such as the Institute for Historical Justice and Reconciliation in the Hague (‘IHJR’)<sup>7</sup> and the Alliance for Historical Dialogue and Accountability in New York (‘AHDA’)<sup>8</sup> cross the border between academia and advocacy and put historiography ‘on the line’ to contribute to reconciliation and peacebuilding, and to promote democracy. The IHJR focuses on ‘historically divided societies’. It has completed projects in the former Yugoslavia and Kenya and is running projects in Armenia-Turkey and the Palestinian territories. It ‘uses the innovative and effective methodology of shared narratives to engage key local stakeholders in dealing with their past’.<sup>9</sup> The IHJR created a seven step ‘theory of change’ for which it draws on ‘historians and experts’ from antagonistic communities to come together and create and disseminate ‘shared historical narratives’, ‘informed interpretations’ and ‘shared information’ that shows all sides of the conflict.<sup>10</sup> The AHDA similarly describes its mission as centred around the construction of shared narratives through ‘historical dialogue’, and argues that this way of using ‘historical memory’ is an ‘underutilized mechanism for addressing conflict’.<sup>11</sup>

Although they shun the outright (neo)positivist discourse that is found in many truth commissions, and explicitly warn that even a shared narrative is ‘unlikely to be linear or mono-

<sup>4</sup> This new juridical philosophy was pioneered in a ruling by the Inter-American Court of Human Rights in 1988, which stated that states not only are obligated to prevent human rights violations but that they also have a binding legal responsibility to investigate past violations within their jurisdiction. Other pioneering work was done by some NGOs, including the Centre for Human Rights Legal Action in Guatemala and the London-based Article 19, which were among the first to articulate the right to know the truth in the early 1990s. Toward the end of the 1990s, the idea of a right to truth eventually was adopted by the UN. For a detailed discussion, see Antoon de Baets, *Responsible History* (Berghahn Books, 2009) 154–163; Y. Naqvi, ‘The Right to the Truth in International Law: Fact or Fiction?’ (2006) 88 *International Review of the Red Cross* 245.

<sup>5</sup> Although most professional historians have, in the wake of post-modernist and post-structuralist criticisms, become critical of the more naive notions of absolutely ‘objective’ truth, the idea of ‘objectivity’ remains one of the central regulating ideals of the profession. For a classic discussion of this ideal in the American case, see Peter Novick, *That Noble Dream: The ‘Objectivity Question’ and the American Historical Profession* (Cambridge University Press, 1988); Paul Newall, ‘Historiographic Objectivity’ in Aviezer Tucker (ed), *A Companion to the Philosophy of History and Historiography* (Wiley-Blackwell, 2010).

<sup>6</sup> On historians as myth-breakers, see Chris Lorenz, ‘Drawing the line: “Scientific” History between Myth-making and Myth-breaking’ in Stefan Berger, Linas Eriksonas and Andrew Mycock (eds), *Narrating the Nation: Representations in History, Media and the Arts* (Berghahn Books, 2008) 35–55.

<sup>7</sup> See Institute for Historical Justice and Reconciliation, *Institute for Historical Justice and Reconciliation* <<http://historyandreconciliation.org/>>.

<sup>8</sup> The Alliance for Historical Dialogue and Accountability (‘AHDA’) is a joint initiative of the Swinburne Institute for Social Research and Columbia University’s Institute for the Study of Human Rights. See Alliance for Historical Dialogue and Accountability, *Alliance for Historical Dialogue and Accountability* <<http://www.hrcolumbia.org/ahda/>>.

<sup>9</sup> Institute for Historical Justice and Reconciliation, *About the Institute for Historical Justice and Reconciliation* <<http://historyandreconciliation.org/about/>>.

<sup>10</sup> See Institute for Historical Justice and Reconciliation, *Strategic Plan — IHJR: March 2014–March 2016* (March 2010) <<http://historyandreconciliation.org/wp-content/uploads/2014/01/Strategic-Plan-Website-Version2.pdf>>.

<sup>11</sup> See Alliance for Historical Dialogue and Accountability, *Program Overview* (2014) <<http://www.hrcolumbia.org/ahda/>>.

vocal and most likely has distinct registers and diverse perspectives',<sup>12</sup> the ideas of historical truths versus lies, and myth-making versus myth-breaking, are central to the mission of both organisations in a direct or indirect way. The baseline of IHJR reads that it 'seeks to dispel public myths about historic legacies in societies divided by conflict'.<sup>13</sup> The basic ideas underlying its mission are succinctly explained in one of its annual reports, which states that 'misconceptions of history' are the cause of many current-day ethnic and nationalist conflicts.<sup>14</sup> The IHJR, therefore, believes that confronting and overcoming these 'distortions of historical reality', by creating understanding and shared narratives, will contribute to the creation of stable peace. According to Elazar Barkan — one of the most active and eloquent spokespersons of the AHDA — the power of historiography in the context of peacebuilding and reconciliation is situated in the fact that it strives toward objectivity and that it is 'non-fiction'.<sup>15</sup> Barkan recognises that combining 'historical advocacy' with the maintenance of the highest professional standards can be challenging.<sup>16</sup> Yet, he is convinced that the methodology or skills of historians (eg source criticism, knowledge of contexts etc), as well as the subject of history itself can contribute to reconciliation via the construction of 'negotiated histories'. To cite Barkan:

Historical claims vetted by experts become 'practical truth' and noncontroversial in the public arena. On the contrary, controversial conclusions might be innovative, interesting and challenging, yet they are unlikely to achieve the status of truth until embraced by the profession.<sup>17</sup>

As mentioned in the introduction, the idea of a historical activism in the name of reconciliation, peace or even historical justice is not supported by all historians. Interestingly, it is exactly the ideas of (objective) truth versus lie, and myth making versus myth-breaking, that are at the core of many arguments about the reasons for not entering transitional justice or at least being sceptical about it.

Predictably the use of historicising discourse in courts or tribunals and state-sponsored truth or historical commissions, together with the more positivist claims about truth telling, have been most fiercely criticised. Historians especially fear the tendency to present the findings of tribunals and commissions as official history and they reject all claims that are too hubristic about the possibility of finding final historical truths.

Some historians take a principled position and reject each confluence between the search for historical truth and the search for a political good (eg nation-building) or a judicial aim. According to Asher Moaz, historical research should never be subjected to any limitations

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<sup>12</sup> Institute for Historical Justice and Reconciliation, *Annual Report 2010* (2010) 5 <[http://historyandreconciliation.org/wp-content/uploads/2012/07/IHJR\\_AnnualReport10.pdf](http://historyandreconciliation.org/wp-content/uploads/2012/07/IHJR_AnnualReport10.pdf)>.

<sup>13</sup> Institute for Historical Justice and Reconciliation, *IHJR in Brief* <<http://historyandreconciliation.org/ihjr-in-brief/>>.

<sup>14</sup> Institute for Historical Justice and Reconciliation, *Annual Report 2009* (2009) <[http://historyandreconciliation.org/wp-content/uploads/2012/07/IHJR\\_AnnualReport09.pdf](http://historyandreconciliation.org/wp-content/uploads/2012/07/IHJR_AnnualReport09.pdf)>.

<sup>15</sup> Elazar Barkan, 'History on the Line: Engaging History: Managing Conflict and Reconciliation' (2005) 59 *History Workshop Journal* 229, 231.

<sup>16</sup> Elazar Barkan, 'Introduction: Historians and Historical Reconciliation' (2009) 114 *American Historical Review* 899, 903.

<sup>17</sup> Barkan, 'History on the Line', above n 15, 234.

imposed ‘from the outside’: ‘More properly, one historian’s researches should be criticised by another historian, and not be made the subject of an examination by a state institution possessing an official status’.<sup>18</sup> This is especially when the submission of historical truth to the straightjacket of legal reasoning is conceived as a major threat — whether it be in the form of judicial verdicts by courts and tribunals, in the form of quasi-verdicts by truth commissions, or in the form of so-called memory laws such as those that have been introduced in several countries to criminalise Holocaust denial. Tristram Hunt, for example, stresses the ‘fundamental chasm’ that separates the legal and historical professions is

[p]artly due to a degree of naivety but also a shade of arrogance within the legal world, [where] there is a belief that what is recorded within the court room or inquiry hall can constitute the irrefutable history of the past. This is both intellectually circumspect and historically dangerous.<sup>19</sup>

The recent principled rejections of the use of historiography in transitional justice, in this sense, go back on a much older tradition of criticising the judicialisation of history. It resembles the influential criticisms of the confluence of history and (criminal) justice by prominent intellectuals, such as Hannah Arendt and Carlo Ginzburg.<sup>20</sup>

Interesting discussions can also be found among those historians and academics who do not oppose the use of historiography in truth and historical commissions or trials and tribunals in principle, but critically reflect on practical challenges, limitations and possibilities. An important discussion on this more practical level is centred around the question about which sort of institution, and which corresponding regime of truth, would offer the best possibilities for, or create the least restrictions on, the construction of a contextualising and complex historical truth. Most historians would probably intuitively believe that historical truth can best be reached under the conditions of free academic research but that, outside of this traditional habitat, preference goes to so-called historical commissions followed by classical truth commissions. They would also believe that the hardest contexts for historians and historical truth are those with a stronger judicial character, most notably criminal courts and tribunals.

Recent research, however, shows that this intuitive belief needs to be nuanced. Some commentators convincingly argue that courts and tribunals *can* yield rich historiography or at least can deliver important contributions to historical research and debate. In his rich and inspiring book *The Memory of Judgment*, Laurence Douglas has, for example, challenged dominant views on the relation between history and jurisdiction. Douglas does this by arguing that, depending on their specific legal strategy and didactic paradigm, certain courts successfully confront their ‘dual burden’ of judging *and* representing the past. Douglas moreover challenges another widespread vision by rejecting the idea of a strong contrast between the open character

<sup>18</sup> Asher Maoz, ‘Historical Adjudication: Courts of Law, Commissions of Inquiry, and “Historical truth”’ (2000) 18 *Law and History Review* 559.

<sup>19</sup> Tristram Hunt, ‘Whose Truth? Objective Truth and a Challenge for History’ (2004) 15 *Criminal Law Forum* 193, 193.

<sup>20</sup> Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin Books, 1994); Carlo Ginzburg, *The Judge and the Historian* (Verso, 2002); See also Pieter Lagrou, ‘“Historical Trials”: Getting the Past Right — or the Future?’ in Christian Delage and Peter Goodrich (eds), *The Scene of the Mass Crime: History, Film, and International Tribunals* (Routledge, 2013) 9–22, 10.

of historical inquiry and the allegedly closed or final character of judgment. Legal understandings too, Douglas argues, can be fluid and frequently undergo revision.<sup>21</sup> As he explains: ‘Individual trials must be staged to reach closure; yet, the discourse of legal judgment and the historical understanding it contains remain fluid and can be complexly revised’.<sup>22</sup> Richard Wilson similarly claims that tribunals can produce good historiography. Here too, results can strongly vary. However, according to Wilson, the International Criminal Tribunal for the former Yugoslavia (‘ICTY’), for example, in some cases produced rich and innovative insights on the history of the former Yugoslavia. Much, according to Wilson, depends on the presence or absence of political constraints, and more specifically on the question of whether courts and tribunals function in a national or in an international context.<sup>23</sup>

The historical quality of the findings of truth commissions can also strongly vary from case to case. Some of the most famous truth commissions, such as the South African Truth and Reconciliation Commission (‘TRC’) and the Argentinean *Comisión Nacional sobre la Desaparición de Personas* (‘CONADEP’), yielded mediocre or even poor historical insights. Yet, other truth commissions, such as the Guatemalan *Comisión para el Esclarecimiento Histórico* (‘CEH’) and Sierra Leonean Truth and Reconciliation Commission (‘SLTRC’) did much better on this level.<sup>24</sup> In my own research on the government appointed historical commission that inquired into the Belgian responsibility for the 1961 murder of the Congolese Prime Minister Patrice Lumumba, I found that the presence of professional historians does not necessarily yield better or more profound historiographical insights than those yielded by many truth commissions, which are seldom staffed by professional historians (at least not in the higher ranks).<sup>25</sup>

However, discussions on the use of historiography in transitional justice are not restricted to the question of whether, and to what extent, good historiography can be produced in a context of state-sponsored commissions or in a judicial setting. They also revolve around the more fundamental question: whether the search for historical truth and a political good can ever be successfully combined, even in situations where the initiative is taken by historians themselves and where no (direct) pressure comes from legal institutions or overseeing states. The question then becomes whether one of these aims will not always tend to prevail over, and come to compromise, the other. Do shared narratives aiming at reconciliation or nation-building not

<sup>21</sup> This dominant vision is clearly expressed by the French philosopher Paul Ricoeur, in Paul Ricoeur, *Memory, History, Forgetting* (University of Chicago Press, 2004) 319. Ricoeur claims that:

It remains that the definitive character of the verdict marks the most obvious difference between the juridical approach and the historiographical approach to the same events: what has been judged can be challenged by popular opinion, but not retried; *non bis idem*; as for the review of the decision, it ‘cuts only one way’ (Garapon).

<sup>22</sup> Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trial of the Holocaust* (Yale University Press, 2001) 4.

<sup>23</sup> Richard Wilson, ‘Judging History: The Historical Record of the International Criminal Tribunal for the Former Yugoslavia’ (2005) 27 *Human Rights Quarterly* 908; Richard Wilson, ‘Humanity’s Histories: Evaluating the Historical Accounts of International Tribunals and Truth Commissions’ (2007) 80 *Politix* 31.

<sup>24</sup> See, eg, Greg Grandin, ‘The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala’ (2005) 111 *American Historical Review* 46.

<sup>25</sup> Berber Bevernage, ‘History by Parliamentary Vote: Science, Ethics and Politics in the Lumumba Commission’ (2011) 9 *History Compass* 300.

always to a certain extent have to be compromised narratives in order to be successful? Conversely, does the search for historical truth actually always provide a good basis for nation-building and reconciliation, or does it rather pose a threat to the latter aims if it is uncompromisingly prioritised?

It indeed has to be noticed (as the IHJR and AHDA seem to acknowledge) that contested historical legacies are not always caused by misconceptions, lies or myths and thus cannot always be solved by truth telling. The efficacy of historical truth for reconciliation seems doubtful in situations where the conflict is not based on violence — that in retrospect turns out to have been senseless, irrational or even counterproductive — but rather on mutually exclusive interests that are structurally reproduced and continue to exist into the present. Some truths, it seems, simply cannot lead to reconciliation. Also, for historians it is (relatively) easy to help where simple ‘facts’ are denied by negationists or malevolent revisionists. However, things become much more difficult where conflicts revolve around more complex interpretations or evaluations of historical phenomena. Academic historiographical practice shows that, on this more complex level, historians themselves often cannot reach consensus. This is not due to a lack of will to be ‘objective’ or due to malicious intents. It seems to be an inherent feature of the epistemic nature of this practice — a feature often linked to historians’ characteristic use of narratives.<sup>26</sup> In a similar way, it can be questioned whether academic historiography actually offers a good starting point to help us draw a strict line between myth-making and myth-breaking. For example, the Dutch theorist of history Chris Lorenz argues that even in ‘scientific history’ this is not easily done, certainly not when the latter’s intimate relation to nationalism and nation-building is at play. Lorenz argues that, from its genesis in the early 19<sup>th</sup> century onwards, academic history has always suffered from an unresolved tension between epistemological (or ‘*Wissenschaftsanspruch*’) and practical (or ‘*Orientierungsanspruch*’) claims — with the first always undermining the second and vice versa.<sup>27</sup>

### III THE HEALING FORCE OF REMEMBERING AND REMEMBRANCE AS JUSTICE

A second obvious way in which historians seem to be able to contribute to transitional justice is by preventing forgetfulness from taking place. Historians often identify themselves as individuals struggling against forgetfulness. They share this self-representation with many transitional justice advocates. Transitional justice is often considered to be essentially about the conflict between a will to remember and an effort to forget. Even though some argue that it is important to find a proper balance between too much forgetting and too much remembrance,<sup>28</sup> most transitional justice scholars and activists believe remembrance is inherently superior to forgetting, and claim that this is the case in relation to both the striving for healing and

<sup>26</sup> This was most prominently pointed out in some key texts by historical theorists such as Hayden White, Frank Ankersmit and Louis Mink. See Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Johns Hopkins University Press, 1987); Frank Ankersmit, *Narrative Logic: A Semantic Analysis of the Historian’s Language* (The Hague, 1983); Louis Mink, ‘Narrative Form as a Cognitive Instrument’ in Robert Canary and Henry Kozicki (eds), *The Writing of History: Literary Form and Historical Understanding* (University of Wisconsin Press, 1978) 129–49.

<sup>27</sup> Lorenz, above n 6.

<sup>28</sup> See, eg, Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Beacon Press, 1998).

reconciliation and the striving for justice. Many are indeed convinced that collective remembrance of past evils can have a healing force. And, as Luc Huyse remarks, recent truth commissions have often been based on the idea that the remembrance of the truth generates an alternative or even superior form of justice.<sup>29</sup> This representation of transitional justice has been of great importance in the creation of its identity (dare I say myth of origin) and has led to important discussions. But it is also intellectually restrictive, and certainly problematic, when assessing the potential role of historiography.

Firstly, the broad consensus about the superiority of remembrance over forgetting is a relatively recent phenomenon, which is actually not at all self-evident. As Timothy Garton Ash claims, the advocates of forgetting have been of considerable influence throughout history.<sup>30</sup> Much of post-war West European democracy, for example, has been constructed on the foundation of a politics of forgetting. Further, it was as late as 1975 when Spain made its, once widely celebrated, transition to democracy with a conscious policy of forgetting.

Paradoxically, the Spanish case has recently been most often referred to by supporters of the idea of the superiority of remembrance. They refer to the recent upsurge of memory movements in that country as the ultimate proof of a natural and indestructible urge of people to remember, and the futility or dysfunctionality of forgetting as the basis of any politics aiming at national reconciliation and stable democracy.<sup>31</sup>

Yet it should be asked whether the latter movement for forgetting actually holds in the long run, and whether it works for all cases. The Indian intellectual Ashis Nandy, for example, has claimed that the values of history and remembrance (which according to him are Western values that were externally imposed on many countries) have had a very negative effect on his country and more specifically on the religious tensions between Hindi and Muslims.<sup>32</sup> He therefore pleads for a more critical reflection on the value of history and remembrance and an exoneration of what he calls the 'principle of principled forgetting'. When it comes to nation-building and stopping violence, Nandy provocatively argues that one should not construct alternative histories but rather search for alternatives *to* history.

Nandy does not stand alone when making this sort of claim. Actually he takes part in a long intellectual tradition. Ever since Friedrich Nietzsche famously argued that humanity has to learn to forget and think ahistorically in order to be able to live, many prominent intellectuals have pleaded against an 'obsession' with history in the name of a more present or future-oriented ethics.<sup>33</sup> In the context of post-conflict situations, and transitional justice more specifically, similar claims have been made by people such as Jean Bethke Elshtain, who defends the resort to

<sup>29</sup> Luc Huyse, *All Things Pass, Except the Past* (Van Halewyck, 2009).

<sup>30</sup> Timothy Garton Ash, 'The Truth about Dictatorship' (1998) 45 *New York Review of Books* 35; See also Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge University Press, 2004).

<sup>31</sup> For a discussion of this view see Berber Bevernage and Lore Colaert, 'History from the Grave? Politics of Time in Spanish Mass Grave Exhumations' 7 *Memory Studies* (forthcoming).

<sup>32</sup> Ashis Nandy, 'History's Forgotten Doubles' (1995) 34 *History and Theory* 44.

<sup>33</sup> Friedrich Nietzsche, *Vom Nutzen und Nachteil der Historie für das Leben* [On the Use and Abuse of History for Life] (Diogenes, first published in 1873, 1984 ed); See also, for an influential recent version of this argument, Keith Jenkins, 'Why Bother with the Past? Engaging with Some Issues Raised by the Possible "End of History as We Have Known It"' (1997) 1 *Rethinking History* 56.

a 'knowing forgetting' in situations where groups are held hostage to a burdened past, and are in great need of the 'drama of forgiveness'. She writes that:

People are very fond of citing Santayana's claim that those who don't know their history are doomed to repeat it. But perhaps the reverse is more likely, namely, that it is those who know their history too well who are doomed to repetition.<sup>34</sup>

A similar position is defended by Bruce Ackerman who claims that young democracies should not focus primarily on corrective or retrospective justice, but rather on forward-looking constitutional and bureaucratic reform.<sup>35</sup> To get rid of the destabilising force of burdened pasts, Ackerman even advises transitional societies to burn the 'stinking carcasses' that are often still left in their official archives (such as the Stasi files in East Germany).<sup>36</sup>

Beyond this thorny discussion on the relative advantages or disadvantages of remembrance or forgetting, a second problem arises with this representation of transitional justice as involved in the struggle of remembrance against forgetting. The problem is that this struggle is often cast in far too simplistic and dualist terms. Even though theorists have repeatedly argued that memory and forgetting are intricately linked, a highly dichotomist interpretation of these concepts keeps dominating the imagination of both supporters and critics of transitional justice, and it has equally constrained the debate on the possible engagement of historians. This can be illustrated by referring to the South African case. There, dualist thinking about memory and remembrance has led to the paradoxical situation in which the Commissioners of the TRC (such as Desmond Tutu and Alex Boraine) presented its mission as a 'struggle of memory against forgetting', often citing Kundera and Santayana.<sup>37</sup> However, many critics, including several historians, precisely argued that the TRC was a sort of 'exercise in forgetting',<sup>38</sup> that it induced 'social amnesia',<sup>39</sup> or that it provided 'a nod at remembering in the interests of a profounder forgetting'.<sup>40</sup> While the criticisms about the dimensions of amnesia in the TRC are to be taken seriously, they tend to obscure the enormous differences between the work of the TRC and the state-imposed amnesia that existed under Apartheid rule. For example, during Apartheid, records were systematically destroyed to keep certain processes secret, while it has been part of the TRC's mandate to investigate these malpractices. Moreover, I am convinced that the fundamental TRC concept of

<sup>34</sup> Jean Bethke Elshtain, 'Politics and Forgiveness' in Nigel Biggar (ed), *Burying the Past: Making Peace and Doing Justice After Civil Conflict* (Georgetown University Press, 2003) 43; See also, A G Loureiro, *The Ethics of Autobiography: Replacing the Subject in Modern Spain* (Vanderbilt University Press, 2000) quoting Jorge Semprún, who stated on a personal level, that he attributed his survival after Buchenwald to 'a long cure of aphasia, of voluntary amnesia, in order to survive'.

<sup>35</sup> Bruce Ackerman, *The Future of the Liberal Revolution* (Yale University Press, 1992) 72–73.

<sup>36</sup> Ibid 81.

<sup>37</sup> See especially, Truth and Reconciliation Commission of South Africa, *Report* (1998–2003) vol 1; See also A Boraine, *A Country Unmasked* (Oxford University Press, 2000); D M Tutu, *No Future without Forgiveness* (Doubleday, 1999).

<sup>38</sup> Jacques Derrida, 'Archive Fever in South Africa' in Carolyn Hamilton et al (eds), *Refiguring the Archive* (Kluwer Academic Publishers, 2002) 38–80, citation on 54.

<sup>39</sup> Anthony Holiday, 'Forgiving and Forgetting: The Truth and Reconciliation Commission' in S Nuttall and C Coetzee (eds), *Negotiating the Past: The Making of Memory in South Africa* (Oxford University Press, 2000) 43–56; I De Kok, 'Cracked Heirlooms: Memory on Exhibition' in S Nuttall and C Coetzee (eds), *Negotiating the Past: The Making of Memory in South Africa* (Oxford University Press, 2000) 57–74.

<sup>40</sup> Verne Harris, *Truth and Reconciliation: An Exercise in Forgetting?* 3 November, 2002 (unpublished paper that was featured on the website of the South African History Archive but has since been removed).

making amnesty conditional on truth telling rests on a sincere conviction that simple forgetting will no longer do as a way to deal with the past.

Finally, when considering the problem of transitional justice exclusively in terms of a conflict between remembering and forgetting, one can hardly explain why the turn to historicising discourses can often be found in countries that do not seem to be confronted with a lack of memory, but that primarily suffer from what Charles Maier has termed a ‘surfeit of memory’.<sup>41</sup> Therefore, I have argued in previous publications, that we should transcend the memory–forgetting dichotomy, and focus more closely on diverse ways of remembering, which can sometimes have radically different features and ethical or political effects.<sup>42</sup> The current field of transitional justice, I argue, is primarily the arena for a conflict between two strongly differing ways of remembering that manifest contrasting or even opposite temporal features. This brings me to my third and last point about the (potential) engagement of historians and their discourse in transitional justice.

#### IV HISTORICISATION: PUTTING THE PAST IN ITS PLACE

There is, of course, another aspect of modern historiography, about which it is sometimes said, that it can help in dealing with the legacies of a violent past: that of historicising phenomena or putting phenomena in their (proper) time. A long and honorable tradition attributes to historians the emancipatory potential to resist both the tyranny of the past over the present, as well as the totalitarian dominance of the present over past and future. Historians can do this, it is said, by demonstrating the fundamental differences that exist between past and present.

One prominent member of this intellectual tradition is the French historian Henry Rousso.<sup>43</sup> According to Rousso, the *métier* of the historian results in a liberating type of thinking because it rejects the idea that people or societies are conditioned by their past without any possibility of escaping it.<sup>44</sup> The historian can do this because, in contrast to the ‘activist of memory’, they only bring the past into the present in order to demonstrate the fundamental ‘distance’ that separates these two realities. While ‘activists of memory’ ignore the ‘hierarchies of time’, and do not seem to grasp the distance between past and present, historians observe the past where it belongs (or ‘à sa place’) and are self-conscious that they do so from the present, where they belong (or ‘notre place’). One could paraphrase Rousso’s argument as follows: a good historian inherently is an emancipator, because by measuring time, he or she knows what is contemporary or actual, and what is past or bygone, and because he or she also knows what is the proper timing of phenomena.

<sup>41</sup> Charles Maier, ‘A Surfeit of Memory? Reflections on History, Melancholy, and Denial’ (1993) 5 *History and Memory* 1936.

<sup>42</sup> Berber Bevernage, *History, Memory and State-Sponsored Violence* (Routledge, 2011); Berber Bevernage, ‘Writing the Past Out of the Present: History and the Politics of Time in Transitional Justice’ (2010) 69 *History Workshop Journal* 111.

<sup>43</sup> Henry Rousso, *The Haunting Past: History, Memory, and Justice in Contemporary France* (Ralph Schoolcraft trans, University of Pennsylvania Press, 2002) [trans of: *La hantise du passé: entretien avec Philippe Petit* first published 1998].

<sup>44</sup> *Ibid* 10, quoting Philippe Petit.

This same plea, for a proper relation to time and timing, also plays a prominent role in Rousso's well-known refusal to function as an expert witness in the Holocaust trial of Maurice Papon, which only took place several decades after the facts. The problem with this trial, according to Rousso, was that due to the great distance in time, it tended to apply a presentist ethical perspective to the historical events, and became a trial of memory rather than a normal judicial process. In this context, Philippe Petit appropriately writes that Rousso became a contemporary historian to 'accept the irreparable'.<sup>45</sup>

The Dutch historian Bob de Graaff,<sup>46</sup> holds similar ideas about the ethical value of historiography. He too, considers the historian to be an expert of proper times and timing. He draws a contrast with (genocidal) victims and survivors for whom, according to de Graaff, the difference between the past and present is vague and who live in a synchronic rather than diachronic time or even live in an 'extra-temporality'.<sup>47</sup> He refers to holocaust victims for whom, he claims, the 'past remains present', and to whom it seems as if atrocities 'only happened yesterday or even today'.<sup>48</sup> The task of historians, in contrast, is to place events, even genocidal ones, in their time: literally to 'historicize' them. Historians have to do this by trying to 'determine the individual character of particular epochs and by that demarcate one epoch vis-à-vis the other'. As de Graaff puts it: 'the historian historicizes' in the sense of 'closing an epoch by recognizing its entirely individual/particular character'.<sup>49</sup> The historian recognises the fact that the past can be 'called up' again, but in contrast to the survivor he does this merely voluntarily. Moreover, he also 'registers' that facts of the past are 'bygone', 'definitely lost' or have 'come to a downfall'.<sup>50</sup>

Good historiography therefore, according to de Graaff, is *the* antidote for resentment. Much like Rousso, de Graaff considers that the professional duty of the historian is also socially desirable: that there is also a societal justification to 'draw a line under victimhood'. Sooner or later our gaze has to be redirected from the past to the future. De Graaff therefore approvingly cites the literary author Hellema that: 'it has become about time [*hoog tijd*] to put the past in its place'.

I have long shared this vision of Rousso and de Graaff. It can hardly be doubted that the historicising skills historians form are an essential part of our critical thought, and that they are potentially of great importance to transitional justice, especially its search for a closure without forgetting. However, I have become convinced that this historicising approach comes with serious risks and ethical dilemmas when applied to transitional justice.

In order to explain this, I must return once more to Rousso's plea to study the past where it belongs (that is, in the past) and from where we (historians or contemporaries) belong, as well as

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<sup>45</sup> Ibid 10, quoting Philippe Petit: 'Pour accepter l'irréparable, il s'est fait historien du temps présent' [In order to accept the irreparable, he became a contemporary historian].

<sup>46</sup> Bob de Graaff is known as a member of the research team that was commissioned by the Dutch government to scrutinise Dutch responsibilities in the Srebrenica massacre.

<sup>47</sup> Bob de Graaff, *Op de klippen of door de vaargeul: De omgang van de historicus met (genocidaal) slachtofferschap* [On the Cliffs or Through the Channel: On the Way Historians Deal with (Genocidal) Victimhood] (Humanistics University Press, 2006) 27. The translations from this text are the author's own.

<sup>48</sup> Ibid 28.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid 28, 71.

de Graaff's claim that 'it [is] about time to put the past in its place'. There are three questions about this issue: firstly, how do historians know the proper place for the past; secondly, where do they get the authority to put 'in its place' or 'close off' the past; thirdly, how can they decide when the time has come to do this?

#### A *How do Historians Know the Appropriate Place for the Past?*

Firstly, one should ask whether historians can simply observe the borders between past and present, and whether they thereby, in Rousseau's words, can also determine the place where they themselves belong as historians and where their subject of study belongs (eg, academic historiography, the archive, the historical museum, etc).<sup>51</sup> Can we claim to know the proper place of the past or is this place rather the product of an act of putting in its place and thus constituted performatively? This question may seem rather sophisticated, but it is not. Since the historical present can never be reduced to a single point in time, its definition will always, as French historian Jacques Le Goff notes, remain a basic problem to historians, whether they recognise this or not. Moreover, Le Goff rightly argues that the definition of the present always contains ideological aspects.<sup>52</sup>

The latter especially is the case in contexts of profound political, social and cultural transitions, where the borders between present and past are often vague. Truth commissions, for example, are generally not created after transition processes are completed or consolidated, but themselves make up an important part of these transitions. As such, I have argued that these commissions should not be considered as mechanisms that merely reflect on the past retrospectively, but rather as actively constituting and regulating the categories of past and present.<sup>53</sup> The use of historicising discourse in truth commissions, and in 'new' democracies in general, form a part of a broader politics of time in which these countries attempt to exorcise the ghosts of the past by actively positing what belongs to their (judicial, political, social, cultural, etc) present and what cannot or should not be considered part of this present. Thus, this process actively posits what can be considered timely or part of actuality and what to the contrary should be considered anachronistic, old, bygone or definitely lost or downfallen. In order to understand this phenomenon and its important political and social effects, I advocate an analysis that interprets the use of historicising discourse in transitional justice, not just as a type of constative language, but also as a type of language containing performative dimensions that actively produce certain realities.<sup>54</sup> I agree with the French historian Michel de Certeau, when he claims that the division between past and present is not merely an absolute axiom of historiography, but the result of an

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<sup>51</sup> This question has been the central question of a collective volume that I co-edited with Chris Lorenz. See Chris Lorenz and Berber Bevernage (eds), *Breaking up time: Negotiating the Borders Between Present, Past and Future* (Vandenhoeck & Ruprecht, 2013).

<sup>52</sup> Jacques Le Goff, *Histoire et Mémoire* [History and Memory] (Editions Gallimard, 1988) 31.

<sup>53</sup> Bevernage, *History, Memory and State-Sponsored Violence*, above n 42; Bevernage, 'Writing the Past Out of the Present', above n 42.

<sup>54</sup> This distinction between 'constative language' and 'performative language' was first introduced in language philosophy by the British philosopher J L Austin. See J L Austin, *How to do Things with Words* (Harvard University Press, 1962).

‘act of separation’ (or ‘*le geste de deviser*’), which conditions the very possibility of (modern, Western) historiography.<sup>55</sup>

De Certeau rightly argues that the idea of a strict division between past and present is founded on a socio-political logic and in turn has important political implications. I believe the following citation about the practice of historiography also holds true for the use of historicising discourse in transitional justice

[w]ithin a socially stratified reality, historiography defined as ‘past’ (that is, as an ensemble of alterities and of ‘resistances’ to be comprehended or rejected) whatever did not belong to the power of producing a present, whether the power is political, social, or scientific ... Historical acts transform contemporary documents into archives, or make the countryside into a museum of memorable and/or superstitious traditions. Such acts determine an opposition, which circumscribes a ‘past’ within a given society.<sup>56</sup>

Our knowledge on the general efficacy of the use of historicising discourse in transitional justice is still very limited. Yet, while historicising discourse might help transitional countries in their search for social closure, it can have two negative effects which are each other’s exact opposite: the first can be described as a sort of temporal Manichaeism which can lead to a ‘hyper-moralism’; the other can be described as temporal relativism which can lead to a ‘hypo-moralism’ or an incapacity to form ethical judgments.<sup>57</sup>

A criticism often formulated against truth commissions and historical commissions is that, because of their focus on a strictly delimited period of the past, they pay little attention to the continuity of certain historical phenomena. Thus, they do not combine their retrospective focus enough with a critical analysis of the present.

The South African historian Colin Bundy, for example, strongly criticised the TRC in his country. According to him, the TRC focused too strongly on the strictly delineated period of Apartheid, which it described as the ‘beast of the past’, while it hardly took notice of continuities with the periods before and after.<sup>58</sup> Other commentators too deemed the strict focus of the TRC a missed chance for a more critical analysis of the ‘new’ South Africa.<sup>59</sup> The lack of a critical scrutiny of the present can, on an ethical level, indeed result in the emergence of a double standard whereby a sometimes-moralistic condemnation of past injustice is combined with an

<sup>55</sup> Michel de Certeau, *L’écriture de l’histoire* [The Writing of History] (Éditions Gallimard, 1975) 16. The translations from this text are the author’s own.

<sup>56</sup> Michel de Certeau, ‘History: Science and Fiction’ in Wlad Godzich and Jochen Schulte-Sasse (eds), *Heterologies: Discourse on the Other* (Brain Massumi trans, University of Minnesota Press, 2006) 216 [first published 1983].

<sup>57</sup> In previous publications, I have already identified another negative potential ethical effect of the use of a historicising discourse in transitional justice: namely what I have identified as its ‘allochronist’ tendency (a term from Johannes Fabian). This is the tendency to (symbolically) allocate into another time or treat as living anachronism those people who refuse to participate in the process of reconciliation or nation building. See Bevernage, *History, Memory and State-Sponsored Violence*, above n 42.

<sup>58</sup> Colin Bundy, ‘The Beast of the Past: History and the TRC’ in W James and L van de Vijver (eds), *After the TRC: Reflections on the Truth and Reconciliation Commission in South Africa* (David Philip Publishers, 2001) 9–20.

<sup>59</sup> Jacobus Du Pisani and Kwang-Su Kim, ‘Establishing the Truth about the Apartheid Past: Historians and the South African Truth and Reconciliation Commission’ (2004) 8 *African Studies Quarterly* 77.

inertia or even blindness for present-day injustices. Worse even, the past can even come to function as a metaphorical storehouse for all evil, which then no longer seems part of the present, or in relation to which contemporary evil seems rather innocent. When this is the case, a tendency toward temporal Manichaeism emerges, which unburdens the present by burdening the past. Richard Wilson, for example, formulated such a critique against the South African TRC, which he criticised for condemning violence of the past while identical violence was still continuing in prisons only a few miles away.<sup>60</sup>

Remarkably, the South African TRC itself became a victim of the very logic of temporal Manichaeism to which it tended. To many people's regret, the commissioners of the South African TRC did not succeed in reaching consensus about all of its central findings. The fifth volume of its final report, therefore, includes a *Minority Position* by Afrikaner commissioner Wynand Malan. Malan, among other things, did not agree with the report's analysis of Apartheid and Apartheid violence. Interestingly, according to Malan, the report primarily failed on a historiographical level, and he uses a historicising approach to denounce the report's analysis of Apartheid as being anachronistic. Malan posits that unity and reconciliation can only be achieved if history is reframed in such a way that it is made clear that both perpetrators and victims are victims of an 'ultimate perpetrator', namely 'the conflict of the past'.<sup>61</sup>

The limited attention paid to the persistence of the past in the present, and the related tendency toward temporal Manichaeism, can partly be explained by referring to the specific political and ideological context in which most truth commissions function. Yet, the postulate of the strict division of past and present, and the taboo on presentism and anachronism that underpins many of the dominant currents of Western historiography, also plays a central role here. Temporal Manichaeism is moreover reinforced by a widespread tendency in contemporary historiography that, as Pieter Lagrou appropriately remarks, increasingly focuses on horror and evil in the past and tends to evolve from a '*histoire du temps présent*' [history of the present] into a '*histoire des autres*' [history of the others].<sup>62</sup>

Paradoxically, the logic of historicisation can also lead to a moral relativism and an incapacity for ethical judgment. This especially is the case when the absolute singularity of historical events and epochs is stressed. Due to the fact that we, in order to formulate an ethical judgment, always to a greater or lesser extent, need a certain standard that transcends the case under evaluation — which thus, in a certain sense, is ahistorical — a radical stress on the singularity of each historical situation can lead to a hypo-moralism. Most historians will not consider this a problem, but in the context of transitional justice and historical justice this can be highly problematic. This certainly is the case if one agrees with Antoon de Baets, that even if historians *qua* historians should not judge, then at least their insights should enable others to do so in an informed way.<sup>63</sup>

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<sup>60</sup> Richard Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge University Press, 2001).

<sup>61</sup> Truth and Reconciliation Commission of South Africa, *Report* (1998–2003) vol 5, 443.

<sup>62</sup> Pieter Lagrou, 'De l'histoire du temps présent à l'histoire des autres: Comment une discipline critique devint complaisante' [From Contemporary History to History of the Others: How a Critical Discipline Became Complacent] (2013) 118 *Vingtième Siècle: Revue d'histoire* [Twentieth Century: Historical Review] 101.

<sup>63</sup> Antoon de Baets, 'Na de genocide: Waarheidsstrategieën van rechters en Historici' [After Genocide: Truth Strategies of Judges and Historians] (2003) 116 *Tijdschrift voor Geschiedenis* [Journal for History] 212, 225.

The problem of hypo-moralism by historicisation can, for example, be illustrated by referring to the case of the Lumumba commission. When writing their final report, to a great extent, the Belgian MPs fell back on research that was done by a specially appointed team of historians. The Belgian MPs also took over the latter's taboo on presentism. This taboo on presentism or, as the MPs put it, the fear to 'analyse and comment on the facts from a present-day worldview', effected a great reticence among the politicians to formulate an ethical judgment. This eventually led to a situation in which the Belgian role in the murder of Lumumba was morally condemned in a nominal way, but in which a series of disclaimers about the difference between 'norms concerning public morality of today' and 'personal moral considerations at that time' immediately defused or even cancelled this nominal condemnation on a political level.<sup>64</sup>

For another example of hypo-moralism by historicisation, I want to return for a moment to the *Minority Position* in which Wynand Malan turned against the conclusions of his colleague commissioners in the final report of the South African TRC. Malan criticises the report on a methodological plane because the commission, according to him, made too much use of oral history, a type of history that he regards as untrustworthy. However, he also set up a historiographical argument against what he considers to be the TRC's all too moralist approach. He interprets this approach as the result of a lack of profound historical analysis. According to Malan, whoever engages in a 'real historical evaluation' of Apartheid cannot but recognise the existence of historical perspectivism. This refers to the fact that each historical phenomenon can become the subject of different legitimate perspectives, which should all be integrated if one wants to arrive at a 'shared history'. Malan, therefore, also criticises the fact that the TRC, in line with a UN ruling, refers to Apartheid as a crime against humanity.<sup>65</sup> For Malan, this clearly is a continuation of an old historical narrative and a 'battle of the past', since the UN took this decision back in 1973. In contrast, Malan, in line with his historicist approach, stresses that 'moral imperatives are phenomena of their times and locations'.<sup>66</sup>

The appellation of Apartheid as a crime against humanity has great practical importance, because this crime is imprescriptible. Malan regrets that his colleague commissioners do not reject this imprescriptibility. He poses the rhetorical question of 'whether an investigation of apartheid under international law would have any present or future legal or political value'. This, according to Malan, might have been the case if it concerned genocide, because genocides remain a potential threat for many societies, but 'apartheid as a system is dead and buried forever'.<sup>67</sup> He therefore concludes that attempts to retroactively prosecute Apartheid crimes can only be considered as an anachronistic and senseless stirring up of the past.<sup>68</sup>

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<sup>64</sup> Bevernage, 'History by Parliamentary Vote', above n 25.

<sup>65</sup> *International Convention on the Suppression and Punishment of the Crime of Apartheid*, opened for signature 30 November 1973, 1015 UNTS 243 (entered into force on 18 July 1976).

<sup>66</sup> Truth and Reconciliation Commission of South Africa, *Report* (1998–2003) vol 5, 448.

<sup>67</sup> *Ibid* 449.

<sup>68</sup> *Ibid* 445.

B *Where Do Historians get the Authority to put History 'in its Place or 'Close Off' the Past?*

Secondly, and relatedly, one can ask from where do historians get the authority to 'put in its place' or 'close off' something of such great weight as 'the past', and whether this is merely on the basis of scientific contemplation. Would it not be worrying if historians would thereby only have to legitimate themselves by referring to their skill of measuring time? And what about the relation between the professional duty of historians to 'close off' epochs, by demonstrating their 'entirely individual/particular character',<sup>69</sup> and the social justification for this act? Can these two actually be distinguished and, if so, is it not often the case that historians tend to see closed, bygone or definitely lost and clearly identifiable epochs where this is deemed socially desirable?

This question should be raised because several thinkers have pointed out that the notion of the individuality/particularity of epochs itself, on a historiographical level, depends (at least partly) on the way in which we demarcate or periodise them.<sup>70</sup> Historians certainly dispose of a reasonable margin for decision making when demarcating one period in relation to the other and this makes it hard to talk in a passive, and de-politicising, way about the observing or recognising of different epochs. Some researchers therefore rightly speak about the existence of 'periodisation politics'.<sup>71</sup> This notion of periodisation politics is highly relevant in the case of 'transitional' countries or 'new' democracies that often base their national identity and international legitimacy on an (alleged) break with a dictatorial or violent past, and thus on a 'discontinuous historicity'.<sup>72</sup> The choice for a particular temporal demarcation is thereby never neutral, but can directly contribute to the legitimacy of the new regime.

C *How Do Historians Know That the Correct Time for Closure has Come?*

I want to return a last time to the citation that 'it has become about time to put the past in its place' to raise a third question: how can one know when this time has come? Can a historian say something about such an inherently ethico-political or even quasi-religious question? Even when we are convinced that at *some* point in time a line has to be drawn under the past, does the central question not remain at *what* point in time this line has to be drawn?

One can agree with Bob de Graaff when he claims: '[v]ictimhood is historically determined. It comes into existence at a certain epoch. It has a beginning, but also an end'.<sup>73</sup> One can hardly

<sup>69</sup> de Graaff, above n 47, 29.

<sup>70</sup> See, eg, Irmline Veit-Brause, 'Marking Time: Topoi and Analogies in Historical Periodization' (2000) 37 *Storia della Storiografia* [History of Historiography] 3, 3; P Toohey, 'The Cultural Logic of Historical Periodization' in Gerard Delanty and Engin Isin (eds), *Handbook of Historical Sociology* (Sage, 2003) 209–219.

<sup>71</sup> Several researchers have, for example, argued that periodisation often serves a striving for autonomy and sovereignty. See, eg, Hans Blumenberg, *The Legitimacy of the Modern Age* (Robert M. Wallace trans, MIT press, 1985) [trans of: *Die Legitimität der Neuzeit* (first published in 1966)]; Kathleen Davis, *Periodization and Sovereignty: How Ideas of Feudalism and Secularization Govern the Politics of Time*. (University of Pennsylvania Press, 2008); Olivia Harris, "'The Coming of the White People": Reflections on the Mythologisation of History in Latin America' (1995) 14 *Bulletin of Latin American Research* 9.

<sup>72</sup> Wilson, above n 60, 16.

<sup>73</sup> de Graaff, above n 47, 28.

deny the social need to make a certain distinction between victimhood and what de Graaff calls 'former victimhood'. The same seems to count for the distinction between perpetratorhood and 'former perpetratorhood'. However, the question is whether this distinction between victims or perpetrators and former victims or perpetrators is not primarily an ethico-political differentiation, instead of a chronological or historical one. The problem with these issues is that they force us to make the leap from a measured time to an imperative time, and such a leap from the descriptive to the prescriptive always is problematic.

Moreover, there is the problem that each chronological moment can apparently be appointed as the proper time to draw a line under the past. This can be done by the 'good historian' but also by perpetrators or politicians with less noble intentions. This indeed is the logic that underpins many pleas for amnesty and amnesia: a logic which posits that it is never more timely to draw a line under the past than the moment when it is still present. How then do we ascertain for ourselves that we are not prematurely closing off the past?

It is clear that many war criminals, dictators and former dictators are suspiciously fond of historicising discourse. However, the issue of the proper time to close off the past is not restricted to the perverse or cynical cases of self-amnestying. As Brandon Hamber and Richard Wilson remark, governments often want to close off the past far earlier than involved individuals are willing or able to do.<sup>74</sup> It is, therefore, important that chronologies, or the fact that events belong to the chronological past, are not instrumentalised as an alibi for claiming that these events also belong to the past in a more substantial sense — in that they are considered *passé*, *bygone* or *history* in the pejorative sense.

## V CONCLUSION

The debate about the possibilities, limitations and desirability of the contribution of historians and historiography to transitional justice up to now has primarily focused on the aspects of truth and the contrast between remembrance and forgetting. Both the proponents and the opponents of the use of history in the context of transitional justice have primarily focused on the tenability of popular transitional justice claims — about the reconciliation by truth telling, about remembrance as an alternative form of justice. Therefore, both sides have primarily conceived the use of historiography in terms of a search for objective truth or as struggle against forgetting. This approach is important and also yields a number of interesting questions. Yet, this focus remains too limited if one wants to fully understand the ethical implications of the use of historiography and historicising discourse in transitional justice.

One should also pay attention to another aspect of the relation between historiography and transitional justice: that of the specific politics of time implied by the practice of historicising. The role of historiography and historicising discourse within the field of transitional justice should not merely be related to its traditional functions of representing the past, of searching for truth or even of generating meaning or identity, but also to its concept of time and the specific way in which it conceptualises the relation between present and past. Historicising discourse can

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<sup>74</sup> Brandon Hamber and Richard Wilson, 'Symbolic Closure Through Memory, Reparation and Revenge in Post-Conflict Societies' (2002) 1 *Journal of Human Rights* 35.

be attractive in the context of transitional justice because of its ambivalent tendency to divide present and past merely by diagnosing its division: in other words, its alleged capacity to put the past in its place simply by recognising this place. While the logic of historicisation can be of great importance in dealing with historical injustice, it can also have a series of negative consequences. It can, for example, lead to hyper-morality as well as to hypo-morality, and can be abused to prematurely close of the past or even legitimise impunity.

Does this mean that I see no ethical mandate for historians, and think that historians should not engage with transitional justice or truth and historical commissions at all? No. Historians should not stay away because historicising discourse is already often used in transitional justice without them being present. Historians, I believe, can play an important ethical role but primarily an indirect one. They should not claim that they can solve complex ethical or political dilemmas simply on the basis of their expertise in measuring time and determining the 'hierarchy of time'. In that case, chronology would indeed serve as an alibi for escaping ethico-political responsibilities. Historians can, however, play a critical role precisely by reflexively pointing out the use and abuse of historicising discourses and politics of time in such a way that ethical and political dilemmas are sharpened and the need for the taking of decisions and responsibility becomes more manifest.

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