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The Judgment of History

Meanings and Political Usages of a “Topos”*

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ABSTRACT. The purpose of this paper is to analyse the principal meanings attached to the conception of world history (*Weltgeschichte*) as a court of judgement (*Weltgericht*) before, in and after Hegel. Who are the judges and who are the accused? Which authors have used this notion of tribunal as a historical category? With what aim in view, and in what contexts? And why was this conception so severely criticised? After reminding of the three principal senses of the idea of history as a tribunal—“the Tribunal of Posterity”, “the Tribunal of Freedom”, “The Tribunal of Power”—, I focus on different political usages of this idea in the context of the totalitarianisms of the first half of the XX century. In the last part of the paper, I discuss the thesis, defended by Joan W. Scott, that the “Judgement of History” should be understood as a critical enquiry into the past.

KEYWORDS. Judgment of History; Koselleck; Hegel; Scott; tribunal of history

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«World History is the world's Court of Judgement» (*Die Weltgeschichte ist das Weltgericht*). This verse, coined by Schiller¹, was picked up by Hegel to sum up his thesis according to which history was to be conceived as the progress of the consciousness of Freedom². This formula has become a *topos* situated half-way between a word-game and a metaphor, and expresses a teleological conception of history, whose varied usages reached through the XIXth and XXth centuries, both as accepted and as rejected, only to fall into eventual dis-use. If today it seems that «no one wants to talk about, or in the name of, the tribunal of history»³, nevertheless, the question concerning the relation between the categories of history and of justice has been taken up again in a yet unexplored sense over the last few years by the debates on the role that the historian can (or cannot) play *in* a tribunal as witness or expert. The objective of this contribution is not to enter into these controversies but to analyse the principal meanings attached to the conception of history *as* a tribunal. Who are the judges and who are the accused? What rights do these parties enjoy? Which authors have claimed such rights? With what aim in view, and in what contexts? And why was this conception so severely criticised, and then largely abandoned? Was this rejection as complete, or as definitive, as it appeared?

After reminding of the three principal senses of the idea of history as a tribunal, I will look into different political usages of this idea, and that across the study of three cases taken from the first half of the XXth century, to be completed with a recent Essay by the historian Joan W. Scott⁴, an Essay devoted to the theme of the judgement of history in the second half of the XXth century.

1 SCHILLER 1873 [1786], 66.

2 HEGEL 2008 [1820], 315.

3 HARTOG AND REVEL 2001, 23.

4 SCOTT 2020.

1. The Tribunal of Posterity

Before tackling Hegel's thesis, it's worth mentioning an older sense of the expression "Tribunal of History". For there is an idea, which goes right back to ancient times, concerning a tribunal of posterity. From the Renaissance and on, certain authors, such as Jean Bodin, take up the ancient *topos* according to which «the fear, or even the hope, represented by the historical judgement of posterity is supposed to have a regulative effective on the behaviour of the world's leaders»⁵. In the XVIIIth century, posterity is often invoked as a tribunal of justice, which is no longer beyond history itself, in the mode of a Last Judgement, but refers to the future, a time coming after the present. In Koselleck's words, we notice a "temporalization" of the Last Judgement, which is displaced from eternity to the future⁶.

The idea of a justice immanent in history does not refer to the outcome of events themselves, but to the way they are taken up in the future, this according to two variants, which depend upon a reply to the question: Who plays the role of the judge? Either, one leave it to the historians: they will judge what happened with hindsight, will assess the acts of "Great Men", which makes it possible to draw lessons from their acts, this according to the model of history as the master of life (*historia magistra vitae*)⁷. Or, more vaguely, one appeals to the judgement future generations will pass on those present at the time, and on the decision-makers who are responsible for the political actions in question. In line with the first figure, one can cite the declaration of d'Alembert in his *Preliminary Discourse to the Encyclopedia*, who praises the pedagogical and political role of the study of history along the following lines:

It is from History that we learn to hold men in high regard solely for the good that they do and not for the imposing

5 KOSELLECK 1975, 666. KOSELLECK refers to Jean BODIN, *Methodus ad facilem historiarum cognitionem* (1566).

6 KOSELLECK 1975, 667. See also KOSELLECK 2018.

7 See BOUTON 2019.

pomp which surrounds them. The sovereigns, those quite wretched men from whom everything conspires to hide the truth, can judge themselves ahead of time at this terrible and honest tribunal; the testimony of History toward those of their predecessors who resemble them is the image of posterity's judgment upon themselves.⁸

The terrible and honest tribunal d'Alembert talks of is obviously that of future historians, who will assume a critical view of the acts and facts of the actual holders of power, just as past historians have been doing from ancient times, regarding those in power who lived before them. The reading of history then becomes, for the sovereign, a way of anticipating the sentences eventually passed by the tribunal of posterity, so that they will be favorable to them.

In other contexts, the reference to the tribunal of history concerns not merely historians but, more generally, the people of the future. With the result that it takes on a rhetorical and political function. Here, Robespierre can be taken as a suitable example, since he repeatedly appealed not just to past but also to a future history to justify a decision, or to convince an assembly. The judgement of posterity is sometimes brandished as a threat to criticise or to abolish a measure he considers unjust. For example, in his speech of the 25th of January 1790, at the National Constituent Assembly, entitled: "On the Silver Mark" ("Du marc d'argent"), he denounces the decree reserving the right to vote to the most affluent citizens, as follows:

Comparing the greatness of your duties and the immensity of your resources against the vicious direction of your works, Posterity will say, with indignation: «They could have made men Free and Happy and yet failed to do so; they were unworthy of their responsibility».⁹

This theme, bearing on the judgement of posterity, was not peculiar to

8 D'ALEMBERT 1995 [1751], 42.

9 ROBESPIERRE 1840, Vol. 1, 164-165. See also ROBESPIERRE 1840, Vol. 2, 199-200.

Robespierre. It is to be found elsewhere, for example, in the words of Marie-Joseph Chénier in his speech of November 25th 1793, where he talks of the need to «Depantheonize» Mirabeau, whose secret complicity with the monarchy had just been become known:

Representatives of a great people, listen to its voice; be as great and as strong as it; as representatives of posterity anticipate its judgment; be as just and severe as it will be; the very praises we now heap upon the genius of Mirabeau will only make the example you are going to set even more solemn and terrible.¹⁰

In deciding whether or not to install someone in the Pantheon, the very sanctuary of posterity, the deputies of the Convention figure as its just precursors; not only do they forestall but even prepare the way for the judgements of future posterity.

In the XIXth century, this *topos* of the judgement of posterity is to be found again, and even remains one the most fertile notions upholding the idea of a justice of history. In his *Napoleon the Little*, Victor Hugo condemns the coup d'Etat of December 2 1851, and refuses to allow Louis Napoléon Bonaparte—the «nocturnal strangler of liberty»¹¹—any hope of entering the posterity of «Great Men». Quite the contrary, «history would appear one day as an avenger»¹² and will show him up for being who he really is:

History laughs and crushes [...]. The historian can only lead him to posterity by the ear. The man once stripped of success, the pedestal removed, the dust fallen, the tinsel and spangles and the great sabre taken away, the poor little skeleton laid bare and shivering—can one imagine anything meaner and more pitiful?¹³

10 CHAUSSINAND-NOGARET 2005, 209.

11 HUGO 1852, 215.

12 HUGO 1852, 20.

13 HUGO 1852, 216.

Hugo says the same thing again in *The Punishments*, Louis-Napoléon Bonaparte will never enter the precincts of History, he «will remain outside and nailed to the door!»¹⁴

Sometimes, the appeal to the tribunal of posterity is simply a possible consolation for those in situations of political powerlessness. Horkheimer writes in this way in 1934:

What has happened to the human beings who have fallen no future can repair. They will never be called to be made happy for all eternity [...]. Now that faith in eternity is necessarily breaking down, historiography [*Historie*] is the only court of appeal [*Gehör*] that present humanity, itself transient, can offer to the protests [*Anklagen*] which come from the past.¹⁵

It is easy to see that by historical posterity is meant, here, the future judgment of historians, who replace an idea that has long since become obsolete, that of the Last Judgement. This conception of history as a court of appeal is not difficult to criticise. To mention only that advanced by Charles Péguy, just before the first World War:

He who loses the battle appeals to the tribunal of history, to the judgement of history. This is still a secularization [*laïcisation*]. Other people, other men, at other times, appealed to the judgement of God, and many of our earlier ancestors sometimes appealed to the justice of Zeus. Today, they appeal to the judgement of history. This is the modern appeal. This is the modern judgment. Poor friends, poor tribunal, poor judgement. They take me for a magistrate, and I am only a (little) administrator. They take me for the judge, and I am only the registration lady [*la demoiselle de l'enregistrement*].¹⁶

14 HUGO 1977 [1853], 258 (from the poem « When the eunuch reigned beside Caesar »).

15 HORKHEIMER 1968, 198-199 (quoted by LÖWY 2005, 31).

16 PÉGUY 1932, 152-153. This posthumous text, first published in 1917, was probably written around 1909-1912.

For Péguy, such an attitude remains an illusion, since it consists in conferring upon history quasi-divine powers, which it evidently does not have. History is not a judge; at best it is but a registrar, like a court clerk, recording events as so many debates which it cannot even hope to settle.

2. The Tribunal of Freedom

From the beginning of the XIXth century, the professionalization of history as an academic discipline is accompanied by a calling in question of value judgements bearing on the past. Ranke's famous formula is well known: «You have reckoned that history ought to judge the past, and to instruct the contemporary world as to the future. The present attempt does not yield to that high office. It will merely tell you how it really was»¹⁷. Hegel fully endorsed Ranke's critique of any moralizing evaluation of history, a critique voiced by an historian who was his colleague at the University of Berlin, but without abandoning the idea of historical judgment. With him, the judgment of history goes beyond any merely normative assessment (judging the past) and in the direction of according to it an ontological status (with a view to guiding the present): in this way world history itself, as a succession of events, is set up as a world tribunal. One moves on from a judgement *on* history *to* a judgement of history itself. Historical justice is not left to the arbitrage of an uncertain posterity¹⁸, it has become contemporary with the events themselves. It begins to resemble a second temporalization of the Last Judgement, moving back from the future to the present. In this very different perspective, the judge of history is neither the historian nor even the public opinion of the future but "the spirit of the world", which now exerts its

17 RANKE, 1885 [1824], vii.

18 Which, according to Hegel, is most often unjust towards great men, whom it condemns through moralistic judgments (see HEGEL 2008, 318: «For the deeds of the world spirit, therefore, they receive no honour or thanks either from their contemporaries (see § 344) or from public opinion in later ages»).

authority in the name of the idea of freedom¹⁹.

What is the best way of coming to terms with this comprehension of history as a world tribunal? The tribunal of history makes no sense from a strictly legal point of view, for «there is no Praetor to judge between states»²⁰. Hegel rejects the idea of an international tribunal set up to settle conflicts between states peacefully, in the Kantian manner. As Karl Löwith observed, the theme of a world tribunal is more inspired by the Judeo-Christian idea of a Last Judgement (*Weltgericht*, *Jüngste Gericht* in German), reproduced in a more secular manner. But, in Hegel's view of history, any secularization of the Judeo-Christian motif of the Last Judgement requires three essential modifications. First of all, it is not God but the “spirit of the world” or the “universal spirit” which presides over the tribunal of history, and which assumes the role of guaranteeing its rationality:

The principles of the spirits of peoples [*Volksgeister*] are in general restricted on account of their particularity, for it is in this particularity that, as existent individuals, they have their objective actuality and their self-consciousness. Their deeds and destinies in their relations to one another are the manifest [*erscheinende*] dialectic of the finitude of these spirits, and out of it arises the *universal spirit*, the *spirit of the world*, free from all restriction, producing itself as that which exercises its right—and its right is the highest right of all—over these finite spirits in world history [*Weltgeschichte*] as the *world's court of judgement* [*Weltgericht*].²¹

Moreover, the world tribunal is not situated at the end of time but at the heart of history itself. Lastly, its right is the absolute right of the universal spirit, founded on a historicized idea of freedom.

Further, in world history it is not merely the *power* [*Macht*] of

¹⁹ For further developments, see BOUTON 2004.

²⁰ HEGEL 2008 [1820], 313.

²¹ HEGEL 2008 [1820], 315.

spirit that passes judgement, i.e. the abstract and non-rational necessity of a blind destiny. On the contrary, since spirit in and for itself is *reason*, and reason's being-for-self in spirit is knowledge, world history is the necessary development, out of the concept of spirit's freedom alone, of the moments of reason and so of the self-consciousness and freedom of spirit. This development is the exposition [*Auslegung*] and *actualization of the universal spirit*.²²

Nothing is more alien to Hegel than a cynical view of history, a kind of *Realpolitik*, in the light of which whatever power is able to exercise a force sufficient to arbitrate disputes between nations thereby acquires the right to do so. Reason now figures as the Spirit of the World, and Reason is manifest as the historical development of the concept of freedom²³.

In this sense, the tribunal of history is a tribunal of freedom. It functions as a conceptual configuration, whose role is to guarantee progress in the institutional and political realization of freedom. When a people coincides with the spirit of the world, like the French people for Hegel at the time of the Revolution, it becomes the «bearer of the highest development yet attained by the spirit of the world at that time»²⁴. As such, that people disposes of an «absolute right», of a «supreme right», and to such an extent that the principles espoused by other peoples are deprived of any right relative to it. This is how Hegel arrives at the conclusion that the «Great Man» who incarnates the spirit of a «world-historical people» is himself upheld by the spirit of the world²⁵.

In the model of posterity, belief in the tribunal of history means that

22 HEGEL 2008 [1820], 316.

23 See HEGEL 2000, 198: «The spirit is reason; what it does is rational. What it does is to reach the self-consciousness of its freedom».

24 HEGEL 1983, 256.

25 See HEGEL 1975, 84: «It is this which gives them [great men] their power in the world, and only in so far as their ends are compatible with that of the spirit which has being in and for itself do they have absolute right on their side—although it is a right of a wholly peculiar kind».

the «Great Man» acts in the name of a future history, in the sense that he will be judged by future generations and or their historians. In Hegel's model, the Great Man acts in the name of present history, to the extent that he is carried along by the movement of current history, whose new principle he is supposed to accomplish as a verdict. With his idea of a tribunal of history, Hegel therefore makes possible a political utilization of history with a view to the legitimization of certain goals, even while setting certain limits to it: the tribunal of world history only validates actions which move in the direction of some progress in the political realization of freedom, which not merely excludes any attempts at a political restoration of the past at his time²⁶, as also future totalitarianism.

Let us offer a few examples of the reception of this conception of history as seen from a Marxist perspective. In the course of a speech given to English workers, in London, on April 14 1856, Marx explicitly evokes the idea of history as a tribunal of justice. After comparing the future social revolution to an old mole—another Hegelian image—who silently saps the foundations of bourgeois society, he continues:

I know the heroic struggles the English working class have gone through since the middle of the last century—struggles less glorious, because they are shrouded in obscurity, and burked by the middleclass historian. To revenge the misdeeds of the ruling class, there existed in the middle ages, in Germany, a secret tribunal, called the “Vehmgericht”. If a red cross was seen marked on a house, people knew that its owner was doomed by the “Vehm”. All the houses of Europe are now marked with the mysterious red cross.

History is the judge—its executioner, the proletarian.²⁷

In this passage, the tribunal of posterity is denounced as partial, because administered by «bourgeois historians», accused of

²⁶ See Hegel's letter to Niethammer, July 5 1816 (HEGEL 1969, 86).

²⁷ MARX 1969, 500.

overlooking the struggle of the working class for their emancipation²⁸. The true tribunal is that of History itself, in as much as it is a process of emancipation supposed to lead on to the victory of the proletariat, and even to authorize a certain violence, since, in undertaking a revolution, the proletariat is only executing a just sentence.

In the Marxist tradition, the association of history with a tribunal has been taken up by other politicians in different contexts, men like Karl Liebknecht, who put it into practise in an impassioned speech at the Reichstag on the 10th of March, 1910, the theme of which was the struggle against privileges:

Gentlemen, we know that the word is true, that world history is the Last Judgment [*daß die Weltgeschichte das Weltgericht ist*], and you will have to answer before this Last Judgment; and it will sound the trumpet of the Last Judgment (Stormy laughter on the right and in the center)—the trumpet of the last judgment (Continuous stormy laughter on the right and in the center.) the trumpet of the people's judgment, gentlemen, will sound evilly in your ears (Shouting and laughter on the right.), yes, gentlemen, the day of vengeance and the day of retribution will come, *dies irae, dies illa!*²⁹

The personification of history as a supreme judge, History with a capital 'H', has continued to exercise a certain fascination right up to the XXth century. Alexandre Kojève, whose lectures on Hegel in the 30s made a great impression upon an entire generation of young French philosophers, presents the Hegelian thesis of world history as world tribunal as a well-established truth, in the same sense as that of the "end of history":

"Weltgeschichte ist Weltgericht", ("World History is a tribunal that judges the World"). History is what judges men, their actions and their opinions, and lastly their philosophical

28 See on this topic THOMPSON (1963).

29 Quoted in GUMBRECHT 2001, 422.

opinions as well. To be sure, History is, if you please, a long “discussion”, between men. But this *real* historical “discussion” is something quite different from a philosophic dialogue or discussion. The “discussion” is carried out not with verbal arguments, but with clubs and swords or cannon on the one hand, and with sickles and hammers or machines on the other.³⁰

When he retrieves Hegel’s thinking in his own Kojevian version, Francis Fukuyama, the apostle of the end of history, also makes use of this idea he cites in German: «The historicist philosopher would be compelled to accept liberal democracy’s own claims to superiority and finality. *Die Weltgeschichte ist das Weltgericht*: world history is the final arbiter of right»³¹. This now looks like being one of the last references to the Hegelian topos—its swan song? For, with the crisis of 2008, the partial failure of the Arab Spring (Only Tunisia seems to have been able to benefit from the course of events) the steady increase in the power of non-democratic States—China, Russia and its aggression against Ukraine—the idea of a justice immanent in history, and which would guarantee the progress of freedom, has become difficult to believe. Nowadays, one is more likely to hold that history does not have a tribunal and that there is no “Spirit of the World”, simply a succession of events, processes and structures.

3. The Tribunal of Power

A third sense of the tribunal of history that needs to be mentioned is the use of this idea to invert the relation of fact and value, indeed to make of violence a criterion of justice. This risk is announced and denounced by Fichte at the beginning of his *Contribution to the Correction of the Public’s Judgments Regarding the French Revolution*: «Will we place in success the touchstone of justice and wisdom, and

30 KOJÈVE 1969 [1947], 185.

31 FUKUYAMA 1992, 137.

will we wait for the event, to call a robber a hero or a murderer, and Socrates a malefactor or a virtuous philosopher?»³². For Fichte, the criterion for judging historical facts lies in the inner tribunal of conscience, not in the facts themselves. One century later, Nietzsche uses the same argument against Hegel. He reproaches him for having «implanted in the generation thoroughly leavened by him that admiration for the 'power of history' which practically at every moment turns into naked admiration for success and leads to the idolatry of the factual»³³. And it is true that some philosophers have understood Hegelian thought in this way. Drawing inspiration from Hegel, Victor Cousin declares: «If, as I have shown, history with its great events is nothing other than the judgment of God on humanity, one can say that war is nothing other than the pronouncement of this judgment, and that battles are the striking promulgation of it»³⁴. Hegel's thesis is misused to become an ideological weapon by which any form of violence can be justified. The paradigmatic example of this is Oswald Spengler, who has completed the perverting of the meaning of the Hegelian formula at the end of *The Decline of the West*:

Ever in History it is life and life only—race-quality, the triumph of the will-to-power—and not the victory of truths, discoveries, or money that signifies. *World-history is the world court*, and it has ever decided in favour of the stronger, fuller, and more self-assured life decreed to it, namely, the right to exist, regardless of whether its right would hold before a tribunal of waking-consciousness. Always it has sacrificed truth and justice to might and race, and passed doom of death upon men and peoples in whom truth was more than deeds, and justice than power.³⁵

The personification of history under the form of a supreme judge,

32 FICHTE 1845/46 [1793], 48.

33 NIETZSCHE 1980 [1874], 47.

34 COUSIN 1840 [1828], 72.

35 SPENGLER 1928, 507.

coupled with the legitimization of violence in its name, can fuel, in certain circumstances, a dangerous ideology, one which constitutes the principal accusation against the idea of a tribunal of history in the XXth century. In France after the first world war, Paul Valéry offers a more radical formulation of this risk:

History is the most dangerous product evolved from the chemistry of the intellect. Its properties are well known. It causes dreams, it intoxicates whole peoples, gives them false memories, quickens their reflexes, keeps their old wounds open, torments them in their repose, leads them into delusions either of grandeur or persecution, and makes nations bitter, arrogant, insufferable, and vain.

History will justify anything. It teaches precisely nothing for it contains everything and furnishes examples of everything.³⁶

To sum up the three first sections one might say, following the lead of Löwith, that, if it is compared with the theme of the Last Judgement from which it arises in part, the idea of history as a tribunal has resulted in a progressive increase in the process of secularization. The tribunal of posterity displaces the moment of judgement from the end of the world to the future of the world. It thereby becomes a normative tool designed to criticize present behaviour in the light of the future, and so to weigh on decisions bearing on the medium and long term. The Hegelian sense of the tribunal of history is a theoretical configuration aiming at the foundation of a teleological conception of history. Even though, for Hegel, this configuration bears only on the past and the present—philosophy does not predict the future—it can be used in a practical and political sense as the guarantee of a victorious future. Understood in this way, the tribunal of history no longer bears on any judgements individuals, or still unborn populations, are likely to pass in the future, regarding what is presently going on. Instead, it has become a superior principle

³⁶ VALÉRY 1963 [1928], 144.

supposed to be capable of guiding the course of history in the right direction. In the idea of a tribunal of power, every trace of transcendence has been eliminated; history no longer being anything more than a political alibi designed to legitimize violence on a grand scale.

4. Political Usages: Three Case Studies from the XXth Century

4.1 History versus Right: Bukharin and the Moscow Trials

Maurice Merleau-Ponty, who attended Kojève's seminars between the two wars, offers an example of what might be called the Hegelian-Marxist reception of the idea of the tribunal of history. In a text, *Humanism and Terror* (1946) devoted to the Moscow Trials of 1938, he writes:

Bukharin and his colleagues were defeated; this means that they were up against a persistent police force and an implacable dictatorship. But their failure means something even more essential, namely, that what broke them was necessitated by that phase of history. 'World History is a world court of judgement', says Bukharin.³⁷

Indeed, in his last plea during his trial, Nicolai Bukharin had said:

World history is a world court of judgement: A number of groups of Trotskyite leaders went bankrupt and have been cast into the pit. That is true. But you cannot do what Feuchtwanger does in relation to Trotsky in particular, when he places him on the same plane as Stalin. Here his arguments are absolutely false. For in reality the whole country stands behind Stalin; he is the hope of the world; he is a creator.

37 MERLEAU-PONTY 1969 [1947], 62.

Napoleon once said that fate is politics. The fate of Trotsky is counter-revolutionary politics.³⁸

For Bukharin, the tribunal of history had chosen Stalin against Trotsky. All the same, we will never know if he truly believed what he said or whether these words were extracted from him by his interrogators and by the atmosphere of terror that surrounded this parody of justice represented by the Moscow Trials.

In the course of his speech, the public prosecutor of the supreme court of the USSR, Andrey Vyshinsky, made it clear that a part of the facts brought against Bukharin and his accomplices, and of which they were principally accused, the betrayal of Lenin, was already prescribed. But he demanded «that the culprits be called to account, if not before a criminal court restricted by the Statues of limitation, then, at any rate, before the tribunal of history which knows of no Statues of limitation, which knows no mercy»³⁹. This was a way of placing the supreme court under the superior authority of the tribunal of history. In his book, *Darkness at Noon* (1940), Arthur Koestler points out how absurd and murderous this conception of history was on the basis of his principal personage, Rubashov, in large part inspired by the real Bukharin and his admissions:

History knows no scruples and no hesitation. Inert and unerring, she flows towards her goal. At every bend in her course she leaves the mud which she carries and the corpses of the drowned. History knows her way. She makes no mistakes. He who has not absolute faith in History does not belong in the Party's ranks.⁴⁰

Just before his death sentence, Rubashov explains in his journal that the Party had developed a "neo-machiavelism" based on acting in the name of History, a History devoid of any moral scruples and charged

38 BUKHARIN 1938, 778.

39 VYSHINSKY 1938, 646.

40 KOESTLER 1948, 36

with justifying the execution of individual “dissidents” not for crimes but for ideas taken to be erroneous:

We were neo-Machiavellians in the name of “universal reason”—that was our greatness; the others in the name of a national romanticism, that is their anachronism. That is why we will in the end be absolved by history.⁴¹

Thus, the reader is led to believe that the tribunal of history, which is supposed to absolve all these practises, is in fact only an alibi for violence. As for the tribunal of posterity, through whose appeal these victims of the earlier judgement might be rehabilitated, for the accused, that appeal could only figure as a derisory consolation: «There was no certainty; only the appeal to that mocking oracle they called History, who gave her sentence only when the jaws of the appellant had long since fallen to dust».⁴² Koestler could not even know how well he had expressed it, since Bukharin was only rehabilitated after the Perestroika, in 1988, fifty years after his execution.

4.2 The Rhetoric of the Tribunal of History in Hitler’s Speeches

The political use of history to legitimize violence is also to be found with the Nazis, in particular, in Hitler’s speeches. In that respect, Koselleck cites Hitler’s final declaration of March 24 1924, at his Putsch Trial, before the announcement of the verdict which was going to condemn him for High Treason.

For, gentlemen, it is not you who pronounce judgment upon us, it is the external Court of History which will make its pronouncement upon the charge which is brought against us. The verdict that you will pass I know. But that Court will not ask of us, ‘Did you commit high treason or did you not?’ That

41 KOESTLER 1948, 73

42 KOESTLER 1948, 17.

Court will judge us as Germans who wanted the best for their people and their fatherland, who wished to fight and to die. You may pronounce us guilty a thousand times, but the Goddess who presides over the Eternal Court of History will with a smile tear in pieces the charge of the Public Prosecutor and the verdict of this court. For she acquits us.⁴³

One he got into power, Hitler continued to evoke regularly, in his speeches, the judgement of history and his responsibility «in the face of history». A few days before the *Anschluss* with Austria, he declares in the course of a meeting:

On April 10, we will jointly pass judgment. For the first time in the history of our *Volk*, a Reich is being constructed in accordance to the will of the *Volk*.⁴⁴

The history of the German people is placed under the providential protection of the tribunal of history, which guarantees the final victory:

For, even though ages of greatness always alternate with ages of disintegration in our *Volk*, the final judgment of history on the actions of humanity will nonetheless be passed by the spirit of *Lebensbejahung* (affirmation of life).⁴⁵

The appeal to the future judgement of history serves equally to legitimize decisions at little cost. Thus the integration, *manu militari*, of all the political youth organisations under the head of Hitler Youth is a decision that «will one day be judged in German history to have been an extremely rare proof of a truly magnanimous, national outlook»⁴⁶. Leaving the League of Nations is presented as «a point that can

43 NOAKES, PRIDHAM, 1998, 34-5 and KOSELLECK 1975, 668.

44 DOMARUS 2007, 157 (speech of April 3, 1938).

45 DOMARUS 2007, 526 (talk to German national reporters, April 6, 1933).

46 DOMARUS 2007, 463 (speech of June 26, 1933).

perhaps be contested by today's interested parties, but that history will judge on its intrinsic merits»⁴⁷. In the Hitlerian conception of history, success becomes the only criterion of justice, a retrospective justification of violence, as can be seen in this April 28, 1939 speech, designed to justify the German occupation of Bohemia and the destruction of the Czecho-Slovakian state. Hitler compared this conquest with the British colonization:

By whatever means Great Britain may have gained its colonial possessions—and I know this entailed the use of force, the use of most brutal force in many instances—I nevertheless realize that no other empire has ever been created by different means. In the end, world history values not the method so much as the success.⁴⁸

Inversely, failure is synonymous with condemnation by history, and that without appeal:

Should the German *Volk* be overpowered in this struggle, then it will have been too weak; it will not have passed its test before history, and it will therefore be doomed.⁴⁹

Whatever sincerity there might have been in all these declarations⁵⁰, the appeal to the tribunal of history made it possible for Hitler to justify his political and military decisions without confronting any opposition—who else, aside from he himself, could know in advance the decrees of the tribunal of history? It was a way of exempting his decisions from any criticism from his contemporaries, since the only competent judge in the matter would be future History, the only

47 DOMARUS 2007, 550 (interview with Ward Price on January 17, 1935).

48 DOMARUS 2007, 639 (speech of April 28, 1939).

49 DOMARUS 2007, 791 (Hitler's official excerpt quoted by Speer at Nuremberg).

50 Which was null according to DOMARUS 1988, 2261: «In reality, as his life shows, he [Hitler] was as indifferent to the judgment of history as to the fate of the German people. For him, 'history', like everything else, was only a means to an end: to satisfy his immense thirst for power».

authority warranted to judge his acts and so, inevitably, to absolve him from any crime. In this scheme of thought, which makes of history a tribunal of power, an alibi for violence, one is far removed from Hegel and his tribunal of freedom. Carl Schmitt was not far from the truth when he declared: «As a result, on this very day [January 30 1933] one can say: ‘Hegel died’». ⁵¹ The relevant reference for Hitler is more likely to be Spengler, whose biologicalizing vision of history he appreciated, even if he contested his thesis with regard to the Decline of the West. He who, on the contrary, claimed that National Socialism would ensure the «Resurrection of the Peoples of the Western World» ⁵².

4.3 History will Judge: Blum at the Riom Trial

The theme of the Tribunal of History, which had been exploited by Hitler for propaganda purposes, is revived, at about the same time, for another politician who was, so to speak, its antithesis, Léon Blum. On the 28th July 1940, the Vichy regime got a retroactive law voted aimed at judging the former ministers of the Popular Front. Arrested, and then accused of being responsible for the military defeat, Blum was judged in October 1940 at Riom. On October the 15th, the day on which he received the charges held against him, and so even before the trial began, Pétain publicizes the condemnation of Blum to a life sentence in prison for «having failed in his duty». In his letter to the “council of political justice”, written in response to the charges, and dated October 20th, Blum, who had been a magistrate over 25 years, denounced the contempt for the principles of separation of powers, the non-retroactivity of laws and the rights of the defense, whose neglect made a «farce» of his trial. He concludes:

I repeat it with regret, I cannot hope any reparation from your justice. But I retain, and reclaim, the right to be justified in the

⁵¹ SCHMITT 1933, 31-2.

⁵² See DOMARUS 2007, 136-7 (speech given at Tempelhofer Field to some million and a half people on May 1, 1935). Note that Spengler expressed doubts about the chances of success of National Socialism.

eyes of my people, even before any international opinion, and I would dare to go so far as to say, before History⁵³.

In the course of the trial, Léon Blum repeats that he is defending himself in view of his country, of universal public opinion and, is not afraid to add, «for History»⁵⁴.

After his condemnation, one of his friends in exile at New York, Suzanne Blum, brought out a collection of texts in March 1943, texts written by Léon Blum between 1932 and 1940, with a view to defending his political record against the accusations of Vichy, pointedly directed proofs drawn up under a title recalling the idea of the tribunal of history: *History will Judge (L'histoire jugera)*. In her preface, she confirms that «History, the only competent Tribunal, will judge. But after reading these pages one gets the impression that History has reached its conclusion in advance»⁵⁵. Léon Blum himself, who did not know of the existence of this publication until after his liberation, that is, after the war, added a preface to the new edition of July 1945, in which he goes back to his declaration at the time of the Riom Trial: «I would not now say, as did my collaborator, 'History will judge'. Whatever I might have said before the judges at Riom, I am not presumptuous enough to think of myself as worthy of being judged by History. I will only say: 'the reader will judge'»⁵⁶ Even while the tribunal of History acquitted him, so to speak, and even rehabilitated him, he takes up a distance with regard to this idea which, in the end, he takes to be presumptuous. Nobody has the right to believe that he or she will be judged by any other tribunal than that of his or her fellow men.

53 BLUM 1945, 257.

54 BLUM 1945, 257.

55 BLUM 1945, XVI.

56 BLUM 1945, VIII.

5. The Judgement of History as a Critical Enquiry into the Past

Even when it is replaced by a tribunal of men, made up of laws, of magistrates and lawyers, the tribunal of history remains present in the background. Thus, the Nuremberg Tribunal has sometimes been interpreted as an implementation of the tribunal of history⁵⁷. Joan W. Scott recalls that the Presiding Judge, general prosecutor Robert H. Jackson, declared at the start of the Nuremberg trial that «we must never forget that the record on which we judge the defendants today is the record on which history will judge us tomorrow»⁵⁸. In this regard, Scott makes another criticism of the idea of the tribunal of history. In her Hegelian version, the idea carries a teleological conception of history founded in the National-state, which figures both as the high point of historical progress and the judge of the tribunal. This vision of history was never however brought into question at the Nuremberg trial. The “Nazi barbarism” was presented as an archaic relic, an anachronic episode in the development of Western civilisation towards progress and modernity, even though the foundation of the Nazi ideology, racism, was indeed already present throughout the whole period of colonialization. Scott means that the Nation-state, a product of the enlightenment, placed itself in the position of a judge of history (Nazism having been rightly presented as an absolute evil), without going as far as to pass critical judgement on itself after the trial. This critique focuses both on the partiality and the risk of blindness that necessarily accompanies institutions who try to endorse the role of the tribunal of history. Scott analyses another example: the commission “Truth and Reconciliation” in South Africa, which favoured a moral approach founded on pardon (without any penal sanction) at the cost of blindness to the political and economic

57 This association can be found on a disc published in West Germany in 1977 which contained a part of the recordings of the trial with the title: “Der Nürnberger Prozess— Weltgeschichte als Weltgericht” (Miller International Schallplatten GmbH ; Dokumentar-Serie—148 017.0).

58 SCOTT, 2020, 3.

conditions surrounding *Apartheid*⁵⁹.

Against these two examples, she brings forward the struggle for the historical recognition of the role slavery played in the formation of the American nation, a struggle led by the descendants of the victims. By comparison with the judicial model of Nuremberg or that of “Truth and Reconciliation”, the persons concerned are not just victims, since they were also actors in, and judges of, the affair. Over and beyond the debates bearing on financial reparations, what is at stake is primarily historical: those who demand reparations are appealing to another vision of history than that of the Nation-state and of progress, whose grey areas they are the first to denounce. Hence the new conception of the idea of judgement in history proposed by Scott. If the belief in a judgment of history that will eventually prevail is no longer tenable, and indeed never was, if this idea is, according to her, little more than an imaginary consolation, she does nevertheless admit the idea that the historical narrative can contribute to unearthing a dissimulated history like that of slavery:

The righteous Judge of the Universe is, in our secular age, understood to be History itself. But, I would argue, it is not History, conceived as an autonomous movement whose infallible judgment will right all wrongs, that is wanted. What is called for is a humanly written account that unflinchingly takes cognizance of “the facts of our history”, exposing their structural and ideological supports and their varying and conflicting temporalities.⁶⁰

In this perspective, the judgement *of* history is a judgement *on* history that can be reduced to a critical work on the grey areas of the past, a history “against the grain” in Walter Benjamin’s sense of that word⁶¹, a philosopher to whom Scott refers on several occasion in her essay. The notion of judgement does not disappear altogether, for this work is

59 SCOTT, 2020, 23-50.

60 SCOTT, 2020, 76.

61 BENJAMIN 2007, 257.

always accompanied by judgements of value assumed as such (like the condemnation of the system of slavery and its extensions across racism). As Stéphane Mosès writes: «For Hegel the Judgment of history is that by which history judges man; for Benjamin, it is the one by which man judges history»⁶².

But who are the men we are talking about here? It seems to me that the «narrative written by men» of which Scott speaks has to be done with, and under the control of, professional historians, in order not to fall into the trap of biased reconstructions and ideological usages of the past. But, it will be said, historians gave up this role of judging the past a long time ago, as is shown by Marc Bloch, who refused the posture of the historian as «a sort of judge in Hades, charged with meeting out praise or blame to dead heroes». The procedures adopted by the historian and the judge, he adds, certainly do have a common anchorage in their honest submission to the truth. But «there comes a moment when their paths divide. When the scholar has recorded and explained, his task is finished. It yet remains for the judge to pass sentence»⁶³. To extend the metaphor of the tribunal, one sees that the historian is neither a simple clerk, in Péguy's sense, nor the judge who pronounces sentence, he is more like an investigative judge who enquires into the pros and cons of the case, with this difference, that he does not have to classify the facts according to judicial norms, since the latter arise out of variable tables of value depending upon the epochs and civilisations in question⁶⁴.

6. Conclusion

In spite of all those critics who did not fail to point out the limits and dangers of mixing the categories of history and justice, it is worth concluding with a mention of certain ways of understanding the

62 MOSÈS 2009, 109.

63 BLOCH 1953, 138-9.

64 See on this topic GINZBURG 1999 and HULAK 2016.

tribunal of history which still seem to be valid. Besides the critical work bearing on the past emphasized by Scott, the formula: «history will judge» serves to mark an epistemological prudence vis-a vis present events. Rather than rushing to judge what happens, one prefers to wait to see the future effects in order to appreciate them «with the benefit of hindsight», and even await what historians will have to say in the future about such and such an action and its eventual conformity with the intentions by which it was inspired. Another important meaning attached to the idea of the tribunal of history, and which is maintained in the XXth century, even though it reaches back before Hegel, is that of the tribunal of posterity. Is such an idea so silly, even presumptuous? In certain cases, it still remains a rhetorical tool used to condemn or convince, and employed in a variety of different contexts. Let us simply offer two very different examples. On August 30 2013, after an attack with chemical weapons against civilians in Syria, the secretary of State John Kerry denounced «the crime against humanity» committed by Bachar Al-Assad: «History will judge us all extraordinarily harshly if we turn a blind eye to a dictator's wanton use of weapons of mass destruction»⁶⁵. This assumption of the judgement of history is not reserved for politicians, it is sometimes taken up by personalities well known to the media. After his meeting with the young militant Swedish militant Greta Thunberg at Los Angeles, the actor Leonardo DiCaprio posted the following message on his Instagram account on November 1 2009: «History will judge us for what we do today to help guarantee that future generations can enjoy the same livable planet that we have so clearly taken for granted»⁶⁶. In this sort of expression, the idea of a tribunal of history loses any trace of the providential, or the eschatological, but simply designates a responsibility towards future generations, a taking into account of their interests, a position which, in an era of global warming, is far from being absurd.

65 Remark delivered at the State Department, Washington, D. C. (30 August 2013).

66 https://www.instagram.com/p/B4VL7ZnFrjf/?utm_source=ig_embed

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