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## **Natural Rights, Cultural Rights, and the Politics of Memory**

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### **Abstract**

Human rights and memory discourses must be robustly linked with each other to add a necessary dimension of futurity to memory and of history to human rights politics. Drawing on the early modern notion of natural rights, this paper asks to what extent 'rights of nature' need to be considered to nurture the sustainability of human rights as social rights.

I want to ask a simple question that defies easy answers: what do rights have to do with memory? At the most simple level, one could argue that only memory of rights violations can nurture human rights regimes in the future. Memory and human rights must be linked more robustly with each other discursively and practically to prevent memory from becoming a vacuous exercise feeding parasitically on itself and to prevent human rights from losing its historical grounding and risking legalistic abstraction and political abuse.

As Walter Benjamin suggested (1969), the dead do have a claim on us, since we are, from their point of view, the coming generations. Nothing messianic about that. No need to talk about

redemption. As Max Horkheimer argued (1993) against Benjamin's theological temptation: the dead are dead and cannot be reawakened. But they do have a right to remembrance. This is a mark of human civilization, after all, long before the explicit articulation of human and any other rights, and ever more so after this most murderous century of human history that we have left behind. Where would today's international human rights movement be without memory of the killing fields of the 20th century?

And yet, memory and rights discourses don't blend easily. Debates about human rights and transitional or retroactive justice in law and political theory have too often remained separated by a deep gulf from discussions of memory and historical trauma in the humanities. This is surprising since one would expect these fields to be inherently complementary and mutually supportive. Yet there remains a fundamental tension between memory and the law. Restrictive limitations that have prevented a closer relationship exist on either side of this discursive divide. Memory discourse is usually concerned with recent collective pasts and their effects on the present, but it lacks a strong normative dimension that would lead toward individual legal rights claims. Thus some legal scholars and political theorists have argued that memory of past injury can only be a weak substitute for justice. At the same time, however, legal proceedings, especially in cases of retroactive justice after the end of dictatorships as in Chile or Argentina, depend on individual memory to arrive at convictions. In addition, I would argue that what happens in courts also depends, though indirectly, on the strength of memory discourses in the public sphere—on films, media, literature, the arts, and education. The biblical demand to remember, so strong in contemporary worldly culture as a counterweight to rampant amnesia, is a moral demand which is not legally enforceable. Reasonably so, since were it enforceable, it would violate the right to forget. Memory itself always remains fragile and difficult to verify. Human rights, on the other hand, is Janus-faced: morality and law. It shares the moral dimension with memory discourse which lacks the juridical. This is why there remains a fundamental tension between memory and rights discourse, and given contemporary culture's often frivolous and exploitative obsessions with memory, one may legitimately ask whether memory helps or hinders justice. Not even to speak of cases where memory is used to incite violence as in Slobodan Milosevic's Serbian propaganda campaign about the 1389 battle of Kosovo which was key in triggering the ethnic cleansing in Bosnia and Kosovo. The Croatian writer Dubravka Ugrešić, in her book of essays *The Culture of Lies* (1998), has made the powerful argument that the disintegration of Yugoslavia was characterized by the simultaneity of a terror of forgetting and a terror of memory.

Human rights discourse, by contrast, makes strong normative legal claims in the name of justice, but often ends up in an idolatry of abstract principles, thus ignoring the historical and political contexts which must be recognized and negotiated if a politics of human rights is to take hold in a specific country at a given time. Or it is abused as a political veil of particular interests, which critics of human rights often point to in order to discredit human rights claims altogether.

Idolatry and abuse are especially visible internationally in the facile equation of universal human

rights with Western democracy. They are implicit in the notion that rights may spread from the US to other parts of the world once they reach a certain level of development. While the genealogy of the current international human rights movement goes back to European sources of natural law of the 17th and 18th centuries, its meaning is not exhausted by this origin which precedes the democratic revolutions of the US and France. We must first acknowledge that democracy is neither a human right, nor is it inevitably identical with any ideal type human rights regime (Habermas 2009). To the extent that democracy operates with majority rule, it may violate the rights of minorities, a constellation rife with conflict especially in the years after World War I and its many newly formed nations and again in a different constellation after the end of the Cold War. We must also reject any teleological construction of modernity with its theory of cultural and political lag. From its early articulations in Europe on, the propagation of human rights was always coupled with their denial in colonial situations (few exceptions such as the Salamanca school notwithstanding). Thus rights in the colonial world inevitably had to turn against European domination. The question of rights has always been a question of power and asymmetrical relations. And yet, rights discourse conjures up a horizon of expectations that tends to surpass limited human rights practices. Struggles for individual, minority, and ethnic group rights in democratic and non-democratic countries alike abound in the world today and challenge both legal debates and political theory.

A second political point must be registered. The traditional idea of nationhood, as it developed during the Westphalian regime of sovereign nation states since the 17th century and characterizes political communities across the world until this day, is not inevitably conducive to the cultural or political rights of minorities. Ever since the Huguenot massacres in France, minority and cultural group rights have often been suppressed in Europe in the interest of enforcing the kind of religious or national homogeneity which is simply no longer adequate to our contemporary world--its flows of migration and cultural mixing, and the development of flexible citizenship. Ever more frequently, the claims of national majority cultures conflict with the rights of others within the nation: indigenous populations, descendants of slaves, disenfranchised groups, sexual minorities, and immigrants of all kinds. At the same time, a human rights regime entirely beyond states and nations is not yet imaginable today, even if some political theorists have begun to conceptualize a "global civil society" as opposed to world government (Weltbürgergesellschaft; Habermas 2004; Benhabib 2002) . Despite certain forms of denationalization of citizenship (dual citizenship, EU passports, the granting of regional voting rights to non-citizens, etc), states do remain important legislators and guarantors of expanded rights, especially via constitutions, new regulations of citizenship and cultural rights, and commitments to transnational organizations. Most rights struggles still play out within this context. On the other hand, however, new forms of de facto statelessness have developed in the context of illegal migrations, the sex trade, and other new forms of slavery and indentured labor. This is particularly pertinent in the case of "third country immigrants" to the EU and of Latin American and Chinese immigrants to the US.

While human rights discourse aims at universality, a concept that has had powerful enemies for

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a long time, discourses about collective memory have typically been limited to national or regional situations, thus blocking insight into the ways a new transnational politics of memory has spread across the world since 1989 in conjunction with rights discourse and yet separate from it (exceptions to this trend: Levy and Sznajder 2006; Rothberg 2009). The idea of collective memory, as it circulates today, mostly relies on an anthropological notion of culture as homogeneous and closed or self-contained. With the expansion of rights since WWII, such notions of national cultures as distinct and coherent units not subject to international rights claims have weakened. Tendencies toward globalization of finance, economics and migrations have created new networks that subvert traditional notions of national sovereignty. Still, discourses of lived memory will remain tied to specific communities and territories, even if the concern with memory itself has become a transnational phenomenon across the world. But even at the national level, memories are always in conflict with each other, more so nowadays than at the highpoint of the Westphalian regime that first saw the invention of national traditions (Hobsbawm 1983). Memories clash just as rights claims confront each other. The notion of collective memory only makes sense if we acknowledge that in any collectivity, there will inevitably be conflict and struggle over memories. Such tensions and conflicts are a key constituent of the public sphere in open societies and must ideally be subject to political recognition, democratic deliberation and negotiation. Key conflict areas today concern the rights of indigenous peoples, language rights, the inequality of gender, sexual rights, citizenship rights and political rights for immigrants. Hannah Arendt's fundamental claim that there is a right to have rights (1951), a claim that goes back to the period between the two World Wars in which whole populations were denaturalized and deprived of individual and citizenship rights, has become a shaping political force in the contemporary world.

Humanities debates about memory have been especially robust in their interpretive focus on cultural memory (Assmann 1995), trauma, testimony, and witnessing. Some have asked to what extent such a focus on subjectivities, legitimate as it is, doesn't risk losing sight of the political dimensions of rights discourse in the present and its implications for the future (Sarlo 2005). While this objection does have some force in relation to an overplaying of trauma in a poststructuralist and psychoanalytic vein, I would argue that it is precisely the focus on the force of individual memories of rights violations that can keep human rights discourse from slipping too fast into abstraction and ahistoricity. Human and cultural rights discourse must be supported by concrete cases of rights violations read in the context of systemic conditions and deep histories, and it can be supported by works of art that train our imagination to recognize what Susan Sontag (2003) called the pain of others and what classical Greek tragedy first articulated: Antigone not as a play about obligations to the dead, but about the rights of the living.

Much of my own past work has been concerned with issues of cultural memory in political context—memory articulations in the visual arts, architecture, and literature which articulate the memory problematic aesthetically in all its fragility and complexity. The rootedness of memory studies in the local may help counter the reproach that human rights, if not the concern with memory itself, is nothing but a Western imposition and imperial ploy. At the same time, I feel

that memory studies in the humanities have reached an impasse—too much of a good thing will eventually diminish the cognitive gain the field can provide. Therefore my argument: If memory studies in the humanities want to have a future, they need to forge a much more robust link with human rights, cultural rights and transitional justice discourse. Such a shift in focus will allow us to move away from an all too exclusive privileging of the past as subject of investigation (a natural for humanists) and to reclaim memory for present and future struggles about rights. Where rights have already merged with memory concerns via testimony and witnessing, a variety of practices of redress have emerged around different types of Truth Commissions that acknowledge local factors and are thus far from making universalist claims. Maybe the ongoing critique of universalism has itself become a straw-man.

Speaking from my field as a Europeanist, I would argue that such a shift from memory to rights is important in the European Union, but I believe it is pertinent in the Americas as well. While the political reorganization of Europe into a partly post-national federal union certainly requires recognition of past injuries and histories, such concerns all too often veil human rights issues of today which have to do with immigration from outside the EU, especially from the former colonies. It blocks out the troublesome systemic bifurcation of political and social rights, which separates EU citizens from so-called third country migrants. Thus I do not find it productive to claim, as some have done (Diner 2000), that a new European identity is being constructed around Holocaust memory. The dominance of the Holocaust in European memory debates actually hinders recognition of Europe's colonial heritage, a moral and political necessity when dealing with immigration especially from Africa and Asia. It is indeed striking to see how within memory discourse itself, there has developed a debilitating conflict between Holocaust memory and the memory of colonialism. Given the centuries-long trajectory of colonial domination, the privileged focus on Holocaust memory in Europe results in a form of short-sightedness that carries with it an apologetic register of forgetting. Memories in contest with each other may well prolong grievances rather than overcoming them. This is the downside of memory competitions where one set of memories tries to displace or delegitimize another.

Recognizing certain inherent limitations of both human rights and memory discourse may then indeed represent a first step toward overcoming the gap between them. The individual strengths of both fields must be mobilized to supplement each other in order to mitigate the deficiencies of either. Both are concerned with the violation and protection of basic human rights and both must draw on history to do so. Both want to acknowledge, if not right wrongs committed in the past, and both project and imagine a better future. Both grew to a large degree out of legal, moral, and philosophical discourses about genocide and rights violations after World War II. Both the Universal Declaration of Human Rights and the UN's Genocide Convention of 1948 were the political result of remembrance (though not about memory as such since in their phrasing they both circumvented the ethnic and particularist dimension of the Holocaust)-- remembrance not only of the unspeakable genocides and forced population transfers of the first half of the 20th-century. But remembrance also of the legacies of the natural law tradition which predates democracy and was influential in the shaping of these UN documents.

## History of human rights and memory discourses

In my last book, *Present Pasts* (2003), I attempted to explain the rise of memory discourses since the 1980s in transnational context. There I argued that memory discourses of a new kind first emerged in the 1960s in the wake of decolonization and the new social movements with their search for alternative and revisionist histories. Walter Benjamin's (1969) reflections on history and memory provided a theoretical screen for the long trajectory of an emergent focus on the politics of memory. The search for other traditions in the postcolonial world and for the traditions of "others", of minorities and ethnic groups in the West, radically challenged the *idée reçue* of a homogeneous modernity, exemplified for instance in ideas of universal progress and modernization, the North-American notion of the "melting pot," or in the European understanding of national cultures as unitary, based on language and ethnic identity. Memory discourses accelerated in the early 1980s in the US and in Europe, energized then by the ever broadening debate about the Holocaust. Historical anniversaries of Nazi rule, World War II and the victory of the allies were widely covered in the international media, and they helped stir up post-World War II re-codifications of national history in Germany, France, Austria, Italy, Switzerland, and Central Europe after 1989. But soon enough resonances of Holocaust and Third Reich memories spread beyond the Northern Transatlantic, attaching themselves to politically and historically very different events and situations in post-dictatorship Latin America or in post-apartheid South Africa. Indeed, one can now observe something like a "globalization" of Holocaust memory, and it certainly has had an effect on the international human rights movement.

The recurrence of genocidal politics in Rwanda, Bosnia, and Kosovo in the allegedly posthistorical 1990s made Holocaust memory discourse pertinent for evaluating present-day events. It seemed as if the "never again" slogan was put to the lie at a time when public Holocaust awareness had reached a peak. In the case of ethnic cleansing in Bosnia and the organized massacres of Rwanda, comparisons with the Holocaust were at first fiercely resisted by politicians, the media, and much of the public, not because of the undeniable historical differences, but rather because of a basic unwillingness to intervene. Public opinion changed in the late 1990s with Kosovo. Streams of refugees across borders, women and children packed into trains for deportation, stories of atrocities, systematic rape, and wanton destruction all mobilized a politics of guilt in Europe and the US associated with the appeasement politics of the 1930s. Holocaust memory helped legitimize NATO's military intervention in Kosovo, but only years after the failure to intervene in a timely fashion in the Bosnian genocide of 1992. Srebrenica and Rwanda marked an absolute nadir of the UN's ability to prevent mass violence perpetrated by one ethnic group on another. The Kosovo intervention thus confirms the increasing power of public memory culture since the late 1990s, but it also raises difficult theoretical and political issues. How legitimate or even useful is it to use the Holocaust as universal trope for historical trauma, organized massacres, and ethnic cleansing? What about the sanctity or limits of state sovereignty? And how justified is international humanitarian intervention on the basis of Holocaust memory and post-Holocaust human rights politics? At any

rate, it was in these specific political situations that rights and memory discourse intersected in reality itself in powerful ways, even if in academic discourse they still went their separate ways.

If the rise of memory discourse must be made intelligible by historical and political contextualization, we also need to understand the contemporary HR movement in its historical evolution and politically changing complexion. Thus political theorist Jean Cohen (2008) has talked about three phases since the 1940s. A first wave developed after WWII in recognition of the atrocities and massive human rights violations committed against civilians before and during the war; it was based on the revival of theories of natural law and moral rights in the face of the largely discredited legal positivism of an earlier time. It resulted in the Genocide convention and the UDHR.

In a second wave, Cohen argues, HR discourse played a central role in anti-colonial projects of liberation from the late 1940s on, in the internal weakening of the Soviet Empire in the 1970s, when the Soviet Union first accepted certain claims of HR discourse (the Helsinki Final Act of the Conference on Security and Cooperation in Europe, 1975), and with domestically led democratic transitions in Latin America in the 70s and 80s. Cohen writes: “Despite being largely exhortatory, the human rights declarations and covenants were an important normative referent for domestic civil society and social movement activists.” (2008; 580) The end of the Soviet Empire and the end of apartheid in South Africa shortly thereafter were major markers for the renewal and spread of civil society debates and rights implementations in many countries (esp. in Eastern Europe and Latin America).

The third wave differs dramatically. Since the end of the Cold War, human rights violations have been selectively invoked as a justification for the imposition of debilitating sanctions, military invasions and authoritarian occupation administrations by multilateral organizations and/or states acting unilaterally under the rubric of “humanitarian” intervention. Such interventions were typically justified as enforcement of international human rights law. The break-up of Yugoslavia, Afghanistan, and Iraq are the pertinent though politically very different cases. Cohen thus distinguishes a traditional from a more current political notion of human rights. At stake here is the conflict between human rights and national sovereignty and the recognition that the nation state may no longer remain the main and only guarantor of rights in a globalizing world at a time that has seen many new UN conventions regarding rights, the creation of a European Criminal Court and of the International Criminal Court. The International Commission on Intervention and State Sovereignty (ICISS) has perhaps gone furthest in limiting state sovereignty in its report of 2001, *The Responsibility to Protect*. While this report clearly came out of the failures of the UN in the 1990s, it is not clear to me whether the shift from humanitarian intervention (“military humanism” as some have called it) to R2P is actually more than a semantic shift, given that the potential protectors will inevitably still be the major powers that also led humanitarian interventions.

In today’s situation, it seems to me, key dimensions of each of these three waves are

intermingled to different degrees, depending on differing constellations on the ground. Taken together, genocide, civil society, and humanitarian intervention shape a dense cluster of political and legal issues that call for specific analysis in each and every case. We should not let the abuse of “humanitarian intervention” blind us to the deeper histories of the struggles for rights.

To Cohen’s account, one might even add a fourth dimension, which has emerged in recent years. It concerns the transformation of human rights discourse to highlight cultural rights claims pertaining to indigenous populations or descendants of slaves in Latin America, Canada, or Australia. And it also arises around civil and social rights in the wake of new forms of immigration and diaspora. While Cohen’s third phase challenges traditional notions of state sovereignty by allowing for cross-border interventions, this fourth dimension claims cultural group rights within sovereign nations, but enters into conflict with the traditional notion of human rights as the rights of individuals and with a homogeneous self-understanding of nationhood. Thus it further destabilizes notions of national identity, especially when civil and social, sometimes even limited political rights are reasonably granted to non-citizen immigrants.

## Natural law

Given the tensions between memory and the contemporary human rights regime, I am particularly interested in the ways in which the human rights declaration of the post-WWII period derived its strength from an earlier natural law tradition. In the 18th century, nature was a revolutionary battle cry in Europe and natural rights as rooted in natural law were claimed both by the American and French revolutions. They made it into the Declaration of Independence (1776) as “the unalienable rights” of “life, liberty, and the pursuit of happiness.” And into the French *Déclaration des droits de l’homme et du citoyen* (1789) as “liberty, property, safety and resistance against oppression” (Article II). Of course it is well-known how the universal equality of men excluded slaves, women, and colonial subjects and how property was considered sacred. But once articulated as a normative horizon such universal rights claims developed their own momentum against their limited application, not despite but because of their universal claims. With Hegel, one could speak of the cunning of reason. And so it goes for recent decades. Despite the fact that the UDHR lacks even a minimal enforcement mechanism such as a binding convention, and genocides have not ceased to happen, human rights and genocide discourses have gone global in recent decades, and time and again they are tenuously linked with debates about memory and justice. The rise of Truth and Reconciliation Commissions is only one outward sign of the linkage between memory and rights discourse. At the same time, TRCs also reveal the inherent tensions between memory and justice regimes.

No rights are ever easily implemented or guaranteed. They can only result from always conflictual political deliberation and will rarely if ever offer easy solutions to conflicts and social problems. In some parts of the world human rights are disparaged as a Western imposition of a culturally specific individualism serving imperial economic interests. While this reproach is not



without merits, the radical critique of HR has been just as politically self-serving in non-democratic societies (think of the Asian values debate promoted by developmental authoritarian states such as Singapore or Malaysia in the early 1990s). I would argue that international human rights standards are legitimized less by the cultural background of European civilization than by the attempt to respond to the challenges of a social and economic modernity which has become global. Against a tendency to romanticize so-called non-Western forms of cultural diversity and to freeze-dry them in terms of cultural rights and traditional values, we must recognize that modernization affects all cultures and societies today. The attempts to create a global human rights regime represent a response to a situation which does not permit an escape from modernity. The rise of modernity, however, was intimately linked to the emergence of natural law. Therefore I would suggest that we draw on the legacies of natural law which do have a European origin, but can map on to ideas about human dignity, liberty, and freedom from oppression present in all cultures of the world. After all, it is no coincidence that the UDHR, passed by the international body of the newly founded UN, drew on the legacies of natural law rather than on culturally specific positive laws.

Then and today natural law has certain conceptual advantages as ground for human rights debates even if, as Habermas has argued (2009) it must be recoded and put into the context of a deliberative reciprocal negotiation of rights within a given political community. At a time when human rights has been recoded as the right to humanitarian intervention and many aspects of the current human rights regime have come under suspicion of abuse, I want to suggest that, however limited in reach, a shift in discourse from human rights to natural law might help us rethink some basic propositions. Clearly there is no such thing as inborn natural law. The issue for me is not to resurrect the natural law tradition per se, but to mobilize some of its parameters in order to critique abuses that sail today under the flag of human rights.

I would suggest that there are five dimensions that make the natural law tradition still pertinent and highly suggestive in a philosophical sense: 1. Universal standards of freedom from oppression, freedom from fear, and human dignity are not culture specific or per se Western, but found in all major cultures of the world. Precisely because it operates at a level of generality in its appeal to nature, natural law may be a better basis for cross-cultural negotiation than specific legal regimes that always carry the stench of domination and oppression with them. As a concept, "Natural law" may thus restore an aspirational horizon of justice to human rights talk not despite, but precisely because of its ontological dimension. 2. Natural law, as framed in different European countries and at different times by Grotius, Hobbes, Thomasius, Pufendorf, and Locke, evolved out of new economic realities of an emerging capitalism and the struggle of a merchant bourgeoisie against the absolutist state, mercantilism, and a confining guild system. Remembering this grounding in political economy, natural law today can be linked to very differently structured issues of economic justice and wealth creation of which class and racialized poverty remain important components. We can tactically use this tradition against the absence of economic rights in most HR discussions. Against the danger of essentializing "nature" as permanent and unchanging, we may remember that the notion of nature is itself not

fixed, but subject to historical and cultural change which may provide natural law with a welcome openness toward the future, especially at a time when the rights of nature itself are increasingly part of the debate. 3. Natural law, as it has been interpreted by philosophers such as Ernst Bloch (1975), is fundamentally political and attuned in a deep sense to specific historical conditions which are often ignored by contemporary human rights discourse in its apolitical humanitarian incarnation. Its transformative politics today lie in challenging notions of sovereign nationhood and cultural homogeneity under the pressures of globalization, migrations, climate change, and new transnational cultural imaginaries. 4. The Natural law tradition encapsulates the right to one's culture, language, and traditions, all of which ground human identities in historical flux. Thus it sidesteps the conflict between individual and group rights so prominent today, and it allows us to seek a mediation between them. Johann Gottfried Herder Johann Gottfried Herder has written compellingly about this dimension in the 18th century when dominant identity patterns shifted from transnational and non-ethnic aristocratic identities to middle-class, ethnic, and national identities. In this recognition of the flows of deep cultural histories, natural law may also help to link memory to rights discourse. After all, the fact of memory as a human characteristic is as unalienable as the rights stipulated in democratic constitutions. 5. Natural law is sufficiently different from culturally diverse and often irreconcilable legal positivisms that it can be used to criticize specific legal practices and refer us to some universal standard of what is right. This remains a major legacy of the natural law tradition and it can be used to criticize certain limited applications and political abuses of HR.

Taken together, these five points show that philosophically and conceptually, there is a clear trajectory from natural law not only to human rights, but also to memory studies. The tactical advantage of mobilizing natural law for current debates is twofold: it might mediate the conflict between individual and group rights and, on another front, diminish the tensions between memory and rights discourse.

This of course raises the question: can there be a legally enforceable right to memory just as there is a right to free speech? It does not seem to make much sense to speak of a legal right to memory except perhaps in a context in which human beings might be technologically or genetically manipulated to forget. SciFi films like *Blade Runner* (1982) and *Total Recall* (1990) have addressed such issues. Only in such a situation would it make sense to speak of a legal right to one's own memory. Of course in a certain dark view of global historical developments as articulated in Horkheimer and Adorno's *Dialectic of Enlightenment* (2002) on the threshold between total war and the Cold war and long before genetic engineering, this kind of manipulation and the resulting destruction of memory was compellingly though reductively analyzed as the project of the capitalist culture industry and its consumerist ideology. The threat to memory would indeed be a threat to human identity itself—identity always shaped by a given time and space. Even if media of memory and the very place of memory in a culture will differ greatly over time and space, Luis Buñuel was right when he said: "You have to begin to lose your memory, if only in bits and pieces, to realize that memory is what makes our lives. [...] Our memory is our coherence, our reason, our feeling,

even out action. Without it we are nothing...”

As an anthropological and historical given, memory, especially collective memory can therefore be related to what has come to be known as cultural rights. The notion of cultural rights, however, poses serious problems. Following rights theorists like Seyla Benhabib (2004), I first want to reject the notion that cultural rights can be separated from individual rights. Certain cultural rights are already reflected in several provisions of international human rights law (freedom of thought, conscience, and religion, Art 18; freedom of expression, Art 19 of the UDHR). Cultural rights are also implicitly recognized in the Genocide Convention of 1948 in light of the fact that genocidal policies often are preceded by attacks on an out-group’s culture. To make the point that cultural and individual rights cannot be separated, it helps to recognize that individual autonomy is not given by nature, but emerges in reciprocal recognition of citizens embedded in a culture and engaged in social and political relations. All individuality is inherently social. Yet individual autonomy is often attacked in the name of community. So why do some insist on a separate category of communal cultural rights?

The cultural rights movement has arisen recently around issues of minority and first nations’ rights within nation states such as Canada or Australia, Colombia, Brazil and other Latin American countries. It can be seen as an expression of the growing emphasis on cultural diversity in an increasingly interconnected world, and it is itself a transformation of earlier struggles, especially struggles for land rights formerly often couched in Marxist terms. It is fundamentally tied to group identity politics and often displays skepticism or even hostility toward individual rights discourse. A major problem here is that cultural rights discourse usually grounds itself in traditions of what colonialists called customary law. Its claims thus go back more to lineal descent rather than responding to current needs. It can, of course, be seen as a legitimate reaction formation against globalization and the fearful prospect of cultural homogenization by financial capital, developmentalism, rampant consumerism and global English. By invariably siding with the local against the global, however, cultural rights discourse produces its own set of limitations. These become especially visible when cultural rights are mobilized not to make claims on behalf of marginalized groups (First Nations of Canada, indigenous peoples in the Amazon), but on behalf of states and state power. This happens in the international arena in attempts to counter alien influence, whether Western influence in Islamic societies or the effects of Islamic presence in Western societies. And it happens within nations when cultural rights are called on for conservative purposes on behalf of a national culture vis-à-vis its immigrant communities. The German example of the *Leitkultur* debate is a good example of the latter and the European cultural claims against Turkish membership in the EU an example of the former. In both cases recognition of cultural diversity is turned against diversity itself in order to favor the dominant culture. These politically very different claims of cultural rights operate on the basis of an obsolete unitary notion of culture. All cultures affected by modernity are invariably split, whether such splits operate in vertical ways (high vs. low culture) or in terms of privileging different media (print vs. music). Such stratifications will always be a site for struggle over meanings. They make palpable that you cannot have a meaningful

discussion of cultural rights without considering individual social and political rights. Culture is not to be separated from the rights of the person, or the rights of citizenship. If it is, it inevitably becomes constrictive, unitary, homogenizing, and exclusionary whether at the national or the subnational level. Rather than overcoming the power problems inherent in national majority cultures, cultural rights claims as articulated by subnational groups may just reproduce these problems at another level.

And yet, with Benhabib (2002) I recognize the claims of culture, especially of language and the expressive values embedded in it, but I argue that cultural rights must be reconciled with the broader category of human rights or natural law. Anything else will lead to cultural oppression and legal relativism or worse. To construct an irreconcilable binary between universal human rights as rights of individuals only and cultural rights as the rights of ethnic or racial groups risks overruling the individual rights of group members in the name of culture. Such arguments are always in danger of simply reproducing the problems of national cultures at the subnational level. It would be equally unacceptable, however, to ignore all cultural group claims by limiting rights to autonomous individuals only, as if autonomy could exist outside of social relations. Positing such a binary also reproduces the unproductive rift between liberal and communitarian or republican political theory rather than seeing the two as interrelated and in need of mediation. Let me highlight the problem by a simple example: just as human rights include the right of exit from a nation or state, cultural rights must preserve the prerogative of an individual born into a culture to leave it and to choose another. This dimension, not sufficiently addressed by the proponents of cultural group rights, is especially pertinent to women and other disenfranchised people in societies or ethnic religious groups that ascribe inferior legal status to them.

Cultural rights discourse shares a problematic dimension with memory discourse, for it inevitably tends to pit the rights of one group against those of another, most interestingly today in the claims of indigenous peoples against the dominant culture of the nation within which they live where it may even lead to a bifurcation between civil law and customary law as in some Latin American countries (e.g., Colombia). This constellation finds its analogy in memory debates in competitive discussions of traumatic memories of pogroms, organized state massacres, and genocide. Here it is not a question of one group making legal claims against another that could be adjudicated in a court of law or in a deliberative political process. Memory culture is rather characterized by often vicious and resentful memory competitions that claim priority of one kind of traumatic memory over another, thus creating insidious hierarchies of suffering. The most difficult and contested of such memory competitions is the one between Holocaust memory and the memories of colonialism which seem separated today by what W.E. Dubois in another context once called the color line. In debates about the politics of memory, we must avoid such vertical hierarchy of past sufferings in which one kind of memory tries to supplant another. Here memory discourse can learn from legal developments. The negotiation of indigenous rights within the framework of nation and constitution, as it has slowly evolved in Canada or Colombia, may indeed provide a theoretical model for reconciliation as opposed to irreconcilability and fierce competition. The task is to recognize a universal (and un-natural)

dimension in systemic oppression and human suffering rather than pitting one kind of memory against another.

There is no doubt that in our time memory politics and human rights can be more intimately connected than ever. Indeed, it is a mark of human rights discourse today that it feeds on memory discourse while often disparaging it. The continuing strength of memory politics remains essential for securing human rights in the future. But as much as its presence is essential for establishing human rights regimes where they do not yet exist, we know that memory may also nurture human rights violations just as HR in some forms is open to political abuse. Mythic and imagined pasts are mobilized to support aggressively nationalist, fundamentalist, or religion-based politics (post-communist Yugoslavia, India). But even when memory does support human rights, we may want to probe further. With the fading of the social and political utopias of the 20th century—the imagined futures of fascism, communism, and global capitalist modernization—and the mountains of corpses the dictatorships of this dark century have bequeathed to our remembrance, it sometimes seems as if too much of the struggle for human rights focuses on righting past wrongs via redress or restitution claims. Securing the past may be as perilous an undertaking as trying to secure the future via utopian projections. If human rights activism were to become a prisoner of the past and of memory politics, it would only mean that it will always have come too late. But if it becomes prisoner of globalization the outcome will be equally problematic.

## **The politics of immigration**

Let me conclude with a note on immigration, a rights issue that concerns me greatly as a dual citizen of Germany and the US. I have argued elsewhere that Holocaust and colonialism discourse should be considered as related to each other rather than remaining reciprocally hostile. But the linkage of Holocaust and colonialism should also be extended to the contemporary problem of immigration politics in the leading Western nations. Algeria and Morocco are for France, what India and Pakistan are for England; Indonesia for Holland; the Muslim countries formed out of the ruins of the Ottoman Empire for Europe and for the US. Immigration politics displaces the problem of colonial rule in postcolonial times to the former colonial powers themselves. This creates new constellations which are articulated and used in the contexts of pasts that refuse to disappear: the Turks as the new Jews of Germany; neo-colonial rule in the banlieue of Paris; little Guantánamos in the dispersed for-profit detention centers for “illegal,” mostly Latin American immigrants in the US. In both Europe and the US, the color line does not only exist in certain discourses antagonistic to each other, but in social reality itself.

Given the urgency of such problems, we need artistic works that challenge the lingering of racialized and displaced colonial practices in the metropole itself, works that in their aesthetic figuration can do justice to the complexity of the situation. Let me conclude with one recent example, local in one way here in Latin America, but

global in a more important dimension: Doris Salcedo's *Shibboleth*, a 2008 installation in London's Tate Modern. In this work, the theme of immigration as exclusion and denial of rights is articulated in relation to language and visibility as a widening crack in the floor all along the Tate's old turbine hall. The concrete walls of the crevice are ruptured by a steel mesh fence, not the barbed wire of the Nazi camps, but the steel mesh of today's border fortifications and the concrete of the walls intended to keep the barbarians outside—whether in Israel or at the Mexican-American border. *Shibboleth* is the biblical word that cannot be pronounced correctly by the foreigners and that divides the world into friend and foe with deadly consequence. Biblical past and the contemporary present clash in this work which reflects in powerful visual and architectural language on the continuities between colonialism, racism, and immigration. The arc does not only lead from the Holocaust and colonialism to Bosnia, Rwanda and Darfur, but also to migration and the practices of a denial of rights and of fundamental asymmetries of power among human beings that will perhaps one day become part of a politics of memory. One wishes it were that already now.

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