



The institutionalization of cosmopolitan morality: the Holocaust and human rights

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Introduction

This article examines the impact that perceptions of the Holocaust have had on the initial articulation of human rights principles after World War II and their subsequent proliferation in the post-Cold War period. Two major UN conventions, one declaring Universal Human Rights as a new standard, the other declaring genocide an international crime, make up the foundation of human rights regimes. Formed in the immediate postwar period in a brief window of opportunity before the Cold War overshadowed most international arrangements, they were specifically designed to prevent another Holocaust and another Nazi party. They then went into suspended animation for 40 years while the Cold War raged. But when the Soviet Union collapsed, the human rights impulse that had been banging against the bars of the Cold War with increasing strength now burst free into an interconnected world that seemed made for it. Within a few years, humanitarian interventions that had long been mooted with no real expectation of response were taken seriously as policy options and then acted upon.

It is just at this moment, when people are asked to sacrifice blood and treasure for human rights ideals – which is to say transnational ideals – that the memory of the Holocaust emerges from its tacit presence to become something consciously put into the foreground and invoked as a frame of reference justifying action. So far, humanitarian military interventions have ultimately been legitimated as a way to prevent genocide and as a way of stopping people who are equated with Nazis. The ongoing association between crimes against humanity and the Holocaust is also apparent in the legal narratives that have invoked the notion of such crimes. Nothing legitimizes human rights work more than the slogan ‘Never Again!’ And behind that imperative is the memory of the Holocaust. It is a mark of just how deeply that memory has saturated our everyday consciousness that the phrase ‘Never Again’ does not require any further specification for us to know what it refers to.

Accordingly, we understand the diffusion of human rights norms during the last six decades as the distillation of changing modes of Holocaust memory. It is one way in which the memory of the Holocaust has been ingrained in institutions. The Holocaust constitutes an epochal break. It has therefore the potential of challenging basic national assumptions (like sovereign law in its own territory) and creating a cosmopolitanized public and political space that reinforces moral interdependencies. Globalization tends to be understood in terms of economic interdependencies. This paper explores the moral and political side of such relationships (see also Held 2002, Levy and Sznajder 2002).

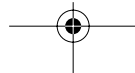
In the first part of the article, we consider the recent proliferation of human rights ideas as a new form of cosmopolitanism. This emerging cosmopolitanism exemplifies a dynamic

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through which global concerns become part of local experiences. In contrast to the universalist view of the Enlightenment, we view cosmopolitanism as a process in which universalism and particularism are no longer exclusive 'either-or' categories but instead a co-existing pair (Beck 2002). The choice of 'cosmopolitanism' as a new moral and political idiom in this connection is not arbitrary. It relates to political and intellectual forms predating the era of the nation-state.

Different people at different places understand the Holocaust as the culmination of the history of anti-Semitism, the history of racism at its worst, or as a crime against humanity. The differences between each of these interpretations are subtle but crucial. Anti-Semitism only happens to the Jews; racism, thus broadened, can happen to anyone who is different or other; crimes against humanity are broader still, and are even considered a crime against the human condition. Together they point to the cosmopolitanization of political life (Levy and Sznajder 2002).

In the second part of the article, we analyze how different representations of the Holocaust have been inscribed in war crimes trials and international conventions. We focus on trials because they are a particularly important site for the production of meaning and reflect the strongly legal dimensions of contemporary global politics. There is a powerful connection between law and collective memory (Osiel 1997; Douglas 2001), ranging from a narrow Durkheimian frame of reference envisioning trials as solidarity-enhancing rituals to a broader approach that views public trials as a contested field where different groups project their ideas about the past and the future. Memories of the Holocaust do not directly cause the emergence of a global legal culture. Rather, they produce a continued negotiation process between 'international law' (i.e. finding the criteria for degrees of wrongdoing) and 'normative ethics' (based on questions of reason and morality). The moral and juridical reactions to the Holocaust bring these two aspects together. We trace the evolution of human rights, their recent institutionalization, and the conditions under which they may even assume priority over national legislation through the valorization of individual rights. Before 1945, international law mainly regulated relations between states, confirming the parameters of the Westphalian order, whereas after 1945 the knowledge of the enormity of the Holocaust has come to provide the main impetus for the privileged position that human rights regimes currently enjoy in the international arena. Far from being a straightforward development, the road to human rights has been a highly contested one. We illuminate some of the obstacles as well as the opportunities by dividing the journey into three decisive periods: the immediate postwar, the Cold War, and the post-Cold War.

Two cosmopolitanisms

It is precisely the abstract nature of 'good and evil' symbolized by the Holocaust that contributes to the extra-territorial quality of cosmopolitan memory and the consolidation of new ethical norms. Their diffusion into the arena of international politics is closely related to a new understanding of cosmopolitanism. In what follows we delineate the theoretical and historical sources of this new cosmopolitanism and expand on its relevance for the politics of human rights in a global age.

Cosmopolitanism, not unlike human rights itself, is frequently viewed as a realization of the Enlightenment project. On this view, both are universalistic aspirations predicated on a rather narrow continental European understanding. As much as enlightened thinking is important for the philosophical underpinnings of human rights, it remained confined to

the European context of intellectual cosmopolitanism. Rather than confining cosmopolitanism to its Enlightenment articulations, we would like to elaborate on a distinction between its universal aspirations and a more localized manifestation of cosmopolitanism (Cheah and Robbins 1998). The brief dream of a world society that flourished in the Enlightenment was almost completely crushed by the nationalism to which it simultaneously gave birth, and Enlightenment sensibilities were completely ineffectual in diminishing war.

Yet it was the experience of nationalism in its most extreme form that gave human rights its potential to flourish. Therefore, not just abstract rational thought about how the world works, but human experience, the experience of catastrophe – which at the same time is the experience of a world where human rights do not exist – is the basis for new human rights regimes.²

To base human rights not on reason but on sentiment needs more justification. The first thing that is obvious is that the rise and spread of cosmopolitan ideas always has a social and political underpinning. This is often less obvious when we concentrate on the abstract philosophy of the Enlightenment. Of course if we look closer, we will find that the thinkers of the Enlightenment did have a political program for encouraging the spread of cosmopolitan ideas and institutions. It was to get the ear of an enlightened despot. But there are at least two problems with that approach from our contemporary viewpoint. The first is that we now consider despotism by definition unenlightened. And the second is that even in its own terms, it did not work. Enlightenment cosmopolitanism may have adorned the courts of European monarchs, but it did not spread among the people.

By contrast, we should concentrate on how cosmopolitanism spreads among people at all levels of society. This brings us to a second important point. Part of the reason that cosmopolitan ideas may spread among people at all levels of society is because philosophy can become religion (Durkheim, 1898). This is what we mean by new forms of ‘rooted cosmopolitanism’. They produce new forms of localism that are open to the world. By rooted cosmopolitanism, we mean universal values that descend from the level of pure abstract philosophy have become emotionally compelling in people’s everyday lives. It is by becoming symbols of people’s personal identities that cosmopolitan philosophy becomes a political force. And it is by embodying philosophy in rituals that such identities are created, reinforced, and integrated into communities.

A commitment to global or cosmopolitan values does not imply that cosmopolitans are rootless people preferring ‘humanity’ over concrete human beings. This need not be the case, as global values are being embedded in concrete rituals (Turner 2002). And war crimes trials are such rituals, considering the extensive media and scholarly attention they receive.

This emotive dimension is also a crucial element of some of the shared assumptions that guided the cosmopolitan reactions to the catastrophes of World War II. The Holocaust in particular posed a challenge to the universal Enlightenment premises of reason and rationality. Paradoxically, the Holocaust functioned simultaneously as the source for a critique of Western universalism and the foundation for a cosmopolitan desire to propagate human rights universally.

The central question here is whether the Holocaust is part of modernity or the opposite, a return to barbarism, representing the breakdown of modernity – a question that connects to the broader debate about whether barbarism constitutes a separate breakdown of civilization or whether it is very much part of modern rationalization and bureaucratization itself. According to Theodor Adorno’s and Max Horkheimer’s study of the *Dialectic of Enlightenment* (1944), barbarism is an immanent quality of modernity, not its corruption. On their view, civilizational ruptures inhere, at least potentially, in the processes of rationalization and bureaucratization that characterize modernity.



For Hannah Arendt, the Nazis represented the breakdown of the Enlightenment and democracy, of critical judgment and of reason. The ambivalence between the above-mentioned frames of civilization and barbarism remained the primary organizing principle for her thoughts on the Holocaust. Nazism, for her, was nothing particularly German, but rather a manifestation of totalitarianism. Universalizing the phenomenon did not preclude her from recognizing its singular features. She perceived the uniqueness of the Holocaust not only to consist in the scope and systematic nature of the killings, but in the very attempt to deny humanity as such. Conventional categories of crime become irrelevant, a view that was later incorporated into the legal canon through the concept of 'crimes against humanity'.

However, our approach here differs insofar as the focus is neither on the metaphysical silence nor on the intellectual despair at the modern project. Instead, we show how the Holocaust has been remembered through institutions and the ritualistic power of criminal trials. These memories, based on a shared negative sentiment of the catastrophe, are not only able to produce despair at the modern world, but actually help enlightened ideas come to the fore (Rorty 1993). It is a sentiment based on a universality that is not derived from reason but rather on common experiences of human wrongs. 'Human wrongs are everywhere; all societies find it easier to recognize and agree upon what constitute wrongs elsewhere than they do rights; wrongs are universal in a way rights are not' (Booth 1999: 62), and as such they are 'a new, welcome fact of the post-Holocaust world' (Rorty 1993: 115).

Reason and sentiment

Underlying this conception of universal human rights as the universality of human wrongs are two different conceptions of the Enlightenment and their respective understandings of reason and sentiments. One major problem with the way contemporary cosmopolitan theorists think of the Enlightenment is the mistaken notion that the source of the ideas that we today consider 'cosmopolitan' lies in the continental Enlightenment, when actually it mainly lies in the Scottish. Many of the ideas that we consider most characteristic of cosmopolitanism today are the opposite of the principles of our supposed forebears in the French and German Enlightenment. For example, one of the leading modern cosmopolitan ideas today is expressed in the concept of human rights. The text most people think of as the founding text of modern human rights campaigning is Kant's *On Perpetual Peace*, which was published in 1795. But Kant's idea was that a stable and peaceful political order could be constructed only out of nation-states that made mutually supportive vows of non-intervention. This view was embodied to large degree in the League of Nations and in the original UN Charter, and can be considered in many ways to be the beginning of the idea of modern international law, something all cosmopolitans regard as a good thing. But there is no escaping that Kant's project regards the sovereignty of nation-states as sacrosanct. It is not an added-on opinion. It is the central principle on which the entire structure stands. And this is precisely the view human rights campaigning has set itself against in the post-Cold War world, as we will show in greater detail below. Modern cosmopolitan politics begins with the principle that sovereignty is not the highest principle and is not sacrosanct. Rather the highest principle is human well-being, and the duty to prevent suffering wherever it occurs is to not stand by and allow innocent people to be slaughtered. This view did not originate in the wake of the Holocaust, but in the experience of the destructive potential of modern warfare and the attempts of numerous organizations like the

International Committee of the Red Cross to make war more 'humane' (see Teitel 2004). However, the connection to inalienable human rights and their codification in institutions with political consequences originated with the formation of the United Nations after World War II. The UN conventions against genocide and their enumeration of crimes against humanity have to be understood as the product of an historical revulsion at the enormity of the crimes of the Holocaust. While this view was politically suspended for 40 years, it continued to be developed intellectually among human rights groups during the entire Cold War period. And when the Cold War ended and this school of thought took center stage, the strength of its claims was astonishing. It essentially claimed that Kant's whole system, based on mutually respected sovereignty, was a sham, and that the real basis of morality was not to let anyone anywhere suffer. If interventions were necessary to achieve this goal, sovereignty be damned.

So the ultimate philosophical origins of this view lie not in the French and German Enlightenment – whose ideas it reversed – but in the Scottish Enlightenment. Specifically, it lies in the idea that there are duties imposed by sympathy and benevolence. It is based on listening and watching sad stories. This point was already discussed by Hannah Arendt (1963b) when she compares the American with the French Revolutions of the 18th century. For her, the French revolutionaries attempted to exchange a more abstract and general concept of justice with the more emotive term of compassion as a new form of modern representation. Arendt also distinguished between pity as a more generalized emotion between people living in distance and compassion as the immediate form of identifying with a sufferer in front of your eyes (Sznajder 2000). Like the French Enlightenment, the Scottish Enlightenment also had a political program of reform. But unlike the French, they placed no faith in benevolent despots. They instead argued that the social conditions that fostered sympathy were the increase in wealth, the increase in interaction, and the increase in equality – and that all of these conditions would be enhanced as the market spread. In other words, they were arguing that market cosmopolitanism and moral cosmopolitanism were mutually supportive.

Post-World War II impact

The Nuremberg trials

Representations and changing memories of the Holocaust would come to play a prominent role in the formation of the legal and political idioms constituting the backbone of the current global diffusion of human rights norms. As early as 1942, Franklin Roosevelt linked the war effort to the protection of freedoms from want and from fear. However, rhetoric aside, in actual war human rights and the Holocaust were of little concern to strategists or legal scholars, who lacked an appropriate terminology to address the atrocities of the Holocaust.³ All this changed with the International Military Tribunal at Nuremberg (aka the IMT or the Nuremberg War Crimes Tribunal), which introduced a set of legal precedents addressing violations of Human Rights and infringed on the state's sovereignty *vis-à-vis* its citizens. What today appears as normative was during and before the trial a highly charged and contested terrain on which various political and legal forces struggled to impose their vision of justice and international relations. The American understanding of the Holocaust, which framed the Nuremberg trials, was originally universalistic: Nazi war crimes happened to 60 million people, among them 6 million Jews. And the original experience of the camps simply reinforced this. The camps the Americans liberated were

mixed camps, containing a wide variety of people the Nazis hated, from political prisoners to Gypsies. Rather than setting off an instant realization that there had been a Holocaust against the Jews, therefore, the original experience of opening the camps instead confirmed the Allies in the view that the Jews were one of many such groups victimized by the Nazis.

During the Nuremberg trials, the Holocaust appeared as a set of facts but not yet as an idea. But, surprisingly perhaps, all the essential facts were there from the beginning, starting with the estimate that 5.7 million Jews had been killed by an intentional plan of the Nazi high command. There was also visual evidence when the film *The Nazi Concentration Camps* was screened, providing one of the most dramatic moments in the trial. But the crimes against the Jews took up a tiny percentage of the total Nuremberg indictment, and the Jews themselves remained abstract victims. There were, for example, no victims testifying on their behalf, as opposed to the situation during the Eichmann trial 16 years later (where, by the way, the same movie was shown – and given a very different meaning by being inserted in a different context; see Douglas 2001).

Behind this minimal reference to the Holocaust was the general unease that there was no existing legal language for the barbarous crimes the Nazis had committed, leading some voices among the Allies to favor summary executions of war criminals rather than the lengthy proceedings of a trial. Ultimately, however, those advocating a legal response prevailed, emphasizing among other things the educational significance of such trials for the German populace. From a purely procedural perspective, political show trials appear illegitimate. In the broader context of transforming a society's collective memory, however, they can be a sensible tool. Osiel has pointed out that 'whether show trials are defensible depends on what the state intends to show and how it will show it. Liberal show trials are ones self-consciously designed to show the merits of liberal morality and to do so in ways consistent with its very requirements [. . .] The [Nuremberg] trial was justified in purely consequentialist terms . . . What mattered most . . . was not to insulate legal institutions from politics, but rather to ensure that they were placed in service of the right kind of politics' (Osiel: 65–66). And indeed, legal arguments draw their persuasive power from the fact that they are grounded in precedent (which is why contemporary emphasis on the Nuremberg trials comprises such an important part of our story). Thus it was hardly surprising that the Nazi crimes were initially constructed as a 'war of aggression' (an existing legal category) rather than as a 'crime against humanity' (an emerging legal category). Legal positivists at the time criticized the Nuremberg trials precisely because they were not grounded in precedent (Kelsen 1947). However, the argument was not about precedent alone. Kelsen maintained that the punishment of war criminals is likely to turn into an act of revenge, a political trial, indeed a show trial. On this legal positivistic view there was little difference between the politically motivated Stalinist show trials and trials against war crimes and crimes against humanity (Bass 2000). The basis for the ensuing legal controversies at the trial were laid on 8 August 1945 in the 'London Agreement' articulating the charter of the International Military Tribunal. It listed a number of crimes that were previously not part of international law, posing new challenges to prevailing assumptions regarding state sovereignty. For one, Article 7 of the Agreement codified the notion that: 'The official position of defendants, whether as Heads of State or responsible officials in Government departments, shall not be considered as freeing them of responsibility or mitigating punishment' (IMT I: 12). It thereby introduced the notion that international law has the authority to hold individuals acting in their official capacity responsible for certain violations.

The controversial centerpiece of the Nuremberg trials, however, was Article 6 of the London Agreement. Emphasizing 'crimes coming within the jurisdiction of the Tribunal

for which there shall be individual responsibility', it listed three specific crimes. Article 6a introduced the notion of crimes against peace, 'namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing' (IMT I: 11). Article 6b focused on 'violations of the laws or customs of war'. This category of war crimes had a secure footing in the Hague convention of 1907, while Article 6a was grounded in the Kellogg-Briand Agreement of 1928.

It was the aforementioned notion of conspiracy and the concept of 'crimes against humanity' specified in Article 6c, however, which were intended to provide a legal basis to cope with the atrocities of the Holocaust itself. Following Article 6c, crimes against humanity included 'murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds . . . whether or not in violation of domestic law of the country where perpetrated' (IMT I: 11). Article 6c pointed toward a radical departure from existing international law by recognizing individual responsibility not just in wartime, extending protection to one's own civilian population, granting supremacy to international law over domestic law, and internationalizing the persecution of minorities. On the one hand, the Nuremberg trials affirmed sovereignty, as crimes against Germany's own citizens could only be said to have occurred after Germany started its 'aggressive war'. War was still the major crime. On the other hand, Article 6c and the legacy of Nuremberg would over time become a formidable challenge to the hitherto sacrosanct sovereignty of nation-states.

Together these measures must be read against the realization of the horrors of the Nazi atrocities and the Holocaust, which at the time did not yet have its own name. This sentiment, rather than legal precedent, determined the scope of universal human rights jurisdiction. A mix of victor's justice and the moral horror of realizing what happened were subsumed under the broader focus of genocide and the Holocaust. Ultimately, the Nuremberg trials are remembered for establishing the previously unknown legal notion of crimes against humanity, thus providing a legal precedent that has structured public and legal debate about genocide ever since.

Even though the Holocaust and the fate of the Jews remained a neglected aspect of the Nuremberg trial, it formed the backdrop for its universalistic message. The struggle at Nuremberg was conceived as one between civilization and barbarism. Civilization was the victim, Nazi barbarism the perpetrator. And this is how we initially got from the Holocaust to the concepts of 'humanity' and of 'crimes' against them. The Jews were there, but they were standing in for 'humanity as a whole'. This version then guided the legal argumentation, as indicated in the following statement by the chief American prosecutor at Nuremberg, Supreme Court Justice Robert H. Jackson: 'The crime against the Jews, insofar as it is a crime against humanity and not a war crime as well, is one which we indict because of its close association with the crime against peace' (IMT: 470-471). Little did it matter that this assessment stands against a wide consensus among historians that the extermination of Jews had been a central objective of the Nazis, regardless of its consequences for (aggressive) war.

The Universal Declaration of Human Rights

The horrors of the Holocaust also formed the background against which human rights norms and a host of other UN conventions initially established their legitimacy. War

atrocities themselves had not previously led to the triumph of human rights. They were not part of international relations prior to World War II; not even the Covenant of the League of Nations contained any reference to such ideas. In contrast, human rights have a central place in the preamble and Article 1 of the UN Charter.

The link between the Holocaust and the emergence of a moral consensus about human rights is particularly evident in the genesis and the consolidation of the Universal Declaration of Human Rights that was adopted by the General Assembly of the newly formed United Nations on 10 December 1948. The Declaration, as well as the UN Charter itself, must be understood as direct responses to the shared moral revulsion of the delegates against the Holocaust – a sentiment that was also reflected in the direct connection between the Declaration and some of the legal principles established in the Nuremberg war crimes trials. This link was also manifest in the close working relationship between the United Nations War Crimes Commission and the Human Rights Division of the nascent United Nations (Morsink 1999: 345). In both cases, concerns about the illegality of retroactive jurisprudence were overcome by replacing conventional (i.e. national) legal principles with the broader notion of international law and its implicit appeal to a civilized consciousness, now viewed as a safeguard against the barbarous potential of national sovereignty. Together they are decisive for how contemporary human rights norms are limiting state sovereignty by providing international standards for how states can treat their own citizens.

A brief look at the origins of the Universal Declaration is instructive. It was the recent memory of the Holocaust that let ‘so many delegations from so many different nations and cultural traditions come to an agreement about a universal moral code’ (Morsink 1999: 36). Analyzing the various draft stages of the Universal Declaration and the debates committee members were engaging in, Morsink makes a persuasive case that each and every article of the Declaration ultimately reflects revulsion at the horrors of the Holocaust.⁴ The very notion of these rights grew directly out of what was then considered its worst breach, namely the crimes of the Nazis. Hence the Declaration says in its preamble: ‘whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind . . .’ It was clear to the framers of the Declaration which barbarous acts were meant. Human rights are therefore not based on clear-cut philosophical or religious world-views, but on historical experiences, especially those of catastrophe (Torpey 2001).

The UN Genocide Convention

This understanding was also echoed when the UN declared ‘genocide’ a crime and asserted that human beings had universal rights. A telling example of how the Holocaust served as the implicit background for the incipient implementation of universal values during the late 1940s and yet itself was not explicitly referred to involves the Genocide Convention, which was adopted by the UN General Assembly on 9 December 1948. The term ‘genocide’ was coined in 1946 by Raphael Lemkin, a Polish Jew. No doubt the example of the Holocaust was the trigger for Lemkin’s efforts to warn the world about systematic attempts to annihilate specific groups. In his mind, however, genocide was by no means synonymous with the extermination of the Jews. Instead, Lemkin justified his project with references to genocidal activities that took place before and after the Holocaust. He was eager, as were so many others, not to present the Holocaust as an exclusive threat for European Jewry, as is made clear in the following passage: ‘The Nazi leaders had stated very bluntly their intent to wipe out the Poles, the Russians; to destroy demographically and culturally the French

element in Alsace-Lorraine, the Slavonians in Carniola and Carinthia. They almost achieved their goal in exterminating the Jews and Gypsies in Europe' (Lemkin 1946: 227). Accordingly, the Convention on the Prevention and Punishment of the Crime of Genocide defined that act in the broadest possible terms as any of a number of acts 'committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group'.

The perceived tension between universalism and particularism also informs liberal critics of the Convention, who object to the collectivistic and somewhat essentialist bias in its definition of who constitutes the object of genocide. The Convention can be criticized for its non-universalistic declaration. Only the killing of particular communities is considered genocide. As such, the Convention is supposed to express a deep illiberalism (for a recent criticism along these lines, see Holmes 2002). At the same time, this argument goes to the crux of a more cosmopolitanized understanding of liberalism and universalism. Yes, the Convention expresses a concern for specific groups only (one should not forget that the Soviet delegation refused to include the word 'political groups' in the Convention), but does this wording constitute an attack on universalism? This dichotomy echoes historiographical and other debates on the Holocaust: was it a crime against humanity or a crime against the Jewish people? Can it not be both? Is the attack on particular aspects of humanity not an attack on humanness as well? Lemkin certainly thought so (see also Ignatieff 2001a,b). In such ways, the cosmopolitanized understanding of humanity – conceived not as a universal concept, but as the sum of its particularities – comes to the fore in the convention that aims to prevent genocide. To be sure, this does not mean that the sheer presence of a convention has prevented genocidal perpetrators from doing their thing. But it gives those who want to fight genocide a legal and moral language with which to resist it. Political realism and idealism do not have to contradict each other. This relationship also informs our analysis of the Cold War period and the Eichmann trial of 1961.

Cold War impact: the particularization of the Holocaust and the Eichmann trial

Given the context in which it emerged, it is not surprising that from the very beginning the concept of genocide was embroiled in emerging Cold War rhetoric. Peter Novick (1999) has pointed out that the concept of genocide was to be understood rhetorically rather than legally. For American Cold Warriors, the term served mostly as a tool of anti-Soviet propaganda. In the debates that led to the ratification of the Genocide Convention, the Soviet Union tried in vain to tie the concept of genocide more closely to the deeds of the Nazis. As the Cold War escalated, the term was mostly directed against the crimes committed by the Soviet Union and other Communist states. The extermination of the Jews was rarely a topic. The genocidal politics of the Soviet Union served Lemkin as a prominent example during his lobbying campaign for the adoption of a genocide convention.

Thus, from its inception, the Cold War was an obstacle to transforming the universalistic lessons of the Holocaust, as they were inscribed in the various UN conventions, into politically salient features of international politics. Instead, Cold War alliances and the reaffirmation of national sovereignties remained the pillars of international relations, rendering the universalistic aspirations of the immediate postwar period largely irrelevant. Memories of the Holocaust and its Jewish victims were no exception to this process. To be sure, for the victims and those close to them, the crimes committed against them had always been an individual, and thus particular, experience. But it had also been a mostly private affair. The Eichmann trial in Jerusalem in 1961 would change all this decisively.

The trial signified a departure from the universal context within which it was embedded during the Nuremberg trials. This contrast is also the central organizing thread of Hannah Arendt's interpretation of the Eichmann trial. 'In the eyes of the Jews, thinking exclusively in terms of their own history, the catastrophe that had befallen them under Hitler, in which a third of the people perished, appeared not as the most recent of crimes, the unprecedented crime of genocide, but, on the contrary, as the oldest crime they knew and remembered' (Arendt 1963a: 267). David Ben Gurion, Israel's first Prime Minister, left little doubt about his aim of reversing the universal narrative told at Nuremberg by shifting the attention away from 'humanity' and refocusing on the crimes committed against the Jewish people. As we pointed out above, there is a subtle but crucial difference between the Holocaust as history's worst act of racism (as it was defined in the UN) and the Holocaust as the culmination of the history of anti-Semitism, as it increasingly came to be recognized in the wake of the Eichmann trial and subsequent mass-mediated events during the 1970s and 1980s.

Thus, despite its particularistic application and the fact that in contrast to the Nuremberg trials it had little impact on international law, the Eichmann trial constitutes an important moment in the nexus of memory and legal narratives. The trial contributed, both through the explicit intentions articulated by the State of Israel and Hannah Arendt's critique of those intentions, to a self-reflexive approach to law in general and to public trials in particular. Arendt, a firm believer in the possibility of a neutral jurisdiction, criticized the extra-legal dimension of the Eichmann trial. 'For it was history that, as far as the prosecution was concerned, stood in the center of the trial' (Arendt 1963a: 19). It is precisely this dimension of the various Holocaust trials that have over time rendered them significant moments of critical self-reflection about the political-cultural significance of war crimes tribunals (Douglas 2001). A second, related legacy of the Eichmann trial for contemporary human rights sensibilities consists of the attention it paid to the voices of the victims. It took what had hitherto remained mostly private – memories of the Holocaust – and provided them with public legitimacy. As we shall discuss in the next section, both elements are recovered and reinterpreted three decades later in the context of the Balkan wars and the ongoing war crimes tribunals beginning in the 1990s.

Post-Cold War impact

The Balkan wars

It was the historical backdrop of the Balkan crisis and unsuccessful demands for NATO intervention in Bosnia that helped establish the link and thus the centrality of the Holocaust as a measuring stick for international human rights politics. The dissemination of the Holocaust as a global icon was facilitated through a number of mass-mediated events and their explicit connection to the ongoing conflicts in the Balkans. Most prominent in this regard were Steven Spielberg's *Schindler's List* and the inauguration of the Holocaust Museum in Washington in 1993, both central moments in the Americanization of the Holocaust. The movie greatly contributed to the universalization of the Holocaust insofar as it tells a moral story of good against evil rather than a tale of Jewish victims. Despite its 'authentic' setting it appears as de-contextualized from history, as the Jewish victims are secondary to the conflict between the evil Nazi (Goeth) and the good human being (Schindler). The Americanization of the Holocaust is underscored in the central message the Holocaust Museum conveys. This process has complemented the pervasive dichotomy

of perpetrators and victims by adding a third epistemological vantage point: namely, that of the witness perspective. The museum's emphasis on by-standerism and the movie's enactment of a morality tale, with clearly designated roles of good and evil, resonated with emerging views of preventing genocide in the Balkans and how to proceed with military interventions. It was none other than Elie Wiesel who, on the day of the museum's inauguration, turned to President Clinton to say that: 'As a Jew I say that we have to do something to stop the bloodshed in this country [Bosnia]. People fight and children die. Why? Something, no matter what, must be done' (quoted in Linenthal 1995: 262). Slowly over the course of the Bosnian conflict, the United States public came to identify the Serbs with the Nazis. An award-winning news photo of an extremely thin old man seen through a fence was a crucial trigger for this emerging view (Gutman 1993). In conjunction with widely publicized news about Serb 'camps', a turning point had been reached.

But it was only during the Kosovo war that these arguments became part of more interventionist policies. Kosovo was a globally televised morality play. References to the Holocaust featured prominently in articulating a moral and political response to Kosovo. The war was repeatedly justified with metaphors articulated in reference to the 'lessons of the Holocaust'. In contrast to genocidal activities in Rwanda, interethnic warfare in Kosovo with its European setting and its televised images resonated with Holocaust iconography. Military intervention in Kosovo was primarily framed as a moral obligation, largely in response to previous failures to intervene on behalf of innocent civilians. 'Never Again Auschwitz' was frequently invoked, but it was no longer only the failure to stop the Holocaust. The slogan 'Never Again' was simultaneously a reminder of World War II and of the delayed involvement in Bosnia. This transposition of Holocaust memory onto contemporary sensibilities about genocide provided the foundation for emerging cosmopolitan memories. One factor behind the creation of the UN war crimes tribunal for the former Yugoslavia was the coincidence of imagery between the Bosnian war and the Holocaust (Power 2002: 274–279). Arguably, it also contributed to the (in our view, surprising) ratification of the International Criminal Court.

'Nuremberg now'

The significance of the Nuremberg trials at the time they took place came to be matched by a self-conscious reinterpretation of their original intentions during the 1990s, reflecting precisely the transition from a Kantian universalism to a more contextualized cosmopolitanism. One relates to their universalistic rendition in 1945; the other is expressed in the course of its cosmopolitan reappropriation in the context of the war crimes tribunals of the 1990s.

Radislav Krstic, a Bosnian Serb general, was condemned to 46 years in prison for 'genocide' at The Hague in 2001. These were crimes he committed in 1995. By now, Nuremberg was the undisputed legal and moral precedent. A leading Yugoslav reporter, Mirko Klarin, published an article in the Belgrade paper *Borba* in May 1991 demanding an international tribunal to judge the crimes being committed in Yugoslavia. The article was called 'Nuremberg now!'. He proposed that a new Nuremberg court be immediately established to try crimes against peace and crimes against humanity in Yugoslavia. In February 1993, the Security Council demanded the establishment of an 'International Tribunal to Prosecute Persons Responsible for Humanitarian Law Violations in Former Yugoslavia'. Based on the Nuremberg model, the tribunal was the first such body to be created since the end of World War II. The tribunal started its work in 1994.



However, it could not prevent the massacre of Srebrenica, where 7,500 men and boys were deported from a UN protected zone and killed in 1995. The episode was one of the United Nations' darkest hours. In December 1998, Krstic was arrested and The Hague tribunal began its effort to prosecute him. As in Nuremberg, the trial's task was not to write history, but to establish juridical responsibility. As in Nuremberg, the history of Srebrenica was written in that trial (Bogoeva and Fetscher 2002). And, finally, as in Jerusalem in 1961, the trial based its evidence on the testimony of surviving witnesses.

The Nuremberg ethos is also evident in other war crimes trials. The United Nations war crimes tribunal for Rwanda, for instance, referred to it explicitly when the tribunal accused three men of inciting Hutus to murder Tutsis and moderate Hutus. 'It is the first time since Julius Streicher, the Nazi publisher of the anti-Semitic weekly *Der Stürmer*, appeared before the Nuremberg judges in 1946 that a group of journalists stands accused before an international tribunal on such grave charges . . . Prosecutors have drawn stark parallels between the vitriolic campaigns against the Jews by *Der Stürmer* before World War II and the actions of some Rwandan media organizations before and during the 1994 slaughter of the Tutsi' (*New York Times*, 3 March 2002: 3). What makes the extent to which the legacy of Nuremberg informs contemporary tribunals even more indicative is that in the early Nuremberg trials the charge of genocide did not even exist.

Cosmopolitanism as a civilizing project

This new cosmopolitanism, as it is enacted through legal rituals and codified in international judicial procedures, can be perceived as part of a larger civilizing process. As we pointed out earlier, the origins of human rights as well as their subsequent institutionalization can be viewed as a moral response to the horrors of the Holocaust. As such, it is part of a development in which our tolerance for cruelty has dramatically changed. In the 18th century, criminals were still subject to spectacularly cruel punishments not only because people found it entertaining, but because it was thought to be morally salutary – that by seeing such awful terror, people would be stimulated to act more morally. Today, our ideas in this regard have been completely reversed. We think that if someone witnesses cruelty they should necessarily be moved by sympathy for the victim – not for the ideas being upheld by the perpetrator. We also think this pity as 'natural'. As Arendt remarked in her study on compassion, 'History tells us that it is by no means a matter of course for the spectacle of misery to move men to pity; even during the long centuries when the Christian religion of mercy determined moral standards of Western civilization, compassion operated outside the political realm and frequently outside the established hierarchy of the Church' (Arendt 1963b: 70–71). Arendt's agenda was not to study the vicissitudes of compassion, but rather to demonstrate the inadequacy of compassion as a political principle and to argue that compassion and virtue are not necessarily identical. And a look at the last two centuries shows clearly that there is nothing natural about it. It was historically produced. And the circle of people for whom we feel sympathy has increased in scope in parallel with the development of capitalism, just as the Scottish Enlightenment said that it would.

This may seem counterintuitive. We all know that capitalism creates all kinds of suffering. And we all know that the industrial revolution was attended by dreadful conditions and cold-hearted philosophies like Social Darwinism. But once again, as with the Enlightenment, this is only one side of it. The industrial revolution in 19th-century England was also the golden era of moral reform movements. And there is every reason to presume that the same is true of modern cosmopolitanism – that economic globalization is giving

rise to worldwide movements for reform in much the same way as the growth of the market in Britain gave rise to moral reform movements.

In both cases, if we take the reformers' presentist perspective, it looks as if the market causes nothing but damage, which they are making heroic efforts to stop. But in both cases, if we compare these reformers with their historical forebears of a century or two past, it is clear that it is not just that the abuses have become worse. It is also true that sentiments have become more legitimate. The market does injure people, lots of people. But it also brings them within the circle of sympathy.⁵ That is, the market seems consistently to excite a politically significant mass of people to believe that cruelty and harm can and must be remedied. And, crucially, the market provides the means to do something about it. It brings people inside the circle not only of sympathy, but of effective sympathy. And this is one of the key social foundations of cosmopolitanism. By moral cosmopolitanism, we mean the belief that our duty to ameliorate the suffering of individuals is more important than any artificial political barrier that may stand in our way.

It is difficult to talk about moral cosmopolitanism in connection with the Holocaust. However, institutionalized cosmopolitanism appears to be the most viable answer to the horrors of the 20th century, which apparently will continue in the future. The Holocaust, or rather the collective memories that have sprung from it during the last six decades, is a paradigmatic case for the political and cultural salience of cosmopolitan sentiments. Both the historiography and the memorialization of the Holocaust have exploded in the last two decades. But this is not merely a function of the enormity of the event. We argue instead that what has pushed the Holocaust to such prominence in public thinking has been the indispensable role it has served in the transition from the world of national sovereignty to a new world of interconnectedness and toward a more cosmopolitanized global civil society, of which the recent proliferation of human rights regimes is a prominent manifestation.

At this point, the Holocaust had been reconfigured as a de-contextualized event. Oriented toward nation-transcending symbols and meaning systems such as the 'Universal Declaration of Human Rights', they complement conventional national memories. What has pushed the Holocaust to such prominence in public thinking relates to the need for a moral touchstone in an age of uncertainty and the absence of master ideological narratives. Memories of the Holocaust now stretch across national borders and create transnational spaces into which human rights norms are spreading and are becoming a globalized phenomenon (Brysk 2002). Human rights activists and other protagonists involved in the aftermath of administrative massacres frequently invoke it. The paradigmatic function of Holocaust memories is also evident outside of Europe and North America. References to the Holocaust abound in debates about slavery and colonialism. Many African intellectuals borrow from a Holocaust vocabulary in order to push their own claims about European guilt or reparations (Soyinka 2000). Black-American demands for reparations for slavery frequently invoke references to the way Jewish organizations negotiated reparations with Germany (see Torpey 2004). 'In China, study of the Holocaust is linked to memory of the Japanese invasion and the Nanking massacre, as well as to the emerging consciousness of human rights' (Miles 2001: 511). The major documentation on the human rights abuses in Argentina is entitled 'Nunca Mas' ('Never Again'), to name but a few examples. All these have to be studied separately, but they hang together via the thread of Holocaust memory on which cosmopolitan ideals are based.

Memories of the Holocaust shape the articulation of a new rights culture. Once this new rights culture is in place, it no longer needs to rely on its original articulation (in this case the memory of the Holocaust) but it assumes strong normative powers. Holocaust memory and the new rights culture are, in other words, mutually constitutive. To be sure,

this is not by necessity but as the result of particular historical conjunctures (the end of the Cold War, the Balkan wars of the 1990s, as well as the failed attempts by this new human rights regime to prevent acts of ethnic cleansing and genocide). The term Holocaust has passed from an abstract universal, to a set of very particularistic and/or national meanings, back to what we have elsewhere referred to as cosmopolitan memories.⁶ The Holocaust is now a concept that has been dislocated from space and time precisely because it can be used to dramatize any act of injustice, racism, or crime perpetrated anywhere on the planet. The anti-Communism that justified intervention during the Cold War had to be replaced with something after its end. And in this new context, human rights seem to be fitting the bill. The idea of genocide contains the admonition that a moral world cannot stand idly by while others are destroyed. Human rights, which have their modern legal origins in the same set of 1948 UN declarations, are tied up in practice with the even stronger assertion that the Holocaust is a slippery slope – that every act of ethnic repression, if not checked, might prepare the way for the next genocide.

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Notes

1. Authors appear in alphabetical order.
2. For the anguish of the helplessness of 'human rights', when people are stripped of all humanness during the Holocaust, see Hannah Arendt's *Origins of Totalitarianism* (1958).
3. Even the term 'atrocities' points to that (see Alexander 2002). The semantics of 'atrocities' places the Holocaust in a cognitive frame of the inhumanities of warfare.
4. For a detailed analysis of the single Articles, see especially Chapter 2 in Johannes Morsink (1999).
5. For a detailed historical and conceptual treatment of these transformations, see Natan Sznajder (2000).
6. For a more detailed account of the concept of 'cosmopolitan memories', see Levy and Sznajder (2001, 2002).

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