

◆ Introduction

Human Rights in Latin American and Iberian Cultures

*Ana Forcinito, Raúl Marrero Fente, Kelly McDonough**

The present volume examines the role of Latin Americanist and Iberian cultural critique in the debates on human rights, and focuses on some of the obstacles and challenges that both its theory and practice confront today. The essays address those issues in four interrelated areas: 1) The struggle for a language that represents (problematically or not) human rights violations in international and domestic laws; 2) The issue of gender and human rights, especially the violation of the rights of women and children; 3) The competing tensions between different kinds of rights discourses; and 4) The need to reconsider cultural and economic rights as part of the human rights debate.

Language, Gender

Rethinking human rights in Latin American and Iberian cultures today involves evaluating the language used to describe and legislate it. This, of course, is not without challenges, as noted in particular in this volume in the essays by Walter D. Mignolo and Idelber Avelar which discuss the often problematic philosophical foundations of the discourse of human rights. Mignolo points to the interconnection of law, political economy, and international politics as he poses the question of “who speaks for the Human” in order to challenge the (Western) epistemic locus of enunciation in which the categories of the human rights discourse are constructed “as if they were universal and good for all.” Avelar highlights the problems associated with twentieth and twenty first-century human rights laws that are based on colonial North Atlantic definitions and discourses of the human, arguing that the doctrine of human rights needs to be transformed in order to

* We wish to remember the passing of our dear friend and colleague René Jara, who was an integral part of bringing the volume’s authors together for the symposium on “Human Rights and Latin American and Iberian Cultures,” held in April of 2008. It was at that meeting that many of the conversations for these essays began. This volume is dedicated in his honor.

work in today's complex world. For Avelar, the definition of human in the legal discourse is obsolete.

Along the same lines as these approaches that deconstruct the notions of "humanity" and "universality," some feminist agendas posit a rethinking of the masculinist paradigm of human rights. Ileana Rodríguez's essay proposes this kind of interrogation of human rights discourse, wondering who actually gets to be this "universal human" protected by the Universal Declaration of Human Rights and other instruments of the law. By discussing different ways of narrating incest, pedophilia, and rape, the reader is asked to reconsider how (or if) the discourse of human rights protects children. Some of the more formidable challenges of sexual crimes are their multiple and repetitive nature, the acts themselves, and the silence that surrounds them. To those challenges one must add those posed by the inertia of a State that does not provide a legal system aimed at preventing these crimes, or a judicial system capable or willing to punish them. Rodríguez argues for new legislation in this area, and for an open debate of these issues in Nicaragua.

Feminist approaches that aim to expose that men are still "the paradigm of humanity" (Jelin 71), are also accompanied by efforts to reformulate the issues of equality and difference. The role that women have played in the articulation of human rights demands during authoritarian regimes has been the topic of many discussions on human rights in Latin America. Their participation has had a particularly meaningful impact on the cultural understanding of the distinctions between the public and private realms, and struggles for memory interconnected with demands for justice. Transnational feminism's role in the re-signification of what human rights mean today cannot be underestimated, as attempts to articulate gendered demands have been instrumental in creating a language that is capable of representing both women's rights and gendered human rights violations. However, the formulations of these gendered perspectives have been oftentimes problematic. As feminism distanced itself from "masculine" understandings of rights, it fell into a similar trap that in some instances universalized the idea of "woman" as if this experience were singular. Jean Franco has recently discussed some of these very issues in regards to the conjugations of women's rights and communal autonomy as manifested in the often untranslatable (to hegemonic language or understandings) experiences of indigenous Zapatista women in Mexico. Following Gayatri Spivak, Franco questions the very viability of the hegemonic language and conceptualization of rights that produce, in their very demand for translation, a wholesale exclusion to "universality." The terms of access to rights, in Franco's view, seem to demand surrender to a dominant culture's mode of thinking and vehicle (language) for doing so.

In her discussion on linguistic and cultural rights, Spivak highlights the "othering" that these discourses produce, arguing that "to have rights here is

to attempt to proclaim that a language or a culture, whatever that might be, is not in the place of the original. ‘Original’ is the name of a relation to a language when another language is also in view” (1610). She adds, “you cannot know you are not the ‘original’ unless translation and translatability have been broached” (1610). Her critique of translations of the Universal Declaration of Human Rights into non-European languages as “symbolic gestures of equality” begs the question of whether translation is a possibility at all.

The issue of cultural and linguistic untranslatability has given way to many divergent opinions regarding whether cultural diversity trumps “universal” human rights. That is, the question arises as to whether or not members of other cultures (most often Western) ought to condemn the cultural practices of “Others” that they (Westerners) consider human rights violations. George Yúdice in this volume argues that one should not confuse respect for cultural diversity with the acceptance of violence (i.e. cultural practices such as female genital mutilation, footbinding, or lynching according to “customary law”) in our local and global communities. Indeed, Yúdice notes, “cultural rights instruments eschew formulations that allow for violations of any human rights.” What is the international community’s right or responsibility in monitoring and prosecuting human rights violations? While we do not pretend to have the answers to these questions, but the following section will discuss how, in some instances, Latin American and Iberian cultures have responded to this very issue.

Law, History, Memory

During the 1960s, 70s and 80s, the introduction of State terrorism by military dictatorships in Latin America (based on the so-called National Security Doctrine) resulted in the mass phenomenon of human rights violations as an expression of systematic political crisis. Taking as point of departure the United Nations General Assembly adoption of the *National Convention for the Protection of All Persons from Enforced Disappearances* in 2006, Barbara Frey’s essay points to the international community’s response to the narratives of these crimes as being instrumental in establishing a legal framework for the prosecution of human rights violations. Frey contends that without the Latin American experience, “the international norm outlawing, preventing and punishing the use of enforced disappearances might never have existed.”

The importance of the international community in the prosecution of crimes against humanity was also made manifest by the National Court of Spain’s unprecedented claim to universal jurisdiction in cases of genocide, terrorism and torture which culminated in the arrest of former Chilean dictator Augusto Pinochet in 1998. That claim also exposed new challenges

in dealing with the differences in international and national justice systems, as well as the paradoxical role of impunity in transitional democracies. In the case of the Pinochet arrest, it was Spanish judge Baltazar Garzón's initial international arrest warrant requesting Pinochet's extradition from London that set the process in motion. Both British and Spanish Courts were to confirm their jurisdiction by relying on their respective domestic laws, transposed from the 1948 Genocide Convention: "[t]hey talked about universal jurisdiction, but grounded their decision in domestic statutory law" (Roht-Arriaza 313). What is interesting (or cautionary) about this example is that Chile could not have charged Pinochet with genocide relying only on their national body of law, since regardless of their ratification of the Genocide Convention, the Chilean penal code did not include a definition of genocide (314). The challenge here, as noted by Roht-Arriaza, is that human rights advocates/attorneys face the formidable task of "insisting not just on ratification of treaties, but on their full implementation in domestic law" (314).

Like Chile, the unsettling relationship between impunity and democracy is evident in the experience of other Latin American countries and their processes of recovering from dictatorships. Regardless of the struggles for memory and justice in transitional democracies, impunity is often one of the main conditions in official national attempts toward peace and reconciliation. This is again evident in the case of Pinochet, who, after returning to Chile in 2000 was granted immunity from trial and later received amnesty. Pinochet's immunity was eventually lifted, and though charged with kidnappings/disappearances, he died in 2006 without being convicted of a crime. Summing up this situation fraught with contradictions, Hugo Gutierrez (one of the prosecuting attorneys of the Caravan of Death Case) stated that "[o]ur country has the degree of justice that the political transition permits us to have."

While the conversations on human rights in Latin American and Iberian cultures are indelibly marked by the atrocities associated with the late 20th century dictatorships, Hernán Vidal in this volume urges us to avoid focusing our energies solely on these abuses. For by viewing the Pinochet dictatorship in Chile as anomalous, we buy into a political myth which obfuscates the lengthy history of human rights abuses in that country. Vidal's essay invokes the relationship between memory and violence that is at the forefront of many academic, social, and political discussions in Latin America and Spain today.

The law, pivotal in the struggle for human rights, can also play a crucial role in regards to memory by legislating *how* we remember (or forget) violations of human rights. The Spanish High Court's vital role in the international community's prosecution of genocide should not overshadow the Spanish Constitutional Court's 2007 ruling that decriminalized negationism (the denial of genocide, in this case the Holocaust) on the

homefront. Joan Ramon Resina in this volume points to the very curious situation of civil rights trumping human rights, decrying the Constitutional Court's role in creating opportunities to deny the experience of victims of genocide. The Court's ruling that cites "freedom of expression," should give us pause, as negations of atrocities occur "in a social terrain where leniency furnishes a protective umbrella for crimes that often remain unstated." At stake here is the ethical foundation of the State and the meaning of democracy in post-transition Spain.

Culture

It is relevant to note that we began editing this volume during the last year of the Bush administration, and that since the contributing authors have institutional ties in the United States, it is the context of U.S. academia that colors some of the discussions. Moreover, the constant exposure in the media to the images of Abu Ghraib, Guantánamo, torture and degradation, and official justifications of so called "alternative ways of interrogation" in recent years has fanned the flames of collective outrage here and abroad. John Beverley's essay highlights how human rights discourses have been perversely deployed in an attempt to make them complicit with human rights violations. Rethinking the paradoxical situation of the United States keeping the "Other" under control while maintaining a "facade of rationality and self-righteousness," Beverley connects Spain's trajectory of decline as an *ancien regime* and that of the United States, marked by the tolerance of torture at both the State and the popular culture levels. His essay also emphasizes the importance of replacing functional questions about torture with the ethical question of whether torture is right in any circumstance. Beverley calls for an approach to human rights that would not be analyzed solely from the perspective of the law—international or domestic—but also in terms of identifying the social and economic inequalities within nations and between nations.

While many of the discussions on human rights deal primarily with physical brutality or crimes against humanity and genocide, the relatively recent turn to redefining and expanding it to include the social, cultural, and economic spheres is an important focus in our disciplines as well. Highlighting the right to access and dissemination of cultural goods as key aspects of the definition of cultural rights, Yúdice analyzes the effects of copyright and intellectual property rights on the exercise of these rights, and on the struggles to ensure them. While acknowledging the wide range of understandings of the notion of culture and underlining that culture is located at the intersection of economic and social justice agendas, Yúdice discusses the legal and political foundations in which struggles for cultural diversity take place, and continue to evolve. As the articulation of rights,

particularly cultural rights, expands, so do the challenges (and benefits) of translating these rights to legal discourse. The terrain is slippery and unstable; often promising yet overwhelming. Yet it is crucial not to be overwhelmed to the point of paralysis. If anything the essays in this volume speak to how we have met previous challenges and how we might prepare ourselves for our future efforts. Our objective here is to stress the contribution that some of the ongoing research in and on Latin America and Iberia can make toward building ethical relationships between cultures, nations, and individuals. If the following pages cannot claim to be the final word, we do hope that they, at least briefly, sustain the conversation.

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