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Universal Truth: Juridical Notes for a Cultural Hermeneutics Based on Human Rights

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For a long period, variations on the theme of "postmodernity" have been used by various tendencies in Latin American literary and cultural studies in the United States, leading to the deliberate weakening of the ability to align critical studies with a tradition of transcendental values set firmly in the humanities. It is particularly worrisome that "postmodernists" have reduced discussions on transcendental values to the level of linguistic games. My notes will explore ways to stabilize this situation, tying concepts from literary criticism both to those of "juridical truth" and to certain concepts from the international human rights law such as *jus cogens* and *erga omnes*.

Connecting hermeneutics with concepts from international human rights law allows interpreters of texts and cultural phenomena to work from an assertive platform that will restore trust in viewpoints concerning the history of the human species and its ethical evolution through the present day. At a time when the humanities in general, and Latin American cultural studies in particular, are going through a deep crisis, it seems vital to place them at the highest rank of universality possible.

Critical literature recognizes that postmodernity is undefinable as a cohesive body of concepts. Even those figures most closely associated with the movement—Lyotard, Foucault, Derrida, Baudrillard, Vattimo—rejected being labeled "postmodernists" (Rosenau). Still, in Latin American critical practice we can identify a characteristic profile of arguments:

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a) The value of all-embracing scientific theories of human redemption is discarded.
b) These theories are reduced to linguistic games incapable of capturing objective truths as to the way of life of social diversity.
c) In some cases, cultural discourses originated in Europe are dismissed as irrelevant for Latin America.
d) The epistemic categories that connect specific entities to universal concepts via intermediate typifications (for example, Juan → Indian → Bolivian citizen → human being → human species) are dismantled.
e) Maximum political value is awarded to specific marginal identities by attributing to them a libertarian, recalcitrant opposition to the state, even if that means valuing criminality.
f) It is proposed that in societies with large, diverse, indigenous populations, the state should be fragmented into smaller ethnic autonomous communities.

One must wonder whether this series of disqualifications and disarticulations, markedly anarchistic in nature, can be effective in investigating cultural matters that are inevitably situated in tight-knit global geopolitical networks. These political, military, and financial networks are capable of rapidly producing theoretical, statistical, and technological governance templates to intervene anywhere in the world.

These geopolitical networks have affected the entire world, causing vast migratory fluxes, miscegenations, and cultural hybrids that have altered the racial, ethnic, and cultural identity and consumption styles of every community, and have limited the sovereignty of every nation. I therefore believe it essential to find a way of reestablishing a fluid dialectical movement of influences between individual and community identities and national and international/universal generalizations, and vice versa.

Thus, it is important to consider the human rights set forth in the Universal Declaration of Human Rights as a foundation for a cultural hermeneutics. Human rights have been described as minimum standards of the highest priority, imperative, unalienable, non-derogable, and universal in nature. These standards boost the ability to make transhistorical judgments evaluating the social effects of individual behaviors and corporate, institutional, and state policies (Nickel). They have become common law (consuetudinary law) binding all nations, particularly since the Proclamation of Tehran in 1968. They are minimum standards in that they promote material and spiritual development of humanity while considering and respecting humankind's enormous racial, ethnic, and cultural diversity (Gros Espiell).

An ontological conception of humanity's history is implicit within the notion of human rights. To capture this dimension and link the aesthetic and juridical perspectives, it has been personally helpful for me to draw on the

existential historical materialism of Jean-Paul Sartre. This opens the possibility of practicing a symbolic anthropology to study both literary fiction and symbolic/metaphorical production in daily life. Accordingly, the history of humankind encompasses its self-transformation with the work of satisfying material and spiritual necessities in the context of social hegemonic powers and hierarchies. Preserving the institutionality of such a hegemonic context and overcoming it imply the construction of material, ideological, and discursive tools that accumulate throughout human history. The antecedents of law, philosophy, and contemporary literature are found in Greco-Roman, Judeo-Christian, and Islamic antiquity.

The historical accumulation of discursive logics and international common law shape the diverse sensory, sensual, and intellectual sensibilities with which we experience the multiple universes we live in, and the ethical and legal responsibilities we must individually and collectively assume. The rights, obligations, limitations, and penalties granted and imposed by the law are fundamental in configuring national and international collective sensibilities.

The Vienna Convention on the Laws of Treaties of 1969 introduced a new element in international relations: the concept of *jus cogens* (imperative law). Article 53 states, "For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." In 1970 the International Court of Justice (the case of Barcelona Traction, Light and Power Company [*Belgium v. Spain*]) added to the concept of *jus cogens* that of obligations *erga omnes* (in relation to all), stating that, "given the importance of the rights involved, nations can be deemed to have a legal interest in such rights being protected; the obligations in question are obligations *erga omnes*."

On the one hand, these compulsory norms are derived from ancestral human customs and accepted and recognized as obligatory, together with practices derived from established international treaties that have become consuetudinary norms (Hossain; Danilenko). Among many (Zuppi), the most obvious are the prohibition of military force to solve political problems or a nation's territorial expansion; respect for the sovereignty of peoples; the Geneva Conventions that protect victims of war; and the prohibition of crimes against humanity, genocide, the forced disappearance of persons, torture, slavery and human trafficking, piracy, and the trafficking of pornography.

Legal commentators note that *jus cogens* has become another source of international law, in addition to consuetudinary law, interstate treaty law, and fundamental juridical principles. In legal practice, the concept of *jus cogens* has been expanded to the entire sphere of international law.

These commentators also point out the paradox that the notion of *jus cogens* has been generally accepted in spite of the lack of an international body legislating new universal and imperative norms. Nevertheless, the preamble of the Vienna Convention expresses confidence that the "principles of free consent and good faith and the *pacta sunt servanda* rule are universally recognized." In other words, trust is placed in the common sense of all nations to recognize and respect the fundamental dignity of humankind and its right to a dignified existence. Thus, there was no difficulty in universally prohibiting "ethnic cleansing," crimes of a sexual nature, and the forced impregnation of women in the armed conflict in former Yugoslavia.

Legal scholars also point out that the Vienna Convention, along with previous discussions by the International Law Commission, made it possible for a majority of the United Nations member states to create new binding norms in international law (Danilenko). This has occurred, for example, with regard to the protection of mineral deposits on the ocean floor by third-world countries, in the name of defending humanity's heritage (Danilenko; Hossain). Every majority agreement holds even the dissenting nations responsible for backing such laws.

Jus cogens, then, serves as one of the main ways of molding what is possible and what is not in understanding international relations and their effects on local and national daily events. These binding norms have become universal truths. To be more specific, the idea of a "right to the truth" in the arena of international law seems to be emerging as a binding norm following the violations of fundamental rights in situations of armed conflict and states of exception, particularly regarding the crime of the forced disappearance of persons.

The logic goes as follows (Naqvi): after the use of forced disappearance as a military instrument in Latin America and other places around the world, it was of the utmost importance to implement Articles 32 and 33 of the Additional Protocol I (1977) of the Geneva Conventions of 1949. These articles establish the responsibility of the parties involved in armed conflict to clarify the fate of disappeared persons as a necessary prerequisite for bringing justice, providing reparations, and creating the context for the psychological recovery of the individuals and families involved and for collective reconciliation in general. Several international bodies endorsed this position, including the Inter-American Commission and Court on Human Rights, the Working Group on Enforced or Involuntary Disappearances of the United Nations, the United Nations Human Rights Committee, and the European Court of Human Rights. Along with these were various Truth and Reconciliation Commissions throughout the world, after the restitution of the rule of law (Eisikovits).

The more explicit recognition of the "right to the truth" was provided in 1997 by Louis Joinet, an expert on impunity in violations of fundamental human rights designated by the United Nations Human Rights Commission:

> Cada pueblo tiene el derecho inalienable a conocer la verdad acerca de los acontecimientos sucedidos y las circunstancias y los motivos que llevaron, mediante la violación masiva y sistemática de los derechos humanos, a la perpetración de crímenes aberrantes. El ejercicio pleno y efectivo del derecho a la verdad es esencial para evitar que en el futuro se repitan las violaciones. (Naqvi 18)
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> (Every people has the inalienable right to know the truth about past events and about the circumstances and reasons that led, through systematic, gross violations of human rights, to the perpetration of heinous crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of violations in the future.)

Such a declaration gives practical content to the notion of the truth of international law: "El derecho a la verdad es análogo a [las] normas procesales" (Naqvi 28) (The right to the truth is analogous to procedural norms). It's worth reviewing these procedural norms, as they are so close to Aristotelian aesthetics.

Legal experts differentiate between "historical truth" and "procedural truth" (Martínez Pérez; Rivera). The search for "procedural truth" applies in cases that have arrived in court to repair the damage done to coexistence and the social order by the commission of a crime. The facts of the crime are reconstructed by the testimonies provided by the alleged perpetrators, victims, witnesses, prosecutors, and defense attorneys. The validity of each story is evaluated by the official investigators, who establish whether or not the facts in question occurred. They put together the chronology, the setting, the logical structure, the terms of the conflict leading to the crime, the means and tools utilized, and the characteristics and dimensions of the damage caused, all of which are weighed in terms of verisimilitude, probability, and certainty. The judges refine the process even further, applying reason in the use of formalized juridical norms to decide whether the evidence in question is lawful or unlawful, whether it is to be included or excluded in the process. Furthermore, the judges must guarantee the human rights of the parties in litigation, according to the national constitutions and international treatises to which the nations have committed themselves.

"Procedural truth" conforms to the Aristotelian notion of causalities, an important factor in elaborating a hermeneutics based on human rights. Aristotle conceived of human action as a response to a purpose, a *telos* (final cause), toward which the actors use their powers and abilities (efficient cause) and the materials and instruments at hand (material and formal

causes). Existentially the *telos* implies the moral and ethical responsibility with which individuals, corporations, and nations exercise their life options in their evolution through history.

In conclusion, a hermeneutics based on human rights can be conceived of in the following terms:

> a) As a human being, the interpreter of cultural phenomena cannot help being an empathic and expressive part of the universal truths of the ontological experience of the species in its ethical evolution. This experience has been accumulated transhistorically in the libertarian and binding legal norms that constitute international human rights law.
> b) Considering what Hans-Georg Gadamer called the "fusion of horizons," it is of utmost importance to recognize the historical ontology of the interpreter of cultural phenomena. That is to say, interpreters are ontologically empowered to establish links between their most immediate daily experiences and the most universal abstractions. Interpretation is a dialogic and constructive task in which the language of the immediate present merges and fuses with that of the past. Interpretation is an effort to revalidate the binding norms of human rights and expand them into the future, in a commitment to the fate of human generations yet to come (Jonas).

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