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BEYOND UNIQUENESS:

The Holocaust and Transitional Justice

“The question of the uniqueness and universality of the Holocaust,” writes Michael Berenbaum, “is being considered with increasing frequency not only in scholarly quarters with a focus on historiography but also in communities throughout the United States where Holocaust Memorials and commemorative services raise a consciousness of the Holocaust” (1989 [1981], 82).¹ Berenbaum wrote those lines long before the 1993 opening of the *U.S. Holocaust Memorial Museum* in Washington, D.C., at a time when Jewish American and Israeli scholars debated the place of the Holocaust along the oppositional poles of uniqueness and universality. In his 1981 essay, Berenbaum briefly reviewed the positions of some of the major participants in the debate, including Yehuda Bauer, Lucy Dawidowicz, Emil Fackenheim, Elie Wiesel, Richard Rubenstein, Ismar Schorsch, Eliezer Berkovitz, Robert Alter, and Henry Feingold. Berenbaum, who had been a member of the *United States Holocaust Memorial Council*, sided with a restrained embrace of the uniqueness claim, arguing that neither the perceived threat of a so-called Americanization of the Holocaust nor the attempt to compare Jewish victims to other victim groups or other genocides would diminish the historical uniqueness for the Jewish community. To Americanize the Holocaust, Berenbaum suggested, is just a way of telling “the story ... in such a way that it resonates”² with an American audience; to compare the Holocaust to other events, he continued, is no

¹ Michael Berenbaum, *The Uniqueness and Universality of the Holocaust*, in: John Roth/Michael Berenbaum (eds.), *Holocaust: Religious and Philosophical Implications*, [1981], New York 1989, 82-97.

² *Ibid.*, 85.

cause for fear since they are “analogous but not equivalent to the Holocaust”³.

While the debate about the significance of the Holocaust for Jewish history and theology occurred primarily in the 1970s and 1980s,⁴ on the other side of the Atlantic the *Historikerstreit* raged among German historians and intellectuals a few years later.⁵ Although the key term in the *Historikerstreit* was not “uniqueness” but “historicization” – the latter referring to the battle over “the historical interpretation and political meaning” of National Socialism⁶ – at stake in both cases was the issue of comparability. Germans wondered whether the Nazi crimes could be relativized and, possibly, “*normalisiert*” (rendered ordinary) by comparing them to other dictatorial crimes of the twentieth century.

Today, the Jewish uniqueness debate and the German *Historikerstreit* are no longer fought with the same passions. With regard to Germany, for example, recent biographical analyses of German historians revealed levels of affective-political identifications characteristic of particular generational cohorts⁷, thus adding a new explanatory dimension to the emotional and intellectual vehemence of the 1980s *Historikerstreit*. In Jewish discourse, new developments such as the emergence of the Israeli *New Historians* or the critical

³ Ibid., 96.

⁴ “The current discussion centers on three major questions: whether the Holocaust is indeed unprecedented within Jewish history; whether it occupies an all too prominent position in contemporary Jewish consciousness ...; and whether the Holocaust has normative implications for Jewish history and theology” (ibid., 93).

⁵ *Historikerstreit: Eine Dokumentation der Kontroverse um die Einzigartigkeit der nationalsozialistischen Judenvernichtung*, München 1987; Dan Diner (ed.), *Ist der Nationalsozialismus Geschichte? Zur Historisierung und Historikerstreit*, Frankfurt 1987; Hans-Ulrich Wehler, *Entsorgung der deutschen Vergangenheit? Ein politischer Essay zum „Historikerstreit“*, München 1988.

⁶ Wehler, 7.

⁷ Nicolas Berg, *Der Holocaust und die westdeutschen Historiker: Erforschung und Erinnerung*, Göttingen 2003.

questioning of the centrality of the Holocaust trauma narrative relativized the uniqueness claim.⁸

What interests me here is not a rehashing of the contours of this debate or a tracing of its further developments but, instead, a reading of the issue of the in/comparability of the Holocaust through a genealogy of transitional justice after 1945. Whereas the Holocaust seems to point to a particular history, a particular trauma, and a particular memory, transitional justice concepts tend toward – to borrow a phrase from Jeffrey Alexander – “the construction of moral universals”⁹. Whereas in the former case, traumatic memory of a singular ethnicity is foregrounded, the latter counteracts singularity due to its intention to seek universal and international jurisprudence. Whereas proponents of the specificity of the Holocaust generally resist comparative approaches, transitional justice works on the basis of comparability. In its most polarized form, claims of an exclusivist uniqueness are pitched against normative universality.

Although the particularity of the Holocaust continues to stand in an apprehensive relationship to the notion of univer-

⁸ The Israeli historian Benny Morris with his work on the Palestinian refugee problem is one of the more recognizable names among the so-called New Historians. See Gershom Gorenberg, *The War to Begin all Wars*, in: *The New York Review* from May 28, 2009, 38-41. For other critics of the centrality of the Holocaust, see, for example, Jeffrey C. Alexander, *The Social Construction of Moral Universals*, in: Jeffrey C. Alexander et al., *Remembering the Holocaust: A Debate*, Oxford 2009, 3-102, Leonard Grob, “Forgetting” the Holocaust: *Ethical Dimensions of the Israeli-Palestinian Conflict*, in: Leonard Grob/John Roth (eds.), *Anguished Hope: Holocaust Scholars Confront the Palestinian-Israeli Conflict*, Grand Rapids, MI, 2008, 68-76, Avraham Burg, *The Holocaust is Over; We Must Rise From Its Ashes*, New York 2008, Tom Segev, *Israels säkularer Mythos: Über den Holocaust nach seiner Universalisierung* (Interview with Lukasz Gelacki), in: *Mittelweg* 36 (2006) 15/5 (Oct/Nov), 87-99, and Jay Winter, *The Generation of Memory: Reflections on the “Memory Boom” in Contemporary Historical Studies*, in: *Bulletin of the German Historical Institute* 27 (Fall) 2000, 69-92.

⁹ Alexander, *The Social Construction of Moral Universals* (see fn 8).

sality embraced by transitional justice, the difference between them is not as clear-cut as one would assume. As I will try to show in this essay, the two separate discourses (Holocaust/transitional justice) developed over time not only in response to cultural changes, but also in response to each other within a larger set of legal, moral, and cultural politics.

According to legal scholar Ruti Teitel, one can distinguish three phases of transitional justice.¹⁰ Phase I concerns the immediate postwar years in which retributive justice in the Nuremberg trials was put on an international platform. Phase II coincides with the end of the Cold War and is characterized by a transitioning from international jurisdiction to nationally autonomous processes of restoration. In this phase, we can also observe an uneasy transitioning from a “politics of difference” to a “politics of reconciliation,” a transition mirrored in the tension between competitive trauma narratives and calls for dialogical restorative processes. Finally, Phase III is marked by renewed efforts of practicing jurisdiction based on moral universals through the establishment of international criminal courts.¹¹ These efforts suggest that the question of the in/comparability of the Holocaust has become an issue of the past, since current dictatorships, civil strife, ethnic cleansing, and genocides around the globe now deserve our full attention. Phase III, however, still gets caught in the uniqueness vs. universality pattern, because the global enforcement of international jurisprudence leads to validations of normative universals that are perceived as im-

¹⁰ Ruti Teitel, *Transitional Justice Genealogy*, in: Harvard Human Rights Journal 16 (2003), 69-94.

¹¹ From an international relations perspective, it could be said that these three phases coincide roughly with the periods of pre-cold war, cold war, and post-cold war. The cold war period itself, however, saw little effort for transitional justice and for pursuing an international human rights agenda (NGOs developed during this time, but neither the dominating superpowers nor the developing world with its interest in gaining national sovereignty over against a colonial past had interest in it). Phase II of transitional justice must be located, therefore, at the end of the cold war and beginning of the post-cold war phase.

positions of hegemonic Western ideals. In reaction, a simmering “politics of entrenchment” challenges the accomplishments of a politics of reconciliation of Phase II.

This essay will largely focus on the second phase of transitional justice and its implications. I will suggest that the enlisting of transitional justice concepts for understanding discourses on the Holocaust helps to break away from an unfruitful circularity of the uniqueness claim. I will further argue that restorative justice – which was developed during Phase II of transitional justice – moves beyond the uniqueness debate by creating a space for rethinking the value of singularity within a framework of dialogical responsibility.

Unique, Singular, Particular: Preliminary Clarifications

When the Holocaust is described as “unprecedented,” “singular,” “unique,” or “particular” – terms which have been largely used indiscriminately in the English literature – it implies that the Holocaust is viewed as categorically different from other kinds of state-sponsored atrocities and genocidal ideologies. This difference would make the Holocaust non-comparable.

Strictly speaking, the descriptive terms mentioned above are not synonymous but indicate different degrees of in/comparability. “Unprecedented,” for example, can mean that the unfolding of the Shoah has been without historical precedent only at the time of its occurrence, but that equivalent events have arisen since. In this case, the Shoah is interpreted as an innovation in the history of genocide (for example, in terms of intentionality, ideology, and technology)¹²

¹² The argument that the Holocaust adds an innovative moment into the history of genocides can be expanded to include the thesis that the Holocaust is not a regression into barbarity but the realization of a particular mode of modernity. In that sense, the Holocaust is not unique but a particular radical expression of modernity. Zygmunt Bauman’s *Modernity and the Holocaust* (Ithaca, N.Y., 1989) develops this thesis, arguing that the Holocaust is not simply an event in Jewish history but profoundly

but it is not understood as an event that is beyond the pale of comparison in a post-Holocaust world. Here, we could speak of the “singularity” of the Holocaust, because singularity refers to some peculiarity. If the Holocaust were viewed as singular, it would imply that it contains peculiar traits that distinguish it from other events. Enough family resemblances, however, would still exist among them to make possible qualitative (and not just “analogous”) comparisons.

“Unprecedented,” however, can also refer to an event of such magnitude that there has been none other since its first occurrence and that there won’t be any in the foreseeable future. In that case, we would speak about the “uniqueness” of the Holocaust, since uniqueness points to something without an equal or rival. In other words, whereas singularity refers to something that stands out among a common experience, uniqueness is marked by its complete difference. In German, this distinction is somewhat preserved in the difference between “Einzigartigkeit” (uniqueness) and “Eigenartigkeit” (singularity).¹³

In light of these differentiations, it is not quite correct to pair universality and uniqueness as opposites as Berenbaum suggested – as if universality would be the antonym to uniqueness. A more correct antonym to “universal” is “local” or “particular.” The universality-particularity pairing has, indeed, also been applied to interpreting the Holocaust, especially in religious contexts. It has been employed in theological discourse and in Jewish-Christian dialogue, where it mirrors the dichotomized characterization of Judaism as a particular religion and Christianity as a universal religion. Though this distinction is not altogether false, it remains

connected to modernity (with its focus on production, division of labor, rational logic, etc). Similarly, Agamben views Nazism as the realization of a fully modern bio-political state (Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen, Stanford 1998).

¹³ The term “particularity” would be translated in German as “Besonderheit” or “Eigenheit.”

problematic in light of the religious polemics and apologetics that a majoritarian religion hurled against its minoritarian sibling. Jewish and Christian interlocutors together might concede that the Holocaust is a particular event with particular victims, but when it comes to determining its meaning and applying its lessons, Christians more quickly than Jews insist on its universality.

Semantic choices should, in principle, inform our analytical perspective in terms of the kind of in/comparability one is willing to concede to the Shoah, and throughout this essay I will try to stay mindful of those differences without undue rigidity. Certainly, with respect to transitional justice, the term “singularity” is preferable to “uniqueness,” since transitional justice seeks moral universals as the basis of conflict resolution and social restoration. With respect to Holocaust discourse, however, words like “singular,” “unique” or “particular” are mostly used interchangeably, and the rhetorically eloquent *uniqueness vs. universality* alliteration is readily and generally understood to refer to the non-comparability of the Holocaust. The question, then, remains: Is the Holocaust in a class of itself when it comes to genocides in comparative perspectives? Or, asked differently, is the Holocaust narrative so dominant that other genocides are rendered invisible?¹⁴

¹⁴ Religious studies professor and Christian theologian Stephen Haynes writes in his analysis of Christianity’s role in the Rwandan genocide that “the landscape of contemporary genocide is so dominated by the Shoah that other tragedies may remain invisible unless they are shown to be ‘like the Holocaust.’ Particularly as arguments for the singularity of the Jewish experience have multiplied over the past decade, students of mass death ... have responded to the uniqueness argument by establishing parallels between the Holocaust and these ‘other genocides’” (Stephen R. Haynes, “*Death Was Everywhere, Even in Front of the Church*”. *Christian Faith and the Rwandan Genocide*, in: Stephen L. Jacobs (ed.), *Confronting Genocide: Judaism, Christianity, Islam*, Lanham 2009, 183-194, here: 185). See also Alan S. Rosenbaum (ed.), *Is the Holocaust Unique? Perspectives on Comparative Genocide*, Boulder 1998.

A final word before proceeding with my conceptual analysis at the intersection of the Holocaust uniqueness debate and a transitional justice genealogy: Working on this essay has brought to the fore some of my own uncertainties with respect to where I stand on the issue of uniqueness. For many years, I have given prominence to the history and memory of the Holocaust in interreligious dialogue and intercultural/intergenerational work with Christians and Jews, European and Americans.¹⁵ More recently, I expanded my thinking about reconciliatory practices and injurious memory by applying it to other crisis zones. I have done so in academic seminars on transitional justice and on the global surge of religious fundamentalism as well as in dialogue with Islam and the facilitation of Israeli-Palestinian-German groups. This essay, then, can also be understood as my own coming to terms with the question of comparability of the Holocaust within a global context. What role does the Holocaust play in intercultural and global settings? Is the singularity of the Holocaust rooted in the fact that it sets universal standards by which to measure current injustices? Is the Shoah unique because its legal legacy provides a paradigm for other conflict resolutions? Does the insistence on the singularity of a particular trauma narrative help or hinder the restoration of former unjust political systems? Does a claim to uniqueness veil the fact that a particular victimization and

¹⁵ Björn Krondorfer, *Remembrance and Reconciliation: Encounters Between Young Jews and Germans*, New Haven 1995; Björn Krondorfer, *Biographische Arbeit in Jüdisch/Deutschen Begegnungsgruppen nach der Shoah*, in: *Biographische Arbeit in der Erwachsenenbildung: Beispiele aus der Praxis*, ed. Manfred Jurgovsky and Ronald Hirschfeld, Bonn 1998, 19-42; Björn Krondorfer, *Von Gott reden im Land der Täter: Theologische Stimmen der dritten Generation seit der Shoah*, co-ed. with Katharina von Kellenbach and Norbert Reck, Darmstadt 2001; Björn Krondorfer, *Interkulturelle Begegnungsprogramme zum Holocaust: Familienbiographie und kreative Erinnerungsarbeit*, in: Christian Geißler/Bernd Overwien (eds.), *Elemente einer zeitgemäßen politischen Bildung*, Münster 2010, 253-269.

a particular evil may have become normative, hence dominating other narratives of suffering?

Transitional Justice, Phase I: Universalizing the Holocaust

Transitional justice is the attempt to rectify former wrongdoings in transitional societies. It is a response to systems of injustice in times of societal transformation. Roht-Arriaza broadly defines transitional justice as that “set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law”.¹⁶ Because transitional justice does not offer – at least not directly – preventive solutions, it can be called “post-conflict justice”.¹⁷ It is the attempt at transforming former unjust societies. In doing so, it can follow a retributive or restorative path (or a mix of both). While transitional justice originally started out with a traditional-judicial approach of punishment and penalty (retributive

¹⁶ Roht-Arriaza writes that “the term [transitional justice] is a bit slippery” because it seems to imply “a defined period,” “does not articulate what the state is transitioning to” and privileges “the legal aspects of coming to terms with the past.” She suggests going beyond Teitel’s definition that is too focused on the legal aspects (transitional justice is a “conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (Teitel, quoted in Naomi Roht-Arriaza, *The New Landscape of Transitional Justice*, in: Naomi Roht-Arriaza and Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, Cambridge 2006, 1-16). Among the many works on transitional justice, see Neil Kritz (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Washington D.C. 1995, Daniel Philpott (ed.), *The Politics of Past Evil: Religion, Reconciliation, and the Dilemmas of Transitional Justice*, Notre Dame 2006, James McAdams (ed.), *Transitional Justice and the Rule of Law in New Democracies*, Notre Dame 1997, and Ruti Teitel, *Transitional Justice*, Oxford 2000.

¹⁷ Roht-Arriaza, *The New Landscape*, 1.

justice), it later moved to restorative justice based on political reconciliation, social healing, and dialogue. Coupled with restorative justice, it puts its weight behind innovative rehabilitation and social integration and is invested in a constructive and future-oriented process of working through the past.

Since the 1980s, models of transitional justice have been activated and applied primarily in Latin America and Africa. Nevertheless, the literature on transitional justice often harks back to the Nazi regime and the Holocaust as originary moments. It takes the postwar *International Military Tribunal* (IMT) in Nuremberg as a significant milestone. By putting the Nazi leadership on trial, the IMT validated and led to an acceptance of international human rights. Although the IMT chose retributive justice to punish perpetrators, it paved the way for both restorative justice models that characterize Phase II and the eventual establishment of the *International Criminal Court* in The Hague (Phase III).

“The Nuremberg Trials are an important reference point for the current system of international criminal justice,” observes Christiane Wilke.¹⁸ Ruti Teitel, a widely recognized legal scholar in the transitional justice field, argues that the first phase of transitional justice started with the internationalization of jurisdiction in Nuremberg. Teitel concedes that the roots of such international law go back in time before the Second World War, yet she insists that the development of a discernible “transitional justice genealogy” does not begin until after 1945. “Transitional justice becomes understood as extraordinary and international in the postwar period after 1945 ... Through its most recognized symbol, the Allied-run Nuremberg Trials, this phase reflects the triumph of transitional justice within the scheme of international law”.¹⁹

¹⁸ Christiane Wilke, *Reconsecrating the Temple of Justice: Invocations of Civilization and Humanity in the Nuremberg Justice Case*, in: Canadian Journal of Law and Society 24/2 (2009), 199.

¹⁹ Ruti Teitel, *Transitional Justice Genealogy* (see fn 10), 70.

Teitel and other scholars working in the field of transitional justice do not engage the details of the history and historiography of the Holocaust. They are largely oblivious to the current status of Holocaust scholarship. They do, however, take the Holocaust as a general point of reference to account for the growing awareness of the necessity for a new moral and political imperative in international law. For the most part, they presume that the Holocaust has a special status, granting it a kind of *de facto* singularity, even when they do not argue or reason their case. For the transitional justice literature, the motivating question is not the in/comparability of the Holocaust. Rather, Teitel and others look at the special impact the Holocaust had on the post-1945 political and legal culture. In other words, it is not the Holocaust itself (and certainly not its significance for Jewish history and religion) that is of primary interest to transitional justice, but its effect on subsequent political developments. In this view, the Holocaust appears not so much as history but primarily as political memory. Because the Holocaust triggered juridical and moral innovations after 1945, it became possible to affirm the “principle that accountability was an important international concern”.²⁰

Martha Minow, professor of law at Harvard University, can be cited as a prominent proponent of such a perspective:

“A century marked by human slaughter and torture, sadly, is not a unique century in human history. Perhaps more unusual than the facts of genocides and regimes of torture marking this era is the invention of new and distinctive legal forms of response ... And most appalling of the genocides, the massacres, systematic rapes, and tortures has been the destruction of the remembrance of the individuals as well as of their lives and dignity: this is what joins the Holocaust and Final Solution, the rape of Nanking, the mass killings of

²⁰ Roht-Arriaza, *The New Landscape* (see fn 16), 6

Cambodians ... the tortures of 'leftists' in Chile, the students in Argentina, the victims of apartheid."²¹

Minow continues: "The novel experiment of the Nuremberg and Tokyo tribunals following World War II reached for a vision of world order and international justice, characterizing mass violence as crimes of war and crimes against humanity"²². It is not uniqueness (or the crime against a particular people) that characterizes the singularity of the Holocaust. Rather, what turns the Holocaust into something singularly important is its appeal to universally applicable and enforceable rights. From a judicial perspective, one can say that the universalizing potential of the Holocaust made it possible to reappraise (and eventually realize) an international jurisdiction without regressing to a (national) politics of retaliation or an arbitrary victors' justice.

This first phase came to an end with the beginning of the Cold War in the 1950s, which "led to a general political equilibrium and an impasse on the question of transitional justice". Nevertheless, the legacy of these postwar trials formed "the basis of modern human rights law".²³

In sum: During the first phase of transitional justice, the singularity of the Holocaust was located neither in its unparalleled uniqueness nor in its historical incomparability. Instead, the Holocaust was something special because of its impact on the question of universality. As memory refracted in moral-political discourse, the Holocaust effectively invigorated moral and legal politics and led to international efforts

²¹ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Boston 1998, 1. In a later version, Minow deemphasizes the legal aspects; the revised sentence reads: "The mass atrocities of the twentieth century, sadly, do not make it distinctive. More distinctive than the facts of genocides and regimes of torture marking this era are the search for and invention of collective forms of response" (*The Hope for Healing: What can Truth Commissions Do?*, in: *Truth v. Justice. The Morality of Truth Commissions*, ed. Robert Rotberg and Dennis Thompson, Princeton 2000, 235-260, 235).

²² Minow, *The Hope for Healing*, 235.

²³ Teitel, *Transitional Justice Genealogy*, (see fn 10), 70.

to hold nation-states accountable for their crimes, no matter how these crimes had been domestically justified and legitimated.

Politics of Difference: Uniqueness between Particularity and Exclusivity

There is, of course, a flip side to this universalized view. Because the magnitude of the Holocaust lends itself to appealing to a universal common good (whether fostered in the legal and cultural realms),²⁴ it leads to the disappearance of those traits that made it particular. Erased now is the acknowledgment of Jews as the prime target of Nazi Germany and the recognition of murderous antisemitism at the base of Nazism's dystopia.

In response to the universalizing proclivity of Phase I, objections were raised against the disappearance of Jewish victims and the erasure of Jewish memory. In the process, the uniqueness of the Shoah became emphasized. The 1961 trial against Adolf Eichmann in Jerusalem – with its high drama and the worldwide attention it received – can be read as the first sustained national response to the universalizing tendency of the IMT in Nuremberg. In Jerusalem, the Shoah (re)gained its particular (Jewish) face.

According to historian Peter Novick, in American Judaism the “shift of the Holocaust from the margins to the center” occurred in the late 1960s; it led to the conviction, “axiomatic in at least ‘official’ Jewish discourse,” that the “Holocaust was unique”²⁵. Public intellectuals like Elie Wiesel, historians like Yehuda Bauer and Steven Katz, and theologi-

²⁴ In the realm of cultural production of universals in the wake of the Shoah, the case of *Anne Frank's Diary* is often cited. For short discussions of how Frank's personal story “evolved ... into a universal symbol of suffering and transcendence,” see Alexander, *The Social Construction of Moral Universals* (see fn. 8), 38-39; also Peter Novick, *The Holocaust in American Life*, Boston 1999, 117-120.

²⁵ Novick, 195.

cal philosophers like Emil Fackenheim and Richard Rubenstein advanced the claim of uniqueness. For example, Katz has repeatedly stated his position that the Holocaust “is historically and phenomenologically unique”²⁶, and Rubenstein further argued that “it is the religious element that makes the Holocaust unique”²⁷. For others, the Holocaust was a “revelational event”²⁸, a position that contributed to the sacralization of the Holocaust. Such sacralization, according to Novick, found wide support in “American ‘folk Judaism’”²⁹. These perspectives were not left uncontested,³⁰ but they resonated well with sentiments in the American-Jewish community.

When reading the uniqueness claim as a response to the universalization that spread in the wake of Nuremberg, it ex-

²⁶ Steven T. Katz, *The Uniqueness of the Holocaust: The Historical Dimension*, in: Rosenbaum (see fn 14), 19-38, here: 19

²⁷ Richard Rubenstein, *Religion and the Uniqueness of the Holocaust*, in: Rosenbaum (see fn 14), 11-18, here: 17. Katz does not want to make “a moral claim” and does not want to “quantify or compare” suffering, but he insists on the “uniqueness of the Holocaust ... by virtue of the fact that never before has a state set out, as a matter of intentional principle and actualized policy, to annihilate physically every man, woman, and child belonging to a specific people” (Katz, 19). Rubenstein argues that the religious-mythic dimension, which ties Jews and Christians to the Holocaust, makes it unique. The Holocaust, he writes, is “a modern version of a Christian holy war carried out by a neopagan National Socialist state” (Ibid., 16.).

²⁸ Irving Greenberg, *Clouds of Smoke, Pillar of Fire*, in: Eva Fleischner (ed.), *Auschwitz: Beginning of a New Era?*, New York 1977, 7-55.

²⁹ Novick (see fn 24), 200.

³⁰ Clearly, Novick criticizes both the uniqueness claim and sacralization process: In “Jewish discourse on the Holocaust . . . the most widespread and pervasive [form] is an angry insistence on the uniqueness of the Holocaust. Insistence on its uniqueness (or denial of its uniqueness) is an intellectually empty enterprise for reasons having nothing to do with the Holocaust itself and everything to do with ‘uniqueness’” (Novick, 9). Other critics include Arthur Hertzberg, Jacob Neusner and Michael Wyschogrod. For brief summaries of those positions, see John Roth and Michael Berenbaum, *What if the Holocaust is Unique?*, in: Roth/Berenbaum, *Holocaust* (see fn 1), 1-8; Berenbaum, *Uniqueness* (see fn 1), 82-97; Novick (see fn 24), 195-203.

plains why scholars like Michael Berenbaum call it a contest between “uniqueness and universality.” Whereas the thrust of Phase I of transitional justice was to transform the public shock over the magnitude of the Nazi crimes into a universally applicable and valid international law (so that nation-states could be made accountable), the second phase of transitional justice must be seen as a search for a corrective retreat from such a universalizing trend.³¹ As we will see further below, such a correction of the vision of transitional justice was motivated by both a cultural politics of difference and a national politics of reconciliation.

Since universalism can easily slide into an indiscriminate leveling of differences, it renders the trauma of particular victims invisible. The attention that the Nazi crimes received in Nuremberg and its follow-up trials, which seemed, at first, to validate the Jewish trauma, began to look like a double annihilation: the physical extermination of Jews through Nazi genocidal policy was followed by the erasure of the particular memory of their extermination in postwar legal debates and consciousness. Elie Wiesel articulated this concern well when he wrote: “First the enemy killed the Jews and then he made them disappear in smoke, in ashes, so every Jew was killed twice. In every extermination center special squads of prisoners had to unearth multitudes of corpses and then burn them. Now he tries to kill them for the third time by depriving them of their past, and nothing could be more heinous, more vicious than that. I repeat, nothing is or could

³¹ I am, of course, not arguing here for a cause-and-effect relationship. The retreat from universalizing claims of the IMT in Nuremberg does not bring into being Phase II of transitional justice. That second phase is much better seen in the context of the decline of the cold war, which engendered an interest in transforming the tension that existed between international law (enforced by the superpowers) and domestic sovereignty (fought for in the developing world). But in the context of the cross-fertilization of the two different discourses (Holocaust uniqueness/transitional justice), one can argue that phase II is a corrective retreat of the universalization of phase I.

be as ugly, as inhuman as the wish to deprive the dead victims of their death”³².

For a community that had been severely terrorized, victimized, and traumatized, a double (or, in Wiesel’s view, triple) negation of particularity (first the deed, then the memory of the deed) is of utmost concern, especially in light of perpetrator societies that like to elude responsibility by erasing specific culpabilities. Furthermore, in light of the centuries-old Christian antagonism toward Jews and the religious dimension of the Holocaust, the Christian proclivity to move quickly from the particular to the universal inevitably raises fear among Jews.

Another way of looking at the insistence on particularity as a reaction to the universalization of Phase I (transitional justice) is to examine the uniqueness claim within the cultural context of a “politics of difference.”³³ Such a politics, which was set into motion in the late 1960s, was understood as a critical counter-voice against liberal democracies and neo-colonial practices and mentalities. It was directed, as Bashir and Kymlicka state, against “traditional majoritarian models of democracy and difference-blind models of national citizenship”³⁴. Alternative models were developed that, if not outright revolutionary in appeal, called for “multicultural,” “contested,” “agonistic” or “deliberative” democracies³⁵. They supported the interests and identities of minorities over against a hegemonic discourse of sameness and against pressures to assimilate into the majority culture. Within these cultural politics, specific sufferings and specific mechanisms of oppression were named in order to strengthen the right of

³² Elie Wiesel, *The Holocaust as Literary Inspiration*, in: Elie Wiesel et al. (eds.), *Dimensions of the Holocaust*, Evanston IL 1977, 5-19, 16.

³³ With respect to “politics of difference,” see Bashir Bashir/Will Kymlicka, *Introduction: Struggles for Inclusion and Reconciliation in Modern Democracies*, in: *The Politics of Reconciliation in Multicultural Societies*, ed. Will Kymlicka and Bashir Bashir, Oxford 2008, 1-17.

³⁴ *Ibid.*, 2.

³⁵ *Ibid.*

social, religious and ethnic minorities and marginalized groups. A politics of difference aimed at rectifying past injustices and foster present civil rights.

During this time, Latin-American and South African liberation theologies, European after-Auschwitz-theologies, and Jewish arguments for the uniqueness of the Holocaust emerged on parallel tracks, a phenomenon that can be understood as a result of a politics of difference. Elie Wiesel's plea for the acknowledgment of the particularity of Jewish suffering and the importance of remembering was picked up by some European and U.S. American supporters of progressive-liberal and liberation theologies, who were mindful of the Holocaust (e.g. Robert McAfee Brown 1978, Isabel Carter Heyward 1982, Sharon Welch 1985).³⁶ For example, in her memoir *Gegenwind*, Dorothee Sölle recalls several personal meetings with Elie Wiesel in the 1980s, in which they talked, among other things, about the "peace movement" and "war preparation." "The expression 'nuclear Holocaust' was then often used," Sölle recalls, but "Wiesel belonged to those survivors who had contributed to an understanding that today the word 'Holocaust' is used specifically, namely for the mass murder of European Jews ... Did we have a right to use this term for those who planned a limited but winnable nuclear war?"³⁷ With a sigh of relief, Sölle re-

³⁶ Robert McAfee Brown, *Theology in a New Key. Responding to Liberation Themes*, Philadelphia 1978; Sharon Welch, *Communities of Resistance and Solidarity. A Feminist Theology of Liberation*, Maryknoll 1985; Isabel Carter Heyward, *The Redemption of God. A Theology of Mutual Relation*, Lanham 1982. In her feminist theology of relation, Heyward devotes chapter 3 to Wiesel's work, "The Experience and Questions of Elie Wiesel: Image of Non-Relation" (Heyward, 73-106).

³⁷ Dorothee Sölle, *Gegenwind. Erinnerungen*, 3rd edition, Hamburg 1998, 249-250. Similarly, feminist liberation theologian Sharon Welch writes, "My work in theology is born out of this unthinkable horror ... caused by the twentieth century's stark brutality ... If the Christians of Germany could not stop Hitler, and if the Christians of the United States cannot stop what may be the ultimate holocaust – nuclear war – of what value is Christianity?" (Welch, 6).

alizes that Wiesel does not object to the usage of the phrase ‘nuclear Holocaust.’ Yet, in the presence of Holocaust survivors, Sölle remains discomfited about German attempts at comparing and relativizing the Holocaust. A few pages later in her memoir, she writes how “odd” – in the presence of Jewish survivors – it strikes her to think of the German *Historikerstreit*’s handling of the “uniqueness (*Einmaligkeit*) and historical significance of the Holocaust”³⁸.

Sölle’s view, of course, is not exceptional given the general political landscape of that time. “In the 1980s,” Alexander writes, “the engorged, free-floating Holocaust symbol became analogically associated with the movement against nuclear power and nuclear testing . . . by telling stories about the ‘nuclear Holocaust’ that would be unleashed if their own democratic governments continued their nuclear practice.” The particular evil of Auschwitz began to serve a greater, universal good. “By invoking this Holocaust-inspired narrative,” Alexander continues, “they were imagining a disaster that would have such generalized, supranational effects that the historical particularities . . . would no longer matter”³⁹. Carter Heyward, an American feminist theologian, thus could ask in the early 1980s whether we ought to approach the Holocaust “as a unique and monstrous achievement, an event incomparable to any other in history,” and then proceed to answer that she has “chosen to write about the Holocaust” because it “demands *particular* attention” given that it “represents so forcefully a *universal* moral problem”⁴⁰.

Christian theologians like Dorothee Sölle and Carter Heyward could find common ground with Jewish pleas for understanding the Holocaust as a paradigm of unprecedented evil. It seemed, on first sight, that they supported the cause of particularity. But, almost paradoxically, they also contrib-

³⁸ Sölle, 252.

³⁹ Alexander, *The Social Construction of Moral Universals* (see fn 8), 52-53.

⁴⁰ Heyward (see fn 36), 74 (emphasis mine).

uted to an inflationary use of the Holocaust metaphor. Within the context of a politics of difference, the question of the significance of the Holocaust got caught in the circular logic of uniqueness vs. universality, and such circularity played itself out as a tension between advocating the particularity of suffering of minoritized and marginalized groups while, at the same time, appealing to moral universals.

To recognize the particular face of suffering creates solidarity among minorities as long as such particularity is experienced as a shared commonality of suffering from dominant ideologies. In this sense, a politics of difference acts as a positive force among fellow sufferers over against oppressive regimes or a majoritarian rule. However, an initially felt solidarity can morph into competitive narratives of suffering. Because memories and narratives of suffering are not stable entities but change and transform over time in reaction to larger political developments, the universal solidarity originally sought in a politics of difference deteriorates into a competition between and among minoritized groups. Given past and present wrongdoings, narrated memories of trauma as well as current experiences of injustice end up vying for international attention.

The problem of the uniqueness claim is that it circles back and forth between the poles of universality and particularity. The initial affirmation of the uniqueness of the Holocaust eventually subverts the original claim to uniqueness on whose basis one advances an ethical stance about the necessity to respond to other calamities and injustices (like the “nuclear Holocaust”). The employment of the Holocaust as a unique event in order to address evil everywhere (an argumentation put forth mostly by non-Jews)⁴¹ left the (mostly Jewish) proponents of the uniqueness argument in an awk-

⁴¹ See, for example, David E. Stannard, *American Holocaust. The Conquest of the New World*, Oxford 1991; David E. Stannard, *The Dangers of Calling the Holocaust Unique*, in: *Chronicle of Higher Education* (August 2): B1-2 (1996).

ward position. They felt affirmed and yet defeated. In response, they started to defend themselves against the inflationary use of the Holocaust metaphor. The Holocaust, Michael Brocke and Herbert Jochum stated in 1982, had lost “its own, its Jewish contours.”⁴²

As the Holocaust achieved near normative status that defined absolute evil – which is what made it “unique” – it lost its uniqueness because it had become a universal paradigm. This irony did not escape sociologist Jeffrey Alexander. The Holocaust, he writes,

[as] trauma-drama could not function as a metaphor of archetypal evil unless it was regarded as radically different from any other evil act in modern times. Yet it was this very status – as a unique event – that eventually compelled it to become generalized and depicularized. For as a metaphor of evil, the Holocaust provided ... a standard for comparative judgment [and thus] became a norm, initiating a succession of metonymic, analogic, and legal evaluations that deprived it of “uniqueness” by establishing its degrees of likeness or unlikeness to other possible manifestations of evility.⁴³

For those insisting on the Jewish particularity of the Holocaust, such particularity was seen as increasingly occupied by others, who substituted the trauma narrative of Jews with their own trauma narratives. Once the uniqueness claim was accepted by too many people, it became a universal paradigm widely used for other causes. In the mid-1990s, Alvin Rosenfeld, professor of literature and Jewish Studies, la-

⁴² “Mittlerweile zeigen sich in der theologischen Diskussion gewisse Ermüdungserscheinungen ... In der zunehmenden Betrachtung des Holocaust als universalem Paradigma verliert er seine eigene, seine jüdische Kontur”; Michael Brocke/Herbert Jochum, *Der Holocaust und die Theologie – „Theologie des Holocaust“*, in: Michael Brocke/Herbert Jochum (eds.), *Wolkensäule und Feuerschein. Jüdische Theologie des Holocaust*, München 1982, 242.

⁴³ Alexander, *The Social Construction of Moral Universals* (see fn 8), 58-59.

mented that the Holocaust was used by all kinds of people “who want to draw public attention to human rights abuses, social inequalities suffered by racial and ethnic minorities and women, environmental disasters, AIDS, and a whole host of other things”⁴⁴. Against such appropriations, the uniqueness of the Holocaust needed to be divorced from its applicability to different narratives of suffering and trauma. It became, in the words of Elie Wiesel, an “ontological event”⁴⁵, or for Roy Eckardt – one of few Christian theologians validating Jewish claims to particularity – a “uniquely unique” event.⁴⁶

The hyperbolic nature of the “uniquely unique” phrase discourages, of course, comparability. If not by intention, then at least by effect, it is a way of getting around the recognition of competing narratives of trauma and suffering through the mechanism of exclusion. “In Jewish discourse on the Holocaust,” Novick observes, “we have not just a competition for recognition but a competition for primacy”⁴⁷. A politics of difference, which sets itself the task of creating solidarity by emphasizing particularity, is always in danger of morphing into a discursive practice of exclusiveness.

⁴⁴ Alvin Rosenfeld, *The Americanization of the Holocaust*, in: *Commentary* 90/6 (1995), 35-40, 35.

⁴⁵ Wiesel (see fn 32).

⁴⁶ “The *ganze Einzigartigkeit*, the unique uniqueness, the only-ness of the Final Solution is disclosed in the fact that all Jewish babies were to be killed along with all children and grownups. . . It is the historical *identity* of the victims that marks off this event from other horrible events, including other ‘holocausts’” (Roy A. Eckardt, *Christians and Jews. Along a Theological Frontier*, in: Michael L. Morgan (ed.), *A Holocaust Reader: Responses to the Nazi Extermination*, New York (1979) 2001, 143). See also Alice and Roy Eckardt, *Long Night’s Journey into Day. A Revised Retrospective on the Holocaust*, Detroit 1988, esp. the chapter “Singularity” and, within it, the subtitled section “From the Unique to the Uniquely Unique” (52-59). For a critical assessment of Wiesel’s ontology claim, see Novick (see fn 24), chapter 10, esp. 211f, and Martin Jay, *Allegories of Evil. A Response to Jeffrey Alexander*, in: Alexander et al., *Remembering the Holocaust* (see fn 8), 110-112.

⁴⁷ Novick (see fn 24), 9.

Once uniqueness becomes associated with exclusiveness, a one-sided memory politics is born. The redemptive and healing value of remembrance now becomes subjected to national interests. Spiritual insight, like the often-quoted “in remembrance lies the secret of deliverance,”⁴⁸ becomes commodified. By the early 1990s, memory had indeed become a cultural currency: national governments apologized vicariously for past crimes,⁴⁹ victimized communities claimed transgenerational restitution, and public forums about memory and remembrance flourished in the humanities, in museums, the media, education, and other cultural niches. Memory got archived, displayed, traded, examined, and historicized. While a memory culture and memory politics were of high value, contractually regulated and ethically reasoned forms of forgetting became anathema.⁵⁰

Memories of past injustices with their concomitant trauma narratives, if framed within an exclusivist understanding of a politics of difference, inevitably lead to competition. Multiple groups will come forward with their own narratives of suffering and victimization, often in reaction to those that are

⁴⁸ The phrase, “in remembrance lies the secret of deliverance,” exists in various versions and is attributed to the founder of Hasidism, the Baal Shem Tov. See Björn Krondorfer, *Remembrance and Reconciliation* (see fn 15), 47-55.

⁴⁹ See Michael Cunningham, *Saying Sorry: The Politics of Apology*, in: *Political Quarterly* 70/3 (1999), 285-293. For example, the USA recently apologized to Guatemala for conducting medical experiments during the 1940s on prisoners, mental patients, and soldiers deliberately infected with syphilis; the Pope apologized in March 2010 to victims of abuse in Ireland; the Australian prime minister apologized for the forced removal of Aboriginal children; etc.

⁵⁰ Historian of antiquity Christian Meier (Christian Meier, *Das Gebot zu vergessen und die Unabweisbarkeit des Erinnerns: Vom öffentlichen Umgang mit schlimmer Vergangenheit*, München 2010) observes that, in the West, there has always been a culture of negotiated forgetting; this process, however, got lost in the twentieth century, especially after the Shoah. See also Björn Krondorfer, *Is Forgetting Reprehensible? Holocaust Remembrance and the Task of Oblivion*, in: *Journal of Religious Ethics* 36/2 (2008), 233-267.

perceived to be dominant, in order to attempt gaining public and international recognition. For example, the emotional and ideological power of the *Naqba*, the Palestinian narrative of their 1948 expulsion, is set against the 1945 “traumadrama”⁵¹ of the Holocaust. Continuing to flourish under the current Israeli occupation policy, the *Naqba* narrative does not just stand on its own, but grows into a counter-narrative, which, instead of losing emotional weight, gains, over time, affective-political significance as it seeks international recognition that is likened to the Shoah memory. As this example demonstrates, within a climate of a politics of difference, wherein a universal validation of particularity turns into competitive claims (which are increasingly ethnocentric and nationalist in nature), each narrative of suffering acquires elements that are *both* comparativist and exclusivist at the same time.

In short, a uniqueness argument that defends itself against universality (and thus comparability) by grounding itself in increasingly exclusivist claims cannot contribute to resolving global conflicts in the spirit of restoration and reconciliation. This is particularly true for situations where a politics of difference has led to an apologetic rhetoric of national particularity and the formation of competing trauma narratives.

Transitional Justice, Phase II: National Autonomy and Politics of Reconciliation

Does transitional justice offer an alternative that escapes such negative circularity? In the 1980s – still before the collapse of the Soviet Union but then certainly accelerated by it – the so-called second phase of transitional justice was set into motion. “Phase II is associated with a period of accelerated democratization and political fragmentation ... [and] the

⁵¹ Alexander, *The Social Construction of Moral Universals* (see fn 8), 58.

form of transitional justice that in fact emerges is associated with nation-building”.⁵²

This shift of transitional justice to nation-building complements well the attention given to particularity as I described it above regarding the uniqueness debate in the context of a politics of difference. After the immediate postwar period with its internationalization of jurisprudence (Phase I) and after the cold war, which stalled most efforts of pursuing an international human rights agenda, transitional justice dovetailed with an emerging politics of difference in that both no longer strongly appealed to international and universal validation. As a politics of difference clamored for recognition of the rights and sufferings of particular peoples, transitional justice of Phase II sought to redress past injustices through mechanisms that preserved national autonomy. Ralf Wüstenberg, who examined the situation in South Africa and post-1989 Germany in his comparative study *Politische Dimension der Versöhnung*, observes: “To overcome the division of the past, political decision making prioritized nation-building”.⁵³

⁵² Teitel, *Transitional Justice Genealogy* (see fn 10), 71. Matthew Fehrs, my colleague in political science, points out that the struggle for national sovereignty during the cold war, which was mostly an anti-colonial struggle aligning itself along the axis of the superpowers, was disinterested in international justice issues. At the end of the cold war, however, a salience of human rights and transnational justice increased because more nations than ever democratized and because the decline of superpowers made more likely civil strife and civil war. Given this international relations perspective, Phase II of transitional justice becomes potent at the moment when global democratization efforts dovetail with an increase of regional and national conflicts.

⁵³ Ralf Wüstenberg, *Die politische Dimension der Versöhnung. Eine theologische Studie zum Umgang mit Schuld nach den Systemumbrüchen in Südafrika und Deutschland*, Gütersloh 2003, 139. See also the shortened and condensed English translation of his study, Ralf Wüstenberg, *The Political Dimension of Reconciliation. A Theological Analysis of Ways of Dealing with Guilt during the Transition to Democracy in South Africa and (East) Germany*, Grand Rapids MI 2009.

Besides nation-building, transitional models of Phase II also showed more flexibility with respect to following merely retributive justice models as practiced during Phase I. The new models tended “to rely upon more diverse rule-of-law understandings tied to a particular political community and local conditions”⁵⁴, and offered, in the words of Elizabeth Kiss, “new vocabularies of truth and justice as well as new institutional repertoire for pursuing them”.⁵⁵ In the second phase, key terms emerged that are frequently associated with transitional justice, including restorative justice, societal healing, reconciliation, rehabilitation, and social integration. Giving preference to restorative justice over against retributive justice paralleled the move from international criminal law to national models of coming to terms with the past. Instead of Nuremberg’s *International Military Tribunal*, autonomous national truth commissions were charged to restore past injustices. Priscilla Hayner in her important book *Unspeakable Truth*⁵⁶ identifies and analyzes 21 of these truth commissions for the time period of 1974 to 2001. They include such countries as Uganda, Peru, Argentina, Brazil, Chad, Nepal, Zimbabwe, Haiti, South Africa, Sierra Leone, Ecuador, and also Germany’s *Enquete Kommission*, the Commission of Inquiry for the Assessment of History and Consequences of the SED Dictatorship in Germany (1992-1994).⁵⁷

⁵⁴ Teitel, *Transitional Justice Genealogy* (see fn 10), 71.

⁵⁵ Elizabeth Kiss, *Moral Ambition Within and Beyond Political Constraints: Reflection on Restorative Justice*, in: Robert Rotberg and Dennis Thompson (Eds.), *Truth v. Justice. The Morality of Truth Commissions*, Princeton 2000, 68-98, here: 70.

⁵⁶ Priscilla Hayner, *Unspeakable Truths. Facing the Challenge of Truth Commissions*, New York 2002.

⁵⁷ Other important works on national truth commissions include Rotberg/Thompson, *Truth v. Justice* (see fn55), and Brandon Hamber, *Transforming Societies after Political Violence. Truth, Reconciliation, and Mental Health*, New York 2009. With regard to the German “Enquete Kommission,” it was evident that Holocaust memory strongly intruded its transitional justice work. The process of coming to terms

The second phase, then, is characterized by efforts to promote national healing instead of international conflict resolution; to promote political reconciliation instead of criminal prosecution; to support social and psychological rehabilitation of victims rather than a justice system centered on the guilt of perpetrators; to advocate truth-telling rather than justice through criminal procedures. It established public witness forums, in which individuals could testify to traumatic experiences and where collective rituals of reconciliation were enacted. It also combined quasi- or proto-judicial enforcement with a collective *ars memoria*. In sum, the second phase of transitional justice focused on national efforts in order to restore some peaceful forms of coexistence between former perpetrators and their victims.⁵⁸

The innovative models of restorative justice are, at least indirectly, linked to a cultural politics of difference, but they also counteract the latter's negative effects. On the one hand, efforts of nation-building and national restoration can be read as an extension of the preference for particularity that defines a politics of difference; on the other hand, expanding and merging the concept of "difference" with a politics of reconciliation helps to evade the exclusivist trap inherent in an understanding of difference as uniqueness.⁵⁹

with the SED-dictatorship had been continuously haunted by the ghosts of the past, writes Christiane Wilke in *Enter Ghost: Haunted Courts and Haunting Judgments in Transitional Justice*, in: *Law and Critique* 21 (2010), 73-92.

⁵⁸ The boundary between national and international mechanism in transitional justice cannot always be drawn neatly. *The United Nations*, for example, has helped in the creation and financing of the Truth Commissions in El Salvador and Guatemala. Also, international civil societies such as *Doctors Without Borders*, *The International Red Cross*, or church organizations are an important component. "International civil societies" and "intergovernmental organizations ... play a variety of roles in national transitional justice"; David Crocker, *Truth Commissions, Transitional Justice, and Civil Society*, in: Rotberg/Thompson, *Truth v. Justice* (see fn 55), 99-121, here: 116.

⁵⁹ Bashir and Kymlicka state that a "politics of difference" and a "politics of reconciliation," which originally applied to different political con-

With a growing preference for a politics of reconciliation, mechanisms of participatory inclusion were advanced that aimed at bringing together different groups formerly in conflict. One could state that a politics of reconciliation, pursued by largely autonomous national bodies such as the various truth commissions, liberates the question of uniqueness from a narrowly understood notion of particularity. It can do so because it does not limit itself to the more circumscribed sphere of court rooms with its criminal procedures (as happened in Phase I) but, instead, focuses on public acts of witnessing by victims as well as public confessions of perpetrators, the latter often broadcast and sensationalized through the media.⁶⁰ As publicly staged events, a politics of reconciliation acknowledges the victimization and suffering of particular people while it avoids the pitfalls of exclusivist uniqueness. A successful politics of reconciliation affirms the singularity of experiences of suffering: not by safeguarding these experiences as unique political memory or by exposing them to undue competition but by allowing them to enter the public realm of discursive contestation that is a hallmark of deliberative democracies.

texts, eventually merged. “[W]e can say that the politics of reconciliation initially emerged as part of the transition to a stable democratic order, whereas the politics of difference emerged to remedy deficits within consolidated democratic orders. However, while these two developments initially arose in different contexts, in response to different problems, they increasingly interconnected in many countries ... [D]ebates about multicultural inclusion are increasingly influenced by ideas of reconciliation; and debates about reconciliation are increasingly influenced by ideas of multicultural citizenship” (Bashir and Kymlicka (see fn 33), 4-5). Bashir and Kymlicka also provide a helpful list of relevant literature on the politics of difference and of reconciliation (ibid., 6).

⁶⁰ Leigh A. Payne, *Unsettling Accounts. Neither Truth Nor Reconciliation in Confessions of State Violence*, Durham 2008.

From Trauma Narrative to Dialogue

Under certain conditions, a politics of reconciliation might even go so far as to acknowledge the human dignity of perpetrators. It does so by approaching perpetrators as misdirected agents rather than the monstrous product of uncivilized evil.

Such a conciliatory move toward perpetrators remains, however, a sore point and easily lends fodder to claims used by the defenders of uniqueness. Are perpetrators deserving any understanding or, perhaps, even clemency? Especially in the context of the German discourse on the Holocaust and the Second World War, such mental generosity is almost unthinkable. Given the widespread white-washing of Nazi perpetrators in postwar Germany, the argument of the uniqueness would be a valuable safeguard against trivializing culpable wrongdoing and against forgetting the extreme harm suffered by the victims. The extraordinary extent to which the Nazis went in their genocidal policy and the severe victimization of targeted communities weigh heavily against any facile politics of reconciliation. Furthermore, given the proclivity of a politics of reconciliation toward nation-building, wouldn't such a politics simply lead to greater national cohesion at the cost of the non-recognition of victims? In such a case, wouldn't the insistence on the uniqueness of the Jewish trauma be a mechanism with which to resist the assimilating tendency of a national cohesion and renewal project?

As we have seen, the first phase of transitional justice paid insufficient attention to the particularity of the Jewish trauma. The international jurisdiction at Nuremberg focused on the specific deeds of the Nazi regime and Nazi perpetrators rather than on the trauma of victimized groups. The retributive justice at Nuremberg saw itself as an instrument of civilization, as a mechanism to rectify a once civilized society gone awry. The IMT represented the triumph of civilization over the criminal savagery of the Nazis. Wilke, in her case

study on the links between international jurisprudence, human rights, and imperial discourses on civilization, quotes the U.S. representative for the prosecution at the IMT, Robert Jackson: "These crimes were committed against us and against the whole society of civilized nations by a band of brigands who had seized the instrumentality of a state"⁶¹. For the architects of the IMT, at stake was the restoration of civilization, not the trauma of victims.

Jeffrey Alexander puts forth a similar analysis when looking at the postwar "progressive narrative," which interpreted Nazism as a regression into uncivilized evil. The progressive narrative regarded the victory over Nazism as more important than the mending of the Jewish trauma. "The trauma that the Jews experienced in the midst of their liquidation was represented as one among a series of effects of Nazi evil," Alexander writes. "The force of the progressive narrative meant that, while the 1945 revelations confirmed the Jewish mass murder, they did not create a trauma for the postwar audience ... Postwar redemption depended on putting mass murder 'behind us,' moving on, and getting on with the construction of the new world"⁶².

Such a narrative, which did not linger on Jewish particularity but wanted to move forward, changed when the second phase of transitional justice was set in motion. With the second phase's proclivity for social restoration, sensitivity toward individual and collective trauma moved to the center of attention. The "Holocaust drama became, for an increasing number of Americans, and for significant proportions of Europeans as well, the most widely understood and emotionally compelling trauma of the twentieth century." The Holocaust became a "trauma-drama," which people "returned to time and time again"⁶³. We can ask then: is the uniqueness of the

⁶¹ Wilke, *Reconsecrating the Temple of Justice* (see fn 18), 191.

⁶² Alexander, *The Social Construction of Moral Universals* (s. fn 8), 17, 19.

⁶³ *Ibid.*, 37, 34.

Holocaust—in the second phase of transitional justice, paralleled by the emergence of the trauma-drama narrative – located in the magnitude of trauma and its enduring effects across generations?

The literature on restorative justice does not address the issue of the in/comparability of the Holocaust trauma – hence, in this sense, it does not give it the status of uniqueness – but it does refer to the extensive psychological and therapeutic research concerning the Holocaust. Just as the Holocaust shifted from a “progressive narrative” to a “trauma narrative,” transitional justice understood as restorative justice began to pay attention to trauma research.⁶⁴ This new sensitivity toward trauma can be read also as a result of a culture of difference with its focus on particularity; it was subsequently put into practice as part of the mechanisms of a politics of reconciliation.

How the Holocaust affected victims and perpetrators over their lifetime and how it continues to affect their descendants as well as communal and social structures are of utmost importance for the social rehabilitation efforts of restorative justice and a politics of reconciliation. Minow writes that restorative justice tries to move beyond the purely judicial frame by consulting and applying psychological insights. Such insight assists in avoiding mistakes previously made under the aegis of retributive justice. “The notion of healing seems foreign to the legal world underpinning prosecutions. Emotional and psychological healing did not figure largely in the national and international responses during the first

⁶⁴ “In this tragic narrative of sacred-evil, the Jewish mass killings become not an event in history but an archetype ... [of] an experience of trauma greater than anything that could be defined by religion, race, class, region ... It provided the symbolic extension so necessary if the trauma of the Jewish people were to become a trauma for all humankind ... Instead of redemption through progress, the tragic narrative offers ... the drama of the eternal return. ... There was only the possibility of returning to it: not transcendence but catharsis” (ibid., 31-33).

decades after the Holocaust. Yet healing recurs in contemporary discussions”.⁶⁵

Restorative justice literature relates to the Holocaust trauma as an exemplary (rather than unique) case insofar as this literature relies on the ample trauma research and therapeutic studies devoted to understanding the long lasting effects of the Holocaust. In this sense, the Holocaust as trauma narrative is seen as an important resource for other transitional justice environments, with the aim of acknowledging the particular suffering of multiple victim groups and of restoring them to a reasonably healthy life. In addition, restorative justice consults studies that focus on perpetrators and their postwar lives, with an interest in understanding how best to balance societal needs for penalty and rehabilitation.

The most thoroughly studied case, in which public encounters between victims and perpetrators were staged and facilitated, is the South African *Truth and Reconciliation Commission* (TRC). Wüstenberg, who analyzes the reconciliatory ideas that guided the TRC, identifies three “regulative mechanisms” with which a politics of reconciliation operates: “Reconciliation is unthinkable without truth; reconciliation has to do with acknowledgment; reconciliation is an encompassing offer for integration”.⁶⁶ The public recognition of the suffering of victims, the public acknowledgment of the truthfulness of their testimonies, and a negotiated confrontation between victims and perpetrators – all of which are geared toward social integration – distinguishes the quasi-judicial procedures of the TRC from traditional criminal justice or other forms of international tribunals.

The will to integrate perpetrators into a public narrative that centers on the testimonies of victims requires a delicate balancing act: it must create safe spaces for traumatized people without molding such trauma into a master narrative or self-interested national memory; it also requires delicate ne-

⁶⁵ Minow, *The Hope for Healing* (s. fn 21), 241.

⁶⁶ Wüstenberg, *Die politische Dimension der Versöhnung*, (s. fn 53), 139.

gotiations between naming and identifying with precision the culpability of perpetrators without burdening large segments of a society with an unpaid guilt that might become a festering source of resentment.⁶⁷ South African psychologist Pumla Gobodo-Madikizela, who had been a member of the TRC, writes in *A Human Being Died that Night* about meeting Eugene de Kock in prison (de Kock had been tried and declared guilty for clandestine and atrocious killing operations under the apartheid regime⁶⁸): “Holocaust discourse has sometimes emphasized remembering but not so clearly dialogue, which is critical if victims are to live again with perpetrators in the same society, or indeed if they are to live in greater harmony with themselves”.⁶⁹

Following Gobodo-Madikizela’s advocacy of dialogue, one could say that a successful politics of reconciliation aims at preventing the formation of a unique trauma narrative if, by that, we mean that a particular trauma narrative is put on a pedestal so high that it is beyond the reach of dialogical engagement. Since taking the trauma of each victim seriously requires an acknowledgment of singularity, it might be good to speak about the singularity of trauma that can, under

⁶⁷ Prosecuting state-sponsored violence is beset by intractable legal and moral problems due to the layered levels of complicity that have widely and deeply infiltrated society. Neither in postwar Germany nor Cambodia or Rwanda, to name only three examples, was it possible to punish everyone who had participated in the criminal deeds and genocidal killings. Also, in genocidal situations, culpability is usually defused, which results in the absence of individually acknowledged guilt. Perpetrators in state-sponsored killings do not see their acts of cruelty in terms of individual evil because state ideology frames violence in terms of collective agency. “In collective evil,” Vetlesen writes, “the individual agent from the very start sees himself as acting on behalf of his group”; Arne Johan Vetlesen, *Evil and Human Agency. Understanding Collective Evildoing*, Cambridge 2005, 172.

⁶⁸ See also De Kock’s own straightforward and yet apologetic memoir, Eugene De Kock, *A Long Night’s Damage. Working for the Apartheid State*, Saxonwold South Africa 1998.

⁶⁹ Pumla Gobodo-Madikizela, *A Human Being Died That Night. A South African Woman Confronts the Legacy of Apartheid*, Boston 2003, 119.

facilitated conditions, be enriched by dialogue. Rather than locking trauma into a firm (cultural) narrative and fixed (collective) memory, societal efforts must be expended to transforming injustice and suffering through dialogical processes.

Transitional Justice, Phase III: Universal Paradigm or Politics of Entrenchment?

New and old conflicts that seem to resist resolution (such as in Rwanda, South Africa, Israel/Palestine) as well as the proliferation of severely oppressive nation-states and terrorist networks have undermined much of the twentieth-century optimism regarding the establishment of democratic structures globally. Given this situation, political hawks, skeptics, and otherwise disillusioned commentators have suggested that a politics of reconciliation, as practiced during the second phase of transitional justice, has failed and that only a return to retributive justice can save the world from the danger of uncivilized savagery. It seems as if the whole world has slid into a dangerous territory where transitional justice needs to be reconceptualized. Consequently, the third phase of transitional justice, according to Teitel, which began at the dawn of the twenty-first century, is characterized by the aim to turn it into an enforceable, global norm.

The *fin de siècle* acceleration of transitional justice phenomena is associated with globalization and typified by conditions of heightened political instability and violence. Transitional justice moves from the exception to the norm to become a paradigm of rule of law. In this contemporary phase, transitional jurisprudence normalizes an expanded discourse on humanitarian justice constructing a body of law associated with pervasive conflict, which contributes to laying foundation for the emerging law of terrorism.⁷⁰

⁷⁰ Teitel, *Transitional Justice Genealogy*, (s. fn 10), 71-72.

The third phase of transitional justice seems to pick up the pieces where the IMT in Nuremberg had left it. However, the temporary nature of the former IMT (the IMT was disbanded after it fulfilled its task) had to be replaced with permanent structures that would guarantee an internationally enforceable retributive justice. It is this vision of permanence that leads to contested views on the goals of transitional justice in its current phase.

The contestation could be described, in simplified terms, as a difference between, on the one hand, a retributive justice that is reinstated in the third phase of transitional justice through multilateral and international tribunals (most famously the *International Criminal Tribunals* for the former Yugoslavia and for Rwanda, and the 2002 ratified *International Criminal Court* [ICC]) and, on the other hand, a retributive justice system that gets enforced through unilateral mechanisms while demanding universal validation (for example, legal and extralegal antiterrorism campaigns, counterwarfare, war on terrorism, legitimating torture in liberal democracies, etc).⁷¹ Much could be said about these new developments, but here I limit myself to five brief observations

⁷¹ Lissa Skitolsky offers a critical analysis, from a philosophical perspective, on the unilateral justifications of the current American war against terrorism. She observes how politicians, who dared comparing the mechanisms of this asymmetrical war with aspects of the Nazi regime, were forced to recant or resign. "The outcry over any comparison between Nazism and the war against terrorism is due in part to the belief that Nazism represents an extreme and unique form of evil against which we can affirm the value of our own socio-political institutions and practices"; Lissa Skitolsky, *The Case of Comparison Between Nazism and the War Against Terror. A Study in Bio-Politics*, in: *International Studies in Philosophy* 38/2 (2006), 159-177, 159-160. Ironically, those who support an exemption from legal and moral accountability concerning "enemy combatants," "detainees," Guantanamo, or "indefinite detention" felt free to make comparisons between Nazis and the newly declared enemies. For example, Dick Cheney stated in 2004, that "just as surely as the Nazis during World War II and the Soviets during the cold war, the enemy we face today is bent on our destruction" (quoted *ibid.*, 175).

that relate to the intersection of Holocaust and transitional justice discourses.

First, with the establishment of the ICC in The Hague (Netherlands), the new phase of transitional justice makes possible a renewed effort of strengthening international criminal justice which began at the IMT in Nuremberg.⁷²

Second, and on the flip side of these positive international efforts, the creation of a globalized norm for international jurisprudence can be misused for particular interests under the guise of moral universals. Whosoever resists such universal consent is in danger of being perceived as an enemy of civilization (an argument oddly reminiscent of the savagery-civilization duality advanced by the architects of the IMT).

Third, the Holocaust uniqueness claim has slowly but steadily changed into an argument about the special nature of antisemitism. With the sustained rise of genocide studies, few scholars today argue for the uniqueness of the Holocaust compared with other genocides. One might concede to the Holocaust a singular nature, but no different from ascribing singularity to each genocidal calamity. We can observe, then, that while there are fewer defenders of the position that the Holocaust is incomparable, the special nature of antisemitism steadily gains attention. In other words, the uniqueness claim is shifting from genocide to hate ideology.⁷³

⁷² The ICC currently pursues criminal procedures against perpetrators in Uganda, Kongo, Kenya, and Dafur. It includes people like Congolese Thomas Lungaba for his forced recruitment and abuse of child soldiers, Sudanese head-of-state Al-Bashir, and, most recently, Libyan president Ghaddafi.

⁷³ Among the examples of shifting the focus away from the Holocaust to antisemitism, one can look at public utterances of hardline Israeli politicians. The debate over the "new antisemitism," which can be traced to the 1970s - see Novick, (see fn 24), 170 - got fueled by the 9/11 events, which shifted it from European and Christian forms of antisemitism to Islamic antisemitism. See, for example, Patterson's (David Patterson, *A Genealogy of Evil. Anti-Semitism from Nazism to Islamic Jihad*, Cam-

This shift, should it get sustained support in the future, is problematic on at least two accounts, and has, with respect to the state of Israel, quite contrary results. On the one hand, ascribing to antisemitism a unique feature can lead to legitimizing specific international actions or sanctions on behalf of national interests, since failing to do so, according to this logic, would result in another Holocaust of the Jewish people. Such a position would be stridently in support of a hard-line Israeli politics. On the other hand, shifting the focus away from the singularity of the Holocaust gradually divorces it from its ideological roots of anti-Judaism and antisemitism, with the result that the Holocaust turns into a de-Judaized, universal issue while antisemitism becomes identified as a Jewish issue. A de-judaized Holocaust, in turn, becomes a paradigm of evil that is applicable to all kinds of international crisis zones, including the facile political conflation of Nazi crimes with the Israeli occupation of the West Banks. The Holocaust, so to speak, is now located in the occupied West Banks and the Gaza strip.

Fourth, public opinion makers, whether in Europe or in the Islamic world, have criticized the hegemony of the Holocaust narrative, suggesting that it has become part of a normative politics that legitimates a Western form of international decision making and jurisdiction. The perception of the hegemonial status of the Holocaust as trauma narrative occasionally leads to remarkable international occurrences, such as Ahmadinejad's proposal to respond to the Western caricatures of Muhammad with caricatures of the Holocaust. Rather than calling for caricatures of Jesus, which would have been the more appropriate equivalent to Muhammad, he pitched a secular historical event against a religious figure. In other words, in the non-Western world, the Holocaust is perceived as the true "sacred cow" of the post-1945, secularized Western hemisphere. The eccentric gesture of the

bridge 2011) construction of genealogical links between Nazism and Islamic jihad.

Iranian president illustrates how strongly members of non-Western nations perceive the West of being (politically, emotionally) bound to the Holocaust: it is assumed, perhaps rightly, that the Holocaust contains a higher normative power than the singularity of Jesus.

Fifth, given the discursive bedlam concerning the construction of moral universals, which, in the West, is torn between particular memory politics and appeals to universally applicable legal norms, neither a politics of difference nor a politics of reconciliation seems to be able to create a new political vision. In its stead, we can observe a global spread of a “politics of entrenchment,” where increasingly ethnonational and ethno-religious interests are at stake in ideological, militant, and armed battles.

Singularity as Dialogical Responsibility

The uniqueness vs. universalization alliteration, with which I began this essay, is not only semantically problematic but also leads to an unhelpful circularity of argumentation. Among the unfortunate results, I have mentioned the emergence of competing trauma narratives that prevent empathetic solidarity instead of helping to build bridges of understanding. I saw this as the unintended result of a politics of difference. I also mentioned that a normative politics of memory leads to political entrenchment in global conflict zones; it does not help in transforming political disagreements. I called this a politics of entrenchment, which is currently infecting international relations.

In contrast to a politics of difference and a politics of entrenchment, a successful politics of reconciliation, as it had been experimented with in the second phase of transitional justice, seeks a dialogical path. In light of its dialogical mandate, the question of the uniqueness of the Holocaust becomes a non-issue, since dialogue requires points of connection and, hence, is fundamentally open to comparability.

Such openness is not an invitation to trivialize, diminish, ridicule, or otherwise relativize the magnitude of the Shoah. As a matter of fact, the dialogical path does not devalue singularity.

When we return to an understanding of singularity as introduced in the opening pages, we might recall that singularity refers to a peculiar trait embedded in a larger family resemblance. Combined with a dialogical mandate, singularity ceases to be an abstract principle and, instead, identifies specific relations that people have vis-à-vis the Holocaust. Instead of asking about a principled difference, we ask for whom, in what circumstances, and in what relational webs the Holocaust is singularly important. If the value of relationality were to move into the center of our thinking, then we would appreciate and support the dialogical work that is required when approaching a traumatic past, with the aim of moving beyond entrenched memories toward possibilities of social repair.

For example, I can say with certainty that the Holocaust is of singular importance to me due to transindividual conditions that have been passed on to me through national and family origins. I find myself engaged in a web of multiple relationships between Jews, Germans, Poles, Christians and Americans (and I could add other relational webs determined by my gender, race, professional affiliation, etc). These relationships cannot be fully understood without the Holocaust; they also cannot grow and mature unless the Shoah becomes integrated in those places where my life intersects with the lives of others.

This does not mean, however, that the Holocaust bears the same weight and significance in all contexts. In places where the Holocaust intersects or overlaps with other burdens of past or present systems of injustice, the value of relationality dictates new and innovative forms of bringing into play the history and memory of the Holocaust. For example, in France, coming to terms with the Holocaust intersects with

its colonial past in Algeria; in Turkey, it intersects with the unacknowledged genocidal killings of Armenians; in the United States, with the murderous conquest of indigenous people and the legacy of slavery; in South Africa, with the white supremacy of the apartheid system. To take into account these various memory narratives in national and transnational contexts, Michael Rothberg suggests that we speak about “forms of *multidirectional Holocaust memory* that emerge out of transnational encounters”⁷⁴. Such a notion, he writes, “capture[s] the interference, overlap, and mutual constitution of the seemingly distinct collective memories that define the postwar era and the workings of memory more generally”⁷⁵. Although Rothberg does not engage the ethics of dialogical relationality, his analysis supports and amplifies my point that the singularity of the Holocaust arises not in its uniqueness but through shared layers of multiple cultural experiences. “People impacted by those [other] histories, such as the history of colonialism and decolonization, make claims on a *shared but not necessarily universal* moral and political project”.⁷⁶

As long as we inhabit a special relation to the victims and the perpetrators of the Shoah, to the communities to which they belong, and to their descendants, we can safely speak of the singular significance that the Holocaust holds for us. This is not just empty rhetoric or an abstract thought, because such a relationship obligates us to engage in responsible dialogue. Beyond universalized and decontextualized claims, what makes the Holocaust singular (but not unique) is not an abstract norm but one’s particular proximity to this event.

⁷⁴ Michael Rothberg, *Multidirectional Memory and the Universalization of the Holocaust*, in: Alexander et al., *Remembering the Holocaust* (see fn 8), 125 (emphasis in original).

⁷⁵ *Ibid.*, 126.

⁷⁶ *Ibid.*, 132 (emphasis in original); see also Michael Rothberg, *Multidirectional Memory. Remembering the Holocaust in the Age of Decolonization*, Stanford 2009.

This is not a matter of personal choice, but one of historical exigency.

Once one consciously accepts the dialogical responsibility that stems from one's proximity to the history, memory, and legacy of the Holocaust, it calls for a relational commitment to one's conversation partners. But it does not call for a fixed Holocaust narrative that must be asserted regardless of circumstances. In situations of global conflict resolution, a person conscious of his or her dialogical responsibility does not need to expect from his or her conversation partners that they give equal weight to the Holocaust, since each is called into the responsibility of his or her own historical exigency. In conversations with African Americans, for example, I can bring the singular significance that the Holocaust has for me into the conversation without expecting this to change the singular meaning that slavery holds for my friends. In encounters with Palestinians, I can testify to the kind of responsibility I have toward Israelis and Jews because of the singularity of my relation to the Holocaust without having to expect that my Palestinian interlocutors will share this view or that, therefore, the value of the *Naqba* is diminished.

Being called into dialogical responsibility within a framework of restorative justice and a politics of reconciliation goes hand in hand with sensitivity toward each other's histories. It acknowledges how and where these histories intersect in a shared present. When we engage in contextualized and responsible dialogue, refracted in the mirror of multidirectional memory work, we are committed to "a shared but not necessarily universal moral and political project."