

Doing Justice to the Dead

Date: Thursday 25 November 2004

Time: 6pm

Venue: Old Theatre, Old Building

Speakers: Lincoln Crawford OBE, David Ould and Dr John Torpey

Chair: Professor Conor Gearty

John Torpey

Thank you Conor. I always think it's a difficult position to be in to stand between a bunch of people and cocktails but I hope you'll indulge me in any case. I want to thank the Centre for the Study of Human Rights for making possible my participation in this event.

My subject is doing justice to the dead, a version of the broader problem of coming to terms with the past or what in German is known as *Geschichtsbewältigung*, or mastering the past. This issue has grown increasingly significant on the political and scholarly agenda in recent years. Indeed a few years ago the Nobel Prize-winning Nigerian author, Wole Soyinka, suggested that we were in the midst of what he called a "*Fin de millenaire* fever of atonement." This phenomenon I think has ridden on the back of the growing significance of the Holocaust in western cultural self-understanding. The Holocaust in turn has served as a kind of template or model for a variety of campaigns around the world to come to terms with the past, a kind of standard phrase here. Another important part of the background has been the process of decolonisation, which has had both internal and external dimensions. That is, white settler colonial regimes generally withdrew as their rule was delegitimised in the post World War II period. Similarly, those groups that could be seen as internally colonised had a stronger basis for challenging the rule of white settlers over them. In the process, there arose a new understanding of the notion of "indigenous peoples," now meaning not those who reside in a country or place, but referring rather to the descendants of those once colonised mainly by Europeans.

More generally I think identity politics and the so-called politics of recognition came to compete with and in some degree perhaps to supplant the so-called politics of redistribution. In the US, at least, this process was also fuelled by what the sociologist John Skrentny has called the minority rights revolution and its emphasis on certain designated minorities as disadvantaged.

On a much more general level I think the success of Freudianism helped to promote the notion of the importance of the past in shaping the present. That is, Freud and psychoanalysis emphasised the way in which past experiences tend to govern our contemporary behaviour. So therapeutic sensibilities I think also play an important role in these developments as well.

All of this contributed I think to a substantial reorientation of some parts of progressive thinking which by definition had always focussed on the future. Now it almost seems as though the old labour movement slogan, 'don't mourn, organise' was reversed to read 'organise to mourn'. To put it another way, there's been a shift from Voltaire's dictum "to the living we owe respect; to the dead, we owe only the truth" to Faulkner's claim that "the past is not over, it's not even past." Now Faulkner's remark raises the obvious problem that it's not always possible to delineate the present from the past. When the German philosopher Max Horkheimer wrote in a letter to his friend and colleague Walter Benjamin that "past injustice is over and done with; the slain are truly slain," he thought he could make that distinction clearly. In some cases past injustices seems to continue into the present. Moreover, some groups or more precisely certain members of some groups refuse to kick the dirt over past injustice. Indeed they regard the lack of attention to past injustice as a continuation or even a repetition of that past injustice. Demands by certain collectivities for the rectification of past wrong raises the question of the modes whereby this can be achieved, if at all – in other words, whether Horkheimer isn't really right that not much can be done about past injustice. One increasingly important mode that I have focussed most of my scholarly attention on in recent years is associated with this notion of reparations. But it's important to note first of all I think that the meaning of that term has undergone a dramatic transformation in the post World War II period.

Before World War II the term referred exclusively to “war reparations” and in some sense it was redundant to add that qualifier, war reparations. In other words it was a fine amongst states; the winners of the War said that the losers had caused it and were going to pay the costs for starting the whole mess., Versailles is here the paradigmatic case. Of course this meaning still exists, I don't mean to suggest that it doesn't exist any more but in recent years, I think in significant part due to the prominence of the reparations for the holocaust and related crimes of the Nazis, the term has been appropriated by many groups seeking redress for historical wrongs. A good example is the South African group called the South African Reparations Movement, which defines the term as a compensation “owed by the former oppressor to the oppressed for the wrongs that were done to them.”

Now this approach or this way of thinking about things I think works better in some cases than in others. The notion of reparations for blacks in the United States for example tends to generate antipathy among whites in part because it suggests the idea of individual checks to blacks – which is not necessarily in fact the goal of many reparations activists. There is division in this community over what exactly they're aiming for but often it has much more to do with what South Africans for example would understand as economic empowerment, small business loans, educational loans and the like.

Moreover there is division among reparations activists in the United States case over whether the claim is for slavery, in other words whether compensation is being sought for slavery, where there's nobody alive who actually lived through slavery, or whether it's in fact for Jim Crowe segregation laws and their consequences, much of which has to do with the gap in wealth between whites and blacks which had a great deal to do with the fact that blacks were until 1948 precluded by so-called “restrictive covenants” from buying many properties. As it happens, apropos the terminology, in turn Japanese Americans who began to struggle for some kind of compensation in the '70s but especially in the '80s were advised by influential figures to use the term “redress” rather than “reparations” because the latter was seen as too scary on the one hand and the notion of redress was said to be something to which Americans had a right, whereas reparations was not something to which they had a right.

Now, the notion of reparations, the plural, in turn I think has increasingly come to mean something different from reparation, the singular. In essence now one *pays* reparations but one *makes* reparation. That is, reparation can come in a variety of different forms, both material and symbolic, and these might include aside from economic compensation of some sort, memorialising certain events, truth commissions to clarify what exactly happened and try to create an official statement of what happened, clearing one's name if one's been wrongfully arrested and that sort of thing. These kinds of provisions have now become part of international law as a result of the United Nations' so-called basic guidelines on the right to reparation for victims of gross violation of human rights sometimes known as the Bassiouni Principles or by reference to their originator the Van Boven Principles, Theodor Van Boven, a name that may be familiar to many of you, who started out working on this set of issues but is now Head of the UN Commission on torture, the body that deals with torture. That is, it's come to be more or less a norm that a persons who have been wronged and who are still alive have a right to some sort of compensation and redress.

Now whether they get it or not is a different story but in theory this I think now has become a norm, a part of customary international law. But the cases of those who have been wronged and are no longer alive tend to be much more difficult because one part of the problem here is that attempts to get compensation or redress of some sort for wrongs from the past from which there are no survivors today have this tendency to reassert the boundaries, usually racial or ethnic, on the basis of with the original injustices were perpetrated. So in other words a whole class of people is said to be the likely beneficiary of some set of compensatory acts. And of course this raises difficulties in the case of, for example, reparations for blacks in the United States. The question you tend to get is, well, do Oprah Winfrey and Michael Jordan also get reparations if blacks get reparations?

Even affirmative action programmes that target under-represented or disadvantaged minorities while being in a certain sense more future-oriented are often criticised for helping those members of these groups who are already relatively advantaged. That is to say, they don't seem to do a very good job of helping the poorest of the poor and this criticism or argument in turn tends to illicit the suggestion that people of any

ethnic background should be assisted on the basis of their class position, in other words the response is to say, well, let's help everybody who is badly off in some particular sense but basically in a class or income sense, irrespective of their ethnic or racial identity. This is however sometimes rejected because it fails to address what is said to be the kind of super-oppression or super-exploitation of certain groups based on their ethnicity or race historically.

Now, I don't want to overstay my welcome because I've been told this is severely sanctioned here but I do want to say a few words though about thinking about the past as opposed to the present which I think is a significant issue in these discussions. I hinted earlier at this business about a kind of competition perhaps between coming to terms with the past on the one hand and fixing the present on the other and I have to confess that I tend to worry that sometimes more attention is paid to the past than is entirely desirable. Obviously people who wish redress and assistance in order to deal with past wrongs should be helped. But when I think of the campaign, for example, to have the Turkish Government declare that the Armenian massacres were genocide, it seems to me that there is a considerable irony here. When Raphael Lemkin created the term, the neologism of "genocide" during World War II, his aim – and of course the genocide convention embodies this hope – that the notion would be used to forestall or to put an end to a genocide that is now in progress. So the pre-occupation with having a set of events declared a genocide that took place 90 years ago, I mean obviously this would make some people feel better and there's a certain sense in which Turkish society I think would be much better off in airing this discussion more openly. But at the same time in the face of events in Darfur, northern Uganda, Congo and elsewhere, one I think has to wonder about whether this is the best thing that one could do with one's time and efforts. It might be a more fitting tribute to the dead to try to forestall a repetition of their fate.

Thank you very much.

[APPLAUSE]