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## The reality and hyper-reality of human rights: public consciousness and the mass media

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### Introduction

Scholarship on international human rights generally adopts two approaches. The normative approach focuses on treaties or other authoritative sources. The institutional approach emphasises governments, organisations or other actors charged with the norms' implementation. Much writing inevitably involves both approaches. Any critical stance is then often limited either to examining obstacles within the norms or their interpretation, or to pointing out the shortcomings of actors responsible for implementation.

The authors of human rights scholarship are often activists, lawyers, diplomats or judges, and may include scholars with professional affinities to those circles. They largely confine their critical scope to those normative or institutional levels. Some theoretical writings go further, proposing broader frameworks, such as liberal, legal-realist, post-Marxist, post-colonial, feminist, communitarian or deconstructionist. Those analyses too, however, frequently focus either on prevailing norms (individually or as a system) or on the performance of the relevant actors.

In this chapter, I shall examine a third layer of activity, the mass media. I shall treat the media as being on a par with, or more powerful than, the dominant systems of norms, in so far as the media determine the situations with which those norms are associated in the public mind; and as being at least on a par with organisations and governments, in so

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far as the media determine which situations are most visibly and urgently acted upon. The neglect of this decisive strand underscores the ongoing formalism of legal practice: norms and institutions receive the most attention, since they assume the official status proper to the promulgation, interpretation and implementation of rights. In most scholarship on international law and human rights, the role of the media, lacking any such formalised status, is cited, if at all, only tangentially.

Some international bodies, like the treaty-based Committees of the United Nations, or the Sub-Commission on Human Rights, do exhibit some independence from media trends.<sup>1</sup> Their roles, however, have remained minor. Even leading politicians scarcely know about them. In the world of real power politics, they do not need to know about such agencies. The Committees or the Sub-Commission may influence cooperative states in a symbolic hope that other states will some day follow suit; but they have wielded no real influence over the most heinous situations and regimes, either because responsible actors are not states party to the respective treaties,<sup>2</sup> or because they disregard the various agencies' findings or recommendations, which lack any enforcement mechanism. Meanwhile, bodies like the former UN Human Rights Commission, or its successor, the Human Rights Council, grimly display the irrelevance of any genuine and balanced picture of global human rights to countless UN member states.<sup>3</sup> Even high-profile NGOs, like Amnesty International, attract only sporadic attention, and usually only in the elite media.

To be sure, a good deal has been written on the portrayal of human rights in the media. As of this writing, however, little of that work appears in publications on international law or on international human rights. It is conducted mostly by political and social scientists, and is published in journals far from the mainstay of international lawyers. The

<sup>1</sup> For periodically updated archives, see Office of the United Nations High Commissioner for Human Rights, 'Human Rights Bodies', at [www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx](http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx) (accessed 15 December 2010); University of Minnesota Human Rights Library, 'United Nations Documents', at [www1.umn.edu/humanrts/un-orgs.htm](http://www1.umn.edu/humanrts/un-orgs.htm) (accessed 15 December 2010).

<sup>2</sup> For ratification information, see United Nations Organisation (UNO), 'United Nations Treaty Collection, Chapter IV: Human Rights', at <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=Den> (accessed 15 December 2010).

<sup>3</sup> See, e.g., Rosa Freedman, 'Improvement on the Commission?: The UN Human Rights Council's inaction on Darfur', *University of California-Davis Journal of International Law & Policy* 16 (2010), 81.

human rights community focuses upon formally empowered instruments, organisations or governments, with little appreciation for the mass consciousness of human rights that overwhelmingly decides the issues that attract or deflect power brokers' attention in the first instance; which mass consciousness is a media creation. If the media lacks any formal role, it more than compensates in its functional influence.

It is worth briefly noting two caveats. First, although I shall not speculate further on this point, even if we were to substitute rights discourse for a law or ethics that is less individualist or litigious in its origins or effects, the role of the global media, unless it were organised vastly differently than it is today, would still remain decisive. The problem of media dominance is not a problem for human rights *per se*. It would be a problem for anything conceivable, in today's sense, as a globally applied ethics. Accordingly, I am less interested in whether a rights discourse is better or worse than any alternatives, and more interested in the role the media assumes with arguable indifference to our legal or ethical paradigms. Secondly, in discussing the role of the media in international human rights, I shall consider them only as actors in generating a public consciousness of human rights. This analysis will not cover the media as, collectively, an object of legal or professional regulation, subject to their own positive norms, such as freedom of speech, defamation or other standards of press conduct. We must bear in mind, however, that the two sets of questions do remain linked. The link becomes evident in times of media blockades, or under totalitarian regimes, since the media's creation of a mass human rights consciousness crucially depends on what the media can report.

### Human rights in hyper-reality

In his chapter in this volume, David Kennedy warns that to frame certain issues as raising distinct concerns about human rights can divert our attention from other problems: 'a well-implemented ban on the death penalty, for example, can easily leave the general conditions of incarceration unremarked'. In that case, singling out capital punishment as a distinct human rights issue 'can make life-without-parole more legitimate, more difficult to challenge'.<sup>4</sup>

The example of the death penalty is probative, since the two other problems Kennedy cites, prison conditions and excessive sentences, are

<sup>4</sup> See p.XXX in Chapter 2 above.

themselves subject to human rights norms. The problem Kennedy evokes is *not* that some important issues enjoy, while others lack, the protections of higher-law norms. We would be hard-pressed nowadays to find an issue of any seriousness that does not in some way involve human rights. Rather, and particularly in our world of bloated and ever-expanding norms and instruments, the problem is that adequate attention cannot possibly be paid to all of them. What is decisive in our world is not which norms do and do not count as human rights, but rather which concrete situations attract attention.

Taking a converse scenario, if the media were suddenly to direct massive and concerted attention to prison conditions or excessive sentences, and to ignore the problem of criminal punishment, it is the death-row inmates who would then suffer. It would not be the sheer existence of formal norms, but rather the media that would have created the shift. The media drive human rights because there are already norms for virtually any situation that the media may report or overlook, and because organisations, institutions and governments overwhelmingly respond to the public pressures generated by the media.

Among the broader public, and among ruling elites, dominant understandings of what international human rights 'are' have little to do with the realities of actual abuses, and most to do with media choices. For example, following the USA-led invasions of Afghanistan in 2001 and then of Iraq in 2003, just under 800 'enemy combatants' were imprisoned at the detention centre in Guantánamo Bay, Cuba.<sup>5</sup> Meanwhile, throughout that period, armed conflict in the Democratic Republic of Congo (DRC) was counting its victims of death, torture, rape, mutilation, orphaning and displacement in the millions.<sup>6</sup> While coverage of Guantánamo during George W. Bush's second presidential

<sup>5</sup> See, e.g., Gordon Cucullu, *Inside Gitmo: The True Story Behind the Myths of Guantánamo Bay* (New York: Harper, 2009); Joseph Margulies, *Guantánamo and the Abuse of Presidential Power* (New York: Simon & Schuster, 2007).

<sup>6</sup> Gerard Prunier, *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (London: Oxford University Press, 2010); Phoebe Okawa, 'Congo's war: the legal dimension of a protracted conflict', 77 *British Yearbook of International Law* (2006) 203. See also, e.g., 'Congo death toll up to 3.8m', *Guardian Unlimited*, 10 December 2004, available at [www.guardian.co.uk/congo/story/0,12292,1370528,00.html](http://www.guardian.co.uk/congo/story/0,12292,1370528,00.html) (accessed 15 December 2010); Lydia Polgreen, 'War's chaos steals Congo's young by the millions', *New York Times*, 30 July 2006, available at [www.nytimes.com/2006/07/30/world/africa/30congo.html?ex=1311912000&en=b51825fef1e20057&ei=5088&partner=rssnyt&emc=rss](http://www.nytimes.com/2006/07/30/world/africa/30congo.html?ex=1311912000&en=b51825fef1e20057&ei=5088&partner=rssnyt&emc=rss) (accessed 15 December 2010).

term became more-or-less daily, not just in the American media, but throughout much of the world,<sup>7</sup> DRC went almost entirely unreported.

That kind of comparison, seemingly compassionate when the spotlight shifts to DRC's real victims, nevertheless breeds intractable dilemmas. We cannot escape the embarrassment that the question 'why should Guantánamo receive so much attention, and Congo so little?' is a mere variation on the positive assertion, 'Guantánamo should receive less attention!' But who would ever voice that demand? Once an event raises undeniably urgent questions of politics, ethics or rights, it becomes disconcerting, and evokes a spectre of authoritarianism, to call for less discussion of it. However noble one's intentions might be in encouraging coverage of other global situations, that desire would seem to stray too close to downright complicity in the camps. After all, the Bush administration would have relished a call for less coverage, particularly if replaced by a focus on human rights abuses by other governments. Any attempt to redress 'too much' reporting on Guantánamo would appear to undermine the democratic value of maximum discussion on issues of state action or public interest. Such a shift would also invite a grisly number-crunching game, wherein we weigh a few hundred victims of the camps against a few million in Congo or elsewhere. Such a calculus would degrade human rights to utilitarian, cost-benefit analyses in order to decide who 'deserves' how much coverage. Comparisons are odious.

The dilemma allows no easy resolution. We cannot approve of the extent of the Guantánamo coverage, so completely does it eclipse millions of other violations around the world. Yet nor can we condemn it, since the loudest possible noise against Guantánamo is crucial to the self-critical dialogue without which a democracy's essential elements of legitimacy and accountability are destroyed.

A common attitude towards the media might be called 'loosely pluralist'. We know that not every problem can be reported. Every day, the world is cluttered with millions of problems. The sheer notion that a given situation does or does not constitute a human rights 'problem' already presupposes some normative criterion that, in many cases, can be disputed. We instead hope for some balanced mix over the long run. Any given day's reporting will emphasise some problems over others. So we accept that the media are doing their job if, over time, we feel that an

<sup>7</sup> Cf. Eric Heinze and Rosa Freedman, 'Public awareness of human rights: distortions in the mass media', 14 *International Journal of Human Rights* (2010) 491, pp.507–8.

overall picture has emerged, at least of the world's gravest abuses. The problem, of course, as 'Guantánamo *versus* Congo' suggests, is that a 'reasonably complete and balanced picture' does *not* inevitably emerge 'over time'.

Nor does the problem reduce to one of elite *versus* popular media, or of left-wing *versus* right-wing media, or of privately *versus* publicly owned media. Although the elite outlets may provide better pictures than the popular press, they too privilege concerns with only tangential bearing upon human rights. The elite *New York Times*, or the centre-left *Guardian*, showed only marginally more interest in DRC than their more colourful counterparts.<sup>8</sup> The public BBC showed little more interest than the privately operated Murdoch outlets.

Only through the media can we glean what might be called a 'functional ontology' of human rights violations: not merely a study of norms on paper, nor even of violations that actually 'exist' in the world, but rather one (a) of those of which the existence matters, because the world's attention is sufficiently drawn to them; and (b) of those of which the existence does not matter, those which do not exist in any functional way, because the media bypass them. In theory, the falling tree makes a sound even if no one hears it: a violation exists even if it is never discovered or publicised. In practice, the decisive mode by which human rights exist, the only mode of existence which makes human rights in any way known to the public at large and to those in power, lies not in the real, but in the so-called 'hyper-real' world. In hyper-reality, the falling tree makes a sound only when someone hears it – and indeed not just a single sound, but through steady repetition. Jean Baudrillard sees hyper-reality, in opposition to reality, where our encounter is fundamentally driven not by lived experience of the object in question (for example a personal encounter with a human rights violation) but rather through media representations.<sup>9</sup> A pre-modern European might have understood a report, or story, about a famine in some faraway place by having experienced hunger at home. Today's Western Europeans will know hunger, or genocidal murders, rapes or limb-hackings, only through televised images of faraway places; not as mirrors of their own lived experiences, but through representations ('simulacra') of societies experienced as alien or 'Other'. The result is that even an existential experience as basic, as primary to the human condition as simple bodily

<sup>8</sup> See *ibid.*

<sup>9</sup> See, e.g., Jean Baudrillard, *Simulacres et simulation* (Paris: Éditions Galilée, 1981).

hunger will, for most in the West, be a sheer media contrivance. For most audiences in the West, in the context of our post-industrial states, human rights abuses are a hyper-real media invention. Even those of us with direct experience of our own, or others', violations will know, through direct experience, only a tiny fragment of any genuinely global human rights picture.

### Human rights: absolute *versus* zero-sum

A commitment to human rights is a commitment to an ethical code. If we believe in human rights as a matter of principle, then, on human rights' own terms, we cannot rate any other interest as being above them, able to trump them. Even God's will cannot stand above human rights in that sense, but can only be, at best, coextensive with them. Admittedly, some details of human rights (for example, the precise maximum number of hours for holding detainees in pre-trial detention, or the precise amount of money that government, or private enterprise, must spend to accommodate the physically handicapped) may allow considerable variation without violating express religious precepts. By contrast, if we believe in core human rights, but only with qualification (for example, only in so far as we think God allows – if we believe, for example, that God requires or permits killing people for the crime of homosexual conduct) then, however much we might accommodate certain positive elements of the prevailing human rights codes, our highest ethical code is, ultimately, something other than human rights. In that case, our ethics might maintain some degree of overlap with human rights, but human rights as such could not be said to be the ultimate ethical value.

If, after all, we do believe in international human rights more or less in their dominant form, then they must represent not only a highest value, but a universal one. There can be no principle admitting the enjoyment of human rights in solely conditional ways (barring conditions legitimated by human rights law itself, such as exceptions clauses or derogations clauses). In other words, human rights, in principle, preclude any zero-sum calculus. Contrary to a classical utilitarian ethics,<sup>10</sup> and contrary to

<sup>10</sup> See generally, John Rawls, *A Theory of Justice*, 2nd edn (Oxford University Press, 1999). Rawls's analysis amounts neither to an unqualified attack on utilitarianism, nor to the suggestion that utilitarian calculations are altogether incompatible with liberal rights regimes. He argues, rather, that utilitarianism in itself cannot provide an adequate foundation for a just political order. Utilitarian considerations are feasible, then, within

more ordinary legislative procedures beyond the core issues of human rights (such as routine deliberations on such issues as tax rates, or financial regulation, or zoning rules), there is no principle of fundamental human rights that can be construed as granting only some rights, on condition that others be withheld: neither can one individual be expected to secure some human rights solely on the condition of forgoing others, nor can any group of people be denied human rights on condition that others may enjoy them.<sup>11</sup>

In other words, even-handedness is not simply an aspiration of human rights, but a conceptual presupposition, without which they make no sense at all. By ‘even-handedness’, I mean not merely the obvious element of equal enjoyment of rights by all rights holders (as has always been expressly stated in the relevant instruments),<sup>12</sup> but also, and of the same stature, condemnation of all perpetrators in general proportion to their respective levels of abuse.<sup>13</sup> (Levels of abuse, in turn, must be determined by taking account, for example, under legitimate states of emergency, of states’ available means;<sup>14</sup> or, in the case of social and economic rights, of states’ available resources.)<sup>15</sup>

Under that principle of even-handedness, a state like Israel would certainly have been subject to criticism and legitimate media attention,<sup>16</sup> from the time of her creation at least into the twenty-first century, but no more than any number of her non-democratic neighbours during that same period, who, before the 2011 uprisings, attracted a media spotlight mostly on their international acts, with very little attention – certainly in comparison to that on Israel – to their internal repression.

rights regimes, but can never override rights. Utilitarianism thus becomes not altogether destroyed by, but simply subordinated to, liberalism.

<sup>11</sup> See generally, e.g., Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977).

<sup>12</sup> See, e.g., Universal Declaration of Human Rights, Arts. 1 and 2, GA Res. 217A (III), at 71, UN Doc. A/810 (1948).

<sup>13</sup> See generally, Eric Heinze, ‘Even-handedness and the politics of human rights’, 21 *Harvard Human Rights Journal* (2008) 7.

<sup>14</sup> See, e.g., UN Human Rights Committee, ‘General comment 29: states of emergency (Article 4)’, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001).

<sup>15</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), GA Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 UNTS 3, entered into force 3 January 1976, Art. 2(1).

<sup>16</sup> See, e.g. UN Human Rights Committee, ‘Concluding observations of the Human Rights Committee: Israel’, report of 29 July 2010, UN Doc. CCPR/C/ISR/CO/3 (2010); UN Committee on Economic, Social and Cultural Rights, ‘Conclusions and recommendations of the Committee on Economic, Social and Cultural Rights: Israel’, UN Doc. E/C.12/1/Add.90 (2003).

Once again, the ability of the media to construct such a situation is striking. A media-disseminated phrase like 'Occupied Territories', directly drawn from international law, too readily serves to distinguish Israel from her self-declared adversaries. An 'occupied territory' raises problems because an entity legitimately claiming self-determination is denied it. Surely, however, we cannot call the people of Tunisia, Egypt, Bahrain, Libya, Syria or Saudi Arabia (as opposed to their small ruling elites) in any sense more self-determining than the Palestinians at any time throughout the late twentieth or early twenty-first centuries.

As with Guantánamo, a common claim is that the brighter media spotlight is justified, since self-proclaimed democracies must be held to higher ethical standards. The problem is that such a criterion, far from applying international law, flatly contradicts it. Universal human rights apply to all states, irrespective of political regime. Nothing in the Universal Declaration of Human Rights or its progeny suggests (and it would be legally and conceptually absurd for them to suggest) that internationally responsible actors acquire a privilege of lower-level scrutiny by formally institutionalising regimes that are repressive either of democracy,<sup>17</sup> or of other human rights principles. Arguably, in so far as non-democratic states by definition contradict some of the most fundamental rights (notably, the right to political participation, not to mention free speech and fair trials),<sup>18</sup> lack of democracy must not lighten, but rather should intensify, the scrutiny a state receives. (In fact, the more one contemplates such a criterion, the more bizarre it appears: presumably, any historian explaining the Second World War would then have to take a hard line on The Netherlands, in view of its democratic traditions, while mentioning Nazi Germany only in passing – 'after all, the Nazis never claimed to be democratic!')

Palestinians have certainly lived in unacceptable conditions. Nevertheless, even conditions in other democracies, such as India or Brazil, with far more millions of people living with comparable deprivation,<sup>19</sup> have scarcely received any such censure, despite the aggravation of such

<sup>17</sup> UDHR Art. 21(1) states '[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives.'

<sup>18</sup> See UN Human Rights Committee, 'General comment 25 (57)' (on rights of political participation) UN Doc. CCPR/C/21/Rev.1/Add.7 (1996).

<sup>19</sup> See, e.g., UN Committee on Economic, Social and Cultural Rights, 'Concluding observations of the Committee on Economic, Social and Cultural Rights: Brazil', report of 22 May 2009, UN Doc. E/C.12/BRA/CO/2 (2009); UN Committee on Economic, Social and Cultural Rights, 'Concluding observations of the Committee on Economic, Social and Cultural Rights: India', report of 16 May 2008, UN Doc. E/C.12/IND/CO/5 (2008).

conditions through official corruption<sup>20</sup> and gross disparities of wealth.<sup>21</sup> As there is nothing like the complexity of a military occupation linked to the poverty in India or Brazil, they presumably have less of an excuse, and, in any case, no better one.<sup>22</sup> Yet not only do they suffer nothing like pariah status, but have counted among the most highly regarded candidates for permanent membership of a reformed UN Security Council. By analogy, examining the daily newspaper *The Australian* over an extended period, Virgil Hawkins – criticising the limited number of narratives that qualify a story for press coverage – approximated that 100 times more attention had been devoted to Israel than to DRC, despite the Congo conflict claiming 1,000 times more victims.<sup>23</sup> Although it is sometimes suggested that the media only spotlight stories with a ‘good guy’ and a ‘bad guy’, that view is probably too simplistic. Hawkins’s analysis does suggest, however, that journalists prefer a narrative of the stronger and the weaker, and either fail to report, or misleadingly report, situations in which the power relations, and ethical dilemmas, are more complex.

Perhaps we should not read too much into such disparate media focus? Perhaps everyone somehow knows, deep down, that Israel is not much worse than countless other states? The facts suggest otherwise.

<sup>20</sup> In Transparency International’s 2009 rankings for corruption, Brazil takes 75th place and India takes 84th place. Transparency International, ‘Corruption Perceptions Index 2009’, at [www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009](http://www.transparency.org/policy_research/surveys_indices/cpi/2009) (accessed 26 February 2011).

<sup>21</sup> Under ICESCR Art. 2(1), a state party is bound only to ‘achieving progressively the full realization’ of economic and social rights, and only ‘to the maximum of its available resources’. Respect for that progressive principle becomes questionable, however, when massive and entrenched poverty is tolerated alongside a privileged class entitled to great accumulation of private wealth.

<sup>22</sup> According to the UN Committee on Economic, Social and Cultural Rights, ‘while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.’ Committee on Economic, Social and Cultural Rights, ‘General comment 3: the nature of states parties’ obligations’, para.2 (Fifth session, 1990), UN Doc. E/1991/23, annex III at 86 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.6 at 14 (2003).

<sup>23</sup> Virgil Hawkins, ‘National interest or business interest: coverage of conflict in the Democratic Republic of Congo’ in *The Australian* newspaper, 2:1 *Media, War & Conflict*, April 2009, 67–84, 71–2. See also, generally, Virgil Hawkins, *Stealth Conflicts: How the world’s worst violence is ignored* (Aldershot, UK: Ashgate, 2008); Philip Knightley, *The First Casualty: The War Correspondent as Hero, Propagandist and Myth-maker from the Crimea to Iraq* (London: Andre Deutsch, 2003).

A broad-based 2008 poll, commissioned by the BBC, surveying more than 17,000 people in 34 countries, revealed that even North Korea was perceived throughout the world as more benign, a better international actor, than Israel.<sup>24</sup> Without our having to deny serious abuses committed by Israel, then, such a perception nevertheless reflects not the reality of the two countries' comparative levels of violations, so much as the hyper-reality of both quantitative and qualitative media coverage devoted to the everyday lives of people living under them.<sup>25</sup>

We need not go so far as to claim that the disproportion accrues 'to Israel's detriment', at least not in an unqualified sense, since, as the spotlight on Guantánamo suggests, attention to human rights abuses can never be called a detriment. Rather, we should say, 'to the detriment of over 20 million North Koreans', who also have individual lives and stories, yet whose suffering attracts only fleeting and superficial attention. Well into the twenty-first century, North Korea may have fallen under the occasional spotlight due to its militarism or nuclear technologies; however, if only because North Korean totalitarianism is so perfect as to preclude press coverage, it draws remarkably little of the humanised, day-to-day interest that global media have devoted to Israeli injustices.

It is a platitude to think that the way for a state to avoid scrutiny is by improving its human rights. But platitudes can be false. States with good human rights records, like Sweden<sup>26</sup> or Norway,<sup>27</sup> have democratic cultures and a free press. Ironically, their media keep their populations awash with constant domestic human rights reporting, hence incessant internal scrutiny. The worst tactic, if a state wishes to avoid scrutiny,

<sup>24</sup> 'World views US "more positively"', report of 2 April 2008, *BBC News*, available at <http://news.bbc.co.uk/1/hi/world/americas/7324337.stm> (accessed 26 February 2011). The title of the article refers to a boost, albeit modest, in the otherwise poor image of the USA during the final years of the George W. Bush administration.

<sup>25</sup> See also Dov Shinar, 'Can peace journalism make progress?: the coverage of the 2006 Lebanon War in Canadian and Israeli media', 71:6 *International Communication Gazette* October 2009, pp.451–71.

<sup>26</sup> See, e.g., UN Human Rights Committee, 'Concluding observations of the Human Rights Committee: Sweden', UN Doc. CCPR/CO/74/SWE/Add.1 (2003); UN Committee on Economic, Social and Cultural Rights, 'Conclusions and recommendations of the Committee on Economic, Social and Cultural Rights: Sweden', UN Doc. E/C.12/1/Add.70 (2001).

<sup>27</sup> See, e.g. UN Human Rights Committee, 'Concluding observations of the Human Rights Committee: Norway', UN Doc. CCPR/C/NOR/CO/5 (2006); UN Committee on Economic, Social and Cultural Rights, 'Conclusions and recommendations of the Committee on Economic, Social and Cultural Rights: Norway', UN Doc. E/C.12/1/Add.109 (2005).

is not to abuse rights brutally, but to abuse them carelessly. In the world not of human rights reality, but of media-generated hyper-reality, the best way for a state to avoid scrutiny is not to improve its conditions, but to create a regime so perfectly and pervasively abusive that no real reporting, by either a domestic or a foreign press, can take place at all, and all political dissent is swatted like a fly at the first signs of life.

So it is that North Korea, Libya, Burma, Syria, and, to large extent still, China have often avoided the exhaustive, painstaking, deeply humanised scrutiny that their conditions would require. Israel–Palestine, then, ends up in the same dilemma as Guantánamo. We cannot accept less reporting, in so far as there can never be too much critical dialogue within and among democracies and their democratic allies; yet nor can we accept the massive reporting focused on Israel–Palestine, in so far as it eclipses coverage of far more abusive states, within the region and beyond, including some of Israel’s harshest, and often – either individually or as a bloc – most powerful, critics.<sup>28</sup>

In practice, human rights may often boil down to the sheer horse-trading of the zero-sum mindset. Certainly in its early years, the practices of the UN Human Rights Council have glaringly illustrated that reality, as very large blocs of Israel’s adversaries, and their allies, push their own states off the agenda while keeping Israel on it.<sup>29</sup> However, even if such outright trade-offs are what states or institutions often do, it is never (again, unlike utilitarians or legislators) what they officially *say* they do. They never formally embrace sheer deal-making as any part of the international human rights movement’s declared principles or procedures, at least not in so far as they wish to be seen as promoting rights. We can certainly acknowledge that the ideal of even-handed application of norms and procedures currently remains far from view. At the same time, we must recall that it remains an ideal conceptually presupposed by human rights.

The norms and institutions of human rights law, then, may shun any zero-sum calculus in principle. No true believer in human rights would ever accept that one population should be given fewer human rights so that another may enjoy more. Nevertheless, the mass media expressly

<sup>28</sup> On the role of the Organisation of the Islamic Conference in sabotaging the work of the Human Rights Council, particularly by directing criticism at Israel in order to deflect attention from its members and friends, see, e.g., Rosa Freedman, ‘The United Nations Human Rights Council: a critique and early assessment’ (PhD thesis, University of London, 2011), ch.5.

<sup>29</sup> See generally *ibid.*; and Freedman, ‘Improvement on the Commission?’

and necessarily play that zero-sum game. And it is an inscrutable one. In a steadily globalising era, public interest in international affairs remains limited.<sup>30</sup> Much of the media scarcely venture beyond a brief selection of headlines. They cannot feasibly stray anywhere near a comprehensive picture of global human rights. Any choice to report one situation is perforce a choice to overlook countless others. Believers in human rights may place them as a highest ethical value, and may shun the *principle* of human rights as zero-sum; however, most of what we know about human rights comes through sources that expressly decline to place human rights as a highest value (regardless of the individual views of particular editors or reporters, many of whom might well, and with utmost sincerity, profess personal allegiance to that code), instead subordinating human rights to the specific, overriding concerns of journalistic interest, and thereby structuring human rights around a rigidly zero-sum calculus.<sup>31</sup>

In the media, instead of representing the highest, unconditional value – as that would require no other concomitant ethical or political value to justify exhaustive coverage – human rights (even in cases of their most egregious abuses) are routinely subordinated to other values, such as high-profile wars (which generally entail Western involvement),<sup>32</sup> terrorism, or political corruption, all of which certainly involve important human rights issues, but are not primarily reported for the sake of comprehensive human rights coverage. Throughout much of the late twentieth and early twenty-first centuries, a journalist covering Libyan-sponsored terrorism, or a North Korean missile testing, might, as an incidental matter, have dropped in some mention of those states' mechanisms of internal repression. But those have rarely been the focus of detailed and sustained coverage for its own sake. During that same period, states like Belarus or Tunisia have merely had to refrain from high-profile provocations altogether in order to avoid virtually all

<sup>30</sup> See, e.g., Knightley, *The First Casualty*, pp.106–9, 118–19.

<sup>31</sup> Even the largest news agencies do not have unlimited resources, nor do their audiences have unlimited time or interest. Moreover, compared to a generation or two ago, political problems today, and certainly human rights issues, are far more intricately tied to detailed national and international legal frameworks. Yet most of us know what we know about human rights from agencies the editors and reporters for which may hold degrees in politics or even international relations, but have little if any specialised training in the theory or practice of international human rights law. (A comparison could be drawn with science or business reporters, who are generally expected to have, or to develop, a level of background or training commensurate with the precision required.)

<sup>32</sup> See, e.g., Heinze & Freedman, 'Public awareness of human rights', p.504.

scrutiny. Even sporting events can become a kind of pretext for such scrutiny, which supersedes and subordinates, rather than being superseded by and subordinated to, human rights violations. Reporting on Tibet may have swept in with the 2008 Olympics, but swept out just as rapidly once the Games were a humdrum memory.

Any demand that the attention paid to problems be strictly tailored to their relative gravity would be an illusion, not least because human rights abuses entail heavy symbolism, beyond the purely personal interests of actual and discretely identifiable victims; and the gravity of a deeply laden symbol resists easy quantification. In 2010, for example, a global campaign was launched to protest the Iranian sentencing of Sakineh Mohammadi Ashtiani to death by stoning for adultery.<sup>33</sup> On a too-literal proportionality test, it would scarcely seem that the intensity of media scrutiny was justified for just one victim. Crucial to such a campaign, however, is that Ashtiani is not a lone victim. The protest arguably has multiple targets. It rages not solely against her punishment, but also against such penalties imposed on any woman, or on any person, in Iran and arguably in other non-democratic or weakly democratic states. It can also be said to protest women's subordination, or harsh sexual moralities, in general, throughout the world. Moreover, such campaigns can have preventative effects, the best result of all for human rights, by warning Iran or other regimes that they are being watched, possibly discouraging future repression.

On the other hand, there must be a limit to the extent to which some victims stand as symbols for others. It would be questionable to justify the media's neglect of victims in China or Libya by arguing that Guantánamo or Palestine stand as global symbols for victims everywhere. Moreover, we must wonder why, for example, some situations generate no such symbols. Has the DRC, for example, been so bereft of them? According to one 2008 report, 'in the last ten years in Congo, hundreds of thousands of women have been raped, most of them gang raped'. That ten-year time span is itself significant, raising questions about where the media have been. Dr Denis Mukwege, director of a local hospital, notes that 'the youngest was three years old', while 'the oldest was seventy-five'. He adds: 'You know, they're in deep pain. But it's not just physical pain. It's psychological pain that you can see. Here at the hospital, we've seen women who've stopped living.' Mukwege describes how soldiers, armed

<sup>33</sup> See, e.g., Jon Leyne, 'Iran's dilemma over stoning', report of 12 August 2010, at [www.bbc.co.uk/news/world-middle-east-10956520](http://www.bbc.co.uk/news/world-middle-east-10956520) (accessed 26 February 2011).

with machetes, attacked one woman. Despite her being pregnant, the soldiers 'just cut her at many places', including her genitals.<sup>34</sup>

I am not suggesting that there is any easy template for the media to follow. The relative significance and symbolism of human rights abuses will always involve judgement calls. And yet, by the late twentieth century, it became clear that it is the media's neglect of the world's most egregious situations, from Congo, to Libya, to Belarus, to North Korea, in comparison to those stories that attract exhaustive coverage, which has generated a hyper-reality of human rights pervasively at odds with their reality.

The number of people who systematically study professional human rights reports, such as the published opinions of the UN treaty-based committees, or reports by Amnesty International, Human Rights Watch, Article 19 and other leading non-governmental organisations (NGOs), as well as leading scholarly journals, is presumably slight, perhaps a few thousand in the entire world. We can assume that they comprise only a small minority even among those individuals who, either as politicians or as experts, are involved in international affairs. Not even full-time human rights professionals can easily keep pace with the sheer volume of materials, outside their own areas of specialisation, in a way that would constantly furnish them with a current, comprehensive overview of global human rights. Beyond that small circle of human rights professionals, the numbers of politicians and diplomats both willing and able to keep abreast of the specialised literature surely hovers around nought, although it is they who hold the greatest power to make change. What they know about human rights will draw largely from the media sources that everyone else receives.

### Human rights in Hollywood

Returning to an earlier example, international norms now strongly condemn capital punishment and advocate its progressive elimination.<sup>35</sup>

At the same time, as has been suggested, we must compare the enormous

<sup>34</sup> 'War against women: the use of rape as a weapon in Congo's civil war', report of 17 August 2008, *CBS News*, available at [www.cbsnews.com/stories/2008/01/11/60minutes/main3701249.shtml](http://www.cbsnews.com/stories/2008/01/11/60minutes/main3701249.shtml) (accessed 26 February 2011).

<sup>35</sup> See, e.g., Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty, GA Res. 44/128, annex, 44 UN GAOR Supp. (No. 49) at 207, UN Doc. A/44/49 (1989), entered into force 11 July 1991, preamble, paras.4, 5 and 6.

scale, and the concomitant time, effort, and costs, of the campaigns against it, with the paucity of attention paid to countless global abuses, exacting an exponentially greater number of victims. Once again, merely to introduce that comparison raises suspicions that we may be lurching towards positive indifference about the death penalty, or devaluing the kinds of debate about criminal punishments that ought to occur in a democratic society.

Kennedy's example of the death penalty is also important in so far as, among Western states, it now stands out as a distinctly American kind of violation,<sup>36</sup> in comparison to European states which have generally abolished it.<sup>37</sup> (Even in European states with voices favouring reinstatement, few appear to feel strongly enough to make this a major issue.) In 2009, Amnesty International reported on the excessive suffering of death-row inmates in Japan. Inmates enjoy no meaningful contact with others, are left uninformed of the date of their execution, and develop alarming levels of mental illness:

The government has a policy of not allowing access to prisoners on death row and denied Amnesty International's request for access . . . Each day could be their last. The arrival of a prison officer with a death warrant would signal their execution within hours. Some live like this year after year, sometimes for decades . . . Apart from visits to the toilet, prisoners are not allowed to move around the cell and must remain seated.<sup>38</sup>

For most people in the West and beyond, however, the face of the death penalty in a prosperous society is more likely to be a film like *Dead Man Walking*, or simply the routine diet of reports, documentaries and television drama shows about capital punishment in the USA, than anything from Japan. Rightly, Europeans in particular condemn the

<sup>36</sup> Although only some US states currently impose the death penalty under general criminal law, certain federal offences also provide for it. See UN Human Rights Committee, 'Concluding observations of the Human Rights Committee: United States of America', UN Doc. A/50/40, paras.266–304 (1995), para.281.

<sup>37</sup> See, e.g., Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (ETS No. 187), Vilnius, 3 May 2002. For global ratification information on the ICCPR Second Optional Protocol, see UNO, 'United Nations Treaty collection, Chapter IV' (note 2 above).

<sup>38</sup> Amnesty International, 'Japan continues to execute mentally ill prisoners', report of 10 September 2009, at [www.amnesty.org/en/news-and-updates/report/japan-continues-to-execute-mentally-ill-prisoners-20090910](http://www.amnesty.org/en/news-and-updates/report/japan-continues-to-execute-mentally-ill-prisoners-20090910) (accessed 26 February 2011). See also, e.g. on forced confessions, Norimitsu Onishi, 'Pressed by police, even innocent confess in Japan', *New York Times*, report of 11 May 2007, at [www.nytimes.com/2007/05/11/world/asia/11japan.html](http://www.nytimes.com/2007/05/11/world/asia/11japan.html) (accessed 15 December 2010).

persistence of the death penalty in the USA, particularly in view of ongoing concerns about racism, poverty and adequate legal representation.<sup>39</sup> However, recalling Kennedy's reference to competing concerns, throughout the late twentieth century and early twenty-first century prison conditions in France have continued so poor as to prompt hundreds of suicides.<sup>40</sup> The numbers are not altogether disproportionate to those of executed Americans, in view of the countries' respective populations. Yet there has been no pan-European, let alone global, discussion of those French conditions.

If we care about differences between formal norms and actual conditions, we might ask whether that French *de facto* condemnation to death is much better than the American *de jure* one (or indeed whether it is not worse, providing a more diffuse target than the formally sanctioned norms or practices of capital punishment). While US criminal justice has long been scrutinised for problems of racism, the traditional French government policy of declining to compile statistics on citizens' race, religion or ethnicity has inevitably diminished the attention paid to those issues within the prison context.<sup>41</sup> The distinctly American image of the death penalty presumably arises from its iconic status in Hollywood, together with Hollywood's global reach, in contrast to the lack of any comparable mediatisation of European or other global situations.

Small wonder that the USA has traditionally been so widely seen as racist, certainly before President Obama's electoral victory: not because its racism or other abuses are so very different from those in other complex, industrialised, multi-ethnic societies, but because it has been far more mediatised. A colleague whose course covers racism in Britain told me recently that he wanted to assign his students something other than a British source, and was thinking about a novel by Alice Walker or Toni Morrison. I told him both were good choices, but also very usual ones, both within the USA and beyond. Why not choose a novel from some country other than the USA? His face went blank.

Admittedly, the occasional news feature will focus outside the USA at times of special flare-up, as in Rwanda, Bosnia or Tibet. Films like *Hotel*

<sup>39</sup> See, e.g., Andre Kaspi, *La peine de mort aux Etats-Unis* (Paris, FR: Plon, 2003).

<sup>40</sup> See, e.g., Gérald Andrieu, 'L'administration pénitentiaire "camoufle"-t-elle des suicides?' *Marianne*, 18 August 2009, at [www.marianne2.fr/L-administration-penitentiaire-camoufle-t-elle-des-suicides\\_a181826.html](http://www.marianne2.fr/L-administration-penitentiaire-camoufle-t-elle-des-suicides_a181826.html) (accessed 26 February 2011).

<sup>41</sup> See, e.g., Molly Moore, 'In France, prisons filled with Muslims', *Washington Post*, 29 April 2008, p.A-01, at [www.washingtonpost.com/wp-dyn/content/story/2008/04/28/ST2008042802857.html](http://www.washingtonpost.com/wp-dyn/content/story/2008/04/28/ST2008042802857.html) (accessed 26 February 2011).

*Rwanda* or *The Last King of Scotland* are perhaps stirring greater mass awareness than we had seen in the past. Curiously, even those films emphasise individuals at one remove from the carnage, without inviting us into a *Color Purple* type of intimacy with victims, their families, or their communities. More importantly, such coverage, still intermittent, cannot compare to the rich palette of highly personalised, often intimate, racially informed programming, from 'Bill Cosby' and 'Oprah', to numerous and detailed documentaries on American slavery, to major Hollywood films, which cross the globe, constantly evoking issues of race in the American past and present. American introspection about racism becomes global. French or Dutch introspection about racism remain, for the most part, French or Dutch. As to Russian, Indian, Chinese, or Japanese introspection, it is questionable how much had gone on at all through their own mass media by the beginning of the new century, let alone through any global distribution.

That strongly US-centred human rights consciousness may well change, as European films like *Made in Britain*, *La Haine* or *Gegen die Wand*, within a broader world-cinematic context, attract greater interest. But such films are still consigned to art-house status as soon as they leave home, and can scarcely boast global or even large European audiences. One might expect that the US media would be admired for its pioneering role in dealing with race. To some degree, it probably is. Ironically, however, it has also created a constant mental association of the USA with racism and other forms of social injustice – an association not so spontaneously drawn to other states, even those with worse records, that lack such media presence. I have no reservation about that US image *per se*, grounded as it is in an undeniable past and present. My objection, rather, is that countless other racisms, countless other histories, countless other abuses throughout the world go mostly unfiled, and so are largely ignored.<sup>42</sup>

I have no illusion that in a state like Belgium human rights would or should receive the attention lavished on the far larger and more powerful USA. Nevertheless the EU increasingly functions, and wishes to be seen, as a composite cultural entity. Given its fervently proclaimed human rights aspirations, we should ask about how the history of racism, including its colonial element, is communicated, not only with respect

<sup>42</sup> Cf. generally Eric Heinze, 'Truth and myth in critical race theory and LatCrit: human rights and the ethnocentrism of anti-ethnocentrism', 20 *National Black Law Journal* (2006–7) 107.

to any given European's own country, but with respect to other European countries, and how its media presence compares to that of US racial history.

It would be dishonest for the EU to represent its cultural unity only in reference to da Vinci and Proust, while presenting its darker elements, past or present, merely as the unfortunate deviations of individual states. It would be remarkable to argue that Mozart was a European but Hitler an Austrian. However, that seems to be the dominant message. Any assumption, for example, that Leopold II created only a Belgian history, distinct from a European one, reflects not Leopold's irrelevance to Europe's past and present, so much as Europeans' own amnesia about their fellow nations. Belgium, the EU's primary host country, retains (in Brussels, the EU 'capital' city) publicly displayed statues of Leopold II, a monarch who implemented systematic murders of millions of Congolese, along with routine chaining and amputations of both children and adults, and the enslavement of virtually that entire population, within just forty years (circa 1880–1920), for the sake of rubber and other raw materials.<sup>43</sup> To this day, that African history is taught and discussed only minimally, if at all, among a European population which, curiously, has often taken a keener interest in US racism than in that of its own European neighbours (to be clear, then, I make that observation not in reference to Europeans' awareness of racism in their own home countries, but in reference to their awareness of racism within EU member states *other* than their own). It is remarkable that today Europeans often pay far more attention to the history of the West African slave trade, which turns into a fundamentally *American* story, than to that Central African history, which does not let Europe so easily off the hook.

The ongoing, murderous consequences for Central Africa, recently tolling over three million dead, and countless others maimed, raped or internally displaced, continue to this day.<sup>44</sup> Both that history, and its ongoing consequences, are scarcely discussed by modern Europeans (or anyone else), who certainly do not commemorate it, and are indeed mostly ignorant of it. A 2004 documentary, one of the very few of its kind, still needed to recite the most basic facts, effectively introducing them as a novelty.<sup>45</sup> The BBC journalist Mark Dummett used that occasion to comment:

<sup>43</sup> See, e.g., Adam Hochschild, *King Leopold's Ghost* (New York: Mariner, 1998).

<sup>44</sup> See, e.g., Okawa. 'Congo's war', p.203. See also, e.g., 'Congo death toll up to 3.8m', *Guardian Unlimited*; Polgreen, 'War's chaos steals Congo's young by the millions'.

<sup>45</sup> 'Congo: white king, red rubber, black death', London, UK: BBC, 2004 (dir. Peter Bate).

Of the Europeans who scrambled for control of Africa at the end of the nineteenth century, Belgium's King Leopold II left arguably the largest and most horrid legacy of all . . . He claimed he was doing it to protect the 'natives' from Arab slavers, and to open the heart of Africa to Christian missionaries, and Western capitalists. Instead . . . the king unleashed new horrors on the African continent.

He turned his 'Congo Free State' into a massive labour camp, made a fortune for himself from the harvest of its wild rubber, and contributed in a large way to the death of perhaps 10 million innocent people. What is now called the Democratic Republic of Congo has clearly never recovered.

'Legalised robbery enforced by violence', as Leopold's reign was described at the time, has remained, more or less, the template by which Congo's rulers have governed ever since. Meanwhile Congo's soldiers have never moved away from the role allocated to them by Leopold – as a force to coerce, torment and rape an unarmed civilian population.

As the BBC's reporter in DR Congo, I covered stories that were loud echoes of what was happening 100 years earlier, [which included] children and adults whose right hands had been hacked off by [Leopold's] agents. They needed these to prove to their superiors that they had not been 'wasting' their bullets on animals. This rule was seldom observed as soldiers kept shooting monkeys and then later chopping off human hands to provide their alibis.<sup>46</sup>

As a superpower, the USA has inevitably attracted greater attention than any given EU member state. That is not entirely a bad thing. We should indeed take a particular interest in the conduct of the most powerful states. It is difficult, however, to justify that disproportionately greater attention strictly from the standpoint of human rights. The EU counts as a composite entity, boasting a shared culture, with a combined wealth and population greater than those of the USA.<sup>47</sup> It is implausible to imagine that either the history or the ongoing realities of racism in Europe merit so much less European or global interest.

Only European Nazism, increasingly associated more with a concluded past than an ongoing present, receives both the quantity and the dramatic quality of attention that is otherwise directed towards US racism, in Europe, in the USA and throughout the world. The

<sup>46</sup> Mark Dummett, 'King Leopold's legacy of DR Congo violence', *BBC News*, 24 February 2004, at <http://news.bbc.co.uk/1/hi/world/africa/3516965.stm> (accessed 15 August 2011).

<sup>47</sup> For regular updates, see, e.g., European Commission, *Eurostat*, at <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home> (accessed 26 February 2011); US Census Bureau, at [www.census.gov/compendia/statab/](http://www.census.gov/compendia/statab/) (accessed 26 February 2011).

extermination of Jews was so thorough that the tiny numbers who survived in Europe, which represented a far smaller proportion of the population after the Second World War than African Americans in the USA, meant that European governments could make amends with comparatively little complication or resistance. More importantly, any Euro-American parity in the respective levels of media attention is attained only because European Nazism and US racism were deeply internal affairs. Europe's Nazi atrocities, like America's racist ones, were committed largely on domestic minority populations. European 'black/white' or 'brown/white' racism, by contrast, differs markedly from that of the USA, having, until the later twentieth century, played out largely on non-European soil. Before the Second World War, Europe's racism was of a wholly different order to American racism, its atrocities committed outside European frontiers and not experienced in any direct sense by ordinary Europeans.

It is no surprise, then, that the internal racial tensions have not festered, as they have in the USA over many years, making it far easier for Europeans to 'forget' a past that they could so easily walk away from, leaving the 'natives' to themselves. A Hollywood-style panorama of Leopold's Congo extending to the ongoing consequences, might spur not only Americans, but also Europeans, to view *Roots* or *In the Heat of the Night* within a far more nuanced global context than the strongly US-centred media has ever provided. If a group of Germans or Austrians were to raise a statue of Hitler in a public place, it would become a European, arguably a global, media event, with hefty condemnation at home and abroad, and likely legal sanctions. Within an hour, the statue would be removed by law or by force. By contrast, in the very 'capital' of the European Union, at the heart of one of Europe's most materially prosperous democracies, statues of Leopold II welcome officials from all EU member states, without a word of European protest. Far from condemnation, proud public commemoration of Leopold still takes place. As recently as 2007, the Belgian Royal Mint issued commemorative coins featuring his effigy. Astoundingly, in its handsomely presented sales brochure, the Mint brushed aside the monarch's atrocities in a question-begging subordinate clause: 'The second Belgian king is certainly, in view of his Congo policy, the most reviled (*de meest verguisde*) of our heads of state . . .'. Given the brochure's money-making aim, that caveat serves more to add an edgy *frisson* than to evoke anything like a memory of the monarch's atrocities. The Mint's aim is to honour the king, not to shame him, praising his government's period of 'economic

and cultural expansion.<sup>48</sup> The European press and populace scarcely notice such chilling gestures. As of this writing, even the European Commission against Racism and Intolerance, which should be most vigilant about Europe's historical memory, has taken no official stand against these public honours commemorating the king.<sup>49</sup> I have emphasised this Belgian example not least because of Belgium's special status within the EU, but others might be cited.<sup>50</sup>

The frequent attention of US film or television to issues of race probably does have some progressive effect, promoting a more critical awareness of those issues. The consciousness it promotes must surely prompt some viewers to think about racism 'generally'. Above all, however, it creates an immediate, and constantly reinforced, awareness of racism *in the USA*. Other societies either actively prohibit any such portrayals of themselves (for example, Western consciousness of the Soviet Union and its allies generally focused on political repression, or militarism, and not specifically on racism), or willingly accept such works, but with nothing like the global distribution enjoyed by their US counterparts. Racism in Western Europe, and around the world, may well receive media attention, but rarely at the scale of *The Color Purple* or *Do the Right Thing*.

A crucial insight of the US civil rights movement was to awaken us to the dominant media's inherent racism. Racism takes forms far beyond the crudest insult and invective. More insidious, more effective, are the media's sheer absences and silences. In the twentieth century, popular US sitcoms from *I Love Lucy* through to *The Brady Bunch* presented an all-white America, on the heels of a long Hollywood tradition of either excluding ethnic minorities, or featuring them in caricatured and

<sup>48</sup> Koninklijke Munt van België, *MuntInfo*, No. 45, October 2007, p.8, available at <http://treasury.fgov.be/intermunt/En/Muntinfo/MI45nl.pdf> (accessed 26 February 2011) (emphasis added).

<sup>49</sup> Albeit formally attached, not to the European Union, but to the Council of Europe, there can be no suggestion that the ECRI's mandate would have no bearing upon European states' attitudes towards such gross historical incidents. For regularly updated policy statements, see Council of Europe, European Commission against Racism and Intolerance, [www.coe.int/t/dghl/monitoring/ecri/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp) (accessed 26 February 2011).

<sup>50</sup> Note also that most continental Europeans now learn English as their second language, often from a very young age. Teachers seek materials that will spur students' interest and provoke thought, finding a treasure trove in both fictional and non-fictional accounts of American cultural history, with its inevitable attention to race. For the most part, the languages of former colonial powers, such as Spanish, Portuguese, Italian, Dutch and even French, along with many non-European languages, are increasingly neglected in the race for English, attracting that same depth of interest only at more specialised levels.

subservient, if not altogether demeaning, roles.<sup>51</sup> That first wave of silencing witnessed changes towards the end of the twentieth century, as the mass media made more room for non-white faces. A reactionary, right-wing view could be associated with nostalgia for the earlier images and hostility towards alternative ones, as the left rightly pushed for diversity.

Since that time, we have been living through a second wave of silencing. If the US popular media have changed since the 1950s, one thing has remained the same: overwhelmingly, coverage is *about the USA*. That's no shock. Popular media always include a strong local component. Mass German audiences watch German serials, or chat or variety shows; mass French audiences watch French serials, or chat or variety shows; and so on. In recent years, Western European popular media have paid increasing attention to issues of race and ethnicity at home.

But a question arises about what the audiences view beyond their local fare. What are popular (as opposed to elite) British, French, German or Italian audiences watching when they are not watching home-grown films or television shows? Are they watching *each other's*, motivated by a political and cultural interest in their own European neighbours? European elites may do so to a limited degree. Overwhelmingly, however, the second media source for mass European and indeed global audiences is American. The average German viewer will have seen more about racism in the USA than about racism in fellow EU-member states France or Italy; the average French viewer will have seen more about racism in the USA than about racism in fellow EU-member states Italy or Germany; and so on. Yes, German viewers will have seen the rioting in British cities or French suburbs, in the form of routine news reports. They will not, however, have fed upon the steady diet of more intimate, personalised, fictionalised, or fly-on-the-wall exposure – the storytelling<sup>52</sup> – which they will have experienced about racism both in their own country *and in the USA*. Meanwhile, the average US viewer (again, as distinguished from small elites) will have seen little if anything about contemporary social conflict either in Western Europe, or indeed in Russia, India, Japan, Brazil or other places.

<sup>51</sup> See generally, e.g., Clint C. Wilson *et al.*, *Racism, Sexism, and the Media: The Rise of Class Communication in Multicultural America*, 3rd edn (New York: Sage Publications, 2003); John D. H. Downing and Charles Husband, *Representing Race: Racisms, Ethnicity and the Media* (New York: Sage Publications, 2005).

<sup>52</sup> Cf. Heinze, 'Truth and myth in critical race theory and LatCrit', pp.115–16 and 120–3.

### Solutions?

At several levels, including not just hard-news reporting but also, perhaps more importantly, popular entertainment, the mass media generate a hyper-reality pervasively at odds with the realities of global human rights. It is the most repressive regimes who benefit most, and their victims who lose most. That media-generated consciousness of human rights becomes a far more powerful factor in actual discussions and actions on human rights than most of what is done within the formally legal confines of norms and institutions. Or, more precisely, it is the media that too often determine the situations towards which, and away from which, those norms and institutions are directed.

That failure to grasp the media's role underscores lawyers' ongoing entrapment in legal formalisms. Human rights professionals and scholars focus almost entirely on norms and institutions, paying too little attention to the overwhelming force of the mass media in determining the use and abuse of those official channels. Remedies are available, but only to a limited extent. Much of the mass media could certainly redress some of the grosser imbalances, by injecting greater diversity and even-handedness into their hard-news reporting. In contrast, the degree to which one might expect the entertainment industry to diversify its topics, or the public to enjoy a greater range, is far from clear.

As we have seen, the problem is not specific to the nature of human rights norms. Any ethics that resists a zero-sum calculus, shunning the idea that ethics towards some individuals or groups can only come at the expense of ethics towards others, must inevitably be sacrificed on the altar of the media's own fiercely zero-sum game. That game remains fundamentally damaging to the ethos of universal human rights, where the sum is not zero. Yet the media will not shed that zero-sum approach for as long as they retain anything like their familiar forms. Even the internet age, which can overcome some of the shackles of traditional editorial practices, scarcely offers a superior alternative, since information turns into a scarcely filtered wasteland through which few can navigate effectively.

At the very least, diplomats, activists and scholars must openly acknowledge the limitations and distortions underlying even our well-informed notions about global violations. Nevertheless, from states conspicuously benefiting from those defects, few such acknowledgements can be expected.