

# Discrimination, Cognitive Biases and Human Rights Violations

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**CARR CENTER**

for Human Rights Policy

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## About the Author

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# **Discrimination, Cognitive Biases and Human Rights Violations**

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Presentation at the First Colloquium on Discrimination, Cognitive Biases and Human Rights at Universidad Nacional Autónoma de México (UNAM), on November 15<sup>th</sup>, 2018.

## **Background**

This text is a slightly edited version of the presentation I gave at UNAM. Most edits are due to the fact that the talk was accompanied by a power point presentation. While I make reference to a few books in the text as well (books featured in the power point presentation) I kept the conversational style of the presentation and added no footnotes. I was invited to speak on this topic in Mexico City by Alexandra Aguilar Bellamy, a 2015 HKS graduate and lecturer and researcher on human rights at UNAM. She invited me to give a keynote at this conference based on her observation that the concepts of cognitive biases and blind spots are not part of the discussion in Mexico, including in discussions about human rights violations. My own research is not squarely on those themes, but the topics of this conference are of immense importance to the human rights community as a whole. They also matter greatly to me personally. So this text is my attempt to come to terms with these issues in addressing the Mexican human rights community.

## **Discrimination, Pejorative Discrimination and the Universal Declaration of Human Rights**

I'd like to talk to you about the connections between discrimination, cognitive biases and human rights violations.

To begin with, let me give you a definition, for conceptual clarity. *Discrimination* literally means we are distinguishing among these things and those things. Making distinctions by itself is not problematic, and also favoring some people over others is not always problematic. It depends on why you are drawing distinctions, the way you are drawing them, and why you are favoring people over others the way you do. But then there is also *pejorative* discrimination, defined as a differential treatment among groups, based on gender, race, or sexual orientation, with the intention or effect of maintaining or establishing an oppressive relationship between groups or maintaining disadvantages within those groups.

With this understanding of pejorative discrimination in place, it becomes rather straightforward to demand policies that would help emancipate groups that so far have been neglected or actively oppressed. In pursuit of such policies you would of course still be *discriminating* against more privileged groups – you would make distinctions. But this would not be *pejorative* discrimination because you are doing it to compensate for past injustices and thus generate a better society.

There are important connections here to the world of human rights. Generally, the perspective of human rights is the perspective of the underdog, about making sure power is used in ways that benefit people. Human rights are violated if power is not used to make sure all people get by, get emancipated or protected. Recall now Articles 1 and 2 of the Universal Declaration of Human Rights, which was passed on December 10, 1948 and has been the seminal document for the human rights movement:

### **Article 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

## Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

These two articles appear before something that many people would think is much more important, the right to life, liberty and security of person – which is only mentioned in Article 3. So what is so important about the material in Articles 1 and 2 that would render it compelling for these various ideas to be put in that order? A related question one may ask here is what is actually the difference between what is stated in Article 1 and what is stated in Article 2? Put differently, what happens in Article 2 that is not already covered in Article 1?

The answer is that these two articles indeed cover much the same ground. Both are concerned with pejorative discrimination in the sense I described. The first conveys a positive message, to say that we all equally are the kinds of creatures whose life and livelihood should be protected by human rights, the kind of rights that are then listed in the remaining articles of the Universal Declaration. And the second article then lists the criteria in terms of which people historically have been (and continue to be) discriminated against in this pejorative sense.

Article 2 is an explicit reminder that *all people* are supposed to be included in the message that Article 1 conveys. This is way of recognizing that, in past documents that would announce entitlements or protections of sorts, there has been a lot of talk about equality -- but then there was an implicit understanding that large parts of the population were simply *not meant* thereby. Recall how the American Declaration of Independence in

1776 spoke of equality, but it did so in times of slavery. The Declaration nowhere states explicitly that black people were not among the men who were said to have been born equal. There was simply an implicit understanding that blacks were not meant. Article 2 of the Universal Declaration makes sure that everyone understands that all categories of discrimination have to be terminated. So in addition to the positive message in Article 1, Article 2 says something like “please, nobody even consider making exemptions for anybody from the point made in Article 1.”

Crucially, then, Articles 1 and 2 talk pretty much about the same thing, only that Article 1 puts the message in positive terms and Article 2 puts it in terms of ending discrimination. What this implies is that the rejection of discrimination is a key issue, and earns a place of honor from the start. This message is there even before we speak of the right to life.

This way of setting priorities in the order the contents of the declaration are presented is a reflection of past experiences, especially those experiences that would have been much on people’s minds at the moment when the Universal Declaration was put together. The Nazi regime and the Holocaust had occurred in very recent memory. But beyond that, the framers of the Universal Declaration were also looking back at two world wars and the role that racial discrimination played in recent centuries in the era of colonialism and imperialism, and thus during that period that has shaped the contemporary world as they knew it (and as we know it).

So, the framers of the Universal Declaration are quite right to give this kind of recognition to the importance of discrimination.

## **Discrimination and Cognitive Biases: Hard-Wired in Our Brains**

But with all that said, we must also realize just how difficult it is for us to realize the kind of non-discriminatory world the Universal Declaration asks us to create. As human beings we are rather hard-wired to treat people in discriminatory ways. It takes much active work, both in terms of individual self-clarification and improvement and in social reforms, to rearrange the world to be free from pejorative discrimination, as the Universal Declaration envisages.

Recent advances in evolutionary psychology in the last few decades have taught us quite a bit about how our cognitive abilities and instincts emerged in the early stages of human history. We have also learned much about how our moral intuitions have arisen as part of an evolutionary process. It is based on such work that we now understand just how difficult it is for us as human beings to build societies where there is no pejorative discrimination at the macro and micro level. We also understand much better how difficult it is for us as individuals to react to our environment in non-discriminatory ways. The human mind is hard-wired to show a substantial amount of group favoritism; doing so has helped us in human evolution. It is plainly because our ancestors displayed such tendencies that we, you and I, are here today.

In early stages of *homo sapiens*, our ancestors lived in small groups of 100-200 people. As far as we understand these matters now, human bands of about that size spread out from Africa some 60,000 or 70,000 years ago. These were the groups that within a few ten thousand years would populate most of the globe, except for rather remote and inhospitable areas. To do so, they needed strong group cohesion, strong relationships within the group. They also needed the favoritism of “us against them” to survive. Morality has emerged in evolution to put “us” above “me.” Individual egoists tend to do better than individual altruists. But groups of altruists (or in any event morally



inclined people) tend to do better than groups of egoists. But the process that put “us” above “me” did that by also putting “us” above “them.”

So, inclinations towards pejorative discrimination came with and fueled human evolutionary success on this planet, for better or worse. But while these inclinations had their evolutionary use, this background makes for a huge problem now because in this era, we live in large mixed communities and are interconnected in many ways – but we still have these Stone Age brains that our ancestors had when they set out from Africa in small bands. That is, while our brains are very similar to the brains of our ancestors 50,000 years ago as they were in the process of populating the world, these ancestors faced very different problems. The morality embedded in their brains had evolved to help them with *their* problems, not with *our* problems in today’s world. Our problems in a vast, interconnected human world driven by enormous technological possibilities has not been foreshadowed in evolution.

One researcher from whom we have all learned quite a lot about the human brain and its psychological dispositions as they have evolved over time is psychologist Daniel Kahneman, an expert in cognitive psychology whose findings were so important across fields that, among many other honors, he received the Nobel Prize in Economics in 2002. His main results have been documented in his book *Thinking Fast and Slow*.

That book introduces a distinction between System 1 and System 2. These systems are not physical parts of the brain. Distinguishing these systems is a way of characterizing brain functions. System 1 deals with automatic, fast, and intuitive reactions. I’m standing here and I’m using my body in a certain way to speak, articulate sentences in English, walk in a straight line, or understand where the voice comes from if someone asks a question. Similarly, if you tell me two plus two is five, I’m not going to sit down to do calculations to see if you are right: I know the correct answer is *four* as part of what

System 1 delivers. System 1 is the automatic unconscious resource that keeps us functioning throughout the day, our autopilot. If we did not have this system, we could not navigate the world (even the small part of it that we inhabit in person) because there is just too much information to process.

System 2 kicks in when conscious effort and active mental labor is needed to make progress. Attention requires energy – it is for good reason that we talk about attention being *paid*. We shift from System 1 to System 2 when focusing, doing work, sitting and concentrating, doing mathematical operations, or reflecting on things. We jump from one system to the other all the time – it is hard to stay focused for long, so we switch back into System 1, but then something happens that requires attention, so we reactivate System 2. For example, when you get tired of listening to me, you revert to System 1 because listening requires effort. And when I manage to get your attention again, you are back in System 2. (It won't last very long before you go back to System 1 again.)

System 1 very much reflects our evolutionary legacy, a collection of the instinctive reactions that we have and that have secured survival of our ancestors in the past. But there was a price to pay for survival: System 1 is a simplifying device. System 1 makes life easy (or in any event bearable and livable in the first place) by structuring the information the environment provides and allows the brain to navigate the world without being constantly overburdened. But it uses a lot of *heuristics*.

Heuristics simplify behavior. If these heuristics do something problematic, we call them *biases*. We need heuristics because if we were constantly reflecting on what we were doing we would not be able to actually do anything; it would just be too hard for our brain. But heuristics are also a source of errors. They get things right much of the time, that's why we have survived, but they come with systematic sources of errors (biases) that create enormous challenges for more complex living arrangements than those within

which our brains evolved. We have only understood all this through the work of Kahneman and many others.

There is a whole range of biases (problematic heuristics). To give you one example, one of them is the *availability bias*. People buy flood insurance after a flood: the problem occurred and so it is on people's minds, and they act accordingly. Similarly, when there has been a terrorist attack somewhere and you ask people what is more likely to occur as a cause of death, to be slaughtered by a terrorist attack or to die in a car accident, people might well say it is terrorism. For most people in the world, of course, the likelihood of dying in a car accident is vastly higher than having anything to do with terrorism, regardless of what just happened in the world. But that is not how people think if information about or possibly images from a terrorist attack are immediately available to the brain. For another expression of this phenomenon, when people share an apartment, they often think their contribution to the household is higher than that of other persons. And this is not normally the case because they want to lie about their record of how many times, say, they have taken out the garbage. Instead, they remember rather well when *they* did it last, but they may have no recollection of seeing anybody else doing it and thus be quite wrong about the overall share of their contribution. All these phenomena would be covered under the heading of "availability bias."

There is a whole family of biases that have been studied. The way our brains manage our attitudes and reactions to people around us is as infiltrated by its own set of heuristics (and thus biases) as any other part of our brain activity. Morality is part of what happens in our brains, and as such it appears in both System 1 and System 2. System 1 draws a lot on heuristics and thus on biases. Again, our ancestors survived and took over the planet (for better or worse) because they (and we) function very well together in small groups of 100 to 200 people. We can manage hierarchies in these groups, can

manage relationships, and have shared understanding of, say, what is sacred within these groups. But while we do manage well within small groups, that comes to some extent at the cost of sidelining everybody else outside the group. The heuristics that make us work well in small groups take on problematic features when we operate in larger groups, and thus in such contexts turn into biases.

Our hard-wired moral reaction is treating people differently if they are not in our in-group – and that would work just fine in those stages of human evolution when “not being in the group” meant “not living with or very near us.” But the differential treatment implied by how our brains are hard-wired (and thus the heuristics with which we go through day-to-day life) turn problematic when we live together in much larger groups than the size for which our moral intuitions are finetuned.

A different way of expressing this thought is that “morality binds and blinds:” within these small groups we have a shared understanding of what is fair, what is sacred and important, and what is the right thing to do. Morality *binds* in the sense that it unites us and gives meaning to belonging; but morality also *blinds* us to the fact that there are other people who do not belong to our group. Such people are not as naturally on our radar and are not part of our system of reactions.

Our brains are hardwired for tribalism: even when we do not actually live in physically separate tribes any longer, we divide the world in our head into in-group and out-group – into us vs. them, and instinctively look to align ourselves along such lines. To make that point, we could play a game in this room and ask everyone on one side of the room to be Team Blue and everybody on the other side to be Team Red. If membership in these teams were connected to any tasks or projects, then within the hour there would likely be a blue or red mentality that shapes interactions from here on. A great book to

read on all this, by the way, is my colleague Joshua Greene's book *Moral Tribes: Emotion, Reason and the Gap between Us and Them*.

### **Biased Perception, Moral Blind Spots and Bounded Ethicality**

Recall what we have done so far. We started with the strong emphasis on eradicating pejorative discrimination in the Universal Declaration, and then went on to notice how hard the realization of a world without such discrimination is for us because pejoratively-discriminatory behavior is hard-wired in our brains. In fact, it is the development of *altruism* (rather than the development of such discriminatory behavior) that is very difficult to understand biologically.

The development of altruism would be impossible to understand if it weren't for such a separation of in-group and out-group. And the key there is, again, that, while individual egoists will do better than people with altruistic or generically moral inclinations, groups of egoists will not be able to prevail against groups of people with such inclinations. But, again, the development of moral inclinations was always also the development of an "us vs. them" mentality that is very hard to overcome. The Universal Declaration sets very high goals for humanity.

One way in which in-group-favoritism (or in-group bias) kicks in is in *biased perception*. One's views on most issues are formed by one's environments, one's social context. People whose outlooks on life were formed in different environments often fail to see eye-to-eye in many things. This too is the direct result of evolution: our brain works well in the small contexts in which humans lived in earlier stages, and the brain is very eager to create coherence with the views articulated within that environment. Many prejudices against people who do not form part of this immediate environment are developed and passed on thereby.

Now, one might think that people with more education and greater sophistication than the average group member can readily rise above their prejudices. But often such people do not use those cognitive advances over their peers to outgrow the group-internal prejudices they grew up with. Instead, they become more sophisticated defenders of group-internal biases. Their greater reflectiveness leads them to a reinforcement of their biases. To be reflexive in ways that puts the group's biases in perspective or might even overcome them is something that is difficult to do for everybody. Even to be reflective within one's group is something extremely difficult to do. But *detaching* oneself from one's own origin and seeking to understand at a deeper level how members of other groups experience in particular the social world they inhabit is genuinely hard. Dealing with reality is always hard, and seriously coming to terms with somebody else's reality is extraordinarily hard.

I'm also talking from personal experience here. There has been a lot of discussion in the United States and many other places about how to treat people fairly along various dimensions. There has been much debate about how to make sense of the socially and especially racially diverse reality in which we live, and much of that debate revolved around the election of Donald Trump as president and the root causes for that electoral outcome. I myself came to the US when I was in my mid 20s. I had grown up in Germany. Accordingly, I thought for a long time that the racial reality in the US, the discrimination of minorities and people of color wasn't something that I had caused or had otherwise anything to do with, because I was not from there and I am not from a particularly privileged family in Germany. My experience growing up was decidedly not that we (my family and I) found ourselves on the upper end of things – in my own social context it was in fact quite the opposite.

Accordingly, I did not think pejorative discrimination in a country I had not grown up in was my problem in any shape or form. But over time I realized that this was an incorrect way to think about it. It took me years to understand how often I have benefited, and continue to benefit, from the *dividends of whiteness* and thus became a rather direct beneficiary of underlying racial prejudice that had accumulated over many decades.

I came to understand that better through many conversations with those who, unlike me, never had the luxury of not thinking about race, including many of my students over the years. I started to appreciate more what it is like to experience the particular social and political world in the United States as a person of color. As a white person not from there, this was very hard to do, and it is of course achievable only in extremely incomplete ways. But one can gradually improve one's understanding here, and I think everybody should try to do so as much as possible – especially those of us who, like myself, in the first place needed to get a profounder appreciation of the depth and rawness of the wounds from racism.

As humans, we naturally have many *moral blind spots*. Some years ago, my colleague Max Bazerman published a book about such blind spots, a book in fact called *Blind Spots: Why We Fail to Do What is Right*. Very few people get up in the morning and think “I'm going to bring a lot of bad things into the world today, especially to people not from my in-group.” To be sure, some people do have bad intentions that can be described in some version of that statement. But for the most part, people wake up and go about the day's business, try to do good things here and there, solve this problem or the other, and are not intentionally doing bad things. However, they (that is, *we*) tend to suffer from what Bazerman has called *bounded ethicality*. That is not a very pretty word, but it captures something that is very real.

That is, we have moral commitments, but in fact we exercise them only according to our in-group perceptions. There is otherwise much *ethical fading*: the concerns of other people fall by the wayside if these people are not in our in-group. The point is not normally that we want bad things for them but that our energies are bundled elsewhere.

For instance, I may work for a company that engages in problematic practices, but no one speaks of it at the work place, it never comes up. We find ways of ignoring it. Or I may belong to a racial group where we are perfectly civilized and decent to each other most of the time and we are generally helping each other out. But we do not think much about how this or that other group might not get on in life very well and it might be actually disadvantaged by the very fact that we are looking out for each other. People “like them” might not get the job that we just secured for another person “like us.” Their political party does not get to help their causes because we help ours to get reelected, and it is focused on our problems. We do not mean to harm others, but we are busy making sure people like us are getting on in life, and that may have rather severe externalities elsewhere. Ethical fading occurs also if problems that could come up in more diverse groups, don't come up because we are surrounding ourselves with like-minded spirits.

Often ethically problematic practices are *outsourced* because we are asking other people to do the dirty work. For example, if I am a landlord and my tenants do not comply with what I want, I send my lawyer. I am asking my lawyer to do my dirty work. This is a way in which we make ethical problems disappear, we ask others to do the dirty work for us. Yet another version is *favoritism*. I want to do something for my cousin or client, or within a political party I want to do something for my followers. I am decidedly not doing that in order to harm other people or in order to discriminate but the net effect of many such actions is pejorative discrimination in the sense I introduced at the beginning.



Another moral blind spot that we can think of is that we overestimate the amount of good that we do in the world, beginning from the household examples where we think we take out the garbage at a much higher rate than we actually do.

There are many other such examples.

### **Bounded Ethicality and Public Culture: Three Domains**

One domain in which bounded ethicality matters is our *memory culture*. In every country in the Americas the population is a mix of indigenous people, white people who conquered the lands, black people who were forced to come there, and then later also Asians who immigrated – these groups and all possible ways in which they have become intertwined. In every country, there is a different mix and a different history on how pejorative discrimination among these groups manifests itself, usually (though not always!) with the white group on top of the pecking order.

What is quite striking to see (in the context of our present discussion) is the *memory culture* in each to these countries: who gets to name cities, rivers or mountains, or whose statues or monuments are erected in the center square. In the United States there has been much discussion for instance about the many places named after, as well as statues of, Southern generals from the civil war era. In recent years increasingly these places have been renamed and statues have been taken down. Some universities have named buildings after people who were enslaved by them (the universities themselves) at that stage of history.

Memory culture matters deeply. What we see around us, which group gets to name things – all this settles which group gets to determine what later generations receive from our past and how they see themselves in their own social reality. Memory culture is also a way for the next generation to get socialized into the practices of bounded

ethicality as we have them in our society. Or we could try to change memory culture to change the ways later generations are socialized into practices of bounded ethicality – to redraw and hopefully expand on these boundaries.

Another symptom of bounded ethicality is that our language needs to contain words in the first place to single out and pillory pejoratively discriminatory behavior: if there is no term for it, it is much harder to articulate complaints and to create an awareness of violations. Harassment has been a big topic in the United States in recent times. The #Me Too movement in particular has been prominent. But in order to have a #Me Too movement there has to be a notion in terms of which to formulate the complaint, namely *harassment*, a notion that has been around only for a few decades. The term “bias” is another example. These are terms that need to be theorized and popularized to describe problems. People will not be able to recognize and address problems (and thus to rearrange their bounded ethicality accordingly) if we do not have appropriate vocabulary.

A last phenomenon I would like to mention here is *testimonial injustice*: who gets to speak, who you are listening to, whose voice carries weight. In every group there are some people who are being listened to more than others. There are some people that are not on the radar at all.

Feminist political theorist Gayatri Spivak at Columbia University in New York City coined the term “subaltern” to capture an extreme version of epistemic injustice. This term was originally designed for the Indian context in the colonial period, where you had the British colonizers, the Indian class who was subjugated but in principle still could speak up (the “underlings”), and then also the “subalterns,” which literally means the ones below the underlings. So, these are the people who do not have a voice at all, they don't even speak up or complain. Testimonial justice is about who actually speaks

up and participates in the conversation, who is present in public spaces. To increase our bounded ethicality, it is especially important to let these people (the subalterns) have a voice in the conversations.

So these are three domains in which public discourse can make sure our bounded ethicality does not get too much into the way of overcoming pejorative discrimination: memory culture, which needs to be improved for everybody to find a social home in society; our linguistic repertoire to capture violations, which must be maintained in public discussion and taught to the next generations; and epistemic justice, whose main concern is to make sure everybody gets an adequate hearing in society.

### **What Does All This Mean for the Human Rights World?**

Let me say two things by way of concluding and drawing this all back to the human rights movement. First of all, there is a lot of psychological insight now written down that allows all of us to engage in intense soul-searching about our own bounded ethicality – about our own biases, biased perceptions, episodes of ethical fading, ethical outsourcing, favoritism, and so on.

Especially those of us in positions of privilege (which in many cases will be white people, especially white men – yes, indeed, such as myself) need to ask ourselves hard questions about ways in which racial biases might undermine our thinking. Personal interrogation of one's own values and actions – especially also in scenarios where there would be a price to pay – is rather important to improve one's own self-understanding.

Then also, at the level of human rights organizations we must wonder what kind of human rights violations come on our radar. What we care about at the organizational level is arguably much more driven by these biases and bounded ethicality that we discussed than we might want to recognize. There is a lot of work to be done within the

human rights movement collectively to really live up to the fact that the Declaration of Human Rights is so clear about the importance of anti-discrimination.

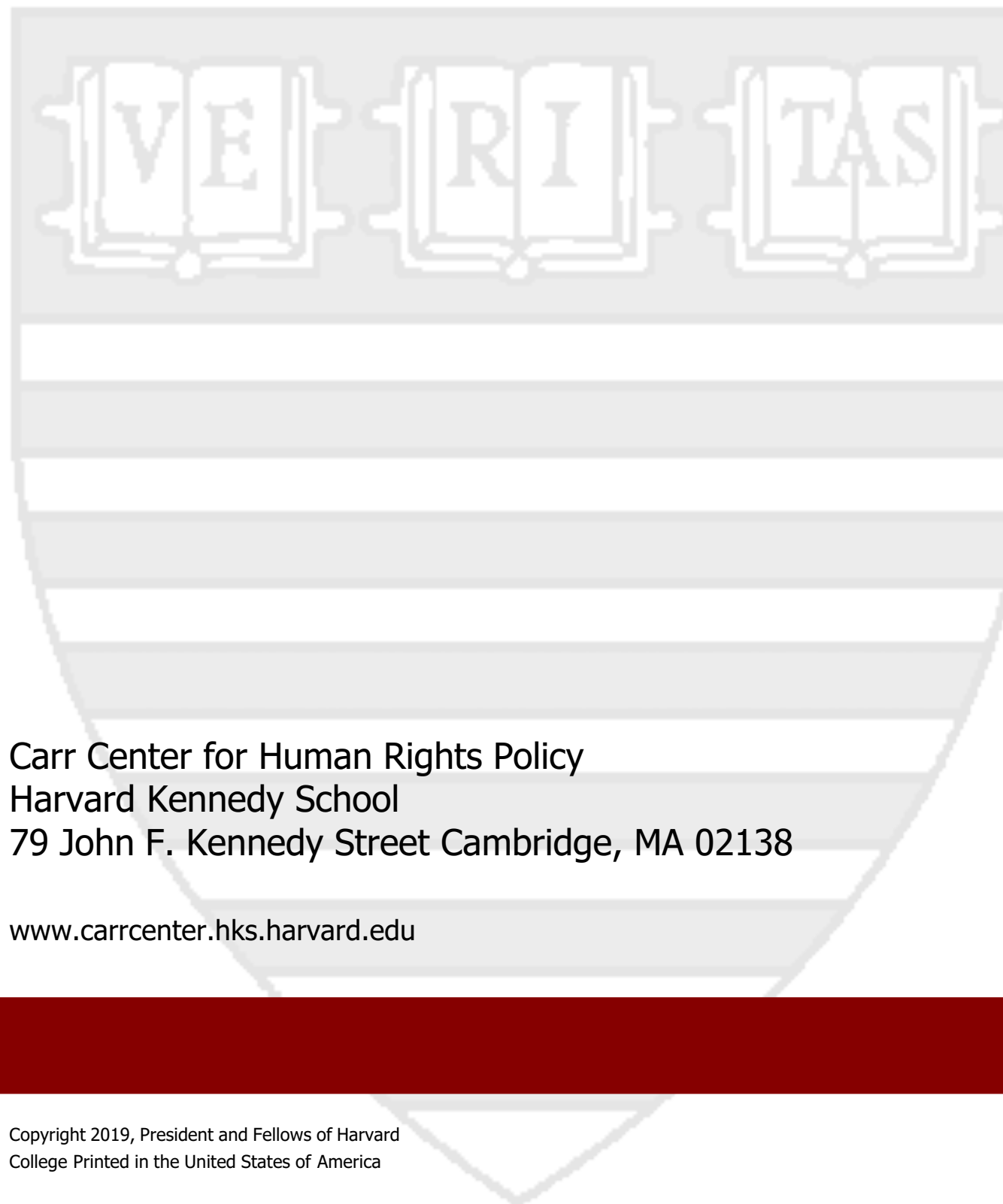
One striking illustration of how bad this sometimes has been is restorative justice at the international level. (By “This”, I mean the manner in which agenda-setting has been shaped by bias.) For about twenty years now there has been an International Criminal Court of Justice based in The Hague. Before that in the 1990s we had two other country-specific courts that actually generated (or let us say, revitalized) the system of international criminal justice. First, we had the International Criminal Tribunal for the Former Yugoslavia, in the 1990s. But back then we also had another international tribunal, one for Rwanda. Far more people died in the genocide in Rwanda than in that in Yugoslavia. We had these two episodes of genocide in the 90s when nobody thought that something like this would happen again. The general thought was that the world was too advanced for something like that to happen again. In response to the calamities in Yugoslavia an international tribunal was created for that country since it was a big shock that this could actually happen in Europe.

But it also happened in Rwanda, in East Africa. And that by all accounts mattered much less to people around the world, at least to those in positions of influence. In fact, if you talk to the people involved in the creation of these two international tribunals it is beyond doubt that the International Criminal Tribunal for Rwanda would never have been put in place had it not been for the one implemented in Yugoslavia. Rwanda was just an afterthought. *For Africa* the world would not have opened a court like that. And this very clearly reveals how the agenda of the human rights field is shaped by cognitive bias. In this case the cognitive bias did not become effective, but only because it would have been too embarrassing not to create a tribunal for Rwanda after one had been agreed

upon for Yugoslavia. But the cognitive bias in the agenda-setting process was nonetheless clearly visible to all involved, in any event those who cared to see it.

That episode (even though it's now more than two decades in the past) is still a good illustration of how much work there is still to be done. We have a long way to go, as a human rights movement, and also as individuals, and talking again also about myself as a white man coming upon the racial realities, we have a long way to go to make good on the vision the Universal Declaration asks us to implement.

Let's make sure that the work gets done.



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