



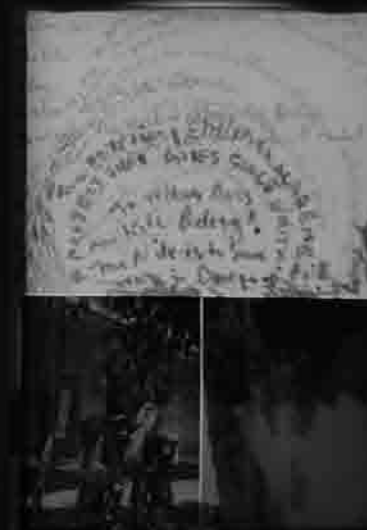
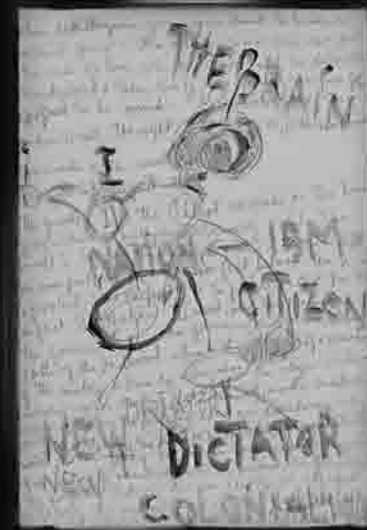
ART&THOUGHT/ FIKRUN WA FANN 98 COMING TO TERMS WITH THE PAST



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COMING TO TERMS WITH THE PAST



EDITORIAL

This edition of *Art&Thought/Fikrun wa Fann* takes as its theme the different ways people find of re-evaluating and **COMING TO TERMS WITH THE PAST**. We firmly believe it is essential that every modern society should be able to do this – by which, of course, we mean a critical re-evaluation that does not shy away from addressing difficult issues and, where possible, taboos as well; an appraisal that does not try to repress the past, but fearlessly looks it in the eyes.

Very few societies have the good fortune to boast a truly unproblematic, non-violent past. Dark corners are often found even in exemplary democracies that have not fought in wars. Switzerland is a case in point. Despite its neutral status during World War Two, its role in the theft of valuable assets by the Nazis was a highly problematic one. However, the Bergier Report was later exemplary in calling Switzerland to account for the part it played in assisting National Socialism.

Germans have acquired a reputation as both experts and model students in the discipline of coming to terms with the past. They have had to re-evaluate two very different histories under two different dictatorships: the Nazi era, culminating in the tragedies of the Second World War and the Holocaust, and the Communist dictatorship under the Socialist Unity Party in East Germany. But if, as Germans, we can today take pride in the process through which we have come to terms with our past, and recommend it to the rest of the world as a peculiarly German export, we should not forget that the process of coming to terms with our past under National Socialism only really got underway in 1968, and that the re-evaluation of the history of the German Democratic Republic was simplified by the fact that the GDR and its apparatus of power rapidly fell apart. This re-evaluation therefore became the official policy not of the GDR but of a united Germany, in which the former West was dominant.

For most other countries, the process of coming to terms with the past when a despotic regime collapses, a civil war comes to an end, or a revolution takes place is a more difficult one. If some kind of reckoning has not been made with those who were previously in power – and this reckoning is usually bloody rather than constitutional, as in the Russian and Iranian revolutions – then supporters of the new and old regimes must somehow find a way of living together, of reconciling their differing views and histories as peacefully as they can. Often this is only possible at a price: the past is not talked about, it is simply repressed. This, however, carries the danger that the old wounds do not truly heal, leading ultimately to more violent conflict at some point in the future, which is why it is so important to find effective ways and means of dealing and coming to terms with the past.

This edition of *Art&Thought/Fikrun wa Fann* aims to demonstrate how different societies are going about this, with reference to examples from all around the world. We need only take a look at the Arab world to see how relevant this subject is today. Yet as we do so it is also apparent that every society has to find its own way of dealing with the past. Formulae that have worked in Germany or South Africa may prove useless in Egypt or Syria. Nonetheless, societies currently in a state of upheaval can undoubtedly earn from others' efforts – and most especially from their failures.

We hope that the articles in this edition will help to encourage an open and fair re-examination of even the darkest corners of history in every part of the world where the past threatens to take the future hostage.

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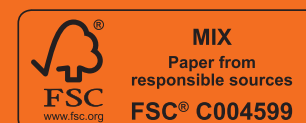
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Front cover: View of the 'Topography of Terror' Nazi Forced Labor Documentation Center in Berlin, viewed through the historical remains of the Berlin Wall. Photo: Stefan Weidner

Prison cell doors in the basement of the EL-DE-Haus (Museum of the History of National Socialism in Cologne). Photo: Stefan Weidner

Inside front cover: Anna Boghiguan: Drawings exhibited at the dOCUMENTA (13). Photo: Stefan Weidner

Inside back cover: Anna Boghiguan: Drawings exhibited at the dOCUMENTA (13). Photo: Stefan Weidner



Berlin Wall Memorial.
Photo: Stefan Weidner

European states, for example, were afraid that if the Stasi were abolished it would mobilise underground. All this can be democratically controlled: you don't want to exclude them. But whether that will actually happen in Egypt is something the society there has to decide for itself. Pressure from abroad is not good; it results in a corral mentality, where people get the impression that the know-it-alls want to show us how things should be done. I don't think we'll get very far with that. The desire has to come from the heart of the nation. I always think it's interesting to compare the situation in Germany in 1945 and in 1989. After 1945 there was denazification, which was organised by the Americans. That didn't really work in Germany; that was imposed on us from outside. In 1989 it was different: it came from the heart of society.

Have there been enquiries from Egypt as to whether you can help it re-evaluate its history?

People often get in touch, but at the moment it's very quiet. But I think Egyptian society itself must itself first decide to do this, then contacts like this will come about of their own accord.

If the Egyptians were to ask you whether you could help them again, would you do it?

I would do it insofar as I am able to – yes, I think so. The optimism people exuded at the time – 'We can do this' – I was infected by that. I hope that optimism is still there.

You give the impression of having no prejudices against the Egyptians. You never talk about them as 'Muslims' or 'Arabs', whose culture might make it impossible for them to establish a democracy. You talk to them on a level.

I believe that the preconditions in Egypt are good, because it has already existed as a state for so long. The state of Egypt has a certain stability on account of its long history, and the people identify with the country, too. In Iraq, for example, ethnicity plays an important role, but you don't have that in Egypt. People there stand by their country and their state, and ultimately that makes me optimistic.

HERBERT ZIEHM was for many years Deputy Head of the Information/Disclosure Division of the Stasi Archives in Berlin. He has now retired.

ALBRECHT METZGER is a Hamburg-based freelance journalist who specialises in Middle Eastern affairs.

Translation: Charlotte Collins

mistakes are sometimes made. We're seeing that at the moment in Germany, where the intelligence service is experiencing one disaster after another. But that doesn't mean it's the wrong way.

Some things didn't work as they should have done, but then there are other democratic institutions – and I would also include the press in this – that expose things like this and raise these painful subjects. And politicians who are prepared to take the consequences.

Given that the conditions there are quite different, is there actually anything Egypt can learn from Germany about coming to terms with its past?

I think it's possible to learn that it's a matter of absolute necessity to re-evaluate what has happened under a dictatorship, rehabilitate the political victims of this dictatorship and compensate them. It is possible to give the victims back their dignity. And it's necessary to show that crimes committed in the name of the state will not be tolerated. The International Criminal Court shows that we can't act arbitrarily, we can't write our own laws to suit ourselves. I think that the process of re-evaluating the past is also a signal directed at the future.

So can Germany be of assistance in Egypt? Can it serve as a model?

I think we can offer them legal assistance. We can show that you can also do things democratically. The Eastern

→ For more than two decades now, and in countries around the world, increasing importance has been ascribed to the public reappraisal of a dictatorial past. This is demonstrated by the numerous truth commissions and other initiatives for throwing light on human rights violations; by national and international courts of justice dealing with the legal investigation of state repression; by a multitude of local forms of remembrance such as museums, anniversaries and monuments; and by intensive discussions in many societies about the interpretation of a conflict-ridden history.

Latin America now has a wealth of experience in diverse political strategies for dealing

ter the military coups the relentless pursuit of opponents of the regime began, and excessive repression soon followed: political detention and torture, exile, exclusion from employment, executions and murder.

In particular, the systematic 'disappearing' of people as a clandestine form of repression spread a social climate of terror, fear, and arbitrary punishment. According to the final report by the first Truth Commission and its successor organisation, the number of documented cases of disappearances during the Chilean military dictatorship amounted to 1,102, and a total of 3,197 people were murdered. In Argentina, more than 12,000 disappeared have been registered

Complex and diverse attempts at coming to terms with a violent past emerged from Latin America's bloody experiences of military dictatorships and civil wars during the second half of the twentieth century. These offer an exemplary model for other countries, not least in the Arab world.

Ulrike Capdepón

DICTATORSHIP AND HUMAN RIGHTS VIOLATIONS IN LATIN AMERICA

COMING TO TERMS WITH THE PAST IN CHILE AND ARGENTINA

with the past. These not only make clear that if the past is not re-evaluated a potential for conflict remains, they also offer a frame of reference for other parts of the world. For instance, truth commissions were first deployed in Latin America and can be viewed as the regional prototype for confronting recent history. The Argentinian human rights movement has also opened up new ways of countering legal immunity at the national level through transnational jurisdiction.

Against the background of the current processes of structural change following on from the Arab Spring, and the urgent question of how the newly-emerging regimes should deal with their authoritarian past, this article details the structures and experiences of the public reappraisal of dictatorships and human rights violations in Latin America by comparing the perspectives of the Cono Sur countries Chile and Argentina.

THE DISAPPEARED In the context of the Cold War the military dictatorships emerging in southern Latin America with the direct or indirect support of the USA were linked by the same ideological impulse: the 'National Security Doctrine', directed primarily against leftist opposition. Af-

by name. Human rights organisations in both countries assume that the number of disappeared is actually much higher: at least 4,500 in Chile and 30,000 in Argentina. The fate of most of those who disappeared has still not been established even today, constituting an open wound and one of the most burdensome legacies of the two military dictatorships.

There are differences between the two countries in terms of how long the military regimes lasted and in the paths taken in returning to democracy. When the military *junta* seized power in Argentina on 24th March 1976, a military dictatorship had already taken over by force three years earlier in neighbouring Chile. The transition to democracy got under way in Argentina in 1983, whereas Chile remained under the dictatorship of Augusto Pinochet until 1990. In Argentina, defeat in the Falklands/Malvinas war and economic failure brought about the collapse of military rule, so the armed forces initially exerted relatively little influence over the process of democratisation. In Chile, on the other hand, after a 'negotiated transition' the military was able to continue to dominate many spheres of political influence and thus determine the modalities of this changeover.

The Navy School of Mechanics (ESMA) in Buenos Aires, Argentina, which is being turned into a place of remembrance. The 35 buildings on the campus have been handed over to various Argentinian human rights organisations. Photo: Ulrike Capdepón

Silence about the legacy of dictatorship has been broken, once and for all, since the end of the 1990s. Discussion has got underway throughout the whole of society – sparked off, to a considerable extent, by the extradition procedures initiated in Madrid against Pinochet and numerous Argentine military leaders, and by the arrest of the Chilean ex-dictator in London in October 1998.

CHILE: BETWEEN AMNESTY AND PUBLIC CONFRONTATION

Chile's 1978 amnesty, decreed by the dictatorship, initially pursued a policy of immunity from prosecution. Human rights organisations criticised the Chilean military's self-exoneration as lacking democratic legitimacy, as well as for the inadmissibility of a self-serving amnesty, and, not least, as a violation of international law. Ex-dictator Pinochet's direct involvement in the process of democratisation as a political power factor prevented any dismantling of the institutions of dictatorship during the first two legislative periods. As commander-in-chief of the armed forces until 1998 and senator for life, Pinochet was to have crucial influence over the transition process.

In 1990 Patricio Aylwin, the country's first democratically-elected president (1990-94), established the National Commission for Truth and Reconciliation (CNVR – also known as the Rettig Commission after its chairman, jurist Raúl Rettig) to investigate human rights violations and at least to determine the fate of people killed under Pinochet's dictatorship. Thousands of witnesses were interviewed over a period of nine months, and documents gathered by human rights organisations were evaluated. However, the names of the perpetrators were not publicly disclosed. The Commission's work was limited to clarification of the most extreme cases of violence, leading to death – meaning people who had been disappeared or executed. Initially, however, no attention was paid to the many who had been tortured, or to other victim groups. The Commission's final report was in three sections: alongside an account of the human rights violations committed it also included recommendations for compensation, and a list of the victims by name.

These findings were publicly announced in a speech by Christian-Democrat President Alwyn, which was broadcast on all television and radio stations on 4th March 1991. The military leadership, however, rejected the Commission's final report as one-sided, and a few weeks later the armed forces issued their own account, justifying the coup as a patriotic duty. The impression arose of truth without consequences: it was declared that human rights violations had been committed, but with no possibility of the perpetrators being brought to trial and sentenced. Furthermore, people were confronted with two different interpretations of the country's dictatorial past, with the result that, initially, the majority chose to go down the path of repression and forgetting.

Only Manuel Contreras, the former head of the Chilean secret service, was explicitly excluded from the amnesty decree following pressure exerted by the United States. He was charged with responsibility for the murder of Orlando Letelier, a member of the Allende government, in Washington in 1976. In September 1993 the Chilean Supreme Court condemned Contreras to seven years in prison, but he refused to serve his sentence. During the years of his trial the armed forces had several times made threatening moves and conducted emergency exercises in order to obstruct his imprisonment. Although the initial sentence was a lenient one, in June 2008 Contreras was given two life sentences, the highest punishment imposed to date for human rights violations under the dictatorship. That outcome was largely achieved by very active Chilean human rights and victim organisations with good international connections, which campaigned consistently for the legacy of Pinochet's dictatorship to be dealt with, and for an end to immunity from punishment.

THE ARREST OF PINOCHET The arrest of ex-dictator Augusto Pinochet in a London clinic during the night of 16th October 1998 attracted worldwide attention. This process was initiated by a charge of genocide and 'crimes against humanity' made in Spain in 1996 against Pinochet and other members of the Chilean military junta



by legal and civilian groups. The basis for this investigation was the universal jurisdiction anchored in Spanish law, allowing worldwide pursuit of perpetrators of 'crimes against humanity'. A transnational network of human rights organisations, NGOs, associations of exiles, victims' and relatives' organisations, and citizens' initiatives – established after the end of dictatorship – quickly went into action.

The arrest of Pinochet in London and the intensification of public attention – also internationally – led to renewed dynamism in the public re-evaluation of Chile's dictatorial past. In August 1999, during the 503 days of Pinochet's house arrest in London, Edmundo Pérez Yoma, defence minister under President Eduardo Frei (1994-2000), called for the establishment of a 'Dialogue Round Table' (*Mesa de diálogo*) on human rights, bringing together members of the military, lawyers, and representatives of the churches. This Round Table was intended to bring about clarification of the fate of the disappeared, but the information provided by the military within the stipulated time turned out to be flawed. Furthermore, in order to ensure military co-opera-

tion the Round Table decided that information revealed about the disappeared would be treated as subject to professional secrecy. The Association of Relatives of Disappeared Detainees (AFDD) therefore categorically rejected the final document, although the military had made some concessions.

Chilean domestic politics changed after Pinochet's return to the country, when he resigned as a senator and ceased to be a real factor in power politics. Public pressure exerted by human rights organisations and their ambitious lawyers also led to the country's amnesty law being partially circumvented from 1998 onwards, so that sentence could be passed on guilty members of the military from the Pinochet regime. It seemed as if the tight corset of the amnesty law had been breached. Constitutional judge Juan Guzmán Tapia's new legal interpretation of 'enforced disappearance' established itself to a certain extent as an accepted alternative. By interpreting disappearance as ongoing abduction (*secuestro permanente*), the judicial authorities continued to regard disappearance as abduction, and the offence re-

Villa Grimaldi in Santiago, Chile, a former detention and torture centre, where there is now a Park for Peace. The 'wall of names' commemorates the 226 disappeared of the approximately 4,500 people who were imprisoned here. Across the top is a verse by the Uruguayan poet Mario Benedetti: 'Oblivion is full of remembrance' ('El olvido está lleno de memoria'). Photo: Ulrike Capdepón

mained punishable as long as no body had been found. Legal processes could not be abandoned and neither could infringements of human rights be amnestied.

The arrest of the ex-dictator may not have resulted in his actual sentencing under criminal law abroad, but it did influence the Chilean courts' legal dealings with human rights violations by the dictatorship and affected the international application of worldwide jurisdiction. In Chile there was renewed debate about the legacy of the Pinochet dictatorship, and repressed memories were set free, generating intensive discussion within society. The outcome in Chile was a considerable increase in the sentencing of members of the military brought before the courts, and the amnesty law was called into question and circumvented.

That was partly a result of changes in political groupings within the country, but a decisive role was played by transnational activities implemented by relatives' groups and human rights organisations. The increasing impact of international law and the extradition process against Pinochet were also of importance.

NO TOMORROW WITHOUT YESTERDAY Positive changes resulted from President Ricardo Lagos' (2000-2006) speech on the thirtieth anniversary of the military coup, entitled 'No Tomorrow Without Yesterday' (*No hay mañana sin ayer*). In this he presented the basic elements of his human rights policy and announced the establishment of a commission for the investigation of political imprisonment and torture. In August 2004 the socialist president set up the Valech Commission. With this, thirteen years after dictatorship came to an end, the problem of its political prisoners and numerous victims of torture made it onto the political agenda.

The Commission presented its report in November 2004. It documented the statements of 35,865 witnesses, recognised 28,459 named persons as former political prisoners, and uncovered 802 prison camps and torture centres.



When President Lagos made known the findings of this report, he recognised the state's role as an institutionalised instrument of repression in the systematic use of torture during the Pinochet dictatorship. The victims received a right to state compensation and special treatment in the health and education systems. Furthermore, in a historic statement accompanying publication of the Valech report the commander-in-chief of the army, Juan Emilio Cheyre, recognised the military's institutional responsibility for the human rights violations.

With the establishment of the Truth Commission, which was exclusively concerned with the issues of political imprisonment and torture, the Lagos government opted for a new kind of strategy (unprecedented not only in Latin America) for re-evaluating the past, one that made an important contribution towards clarifying the dictatorship's repressive practices. Viewed overall, the Rettig and Valech commissions assembled a complex image of repression, but the whereabouts of many of the disappeared remains unknown.

Attempts to bring human rights violations before the courts repeatedly intensified the discussion about Chile's dictatorial past, and about tak-

ing legal action against Pinochet. Chilean courts initially declared the ex-dictator of unsound mind as a result of senile dementia, but by 2006 several trials had successfully been initiated. He stood accused of murder, enforced disappearance, torture, abduction, money laundering, tax evasion, and other crimes. Four hundred charges were under investigation against Pinochet, who remained under house arrest until his death on 10th December 2006. This put an end to the numerous attempts to sentence him for his responsibility for state terrorism and human rights violations in Chile. Legal prosecution of Pinochet certainly resulted in a lasting diminishment of his prestige among his followers, but there are still those, particularly among the country's elite, who support the dictatorship.

PLACES OF REMEMBRANCE The symbolic representation of the dictatorial past in places of remembrance is also of fundamental importance. In Chile there are now many museums and memorials – like the Mausoleum for the Dead and the Disappeared Victims of Dictatorship established in 1994 at the main cemetery in Santiago, and the place of remembrance in the grounds of the Villa Grimaldi, a former torture centre, where a 'Park for Peace' was created. One of the most important measures taken during the presidency of Michelle Bachelet (2006-2011), herself a victim of the dictatorship, was the introduction in 2007 of 30th August as National Day of the Disappeared (*Detenido Desaparecido*). The Bachelet government also initiated the establishment of the Museo de la Memoria as a human rights centre in Santiago, archiving the documents assembled by the two Truth Commissions. In addition, a museum has been set up as a memorial site at the former Londres 38 torture centre in the centre of Santiago.

Representation of history and the mediation of memory in schoolbooks are also important with regard to the establishment of a minimal consensus on the condemnation of the military dictatorship. In March 2010 the centre-left *Concertación* government was replaced (for the first time since the end of the Pinochet dictatorship) by a neoliberal-right-wing alliance which included followers of Pinochet. In January 2012 Sebastián Piñeras' government announced the deletion of the term 'military dictatorship' from history books, to be replaced by the euphemistic 'military government'. This led to immediate criticism by human rights organisations. It is clear that there is still no agreement about the interpretation of the dictatorial past and the causes of the Chilean military coup. That is also reflected in Argentina's re-evaluation of dictatorship and human rights violations.

ARGENTINA: BETWEEN CLOSURE AND (BELATED) JUSTICE Members of the Argentine junta also hoped they would be able to escape legal investigation into human rights violations by way of an amnesty law they had passed in 1983, and arranging for incriminating evidence to be destroyed. Nevertheless, the collapse of military rule and its moral delegitimation in the eyes of the public initially encouraged far-reaching steps towards investigation and

prosecution under the first democratic president, Raúl Alfonsín (1983-1989). The setting up of the Truth Commission (CONADEP), charged with discovering what had happened to the disappeared; the distribution of its final report *Nunca Más (Never Again)*, which recorded only a fraction of the human rights violations that had been committed; and the prosecution of leading figures from the dictatorship: all these laid an important foundation for social condemnation of human rights violations during the military dictatorship.

However, when a number of junta members were sentenced during trials held in 1985 and the armed forces once again made threatening moves, the Argentine parliament passed the Full Stop Law and the Law of Due Obedience in 1986 and 1987, which assured soldiers under investigation that they would enjoy extensive impunity. This was met with massive protests from the Argentinian human rights movement. Then the Peronist President Carlos Menem (1989-1995) pardoned members of the military who had already been sentenced, including leading members of the junta found guilty during the historic trials of 1985. When criminal prosecutions came to a standstill, associations of victims and their relatives (including the Mothers of the Plaza de Mayo, who to this day walk round and round the square in front of the presidential palace in Buenos Aires, demanding justice for their disappeared children) broke off all co-operation with the government and sought greater support from international human rights organisations.

The outspokenness of the naval captain Adolfo Scilingo in a 1995 interview with journalist Horacio Verbitsky made public detailed information about the system of repression, in particular about the death flights from which disappeared political prisoners were thrown, still alive, out of planes above the Río de la Plata. This led to a wave of confessions by other members of the armed forces, which provided more explosive material for public discussion about the legacy of the Argentine dictatorship.

Major demonstrations in March 1996, on the twentieth anniversary of the military coup, revived demands for truth and justice in Argentina. In that context the Spanish legal system also devoted attention to the disappearance of many people of Spanish nationality. Judge Baltasar Garzón, who had taken over these investigations, issued international warrants for the arrest of ninety-six high-ranking members of the Argentine military.

'TRUTH TRIALS' Even though the amnesty laws meant it was no longer possible to bring perpetrators to justice in Argentina, many relatives of victims called on courts of appeal to investigate how their disappeared relatives had died. The Inter-American Commission of Human Rights accorded victims the right to know the truth, and so-called 'truth trials' were initiated in a number of the country's courts. These contributed to the clarification of human rights violations, but were unable to impose any punishments.

It was only with the Kirchner government (2003-2007) that a fundamental change took place in Argentina's policy

on its past. Shortly after taking office, Néstor Kirchner took the symbolic step of receiving the Mothers of the Plaza de Mayo in his presidential palace. The Argentine parliament countermanded the amnesty regulations in August 2003, and the annulment of these laws was confirmed by the Supreme Court in June 2005. These moves were the outcome of changes in the internal balance of power and in public awareness – and also of mounting international pressure, through applications for extradition, accompanied by the ratification of international norms in criminal law. In August 2003 Kirchner signed the UN Convention on the Non-Appliability of Statutory Limitations to War Crimes and Crimes Against Humanity, thereby making it possible for pardons previously granted to the military to be declared unconstitutional. In addition, he set up a Human Rights Secretariat as part of the government, with far-reaching responsibilities for clearing up crimes committed under the dictatorship.

There followed an intensive resumption of trials involving human rights abuses. Not long ago two former Argentinian dictators, Jorge Rafael Videla and Reynaldo Bignone, were sentenced to life imprisonment. In July last year, Federal Court No. 5 in Buenos Aires held them responsible for the abduction of the babies of women imprisoned for opposing the government. The babies were then given under false names to military families who supported the dictatorship. Investigation of the *Escuela Mecánica de la Armada* (ESMA), the military junta's notorious detention and torture centre where thousands of people disappeared, had been broken off in 1987, but was resumed in December 2009. Women prisoners in the ESMA had given birth to their babies in a secret delivery ward, only for them to be raised under a false identity by families loyal to the regime. In October 2011 the man known as the 'Angel of Death', Alfredo Astiz (a former naval captain and a symbolic figure in the military junta), and eleven other ex-officers were given life sentences for their participation in human rights violations committed in this former naval school.

The handing over of the ESMA site to human rights and relatives' organisations in 2004 was thus of great symbolic significance. After navy personnel had finally left it became a memorial, the most important place of remembrance in Argentina. Debates within society about the establishment of this memorial and its future organisation repeatedly expose the opposing interpretations of history promoted by the various political allegiances.

SHIFTS IN COMING TO TERMS WITH THE PAST As detailed above, after the Chilean and Argentine dictatorships had come to an end, the processes of democratisation that got under way were initially characterised by impunity, un-

derpinned by amnesty laws intended to block long-term any legal prosecution for human rights violations. Truth commissions at least managed to uncover and document the extent of these crimes, but without any systematic legal pursuit of the perpetrators in either country.

The experience that hardly anything had changed in the new democracies in terms of social and economic deprivation led to disappointment among parts of the population, mingled with bitterness about the ongoing impunity enjoyed by the military. Alongside their traditional demands for truth and justice, human rights organisations such as Argentina's Mothers of the Plaza de Mayo or the Association of Disappeared Detainees in Chile increasingly positioned their protest within a greater social context of neo-liberal economic policy, privatisations and social exclusion, highlighting the historical continuities with the dictatorship.

The Chilean amnesty law is still formally in force, but viewed over the longer term it is apparent that what were long thought to be unalterable regulations are in fact dependent on current discourse, changed circumstances, and different power constellations. Its overall social legitimation can once again be publicly called into question, and immunity from punishment can potentially be rescinded. The influence of increasingly interconnected human rights movements across the world played a decisive part in this transformation in public dealings with dictatorial pasts. Both in Chile and in Argentina the struggle to combat impunity succeeded in bringing about legal proceedings at the international level at a time when efforts to address the crimes of dictatorship seemed to be blocked nationally. The human rights movements in both countries have made increasing use of international instruments against such impunity, thereby making an important contribution towards the further development of universal jurisdiction. Transnational pursuit of serious infringements of human rights was to be highly significant for these two countries. However, it has also become clear that the long-term consequences of the military dictatorships are still present in both Argentine and Chilean society, and there is still considerable potential for social conflict over how the experience of dictatorship and human rights violations should be remembered in future.

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Translation: Tim Nevill

The South African Truth and Reconciliation Commission, set up to address the crimes committed (on all sides) during the apartheid era, is considered all over the world to be a model. However, it encountered numerous problems during its existence, and was only partially successful. The renowned South African poet and activist Antjie Krog explains how things could have been done better, and what other states that find themselves in similar upheaval can learn from the TRC.

Antjie Krog

SOME LESSONS LEARNT

THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION (TRC)

INTRODUCTION

It is the year 1995. My country's first democratically elected parliament opens with trumpets, jets of triumph and a vintage Nelson Mandela speech. I am there. I am reporting – as part of the new radio team reporting our 'new' parliament in all its languages to the nation. (Yes, we used words like 'nation' and are both thrilled and perplexed as we taste it on our tongues for the first time.) There are eight of us; keen and multilingual, we work under editor Pippa Green, and our voices, energised by the wealth of potential all around us, are regularly heard across the country.

Parliament, under the leadership of Nelson Mandela, wasted no time. It prioritised two tasks that would influence the country for decades to come: the drafting of a new constitution to protect and guide a young democracy, and legislation which would establish a body to deal with the past by giving amnesty and listening to victims. The Justice Portfolio Committee chaired by ANC activist and workaholic Johnny de Lange was assigned to become my beat.

In my memory of these times, several things stood out: the first was that everything was possible – every good thing. There was an upsurge of goodwill, of pride, of Nelson Mandela founding, creating our most beautiful face, our best face. Secondly, we were, suddenly, a 'country-in-training'. It felt like we had to learn a completely new vocabulary. For our reports we regularly looked for someone to explain never-heard-before or never-understood-before terms in ordinary language: what actually was a 'human right', a bill of rights; what was the difference between interrogation and torture; when was something a crime against humanity; what were the implications when parliament was no longer the highest authority but instead subject to the Constitutional Court, so it was no longer a question of *Salus rei publica suprema lex est* – the law of the state is the highest law – but something entirely different; what was the difference between amnesty and indemnity; what precisely was pornography;

what was the difference between freedom of speech and hate speech; what did integrity of the body mean, or productive rights?

A NEW VOCABULARY Those of us working in our mother tongues had to find terms for these new-to-us concepts. I remember how the head of the Reserve Bank during a radio interview had to find Venda words to explain interest rates and the Gini coefficient. He left the radio booth bathed in sweat. One of my colleagues reported on hearings on the legislation around pornography. 'What is pornography in Xhosa?' asked Pippa Green. 'I made a word which basically means dirty pictures,' he said. 'You can't use that because it already contains a value judgement. Let's phone somebody who works on the Xhosa dictionary?' We were learning, our languages were learning, and everybody was catching up.

The third thing I remember about these times was the intensive consultative process around the TRC legislation. For months on end different groups, individuals, societies, representatives appeared before the Commission putting their requests and formulating their fears. All political parties were represented in the portfolio committee and we personally reported how they were accommodated. The draft bill was distributed to non-governmental organisations all over South Africa; seminars and workshops were held to help people understand the philosophy behind the Commission; the findings of these workshops and seminars were made available to the people working on the bill; thousands of booklets explaining the main ideas of the Commission were distributed; and also a number of radio programmes on the TRC were broadcast [Boraine 2000: 50].

I remember how one of the civil servants who worked through the night to turn the day's discussions into draft legislation complained about the cumbersomeness of the consultation process: 'If I was allowed to draft this law we would have been finished long ago with a short slick piece.'