

***Historical Memory and Democratization in Chile and Spain:
Between local Discourses and international Norms***

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Abstract:

This essay provides a short comparison of the respective memory politics regarding amnesties, truth commissions and trials during the processes of political change in Spain and Chile and the discursive treatment of the dictatorial legacies.

It will be followed by an analysis of transnational factors and their impact on national debates of coming to terms with the past. In this broadened perspective the dynamic and complex interdependencies concerning the growing influence of the international human rights discourse, the Spanish responsibility for the arrest of Pinochet in London and the discourse on the enforced disappearances as well as its influence on the local civil society actors in Spain will be considered.

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1. Introduction

In both the Chilean and - following a lengthy phase of non-thematization in recent years - Spanish public discourse, the debate is currently being determined by the question of how to deal with the legacy of state-sponsored crimes committed under the two military dictatorships. The 'Pinochet Case' - the arrest of the Chilean ex-dictator in London at the instigation of the Spanish investigating judge Baltasar Garzón ten years ago and its impact on memory discourse not only in Chile, but also in Spain - has revealed the international dimension of how a dictatorial past is handled in the public realm.

The intention here, on the basis of a short comparison of the respective countries' memory-cultures¹, is to investigate the change in public treatment of the military dictatorship pasts in Spain (1936/9-1975) and Chile (1973-1990) in their respective discursive interactions by adopting a transnational perspective.² In the research field of coming to terms with a dictatorial past and human rights violations, new investigations are increasingly oriented towards issues that are transnational in their scope.³ In this vein, the perspective is geared towards bringing out transnational and international discursive interrelations in the public treatment of the two countries' dictatorial pasts. Using a discourse analysis approach⁴, the objective is to reveal how memory-political protagonists are quarrelling with other actors in society about what the hegemonic narrative for interpreting the past should be. These disputed interpretations of history are particularly polarised in Chile and Spain because neither country has a societal consensus on the hegemonic interpretation of its dictatorial past.

A comparison of the Spanish and Chilean experiences obviously shows some significant differences concerning official memory-culture and mechanisms that contribute to active political justice policies in Chile and the lack of such policies during the Spanish transition process. (Aguilar/Hite 2004: 219) By giving greater attention to the discursive dimensions and the treatment of the human rights violations during transitions to democracy, I will firstly examine the corresponding processes of dealing with the past by

¹ With the concept *memory-culture*, I understand the process whereby a society confronts the legacy of its traumatic past of dictatorship and repression. (s. Reichel 2004: 10-12 and J. Assmann 1992: 30)

² According to Conrad and Osterhammel, the concept of the transnational is aimed "at relationships and constellations that transcend national boundaries" (2004: 14). Transnationality, then, means activities of all kinds taking place beyond and across the borders of nation states.

³ Cf. e.g. François (2004) and Levy/Sznajder (2001); on the transnational treatment of the past using the example of Nazi war crimes from a comparative European perspective, see Frei (2006).

⁴ The method of discourse analysis offers an adequate approach to the debate of dealing with the painful past of dictatorships and human rights violations. For this field of research can be used press sources, parliamentary debates and documents of local and transnational human rights organizations.

truth- and justice-policies and the respective governmental decisions. In a second step, on the basis of the country-specific memory-cultures, in a broader transnational perspective I will provide some examples focusing on the discursive interdependencies and their impact on the national specific reappraisal discourses. In this perspective the dynamic and complex interrelations concerning the growing influence of international human rights organizations, the Spanish responsibility for the arrest of Pinochet and the transnational influence of the discourse on the 'enforced disappearances' will be considered.

2. Memory-culture in Spain and Chile: A Comparative Approach

My intention is to examine, how Spain and Chile have dealt with the corresponding challenges of their legacies of human rights violations in political, legal and administrative terms and their consequences for the public memory discourse during the 'pacted transition'. The similarities and differences of particular policies concerning the past in the two cases including amnesties, truth commissions and trials indicate how historical memory is publicly expressed and symbolized.

2.1 Impunity, Amnesties, Truth Commissions or Trials?

During the transition process to democracy, in both countries political measures had to be taken regarding the legacy human rights violations inherited from the preceding dictatorship. An important difference between Spain and Chile in this respect is the time that has elapsed and the historical distance to the extreme repression in Spain as well as the lack of organized demands for truth and accountability of the past during the Spanish transition process. (Aguilar/Hite 2004: 208-210) In Spain, the climax of post war violence had taken place decades before Franco died, after a generational change most perpetrators and their victims were deceased. In Chile, on the other hand, after sixteen and a half years of dictatorship both victims and victimizers were still alive and the interpretation of the past in the public realm has been present from the beginning of the democratization process. Consequently, the demand for justice was one of the most salient issues in the early stages of the transition.

In Spain, after a series of partial acts of grace, the 1977 newly democratically elected Parliament' voted for an amnesty law - supported by the great majority of the antifrancoist opposition - which exceeded the previous amnesty measures, granting amnesty to

both former opponents and hence victims and executioners. In some respects amnesty laws in Spain and Chile symbolized the perceived correlation of forces between the democrats and the adherents of the dictatorial past.

With the amnesty law, which was adopted in March 1978 during the Pinochet regime without any democratic legitimation, a “shield of impunity” (Wright 2007: 182) for the military was constructed. With this ‘self-amnesty’, which like in Spain, covered all criminal acts committed during the dictatorship, the military junta tried to make itself immune to prosecutions. The new constitution which was promulgated in 1980, implemented a number of ‘authoritarian enclaves’⁵, laws which prevented democratic change in the constitution and the institutions left by the dictatorship. In Chile, as well as in Spain, the Law of Amnesty is still in effect today, although in Chile, this issue has been discussed and questioned publicly. In spite of the Amnesty Law, some Chilean judges decided to investigate “the cases of forced disappearances or torture, although they were then obliged to grant amnesty to the accused.” (Aguilar 2009: 521) This strategy helped clear up the facts without contravening the law (ibid.) and calling into question the impunity of the perpetrators. Thereon after the arrest of Pinochet in London some Chilean judges and human rights lawyers questioned the General Amnesty as a whole, arguing that by granting amnesty for serious human rights violations, it would undermine the principles of international human rights norms. In the context of the Pinochet Case in 1998, which brought the debate about the crimes committed during the dictatorship onto the political agenda, an alternative construction of the term *enforced disappearance* was applied to some extent, based on a new legal interpretation made by the investigating judge Juan Guzmán Tapia. By reinterpreting the cases of ‘disappearances’ as ongoing crimes (*secuestro permanente*), the missing persons legally were still considered as kidnapped. With this, the cases were interpreted as enduring criminal acts, as long as no dead body was found, so that the ongoing proceedings could neither be closed nor the cases of grave human rights violations be amnestied.

In contrast to the developments in Spain, the Chilean government created an official truth commission in the early days of political change in order to clarify human rights violations, gathering the testimonies of the victims and with this acknowledging the crimes of the dictatorship. In 1990, president Patricio Aylwin constituted the *National*

⁵ The term ‘authoritarian enclaves’ introduced by the Chilean sociologist Antonio Garretón is used to describe the elements of the Chilean political system, laws and institutions left over as the legacy of the dictatorship. (s. Garretón 1996: 29 et seq.).

Commission for Truth and Reconciliation (Comisión Nacional de Verdad y Reconciliación, CNVR), and the so-called *Rettig Report*, named after its chairman, was published in February 1991, which at least should have cleared up the destination of the ‘desaparecidos’⁶ and executed victims during the Pinochet regime, while the names of the perpetrators were not revealed. The truth finding process occurred invariably in the limiting structures of the amnesty law as a minimalist form to construct an historical memory and an official national narrative of the repressive past.⁷ However, the report “was a critical turning point in gaining respect for victims and advancing public understanding of the country’s past” (Hayner 2000: 352) and recommended extensive reparations. These official truth finding politics were continued by the *National Commission on Political Prison and Torture* (Comisión Nacional sobre Prisión Política y Tortura, CNPT), which was established in 2003. Its work was exclusively concerned with the victims of political imprisonment and torture, being ignored by the previous commission.

The establishment of truth commissions for documentation and truth finding processes concerning the cases of human rights violations found no such counterpart during the Spanish transition.⁸ The central demands of justice and of putting an end to impunity in the sense of a punishment of the perpetrators were not raised during the Spanish transition process. The Spanish Amnesty Law, which put on the same level victims and victimizers, has not been questioned publicly and it continues to be in effect, until today it was not possible to apply international legislation systematically in Spain.

Summarising, it can be said that Chile in contrast to Spain – in spite of considerably more difficult initial conditions concerning the existent institutional ‘authoritarian legacies’ and the less democratic circumstances of the transition process, has gone further in terms of memory and justice politics, not only in terms of public clarification of the human rights violations through the creation of truth commissions, but also by taking legal proceedings against some of those responsible for the worst violations of human

⁶ The Spanish term *desaparecido* (‘disappeared’) specifically refers to the common repressive praxis of military dictatorships and the victims of state terrorism during the 1970s and the 1980s in Latin America which since then found representation in international human rights legislation and discourse.

⁷ The Military command promptly rejected the results of the *Rettig Report* as biased. Some weeks after its announcement they delivered their separate counter statements, in which the coup was basically justified as a patriotic duty. The denying statements of the armed forces are reprinted in the review of *Centro de Estudios Públicos*, No. 41, <http://www.cepchile.cl>. (February 24th, 2009)

⁸ The only initiative comparable to a truth commission, formed by historians, was introduced in 1976 to investigate the bombardment of the Basque town Guernica, hence it was more focused on a particular event of the Civil War, than on the Franco-dictatorship itself (Aguilar 2001: 114). In February 2007, a first truth commission was created on a regional level in Valencia, with the task to investigate the Francoist postwar repression between 1939 and 1953.

rights, although the Chilean Law of Amnesty apparently impeded it. In contrast to this, Spain has undergone no legal process bringing responsible adherents from the Franco dictatorship to justice.

2.2 Public Debates and Narratives of the Past

The repression of the Franco dictatorship has not been discussed publicly until the end of the 1990s and the tacit “pact of no-instrumentalization of the past” (Aguilar 2004: 26) impeded a political debate about the practice of enforced disappearance in Spain. However, the Chilean discourse about the dictatorial past during the transition was dominated by the discussion about the ‘desaparecidos’ and their remains. In Chile the central issue which for instance the *Mesa de Diálogo* (Roundtable) working from 1999 to 2001 had to confront, was the question of the thousands of persons who ‘disappeared’, ‘desaparecido’ was the widely used term in the memory discourse during the Chilean transition, engendered by the findings of mass graves, which startled up the Chilean public. (Lira/Loveman 2002: 45-48) In Spain, the search of mass graves and persons who ‘disappeared’ during Civil War and Francoism started recently and the initiative to locate and exhume their remains has been provided by the local *memoria histórica*-movement. Here it has only been in the last few years that organized demands for accountability and justice arose by local human rights organizations dedicated to paying tribute to the victims of the Franco dictatorship. Change in the correlation of political forces, generational change and developments in international criminal and human rights law as well as the growing international reluctance towards national impunity laws have helped to give impetus to these demands. (Aguilar 2008: 442)

An obvious deficiency to explain the differences in the current discussion about the dictatorial past in Chile and Spain is the prevailing tendency towards considering the debate exclusively as a limited, national problem, without integrating it into a broader context of transnational influences and interdependencies concerning the experiences of coming to terms with the past in other countries.

3 Transnational factors influencing country-specific memory discourses

Although the main sphere of action for policies towards the past had long been the nation state, comparative parameters, historical reference frameworks and discursive transfer processes have encouraged the global spread of strategies for dealing with the

past between different societies and between transnational protagonists - such as human rights and exiles' networks - within civil society. The changes in the discourses of accounting with the past in Spain and Chile which emerge in a long-term, dynamic process cannot be explained by domestic politics alone; in addition to country-specific factors, transnational developments and international changes were significant for both countries. A transnational perspective on the discourses of coming to terms with the past in Spain and Chile and an analysis of their reciprocal impact on the local narratives can provide new insights in this area.

3.1 The Influence of a Transnational Human Rights Movement: Demands for Justice

The human rights system over the past two decades has become more influential and more transnationalized. (Keck/Sikkink 1998: 89 et seq., Tarrow 2005: 188) The end of the East-West conflict has led internationally to the emergence of a differentiated and complex human rights movement which, in contrast to the Spanish *transición* that started in 1975, was able to influence the democratization process in Chile and the state's policy towards the past through transnational cooperation between NGOs and local human rights organizations. The arrest of Pinochet in London in 1998 would have been unthinkable without the human rights and exiles' networks which had emerged and were already contributing to the external pressure on the Chilean military dictatorship, and their lobbying work even after the dictatorship had come to an end.

The international human rights regime that had established itself from the 1980s onwards could be used to put increasing international pressure on the Chilean military dictatorship, supported by a local and transnational networked human rights movement, in a global context that was increasingly rejecting the notion that such regimes should escape unpunished within a growing international reluctance towards national impunity laws. The Chilean policy towards the past was therefore facing an international dynamic process which was increasingly putting post-authoritarian regimes under pressure to take steps such as establishing which human rights violations were committed during the dictatorial years and punishing their perpetrators, in contrast to the Spanish transition process which, in foreign policy terms, was shaped by the Cold War in the late 1970s. In Spain, against the backdrop of the traumas caused by the Civil War, there has been for years no public debate of any kind on the human rights violations committed under the Franco dictatorship; in that country, the recovering of the painful aspects of the past has only just begun.

3.2 The ‘Pinochet Case’: Spanish Public Debates on how to come to Terms with the Past

The impact of the arrest of Pinochet in London in 1998, initiated by the Spanish investigating judge Baltasar Garzón, on the Spanish discourse of coming to terms with the past indicates the discursive entanglement of transnational and local memory endeavours. After all, it was the widespread disclosure and massive discussion of Chile’s dictatorial past in the Spanish public debate which promptly brought the Franco dictatorship, previously a taboo-subject, back onto the political agenda, thereby bringing about - in both Spain and Chile - a renewed public debate about human rights violations under the respective dictatorships. The attempts by the international human rights movement and the legal system to reassess the Chilean military dictatorship were to have consequences for the memory discourse on the past that took place within Spain. The ‘Pinochet Case’ not only brought Chile’s dictatorial past back onto the political agenda; by triggering such a debate it acted as a catalyst⁹, in Spain too, for the discussion of the Franco past that Spain had not yet come to terms with. Among the consequences of Pinochet’s indictment and subsequent arrest was to fracture the political consensus on silence about the past, resulting in the paradoxical situation of Spain forcing Chile to face its own dictatorial past while refusing to face its own. In Spain, Pinochet’s arrest had the most profound political impact by disrupting the silence about the past carefully crafted during the transition. It can be shown that the transnational prosecution of past human rights violations also has an impact on the process of coming to terms with the past in the country from where the legal pressure is coming.

While the Spanish legal system involved itself actively in the process of coming to terms of the Chilean dictatorship past from the point of view of criminal law standpoint, the legal and administrative treatment of the Franco dictatorship was determined by the immunity from criminal proceedings protected under the amnesty law. Included in the discussion as a central strain of the discourse proved to be the debate on whether the Spanish legal system was acting legitimately in condemning dictatorships in other countries while the crimes committed in the Civil War and under the Franco regime in Spain were not even investigated, let alone prosecuted, and on whether Spain therefore had no legitimate right to reassess Chile’s dictatorial past in the light of its own inability to confront the past with regard to Franco. As a result of the permanent cross-references in the public debate and the creation of parallels between the two military dictatorships, the

⁹ The term ‘catalyst effect’ is used in the context by e.g. Davis (2006: 252), Blakeley (2005: 45et seq.), Pion-Berlin (2004), Burbach (2003: 116).

Pinochet affair led to a new dynamism in both countries in the public confrontation of the dictatorial past and additionally intensified the process of coming to terms with that past.

Transnational contacts of actors' coalitions between Spanish and Chilean NGOs, lawyers and local human rights initiatives created the preconditions for these cross-border collaborations that were required to counter the immunity from criminal proceedings in Chile (e.g. Roht-Arriaza 2005: 208-218). The indictments submitted by Madrid's *Audiencia Nacional* against incriminated Chilean military personnel were the result of years of cooperation between Chilean and European human rights organizations, exiles' networks, and lawyers who engaged in ongoing political lobbying. As a discourse coalition, this 'transnational advocacy network' (TAN) (Keck/Sikkink 1998) that formed during the course of the 'Pinochet Case' has a cross-border impact on the reassessment discourses with the societies in question.

One consequence of the debates triggered by the 'Pinochet Case' was that the political 'pact of oblivion' (*pacto de olvido*) of the Franco past, which had shaped the Spanish transition process, had started to crumble, also as a result of outside influences. In this way, the Spanish experience is a surprising example of a 'boomerang effect' (Sikkink 2005: 276 et seq.) that was able to have its impact even after an extremely long period following the demise of the Franco dictatorship and the transition process, thereby contributing to the erosion of persistent Francoist historical narratives and interpretations that were not called into question during the transition process.

All in all, the explanations of the transnational influence of the 'Pinochet Case' on the domestic debates concerning the dictatorial past in Spain and Chile make it clear that national boundaries, and therefore discursive arenas, have been crumbling as far as coming to terms with dictatorship and human rights violations is concerned.

3.3 Discursive Transfer Processes in the Debates Regarding 'desaparecidos'

Ten years after Spanish Magistrate Baltasar Garzón had investigated in the Pinochet case on human rights charges in Latin America, he recently turned his attention to the investigation of the enforced disappearances during the Spanish Civil War opening the first criminal investigation into Francoist repression. Using international human rights laws, it was an attempt to vanquish the Amnesty Law and consequently, impunity in

Spain, following the demands of local memory initiatives supported by international human rights organizations.¹⁰

It is noticeable that the protagonists in local Spanish civil society who are eager for re-appraisal of the traumatic past, constantly refer, as a discursive strategy, to parallels with the clearing up of human rights violations by the dictatorships in the Southern Cone. The public debate on the Republican ‘desaparecidos’ during the Civil War and the Franco dictatorship must be viewed in the context of the pursuit of Chilean military personnel by the Spanish courts, the international negotiations on Pinochet’s arrest and the discussion on the enforced disappearances during the years of Chilean dictatorship that this debate triggered. It was the starting point of a campaign within Spain to search for the locations of mass graves of Republican ‘desaparecidos’ of Francoist repression since the beginning of the Civil War. The term ‘desaparecido’ used for the victims of Franco dictatorship, a central concept for confronting this issue in Latin America, became a reference point of local civil society actors in the Spanish debate over the ensuing years so that awareness of its transferability to Spain’s dictatorial past could be generated.

In December 2002, for example, the *Asociación para la Recuperación de la Memoria Histórica* (ARMH), one of the first citizens’ initiatives from the Spanish memory-culture movement ‘from below’, submitted a petition to the United Nations’ ‘Work Group on Enforced Disappearance’ - originally set up to find the dictatorships’ ‘disappeared’ in the Southern Cone - in which they demanded that the Spanish state should order the exhumation of the disappeared victims of the Civil War and the Franco dictatorship, who were hastily buried in mass graves. For the first time, the Spanish right wing *Partido Popular*-government faced some international pressure to begin to adequately address its forgotten past of war and repression. In the current discourse about the past, human rights organizations refer, in relation to the finding of the persons who ‘disappeared’ in Spain, systematically to international law and allude to the experiences of the Southern Cone in order to assert their recently intensified demands for clarification and justice.

Civil society protagonists in the *memoria histórica*-movement refer to the term of the ‘desaparecido’ to put the Civil War past and the Franco dictatorship in a context of the international human rights discourse shaped by Latin American experiences. Thereby

¹⁰ Amnesty International: *Spain: No global exception when investigating the crimes of the past*, 13. November 2008, s. <http://www.amnesty.org/en/for-media/press-releases/spain> (June 15th, 2009)

they are able to break the silence on the issue in the Spanish memory-culture and demand truth, justice and reparation for the victims of the Francoist repression.

To conclude, the experiences of dealing with a dictatorial past and human rights violations in the Southern Cone in public debates have become an important point of reference for the Spanish civil society movement: Domestic groups refer to the experiences in other countries to reinforce their demands on a national level. Local memory discourses must be considered in a growing interrelation with international norm building processes.

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