



TRANSCRIPT

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INHERITING THE BURDEN OF GUILT: REFLECTIONS ON
ATONEMENT, RESPONSIBILITY AND ACCOUNTABILITY

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Inheriting the Burden of Guilt: Reflections on Atonement, Responsibility and Accountability

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I too wish to start by acknowledging and paying my respects to Australia's First Nations people.

I also wish to say thank you.

First to John and Valerie Braithwaite. John brought me to Australia for the first time in 1997, and he and Val have been wonderful hosts at ANU's Regnet ever since. I fell in love with Australia then right away.

Griffith University, its School of Criminology and Criminal Justice and the Griffith Criminology Institute offered me a position in 2015, and I have thrived among and been inspired by a group of exceptional colleagues and doctoral students ever since. Thank you, my dear colleagues and students.

I would like to thank those who encouraged me to take up this topic and who made this lecture possible. I thank Dr Robyn Holder for encouragement and continuous advice, and Professor Janet Ransley for suggesting this lecture. I thank the staff at Griffith Criminology Institute, Amanda Cockle, Elle Cash, Fiona Saunders and Irene Dullaway for their outstanding support.

Finally, a big thank you to Griffith postgraduate student Emma Mitchell, who helped with the research.

What I am talking about today, is based on research I began more than 25 years ago. I wanted to know about the attitudes held by ordinary Germans towards the Nuremberg Trials that were conducted at the time in 1945/ 1946. I was utterly surprised to find that these people, who had at best looked on and perhaps done worse when the law was trampled upon in their country, wanted fair procedures and just sentences (and thought they were entitled to it).

It seemed to me that looking back at the origins at Nuremberg could help in understanding the present. How societies deal with unspeakable/ unimaginable atrocities, with victims and perpetrators, how justice can be and is done, have been themes of my research ever since.

I looked at the role of legal institutions in shaping collective memories of the past, and explored the powerful emotions involved in this process.

We now know that there are numerous and different ways to address past wrongs and injustice in order to prevent their recurrence and secure a more just future for all. Since the 1990s, we have seen a proliferation of such efforts, e.g. the International Criminal Tribunals for former Yugoslavia and for Rwanda, or the Truth and Reconciliation Commission in South Africa. The inquiry led by Tony Fitzgerald (who is here today) was a courageous endeavour of addressing the past and paving the way towards improving justice.

There is no way to compare the atrocity crimes that are “on trial” in such processes of ‘transitional justice’. Massacres, genocide, war crimes and crimes against humanity are unique in their context, space and time. However, our ways of justice can be interrogated, scrutinised, juxtaposed and (maybe) compared: perhaps less in terms of success or outcomes, and more how we engage with and embrace this process. Philosopher Susan Neiman did exactly this in her book “Learning from the Germans”, as the second line of the title explains: Confronting Race (in the US South) and the Memory of Evil (in Germany). Having grown up in the US South, and living and working in Germany for decades, she explored large and small initiatives and talked to a wide range of people. She visited schools and educational centres, participated in ceremonies, and assessed how justice had been, was and could be done. My own experience of living in two countries resonates with this: What I hear here in Australia connects with what I have heard and what I know from Germany, what is said and unsaid, and also what is written often makes immediate sense to me even though from a different perspective. I see familiar struggles to address the past which touch my heart. However, no two histories are ever entirely alike, as Neiman concedes, and I do that too.

My talk today proceeds in three steps. Legacies relate to the past, and my starting point is to inquire about “the past”. Next, addressing guilt brings perpetrators into focus. Following this, I interrogate what we – inheriting the burden of guilt – can do: here I address questions of truth, justice and memory. I do this mainly from the perspective of the country I am most familiar with, my home country Germany.

The Past

It is common to declare the past a foreign country. This allows for idealised images of that past on the one hand, and worse, for denial of the links that connect us to this past on the other hand. Nothing could be more wrong. The past was a present not so long ago, and we are linked to it through family and kinship, places and stories.

This was brought home to me by my mother. She was in her mid-eighties, when I accompanied her on a tour through the former German Democratic Republic, East Germany. When in Weimar, an iconic place in German history, she decided to visit the site and museum of the infamous concentration camp of Buchenwald, in very close vicinity to the city. When she later told her travel companions, all educated and professional women in their 70es, where she had been, an icy silence ensued, and the topic was quickly changed. I asked her why she had wanted to visit Buchenwald. Her answer was: "I lived in the country, I was an adult, I need to know."

Viewing the past as a foreign country stifles the desire "to know" in two ways. First, we want people of the past to be like us. Thus, within German families and in particular in the grandchildren's generation, the desire to believe that "Grandpa was not a Nazi" (so the title of a well-known book) was widespread and overwhelming, notwithstanding the most obvious evidence to the contrary. Grandpa most likely had been an active member of the SS in the East, which at least might have raised some doubts about a potential involvement in atrocities and mass killings. Consequently, we refuse recognition of the possibility that to a degree, we – the generations who come after - might be like them, and that perceptions and attitudes that justified and motivated the atrocities still live on.

Second, it is also common to say that times were different. Then, racism, exclusion, dispossession and finally violence was common and supported by communities, and thus perpetrators acted accordingly. Consequently, it is said that we should not judge in hindsight from our different set of values and perspectives, or so this argument against 'anachronism' goes. It is heard everywhere: in Germany, in the US and UK in relation to the slave trade, in the Netherlands about colonial massacres in Indonesia, and in Australia related to the Frontier Wars. It is powerful in debates about symbols – the Confederate flag in the US, statues and memorials across the UK and Australia.

This latter argument does not hold against the evidence that we have.

First, excessive violence and mass atrocities were not widely supported by communities at the time. In fact, even perpetrators do not assume this, and that is why they destroy and cover up the evidence as far as possible. The Nazi regime made huge efforts to cover up and destroy any traces of mass killings and the Holocaust, and to keep it a secret even among the German population (it was of course an “open secret”). Thus, German police involved in mass killings in the Soviet Union were sent on a resort holiday, but not allowed back to their families to ensure that they did not talk about what they had done and witnessed. Coded language was used to cover atrocities and mass killings. For example, in Nazi terminology, they talked about “special measures” or “action” being taken, and similar language was used e.g. in Guatemala in the genocide of the 1980s and 1990s.

Perpetrators therefore often feel the need to seek moral reassurance from their close networks, like family and friends. German soldiers took and sent back photos of mass killings to families notwithstanding that it was strongly prohibited. People in the US South sent postcards of lynchings to family and friends to document that they were present at the site (at about 600 of these postcards have survived). I interpret this as a strong desire to ensure that such atrocious violence ultimately could be understood, if not accepted, and those who committed it could evade moral condemnation by their loved ones and in their closest circles.

Finally, the evidence tells us that wrongs were seen as wrongs at the time. We have very early testimony from Spanish colonisation in the 1500s, then in the campaign against slavery and the slave trade. For Australia, Henry Reynolds has documented the voices of citizens who decried the terrible wrongs against First Nation people. His book spoke of “This whispering in our hearts” that told citizens at the time what was a terrible wrong. The words were originally written by Richard Windeyer in 1842. The openness of and media involvement in this debate at the time in Australia is amazing and outstanding on all accounts, even though those who spoke out were often ostracised and muted, excluded and chased out of the country, and found little support for their alarm. Nothing like that and on that scale ever happened in Germany, perhaps with only one exception of a public condemnation of the killing of vulnerable and disabled people by a Catholic bishop.

This is the past that we inherit. As I have shown there are many incentives to distance ourselves from it, and to deny the truth. But we need to know.

Perpetrators

So, if perpetrators cannot be banned into the foreign country of the past, we need to know who they were and what they did. Only then we can understand the legacies of guilt that we inherited from them. This is the reason why Paul Keating in his famous Redfern Speech used “we” to detail guilt and responsibility. Knowing perpetrators in this sense (and using again Keating’s words) is “a test of our self-knowledge”, and “how well we know our history”.

In Germany, it took two decades until questions about fathers’ and grandfathers’ roles during the war and Nazi regime were publicly and widely asked. German historical scholarship has been absolutely decisive in the process of knowing perpetrators and making them known. These histories gave names to all ranks of perpetrators, laid bare their actions, and clearly demonstrated the involvement of the bureaucracy and the military. Single events were described in detail and gave a name to otherwise little-known villages and cities. Historians shed light on the government bureaucracy and its various agencies and detailed the involvement of major corporations and banks in looting and slave labour. This culminated in the Army Exhibition in 1995, put together by the private Hamburg Institute of Social Research. It finally destroyed the myth a “clean army” distinct from the SS. This historiography (both in Germany and abroad) is ongoing and vital in bringing the “we” of perpetration and guilt into the light.

What we learn here about our past is that there are no ‘bystanders’, an easily adopted and comfortable category. Profiteers, civil servants, administrators, professionals, scientists, those who oversee, order and organise are complicit, facilitate and participate in the crime. Mass atrocities are inexorably linked to dispossession, looting and outright robbery. In Germany this included “acquiring” Jewish businesses and factories, funds and real estate by German corporations, businesses, banks, and individuals. As privileged and elite groups enriched themselves, so did ordinary Germans in the widespread acquisition of the household goods of murdered Jewish people, the origins of which were widely and clearly known. All major corporations exploited ‘slave labour’ in camps (which at least put some of their representatives in the dock at Nuremberg).

Relevant to us in the audience today - and to me - is the role of legal and criminology professionals and their participation in the crimes.

For Telford Taylor, prosecutor, protagonist and chronicler, the Nuremberg Trials told a “story of betrayal”: doctors who betrayed their professional ethics and their oath; civil servants who betrayed democracy and its values of justice and inclusion; soldiers who had run afoul of their code of conduct; and for him, a lawyer, the treason against the rule of law committed by German lawyers weighed heavily. We can add to this list scientists who betrayed the rationale and core values of science; and members of the church who betrayed their faith by not protecting the weak and vulnerable, knowingly sending them to their certain death.

Many of these highly educated professionals served an entire legal and bureaucratic structure that sanctioned exclusion, dispossession and outright violence. They cloaked their activities in a mantle of pseudo-legality that made them appear to follow legal requirements and procedures, and legitimate patterns of violence, as e.g. in the case of police. The pseudo-legality provided them with a sense of impunity, while participating in a larger system of injustice. In 1946 jurist and legal philosopher Gustav Radbruch coined the term “legal injustice” for a legal system that operates on exclusion and inequality and denies basic requirements of justice. Law itself then becomes an instrument of injustice.

German criminologists were actively involved in this system. Their complicity is apparent in the adoption and justification of the regime’s policies, and in collaboration with criminal justice institutions, including the police and those involved in racial policies. They researched and provided reports and assessments on the basis of which offenders were transferred to concentration camps or to psychiatric wards; in both cases this signalled imminent danger for their lives and health. They cooperated with authorities in referring ethnic minorities and adult offenders for sterilisation, and with police in sending offenders to concentration camps where ten thousand of them perished. They were decisive in sending young offenders to euphemistically named “Jugendschutzlager” (Youth Protection Camps), where the majority died of maltreatment, hunger and disease. Based on the definition of the International Commission of Jurists in 2008, we can identify criminologists in all types of involvement in atrocity crimes: they enabled them through research and applicable instruments, they exacerbated and facilitated them through active participation. German criminologists did not do this under a veil of ignorance, but to the contrary had intimate knowledge of the deadly conditions in concentration camps for adults and juveniles, which were designed to “exterminate through labour” – this is quote from the then Minister of Justice.

Identifying the many shades of participation, complicity, benefitting and exploitation does not spread responsibility thinly but deepens it. It requires to say “we” as Keating did. “We” inherit a past, and a burden of guilt and shame, but also privilege and unearned benefits, and institutions that are stained by previous involvement. We inherit largely unacknowledged truths, that whisper in our hearts. This requires truth, justice and remembering.

Truth

Guilt like shame is a ‘self-conscious’ emotion. This definition is based on the observation that these emotions make perpetrators wish to hide and disappear. In particular, they tend to keep those experiences secret that involve a greater responsibility for the event. In Germany the silence after the war was the seamless continuation of cover-ups and secrecy when the crimes were committed. Nonetheless, the Holocaust had been a very ‘open secret’ among the population, not the least evidenced by the household goods that ordinary Germans could lay their hands on. It was presumably no secret at all to everyone working in government agencies that were most directly involved in dispossession and forcible expulsion, and among industrialists who enriched themselves and used slave labour from death camps.

Silence and secrecy thus pervaded German society after the war and included all ranks of society. It also reached deep into families and through generations. Wives, children and later grandchildren were shocked when their husbands and fathers were arrested and charged with mass killings, sentenced and imprisoned; or grandchildren realised that Grandpa was absent because he was sentenced to lifelong imprisonment for atrocious crimes. Most of them never had dared to ask questions.

Under a cover of silence, perpetrators partially and selectively disappear. Public and personal silence disconnect the past from the present, and perpetrators are shielded from the truth. Often and in many instances the burden of telling the truth has been shifted to the victims and victim-witnesses, whether in criminal trials, truth commissions and other testimony, while perpetrators have been allowed to stay silent.

But as perpetrators they do know the truth about what happened. We think of policeman Bill McKinnon in historian McKenna’s book, who buried his accurate report of what had happened when he killed First Nations man Yokunnuna at Uluru in 1934, at the very bottom of a box with his papers in his family’s garage, but - he kept it.

Thus, addressing guilt needs as a first step truth: Truth with a (high) degree of precision, and an analysis of actual responsibility rather than generalised attributions of blame.

Perpetrators need to engage and be engaged in this process, and as time passes, it is on their children and grandchildren. In Germany as well as in many other countries, organisations facilitate and support such research into family history, including encounters between victims and their children and perpetrators and their children. The gap between public knowledge and private acknowledgment can thus be narrowed, and truth can become embedded in private lives.

Justice

Doing “Justice” is a route towards retrieving the truth. This is the case for Germany, where all major domestic trials since the 1950s had confronted the population with unwelcome, unacknowledged truths.

A heavy part of the burden of guilt is the failure of (criminal) justice when it could and should have been done. Still, ten thousands of criminal investigations with hundred thousands of suspects were started after 1945 in domestic German courts and besides the international proceedings at Nuremberg. Only a fraction of these suspects was sentenced. These trials are still ongoing in domestic criminal courts as of today.

Nonetheless, the history of trials in domestic criminal courts in Germany after the Nuremberg Trials 1945/ 1946 demonstrates the wide gap between responsibility/ accountability on the one hand and criminal justice and punishment on the other. The profiteers and industrialists, banks, corporations and commercial beneficiaries were rarely touched, as were high-ranking civil servants, government officials or police leaders. Sentences were never even minimally sufficient (as John Braithwaite would say) and mostly defied any sense of justice.

This was a failure to capture that all those participating in the crimes should be held accountable – be they leaders, executives, book-keepers, tax officers, guards or low-level government officials. Since the time for criminal trials and punishment has (nearly) passed in Germany, this principle of accountability – as John Braithwaite has called it – becomes the guiding principle for justice that transcends criminal punishment. Justice is done through reparations, restitution, compensation and restoration to right the wrong. This requires accepting responsibility and acknowledging those who suffered.

For Germany this process can be described in three points: too little, too slow, too reluctantly. However, it is reassuring that this reckoning has not yet come to an end. Only very recently the Federal Parliament acknowledged the adult and young offenders who had suffered in concentration camps as victims of the Nazi regime, which created a legal foundation for redress. It took a long time until minority groups, the Sinti and Roma were acknowledged as such, or gay men. More than half a century after the end of the war, in the early 2000s, German industry finally and reluctantly agreed to pay compensation for slave labour, and only under considerable international pressure. There is a lot to learn here, how not to do it.

Memory

A third way in which we can share and shoulder the burden of this guilt is to remember. But how do we remember this past, how do we know our history? The process of recovering the truth and remembering is driven by the victims. For very good reasons, memory spaces are theirs.

Nonetheless, the question arises whether there should and could be a space for remembering not only the crimes and suffering, but who committed them and how it was done. Following Keating, I think this is an important part of our self-knowledge and the acknowledgment of the burden of guilt.

Most of this is not visible in public space but enshrined in books and documentation. In Germany, the Topography of Terror identifies the sites of government agencies, where the atrocities were planned, administrated and executed, remote from the actual violence. Often, a small room dedicated to remembering can be found in the still functioning government buildings. This includes such inconspicuous agencies as tax offices that executed the dispossession of the Jewish population, as well as the sites of research institutes that were deeply involved with the mass killings. These memorial sites predominantly make histories 'known'.

Physical memorials at the actual sites of the atrocities reflect the experience of victims and give them meaning. However, at such memorial sites 'where it happened' perpetrators always have a silent, unspoken presence. This presence is hard to ignore and raises questions about our past.

In one example, the presence of perpetrators is made particularly palpable by 'stumbling stones' in German cities. These are small brass plates set into sidewalks in front of houses from which individuals were deported to their deaths; they include name, age, date of deportation, and the place where they were murdered. They remind of the individual victims – and - of the innumerable neighbours who had looked on, unable or unwilling to intervene, but perhaps waiting to acquire the property. The past is embodied in the urban landscape, and in the neighbourhood of Hamburg University, one stumbles from stone to stone.

Thomas Hobbes, always the pessimist when it comes to human nature wrote: "To have done more hurt to a man, than he can, or is willing to expiate, enclineth the doer to hate the sufferer."

My own research and that of many others clearly shows that Hobbes is wrong here. We have the capacity to uncover and accept the truth, even if it "burns" (as Marcia Langton was told by the late leader Yunupingu), and to share it. We can be honest about our families even if it hurts. There are many ways to acknowledge suffering, through justice, memorials and grass-root initiatives, as Susan Neiman demonstrates. We can offer apologies without expecting forgiving and reconciliation. We can do justice, even if it is inadequate and deficient, and late. That there were many and successful efforts by many individuals to bring the perpetrators to justice, is one of the better parts of German history. We have the capacity to provide reparation, restitution and compensation.

All of this - truth, justice and remembering: We should offer it freely and readily.
Yes, we can know and do better.

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