

Explorations | Exploraciones

Between Truth and Amnesia: State Terrorism, Human Rights Violations and Transitional Justice in Brazil

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Abstract:

The military rule in Brazil between 1964 and 1985 employed less violence than similar authoritarian regimes in neighbouring countries, and attempted to maintain a façade of legitimacy by allowing for a consented opposition. Nevertheless, Brazil was the last Latin American nation to establish a truth commission. Ever since the Amnesty Law was passed in 1979, authorities and citizens have both struggled to come to terms with the human rights violations committed in the past. The Brazilian government went as far as offering material reparations to the presumed victims without disclosing official information to establish what the reparations were being paid for. Is it better to remember or forget? This Exploration discusses transitional justice strategies, and documents recent developments in Brazil's political history. *Keywords:* Brazil, transitional justice, historical memory, truth commission, state terrorism.

Resumen: Entre la verdad y la amnesia. Terrorismo de Estado, violaciones de derechos humanos y justicia transicional en Brasil

Entre 1964 y 1985, el régimen militar en Brasil empleó menos violencia que regímenes autoritarios de países vecinos, e intentó mantener una fachada de legitimidad. Sin embargo, Brasil fue el último país latinoamericano en establecer una comisión de la verdad. Desde la aprobación de la Ley de Amnistía en 1979, tanto las autoridades como los ciudadanos luchan para hacer justicia a las violaciones de derechos humanos cometidas en el pasado. El gobierno brasileño llegó al extremo de ofrecer reparaciones materiales a las presuntas víctimas, sin revelar informaciones oficiales para establecer por qué las estaba pagando. ¿Es mejor recordar u olvidar? Esta Exploración analiza las estrategias de justicia transicional y documenta evoluciones recientes en la política histórica brasileña. *Palabras clave:* Brasil, justicia transicional, memoria histórica, comisión de la verdad, terrorismo de Estado.

In the second half of the twentieth century, over 100,000 people lost their lives to state terrorism in Latin America, and a similar number disappeared. In Argentina alone, 9,000 citizens officially went missing between 1976 and 1983, though human rights organizations speak of a figure at least three times higher. The authoritarian regime in Brazil was neither harmless nor mild, as conservative historians insist on saying, but the number of civilian victims was definitely lower than in other neighbouring countries. Despite governing for over twenty years (between 1964 and 1985), the Brazilian military employed less violence and attempted to maintain a façade of legitimacy.

And yet Brazil has experienced particular difficulty in evolving from an authoritarian to a constitutional state, as the military forces designed the transition according to their own interests. Brazil was one of the last Latin American nations to set up a truth commission in order to investigate human rights violations committed during the dictatorship, and neither the constitution nor the official organs were completely freed of authoritarian elements. This exploratory article discusses how democratic governments in Brazil have dealt with the nation's authoritarian past. After an overview of transitional justice policies, it presents a short Brazilian history of the years between 1964 (the year of the military coup) and 1985 (when a civilian president took office again), and concludes with an analysis of Brazil's experience with transitional justice, from the controversial amnesty law passed in 1979 over reparations paid in 1995, until the appointment of a National Truth Commission in 2011.

Remember or forget?

The notion that collective suffering needs to be compensated emerged following World War II, when West Germany and Israel signed a restitution agreement, and evolved further from the 1950s to the 1970s with the civil rights movement in the USA. When confronting the traumatic past of a nation, two extreme approaches can be adopted: accountability or denial. The first approach requires governmental engagement, as wrongdoings must be officially acknowledged. Meanwhile, individuals must be compensated. While a connection between accountability and democratic development of a nation has never been proven, therapists argue that collective engagement with the past is crucial for the psychological development of a society (Straßner 2007, 42). The second approach, on the other hand, involves avoidance: culpability is limited to a few scapegoats, while the masses are considered innocent. This method presupposes that the past cannot be undone, for which reason it is best to let time cure all the wounds. This is seen

as better than reliving the past and instigating resentment. Based on this dichotomy, which was further developed by Amstutz (2005), Barkan (2000) and Minow (1998), the following classification of transitional justice strategies is offered.

Amnesia is based on consistent neglect and denial of past events, as ‘nations, like individuals, can only stand so much truth’ (Amstutz 2005, 19). This strategy implies forgetting as a way of coping – for instance, the constant refusal of the Turkish government to admit the murder of 1.5 million Armenians between 1915 and 1917.

Forgiveness goes one step further than amnesia by accepting the occurrence of traumatic events while overcoming resentment, moving on and perhaps even attempting to establish a new relationship between the victim and the transgressor. Forgiveness is the most personal of all strategies, as one victim cannot forgive in the name of all others. Accordingly, the state should avoid such a personal mechanism and refrain from passing an amnesty law and exempting offenders from legal prosecution, as state forgiveness often equals official amnesia. Nevertheless, authoritarian governments themselves often pass amnesty laws shortly before transitioning to democracy in order to avoid subsequent judicial proceedings, as was the case in Argentina, Brazil, Chile and Uruguay during the 1980s.

The survivors of an authoritarian regime must be able to reconcile emotions with factual knowledge in order to successfully come to terms with collective traumata or shared guilt. For this reason, *truth telling*, disclosure of intelligence files and official apologies are considered to be the most effective forms of assessing the authoritarian past of a country. Truth and reconciliation commissions can also be established (as was the case in South Africa or Chile), focusing on victims – particularly the forgotten ones – to offer validation and reassurance that their suffering was real, and wrong. According to Barkan (2000, 317), ‘victimization empowers’: being a victim is a political tool, as victims can use their position to choose whether to accept the perpetrator’s apology or not. However, victims are often unable to show compassion and give up on resentments, while perpetrators of a crime are frequently not willing to disclose information on detention, torture, killings or disappearances of dissidents.

Victims of state terrorism may be granted the right to *compensation* through restitution or reparation. Restitution involves either the devolution of seized, confiscated and stolen property or the restoration of the moral, legal and political status through medical treatment, legal counselling or annulment of decrees. Though restitution aims to redistribute the resources in a fair manner, it often creates new injustices. In South Africa, for exam-

ple, it is nearly impossible to offer restitutions to the victims of the apartheid (the black majority) without violating the rights of the white minority. In such cases, symbolic financial reparations may be a better alternative (e.g. West Germany's reparation programme that paid \$75 billion to German citizens and \$150 billion to foreigners who had been persecuted by the Nazi regime). The danger of reparations is, of course, that they may be interpreted as an attempt to trivialize the crimes, as the losses cannot be restored. Also, it is nearly impossible to compensate for all committed offenses.

Dismissing responsible persons and institutions is another possibility. Following World War II, government staff was dismissed and parties were dissolved in an attempt to 'purify' the West German political system. These *purges* (or *lustrations*, as they were called in post-communist Eastern Europe) presuppose a collective responsibility for the errors committed in the past and intend to legitimize the new regime by de-legitimizing the old one (Straßner 2007, 42).

Finally, *legal prosecution* and *punishment* of past criminal offenses promote confidence in legal institutions. However, prosecuting state-sponsored crimes is more difficult than prosecuting individual crimes because the evidences are often incomplete or unavailable. According to the principle of *nulla poena sine lege* (no punishment without a law), on which modern jurisprudence is based, offenses may only be judged by the laws in effect at the time these offenses were committed. This means that current legislation does not apply to crimes perpetrated in the past (Amstutz 2005, 39).

If a new regime emerges as a result of the voluntary transfer of power by military forces, as was the case in Brazil in 1985, prosecution will probably never take place. Civilian regimes established on this condition have a limited authority that could be endangered by trials against previous governors. Indeed, law enforcement may have negative and destabilizing effects if the old regime still has many supporters; if there is no clear distinction between perpetrators and victims; or if too many citizens have suffered from human rights abuses (Straßner 2007, 42). According to Huntington (1995, 81), trials should only take place if the dictatorship is forcefully replaced by a democracy and the authoritarian elites are disempowered; otherwise the 'political costs of such an effort will outweigh any moral gains'. However, if wrongdoers are not punished, the value of the victim's suffering is degraded. For this reason, prosecution should take place at some point.

Military rule in Brazil

In Brazil, the early 1960s were marked by social struggles for education and land reform, campaigns against tax evasion and inflation rates as high as 74 per cent a year. Following the resignation of President Jânio Quadros in 1961, Vice-president João Goulart assumed office and initiated structural reforms that intimidated conservative sectors of the middle class and the military, leading to a clear polarization of Brazilian society. Plínio Corrêa de Oliveira, founder of the Brazilian Society for the Defence of Tradition, Family and Property, wrote in 1959 that ‘the main goal of a legitimate dictatorship [should be] the restoration of the order’ that communists – the ‘inner enemies’ – had destroyed (quoted by Brune 1971, 19; my translation). Indeed, the reigning perception of Brazilian politics after 1964 was based on the US-supported National Security Doctrine, according to which the enemy came from within the country and the ‘inner peace’ should be maintained at all costs.

On 1 April 1964, the Armed Forces deposed President João Goulart without resistance. The self-proclaimed ‘Supreme Command of the Revolution’ – for the coup d’état was seen by the military as a revolution – passed the first Institutional Act (*Ato Institucional*, AI-1) decreeing a state of emergency, discharging 10,000 civil servants and suspending the political rights of 378 individuals, including former presidents Juscelino Kubitschek, Jânio Quadros and João Goulart. The following thirteen Institutional Acts established indirect elections for presidents and governors in a two-party system, consisting of a pro-government party ARENA (*Aliança Renovadora Nacional*, National Renewal Alliance) and the party of consented opposition, MDB (*Movimento Democrático Brasileiro*, Democratic Brazilian Movement). Unlike Chile or Paraguay, where one individual (respectively Pinochet and Stroessner) embodied power, Brazil was governed by military juntas that rotated between 1964 and 1985. General Humberto Castello Branco assumed office following the coup and was replaced by the Minister of War, Artur da Costa e Silva, in 1966. Under Costa e Silva, the fifth Institutional Act of 13 December 1968 (AI-5) shut down the Brazilian Parliament, granted exceptional rights to the president and suspended political rights of certain citizens. The Parliament only briefly reopened in 1969 to endorse Emílio Garrastazu Médici as the new president.

According to Arns (1985, 86), most of the dissidents came from the urban area and over half of them had an academic degree, a remarkable statistic for a country where, at the time, only 1 per cent of the general population attended university. Despite losing their political rights, students, politicians and workers regrouped shortly after the coup. Some of the around

50 clandestine dissident organizations – nearly all of Marxist orientation – defended the Marxist concept of ‘revolutionary violence’ against the government (such as ALN and MR-8, which jointly kidnapped American ambassador Charles Burke Elbrick in 1969 and exchanged him for 15 political prisoners). Other organizations (such as PCB or AP) campaigned for diplomatic solutions. However, following the AI-5 in 1968, dissidents were arrested and strikes were suppressed by the Army. As a consequence, oppositional groups lost power: VPR disbanded, ALN leaders were murdered and MR-8 members emigrated to Cuba, Chile and Europe.

Dissidents were considered to be enemies of the Brazilian state and subjected to imprisonment, exile, suspension of political rights and expulsion from school or university. Capital punishment was established by the AI-14, but never officially practiced. All leftist opponents who died under the regime were executed illegally, though coroners frequently determined ‘suicide’, ‘road accident’ and ‘escape attempt’ to be the cause of death. Forced disappearances were also reported. Between 1972 and 1975, for instance, about seventy farmers and members of the Communist Party of Brazil went missing in the Araguaia region (Catela 2000, 299), and most were never found again. The Catholic Church and the chiefly Catholic middle class initially supported the military government, believing it to be a temporary solution, and denying altogether the existence of political prisoners. A shift in perception took place around 1968, as the image of the government began to be stained by the accusations of torture, murder and disappearance of dissidents, including nuns and priests.

The exact number of political prisoners remains unknown. By 1971, the press spoke of 12,000 detainees, mostly students, journalists, artists or lawyers, with an average age of 22 (Brune 1971, 35). They were systematically tortured by the government agency DOPS (*Departamento de Ordem Política e Social*, Department of Social and Political Order) and the military intelligence service DOI-CODI (*Destacamento de Operações de Informações – Centro de Operações de Defesa Interna*, Department of Information Operations – Centre for Internal Defence Operations). Interrogators were trained by the School of the Americas and supported both materially and financially by the CIA. Amongst the adopted torture methods were castration, rape, isolation, electric shock, poisoning, beating, burning and nail pulling. Interrogation records were often made under torture and remained in the hands of the police. Trials were not held.

In economic terms, the military administration was initially successful, with a GDP growth of 9.5 per cent and an industrial growth of 11 per cent in 1969. This *milagre econômico* was seen as evidence that socio-economic

growth did not necessarily walk hand-in-hand with a democratic government. However, the official economic policy based on trade liberalization and foreign investment began to show signs of weakness. Following the oil crisis of 1973, inflation rose steadily, reaching 77 per cent in 1979. That, coupled with the human rights violations, led to a strong collective dissatisfaction with the regime. Ambitious infrastructure projects, such as the Rio-Niterói Bridge or the Trans-Amazonian Highway, were no longer enough to win back public support.

Motivated mainly by financial difficulties, loss of public support and increasing pressure from foreign governments and human rights organizations, in March 1974, President Ernesto Geisel and his adviser Golbery do Couto e Silva initiated a controlled ('slow, gradual and safe') political opening. President João Figueiredo passed the Amnesty Law on 28 August 1979 and pardoned all political crimes committed between 1961 and 1979, both by dissidents and by the military. However, politically motivated offenses such as bank robbery, kidnapping, terrorism, murder and burglary were not covered by the law. Moreover, the existence of missing persons was not acknowledged. Still, the revocation of all Institutional Acts (including the AI-5) in 1979 restored parliamentary immunity, revoked capital punishment and reintroduced a multi-party system. In 1980, civil society reorganized and founded two of today's strongest parties, the Worker's Party (Partido dos Trabalhadores, PT) and the Brazilian Democratic Movement Party (Partido do Movimento Democrático Brasileiro, PMDB, which emerged from the former oppositional party MDB).

In 1984, massive civil society campaigns for direct elections were organized by the PMDB and gathered up to 1,500,000 citizens. However, the first civilian president in twenty years, Tancredo Neves, died in 1985, shortly before assuming office, and was substituted by the unpopular Vice-president José Sarney, a former member of the government party ARENA. The long transition to democracy was only completed in March 1990, after the first democratically elected president, Fernando Collor de Mello, assumed office.

Transitional justice

In October 1977 a member of the Higher Military Court, Brigadier Delio Jardim de Mattos, suggested a possible revision of the 'revolutionary punishments'. That year was marked by a series of pro-amnesty events organized by student groups and trade unions in association with the Catholic Church and the Brazilian Bar Association. However, civil society pleaded for a general pardon only for dissidents, not for military forces. They de-

manded the release of political prisoners, the return of exiled citizens, the investigation of disappearances and the definite end of torture.

The Brazilian transition from an authoritarian regime to a state of justice was shaped by three laws (Catela 2000; Mezarobba 2009). The first was Law 6,683, passed in 1979. It was the first political act of president Figueiredo and covered all political crimes committed between 2 September 1961 and 15 August 1979, both by dissidents and by the military, excluding violent acts classified as assault, kidnapping or terrorism. Despite efforts of MDB politicians, the Amnesty Law did not foresee in the investigation of the disappearances. The death of missing persons was not officially acknowledged; government-issued documents indicated a 'presumed dead' or 'whereabouts unknown', and did not hold the value of a death certificate. In the words of Sales, the Amnesty Law of 1979 was 'an attempt at reconciliation through social oblivion' (2009, 26; my translation). The second Law 9,140 was passed in 1995 by President Fernando Henrique Cardoso (himself a dissident of the military regime). The law recognized 136 missing persons as dead, and also recognized the responsibility of the Brazilian State for human rights violations committed between 1961 and 1988. The so-called Law of the Disappeared created the Special Commission on Political Deaths and Disappearances to identify other missing citizens, locate their bodies, and establish tentative reparations for victims and their families. After eleven years of activity, the Special Commission paid a total sum of 40 million reais (circa 20 million dollars) to the families of 353 victims murdered by the military regime. Finally, Law 10,559 was sanctioned in 2002 and offered economic compensation for losses suffered during the military dictatorship. These compensations consisted of single instalments or lifelong monthly wages. In addition, the law granted former political dissidents the right to resume and finish university degrees forcefully interrupted by the military government.

Although the Brazilian state was responsible for gross human rights violations committed on its territory between 1961 and 1979, democratic governments chose to confront the authoritarian past through avoidance, passing an amnesty law and hoping for amnesia. However, as the perpetrator of the crimes, the state is not entitled to offer forgiveness through amnesty. Since it is not the state that was wronged, forgiveness by the state has no value. As Minow (1998, 20) formulates it: 'If forgiveness is announced by someone who was not wronged, perhaps by a public official claiming to speak on behalf of the victims, it is a call to forgetting or putting aside the memories, not the act of forgiveness itself'.

Purges and trials did not take place. Only in recent years have reparations been paid, without disclosure of official information: the Special Commission on Political Deaths and Disappearances offered material reparations without establishing what these reparations were being paid for. The only clear account of torture and human rights violations committed between 1964 and 1979 is a report authored by the Catholic Church in 1985, *Brasil: Nunca Mais*. A law passed in 1991 determined that official documents classified as confidential should be made public after sixty years. On the last week of his term (1995-2002), however, President Fernando Henrique Cardoso passed a law instituting eternal secrecy for confidential documents, meaning official archives from the authoritarian years would never become available to society. Not even Cardoso (a former member of the MDB) was willing to open confidential files, as this would cause too many disagreements with the still powerful Brazilian military.

Brazil's military forces conceived a transition to democracy on their own terms, passed a self-amnesty law in 1979, and left power with popularity and influence. During the Constituent Assembly of 1988, most clauses that could have curtailed military autonomy were skilfully omitted (Linz and Stepan 1996, 169). This military influence makes it difficult to find a generally satisfactory punishment for all human rights abuses. As opposed to Chile, for instance, no official apology took place in Brazil.

Recent developments, however, point at new steps in the process of transitional justice. In 1995, Human Rights Watch and the Centre for Justice and International Law (CEJIL) filed a petition against Brazilian authorities in the name of seventy dissidents who disappeared between 1972 and 1975 in the region of the Araguaia River, in Northern Brazil. On 24 November 2010, the Inter-American Court of Human Rights unanimously ruled the Brazilian government to be responsible for the forceful disappearance of those seventy dissidents and the violation of their rights to life, to a legal personality, to personal integrity, to personal liberty and to freedom of thought and expression. Furthermore, the Court declared that 'provisions of the Amnesty Law which prevent the investigation and punishment of serious violations of human rights are incompatible with the American Convention, lack legal effect and must not further represent an obstacle for the investigation of the facts' (Corte IDH 2010, 114; my translation). The Brazilian government was required to investigate the facts, pay reparations and organize a public ceremony in which authorities should acknowledge the responsibility for the death of Brazilian citizens.

While a public apology ceremony has not yet taken place, the investigation of human rights violations is making progress. On 21 September 2011,

the Brazilian Chamber of Deputies passed Bill No. 7,376 creating the National Truth Commission, which officially began work on 16 May 2012. The establishment of the Commission was made possible by Law 12,527, which suspended the eternal secrecy for confidential documents; it was passed by President Dilma Rousseff on 18 November 2011. According to this law, citizens and members of the Commission may not be denied information that concerns basic rights or human rights violations. Over the course of the years 2013 and 2014, the seven members of the Commission shall hold public hearings, interview witnesses and have access to official documents in order to investigate all human rights violations committed between 1946 and 1988.¹ The first effective step undertaken by the Commission was to change the death certificate of Brazilian-Croatian journalist Vladimir Herzog, who had been imprisoned and tortured to death in 1975, though official records claimed he had taken his own life. The new death certificate will state the following: ‘The death resulted from injuries and mistreatment in the building of the Second Army in São Paulo (DOI-CODI)’ (Geraque 2012; my translation). Since November 2012, a working group of the Commission is investigating human rights violations committed against land workers and indigenous people. Deputies that lost their political rights after 1964 experienced a symbolic devolution of their mandates in December 2012. (The Public Prosecutors of Brazil, Uruguay, Argentina, Ecuador and Venezuela are also expected to collaborate in order to enable a joint investigation of the political repression suffered in each country.)

Conclusions

The very same military forces that established an authoritarian regime in Brazil in 1964 led the transition to democracy during the 1980s. They argue to this day that the 1964 coup successfully protected Brazil from the ‘communist threat’; that state and state-sponsored violence were proportional to the violence employed by ‘communist terrorists’; and that the State of Emergency (AI-5) decreed in 1968 was just a reaction to the armed struggle of the revolutionary left. Despite attempts to subordinate the armed forces to civilian rule, generals played a crucial role during the Constituent Assembly of 1988 and still enjoy autonomy and influence.

The investigation of the past is a prerequisite for the emergence of a solid judiciary system. However, due to military pressure, the Brazilian transitional justice gave priority to financial reparation for victims and relatives at the expense of truth-telling investigations. No democratically elected president ever went public to acknowledge state responsibility and apolo-

gize for human rights violations committed between 1964 and 1985. The issue of political disappearances is still treated with care so as not to provoke a confrontation with the military. Another important obstacle to prosecution is the fact that the wrongness of the military rule is not a societal consensus. Military forces have played a key role in Brazilian politics ever since the proclamation of the Republic by Marshal Deodoro da Fonseca in 1889. They are still associated with ‘order and progress’, the positivist motto that adorns the Brazilian flag; and even though most educated citizens are aware of the human rights violations committed between 1964 and 1979, many are willing to pass off the death and disappearance of ‘communist terrorists’ as a necessary evil. After all, many reason, the economy *did* grow around 10 per cent a year under military rule, and Brazil *did* win the 1970 Soccer World Cup. In the ensuing period, when inflation peaked at 230 per cent a year, many citizens still believed that the situation was better under the authoritarian regime than under the first years of civilian democratic government. Other than a few interest groups – such as NGOs *Tortura Nunca Mais* (Torture Never Again) and the *Comissão de Familiares dos Mortos e Desaparecidos Políticos* (Committee of Relatives of the Political Dead and Disappeared), society at large has shown little interest in confronting the country’s authoritarian past.

Compared to the national truth commission established in Latin American countries like Argentina (1983), Chile (1990) and Peru (2001), Brazil is a latecomer. The fact that Brazil’s National Truth Commission was only established in 2012 illustrates the reticence of post-dictatorial governments, but also suggests that Brazilian society needs to deal with its past. The work of the National Truth Commission should be followed attentively by the media and society, as the investigations conducted over the course of the next years will require cooperation from former officials and torturers. Thus, an important question is how the military will react. Shortly after the founding of the National Truth Commission, retired marines announced a parallel Truth Commission designed to dismiss allegations and offer legal advice to accused members of the Armed Forces. In an opinion article published by renowned newspaper *Estado de São Paulo*, Army General Rômulo Bini Pereira accused the National Truth Commission of being vengeful and representing a ‘one-sided truth’ that could lead to the revocation of the Amnesty Law (Pereira 2012). This fear appears to be unfounded. Change has indeed taken place under current president Dilma Rousseff, an ex-guerrillera who now ironically is head of the Armed Forces. But the National Truth Commission is not vengeful; instead it aims to carefully question official Brazilian history by rewriting a period many consider to have

already been written. It attempts to disclose the destiny of the disappeared using whatever documents and witnesses are still available. The final report produced by the Commission could show just how far Brazilian authorities are willing to go in order to finally achieve justice.

Nevertheless, critics of the Commission are not limited to members of the armed forces. Writer and theologian Frei Betto (2011), who was arrested and tortured by the military regime, appeals for the creation of a National Truth *and Justice* Commission, as elucidating the crimes is no longer enough: torturers and murderers should be punished by the government. Yet in a country as willing to forget its history as Brazil is, the creation of the National Truth Commission is a very encouraging first step that does not rule out the future prosecution of perpetrators. One can only hope that the final report, scheduled to appear in 2014, will increase public awareness of human rights violations and strengthen Brazilian democracy by proving that economic growth without political rights is not an alternative.

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Acknowledgements: I would like to thank Dr. Peter Birle from the Ibero-American Institute in Berlin for working as my advisor and editing an earlier version of this Exploration in German.

Note

1. At least in theory, human rights violations committed during the New Republic (1946-1964) will also be investigated.

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