

The onset of remembering

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The belated creation of the Truth Commission shows Brazil's peculiar way of dealing with its legacy of human rights violations



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Brazil has a unique history when it comes to dealing with the human rights violations that occurred during the military government, from 1964 to 1985. The National Truth Commission has only been created recently, 27 years after civilian governments were reinstated. In the next two years, the Commission will gather witness statements from the victims of political repression and from government agents accused of human rights violations. When it concludes the project, the Commission will publish a report with the official version of the violation-related circumstances and will propose actions to prevent such violations from ever occurring again. The Brazilian experience is a singular one from two perspectives. First, this is the latest of all the commissions organized by approximately forty countries over the last decades to investigate crimes committed during dictatorships. Moreover, Brazil is an unusual example of a country that implemented various initiatives to provide reparation for the crimes, such as compensation to families whose members died during the dictatorship, and for victims of political persecution. However, the investigations of the facts were postponed.



Protest march demanding amnesty in São Paulo, in 1979...

Why did Brazil choose to provide financial reparation? This question underlies the doctoral research of political scientist Glenda Mezarobba, who received a grant from FAPESP and presented her thesis at USP in 2008. One of the main conclusions of the research, which included a six-month stay at a research center in New York, was that the Amnesty Law of 1979 had a very strong influence on the behavior of the agents and victims of the repression. In Argentina, for example, the military decreed self-amnesty shortly before turning power over to civilians in 1983. However, the pardon was immediately revoked by the civilian president Raúl Alfonsín, under pressure from broad segments of the population who clamored for justice. The journey to investigate and punish the dictatorship in Argentina experienced ups and downs. The country witnessed rebellions by the military and the enactment of laws – later revoked – that ordered the conclusion of the proceedings, but the justice system continued along the same course. Former dictators Jorge Videla and Reynaldo Bignone were sentenced to life imprisonment. Even in Chile, where the transition had been mediated by former dictator Augusto Pinochet, comfortably installed in the Senate for life, an agreement was reached to summon a Truth Commission. Subsequently, the crimes were investigated because of international pressure. Pinochet himself was kept under house arrest in London in 1998, having been accused by the Spanish Courts of crimes against the country's citizens.

Glenda points out that in Brazil, the Amnesty Law was the antidote that neutralized more demanding souls. "Amnesty had been called for since the mid-1960s; it became the slogan during the dictatorial regime. The mobilization this law unleashed in the late 1970s led to the creation of committees for amnesty in Brazil. In Europe, this law is seen as the precursor of the current human rights movements in Brazil," says Glenda, who is currently a researcher at the State University of Campinas and at the National Science and Technology Institute for Studies on the United States (INCT-Ineu). In addition, she is the director of the Humanities Department at FAPESP. "The Amnesty Law was discussed in Congress, surrounded by the military; the law was sanctioned by the government. However, the pro-amnesty movement felt it had achieved a victory. That was a different reasoning from the one in Argentina or Chile. Those countries did not have a Congress or a Parliament to legitimize amnesty.



... and protest marches by mothers at the Plaza de Mayo in Buenos Aires, in 1985: the Brazilian Armed Forces articulated oblivion, whereas the Argentine Armed Forces did not resist the clamor for justice

And people there didn't want pardon – they clamored for justice,” she states. With very few exceptions, the victims who benefitted from the Amnesty Law in Brazil did not go to court to identify and punish their torturers. “The way in which the Amnesty Law has been interpreted since the dictatorship in a country where some laws ‘catch on’ and others don’t has caused a lot of astonishment. Of course there is room for the Courts to re-interpret the Amnesty Law which, by the way, doesn’t mention torture, for example, but very few people have gone to court to demand this re-interpretation. The people who benefitted from amnesty find it difficult to see themselves as victims and to view the Judiciary Power as the arena for justice.

Glenda Mezarobba is involved in a field of research called transitional justice, which deals with the judicial and extra judicial initiatives and mechanisms adopted by countries with a history of mass violations of human rights, as evidenced by entities such as the United Nations (UN) and the Organization of American States (OAS). Since it is materially or politically impossible to take an extensive list of crimes to court, strategies have been established to prevent impunity. Punishment is concentrated on crimes against humanity or genocide, as exemplified by the trials of Nazi criminals after the Second World War. The core of transitional justice is the concept that the State has at least four duties to society – justice, truth, reparation, and reform – and that these duties must be performed by means of amnesty for minor crimes, compensation, public apologies, opening of files, and building of museums and memorials, among other things.

The truth commissions are another venue where victims have a voice and where memories of periods of darkness are retrieved. In addition, the truth commissions seek to build a democratic environment, yet they lack the authority to punish the perpetrators. “Under some circumstances, transitional justice emphasizes the need to focus on restoring the relationship between victims, the perpetrators, and society, rather than on punishment,” says Lucia Elena Arantes Ferreira Bastos, a researcher at USP’s Center for Studies on Violence. Last year, she concluded her post-doctoral course, thanks to a grant from FAPESP. The truth commissions seek to manage conflicts that do not end after the transition from a period of massive violations of human rights to a period of democracy. The Truth and Reconciliation Committee of South Africa was created in 1993, when racial confrontation occurred frequently. The commission’s objective was to transform violence into dialogue.

It was the result of lengthy negotiations and its objective was to rebuild memories of the period of violence through the testimonials of victims, their family members, and repression agents. As the ultimate objective was reconciliation, the commission had a unique mechanism whereby tormentors who confessed their crimes were granted amnesty. “The major innovation of the South Africans is linked to the principle of individual and conditional amnesty, as opposed to the general amnesties granted in Latin America under pressure from the military,” says Luci Buff, whose doctorate in philosophy was based on a thesis, presented at the Catholic University of São Paulo (PUC) in 2007, about the horizons of pardon. Her thesis included the South African example. “The objective was not to cover up or delete the crimes, but to reveal them. Former criminals were given the opportunity to participate in the re-writing of national history to be forgiven,” she stated. This mechanism was partially efficient. Only 17% of the crimes investigated by the commission were pardoned or granted amnesty.

Of course, there are very few similarities between the South African experience and the Brazilian one, as has been pointed out by Edson Teles, a professor of philosophy at the Federal University of São Paulo (Unifesp) at Guarulhos. He is the author of a doctoral thesis – funded by a grant from FAPESP – on the track record of justice and reparation policies in Brazil after the military cycle and in South Africa after apartheid. “Brazil is at a very different moment. The dictatorship ended a long time ago, but some legacies are yet to be re-visited. Our truth commission seeks to conduct a historical investigation to re-build the memory and thus obtain the political transformation of the present,” says Teles, whose family members were among the political prisoners sentenced to prison terms because of the Araguaia event. “Our Truth Commission does not seek to punish the crimes either, but it has fundamental differences. The South African commission is autonomous, whereas the Brazilian one is linked to the Office of the Chief of Staff of the President of the Republic. This is a major difference, because the crimes committed by the State will be discussed and the State still has heirs from the legacy of the former military governments, as the recent manifestations of the Armed Forces indicate. There is a lot of pressure, and that is why the issue of autonomy is so important.”



Nazi war criminals' trial in Nuremberg, in 1946: The challenge of judging and punishing crimes that killed millions of people

However, the Brazilian Truth Commission may play a historical role, Teles points out, as, for example, in the construction of a collective memory of the period. “Publicizing the traumas and the resentments by means of narratives might contribute to ending the mourning and strengthening social bonds,” he states. “The opposition between the pacifying political reasoning of the State and the painful memories of the Brazilian military dictatorship obstructs the public expression of sorrow and reduces the memory to private emotions.” Another important contribution could come from the empowerment of democratic institutions. Teles points out that Brazil still has laws and legacies in the structure of the State that have remained from the dictatorship times. He adds that in other countries the truth commissions suggested reforms of these structures and helped to build a democratic State. “Torture is still a common practice in the Brazilian police system. One of the benefits that the Truth Commission may bring is to propose the reform of institutions. This will be achieved if the commission successfully identifies the people responsible for criminal acts and the structure that allowed atrocities to occur.”



Supporters of the Truth and Reconciliation Commission in South Africa, in 1995: amnesty for those who confessed to human rights violations

Research studies in the field of transitional justice are recent in Brazil. Political scientist Glenda Mezarobba had to spend six months in New York doing research for her doctoral thesis, at the International Center for Transitional Justice, a benchmark reference in this field. “There was very little research on this in Brazil at that time and I lacked people to discuss it with, but I found such people in the United States,” she says. While she was in the US, Argentina’s Juan Mendez was the president of the center. Mendez, a lawyer, had defended political prisoners in the 1970’s, and had been tortured and sentenced to prison terms for his activism. He was expelled from Argentina in 1977 and went to the United States, where Amnesty International adopted him as a prisoner of conscience. At present, he is a special reporter for the United Nations for crimes of torture. “I asked him about the amnesty decreed at the end of the military government in Argentina and he did not see any sense in my question. I realized then that in Brazil, unlike Argentina and Chile, for example, the waters had moved the wheels of oblivion,” she states. In New York, Glenda found a vast bibliography on the subject, which included literature written in Brazil, but no longer available here. “I would have been unable to produce my thesis if I hadn’t gone to New York,” says the researcher. Glenda is the author of three entries on Brazil that are part of the first encyclopedia of justice transition, due to be released by the Cambridge University Press in December.

During the Lula Administration, a work group was created to discuss the Bill of Law that would lead to the instatement of the Truth Commission. At that time, Glenda was invited to advise political scientist Paulo Sergio Pinheiro, one of the members of the commission. Pinheiro, a professor at USP, is the founder of the Center for Studies on Violence. “The commitment of Paulo Vanucchi, then Minister of Human Rights, was crucial to create this study group. At the time, we made an effort to encourage the academic community to participate in the discussions on the Truth Commission,” says Glenda. Prior to this event, and with the same objective, Glenda and Pinheiro coordinated the International Conference on the Right to the Truth. The two-day event, held in São Paulo in October 2009, brought together researchers from the fields of law, political science and international relations, as well as government authorities and human rights activists from Brazil and abroad. The event was held with the support of FAPESP. Paulo Sérgio Pinheiro,

appointed as a member of the Truth Commission, believes that the experiences of commissions of other countries and the engagement of the academic community will help the work of the Brazilian commission. “Brazil will benefit from the experiences of the ‘truth commissions’ set up all around the world since the 1980s. We can learn from recently established commissions, such as the ones created in Paraguay, or Uruguay, which had massive participation by universities, and the one created in Peru,” he told the BBC news agency.



Refugees from the genocide in Rwanda, in which 800 thousand people were murdered; crimes against humanity test the limits of transitional justice

One of the outstanding elements of Glenda Mezarobba's research work suggests that the dictatorship regime in Brazil was more skillful at 'capturing the hearts and minds' of its citizens than was the case of the other Latin American dictatorships. "This might be helpful to understand why the dictatorship in Brazil was 'not as bloody' as in Argentina and Chile. It was unnecessary for it to be any bloodier than it was," she states. The appropriation of the amnesty concept, transforming it into a dynamo of oblivion, is an example of this skill. Glenda also refers to the efficiency of the dictatorship regime in forbidding the entry into Brazil of observers from the Inter-American Human Rights Commission. "In Argentina and Chile, the observers' reports played a major role in denouncing human rights violations. In Brazil, our diplomacy was 'efficient' because it barred these initiatives," she says. Likewise, Brazil was seldom actively accused by courts of other countries for crimes committed against those countries' citizens, unlike what happened in Argentina and Chile. "Only one lawsuit was filed in this respect – in Italy," Glenda adds.

During the Brazilian dictatorship, clamor for amnesty was concurrent with the protection and promotion of human rights, and with the desire for democracy and for punishment of the torturers. The clamor was led by advocates of human rights and by family members of the dead and the missing. However, the clamor found no echo in society. The resistance of the military concerning the investigation of facts – on grounds of the Amnesty Law – prevailed. This does not mean that the Brazilian State has not taken any action to do its duty – albeit partially – since then. All the civilian presidents who preceded incumbent president Dilma Rousseff dealt in some way with the legacy of mass violations of human rights. José Sarney signed the International Pacts of the United Nations on Civil and Political Rights and the Convention Against Torture and other Cruel or Inhuman Degrading Treatment or Punishment. The project Brasil Nunca Mais (see Box) was also announced during the Sarney administration, although it had no official backing. This project has been the most important initiative implemented so far to disclose the facts linked to the violation of human rights by political repression from 1961 to 1979. The facts were disclosed by systematizing the information found in the proceedings filed at the Higher Military Court. Several files of state agents of repression, kept under the custody of the Federal Police Department, were released during the Fernando Collor administration. The Law of the Dead and Missing Persons was enacted by the Fernando Henrique Cardoso administration. This law acknowledges the responsibility of the State regarding 136 missing persons. The Amnesty Commission, also created during the Fernando Henrique Cardoso administration, resulted in financial compensations for the politically persecuted who had undergone economic losses due to political repression. The Lula administration continued paying out compensation and disclosed public documents by means of the National Archives' Memórias Reveladas portal. In addition, a study group was created to draw up the bill of law that resulted in the creation of the Truth Commission.

The Amnesty Commission created during the Fernando Henrique administration to ensure financial compensation for the victims of the dictatorship was not set up with investigative objectives. "The law that established the commission does not refer to victims; the wording of the law refers to 'people granted amnesty' or who 'benefitted from amnesty'," says Glenda. To qualify for financial compensation, the petitioner had to prove the responsibility of the State for the death of an activist or for losses undergone by a politically persecuted party. As soon as proof was obtained, the investigation ended, without detailing the circumstances and the people involved. "A typical case of blank amnesty, the Brazilian transitional model neglected the need to clarify past crimes; two decades later, the country adopted a vague principle of responsibility, granted non-distinctly to the State, without identifying individuals," wrote researchers Cristina Buarque de Holanda, Vanessa Oliveira Batista and Luciana Boiteux, from the Federal University of Rio de Janeiro, in an article published in 2010.



Former Chilean dictator Augusto Pinochet, detained at a clinic in London in 1998: pressure from international justice forced Chilean courts to investigate crimes

Lucia points out that the adoption of transitional justice mechanisms has expanded since the end of the Cold War. “Truth commissions have multiplied in the last two decades; we have witnessed unprecedented progress as regards international penal justice. Never have there been as many apologies and reparations to victims of human rights violations as now,” says Lucia. “However, transitional justice has met with contradictory facts, divided between moments of hope and tragedy, which have stirred the debate on how best to achieve reconciliation – whether it should be a policy, a pardon, or a punishment,” she states. Hope is exemplified by the collapse of the Communist dictatorships, the end of apartheid in South Africa, and the strengthening of democracy in Latin America. Tragedy is exemplified by the genocide in Rwanda and the ethnic strife in the former Yugoslavia. “At present, international justice is working on both propositions, namely, extra judicial mechanisms resulting in punishment and on the reconstruction of society.”

Brasil: Nunca Mais online

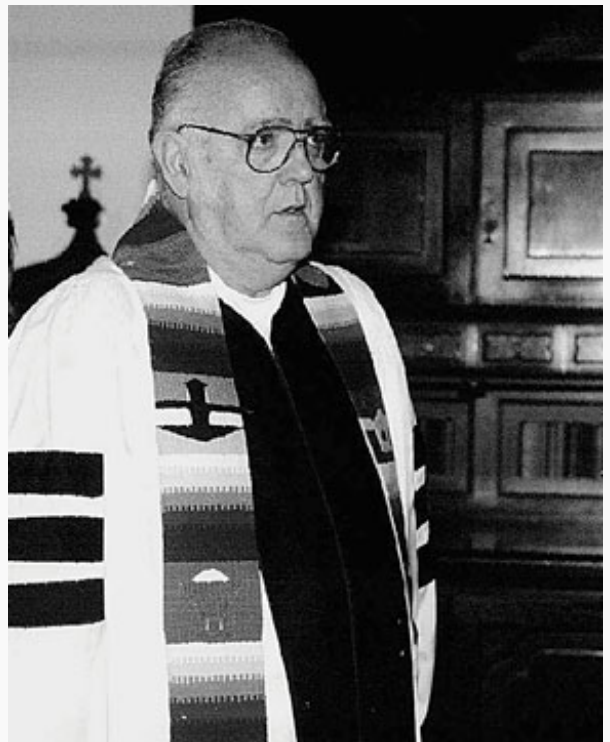


The documents of the *Brasil: Nunca Mais* [Brazil: Never Again] project are being digitized. The project, headed by Paulo Evaristo Cardinal Arns and by the Presbyterian Church Pastor Jaime Wright, generated the most important documentation in Brazil on political repression in the country during the 1961- 1979 period. Within one year, the documents will be available on the internet. The process of digitizing the collection is being conducted by the São Paulo State Public Archive, based on microfilms kept in the United States. The digital version of the collection of documents will be revised and corrected at Unicamp's Edgard Leuenrouth Archives (AEL), where the documents are stored, to be added to proceedings that had not been microfilmed. During this phase of the process, AEL will use equipment acquired through FAPESP's Infrastructure Program, which provided funds in the amount of some R\$ 590 thousand for the Archives. "We will check the data and treat the images," says Alvaro Bianchi, AEL director and a professor of political science at Unicamp. The university has housed this collection of documents since 1987. The collection comprises more than one million pages on 707 proceedings conducted at the Higher Military Court, plus 10 thousand attachments to said proceedings.

The documents were secretly obtained by a group of thirty human rights activists, some of whom have chosen to remain anonymous. From 1979 to 1985, this group consulted and generated copies of proceedings at the Higher Military Court that contained, for example, accusations of torture submitted to the courts by political prisoners. "The publication of these documents preceded the disclosure of a list of 444 torturers. However, neither the book and nor the identification of the torture agents triggered any broad scale reaction in favor of putting an end to the impunity of the people accused of violating human rights," says political scientist Glenda Mezarobba. The documents became a sort of official version of the facts, despite having been put together without government approval. According to Alvaro Bianchi, *Brasil: Nunca Mais* is one of the collections most frequently consulted at AEL and it has provided the basis for many studies and theses on the history of the leftist movement, the resistance to the military government, and the student movement; however, it has not been used much for research into human rights. "Researchers have been mostly interested in the seized documents that were attached to the proceedings. They are a source of information that is hard to come by," he states.



Cardinal Paulo Evaristo Arns...



... and Jaime Wright: responsible – without government sanction – for collecting the most important documents on political repression



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