

Truth Commission in Brazil: Individualizing Amnesty, Revealing the Truth

By Paulo Coelho Filho · February 2012



Introduction

In 2004, the Brazilian newspaper *Correio Brasiliense* published a photograph of a man hanging in the Information and Operations Detachments and Commands (DOI/CODI), a unit responsible for carrying out torture and homicides in the Brazilian military dictatorship (1964-1985). The man in the picture was purported to be television journalist Vladimir Herzog, who died in DOI/CODI in 1975. At the time, the media widely reported this case because of Mr. Herzog's public importance, yet vehemently denied the police version, which claimed that Mr. Herzog committed suicide by hanging himself with a belt in his prison cell. Since prisoners had their belts removed before investigation, Mr. Herzog could not have killed himself in the way described by DOI/CODI. Besides, the marks on his neck pointed to clear signs of strangulation, not hanging. In 1975, Mr. Herzog's death represented the initial rejection of lies propagated by the Brazilian military; ever since then it has symbolized the beginning of the Brazilian redemocratization process.[\[1\]](#)

Almost thirty years after his death, the case of Mr. Herzog would still create uneasiness and inflame Brazilian society.^[2] Not only did the picture provide visual evidence of Mr. Herzog's strangulation, but it was also revealed to be part of a collection of documents that the armed forces claimed to have destroyed years before.^[3] As in 1975, the Brazilian people were outraged by lies about the darkest chapter of the nation's history. To respond to this public indignation, the military issued a statement contending that in the dictatorship "[t]he measures taken by legally constituted forces were a legitimate response to the violence of those who rejected dialogue and opted for radicalism."^[4] Today, twenty-five years after the end of the military era, no one knows exactly what happened to Mr. Herzog or the hundreds of individuals tortured and killed during the Brazilian military dictatorship.

While Argentina, Chile, and Peru have officially investigated the deaths and torture that took place during their dictatorships, Brazil has yet to do so.^[5] Argentina, Chile, and Peru created truth commissions to foster accountability for the crimes committed during the dictatorships, and to understand the patterns of violence by the various forces, especially their repertoires, targeting, and frequency. In these countries, where the military victimized thousands of people, the truth was urgently demanded. In Brazil, the number of deaths probably measures in the hundreds,^[6] but more than 50,000 people were detained and 10,000 forced to go into exile.^[7] Brazil's dictatorship might not have murdered as many citizens as did the governments in Argentina, Chile, and Peru, but the truth is still important as the country does not know the details of the executions, torture, and kidnappings that took place during those twenty-one years. Brazil will finally come to terms with its past: in October 2011 Brazil's Congress voted to set up a truth commission, and President Dilma Rousseff immediately signed the bill into law.

Truth commissions have been established not only in Argentina, Chile and Peru, but also in El Salvador, Uruguay, Guatemala, Sri Lanka, Zimbabwe, Chad, and South Africa. In the past,^[8] truth commissions (1) provided the victims with psychological support as well as monetary reparation for crimes committed against them, (2) upheld the right of families of victims to know about the violence perpetrated against their kin, and (3) publicly acknowledged the victims' version of events. Truth commissions were especially beneficial for the civil society at large by (4) pointing out the institutional failures that might have contributed to the gross violations of human rights, (5) making recommendations to preclude these violations from occurring again, (6) fostering a spirit of human rights, and (7) reinforcing the importance of transparent governmental institutions. As United Nations (UN) Secretary-General Kofi Annan reported to the UN Security Council:

truth commissions have the potential to be of great benefit in helping post-conflict societies establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparations and institutional reforms. They can also provide a public platform for victims to address the nation directly with their personal stories and can facilitate public debate about how to come to terms with the past.^[9]

In this paper, I will support Brazil's decision to abandon its position as a South American outlier and finally investigate the darkest chapter of its history. I contend, however, that the main impediment to the creation of a Brazilian truth commission is the Amnesty Law of 1979, which granted "total and unrestricted amnesty" to all individuals involved in politically motivated

crimes during the dictatorship, including torture, kidnapping, and homicide. I will outline the current dilemma surrounding the Brazilian amnesty: while in April 2010, the Brazilian Supreme Court upheld the constitutionality of the 1979 Amnesty Law, in December 2010, the Inter-American Court of Human Rights ruled the Amnesty Law illegal. Brazilian President Dilma Rousseff must now face the decision of following either the Inter-American Court's decision or the Brazilian Supreme Court's ruling.

I propose a solution to this predicament by making the case that President Rousseff should revoke the Amnesty Law of 1979 and grant *individualized* amnesty for all perpetrators who will come forward to the truth commission. As a result, Brazil will be able to investigate the military-era deaths, tortures, and disappearances without having to prosecute the perpetrators that cooperate with the work of the truth commission.

The discussion of this process will proceed in four sections. First, I will present the patterns of political violence during the Brazilian military dictatorship, as well as a few of the official and unofficial attempts to investigate these acts of violence and to offer reparations to the victims. Next, I will discuss the advantages of my policy proposal. I will argue that perpetrators will not only have enough incentives to testify, but that they will also face the public disapproval of their past acts – an informal form of punishment – while the victims will remain in the spotlight. Then, I will present the main benefits of a Brazilian truth commission for the victims and their families, the civil society, and the military. I contend that these three groups have much to gain from the investigation of the atrocities committed during the “years of lead,” as the Brazilian dictatorship is commonly called. Finally, I will address the possible challenges to my approach, which include the moral price of amnesty, the possibility of fairness of a truth commission, the military reaction, and the legality of a change in the Amnesty Law. I will conclude by suggesting that President Rousseff should adopt a compromise position between the rulings by the Brazilian Supreme Court and the Inter-American Court of Human Rights

Political Violence in Brazil

Between 1964 and 1985, the government carried out repression against those who might be affiliated with communist activities and those who violently opposed the military rule. The Civil Police, the Militarized Police, and the military itself (through its special units, such as DOI/CODI)[\[10\]](#) were responsible for acts of violence against alleged communists and political opponents, including torture and homicide.

In an unofficial report published by the Catholic Archdiocese of São Paulo, which investigated 695 trials of politically motivated crimes brought before the military courts,[\[11\]](#) 88 percent of 7,367 defendants were male and 12 percent were female; 38.9 percent were 25 years old or less; and “[o]f the 4,476 whose educational level was recorded in the military court proceedings, 2,491 had a university degree, and only 91 declared themselves illiterate.”[\[12\]](#) Geographically speaking, respondents largely came from urban areas, especially São Paulo (1,517 defendants) and Rio de Janeiro (1,872 defendants). The most common charge against them (4,935 cases) was “militancy in a banned political party organization,” (predominantly leftist groups) and the next most frequent (1,464 cases) was “participation in violent or armed actions.” [\[13\]](#) The repression primarily occurred between 1964 and 1966, following the 1964 military coup, and 1969-1974,

after the declaration of the Institutional Act No. 5, which allowed the president to suspend the political rights of individuals deemed subversive and to intervene in states and municipalities, among other provisions in the name of “national security.” Additionally, the report states that “1,918 defendants testified that they had been tortured during interrogation.”[\[14\]](#) According to the defendants, in an attempt to create an “atmosphere of terror,” interrogators tortured prisoners before starting the interrogation. The description of one of these incidents is in the records of the case of the teacher Luiz Andréa Fávero, 26 years old:

The accused was taken by surprise in the home of his parents by a veritable swarm of police; that said individuals invaded the house, handcuffed his parents and, initially, took the accused to one of the rooms of the house; in said room, the police tore off the clothes of the accused and placed his feet in a basin of water, and, using, wires from an electrical apparatus, proceeded to apply shocks; ... that the accused was then taken to the door of the room where his wife was and there saw that the same process of torture was being administered to her; that the accused was, immediately afterward, taken outside the house, where he saw his parents tied-up inside a vehicle... [\[15\]](#)

Up until now, no perpetrator has ever been put on trial in Brazil. Despite the lack of facts about the perpetration of political violence in Brazil, a few families and victims have already received reparations. In December 1995, President Cardoso signed Law No. 9,140/95 (Law of Political Assassination and Disappearance), which recognized the deaths of 136 people who were part of a list of the Brazilian Armed Forces. The law “allowed their families to obtain death certificates, and created a reparations program for those identified in the law as murdered or disappeared by the military government.” [\[16\]](#)

In 1996, the special commission *Comissão de Familiares de Mortos e Desaparecidos Políticos* (Commission for the Family Members of the Persons Killed or Disappeared for Political Reasons) was created to investigate the crimes committed during the dictatorship and to grant reparations for families who could prove to have been victims of violence. In 2007, the commission, which relied solely on information provided by the victims, published the report *The Right to Memory and to Truth*, accusing “federal agents of rape, torture, executing prisoners, and concealing bodies of victims,” and noting that “opponents of the regime resorted to bank robberies, kidnappings of foreign diplomats and attacks on military bases, which it says produced countless victims.”[\[17\]](#) According to this report, more than 400 people were killed and more than 160 people are believed to have disappeared during the military dictatorship. No commission in Brazil has ever had full access to the military documents or benefitted from the cooperation of military and police officials.

In December 2009, President Lula announced the creation of the National Human Rights Plan (PNDH), which proposed the revision of the 1979 Amnesty Law and the creation of a truth commission to investigate the military era crimes. PNDH led to outrage within the government. Minister of Defense Nelson Jobim, along with the three senior officials of the armed forces (army, navy, and air forces), threatened to write a joint letter of resignation. PNDH was accused of one-sidedness for focusing on the crimes by the military rulers and excluding those by the armed resistance. President Lula promised to reevaluate the one-sided aspect of a truth

commission. But, in his eight-year term, PNDH was never reviewed or submitted for voting in Congress.

On January 1, 2011, President Dilma Rousseff, Lula's protégée and former chief-of-staff, was sworn into office. During the military dictatorship, President Rousseff was imprisoned for almost two years and was tortured with electric shocks. A former Marxist guerilla, Ms. Rousseff was part of the resistance to the military government. In her inauguration speech, she said, "I gave my youth, as did many of you present, to the dream of a just and democratic country. I bore the most extreme adversities inflicted on all of us who dared to stand up to oppression. I have no regrets, no resentment or rancor."[\[18\]](#) During her political campaign, she promised to bring violators of human rights to justice. And now she has the chance to fulfill her promise and create a truth commission.

Policy Suggestion

The main impediment to the success of a truth commission in Brazil is the Amnesty Law of 1979. In April 2010, the Brazilian Supreme Court upheld the constitutionality of the law in a landmark case and maintained that the law prohibits the prosecution of perpetrators both from the state forces and the armed resistance. In December 2010, however, the Inter-American Court of Human Rights denied the legality of the law and ordered the government to investigate "the killing, torture and disappearance of 70 people, including farmers and members of the Communist Party of Brazil, during military operations to crush resistance to the dictatorship in the early 1970s." [\[19\]](#) As the Inter-American Court of Human Rights ruled,

the Court analyzed the compatibility of the Amnesty Law No. 6.683/79 with the international obligations assumed by Brazil under the American Convention on Human Rights. Based on international law and its constant jurisprudence, the Inter-American Court concluded that the provisions of the Amnesty Law that prevent the investigation and punishment of serious human rights violations are incompatible with the American Convention and lack legal effect, and as such, cannot continue to represent an obstacle for the investigation of the facts.[\[20\]](#)

Although the Brazilian State defended its position by arguing that the country had provided general amnesty to all perpetrators of politically motivated crimes and thus was not legally able to conduct formal investigations against individuals pardoned by the state, the Court contested the validity of the Amnesty Law and concluded that the crimes perpetrated against civilians violated fundamental rights, such as the right to juridical personality, right to life, right to human treatment, and right to personal liberty – all of which are protected by the American Convention on Human Rights. The Court ruled that the Brazilian must investigate gross violations of human rights.[\[21\]](#)

To resolve this legal stalemate, President Rousseff should revoke the Amnesty Law of 1979, which provided *general* amnesty for all of those involved in crimes with political motivations, and grant *individualized* amnesty for all perpetrators who will come forward to testify in the Brazilian truth commission. Accordingly, the government will not prosecute state agents or members of the resistance as long as they cooperate with the work of the commission. The state

does not deny the historical importance of the Amnesty Law, nor does it ignore the violations of human rights that occurred in Brazil. This approach has three main advantages:

(i) *Incentive to Speak*. Under the *general* amnesty granted by the 1979 Amnesty Law, perpetrators have very few incentives to come forward. Indeed, why would one decide to recount acts of violence more than two decades later? Even if perpetrators are assured that the general amnesty of 1979 precludes any sort of prosecution, they might still doubt that this amnesty can protect them.^[22] In Argentina, the National Commission on the Disappeared provided the authorities with the names of perpetrators that the commission deemed to deserve prosecution, as well as evidence against them,^[23] as soon as the state decided to revoke the general amnesty the military had granted itself.^[24] In Brazil, perpetrators might fear this outcome – even if prosecution is currently illegal in accordance with the Amnesty Law of 1979. In the context of a general amnesty, a truth commission would have limited investigative power, as perpetrators would not be willing to offer their version of the story. By offering *individualized* amnesty, however, the government will emphasize that perpetrators will not be prosecuted if they choose to cooperate with the truth commission. The government will address the question of amnesty right from the beginning and will erase doubt that the Amnesty Law will disincentivize perpetrators' cooperation. It will be in the perpetrators' best interest to testify so as to avoid criminal prosecution – and it will also be in the state's best interest. As Kent Greenawalt explains, "If a truth commission can draw testimony from those to be granted amnesty, much more will be revealed about past abuses than would be possible in a series of criminal trials. And the process will take much less time."^[25]

Although one might agree with the positive outcomes of this policy, one might still wonder how the terms of the individualized amnesty will work, in particular, what "cooperating" with the truth commission means. In South Africa, individual amnesty was granted for politically motivated crimes between 1960 and April 1994.^[26] "Amnesty was granted only to those who fully confessed to their involvement in past crimes and showed them to be politically motivated. For gross violations of human rights (...) the applicant was required to appear in a public hearing to answer questions from the commission, from legal counsel representing victims or their families, and directly from victims themselves."^[27] In Brazil, the government must also grant individualized amnesty to the perpetrators that choose to cooperate with the truth commission. The specific conditions must be discussed in the mandate of the commission, but cooperation must involve not only testimonials of what happened in the military era, but also perpetrators' help in identifying other perpetrators and in truthfully answering all of the questions of the commission. Put simply, the role of a cooperative perpetrator might be compared to that of an informant in a criminal investigation – a person who will receive a benefit (in the Brazilian case, amnesty) in exchange for valuable information. As in South Africa, perpetrators must give a complete account of the perpetrated violence, and no apology or sign of remorse will be necessary.^[28]

(ii) *Informal Punishment for Perpetrators*. Perpetrators who testify will not be tried, yet they will indirectly be punished. Although the government will have no power to penalize the perpetrators who choose to testify, these perpetrators will still be subject to public opinion, as they will publicly talk about the atrocities they committed. As in the South African Truth and Reconciliation Committee, perpetrators' testimonies will disclose information at a national (and

even global) level – and if their revelations had been unknown to their families and friends, the “darker side of their lives” would be “exposed in public.”^[29] In this specific way, a truth commission might work similarly to the criminal justice system, since both produce a record with the names of the victims and the perpetrators. If the Brazilian truth commission releases the names of the perpetrators, the “record can form the basis for informal social sanctions of public disapproval or ostracism, and of related shame, embarrassment, and disadvantage for the criminal.”^[30] This “informal social sanction” can ensure that perpetrators face some sort of punishment for their past actions or omissions. Certainly, to name the guilty is not the same as to make them formally pay for their crimes – but Brazil must accept this tradeoff if it wants to paint a full, detailed picture of those twenty-one years.

(iii) *Focus on the Survivor.* Revoking generalized amnesty and individualizing amnesty will ensure that the truth commission will focus on survivors rather than on perpetrators. Since the amnestied cannot be judged, the spotlight will soon shift from the perpetrators to the survivors. If the government revoked the Amnesty Law of 1979 and did not grant individualized amnesty, perpetrators would be tried, and the survivors would soon occupy a secondary place. As Martha Minow simply puts it, “Trials focus on perpetrators, not victims. They consult victims only to illustrate the fact or scope of the defendants’ guilt. Victims are not there for public acknowledgement or even to tell, fully, their own stories.”^[31] In the Brazilian truth commission, as in the South African Truth and Reconciliation Commission, there is a “need for reparation but not for retaliation.”^[32] The goal of the commission is not to seek revenge against wrongdoers; in fact, retaliation is not possible under the aegis of amnesty. Individualizing amnesty will provide perpetrators with incentives to testify and informal punishment for their actions or omissions, while also ensuring that the survivors remain in the spotlight.

Benefits of a Truth Commission in Brazil

Today, Brazil has very little to lose from creating a truth commission. Truth commissions often work immediately after the perpetration of political violence, such as in the case of South Africa, because their work might be indispensable for the peaceful transition to a democratic system. In Brazil, on the other hand, since the military dictatorship ended more than twenty-five years ago, the truth commission does not pose a threat to redemocratization. Setting up a truth commission in Brazil today is much less risky in terms of political stability than it would have been in 1985.

In addition, Brazil “is not a war-shattered society in which most medical personnel have fled the country or died in the conflict.”^[33] Rather, Brazil is the seventh largest economy in the world and a stable democracy, which has the means and the capacity to create a well-funded, well-organized truth commission. Compared to other countries that experienced political violence in the past, Brazil has sufficient wealth to fund a commission and provide financial as well as psychological support for the victims.^[34] The country has the personnel necessary to conduct investigations and offer medical and emotional guidance for victims and perpetrators. In other words, a truth commission is a feasible project for Brazil – and it can offer great benefits for (i) the victims and their families, (ii) the civil society at large, and (iii) the military.

In the first group to benefit will be the victims, who will enjoy not only having their version of the story publicly acknowledged, but who might also experience healing^[35] from past abuses

and receive reparations for the crimes committed against them. The government and the civil society will recognize their accounts of the events that inflicted pain on – and caused harm to – them and their families. In this way, victims’ suffering and endurance will be publicly recognized, enabling “the audience to share in the process of acknowledgments, mourning, and sympathetic listening.” [36] While truth commissions’ capacity to provide healing might be a contentious issue, Thomas Buregenthal, who worked as one of the three commissioners in the United Nations Truth Commission for El Salvador, argues that many of the victims who came forward to testify in the Truth Commission had never spoken about those atrocities to their parents or relatives, and that as they were finally able to recount the violence they had endured, “one could not listen to them without recognizing that the mere act of telling what had happened was a healing emotional release.” [37] Martha Minow also believes that recounting one’s suffering has an important healing effect. As she simply puts it, “Coming to know that one’s suffering is not solely a private experience, best forgotten, but instead an indictment of a social cataclysm, can permit individuals to move beyond trauma, hopelessness, numbness, and preoccupation with loss and injury.” [38] Even if healing does not substantially occur in the Brazilian truth commission, victims will nonetheless receive compensation through lump-sum payments and/or pensions, as well as educational and health programs, as happened in Chile’s National Truth and Reconciliation Commission, for example. [39] Descendants might finally learn what happened to their family members during the dictatorship, locate their remains, and exercise the fundamental right of burial. Thus, the Brazilian truth commission will stand behind the critical idea that “victims and their descendants have a moral right to know the truth about human rights abuses.” [40]

The Brazilian civil society at large will also reap benefits. Truth commissions point out the institutional failures that might have contributed to the gross violations of human rights, and also make recommendations in order to prevent these violations from occurring again. Even more important, they can foster a spirit of respect for human rights in the society, because during and in the aftermath of the work of truth commissions, people often write memoirs, direct theatrical productions and movies, and recount events in light of the testimonies and facts. Truth commissions end up stimulating discussions on television, radio, and the Internet, thereby increasing public awareness of human rights. They also reinforce to the civil society the importance of transparency in the government. As David Crocker states, “[i]t is not enough to discern the truth; the truth also should be accessible to the public.” [41] By performing its activities, inquiries, and deliberations with transparency, the Brazilian truth commission will become an important example of a fair and transparent institution, and will highlight the significance of transparency in a democratic government. In other words, “If conducted in an open, evenhanded manner, a truth commission may... provide a demonstration of how a democratic body operates.” [42]

Most important, the truth commission can reconcile the Brazilian society to this dark episode in its history. Brazil will be unable to pretend that the military dictatorship never took place, or that state agents and civilians never committed gross violations of human rights. The society will know about the atrocities, deaths, torture, and kidnappings of the military era. “In collating personal memories of the past, they [truth commissions] hope to establish a redemptive narrative, a collective memory that might provide the basis for a new civic identity that could encompass

both victims and perpetrators.”[43] The truth will encompass the stories of victims and perpetrators, and thus civil society itself will have the power to give the final verdict.

Even for the military, a truth commission might be beneficial. Military cooperation with the investigations of the truth commission might provide a chance to enhance military reputation[44] and to reveal the military side of events. Military officers will be able to show Brazilian civil society that the armed forces are interested in disclosing the truth and willing to accept the responsibility for past acts. They will have the chance to explain – and justify – their behavior, and, because the violent members of the resistance will also testify, will be able to prove that violence was not unilateral. Ultimately, the truth commission can recommend reforms to the military in terms of civilian oversight and training.[45] Huggins *et al.* demonstrate that, similar to the Greek training, the instruction of the Brazilian cadets “desensitized men to pain and suffering, promoted total obedience to authority, engendered acceptance of the system’s ideology, and energized their resolve to destroy designated enemies of the state.”[46] The Brazilian truth commission might point to the possible causes that led to police brutality as well as torture and excessive use of force. The police and the military can improve their training and take measures to prevent excessive use of violence from occurring again.

Challenges

Critics of my approach might not agree about all the potential benefits a truth commission could create for Brazil. Indeed, even though the benefits I have outlined were based on the results of previous truth commissions, they were not present in every single one of them – the ultimate outcomes of a truth commission are connected to the objectives in the commission’s mandate. While not all of the benefits might be realized, the seventh largest economy of the world can afford the costs of a truth commission. And the Brazilian government will unquestionably show its society and the world that violations of human rights are not tolerated in a democratic state. Beyond the uncertainty of benefits, more profound questions about my proposal remain:

The Price of Amnesty: Critics might argue that amnesty is a high price to pay for the revelation of the truth, but they disregard that the price of amnesty was paid when the Brazilian state decided to pardon all offenders in 1979. One might still argue that perpetrators should be put on trial, and face the legal repercussions of their crimes. This argument does not consider that perpetrators would have few incentives to come forward, and that the truth commission would end up offering a *partial* truth, primarily based on victims’ testimonies. Amnesty was the price that other countries paid in order to accomplish the goals of their truth commissions, and it was already paid in Brazil. “Amnesty was a price that South Africa had to pay for a relatively peaceful transition. It was also a price many victims had to pay in order to know some of the truth of their horrendous past.”[47] If Brazil wants to discover the truth of its “horrendous past,” it must grant individualized amnesty to the individuals who choose to testify.

One-Sidedness: A very likely criticism is that the truth commission would mostly reveal the facts about crimes committed by the security forces, not by the resistance. In this way, the truth commission would benefit victims of state-led violence, and would not point to the atrocities that civilians themselves committed against private and public property, which also produced victims. However, it is important to note that the amnesty would be revoked for everyone –

military officials and members of the resistance. All of them could be subject to prosecution unless they testified before the commission. Investigating the resistance might even offer greater political legitimacy to the work of the commission. If crimes committed by the state forces dominate the discussion, the case is not that the resistance is immune to scrutiny, but rather that violence perpetrated by the state might prove to be larger than violence perpetrated by civilians, as occurred in Peru and Colombia. Also, one must note that the State has a special responsibility to investigate abuse by itself. As Judge Cançado Trindade argues in the Inter-American Court of Human Rights, “It is never to be forgotten that the State was originally conceived for the realization of the common good. The State exists for the human being, and not vice versa. No State can be considered to rest above the Law, whose norms have as ultimate addressees the human beings.”[\[48\]](#) After violating legal norms it created, the State must investigate its abuse of force.

The Military Reaction: One might foresee an incendiary reaction from the military, as occurred in the launch of the National Human Rights Plans in December 2009. However, even if the Minister of Defense and the senior officials threaten to resign from their positions, it is imperative that President Rousseff take on her constitutional role as the supreme authority of the armed forces.[\[49\]](#) The Presidency of Brazil cannot be subordinate to the Ministry of Defense, the army, the navy, or the air forces – the military dictatorship has already ended. Furthermore, “[a]s military and police officials responsible for past human rights abuses retire, there is the potential to work with the younger generation of officers.”[\[50\]](#) Today’s military officers might be more willing to cooperate with the government’s initiative to investigate abuses of human rights.

Legality: Is it legal to revoke the Amnesty Law of 1979? Although the Brazilian Supreme Court upheld its constitutionality in April 2010, the nation has the obligation to revise the scope of the amnesty in the face of the Inter-American Court of Human Rights’ ruling. Brazil has not only ratified the American Convention on Human Rights, but is also a signatory of the Universal Declaration of Human Rights and the United Nations Convention against Torture. Latin American countries, such as Peru and Argentina, also revoked the amnesty laws that had pardoned crimes committed during their dictatorships. In Argentina, the decision to revoke these laws was initiated in the government itself.[\[51\]](#) In Peru, the Inter-American Court of Human Rights found the Peruvian Amnesty Law illegal – and the government followed the ruling. If Brazil aspires to become a world power and to assume a major diplomatic role, Brazil must respect international law. As Supreme Court Justice Cesar Britto (who voted against the constitutionality of the Amnesty Law of 1979) wrote, “Amnesty is not amnesia.” Perpetrators will not have to face prosecution if they testify about what they witnessed and committed during the military dictatorship. Amnesty will become individualized and conditioned to the performance of the moral and legal duty to testify before the commission. President Rousseff will adopt a position of compromise: she will acknowledge the role of amnesty in the redemocratization process by offering individualized amnesty to cooperative perpetrators while simultaneously proclaiming the government’s intolerance for gross violations of human rights.

Conclusion

I have defended Brazil’s decision to set up a truth commission to investigate the acts of violence that victimized hundreds of individuals during the twenty-one years of the military dictatorship. I

have presented a few of the benefits that a truth commission can bring to the victims and their descendants, the Brazilian society, and the army. And I have contended that a truth commission will have greater investigative power if the government revokes the general amnesty granted by the Amnesty Law of 1979 and concedes individualized amnesty for perpetrators who cooperate with the commission's investigations. Certainly, the Brazilian truth commission will have more investigative power if it can subpoena government records, but I have not weighed the arguments for or against the declassification of military files. In this paper, I have addressed the Amnesty Law of 1979, because this law is the most commonly cited impediment to the success of a Brazilian truth commission. My policy suggestion consists of a compromise between two opposing rulings by two sovereign tribunals: the Supreme Court of Brazil and the Inter-American Court of Human Rights.

Although we know that Vladimir Herzog could not have hanged himself in DOI/CODI's prison cell, we still do not know the circumstances that led to his execution. We do not have a full picture of the pressures to which policemen were subjected in the special units, nor do we understand why and when violence became an option for the armed forces. A truth commission might enlighten the millions of Brazilians who still come across darkness when turning to the "years of lead," twenty-one years of repression, censorship, torture, and gross violations of human rights. Mr. Herzog's voice against the dictatorship atrocities – along with hundreds of others – can be echoed in a society's attempt to look for the *truth*, a concept that philosophers have long struggled to define, but whose lack is evident in the picture of a man who "was hanged."

Bibliography

Archdiocese of São Paulo. *Torture in Brazil: A Shocking Report on the Pervasive Use of Torture by Brazilian Military Governments, 1964-1979*, translated by Jaime Wright. New York: Vintage Books, 1986.

"Barrios Altos v. Peru." *Inter-American Court of Human Rights*, 14 March 2001.

Barrionuevo, Alexei. "Amnesty for Brazil Dictatorship Is Challenged." *The New York Times*. 16 Dec. 2010.

Boraine, Alex. "Truth and Reconciliation in South Africa: The Third Way." In *Truth. v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg, and Dennis Thompson. Princeton: Princeton University Press, 2000.

Boraine, Alex, "Alternatives and Adjuncts to Criminal Prosecutions." Presented at "Justice in Cataclysm: Criminal Tribunals in the Wake of Mass Violence," Brussels, Belgium, 20-21 July 1996).

Browning, Christopher. *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland*. New York: HarperCollins, 1992.

Bronéus, Karen. "The Trauma of Truth Telling: Effects of Witnessing in the Rwandan Gacaca Courts on Psychological Health." *Journal of Conflict Resolution* 54:3 (2010), 408-437.

Crocker, David A. "Truth Commissions, Transitional Justice, and Civil Society." In *Truth. v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg, and Dennis Thompson. Princeton: Princeton University Press, 2000.

Delizoicov, Eremias. Mortos e Desaparecidos Políticos no Brasil. Non-Governmental Organization Website. < <http://www.desaparecidospoliticos.org.br/>>

Duffy, Gary. "Brazil reveals military rule list." *BBC News*. 30 Aug. 2007.
<<http://news.bbc.co.uk/2/hi/americas/6969812.stm>>

Duffy, Gary. "Brazil truth commission arouses military opposition." *BBC News*. 11 Jan. 2010.
<<http://news.bbc.co.uk/2/hi/8451109.stm>>

Duffy, Gary "Tackling Brazil Painful Past." *BBC News*. 26 Nov. 2007.
<<http://news.bbc.co.uk/2/hi/americas/7109516.stm>>

Elster, Jon. *Closing the books: transitional justice in historical perspective*. Cambridge: Cambridge University Press, 2004.

Foster Lynch, Meghan. "Am I My Brother's Killer? The Social Psychology of Violence against Civilians." Prepared for the Graduate Student Conference on Order, Conflict, and Violence at Yale University. Spring 2008.

Gibb, Tom. "Brazil open military era files." *BBC News*. 22. Dec. 2005
<<http://news.bbc.co.uk/2/hi/americas/4551186.stm>>

"Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil," *Inter-American Court of Human Rights*, 24 Nov. 2010.

Greenawalt, Kent. "Amnesty's Justice." In *Truth. v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg, and Dennis Thompson. Princeton: Princeton University Press, 2000.

Hamber, Brandon. "Living with the Legacy of Impunity: Lessons for South Africa about truth, justice and crime in Brazil." *Latin American Report* 13, no. 2 (1998): 4-16

Hayner, Priscilla B. "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16 no. 4, (1994): 225-226.

Hayner, Priscilla B. *Unspeakable Truths: Confronting State Terror and Atrocity*. New York: Routledge, 2001

Huggins, Martha. "Legacies of Authoritarianism: Brazilian Torturer's and Murderers' Reformulation of Memory." *Latin American Perspectives* 27: 2 (2000).

Huggins, Martha, Mika Haritos-Fatouros, and Philip G. Zimbardo. *Violence Workers: Police Torturers and Murderers Reconstruct Brazilian Atrocities*. Berkeley and Los Angeles: University of California Press, 2002.

Kelman, Herbert, and Lee Hamilton. *Crimes of Obedience: Toward a Social Psychology of Authority and Responsibility*. New Haven: Yale University Press, 1989.

Minow, Martha. "The Hope for Healing: What Can Truth Commissions Do?" In *Truth. v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg, and Dennis Thompson. Princeton: Princeton University Press, 2000.

Ntsebeza, Dumisa B. "The Uses of Truth Commissions: Lessons for the World." In *Truth. v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg, and Dennis Thompson. Princeton: Princeton University Press, 2000.

Peters, Krijn, and Paul Richards. "'Why We Fight': Voices of Youth Combatants in Sierra Leone." *Africa: Journal of International African Institute*, 68.2 (1998): 183-210.

Presidência da República Federativa do Brasil. Casa Civil: Subchefia para Assuntos Jurídicos. Lei nº 9.140, de 04 de dezembro de 1995.
<http://www.planalto.gov.br/ccivil_03/Leis/L9140.htm>

"Programa Nacional de Direitos Humanos recebe críticas de diversas áreas." *G1 Portal de Notícias*. 08 Jan. 2010.

"Press Release: Judgment of the case Gomes Lund *et al.* ("*Guerrilha do Araguaia*") v. Brazil." Inter-American Court of Human Rights. 14 Dec. 2010.

Rocha, Jan. "Brazil to prove its military past." *BBC News*. 27 Oct. 2009.
<<http://news.bbc.co.uk/2/hi/8325593.stm>>

Rohter, Larry. "Argentina: Legislators Back Amnesty Repeal." *The New York Times*. 14 Aug. 2003.

Schaap, Andrew. *Political reconciliation*. London and New York: Routledge, 2005.

Smeulers, Alette. "What Transforms Ordinary People into Gross Human Rights Violators?" In *Understanding Human Rights Violations*, ed. Sabine C. Carey and Steven C. Poe. London: Ashgate, 2004.

Straus, Scott. *The Order of Genocide: Race, Power, and War in Rwanda*. Ithaca: Cornell University Press, 2006.

United Nations. "The rule of law and transitional justice in conflict and post-conflict societies." *Report of the Secretary-General*. New York: United Nations, 2004.

Van Auken, Bill. "Human rights report cites Brazil for torture, police killings." *World Socialist Website*. 27 Jan. 2011 <<http://www.wsws.org/articles/2011/jan2011/braz-j27.shtml>>

Weschler, Lawrence. *A miracle, a universe: settling accounts with torture*. USA: Penguin, 1990.

Wiebelhaus-Brahm, Eric. "What Does Brazil Have to Gain From a Truth Commission After Two Decades of Democracy?" Presented for the International Conference on the Right to Truth, University of São Paulo, São Paulo, Brazil, 19-20 Oct. 2009.

[1] Archdiocese of São Paulo 1985, xi

[2] Rohter 24 Oct. 2004

[3] Rohter 31 Jan. 2005

[4] Rohter. 24 Oct. 2004

[5] Wiebelhaus-Brahm 2009, 10

[6] Eric Wiebelhaus-Brahm estimates that between 300 and 500 people were killed during the Brazilian dictatorship. Judging from the experience of other Latin American countries, one might be suspicious of estimations of deaths. In Peru, for example, 30,000 deaths were estimated, yet the Peruvian truth commission concluded that more than 70,000 people were killed during the dictatorship (Comisión de la Verdad y Reconciliación, Peru).

[7] Wiebelhaus-Brahm 2009, 1

[8] My methodological approach involved reviewing the literature on truth commissions in general, and, in particular, the Argentinean, Chilean, Peruvian, and South African experiences. I largely base my argument on *Truth v. Justice: The Morality of Truth Commissions*, edited by Robert I. Rotberg and Dennis Thompson, and Priscilla B. Hayner's *Unspeakable Truths: Confronting State Terror and Atrocity*. The benefits I mention were not present in all commissions, but were present in at least one of them. I will analyze such benefits more closely in the third section of this paper.

[9] United Nations 2004, cited in Wiebelhaus-Brahm 2009, 2

[10] Huggins *et al.* 2002, 30

[11] Although this report became a national bestseller by selling over 100,000 copies, it did not investigate the cases that had not been brought before the military courts, which seem to constitute the majority of human rights violations at the time.

[12] Archdiocese of São Paulo 1985, 77

[13] *Ibid* 78

[14] *Ibid* 79

[15] *Ibid* 69

[16] Wiebelhaus-Brahm 2009, 11

[17] Duffy 30 Aug. 2007

[18] Official translation provided by the Brazilian Ministry of Foreign Affairs. “ Address of President Dilma Rousseff in the Brazilian Congress on January 1, 2011

[19] Van Auken 2011

[20] Inter-American Court of Human Rights 2010

[21] *Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil*, 24 Nov. 2010.

[22] Huggins 2000

[23] Crocker 2000, 104

[24] Hayner 2001, 34

[25] Greenawalt 2000, 204.

[26] Hayner 2001, 43

[27] *Ibid*

[28] Hayner 2001, 43

[29] Ntsebeza 2000, 164

[30] Greenawalt 2000, 190

[31] Minow 2000, 238

[32] Borraine 2000, 153.

[33] Wiebelhaus-Brahm 2009

[34] Wiebelhaus-Brahm 2009

[35] In analyzing the psychological effects of Rwandan gacaca trials on witnesses, Karen Brounéus (2010) challenges the idea that truth telling can be healing. She argues that “[w]itnesses in the gacaca reported higher levels of depression and PTSD than nonwitnesses, also when controlling for important predictors for psychological ill health such as gender or cumulative trauma exposure” (409). Her conclusions, however, are based upon the gacaca trials, in which witnesses would speak in front of dozens of people, including their close neighbors. Some of these trials were also marked by partiality and informality, which might have limited the capacity of victims and witnesses to fully convey their stories. Whether Brounéus’ argument can be applied to Brazil is uncertain. The Brazilian truth commission will not be a massive trial of perpetrators, but rather will focus its attention on the survivors. And the commission will provide psychological support for those who testify.

[36] Minow 2000, 248

[37] cited in Minow 2000, 257

[38] Minow 2000, 244

[39] Wiebelhaus-Brahm 2009, 12

[40] Crocker 2000, 101

[41] *Ibid*, 101

[42] Wiebelhaus-Brahm 2009, 15

[43] Schaap 2005, 134

[44] Wiebelhaus-Brahm 2009, 8

[45] *Ibid* 12

[46] Huggins *et al.* 2002, 237

[47] Boraine 2000, 151

[48] Inter-American Court of Human Rights. *Barrios Altos v. Peru*. Judgment of March 14, 2001.

[49] Federal Constitution of Brazil of 1988, Art. 142, *caput*

[50] Wiebelhaus-Brahm 2009, 8

[51] Rohter 14 Aug. 2003.

<http://yris.yira.org/essays/440>