

On the Brazilian Truth Commission (Comissão da Verdade)

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Brazil's Truth Commission was created in 2012, ~~at the initiative of the executive, more than 33 years after the 1979 Amnesty Law, which set up the framework for the end of dictatorship~~ and 24 years after the 1988 Constitution, which marked the end of the nine year ~~long~~ transition to civilian government.¹ Civil society itself was late in demanding that justice be done for the crimes committed during the dictatorship. ~~Small groups had been demanding it for a long while, but it was only in 2008 that it became a national issue, when the National Conference on Human Rights approved a motion for the Creation of a National Commission on Truth and Justice.~~² The government sent to Congress the proposal, but, ^{for that photo} bending to strong military pressure, dropped the word "justice". The Brazilian Truth Commission has the power to summon people and interrogate them, make searches and request documents, but not to indict or prosecute.³ _{not to}

As the issue stands now, the military will never be brought to justice for the crimes it committed, including manslaughter, kidnapping and

¹ In Argentina, Generals Videla and Viola were condemned for crimes against human rights shortly after the end of the dictatorship in 1983; in 1990 they were pardoned by President Carlos Menem but the trials were resumed and in 2012 Videla, Bignone and others received long sentences and were jailed. Among other crimes, they were accused of kidnapping over 35 babies.

² National Conferences are thematic assemblies organized in intervals of a few years by grass root-organizations, modeled on the National Health Conference. They proliferated during Lula's administrations

³ Members of the Commission were: Cláudio Fonteles: Procurador-geral da República between 2003 and 2005; he was a member of Ação Popular, and headed the União Nacional dos Estudantes in the 1960s; Gilson Dipp: minister in the Superior Tribunal de Justiça and, since 2011, a member of the Tribunal Superior Eleitoral; José Carlos Dias: Minister of Justice in the Fernando Henrique Cardoso government; José Paulo Cavalcante Filho: lawyer and consultant; Maria Rita Kehl: psychologist, analyst and literary critic; Paulo Sérgio Pinheiro: Diplomat and sociologist from the Universidade de São Paulo; Rosa Maria Cardoso da Cunha: lawyer, lecturer and writer.

strange arrangement – unique amongst the 40 or more truth commissions set up in post cold-war – is expressed in the 1978 Amnesty Law passed by Congress and signed by the then president, general João Batista Figueiredo, who before that position was the head of the secret service (SNI).⁴

The Amnesty Law allowed for the freeing of all political prisoners and the return of all political exiles. But it also granted total immunity to the agents of repression who had committed crimes between September 1961 and August 1979. ~~From the general-presidents, such as Figueiredo himself, down to policemen and others carrying out orders. It was part of the long and gradual process of transition over which the generals never lost control.~~

Brazil's rather long transition from dictatorship to democracy resembles that of the end of slavery, which began with Lei do Ventre Livre of 1871, freeing the newborn, and which was only completed 17 years later with the freeing of all slaves in 1888.

~~There are other similar historical processes: Brazil was the last country in the Americas to abolish slavery and was the last as well to establish a Truth Commission into the crimes committed by the dictatorships set up in the region in the 60s and 70s, under US aegis as part of the cold war. Last but not the least, in just the same way the government of the time ordered the destruction of all official records related to slavery, so the military apparatus in Brazil claims that all records of the political repression in the 60's and 70's had been destroyed, "in accordance to the norms of the time".⁵~~

By the time the truth commission was actually ~~set up last year~~ and began its work, ^{recently} all generals responsible for the military coup and for devising and ordering the criminal methods of repression, were already dead, of natural

⁴ Lei 6.683

⁵ Aviso 195 das FFAA ao ministro da defesa Nelson Jobim) seg. Vinicius Mansur, Carta Maior, 21/08/2012

causes, surrounded, of course, by their children and grandchildren. A few of the people responsible for the worst crimes, such as Coronel Ney Pimentel and Policeman Sergio Fleury, were shot or drowned in what looks like "queima de arquivo" – the burning of the archive.

The two main questions I would like to address here are: first, why did Brazil's Truth Commission arrive so late and so weak? Second, given its limited powers, what can we expect from it?

Starting with the first question: ~~Why so little and so late?~~

~~As I have already suggested by comparing it with the end of slavery,~~ there is a pattern in political transitions in Brazil, due to the undisputed and permanent hegemony of Brazil's ruling elite, which means that it can control and contain within limits most of the instances of rupture in the social order, throughout our history. Indeed, the transition is often an initiative undertaken by a faction of the ruling elite which has a strategic vision of the problem, as was the case with both the proclamation of independence from Portugal and the end of slavery. ^{all done by the ruling elite}

There are also ~~specific and~~ contingent reasons for the weakness and late arrival of the Truth Commission. ~~One of them derives from the particular nature of the repression in Brazil.~~ ^{While} In Chile and Argentina repression took the form of the extermination on a massive scale of almost an entire generation of militants – left-wingers in Chile and the Peronist youth in Argentina. In Brazil, ~~it was different:~~ armed opposition was only undertaken by minority groups, and so the policy of extermination and disappearances was also only applied to minority groups. ~~Between ten or twenty thousand people were killed in Chile and Argentina -- nobody~~

⁶ An important exception was the young officers' revolution of the 30's, which reflected a split in the ruling elite.

knows how many; in Brazil there were 475 killed or disappeared, according to figures published in 2009.⁷

The dominant and less conspicuous form of repression in Brazil was a widespread ~~cleansing~~ ^{purge} of universities, trade unions, the armed forces and state companies and even some large ~~private~~ companies. ~~Renowned professors in their respective fields, such as Fernando Henrique Cardoso, Paulo Freire, Isaias Raw, over a hundred of them, were sacked from research institutes and universities. Political leaders were exiled. Legalist officers and sergeants in the army, air force and navy were forced into retirement or simply expelled. Liberal, nationalist and left-wing civil servants were sacked or transferred to remote locations; union leaders were blacklisted, or stripped of their political rights, prosecuted and unjustly accused of crimes against national security; some served prison sentences, others were banned, and so on. About 70,000 people were harmed in this way.~~ ⁸ Many of them were also tortured.

As a result, it was only natural that the main civil society discourse in the struggle against the military regime was for the restoration of civil rights and the rule of law. In short, the return of democracy. Punishment for the crimes committed was hardly mentioned. ~~Amnesty was the catchword for liberty, not for punishment.~~ ^{at the time} ~~The demand was for the freeing of all political prisoners and the return of political exiles as the pre-conditions for the return of normal political life with freedom of organization and expression.~~ ^{only} ~~It was this struggle for Amnesty that was the key demand of the opposition movement against the regime from 1975 onwards. At a stage when armed~~

⁷ Instituto de Estudos da Violência de Estado (IEVE), Dossiê Mortos e Desaparecidos, Imprensa Oficial do Estado de São Paulo, 2009.

⁸ According to the IEVE report (op.cit.), 24,560 people were persecuted, including 6,592 members of the military. The Amnesty Commission 2008 report says that over 70,000 applications for reparations had been filed by then. In 2008 there were still 14,000 being examined.

~~opposition had already been wiped out – in this case by unimaginably brutal methods.~~

The Amnesty Law was negotiated as part of the transition pact between the military and liberal politicians and rubber-stamped by the same kind of cleansed Congress that had operated during the full dictatorship, in which many of the senators had been nominated by the executive and none of the exiled politicians had yet returned to their former positions. The law granted full immunity to violators of human rights and “connected crimes” – an extension added to make sure that none would ever be punished. Later, the Amnesty Law was incorporated into the 1988 Constitution, as part of the transition ~~arrangements~~: *clauses*

An Amnesty Commission was set up afterwards to ^{offer} compensation for ~~injustices committed during the dictatorship, through~~ monetary ^{payment} to every person capable of proving that he or she had been sacked or arrested or tortured or exiled by the dictatorship. ~~On top of an initial payment, some times quite a large one, many people were given a monthly payment for the rest of their lives.~~

Undoubtedly these persons needed this financial reparation and deserved it, but nonetheless it amounted to a monetization of human rights violations, which helped, in my view, to relegate ^{as} to a secondary question the issue of justice.

One also has to look into the nature of the main forces that were putting pressure on the cornered dictatorship. One was made up of liberals, led by politicians, jurists, institutions such as the OAB and the CNBB, and the democratic movement around social-democrats such as Fernando Henrique Cardoso – to name a reference point. They won a decisive victory in the

1974 election for the Senate, making difficult for the military to sustain the mask of democracy, without losing power in the following election.⁹

Seen now, from a decades-long perspective, the liberals' historical undertaking was not just or not only the dismantling of dictatorship, but the dismantling of the state-dominated economic system, in which state companies had grown bigger and bigger, stronger and stronger. This process was closely related to the shift in US policy that was happening at the same time, under president Carter, when the US discourse went from supporting military dictatorships to demanding democracy and human rights, and to pressing for neo-liberal policies in Latin America and worldwide. Brazil's military was the backbone of the state productive system. One has to remember that this was the time when Geisel established the ambitious Second National Development Plan, and the even more ambitious nuclear programme in association with West Germany. Democratization was instrumental to the subsequent dismantling of the state productive sector. Privatization, not just democratization, was the historical task of the neo-liberals.

The other social force that defeated dictatorship, in fact the decisive one, was the workers' movement that staged gigantic strikes in the late seventies, which led to the downfall of the repressive apparatus. It was the new working class, created during decade of strong economic growth and industrialization under Juscelino Kubitschek and again during the economic miracle of the late sixties, that was showing its strength. The reference point with this movement is Lula.

And what was Lula's historical undertaking? To give the working class a much larger share of national income, to put an end to extreme poverty, to give each worker a house, and a school for his children, and a car for his

⁹ General Geisel knew what was happening so he issued the "pacote de abril" (April package), changing again the rules of the electoral game

family. All this is important. But again, democratization was, for this social force, an instrument for achieving social justice and social ascension, not an end on itself.

Furthermore, most survivors of the armed struggle joined Lula's Workers Party. Trade unionists in this party, along with former left-wing militants, form the bulk of people asking – and being given -- financial reparation for their persecution during the dictatorship.

~~Last but not the least~~, the dictatorship was a joint venture between the military and big capital. Today the extension of the collaboration between large economic groups and the torture centers is well documented. Bradesco, Camargo Correa, Ford, Ultragás and many, many other companies gave money for the death squads that tortured, killed and disappeared militants. Many important politicians that served the dictatorship remain in Congress and state assemblies. José Sarney, a leader of the ruling party during the dictatorship, was the first president after the transition and remains a powerful politician in Congress and his native state, Maranhão

Now our second question: What can we expect from the truth commission? What kind of truth the truth commission is looking for? The technical truth, or the truth that creates consciousness? Brazil's Supreme Court has recently reiterated the key points of the Amnesty Law, mainly that the crimes have been prescribed by the Amnesty Law, and their perpetrators have total immunity. Everyone knows that the Judiciary in Brazil is a stronghold of conservative thinking. Even so, this ruling came as a shock, considering the gravity of the crimes committed, in particular, the execution of defenseless prisoners in the Araguaia region, the killing and dismembering of bodies of politicians in Rio and São Paulo.

Beside its limited scope, the resources of the Truth Commission are also limited. It has almost no staff (only 14 advisers), and some of its members

are dividing their time between this task and others equally relevant. It has been given two years to conclude its inquiry.

After ²half a year, in despair because of the slow progress it had made, the commission created a few sub-commissions to deal with specific issues. Its early efforts to get access to military archives have also been unfruitful. Now it has decided to look at the archives of foreign governments. It is a race against time and against obstacles.

Furthermore, although the commission has the power to summon a person and the person has to attend, he or she is not forced to tell the truth, or to say anything for that matter. Claudio Fonteles, one of the members of the Truth Commission, says that the people have to tell the truth, otherwise they are committing a new crime, and that they can not invoke the right to silence on grounds of not incriminating themselves, because they are technically not "defendants" in a criminal proceeding. This is, of course, a sophism.

Fonteles revealed in an interview that he had made a specific study of this matter, which shows that the commission is not so sure that the person summoned has to attend and has to tell the truth. In fact, Harry Shibata, the infamous doctor who signed false death certificates, refused to say anything of any worth before the commission. *He has made*

In the same interview Fonteles supported entirely the Supreme Court interpretation that all crimes ceased to be punishable because of the Amnesty Law. He disagrees as well with the Public Attorneys who are investigating three cases of disappeared, on the grounds that they were kidnapped and, as long as their bodies are not found, this constitutes a "crime not yet closed" (*crime continuado*), therefore not covered by the Amnesty Law.¹⁰

¹⁰ Another initiative to make justice was a complaint filed at the Human Rights Commission of the OEA in 1999. The government has argued at the OEA that it is impossible to punish the culprits

The Fonteles interview makes us think that the Truth Commission has reached a non-written agreement with the military establishment, obviously based on reciprocal concessions.¹¹ One main criticism of the workings of the Truth Commission is that it is questioning people behind closed doors, as has happened with Shibata and many others. If the Commission has no power to prosecute and to bring people to justice, its only *raison d'être* is to create national awareness against violations of human rights. This can only be achieved by staging open proceedings and airing them through a TV network.

I suspect that the decision not to question people in public is part of this non-written agreement with the military. If this is the case, the Truth Commission represents a new stage in the long process of controlled and self-contained transition to democracy, of which the Amnesty Law was the cornerstone, rather than a rupture in this process. The extent to which it has been criticised for the secrecy of its sessions has somewhat shaken and perhaps split the Truth Commission, but it is still working in secret, so strongly imprinted in its DNA is its desire to respond to the state, not to civil society.

Conscious of its own limitations and somewhat alarmed by its meager results so far, the commission decided recently to encourage the creation of regional and local truth commissions, and signed a cooperation protocol with some of them. But these sub-commission do not even have the power to summon people.

Nevertheless, important bits of information came to light recently, some of them stimulated by the creation of the commission, most of them confirming what was already known. Also newspapers began searching

because of the Amnesty Law, but its argument was rejected and the case continues. This shows that the Amnesty Law is in contradiction with the best practices on human rights violations in International Courts.

¹¹ O Estado de S. Paulo, 10/02/2013, pg. A7

documents and old archives, shedding light on some obscure events.¹² The Truth Commission usually jumps at the opportunity offered by these reports, saying that it will investigate. This was the case of Carlos Vieira Berbert, a militant belonging to Molipo (Movimento de Libertação Popular), who was killed by the army in a small town in the interior and buried secretly. It is the commission running after the media rather than then the media running after the commission.¹³

My guess is that at the end of its investigation, the Truth Commission will issue a very shocking report, that the report will make headlines for a few days, and then everything will be forgotten and in the future, when someone asks, what about the punishment of those responsible for the crimes of the dictatorship, the answer will be: “what else do you want, you have had already a Truth Commission, haven’t you?”

What is at stake, besides the need for justice and truth as a value, is the possession and control of a country’s memory. This is a strategic asset, that the ruling elite cannot afford to lose.

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¹² The press found documents proving that former Congressman Rubens Paiva, arrested in 1971 was killed in an army facility; also a document was found, showing that president Emilio Medici ordered in 1972 that any claim of torture in Brazil had to be strongly denied. His rationale was that they had to be denied in order to maintain the cohesion of the repressive apparatus.

¹³ The most dramatic recent revelation was that some bodies were disposed of by burning them in a sugar-cane facility. This came in a book that interview a torturer who repented and became religious. The truth commission has investigated and believes the revelation to be true.