

**Incomplete Transformation:
An Analysis of Transitional Justice in Brazil**

One unusual evening, a military judge came to my residence... The magistrate, apparently cool and objective, was overcome with emotion. He told me that he had just received two documents from different sources signed by different persons. Two political prisoners each stated that they had assassinated the same person, at an unlikely time and in altogether improbable circumstances. The judge concluded: 'Imagine the psychological and maybe even physical condition of someone who reaches the point of declaring himself an assassin, even though he isn't!' Interrogation under torture or the threat of torture, however, reaches even greater heights of absurdity and futility.¹

- Paulo Evaristo, Cardinal Arns Metropolitan Archbishop of Sao Paulo

Torture used for any end is inhumane and futile. Confessions extracted from an individual, broken in both psyche and body, can not and should not receive legal consideration. Unfortunately, in many military regimes throughout the world, security forces have institutionalized the use of torture. To the present day, torture continues to be one of the most prevalent manners of human rights violation used by states across the world. Brazil is no exception.

As a pivotal state, Brazil garners much international attention for the potential might of its economy, its geographical size and location, enormous population, and the influence it carries with the ten nations that touch its borders.² It comes as no surprise then that the United States government, in its desire to guard Latin America from Communism, supported the Brazilian military throughout the longest and one of the most brutal military regimes that occurred in Latin America during the Cold War. During their 20-year reign, Brazilian military dictators institutionalized the use of torture to control both the mind and spirit of all Brazilians, not only those subversives they sought to eliminate.

¹ J. Dassin, *Torture in Brazil* (New York: Random House, 1986), xxv. *Please note this is the English version of *Brasil: Nunca Mas, Brazil's unofficial truth commission, published by the Catholic Church in 1985.**

² Robert Chase, Emily Hill, Paul Kennedy, eds., *The Pivotal States, A New Framework for US Policy in the Developing World*, (New York: W.W. Norton & Company, 1999).

Eventually, poor economic management and extreme human rights violations combined to erode domestic and international support for the military. But when a civilian was finally elected president in 1985, no one lifted a finger to prosecute those known for having tortured and killed Brazilians. That same year, the Catholic Church published Brazil's unofficial truth commission, a book entitled, Brasil: Nunca Mas (Brazil: Never Again). It was widely read: scorned by some and praised by others. The book brought to light the names of torturers and victims far all who cared to see. Yet despite the available truth, Brazilians have never officially or formally processed the inhumane threads of their past.

Even now with the leadership of President Luis Inácio Lula da Silva, who himself suffered inhumane treatment, the government makes no effort to directly address the continued and past use of torture in Brazil. The campaigns to eradicate crime and install a respect for human rights are at odds. The challenges of the Lula administration, including poverty, urbanization, crime, and hunger, are so numerous and complex that current problems receive more attention than bringing to justice those responsible for past human rights violations: a matter perceived as buried in the past. Both trials and an official truth commission are not realistically feasible. Yet for those Brazilians who have suffered and still suffer, it remains important to complete the process of transitional justice in Brazil. To a limit, there has been some justice; however, corruption, poorly implemented legislation and the daily use of torture continue to prove its absence and necessity.

This article will analyze transitional justice in Brazil. It will review the third Brazilian military regime's political, legal, and ideological installation from 1964 to 1978, its repression techniques used from 1964 until 1974, and the process of re-

democratization from 1974 to 1985. The new democracy's attempts to generate transitional justice are then discussed, as are Brazil's domestic and international attempts to improve its human rights record. Finally, this article will explore both moral and practical issues surrounding the Brazilian transitional justice process. In conclusion it offers suggestions for what should be done to complete the process of transitional justice in Brazil.

The Military Regime

Brazilian society in the early 1960s gave way to progressive influence on politics and an increased strength in voice and number of unionized workers. The military allowed a progressive nationalist, João Goulart, to take office due to massive popular support after his predecessor's resignation in August 1961. Goulart's presidency marked a significant defeat to those military generals interested in maintaining some control over the Brazilian government. Under Goulart's administration, urban workers organized at a rapid pace, from 1962 to 1964. His progressive rhetoric, collectively referred to as "basic reforms", bolstered their efforts.

The formation of the General Workers' Command (CGT), an umbrella organization formed to unite all labor organizations, signaled to the military Goulart's intent upon progressive reformation of the Brazilian society, economy and government. Within the political climate of the Cold War, the military feared a communist revolution was only a matter of time.³ Adding insult to injury, the military's lower ranks began to show an interest in Goulart's rhetoric. By the end of 1963, Brazil's adherence to progressive rhetoric had marginalized the military's position in the government. When

³ Dassin, *Torture in Brazil*, xxv.

the United States government, in early 1964, gave the Brazilian military quiet support, it immediately moved to carry-out the coup d'état it had been planning for years.

President Goulart, perhaps feeling pressure from the military's clandestine coup preparations, organized a rally on 13, March 1964 at the Dom Pedro II rail station, across the street from the war ministry building in Rio de Janeiro. A holiday for all workers in Rio state was declared on that day, and an estimated 120,000 to 200,000 Brazilians joined the rally.⁴ In front of the crowd Goulart signed the promised "basic reform" bills signaling the Brazilian government's unprecedented swing to the left. The resulting ideological divide galvanized the anti-communist Right into a coalition of support for the military generals. Brazil's Catholic Church hierarchy joined the military's coalition. And at the end of March 1964, when the Metalworkers' Union in Rio de Janeiro resisted the military's attempts to disband a union meeting, the military moved with full force using the meeting as a stage for its coup. The coup was complete when tanks rolled into Rio and Goulart was called to step down from office. There was no opposition to the use of lethal force. The US president at the time, President Lyndon B. Johnson, telegraphed a message to the day-old military regime and "sent his 'warmest well wishes,' admiring 'the resolute will of the Brazilian community to resolve...difficulties...without civil strife.'"⁵ Soon after, Brazil's third military regime was in place and preparing to legitimize its rule.

The first military president, the moderate General Marshal Humberto de Alencar Castello Branco, was inaugurated only days after the April 9, 1964 signing of the First Institutional Act (IA-1). The combination of a new military president and IA-1

⁴ Phyllis R. Parker, Brazil and the Quiet Intervention, 1964, (Austin: University of Texas Press, 1979), 59.

⁵ Ibid.

inaugurated a four-year period of legitimization and power consolidation from mid-1964 to late 1968. Invoking IA-1 lines, “The victorious Revolution, as the Constituent Power, confers its own legitimacy upon itself,” the military removed 378 political officers and some 10,000 civil servants from their posts. Consequently, the Castello Branco administration formed the National Information Service, also known as the Brazilian Intelligence Organization. It immediately opened 5,000 investigations implicating some 40,000 persons.

Not until the passage of the Second Institutional Act (IA-2), under the Castello Branco administration, were Brazilians truly threatened by a legally entrenched military. In one fell swoop, IA-2 abolished all pre-established political parties, allowed the executive branch to disband the Congress at will, made presidential elections indirect and extended the jurisdiction of military courts over the civilian population. In 1966, the former Minister of War and well known hardliner, General Artur da Costa e Silva, assumed the presidency: a victory for the hardliners. Under his administration, a newly passed constitution awarded totalitarian authority to the military hierarchy.⁶ Opposing the new constitution and Costa e Silva’s rule, many Brazilians began to organize, vocalize, and resist. During 1967 and 1968, protest demonstrations were a regular event and union movements gained momentum.

Responding to the increased need to suppress the anti-government sentiments in Brazilian society, the Costa e Silva administration passed the Fifth Institutional Act (IA-5) in December of 1968. It disbanded the national congress and with it all remaining means of political opposition to military rule. When Costa e Silva suffered a debilitating

⁶ Lawrence Weschler, *A Miracle, A Universe: Settling Accounts with Torturers*, (Chicago: University of Chicago Press, 1998), 64.

stroke, the military did not allow his civilian vice-president to take office. The resulting exchange of violence between the military and organized Brazilian populace resulted in the introduction of the death penalty and exile as punishment for political crimes. By October 1969, the hardliners had retained power through Costa e Silva's successor, General Emílio Garrastazu Médici.

Under the motto, "Security and Development", General Médici allowed for the creation of "security organs", which existed solely to suppress civil liberties. These organs, organized under the Brazilian Intelligence Organization hierarchy and supported by military courts, created the most oppressive period of Brazil's history, when "thousands of Brazilians were sent to prisons, and torture and killing by the state became routine."⁷ General Médici's administration retained power from 1969 until 1974; its use of lethal force, torture and "disappearances" was very successful because by 1974 nearly all armed opposition forces had been disbanded.

National Security Doctrine: Legislation and Implementation

Fostered by the legitimizing strength of the Institutional Acts, a rewritten constitution, the National Security Law, and clandestine support from the US, the military regime attempted to reorganize Brazilian society using an ideology framed within Brazil's National Security Doctrine. From the Brazilian military view point, one espoused by Western military doctrine of the 60s and 70s, outside forces were not as threatening to national security as domestic factions working to undermine the government from within. Therefore, strict control over society was justified and necessary to protect Brazil's sovereignty.

⁷ Weschler, A Miracle, 64.

The military regime's adherence to the National Security Doctrine led to the National Security Law (NSL): a supreme law that superceded all others, even the Federal Constitution. First passed in 1967, this law was altered several times; each modification reflected the increased severity of the military regime's control over Brazilian society. Under the NSL, security forces were not obliged to face reprisal for their actions and acted with complete impunity.

Both the NSL and IA-5 caused extraordinary civil unrest, signaled by the formation of many urban guerrilla organizations. Responding to these guerrilla groups, the military regime formed a semiofficial, paramilitary squad known as Operation Bandeirantes (OBAN) in mid-1969. OBAN operated in the state of São Paulo, and enjoyed an extralegal status. Staffed with officers and members of the Brazilian army, OBAN hired members of the navy, air force, and state and federal police. Its ability to operate with immunity allowed the OBAN to capture, interrogate and imprison suspected Brazilian guerrillas and political dissidents with unchecked brutality. The OBAN's success, largely due to the use of torture, led to the formation of two nation-wide security groups: the Information Operations Detachment – Center for International Defense Operations (DOI-CODI) and the State Departments for Political and Social Order (DEOPS). These two groups also enjoyed complete immunity.

Formed in January of 1970, the DOI-CODI and DEOPS assumed responsibility for all domestic security matters. Operating at the federal level, the DOI-CODI was a well organized security group centrally commanded by the Brazilian army. Operating at the state level, the DEOPS employed state and federal police as well as officers and soldiers from Brazil's military branches. In São Paulo state, where civil unrest was

especially virulent, the DEOPS formed a group known as the “Death Squad” to eliminate criminals. Under the Brazilian Intelligence Organization’s pyramid hierarchy, these security forces were principally responsible for the investigation, abduction, interrogation, torture and murder of suspected political dissenters.⁸

Torture in Brazil

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines torture as, “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession.”⁹ In Brazil, security forces used torture to extract confessions, often false, from suspected political dissenters, innocent victims of oppression, and other unfortunate targets. It is important to note that the torturers in Brazil received extensive training, sometimes from foreign individuals, and used specific methods of inflicting excruciating pain.

The notion of training military and police officials in the methods of intentionally inflicting severe pain institutionalized the practice and acceptance of torture in Brazil. Many cases have been documented where security personnel used detainees as “guinea pigs” in front of a hundred or more security personnel. During training sessions, where photo slides were used to teach torture methods, instructors used victims to demonstrate torture technique. One victim, *Ángelo Pezzuti da Silva*, was tortured in Rio de Janeiro by an army police unit; he shared his experience with the Council of Military Justice in 1970:

⁸ Dassin, *Torture in Brazil*, 64-66.

⁹ United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See, http://www.unhchr.ch/html/menu3/b/h_cat39.htm (retrieved, 03/04/03)

...the defendant and his companions confirmed that tortures are an institution, given the fact that the defendant was an instrument for practical demonstrations of this system, in a class in which more than 100 sergeants participated and whose teacher was an officer of the Army Police, called Lt. Ayton; that, in this room, while slides about torture were being shown, practical demonstrations were given using the defendant ...and other prisoners as guinea pigs.¹⁰

This training methodology was widely practiced in Brazil during the military regime, and demonstrated the formation of a “scientific method” used to extract confessions from prisoners.¹¹ A US police officer, Dan Mitrione, was the first to introduce this scientific method by demonstrating to Brazilian security forces the use of live victims while teaching torture methods. In the early years of the military regime, he would kidnap beggars off the street and torture them in class rooms to demonstrate the different methods of producing enough pain to extract confession.¹² While Mitrione eventually left Brazil for Uruguay, where he was killed by guerrillas, the practice of using live victims as guinea pigs continued in Brazil for many years.¹³

Brazil’s torturers devised methods to deliver the most pain and psychological stress while producing the least amount of physical evidence on the victim. The researchers of Brasil: Nunca Mas classified some 283 types of torture under the subheadings:

moral/psychological, general physical, and physical specific, which is subdivided into sexual; electrical; with instruments; edge of death tortures, such as drowning; and combined tortures, as when a person was doused with water in order to heighten electrical conductivity.¹⁴

Of the many methods used, the “parrot’s perch”, is worth mention because, by many accounts, it was the most widely used method:

¹⁰ Dassin, *Torture in Brazil*, 13.

¹¹ Dassin, *Torture in Brazil*, 14.

¹² A.J. Langguth, *Hidden Terrors*, (New York: Pantheon Books, 1978).

¹³ Dassin, *Torture in Brazil*, 14.

¹⁴ Weschler, *A Miracle*, 53.

The parrot's perch consists of an iron bar wedged behind the victim's knees to which his wrists are tied; the bar is then placed between two tables, causing the victim's body to hang some 20 or 30 centimeters from the ground. This method is hardly ever used by itself; its normal 'complements' are electric shocks... and drowning.¹⁵

Aside from individual torture sessions, Brazilian security personnel often tortured the family members of suspected dissidents, forcing them to watch the beating of their children and the rape of their spouses or lovers. They tortured wives, forcing them to incriminate their husbands; they forced children to incriminate their mothers and fathers, and mothers and fathers were forced to incriminate their children. The military regime indiscriminately used torture on political dissidents in order to destroy their morale and sense of self. Once broken, torture victims tended to confess anything in order to save themselves or their loved ones. Brazilian military courts used these confessions to uphold the National Security Doctrine, which justified the use of torture. It is a vicious cycle that continues to exist today in jails and holding cells where police forces torture suspected criminals until confession.

Political Liberalization

The hardliners, led by Generals Costa e Silva and Médici, were brutal and repressive: responsible for the highest levels of torture and death during the twenty year military rule.¹⁶ But they successfully fulfilled the goal of reforming Brazil's economy and society. The military regime found success in economic growth, at rates as high as 14.3

¹⁵ Dassin, *Torture in Brazil*, 16.

¹⁶ Dassin, *Torture in Brazil*, 53.

and 15.8 percent, and the nearly complete eradication of violent urban groups and the domestic Communist threat.¹⁷

But by the end of the Médici administration, its excessive human rights violations brought both international and domestic pressure, which weakened the hardliners' grip on power. The seizure of power by the moderates in 1974 polarized the military. The moderates sought to transform the government back to democracy through political liberalization. The hardliners, in turn, further entrenched themselves in Brazil's domestic policing system. Managing the tenuous liberalization process of gradual political leniency under increasing internal pressure and conflict proved very challenging.

In the early 1970's, Brazil was known internationally as a place where torture was routine, disappearances were normal, and political rights were non-existent. By late 1973, the world oil crisis had ruined the Brazilian economy. Complementing Brazil's deplorable human rights reputation, the failing economy eroded the military regime's domestic and international legitimacy. Committed to conceding a controlled amount of political representation to the opposition, General Ernesto Geisel succeeded General Médici in early 1974.

General Geisel's administration from 1974 to 1979 set out to bolster the military's domestic and international legitimacy by allowing some political space to the opposition. In November 1974, elections were held for a new Congress: the first legislative election since 1966.¹⁸ The regime's only opposition party under the two party system, the Movimento Democrático Brasileiro (MDB), produced 16 of the 22 elected senators. It

¹⁷ Weschler, *A Miracle*, 64.

¹⁸ Luciano Martins, *The Liberalization of Authoritarian Rule in Brazil*, eds. Guillermo O'Donnell, Phillippe C. Schmitter, Laurence Whitehead in, *Transitions From Authoritarian Rule: Latin America*, (Baltimore: Johns Hopkins University Press, 1986), 83.

won 34 percent of the lower house representation.¹⁹ The regime's official political party, ARENA, suffered a significant loss in the 1974 election. The military grudgingly accepted the results. After the 1974 election, many Brazilians looked to the municipal elections, planned for 1976, as another chance to democratically further the liberation of their society. But the disappearance of five opposition congressmen and the passage of the Falcão Law revealed the military's remaining willingness to use repressive force.

The Falcão Law limited campaigning over television and radio and severely restricted politically motivated meetings, public and private. But even under the restrictions of the Falcão law, the 1976 municipal elections resulted in success for the MDB. Threatened by the opposition's quick political growth, General Geisel disbanded Congress in April, 1977. He then passed the "April Package", a set of constitutional amendments designed to strengthen the regime's power and stall the political growth of the opposition.²⁰ The April Package politically destroyed the opposition, but its popular support was stronger than ever.

The domestic press, recently freed by the military's new leniency, relentlessly focused on Brazil's deplorable human rights conditions and a call for justice. Its collective action attracted international attention. Soon after in April 1977, the Catholic Church made its first step towards a proactive stance against the regime in defiance of the regime's poor human rights reputation. The archbishop of São Paulo, Cardinal Paulo Evaristo, visited a senior member of General Geisel's staff, General Golbery, with a group of relatives of "disappeared" political prisoners.

Initially, Golbery promised to provide information within thirty days regarding the prisoner's whereabouts. He subsequently reneged on that promise. Justice

¹⁹ Ibid.

²⁰ Dassin, *Torture in Brazil*, 55-56.

Minister Falcão went so far as to inform the press that those listed as 'disappeared' had never been detained.²¹

This incident had a profound impact. An obvious disregard for civilian rights, the senior staff miscommunication and information mismanagement, and the attention attracted by the Catholic Church's involvement in this case combined to further weaken the regime's domestic legitimacy.

By the mid-1970s, security forces were under significant pressure from both the press and the moderate military leaders to use less brutality. However, in late October 1975, security personnel tortured and killed the popular journalist Vladimir Herzog. He was detained only after voluntarily seeking to clear bogus charges. A colleague of Herzog's, Rodolfo Osvaldo Konder, also detained, heard his screams and spoke of the moment with Cardinal Evaristo, then Archbishop of São Paulo. The Archbishop held a memorial mass in his church for the Jewish journalist. The event was heavily publicized. Many Brazilians, Jewish and Catholic alike, came to pay their respects to Herzog.²² Due to both the widespread public reaction and his desire to maintain domestic legitimacy, President General Geisel dismissed the commander of São Paulo's Second Army, General Ednardo D'Ávila Mello.²³ General Mello's dismissal was an unprecedented breach of the security forces' immunity. His dismissal was the first salient example of justice seen since the beginning of the political liberalization movement.

These two incidents permanently rearranged Brazil's political landscape. On the left side of the spectrum a growing mass of outspoken politicians and journalists, the Catholic Church, and popular support from the middle and lower class took shape in a

²¹ Dassin, *Torture in Brazil*, 56.

²² Weschler, *A Miracle*, 43.

²³ *Ibid.*

strong and well supported opposition to the military regime. On the far right were the security forces, which by late 1977 had begun operating as terrorists using car bombs and kidnappings to undermine the domestic legitimacy of the moderate regime.²⁴ And in the middle was the faction of military moderates. It fought to control the pace of liberalization and keep the political strength of the opposition and growing violence of the hard liners in check. Above all, it struggled to repair Brazil's failing economy.

Despite the moderates' efforts, little balance between political liberalization and repressive control had been achieved by the end of the Geisel administration. Within the military itself, power struggles between the moderates and the hard liners nearly sparked a civil war. In Congress, the opposition had won many seats despite the regime's efforts to slow its growth. Another moderate and former commander of the Brazilian Intelligence Organization, General João Baptista de Olivera Figueiredo, was then positioned for presidency.

But before General Figueiredo was inaugurated, Geisel's administration suffered another political defeat. In the November 1978 Congressional elections, the opposition gained more political ground, winning some 18.5 million votes.²⁵ This victory in itself was another example of justice, for the resulting legislative pressure forced the government to remove the Fifth Institutional Act (IA-5), the law that had initially legitimized the dictatorship.

On March 15, 1979, General Figueiredo was inaugurated. He faced an uphill battle to slow opposition growth. In exchange for 15 years of limited economic success for the upper 10% of Brazilian society and brutal social reform for the rest, the military

²⁴ T. E. Skidmore, The Politics of Military Rule in Brazil, 1964-85, (New York: Oxford University Press: 1998), 168.

²⁵ Dassin, Torture in Brazil, 58.

regime had soiled Brazil's international reputation and ultimately destroyed its economy. It had produced 10,000 political exiles; denied the political rights of 4,682 persons; expelled 245 students from universities; it had killed 300 persons; and had processed thousands of civilians through its political prisons, where torture had been institutionalized since the regime's conception.²⁶

Amnesty and Peaceful Transition

The final years of the military regime, from 1979 to 1985, saw the military's gradual ebb of power, amnesty applied, and a peaceful installation of democracy. The twilight years of the military regime saw complicated political maneuvering, signaled by the opposition gaining more ground and the military using what power it had to deter the inevitable arrival of democracy. While a detailed review of this time is not critical to this study, an examination of the Amnesty Law is important because it is the fundamental reason why Brazil's new democracy did not pursue justice once in power.

Amnesty in Brazil holds both precedent and historical continuance. After the previous military regime ended in 1945, no official investigation of its repressive abuse of power occurred.²⁷ And by the time Congress passed the amnesty bill in August of 1979, a total of 48 amnesty bills had been made law in Brazilian history. Brazil's 1979 amnesty law granted blanket amnesty to "all those imprisoned or exiled by the State since September 2, 1961," which was the passage date of the last amnesty law. A paraphrased translation of the law reads:

Law 6683 of 8/28/79 grants amnesty to individuals who, between 9/2/61 and 8/15/79, have committed political offenses or offenses related to them; to persons

²⁶ Dassin, *Torture in Brazil*, 59.

²⁷ Skidmore, *Military Rule*, 219.

with suspended political rights; to employees of the Direct or Indirect Administration, of Foundations related to the Public Power, and others specified.²⁸

The new amnesty restored political rights to opposition politicians. And it barred from persecution all those included in political and “connected” crimes, which referred to the torturers, military leaders and personnel. Those guilty of armed resistance to the government and terrorists were not given amnesty.²⁹

Unlike amnesty laws in other Latino states, the Brazilian version pardoned individuals on both sides of the political fence: opposition politicians and military personnel alike. The amnesty law was a political trade-off in an environment where the opposition was only growing stronger while the regime grew ever weaker. The mutual agreement sealed within the amnesty law foreshadowed democracy and civilian rule because the agreement allowed the military to resign power while saving face – hurdling a major obstacle to transition. The following passage exemplifies the military position. “We no longer talk about it, let us blot this page from history as if nothing has happened; once amnesty has been granted we can re-establish a state of constitutional normalcy.”³⁰ The 1979 amnesty improved the popularity of General Figueiredo as the opposition saw the passage of an amnesty law a victory for its cause.

However, his popularity was short lived as the Brazilian economy worsened. And while not a central factor to the initiation of the political liberalization process, the military regime’s inability to rectify the poor economy was certainly its death knell, as it

²⁸ Senado Federal do Brasil, LEI-006683 de 28/08/1979, translated paraphrasing by Global Legal Information Network, see, <http://rs21.loc.gov>

²⁹ Skidmore, *Military Rule*, 217-219.

³⁰ Hamber, *Living with the Legacy of Impunity*, 11.

ultimately undermined its prestige and domestic legitimacy.³¹ After the 1982 Congressional elections, the opposition, now reorganized under a multiparty system, had finally won enough votes to command control of the Electoral College. In the subsequent presidential election of 1984, the military leadership was disorganized, and the opposition had organized a coalition of political parties that supported the Tancredo-Sarney ticket. It was a landslide victory for the opposition coalition: 480 to 180 votes.³² The night before his inauguration, Tancredo died. The next day, José Sarney was sworn in as Brazil's first democratically elected, civilian president since 1964. The transition back to democracy in 1985 was as peaceful as the military's seizure of power in 1964.

Justice after Transition

Defined collectively as “situations in which a previously authoritarian regime has given way to a democratic one, and the new democracy is faced with the problem of how to address the human rights abuses of its predecessor,” transitional justice is incomplete in Brazil.³³ Through the political liberalization process and the passage of the 1979 Amnesty Law, the military initiated Brazil's transition to democracy. This mode of transition, referred to as a “transformation” by Samuel Huntington,³⁴ explains a gradual shift of power from the military to civilians, largely exemplified by the military's “continued allegiance to the electoral process.”³⁵

³¹ Ibid.

³² T. E. Skidmore, *Brazil's Slow Road to Democratization: 1974-1985*, ed. A. Stepan in Democratizing Brazil: Problems of Transition and Consolidation (New York: Oxford University Press, 1989), 31.

³³ Stephen A. Garrett, “Modes of Transitional Justice – A Comparative Analysis,” *International Studies Association*, 41st Annual Convention, Los Angeles (2000), 1.

³⁴ S. Huntington, The Third Wave: Democratization in the Late Twentieth Century (Oklahoma, University of Oklahoma Press, 1991), 114.

³⁵ Skidmore, *Slow Road*, 33.

Breaking the agreement that was instrumental in the transition to democracy was not an option. The Leftists simply accepted the amnesty, forgoing the right of investigation for past atrocities. The political leadership of the new democracy, which had fought for many years to win top posts in a newly democratic Brazil, strictly adhered to the amnesty law.³⁶ For many of these men it was the amnesty law that allowed them to return from exile and re-enter political life. The prosecution of torturers would jeopardize the legitimacy of their own presence in Brazil because amnesty, if repealed, would jeopardize their own freedom.

As such, the official prosecution of individuals for human rights violations did not occur. As Hamber argues, “the political direction chosen by the country after transition has a significant impact on how the truth can or cannot be used.”³⁷ Even now, in 2003, there has been no official trial or admission of guilt by either the perpetrators of the regime’s brutality or the Brazilian government. The truth has been forgone by the Brazilian government. Members of the 1985 political regime thought it more important to secure their grip on power than to reconcile - in the name of the civilians they had sworn to protect - the atrocities of the past. The amnesty agreement between the opposition and military was written in stone. Regardless of Brazil’s political gestures to improve its human rights conditions, thousands of Brazilians will continue to ask: “why” and “what for” until their death.

Transitional justice in Brazil has seen three noteworthy advances: an unofficial truth commission, Brazil’s signature to the UN’s Convention Against Torture, and the passage of a domestic torture law. Transitional justice attracts little political action in

³⁶ Ibid.

³⁷ Hamber, *Living with the Legacy of Impunity*, 10.

Brazil for two reasons. First, amnesty law protection extended to both the military and the exiled opposition politicians. It prohibits the prosecution of either group. Second, transitional justice activists focus on Brazil's Torture Law and Brazil's adherence to the UN's Convention Against Torture, and less so on trials, reparations, and official truth commissions. Brazilian politicians have never recognized the truth of the past. No official truth commission has been formed; no trials have occurred; no serious reform laws have been passed; and, the political will to address past atrocities, if ever there was one, erodes with time. Despite the fact that Brasil: Nunca Mas (BNM) revealed an enormous amount of truth to Brazilian society, politicians in 1985 decided to officially ignore it. They still do today.

BNM, published by the Catholic Church, is the product of one man's desire to seek the truth and reveal it for all Brazilians to see. Cardinal Paulo Evaristo financed and harbored, at risk of death, a group of lawyers and journalists, who legally borrowed from the military regime's court stenographic files - dating from 1964 to 1975 - to document the military's use of torture. It sheds light on the regime's doctrine, history, and justification for repression. The regime's torture, brutality, and corruption are also reviewed. It reveals by name victims and torturers alike as well as methods of torture, implicating from top to bottom all those responsible for the regime's most egregious human rights atrocities.

After BNM's publication, it became a national best seller, and remained so for 25 weeks. To date, some 200,000 copies are in circulation. BNM is the best selling non-fiction book in Brazilian literary history, suggesting that the truth it revealed was

desperately sought by thousands of Brazilians.³⁸ By its pure number of sales and diffusion through Brazilian society, BNM has become Brazil's "semi-official" truth commission.³⁹ The book implicated many top officials, who at its time of publication, held top political positions, such as the mayor of São Paulo, ambassador to Paraguay, military attaché to the embassy in Montevideo, and transportation director of the city of São Paulo.⁴⁰

Apart from a few exceptions, none of these men were prosecuted or fired. In the state of Rio de Janeiro, where the leftist Leonel Brizola (former president Goulart's brother-in-law) was governor, officials fired some men whose names had appeared on the BNM list as torturers. Occasionally, the list was referred to when promotions were considered.⁴¹ But again, no state-sponsored prosecutions took place. It would be another four years before Brazil would install its second major advance in transitional justice.

On August 28, 1989, Brazil signed and ratified the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Brazilian participation in the CAT signaled to the international community Brazil's participation in the growing body of nations working towards the eradication of human rights violations worldwide. However, like many other signatories of the CAT, there remains in Brazil a substantial gulf between what is publicized and what is actually accomplished.

The distance between definitive legislative action and window dressing was first noticed when Brazil did not submit its initial implementation report, under article 19 of

³⁸ Ibid, 9.

³⁹ Ibid.

⁴⁰ Weschler, *A Miracle*, 76.

⁴¹ Ibid.

the CAT, to the convention oversight committee in 1990. In 1994 and again in 1998, Brazil did not submit the required periodic implementation reports.⁴² Finally, on August 18, 2000, ten years after the first due date, Brazil submitted its initial implementation report. Less than a month later UN Special Rapporteur, Sir Nigel Rodley, arrived in Brazil for a month-long review of Brazil's adherence to the CAT. After a detailed review of Brazil's human rights condition, Sir Rodley found 348 instances in 18 states where police officers tortured suspected criminals. His conclusion is indicative of Brazil's poorly implemented human rights legislation.

Torture and similar ill-treatment are meted out on a widespread and systematic basis in most of the parts of the country visited by the Special Rapporteur, and as far as indirect testimonies presented to the Special Rapporteur from reliable sources suggests, in most other parts of the country.⁴³

The Special Rapporteur's 31 recommendations on improving Brazil's human rights conditions were submitted to the CAT review committee. Within the recommendations, three points are important. First, the Rapporteur recommended that at the highest levels state and federal political leaders, "need to declare unambiguously that they will not tolerate torture or other ill-treatment by public officials... and make clear that the culture of impunity must end."⁴⁴ Second, regarding the admission of confessions in court, he recommended that, "no statement or confession made by a person deprived of liberty... should have probative value in court,"⁴⁵ adding that,

where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should then shift to the prosecution to

⁴² Amnesty International, Brazil, 'No one Here Sleeps Safely' Human Rights Violations Against Detainees, (AMR ref: 19/0009/1999). See, <http://www.amnesty.ca/library/1999/bz13.htm> (retrieved 3/18/03)

⁴³ Nigel Rodley, United Nations Special Rapporteur on Torture Report on Mission, 20 August – 12 September 2000: E/CN.4/2001/66/Add2.

⁴⁴ Ibid.

⁴⁵ Ibid.

prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment.⁴⁶

And three, “where a specific allegation or a pattern of acts of torture or similar ill-treatment is demonstrated, the person involved, including those in charge of the institution... should be dismissed,” adding that, “a start could be made by purging known torturers from the period of the military government.”⁴⁷ Clearly, the Rapporteur’s conclusions and recommendations have presented Brazilian policy makers with the most clear and direct manner of transitional justice possible: the purging of known torturers from police forces, eradication of impunity and official denouncement of torture.

Brazilian policy makers are keenly aware of Brazil’s torture problem. Reacting to Sir Rodley’s report, the government set up a series of torture hotlines, but has done little else. The hotlines themselves are not effective as some 1,500 of a total 23,446 calls received between October 2001 and October 2002 were related to torture.⁴⁸

In 1997, Brazil made another small advancement toward completing transitional justice when it passed its Torture Law. The law officially criminalizes the use of torture in Brazil. But it only can be applied to non-state actors who use torture in private.

...Its definition of torture includes acts committed by non-state agents acting in their private capacity. The law’s legal definition of torture does not hold government officials responsible for these acts, as required by articles one and four of the Convention Against Torture.⁴⁹

As a result, only non-state actors have been convicted of torture in Brazil, as revealed in Brazil’s first government report to the UN Committee Against Torture.⁵⁰ Those places

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ “Em un ano, SOS Tortura recebe mais de 1.500 denúncias no país,” Folha de São Paulo, (São Paulo, SP) 7 June, 2002, cited in Global Justice, Human Rights in Brazil, 34.

⁴⁹ Global Justice, Human Rights in Brazil – 2002: The Global Justice Center Annual Report, (Rio de Janeiro: 2002), 34.

⁵⁰ Ibid, 35.

where torture is most prevalent, including prisons, police stations and detention facilities, are not subject to the Torture Law's jurisdiction.

While some policy makers work toward the completion of transitional justice principally by slowly eroding impunity, improving transparency and working toward implementing anti-torture legislation, it's the Brazilian society and world community that pushes the hardest for an improved human rights condition. The formation of dozens of domestic human rights groups such as the National Human Rights Program, the Christian Action for the Abolition of Torture, the Catholic Prison Ministry of São Paulo, and Global Justice exemplify the Brazilian desire to detach itself from the past, eradicate torture and move forward. Despite both international and domestic pressure there is still strong resistance to transitional justice amongst policy makers and those who can make change from the top down.

Impunity and Authoritarianism

Because there was no trial and dismissal of individuals responsible for torture and other atrocities committed between 1964 and 1985, Brazil has undergone an incomplete transformation to democracy.⁵¹ The first "transition" to democracy occurred in 1985 with Sarney's inauguration, but a subsequent and equally important second transition, which includes the "institutionalization of democratic practice at all levels of the State" and civil society, has not.⁵² Democratic practice in this case includes due process, adherence to federal and state law at all levels of the justice system, and persecution for extralegal

⁵¹ Cited in Hamber, *Living with the Legacy of Impunity*: Pinheiro, 1996; Cardia, 1996; Lawrence, 1991.

⁵² B. Hamber, *Living with the Legacy of Impunity: Lessons for South Africa about Truth, Justice and Crime in Brazil*, *Latin American Report* (July-December 1997), Vol. 13, No. 2, 13. (note: page numbers reflect reformatted text as downloaded on 2/11/03 from <http://www.csvr.org.za/papers/papbraz.htm>)

murders and torture. The absence of a second transition, coupled with continued immunity for military and police personnel, has contributed largely to socially rooted authoritarianism, defined as “an independent set of social, political, and cultural practices” that result, in part, from a series of authoritarian regimes.⁵³ Brazil has seen three military regimes, each with its own brand of impunity.

Hamber’s discussion of impunity cites two arguments that examine socially rooted authoritarianism in Brazil: “reconstruction of a democratic society in Brazil since the dictatorship has not been rigorous enough to contain the arbitrariness of violence of the agencies of public order;” and, “the return to democratic constitutionalism has done little to eradicate authoritarian practices embedded in the state and society.”⁵⁴

Additionally the UN Special Rapporteur’s conclusions clearly present evidence of socially rooted authoritarianism. Local and international NGOs, such as Amnesty International, Human Rights Watch and Global Justice, reveal the continued existence of socially rooted authoritarianism by publicizing current human rights violations in annual reports. Their collective work provides concrete examples of the incomplete process of transitional justice in Brazil.

A 1991 report published by Human Rights Watch International precisely reveals the link between past human rights violations, rising crime, and an incomplete transitional justice process:

Brazil's ongoing economic crisis, spurred by spiraling unemployment, unequal land distribution and large-scale migration from rural to urban areas, has produced a high rate of violent crime in Brazil's cities. All too often, the police have responded with violence, including torture, extrajudicial executions of suspected criminals and homeless children, and a failure to investigate and prosecute so-

⁵³ Hamber, *Living with the Legacy of Impunity*, 12.

⁵⁴ *Ibid.*

called "extermination teams," or *justiceiros*, often composed of retired or off-duty police officers, which also commit extrajudicial executions.⁵⁵

One difference between 1990 and 1970 lies in the direction of the violence, which is now criminal, not political in nature. However, there are many more similarities than differences between these two time periods. The *justiceiros* still provide "death squad" service to the state. They operate outside the law. And the officers, still protected by immunity, are many of the same individuals who tortured and killed political dissenters from the middle class in the 1960's and 1970's. This same report cites 1,230 killings in Rio de Janeiro between December 1990 and May 1991, and an average of 2.33 deaths a day meted by death squads in São Paulo in 1991.⁵⁶

In one case, the government of Sao Paulo requested the help of Amnesty International to curb the activity of death squads in São Paulo.⁵⁷ In another state, Espirito Santo, an elected commission of policy makers learned that some 100 people had been killed in 1990 by a death squad, which was made up of police men, according to Brazilian newspaper, *O Globo*. The same article reported that police leadership in Espirito Santo was unable to confirm the participation of police officers in death squad activity because no investigation had been opened.⁵⁸

Socially rooted authoritarianism is alive and well in Brazil. Human rights organizations focus on the present, because it is apparent the past will not change. The Brazilian government may never review the ethics of the political agreement and amnesty that brought it to power in 1985. Brazilians are just as aware of this fact as are human

⁵⁵ Human Rights Watch, *Brazil: Human Rights Developments*. See, <http://www.hrw.org/reports/1992/WR92/AMW-02.htm> (retrieved on 3/16/03).

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ "'Operation Death Penalty' Reportedly Kills 100," Madrid EFE, March 8, 1991, as reported in FBIS, March 12, 1991. (as cited on www.hrw.org/reports/1992/WR92/AMW-02.htm)

rights organizations. Clearly, the complexity of curbing human rights atrocities while simultaneously fighting crime is a conundrum that must be unraveled before Brazil may complete transitional justice and its transformation to democracy. Even if crime were eradicated, the problems of the landless, of hunger, of urbanization, and of the economy far outweigh - in the eyes of Brazilian policy makers - the lack of transitional justice in both importance and relevance.

Recommendations for Transitional Justice

It is unlikely that trials or official truth commissions will ever occur in Brazil. The publication of BNM revealed as much truth as possible for any new democracy to handle, and no one was prosecuted. Amnesty was extended to military officials and political exiles, a mutual agreement for mutual favor. It will not be repealed.

However, its “blanket” extended only from 1961 to 1979. The new Brazilian government could have passed its Torture Law in 1985, or as soon as possible after the final date of the amnesty law, not waiting until 1997 to do so. And when they finally passed the Torture Law, Brazilian legislatures should have included both state and non-state actors in the definition of torture, not just non-state actors.

The Brazilian constitution of 1988 renders confessions obtained through torture illegal; however, many confessions obtained through torture are still used in court, where many judges are not objective in their rulings. Partially because of socially rooted authoritarianism exemplified by a lack of judicial objectivity, and legally because the prosecution - the State - still enjoys the same immunity awarded to military regime personnel. Brazil needs a new Torture Law, written in accordance with the constitution,

that declares torture illegal if practiced by either state or non-state actors. Under such a law, progressive judges and prosecutors would then have the legal instrument to begin effectively eroding the foundation of immunity that contributes to the continued existence of socially rooted authoritarianism in Brazil. Their work might then counterbalance the politicians' unwillingness to do what is politically damaging.

Due to the disparity of wealth in Brazil and the continued unrest of landless workers, urbanization and thus crime will continue to exist for some time, but the use of torture should not. Each year, the State trains new state and federal police officers. Included in their training should be human rights awareness classes. Trainers must make new recruits aware that they do not have immunity, that the use of torture is not an option, and that they will be prosecuted. But a fundamental change of attitude and an acknowledgment of governmental wrong doing must first occur.

Many Brazilians, still plagued by their loss of a "disappeared" relative, still demand justice. Some doctors, working with advanced DNA matching technology have been able to positively identify the cadavers of missing persons. Their work is very important. But it is more important for the Brazilian government to officially recognize its past. It could sanctify a national remembrance day with a domestic holiday, or simply construct a memorial where relatives of the dead may come to mourn and recognize their lost loved ones. Would it be too much for Brazil's president, with Brasil: Nunca Mas in hand, to come before the nation, hold the government accountable for past crimes against humanity, apologize and ask for forgiveness? Considering the continued lack of political will, it would seem so.

Conclusion

Brazil's president, Luis Ignacio Lula da Silva, who himself suffered from the regime's brutality, is the man who has the perspective and presence to take action. While his government is beholden to the compromises needed to unify a thin political coalition, he may be the last Brazilian president with close ties to Brazil's ignored past. But can his charisma, backed by the strength of a domestic human rights campaign, create enough political pressure to reform the torture law? Can he give spirit to those lawyers and judges who feel compelled to complete Brazil's second transition to democracy?

Truthfully, a minority of Brazilian business elite and politicians resist the truth by not officially acknowledging the past: torturers themselves, even at the top of the pyramid, continue to live with the pains of their past duty according to Archbishop Paulo Evaristo.

During the long wait in the corridor, I was able to talk with police officers who conducted [torture]... They were all having serious problems, with their families and private lives, which they themselves saw as divine judgment upon them. With a cry of desperation, [one] of them asked me, 'Is there any hope that I will be forgiven?'⁵⁹

Divine judgment comes to us all. Religion transcends torture. Let us hope then that in the name of the thousands of victims of Latin America's longest standing military regime, those elite business men and politicians who continue to ignore the truth will come to make at least a minimal recognition of the truth through official acknowledgment of the past. Official acknowledgment might save thousands of Brazilians from living life waiting for death. And by making such amends, these men may save themselves from judgment and, perhaps, ultimate justice.

⁵⁹ Dassin, *Torture in Brazil*, xxvii.

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