On 5 December 1995, the Brazilian daily newspaper *Folha de S. Paulo* (1995, 12) reported on page number twelve (!): ‘In a closed ceremony in his Cabinet, without any speeches, President Fernando Henrique Cardoso sanctioned yesterday the law which recognises the death of 136 disappeared persons’. Quietly – nearly secretly – the government issued a law by which the state first recognised the assassinations of political opponents by the military regime which ruled Brazil between 1964 and 1985. This paper calls into question that this official statement qualifies as a sincere state apology. It thereby contributes to the question of what constitutes a genuine apology of the state and what precisely does not qualify as one. Taking post-authoritarian Brazil as a case study, I question that the act of issuing an official declaration alone – an apology as a mere speech act – meets the requirements of a genuine apology, if it is counteracted (rather than supported) by further political steps. A state apology – the recognition of the state’s wrongdoings and expression of regret – constitutes a whole process of initiatives rather than a single act and takes a variety of forms ranging from law decrees and Supreme Court verdicts to seemingly simple words. I will coin this range of political steps which together constitute a sincere apology ‘apologetic state initiatives’ echoing a similar concept put forward by Jennifer Lind (2009, 523) – the so-called ‘apologetic
remembrance’. While apologetic state initiatives include official statements of recognition and regret of violence, revocations or reinterpretations of amnesty laws, public hearings in and final reports of truth commissions, trials which indicate the perpetrators wrongdoings, commemorations, museums, ceremonies and holidays, ‘unapologetic state initiatives’, by contrast, are actions and symbols which decline either the recognition of past crimes or feelings of remorse for them. They include statements of denial, confirmations of amnesties, impunity, lack of or resistance to truth commissions, the perpetuation of the perpetrators’ narratives and their vocabulary, the denial of access to archive material, the active sabotaging of clarification of cases of past human rights crimes, along with the lack of monuments, museums and clarifying text books. The ultimate sincerity of a state apology depends on the whether apologetic trump unapologetic initiatives. In Brazil, I argue, unapologetic state initiatives are still overriding the timid apologetic steps advanced since 2006 (Schneider 2011a). I am not denying that there were not any, but I rather conceive of this process as an arena of struggle, whereby the supporters and catalysts of apologetic initiatives have so far lost out on the dominant (or in Gramscian terms hegemonic) camp which promotes denial. In that sense, a lack of an apology clearly signals disagreement about a historical narrative and represents a concrete manifestation of a deeper discursive struggle (Harris, Grainger and Mullany 2006, 718-9; Nobles 2008, 2-3). Hence, an apology (or the lack of it) can only be grasped considering its deeper historical roots and by unravelling the struggles within a given society over historical narratives.

In what follows, I will therefore first of all introduce the transitional justice history of Brazil and provide a brief overview of the juridical, political and financial steps the state has taken for the victims of human rights crimes under military rule and their families. I will then turn to recent changes in the Brazilian state’s politics of memory. What seemed like a promising shift towards an active championing of human rights victims has recently faced a major backlash, as two incidents that counteract the 1995 apology demonstrate. Finally, I briefly address the question of why does it matter if the state apologised for human rights crimes.
1. The state’s silencing of past systematic human rights crimes

In Brazil, the overall number of dead and disappeared between 1961 and 1988 is calculated at 474 (SEDH 2009, 17, 20-21, 48). Between 1964 and 1985 it is estimated that more than 50,000 Brazilians were imprisoned and 20,000 tortured (SEDH 2009, 30; Pereira 2005, 68). Despite the overall lower number of victims compared to Argentina and Chile and the fact that repression in Brazil affected primarily left-wing groups combating the regime rather than the general public, torture nonetheless became a systematic state procedure from 1969 onwards when the repressive organs, Centre of Internal Defence Operations - Department of Operations of Information (Centro de Defesa Interna – Departamento de Ordem Interna, Codi-Doi), were installed which institutionalised human rights violations.

While the principal form of an apology would be first of all acknowledging and secondly expressing regret for systematic state repression, a key feature of post-1985 Brazil is precisely its denial. It is the only post-military country in Latin America which has neither instated a truth commission nor prosecuted state officials involved in human rights crimes (Heinz 2008, 56). The first systematic report on torture – *Brasil Nunca Mais* – published in 1985, the year of Brazil’s return to civil rule, was not initiated by the state, but the archdiocese of São Paulo (Arquidiocese de São Paulo, 1985). In 1995, members of various victim associations presented a list of demands which included the state publicly assuming the responsibility for murder and torture (SEDH, 2007: 32-33). The state responded with a Law (no. 9.140/95) which created an investigation commission – the so-called Special Commission of the Families of the Dead [or Killed] and Disappeared Political Activists (Comissão Especial sobre Mortos e Desaparecidos Políticos, CEMDP) – and compensation payments ranging from approximately $ 99,500 to 150,000 US dollars. Yet, the burden of proof lay with the victims’ families, not the state, otherwise they were not entitled to receive compensation, and finding evidence proved difficult, because access to documents commonly was denied (SEDH 2007: 33-34, 36). The Special Commission later published an official
report (SEDH 2007) according to which human rights activists were rather disappointed about the 1995 Law; individual cases were not investigated, the government did not launch a major media campaign pinpointing victim families to their right of compensation, and for a lengthy period the state sabotaged the investigation of these cases (SEDH, 2007: 38, 43; Santos, Teles, and Teles, 2009: 376, 473-474, 489, 491). The state also repressed the memory of human rights crimes by blocking access to archive material. In 2002, shortly before leaving office, President Fernando Henrique Cardoso (1995-2002) issued a decree which drastically prolonged the closure of government files to the public. Absurdly, this decree permitted the documentation to remain closed for one hundred years thus hindering the clarification of systematic state repression under military rule (Costa, 2008: 23-24; Fico, 2004: 126). To be brief, the general tactic of post-military governments has been to silence the authoritarian past. The few steps taken in response to claims by human rights activists were to formally apologize for the state violence in 1995, to instate a special commission to examine these cases, and to pay compensation to the victims’ families, if they had sufficient proof (Catela, 2000: 299-300).

In Argentina, by contrast, families of victims and human rights organisations mobilised in the late 1970s and early 1980s and progressively forced politicians to finally address this problem resulting in numerous military generals being condemned and imprisoned throughout the 1980s (Catela 2000, 301-15; Jelin 2008, 345-47). In Chile and Uruguay, military officials involved in human rights transgressions have likewise stood trial. Argentinean governments even openly criticised their armed forces and expropriated a former military detention centre to turn it into a museum of human rights violations. The official inauguration ceremony of the museum was broadcast widely in the media (Catela, 2008: 183). While this paper focuses on the Brazilian state rather than public activism, it is vital to keep in mind that in most post-authoritarian countries in the Southern Cone public mobilisation has been a key factor to catalyse state action and despite the engagement of numerous human rights activists in Brazil, it appears that the general public has not taken much interest in the country’s history of repression. By contrast in Brazil, public consensus
has not yet materialised in decisive forms such as opinion polls in which a clear majority condemns
the regime, less contested interpretations of the regime, or museums, not only unanimously
patronised by the state but also endorsed by the Brazilian public.

Earlier this year (2011a) I argued that from 2005 onwards the Brazilian state had adopted a
new politics of post-military memory and started to actively champion the remembrance of the
authoritarian past by launching two major projects: ‘The Right of Memory and Truth’ (Direito à
memória e à verdade, 2006), on the one hand, including the inauguration of victim monuments, a
touring exhibition and distance tutorials for teachers, and ‘Revealed Memories’ (Memórias
Reveladas, 2009), on the other hand, intended to enhance research, make sources available, and
stimulate both academic and public discussions. However, given the recent backlashes in Brazil’s
transitional justice history, I feel I need to reconsider my argument. These new ‘politics of memory’
have peaked and reached a turning point in the latest crisis on the Truth Commission which leads us
to the next point – two ‘unapologetic occurrences’ which symptomatically exemplify the state’s
‘non-apology’.

2. Conflations of the 1995 ‘apology’

In what way has the state not apologised? Both the Supreme Court’s rejection to revoke the 1979
Amnesty Law in April 2010 and the crisis about the Truth Commission in January 2010
demonstrate that despite its 1995 ‘apology’, the state still falls short of admitting that a state-led
repression network was in operation from 1969 onwards violating basic human rights of Brazilian
citizens. In 2008, the Brazilian Lawyers’ Organisation (Ordem dos Advogados, OAB) appealed to
the Supreme Court (Supremo Tribunal Federal, STF) to make torture exempt from the Amnesty
Law which grants full impunity to former perpetrators. On 28 April 2010, the Brazilian Supreme
Court refused to revoke the Amnesty Law by seven votes against two (Folha Online 2010). Now
what does this mean and why does this incident support my claim that the Brazilian state failed to
apologise? The main reason is not the decision to grant amnesty to the perpetrators in itself. A state
apology does not necessarily imply ‘retributive justice’ and concrete imprisonment, but may also take a ‘restorative’ form, a formal apology, an act of forgiveness, the official recognition and exposure of the perpetrators’ transgressions (Ntsebeza in Kotzé 2000, 169). Scholars like Gutman and Thompson (Rotberg and Thompson 2000, 22) have pinpointed alternative forms of justice and argued that on some occasions prosecution may not even be the best road to take. Criminal justice may be the most symbolical yet not the only way to acknowledge systematic transgressions.

The reason why the STF did indeed undermine the 1995 apology lies in the amnesty text (and its confirmation) and the historical meaning it attributes to the past state repression – in other words, the non-apology lies in the verdict’s historical narrative of violent repression between 1964 and 1985, a story told by the perpetrator state itself given that the Amnesty was a self-amnesty issued six years prior to Brazil’s return to formal democracy. The OAB (2008, 13-15) justified its appeal by questioning the biased interpretation of a paragraph of the Amnesty Law, which explicitly disqualified those implicated in so-called acts of ‘terrorism’. While this exception from amnesty had only been applied to the militant regime opposition who, according to this legislation, were still considered as ‘terrorists’, human rights violations by members of the repressive organs had still not been acknowledged as acts of state terrorism: ‘…the systematic and organised practice … of homicide, … torture and rape against political opponents does not represent State terrorism [sic]?’ (OAB 2008, 16-19). In other words, not only did the Amnesty Law use the words of the illegal military regime – the ‘terrorists’ were still members of the regime opposition only – but worst of all, it clearly failed to acknowledge that the systematic state repression at the time constituted ‘state terrorism’. Hence, the verdict means that the Brazilian state is still in debt of an official recognition of state perpetratorship. Far from delivering retributive justice like its neighbour countries, Brazil still owes the smallest of all steps in the transitional justice process – restorative justice. It precisely did not apologise. In other South American nations, by contrast, either the government or the Supreme Court has revoked the Amnesty Law, frequently responding to public activism (Argentina and Uruguay), or else the state has nonetheless found a legal way to prosecute human rights
transgressors from the authoritarian era (Chile).

A similar fight over seemingly harmless ‘words’ occurred during the crisis over the truth commission in early 2010 (Schneider 2011c). On that occasion the Brazilian Defence Minister, Nelson Jobim, and the three leading military generals threatened to resign over the creation of a National Truth Commission and successfully blackmailed the at the time President, Luiz Inácio da Silva called Lula, to amend the text of the law proposal: The expression, ‘in a context of political repression’ (referring to human rights violations) was replaced by the phrase ‘in a context of political conflicts’ (Agência Brasil/O Globo 2010). Once again state representatives refused to accept the state’s involvement in political repression on a larger scale. The specification of who committed the human rights violations – military officials or the militant opposition to the regime – was erased. Hence, different unapologetic state measures ranging from law decrees and Supreme Court verdicts to ‘simple words’ have confirmed that overall the Brazilian state has not yet ‘apologized’ to victims of human rights abuses. A clear acknowledgement of state terrorism and political repression remains outstanding both in laws and, most importantly, in words.

But were there good reasons to deny a genuine apology in the Brazilian case? This is a complex question I can only tentatively address here, but historically speaking, unpunished human rights crimes have a long history in Brazil, a country characterised by continuously reproduced social injustice (Skidmore 2004; Pereira 2009). Although the Brazilian military retained significant power in the post-1985 state, military pressure does not provide a convincing justification for the failure to say sorry, as other influential groups (media, politicians, state entities) did not support an apology either. Personally, I suggest that the post-1985 governments did not feel the need to sincerely apologise as both pressure from influential groups and major public mobilisation were absent. They would rather shy away from confrontations with nostalgic regime supporters. In short, the motivation of most state agents to apologise has been weak. Most may have even feared what Lind (2009, 554) calls a ‘domestic backlash’, a national reaction to defend and glorify the state’s violent past rather than to clarify and regret it.
3. State apology - Why does it matter?

The most obvious purpose of a political apology in the Brazilian case, needless to say, would be to alleviate the suffering of the victims and their families by the mere fact of recognising the illegal violence (Cunningham 1999, 289; Du Toit 2000, 127). While retributive justice focuses on the perpetrators, restorative justice addresses the victims’ perspective. The Brazilian state’s failure to acknowledge the systematic nature of the crimes forecloses a kind of ‘social reconciliat[ion]’, to many scholars the prime goal of any transitional justice measure. Tim Cahill of Amnesty International argued that the Brazilian Supreme Court’s defence of the Amnesty Law placed a ‘judicial seal of approval’ on the pardoning of human rights violators. He regarded it as a clear ‘offence’ to the victims: ‘This is an affront to the memory of thousands who were killed, tortured and raped by a state that ought to protect them. Once again, the victims and their families were deprived of gaining access to truth, justice and compensation’ (Reuters 2010).

Equally important, if state crimes were totally forgiven without even naming them, people will not believe in the new democracy (Kotzé 2000, 169). Sincere state apologies shape the normative value of human rights in new democracies, as other post-authoritarian countries in the Southern Cone have shown. The Argentinean sociologist Elizabeth Jelin (2008, 345-47) has pointed out how post-authoritarian Argentina has elevated the protection of human rights, making it a cornerstone of its new democracy. In contrast, the Brazilian Supreme Court declined to change the value system. Had it annulled the amnesty, it would have initiated such a change in values and strengthened human rights in Brazil. Activists have criticised the verdict for legally sanctioning impunity and thereby strengthening a climate in which human rights violations continue to go unpunished (Reuters 2010). Pereira (2000, 233-34) and Pinheiro (1994, 241) have shown that the Brazilian people tolerate the widespread hard-line strategy of the police and that a change in the perception of police misbehaviours can come from a shift in values alone. An empirical study by Sikking and Walling (2007, 434) revealed that truth commissions and human rights trials enhanced
democracies in Latin America and reduced human rights crimes from 1980 onward. Similar to other transitional justice measures, the effect of apologetic state initiatives are hard to measure. Yet, research on trials has demonstrated that in countries which held trials, human rights crimes have notably decreased. In post-authoritarian Brazil, in contrast, the only transitional Latin-American country without trials, the number of human rights transgression has increased despite the country’s formal return to democracy (Sikking and Walling 2007, 435-40). If a state apology is regarded in the wider sense as a coherent bundle of apologetic state initiatives, it is highly likely that a sincere political apology would equally curb human rights violations and enforce rule of law.

Also, to recur to transitional human rights law and non-governmental organisations has not only been a smart strategy of activists, but Brazil’s role in the global economic and diplomatic system has also been a key motif for a genuine apology. Brazil is aspiring for a permanent seat in the United Nations Security Council. Cezar Britto, the President of the Brazilian Lawyers’ Association (OAB), recently defended the National Truth Commission, by highlighting the paradox that Brazil was defending democracy in Haiti, but afraid to address its own military past (Lima 2009). The clear majority of advantages of a full state apology make it even harder to comprehend, why Brazil, in striking contrast to its Latin American neighbours, has still failed to make this step.

Lastly, another key function of a proper state apology is to prevent from similar crimes reoccurring. The post-2006 ‘new politics of memory’ have been run with the slogan ‘So that we never forget, so that it never happens again’. However, if the state fails to acknowledge its organized wrongdoings, will the memory of left-wing resistance groups be enough? Would it not rather fail to both satisfy the victims, reframe the historical narrative and redirect the social norms towards democracy? Currently, it looks as if, shying away from a sincere political state apology, Brazil tries the softer variant of a kind of ‘cultural’ apology. Instead of taking up responsibility for its crimes, the Brazilian state enhances the remembrance of victims and tries to draw on human compassion. As the two recent incidents – the Supreme Court verdict and the crisis over the truth commission – have demonstrated, the state still owes a political apology, still owes a redefinition of
the word ‘terrorists’ and a sincere admission of political state repression. A public recognition that systematic imprisonment, torture and murder happened under the state’s auspices, that this was illegal and should not reoccur, would be the very least apologetic initiative to embrace the victims and initiate a value change in Brazil.

It remains to be seen, if the already severely watered down truth commission will become rather an apologetic or unapologetic initiative, whether it will be strong enough to finally and unmistakably recognise the state’s systematic involvement in human rights crimes. Will President Dilma Rousseff give a historical speech which will be broadcast widely in the media? Perhaps, on that occasion the truth commission will make it even to the front page.
Literature


