

**JUSTICE CASCADE IN LATIN AMERICA  
AND THE BRAZILIAN CASE**

A THESIS  
SUBMITTED TO THE  
STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES  
AT THE STANFORD LAW SCHOOL,  
STANFORD UNIVERSITY  
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF  
MASTER OF THE SCIENCE OF LAW

Advised under the faculty supervision of Professor Helen Stacy

By

**CRISTINA BRANDAO**

May 2010

## ABSTRACT

This thesis discusses transitional justice in Brazil. In recent decades, quite a few countries decided to grant amnesties to human rights abusers when confronting mass violence legacies, especially in Latin America, and Brazil was among these countries. In 1979, the Brazilian military government granted a broad amnesty for human rights perpetrators during the period of military rule. Nevertheless, a significant percentage of Latin American states have responded to domestic and international pressures to implement trials and truth and reconciliation commissions to examine alleged human rights violations of past military regimes. Brazil, however, has so far not adopted this path.

More specifically, recent literature has argued that a *justice cascade* is underway in Latin America today. The term justice cascade refers to an international human rights advocacy network now operating in Latin America that supports individuals without access to justice in their home country in seeking justice abroad. For some, this cascade hit almost all transitional countries in the region, except for Brazil. Brazil is the only Latin American country where the amnesty had the desired effect of impeding trials of agents of the former military regime. My research aimed to understand why.

Through document analysis and supplementary interviews, I conducted a case study of the Brazilian case. My findings suggest that, in Brazil, the demand for accountability for wrongdoings of the former regime depended on perceptions that the population holds in regard to the military regime period, which were shaped by unique historical, political, and economic events. The particularities of the conflict in each country or region shape the post-conflict political decisions more than the international community would desire or expect. Even if amnesties for human rights violators are considered by some to be illegal, illegitimate, and unacceptable by international standards, nevertheless, historical, political, and economic circumstances are decisive in the choice of transitional mechanisms that best address the wrongdoings of a past regime in a particular state.

The jury is still out in regard to the effectiveness of transitional justice mechanisms in improving the lives of the populations that suffered the atrocities of conflict. The Brazilian case may contribute to this debate as an example of a country that persisted in its choice of “no justice, no truth,” and yet achieved a stable democracy and a visible tolerance among opposing political parties that were once enemies in the former regime.

## TABLE OF CONTENTS

<b>INTRODUCTION</b>	1
<b>1. THE JUSTICE CASCADE IN LATIN AMERICA</b>	5
<b>1.1. CHILE AND THE LONG PATH TO ACCOUNTABILITY</b>	7
<b>1.2. ARGENTINA AND THE INVALIDATION OF THE FULL STOP AND         DUE OBEDIENCE LAWS</b>	9
<b>1.3. DOES JUSTICE LEAD OR FOLLOW?</b>	12
<b>2. THE BRAZILIAN AMNESTY ACT AND THE NEW DEMAND FOR ACCOUNTABILITY</b>	16
<b>2.1. A CASE STUDY</b>	18
<b>2.2. THE 1979 AMNESTY ACT</b>	21
<b>2.2.1. THE LEGALITY OF THE 1979 AMNESTY ACT UNDER INTERNATIONAL             LAW</b>	24
<b>2.3. FORMAL GOVERNMENT ANSWERS TO VICTIMS' DEMANDS</b>	30
<b>3. THE JUSTICE CASCADE AND ITS WEAK INFLUENCES IN BRAZIL</b>	34
<b>3.1. PERCEPTIONS OF THE MILITARY REGIME PERIOD</b>	37
<b>3.2. PERCEPTIONS OF THE AMNESTY PROCESS</b>	42
<b>4. AMBIVALENCE REGARDING THE TYPE OF REGIME: WHY IS BRAZIL     DIFFERENT?</b>	46
<b>4.1. THE ECONOMIC MIRACLE</b>	46
<b>4.2. THE BRAZILIAN POPULATION'S LEVEL OF POLITICIZATION DURING THE         1970S</b>	49
<b>4.3. THE LEVEL OF VIOLENCE INFLICTED UPON THE CIVILIAN POPULATION</b>	54
<b>CONCLUDING REMARKS</b>	62
<b>BIBLIOGRAPHY</b>	66