



Eduardo Monteiro Burkle

When Forgetting Is Dangerous

Transitional Justice, Collective
Remembrance and Brazil's Shift to
Far-Right Populism

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FOREWORD

The European Master's Degree in Human Rights and Democratisation (EMA) is a one-year intensive programme launched in 1997 as a joint initiative of universities in all EU Member States with support from the European Commission. Based on an action- and policy-oriented approach to learning, it combines legal, political, historical, anthropological and philosophical perspectives on the study of human rights and democracy with targeted skills-building activities. The aim from the outset was to prepare young professionals to respond to the requirements and challenges of work in international organisations, field operations, governmental and non-governmental bodies, and academia. As a measure of its success, EMA has served as a model of inspiration for the establishment of six other EU-sponsored regional master's programmes in the area of human rights and democratisation in different parts of the world. Today these programmes cooperate closely in the framework of the Global Campus of Human Rights, which is based in Venice, Italy.

Up to 90 students are admitted to the EMA programme each year. During the first semester in Venice, they have the opportunity to meet and learn from leading academics, experts and representatives of international and non-governmental organisations. During the second semester, they relocate to one of the 42 participating universities to follow additional courses in an area of specialisation of their own choice and to conduct research under the supervision of the resident EMA Director or other academic staff. After successfully passing assessments and completing a master's thesis, students are awarded the European Master's Degree in Human Rights and Democratisation, which is jointly conferred by a group of EMA universities.

Each year the EMA Council of Directors selects five theses, which stand out not only for their formal academic qualities but also for the originality of topic, innovative character of methodology and approach, potential usefulness in raising awareness about neglected issues, and capacity for contributing to the promotion of the values underlying human rights and democracy.

The EMA Awarded Theses of the academic year 2019/2020 are:

- Caruana, Deborah, *Securitising Children Rights: Victims and Heirs of Terrorism. A Critical Analysis of France's Approach to Children of Foreign Terrorist Fighters*. Supervisor: Heidi Riley, University College Dublin, National University of Ireland, Dublin.
- Catalão, Mariana, *Environmental Justice, Climate Change and Human Rights. Different Contributions, Different Consequences and Different Capabilities Should Equal Different Human Rights Obligations*. Supervisor: Jan Klabbers, University of Helsinki.
- Houssais, Olivia, *Democratic Deficit Theory: A Reversed Approach. Why Radical Political Changes in Member States Affect the Quality of Democracy in the EU*. Supervisor: Anna Unger, Eötvös Loránd University, Budapest.
- Monteiro Burkle, Eduardo. *When Forgetting Is Dangerous: Transitional Justice, Collective Remembrance and Brazil's Shift to Far-Right Populism*. Supervisor: Alice Panepinto, Queen's University Belfast.
- Stockhem, Ophélie, *Improving the International Regulation of Cybersex Trafficking of Women and Children through the Use of Data Science and Artificial Intelligence*. Supervisors: Maria López Belloso and Demelsa Beniso Sánchez, University of Deusto, Bilbao.

The selected theses demonstrate the breadth, depth and reach of the EMA programme and the passion and talent of its students. We are particularly proud of EMA's 2019/20 students: as teachers and students across the world can testify, the COVID-19 pandemic brought many different challenges for teaching and learning. It is fair to say that our students researched and wrote their theses in turbulent times. On behalf of the Governing Bodies of EMA and of all participating universities, we applaud and congratulate them.

Prof. Manfred NOWAK
Global Campus Secretary General

Prof. Thérèse MURPHY
EMA Chairperson

Dr Wiebke Lamer
EMA Programme Director

This publication includes the thesis *When Forgetting Is Dangerous: Transitional Justice, Collective Remembrance and Brazil's Shift to Far-Right Populism* written by Eduardo Monteiro Burkle and supervised by Alice Panepinto, Queen's University, Belfast.

BIOGRAPHY

Eduardo is a lawyer and human rights activist from Brazil. After his LLB, he co-founded and coordinated Amnesty International's Activism Group in Londrina, Paraná, Brazil. His research interests include the transitional justice experience in Latin America, the global rise of far-right populism and political theory.

ABSTRACT

Transitional justice measures such as, inter alia, trials, truth commissions and institutional reforms or a lack thereof impact how societies deal with the past and help shape the collective memories of societies and its different groups. The aim of this paper is to analyse the Brazilian transition to democracy and how the lack of implementation of transitional justice measures, or their shortcomings, can explain the non-existence of a consensus towards its authoritarian past. By not having a shared understanding of its own past, we argue that the Brazilian democracy is prone to revive its authoritarian past, as shown by the recent wave of autocratisation it suffers. The rise of far-right populism in Brazil is linked to a dictatorship nostalgia, embodied in President Jair Bolsonaro and the intense presence of the military in his government. Without the proper reckoning with its past, Brazilian democracy displays an inherent weakness associated with its amnesia towards the military dictatorship (1964-85).

Keywords: transitional justice, collective memory, Brazilian military dictatorship, populism.

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*I was sailing in the Milky Way
Losing track of memories that weren't that day
Right by her side
As the stars flew by I did collide with memory
But somehow I survived
And became free*
– Neil Young

*You have to begin to lose your memory, if only
in bits and pieces, to realize that memory is
what makes our lives. Life without memory
is no life at all, just as an intelligence without
the possibility of expression is not really an
intelligence. Our memory is our coherence, our
reason, our feeling, even our action. Without it,
we are nothing*
– Luis Buñuel

TABLE OF ABBREVIATIONS

AI-5	Institutional Act Five
ACHR	American Convention on Human Rights
CEMDP	Comissão Especial sobre Mortos e Desaparecidos Políticos (Commission on Political Deaths and Disappearances)
DOI-Codi	Department of Information Operations – Centre for Internal Defence Operations
ECtHR	European Court of Human Rights
IACtHR	Inter-American Court of Human Rights
LDI	Liberal Democracy Index
MBL	Movimento Brasil Livre (Free Brazil Movement)
NTC	Brazilian National Truth Commission
OAB	Ordem dos Advogados do Brasil (Brazilian Bar Association)
PMDB	Partido do Movimento Democrático Brasileiro (Brazilian Democratic Movement Party)
PSDB	Partido Social Democrata Brasileiro (Brazilian Social Democratic Party)
Worker’s Party	Partido dos Trabalhadores
STF	Supremo Tribunal Federal (Brazilian Supreme Court)
TCU	Tribunal de Contas da União (Supreme Audit Agency)
TERNUMA	Terrorismo Nunca Mais (Terrorism Never Again)
US	United States of America

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INTRODUCTION

Salvador Dali's most famous painting is entitled 'The Persistence of Memory'. However, many refer to it simply as 'Melting Clocks' in reference to the most distinguishable component of the surrealism icon. While Dali never fully explained the meaning of the melting clocks, they can be interpreted as how time works in a different way concerning memory, or as Sontag claims – echoing the work of Walter Benjamin – how the work of memory collapses time.¹

The intricate relationship between time and memory gains another layer when we consider the existence of collective memories. These memories define how different groups not only remember the past, but form their identity and their lens to read the present. The existence of (sometimes dissonant) collective memories of authoritarian pasts is a useful perspective to grasp how decades-long events can resurface in the public sphere and profoundly influence the political scenario.

But does the Brazilian society remember its own authoritarian past? This research project analyses the transitional justice process in Brazil, using the perspective of memory studies and the concept of collective memory to identify the ongoing implications of the lack of understanding concerning the military dictatorship period (1964-85). By doing so, we try to explain the emergence of a dictatorship nostalgia and the rise of far-right populism in the country.

The election of Jair Bolsonaro in 2018, a former military famous for praising the regime, represented not only the rise of far-right populism in Brazil but brought back the armed forces to the centre stage of national politics. Assessing the transitional justice experience in Brazil, we can ask:

¹ Susan Sontag, *Under the Sign of Saturn* (Farrar, Straus & Giroux 1980) 115.

Would the return of the military through the electoral vote be possible with the early implementation of transitional justice measures? Does the formation of a shared collective memory of the authoritarian past by transitional justice mechanisms allow a shield against this type of populism attached to a dictatorship nostalgia? Have the shortcomings and the late implementation of transitional justice in Brazil turned its democracy more fragile to figures like Bolsonaro?

Unlike many other countries, including its neighbours from Latin America, Brazil transitioned to a democratic state without deploying significant transitional justice measures. The Amnesty Law approved during the military rule persists and no human rights trials took place in the country until this day. This approach, emulating the conciliatory reasoning behind the negotiated Brazilian transition to democracy, shows that, at least initially, there was also a pact for amnesia.

The transitional justice practice developed a series of mechanisms that countries adopt not only to make their transition from authoritarian regimes to democratic ones, but also to 'deal with the past'. In this sense, measures such as truth commissions, trials and institutional reforms exist not only to bring stability and legitimacy to new democratic regimes or to make justice for victims but also as a way to introduce a shared understanding of the past.

In this sense, transitional justice measures can help foster collective memories about authoritarian pasts. When successful, they do so in order to prevent countries from falling back into autocratic experiences, or as embodied in the motto of many transitional justice experiences throughout the world: *Nunca más!*²

In order to analyse this subject, this desk-based study resorted to primary sources, including the Brazilian Amnesty Law, the report from the National Truth Commission (NTC) and judgments from the Brazilian Supreme Court (*Supremo Tribunal Federal* or STF) and the Inter-American Court of Human Rights (IACtHR). The secondary sources are academic works in English and Portuguese, mainly on the fields of transitional justice, memory studies, political science and history.

² Or simply 'never again' in English.

The first chapter lays out the historical background of the dissertation. It considers how the coup of 1964 was not an initiative of the military only, but enjoyed support across a significant section of Brazilian society, polarising Brazilian politics. A similar polarisation happened in 2018 with the election of Jair Bolsonaro, when the military became part of political life again.

The second chapter deals with the theoretical aspects of transitional justice and collective memory. The objective is to discuss how transitional justice mechanisms, such as trials and truth commissions, have the potential of shaping a shared understanding of the past. The human rights-oriented framework of the transitional justice field implies that this memory work can have a meaningful impact on democratisation processes.

The third chapter presents the transitional justice experience in Brazil, showing how the characteristics of the regime itself and the controlled transition to democracy also meant a pact for amnesia. Sparse and narrow measures of transitional justice, mostly focused on reparations programmes, failed to deliver justice for the victims of the dictatorship, and the absence of debates in the public sphere about the authoritarian past prevented the matter from being publicly acknowledged. A more far-reaching approach, symbolised by the establishment of a truth commission in 2011, almost three decades after the transition to democracy, was interrupted by changes in the political scenario.

The fourth chapter is focused on contemporary Brazilian politics and the rise of far-right populism and a dictatorship nostalgia, personified in Jair Bolsonaro, elected president in 2018. It shows not only how the period of autocratisation that Brazil lives is linked with its past, but also how Bolsonaro's nostalgia for the military dictatorship and its political success would not thrive with a proper reckoning of the dictatorship years.

1.

TANKS AND BALLOTS: FROM THE MILITARY
DICTATORSHIP (1964-85) TO BOLSONARO (2018)

This chapter provides an overview of the history of the military dictatorship in Brazil (1964-85), explaining the conditions that allowed the military to depose an elected president and to govern the country for more than two decades. The Institutional Act Five (AI-5) (a symbol of the authoritarianism of the regime), the Amnesty Law of 1979 and the *Diretas Já* (Direct Elections Now) movement are presented as milestones of the military in power and the subsequent process of democratisation. Lastly, it presents the rise of Jair Bolsonaro as a political figure in Brazil and his trajectory to presidency in 2018, representing the return of the military in Brazilian politics, this time through democratic elections.

1.1 THE COUP OF 1964 AND THE FORMATION OF THE MILITARY REGIME

The Brazilian military dictatorship³ started in 1964 and would last for 21 years. On 31 March 1964, tanks were on the streets as a military junta deposed President João Goulart and issued the Institutional Act 1⁴ that annulled the mandate of the deputies of the left-wing parties, gave

³ Thomas E Skidmore, *The Politics of Military Rule in Brazil, 1964-1985* (OUP 1990); Elio Gaspari, *A Ditadura Emvergoadada: As Ilusões Armadas* (Companhia das Letras 2002); Elio Gaspari, *A Ditadura Escancarada: As Ilusões Armadas* (Companhia das Letras 2002); Leslie Bethell and Celso Castro, 'Politics in Brazil Under Military Rule, 1964-1985' in Leslie Bethell (ed), *Cambridge History of Latin America - Volume IX: Brazil since 1930* (CUP 2008); Elio Gaspari, *A Ditadura Encurralada* (Editora Intrínseca 2014); Elio Gaspari, *A Ditadura Derrotada* (Editora Intrínseca 2014); Elio Gaspari, *A Ditadura Acabada* (Editora Intrínseca 2017); Lília Moritz Schwarcz and Heloisa Starling, *Brazil: A Biography* (Allen Lane 2018); Marcos Napolitano, 'The Brazilian Military Regime, 1964-1985' in *Oxford Research Encyclopedia of Latin American History* (2018).

⁴ The military issued 17 institutional acts during the regime, with different consequences on the Brazilian legal order. Their objective was to portray a sense of legitimacy to the dictatorship on what Anthony W Pereira calls 'authoritarian legality', see Anthony W Pereira, *Political (In)Justice: Authoritarianism and the Rule of Law in Brazil, Chile, and Argentina* (University of Pittsburgh Press 2005).

a veneer of legality to the *coup d'état*, and paved the way for General Castelo Branco to become president. What was left of the National Congress 'elected' Castelo Branco on 11 April 1964 in an indirect election in which he was the one and only candidate. The votes of the members of the congress (361 votes and 72 abstentions) were geared by fear or by convenience, whilst also expecting presidential elections would still happen in 1965.

In his speech that same day, Castelo Branco guaranteed there would be no more annulments of political rights in the congress and that he would hand over the presidency to a successor to be elected the following year. As Schwarcz and Starling point out, he 'said what everyone wanted to hear, but he kept none of his promises'.⁵

Many political actors, including the deposed President João Goulart, firmly believed that the military would continue to play a role as 'both protagonist and moderating power', as had happened many times throughout the 20th century in Brazilian politics, and that after a cooling-off period, they would allow the civilians to return to power.⁶

The military, with their newly self-given emergency powers, would end up electing⁷ another four generals after Castelo Branco (1964-67): Costa e Silva (1967-69), Garrastazu Médici (1969-74), Ernesto Geisel (1974-79) and João Figueiredo (1979-85). The end of the dictatorship was marked by the indirect election of a civilian in 1985, while the Brazilians would vote again for directly choosing their president only in 1989, with the election of Fernando Collor.⁸

However, how was the *coup d'état* possible? During João Goulart's presidency, the scenario was of an unprecedented polarisation between the political forces. In 1963 there were two political agendas in Brazil, one on the left and one on the right, based on competing visions on how to transform the country, but showing no will to resolve political differences democratically.⁹

⁵ Schwarcz and Starling (n 3) 513.

⁶ Marcos Napolitano, *1964: História Do Regime Militar Brasileiro* (Editora Contexto 2014) 68; Schwarcz and Starling (n 3) 511–12.

⁷ The five presidents that took office during the military rule, all of them senior (four-star) generals, were previously selected by the military high command and then indirectly elected by the congress, or later by an electoral college whose members the military was sure would support their candidate, see Bethell and Castro (n 3) 165.

⁸ Leslie Bethell and Jairo Nicolau, 'Politics in Brazil, 1985-2002' in Leslie Bethell (ed), *The Cambridge History of Latin America, Volume IX - Brazil since 1930* (CUP 2008); Bryan McCann, *The Threats of Democracy: Brazil since 1989* (Zed Books 2013) 12–13.

⁹ Schwarcz and Starling (n 3) 505.

João Goulart, famously known by the nickname ‘Jango’, was elected as a vice president and later assumed office after former President Janio Quadros renounced his post in 1961. In power, Goulart had a plan involving a broad reform agenda including agrarian, urban and electoral changes. Politically fragile, Jango was far away from approving his plans, at least on the terms that would satisfy his political base. While his inefficiency dissatisfied the left (represented mainly by the urban and rural workers and students), the possibility of seeing Goulart’s core reforms materialise was a nightmare for the right-wing (made up of traditional elites, entrepreneurs, military and sectors of the middle class).¹⁰

Opinion is divided among those pointing out that Goulart suffered from a ‘decision-making paralysis’, and was incapable of dealing with polarised conflicts, and those who think that merely the ‘radicalization of the actors’ from the left and right was the driving factor that led to his downfall.¹¹

However, the coup was not merely the product of a political crisis¹² and Jango’s core reforms were not necessarily destined to fail. Moreover, public opinion polls suggest that he had an approval rate of at least 46% among the population at the time.¹³ Yet, Goulart was ‘deeply distrusted’¹⁴ by segments of the military and the conservative elite as both of them saw him as an extreme leftist.

A member of the Brazilian Labour Party (*Partido Trabalhista Brasileiro*), Goulart was far from being a communist. Still, the military until this day calls their intervention in Brazilian politics as the ‘revolution of 1964’,¹⁵ and considers it a necessary and justified action in order to protect democracy from Jango and his own inevitable communist revolution.¹⁶

The *coup d’état* was a multifaceted, complex and volatile project. It represented an overwhelming victory for the country’s conservative forces outweighing relevant sectors of society, such as the trade unions and the student movement. It unified almost all the military forces and republican

¹⁰ Napolitano (n 3) 2–3.

¹¹ Napolitano (n 6) 11–12.

¹² *ibid.* 67.

¹³ Daniel Aarão Reis, *Ditadura e Democracia No Brasil: Do Golpe de 1964 à Constituição de 1988* (Zahar 2014); Napolitano (n 6) 45; Rodrigo Patto Sá Motta, ‘The 1964 Coup and Dictatorship in Opinion Polls’ (2015) 20 *Tempo* 1.

¹⁴ Napolitano (n 3) 2.

¹⁵ João Roberto Martins Filho, ‘The War of Memory: The Brazilian Military Dictatorship According to Militants and Military Men’ (2009) 36 *Latin American Perspectives* 89.

¹⁶ Napolitano (n 3) 3.

institutions. Not a single shot was fired, but regardless this right-wing order managed to remove a president that had been elected democratically.¹⁷

More than a military rebellion, the coup demonstrated the power of a rather heterogeneous group of collaborators, including civilians, military, politicians, entrepreneurs, liberals, the middle class and authoritarians. Anti-communism was a unifying factor in fighting Jango's reforms while raising the flags of the legitimate defence of democracy and 'western and Christian'¹⁸ values against 'left-wing extremism'.¹⁹

In a series of demonstrations, called the March of the Family with God for Freedom (*Marcha da Família com Deus pela Liberdade*), protesters swarmed the streets of all the major cities in Brazil.²⁰ They gathered crowds in anti-Goulart demonstrations with heavy Christian symbolism that defended 'traditional values' and made clear 'their repudiation of atheist and antinational Communism'.²¹

In this sense, it is clear that the coup was sustained by a 'broad social alliance'²² among civilians and the military that allowed the coup to be successful. As the coup evolved into a government, the rule of law and democracy shrunk and many of those who first backed the military started to withdraw their support (some later than others).

Even though the military always held the bulk of decision-making powers²³ the extent of civilian participation, both in the coup and in the subsequent government, led to a debate²⁴ on how to define the military in power. Dreifuss, for instance, classified the coup of 1964 as a 'civilian military'²⁵ endeavour, emphasising the participation of many political actors other than the military as crucial to the coup. Similarly, other authors also qualified the regime itself as a civilian-military dictatorship²⁶ in reference to the complicity of the Brazilian society with the regime.²⁷ However, the majority still opts to define it as a military dictatorship,

¹⁷ Reis (n 13) 21; Napolitano (n 6) 52.

¹⁸ Schwarcz and Starling (n 3) 509.

¹⁹ Napolitano (n 6) 49.

²⁰ Schwarcz and Starling (n 3) 509.

²¹ James N Green, Victoria Langland and Lilia Moritz Schwarcz, *The Brazil Reader: History, Culture, Politics* (Duke UP 2018) 412.

²² Reis (n 13).

²³ Napolitano (n 6) 7.

²⁴ Marcelo Ridenti, 'The Debate over Military (or Civilian-Military?) Dictatorship in Brazil in Historiographical Context' (2018) 37 Bulletin of Latin American Research 33.

²⁵ René Armand Dreifuss, *1964, a Conquista Do Estado: Ação Política, Poder e Golpe de Classe* (Vozes 2006).

²⁶ Reis (n 13).

²⁷ Ridenti (n 24) 5.

acknowledging the tangled relationship between the military and civilians in the matter.²⁸

The military themselves were not a monolithic group. The armed forces held a long tradition of being involved in past governments,²⁹ and among its different generations and even hierarchy represented a ‘wide variety of political ideologies’.³⁰ The rivalry among different factions always emerged when it was time to select a new general to fill the presidency; however, the ‘disagreements between the rival factions within the armed power forces were not over power *per se*, but about what should be done with it’.³¹

From 1964 to 1985, the military dictatorship ruled using emergency powers, repression and controlling public information while adopting a modernisation economic plan. Goulart’s reformist agenda was replaced by another ideological and political model of a society and state, now with the military in command.³²

The investiture of General Castello Branco was a prelude to a complete change in Brazil’s political system. This transformation was brought about by collaboration between the military and sectors of civilian society that wanted to implement a modernization project based on industrialization and economic growth, sustained by an openly dictatorial regime. This implied far-reaching changes to the structure of the state.³³

To fulfil its objectives, the dictatorship relied on the creation (or re-orientation) of a legal framework and secret service designed to gather information and silence dissent through political repression and censorship.³⁴ This included the National Intelligence Service,³⁵ the DOI-Codi system (Department of Information Operations – Centre for Internal Defence Operations), the political police (Department of Political and Social Order),³⁶ the Law of National Security³⁷ and the creation of the Military Police.³⁸

²⁸ Napolitano (n 6).

²⁹ José M de Carvalho, *Forças Armadas e Política No Brasil* (Todavia 2019).

³⁰ Schwarcz and Starling (n 3) 515.

³¹ *ibid.*

³² *ibid* 517.

³³ *ibid* 514.

³⁴ *ibid.*

³⁵ Law no 4.341,13/06/1964.

³⁶ Law no 2304, 30/12/1924.

³⁷ Decree-Law 314 (13/03/1967); Decree-Law 898 (29/09/1969).

³⁸ Janaína de Almeida Teles, ‘Democratic Transition and Conciliation: Human Rights and the Legacy of the Brazilian Dictatorship’ in N Schneider (ed), *The Brazilian Truth Commission: Local, National and Global Perspectives* (Berghahn Books 2019) 86–87.

Starting in 1964, torture became widely adopted and used systematically by the regime as an interrogation technique. Three years later, cases of disappearances became recurrent after the Costa e Silva presidency in 1967. In 1972, Amnesty International published a report denouncing the use of torture by the armed forces in Brazil as a ‘instrument of power’ as well as the existence of death squads.³⁹ Many of these cases involved cover-ups, including the destruction of evidence to make the identification of the bodies impossible or by staging cases of suicide.⁴⁰

However, after the AI-5 (Institutional Act Five), the ‘killing machine’ had risen to its fullest potential with torture and physical repression as methodical and coordinated large-scale tools.⁴¹ While in the first years of the dictatorship, the targets were mainly left-wing activists that had supported João Goulart previously, with the AI-5 the military prioritised the targeting of students⁴² and the rising armed struggle, formed by a now clandestine left.⁴³

The so-called *anos de chumbo* (years of lead), characterised by institutionalised state repression, political exclusion and gross human rights violations by the security apparatus, had begun.⁴⁴

1.2 ‘THE COUNTRY IS BEING SWEEPED BY STRONG WINDS’:⁴⁵ THE AI-5 AND THE YEARS OF LEAD

The *anos de chumbo* (years of lead) represented the period in which the dictatorship showed its brutal side more clearly. Before the AI-5, the regime usually avoided the explicit use of repression, especially against artists, intellectuals and the press, preferring to maintain part of the civil support as a way to legitimise the coup while still fighting dissent and critics.

³⁹ Anistia Internacional, ‘Report on Allegations of Torture in Brazil’ (1972) 64 <https://issuu.com/anistiabrasil/docs/relat_nio_da_tortura_1972> accessed 8 August 2020.

⁴⁰ Schwarcz and Starling (n 3) 528–29.

⁴¹ *ibid* 529.

⁴² Victoria Langland, *Speaking of Flowers: Student Movements and the Making and Remembering of 1968 in Military Brazil* (Duke UP 2013).

⁴³ Skidmore (n 3) 85.

⁴⁴ Langland (n 42) 5.

⁴⁵ On 14 December 1968, one day after the approval of the AI-5, in the *Jornal do Brasil* newspaper the weather forecast appeared on the front page: ‘Stormy Weather. Suffocating Temperature. Air unbreathable. The country is being swept by strong winds’. In reality, it was a sunny day with a bright blue sky.

The AI-5, approved on 13 December 1968, was a game-changer. It marked the beginning of a period in which the dictatorship used violence in a systematic way and would represent the closure of the public sphere. Censorship, torture and the disappearance of political prisoners peaked.⁴⁶ Based on this legal framework, the military closed the congress and increased the broad and discretionary powers of the regime. The state of exception⁴⁷ was clearer than ever as the dictatorship went from an ‘embarrassed’ one to being ‘wide open’ about its true nature.⁴⁸

The AI-5 suspended habeas corpus, freedom of expression and freedom of reunion; it permitted peremptory dismissals, the annulment of mandates and citizens’ rights; and it determined that political trials would be conducted by military courts, with no right to appeal. It was imposed in a time of political unrest and increasingly hostile opposition activity. There had been student protests, strikes, pronouncements by pre-1964 political leaders, and the beginning of armed resistance by the revolutionary left.⁴⁹

The ‘military extreme right’, who would assume the executive with Costa e Silva and Geisel, adopted direct police violence and the use of paralegal instruments, such as the promulgation of institutional acts and a new constitution in 1967, as the opposition to the regime would take shape in student movements and the clandestine left. Often described as a ‘coup within a coup’ ushering in the ‘hardline’ branch to power during the military regime,⁵⁰ the AI-5 is better explained as the culmination of the military plan of establishing the legality of a state of exception.

Emboldened by a legal framework in support of their arbitrary measures, the military successfully created further limitations on the congress and the judiciary, as it ‘legalized the punishment of dissidents, prevented the opposition from organizing, and restricted any kind of political participation’.⁵¹

The student movement had faded in 1968⁵² and were prevented from demonstrating in the years that followed. The repressive approach of the government made the armed struggle one of the few options for the resistance of a now clandestine left. Soon many small guerrilla groups

⁴⁶ Napolitano (n 6) 71.

⁴⁷ Giorgio Agamben, *State of Exception* (University of Chicago Press 2005).

⁴⁸ Gaspari, *A Ditadura Emvergonhada: As Ilusões Armadas* (n 3).

⁴⁹ Schwarcz and Starling (n 3) 522.

⁵⁰ Reis (n 13) 72–73.

⁵¹ Schwarcz and Starling (n 3) 522–23.

⁵² Langland (n 42).

were formed throughout the country, such as the *Guerrilha do Araguaia*,⁵³ but by 1976 these opposition groups had been practically decimated.⁵⁴

Even if they were not even close to harming the military given the inequality of arms, the actions of these groups⁵⁵ had other effects, especially in the international news, demonstrating the systematic use of torture and politically-motivated incarceration in Brazil and undermining the dictatorship's standing in international relations.⁵⁶ Simultaneously, 'advocacy networks' composed by organisations such as Humans Rights Watch and Amnesty International along with Brazilian exiles worked on denouncing the human rights violations by the military regime, especially towards the United States of America (US) foreign policy establishment.⁵⁷

The *anos de chumbo* marked the period in which the dictatorship would complete its transformation into a police state. At the same time, it would also show the capacity of the opposition to take to the streets and converge the actions of the left-wing guerrillas, the mass movements and cultural contestation.⁵⁸

Over the years, the dictatorship built a heavy repressive machine against society based on the tripod of vigilance, censorship and repression.⁵⁹ The government's objective was to ban any cultural manifestation or opinion against the regime while trying to control the public opinion and cultural production, as well as manipulating the press coverage of certain events. The pressure of the government drove many politicians, artists and intellectuals into exile.⁶⁰

⁵³ Janaína de Almeida Teles, 'The Araguaia Guerrilla War (1972–1974): Armed Resistance to the Brazilian Dictatorship' (2017) 44 *Latin American Perspectives* 30.

⁵⁴ In *Gomes Lund and others v Brazil* the IACtHR condemned the Brazilian state for the human rights violations regarding the disappearances, torture and prison of more than 70 members of the guerrillas. See ch 3. Inter-American Court of Human Rights *Case of Gomes Lund et al ('Guerrilha Do Araguaia') v Brazil* (Preliminary Objections, Merits, Reparations, and Costs. Judgment of 24 November 2010) Series C No 219 59 (the *Gomes Lund* case).

⁵⁵ The most famous being the kidnap of Charles Burke Elbrick, the United States of America (US) Ambassador to Brazil at the time, later exchanged by the liberty of political prisoners.

⁵⁶ de Almeida Teles (n 38) 91.

⁵⁷ Juliana T de S Martins and Anthony W Pereira, 'The Politics of Human Rights' in Barry Amers (ed), *Routledge Handbook of Brazilian Politics* (Routledge 2018) 505; James N Green, *We Cannot Remain Silent* (Duke UP 2010) to return to the 18th century formulation that circulated between the American and the French Revolutions

⁵⁸ Napolitano (n 6) 94.

⁵⁹ *ibid* 131.

⁶⁰ Denise Rollemberg and Timothy Thompson, 'The Brazilian Exile Experience: Remaking Identities' (2007) 34 *Latin American Perspectives* 81; Mario Sznajder and Luis Roniger, 'Political Exile in Latin America' (2007) 34 *Latin American Perspectives* 7, 18–21.

However, why did the government give so much importance to having a legal framework to rule if they could have just assumed the executive *de facto*? The ‘legal façade’ of the dictatorship was significant for two reasons according to Napolitano:⁶¹ 1) it would avoid the rupture between different military leaders; 2) it would allow a process of ‘authoritarian normalization’ with some predictability to the actions of the government and consequently a stabilisation of the regime.

The military leadership knew that the regime would not be sustainable in the long run if it continued resorting to the level of violence that marked the *anos de chumbo*. They would adopt a doctrine of ‘institutional authoritarianism’ trying to control the political system and the society utilising the state’s institutions while continuing to deploy the secret services more selectively. In this sense, the institutional acts were among the elements that structured the regime, but at the same time avoided the concentration of power in only one political figure.

The state mechanisms used to censor and repress in the *anos de chumbo* only began to be dismantled in 1976, when the political cost for its use would jeopardise the plan of ‘political normalization’ and institutionalisation of the regime.⁶² A process of ‘gradual re-democratization then led to a reduction in political repression, which occurred slowly, and not always continuously’.⁶³ On 31 December 1978, the AI-5 was annulled by President Geisel and the period of transition would begin, marked both by the approval of an amnesty law and a new constitution.

1.3 A CONTROLLED TRANSITION AND THE REBIRTH OF CIVIL SOCIETY: THE AMNESTY LAW AND THE *DIRETAS JÁ* MOVEMENT

On 11 February 1979, Santos and Corinthians were facing each other on what seemed another regular Sunday of football in Brazil. However, that day was special. Among the *Gaviões da Fiel*, supporters of Corinthians, there was a huge banner calling for a ‘broad, general, and unrestricted amnesty’.⁶⁴ The scene, broadcasted on nationwide

⁶¹ Napolitano (n 6) 80.

⁶² *ibid* 143.

⁶³ Schwarcz and Starling (n 3) 551.

⁶⁴ *ibid* 552.

television and printed in the newspapers the next day, was an example (and symbol) of how the amnesty cause was able to unify the opposition and reach the general public with large-scale protests in the streets and many political rallies.⁶⁵

The Committees for Amnesty were organised throughout the country, infusing the society with manifestos, meetings and protests as they demanded a ‘broad, general and unrestricted amnesty’. Some sectors of the left went further, calling for the dismantling of the institutions of repression and the prosecutions of the torturers. Others, such as the *Partido do Movimento Democrático Brasileiro* (PMDB) were more realistic, as they thought the amnesty would not be possible without a pact with the conservative forces, and that demands like the prosecution of state agents would not be possible.⁶⁶

The military, on the other hand, was trying to frame the conflict with the clandestine left with its own ‘two demons’ theory, arguing that ‘both sides’ should be amnestied, even though this was far from the truth as the inequality of arms between sides was more than evident.⁶⁷ In the end, through political manoeuvring, the regime approved the Amnesty Law on 28 August 1979 that would guarantee a reciprocal amnesty for both state agents and the resistance.

Nevertheless, it was an important step to the end of the regime. The ‘summer of amnesty’,⁶⁸ between 1979 and 1980, saw the return of many relevant cultural and political figures to the country from their exile, and a new party-political structure that would influence the country in the (re)construction of the democracy until the present day.

This project was also influenced by an international relations dimension, with European allies of the government increasingly ashamed of maintaining ties to a state that adopted torture as official policy. For example, in 1976, with the election of Jimmy Carter, the US, who in 1964 played a role in supporting the coup,⁶⁹ changed the tone and started criticising the Latin American dictatorships.⁷⁰

⁶⁵ Schwarcz and Starling (n 3) 552.

⁶⁶ Reis (n 13) 73–95.

⁶⁷ *ibid* 73–94.

⁶⁸ *ibid* 9–10.

⁶⁹ Matias Spektor, ‘The United States and the 1964 Brazilian Military Coup’ in *Oxford Research Encyclopedia of Latin American History* (2018); Anthony W Pereira, ‘The US Role in the 1964 Coup in Brazil: A Reassessment’ (2018) 37 *Bulletin of Latin American Research* 5.

⁷⁰ Kathryn Sikink, *Mixed Signals: U.S. Human Rights Policy and Latin America* (Cornell UP 2007).

The fight for amnesty was a huge victory for the social movements, and represented the rebirth of civil society in Brazil, led by feminist initiatives such as the *Movimento Feminino pela Anistia* (Feminist Amnesty Movement)⁷¹ and a new trade unionism.⁷² However, the ‘broad, general and unrestricted amnesty’ motto was skilfully used by the military. The amnesty (and the transition) were negotiated with the return to a democratic state in mind,⁷³ which allowed the military to claim that, in the name of national reconciliation,⁷⁴ the crimes of torturers were political ones, and therefore covered by the amnesty.

The approval of the Amnesty Law in 1979 kicked off the dictatorship’s strategy for a controlled political transition. After the *anos de chumbo*, the governments of Ernesto Geisel (1974-79) and João Figueiredo (1979-85) pursued the ‘slow, gradual and secure’ liberalisation of the regime.⁷⁵

The transition in Brazil began as ‘regime-initiated liberalization’, and, as Stepan notes, contained ‘the strongest elements of elite initiation and elite transaction’.⁷⁶ This project entailed the gradual transfer of power to civilians while not jeopardising the interests of a conservative elite. At the same time, the military ensured they kept influence in key areas of the state structure and avoided criminal responsibility for crimes committed during the regime.⁷⁷

In this sense, the special character of the Brazilian transition was the dialectic between regime concessions and societal conquest, with a historical awakening of civil society as an essential factor for the democratisation of the country, involving actors such as women’s groups, entrepreneurs, lawyer associations, church-linked organisations and the press.⁷⁸

⁷¹ Sonia E Alvarez, *Engendering Democracy in Brazil: Women’s Movements in Transition Politics* (Princeton UP 1990) 94.

⁷² Paulo Fontes and Larissa R Corrêa, ‘Labor and Dictatorship in Brazil: A Historiographical Review’ (2018) 93 *International Labor and Working-Class History* 27, 32.

⁷³ Paulo Ribeiro da Cunha, ‘Militares e Anistia No Brasil: Um Duetto Desarmônico’ in V Safatle and E Teles (eds), *O Que Resta da Ditadura: A Exceção Brasileira* (Boitempo Editorial 2019) 35–36.

⁷⁴ Flávia Piovesan, ‘Direito Internacional Dos Direitos Humanos e Lei de Anistia: O Caso Brasileiro’ in V Safatle and E Teles (eds), *O Que Resta da Ditadura: A Exceção Brasileira* (Boitempo Editorial 2019) 99–100.

⁷⁵ Adriano Codato, ‘A Political History of the Brazilian Transition: From Military Dictatorship to Democracy’ (2005) 2 *Revista de Sociologia e Política*, 16.

⁷⁶ Alfred C Stepan, *Democratizing Brazil: Problems of Transition and Consolidation* (OUP 1989) VII.

⁷⁷ Anderson Deo, ‘Uma Transição à Longo Terme: A Institucionalização Da Autocracia Burguesa No Brasil’ in M Pinheiro (ed), *Ditadura: o que resta da transição* (Boitempo Editorial 2015).

⁷⁸ Stepan (n 76).

It is hard to pinpoint where this awakening exactly began. However, the murder of journalist Vladimir Herzog whilst being kept in prison by the military represented a turning point to an opposition uprising.⁷⁹ This process reached its peak with the *Diretas Já* (Direct Elections Now) campaign with a huge mobilisation of the masses by the opposition forces.⁸⁰

The campaign was built around the Dante de Oliveira Amendment⁸¹ that would change the constitution and allow direct elections for the presidency in 1985. It is commonly described as the main example of the resurgence of civil society in Brazil, including the rising new trade unionism, social movements and political leaders of a broad range of ideologies pursuing the return to democracy after years of authoritarianism.⁸²

Nevertheless, the military still had the upper hand in the negotiations concerning the transition, at least in the congress, and was able to block the Dante de Oliveira Amendment.⁸³ The congress would elect the new president in an indirect election that chose the moderate politician Tancredo Neves. He would never assume the presidency as he passed away just before taking office, paving the way for José Sarney, a conservative politician that stood with the military for years, and elected initially as a vice president, to become the first civilian president after the many years of dictatorship.

Nery argues that the *Diretas Já* became a mere instrument for opposition politicians to negotiate a transition directly with the military after the failure to approve the direct election for a president in 1985.⁸⁴ In this sense, even though it had brought millions to the streets, it did not reach its full potential in going further with the democratisation of the country.⁸⁵

⁷⁹ Skidmore (n 3) 176–77.

⁸⁰ Bethell and Castro (n 3) 223.

⁸¹ A constitutional amendment proposed by PMDB deputy Dante de Oliveira that would ensure direct elections in 1985.

⁸² Skidmore (n 3) 240–44; for a critical analysis of the movement see Vanderlei Elias Nery, 'Diretas Já: Mobilização de Massas Com Direção Burguesa' in M Pinheiro (ed), *Ditadura: o que resta da transição* (Boitempo Editorial 2015).

⁸³ Bethell and Castro (n 3) 223–24.

⁸⁴ Nery (n 82).

⁸⁵ Napolitano (n 3) 16.

The ‘conciliatory’ reasoning of the transition worked against a more radical transformation of the Brazilian society post-dictatorship, demonstrating the ‘conservative character of the Brazilian modernization’.⁸⁶ The transition was pact-based and mostly controlled by the military, the conservative elite and the moderate politicians, or at least with their objectives and desires in mind, as shown by the Amnesty Law and later in the constitution of 1988.

Nevertheless, 1979 was a pivotal year in the process of transition to democracy in Brazil. Some authors, considering the approval of the Amnesty Law and the abrogation of the institutional acts, consider it the end of the dictatorship,⁸⁷ while the majority consider 1985, when the military stepped down from power (with the first election of a civilian for president in 21 years), as the definitive mark for the end of the dictatorship.⁸⁸

The transition would officially end in 1988 with the approval of a new constitution, commonly described as the ‘citizen’s constitution’. It was celebrated as the full reestablishment of a democratic regime in Brazil. The cycle of the dictatorship was closed cordially.⁸⁹

Despite being a democratic state and achieving significant political and economic achievements, Brazil failed to reckon with its authoritarian past in the following decades. All the transitional justice measures adopted by the state were either too late or limited, as we are going to discuss in subsequent chapters. The lack of public scrutiny and condemnation of the military dictatorship enabled new forms of authoritarianism to rise when the country faced intense polarisation in its politics again. Not only inspired by the military but with them, Bolsonaro’s far-right populism thrived on the absence of a collective national memory on its authoritarian past.

⁸⁶ Deo (n 77).

⁸⁷ Reis (n 13); Marco A Villa, *Ditadura À Brasileira: 1964 - 1985 - A Democracia Golpeada à Esquerda e à Direita* (Leya 2014).

⁸⁸ Skidmore (n 3); Gaspari, *A Ditadura Acabada* (n 3); Napolitano (n 6).

⁸⁹ Reis (n 13) 16.

1.4 BOLSONARO: THE MILITARY BACK IN POWER THROUGH DEMOCRATIC ELECTIONS

Jair Messias Bolsonaro was once an unknown captain in the armed forces. That changed in 1986 when he published an article in the national magazine *Veja* criticising the remunerations of the armed forces during José Sarney's government, the first president after the military dictatorship. One year later, he would appear again in the same magazine, in a more polemic way.⁹⁰

The story featured by *Veja* accused Bolsonaro as being the co-author of the '*Beco sem saída*' (blind alley) plan that had the objective of setting bombs in several military locations in order to pressure the government to raise the salary of the army. His case ended up in the Military Superior Tribunal (*Superior Tribunal Militar*), in which he was absolved. The journalist Maklouf Carvalho⁹¹ argued that his acquittal, denying the media investigation and also preserving the image of the army, was conditioned to his discharge. Six months after the end of the trial, Bolsonaro retired from the army and paved his way to be elected city councilman for Rio de Janeiro.

Later, in 1990, he was elected to the National Congress, where he stayed for seven terms and almost 28 years. As a federal deputy, Bolsonaro was part of the so-called *baixo clero* (low clergy) formed by deputies of the smaller parties, without much influence in the congress and generally despised by the political leaders, except when they need a quorum for a specific vote.⁹²

During Bolsonaro's lacklustre years at the National Congress, he was more famous for his mouth and persona than for his work, being the author of only two bills and by focusing more as being a representative of military interests in the congress.⁹³ He collected controversies, not only by praising torture and the military dictatorship publicly but also with homophobic and racist rants or by saying to a leftist congresswoman: 'I would never rape you because you do not deserve it'.⁹⁴

⁹⁰ Luiz M Carvalho, *O Cadete e o Capitão: A Vida de Jair Bolsonaro No Quartel* (Todavia 2019).

⁹¹ *ibid.*

⁹² Thais Oyama, *Tormenta: O Governo Bolsonaro: Crises, Intrigas e Segredos* (Companhia das Letras 2020) 9.

⁹³ GZH Política, 'Em 26 Anos, Bolsonaro Apresentou 171 Projetos; Dois Foram Aprovados' (*GaúchaZH*, 23 July 2017) <<https://gauchazh.clicrbs.com.br/politica/noticia/2017/07/em-26-anos-bolsonaro-apresentou-171-projetos-dois-foram-aprovados-9850750.html>> accessed 17 June 2020.

⁹⁴ Anna Jean Kaiser, 'Woman Who Bolsonaro Insulted: "Our President-Elect Encourages Rape"' (*The Guardian*, 23 December 2018) <www.theguardian.com/world/2018/dec/23/maria-do-rosario-jair-bolsonaro-brazil-rape> accessed 17 July 2020.

For Bolsonaro, playing the role of the anti-political correctness hero already paid off in the 2014 elections when he was the most voted congressman from the state of Rio de Janeiro, with almost half a million votes. The newspaper *El País* described him as ‘the caricature of an extreme right-wing candidate’ who had multiplied his votes by four in comparison with his last re-election, declaring it to be the ‘Bolsonaro Phenomenon’.⁹⁵

Nevertheless, four years later, when he decided to run for president no one predicted his victory or even considered him a serious candidate. This is shown by the fact he did not receive the support of any of the traditional parties and, running for the irrelevant *Partido Social Liberal* (Liberal Social Party), had a mere eight seconds of public electoral television time.⁹⁶

However, in what can be considered the most surprising elections in Brazilian history, Bolsonaro and the far-right populism emerged victorious in a ‘disruptive election’.⁹⁷ Beyond the unmatched level of polarisation since the democratisation, the presidential elections of 2018 were also marked by the imprisonment of ex-President Luiz Inácio Lula da Silva⁹⁸ months before the election, when he had been the favourite to win according to the polls.⁹⁹ In addition, Bolsonaro was stabbed at a campaign rally.¹⁰⁰

Even though he was at that point already a career politician, with three of his sons also holding elected representative positions, Bolsonaro labelled himself as an outsider. The lack of support of traditional parties and politicians helped him to sustain this narrative at the cost of television time and party structure. Bolsonaro’s campaign was able to overcome this, especially after he was stabbed, which brought him unprecedented media coverage.¹⁰¹

⁹⁵ Francho Barón, ‘O Inquietante “Fenômeno Bolsonaro”’ (*El País*, 7 October 2014) <https://brasil.elpais.com/brasil/2014/10/07/politica/1412684374_628594.html> accessed 17 July 2020.

⁹⁶ Maurício Moura and Juliano Corbellini, *A Eleição Disruptiva: Por Que Bolsonaro Venceu* (Record 2019) 126–29.

⁹⁷ *ibid.*

⁹⁸ In the polemic judiciary-led Car-Wash operation (*Lava Jato*), see ch 4.

⁹⁹ BBC, ‘Lula: Brazil’s Jailed Ex-Leader Barred from Presidential Race by Electoral Court’ (*BBC News*, 1 September 2018) <www.bbc.com/news/world-latin-america-45380237> accessed 9 August 2020.

¹⁰⁰ Dom Phillips, ‘Jair Bolsonaro: Brazil Presidential Frontrunner Stabbed at Campaign Rally’ (*The Guardian*, 7 September 2018) <www.theguardian.com/world/2018/sep/06/brazil-jair-bolsonaro-far-right-presidential-candidate-stabbed> accessed 9 August 2020.

¹⁰¹ Moura and Corbellini (n 96) 1432.

The event not only brought millions of followers to his digital platforms but also had relocated the campaign to the internet, where Bolsonaro outperformed his adversaries. Moura and Corbellini¹⁰² explain that his victory was not only a consequence of Bolsonaro's assault, as pre-established factors also contributed to it such as 1) the demoralisation of the political elite and the traditional parties by corruption scandals; 2) the public security crisis that was perceived now as an important national question and 3) the growing relevance of social media, in particular WhatsApp, that changed the way of running a campaign completely.

In power, Bolsonaro's 'culturally conservative and economically neoliberal'¹⁰³ agenda has the military as one of its significant warrantors. In his own words, there would be a 'completely militarized'¹⁰⁴ cabinet where by June 2020, nine out of the 22 ministers were from the military (including the police).¹⁰⁵ The participation of members of the armed forces in the government exceeds those during the military dictatorship, in what some predict to be around 3,000 posts. That motivated the *Tribunal de Contas da União* (Supreme Audit Agency – TCU) to order a mapping and find out the exact number, considering it could represent 'a distortion of the role of the armed forces'.¹⁰⁶

The election of Bolsonaro and his Vice-President General Hamilton Mourão represented the return of the military to the centre of Brazilian politics and a victory of far-right populism. Personified in Bolsonaro, the success of the far-right in Brazil is closely tied with the military and the legacy of their dictatorship. For this reason, to understand how the military managed to get back in power through the popular vote it is necessary to study the process of transitional justice in Brazil and the formation of collective memory on its authoritarian past. In the next chapter, we deal with the theoretical aspects of how transitional justice measures can help to shape collective memories.

¹⁰² Moura and Corbellini (n 96) 233–38.

¹⁰³ Ariel Alejandro Goldstein, 'The New Far-Right in Brazil and the Construction of a Right-Wing Order' (2019) 46 *Latin American Perspectives* 245, 258.

¹⁰⁴ Láis Lis, 'TCU Decide Apurar Quantos Militares Ocupam Cargos Cívicos No Governo Bolsonaro' (*G1 Política*, 17 June 2020) <<https://g1.globo.com/politica/noticia/2020/06/17/tcu-decide-apurar-quantos-militares-ocupam-cargos-civis-no-governo-bolsonaro.ghtml>> accessed 17 July 2020.

¹⁰⁵ Guilherme Mazui, 'Com Escolha de Braga Netto, Só Militares Ocupam Gabinetes de Ministros No Planalto' (*G1 Política*, 13 February 2020) <<https://g1.globo.com/politica/noticia/2020/02/13/com-nomeacao-de-braga-neto-so-militares-ocupam-gabinetes-de-ministros-no-planalto.ghtml>> accessed 17 July 2020.

¹⁰⁶ Matheus Simoni, 'TCU Decide Levantar Número de Militares No Governo Bolsonaro' (*Metro1*, 17 June 2020) <www.metro1.com.br/noticias/politica/93514,tcu-decide-levantar-numero-de-militares-no-governo-bolsonaro> accessed 17 July 2020.

2.

DEALING WITH AN AUTHORITARIAN PAST:
TRANSITIONAL JUSTICE MECHANISMS AND THE
COLLECTIVE DIMENSIONS OF MEMORY

Transitional justice emerged as a way for societies to make sense of a violent past as they shift from conflict and authoritarianism to democracy. The different groups involved in such conflicts often have contrasting views on the past while developing their collective memories of ‘what happened’.

In this sense, the politics of memory offers a useful perspective on how transitional justice mechanisms, such as trials and truth commissions, influence the formation of collective memories of different groups. It shows how they can be stitched by legal or quasi-legal mechanisms, forming shared understandings of the past with long-term political implications, even though the process of memory-making is an everlasting one.

This chapter is structured in the following way: The first three parts are dedicated to theoretical aspects of transitional justice and collective memory, arguing how the transitional justice framework can offer a critical opportunity to form a shared understanding of the past in post-authoritarian scenarios. The fourth part deals with how transitional justice mechanisms can foster collective memories. The fifth part argues for the importance of societies to reckon with their authoritarian and violent past. Lastly, this chapter summarises how the politics of memory can influence the process of democratisation of a country.

2.1 TRANSITIONAL JUSTICE: RECKONING WITH THE PAST

The concept of ‘transitional justice’¹⁰⁷ *per se* appeared only in the mid-1990s, and the existence of an apparent field can be observed after the turn of the 21st century.¹⁰⁸ Paige Arthur, for instance, in her conceptual history of transitional justice, describes its origins emerging from the transitions from authoritarian rule in Eastern Europe and Latin America in the late 1980s and early 1990s.¹⁰⁹

This period is marked by ‘accelerated democratization and political fragmentation’¹¹⁰ in the midst of what Huntington famously described as the third wave of democratisation,¹¹¹ which includes the wave of liberalisation with the transitions in the southern cone of South America and the collapse of the Soviet Union.

The new democracies emerging were faced with how to deal with past regimes and which justice policy would be adopted. The prior experience of the Nuremberg Trials based on post-war international justice was questioned as to whether it would be the best option for the still fragile democracies in a state of tension to decide between punishment and amnesty.¹¹²

The deliberations over justice in transition are best understood when situated in the actual political realities and in the transitional political context, which included the features of the predecessor regime as well as political, juridical, and social contingencies. The feasibility of pursuing justice and its ability to contribute to transitional rule of law depended upon the scale of prior wrongdoings, as well as the extent to which they were systemic or state-sponsored.¹¹³

¹⁰⁷ There are different approaches to pinpoint the origins of transitional justice that range from Elster’s analysis of historical precedents that include transitions policies that go back as far as ancient Athens, to other authors such as Teitel who traces the origin of transitional justice to the end of the great wars and the Nuremberg trials. See Ruti G Teitel, ‘Human Rights in Transition: Transitional Justice Genealogy’ (2003) 16 *Harvard Human Rights Journal* 69; Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (2004).

¹⁰⁸ Christine Bell, ‘Transitional Justice, Interdisciplinarity and the State of the “Field” or “Non-Field”’ (2008) 3 *International Journal of Transitional Justice* 5, 7.

¹⁰⁹ Paige Arthur, ‘How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice’ (2009) 31 *Human Rights Quarterly* 321.

¹¹⁰ Teitel (n 107) 71.

¹¹¹ Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (University of Oklahoma Press 1993).

¹¹² Teitel (n 107) 75–76.

¹¹³ *ibid.*

In this sense, these regimes had profound dilemmas on the extent to which ‘imposing transitional criminal justice’ would contribute to the reestablishment of the rule of law. At the same time, these dilemmas went beyond the accountability of the human rights violations of the previous regimes as they included a dimension of reconciliation and healing of the society. This favoured the option of new methods for truth-seeking and accountability and the preoccupation with the political conditions that would allow nation-building.¹¹⁴

While there are many definitions for transitional justice, they all tend to ‘view transitional justice as the attempt to deal with past violence in societies undergoing or attempting some form of political transition’¹¹⁵ or ‘to refer to societies that are transitioning from conflict to peace or from authoritarian rule to democratic rule’.¹¹⁶

Initially, transitional justice was characterised as ‘legal responses to confront the wrongdoing of repressive predecessor regimes’.¹¹⁷ However, the development of the field and its mechanisms allowed it to become an increasingly far-reaching concept that stretches beyond legal responses, promoting both ‘backward-looking and forward-looking justice’.¹¹⁸

The importance of human rights, in particular the necessity of their efficacy in governing conduct needing to be (re)established, is deeply important to the field of transitional justice. The new political order emerging ought to commit to these rights – and protect them – while the previous regime, which publicly sanctioned violence, must be rejected.¹¹⁹

With the emergence of transitional justice mechanisms, the field has faced a dilemma between truth and justice.¹²⁰ This can be seen in human rights terms *vis-à-vis* conflicts between the right to truth¹²¹ (concerning the victims) and the duty to investigate (concerning the state). The core dynamic of this dilemma demonstrates the co-existence and conflict ‘among justice, history and memory’.¹²²

¹¹⁴ Teitel (n 107) 76–77.

¹¹⁵ Bell (n 108) 7.

¹¹⁶ Kirsten J Fisher, ‘Defining a Relationship between Transitional Justice and Jus Post Bellum: A Call and an Opportunity for Post-Conflict Justice’ [2018] *Journal of International Political Theory* 5.

¹¹⁷ Teitel (n 107) 69.

¹¹⁸ Fisher (n 116) 4.

¹¹⁹ Colleen Murphy, *The Conceptual Foundations of Transitional Justice* (CUP 2017) 18.

¹²⁰ Naomi Roht-Arriaza, ‘The New Landscape of Transitional Justice’ in Naomi Roht-Arriaza and Javier Mariezcurrena (eds), *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (2006) 8; Bronwyn LeeBaw, ‘The Irreconcilable Goals of Transitional Justice’ (2008) 30 *Human Rights Quarterly* 95.

¹²¹ Alice M Panepinto, ‘The Right to the Truth in International Law: The Significance of Strasbourg’s Contributions’ (2017) 37 *Legal Studies* 739.

¹²² Teitel (n 107) 81.

At its broadest understanding, transitional justice can involve ‘anything that a society devises to deal with a legacy of conflict and/or widespread human rights violations’.¹²³ This includes how to portray the authoritarian past in high school textbooks, the creation of memorials, museums and days of mourning, the reform of the judiciary and criminal codes, and even policies to tackle inequality.¹²⁴

Moreover, as a consequence of this broad canvas, the notion of transitional measures expanded even further, gaining importance in discussions involving reconciliation, democratisation, truth-telling and historical inquiry.

This expansion has also meant that transitional justice implies a ‘non-linear approach to time’.¹²⁵ Transitional justice measures often revisit the past as a way to move forward:

[T]ransitions are rare periods of rupture which offer a choice among contested narratives. The paradoxical goal in transition is to undo history. The aim is to reconceive the social meaning of past conflicts, particularly defeats, in an attempt to reconstruct their present and future effects.¹²⁶

Sharp, for instance, highlights how transitional justice mechanisms and their interventions presume a ‘period of rupture in which some kind of extraordinary justice’¹²⁷ can be carried out. Transitions, in a sense, present an opportunity to contest historical narratives: the framework of transitional justice can be used to form new shared understandings of the past and build new collective memories about the previous regime with many social and political implications.

2.2 POLITICS OF MEMORY AND TRANSITIONAL JUSTICE

The transitional justice field is anchored in a ‘dealing with the past’ approach where different mechanisms are deployed in a complementary way assuming that seeking truth, identifying and punishing perpetrators, building memorials to victims, setting reparations programmes, among others measures, have a positive impact on bringing legitimacy and

¹²³ Roht-Arriaza (n 120) 2.

¹²⁴ *ibid.*

¹²⁵ Teitel (n 107) 86.

¹²⁶ *ibid.* 86–87.

¹²⁷ Dustin N Sharp, *Re-Thinking Transitional Justice for the 21st Century* (CUP 2018) 6.

stability to a democratic order.¹²⁸

Meanwhile, societies in transition tend to have deeply divided and often radically different conceptions of ‘what happened’. Narratives can be constructed in different ways by each group, with dissonant interpretations on the images of the parts involved and the conflict itself. In this sense, the transitional period (and the transitional justice mechanisms) are vital in finding and establishing a ‘minimal core of shared truths’ as they can forge a process of ‘reconstructing the basis of a shared understanding of the past and future’.¹²⁹

Periods of political transition show the intricate links between memory, truth and justice.¹³⁰ For this reason, the field of transitional justice can be enriched by the insights of the memory studies to add ‘historical and contextual depth’ to its approach.¹³¹

Through the perspective of the politics of memory, transitional justice mechanisms are deployed in a specific period of the whole process in which a ‘society interprets its past in a post-authoritarian context’.¹³² In this sense, the politics of memory are intertwined with transitional justice policies – and their mechanisms – but differs from them qualitatively and temporally.¹³³

The ‘politics of memory’ refers to the various ways that political elites, social groups and institutions reinterpret the past and the breakdown of civility and propagate new interpretative narratives about the ‘what happened’ to legitimate a new political dispensation and develop a new vision of the future for the polity.¹³⁴

In the lens of memory studies, the collective and social aspect of memory is highlighted, as it can ‘shift the boundaries, and patterns, of social and political inclusion and exclusion, thus marking new social

¹²⁸ Rosemary Nagy, ‘Transitional Justice as Global Project: Critical Reflections’ (2008) 29 *Third World Quarterly* 275, 276; Mihaela Mihai, ‘Transitional Justice and the Quest for Democracy: A Contribution to a Political Theory of Democratic Transformations’ (2010) 23 *Ratio Juris* 183, 187; Jelena Subotic, ‘Expanding the Scope of Post-Conflict Justice: Individual, State and Societal Responsibility for Mass Atrocity’ (2011) 48 *Journal of Peace Research* 157, 158.

¹²⁹ Susanne Karstedt, ‘Introduction: The Legacy of Maurice Halbwachs’ in S Karstedt (ed), *Legal Institutions and Collective Memories* (Hart 2009) 7–10.

¹³⁰ *ibid* 1–2.

¹³¹ Alexandra Barahona de Brito, ‘Transitional Justice and Memory: Exploring Perspectives’ (2010) 15 *South European Society and Politics* 359, 359.

¹³² *ibid* 360.

¹³³ *ibid*.

¹³⁴ *ibid*.

and political continuities and discontinuities', shaping in this process both the present and the future of these societies.¹³⁵

Thus, the politics of memory can help observe the memory process unchained by post-authoritarian transitions in a broader historical context. Many times, memories created a long time ago can determine how certain groups justify their actions in the present day.¹³⁶

Therefore, the insights of memory studies open the possibility of reframing transitional justice as part of a 'continuous process generating ongoing cycles of social memory-making'.¹³⁷ Political transitions present a scenario where there is no social consensus on the former authoritarian regime, and where transitional justice mechanisms, such as trials and truth commissions, can generate a relatively homogenous narrative of the past.

At the same time, transitional justice seems progressively to be recognised as a continuous process of transformation, not delimited by a set of interventions but viewed as an 'open-ended process of reckoning'.¹³⁸ This is essential if we are to understand the power involved in pairing transitional justice with the politics of memory.

Moreover, intertwining the transitional justice perspective with the politics of memory can help in comprehending how societies can, at least momentarily, choose amnesia instead of the pursuit of justice, considering the political situation the new regime faces. In this sense, the insights of memory studies can mitigate the problems of an 'overly abstract' normative view of transitional justice.¹³⁹

Even though the memory-making process is an everlasting one, the period of transition represents a time in which 'consensus breaks down' and new 'foundational values need to be restated and reworked'.¹⁴⁰ Here the transitional justice mechanisms contribute to shaping memories, in a process that otherwise happens holistically, and can strengthen the stability and legitimacy of a new regime.

¹³⁵ Alexandra Barahona de Brito, 'Transitional Justice and Memory: Exploring Perspectives' (2010) 15 *South European Society and Politics* 359–360–61.

¹³⁶ *ibid* 361.

¹³⁷ *ibid* 364.

¹³⁸ Laurel E Fletcher, Harvey M Weinstein and Jamie Rowen, 'Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective' (2009) 31 *Human Rights Quarterly* 163, 216.

¹³⁹ Barahona de Brito, 'Transitional Justice and Memory: Exploring Perspectives' (n 131) 365.

¹⁴⁰ *ibid* 364.

The birds-eye perspective of the politics of memory can be used to decipher the long-term effects of transitional justice mechanisms and the political use of their findings. The outcomes of transitional justice mechanisms such as trials, truth commissions and amnesty laws have a fundamental and pragmatic aspect, which paves the way for different groups involved in the conflict to ‘move on’. However, the maintenance of these narratives, in the long term, faces ‘cognitive battles’,¹⁴¹ which shows ‘there is not one “truth” but various competing “truths” that will compete to gain ascendancy, and the dominance of one “narrative” over another may shift with the passage of time’.¹⁴²

The facts and the truth recovered in transitional periods ‘that have been an undercurrent in social life and society finally surface into the public realm and collective memory consciousness’,¹⁴³ but with time, the narratives can change as well as their political uses. For this reason, it is essential to understand how collective memories work.

2.3 THE COLLECTIVE DIMENSIONS OF MEMORY

Maurice Halbwachs is recognised as the theorist who coined the term ‘collective memory’ in the early 1920s.¹⁴⁴ The French philosopher and historian’s most significant contribution was to acknowledge the social and collective dimension of memory. For him, our memories are not neutral, or merely a recalling of facts; instead, they are embedded within groups with which we are affiliated and by other social and cultural aids as well.

The central idea in his take on memory is that no human lives are socially isolated; in fact, the opposite is true; all human activities are socially constructed. For Halbwachs, memories are more than a simple imprint: they are recollections where there is an effective selection and reconstruction of the past that is inevitably influenced by our social interchanges.¹⁴⁵

¹⁴¹ Eviatar Zerubavel, *Social Mindscales: An Invitation to Cognitive Sociology* (Harvard UP 1997).

¹⁴² Barahona de Brito, ‘Transitional Justice and Memory: Exploring Perspectives’ (n 131) 365.

¹⁴³ Karstedt (n 129) 21.

¹⁴⁴ Maurice Halbwachs, *La Mémoire Collective* (A Michel 1997).

¹⁴⁵ Erika Apfelbaum, ‘Halbwachs and the Social Properties of Memory’ in Susannah Radstone and Bill Schwarz (eds), *Memory: Histories, Theories, Debates* (Fordham UP 2010) 85.

Therefore, collective memories are formed and recollected by a ‘dynamic social process’ where our different affiliations can determine how we remember our own history.¹⁴⁶ In this sense, memories are both ‘flexible and multilayered’ as they adopt their true meaning from the perspective of a ‘broader social, cultural, or historical context’.¹⁴⁷ The process of memorialisation fluctuates over time in the politics of memory.

The work of Halbwachs acquired fresh relevance during the so-called ‘memory boom’ of memory studies.¹⁴⁸ In this ‘contemporary public prominence of memory’, terms such as public, social, cultural or collective became common adjectives to accompany memory. They all converge in the understanding that ‘there is no way of thinking about memory outside its histories and politics’.¹⁴⁹

Memory, in this scheme of things, is not an impossibility, but a pre-constituted, actually-existing site of conflict, in which many contrary forces converge and in which the interactions between memory and forgetting are contingent as much as they are systemic. In whatever guise it is manifest, the politics of memory is always overdetermined and unstable, the consequence of incessant human intervention.¹⁵⁰

Even if remembering is an individual activity, memories are inherently ‘socially communicated and socially and historically embedded’.¹⁵¹ Barahona de Britto catalogues four reasons for this: 1) collective memory is the memory commonly shared by individuals; 2) society plays an essential role in constructing and editing how and what societies remember; 3) memory is social because its existence is ruled by our relations with others and 4) memory requires and presumes its transmission and articulation.¹⁵²

¹⁴⁶ Apfelbaum (n 145).

¹⁴⁷ *ibid* 86.

¹⁴⁸ Jeffrey K Olick, Vered Vinitzky-Seroussi and Daniel Levy, ‘Introduction’ in Jeffrey K Olick, Vered Vinitzky-Seroussi and Daniel Levy (eds), *The Collective Memory Reader* (OUP 2011).

¹⁴⁹ Susannah Radstone and Bill Schwarz, ‘Introduction: Mapping Memory’ in Susannah Radstone and Bill Schwarz (eds), *Memory: Histories, Theories, Debates* (Fordham UP 2010) 4.

¹⁵⁰ *ibid*.

¹⁵¹ Barahona de Brito, ‘Transitional Justice and Memory: Exploring Perspectives’ (n 131) 362.

¹⁵² *ibid*.

Therefore, memories can appear and be transmitted in society in a myriad of forms that range from legal institutions,¹⁵³ as they ‘reflect, codify, and reinforce society’s shared values and understanding of the past’,¹⁵⁴ to the resources individuals share¹⁵⁵ and reflect in social and cultural institutions and their products (books, museums and libraries, among others) and commemorative ceremonies.¹⁵⁶

Collective memory is then ‘built and continually altered’.¹⁵⁷ This ‘memory work’¹⁵⁸ explains how members of different groups in society engage dialectally with their memories and how individuals share, collaborate and interpret certain events inside these groups that also have an undeniable role of forming social bonds within its members.¹⁵⁹

Memory studies define these groups, whose importance was recognised as far back as Halbwachs’ work, as mnemonic groups, giving them significant importance as they ‘socialise us to what should be remembered and what should be forgotten’.¹⁶⁰ From this notion, it is possible to acknowledge the existence of parallel memories existing within society. More than that, considering how memories work ‘both in the public sphere and in everyday life’,¹⁶¹ it is clear that people do not act only in a conscious or pragmatic sense. Instead, many times they act ‘in light of the memories and narratives they have adopted and that make sense to them as members of a particular “memory group”’.¹⁶²

Individual memory is a product heavily influenced by the fact that an individual shares collective memory with the multiple groups to which that person belongs. For this reason, an individual’s memory is a bricolage, with contributions from shared memories with mnemonic groups/communities (with the nation being the main one¹⁶³), but not identical to it.

¹⁵³ Michael Schudson, *Watergate in American Memory: How We Remember, Forget, and Reconstruct the Past* (BasicBooks 1992).

¹⁵⁴ Rachel López, ‘Legalising Collective Remembrance after Mass Atrocities’ in S Elizabeth Bird and Fraser M Ottanelli (eds), *The Performance of Memory as Transitional Justice* (Intersentia 2015) 25.

¹⁵⁵ Iwona Irwin-Zarecka, *Frames of Remembrance: The Dynamics of Collective Memory* (Transaction 1994).

¹⁵⁶ Paul Connerton, *How Societies Remember* (CUP 1989).

¹⁵⁷ Sharon K Hom and Eric K Yamamoto, ‘Collective Memory, History, and Social Justice’ (2000) 47 UCLA L. Rev 1747, 1764.

¹⁵⁸ Irwin-Zarecka (n 155).

¹⁵⁹ López (n 154) 25.

¹⁶⁰ Barahona de Brito, ‘Transitional Justice and Memory: Exploring Perspectives’ (n 131) 362–63.

¹⁶¹ Radstone and Schwarz (n 149) 3.

¹⁶² Barahona de Brito, ‘Transitional Justice and Memory: Exploring Perspectives’ (n 131) 362.

¹⁶³ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 2016).

For Halbwachs, each subject's autobiographical memory is dialectically related not only to the collective memories of the various groups to which he or she is affiliated, but also to a broader historical memory of the society in which he or she lives. The traces of this past constitute the background foundation of the construction of one's identity: they carry the notion of duration, stability, permanence, and a sense of rootedness vital to the maintenance of memory and identity.¹⁶⁴

This explains the importance for states in transition to 'deal with the past'. Transitional mechanisms in their legal forms are geared 'primarily toward justice' or 'toward establishing truth', and aim to provide an 'official narrative and a framework to account for past events'.¹⁶⁵ In a transition, many mnemonic communities can be observed (eg victims, oppressors, militaries or human rights activists) with their own 'particular constellations of memories and particular meaning-engendering social narratives'.¹⁶⁶

Moreover, we live in a period of 'unprecedented politicization of memory':¹⁶⁷ the way groups interact with memory has become more complex than ever before. How different groups re-interpret, forget or distort the past can have many political implications, but at the same time their choices are influenced by power dynamics. In the following chapters we are going to analyse how a period of political unrest in Brazil was used by the far-right and the armed forces to distort the past favouring the military memory of the dictatorship period.

In fact, the relationship between different mnemonic groups can impact on what is perceived as the historical canon. Molden, for example, argues that the politics of history and memory can be profoundly changed by the relation of forces between 'hegemonic master narratives, defiant counter-memories, and silent majorities'.¹⁶⁸

This mnemonic power relation shows how the tension between groups, with opposed collective memories, can have a profound impact not only in the political realm but also in terms of rearranging 'the cultural coordinates of the broader community'.¹⁶⁹ Considering this, Molden acknowledges how 'constitutive categories' for collective memory, already recognised by Halbwachs, such as class, gender, political and religious identities, have a significant impact on collective understandings of the past.¹⁷⁰

¹⁶⁴ Apfelbaum (n 145) 91.

¹⁶⁵ *ibid* 90.

¹⁶⁶ Barahona de Brito, 'Transitional Justice and Memory: Exploring Perspectives' (n 131) 363.

¹⁶⁷ Radstone and Schwarz (n 149) 10.

¹⁶⁸ Berthold Molden, 'Resistant Pasts versus Mnemonic Hegemony: On the Power Relations of Collective Memory' (2016) 9 *Memory Studies* 125.

¹⁶⁹ *ibid* 131.

¹⁷⁰ *ibid* 137.

2.4 TRANSITIONAL JUSTICE MECHANISMS FOSTERING COLLECTIVE MEMORIES

Having described the social and collective aspects of memory and how influential they are in different mnemonics communities; it is possible to translate this conceptualisation to the parties involved in a transitional process. The use of categories such as victims, perpetrators, political parties and human rights activists can foreground different groups with different collective memories about the past.¹⁷¹ Thus, memory studies can ‘broaden our understanding of what shapes the choices and actions of different individuals and groups’¹⁷² and also be part of the analysis of the outcomes and long-term effects of transitional justice measures.

In this sense, it is possible to ‘enrich our understanding of transitional justice’ by not limiting the perception of transitional justice policies in a narrow way, but instead deepening the analysis beyond the ‘more time-limited analysis of transition type’ and adopting an approach that observes the ‘balance of power between incoming democratic and outgoing authoritarian elites’.¹⁷³

Moreover, transitional situations show more clearly the relation between legal institutions and collective memories. Osiel highlights how our collective memories are constructed many times by ‘legal blueprints’.¹⁷⁴ The construction of collective memory is complex and multifaceted, including the role of legal institutions, which explains the importance of legal and quasi-legal procedures in transitions.

Even though the state does not have a monopoly in ‘organizing the production of memories’, the period of transition is where it does have an opportunity in ‘establishing a particular and “politicised” common memory’ via legal and quasi-legal procedures and institutions such as trials and truth commissions.¹⁷⁵

¹⁷¹ It is important to realise that these categories can also be read in a critical way. See Adriana Rudling, ‘“I’m Not That Chained-Up Little Person” Four Paragons of Victimhood in Transitional Justice Discourse’ (2019) 41 *Human Rights Quarterly* 421.

¹⁷² Barahona de Brito, ‘Transitional Justice and Memory: Exploring Perspectives’ (n 131) 363.
¹⁷³ *ibid.*

¹⁷⁴ Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (Transaction Publishers 1997) 209.

¹⁷⁵ Karstedt (n 129) 10–13.

2.4.1 *Trials: justice and memory*

Many scholars describe the relationship between collective memory and justice efforts, highlighting how legal proceedings can play a role in ‘strengthening a shared understanding of the past’,¹⁷⁶ contributing to reconciliation and societal healing. Teitel, for instance, describes trials as ‘the long-standing ceremonial forms of collective history making’,¹⁷⁷ In similar vein, Osiel argues that trials can promote reconciliation while establishing a collective memory as, by prosecuting oppressors, a society can (re)build its social values. In this sense, courtrooms are a ‘theater of ideas’, where the ‘large question of collective memory and even national identity are engaged’.¹⁷⁸

Legal proceedings can also ignite public discussion of the past beyond the walls of the courts, offering an ‘important venue for a renegotiation of the collective memory’¹⁷⁹ or a ‘touchstone’¹⁸⁰ for its formation. This notion is linked to the idea that healing runs in parallel with the role of trials in a divided society. By setting the stage for a shared understanding of the past, trials have a cathartic quality inherent to them.¹⁸¹

Moreover, the growth and expansion of regional human rights systems and mechanisms, such as the IACtHR and the European Court of Human Rights (ECtHR), demonstrate how victims seek redress and state accountability in these legal institutions. Lopez, for instance, has argued that these human rights mechanisms should acknowledge the significance of collective memory by the use of their remedial powers.¹⁸²

Still, many countries fail, at least during early transition processes, to bring to justice those who committed human rights violations in authoritarian periods. Many times this is because of the existence of amnesties that grant immunities to perpetrators. While amnesty laws can be a stabilising measure that ensures the transition to democracy, they

¹⁷⁶ López (n 154) 29.

¹⁷⁷ Ruti G Teitel, *Transitional Justice* (OUP 2000) 72.

¹⁷⁸ Osiel (n 174) 3. Also on the theatrics of the courtrooms and show trials, see Awol K Allo, ‘The Show in the Show Trial: Contextualising the Politicization of the Courtroom’ (2010) 15 *Barry Law Review* 41.

¹⁷⁹ López (n 154) 32.

¹⁸⁰ Jody Lynce Madeira, ‘When It’s So Hard to Relate: Can Legal Systems Mitigate the Trauma of Victim-Offender Relationships’ (2009) 46 *Houston Law Review* 401.

¹⁸¹ Mark Osiel, ‘Ever Again: Legal Remembrance of Administrative Massacre’ (1995) 144 *University of Pennsylvania Law Review* 463; López (n 154) 32–33.

¹⁸² López (n 154) 38.

can also present in the long term the nurturing of a culture of impunity and a dead-end to the transitional justice process in a particular country. In this sense, amnesties are perceived as a ‘transitional justice measure of last resort’.¹⁸³

For this reason, often, these amnesties are revised further in the transitional process of a country. This trend caused the rise in human rights prosecutions happening at both the national and international levels, in what Sikkink and Lutz have described as a ‘justice cascade’.¹⁸⁴ Yet, there is still some scepticism that considers that these trials are capable of re-igniting conflicts or undermine democracy.¹⁸⁵ Data from Latin America show that this scepticism does not stand, and, in fact, they contribute to the improvement of human rights and the enhancing of the rule of law in those countries.¹⁸⁶

In Brazil, however, the Amnesty Law persisted even decades following the transition to democracy. Different from the majority of countries in Latin America there were no trials of state agents. In the next chapter we focus on the transitional experience in Brazil and how the Amnesty Law represented a hindrance not only for human rights trials but for transitional justice overall.

2.4.2 *Truth commissions: truth and memory*

Considering the limited reach that courts have, and also the fact prosecutions would not solve by themselves the process of transitional justice in societies, many countries have adopted truth commissions as a central component in dealing with past atrocities, with each context calling for specific investigatory mandates and powers that take account of the needs and political realities of the society in question.¹⁸⁷ Thus, gradually trials and truth commissions started to be seen as complementary to the task of truth-seeking and truth-telling and as parts of a broader ‘set of obligations’ that pursue the triad of truth, justice and guarantees of non-repetition.¹⁸⁸

¹⁸³ Anja Mihr, ‘Transitional Justice and the Quality of Democracy’ (2013) 7 *International Journal of Conflict and Violence* 298, 301.

¹⁸⁴ Kathryn Sikkink and Ellen Lutz, ‘The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America’ (2001) 2 *Chicago Journal of International Law*.

¹⁸⁵ Kathryn Sikkink and Carrie Booth Walling, ‘The Impact of Human Rights Trials in Latin America’ (2007) 44 *Journal of Peace Research* 427, 433–34.

¹⁸⁶ *ibid* 443.

¹⁸⁷ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn, Taylor & Francis 2010).

¹⁸⁸ Roht-Arriaza (n 120) 8.

The classic definition of a truth commission is one that fits Priscila Hayner's conceptualisation, allowing some variation, and refers to bodies with the following characteristics: 1) truth commissions focus on the past; 2) they investigate a pattern of abuses over a period of time rather than a specific event; 3) a truth commission is a temporary body, typically in operation for six months to two years, and completing its work with the submission of a report; and 4) these commissions are officially sanctioned, authorised or empowered by the state.¹⁸⁹

As for the objectives of truth commissions, Popkin and Roht-Arriaza offer the following list: truth commissions can establish an authoritative record, help victims by providing them with both a platform and redress, make recommendations for reforms and promote accountability.¹⁹⁰ Relatedly, Daly highlights that truth commissions can promote reconciliation and create a clear distinction between past and present.¹⁹¹

There is a growing scepticism, however, on the work of truth commissions and the 'truth' they produce.¹⁹² This includes questions about how truth commissions can provide an official authoritative account about the past that often is a contested one. For instance, Chapman and Ball criticise the focus on individual cases and testimonies rather than on the causes and patterns of violations that occurred.¹⁹³ In this sense, truth commissions provide a 'micro-truth', more prone to 'subjective limitations and distortions of memory',¹⁹⁴ as opposed to 'macro-truths'.

However, this criticism cannot diminish the relevance and importance of truth commissions. There are two reasons for this: First, there is no defined canonical model for a truth commission. As they proliferated throughout the world, the design and purposes of individual truth commissions were different and context-sensitive. Second, truth

¹⁸⁹ Hayner (n 187) 11–12.

¹⁹⁰ Margaret Popkin and Naomi Roht-Arriaza, 'Truth as Justice: Investigatory Commissions in Latin America' (1995) 20 *Law & Social Inquiry* 79.

¹⁹¹ Erin Daly, 'Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition' (2008) 2 *International Journal of Transitional Justice* 23, 27.

¹⁹² Margaret Urban Walker, 'Troubles with Truth Commissions: Putting the Moral Aims of Truth Commissions to the Fore' in S Elizabeth Bird and Fraser M Ottanelli (eds), *The Performance of Memory as Transitional Justice* (Intersentia 2015) 10.

¹⁹³ Audrey R Chapman and Patrick Ball, 'The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala' (2001) 23 *Human Rights Quarterly* 1.

¹⁹⁴ Walker (n 192) 10.

commissions are ‘keyed to a context of a post-conflict or post-repression political transition’,¹⁹⁵ which underlines a moral project, part of which is the harmonisation with transitional justice mechanisms in order to secure legitimacy and stability for the new regime.

Onur Bakiner argues that, beyond forensic investigation, truth commissions have a great potential in developing historical narratives that are able to explain ‘causes and patterns’ of an authoritarian past; he describes this as a ‘historiographical function’.¹⁹⁶

Truth commissions have emerged in political contexts where societies’ conventional mechanisms for investigating serious crimes and writing unbiased accounts of the past (the judiciary and the media, chief among them) had ceased to function. They face the twofold task of discovering forensic facts and forging societal consensus over the meaning of the past. On the one hand, political decision makers grant them, at least ideally, the authority to publicize the truth about the nation’s past, above and beyond political and societal debates. On the other hand, commissions are firmly embedded in the social struggles over memory and history, which makes the reception of their findings and narratives dependent on larger political and societal processes. They produce one truth among others.¹⁹⁷

Even though a truth commission cannot claim to represent the truth ‘once for all’, this also can be said of any initiative concerning historical narratives. In any case, truth commissions can present an ‘inclusive, truthful, and accurate historical explanation’¹⁹⁸ concerning past human rights violations, thereby contributing to the formation of a nation’s collective memory.

In this sense, even with their inherent limitations, truth commissions play an essential role in giving voices to victims, reaffirming their dignity and providing an extensive (and reliable) documentation of past abuses.

For this reason, truth commissions need to be understood as a critical moment in a deliberate ‘open-ended and long-term process of uncovering and preserving truths’.¹⁹⁹ The already-discussed limits of the truth commissions sign how they can better serve as a kick-off for multiple projects of truth recovery practices to be developed through time.

¹⁹⁵ Walker (n 192) 17–19.

¹⁹⁶ Onur Bakiner, *Truth Commissions : Memory, Power, and Legitimacy* (University of Pennsylvania Press 2016) 62–63.

¹⁹⁷ *ibid* 63.

¹⁹⁸ *ibid* 236.

¹⁹⁹ Walker (n 192) 20.

This long-term preoccupation is better observed in the recommendations, usually issued by a truth commission at the end of its reports, where truth recovery and preservation can be prescribed via other projects and institutions as a continuous project. Thus, even though a truth commission is a 'limited transitional institution',²⁰⁰ its intervention can set a more substantial project of finding, rethinking and preserving a society's truth.

However, what is the impact of a truth commission when it is established decades after the transition to democracy? While normally they tend to inaugurate the process of transitional justice, in Brazil this logic was reversed. In the subsequent chapter we deal with the Brazilian NTC and its achievements and shortcomings as a late truth commission.

2.5 TRANSITIONAL JUSTICE AND THE MEMORY ASSUMPTION: IT IS ALWAYS BETTER TO REMEMBER?

Rotondi and Eisikovits claim that transitional justice scholarship generally agrees that societies must deal with their past, which entails a 'memory assumption' of the field. For them, there is a broad consensus that accountability helps 'nurture budding non-authoritarian institutions' and that burying the past is a 'profound injustice to victims' that would also perpetuate a culture impunity.²⁰¹

However, while acknowledging that there are 'strong grounds for the memory assumption', Rotondi and Eisikovits argue that it should not work as dogma. This is not intended as a reason to 'undermine the rationale for remembering', but to pinpoint cases where the memory assumption can be problematic, and an argument for forgetfulness can thrive.²⁰²

They present three cases in which forgetting can be a valid strategy:

[C]onflicts with significant cultural variance on the question of how best to deal with the past; conflicts where there is a complicated division of guilt between the parties; and political situations where an insistence on commemoration and thorough accountability risks reigniting the conflict.²⁰³

²⁰⁰ *ibid* 21.

²⁰¹ Jack Volpe Rotondi and Nir Eisikovits, 'Forgetting after War: A Qualified Defense' in Claudio Corradetti, Nir Eisikovits and Jack Volpe Rotondi (eds), *Theorizing Transitional Justice* (Routledge 2015) 26–27.

²⁰² *ibid* 27.

²⁰³ *ibid*.

The third case – circumstances of ‘extreme political volatility’ – is where the authors dedicate their efforts to form a ‘philosophical argument for the legitimacy’ of forgetting. These situations present the ‘peace v justice’ dilemma at its apex. They imply that pursuing truth and remembering can jeopardise the transition itself or turn it dangerous.²⁰⁴

Rotondi and Eisikovits argue that political transitions often require compromises. This often materialises in the need to balance the desire for accountability and the necessity of ensuring peace and social stability for the new regime. Such cases can present ‘legitimate, largely non-cynical reasons for foregoing transitional justice due to rational fears of reinstating massive violence’.²⁰⁵

However, both authors also seem to recognise that even though ‘a partial erasure of historical detail is inevitable’, because of factors that range from political contexts to the possibility of accessing archival materials, this should not be seen as an argument to ‘abuse history’.²⁰⁶

Further, even in the narrow cases in which Rotondi and Eisikovits seek to justify the decision to forget, they acknowledge there might be legal implications to this option. They note in particular the residual authority of the International Criminal Court and the recognition of a right to truth in customary international law, which includes the responsibility of states at the Inter-American Commission on Human Rights and the ECtHR²⁰⁷ to provide ‘full information to victims about the circumstances under which they were abused (in addition to general information about patterns of injustice)’. Waldron provides another reason to be concerned: he argues that forgetting can mean the perpetuation of unjust social relations. In particular, he makes the point that remembering can sustain ‘the moral and cultural reality of self and community’.²⁰⁸ Recollection allows a community to look back to the past and see how they would want certain events in their history to have actually unfolded. In doing so, it can become clear that a society would not accept the reoccurrence of similar events.²⁰⁹

²⁰⁴ Volpe Rotondi and Eisikovits (n 201) 28–31.

²⁰⁵ *ibid* 31–34.

²⁰⁶ *ibid* 34.

²⁰⁷ Panepinto (n 121).

²⁰⁸ Jeremy Waldron, ‘Superseding Historic Injustice’ (1992) 103 *Ethics* 4, 6.

²⁰⁹ *ibid* 5.

In this sense, knowledge about the past is ‘important in itself’ as a ‘moral right’ for victims and their descendants. Moreover, without a ‘reasonably complete truth’, all the goals of transitional justice – from sanctions to reconciliation – are jeopardised. In order to reckon with past atrocities, a society should ‘investigate, establish, and publicly disseminate the truth about them’.²¹⁰

If transitional justice mechanisms are implemented without proper attention to ‘relevant ethical questions’, then the outcomes of the transitional process tend to be ‘ad hoc, ineffective, inconsistent, and unstable’.²¹¹

This means that a “one-size-fits-all,” technocratic and decontextualized solution²¹² must not be applied to all societies in transition. Transitional justice measures need to be approached in a ‘context-sensitive manner’.²¹³ This implies that ‘transitional justice processes need to be pursued holistically’ by dealing with past wrongdoing with the objective of societal transformation²¹⁴ and regime consolidation.

Thus, it is only in a minimal sense that forgetfulness can enhance the process of transition, as shown by Rotondi and Eisikovits. Moreover, the open concept of transition in transitional scholarship, plus the adoption of a ‘non-linear approach to time’²¹⁵ means that forgetfulness can only be understood as a strategic approach towards transitional justice that can be revisited later.

In the process of transitional justice, truth is recognised as an essential component for successful transitions. The myriad of mechanisms to deal with the past dislocate the debate to whether measures, such as truth commissions, must be adopted or not by post-conflict societies, but as how to compose a tailor-made solution that encompasses the particularity of each transition.

²¹⁰ David A Crocker, ‘Reckoning with Past Wrongs: A Normative Framework’ (1999) 13 *Ethics and International Affairs* 43, 49–50.

²¹¹ *ibid.*

²¹² Nagy (n 128).

²¹³ Murphy (n 119) 10.

²¹⁴ *ibid.* 194–95.

²¹⁵ Teitel (n 107) 86.

2.6 POLITICS OF MEMORY AND THE PROCESS OF DEMOCRATISATION

Transitional justice mechanisms can have a profound effect on the democratisation of a society in transition. At the same time, the outcomes of these measures help to shape the collective memories of societies, where it is possible to analyse the ‘dynamic links between democratization and accountability policies.’²¹⁶

The type of transition itself shapes these possible outcomes. When a transition occurs after the defeat of an authoritarian regime and the elite that surrounds it, then the scope for truth and justice policies tends to be more extensive. For this reason, it is possible to classify two types of transition – either by rupture or by negotiation.²¹⁷

In any case, the key variable seems to be the relative strength of pro-reform groups emerging from the old regime, moderate opposition, and intransigent groups on both sides, namely the authoritarian elite and radicals within the opposition. Negotiations between these political groups and their relative strength in the transitional processes are crucial variables for understanding when and how retroactive justice measures, such as purges, truth commissions, and trials, are adopted. The politics of memory, such as the symbolic and economic rehabilitation of the victims, the building of monuments and ceremonies, and public recognition of the suffering of the victims, will also depend on this equilibrium.²¹⁸

Transitions by rupture mean that the representatives of the former regime ‘have lost their capacity to manoeuvre as their political, police, or military vehicles have been totally or almost completely destroyed and cannot be reconstituted’. In contrast, transitions that are negotiated usually are marked by a reform-oriented pact between elites. In the latter, ‘the repressors or outgoing regime authorities tend to retain such a measure of power that the new democratizing elite must co-exist and must constantly negotiate change with the old guard’.²¹⁹

Moreover, there are a series of conditions that influence how new regimes decide to deal with the past, making them ‘historically grounded and thus peculiar to each country’.²²⁰ These conditions include the

²¹⁶ Alexandra Barahona de Brito, ‘Introduction’ in Alexandra Barahona De Brito, Carmen Gonzalez Enriquez and Paloma Aguilar (eds), *The Politics of Memory: Transitional Justice in Democratizing Societies* (OUP 2001) 2.

²¹⁷ *ibid.*

²¹⁸ *ibid.* 13.

²¹⁹ *ibid.* 12.

²²⁰ *ibid.* 17.

beliefs and values of the emerging new regimes,²²¹ structural factors, the existence of strong human rights movements, the international context and the presence of an engaged and articulated civil society. The way these factors are presented in each society can determine if a country try to ‘keep memory alive’ when there might be some resistance to accountability, or if it opts for (at least temporary) forgetting.

At the same time, the existence of a previous democratic tradition can fuel the transitional measures taken by the new regime and facilitate the process of accountability. Where there is a weak democratic tradition and a permanent legacy of authoritarianism, the period of transition tends to produce a ‘weak or fearful society’.²²² In this scenario, many years can pass before backward-looking accountability becomes possible.

Every transitional period entails at least a tentative democratisation or deepening of an existent democracy. This process means progress in several areas such as ‘political, legal, institutional, cultural ideological, social, and economic arenas’.²²³ Garretón, for instance, acknowledges that truth and justice are linked to institutional reform and that without these elements, brought by transitional justice mechanisms, democracy is weaker.²²⁴

However, the exact role of truth and justice in a democratisation process is heavily dependent on how those policies are formulated, the level of social interest in engaging with them and the expectation surrounding their outcomes. Moreover, specific national conditions, such as the political scenario, are essential in evaluating their impact.²²⁵

Even though there are examples of democratisation without accountability, backward-looking truth and justice can indeed set in motion a process of broader reforms, deepening democracy. Also, they produce a social engagement that can be vital for the politics of democratisation.²²⁶

²²¹ Jon Elster, ‘Coming to Terms with the Past. A Framework for the Study of Justice in the Transition to Democracy’ (1998) 39 *European Journal of Sociology* 7.

²²² Barahona de Brito, ‘Introduction’ (n 216) 17–18.

²²³ *ibid* 29–30.

²²⁴ Manuel Antonio Garretón M, ‘Human Rights in Processes of Democratisation’ (1994) 26 *Journal of Latin American Studies* 221.

²²⁵ Barahona de Brito, ‘Introduction’ (n 216) 31.

²²⁶ *ibid* 31–34.

The potential of how transitional truth and justice can improve the process of democratisation is dependent on the power dynamics of the transition itself. Barahona de Brito argues that the level of popular participation and interest in the process and if they are democratic themselves can determine if they are genuinely conceived of as a way to break with an undemocratic past and build a new democracy.²²⁷

The understanding of how collective memory works can help us to realise that the choices and actions of individuals and the groups are dictated by how they remember the past.²²⁸ Transitional justice mechanisms try to stitch the fragmented and parallel memories of such groups, bridging the gaps between them, in order to compose a human rights orientated vision of the past, which can lay the ground for a new democratic regime.

The pursuit of ‘truth’ in its many forms – as recovery of what happened, as clarification of its moral content, as a consensual truth – is the central and common focus of legal and quasi-legal procedures, of individual remembrance and collective renderings of the past. It is the core problem of transitional justice: how to realign truth in these various forms with the needs of reconciliation and recovery within post-violence societies. As selective, distorting and restricting as legal institutions and quasi-legal procedures are, likewise are individual and collective memories, and as such, neither the individual sphere nor the institutional or wider social realm differs in principle in rendering distorted, orchestrated or manipulated ‘truths’.²²⁹

Nevertheless, the politics of memory transcends transitional justice mechanisms and their pursuit of truth and justice in transition. It is also concerned with ‘how a society interprets and appropriates its past, in an ongoing attempt to mold its future (social memory)’.²³⁰ Therefore, the politics of memory ‘is an integral part of the process of building various social, political, or “collective” identities, which shape the way different social groups view national politics and the goals they wish to pursue for the future’.²³¹

The link between the collective dimension of memory and the transitional justice field can be observed closely through the lens of the

²²⁷ *ibid* 34–35.

²²⁸ Barahona de Brito, ‘Transitional Justice and Memory: Exploring Perspectives’ (n 131) 363.

²²⁹ Karstedt (n 129) 8.

²³⁰ *ibid* 37–38.

²³¹ *ibid*.

politics of memory. It shows us how the collective memory of different groups can have a powerful effect on how a society interprets its past, with political consequences in the present. Furthermore, transitional justice mechanisms are capable of contributing to the formation of a shared understanding of the past, which can be a factor that deepens democratisation processes. In the next chapter, this theoretical framework will be applied to the Brazilian transition, demonstrating how the lack of transitional justice mechanisms in the Brazilian case explains the presence of parallel collective memories on the military dictatorship.

3.

SHADOWS AND LIES CANNOT PROMOTE HARMONY:²³²
TRANSITIONAL JUSTICE AND THE BRAZILIAN CASE

This chapter deals with the Brazilian transitional justice experience, and how the late and sparse implementation of transitional justice measures allowed amnesia to thrive after the transition to democracy. At the heart of this gap in the nation's collective memory of the military regime is a blanket amnesty approved in 1979 that meant impunity for the gross human rights violations committed by the armed forces.

In order to tackle this analysis of the Brazilian case of transitional justice the first part of the chapter will deal with the transition to democracy and the instauration of two reparation commissions by the Brazilian state. The second part is dedicated to the Amnesty Law and its dissonant interpretation between the Brazilian Supreme Court and the IACtHR. Next, the NTC is shown as the pinnacle of a gradual turn in the politics of memory in Brazil. Lastly, this chapter discusses the shortcomings of this new phase of the transitional justice in Brazil and, also, how it was interrupted as soon as the *Partido dos Trabalhadores* (Worker's Party) left power in 2016.

²³² In her speech at the inauguration of the National Truth Commission in 2012, Dilma Rousseff said 'Ignorance of history does not bring peace, on the contrary, it preserves latent pains and grudges. Disinformation does not appease, it only helps drive intolerance. Shadows and lies cannot promote harmony. Brazil deserves the truth. The new generations deserve the truth, and, most of all, those who lost friends and relatives and are still suffering as if their loved ones kept dying everyday, they deserve the factual truth'. For the translation of part of the speech see Samantha Viz Quadrat, 'The Skirmish of Memories and Political Violence in Dictatorial Brazil' in E Allier-Montaña and E Crenzel (eds), *The Struggle for Memory in Latin America: Recent History and Political Violence* (Palgrave Macmillan 2015) 86.

3.1 A NEGOTIATED TRANSITION AND A DELAYED TRANSITIONAL JUSTICE: THE BRAZILIAN CASE

The transition to democracy in Brazil was one of the longest in Latin America. It began in the second half of the 1970s in Ernesto Geisel's term with a liberalisation plan aiming at the 'institutionalization of the regime'.²³³ The so-called *abertura* was a synonym for a restrictive and punctual strategic plan by the military. Later, the insurgence by the civil society and (part of) the political system tipped the *abertura* into a long-term project of democratic transition that would be implemented in controlled and gradual steps, encompassing the Amnesty Law (1979), the indirect election of a civilian president (1985), the approval of a new constitution (1988) and the first direct election for a president (1990) after the coup in 1964.²³⁴

The Brazilian transition was a 'regime-initiated liberalization'²³⁵ with the military retaining 'substantial control over the transition to democracy'.²³⁶ The pressure by civil society was a key component in the process. However, the liberalisation of the regime was provoked by the loss of the support of the regime provided by the elite and middle class,²³⁷ which disintegrated in the last years of the regime with the end of the 'economic miracle'²³⁸ the government sustained between 1969 and 1973.

Beyond military control, other factors help explain the Brazilian transition and how it shaped the transitional justice experience in the country. Perhaps the most significant, in comparison with other dictatorships of the southern cone, is that Brazil had the most 'legalized form of military regime'.²³⁹

²³³ Marcos Napolitano, *1964: História Do Regime Militar Brasileiro* (Editora Contexto 2014) 245–46.

²³⁴ Adriano Codato, 'A Political History of the Brazilian Transition: From Military Dictatorship to Democracy' (2005) 2 *Revista de Sociologia e Política*, 16; Leslie Bethell and Celso Castro, 'Politics in Brazil Under Military Rule, 1964-1985' in Leslie Bethell (ed), *Cambridge History of Latin America - Volume IX: Brazil since 1930* (CUP 2008); Leslie Bethell and Jairo Nicolau, 'Politics in Brazil, 1985-2002' in Leslie Bethell (ed), *The Cambridge History of Latin America, Volume IX - Brazil since 1930* (CUP 2008); Bryan McCann, *The Throes of Democracy: Brazil since 1989* (Zed Books 2013) 12–13..

²³⁵ Alfred C Stepan, 'Paths Toward Redemocratization: Theoretical and Comparative Considerations' in Guillermo A O'Donnell, Philippe C Schmitter and Laurence Whitehead (eds), *Transitions from Authoritarian Rule: Comparative Perspectives* (Johns Hopkins UP 1986).

²³⁶ Marcelo Torelly, 'Assessing a Late Truth Commission: Challenges and Achievements of the Brazilian National Truth Commission' (2018) 12 *International Journal of Transitional Justice* 194, 197.

²³⁷ Alexandra Barahona de Brito, "'Justiça Transicional'" Em Câmera Lenta: O Caso Do Brasil' in Antonio Costa Pinto and Francisco Carlos Palmomanes Martinho (eds), *O Passado que não Passa: A sombra das ditaduras na Europa do Sul e na América Latina* (Civilização Brasileira 2012) 169.

²³⁸ Bethell and Castro (n 234) 203.

²³⁹ Torelly (n 236) 196.

In authoritarian states, law is often used as an instrument against opposition, but also to promote the institutionalisation of the regime, giving it a veneer of legitimacy.²⁴⁰ That is to say, rule by law instead of rule of law.²⁴¹ This is also true when the military are in power and are able to have strong bonds with the judiciary. The civilian-military cooperation in the dictatorships of the southern cone, which included the judiciary, led O'Donnell to coin the term 'bureaucratic authoritarianism'.²⁴²

Analysing the 'authoritarian legality' of the regimes in Brazil, Argentina and Chile, Pereira illustrate how the degrees of integration and consensus between the judiciary and the military were higher in Brazil.²⁴³ While this led to lower levels of lethal violence, as the regime was able to utilise political trials to neutralise the opposition, it created an 'immense barrier'²⁴⁴ for reforms after the end of the dictatorship.

A direct consequence of this authoritarian legality was the adoption of a different system of repression. In Brazil, the 'judicial branch's adherence to authoritarianism allowed political enemies to be prosecuted, imprisoned and expelled from the country in formal ways'.²⁴⁵ The legal appearance of the regime also included a restricted congress function, presidential terms and controlled two-party elections for the legislature. While the military always kept a tight control of this environment, Alfred Stepan argues that the dictatorship in Brazil never articulated 'a systematic attack on democracy as system of government',²⁴⁶ in contrast with other authoritarian regimes of the southern cone, for example.

Perhaps the most symbolic face of the 'democratic façade'²⁴⁷ of the military regime was the existence of a bi-partisan system with a government party, the National Renewal Alliance (*Aliança Renovadora Nacional* or ARENA), and an opposition party, the Brazilian Democratic Movement (*Movimento Democrático Brasileiro* or MDB). However, the regime had authority to appoint representatives to some seats in the congress and were able to suspend political rights of individuals and

²⁴⁰ Tamir Moustafa, 'Law and Courts in Authoritarian Regimes' (2014) 10 Annual Review of Law and Social Science 281, 283.

²⁴¹ Mark Tushnet, 'Rule by Law or Rule of Law?' (2014) 22 Asia Pacific Law Review 79.

²⁴² Guillermo O'Donnell, *Modernization and Bureaucratic-Authoritarianism: Studies in South American Politics* (Institute of International Studies, University of California 1973).

²⁴³ Pereira, *Political (In)Justice: Authoritarianism and the Rule of Law in Brazil, Chile, and Argentina* (n 4).
²⁴⁴ *ibid* 172.

²⁴⁵ Torelly (n 236) 196.

²⁴⁶ Alfred C Stepan, *Democratizing Brazil: Problems of Transition and Consolidation* (OUP 1989) X.

²⁴⁷ Nina Schneider, 'Impunity in Post-Authoritarian Brazil: The Supreme Court's Recent Verdict on the Amnesty Law' (2011) European Review of Latin American and Caribbean Studies 39.

suspend mandates.²⁴⁸ In essence, it was a ‘rigged legislative system’²⁴⁹ that was shut down when refused to comply with the military.

The success of this ‘repressive legal strategy’²⁵⁰ was undeniable. It allowed the regime to rely mostly on the use of the judiciary, instead of large-scale clandestine operations and disappearances, which impacted the struggle for accountability later. Torelly argues that while in other countries of the southern cone the crimes committed by the dictatorship were an unavoidable topic in the return to democracy, in Brazil, they were not a central issue. Ultimately, this led to ‘less social mobilization for justice’.²⁵¹

The controlled transition, with a high degree of continuity of the political and economic elite, did not allow the implementation of transitional justice measures, at least initially. During the terms of José Sarney (1985-90), Fernando Collor de Mello (1990-92) and Itamar Franco (1992-95)²⁵² no significant measures were taken concerning the recognition of state responsibility or the redress of victims.

Things started to change in the Fernando Henrique Cardoso administration (1995-2003), while the bulk of transitional justice initiatives happened or were completed during the mandates of Luiz Inácio Lula da Silva (2003-11) and Dilma Rousseff (2011-16), from the left-wing Worker’s Party. All the three of them were victims of the dictatorship²⁵³ either by being exiled (Fernando Henrique Cardoso), arrested (Lula) or tortured (Dilma).

Transitional justice in Brazil can be summed as the combination of ‘reparation, some truth, and no justice’.²⁵⁴ Brazil struggled to implement transitional justice measures, in what can be classified as a ‘slow-motion transitional justice’.²⁵⁵ Moreover, the victim-centred approach did not allow far-reaching effects of the outcomes of the mechanisms applied.

²⁴⁸ Ann M Schneider, ‘Legislative Efforts against Impunity in the 1979 Amnesty Debate in Brazil’ (2018) 37 *Bulletin of Latin American Research* 1, 3–4.

²⁴⁹ *ibid* 2.

²⁵⁰ Torelly (n 236) 198.

²⁵¹ *ibid*.

²⁵² Itamar Franco assumed the presidency after the impeachment of Fernando Collor following a corruption scandal. The process was seen at the time as a sign of a health democracy functioning in Brazil, as after two decades of dictatorship and the indirect election of José Sarney in 1985, Brazilians were able not only to vote for Collor but also to take him out of the office. See Bethell and Nicolau (n 234) 254.

²⁵³ Quadrat (n 232) 72.

²⁵⁴ Napolitano (n 233) 345–46.

²⁵⁵ Barahona de Brito, ‘“Justiça Transicional” Em Câmara Lenta: O Caso Do Brasil’ (n 237) 183.

The Special Commission on Political Deaths and Disappearances (*Comissão Especial sobre Mortos e Desaparecidos Políticos*, or CEMDP)²⁵⁶ was the first direct transitional justice measure implemented by the Brazilian state. Established in 1995, around ten years after the end of the dictatorship, it was dedicated to recognising state responsibility for death and disappearances for political reasons during the regime. It also granted financial reparations for their families, but was not able to provide full accountability for the crimes committed by the state agents or the location of missing corpses.²⁵⁷

In addition, the Amnesty Commission was established later in 2001, with a broader mandate, being able to promote economic reparations to civilians and military officers who suffered political persecution by the regime.²⁵⁸ Both commissions exemplify how the reparations programme worked as the ‘structuring axis’²⁵⁹ of the transitional justice in Brazil.

The military pressure on these initiatives was evident. Not only did they have seats on both commissions, but they also made sure that their mandate was quite limited.²⁶⁰ The commissions did investigate human rights violations but did not have power to indict state agents. In the end, the armed forces managed to control these processes, including having an informal veto power, which meant they controlled not only access to information but also exercised influence on ‘the official narrative regarding the past’.²⁶¹

Even with the military influence in the transitional justice efforts, the commissions played an essential role ‘despite their limited truth-seeking mandate’²⁶² by investigating and recognising several human

²⁵⁶ The CEMDP was created by Law 9140/95 on 4 December 1995. Among the criticism the commission faced was that it determined that the relatives had the burden of proof, including the responsibility for DNA exams and the localisation of missing bodies. Moreover, it delimited the recognition of the state to deaths that occurred inside of sites controlled by the military. See Quadrat (n 232) 80.

²⁵⁷ Edson Teles and Renan Quinalha, ‘Scopes and Limits to the Transitional Justice Discourse in Brazil’ in Nina Schneider and Marcia Esparza (eds), *Legacies of state violence and transitional justice in Latin America: a Janus-faced paradigm?* (Lexington Books 2015) 29.

²⁵⁸ Cecília MacDowell Santos, ‘Transitional Justice from the Margins: Legal Mobilization and Memory Politics in Brazil’ in Nina Schneider and Marcia Esparza (eds), *Legacies of state violence and transitional justice in Latin America: a Janus-faced paradigm?* (Lexington Books 2015) 45.

²⁵⁹ Paulo Abrão and Marcelo Torelly, ‘Mutações Do Conceito de Anistia Na Justiça de Transição Brasileira: A Terceira Fase Da Luta Pela Anistia’ in C Prittitz and others (eds), *Justiça de Transição: Análises Comparadas Brasil-Alemanha* (2015) 21.

²⁶⁰ Torelly (n 236) 198.

²⁶¹ *ibid* 198–99.

²⁶² *ibid* 199.

rights violations that the armed forces never admitted. In this context, even though they were created as reparation initiatives, they managed to change the political scenario, as ‘murder, disappearances, torture and kidnappings were no longer “alleged” but were recognized by the state’²⁶³ in numbers that far exceeded what was previously believed.

Nina Schneider argues that the strategy of post-1985 governments in Brazil was to ‘silence the military past’,²⁶⁴ with the few transitional justice measures being focused on official apologies by the state and compensation to victims. However, after 2005, under the Worker’s Party administrations it is possible to notice a change in the transitional justice process in Brazil, including a re-orientation of the pre-existing commissions to produce projects concerning the politics of memory.

This new state policy included the creation of museums, educational programmes, monuments and official reports.²⁶⁵ For example, the report ‘Right to Memory and Truth’ (*Direito à Memória e à Verdade*)²⁶⁶ summarised the work of the CEMDP and recognised almost 400 deaths and disappearances as crimes committed by the dictatorship. It is crucial to notice that the state recognition was made by the civilian part of the state, while the military always rejected recognising the human rights violations of the regime, considering that there were ‘excesses’, but not regular and institutionalised violations committed by the armed forces.²⁶⁷

Under the Amnesty Commission, the Amnesty Caravans (*Caravanas da Anistia*) encompassed public events happening throughout the country, normally in places relevant to the opposition to the dictatorship in that particular city, that combined an educational aspect and also promoted official apologies by the state to victims.²⁶⁸ The same commission also launched in 2010 the project Marks of Memory (*Marcas da Memória*), destined to register the oral history of those persecuted by the regime and to fund civil society initiatives of preserving and disseminating the memory of the authoritarian past.²⁶⁹

²⁶³ Torelly (n 236) 199.

²⁶⁴ Nina Schneider, ‘Breaking the “Silence” of the Military Regime: New Politics of Memory in Brazil’ (2011) 30 *Bulletin of Latin American Research* 198, 201.

²⁶⁵ *ibid* 206.

²⁶⁶ Secretaria Especial dos Direitos Humanos da Presidência da República (SEDH), ‘Direito à Verdade e à Memória: Comissão Especial Sobre Mortos e Desaparecidos Políticos’ (2007).

²⁶⁷ Quadrat (n 232) 81.

²⁶⁸ *ibid* 83.

²⁶⁹ *ibid*.

Another relevant initiative was the creation in 2009, under the Brazilian National Archive, of the Revealed Memories (*Memórias Reveladas*) Centre. The objective was to form a network of archives of the military regime, stimulating research and the academic and political debate on the theme.²⁷⁰

However, all these efforts worked upon the logic of the Amnesty Law and the post-authoritarian ‘informal veto power’²⁷¹ the military held. Teles and Quinalha consider that the transitional justice in Brazil shows a ‘central ambiguity’²⁷² where important advancements were made, especially concerning reparations to the victims and their families, but recognition measures were sparse and lacked publicity. Moreover, not a single state agent was convicted and there were no relevant reforms in the armed forces or the judiciary.

In this sense, the transitional justice rhetoric was many times utilised as a strategy ‘to hide and legitimate processes of impunity and to block demands for justice, truth and compensation’.²⁷³ Although human rights movements demanded justice and a more assertive approach towards the transitional justice, other segments of the state and the military reproduced ‘a historical interpretation of the “two sides” of the conflict’.²⁷⁴ This discourse implied that any transitional justice measure needed to consider a permanent threat to the stability and governability of the country and should be built around a ‘rhetoric of peace and conciliation’²⁷⁵ even if that meant oblivion and impunity.

3.2 THE AMNESTY LAW: A BRIDGE TO DEMOCRACY OR A PACT FOR AMNESIA?

A significant example of the military control in the transition can be found in the Amnesty Law approved in 1979, six years before the military stepped out of power. The movement for the approval of such a law started within civil society and aimed for the liberty of political prisoners, readmission of public servants purged by the military and the

²⁷⁰ Schneider, ‘Breaking the “Silence” of the Military Regime: New Politics of Memory in Brazil’ (n 264) 207.

²⁷¹ Torelly (n 236) 202.

²⁷² Teles and Quinalha (n 257).

²⁷³ *ibid* 33.

²⁷⁴ *ibid* 30.

²⁷⁵ *ibid*.

return of exiled Brazilians. However, in the political negotiations, the regime re-purposed the Amnesty Law by shaping it as an instrument for impunity and forgetting the abuses it had committed.

The Amnesty Law is at the heart of the military exit plan. Abrão and Torelly describe how this plan involved three steps: 1) the approval of an auto-amnesty law able to marginalise radical politics; 2) indirect elections to secure the continuity of the regime logic and not allow a relevant rupture to happen; 3) extensive destruction of public archives of the repressive institutions in order to erase the traces of the human rights violations and to avoid further individual responsibility.²⁷⁶

Nevertheless, the Amnesty Law is considered a milestone for democratisation in Brazil, in what is better described as a ‘paradox of everyone’s victory’.²⁷⁷ On the one hand, it represented a historical, social mobilisation for political openness, but on the other, it was used as an instrument for impunity and forgetfulness by the military regime.²⁷⁸

Abrão and Torelly highlight two dimensions of the Brazilian Amnesty Law. The juridical dimension was to secure that there would not be prosecutions against the military. The political dimension was the negotiation of a pact of reconciliation which the military argued were unavoidable for the transition of power. The Amnesty Law, in the terms it was approved, was framed by the military as the only possible way to achieve democracy.²⁷⁹

This political pact can be critiqued in several ways. First, it was not approved in a free and democratic space. Second, it suffers from an inherent legitimacy deficit, as the political representation at the congress in 1979 was restricted, including representatives that were not chosen by direct vote.²⁸⁰ Therefore, it is possible to question the equality between the political actors that negotiated the pact and its fairness. Under the proposed reconciliation by a reciprocal amnesty the military in fact promoted a political racketeering where the concession of freedom and the return of the exiled was only permitted in exchange for impunity for the crimes of the regime.

²⁷⁶ Abrão and Torelly (n 259) 26.

²⁷⁷ Marcelo Torelly, *Justiça de Transição e Estado Constitucional de Direito: Perspectiva Teórico-Comparativa e Análise Do Caso Brasileiro* (Editora Fórum 2012).

²⁷⁸ Abrão and Torelly (n 259) 21–22.

²⁷⁹ *ibid* 24.

²⁸⁰ *ibid*.

While the push for amnesty started and was led by an insurgent civil society, the 1979 Amnesty Law in Brazil was a bill introduced by the military and approved in their terms. The regime managed to exclude from the amnesty those convicted for the so-called ‘blood crimes’²⁸¹ (acts of terrorism, robbery, kidnapping and physical attacks), which meant basically the exclusion from the amnesty of the guerrilla members arrested by the armed forces. In addition, they implicitly included ‘under the aegis of crimes connected to political crimes’²⁸² the amnesty for state agents involved in crimes of torture, execution and forced disappearances.

The Amnesty Law encompasses three main aspects with cultural, political and juridical dimensions that Abrão and Torelly identify as 1) the adoption of forgetfulness as the better way to deal with the past; 2) the denial of the existence of victims and the justification of the use of violence via a ‘two demons’ justification where the amnesty was reciprocal and 3) the guarantee of impunity via the judicial interpretation of the Amnesty Law.²⁸³

Decades later, the extensive Brazilian reparation programme, combined with the new phase on the transitional justice during the Worker’s Party administrations, strengthened the position of independent organisations fighting for justice.²⁸⁴ In this environment, more favourable to transitional justice, the Brazilian Bar Association (*Ordem dos Advogados do Brasil* or OAB) appealed to the STF questioning the constitutionality of the Amnesty Law.

In the ADPF 153²⁸⁵ the OAB argued that the crime of torture could not be considered a political crime, as it was in the interpretation of the Amnesty Law at that point, but instead, a crime against humanity, following international human rights law, and for that reason could not be forgiven by a blanket amnesty.²⁸⁶ Additionally, a ‘one-sided’

²⁸¹ Glenda Mezarobba, ‘Between Reparations, Half Truths and Impunity: The Difficult Break with the Legacy of the Dictatorship in Brazil’ [2010] *Sur - International Journal on Human Rights* 7, 17; Schneider, ‘Legislative Efforts against Impunity in the 1979 Amnesty Debate in Brazil’ (n 248) 5.

²⁸² Schneider, ‘Legislative Efforts against Impunity in the 1979 Amnesty Debate in Brazil’ (n 248) 5.

²⁸³ Abrão and Torelly (n 259) 28.

²⁸⁴ Torelly (n 236) 200.

²⁸⁵ Supremo Tribunal Federal (STF), ADPF 153 (29 April 2010) <<http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=612960>> accessed 30 July 2020.

²⁸⁶ Emilio Peluso Neder Meyer, ‘Criminal Responsibility in Brazilian Transitional Justice: A Constitutional Interpretative Process under the Paradigm of International Human Rights Law’ (2017) 4 *Indonesian Journal of International & Comparative Law* 41, 49.

interpretation of the amnesty excluded those involved in ‘acts of terrorism’ (ie the armed struggle), but included military personnel who had been part of ‘state terrorism’, highlighting it was not a reciprocal amnesty after all. Lastly, the OAB claimed that torture could not be amnestied under the 1988 Constitution and international human rights law.

However, the outcome was negative as the court found the Amnesty Law to be constitutional by seven to two votes.²⁸⁷ The winning argument was based on considering that the Amnesty Law was a bilateral negotiation between the civil and the military and therefore was not an auto-amnesty and, that as a reconciliation law, only the legislative power had the prerogative to modify it.²⁸⁸ The Supreme Court decision was a significant blow for the transitional justice process in Brazil, as it extended and solidified the impunity that emanated from the Amnesty Law to the military crimes committed during the dictatorship.

On the international level, the IACtHR ruled against Brazil in the case concerning the *Guerrilha do Araguaia (Gomes Lund and Others v Brazil)*, which included a higher number of direct victims of the regime, counting 64 guerrilla members dead or missing.²⁸⁹ In the judgment, which happened only six months after the ADPF 153, the court considered that the Amnesty Law could not be used as a hindrance to block the investigation and prosecution of gross human rights violations.²⁹⁰

The IACtHR considered that the Amnesty Law, by preventing the investigation and sanction of gross human rights violations, was incompatible with the American Convention on Human Rights (ACHR)²⁹¹ and should be revised. The ruling, in contrast with the Brazilian Federal Supreme Court, considered that the Amnesty Law was, in fact, no different from auto-amnesty laws also approved in other Latin American dictatorships.²⁹² The IACtHR used the examples of Argentina, Chile, Colombia, Peru and Uruguay as countries with self-amnesties that later revised those laws ‘taking into account in good faith their international obligations’.²⁹³

²⁸⁷ Supremo Tribunal Federal (STF), ‘Voto Do Ministro Eros Grau é Pela Anistia Ampla, Geral e Irrestrita’ (28 April 2010) <www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=125398> accessed 30 July 2020.

²⁸⁸ Abrão and Torelly (n 259) 35.

²⁸⁹ Quadrat (n 232) 75.

²⁹⁰ Torelly (n 236) 200–01.

²⁹¹ (entered into force 18 July 1978) OAS Treaty Series No 36, 1144 UNTS 123.

²⁹² Meyer (n 286) 62.

²⁹³ *Case of Gomes Lund et al (‘Guerrilha Do Araguaia’) v Brazil* (n 54).

The IACtHR, while recognising the efforts of the Brazilian state in its reparations programme, determined that it should criminally investigate the facts concerning the *Araguaia* case.²⁹⁴ In 2018, the IACtHR, in *Herzog et al v Brazil*²⁹⁵ reiterated the decision that evaluated the Brazilian Amnesty Law as incompatible with the ACHR. Moreover, it argued that the Brazilian state should also re-open the Vladimir Herzog case and investigate the murder of the journalist who was tortured and killed by the political police of the military dictatorship, which later forged his death by staging a suicide.

So far, the Brazilian state has failed to comply with the judgment of the IACtHR and most of its recommendations,²⁹⁶ which included the publication of documents in custody of the armed forces, the determination of the whereabouts of the victims and the prosecution and punishment of those responsible for the crimes in the Araguaia. The main exception, concerning the compliance with the court recommendations, was the creation of the NTC.

3.3 THE NATIONAL TRUTH COMMISSION: AN UNTAPPED POTENTIAL

The NTC was established in 2011, almost three decades after the end of the military rule, differing from most countries who usually establish truth commissions within three years after a transition.²⁹⁷ By then, most of the work of truth recovery had already been done by civil society and the earlier reparation commissions, having ‘little room for new historical discoveries’.²⁹⁸

Three important truth-seeking initiatives happened before the NTC, including the state-sponsored reparation commissions (CEMPD and the Amnesty Commission). As for the civil society, the main contribution was the 1985 report *Brasil Nunca Mais*²⁹⁹ (Brazil Never Again), a project

²⁹⁴ Mezarobba (n 281) 18.

²⁹⁵ Inter-American Court of Human Rights *Case of Herzog et al v Brazil* (Preliminary Objections, Merits, Reparations and Costs, Judgment of 15 March 2018) Series C No 353.

²⁹⁶ Meyer (n 286); de Almeida Teles (n 38) 99–100.

²⁹⁷ Onur Bakiner, ‘Truth Commission Impact: An Assessment of How Commissions Influence Politics and Society’ (2014) 8 *International Journal of Transitional Justice* 6, 17.

²⁹⁸ Torelly (n 236) 213.

²⁹⁹ Paulo Evaristo Arns and Catholic Church Archdiocese of São Paulo (Brazil), *Brasil, Nunca Mais* (Voices 1985). The report was also translated into English. See Catholic Church Archdiocese of São Paulo (Brazil) and others, *Torture in Brazil: A Report* (Vintage Books 1986); A digital version entitled ‘Brasil Nunca Mais Digit@l’, which includes all the documents used to write the report can be found at: <<http://bnmdigital.mpf.mp.br/pt-br/sobre.html>> accessed 30 July 2020.

led by the Catholic Church and based on secretly copied documents of the military archives. Published in 1985, and an instant best-seller, *Brasil Nunca Mais* documented the systematic use of torture by the military dictatorship a decade before any transitional justice initiative by the Brazilian state.³⁰⁰

Being a late truth commission, the NTC had different objectives from an ‘immediately post conflict investigative body’ and its importance of improving stability or establishing truth³⁰¹ for a new democratic regime. The work of the NTC is better perceived as the ‘largest rupture with the “transition by transformation” model’ that had marked the Brazilian transitional efforts so far.³⁰²

More than improving the accountability of the authoritarian past and pressuring the justice system to comply with the international law, the most important contribution of the NTC was to challenge the ‘informal veto power’³⁰³ of the military, representing the first transitional justice mechanism that broke the ‘tradition regarding military involvement in transitional justice issues in Brazil’.³⁰⁴

The establishment of the NTC caused an ‘upsurge in transitional justice work in Brazil’.³⁰⁵ The most innovative characteristic of the truth commission experience in the country was the existence of concomitant local truth commissions led by universities, trade unions and municipal and regional governments. A network of around 100 local truth commissions³⁰⁶ was formed, and many of them also engaged with the NTC providing documents and sharing their findings or even formalising their partnership in letters of cooperation.³⁰⁷

³⁰⁰ Nina Schneider and Gisele Iecker de Almeida, ‘The Brazilian National Truth Commission (2012–2014) as a State-Commissioned History’ in Berber Bevernage and Nico Wouters (eds), *The Palgrave Handbook of State-Sponsored History After 1945* (Palgrave Macmillan 2018) 638.

³⁰¹ Torelly (n 236) 213.

³⁰² *ibid* 195–96.

³⁰³ *ibid*.

³⁰⁴ *ibid* 214–15.

³⁰⁵ Anthony W Pereira, ‘Progress or Perdition? Brazil’s National Truth Commission in Comparative Perspective’ in Peter R Kingstone and Timothy J Power (eds), *Democratic Brazil Divided* (University of Pittsburgh Press 2017) 156.

³⁰⁶ Nina Schneider, ‘Introduction: The Brazilian Truth Commission in Local, National and Global Perspective’ in Nina Schneider (ed), *The Brazilian Truth Commission: Local, National and Global Perspective* (Berghahn 2019) 3.

³⁰⁷ Pereira, ‘Progress or Perdition? Brazil’s National Truth Commission in Comparative Perspective’ (n 305) 156; Schneider and de Almeida (n 300) 641–42.

The work of the NTC led to a report that ‘mainly systematizes previously existing information’,³⁰⁸ improving accountability by recognising the human rights violations of the regime in a systematised way and, for the first time in the Brazilian transitional justice process, naming the perpetrators. Torelly highlights that even if ‘criminal accountability never occurs, some relevant historical accountability has been achieved’.³⁰⁹

In this sense, an important contribution of the NTC was to bridge the contradiction between the Amnesty Law of 1979 and the international treaties signed by the Brazilian state.³¹⁰ In accordance with the IACtHR ruling in the *Gomes Lund* case, the NTC considered that the broad and systematic violations of human rights committed by the armed forces were crimes against the humanity and therefore could not be amnestied.³¹¹

The final report of the NTC, published in 2014, for the first time named 377 perpetrators of human rights violations during the military regime. Moreover, it presented an official account of 434 victims of the dictatorship.³¹² Beyond the report, the NTC also was integrated to the Brazilian national archives, making available documents from the regime and part of the audio and video recordings of the commission itself.³¹³

The recommendations of the NTC, distinguishing it from the other commission’s reports, are mostly ‘forward-looking’.³¹⁴ Most of the 29 recommendations denounce human rights violations that still persists in the present day.³¹⁵ Among the recommendations concerning public security and the strengthening of human rights related institutions, the NTC recommended reforms in the judiciary, armed forces and law enforcement.³¹⁶ It also included changes in the military recruitment and education.³¹⁷

³⁰⁸ Torelly (n 236) 213.

³⁰⁹ *ibid* 214.

³¹⁰ Pereira, ‘Progress or Perdition? Brazil’s National Truth Commission in Comparative Perspective’ (n 305) 163.

³¹¹ Meyer (n 286) 68; Pereira, ‘Progress or Perdition? Brazil’s National Truth Commission in Comparative Perspective’ (n 305) 171.

³¹² Pereira, ‘Progress or Perdition? Brazil’s National Truth Commission in Comparative Perspective’ (n 305) 152–53.

³¹³ Schneider and de Almeida (n 300) 642.

³¹⁴ Pereira, ‘Progress or Perdition? Brazil’s National Truth Commission in Comparative Perspective’ (n 305) 170.

³¹⁵ Schneider and de Almeida (n 300) 643.

³¹⁶ CNV, ‘Comissão Nacional Da Verdade - Relatório’ (2014) 964–75.

³¹⁷ *ibid* 967.

In addition, the NTC recommendations also encompass that the armed forces must officially acknowledge the gross violations of human rights committed during the regime. It also recommended the revision of the Brazilian Amnesty Law, making reference to the judgment by the IACtHR,³¹⁸ and presented follow-up steps, including the creation of a body to check the enforcement of its recommendations by state authorities.³¹⁹

The report was well received by the international human rights community, but had a ‘mixed reception’ from victim groups.³²⁰ While recognising the relevance of the commission recommendations, they pointed that there was no relevant advances towards the location of missing corpses or no signal of criminal convictions following the NTC’s Report.³²¹ The president of the victim group *Tortura Nunca Mais – Rio de Janeiro* (Torture Never Again) considered the final report ‘superficial’ and stated that the investigations could have gone further considering the two years and seven months duration of the commission.³²²

So far, the NTC report has not impacted the Brazilian state’s policies, meaning that no relevant outcome from the NTC other than the report itself can be noted. Moreover, the report failed to reach mass audiences and is ‘not being actively promoted and distributed in the form of a public awareness campaign’.³²³ While it is available free online, the report’s length of 3,383 pages and the adoption of legal vocabulary can explain the apathy of the Brazilian society towards it. Besides, the NTC could not agree on an executive summary of the report, which would help its dissemination.³²⁴

Schneider and Almeida acknowledge that the NTC has great potential concerning the impact on collective memory by denouncing ‘a number of myths about the military dictatorship’, including the ‘portrayal by the military institution of a “war” provoked by the Left and clearly [arguing] that state-sponsored violence took place right from the outset of the military period’. However, this potential is not

³¹⁸ CNV (n 316) 965; Schneider and de Almeida (n 300) 644.

³¹⁹ CNV (n 316) 973.

³²⁰ Schneider and de Almeida (n 300) 646.

³²¹ Torelly (n 236) 213.

³²² Folha de SP, ‘Fundadora do Tortura Nunca Mais considera frustrante relatório da CNV’ (10 December 2014) <<https://www1.folha.uol.com.br/poder/2014/12/1560330-fundadora-do-tortura-nunca-mais-considera-frustrante-relatorio-da-cnv.shtml>> accessed 30 July 2020.

³²³ Schneider and de Almeida (n 300) 647.

³²⁴ *ibid* 645.

fulfilled considering the modest dissemination and circulation of the report and its findings.³²⁵

3.4 ASSESSING THE TRANSITIONAL JUSTICE IN BRAZIL: AN INCOMPLETE MEMORY TURN

The transitional justice experience in Brazil, since the formal end of the dictatorship, failed to perform a ‘transformative rescue of the memory’ in the country.³²⁶ The sparse transitional measures taken since the 1990s led Teles to observe a ‘mistreatment of memory’³²⁷ in Brazil. Even in more assertive measures, such as the NTC, memory was processed only as a theme or a piece of information without a creative or transformative approach.

Brazil has since lived a pact of oblivion as an argument of reconciliation, of which the Amnesty Law is the main symbol of ‘institutionalized amnesia’.³²⁸ The main sponsors of this policy were the military, with significant support from political actors in the country.

During the Worker’s Party governments (2003-16) it is possible to notice a shift in the approach of the Brazilian state to transitional justice. This is evident in the incorporation of initiatives of truth-seeking and memorialisation in the pre-existing reparation commissions, while the climax of this new phase of transitional justice was the establishment of a truth commission. Nina Schneider defined this as a shift from ‘politics of silence to politics of memory’,³²⁹ or as Rebecca Atencio puts it, a ‘memory’s turn’ where the Brazilian state started to ‘slowly abandon (...) its previous discourse of reconciliation by institutionalized forgetting in favour of a new one based on reconciliation by institutionalized memory’.³³⁰

Although the military resistance to the implementation of transitional

³²⁵ Schneider and de Almeida (n 300) 645.

³²⁶ Tayara Talita Lemos, ‘Justiça de Transição e 1988 Ou Sobre Porque Precisamos de Um Constitucionalismo Transicional e Políticas de Justa Memória Permanentes’ in Lucas Azevedo Paulino (ed), *Constituição, democracia e jurisdição: um panorama dos últimos 30 anos* (IDDE 2018) 316–18.

³²⁷ Edson Teles, ‘Transição, Consenso e Violência Política Na Democracia Brasileira’ in Pontes and others (eds), *Cultura, memória e poder: diálogos interdisciplinares* (EdUERJ 2013).

³²⁸ Lemos (n 326) 316–18.

³²⁹ Schneider, ‘Breaking the “Silence” of the Military Regime: New Politics of Memory in Brazil’ (n 264) 199.

³³⁰ Rebecca Atencio, *Memory’s Turn: Reckoning with Dictatorship in Brazil* (University of Wisconsin Press 2014) 17.

justice measures is indisputable, another significant obstacle to it is the lack of interest of the Brazilian society itself in dealing with its violent past. Differing from other countries in Latin American that faced similar military regimes, in Brazil there is a ‘collective denial of the military past’³³¹ and the memory was reduced to the ‘private remembrance’ of the victims, their families and some institutions that supported them such as the Catholic Church and human rights activists.³³²

While the struggle for the amnesty and the mobilisation of the *Diretas Já* evidenced great involvement of the Brazilian society during the democratisation period, the same was not shown concerning the appeal for justice and accountability surrounding the gross human rights violations of the regime.³³³ Schneider argues that while in the Argentinian context there is a ‘dominant memory’ on the authoritarian rule of the military, the Brazilian case is defined by a ‘denial’ or a deeply divided notion of the past, or, simply put, an ‘unmastered past’.³³⁴ This means that the historical legacy of the military dictatorship is still unresolved in the collective memory of the nation, while silence or polarised views thrive among the different groups of society. The lack of a public consensus means that Brazil fails to narrate its own history in a ‘broadly accepted manner’.³³⁵

However, this indifference or desire for forgetfulness is not collective, and agents from different groups in civil society wished to preserve their memories and perspectives of the past.³³⁶ Groups such as the victims and a more engaged civil society found more resonance for their memories, especially in the reparation’s commissions and latter with the NTC. Still, all these actions had limited publicity and were framed as a ‘stage for political debate’³³⁷ between the ones who supported the government or not.

The pressure of such groups was not sufficient to generate

³³¹ Schneider, ‘Breaking the “Silence” of the Military Regime: New Politics of Memory in Brazil’ (n 264) 199.

³³² *ibid.*

³³³ Mezarobba (n 281) 16.

³³⁴ Schneider, ‘Breaking the “Silence” of the Military Regime: New Politics of Memory in Brazil’ (n 264) 204; Schneider draws the concept of unmastered past from Gavriel Rosenfeld that defines it as a ‘historical legacy that has acquired an exception, abnormal, or otherwise unsettled status in the collective memory of a given society’. See Gavriel D Rosenfeld, ‘A Looming Crash or a Soft Landing? Forecasting the Future of the Memory “Industry”’ (2009) 81 *Journal of Modern History* 122, 196–97.

³³⁵ Schneider, ‘Breaking the “Silence” of the Military Regime: New Politics of Memory in Brazil’ (n 264) 204.

³³⁶ Ana Paula Ferreira de Brito and Maria Leiticia M Ferreira, ‘As Reivindicações Por Memória e Verdade e a Comissão Nacional Da Verdade: Construindo a Memória Social Sobre o Período Militar No Brasil’ in Emílio Peluso Neder Meyer and Marcelo Andrade Cattoni De Oliveira (eds), *Justiça de Transição nos 25 anos da Constituição de 1988* (Inicia Via 2014) 39.

³³⁷ *ibid.* 56.

mobilisation for more far-reaching measures involving accountability and justice, at least on the national level.³³⁸ The Brazilian state only conceded an extensive reparation programme, while keeping the legacy of the Amnesty Law intact. The focus on the victim-centred financial compensation, combined with the lack of publicity of the other initiatives of the reparation commissions, led to the dissemination of distorted view of these reparations³³⁹ as a ‘dictatorship pension’.³⁴⁰

The focus on the reparation programme led to an ‘individualization and a depoliticizing of the question of truth’,³⁴¹ reinforcing a false narrative that the Amnesty Law provided a reciprocal forgiveness to both sides, radicals (or terrorists) and the armed forces, who were part of a revolutionary war.³⁴² The persistence of the Amnesty Law, sedimented by the Brazilian Supreme Court in the ‘spirit of national reconciliation’,³⁴³ proved to be the major obstacle to the implementation of transitional justice in Brazil, while still being a ‘core element’³⁴⁴ concerning the construction of the memory of the dictatorship.

The lack of a thorough transitional justice project in Brazil contributed to the non-existence of a hegemonic national collective memory of the military dictatorship. The result is that specific groups, such as victims and the military, had room to construct and brew their memories for long decades, apart from state-sponsored initiatives. This had significant implications for different groups, as for the victims, it meant more obstacles in the pursuit of justice, as the Amnesty Law was based in this pact of reconciliation as forgetfulness.³⁴⁵ For the military, this entailed more complex ramifications. On one side, they argued for forgetfulness by defending the Amnesty Law and its current interpretation, but on the other side, they also formed their own collective memory on the dictatorship.

Even if the post-1985 period presented a shift towards the

³³⁸ Mezarobba (n 281) 13–14.

³³⁹ *ibid* 16.

³⁴⁰ Quadrat (n 232) 83.

³⁴¹ Nina Schneider, “‘Too Little Too Late’ or ‘Premature’? The Brazilian Truth Commission and the Question of “Best Timing” (2013) 19 *Journal of Iberian and Latin American Research* 149, 154.

³⁴² Quadrat (n 232) 77.

³⁴³ Teles and Quinalha (n 257) 31.

³⁴⁴ Quadrat (n 232) 77.

³⁴⁵ Atencio, *Memory’s Turn: Reckoning with Dictatorship in Brazil* (n 330) 15.

implementation of transitional justice measures, this process was not constant and on-going, but rather a volatile one. The Fernando Henrique Cardoso administration (1995-2003) inaugurated the first reparation commission, but also approved legislation that increased the limitation for access to ‘top secret’ documents, making it increasingly difficult to access information in the archives of the armed forces.³⁴⁶ The Worker’s Party administrations (2003-16), on the other hand, faced criticism on failing to comply with the IACtHR ruling that demanded the investigation of the *Guerrilla do Araguaia* case and the revision of the Amnesty Law. In this sense, the establishment of the truth commission can be read as a ‘diplomatic project’³⁴⁷ towards the international human rights community with no significant outcomes.

It is crucial to notice how the approval of the NTC and its mandate happened during the Dilma Rousseff administration. Rousseff’s approval ratings were sky-high³⁴⁸ when the NTC started to work, but soon after the delivery of its report, the government was facing a substantial economic and political crisis that preceded her impeachment in 2016.³⁴⁹ This adds another layer to the explanation concerning the lack of implementation of the recommendations of the NTC and transitional justice measures overall. It shows how this new phase of transitional justice was too dependent on the political will of those in power at the time and, for this reason, vulnerable to the dynamics of politics and power struggles.³⁵⁰ The complete halt in the transitional justice process in Brazil after Rousseff’s impeachment show an incisive interruption in this ‘memory turn’³⁵¹ that was happening, even though slowly, since 2005 in the country.

During the Michel Temer administration (2016-19) the creation

³⁴⁶ Santos (n 258) 59.

³⁴⁷ Schneider, “‘Too Little Too Late’ or ‘Premature’? The Brazilian Truth Commission and the Question of “Best Timing”” (n 341) 154.

³⁴⁸ In April 2012, one month before the NTC started to function, Dilma’s government was approved by 56% of the Brazilians, this number went to 12% in April/2015, just four months before the NTC published its final report. See BBC, ‘De campeã de popularidade a 62% de rejeição: seis momentos-chave no governo Dilma’ (*BBC News Brasil, 18 March 2015*) < www.bbc.com/portuguese/noticias/2015/03/150318_dilma_aprovacao_reprovacao_cc> accessed 29 July 2020.

³⁴⁹ On Rousseff’s impeachment process, see ch 4.

³⁵⁰ Schneider, “‘Too Little Too Late’ or ‘Premature’? The Brazilian Truth Commission and the Question of “Best Timing”” (n 341) 150.

³⁵¹ Atencio, *Memory’s Turn: Reckoning with Dictatorship in Brazil* (n 330).

of a post-NTC monitoring body was cancelled³⁵² and six members of the Amnesty Commission were exonerated. In the same day, Temer appointed twenty new members to it, changing the 16-member format to 30 members in total, in an unprecedented interference on the work of the commission.³⁵³ Victim-groups protested outraged with the fact that some of the new components had direct links with the military regime.³⁵⁴ In addition, Temer established that new financial compensations for victims needed the approval of the *Advocacia Geral de União* representing the end of the autonomy of the Amnesty Commission. This led to the increase of the number of rejections in applications to the commission from 37% in 2017 to 88% in 2018.³⁵⁵

Overall, the transitional justice experience in Brazil can be considered so far to be ‘moderate, gradual, non-confrontational, and conservative’.³⁵⁶ If the turn to memory that started in the Worker’s Party governments was stopped after Rousseff’s impeachment, the election of Jair Bolsonaro presented not only a challenge for the late and incipient transitional justice in Brazil, but democracy itself. In the next chapter, we deal with the effects of *Bolsonarismo* on the perception about the military regime in the public sphere, and how the participation of the military in the rise of far-right populism put Brazilian democracy in a wave of autocratisation.

³⁵² Torelly (n 236) 214–15.

³⁵³ Marcella Fernandes, ‘Mudanças Do Governo Bolsonaro Em Comissões Desmontam Anos de Políticas de Reparação Da Ditadura’ (*HuffPost Brasil*, 1 February 2020).

³⁵⁴ Ponte, ‘Defensores de Direitos Humanos Repudiam Intervenção de Temer Na Comissão de Anistia’ (*Ponte Jornalismo*, 3 September 2016) <<https://ponte.org/governo-temer-intervem-na-comissao-da-anistia/>> accessed 29 July 2020.

³⁵⁵ Fernandes (n 353).

³⁵⁶ Pereira, ‘Progress or Perdition? Brazil’s National Truth Commission in Comparative Perspective’ (n 305) 158.

4.

BOLSONARISMO AND THE DICTATORSHIP NOSTALGIA:
FAR-RIGHT POPULISM IN BRAZIL AND A RETURN TO
AUTHORITARIANISM

This chapter is dedicated to the rise of far-right populism in Brazil and its relations with a dictatorship nostalgia in the country. The rise of *Bolsonarismo* presented the re-emergence of the military to the central stage of Brazilian politics and also entailed the elevation of the military memory on the dictatorship from the barracks to the mainstream. Lastly, it presents the detrimental effects of *Bolsonarismo* in democracy and how the characteristics of the transitional justice experience in Brazil led the country to be more prone to authoritarianism revivals.

4.1 FROM LULISMO TO BOLSONARISMO: AN IRRUPTION OF MEMORY AND THE
RISE OF THE FAR-RIGHT IN BRAZIL

The period between 2002-16 marked the years of *Lulismo*³⁵⁷ in Brazil, encompassing four electoral victories of the left-wing Worker's Party in the country by its main leader Luiz Inácio Lula da Silva (2003-10) and his successor and *protégé* Dilma Rouseff (2011-16). The downfall of the Worker's Party,³⁵⁸ after 13 years in power, meant more than the rise of a new right-wing order, embodied in Bolsonaro's populism, but also an irruption of memory concerning the legacy of the military dictatorship in the country.

³⁵⁷ André Singer, *Os Sentidos Do Lulismo: Reforma Gradual e Pacto Conservador* (Companhia das Letras 2012); David Samuels and Cesar Zucco, 'Lulismo, Petismo, and the Future of Brazilian Politics' (2014) 6 *Journal of Politics in Latin America* 129.

³⁵⁸ Ruy Braga and Sean Purdy, 'A Precarious Hegemony: Neo-Liberalism, Social Struggles, and the End of Lulismo in Brazil' (2019) 16 *Globalizations* 201.

During the years of the Worker's Party in power, Brazilian democracy showed important signs of stability and consolidation.³⁵⁹ Among its achievements were massive programmes of social inclusion such as *Bolsa Família* and *Fome Zero* and the sustained economic growth,³⁶⁰ which reduced social inequality.³⁶¹ Moreover, Brazil's 'growing influence on international relations'³⁶² could be perceived by its role with Russia, India, China and South Africa (the BRICS) and a more active and relevant foreign policy.

Singer describes the project of the Worker's Party as a 'Rooseveltian dream'³⁶³ with policies aimed towards social integration and tackling inequality. The success of these policies shaped the relationship of popular sectors of Brazilian society and Lula, especially in the more impoverished northeast region.³⁶⁴

However, corruption scandals and the poor economic performance in the last years of Rousseff's term coincided with the rise of a new right in the country. The decline of *Lulismo* can be pointed in three major happenings: the demonstrations of June 2013, the Car-Wash (*Lava Jato*) operation, and, lastly, the impeachment of Rousseff in 2016.

The demonstrations of June 2013 marked a period when 'uncertainty emerged in Brazilian politics'.³⁶⁵ The protests started in the city of São Paulo, demanding a reduction in public transportations fares, mainly supported by left-wing movements, but suddenly and unexpectedly became something else entirely.³⁶⁶ The demonstrations 'showed the contradictions between the image of Brazil as an emerging international power and a country whose inequality and poverty were still among its principal problems'.³⁶⁷ The protests in Brazil, much like the Arab

³⁵⁹ Peter R Kingstone and Timothy J Power, 'Introduction: A Fourth Decade of Brazilian Democracy' in Peter R Kingstone and Timothy J Power (eds), *Democratic Brazil Divided* (University of Pittsburgh Press 2017) 3, 5.

³⁶⁰ Laura Carvalho, *Valsa Brasileira: Do Boom Ao Caos Econômico* (Todavia 2018).

³⁶¹ Anthony W Pereira, 'Bolsa Família and Democracy in Brazil' (2015) 36 *Third World Quarterly* 1682; Wendy Hunter and Natasha Borges Sugiyama, 'Assessing the Bolsa Família' [2017] *Democratic Brazil Divided* 131.

³⁶² Ariel Alejandro Goldstein, 'The New Far-Right in Brazil and the Construction of a Right-Wing Order' (2019) 46 *Latin American Perspectives* 245, 247.

³⁶³ André Singer, *O Lulismo Em Crise: Um Quebra-Cabeça Do Período Dilma (2011-2016)* (Companhia das Letras 2018).

³⁶⁴ Goldstein (n 362) 247.

³⁶⁵ *ibid.*

³⁶⁶ Braga and Purdy (n 358) 206.

³⁶⁷ Goldstein (n 362) 247.

Spring,³⁶⁸ suggested that the years of economic growth and social mobility had ‘stimulated new demands among the lower middle class, while the upper middle class felt its status threatened by “newcomers” from below’.³⁶⁹

By then, the Worker’s Party, in the government for more than a decade, had ‘consolidated as a bureaucracy over the state’.³⁷⁰ With its main leaders participating in the federal administration, the party had lost its presence on the streets and a closer connection with social movements and unions. These characteristics were part of the identity of the party and the reason for its previous electoral success.³⁷¹

While the federal government underestimated the significance and the dimensions of these new actors, they were capitalised by emerging right-wing movements.³⁷² Some of them already in formation in the past decade, these movements faced a perfect storm with their anti-establishment and corruption discourse echoing in the streets and social media. Pinheiro-Machado, for instance, argues how, with the help of the mainstream media coverage, soon, the protests started to be read as mere criticism to the corruption in the Worker’s Party government.³⁷³

The 2014 presidential elections happened amidst a polarisation unseen since the democratisation in 1985. Dilma’s narrow victory for re-election against the PSDB (*Partido Social Democrata Brasileiro*) candidate Aécio Neves was followed by a ‘destabilization tactic’³⁷⁴ adopted by the opposition in a twofold plan including by not accepting the results of the presidential election and co-opting the government’s main ally in congress; the PMDB.

Rousseff’s second term would not reach its end. By August 2016, the PMDB-PSDB-led impeachment process ended the almost 14 years of the Worker’s Party in government and turned her vice-president and former ally Michel Temer into an improbable and unpopular president. His administration had an inherent weakness as he lacked popularity and political credibility, being in power only due to a controversial

³⁶⁸ Rosana Pinheiro-Machado, *Amanhã Vai Ser Maior: O Que Aconteceu Com o Brasil e Possíveis Rotas de Fuga Para a Crise Atual* (Planeta 2019) 204.

³⁶⁹ Goldstein (n 362) 247.

³⁷⁰ *ibid* 248.

³⁷¹ *ibid*.

³⁷² *ibid* 247–48.

³⁷³ Pinheiro-Machado (n 368) 326.

³⁷⁴ Goldstein (n 362) 248.

impeachment process, which many consider a palace coup.³⁷⁵ For this reason, Temer resorted to other centres of political power, such as the military, to hold power.³⁷⁶

The Car-Wash Operation (*Lava Jato*) was hugely influential, not only on the 2016 impeachment but further on the election for Temer's succession. It started as an operation dealing with corruption scandals in oil state company Petrobras, but soon derailed into a lawfare instrument, especially by the hands of judge Sergio Moro, raised to the position of judicial celebrity and national hero against corruption. Moro contributed to the impeachment of Rousseff by leaking compromising, but illegal, hearings of the president at the time, inflaming the political crisis Dilma was already suffering. Later, already in 2018, he ordered Lula's imprisonment, utilising a new and controversial constitutional interpretation, and taking the former president out of the electoral run. Months later, he was appointed Minister of Justice of the Bolsonaro government.³⁷⁷

Ariel Goldstein claims that 'Bolsonaro's appeal has grown where the order constructed in the past decade by *Lulismo* has eroded'.³⁷⁸ Parallel to the decline of *Lulismo*, the radical right-wing advanced and impacted both the political culture and public discourse. If, in the last decade, the main challenges and debates in Brazilian politics were about 'inequality and unfair wealth distribution', now they were dislocated to a discussion about 'corruption and dishonesty' that favoured populist approaches.³⁷⁹

A new right-wing order emerged, at first not by popular vote but by Temer's presidency. In this sense, the many corruption scandals that were detrimental not only to the Worker's Party but to the whole political class, plus a total disenchantment with democracy itself that had started since the 2013 demonstrations and was boosted during Temer's unpopular and unstable term, paved the way for 'extreme solutions'³⁸⁰ to be found in the ballot.

Bolsonarismo was only possible in this context of a 'clear cultural battle to redefine issues in the public square from a right-wing perspective'³⁸¹

³⁷⁵ Braga and Purdy (n 358).

³⁷⁶ Goldstein (n 362) 250–51.

³⁷⁷ Perry Anderson, *Brazil Apart: 1964-2019* (Verso Books 2019).

³⁷⁸ Goldstein (n 362) 254–55.

³⁷⁹ *ibid* 252–53.

³⁸⁰ *ibid* 254.

³⁸¹ *ibid* 256.

that favoured his unlikely presidential run in 2018. This conservative uprising included new ‘digital movements’ such as MBL (Movimento Brasil Livre), *Revoltados Online* and *Vem Pra Rua*³⁸² emerging from the June 2013 demonstrations, but also public figures such as evangelical leaders³⁸³ with close ties to politics and media and long-time regime apologists such as the polemicist Olavo de Carvalho.

In the middle of this ‘struggle over cultural hegemony’³⁸⁴ that reshaped the public sphere, the strategy of this emerging radical right was to isolate politically the still relevant politically left that had ruled the country for more than a decade. What bonded all these different actors were the construction of a ‘leftist enemy’.³⁸⁵ Then the narrative of anti-communism and the revisionism towards the dictatorship thrived, not only restricted within small circles of militaries and their supporters but on a broader political sphere.

This represents a direct link from the present to the past, as this group re-enacted the pseudo-dilemma the military use until today to justify the coup in 1964. The protests for Dilma’s impeachment in 2015 represented the first time the right was in the streets since the democratisation.³⁸⁶ The new right order paired with the military to become saviours of democracy seeking to assume power in order to avoid an implausible communist threat. The left, on the other hand, were labelled as communists who corrupted the political order and should be avoided at all costs.

Moreover, it gathered support from the same middle class that supported the coup in 1964. Aesthetically, the marches re-enacted, in the present day, the Marches of the Family with God for Freedom (*Marcha da Família com Deus pela Liberdade*) that preceded João Goulart’s coup. Once again, the military were seen as an alternative to combat supposed radicals in power, showing that a significant part of the population had a positive memory about the 1964-85 period.³⁸⁷ Many of the protesters’ signs made direct references to the military and their regime asking for

³⁸² Vitor de Angelo, ‘Saudade Dos Militares: Os Pedidos de Retorno Das Forças Armadas Ao Poder No Brasil’ (2018) 5 REB - Revista de Estudos Brasileños 93, 97.

³⁸³ Ronaldo de Almeida, ‘The Broken Wave: Evangelicals and Conservatism in the Brazilian Crisis’ (2020) 10 HAU: Journal of Ethnographic Theory 32.

³⁸⁴ Goldstein (n 362) 256.

³⁸⁵ *ibid* 247.

³⁸⁶ Angelo (n 382) 97.

³⁸⁷ *ibid* 102.

a ‘military intervention’ to ‘save us once again from communism’ or asking ‘why haven’t you killed them all in 1964?’.³⁸⁸

This re-emergence of popular support for the military is evidence that even though it was decided not to deal with the past, the topic is still susceptible to return, sometimes suddenly, to the public sphere. We have already seen how the political elites avoided a reckoning with the dictatorial past in Brazil for many years after the transition. This led to the collective memories of groups such as the military and victims to be shaped without those topics reaching the public sphere. However, these repressed memories can always come back to the political arena, influencing the outcomes of current political events.

Wilde, analysing Chile after Pinochet’s arrest, pointed out how periods of political turmoil can cause an ‘irruption of memory’.³⁸⁹ In his words, these irruptions happen in the context of a ‘deeply divided public discourse’ where ‘contending and mutually exclusive collective representations of the past’ are in shock.³⁹⁰ The downfall of *Lulismo* and the rise of *Bolsonarismo* echoed the same type of polarisation in politics of 1964, as this series of events – from the protests of 2013 to Rousseff’s impeachment – represented not only a disenchantment with democracy but also an irruption of memory concerning the Brazilian authoritarian past.

The rise of a new right-wing order in Brazil paved the way for a specific type of far-right populism that is proving itself particularly dangerous to Brazilian democracy. Pandora’s box was opened, and a wave of revisionist narratives about the dictatorship flooded the public sphere. In common, they all downplayed the gross violations of human rights by the military regime and exalted the economic performance during the ‘economic miracle’ of the dictatorship years. Besides, they portrayed the military as incorruptible figures, essential to avoid Brazil’s fate of becoming a Cuba-like regime in the 1960s.³⁹¹

A former member of the military himself, Bolsonaro always praised the legacy of the military regime. If, after the democratisation, the topic was a taboo for politicians, the same could not be said after his election

³⁸⁸ Angelo (n 382).

³⁸⁹ Alexander Wilde, ‘Irruptions of Memory: Expressive Politics in Chile’s Transition to Democracy’ (1999) 31 *Journal of Latin American Studies* 473.

³⁹⁰ *ibid* 475.

³⁹¹ Gisele Lecker de Almeida, ‘Undoing Brazil’s Dictatorial Past’ in Natascha Mueller-Hirth and Sandra Rios Oyola (eds), *Time and Temporality in Transitional and Post-Conflict Societies* (Routledge 2018).

in 2018.³⁹² This irruption of memory paved the way for politicians like Bolsonaro to be elected, which was unthinkable before. Moreover, it allowed an opportunity for the revisionist collective memory of the military concerning the regime to leave the barracks to the mainstream.

4.2 THE MILITARY MEMORY: FROM THE BARRACKS TO THE MAINSTREAM

The military perspective can be noticed by their reluctance to engage with any transitional justice measure taken in the country, but also by their interpretation of the events that happened during the dictatorship. Officially, the Armed Forces never recognised that a *coup d'état* happened in 1964, still celebrating 31 March and referring to it as the 'revolution of 64'. Moreover, the military always resisted giving complete access to their files from the period nor did they officially apologise to the victims and their families.³⁹³

At the heart of the military collective memory is the Brazilian version of a 'two demons' theory where violations happened at 'both sides' of a revolutionary war.³⁹⁴ This discourse can be noted in the reluctance of the armed forces to participate in transitional justice measures and the criticism they direct towards all the initiatives. While the reparation commissions were merely tolerated, a more reactive approach can be observed by the military reaction towards revisions in the Amnesty Law and the establishment of the NTC. The military, in all cases, were particularly worried about the possible punishment of agents.³⁹⁵

The military always labelled any transitional justice measure, especially those towards justice, as a vendetta of the left in Brazil

³⁹² Rebecca J Atencio, 'From Truth Commission to Post-Truth Politics in Brazil' (2019) 118 *Current History* 68, 68.

³⁹³ Anthony W Pereira, 'Progress or Perdition? Brazil's National Truth Commission in Comparative Perspective' in Peter R Kingstone and Timothy J Power (eds), *Democratic Brazil Divided* (University of Pittsburgh Press 2017) 158; Atencio *ibid* 69.

³⁹⁴ Renan Honório Quinalha, 'Com Quantos Lados Se Faz Uma Verdade? Notas Sobre a Comissão Nacional Da Verdade e a "Teoria Dos Dois Demônios"' (2013) 15 *Revista Jurídica da Presidência* 181, 192; Samantha Viz Quadrat, 'The Skirmish of Memories and Political Violence in Dictatorial Brazil' in E Allier-Montañón and E Crenzel (eds), *The Struggle for Memory in Latin America: Recent History and Political Violence* (Palgrave Macmillan 2015) 77.

³⁹⁵ Nina Schneider and Gisele Lecker de Almeida, 'The Brazilian National Truth Commission (2012–2014) as a State-Commissioned History' in Berber Bevernage and Nico Wouters (eds), *The Palgrave Handbook of State-Sponsored History After 1945* (Palgrave Macmillan 2018) 641.

(*revanchismo*)³⁹⁶ and as a campaign to demoralise the armed forces. The military commonly uses the term *revanchismo* in order to refute punishment or criticism for the human rights violations that occurred in the regime, by suggesting the claim for justice or accountability is a demand based on the personal vengeance of the victims or the left in general.³⁹⁷

The reaction of the President of the *Clube Militar* (Military Club)³⁹⁸ to the final report of the NTC is a perfect example of how the military perceives any transitional justice measure as *revanchismo*:

The report only could be a collection of half-truths, calumnies, and whole lies, packed with pieces of truth whose disclosure is biased because of the socialist orientation of its commissioners. From the 29 recommendations, many target the Armed Forces, as agents of the State. There is no reference to the activities of terrorists, guerrilla fighters, kidnappers, and leftist murderers who were trying to take power by force and establish in the country a communist totalitarian regime following the Soviet, Chinese or Cuban model (...) The hate and the wish for vengeance are so big that lawyers, jurists and university professors sign such absurdities. All in the name of the socialist cause (...) The report is as laughable and partial as the commission itself.³⁹⁹

As we saw previously, the Amnesty Law represented a pact for amnesia,⁴⁰⁰ however, as democracy was slowly consolidating and human rights started being part of the national agenda, politics of reparation and memory advanced as well. Simultaneously, groups formed not only by members of the armed forces but also by regime apologists surfaced to defend the prerogatives of the military and a positive memory of the coup in 1964 and the regime itself.⁴⁰¹ Moreover, they negatively perceive those victims who are part of the reparation programme, considering it a way to make money, and question how many leftist militants that

³⁹⁶ Fernanda Teixeira Moreira, 'Para Além Das Casernas: Memória de Direita, Revanchismo e Justiça de Transição No Brasil' in Maria Paula Araujo and António Costa Pinto (eds), *Democratização, memória e justiça de transição nos países lusófonos* (Autografia and EDUPE 2017) 43.

³⁹⁷ Nina Schneider, 'Breaking the "Silence" of the Military Regime: New Politics of Memory in Brazil' (2011) 30 *Bulletin of Latin American Research* 198, 204.

³⁹⁸ An organisation of retired members of the Armed Forces.

³⁹⁹ Lucas Salomão, 'Clube Militar vê Coleção de "calúnias" Em Relatório Da Comissão Da Verdade' (*G1 - Política*, 10 December 2014) <<http://g1.globo.com/politica/noticia/2014/12/relatorio-e-absurdo-em-nome-da-causa-socialista-diz-clube-militar.html>> accessed 4 August 2020 (author's translation).

⁴⁰⁰ Moreira (n 396) 44.

⁴⁰¹ *ibid.*

were opposed to the dictatorship now participate in politics in the post-authoritarian governments.⁴⁰²

These positions did not suddenly appear in the political scenario or were merely reactions to the implementation of transitional justice in Brazil. Instead, they reflect the existence of a battle for memory about the military dictatorship. As a counterpoint to the voices of victims, a right-winged intellectual field started to ‘deliberately interfere in the public space’⁴⁰³ in order to legitimate a specific view of the past.

As described previously in Chapter 2, the past is a construction that serves to ‘justify the present order’, but its arrangement is never something truly stable.⁴⁰⁴ This is true because the collective remembrance of political events is a direct product of ‘specific power constellations of a given society’.⁴⁰⁵ While for many years the military memory of the events of the dictatorship could be considered to be in the margins of the public discourse, the rise of this new right-wing order presented an opportunity for a change in the general perception of the legacy of the military in power.

Molden states that a community never has an entirely homogenous view of the past as ‘tensions between different groups (often with opposed collective memories) do persist within the collective’, thus the ‘meaning of the past is always negotiated’.⁴⁰⁶ In this sense, drastic changes in the political scenario also present a window where groups can challenge the predominant interpretation of history to impose a new narrative about the past.⁴⁰⁷

The military and regime apologists posed as victims of the leftist *revanchismo* and started to dispute the memories of the military regime in the public sphere,⁴⁰⁸ mostly by the publication of books and biographies and the creation of websites which offered a revisionist reflection of the memories of the dictatorship. They tried to relativise or justify topics such as the use of torture, the disappearances and the repression. One of these publications was the book *A Verdade Sufocada (The Strangled*

⁴⁰² Quadrat (n 394) 81–83.

⁴⁰³ Moreira (n 396) 42–43.

⁴⁰⁴ Berthold Molden, ‘Resistant Pasts versus Mnemonic Hegemony: On the Power Relations of Collective Memory’ (2016) 9 *Memory Studies* 117.

⁴⁰⁵ *ibid* 118.

⁴⁰⁶ *ibid* 131.

⁴⁰⁷ *ibid* 140.

⁴⁰⁸ Moreira (n 396) 46.

Truth) published by the former Colonel Brillhante Ustra⁴⁰⁹ in which he wrote, ‘Enough of silence! Write. Do it like they do, even if you are not a writer’.⁴¹⁰

Part of their strategy was mirroring civil society’s initiatives oriented against the legacy of the dictatorship. The non-governmental organisation *Tortura Nunca Mais* (Torture Never Again) had as its counterpart *Terrorismo Nunca Mais* (Terrorism Never Again or TERNUMA) to exteriorise a positive image of the military regime. One of their founders was Ustra. These groups intended not only to dispute the findings of the truth-seeking transitional justice measures implemented by the state, but they also entailed an extreme right political project.⁴¹¹

Olavo de Carvalho, polemicist and political guru of President Bolsonaro, said about the TERNUMA that the ‘collective memory is entirely held hostage by two forces: the media and the national system of education’ and that those who dominate these forces would be able to ‘change the past, counterfeit the present, and put the people in the way for a fictitious future’. For Carvalho, the far-right sought to ‘reconquest the true perspective of the whole, that was robbed from the Brazilian memory by Manichean manipulators’.⁴¹²

The construction of a positive image of the dictatorship cannot co-exist with the recognition of victims and the widespread and systematised use of torture by the military. The use of categories such as victims and perpetrators, as well as the human rights lexicon,⁴¹³ turns transitional justice into an obstacle in the proliferation of this revisionist way to deal with the past adopted by the military and absorbed by the populist far-right.

The negligence towards a broader and far-reaching politics of memory in the post-authoritarian Brazil has meant that discussion about the dictatorship does not reach society, as more effective and far-reaching measures were never taken. Even if the debate is centred on

⁴⁰⁹ Chief of the OBAN/DOI-CODI, the repression organ of the Army, during the dictatorship.

⁴¹⁰ Carlos Neto Alberto Brillhante Ustra, *A Verdade Sufocada: História Que a Esquerda Não Quer Que o Brasil Conheça* (Ser, 2007) 566.

⁴¹¹ Odilon Caldeira Neto, ‘Neofascismo, “Nova República” e a Ascensão Das Direitas No Brasil’ (2020) 10 *Conhecer: debate entre o público e o privado* 120, 133.

⁴¹² Olavo de Carvalho, ‘Militares e a Memória Nacional’ (31 December 2000) <<https://olavodecarvalho.org/militares-e-a-memoria-nacional/>> accessed 4 August 2020.

⁴¹³ Elizabeth Jelin, ‘Los Derechos Humanos y La Memoria de La Violencia Política y La Represión: La Construcción de Un Campo Nuevo En Las Ciencias Sociales’ (2004) 27 *Estudios Sociales* 91, 97–98.

the memories of restricted groups, such as the victims, civil society and the military, the fact that the debate is always perceived as a political-partisan topic,⁴¹⁴ between the left versus the right, reverberates the discussion beyond what is initially expected and spills in a broader political arena.

The re-emergence of the military memory of the dictatorship to the mainstream is evident with the election of Bolsonaro. Moreover, it was particularly easy because the characteristics of the Brazilian transition to democracy (and its transitional justice experience) failed to compose a hegemonic collective memory on its authoritarian past. Soon, the military were able not only to engage in this memory war for the meaning of the past but to participate actively in the current politics.

The interference of the military in politics after the democratisation was restricted to block any attempts of opening the archives of the dictatorship. However, Murilo de Carvalho argues that this started to change in 2015,⁴¹⁵ amid the political and economic crisis of Rousseff's second term, when General Hamilton Mourão claimed that 'awakening of the patriotic fight' was the way out of the political crisis.⁴¹⁶ Mourão would be elected vice-president on Bolsonaro's ticket in 2018.

The military had already played an important role in Temer's government. Politically weak, he conceded positions never occupied by the armed forces since the democratisation in 1985 and also approved the military intervention in Rio de Janeiro in 2018. The Army Commander-in-Chief General Villas Boas said they needed 'guarantees to act without the risk of another truth commission'.⁴¹⁷ The military was now definitively active in the political landscape.

⁴¹⁴ Ana Paula Ferreira de Brito and Maria Leiticia M Ferreira, 'As Reivindicações Por Memória e Verdade e a Comissão Nacional Da Verdade: Construindo a Memória Social Sobre o Período Militar No Brasil' in Emílio Peluso Neder Meyer and Marcelo Andrade Cattoni De Oliveira (eds), *Justiça de Transição nos 25 anos da Constituição de 1988* (Initia Via 2014) 57.

⁴¹⁵ José M de Carvalho, *Forças Armadas e Política No Brasil* (Todavia 2019).

⁴¹⁶ Tahiane Stochero, 'General Defende "Despertar Para Luta Patriótica"' Em Palestra No RS' (*G1 - Política*, 20 October 2015) <<http://g1.globo.com/politica/noticia/2015/10/general-defende-despertar-para-luta-patriotica-em-palestra-no-rs.html>> accessed 4 August 2020.

⁴¹⁷ Mário Magalhães, *Sobre Lutas e Lágrimas: Uma Biografia de 2018, o Ano Em Que o Brasil Flertou Com o Apocalipse* (Editora Record 2019) 55.

4.3 BOLSONARISMO AND FAR-RIGHT RIGHT POPULISM: THE DICTATORSHIP NOSTALGIA

The rise of Bolsonaro to power also represented the rise of far-right populism in Brazil. Still, even though many scholars point how populism endangers democracy,⁴¹⁸ there is not a proper consensus on how to define populism, making the term essentially a politically contested one.⁴¹⁹

The ideational approach, by establishing some common characteristics shared among populists, is a successful attempt to explain the causes and effects of populism, allowing it to be applied to many different contexts. This approach focuses on defining populism as a thin-centred ideology that is based on a narrative in which a moral and Manichean distinction is made between the 'pure people' and a 'corrupted elite'.⁴²⁰

Cas Mudde defines populism as:

a thin-centred ideology that considers society to be ultimately separated into two homogenous and antagonistic groups, 'the pure people' versus 'the corrupt elite,' and which argues that politics should be an expression of the *volonté générale* (general will) of the people.⁴²¹

Conceiving populism as a 'thin-centred ideology' means that it always appears attached to other 'concepts or ideological families'.⁴²² While in most of the cases, nationalism is attached to populism, in Brazil, there is a specific kind of nationalism linked to Bolsonaro's populism, making it paired with a dictatorship nostalgia. The nationalism for the Brazilian far-right goes beyond the appropriation of national colours and symbols, adopting the aesthetics from the street protests for Rousseff's impeachment in 2015 in which the national football team yellow and green jerseys were the most fashionable outfit. Embedded in this particular type of populism is the elevation of the armed forces and the police into a beacon of national identity and pride.

⁴¹⁸ Federico Finchelstein and Nadia Urbinati, 'On Populism and Democracy' (2018) 1 *Populism* 15; Roger Eatwell and Matthew Goodwin, *National Populism: The Revolt Against Liberal Democracy* (Penguin Books Limited 2018); Henrik Bang and David Marsh, 'Populism: A Major Threat to Democracy?' (2018) 39 *Policy Studies* 352.

⁴¹⁹ Jan-Werner Müller, *What Is Populism?* (Penguin Books Limited 2017).

⁴²⁰ Kirk A Hawkins, 'The Ideational Approach', in De la Torre C (ed), *Routledge Handbook of Global Populism* (Routledge 2018); Kai Arzheimer, 'Explaining Electoral Support for the Radical Right', in Rydgren J (ed), *The Oxford Handbook of the Radical Right* (OUP 2018).

⁴²¹ Cas Mudde, 'The Populist Zeitgeist' (2004) *Government and Opposition* 543.

⁴²² Cas Mudde and Cristóbal Rovira Kaltwasser, *Populism: A Very Short Introduction* (OUP 2017) 19.

Brazilian far-right populism walks hand in hand with dictatorship nostalgia. Bolsonaro's speech when he, as a congressman, voted for Dilma Rousseff's impeachment, can summarise his style of populism, and how intertwined it is with a dictatorship nostalgia:

They had lost in 64; they lost now in 2016. For the families and the innocence of the children in the schools, that the Worker's Party never cared for, against communism, for our freedom, against the *Foro de São Paulo*, for the memory of Colonel Carlos Alberto Brilhante Ustra, the tormentor of Dilma Rousseff, for the Army of Caxias, for the armed forces, for Brazil above everything and to God above all, my vote is: yes.⁴²³

In Bolsonaro's populism, the 'corrupted elite' encompasses the cultural, academic and (part of) the political elite.⁴²⁴ Reviving the cold war use of communism as a political scarecrow, he labels all his opponents as leftists or communists and blames them for any problems in the country.⁴²⁵ Bolsonaro uses this Manichean distinction to pose as a 'Christian warrior of patriotism and family values' who needs to be trusted without questioning.⁴²⁶

Straight from the populist handbook, Bolsonaro also provided simple solutions for complex problems, especially regarding public safety, which resonated in cities like São Paulo and Rio de Janeiro and their struggle with violence and organised crime. In his conservative and populist narrative, Bolsonaro adopted firearms as a campaign symbol and promised that, if elected, he would legalise and promote their use for 'good citizens' to be able to protect themselves and their property.⁴²⁷

Bolsonarismo is based on a promise that the military would play a technical and enhancing role in the future government, distancing itself from political indications and, therefore, corruption. Bolsonaro's dictatorship nostalgia was used as a campaign stance promising a 'return to the old social order and traditional values'.⁴²⁸ By revisiting and

⁴²³ Thaís Oyama, *Tormenta: O Governo Bolsonaro: Crises, Intrigas e Segredos (Companhia das Letras 2020)* 4 (author's translation).

⁴²⁴ Marcos Nobre, *Ponto-Final: A Guerra de Bolsonaro Contra a Democracia* (Todavia 2020).

⁴²⁵ Goldstein (n 362) 256.

⁴²⁶ Federico Finchelstein, *A Brief History of Fascist Lies* (1st edn, University of California Press 2020) 102.

⁴²⁷ Rosana Pinheiro-Machado and Lucia Mury Scalco, 'From Hope to Hate: The Rise of Conservative Subjectivity in Brazil' (2020) 10 HAU: Journal of Ethnographic Theory 21, 25.

⁴²⁸ Rebecca J Atencio, 'From Truth Commission to Post-Truth Politics in Brazil' (2019) 118 Current History 68, 74.

distorting the authoritarian past of the military dictatorship, Bolsonaro aims to pose as a ‘national savior’⁴²⁹ – his supporters calls him ‘the myth’ – whose mission is to restore the social order, like he claimed the military did in 1964, and overcome the crises (economic, political and, for the far-right, also moral) that Brazil had been facing since 2013.

Finchelstein claims that the distortion of history is a ‘fundamental feature’ of populism, as for leaders such as Bolsonaro, rewriting history is essential for their power-grabbing project.⁴³⁰ When Bolsonaro refuses to acknowledge the period of 1964-85 in Brazil as a dictatorship, falsely claiming that it was a democracy, or when he proposes to celebrate the date of the 1964 coup officially, his objective is not only to praise the military but to replace ‘history with myth’.⁴³¹ Bolsonaro manipulates history and uses it as a propaganda tool, to normalise his politics based on ‘political violence, national chauvinism, and personal glorification’,⁴³²

Bolsonaro’s disdain for any transitional justice measure as a way to reckon with the military dictatorship can be explained by his use of (distorted) history as a tool to justify a Manichean narrative in which he poses as the saviour of the nation, while the other (ie the left) represent dangerous enemies. In 2011, Bolsonaro, then a member of the parliament, called the NTC the ‘commission of retaliation’ and when discussing the approval of the truth commission he wrote in an opinion article that it would create a ‘circus’ and that the project would ‘throw the military into a cackle of hyenas, hurting the hierarchy and the discipline of the military class’.⁴³³

Once in office, Bolsonaro determined ‘proper commemorations’ concerning the 55th anniversary of the coup in 1964. At the ceremony, calling it ‘the democratic revolution of 1964’, he said ‘Where in the world you have seen a dictatorship just handle the power to the opposition in a pacific way? Only in Brazil. Therefore, it was not a dictatorship’.⁴³⁴

⁴²⁹ Pinheiro-Machado and Scalco (n 427) 29.

⁴³⁰ Finchelstein (n 426) 97–98.

⁴³¹ *ibid* 99.

⁴³² *ibid* 100.

⁴³³ Jair Bolsonaro, ‘Outra Opinião: Comissão de Retaliação’ (*O Globo*, 26 September 2011) <<https://oglobo.globo.com/opiniaio/outra-opiniaio-comissao-de-retaliacao-2866269>> accessed 5 August 2020.

⁴³⁴ IstoÉ, ‘Bolsonaro Diz Que Não Houve Ditadura No Brasil e Que Regime Teve “probleminhas”’ (*IstoÉ*, 27 March 2019) <<https://istoe.com.br/comemoracao-de-1964-ficara-dentro-dos-quarteis-diz-bolsonaro-em-entrevista-na-tv/>> accessed 5 August 2020.

Bolsonaro's attitude against the implementation of transitional justice in Brazil is not limited to discourses and symbols. He, like Michel Temer, changed members in both the Amnesty Commission and the CEMPD, including regime apologists and military personal in the composition of the reparation commissions while promising to tighten the rules concerning the approval of economic reparation to victims and to put an end to the works of the commissions during his first mandate.⁴³⁵

Questioned about the change in the commissions, Bolsonaro's minister of Human Rights, Women, and Family, Damare Alves replied:

The reason for the changes is that the president has changed as well. Now it is Bolsonaro, from the right-wing. Period. When they selected terrorists for the commission, no one complained.⁴³⁶

The interference by the federal government in the commissions happened a few days after the CEMPD issued a death certificate stating that the father of Felipe Santa Cruz, President of the OAB, was murdered by the Brazilian state. The death certificate was issued after findings made by the NTC showed that Fernando Augusto de Santa Cruz Oliveira was arrested and killed by state agents during the military dictatorship. Asked about the matter by journalists, Bolsonaro replied 'Do you believe in truth commissions?'. Besides, the president said that one day he would tell the truth about how Santa Cruz's father died but warned that he would 'not like to hear it'.⁴³⁷

The dictatorship nostalgia is part of the DNA of Bolsonaro's far-right populism. It was not only a discourse used in the elections but also represented a distortion of the history of Brazil's authoritarian past to legitimise the mass participation of the military in his government. This explains the necessity of discrediting the transitional justice measures adopted by the state so far as well as the silencing of victims. However,

⁴³⁵ André Shalders, 'Governo Bolsonaro: Ministra Damare Alves Quer Endurecer Regras Para Indenizações de Perseguidos Do Regime Militar' (*BBC News Brasil*, 13 February 2019) <www.bbc.com/portuguese/brasil-47206186> accessed 5 August 2020.

⁴³⁶ Vitor Sorano and Felipe Néri, 'Bolsonaro e Damare Trocam Integrantes Da Comissão Sobre Mortos e Desaparecidos Políticos' (*G1 - Política*, 1 August 2019) <<https://g1.globo.com/politica/noticia/2019/08/01/bolsonaro-e-damare-trocaram-integrantes-da-comissao-sobre-mortos-e-desaparecidos-politicos.html>> accessed 5 August 2020 (author's translation).

⁴³⁷ Guilherme Mazui, "'Você Acredita Em Comissão Da Verdade?'," Diz Bolsonaro Sobre Mortes Na Ditadura' (*G1 - Política*, 30 July 2019) <<https://g1.globo.com/politica/noticia/2019/07/30/acredita-em-comissao-da-verdade-diz-bolsonaro-ao-falar-sobre-morte-de-pai-de-presidente-da-oab.html>> accessed 5 August 2020.

the effects of *Bolsonarismo* and the military in power are showing to be not only detrimental to transitional justice efforts but to democracy itself. This far-right populism order also inaugurated an unprecedented wave of autocratisation since Brazil's transition to democracy happened in 1985.

4.4 A PAST AHEAD: AUTOCRATISATION IN BOLSONARO'S BRAZIL

The democratic setbacks happening in different countries in the world seem now a 'global challenge'.⁴³⁸ This recent wave of autocratisation, including countries affected by far-right populism such as Hungary, Poland, Turkey and Brazil, makes scholars agree on at least one key issue: democracies nowadays 'erode gradually and under legal disguise',⁴³⁹ making the occurrence of any sudden democratic breakdown, such as military coups, rarer.⁴⁴⁰

Even if the literature on the topic still lacks consensus on how to frame and conceptualise this phenomenon, descriptions such as autocratisation,⁴⁴¹ deconsolidation⁴⁴² or democratic backsliding⁴⁴³ all focus on democratic recessions that lead a regime towards more autocratic forms of organisation. Moreover, they all acknowledge that this process happens in a gradual diminishing of democratic traits of regimes.⁴⁴⁴ Bermeo, for instance, coined the term 'executive aggrandizement' to illustrate the process in which, through democratic representation, those elected start 'undertaking a series of institutional changes that hamper the power of opposition'.⁴⁴⁵

V-Dem (Varieties of Democracies), in their 2020 report entitled 'Autocratization Surges – Resistance Grows', classified Brazil as one of the countries with the most significant decay in the Liberal Democracy

⁴³⁸ Anna Lührmann and Staffan I Lindberg, 'A Third Wave of Autocratization Is Here: What Is New About It?' (2019) 26 *Democratization* 1095, 1095.

⁴³⁹ *ibid.*

⁴⁴⁰ Nancy Bermeo, 'On Democratic Backsliding' (2016) 27 *Journal of Democracy* 5, 7.

⁴⁴¹ Lührmann and Lindberg (n 438).

⁴⁴² Roberto Stefan Foa and Yascha Mounk, 'The Signs of Deconsolidation' (2017) 28 *Journal of Democracy* 5.

⁴⁴³ Bermeo (n 440).

⁴⁴⁴ Lührmann and Lindberg (n 438) 1099.

⁴⁴⁵ Bermeo (n 440) 10.

Index (LDI) in the last decade.⁴⁴⁶ However, a closer look at the specific data on the country shows how the LDI went down, especially after the 2013 June demonstrations, the impeachment in 2016 and, more prominently, after Bolsonaro's election. The effects of the *Bolsonarismo* and the military in power are already evident, with constraints in the media, civil society and civil liberties.⁴⁴⁷

The gateway for this autocratisation wave was the ascension of this specific kind of far-right populism that also brought the military back to the central stage of Brazilian politics. While it is more plausible to say that Bolsonaro was elected despite his extreme and revisionist views on the military dictatorship,⁴⁴⁸ the fact that he was elected even though publicising such views, plus the acceptance by Brazilians of the role that the military plays in his government, can tell a lot about how ineffective transitional justice was in Brazil.

Through the lens of transitional justice, it is possible to argue how having a more complete and robust transitional justice process helped countries like Argentina and Chile to develop a better-shaped memory of their authoritarian past and the human rights violations that happened in that period.⁴⁴⁹ These countries, utilising transitional justice measures, produced informal political barriers that would prevent the militarisation of their governments, even through democratic ways, like what happened in Brazil.

Brazil stands apart when compared to other countries in Latin America concerning transitional justice activity. These countries have not only created truth commissions earlier but generally also promoted deep reforms in their judiciary and armed forces, revised their amnesty laws and prosecuted members of their armed forces.⁴⁵⁰ The most assertive measure adopted by Brazil was the NTC, which not only came too late – more than 25 years after the transition to democracy – but also failed to see its recommendations being implemented. Atencio argues

⁴⁴⁶ V-Dem Institute, 'Autocratization Surges - Resistance Grows. Democracy Report 2020' (March 2020) <www.v-dem.net/media/filer_public/dc/39/dc39af54-0bc5-4421-89ae-fb20dcc53dba/democracy_report.pdf> accessed 5 August 2020.

⁴⁴⁷ *ibid.*

⁴⁴⁸ Atencio (n 428) 68; Luca Manucci, *Populism and Collective Memory; Comparing Fascist Legacies in Western Europe* (Routledge 2020) 171.

⁴⁴⁹ Anthony W Pereira, *Political (In)Justice: Authoritarianism and the Rule of Law in Brazil, Chile, and Argentina* (University of Pittsburgh Press 2005).

⁴⁵⁰ Pereira, 'Progress or Perdition? Brazil's National Truth Commission in Comparative Perspective' (n 393) 156–58.

that if the recommendations of the NTC were applied decades earlier, the dictatorship nostalgia in Brazil would find a more inhospitable atmosphere to thrive.⁴⁵¹

This military participation in a democracy would not be possible in countries with a more negative view of their armed forces, such as Argentina or Chile. The controlled transition by the military in Brazil, along with the lesser number of casualties, allowed then to keep prestige within the post-authoritarian Brazil. Data from *Latinobarómetro* in 2018, concerning the confidence in the armed forces, illustrate how the military in Brazil, different from the other countries in the southern cone, was still trusted by the population even after the dictatorship years.⁴⁵² According to the Datafolha institute, in a poll in June 2019, the armed forces are the most trustworthy national institution, being the political parties the least.⁴⁵³

Simultaneously, the literature on transitional justice also shows how it can impact regime consolidation.⁴⁵⁴ Brazil, even though reaching satisfactory levels of democratisation until 2017,⁴⁵⁵ had left itself, by not dealing properly with its past, more prone to the kind of autocratisation that has been deepening since 2013, or is more prominent since Bolsonaro's election.

In 2009 only 12% of Brazilians said they were 'not at all satisfied' with democracy in their country. This number, not more than a decade later, in 2018 was 46%.⁴⁵⁶ The disenchantment with democracy, and the political system overall, when added with the trust in the military, paved the way, among other relevant factors, for this specific and extremely dangerous to democracy type of radical right populism.

The failed politics of memory during the delayed implementation of transitional justice in Brazil evidences how the process of transitional justice can (when well performed) present a shield against authoritarian

⁴⁵¹ Atencio (n 428) 71–72.

⁴⁵² 'Latinobarómetro 2018' <www.latinobarometro.org/latOnline.jsp>.

⁴⁵³ Guilherme Magalhães, 'Confiança Nas Forças Armadas Segue Como a Maior, Diz Datafolha; Nos Partidos é a Menor' (*Folha de São Paulo*, 10 July 2019) <www1.folha.uol.com.br/poder/2019/07/confianca-nas-forcas-armadas-segue-como-a-maior-diz-datafolha-nos-partidos-e-a-menor.shtml> accessed 5 August 2020.

⁴⁵⁴ Anja Mihr, 'Regime Consolidation through Transitional Justice in Europe: The Cases of Germany, Spain and Turkey' (2017) 11 *International Journal of Transitional Justice* 113.

⁴⁵⁵ Scott Mainwaring and Fernando Bizzarro, 'The Fates of Third-Wave Democracies The Fates of Third-Wave Democracies' (2019) 30 *Journal of Democracy* 99.

⁴⁵⁶ For comparison, in 2018 when asked the same question Argentinians and Chileans pooled 26.4% and 9.3% respectively, see 'Latinobarómetro 2018' (n 452).

revivals. That is not to say that it would turn Brazilian democracy immune to the far-right populism, and the dangers it represents is a global challenge. Nevertheless, it can be said that it would not allow certain kinds of populism to flourish in the political scenario. The proper implementation of transitional justice could create a scenario where Bolsonaro, a former member of military that praises the dictatorship, becomes an unviable vessel for this kind of political trend.

CONCLUSION

‘Gradually, then suddenly.’⁴⁵⁷ This is how Bolsonaro’s far-right populism conquered Brazil and brought the military back to the central stage of politics more than 30 years after the dictatorship had ended. Brazilian democracy now faces its greatest challenge since the democratisation in 1985.

This research argued that Bolsonaro’s far-right populism, which is marked by the militarisation of Brazilian politics, found success in Brazil partially because of the delayed implementation of transitional justice in the country, which prevented Brazilians from creating a collective national memory about the 1964-85 dictatorship.

The political turmoil that has taken place in Brazil since 2013 that led to the surprising election of Bolsonaro in 2018 is a phenomenon without full explanations yet. This dissertation contributed to the construction of such an explanation by evidencing how a proper reckoning of the authoritarian past in Brazil would strengthen its democratisation. In this sense, the victory of far-right populism and the dictatorship nostalgia in Brazil is directly related to the process of transitional justice in the country.

The negotiated transition to democracy and the legal façade of the military regime are still significant obstacles to the adoption of transitional justice by the Brazilian state. Moreover, the persistence of the 1979 Amnesty Law greatly delimited the transitional justice experience in Brazil to an extensive reparation programme, while truth-seeking initiatives lagged for decades and struggled to share their

⁴⁵⁷ As a famous quote by Ernest Hemingway in the *The Sun Also Rises* (Charles Scribner’s Sons 1954) 136.

findings with significant outreach and no state agents were brought to justice.

The Worker's Party administrations (2003-16) represented a shift in the transitional justice in Brazil where the reparation commissions were expanded and re-oriented to truth-seeking and memorialisation. The 2011 truth commission is the most significant symbol of this new state-led approach. Nevertheless, it faced similar problems and was ultimately unable to promote justice for the victims of the dictatorship or have a game-changing role in the politics of memory.

The transitional process in Brazil failed to be truly inclusive to its population and to promote democracy itself. The effects of this failure in the politics of memory are seen now with an unprecedented process of autocratisation under a democratic regime. The transitional justice experience in Brazil was unable to form a shared understanding of the past and proved itself too fragile and dependent on a specific political scenario to thrive.

Thus, the Brazilian case can be a significant one to the discussion of the relationship between transitional justice and the politics of memory. While there is still no definitive consensus on if dealing with the past is always the better way for societies to make sense of their authoritarian past, at least in Brazil, the option for amnesia showed in the long-term a significant fragility in its process of democratisation.

In this sense, this research argues that a robust, thorough and holistic implementation of transitional justice measures can create an immunity barrier to authoritarianism revivals, especially in the case of Brazil, where the polarisation of its politics in 2018 echoed the scenario of 1964 that preceded the coup by the armed forces. Further research questions can be dedicated to exploring how countries that adopted similar transitional justice strategies as Brazil, such as Spain, may be fated to the same challenges that having an unresolved past brought to the Brazilian democracy.

At the end of the first year of his term, Bolsonaro had the worst evaluation of all the elected presidents since democratisation, with 32% of the population approving his government,⁴⁵⁸ which was enhanced

⁴⁵⁸ Daniel Marcelino, Fábio Zambeli and Lucas Helfstein, 'Bolsonaro Tem a Pior Popularidade Entre Presidentes No Primeiro Ano Desde 1987' (*JOTA Info*, 4 October 2019) <www.jota.info/dados/aprovacao-dos-presidentes/bolsonaro-tem-o-pior-primeiro-ano-04102019> accessed 5 August 2020.

by the country's poor economic performance (linked with a series of austerity measures), a series of diplomatic crisis and the involvement of the Bolsonaro family in corruption scandals. During this political crisis, Eduardo Bolsonaro, federal congressman and son of the president, said that a moment of rupture is coming. In his words, 'it is not a matter of "if" but "when" it is going to happen'.⁴⁵⁹ Previously, he had already mentioned that a 'new AI-5' could be introduced 'if the left radicalises to that point'.⁴⁶⁰

The pact for amnesia that marked the Brazilian transition proved itself to be particularly dangerous to the democracy in the country in the long-term. The authoritarian past resurfaced in the public sphere used as a political tool by far-right populism, which is thriving to the detriment of democracy itself. Under the horizon of fast autocratisation, Brazil is fighting not only for its present but also for its past.

⁴⁵⁹ G1, 'Eduardo Bolsonaro vê "momento de Ruptura" e Cogita Adoção de "Medida Enérgica" Por Presidente' (*G1 - Política*, 28 May 2020) <<https://g1.globo.com/politica/noticia/2020/05/28/deputado-eduardo-bolsonaro-cogita-necessidade-de-medida-energica-do-presidente.ghtml>> accessed 6 August 2020.

⁴⁶⁰ Henry Austin, 'Bolsonaro's Son Criticised for Suggesting Brazil's Government Adopt Dictatorship-Era Tactics' (*The Independent*, 1 November 2019) <www.independent.co.uk/news/world/americas/brazil-jair-bolsonaro-far-right-eduardo-bolsonaro-military-dictatorship-a9180256.html> accessed 6 August 2020.

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The present thesis - *When Forgetting Is Dangerous: Transitional Justice, Collective Remembrance and Brazil's Shift to Far-Right Populism* written by **Eduardo Monteiro Burkle** and supervised by Alice Panenpinto, Queen's University, Belfast - was submitted in partial fulfillment of the requirements for the European Master's Programme in Human Rights and Democratisation (EMA), coordinated by Global Campus Europe.



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