

Chapter 4

Echoes from Brazil

Echoes from Brazil: Remembering to Forget¹

Tamara Amoroso Gonçalves is a PhD candidate in the Law and Society Program at the University of Victoria and a Fellow at the Centre for Global Studies. She is also a research associate at the Simone de Beauvoir Institute in Montreal (Concordia University). Her research focuses on the gender dimension of the disputes regarding Brazilian consumer law, which defines discriminatory advertising as illegal. She has been part of the Brazilian feminist movement for 14 years through national and international networks (CLADEM/Brazil and Rede Mulher e Mídia). She also worked for the Brazilian Federal Government with consumer national public policies and with non-governmental organizations engaged with human rights.

Introduction

Societies decide if and how to memorialize traumatic events in different ways. In some cases, the prospect of overcoming a particularly difficult time eclipses the fight for keeping the memory of such traumatic events, which might affect the possibilities of seeking the truth and punishing perpetrators of human rights violations. In others, even if memorialization processes take place, deep reflections on how to prevent future tragedies are not always part of them. Brazil had negotiated a transition from the latest authoritarian regime, which started in 1964, to a

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democratic one in 1985. The price paid for this negotiation was silence regarding the atrocities perpetrated by the military, accompanied by what I am calling a set of intended efforts to forget. This negotiation included an amnesty law that benefits perpetrators, established in spite of all international human rights recommendations.

In this chapter, I present and explore the connections between this negotiated transition with memorialization processes in Brazil, relating such discussions to my experiences during the summer field school on *Narratives of Memory, Migration, and Xenophobia in the European Union and Canada*. Starting by connecting the course experience with my own and a general overview of the Brazilian transition into democracy, I justify the pertinence of this study. Next, I briefly go over the historical and political conditions leading to the negotiation and approval of the Brazilian *Amnesty Law*, in which I highlight some aspects of the law that can be helpful in understanding the current challenges to Brazilian democracy. From a constitutional standpoint, I describe this process of negotiated transition from dictatorship to democracy, exploring how the amnesty law failed to punish perpetrators of human rights violations during the military regime. I argue that both the amnesty law and the context of “authoritarian legalism” that prevailed during the dictatorship profoundly marked the birth of the subsequent democratic Brazilian period.

I then present a short discussion on challenges related to the memorialization of the dictatorship in Brazil, a process that can be considered an example of institutionalized forgetting. I propose that even after the establishment of a democratic legal framework, the intentional lack of memorialization has affected the way democracy is experienced in Brazil and has imposed challenges to human rights enforcement. I conclude with my personal reflections, relating the process of institutionalized forgetting in Brazil and the experiences from the field school. I argue that the lack of accountability, together with the efforts to erase memories of these traumatic events, bring significant challenges to the post-dictatorial period.

Why Include a Chapter about Brazil?

At first, this chapter might seem out of place in a publication about *Narratives of Memory, Migration, and Xenophobia in the European*

Union and Canada, since my discussion is focused on how the negotiated transition from dictatorship to democracy affected the development and strengthening (or lack thereof) of democracy in Brazil. But being from Brazil and taking part in the field school brought up for me many questions about memories of the dictatorial periods in Brazil. Even though the focus of the course and this follow-up publication is on Europe and Canada, I believe that experiences from the global south can enrich the debates around memorialization or institutional forgetting of traumatic events. Brazil has its own particularities within Latin America, but the imposition of dictatorships in South America share similarities, such as an ideological foundation rooted in the threat of a left insurgency (Htun 2003, 19), an aim to push for economic growth, the violent repression of opposition to the military regimes, and challenging processes of transitional justice.

Participating in the summer field school allowed me to experience places (Budapest, Hungary; Ravensbrück, Germany; and the Memorial Site of Les Milles Camp, France) that held traumatic memories in different ways. While Budapest residents have competing memories regarding the Second World War and Hungary's role in it; Ravensbrück, being a former concentration camp, ostensibly addresses and discusses the surrounding community's role in the establishment of the camp. Lastly, Camp des Milles was an internment camp established in a brick factory. After the end of the war, the factory resumed its activities, and it was due to pressure from the public that a museum was created. It was public pressure that made it possible to expose and preserve the memory of the internment camp.

After experiencing how societies in these places dealt very differently with memories, I questioned how Brazilian society interacts with the memories of the 1964 dictatorship. The questions I had related to both my everyday experience as a Brazilian citizen and my work as an activist. I studied at a university that was a centre of resistance against the regime, but there is little information about this resistance on campus. Many of the streets of the city that I am from are named after generals who were engaged in torture and other human rights violations, something that has just recently been recognized as a problem. I felt that memories from the period are sustained by the victims' family members and survivors, almost like oral stories. Of course, these people started movements invoking memory and truth-seeking; they organized into associations; and collectively and individually are pushing for preserving the memory of how the dictatorship affected Brazilian society and people's lives. But

what was happening on the State level? Why was there so little effort to preserve or to problematize such memories?

As a human rights activist, I encountered many discussions about the right to know the truth regarding violations that occurred during the Brazilian military regime. But it was the summer school experience that forced me to re-think the spaces and practices of my birth country, looking at them from a different angle. I felt an urge to reflect on the experiences from the field school, relating them to my own work and the recent history of Brazil.

Remembering to Forget: The Negotiated Transition as a “Safe” Alternative to Establishing a Democracy in Brazil

In this section, I briefly discuss the processes of memorialization or intentional and institutional forgetting, followed by an overview of the transition into democracy from the latest authoritarian regime in Brazil. My analysis includes information on the establishment and challenges of a National Truth Commission [Comissão Nacional da Verdade].

Memorialization is the process of creating public spaces, whether physical or in time, to remember particular events from the past. Such spaces are known as public memorials and are often institutionalized by pressure from organized civil societies after periods of traumatic violence in contexts of transitional justice. In fact, some see such memorialization processes as central for transitioning into democracies after dictatorial periods or other violent events:

“Sites of Conscience” seek to tap the power and potential of memorialization for democracy by serving as forums for citizen engagement in human rights and social welfare. Using deliberate strategies, public memorials can contribute to building broader cultures of democracy over the long term by generating conversations among differing communities or engaging new generations in the lessons of the past. Proponents of memorials contend that dealing with conflictive pasts is an essential component of the construction of national identity based on human rights and human dignity, and such initiatives can make a

Memorials sometimes constitute reparation measures determined by international human rights courts, commissions, or special rapporteurs. In such cases, creating memorial sites is part of a public process to restore the dignity and reputation of victims and family members, but also to guard against the repetition of the violence that is memorialized — standing as a collective reminder and keeper of the memories of the victims. Memory processes and memorials are embodiments of “the right to truth” that has been debated in many cases in international human rights law, particularly related to human rights atrocities committed during violent regimes as is the case with Latin American dictatorships.² A recent report from the United Nations Working Group on Enforced or Involuntary Disappearances on its mission to Peru established that: “Remembrance processes can repair the torn fabric of society and encourage reconciliation among its members, by acknowledging and reconciling their memories” (2016). In short, memorial sites are seen as an opportunity to engage the public in meaningful conversations about the past and ways to move forward after traumatic events.

Often, memorial sites stand as recommendations of truth commissions and successor trials as ways to process and deal with the past, while trying to prevent mass atrocities in the future. The establishment of such memorials can be controversial, and which stories get to be told and which get silenced is a disputed topic: “the ability to remember, to speak of or to commemorate one thing may implicitly be predicated on the ability to keep silent on others. Needless to say, many of these silences and exclusions are far from benign and often reflect real desires to mute certain aspects of the past in order to (re)present its other aspects in specific ways, often more favorable to those in power. In this sense, the narration of certain memories and the silencing of others can oftentimes be conceptualized as the attempts of those with power to set the limits on what is speakable or unspeakable about the past” (Vinitzky-Seroussi and Teeger 2010).

On this matter, Ruth Teitel (2000) explains:

2 The right to truth has been much discussed in the Inter-American System of Human Rights in paradigmatic cases such as *Velasquez Rodriguez vs. Honduras* (1998), *Barrios Altos v. Peru* (2001), along with many others that discuss enforced disappearances in Latin America.

Criminal justice offers normative legalism that helps to bridge periods of diminished rule of law. Trials offer a way to express both public condemnation of past violence and the legitimization of the rule of law necessary to the consolidation of future democracy. Successor criminal justice is generally justified by forward-looking consequentialist purposes relating to the establishment of the rule of law and to the consolidation of democracy. (30)

Traditionally, this idea of purging and of seeking justice regarding gross human rights violations in repressive moments is often seen as a necessary step in moving forward and building a new or more democratic regime.

Teitel discusses extensively processes of transitional justice and how postwar trials started to be discussed and used beyond the postwar contexts to address past political violence and move into non-repressive, democratic regimes. Such trials were used to establish a divide between the two regimes, delegitimizing the predecessor regime and legitimating the new order (2000). Dornelles (2014) argues that in Brazil, as in other contexts, when societies do not deal with the past, the result is that human rights violations from the past (authoritarian regimes) are repeated and perpetuated in the present (democratic period). When the past is silenced or consistent efforts are made to forget what happened, such human rights violations become part of the social structures and the culture of a given society, leading to a naturalization of violent practices (324-25). The silence surrounding the dictatorship and its violent practices might be connected to the extensive and profound violence that permeates Brazilian society.

Brazil had other periods of non-democratic regimes, like the Vargas government which lasted from 1930 to 1945 (Fausto 2008), but my focus here is on the dictatorship that was imposed by the army from 1964 to 1984. The Brazilian dictatorship was different in many ways from other countries in the region. From a legal standpoint, the military regime in Brazil was imposed through a “façade” of legality. For example, for most of its 21 years, the Congress and the judicial system continued operating — severely controlled by the military, but still functioning, simulating a democratic ambient (Power 2018, 229, 250). While the Congress was controlled by the regime, the courts were largely composed of judges who supported the dictatorship. The latter meant that courts, instead of repealing the violent measures or the crimes sponsored by the State,

were, in most cases, validating them. Enforcing the abusive measures imposed by the regime was possible because the army gradually changed the laws, keeping human rights and due process at the margin of the procedures undertaken by courts.

According to Marcelo Torelly (2018):

the judicial branch of the government in Brazil strongly supported the *coup d'état*; courts applied authoritarian legality with very few restrictions; and broad cooperation was established between civil and military justice. Moreover, the Brazilian regime managed to control the political system instead of breaking away from it. Congress functioned during most of the military's rule, and elections were held on a regular basis despite the introduction of several reforms related to the electoral process. (196)

One consequence of being under strict control of the army but having the democratic institutions formally operating meant that repression was exercised by State agents with the courts' support, resulting in an ambience of authoritarian legality (Htun 2003, 20).

Despite strong opposition on the part of civil society, the transition into democracy was led by the Army, in a negotiated process for changing the political regime (Power 2018, 229). Being conducted by the state actors in power ensured that such transition was "safe," in a sense that it did not involve the society more broadly but started from an initiative from the officials in power and happened partially on their terms. The resistance to reviewing the crimes committed during the dictatorship and the denial of the similarities to today's practices is related to the way the transition to a democratic regime happened in Brazil: it was a negotiated transition (Koerner & Assumpção 2009; Reis 2010; Paganotti 2015, 37, 149), but a negotiation made by the military that pushed for an amnesty law that benefitted perpetrators. In Brazil, against all international recommendations regarding transitional justice, amnesty was extended to the State agents who were perpetrators of torture and forced disappearances (Tosi, Pessoa de Albuquerque e Silva, and Abrão 2014, 42). An amnesty law that applies for everybody indistinctly means that State agents who sponsored or inflicted gross human rights violations during the regime were never punished and probably never will be. Self-amnesty was the price the army imposed to grant a "slow, gradual and safe" transition to democracy (Tosi, Pessoa de

Albuquerque e Silva, and Abrão 2014, 42). As a consequence, there was no accountability for the wrongdoings of the previous regime, leading to many questions and challenges regarding the right to truth, memory, and consolidation of a democratic order (Power 2018, 250). Not completing the process of transitional justice and without proper accountability for the wrongdoings of the period, the subject became more and more silenced and obscured in an intended effort to forget this period of Brazilian history (Dornelles 2014, 324).

The way this transition was accomplished brought many challenges to the post-dictatorial order, since at the core of this process was the approval of an amnesty law that could be equally applied to State agents and citizens. The lack of accountability of State agents who promoted gross human rights violations was key to perpetuating violent State practices and sustaining the widespread idea (even if not accurate) that the dictatorship was less severe than in neighbouring countries, such as Argentina and Chile (Abrão and Torelly 2014, 83). Even if the numbers from Brazil might not be as shocking compared to other countries in the region, this impression of a not-so-strong repression might be more linked with particularities of the Brazilian dictatorship, like the “façade of legality” and the way the transition into democracy happened than to an actual less violent repression.

Brazil delayed the process of revisiting the wrongdoings of the military regime. While Argentina and Chile created truth commissions right after the end of the authoritarian regimes, Brazil’s National Truth Commission, as an effect of the negotiated transition, came only in 2012. In establishing a truth commission, Brazil had the opportunity to: i) acknowledge the gross human rights violations perpetrated by the Army and ensure reparations to victims and their family members; ii) punish the State agents responsible for such violent acts, which meant revisiting the 1979 Amnesty Law and breaking with the controlled narrative about the regime imposed by the Army and negotiated with the transition; and iii) recover truth and memorialization processes, amplifying knowledge about the dictatorship broadly within society (Tosi, Pessoa de Albuquerque e Silva, and Abrão 2014, 45).

Efforts to create a truth commission before 2012 always had a limited effect due to the presence of the Army’s representatives in the Commissions. The 2012 Commission was the first one to be established with no representatives from the Army, making it independent of the armed forces’ “informal veto power” (Torelly 2018, 202). Brazil’s Third National Plan for Human Rights (PNDH3), launched in 2010, had

explicit guidelines (recommendations 24 and 25) regarding the right to memory and truth related to the dictatorship, including recommendations to investigate and make public the human rights violations committed during the dictatorship (República 2010). Such guidelines would be implemented by a National Truth Commission, a body that should be established by the State, according to the Brazil's Third National Plan for Human Rights.

Following the PNDH3's recommendation, the Brazilian State started discussing the creation of a National Truth Commission, not without facing broad controversy and criticism. Reactive and conservative groups, mostly supported by the Army, were against reopening the discussion on the dictatorship, arguing it would be harmful to the Brazilian democracy and that the past should be left to the past. Members of the Army and of the Aeronautics positioned themselves against the creation of such a Commission. The heads of both organizations threatened to leave their positions and insisted that revisiting the dictatorial period would cause harm to society by bringing instability to democratic rule. According to them, the recommendations related to the National Truth Commission would risk peace in Brazilian society achieved through the approval of the amnesty law (Quero 2010). As the government pushed for the establishment of the Commission, acting to implement one of the PNDH3's recommendations, massive and controversial public discussions on the issue took place in the Brazilian newspapers through opinion articles and news on the topic, broadening the debates beyond groups traditionally involved in the issue, such as victims and the Army. The creation of the National Truth Commission was possible after an intense process of negotiation with multiple sectors of the society, including the Army. In 2011, a law was passed defining the role and the mandate of the Commission (Law 12.528/2011) that was implemented the following year.

In 2012, the National Truth Commission faced many challenges, including varying expectations from different social groups and representatives appointed to conduct the truth-seeking work. While human rights and social movement activists, victims, and victims' family members expected accountability for the wrongdoings, conservative groups expected the work of the Commission to "end the transitional process and close the books" (Torelly 2018, 204). As expected, the Commission frustrated the expectations of both sides, but it marked a rupture in the "informal veto power" previously exercised by the Army over the narratives regarding the regime (Torelly

2018, 210). When the Commission decided to exclude investigations about crimes committed by “both sides” (military and civilians), it opened the possibility of reviewing and re-discussing the narrative that the military’s intervention and abuses were necessary in order to deal with the supposed communist threat or the violent acts of civilians.

The possibility of breaking from this narrative and acknowledging that the army committed human rights atrocities might seem trivial, but in reality it marked a huge change in the Brazilian narrative, representing a rupture in the army’s informal veto power over the political narrative. According to Torelly:

Unlike the Argentine and Chilean cases, in which truth commissions were formed soon after democratization, the Brazilian National Truth Commission played a different role in a different scenario. Its first main accomplishment was not to report new facts but to assemble everything that was already known in a systematic way, thickening the narrative with testimonial evidence and legitimizing an account of evidence that the regime had mostly tried to cover up. (Torelly 2018, 211)

The work of the Commission also pointed to the future and the process for stabilizing a democratic regime, by making suggestions on how to improve democracy and promote human rights, both in society more broadly and within the courts. One of the alarming conclusions in one of the three reports of the latest Commission is that the Brazilian police continue to operate in a similar way to how they operated during the dictatorship. Therefore, there is a continuity of many of the illegal practices, such as illegal detentions, torture, and forced disappearances. The report also suggested structural changes in the operational mode for the police (Carlos Dias et al. 2014, 2.784, 2.816-818).

Because I am interested in how the intentional lack of memory is related to the current challenges of Brazilian democracy, the next section takes a deeper look into how the new constitutional³ order is

3 Brazil had six Constitutions before the 1988 one was approved (1824, 1891, 1934, 1937, 1946, 1967). Some of them marked the beginning of a democratic order, some of them the establishment of a state of exception. The 1988 Constitution is known as a document that establishes a new legal order in Brazil and therefore creates a new state, grounded on the rule of law, as opposed to the previous period where the Brazilian legal system was marked by the abusive norms imposed by the dictatorship through the Army directly or through the

challenged by the persistent lack of memory and the continuity of authoritarian practices and its relation to an inappropriate amnesty law.

The 1988 Constitution: A Landmark in the Legal Transition to Democracy

As this chapter discusses the lack of processes for memorialization and challenges to Brazilian democracy, with the amnesty law as the core of the intended efforts to forget, I think it is useful to better understand how the transition from dictatorship to democracy happened from a legal standpoint. This section presents some aspects of the new constitution and briefly discusses the discrepancies between the constitutional standards and the perpetuation of the State's violent practices in the present.

From 1984 and 1985 on, the military regime faced growing opposition and challenges to being in power. After being under strict surveillance and control by the Army, Brazil started to gradually be more open to influences of social movements and things that were happening in other countries. In short, the Army's ability to control the traffic of information, the economy, and people's lives was gradually reduced (for multiple reasons) and a slow transition to a democratic regime was led by the regime. By that time, a myriad of social movements called for a new constitution that included a human rights and social justice framework (Htun 2003, 124; Carvalho 2004, 206; Brandão 2011, 80; Santos 2014, 205), in opposition to the exception state rules that were prevailing during the dictatorship. Approving the 1988 constitution was a massive democratic process, engaging society through interest groups and social movements (Carvalho 2004, 199), and established a new and democratic legal framework for the country.

The approval of this constitution is also an important reference on how social movements got organized to push for changes in Brazil. Due to the context of violent repression imposed by the Army during the dictatorship, social movements tended to converge in fighting the regime. After the transition into democracy, the multiple social movements that were first engaged in fighting the dictatorship began acting in a more focused way, pushing for their own individualized

Congress, which was subservient to the Army.

agendas. The discussion of the new constitution engaged the society massively and groups like the feminists, the consumer rights and environmental activists, for example, started fighting for specific prescriptions on the constitution regarding their interests (but so did other sectors such as the economic market, agribusiness, etc.) (Rocha 2008, 135–36), amplifying society's ability to contribute to public policies (Rocha 2008, 135–36). Such activism resulted in the 1988 constitution having the most comprehensive bill of rights, encompassing civil and political, economic, social, and cultural rights, as well as protection for vulnerable social groups such as children, youth, and elderly people. There are many examples that could be pointed out regarding the direct influence social activism has had on the constitutional provisions, and one of them refers to the feminist movement. As result of the women's and feminist activist movement known as the "Lipstick Lobby," equality between men and women was established as a fundamental right (Htun 2003, 125; Blay 2017, 88; Brandão 2011, 95, 125, 138–39, 164). Civil rights protections were also maximized (Carvalho 2004, 209), for example as consumer advocacy groups were able to define consumer rights as fundamental rights (Sodré 2007, 16, 147, 165).

The social trauma caused by the military regime also marked this moment of the creation of this new constitution as one of maximization of all forms of freedom and the search for consolidating the protection of constitutional rights. The Constitution of the Federative Republic of Brazil (*Constituição da República Federativa do Brasil de 1988*), also known as the 1988 constitution or the citizenship constitution, defined procedures for passing laws and constitutional amendments; indicated the federative sharing of power and competencies amongst the federative units; organized the state duties towards citizens, as well as the principles for running the public administration; established the structures required for the activities conducted by the executive, legislative, and judiciary (and the limits to each of these institutions); and declared fundamental and social rights. This constitution differs from previous ones in many ways, but a relevant singularity is that it places fundamental rights at the beginning of the text, indicating that human rights are central. The entire constitutional text has 250 articles. Regarding fundamental rights, the constitution presents a division between individual (article 5), collective, and social rights (articles 6 to

11). Social rights were amplified (Carvalho 2004, 206) and also the constitution universalized the right to vote (Carvalho 2004, 200).⁴

Article 5 presents a long list of fundamental rights (78 sub-articles and 4 paragraphs⁵) and concentrates on describing all individual and collective rights such as rights to: life, equality before the law and equality between men and women, access to justice, due process of law, interdiction of torture and other cruel, inhumane, or degrading treatment or punishment, and others. Article 5 is complemented by international human rights treaties ratified by Brazil.⁶ Although the constitution defines an openness for international human rights treaties as an extra protection for Brazilian citizens, the Brazilian courts tend to resist implementing such treaties and show little room for incorporating these rights into judicial rulings (Torelly 2018, 214).

The constitution is an important milestone in the process for re-establishing democracy in Brazil, but many practices from the authoritarian regime were not eradicated simply by the change of the legal structure. For example, a similar structure and practices employed during the military regime were brought into the military police. The latter is focused on repressing illegal practices and ostensive patrolling, instead of focusing on preventive actions and tactics. The ideology of national security, and the image of citizens as potential terrorists and a risk to the State, were borrowed from the dictatorship and are deeply ingrained into the structure and practices of the military police in Brazil, making the police quite hostile to human rights values (Paz 1985; Lopes, Ribeiro, and Tordoro 2016; Adorno 1998; Bicudo 2000).

4 The 1988 Constitution allowed illiterate people the right to vote. It also determined that all citizens older than 18 years of age must vote; while voting became optional for people aged 16 to 18.

5 While a sub-article might present a specific topic related to the “head” (caput) of the article, the paragraphs present general information or guidance related to the scope of that specific article.

6 Paragraph 3 was added to article 5 in 2005, and it states that any human rights treaty ratified by Brazil and approved by the Congress following the procedure to pass an amendment to the Constitution is considered as a part of the Constitution and an extension of article 5. The approval of paragraph 3 had the intention of clarifying doctrinal debates in the legal community regarding the status of human rights treaties ratified by Brazil. But considering that most international human rights treaties were ratified before 2005, what is the legal status of these treaties in the Brazilian legal system? The dominant view, supported by the Supreme Court, is that human rights treaties have the same legal status as any other general federal law. I share the understanding of Flávia Piovesan (2013), who claims that due to the very special content and the high emphasis the Constitution puts on human rights, human rights treaties are, materially if not formally, part of the Brazilian Constitution.

Jessé Souza (2016) contends that historically Brazil has been a very violent society — as represented in social structures that permanently and consistently deprive one third of its society of basic goods and services, and outside the reach of the rule of law. He talks about violence in an economic and social sense — violence as a deprivation of dignity and human status in the society, and linked to long-standing social exclusion. If such violence has multiple aspects (economic, legal, moral), Brazil also deals with massive physical violence and violence against one's life. These two forms of violence are connected in Brazil, since ostensive violence directed at poor, racialized, and marginalized people is a reality in the country. As a legacy from the last authoritarian regime, institutional violence targeted poor and marginalized people, thus replacing political prisoners (Dornelles 2014, 324, 328). This led to mass incarceration rates and high numbers of killings by police forces.

According to a 2018 Human Rights Watch Report, in 2016, 4,222 people were killed in Brazil by the police, while 1,035 were killed by Rio de Janeiro's police between January and November 2017. Brazil has one of the highest incarceration rates, with 726,000 adults in detention (in 2016, facilities held 97% more inmates than they were designed for) and 24,000 youths in detention (juvenile facilities housing 24% more youth than they were designed for) (Human Rights Watch 2018). This alarming situation is mostly problematized by human rights activists and is not seriously addressed by authorities.

Many things might explain this mismatch between the legal framework, which establishes a democratic State in Brazil, and State agents' current practices. One of them might be the lack of accountability for the wrongdoings of the dictatorial period, and also the resistance to re-structuring police forces, which keep operating in similar ways to the exception periods.

Investigative methods based on violence, torture, etc. are still a common practice for the police in Brazil (Quadros 2014; Fellet 2014), something that the First Report on the Truth and Commission pointed out as an obstacle to democracy in Brazil. Indeed, the Report identifies that abusive and violent practices commonly adopted during the dictatorship are still happening in Brazil; and amongst other initiatives it suggests: reforming the police forces to break its connections with the armed forces (recommendation 20); establishing mechanisms to promote the memory of the gross human rights violations committed during the dictatorship, such as the creation of a national museum for memory; and marking urban landscapes to identify where such viol-

ations occurred (recommendations 28 and 29) (Carlos Dias, et al. 2014, 2.784, 2.816-818). Therefore, persistent violent practices on the part of the Brazilian State challenge the establishment of the rule of law in the country, and also question the validity and efficacy of such rule of law (Quadros 2014; Fellet 2014; Carlos Dias, et al. 2014; Dornelles 2014, 324).

The Amnesty Law

As noted before, the amnesty law is a centre piece in the transition to democracy in Brazil. If this law allowed the country to end the dictatorship, it also blocked further debates on truth-seeking and reparation for the victims of the regime. I will now turn my analysis to this law and the debates it generated in Brazilian society, and then include a brief overview of how this issue has been discussed by the Inter-American Court of Human Rights.

The understanding that the amnesty law should be used to benefit perpetrators as well as victims of the regime is majoritarian in Brazilian jurisprudence. Even though the topic had been debated by different courts, in 2010 a decision by the Brazilian Supreme Court consolidated the understanding that the amnesty law applies to both citizens and state agents.

Law n. 6.683, approved on August 28, 1979, grants amnesty to all those who committed political crimes (or similar or related crimes) between September 2, 1961 and August 15, 1979. Equal amnesty is extended to all public servants, from all branches, including the Legislative, the Judiciary, the Executive, the Army, etc. (first article). Following such disposition, the law established that no amnesty will be granted to those who engaged in “terrorist acts, robbery, kidnapping and threats to individuals,” meaning that civilians engaged in these activities, often acting against the dictatorship, could not benefit from the amnesty law and should face punishment.

Unlike other amnesty laws in the region, which focus on the victims of the regime, the Brazilian law impedes the punishment of wrongdoings committed by State agents. The consequence of this law is the impossibility of holding military agents responsible for torture, forced disappearances, killings, etc. The absence of punishment also means that no investigation was or will be made, thus obscuring the truth about these events. Therefore, victims and family members have,

in turn, a hard time sustaining collectively the memory of what happened. These survivors and the families of the deceased individuals claim the right to know what happened to their family members who were illegally arrested and persecuted by the State. They are the ones pushing for changes in the interpretation of the law, and for reparation and truth seeking. These families have been sustaining the movement for truth-seeking in Brazil.

The federal branch of the Bar Association requested a review of the understanding of the amnesty law (Tosi, Pessoa de Albuquerque e Silva, and Abrão 2014, 50); and with a majoritary (7/2) decision, the Supreme Court judges decided that the law applies to perpetrators as well. One of the votes stressed the need “to forgive and to move on as a society.” This understanding stands in opposition to international treaties signed by Brazil and represents a continuing denial of the rights of victims and their families to know the truth and to have responsible State agents punished for their crimes.

On this matter, a recent decision (March 15, 2018) from the Inter-American Court of Human Rights regarding the case *Herzog and others vs. Brazil* condemns Brazil for maintaining this understanding about the amnesty law. This is a major case about illegal detention, torture, and death as a form of repression. Vladimir Herzog, the victim, was a journalist illegally arrested, tortured, and killed by State agents on October 25, 1975. The military claimed he committed suicide by hanging in his cell. His wife and other family members have been seeking reparation, including the reestablishment of the truth about what happened to him (that he was killed and not that he killed himself), and the punishment of the authorities in charge at the time.

On this historical decision, the Court found the Brazilian State responsible for violating Vladimir Herzog’s rights and the family members’ rights to truth and reparation. Amongst the multiple international obligations the Brazilian State failed to respect and protect, the Court pointed out that the crimes verified in the Herzog case are considered crimes against humanity and, therefore, cannot be subject to amnesty. The Court further stressed that Law n. 6.683/79 should not be an obstacle to investigating and punishing State agents responsible for such acts. One of the conclusions of the ruling is precisely that the Brazilian State cannot leave the crimes (which are crimes against humanity) committed by State agents during the dictatorship unpunished, and that the Brazilian amnesty law is contrary to international

obligations assumed by Brazil to protect and implement human rights (Humanos 2018).

Besides granting that no crimes would be punished, the Supreme Court's understanding (that the Amnesty Law benefits State agents responsible for human rights violations) supports a narrative that justifies State-sponsored violence as a necessary measure against violent actions taken by the citizens who opposed the regime, as well as the idea that such violence was justified to contain a supposed threat regarding a communist revolution. Giuseppe Tosi et.al (2014) indicate that the 1959 Cuban revolution inspired left-wing movements in Latin America, leading to radical solutions from elite and conservative forces to contain and avoid changes into socialist regimes in the region. (Tosi, Pessoa de Albuquerque e Silva, and Abrão 41). In Latin America, efforts to contain "the communist threat" resulted in the imposition of dictatorial regimes, with the brutal repression of opposition of any kind, and the suppression of fundamental rights and the democratic order. The idea that it was necessary to protect the country against such "communist threats" supported the establishment of a strong and centralized national system of control and vigilance (Gaspari 2014) and justified massive and systematic human rights violations, disguised as necessary actions to ensure "national security" and also order, progress, and development. This narrative was the ideological foundation for the military regime (Dornelles 2014, 327).

Lack of Accountability and Persistent Challenges to the Brazilian Democracy

It has been suggested that the transitional justice process in Brazil was incomplete (Tosi, Pessoa de Albuquerque e Silva, and Abrão 2014, 45), and that the amnesty law and the right to truth and memory were some of the main challenges that needed to be addressed in order to complete the transition to democracy.

In Brazil, important steps towards preserving the memory of the gross human rights violations perpetrated by the State during the dictatorship have been taken by civil society, particularly by organizations or groups formed by family members of victims, survivors, and human rights activists. For example, the *Tortura Nunca Mais* (Torture never again) organization started in 1979, when a group of lawyers and

activists decided to access State official documents from the dictatorship and illegally copy them. These documents related to the political prisoners and the procedures that took place within police stations, army headquarters, etc. It can be considered one of the first big efforts to collect, organize, and preserve the memories of the dictatorship. This group ensured that a copy of the 707 process employed by the military courts between 1964 and 1979 was preserved. They gathered more than one million pages, making two copies, one of which was sent abroad to ensure it would be kept safely (Tortura Nunca Mais n.d.).

In 2016, former president Dilma Rousseff was impeached by what many called a *coup d'état*. Demonstrating similarities to what happened in previous years in Paraguay and Honduras, Brazil suffered a parliamentary *coup d'état*. This is a controversial topic that requires deeper discussion, but what I want to address is that social protests related to such impeachment processes often counted on a persistent group of supporters — supporters who claimed military intervention.

Brazil had been experiencing a huge wave of protests, at least since 2013, when millions went to the streets against the idea of hosting the World Cup and against the raising of fares for public transportation. I remember that those who initially supported a military intervention were also present during these protests. Their presence became more evident over time, and increasingly difficult to ignore.

The political chaos insuflated by investigations of the “Operation Car-Wash” (*Operação Lava Jato*), and the corruption scandals it unveiled, led to massive demonstrations on the streets. Political debate became extremely polarized as part of the population called for Dilma’s impeachment and another part argued against it. Operation Car Wash also stimulated a wave of nationalism, with many movements against corruption being created and then spreading all over the country. If fighting against corruption seemed to be a good thing, the association of these movements with highly nationalist and right-wing movements also raised concerns. Demonstrations against corruption and pro-impeachment tended also to call for legalizing the individual’s right to carry weapons, and often, for military intervention. Preceding Dilma’s impeachment, and then right after it, a discourse of crisis took over Brazil. The fact that the country was immersed in a deep economic crisis was also used as a reason to push for impeachment — even if this was not one of the reasons allowed by the constitution for impeachment in Brazil. Impeachment is only justified in cases of intentional wrongdoings and crimes against the Brazilian State.

But Dilma's impeachment is also connected to our problematic and disputed memories in yet another way. According to the constitution, the impeachment request is decided by the lower house of the Congress, which analyzes whether the acts committed by the President justify removing the President from power. The final decision is taken by the Senate. When Dilma Roussef's impeachment was being voted on by the lower chamber, one congressman, Jair Bolsonaro, justified his vote by invoking Colonel Carlos Alberto Brilhante Ustra, who is known to be responsible for at least 50 deaths and more than 500 procedures of torture during the dictatorship, including the torture of the former president. Part of his vote reads: "In memory of colonel Carlos Alberto Brilhante Ustra, Dilma Roussef's horror, of the Caxias Army, in the name of Brazil and above all in the name of God, my vote is yes [yes to proceed the impeachment]" (Barba and Wentzel 2016; Falcão 2016).

The fact that a Congressman could speak in such a manner, praising an iconic figure of the dictatorship, in the place where representative democracy is practiced and receiving little criticism (except from human rights activists), can be seen as a paradox. It is paradoxical because it praises dictatorship using democratic tools (representative democracy), and also because it uses freedom of speech to reclaim a form of government that is known for suppressing freedom of speech. If freedom of speech is one of the pillars of democracy, dealing with such discourses might just be considered part of the democratic game. Even so, it is contradictory to make an apology for a repressive regime when advocating for freedom to express a particular opinion and exercise a democratic right (in this case, being a congressman and representing popular will). His vote is also problematic as it was mostly problematized by human rights activists and did not receive massive social criticism. Somehow, this lack of criticism suggests that the narratives of the memories of the dictatorship, from the standpoint of the victims of the regime, are not taken into account in public debates. Or, in other words, the army narrative is somehow still dominant, making declarations as the one made by Jair Bolsonaro normal, acceptable, and even praised by part of the population.

This whole situation (his vote, the naturalization of invoking a person who symbolizes torture, etc.) is only possible in a context where the memory of the dictatorship is constantly blocked or, as I argue, where intended efforts to forget are in place. Most striking, Jair Bolsonaro was elected the new Brazilian president on October 28, 2018 with 55.54% of the valid votes (Mazui 2018). Because Jair Bolsonaro is

openly in favour of torture, this topic came back to the debates during the presidential campaign. His opponent in the second round, Fernando Haddad (from the worker's party) produced a tv program explaining what torture is and interviewing Amelinha Telles, a woman who was tortured during the dictatorship of colonel Brilhante Ustra. She recalled the procedures that were inflicted on her and how Ustra brought her two kids, at the time 5 and 4 years old, to see her and her husband. Amelinha and her husband were transfigured by torture, covered in vomit, urine, and blood. Part of the torture procedures involved threatening her kids and introducing rats into her vagina. After this program was broadcasted, Jair Bolsonaro contested it before the electoral court (responsible for overseeing the elections in Brazil) and won the right to have the worker's party propaganda suspended (Pires 2018). Meanwhile, Amelinha Telles and her family were threatened. False rumours were also spread by Bolsonaro's supporters, saying that Amelinha was tortured because she killed army officers (Paulo 2018, BOL 2018).

Thinking about problematic and disputed memories such as the dictatorship in Brazil, the above incident reinforces the extent to which the army's narrative about the dictatorship is still prevalent. The argument that violent repression was necessary to contain violent activists and people who opposed the regime is still appealing to at least part of society, those who believe that in such cases torture would be justifiable. The second noticeable aspect is that the electoral court suspended the party propaganda that stated something that was true (torture happened during the dictatorship and Bolsonaro supports torture as a valid procedure, having stated this on multiple occasions and honouring a person known to be responsible for massive torture during the dictatorship), but did not take any measure to protect Amelinha and her family members, who were being threatened and slandered because of Amelinha's testimony during the Worker's Party [Partido dos Trabalhadores, PT] propaganda. All these facts just reinforce the idea that Brazil needs to have a deeper understanding of its own history and that all the efforts from civil society to seek and unveil the truth about the dictatorship were still not enough to oppose the army's narrative.

On another front, the discourse of economic crisis that justified the impeachment has also been used to impose all sorts of backlashes, including restrictions on rights and the few social benefits that exist in Brazil. If comparing two historical moments can be problematic, it is

hard *not* to note that the 1964 regime started after a discourse of chaos and crisis became widespread in society. So this leads to questions related to memories: the 1964 military dictatorship started precisely with the support of a particular group of society. In 1964, millions took to the streets all over the country for the March of the Family with God for Liberty [Marcha da Família com Deus pela Liberdade]. They were demonstrating their support for military intervention. In 2014, a repeated edition of this march took place in São Paulo and their leaders claimed the right to another military intervention — *against* the Worker's Party government, *for* impeachment, and *against* communism. A second protest followed the first one, reminding people of the atrocities committed by the military regime and condemning impeachment, showing that memories are still being disputed in Brazil.

The military regime is over, but this does not mean that a democratic regime has replaced it. In Brazil, right now, democracy is more of a “façade” than a lived experience. If, on the one hand, the announcement of a social and democratic state with a new constitution was an important indication of the end of the dictatorship; in real life, authoritarian practices continue, not only through state actions, but also due to public perceptions regarding human rights. During the negotiations for the end of the military dictatorship, many state actors responsible for persecution and other crimes never left their jobs, and therefore perpetuated military ideas and perceptions regarding society, and mobilized public opinion “against human rights.”

This view is common in Brazil right up to the present day. The authoritarian apparatus was never fully dismantled, becoming either more or less visible depending on specific contexts. By the end of May 2017, the current Brazilian president called upon the army to repress a protest against him (“Temer convoca Forças Armadas após protesto em Brasília e causa controvérsia. Entenda,” 2017). Such things do not happen in democratic societies, where police forces are trained to protect citizens, including during protests. On the contrary, the army is trained to act in the context of war.

In spite of the many efforts and achievements obtained by the latest National Truth Commission, recent events in Brazil have shown how the memories from the dictatorship are still highly disputed, engaging society and the state in a debate about which stories get to be told and which are obscured. A striking example of this dispute is the fact that the current president of Brazil, Jair Bolsonaro, has been making strong efforts to recall and reinforce the army's narrative that the dictatorship

was a necessary regime to contain the “communist threat.” He is doing so by commanding the 1964 *coup d’État* to be commemorated (Londoño, Darlington, and Casado 2019; Human Rights Watch 2019). The government prepared and shared via official channels a video enhancing and glorifying the 64-military regime (Almeida and Maia 2019). Alongside, the Ministry of Education (MEC) declared that history books in Brazil should be changed so that both sides of the history get told (El país Online 2019). According to the ministry: “There will be progressive changes [in the content of the didactic books] so that a broader version of history can be contemplated. MEC’s role is to ensure didactic books are distributed. And such books have to be prepared in such a manner that children can have a real, truthful idea of what is their history.” As a closing remark, the ministry added that what happened in ‘64 “was a sovereign decision made by the Brazilian society,” the dictatorship then being a “forceful democratic regime.” Historians in the country protested against these measures arguing that there is no debate about whether there was a dictatorship in ‘64 or not — there is a consensus by historians that it was (Folha de São Paulo Online 2019). The efforts to deny the dictatorship as a traumatic and problematic event in the Brazilian history went as far as sending an official communication to the United Nations stating that “there was no *coup d’État* on March 31, 1964, and the following 21 years of military regime were necessary to preserve the country from a communist threat and ensure the integrity of Brazilian institutions in the context of the Cold War” (Senra 2019). These actions triggered protests in Brazil, both on the streets and online, with campaigns and actions to remember and commemorate the survivors and their memory, as well as to honour the ones who died (N. Almeida 2019).

Thinking about the memorialization processes experienced in Hungary, France, and Germany, it seems that the Brazilian case is closer to the Hungarian context, where competing memories from the past dispute public memory and debates. The 2012 National Truth Commission established in Brazil pushed for a more comprehensive debate on truth and memory from the dictatorship by recommending the creation of memorial sites and other initiatives. However, it seems that we have a not-so-optimistic prospective on this matter, as Brazil struggles to overcome a political and economic crisis and severe austerity measures are being imposed. With little or virtually no resources to expend on the creation of such sites, it is the individual memories of the family members of victims of the dictatorship that still

fight for the right to know the truth about what happened to their sons, daughters, fathers, mothers, spouses, uncles, aunts, and friends. Somehow, despite all the efforts to make people forget, some of us *insist* on remembering. We have to continue to hope and to join these families in the fight for truth and memory in Brazil, hoping that in the near future we can push our country, but also our society, to openly and frankly discuss our past, so that we can build something different for the future. This fight gains a particular relevance in the context of Bolsonaro's election, since he has the open support of part of the army (being a retired member of the army himself), has been openly declaring that he will ban all opposition and activists (Phillips 2018), and has been actively disputing the memories of the victims of the dictatorship — denying that the mass atrocities occurred or justifying them as necessary. In this context, fighting back to reinstate the victim's memories and preserve democratic institutions becomes imperative. As activists say in Portuguese, “*luto pra mim é verbo*” — grieving is a call to action!

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