Politics of Impunity: Rethinking the Representations of Violence through the Disciplinary Role of the Brazilian Truth Commission

A thesis submitted to The University of Manchester for the degree of Doctor of Philosophy in the Faculty of Humanities

2016

Henrique Tavares Furtado

School of Social Sciences
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List of Abbreviations

ALN = Ação Libertadora Nacional (National Liberation Action)

Amnesty Commission = Comissão de Anistia do Ministério da Justiça (Amnesty Commission of the Ministry of Justice)

ANC = African National Congress

AV = Ala Vermelha do Partido Comunista (Red Wing)

CAVR = Comissão de Acolhimento, Verdade e Reconciliação (Commission of Reception, Truth and Reconciliation)

CBA = Comité Brasileiro pela Anistia (Brazilian Amnesty Committee)

CCC = Comando de Caça aos Comunistas (Command of Communist Manhunting)

CCV = Comissão Camponesa da Verdade (Peasant’s Truth Commission)

CEH = Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification)

CEMDP = Comisión Especial sobre os Mortos e Desaparecidos Políticos (Especial Commission on Political Deaths and Disappearances)

CENIMAR = Centro de Informações da Marinha (Navy Information Centre)

CIE = Centro de Informações do exército (The Army Information Centre)

CISA = Centro de Informações de Segurança da Aeronáutica (Air Force Centre of Information and Security)

CJP = Comissão de Justiça e Paz (Commission of Peace and Justice)

CNV = Comissão Nacional da Verdade (National Truth Commission)

CNVJ = Commission Nationale de Vérité et de Justice (National Truth and Justice Commission)

CNVR = Comisión Nacional de Verdad y Reconciliación (National Truth and Reconciliation Commission)

COLINA = Comandos de Libertação Nacional (National Liberation Commands)
CONADEP = Comisión Nacional sobre la Desaparición de Personas (National Commission on the Disappearance of Persons)

CVES = Comisión de la Verdad para El Salvador (Commission on the Truth for El Salvador)

DOI-CODI = Destacamento de Operações de Informação– Centro de Operações de Defesa Interna (Deployment Group for Intelligence Operations – Centre of Operations of Internal Defence)

DOPS = Departamento de Ordem Política e Social (Department of Political and Social Order)

ESG = Escola Superior de Guerra (Superior War College)

FORGA = Forças Guerrilheiras do Araguaia (Araguaia Guerrilla Forces)

IDASA = Institute for a Democratic Alternative for South Africa

IEVE = Instituto de Estudo da Violência do Estado (Institute for the Study of State Violence)

ISER = Instituto de Estudos da Religião (Institute of Religion Studies)

LSN = Lei de Segurança Nacional (National Security Law).

MR-8= Movimento Revolucionário 8 de Outubro (Revolutionary Movement 8 October)

MRT = Movimento Revolucionário Tiradentes (Tiradentes Revolutionary Movement)

OAB = Ordem dos Advogados do Brasil (Order of Brazilian Attorneys)

OBAN = Operação Bandeirantes (Operation Bandeirantes)

PCB = Partido Comunista Brasileiro (Brazilian Communist Party)

PCdoB = Partido Comunista do Brasil (Communist Party of Brazil)

PNDH-3 = Terceiro Programa Nacional de Direitos Humanos (Third National Programme of Human Rights)

POLOP = Organização Revolucionária Marxista (Revolutionary Marxist Organisation)

PTB = Partido Trabalhista Brasileiro (Brazilian Labour Party)

SNI = Serviço Nacional de Informação (National Information Service)

TRC = Truth and Reconciliation Commission of South Africa
UDHR = Universal Declaration of Human Rights

UN = United Nations

UNDP = United Nations Development Programme

VAR-Palmares = *Vanguarda Armada Revolucionária Palmares* (Palmares Revolutionary Armed Vanguard)

WWI = First World War

WWII = Second World War
Abstract

This thesis is a critique of liberal humanitarian representations of violence in the context of Post-Conflict or Post-Authoritarian struggles against impunity. In particular, it addresses the argument of “cultures of impunity” whereby punishing perpetrators of violations of human rights in transitional societies prevents the endorsement of regimes of silence and the normalisation of wrongdoing. Drawing on a Deconstructivist and Disciplinary methodology this thesis argues that debates about punishment or forgiveness in the aftermath of systematic violence have a wider political meaning and a particular historical function. Instead of mere responses to an external reality “punishment vs. impunity” debates also have a productive facet: because they represent violence in a liberal humanitarian frame, they produce a postconflictual ethos that defines (1) the modes of acceptable political resistance in the present and (2) the achievable limits of justice in the future. In order to explain this wider “politics of impunity” this thesis focuses on the Brazilian transitional case, from the end of the Dirty War in the 1970s to the establishment of the National Truth Commission (2012-2014). As such, it rejects the explanation of Brazil as a quintessential “culture of impunity,” a reasoning that blames the amnesty of perpetrators after the militarised dictatorship (1964-1985) for instituting a regime of silence about the past and creating the conditions for an eternal state of exception in Brazil. Although it recognises the merits of this logic, this work argues against it, reassessing the question in a rather different perspective. First, the thesis suggests a methodological twist: moving focus away from the conditions of implementation of justice in post-conflict and post-authoritarian scenarios into the conditions of possibility of the promise of “never again”. This thesis analyses truth commissions, criminal tribunals, and reparation programmes as parts of a historically situated set of disciplines; that is, as the conjunction between a body of knowledge and modes of conduct centred on a specific representation of violence as an intentional, cyclical, and exceptional phenomenon. In other words, it is by narrowing down what violence is that struggles against impunity can promise a future of non-recurrence. Second, the thesis then describes how this representations of violence were mobilised in order to historically produce a postconflictual reality in Brazil. By analysing the trajectory of the memory struggles (1975-) I explain how this postconflictual reality redefined the meaning of political resistance after the Dirty/Cold War, and by looking at the work of the truth commission I describe in what sense it creates a parsimonious promise of justice.
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Acknowledgments

Writing an acknowledgments page is an incredibly difficult task, especially after finishing a doctorate. It is hard to find something to say after having spent the past four years typing and re-typing the 500 thousand and something characters that will follow from this page. Such is the paradox of acknowledgments: we suddenly catch ourselves completely “dry” for words when our words are supposed to matter the most; when they are addressed to those who matter the most. It is in the name and for the sake of my always supportive addressees that I have forced myself to overcome fatigue, to write something, and to transform my inability to get the grips with writing into an opportunity to display affection and gratitude. This is how I would like you all to read what follows: as my very own, quasi-unbearable act of love.

First of all, I thank my wife Emmy Eklundh, my mom Alda Lúcia, my dad Henrique, my aunt Fá and uncle Manéu, my aunts Letícia and Neuza, and my “sisters” Jú and Ná. You are the ones who taught me how to love knowledge, how to be fearless of inconsequential decisions (and I have made a few), and most of all, how to believe in myself. This gratitude is of course extended to my in-laws Berth and Lotta, who have been really supportive and fantastic in the past few months. This is particularly true of you Emmy, who were the one to endure the biggest burden. Much to your displeasure, you became my “guardian angel”. Please accept this thesis, which I fully dedicate to you.

On the professional side, I thank my supervisors Andreja Zevnik and Maja Zehfuss. I know that when you accepted me you went for a risky bet, and I will never in my life forget that. In the roll of academics who also have continuously supported and inspired me are Peter Lawler, Helen Dexter, Emmanuel-Pierre Guittet, Charlotte Heath-Kelly, and all the members of the Critical Global Politics Cluster. I would also like to thank my examiners Kimberly Hutchings and Japhy Wilson, for their fantastic comments on my work and, ultimately, for having accepted me as one of their peers. Finally, I would like to emphasise my gratitude to the Brazilian Ministry of Education (whilst we still have one) who financially supported this project through the CAPES scholarship, and to the interviewees who spent their lives fighting for democracy and accepted to take part on this research.

I thank my closest and dearest friends Andy Northcott, Adrià Llacuna, Gabriel Pimenta, Gareth Price-Thomas, Oliver Turner, Rachel Massey, Sabrina Villenave and Thomas Tyerman. I will never forget how you all made me feel truly welcomed when nothing else did.
Introduction

The word “impunity” comes from the Latin impūnitās. It means, quite simply, “exemption from punishment or penalty” (OED 2016) or “from injury or loss as a consequence of any action” (ibid.). This is merely an etymological curiosity. Claiming the Latin roots of a word evokes no inner wisdom or truth about the world. It evokes nothing, but a misguided sense of allure and authority. The authority of a long lost, classical origin that is represented, that lives once again, and that once again must be mobilised every time speak of unacceptable acts of the hostis humani generis, the enemies of humankind. But this etymological root and the weight of its tradition are not revealing or enlightening. On the contrary, they only serve as a smokescreen. By telling us what impunity means they divert our attention away from what punishment really does.

This thesis is a critique of the liberal humanitarian understanding of violence in the context of post-conflict or post-authoritarian impunity. I argue that the way violence is represented – defined, narrated, and remembered – in the aftermath of conflict has important implications for the fate of those violated in the past, but also for the promise of a future when violence will never happen again. My central point is that there is a wider “politics of impunity” behind the question of whether or not to punish perpetrators of mass atrocities. A politics traversed by exclusions limiting the ways in which the phenomenon of violence can be understood and therefore delimiting a very specific mode of response. I explain this liberal humanitarian politics via a deconstructive and disciplinary reading of decades of struggles for criminal accountability regarding violations of human rights during and following the Brazilian Dirty War. The thesis is centred on an analysis of the report of the Brazilian National Truth Commission, but this should not conceal one fact. Brazil is mostly relevant as an expression of a wider phenomenon; as a limit against which the central oppositions that constitute liberal humanitarianism – the distinctions between war and peace, democracy and authoritarianism, violence and non-violence – are dissolved. It represents the boundaries, the

1 The concept of liberal humanitarianism is not self-evident. It has been widely used in the field of Global Studies to denote a particular “western” tradition of understanding the moral, political, and juridical implications of the international system of states (Dunne and Wheeler 2004; Jabri 2010; Odysseos 2010; Richmond 2010; Richmond 2006; Walker 2006). In this thesis, the term is used on a more general sense, identified with a strong sense of legalism (Shklar 1964), a concern with human security and the promotion of human rights (Douzinas 2000), a specific view of power (Foucault 2003; 2009), and, as I show, a narrow understanding of violence.
tropics, as it were, where the narratives of the global centre are uncovered in their most central contradictions.

The Brazilian Exception

From the 1970s to the 1980s the Southern Cone was struck by its own war on terror. 11 September 1973 – the fall of Allende in La Moneda palace in Santiago, Chile, – became the symbolic moment of this “war,” informed by the ideologico-political divisions of the Cold War. In the Southern Cone, this date is remembered as a victory of regional, right wing authoritarian regimes, and the defeat of those who were fighting for another possible world. It was a victory for a series of Dirty Wars that left a shocking record of abuses. In the name of national security and the defence of the “Western” world, members of authoritarian juntas committed crimes that shocked the so called “West”. As in the other countries of the Southern Cone, Brazil was also affected by this specific mode of counter-insurgency/counterterrorism. An anti-communist crusade in Brazil followed the military coup d’état of 31 March 1964. In the hall of abuses left as its heritage, human rights activists claim 70,000 cases of political persecution, 20,000 cases of torture, 10,000 forced into exile, and a number of deaths and disappearances ranging from 434 to more than 9,500. After 21 years (1964-1985), the military left power and the dictatorship finally gave way to the return of democracy.

Most stories stop here; at the moment war turns to peace, authoritarianism into democracy, political enmity into civil disagreement. The moment conflict, in its various forms, ends and efforts towards remembrance, redressing, and coming to terms begin. This

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2 This is the name of the southernmost region of America, encompassing the territories of Argentina, Brazil, Chile, and Uruguay.
3 Because of the theoretical basis connecting these operations (see Chapter 3), counter-insurgency and counterterrorism will be hereafter used as synonymous.
4 The Dirty Wars left a shocking record of abuses. But their most perverse legacy was the atrocities that could not be traced, such as forced disappearances. There were at least 300,000 disappearances in Central and South America (CEH 1999; CONADEP 1985; McSherry 2002; 2005; Slack 1996).
was the case with Germany in the post-1945 era, the case with Argentina in 1984, with Chile in 1990, and South Africa five years later. Arguably, time moved on in those places, bringing an aftermath to violence, conflict, and the times of exception. Democracy was restored, or first implemented, and the crimes of the past (the Holocaust, la guerra sucia, apartheid) came to a halt. This is not the case with Brazil. Half a century after the 1964 coup, the country still struggles with the absence of a proper “aftermath”.

In a metaphorical sense, there was no aftermath for survivors and relatives of victims of the dictatorship. There usually is not when it comes to disappearances. Due to the very nature of their traumatic experience – never knowing how, when or if their loved ones died – survivors and relatives never have a sense of closure, let alone a feeling of justice. After the end of the Dirty War\(^6\) and before the beginning of re-democratisation, the military endorsed a blanket amnesty (Law 6.683/1979) that significantly constrained the possibilities for reckoning. The amnesty law pardoned state agents who perpetrated political violence, and unofficially imposed an enduring silence about the past. The archives of the political police remained closed, authorities continued to deny the existence of cases of torture or dismissed them as unimportant, and the military kept commemorating the “neutralisation” of clandestine organisations in the “just” war on terror. This post-authoritarian silence further disenfranchised those who had already been violated by the state. It was almost as if authoritarianism had never properly ended. I had simply mutated, adopted other tactics.

But there is also a more literal sense to the absence of an aftermath in Brazil. A sense that sets it apart from other post-conflict or post-authoritarian scenarios, meaning, quite simply, that there was no proper end to violence. On the contrary, the alleged “pacification” of insurgent movements, the relative de-militarisation of the state, and the national pact for reconciliation were followed by a stunning rise in the levels of violence (Adorno 2002a; 2002b; Cardia 2003; Pinheiro 1990; Waiselfisz 2014). If following the apex of the dictatorship authorities resorted to “extensive political imprisonment” and “political murders and brutality”, five years into the democratic regime “terror” was “expanded to the whole population” (Gibney et al 2015).

\(^6\) In Brazil the harshest period of political repression is more commonly known as the anos de chumbo (years of lead). For the sake of clarity, and with a wider readership in mind, I will use these expressions interchangeably throughout the text.
These quotes are from the Political Terror Scale (PTS) dataset, whose language is unhelpfully dramatic. As I will show throughout this thesis, there is a part of the Brazilian population that never witnessed any “terror”, either during the militarised dictatorship or under the new republic. But the quotes illustrate the daunting reality of a place that does not fit into general stereotypes between war and peace, democracy and authoritarianism, the exception and normality. Paradoxically, the Brazilian transition witnessed a more violent and, quantitatively, more repressive outcome. From the early 1980s to the late 1990s, Brazil witnessed a 209% increase in homicide rates (Adorno 2002a: 92). Driven by a set of complex causes – amongst which figure Brazil’s entrance into global drug trafficking routes and the rise of organised crime – this meant that no fewer than 229,266 individuals were intentionally assassinated during the re-democratisation (Waiselfisz 2014: 27), more than 20 times the number of the highest estimates of disappearances of the Dirty War in Brazil – more than all of the Dirty Wars in the Southern Cone.

Although there has been some fluctuation over the years, these frightening figures have continued to increase, promoting disheartening consequences. In the mid-1990s, members of Médecins Sans Frontières concluded that 90% of residents of the favelas they visited in Rio de Janeiro showed signs of post-traumatic stress disorder (Cardia 2003). At the turn of the century, Brazil had metrics of violence that, given their specific proportions, could be compared to those of famous international conflicts and warzones. From 2003 to 2011, 449,985 Brazilians were killed; a number 2.24 times higher than the number of disappearances of the Guatemalan Civil War, and 1.5 times higher than the overall casualties of the Iraq War (CEH 1999; Waiselfisz 2014; IBC 2015). In 2014 alone, the figure – 60,000 homicides – equalled the number of US soldiers lost during the entire Vietnam War (FBSP 2015). In absolute terms, no “peaceful” and “reconciled” democracy has been more lethal than the Brazilian democracy (ibid.).

One of the most worrying features in this scenario is the continuation of violations of human rights by state agents. In the context of an ever-growing feeling of insecurity (Adorno 1999; Cardia 2003), the perpetration of abuses and wrongdoing by the police forces has been a constant routine (Panizza and de Brito 1998; Pereira 2000). Almost three decades

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7 Obviously, Brazil is a much larger country than both Guatemala and Iraq. The numbers are still impressive if we look at a more reasonable comparison between political units of similar size (such as the state of São Paulo and Iraq). During the same period of time, the number of intentional killings in São Paulo accounted for around 60% of the number of civilian deaths during the Iraq War (Waiselfisz 2014; IBC 2015).
after the end of the Dirty War, the practices of torture, unlawful killings and even forced disappearances are still a normalised part of everyday policing (Amnesty International 2001; 2014b; Human Rights Watch 2015). Practices that are always justified by a new “war” (e.g., the war on drugs, the war on organised crime) and a new project of “pacification” (the World Cup, the Olympics). Practices that enjoy the support of half of the population, who agree with the murky reasoning that a “good thug is a dead thug” (FBSP 2015: 7).

The result of this equation has been, and continues to be catastrophic. In 1992, 111 inmates were shot dead by the riot police in a detention centre in São Paulo (the Carandiru massacre) (Amnesty International 2001); In July 1993, eight homeless children were murdered by a death squad in Rio (the Candelária church massacre); in August, 21 residents of a local favela were killed in similar conditions (the Vigário Geral massacre); and between July and August, 16 Amerindians were assassinated on the border with Venezuela (the Yanomami massacre) (Panizza and de Brito 1998: 25-28). In 1996, 19 members of the landless movement were gunned down when invading a plantation-like estate in the north-east (the Eldorado dos Carajás massacre) (Adorno 1999: 131). In May 2006, 564 individuals were killed (59 agents of the state and 505 civilians) in a series of confrontations between the militarised police forces and members of organised crime (EBC 2016). In 2013, another case of forced disappearance during yet another “pacifying operation” in a favela in Rio sparked international outrage (The Independent 2013; EBC 2013). Those are only a few examples of the cases we have become aware of. There is a much larger, more terrifying, and under-reported reality in which, over the past 15 years, agents of the Brazilian state were responsible for at least 26,858 deaths during “legal interventions or war-like operations” (FBSP 2013, 2015), a level of lethality, on average, 4.6 times higher than that of the US police forces (ibid.). It is almost as if the Brazilian Dirty War had never ended but had merely been decentralised and fragmented, transformed into an endless and headless state of exception.

A Truth Commission against a “Culture of Impunity”

These facts all contributed to the dissemination of a common explanation for the Brazilian exception that connected the absence of redress with the continuation, and even the increase, of violence. For years, experts and politicians, human rights activists and survivors have described Brazil as the quintessential case of a “culture of impunity” (Abrão et al 2010; Genro and Abrão 2010; Greco 2014). It is a case where amnesty for perpetrators
in the post-authoritarian scenario, and the forced amnesia concerning violations of human rights had paved the way for the banalisation of abuses (Bickford 2007; Goldman 2009; Orentlicher 2007). According to this reasoning, the regime of silence and forgetfulness (Greco 2014; Schneider 2011b) instituted by the 1979 amnesty law undermined the process of democratisation, which was left as “incomplete” (Garcia 2014; Zaluar 2007). Incapable of coming to terms with its past, of assimilating properly liberal, democratic values, and of punishing those who committed wrongdoing, Brazil had turned into an “ugly” democracy (Pereira 2000). A place where misuses of state authority are normal and atrocities are committed with impunity.

In the logics behind the “culture of impunity” argument, silence and forgetting do not mean the absence of speech or the lack of remembering. The accusations of political amnesia are inextricably related to the blanket amnesty and, in particular, to its reconciliatory promise. Almost three decades into the transition, the Brazilian state had never seriously disputed the protection given to former perpetrators by Law 6.683/1979. Attempts were made by human rights activists and professional organisations. However, at the time of this writing, no agent of state terror has been prosecuted, which is not to say the past has never been addressed. In the 1990s, the executive branch of the Brazilian government slowly and timidly began to take the first baby-steps towards redress. The archives of the political police were made partially public (Catela 2009) and, in parallel to the implementation of new federal directives on human rights, the state also created two reparation commissions. But the tone of reckoning was always somehow conditioned by the project of reconciliation. Because of that, reparations were seen by many activists as a way of buying their silence (V., personal communication, Rio)

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8 For an English overview of litigations started by relatives against the authoritarian regime see (Santos 2015).
9 In 1995, President Fernando Henrique Cardoso (1995-2003) decreed Law 9.140/1995 recognising a list of 136 disappearances as political assassinations and creating the CEMDP. The special commission provided reparation to the families of victims ranging from R$100,000 to approximately R$150,000, based on a calculation of the victim's life expectancy (CEMDP 2007). In 2001, Cardoso created the Amnesty Commission, via Provisionary Measure 2.151-3/2001. This second reparation commission was mandated to investigate alleged cases of political persecution. As of 2012, the Amnesty Commissioned granted 35,000 requests for political amnesty, of which 15,000 complainers were also granted the right to reparations (Coelho and Rotta 2012).
10 Both the opening of archives and the reparation commissions were significantly curtailed by the post-transitional, amnesic atmosphere. Although the constitution of 1988 granted the right to habeas data considering governmental information, Law 8.159/1991 specified that documents pertaining to national security issues could remain secret for up to 200 years from date of issue (Lei No 8.159 1991: Art. 23, Paragraph 3). In the same vein, at the establishment of the CEMDP, Cardoso defended the amnesty law as a sine qua non condition for national reconciliation (Cardoso 1995). As for the Amnesty Commission, their members have constantly emphasise their role to re-signify the idea of amnesty from a regime of forgetfulness to one of forgiveness (Abrão and Torelly 2010; Silva Filho 2010; 2011).
de Janeiro, 22 July 2014; F., personal communication, Vitória, 9 July 2014) and preserving the “culture of impunity”.

This reconciliatory atmosphere was shaken in the late 2000s with the more emphatic policies of redress of three consecutive left wing governments, headed by two former political prisoners – Lula da Silva (2003-2011) and Dilma Rousseff (2011- ). During this period, the role of the reparation commission and the country’s directives on human rights were significantly restructured and expanded. In 2007, members of these commissions began to use the term “transitional justice” (Santos 2015). They also started the Caravanas da Anistia (amnesty caravans) project, in which they have travelled to the deep countryside providing technical guidance by request and performing a series of lectures, debates, art exhibitions, and public hearings (Coelho and Rotta 2012; Silva Filho 2008: 162). At this point, Brazil’s regime of forgetfulness came under national and international scrutiny.11 In 2009, after the 11th National Human Rights Conference, the government created the PNDH-3, a new, broader programme of human rights.12 For the first time, federal authorities mentioned a right to memory and truth and proposed to create a truth commission.

The Comissão Nacional da Verdade (National Truth Commission, CNV) was created on 18 November 2011, after Dilma Rousseff was elected the first female president of Brazil. The moment was filled with symbolism. In the 1970s, Rousseff had been a member of two clandestine organisations (COLINA and VAR-Palmares), part of the armed struggle against the dictatorship. Accused of crimes against national security, she was imprisoned, brutally tortured, and sexually assaulted by members of the authoritarian regime. She was not only the first woman, but also the first “terrorist” and the first survivor to ever become head of state. After forty years, her political platform promised a serious policy of redress. It promised to reveal a “truth” about the violent past that nurtured “no hatred, no resentment, but also no forgiveness” (Rousseff 2012); truth understood simply “as the contrary of forgetfulness” (ibid, my emphasis).

After two years and seven months, the CNV published a 3,378-page, three-volume report on the times of “state terror”. The report re-affirmed the logics of the “culture of impunity” argument. In particular, it emphasised the need to acknowledge the “institutional

11 In 2008, the OAB officially disputed the legitimacy of the amnesty law according to the federal constitution (STF 2008). Their rationale was, however, rejected by the Supreme Court in 2010 (Schneider 2011a).
12 For an analysis of the differences between Brazil’s national programmes on human rights see (Adorno 2010; Neto 1997; Pinheiro and Neto 1997).
responsibility of the Armed Forces” (CNV, 2014b: 964) for crimes against humanity in the past, so as to stop violations in the present. It also affirmed, as an unprecedented move, the need to reconsider the 1979 Amnesty law (ibid: 966) so that violence would never happen again.

**Violence, Method, and Representation**

Because of the topic nature of the CNV (2012-2014) and due to the scarcity of works in English about Brazil, this thesis is an obvious contribution to the field of Brazilian studies and the literature on transitional justice. Because it centres on the problem of impunity in the aftermath, it also adds to fundamental discussions on the topics of state terror, political reconciliation and the promotion of human rights. But much more than a case of post-conflict or post-authoritarian justice, the Brazilian trajectory from terror to truth raises deeper questions. The history of almost-continuous repression and of enduring violations of human rights is, for lack of a better word, intriguing. The fact that a stable democracy that “has not been involved in any armed conflicts since 1946” (UCDP 2015) can still endure the losses of one (American) Vietnam War per year is certainly a challenge for the clean-cut distinctions of liberal humanitarians. It brings into question assumptions regarding war and political repression that have been central to projects of pacification and to a specific civilizational narrative behind the goal of democratisation. Likewise, it brings to the forefront debates about exceptionalism, legitimacy, temporality, trauma and resistance; problems that have permeated critically inclined research in the field of Global Politics in the recent decade. This thesis offers a fresh perspective on representations of violence in the context of a postcolonial state, a “non-western” perspective that suggests the rethinking and decentring of enduring colonial narratives, like the idea of a “culture of impunity”.

Truth commissions are temporary bodies mandated to investigate past abuses, concluding with a report (Hayner 2011). This final report narrates such abuses, putting them into a large, historical and political context (Leebaw 2011; Moon 2006). It follows a specific storyline that has “a beginning and an end” (Misztal 2003: 10). Truth commission reports are particularly interesting because they deal with all the topics mentioned above. As sites where historical and national narratives are reproduced and legitimised (Wilson 2001), they reaffirm a sense of sovereignty as the capacity to draw the line between rightfulness and rightlessness;
between the reproachable past and the bright future; the exception and normality. Because they essentially speak of systematic wrongdoing – most prominently acts of non-state or state terror – they provide an important source of information regarding which forms of violence count as “terrorism”, and which experiences are considered “traumatic”. As important channels for remembrance in the aftermath, they are supposed to resist illiberal regimes of silence and “allow survivors a voice” (Edkins 2003: 18). But, above all else, truth commission reports are sites where violence is represented according to a liberal humanitarian frame, often in places where this frame has virtually no resonance.

According to traditional approaches, instances of representation – like writing, remembering, dreaming, and narrating – work by re-presenting an original thing or event that for whatever reasons is absent, no longer available to our senses (Derrida 1973; 1997). Representation happens when a thought – a vouloir dire (wanting to say) – is transformed into words, when the etymological origins of a word are recuperated, when someone dreams of a person who disappeared, and when a past conflict is narrated. For critical or poststructuralist perspectives, none of these original presences can be brought back into life again, but their absences can be supplemented, that is, they can be concealed by a process of signification.13 This process “artificially” reproduces a “presence” by connecting its essence to things and events available in the present. Writing down thoughts and wishes on a piece of paper, printing posters with the face of the disappeared, retrieving the essence of impunitas, and identifying the continuation of the Dirty War in current violations of human rights are all representational practices. These practices are important because they can eschew unbridgeable distances in time and space; they can overcome silences, and even death, in other to communicate a reality to those who cannot directly access it.

Nonetheless, they are never straight forward. It is impossible to completely re-present someone or something, meaning it is impossible to completely reverse their current state of absence. In the context of historical narratives and truth commission reports this means that “it is impossible to remember everything” (Zehfuss 2007: 157). As practices of eschewing and concealing, representations are always, to some extent, unrepresentative. They can only

13 Critical or poststructuralist theories draw on Saussure’s structural linguistics, and its specific account of signification. According to Saussure’s theory of the sign, meaning does not come from the relationship between words (linguistic signs) and the things they represent (referents). Rather, the attribution of meaning is derived from within the structure of a given language. It comes from the double nature of a linguistic sign, as the connection between a signifier (an audio-visual image) and a signified (a content) (Saussure 1959). For example, the meaning of sign “dog” is not to be found on a relationship with its referent (the animal) but on the connection between the word-sound “d-o-g” and the concept of a “four-legged, furry mammal”. 

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produce meaning by a process of reduction. A process wherein a complex reality – immersed in multiple possible interpretations – is filtered down to a neat and singular outcome. In the case of narratives about the past, this outcome is a coherent storyline. What enables these stories to work – what makes them meaningful and credible – is the “exclusions and breaks” (Spaulding 2014: 140) they perform. It is what they do not say, what they avoid, and what they forget: what they deem unessential or secondary about their central tale. Representational practices can make “sense of experience through synthesising perceptions, emotions and meanings” (Humphrey 2000:10), but this process of synthetisation leaves behind a trace of silences and things unsaid (Foucault 2006). Metaphorically speaking, it works like the frames of a painting, the limits delimiting its boundaries, separating it from what it is not.14

This is why the liberal humanitarian framing of violence is so important: in the process of representing violence, of making sense of violent experiences, liberal humanitarianism leaves its own trace of exclusions. A trace filled with aspects of the past that are silenced and things that are left forgotten. To investigate and discuss these exclusions is paramount in the context of post-conflict or post-authoritarian justice. It is even more so when a truth commission is considered a way of giving survivors a voice and of resisting a regime of political oblivion, or described as the opposite of forgetfulness.

First of all, violence is an overwhelming topic. Almost every work on violence begins by pointing out the overwhelming abundance of things that could be called “violent”. (Michaud 2005; Collins 2009; (Dexter 2012; Galtung 1969; Wieviorka 2009). The “essence” of violence as a social and political phenomenon is very hard to grasp. For the sake of clarity I will roughly reduce this overwhelming abundance to two major traditions, two major forms of making sense of violence. These traditions emerged throughout modernity and have changed and incorporated different elements, but they have also preserved their central core. On one hand, and most commonly, the phenomenon of violence can be treated as a visible act. It is read as an individual or collective action that represents a direct, physical offense against another individual or group. This form of violence represents an instrumental action (Arendt 1970), and it is based on particular reasons that can be seen as political or non-

14 The idea that representational practices always already entail a process of exclusion can be traced to Saussure (1959) and Freud (1997 [1899]), two major influences of critical theory. For Saussure, the connection of a signifier to a signified is only meaningful because it excludes all other possible connections within the diachronic structure of languages. For example, the traffic sign “turn to the left” can only represent one coherent action because it does not mean “turning to the right”. Likewise, Freud identified unconscious mechanisms whereby the dreams of his patients could only make sense once they distorted and repressed certain “immoral” wishes.
political (Wieviorka 2009), justified or illegitimate (Dexter 2012), and rational or emotional (Collins 2009). Most of the violence I have described concerning the Brazilian eternal state of exception fits in this category. Mistreatments, homicides, gross violations of human rights (including the covert ones such as disappearances) are all visible forms of violence. They are visible because they express a sense in which the phenomenon of violence originates in an individual source that carries an indivisible responsibility. They offer an idea of violence that possesses a clearly identifiable face (Balibar 2002): the face of perpetrators of violent acts.

This is not the only form of representing violence. Over the last two centuries a number of scholars associated with leftist or critical traditions of political thought have suggested a different way of thinking about violence that treats it not only as a visible act, but also as a phenomenon that involves an invisible or concealed facet, a facet that is subjected to hidden or overlooked dynamics. For this tradition, violence is not necessarily or primarily an act; it does not involve only a physical “wound”. Understood under a plethora of different names – ranging from “psychopathological” (Fanon 2001), “symbolic” (Bourdieu and Wacquant 1996), “objective” (Zižek 2005; 2009), “ultra-objective” (Balibar 2002), “epistemic” (Spivak 1988) and “metaphysical” (Derrida 2001) – the phenomena of violence is always described as inevitably political. It is political because it is identified with the very basis of a given political order. This violence does not originate from one single source, but it pervades and founds whole structural or systemic arrangements, the most diverse processes of exclusion. It is, as it were, invisible, because it has no identifiable face (Balibar 2002).

My idea of a “politics of impunity” operates in the interplay between these two boundaries of visible and invisible violence. In a very brief and general sense, my argument is that a focus on post-conflict or post-authoritarian impunity – such as the one exhibited by the CNV – makes visible a whole range of violations of human rights in the past, whilst rendering invisible more fundamental “violations” at the heart of the present political order. In other words, a “politics of impunity” can be seen as the process by which violence – in its most diverse instances and countless expressions (Wieviorka 2009: 9) – is reduced to an individual and indivisible source of blame; as a system of attribution of responsibility in which structural and systemic forms of violence are side-lined or left forgotten. My overall objective is to show that, from a historico-political perspective, impunity means much more more

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15 This sense of individual does not necessarily mean one single person. It can either refer to one person or a collective so long as these categories are conceived as indivisible and clearly delimited unites. Examples of “individual” sources would be one officer, one institution (the Armed Forces), or even one state.
than “the absence of punishment”. It plays a very specific function with serious consequences regarding two interrelated points: (1) establishing the acceptable limits of “resistance” in the present and (2) constraining the conceivable contours of “justice” and “accountability” in the future.

**Between Deconstruction and Disciplines**

This thesis follows a methodological framework that is in between a Derridean logic of deconstruction and a Foucauldian historical-genealogical investigation. Roughly, deconstruction is a process of philosophical reasoning in which the logics of re-presentation are taken to its limits (Culler 1983; Derrida 1981; 1997). It consists of identifying the contradictions or *aporias* at the heart of a given representational practice (such as a truth commission report), revealing the way in which these contradictions express the presence/absence dichotomy that grounds the workings of representation. A deconstructive method reveals how these dichotomies are never exactly clear-cut distinctions, but rather complex and interrelated. It involves showing the absences that already constitute a presence; in unveiling the unrepresented limits of representation. In a sense, this thesis is a deconstruction of the central dichotomy of struggles against impunity in the aftermath: the opposition between punishment, as the presence of justice, and silence and obliviousness, as the absence thereof.¹⁶

But the method of deconstruction is always at a crossroads. There are many ways of performing a deconstructive reading. One can proceed by means of logical reasoning, that is, by emphasising the reasoning behind a specific opposition (e.g. punishment/silence) until an unsurpassable contradiction is encountered. An example would be to look at how liberal humanitarian struggles against impunity in themselves struggle to deal with the “traumatic” experiences that violence brings about. How they fail to break the veil of silence surrounding certain unspeakable atrocities. How, ultimately, there are forms of violations that are in themselves unpresentable or “incomprehensible”, that lay outside the realms of language and meaning.

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¹⁶ This opposition has been a constant feature of international struggles against impunity. See (Eastmond and Selimovic 2012; Obradovic-Wochnik 2013).
This has been the perspective adopted by certain critical works on the limits and boundaries of violence. In particular, it has become a recurrent trope of a tradition that merges Derridean and Foucauldian thoughts, drawing on a very specific interpretation of Foucault’s concept of “biopolitics”, based on Derrida’s critique of analytic philosophy of language. This tradition insists on framing everyday violence in terms of Gewalt, the legitimacy of the use of force/violence that dictates the limits between authority (the normal rule of law) and authoritarianism (the state of exception). As this thesis proceeds it will become clear why I have not engaged with this tradition, and why I have purposefully avoided the concept of “biopolitics”.

Instead, the following pages carry out a deconstructive reading anchored in a historically contextualised, genealogy of disciplinary practices. It takes a different modus operandi. A more robust explanation is developed in Chapter 2, but some remarks can be made in advance. My argument about a politics of impunity and my critique of liberal humanitarian representations of violence are not mainly philosophical, abstract, or ahistorical. It does not rely or need to recuperate a classical dilemma or distinction based on the tradition of Roman thought. The discussion about the exclusions, silences and the unrepresented aspects of violence concerning the report of the Brazilian truth commission is primarily a historico-political discussion. As I will make clear, the politics of impunity in Brazil do not express the traumatic limits of reason, representation or intelligibility. They do not concern the impasses of sovereign power or its impossible decisions. On the contrary, my analysis shows nothing unspeakable or incomprehensible; it shows a historical function of the liberal humanitarian politics of impunity that is rather painfully easy to understand.

Chapter Outline

Both concepts of liberal humanitarianism and impunity draw on a gargantuan, interdisciplinary tradition of legal, political, and moral reasoning. Hence, they can be addressed from a variety of ways. The first chapter situates my critique in one specific branch of liberal humanitarianism – the field of transitional justice – and one specific case of impunity – the “punishment versus impunity” debates following the aftermath of mass atrocities. The

17 For Derrida’s own explanation of how deconstruction and genealogy are related see (Boradori,et al 2003: 126-136)
chapter investigates a traditional account of the rise and transformations of, as well as the challenges experienced by, the international fight against impunity as a response to systematic wrongdoing from the post-1945 to the formation of a “common language of justice” in the 2000s. Besides contextualising the thesis, this investigation serves two purposes: to trace the association between impunity and political obliviousness in the context of humanitarian activism in the Southern Cone, and to explain how punishment became identified as a condition of implementation of the post-conflict or post-authoritarian transition.

In the second chapter, I explain why there is a need to move away from this traditional analysis. Instead of understanding the international fight against impunity in terms of conditions of implementation, I suggest assessing its conditions of possibilities. Drawing on the works of Michel Foucault, this chapter begins to sketch out a critical genealogy of transitional justice as a discipline (a body of knowledge) that disciplines (exercises a form of power over) the realm of political conduct in the aftermath of violence. I explain that, much more than an external intervention (punishment) on an external and objective reality (the post-conflict), transitional justice measures are a set of liberal humanitarian “disciplines” that fundamentally produce a postconflictual reality. This chapter lays the theoretical and methodological foundations for the rest of the thesis describing, for the first time, the specific representation of violence behind the “punishment versus impunity” debates.

In the third chapter, I historicise this specific representation of violence in the context of Brazilian history during the Dirty War by drawing on the memory of political resistance. This contextualisation serves the purpose of tying the logical conditions of struggles against impunity (a specific representation of violence) to the historical conditions presented by the emergence of a postconflictual time. Drawing on the insights I gathered from my visit to the Memorial da Resistência (Resistance Memorial) in São Paulo in the second semester of 2014, the chapter disputes the narratives of an uninterrupted movement of resistance against the dictatorship. I show how the appearance of human rights activists demanding the punishment of perpetrators and promising a future of “never again” was connected to the multiple disappearances of an earlier form of resistance. The chapter describes how this liberal humanitarian “resistance” only monopolised the political landscape after “displacing” a radical leftist resistance that nurtured different representations of violence and broader conceptions of justice. The purpose of this chapter is to thoroughly describe how, at the end of the Dirty War, emerging debates on whether to punish perpetrators of violations of human
rights played a role in disciplining the political transition. It is to offer the first glimpses of the effects of a politics of impunity.

The fourth chapter analyses the Brazilian truth commission (CNV) in terms of its relations with human rights activists, its particular its theory behind truth-seeking, and the representations of violence in the past. The chapter is the result of five in-depth interviews with prominent activists, of an analysis of five reports from an NGO overseeing the work of the CNV, and finally of my own assessment of the narrative of the truth commission. The narrative was gathered from material composed of more than 350 press releases, more than 30 texts and speeches authored by members of staff, around 80 hearings and testimonies broadcast and uploaded to the CNV’s YouTube channel, official communications between the CNV and the ministry of defence, 9 preliminary or partial reports released by the CNV and, finally, the 3,378-page, three-volume final report. This chapter points towards the limits of a liberal humanitarian “common language of justice”, and, most specifically, how, by reproducing the historical exclusions, breaks, silences and disappearances of traditional humanitarian struggles against impunity the CNV creates a story about the demons and the dreamers of the past.

Finally, in the fifth chapter I address how the argument of a “culture of impunity” guides the recommendations of the CNV’s report to a fundamental aporia or contradiction regarding the distinction between visible and invisible forms of violence that ends up significantly restraining the commission’s mode of response to the Brazilian “eternal state of exception”. This chapter functions as the last step of my deconstructive and disciplinary analysis of the fight against impunity. It explores the liberal conception of power behind the liberal humanitarian representations of violence and counterpoises it to Foucault’s idea of disciplinary power and to the never-ending drive for a form of “political transition” in Brazil regarding the “cleanliness” of its population. In the end, this chapter serves to question the limits of understanding violence in terms of legitimacy, the exception, and the “right to kill”. It is, as it were, an invitation to reclaim a certain Foucauldian understanding of violence related to a socio-political (and not to a philosophico-juridical) norm.
1 *Hostis Humani Generis*: a “Genealogy” of the International Fight against Impunity

1.1 Introduction

Brazilian activists were not the first to have described punishment as the contrary of forgetfulness. Pro-retribution liberal humanitarian arguments in the aftermath of systematic violence have been historically constructed on the central opposition between *punishment* and *political oblivion* (Eastmond and Selimovic 2012; Obradovic-Wochnik 2013). Drawing on an inexorable legalism, defenders of post-conflict or post-authoritarian retribution have long rejected alternatives to criminal prosecutions – such as blanket or bargained amnesties (United Nations 1997) – as cover-ups for a “pact of silence” (Lessa et al 2014: 79) or as a mere signal of “torturers still controlling the guns” (Orentlicher 1991: 2615). Breaking with these pacts, seeking the truth about the violations they conceal, and promoting criminal accountability has long been framed as the only way of preventing the resurgence – or, as in the Brazilian case, stopping the continuation – of barbarism (Bhargava 2000; Farer 2000).

The etymological root of impunity (*impūnitās*) suggests the need to punish wrongdoing has been a problem for a very long time. But according to the transitional justice literature, it has only become a proper international problem rather recently. Far from being an ancient or ahistorical question, the international fight against impunity is inextricably connected to the political imaginary of modernity, especially regarding its consequences throughout the twentieth century. This chapter traces a certain “genealogical” account of the international fight against impunity as it is traditionally described by transitional justice scholars. It follows the development of “punishment versus impunity” debates that informed the major responses to systematic wrongdoing from the post-1945 denazification to the establishment

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18 Shklar defines legalism as the “ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consists of duties and rights determined by rules” (1964: 1). She argues legalism discloses an “urge to draw a clear line between law and non-law [...] to isolate law completely from the social context within which it exists” (ibid: 2). On the dynamics of legalism in relation to transitional justice see (Leebaw 2011; Mcevoy 2007; Shklar 1964).

19 The way scholars have dealt with the question of punishment in the aftermath is permeated with ahistorical accounts (Arthur 2009). It is not uncommon to see overgeneralisations that “democratic transitional justice is almost as old as democracy itself” (Elster 2004: 3) or that the conflicts they raise “are a natural part of human interaction” (Bar-tal 2000: 351).
of the international right to the truth (Hayner 2011; Kritz 1995; Rotberg and Thompson 2000; Roht-Arriaza 2006; Teitel 2014). The objective is to argue that the liberal humanitarian fight against impunity – as a fight against the enemies of humanity for the protection of human rights – is not static. It is a project that was raised, that faced serious resistance, and that overcame these different resistances by appropriating their languages.

One of the first and most prominent attempts to write the story of transitional justice interventions was Ruti Teitel’s three-phase analysis of the evolution of transitional responses. In a short but significant piece entitled Transitional Justice Genealogy (2003), she contextualised transitional responses alongside three historical phases. This chapter follows Teitel’s “genealogy” – in a rather loose, creative manner – as an inspiration to draw the history of the international fight against impunity. The first section discusses a “first phase” of transitional responses (1945-1948) when an internationalised framework for punishing perpetrators of mass atrocities was first devised via the emerging, modern system of human rights. It shows how, in the post-war period, human rights activists connected the problem of impunity in the aftermath with the tropes of silence and forgetting, and how liberal humanitarians came to identify remembrance as a form of resistance. The second section sets out the alternatives to the retributivist agenda created in a “second phase” of transitional responses (1980-1990). It shows how an agent of retribution was disputed in favour of a restorative account of post-conflict reconciliation and forgiveness, first in Latin America and later in South Africa. In the third section, I analyse the ways in which the international fight against impunity reclaimed the language of forgiveness and reconciliation, leading to a “third phase” (1998/2002–) when retributive and restorative measures were brought together under a common language of justice.

2.2 A Traumatic Beginning: the Twofold Problems of Judgment in the Post-1945

Neither as old as time itself, nor an inherent feature of human nature. Ruti Teitel places the origins of the search for justice in the wake of systematic violence in the aftermath of the Second World War (WWII). In her “genealogical” account, the legal, moral, and political debates leading to the Nuremberg and Tokyo war trials defined a new mode of responding to threats to global peace and stability. This moment inaugurated a first phase of
transitional interventions that broke free from merging jurisdiction and territorial sovereignty. If we accept Teitel’s periodisation, the origins of transitional justice responses are contemporaneous with the genesis of a new form of humanitarianism and the rise of an international fight against impunity.

There is no need to explain the by now well-known history of WWII. It suffices to state here the problems of its aftermath. With the military defeat of the Third Reich came the immediate necessity of re-establishing world peace, but also of coping with what had just happened. This is no novelty; after conflicts are properly contained, or after they completely exhaust themselves, reckoning finds room to take place. In relation to WWII, the end of hostilities brought the question of “what to do with surviving leaders of the Nazi Regime” (Leebaw 2011: 5). This was a seemingly simple question that demanded an extremely difficult answer. Many were the solutions suggested by the Allied intelligentsia. Leebaw (2011) recounts how Roosevelt’s post-war cabinet was split between at least two options: a straightforward one – the summary execution of the Nazi criminals – and of one a more complex nature – the establishment of military tribunals (ibid.). On the Soviet side, Prusin also describes heated claims for the fascist “‘thugs’, ‘bandits,’ ‘degenerates,’ ‘cannibals,’ and ‘perverts’” (2003: 15) to be sent right to the gallows. Notwithstanding the calls for instantaneous capital retaliation, the idea of criminal prosecution was eventually persuasive enough to convince both the capitalist and the communist worlds. But the implementation of prosecutions needed a sensible reorganisation of the principles of international law and the traditional response to the end of conflicts.

A set of problems surrounded the idea of holding post-war trials. First, there was a problem of legal authority and political legitimacy. Before the end of WWII, responses to threats to international order and peace were informed by the concept of sovereignty (Orentlicher 1991; Teitel 2000). Those who had broken the laws of nations and had failed their duties as subjects were punished according to the adjudication of local authorities. This was a system of assigning responsibility wherein the jurisdiction over “international” crimes respected the principle of territoriality. This system was still informing legal and political responses in the aftermath of the First World War (WWI).

20 For an explanation of the consequences and contradiction regarding the concept of sovereignty see (Bartelson 1995; 2011; Walker 1993; 2006c).
Very briefly, the logics of modern political sovereignty follow specific schemata that present “the implicit relation of *demos* (the people as a mass), *ethnos* (peoples as nations), and *topos* (the territory to be occupied and ruled)” (Meister 2012: 131). After WWI, this implicit relation framed the re-establishment of justice, peace, and political order in terms of mass accountability, national enforcement and local adjudication. This traditional way of settling accounts proceeded in a linear, descending fashion: states were subjected to the sanctions imposed by universal jurisdiction and citizens were subjected to the sanctions imposed by national jurisdiction.\(^{21}\)

Nazi Germany showed these schemata to be problematic, in more than one way. After the defeat of the Third Reich, the irrevocable primacy of the principle of sovereignty under international law was severely questioned. This was, in fact, a retrospective assessment. In 1945, there was a general perception that the inter-war responses had backfired. The indiscriminate sanctions and reparations imposed on the German state were seen as having played a fundamental part in the rise of National Socialism. The collective frame (sovereignty) was estimated to have unintentionally allowed for a counter-narrative of collective victimization. The national model was accused of fuelling the Nazi discourse of foreign enmity, spurring new hostilities. Similarly, the German trials – criminal prosecutions of German citizens carried out under national jurisdiction – were seen as decidedly ineffective in their pedagogic duty to set the limits of acceptable behaviour.

But there was another problem. The German state was in no condition to prosecute its own nationals in the aftermath of WWII. It was an occupied territory temporarily stripped of sovereignty, and therefore, stripped of the capacity to fully exercise its national jurisdiction. The very fact of the occupation suggested doubts. Critics wondered if the “justice” waged by the occupying forces would be justified, or if it would merely constitute an instance of victors’ justice, that is, a mere imposition of the occupier’s will upon the defeated (Wechsler 1947). The decision to implement military tribunals also had to account for the suspicion of being a politicised show selective in its rejections of past atrocities (Shklar 1964).

\(^{21}\) Respecting the principle of sovereignty, the response to WWI employed a frame of collective (national) responsibility for the war. This frame determined that Germany as a country, and Germans, indiscriminately in the plural, were to be blamed for wartime atrocities. Consequentially, the decision to impose onerous sanctions upon the German state was accompanied by the decision to leave “Germany to conduct its own national trials” (Teitel 2000: 39).
And yet, there was a third problem. Alongside the question of legal credibility was the enormity of the wrongdoing that was witnessed. The industrial annihilation of undesirable individuals and the programme of elimination of European Jewry (Shoa, Holocaust) were of such magnitude, so incredible, that, according to Primo Levi (1989), people were likely not to believe it had actually happened. The post-war trials would not judge common transgressions of warfare. They were supposed to pass judgment over events that have since become imprinted on the global “western” imaginary (Edkins 2003; LaCapra 1996; Zehfuss 2007) as “the epoch’s inaugural historical trauma” (Luckhurst 2008: 13).

Judging traumatic events entails a much deeper complexity than the question of legitimacy alone. Trauma is a concept related to incomprehensibility. The concept of trauma originates from a medical term, a rupture produced on the body (a wound) by an external factor (a shock) (Edkins 2003; Leys 2000; Luckhurst 2008). When applied in the social context, as a metaphorical description, trauma usually refers to a rather different rupture: the breakdown of the faculty of understanding. The talk of Nazi crimes as an inaugural trauma suggests they induced “the confrontation with an event that, in its unexpectedness or horror, cannot be placed within the schemes of prior knowledge” (Caruth 1995: 153). The reckoning with the Reich’s programme of extermination, in this sense, represented a “direct imposition on the mind of the unavoidable reality of horrific events […] that it cannot control.” (Caruth 1996: 57). Claude Lanzmann illustrates the point in a powerful and clear example. He argues it is enough to ask oneself “why have the Jews been killed? […] for the question to reveal its obscenity” (Lanzmann 1995: 204). In his logic, no reason would be good enough and no explanation sufficient enough for the extermination of human beings on an industrial scale.

The “epoch’s inaugural trauma” created a twofold problematic of judgment. As to what concerns the establishment of post-war trials, the problem of legal credibility was infinitely augmented by the problem of traumatic incredibility. Even if we assumed the Nazi crimes could be legitimately tried by a local authority, respecting the customary principle of sovereignty, the problem of understanding remained. How would one be capable of responding to atrocities of such obscene incompressibility?

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22 The number of those who died due to the Nazi camps is a debated issue. Scholars have usually suggested the figure of six million Jews (Bauman 1998; LaCapra 1996). For Primo Levi, famous survivor, the exact number does not matter. To speak of millions assassinated as a state policy is, already, sufficiently terrifying (Levi 1989).
23 See (Caruth 1996; Edkins 2003; 2006; LaCapra 1996; Leys 2000; Luckhurst 2008).
The origins of the international fight against impunity must be seen in light of this theoretical and practical conundrum: the moment our capacity of judgment (both legal and philosophical) is confronted with a doubly incomprehensible crime. Incomprehensible first because it referred to a situation for which no legal template was available. The era’s inaugural trauma disturbed the customary responses to threats to global peace. However, it was also incomprehensible because it required a new way of looking at systematic wrongdoing. It demanded the “invention” of an atrocity with no historical parallel.

1.2.1 The Nuremberg Trials and the Concept of Enemies of Humankind

The first public section of the post-war International Military Tribunal was held in October 1945. In Berlin it was decided 22 German citizens would be prosecuted for their crimes during the war (Wechsler 1947). On 20 November, the series of trials began in the city of Nuremberg, a former stronghold and symbol of the ascendance of the Nazi Party in Germany (Schaack 1999; Schabas 2000). In 1946, the Allied jurists reached a verdict; of the 22 indicted individuals, 3 were acquitted, 7 were sentenced to imprisonment, and 12 were sentenced to capital punishment for their part in three forms of wrongdoing: crimes of war, crimes against peace and, finally, the unparalleled accusation of crimes against humanity (Wechsler 1947).

The innovative idea of “crimes against humanity” was the legal and political solution for the fact that the Nuremberg tribunal – facing a two-fold problematic of judgment – “took place in a social vacuum” (Shklar 1964: 157). Faced with the lack of precedents this problem invited a certain “creative legalism” (Leebaw 2011; Shklar 1964). To solve the complications surrounding the questions of legitimacy and comprehension, Allied jurists needed to go beyond the following of clear procedural rules.

As a post-war trial, Nuremberg was primarily concerned with the crimes of aggression (crimes against peace) and the violations of international, humanitarian treaties (Luban 1987; Schaack 1999; Schabas 2000). But these concepts failed to satisfactorily grasp the traumatic nature and radical obscenity of the Nazi dictatorship. Both categories still presupposed the collectivist frame, missing that the most horrendous crimes of German officers had been committed against Germans themselves. The Allied jurists faced a serious question: if they
were to stick to the principles of international law, they would leave unpunished the worst of all evil.

Orentlicher describes how this inconsistency led to an ingenious theoretical operation; the development of a kind of wrongdoing that mobilised international jurisdiction in relation to the fate of individuals. This operation consisted in appropriating and reworking an old concept of customary law. Orentlicher argues that, roughly, under customary law, two kinds of wrongdoing were defined as “international crimes”: the violations of safe conduct and the rights of ambassadors “which states were required to punish when committed by one of their citizens” (Orentlicher 1991: 2553), and the crime of piracy, which even states “lacking a direct nexus to the crime could nonetheless punish” (ibid.). In practice, both arrangements still preserved the limits of sovereign authority, since “in each instance national courts were the fora in which the law of nations was enforced.” (ibid: 2554). Effectively, none of the aforementioned crimes foresaw the internationalisation of adjudication (pirates could be punished by any state, but never by every state). Nonetheless, even if lacking a direct connection with the concept of universal jurisdiction, the idea behind those historical crimes offered a most needed guidance.

According to Orentlicher (1991), piracy24 could be punished by any nation because it was understood as an offence to the law of all nations. This fact, much more than mere semantics, implied an important underlying rationale. It suggested a class of evildoers that, resting outside the system of rules, represented a breach in the primacy of territorial sovereignty. The answer lay in the nature of wrongdoing. Piracy was not a crime against a particular state, it was perceived as a crime against the very order of the European system. For the threat they represented, pirates were seen as hostis humani generis, the enemies of humankind.25

The suggestion that there could be forms of wrongdoing that concerned the whole of humankind offered a fertile ground for the “creative legalism” of Allied jurists. In order to legitimise the overcoming of national jurisdiction, the legal architects of the Nuremberg charter merely had to frame the Nazi atrocities as offenses against the whole of humanity. By

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24 Orentlicher is very careful to note the problems of overemphasising the role played by the customary concept of hostis humani generis in the run up to Nuremberg’s innovation. In her own words “many of the justifications for establishing universal jurisdiction over piracy are absent in the case of human rights violation” (1991: 2557, note 78). For a summary of modern universal jurisdiction see (Addis 2009).
25 Hostis humani generis is often translated as the “enemies of mankind”. Here I have adopted a non-gendered version.
mobilising the universalistic potentiality imbued in the idea of *hostis humani generis*, Nuremberg could prosecute “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population […] whether or not in violation of the domestic law of the country where perpetrated” (United Nations 1949: Annex 2, Art. 6 c).

Such disregard of domestic law had a double function. First it repudiated the Nazi legal order and its “criminal system that had made mass murder […] a legal duty” (Arendt 2003: 228). This problematised the defendant’s plead about the legality of their acts; the common argument that during the dictatorship, the Führer’s word had the power of a law (Agamben 1998: 83; Arendt 1964). Second, it provided the solution for theoretically legitimating the prosecution of war criminals by an international tribunal for atrocities committed against victims of the same nationality (Schaack 1999). A new type of crime that offended humanity was the “radical innovation” (Orentlicher 1991: 2555) and the most important heritage of the Nuremberg trials (Schaack 1999). Its resort “to international criminal law and the extension of its applicability beyond the state to the individual” (Teitel 2003: 73, my emphasis) provided a paramount precedent for a new form of humanitarianism.

Orentlicher argues that Nuremberg “inaugurates the branch of international law recognizing and protecting human rights.” (Orentlicher 1991: 2555). Both Vincent (2010) and Meister (2012) echo her statement by interpreting the advent of human rights as an organised response towards the new, unprecedented crime of annihilation of an entire people. Whether or not that is truly the case, the post-1945 era witnessed a rush to institutionalise Nuremberg’s creative, legalistic idea of “offenses against the whole of humanity”. This rush took the form of a set of positive statutes, conventions and treaties based upon the Nuremberg principles and intended at typifying a new legal order. Throughout the twentieth century, the efforts to prevent the recurrence of “barbarous acts that have outraged the conscience of humanity” (United Nations 1948b: 71) have animated the international search for justice. It kept alive the principle that perpetrators of violations of human rights should be punished, irrespective of their nationality, anywhere they were, as *hostis humani generis*, the enemies of humankind.

1.2.2 The Dirty Wars and the Merging of Impunity, Silence, and Forgetting

The international fight against impunity, however, came to a sudden halt in the years following 1948. The plans of establishing a permanent, international criminal court during the United Nations Genocide convention (United Nations 1948a) were frustrated by the geopolitical sensitivities of the Cold War. In a world divided in “spheres of influence” (Lederach 1997: 5) state officials were “more inclined to avoid pressing human rights concerns […] because they feared that such actions would actually exacerbate international tension” (Orentlicher 1991: 2558).

At Nuremberg, the concept of crimes against humanity was intrinsically related with the idea of crime against peace. Judging the Nazi criminals was the necessary goal of the trial to end all wars (Shklar 1964). But the world seemed to have moved in a direction that opposed the goals of justice (criminal accountability) to the goal of political stability (peace). This story is also well known. The stalemate between the two world powers and the strict division of the world into capitalist and communist spheres quickly reinstated the primacy of state sovereignty. In Teitel’s dramatic terms, this “attendant shift in the political winds eviscerated the impetus to justice.” (2000: 63).

This is a common, but unhelpful trope in the literature. The description of the Cold War as an interregnum in the international fight against impunity – when justice was held back by politics – obscures more than it clarifies. The years following 1948 were years of intense debates concerning the substance of human rights. They displayed a core tension in the project to institutionalise Nuremberg’s creative legalism (Leebaw 2011). Finally, in Latin America, they witnessed a process of politicisation of individual grief that transformed remembrance in a powerful form of political resistance (Greco 2014; Jelin 2003; Jelin and Azcarate 1991).27

Humanitarian activism is usually portrayed during the Cold War (from the post-1948 until the mid-1980s) as a humble practice of “naming and shaming” (Arthur 2009; Collins et al 2012; Lessa et al 2014; Waldorf 2012). The story is simple: faced with the unlikelihood of criminal prosecutions in authoritarian settings – due to the lethargy, impotence or

27 The idea that remembrance presents a continuation of resistance (see Appendix, Figure 1) is a powerful trope in the Southern Cone, and will be further explored in subsequent chapters.

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unwillingness of local judiciaries – human rights militancy was limited to making public, locally and overseas, the atrocities of state agents (Arthur 2009). This process involved disclosing a specific pattern of violations “to the light of international scrutiny” (Keck and Sikkink 1998: 23). This “mobilisation of shame” (ibid.) was part of a campaign “lobbying for policy change” (Gready 2011: 215). Its final goal was the erosion of the basis of legitimacy of violent regimes, so as to overthrow them on the road to re-democratisation.

Although the idea behind this mobilisation of shame is not altogether incorrect, it presents a rather crude, instrumental depiction of what was at stake in this form of activists, especially in the context of Latin America. From the perspective of organisations based in the Global North – such as the World Council of Churches (1948), Amnesty International (1961) and Human Rights Watch (1978), to name a few – the scrutiny of authoritarianism might have seemed as a simple instrumental mobilisation of “shame” (political legitimacy). But from the perspective of Latin American activists it was a much more complex process. A process in which the ideas of impunity, silence, and terror where interwoven.

During the 1970s, humanitarian activists in the Southern Cone were not simply fighting violations of human rights, they were fighting the political denial of such violations. As the continent intensified its fight against communism, terrorism and subversion the nature of state violence progressively changed from an overt and explosive instance of political repression to a covert “war” that employed the systematic effacing of its trails (see Chapter 3). The dissemination of disappearances is emblematic of these violations that left no trace, no body, no end, and, for all official purposes, had never actually happened. This marks a significant difference between the reality of violence during the Nazi programme of extermination and that of the Dirty Wars. Both were of an “unspeakable” nature, but in the Southern Cone the term had a more literal, less incomprehensible meaning.

The fight against impunity in the context of South American state terror posed a significant problem for political dissidence (especially for human rights advocacy networks). Their struggle towards criminal accountability was inextricably connected with larger societal struggles against regimes of denial, silence, and forgetfulness instituted by the authoritarian juntas. These regimes were terrifying because they robbed the victims of state violence of their own “voice,” and this made violence “unspeakable” not because it was outside the realms of language and comprehension but because there was no chance to speak up about it. From the perspective of those fighting impunity as political oblivion, the traditional practice of “naming and shaming” is better understood as an active practice of resistance through
remembrance. A practice in which human rights activists also had to work as “memory entrepreneurs” (Jelin 2003: 33), creating mobilising the “voice” of survivors fighting to create channels via which they could be “heard”.

The struggle to punish the enemies of humankind in the Southern Cone took the form of memory struggles, that is, instances where the individual recollection of the past is collectively mobilised in order to achieve a particular political goal. They are forms of political mobilisation aiming to re-claim “memory – no longer individual, but collective and historical memory” (Jelin and Azcarate 1991: 29) and counter historical narratives that they believe stand for the endorsement of “oblivion” (ibid.). Their objective is usually to “allow survivors a voice” (Edkins 2003: 18) by breaking with official denial, disputing the narratives about the past, and contesting the legitimacy of a given social and political order (Wilson 2001; Zehfuss 2007; Mälksoo 2015). These struggles become forms of political resistance because their final goal is to challenge the “threat to sovereign forgetting“(Auchter, 2013: 310). In the Southern Cone, this memorial resistance against dictatorial regimes still relied on an international humanitarian background, but its general mode of justification was very different. As Primo Levi suggested, the Nuremberg trials were also instances of political judgment against the risk of generalised forgetting. Part of their justification was to work as a preventive measure against political oblivion; the world should remember the extermination of millions in order to build a stable road to global peace and order. But in the Southern Cone, forgetting was already a reality and remembering was directly opposed to both peace and order.

South American “memorial-humanitarian” struggles rejected the maintenance of order as the widespread endurance of political forgetfulness regarding violations of human rights. They re-claimed peace (or pacification) as the denial of knowledge and acknowledgment of violations, and inverting Nuremberg’s equation, mobilised the memory of violations in order to disturb a wanton peace. This new equation was immortalised in the slogan memoria, verdad y justicia (memory, truth and justice). This “naming and shaming” was rather complex: it involved the gargantuan effort of preserving and recuperating the archives of repression (memory)²⁹; it required the gathering of forensic proof of violations of human

²⁸ The literature on memory and trauma studies largely accepts that the way individuals remember the past always involves an inter-subjective, social or collective element. For general account social or collective memory, see (Connerton 1991; Halbwachs 1992; Olick 1999; Mistal 2003). For an analysis of the politics of memory in the field of Global Studies see (Zertal 2000; Edkins 2003; Zehfuss 2003; 2007; Bell 2006; Auchter 2013; Mälksoo 2015).
²⁹ For a summary of the archival facet of human rights activism in the Southern Cone, see Bickford (1999).
rights (truth); and, most of all, it sought to ensure criminal accountability (justice). The intersection between these three goals was what constituted the promise of nunca más (never again) in its double and indissociably connected memorial humanitarian facet: as a memorial promise it opposed political obliviousness towards violations of human rights so violations would come into light; as a humanitarian promise it opposed the impunity of perpetrators their crimes would never happen again). Together, these goals merged the fight against the enemies of humankind (Nuremberg’s heritage) with the fight against the active denial of their “inhuman acts”.

Teitel claims the demise of the Cold War and the following processes of re-democratisation lifted the political impediments to prosecutions, bringing back the global drive for justice. Indeed, these memorial-humanitarian struggles had a very significant political impact in the South American context. In 1986, and for the first time, the Inter-American Commission broke “with its past practice [the simple “naming and shaming”] and began submitting cases to the Inter-American Court” (Goldman 2009: 874). As the prospects of criminal prosecutions became more clearly delineated as a response to systematic wrongdoing, legal scholars, activists, and politicians were inevitably faced with the question of “whether and to what extent” (Teitel 2003: 75) they should reproduce Nuremberg.

1.3 The Challenge of Reconciliation and its Alternative Visions of Justice

The Nuremberg model of universal jurisdiction was, nonetheless, widely rejected in “transitional societies” throughout the globe (particularly in Eastern Europe, South America, and South Africa) at the end of the Cold War. In these places the fight against impunity for the protection of human rights gave way to different, alternative visions of justice and, in particular, the idea of forgiveness. The literature is filled with attempts to explain this phenomenon. A more traditional account suggests that differences in legal, moral and political responses rested on two variables: the nature of violations societies had to reckon with, and the nature of the post-transitional political balance.

For this account the international fight against impunity was designed out of necessity. Allied jurists needed to justify Nuremberg as something other than an instance of “victor’s justice”. This is roughly why the idea behind the concept of hostis humani generis was mobilised and interwoven with the protection of global peace. Punishing the enemies of
humankind was a necessary step towards a peaceful order. But the memorial-humanitarian struggles (for truth and) against impunity in the Southern Cone were constitutively different. Their call for justice was a form of “victim’s justice”: a justice coming not from those who had won the war (in a top down imposition) but from the relatives of those who had disappeared (in a long and weary bottom-up struggle).

As a form of justice claimed by the “defeated” (Oliveira 2011) the “struggle for truth against impunity” was a direct affront to those who perpetrated atrocities in the past. Officers who, differing from the Nazi criminals, were not stripped of sovereignty, but in many countries remained in power.30 In their mobilisation of memory as a form of resistance, activists in the Southern Cone opposed the *instituted* memory of regional dictatorships (the official history of the past) with an *instituting* memory of human rights violations (the unofficial struggle against forgetting) (Greco 2009). The success of this counter-memorial programme varied in the region. Local struggles differed based on the nature of violations against human rights, the scope and overtness of political repression in the past and the strength of conservative sectors in the present. In the cases of Brazil, Chile and Uruguay, where the military remained strong and conservatives remained in power; impediments to legal prosecutions (amnesties) were enacted and respected by the new, post-transitional regimes.31 But in one country, Argentina, the situation was very different.

In Argentina, the Junta’s victory during the Dirty War was followed by a tremendous economic crisis and a military defeat against the British army in the Malvinas war (1982-1983). In the context of a weakened, demoralised military and a strong memorial-humanitarian movement, the fight for truth against impunity gained significant momentum. In 1983, the military withdrew from power and Raúl Alfonsín, a pro-human rights candidate, was democratically elected president. Enjoining the strong support of memorial-humanitarian activists, Alfonsín devised a tripartite strategy of transitional response respecting the goals of criminal accountability, knowledge and acknowledgment. In its first few months as elected

30 I focus on the Southern Cone and South Africa for their joint importance in framing the basis of global transitional responses during the second phase. For the Eastern European process of de-communisation see (Gonzáles-Enríquez 2001; Holmes 1995; Rosenberg 1995a).
31 In Chile (1978), Brazil (1979) and Uruguay (1986) blanket amnesties were decreed by the military before the transition. In Uruguay, in two referendums (1989) and (2009) a majority voted for the maintenance of the amnesty (de Brito 2001; Lessa 2011). The Argentine military Junta did enact a blanket amnesty; the Ley de Pacificación Nacional (National Pacification Law) before leaving power (1983), but the Alfonsín administration ruled it out on the way to the trial of the century.
president he decided to prosecute the heads of the former Junta – in what was later known as the “trial of the century” (Wilke 2011: 133) – and former leftist guerrilla leaders (Humphrey and Valverde 2008; Sikkink and Walling 2006). But the most innovative and enduring heritage of his transitional agenda was the establishment of an extrajudicial commission of inquiry; the first “truth commission” that was mandated to investigate the thousands of disappearances produced during the Dirty War.32

Post-Dirty War Argentina was not Post-War Germany; the ethical, political and legal dilemmas were significantly different. After the Nazi defeat, the enforcement of criminal accountability faced the twofold problem of judgment. The trauma of witnessing an unprecedented crime (genocide) on an unprecedented scale (as part of the war effort) deeply problematized the punishment procedures. Faced with the systematic character of violations and their “legality” under the previous regime, Nuremberg had to work around the questions of “Who will be held accountable? And who will hold them to account?” (Weschler cited in Arthur 2009: 322). But in the Argentina of the 1980s, the situation was radically different. Indeed, the problem of societal compliance, the systematic character of repression, and a frightening, bureaucratic indifference were also present (Osiel 2005). But that was only part of the story. The Dirty Wars lacked the provocative number of causalities produced by the Nazi industrial genocide. But they showed the terrorising “absence” of death (and information thereof) in the figure of forced disappearances. Alongside the question of who to punish and how to punish perpetrators, the Southern Cone had faced questions such as “Who was there? Who was screaming . . .?” (Weschler cited in Arthur 2009: 322).

For 280 days the Comisión Nacional sobre la Desaparición de Personas (National Commission on the Disappearance of Persons, CONADEP) looked for answers. The commission offered in the search for truth (the knowledge of the whereabouts of the disappeared) an end to this unending suffering.33 Enjoying official status (Bickford 2007), CONADEP represented the effort to merge the instituting (counter-memorial) and the instituted (official) poles of remembrance in Argentina’s transition to democracy. In September

32 The Argentine CONADEP was not the first extrajudicial commission of inquiry ever to be implemented. Other similar, previous attempts have been made in both Uganda (1979) and Bolivia (1982) (Hayner 2011; Hayner and Salvador 1994). However, in neither of these places were the commissions successful.
33 For criticisms of CONADEP’s work see (Camacho 2008; Crenzel 2008; 2013; Di Paolantonio 1997; Jelin 2003).
1984, the commission released its report affirming the systematic nature of past atrocities and, thus, defining the Dirty War as a crime against humanity.\textsuperscript{34} The report officially recognised 8,961 forced disappearances and 380 clandestine prisons (CONADEP 1985). Most of all, against claims from conservative sectors framing such violations as “overreactions” (the misdeeds of a few rogue officers) CONADEP vehemently affirmed: “it is the whole of the system, the whole of its methodology, since its very idealisation, which constituted the great overreaction; the aberration was a common widespread practice” (ibid: 16).

The Argentine case was extremely influential, encouraging the dissemination of truth commissions around the globe (Crenzel 2008). As of 2015, more than 40 extrajudicial commissions have been established, making of the search for knowledge and acknowledgment a now standard response to mass atrocities and systematic violence (Hayner 2011; Hayner and Salvador 1994).\textsuperscript{35} Truth commissions are usually associated with the ideas of forgiveness and national reconciliation, but CONADEP falls short of this description. The Argentine commission had the overt intention of producing forensic evidence that could later serve as basis for further prosecutions (CONADEP 1985). In Argentina, truth-seeking was not associated with a politics of collective forgiveness. Reconciliation and forgiveness as alternatives to punishment only entered the transitional agenda in Chile (1990), and most notably in South Africa (1995).

\textbf{1.3.1 The Minimalist Position: the “Possible” as the Measure of all Things}

In a recent attempt to map the contentious topic of political reconciliation, Verdeja (2012) identifies two different paradigms: a minimalist and a maximalist approach. For a minimalist account, reconciliation stands for the “simple coexistence between former enemies, premised on a rejection of violence” (Verdeja 2012: 168). Minimalists abide by a thin proceduralism concerning the formal regulation of animosities in the post-conflict scenario. They tend to frame the role of transitional interventions as providing proper means

\textsuperscript{34} The next chapter gives a more thorough explanation of this connection.
\textsuperscript{35} Of course, there are sensible methodological issues as to what constitutes a truth commission (Bickford 2007; Mendeloff 2004) and different accounts could ultimately result in divergent numbers.
of mediation, the re-structuring of political representation, and the reorganisation of the judiciary. This calculating perspective weighs the fight for truth and justice against contextual political constraints (Zalaquett 1995). Minimalist scholars see the prospects of achieving peace and restoring decency as depending on the “prospects for controlling the behaviour of those […] who are antagonistic to democracy” (O’Donnell and Schmitter 1995: 64). Therefore, in their account, realistic transitional responses must be attentive to the “natural fit between the desires for reconciliation that often […] animates incoming leaders and the desire for immunity in the outgoing ones” (Elster 2004: 27). In abstract, minimalism is utterly convincing. But in historical terms, it cannot be disentangled from a “counter-offensive” to the advances of memorial-humanitarian struggles in the Southern Cone.

In Argentina, the fight against impunity revolved primarily around the phenomenon of forced disappearances. But in other countries of the Southern Cone – most specifically Brazil, Uruguay and Paraguay – the number of disappeared was dwarfed by the number of exiles and political prisoners (see p. 2). In these places, the fight for truth against impunity was also a fight for political amnesty36. Amnesty here was not seen as a synonym of benevolent forgiveness, but as a relentless cry for “freedom” (UN Sub-Commission on the Promotion and Protection of Human Rights 1997: 3), social demand for the liberation of “terrorists” and the return of exiles. This kind of amnesty, as part of the memorial-humanitarian struggles, essentially opposed the theme of reconciliation.

The term “amnesty” demonstrated an immense capacity to build up social mobilisation around a political objective. And this capacity partially explains its progressive appropriation by conservative sectors and the dissolution of its retributivist agenda. Beyond the hard-core of memorial-humanitarian struggles – composed by survivors, human rights activists and relatives of victims – the concept of amnesty was also associated with the themes of pardoning, forgetting, and forgiving. This association between amnesty and forgiveness was eventually turned against the activists themselves. Through the idea of forgiveness, remembrance ceased to be a form of resistance against impunity and was rendered as revanchismo (revenge), an enduring resentment that threatened the process of pacification. In

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36 The most important groups in this regard were the “Amnesty Committees in Brazil, the International Secretariat of Jurists for Amnesty in Uruguay (SIJAU) and the Secretariat for Amnesty and Democracy in Paraguay (SIJADEP)” (UN Sub-Commission on the Promotion and Protection of Human Rights 1997: 3).
order to “protect” the future of the nation, and rejecting the need to address violations of human rights, opposing groups claimed a need to turn the page of the past (Silva Filho 2008: 174), a need to forget, to forgive, and to let bygones be bygones.

The idea of minimalist reconciliation in the Southern Cone is indissociable from this dual friction; the clash between a project of amnesty anamnesis – fruit of the struggle for truth against impunity – contra a project of amnesty amnesia – fruit of the struggle for forgiveness towards national reconciliation (Greco 2014). It was in the interplay between these two divergent tensions, that the idea of truth-seeking as a “second-best” (Roht-Arriaza 2006: xx) form of justice gained prominence. And it was in Chile that truth-seeking was blatantly disconnected from the promotion of criminal prosecutions. There, the pursuit of knowledge and acknowledgment (previously at the service of punishment) appeared, for the first time in the Southern Cone, as a policy for national reconciliation against the temptation of revenge: it was justice “en la medida de lo posible” (Aylwin 1992: 33), within the realms of the possible.

Chile was the second transitional country in the Southern Cone to establish a successful truth commission. In May 1990, the democratically elected president Patricio Aylwin Azócar created the Chilean Comisión Nacional de Verdad y Reconciliación (National Truth and Reconciliation Commission, CNVR). Following the Argentine model, Aylwin formed an extrajudicial commission in order to assess past atrocities and preserve the historical memory of Pinochet’s regime. But there were differences in the tone of truth-seeking between CONADP and the CNVR. In the memorial-humanitarian spirit, the Argentine commission rejected the possibility of “reconciliation unless the guilty repent and unless we find justice founded upon truth” (CONADEP 1985: 10). CONDAPE’s truth was a historical truth (memoria), but most fundamentally a forensic form of truth (justicia) (Grenzel 2008). In Chile things were decidedly dissimilar. The truth produced by the Chilean commission was meant “to collaborate for the reconciliation of every Chilean” (Comisión Nacional de Verdad y Reconciliación 1996 [1991]: 10).

37 This counter-offensive was immortalised in the infamous saying of Uruguayan president Sanguinetti: “no hay que tener ojos en la nuca” (Lessa 2011: 179), one should not have eyes on the scruff.
38 In Germany, as in Argentina, punishment was already seen in a form of symbolism. As “post-conflict” trials they had a symbolic power (Shklar 1964) as “exemplary” (Nino 1991: 2623) instances of retribution concerning “those mainly responsible for the worst deeds” (ibid.). Nevertheless, during the Chilean transitional response, this symbolic power was turned against the possibility of punishment itself.
The trope of reconciliation adopted by the CNVR posed a clear continuation with the semantics of the previous regime. In practice, Aylwin’s transitional policies were strongly constrained by a form of authoritarian enclave that outlived authoritarianism (Crenzel 2011). In the 1980s, the Chilean Junta adopted strategic measures to ensure that, even when leaving power, the military would still remain powerful. By the 1990s, Pinochet’s government had passed a sequence of *leyes de amarre* (tie-up laws) that restricted the possibilities of criminal accountability for the foreseeable future (de Brito 2001). This directly affected the political landscape. When the CNVR was created, Pinochet “remained as head of the army, a number of Senate seats remained subject to Pinochet’s appointment […] and military and judicial structures remained intact” (Popkin and Roht-arriaiza 1995: 84). With half of the Chilean electorate supportive of his neo-liberal achievements (Rojas 2001: 151), Pinochet was able to dictate the order of events to a larger extent.

This context provided a fertile ground for the minimalist approach: the trope of reconciliation was taken forward by a president committed to “reconciling the virtue of justice with the virtue of prudence” (Aylwin 1992: 33; 2007). In search for a reconciliatory form of justice, Aylwin appointed eight individuals of different political affiliations to assess the atrocities perpetrated by both sides of the Chilean Dirty War (CNVR 1996). Like its Argentine predecessor, the Chilean commission also affirmed the systematic character of violations of human rights. But unlike CONADEP’s approach, the CNVR also blamed the leftist armed opposition for having committed 90 out of 2920 violations of human rights (CNVR 1996).

Members of the CNVR had no easy job justifying this reconciliatory middle ground. Their report was criticised by both supporters and opponents of the authoritarian regime (Camacho 2008). But it is precisely because of this uncomfortable position that Chilean truth-seeking left an important mark in the international fight against impunity, as expressed in the words of José Zalaquett, a former member of Amnesty International a member of the Chilean commission and an impassionate defender of the project reconciliation. Against critics (especially critics on the left) Zalaquett described the political prudence the CNVR showed as a deeply courageous move, calling it a “less striking form of courage […] to learn

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39 In 1978 Pinochet’s government decreed an amnesty law lifting the state of exception instituted in the wake of the 11 September coup. The ley de amnistía pardoned state agents who perpetrated violations of human rights during the state of exception. The text strongly connected the achievement of “general tranquillity, peace and order” (1978) with the need to “leave behind meaningless hatred” (ibid.) and “to consolidate the reunification of all Chileans” (ibid., my emphasis).

40 The general famously threatened more robust forms of justice affirming that “[t]he day they touch one of my men, the rule of law ends.” (Pinochet cited in Rosenberg 1995b: 134).
how to live with real-life restrictions” (Zalaquett 1992: 1438). He also lauded the courage “to advance one’s most cherished values day by day to the extent of the possible” (ibid.).

1.3.2 The Maximalist Position: Therapies of Forgiveness and Social Healing

Besides the minimalist account, Verdeja also acknowledges a second, broader take on political reconciliation. Merging religious, moral and even medicalised arguments, this maximalist account “stipulates more extensive requirements for morally acceptable coexistence” (Verdeja 2012: 169). In at least one central point, maximalist reconciliation holds a fundamental difference against minimalist perspectives: while the latter characterises reconciliation as a realistic political compromise – justice within the realms of the possible – the former sees forgiveness and social restoration as superior forms of justice. Maximalists envision post-conflict justice as a restorative exercise in which punishment is secondary to “the call to heal, to redress imbalances, and to reduce differences” (Tutu 2000: 81, my emphasis). This vision of reconciliation, as opposed to “vengeful” punishment, offers a “reparative humanism in a society trying to heal itself from a destructive past” (Gobodo-Madikizela 2010: 294). According to maximalism, truth-seeking and forgiveness in the wake of systematic violence constitute parts of an essential post-conflict or post-authoritarian “therapy” (Humphrey 2002).

The South African case became known as the quintessential example of maximalist reconciliation. Moon argues “the TRC was distinctive because it applied therapeutic assumptions and methods to its redress of past violence” (2009: 78). She also accepts that idea of post-conflict healing, however, was already incipient in both the Argentine and Chilean transitions. In South Africa, the tensions witnessed between the international fight against impunity were reworked. A new form of “creative legalism” – the same one that animated Nuremberg’s post-War response – incurred in a more substantial rejection of retribution (Leebaw 2011).

It is empirically incorrect to suggest South American “minimalism” as devoid of any substantial moral justification. In Argentina and Chile, both forms of historic (truth-seeking) and forensic (criminal trials) justice were already legitimised through a mix of religious and medical metaphors. In his inaugural speech as elected president, Alfonsín referred to post-Dirty War Argentina as a society that was made “sick” (Alfonsín 1987: 70) by the wounds of
the past. Also, “the Alfonsinista experience, promised a future that would suture these wounds” (Vezzetti 2011: 59, my emphasis) without turning to “sterile fixations on the past” (Alfonsin 1987: 15). In Chile, this pattern continued. In a speech at the mythical Estadio Nacional,\textsuperscript{41} Aylwin affirmed that the state of “Chile’s spiritual health” (Aylwin 1992: 21) demanded “sanitation measures” (Aylwin 1992: 21). In both cases, by mobilising the ideas of (spiritual and moral) health, these South American presidents associated their post-authoritarian measures with themes familiar to religious sectors of society (Bonnin 2009; Lira and Loveman 2012). They suggested “amnesties” as acts of sacrificial compassion. They endorsed reconciliation and forgiveness as Christian values against (un-Christian) generalised hatred. In Argentina, this connection helped to justify a reversal of policies of accountability.\textsuperscript{42} In Chile, it induced the theory that exposing the “truth also brings a measure of healthy social catharsis and helps to prevent the past from reoccurring.” (Zalaquett 1992: 1433).

The sewing together of truth and reconciliation in a therapeutic-religious frame strongly influenced the South African case. Zalaquett’s idea of cathartic truth-seeking found many enthusiastic supporters amongst the African National Congress (ANC) lawyers (Leebaw 2011; Moon 2006) struggling to handle the end of decades of racialized oppression during the apartheid state (1948-1994) with the founding of a new republic. In this scenario, more than a focus on pacification and political stability, the idea of social restoration promised “a wider vision of justice that would encompass the ongoing pursuit of political and social change” (Leebaw 2011: 67). In 1995, the elected government of Nelson Mandela enacted the Promotion of National Unity and Reconciliation Act (1995). Following the experience of twelve previous cases of transitional truth-seeking, the act established a commission of inquiry mandated to create “as complete a picture as possible of the causes, nature and extent of the gross violations of human rights” (1995: Art. 3). The Truth and Reconciliation Commission of South Africa (TRC) would become the largest, most complex, and most influential truth commission to date (Hayner 2011).

Supported by a maximalist account of reconciliation, the TRC was preoccupied with the restoration of order and political stability. But its conceptualisation of “order” was

\textsuperscript{41} The football stadium where the Chilean Armed Forces imprisoned, tortured and assassinated subversives following the September 11 coup.
\textsuperscript{42} Following a series of military riots (Camacho 2008; de Brito 2001) that were seen as serious threats to democratic order and stability (Nino 1991) the Argentine government passed the Ley de Punto Final (Full Stop Law) (1986) and the Ley de Obediencia Debida (Law of Due Obedience) (1987). Both laws effectively halted the prosecutions of former perpetrators until 2005. As to justify such drastic “full stop”, Alfonsin finally resorted to “the need for ‘reconciliation’” (Di Paolantonio 1997: 444).
substantially more profound. In South Africa, order stood for more than a rational common ground bound to the realms of what is politically possible. It was framed through an organic lens; as that which provides the “life” and “health” of a community. This organic order was translated in the notion of *Ubuntu*: a traditional Bantu concept in which “humanness” is expressed by the virtue of coexistence (Gibson 2004; Gibson 2006; Leebaw 2011; TRC 1998; Wilson 2001). The concept of *Ubuntu* is at the heart of the TRC’s creative rejection of retribution and legitimation of restoration as a better form of justice. Stressing a vision of humanness as interconnectedness – by drawing on a belief that “people are people through other people” (TRC 1998: Vol.1, 85) – *Ubuntu* leads to an interpretation of punishment as a harm to the “essence of shared humanity” (Gobodo-Madikizela 2010: 277). Roughly, in this account, the fight against the enemies of humankind (a struggle for criminal accountability) risks much more than enhancing social divisions. Punishment can alienate perpetrators from the community they violated, damaging even further the social ties behind the organic cohesiveness of a social body. Instead, “in the spirit of Ubuntu” (Tutu 2000: 54) reconciliation should work for “the healing of breaches, the redressing of imbalances, the restoration of broken relationships” (Tutu 2000: 54). Forgiveness offers a chance to restore the organic balance since it “seeks […] to rehabilitate both the victim and the perpetrator” (ibid.)

*Ubuntu* preaches a sacrificial need for collective forgiveness, respecting the need for knowledge and acknowledgment, but also the need for repentance. In a typical maximalist understanding, the logics of *Ubuntu* depict the violent past as “an abscess,” which “cannot heal properly unless it is thoroughly incised and cleaned out.” (Rampele cited in Leebaw 2011: 74). This creative account had many interesting consequences. In a sense, it presents the most elaborate rejection of the Nuremberg model during the “second-phase” with a promise of social restoration strongly infused with a decolonial sense. In South Africa, the idea of an organic order raised “a polarity between ‘African’ ubuntu/reconciliation on the one hand and ‘Western’ vengeance/retributive justice on the other” (Wilson 2001: 11). The mobilisation of *Ubuntu* was bound to the search for a different form of justice, based on different idea of civilization.

43 Leebaw emphasises, however, that forgiveness was never seen as unconditional by members of the TRC (Leebaw 2011).
44 This was certainly not at work in the Southern Cone, where the enforcement of transitional justice was seen as the restoration of proper civilised, Western standards of coexistence (Comisión Nacional de Verdad y Reconciliación 1996 [1991]; CONADEP 1985).
In this decolonial, organic justice, the function of amnesties and the nature of truth were completely re-drawn. In one of its most controversial issues, the TRC’s reconciliatory therapy transformed the provision of amnesties as a confessionary means towards attainment and repentance. The 1995 National Unity and Reconciliation Act determined amnesties to be granted in exchange for full disclosure on past atrocities, on an individual basis. Perpetrators were given a chance to repent, provided they offered knowledge and acknowledgment of their own misdeeds. This ingenious move connected a vision of “truth as acknowledgment and justice as recognition” (du Toit 2000: 123) to the confession of “potentially penitent souls” (Moon 2008: 93).

In order to make this equation work, the TRC had to break down the primacy of forensic truth (a constitutive aspect of the international fight against impunity) into a series of different forms of truth. The forensic, or factual, truths that support Western “legal proceedings rely on proof beyond reasonable doubt” (Truth and Reconciliation Commission of South Africa 1998: Vol. 1, 6). Such a requirement, by virtue of logical necessity, excludes a more reconciliatory logic based on the idea that individuals might hold different perspectives on the same topic. Forensic truth presents a sharp opposition between a truthful, factual account of the past (what really happened) and a misrepresentation (a deceitful account). The politico-legal consequences are straightforward: someone is either innocent (their stories have been factually proven true) or guilty (their stories bear no grounds in factual, objective reality). In its “black and white” account of events, forensic truth leaves no space for the pluralism underpinning the political project of the South African “rainbow nation” – a multicultural and racially diverse polity (Gibson 2004; Norval 1998).

In order to counter this undesirable effect, the TRC defined 4 different kinds of coexistent truths: (1) factual (forensic) truth, the gathering of legal proof of past atrocities; (2) personal truth, individual accounts on violent events; (3) social truth, a dialogic truth created out of interaction between different accounts; and (4) restorative truth, a truth that, by opposing the truth of the apartheid state, would heal both traumatised individuals and the wounded nation (Moon 2008; TRC 1998). Based on the rational of multiple, coexistent truths, the TRC granted more than a thousand amnesties to individual perpetrators who cooperated in the search for knowledge and acknowledgment (Hayner 2011: 30).
1.4 The Retributivist Come-Back: Weaving a “Common Language” of Justice

The alternatives to criminal accountability devised during the second phase (both in its minimalist and maximalist forms) incited fervent debates concerning the fate of transitional societies. The connection between the innovative frameworks of truth commissions and the trope of reconciliation, healing, and forgiveness broke down the liberal humanitarian interlacing between (forensic) truth and criminal accountability (justice). This naturally provoked proponents of the international fight against impunity, who could no longer hold together the opposition between punishment or retribution and regimes of silence and forgetfulness. In places like Chile and South Africa, truth-seeking had broken the veil of political oblivion about the violent past, but no perpetrator had been convicted. This alternative was disturbing because it problematized what in liberal humanitarian terms was a simple dichotomy between punishment or impunity (Teitel 2014) into a complex choice between truth versus justice (Rotberg and Thompson 2000) or between different visions of justice.

Nevertheless, the clash between retribution and restoration did not end. Especially after the South African case, making a “come-back” became the main goal of struggles against impunity. That is to say, retributivist activist and scholars tried hard to circumvent or overcome the “extrajudicial” character of social forgiveness and its pervasive association with “amnesic” amnesties. They still desired more than a symbolic form of “historical justice” in the aftermath of violence. Understanding the imposition of forgiveness as a euphemistic ratification of impunity they emphasised that reconciliation represented the silencing of victims and the political obliviousness to their suffering. Activists and practitioners continued to seek an authoritative endorsement for criminal prosecutions in the memory of Nuremberg and of the hostis humani generis (Humphrey 2002; Leebaw 2011; Teitel 2003). As alternatives to retribution were devised in the 1990s, liberal humanitarian scholars also argued for an international duty “[...] to prosecute those who are responsible” (Orentlicher 1991: 2540) for violations of human rights.

This “come-back” of the liberal humanitarian project was organised in a long process that eventually lead to an overarching synthesis between retributivist and restorative agendas that moved beyond the entrenched oppositions between punishment and forgiveness in order to “lay the foundation for a normalized law of violence” (Teitel 2003: 70). This jurisprudence
recuperated the idea of universal jurisdiction in the establishment of a permanent International Criminal Court (ICC) (United Nations 1998), and inaugurated a new mode of steady-justice, a “third phase” of transitional responses where justice, truth, and reconciliation were all part of a singular mode of response to post-conflict or post-authoritarian realities. In order to understand this historical transformation of the international fight against impunity, one needs to look at its three main aspects: (1) the move towards hybridism, (2) the devising of holistic responses, and (3) the framing of truth as a human right.

1.4.1 Hybridism: Merging the Local and the Global

In both the “first” and “second” phases of post-conflict or post-authoritarian responses a sense of division between the “global” and the “local” was respected. These two geopolitical distinctions were constantly opposed in the development of transitional interventions. The post-1945 tribunals struggled to legitimise the prosecution of individuals in spite of their communitarian belonging, as the enemies of humankind. Its innovation was to render perpetrators accountable, anywhere in the globe, via the concept of universal jurisdiction. Their crimes were crimes against humanity, and because they offended the most basic human rights (the very idea of humanness) they could be punished by any legal authority. On the other hand, the post-Dirty Wars in the Global South dispute the primacy of this universalising response with resort to narratives of national and therefore local projects of reconciliation.

The idea of hybrid interventions cuts across this distinction. It relies on transitional responses using a mix between global and local elements. As a pragmatic innovation, the turn to hybridity was progressively developed from a “resurgence” of internationalism after the end of the Cold War (a phenomenon that happened outside the Southern Cone and South Africa). In particular, the logical argument supporting hybridity was drawn from the problems and perceived failures of transitional interventions under the auspices of the United Nations (UN). Three specific experiences were fundamental for framing transitional hybridism: the establishment of a truth commission in El Salvador (1992), and the creation of two ad hoc international criminal tribunals in the Balkans (1993) and in Rwanda (1994).

The history of El Salvador during the 1980s was similar to that of the Southern Cone countries. Engulfed in an anti-Communist atmosphere, the country was taken by a “right-
wing civilian-military alliance engaged in a counterinsurgency civil war” (Collins 2010: 149). For twelve years, El Salvador was trapped in a conflict between leftist guerrillas and the country’s military juntas. Peace talks started in the late 1980s, eventually leading to a UN-brokered peace accord in the early 1990s (ibid). In accordance with the second phase trend, the Salvadoran peace accord defined truth-seeking as an immediate condition for the implementation of a long-lasting peace. Contrary to the second phase general rejection of internationalism, Salvadoran truth-seeking was carried out by “non-partisan” global actors. This was justified as a necessary condition. Due to the perceived intractability of the civil war divide, the peace negotiations forbade national citizens of El Salvador to partake in the search for knowledge and acknowledgment (Hayner 2011).

In 1992, the Comisión de la Verdad para El Salvador (Commission on the Truth for El Salvador, CVES) was created under the administration of the UN (ibid). El Salvador represented a first pocket of “neutrality” and internationalisation amidst second-phase concerns with “local” political constrains. Collins affirms that in El Salvador, from the peace talks to the establishment of the CVES, “the level and length of UN involvement was unprecedented for the organization” (2010: 159). In contrast with the Southern Cone and South Africa, El Salvador represented an instance where “only international protection could make a truth-telling excise possible, given the charged post-conflict atmosphere” (ibid). In later years, the Salvadoran experience would be remembered as one of the original peace operations specifically “mandated to address transitional justice and rule of law activities” (United Nations 2004: 5).

Around the same time of the Salvadoran peace accords, the world witnessed an alleged re-emergence of ethnic conflicts (Lederach 1997). Especially troubling were two gruesome cases of mass atrocities. The Yugoslav ethnic wars (1991-1999) left 300,000 dead, thousands raped and over 4 million refugees, imprinting “the term ethnic cleansing on global consciousness” (Mann 2005: 356). During the Rwandan genocide (1994) more than 500,000 people were murdered “at a rate of 300 murders every hour” (ibid: 430). It seemed as though the world was faced with the “return” of the epoch’s inaugural trauma. And with this new genocidal drive, Nuremberg’s first-phase of legal response was promptly reactivated. At the same time the creative legalism of South African lawyers was responsible for devising alternatives to criminal prosecutions, punishment regained momentum. For the first time since 1948, other international tribunals were established to judge what were seen as heinous offenses to humanity and threats to global peace. In 1993, Security Council resolution 827
established the International Criminal Tribunal for the former Yugoslavia (ICTY) to operate in the Netherlands (United Nations 1993a). In the following year, resolution 955 created an International Criminal Tribunal for Rwanda (ICTR) (United Nations 1994).

Despite their many merits, as “completely international” (Roht-Arriaza 2006: 10) mechanisms, the Salvadoran commission and the ad hoc tribunals had undesirable shortcomings. As global responses they could never overcome a certain local suspicion. Many activists still nurtured the view that they were composed of outsiders, gringos who actually impaired rather than instigated “genuine reform on the local level” (Arthur 2011: 289). This, at times, “generated outright resistance and hostility” (ibid.). The CVES was strongly criticised for displacing the concerns of local activists, who were excluded from the search for knowledge and acknowledgment as a sine qua non condition for truth-seeking (Collins 2010). Also, in Serbia, the prosecution of war criminals “from above” contrasted with the silence of the local population, who showed little interest in reassessing the past (Obradovic-Wochnik 2013). In addition to concerns over scepticism and detachment were logistical and financial problems. In Serbia and Rwanda, the international fight against impunity proved particularly straining. By 2004, the ad hoc tribunals had shared “more than 2,000 posts between them and a combined annual budget exceeding a quarter of a billion dollars” (United Nations 2004: 14). A more efficient alternative was needed.

Hybrid responses came as a logical answer to these problems. Hybrid courts function “with international backing that combine, to differing degrees, domestic and international jurisprudence and include both international and national judges” (Verdeja 2009: 95). Hybrid truth commissions were first implemented in Haiti (1995) and Guatemala (1997), where truth-seeking mixed global and local elements. According to Roht-Arriaza, this was a clear measure to improve the efficiency of transitional interventions. Hybridism offered a way to “combine the independence, impartiality and resources of an international institution with the grounding in national law, realities and culture, the reduced costs, and the continuity and sustainability of a national effort.” (Roht-Arriaza 2006: 10). This arguably neutral,

45 In Haiti, in order to mark his return from exile, Aristide created the Commission Nationale de Vérité et de Justice (National Truth and Justice Commission, CNVJ), which began in 1995. The CNVJ was a hybrid institution, composed of four Haitian members and three foreign commissioners (Hayner 2011)

46 In Guatemala, after a long and draining civil war, a series of UN-brokered peace accords created the Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification, CEH) as part of a set of pacifying measures. The accord designated that the extrajudicial commission was to be formed by two national members and a non-Guatemalan chairman (ibid.).

1.4.2 Holism: Building an Emancipatory Peace Project

At the same time that the trade-off between global and local responses was being progressively questioned, the sophisticated theory of forgiveness, historical justice, and national healing behind maximalism gave birth to “a burgeoning industry, both in theory and praxis, as the politics of reconciliation” (Moon 2006: 258). But throughout the development of this “industry” the dichotomy between truth and justice – or retribution (criminal accountability) and restoration (reconciliation) – was being heavily scrutinized by memorial-humanitarian activists.

Having found a fertile soil in works on transitional justice, the politics of reconciliation, and the idea of historical justice, as the provision of knowledge and acknowledgement, were never unanimous in the field of peace and conflict research. Traditional accounts were more concerned with the end of hostilities and the priorities of disarmament and demobilisation (Andrieu 2010; Galtung 1969; Mani 2005a; Richmond 2010; Richmond 2006). Some scholars remained sceptical to claims that truth would ever bring about societal healing (Mendeloff 2004; 2009). For a selected group of researchers, however, the idea of reconciliation and, in particular, the maximalist trope, offered a promising alternative towards a “more ambitious forms of peacekeeping” (Richmond 2010: 22) capable of rebuilding a “deeply divided society” (Lederach 1997: 28).

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47 Much of the research that is known as “conflict management” and “conflict transformation” share strong ties with minimalist accounts of reconciliation. In this respect it might be interesting to contrast Verdeja’s typology of reconciliation with Richmond’s “generations” of “peacebuilding” (see following note).
48 Richmond describes the history of peace and conflict research as a series of four subsequent generations: a first generation based on conflict management, a second generation based on conflict resolution, a third generation based on liberal peacebuilding and a fourth generation of post-liberal peace. (Richmond 2010). Richmond identifies the rise of liberal peacebuilding in the early 1990s, when a series of “peacekeeping operations in Namibia, Cambodia, Angola, Mozambique and El Salvador seemed to offer the hope that the peace engendered by UN intervention could go beyond patrolling cease-fires” (ibid: 22, my emphasis). This generation follows the release of the UN’s An Agenda for Peace (1992b), the document introducing the concept of post-conflict peacebuilding as global, multilevel-approach “in order to promote a durable foundation for peace” (United Nations 1992b: v).
The idea of reconciliation as a policy of forgiveness meant to “humanize the perpetrators” (Minow 1998: 338) was seen as an important way to “engage the sides of a conflict with each other as humans-in-relationship” (Lederach 1997: 26). The notion behind post-conflict reconciliation promised “bringing together people from opposing sides and encouraging them to articulate their past pain” (Lederach 1997: 150). Reconciliation, as “a process through which a society moves from a divided past to a shared future” (IDEA 2003: 12), became an increasingly attractive buzzword for researchers and practitioners concerned with measures “for the prevention of further conflict” (SIDA 2003: 9). It came to be seen also as a potential contribution of transitional justice to a thicker understanding of pacification (Andrieu 2010; Lederach 1997) and for wider strategies of conflict transformation (Little 2011).

The adoption of the maximalist theme by this “correlate” literature was originally much closer to the reestablishment of an organic order, as envisioned by the TRC. But, over time, this burgeoning industry of political reconciliation shows a progressive understanding that neither retribution nor restoration can bring about peace on their own. Handbooks affirm that “compromise regarding justice, and the legal desire for retribution [...] innately carries the risk of silencing the past” (SIDA 2003: 30). They start insisting that “[r]econciliation processes are ineffective as long as the vicious circle of impunity is not broken” (IDEA 2003: 108). Over time, this rapprochement of an emancipatory peacebuilding agenda and the maximalist idea of reconciliation incurs in a specific mantra: the need for a “holistic prism” (Gready and Robins 2014: 6) that encompasses “all existing methods of transitional justice” (Mani 2005b: 524) as means “necessary to support sustainable peacebuilding.” (Lambourne 2009: 47).

This holistic approach is crystal clear in the UN report *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies* (2004). According to Andrieu, the 2004 report marks the “official” recognition of transitional interventions as “an apparatus within the wider peacebuilding ‘package’” (Andrieu 2010: 538). This co-optation of the transitional expertise demonstrates an increased understanding “that confronting the past is considered essential to building a culture of human rights” (ibid: 538-539). More than that, it illustrates a strong

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49 For Lederach, reconciliation offers an important mechanism for the resolution of conflicts since it creates “a place where people and things come together.” (Lederach 1997: 29). In his work this place accounts for the encounter between “truth”, “mercy”, “justice”, and “peace” (ibid: 30). Now justice here involves four main ideas: equality, right relationships, making things right, and restitution (ibid.), none of which overtly refer to criminal accountability.
tendency to bind the meaning of national reconciliation to the fight against impunity. In an attempt at “articulating a common language of justice for the United Nations” (United Nations 2004: 4, my emphasis), the 2004 report closes the gap between retribution and restoration. Transitional justice is defined as the “full range of processes and mechanisms […] in order to ensure accountability, serve justice and achieve reconciliation” (ibid.). This common language frames justice as “an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs” (ibid.).

1.4.3 Truth as a Human Right: Sewing the Loose Ends

The common language of justice “revived” the humanitarian idea that “truth and justice are complementary” (Roht-Arriaza 1998: 314) after a period when they had been seen as “alternative forms of accountability” (Leebaw 2008: 99). In this common language, reconciliation (as the reestablishment of peace and order) was dissociated from the project of amnesic amnesties and reconnected to justice (as the insurance of criminal accountability). This rapprochement incurs in the development of a “whole array of methods for combining truth-seeking and prosecutorial functions” (Roht-Arriaza 2006: 9). It supports the premise that “there can be no just and lasting reconciliation unless the need for justice is effectively satisfied” (United Nations 2005: preamble).

If in “political” terms, the sewing together of retribution (punishment) and a restoration (forgiveness) requires a wider, emancipatory peace agenda, in “legal” terms it undergoes an ingenious operation. In order to integrate justice and reconciliation, liberal humanitarian scholars and activists had to render truth (both historical and forensic) as an inalienable right. The reasoning is provocatively simple. The idea of “truth” (or knowledge

50 One of the most interesting aspects of this “common language of justice” is the merging of the historical vocabularies of the fight against impunity and the maximalist “transitional therapy” of reconciliation. Although it conditioned restoration to a retributivist agenda, the new holistic perspective still preserved the goals of “individual and societal healing” (United Nations 2006b: 8) as fundamental for an everlasting peace. Even a hybrid, holistic forms of justice still sees the explosion of conflict as a “trauma” (IDEA 2003: 77) promoting “the destruction of individual and/or collective structures of a society” (ibid.). In a medicalised tone, the holistic fight for justice in the aftermath is framed as a complex “mix of complementary therapies” (Schabas 2006: 21) for “populations traumatized by war” (United Nations 2004: 11). These complementary therapies “may contribute to the building of a healthy civil society” (Andrieu 2010: 539) by seeking to “heal rather than exacerbate wounds.” (Mani 2005b: 525). For an account of therapeutic justice in the twentieth century see (Humphrey 2005; Moon 2009; Pupavac 2004).
and acknowledgement) had been the central support the reconciliatory challenges to the international fight against impunity in the 1990s. It was the nodal point justifying the entrenched division between the pursuance of criminal prosecutions and the endorsing of “amnesic” amnesties.

In tandem with the flourishing and development of a religious, medicalised trope of forgiveness in the Global South, retributivists continued to press for the prosecutions of perpetrators. From the mid-1980s and throughout the 1990s, international treaties incorporating new violations and typifying new crimes expanded the breadth of and depth of human rights law. As a consequence of the reckoning with the Dirty Wars, the number of international, core instruments was expanded with the Convention against Torture and other Inhuman Treatments (United Nations 1996 [1984]) and the Declaration on the Protection from Enforced Disappearance (United Nations 1992a). Around the same time, a series of UN Bespoke reports from independent experts compiled otherwise ad hoc transitional policies in standardised, legal terms. Some of these reports questioned if victims of violations had a right to economic reparations; others pushed forwards the question if there was an international duty to fight impunity in the aftermath.

Between 1996 and 1997, French justice Louis Joinet elaborated the famous Question of the impunity of perpetrators of human rights violations (civil and political) (1997). The report provided a series of principles to guide the fight against impunity, whilst suggesting restrictions on the provision of amnesties. The first of Joinet’s principles is a right possessed by victims of violations of human rights (and their relatives) to know the truth about the past. This interpretation of the right to the truth heavily draws on the experience of memorial-humanitarian tradition, in particular, with the creative ways in which advocates circumvented “amnesic” amnesties in the Southern Cone. Joinet frames the right to know the truth as

51 The declaration defining disappearances as crimes against humanity was adopted by the General Assembly fourteen years later (United Nations 2006a).
53 Commentators have traced the right to truth back to the UDHR, the Geneva Conventions (1949), and even to the International Covenants of 1966 (Groome 2011; Naqvi 2006). This, however, misses the connection between the right to the truth and the specific political decision of the South African TRC, as well as the work of memorial-humanitarian activists in the Southern Cone and wider Latin America.
54 The Inter-American Commission on Human Rights played a major role in formulating the policies of knowledge and acknowledgement as an inalienable right (Groome 2011; Orentlicher 2007, UN 2004). In Latin America, the rhetoric of forgiveness and “moving on” was strongly resisted by human rights activists, family
not simply the right of any individual victim or closely related persons to know what happened” (UN Sub-Commission on the Promotion and Protection of Human Rights 1997: A17), but also a collective right whose “corollary is a ‘duty to remember’, which the State must assume” (ibid.). The right to the truth and its correlated duty to remember were devised to work for acknowledgement “against the perversions of history that go under the names of revisionism or negationism” (ibid.). In a clear defiance of the TRC’s creative legalism that pulverised the idea of truth in multiple, coexistence forms, Joinet recuperates the Argentine principle that truth commissions should work “to preserve evidence for the courts” (ibid.).

The right to the truth was later revised, in the 2000s, in two UN commissioned studies, by Diane Orentlicher, a longstanding supporter of criminal accountability. The reports assessed the best practices “to assist States in strengthening their domestic capacity to combat all aspects of impunity” (United Nations 2005: 1). Through her thorough exposition Orentlicher reinforced the victims’ “impresscriptible right to know the truth about the circumstances in which violations took place” (United Nations 2006b: 7). She explicitly affirmed the role of truth commissions as “to safeguard evidence for later use in the administration of justice” (ibid: 9). Once again, in a more specific way, her text overtly rejected the South African model, reassuring that “[t]he fact that a perpetrator discloses the violations that he, she or others have committed […] cannot exempt him or her from criminal or other responsibilities” (ibid: 16).

The right to the truth is a legal concept, but it has a very specific political function. Turning truth into a “right” foreclosed the grounds for alternatives to retribution. It theoretically bound reconciliation back to criminal accountability. In a sense, the theory behind this new right was supported by a general expression of human rights as “equal and inalienable” (United Nations 1948b: 71). Most of all, it mobilised an idea of human rights as “indivisible and interdependent and interrelated” (United Nations 1993b: 1-5). By rendering

55 In 1991, Orentlicher published the classic Settling Accounts (1991). In the article, by drawing on the Nuremberg precedent, she argues that international criminal law imposes a duty to combat impunity on every individual state.  
56 The UDHR makes no visible distinction between the rights it specified as being granted to individuals based on their humanity. However, during the Cold War, legal theorists and politicians split the rights listed in the declaration into two main groups (Civil and Political, or first generation rights) and Socio and Economic (or
the knowledge of past violations as yet another human right, legal theorists were ensuring a motto long held by memorial-humanitarian struggles: the equal, inalienable and inseparable nature of truth (knowledge), memory (acknowledgment) and justice (criminal accountability). The right to the truth was an important development recuperating the tradition retributivist goal of “ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished” (United Nations 2005: 7).

Defined by hybrid mechanisms, a holistic approach, and the idea that truth-seeking constitutes a human rights, this common language of justice was seen at work in several transitional/peacebuilding cases during the last fifteen years. Halpern and Weinstein remind us how both the Yugoslav and the Rwandan cases shared “[t]he implicit assumption […] that criminal trials are an important component of reconciliation” (Halpern and Weinstein 2004: note 11). A confluence also seen in the responses employed in Sierra Leone (2002) where both a truth commission and a special court became operational, side by side in an “unprecedented experiment” (Schabas 2006: 21). The Sierra Leonean Special Court was established to “contribute to the process of national reconciliation” (ibid.) showing how “the relationship of the two mechanisms is rather more synergistic than many might have thought.” (ibid: 39). In East Timor (2001), ad hoc courts, a truth commission, and reconciliation processes were set up as complementary interventions (Reiger 2006). In the spirit of the third phase, the Timorese Comissão de Acolhimento, Verdade e Reconciliação (Commission of Reception, Truth and Reconciliation, CAVR) saw reconciliation as an essential mechanism in the “fight against impunity” (CAVR 2005: 29). It offered “the resolution of a striking number of cases that could not be possibly processed via the formal justice system” (ibid.).

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second generation rights) (Brems 2009; Cohen 2004; Kennedy 2002; Vincent 2010). In the 1990s the idea of “indivisibility” emerged to dispute claims that social and economic rights were of a secondary nature to civil and political rights (Nickel 2008).

57 Both Leebaw and Doxtader criticise this this progressive in-distinction between retributive and restorative forms of justice. For Leebaw (2008) the synthesis shows little regard towards contradictory claims. According to Doxtader (2012), this inevitably undermined the rhetorical, deconstructive possibilities presented by the concept of reconciliation.
1.5 Conclusion

In this chapter I have provided an overview of the rise of, the challenges to, and the final return of the international fight against impunity from the post-1945 (with the advent of human rights law) to the mid-2000s (when truth was framed as a human right). Resorting to traditional accounts in the literature of transitional justice, I showed how the struggle against the enemies of humankind is not a static, essential or never-ending fight of defenders of punishment and justice versus defenders of regimes of silence and forgetting. On the contrary, throughout late twentieth century and the early twenty-first century the project to punish perpetrators of crimes against humanity was in a constant state of change.

Originally resolving a “traumatic” problem of judgment, global criminal accountability was first associated with the defence of peace. This was later subverted by memorial-humanitarian activists in the global south who equated a very specific “peace” with imposed regimes of silence and impunity; and, on a different note, by the reconciliatory promise of the TRC (associating prosecutions with wounds to a healing social tissue). The latter proposed reconciliation between victims and perpetrators, and not retribution, as the best way to achieve a durable and healthy peace. From the mid-1990s to the turn of the century the goal of the retributivist agenda was to overcome these challenges, in particular to reject the TRC’s proposal. And liberal humanitarian scholars and activists did so by mobilising trends in general peacebuilding practices such as the ideas of hybridism and holism with a specific jurisprudence that framed truth as an inalienable right. The result was the weaving of a global, “common language of justice” for which legal retribution and political reconciliation were merely two parts of the same overarching set of responses to the heinous heritage of mass atrocities.

This “genealogy” is compelling and convincing in many ways, but it is also very problematic. By describing the history of transitional responses as a series of “phases” in which the Nuremberg model is either rejected or accepted the story reproduces a commonly misguided trope; the idea that the implementation of truth, justice and reconciliation in the aftermath of violence is simply a response to the external reality, a way of coping with a series of historical “traumas” that produced “problem of judgment”. In the next chapter I will propose a different view of the “punishment versus impunity” debates. This reading starts to shed light on some neglected aspects of post-conflict or post-authoritarian justice and is related to the idea of a politics of impunity. Drawing on Foucault’s critical historicism, I will
provide the first move towards a *critical genealogical* analysis that seriously investigates transitional justice responses as *a set of disciplines*. The first step of this analysis will be to move away from the *conditions of implementation* of justice towards its *conditions of possibility*. That is, from a discussion of how can we can best implement peace and justice in the aftermath of violence, to how we can even begin to think that violence ever ends.
2 Producing the Post-conflict: The Liberal Humanitarian Representations of Violence

2.1 Introduction

The first chapter offered a historical account of the international fight against impunity from its origins (alongside the rise of modern human rights law) to its most recent transformation (the right to the truth). The chapter revolved around the problems concerning the implementation of justice in post-conflict or post-authoritarian scenarios. I provided a brief overview of the “punishment versus impunity” debates according to the literature on transitional justice, describing how the retributivist agenda was disputed, and finally overcame, challenges concerning the question of national reconciliation. As I explained, my overview was informed by Teitel’s three-phase “genealogy” of the quest for truth, justice, and reconciliation in the wake of violence.

Teitel claims her “genealogy” is indebted to Michel Foucault. In the first footnote of *Transitional Justice Genealogy* she quotes “Nietzsche, Genealogy, History” (1984), Foucault’s widely known manifesto for a genealogical method, as a source of inspiration. This, as we shall see, is extremely problematic. Foucault might have indeed influenced Teitel in her desire to write the history of problems often appreciated as transcendental (punishment, acknowledgement and forgiveness). As a fierce critic of transcendentalisms of all sorts, Foucault surely invited research across disciplines to follow his critical, historical analysis. However, all too often, his complex method is appropriated, distilled of its intricate nuances, and ends up producing conclusions that are at best, misleading, and at worst, a clear misreading of Foucault. This is the case of with Teitel’s “genealogy” described in the last chapter.

Teitel’s mistake is by no means hers alone. It merely expresses a general trend in the literature on the implementation of justice (and peace) in the aftermath. The discussion concerning punishment, acknowledgement and forgiveness largely departs from a traditional account on the production of knowledge that assumes a relation of exteriority between the field and practice of transitional interventions and the problems faced in the wake of
systematic violence. In a sense, this perspective takes the quest for justice in the post-conflict as a question of problem solving. This logic identifies in a particular (post-conflict) situation the need to implement one particular solution (justice, in all its different forms). If we look back, that was exactly the logic behind last chapter’s “genealogy”. Everything began when the trauma of the Holocaust required the creation of a new, unprecedented crime and the enforcement of an international duty to punish the enemies of humankind (solving the impossibility of philosophical and legal judgment); in the Southern Cone and in South Africa the “trauma” of state terror (the Dirty Wars and Apartheid) and its regime of silence induced the creation of truth commissions (solving the problem of disappearances and the need for reconciliation); and, from the establishment of the ICC onwards, a common language of justice connected both responses (solving the dynamics of a new era of pervasive conflict).

Knowledge and practice here are always a response to something exterior to them.

The first step towards a critical genealogical approach is to go back to Foucault, and pay serious attention to his critical historical method. The last chapter showed that a historical analysis is just not enough so long as it remains at the level of conditions of implementation. Foucault was adamant about the need to question the conditions of possibility of claims to knowledge. If we are to do justice to his genealogical method, we need to move away from the conditions of implementation of post-conflict or post-authoritarian justice towards a discussion about their conditions of possibility. This means we have to stop asking ourselves “what can we do to achieve justice in the post-conflict era?” and start asking “how can we even speak of a post-conflict era to begin with?”. It also means leaving behind the assumption of exteriority between knowledge and experience.

A critical genealogy of the “punishment versus impunity” debates – an inquiry into its conditions of possibility – must proceed in three steps. First, instead of focusing on the problems that come with the end of violence, a critical genealogy must reveal how, at a particular point in history, it became possible to speak of a time when violence had ended or could possibly end. Second, instead of simply mentioning the disputes between retribution and restoration, a critical genealogy must situate these debates in the internal cohesion of a body of knowledge. It must show how seemingly disparate perspectives and position actually share a common ground. Finally, and most importantly, a critical genealogy must disclose how a field of knowledge and practice emerged through a process of objectification: the production of its very object of study and intervention. In sum, and as it concerns the present work, this
critical enterprise must reveal in the internal coherence of debates concerning impunity, how a narrow representation of violence produces a convincing “myth” of the post-conflict era.

In the present chapter, I begin to draft what this critical genealogy should look like. In the first section I present a dense, but necessary, explanation of Foucault’s historical methodology. My exposé surrounds his idea of truth as a historical “set of rules” suggesting that “new” objects of analysis are, in a sense, produced by “new” academic disciplines. This takes me away from the conditions of implementation of transitional justice to its conditions of possibility. In the second and third sections, I move on to identify, in the history of transitional justice, the “discipline’s” own process of objectification. The second section contextualises the rise of transitional debates in the late twentieth century (1980-1990), at a time when the post-conflict appeared in the global political landscape as an attainable reality. The third and last section analyses the idea of a postconflictual political ethos vis-à-vis its assumption about the phenomenon of violence.

2.2 The Two Meanings of the Word Discipline in Foucault

As an extremely prolific writer, Foucault left a universe of concepts and ideas as an inheritance. It is unfortunately rather easy to lose oneself in such conceptual abundance. Foucault’s later status as a “superstar” hardly helps; entire bodies of work were built and developed upon notions he merely suggested in passing. So, the problem begins with the question of where to begin, a problem I will attempt to circumvent. There is, in the vast and erudite intellectual labyrinth of Foucauldian scholarship, one concept that stands out, one concept that simultaneously embodies the immediate connection between the two fundamental poles of Foucault’s thoughts: the production of knowledge and the effects of power. This concept is discipline, a singular term with multiple senses.

Foucault understands and uses discipline in a volatile manner. The notion of “discipline” is not a static, immutable and coherently used concept; on the contrary, discipline

58 In the field of global studies and the areas of human rights and transitional justice, researchers usually begin by explaining the concepts of discourse or discursive practice (Dittrich 2013; Dunne and Wheeler 2004; Evans 2005; Frazer and Hutchings 2011; French 2009; Humphrey 2002; Moon 2006) or the ideas of governmentality (Campbell 1992; Fourlas 2015; Katz 2011; Odysseos 2010). Without discrediting these approaches I take my own different shortcut into Foucault’s power-knowledge nexus.
is a notion that evolves over the years, assuming different connotations and unveiling the development of his thoughts. If one reads Foucault’s works in retrospect, as he himself did occasionally (Foucault and Rabinow 1984), the concept of discipline attains a prominent place. It presents the juncture connecting Foucault’s incessant questioning of authoritative knowledge claims that govern our modes of life. It poses the critique of disciplines (bodies of knowledge) that discipline (forms of power) our everyday conduct.

In this chapter I explain the first meaning of the term discipline in order to contextualise the “punishment versus impunity” debates in the aftermath of violence. Roughly speaking, in Foucault’s early works a discipline refers to a domain of knowledge characterised by rules of internal coherence. This meaning of discipline is important because it offers a different perspective on the relation between bodies of knowledge and objects of knowledge. This perspective is the basis of the idea of objectification.

One has to consider Foucault’s sophisticated account of truth in order to understand the relation between disciplines and their rules of internal coherence. Foucault works with a concept of “truth” that refers to a relation of correspondence defined by a set of rules (Foucault and Rabinow 1984). This is to say the production of knowledge, as a general inquiry about the truth of things, is always a process constrained by specific procedures. If one desires to know the truth about a given phenomenon one must follow specific directions provided by a particular set of rules. This sounds all too technical, like a question faced only by scientists in the isolation of their laboratories, but it is a rather banal reality faced by thousands of people every single day. Any of us, in spite of our credentials, would resort to a set of rules in order to judge the veracity of the pettiest, most practical questions. A hypothetical example might help to clarify. Imagine one is sadly alone in a pub on a Friday night. Imagine, too, that one is approached by another person inquisitive about the availability of a nearby stool. Now, when asked the question “is this chair free?”, any of us would promptly resort to an observational method (a rule in order to discover the truth about this particular situation). Simply put, if I have not seen anyone occupying the stool, the truth is it could be free. If, on the other hand, we just saw the stool’s occupier leaving for a quick cigarette, for better or

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59 Foucault does not exactly use the term discipline when referring to bodies of knowledge. He more commonly refers to savoir (Foucault 2002b), discourse or discursive formations (Foucault 2002a). One of the main reasons for this terminological difference is Foucault’s inclination to look at claims of knowledge that were not validated as modern, academic fields of inquiry. Knowledges that were left behind as the debris of immature, mad, or improper form of investigations and are not considered “disciplines” in a serious sense. Nonetheless, I recuperate the term here for its semantic value concerning the power-knowledge nexus.
worse, the stool is unavailable. Either way, depending on our levels of narcissism, we can rarely hold back the drive to interpret possible hidden meanings of such transparent, practical question. Was it really a simple question, or was it the beginning of a flirt? In that case, the truth demands further investigation.

The idea of truth as a set of rules defining a relation of correspondence – be it with the visible world or its invisible depths – is by no means an original contribution of Foucauldian thought. It has been long discussed by philosophers of science. 60 Foucault’s inventive twist was, in fact, seeing such rules as fundamentally historical. In one of his most famous works, The Order of Things (1966), Foucault describes, in overwhelming intellectual breadth, how the relation of correspondence between claims of knowledge and the “objective reality” dramatically changed over the course of time. According to Foucault’s reasoning (and this is a fundamental point) such fluctuations were not caused by the advances of the scientific method.

At first sight, The Order of Things is an incomprehensible book. This is not due to a convoluted writing style; reading Foucault is usually much easier than reading his contemporaries. The book in itself is weird, the information it conveys is simply strange. The Order of Things presents a whole set of odd historical “anecdotes”. The first chapter takes us to the late Middle Ages, recounting a time of strong beliefs in the biblical myth of Babel (the common, primal language of humankind), the healing powers of walnuts (capable of curing headaches) and the wickedness of cemetery flowers (carrying the omen of death). From the beginning, we come across beliefs that seem incredible in the most archaic sense of the word, even ludicrous, to our modern minds. We are all too quick to see in these beliefs mere misbeliefs of a past tainted by religious fanaticism or blinded by superstition. Of course the medieval Europeans thought as much, they did not know better. However, it is against this “liberal arrogance” (Bartelson 1995: 66) – the presumptuous conjecture that we are right, that we know the truth – that Foucault’s writing is so powerful. The Order of Things describes such remarks in their opacity, without prejudice. In the “misbeliefs” of the past it sees simply a different understanding of truth. This is perhaps the strongest of Foucault’s political arguments. He takes us to this different reality, the heterotopos of an incomprehensible mode of knowledge, in order to question the “beliefs” of the present, the “truths” that govern our lives.

60 See (Kuhn 1996; Popper 2002).
Foucault’s genealogical approach creates this *heterotopia* by introducing the concept of objectification. Objectification fundamentally challenges the traditional way of looking at bodies of knowledge as if solving external problems. It refers to the process by which the objects we deem most natural (that is, the things whose existence we see as independent from our perspective) have, in fact, not always existed. Objectification supports a theory for which “objective facts” and an “objective reality” must first emerge as *knowable objects*. Here is where truth, as a set of historical relations of correspondence comes in.

Perhaps the best way to explain objectification is to give Foucault’s most radical account of it. In an unfathomable remark, Foucault affirms the discipline of “Biology” was unknown prior to the modern age. His explanation is astonishing; there could be no Biology before the emergence of its object of study, life. Such an unsettling statement must be reassessed if Biology did not exist is because “life itself did not exist” (Foucault 2002b: 139). How can Foucault claim “life”, the most natural and self-evident aspect of our being, to put it crudely, a modern invention? He can and he does because he exposes, in the seventeenth and eighteenth century, a set of rules concerning truth (an *episteme*) that could not yet accommodate the modern understanding of life.

From the seventeenth to the late eighteenth century the production of knowledge works within “the apparent simplicity of a description of the visible” (Foucault 2002b: 149). The rule of correspondence between representations (knowledge claims) and the reality they refer to locates certainty about truth in what is superficially and immediately observable. Knowing the truth about the world consists, according to this premodern rule, of knowing the visible characters of worldly things. This rule of correspondence (the visible) orbits a central idea: the visible surface of things transparently represents their true nature.

In this historical context, the primacy of the visible in the order of knowledge dictates the predominance of “sight with an almost exclusive privilege, being the sense by which we perceive extent and establish proof” (ibid: 144). Here, the metaphor of the “Dark Ages” is quite revealing. From a historical perspective, the privilege attributed to the visible, observable superficiality of things was a way of detaching seventeenth and eighteenth century scholars

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61 Foucault’s periodisation roughly divides the history of the “Western” world into the Renaissance (the late medieval times to the 1500s), the Classical Age (the mid-1600s to the late 1700s), and the Modern Age (the beginning of the 1800s to the present days).
from the madness of medieval “misbeliefs”. The observation of what is visible is the first step to achieve a form of knowledge based on the “universal form”: a pristine deduction from the visible façade of the world. As part of a complex and rigorous method, the function of sight was exactly to ensure this immaculate double representation. Through sight one could deduct a representation (the ideal form) from the observance of what represents, in things themselves, their truthful nature (their visible surface).

We only have to follow the “rule of the visible” to see through the logics of objectification, and Foucault’s objection to a talk of life prior to modernity. According to the respective epistem of the seventeenth and the eighteenth century “life” cannot be more than an observable feature. The space of objectification – the space of what can be known – is restricted to the visible surface of things. Hence, “life” can only be known, it can only become an object of knowledge, in terms of what visibly denotes life. This is simply the measure of rigour adopted in the post Renaissance Europe. If we go beyond the surface of things in our quest for knowledge, we fall back on ridiculous medieval misbeliefs. What, then, can be the distinctive features of “life” under the rule of the visible? They can only refer to the observable character that distinguishes one group of things (things that are alive) from all the other things in nature. And the way of singling out “things that are alive” is by seeing their movement (animation) and decay (degradation). Under the rule of the visible, life can only mean visible transformations such as moving around, aging, and eventually dying. The modern notion of life (as an invisible force and a deep organic function) cannot possibly make sense.

According to Foucault, the objectification of life – its appearance in the realm of “knowable things” – is indissociable from the breakdown of the order of the visible. From the late eighteenth century onwards visibility is supplanted as rule of correspondence between knowledge and truth by a “rediscovery” of the invisible depths of the world. Notwithstanding how, why, and when exactly it happened, at the advent of modernity knowledge was infused by a certain historicity – a mode of being, above all, limited by its existence in time. From a

62 In observing a particular thing and extracting from it all the misleading features unrelated to sight (taste, smell, touch, and most importantly, the hearsay medieval people were so fond of) one can delineate a form that is universally applicable: an ideal structure.

63 The change that takes place here is an extremely complex process, an epistemological break for which Foucault himself lacks satisfactory explanations. In fact, he suggests any explanation of such a gargantuan “event” – in terms of the “spirit of the time, technological or social change” (Foucault 2002b: xiii) is doomed to be unsatisfactory, to look more “magical than effective” (ibid: xiii-xiv). Suffice it to say, for the purposes of explaining objectification, that the transparency of the order of the visible as a rule of correspondence is suddenly obscured at the advent of modernity.
genealogical perspective, what historicity does is to create a three dimensional picture of things, a feature Foucault calls verticality (2002: Chapter 8). Once affected by this historicity, the world discloses a depth that was not previously accounted for during the age of superficial observation. This change in the rules of correspondence regarding truth is the necessary condition for the process of objectification that gave birth to both life (as a knowable objective reality) and Biology (the discipline devoted to life as its object of knowledge).

The concept of organic structure provides an interesting point of clarification. Citing Lamarck (1744-1829) Foucault explains how the notion of organic structure radically transformed the classification of living beings according to visibility. How it infused the abstract, mechanical concept of life with an existence in time (historicity) and a depth in space (verticality). Lamarck criticised his predecessor naturalists for placing crustaceans in the same category as insects. If we consider sight alone, “the articulations of the bodies and limbs” (Foucault 2002b: 248) of crustaceous and insects look reasonably similar. To put it differently, if lobsters look like oversized ants it makes sense, under the rule of the visible, “to regard them as true insects” (ibid.). However, for Lamarck this is a capital mistake. He begins to think of life in terms of organic structures and their internal functions. Since crustaceans “breathe solely by means of gills, in the same way as molluscs, and like them have a muscular heart” (ibid.) they are fundamentally different from “the arachnids and the insects, which do not have a like organic structure” (ibid.).

In the analysis of organic structures the historicity of life comes into play and shatters the transcendentalism of premodern, ideal forms. First, the notion of organic structure suggests a hierarchy of visible features. Of all the visible characters of living beings, some are of much more importance than others. Second, this hierarchy is decided based solely on functional terms. The more important a visible feature is the more connected it is to the deepest and most important of organic functions: the maintenance of life. Lamarck’s argument is illustrative once again. The “gills” (the respiratory visible organ) express a vital function (respiration) and the articulation of limbs (the locomotive visible organ) are expressions of a secondary one (locomotion).

For Foucault, modernity appears once the knowledge based on the surface appearances of the world (sight) stops being a sign of enlightenment and starts designating superficiality. This significantly changes the procedures of knowing. Modern, “in-depth” knowledge is the knowledge that seeks the hidden meaning of things (interpretation) and tries to describe them in an objective, neutral language (formalisation) (Foucault 2002b). It is only
in this order of knowledge that life, meaning more than simple animation, can become an objective reality. The appearance of such life is conditioned, as seen with Lamarck, by the appearance of new, methodological directives. Both life and Biology are inseparable from anatomy, the modern technique that “consists in establishing indicative relations between superficial, and therefore visible, elements and others that are concealed in the depths of the body” (Foucault 2002b: 294).

If we accept Foucault’s daring logic, our understanding of truth, knowledge, and its relation to an external reality is significantly transformed. A Genealogical account sees the production of knowledge as more than a mere representation of the objective nature of the world. By taking us back to a time when life “did not exist”, Foucault reveals how “disciplines” and their methodologies help to produce the world they analyse. Disciplines divide, classify and order the very reality they are supposed to merely interpret in a formalised manner. They do so in a way conducive to a specific logic, following a historical set of rules (the primacy of the visible, or the privilege of the organic). This not to say knowledge claims simply create their object of study, implying that biologists invented life, from scratch, at some point in history. It is, rather, to insist that both disciplines and their objects of study emerge in a contemporaneous relation to each other. The concept of objectification suggests a contemporaneous emergence that binds together bodies of knowledge and objects of knowledge. For example, the objectification of life discloses how at a particular historical moment an object enters the space of knowable things (life), as a field enters the space of knowledge practices (Biology), as procedures enter the space of rigorous methods (anatomy).

Foucault affirms that “what permits us to individualize a discourse […] is not the unity of an object” (Foucault 1972: 227) – such as life for biology – but the series of rules of formation that define discourses “as practices that systematically form the objects of which they speak” (Foucault 2002a: 54). Departing from this sophisticated insight, I ask a simple question in this chapter. What happens to debates on truth, justice and reconciliation if we look at them as systematically forming the object of which they speak of? What can we see if we contextualise the punishment versus impunity debates as the enunciations of a “discipline” (transitional justice) that can only exist through its own process of objectification?

The Foucauldian method, as any good method, already suggests an answer. If we are to flip the question of post-conflict or post-authoritarian justice from its conditions of implementation – as the literature tends to reinforce – towards its conditions of possibility we have to first contextualise such debates in manner that does not simply trace them back to a
traumatic origin. A critical genealogy begins with the emergence of a new “discipline” for which the *post-conflict* became a possibility.

2.3 A New “Discipline” of Justice at the End of History

In a 2009 article entitled ‘How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice’, Paige Arthur criticised the literature for falling “into the trap of imputing ideas about ‘transitional justice’ to actors who, presumably, were unlikely to have held them” (Arthur 2009: 328). Her criticism was, perhaps, the first sign of a deeper historical awareness concerning the punishment versus impunity debates. In order to avoid the same mistake, Arthur contextualised the origins of transitional justice, “examining the invention of a phrase itself [transitional justice], as representative of the emergence of a new position” (ibid.). Against the field’s transcendentalism, her historical approach located the rise of transitional justice – as a distinct practice of human rights – in the late twentieth century (in the beginning of Teitel called a “second phase” of responses).

Strictly speaking, Arthur was not calling for a critical genealogical study of justice and reconciliation. Nevertheless, her sense of historicity offers a good starting point. The late twentieth century was marked by the intersection between two global events. From the mid-1980s until the mid-1990s the world witnessed the progressive demise of the Cold War in the Global North, and the troubled reckoning with the “Dirty Wars” in the Global South. The process of de-communisation, the end of authoritarian regimes in the Southern Cone and the fall of apartheid had a significant impact on the landscape of global political imagination. Arthur argues this impact was fundamental for the rise of new claims of knowledge about the

64 According to Arthur’s thorough textual search, there is almost no mention of the term “transitional justice”, meaning a concern for justice during periods of democratisation, prior to the early 1990s.

65 There are significant differences between the historical analysis of Foucault and Arthur’s method: the historical hermeneutics of Quentin Skinner. The central difference concerns the concept of objectification. Arthur states that, according to Skinner, “the invention of new terms, or the shift in meaning of old terms, in a political vocabulary are responses to concrete problems faced in political life” (Arthur 2009: 328). This logic assumes a representational relation between words and things that is foreign to Foucault’s method (Foucault 2002a; 2002b). As already mentioned, the process of objectification is not simply a response at the level of language to an external stimulus produced by a new political reality. It is effectively and actively implicated in the production of this new political reality as a meaningful and knowable reality. For a deeper analysis of the differences between a Foucauldian and Skinnerian methods see Bartelson (1995).
It is against this background of paramount political transformations that she analyses the rise of transitional justice as a new “discipline”. More specifically, she argues that the “fabrics” of the discipline were interwoven during a series of conferences. These encounters, held between 1988 and 1995 were important in creating the basis of a knowledge about justice in post-authoritarian times and of new mechanisms for the implementation of a sustainable post-conflict. Addressing the dilemmas of societies facing a fragile balance between (re)democratisation and reckoning, such conferences laid the foundations for the debates on whether or not, and how, to punish perpetrators of heinous crimes.

In 1988, in the city of Wye in the United States, a meeting entitled *State Crimes: Punishment or Pardon?* took place at the Aspen Institute, funded by the Ford Foundation. Henkin’s report of the conference proceedings is illustrative of what was at stake in the discussions. Participants from a legal background suggested “punishment would serve to deter the violators from future violations” (Henkin 1995: 185) preventing “human rights violations by others in the future” (ibid.) and functioning “to express the moral condemnation of society” (ibid.). Whilst some participants did stress “the need for national reconciliation and healing in order to establish a stable democratic society” (ibid.) a considerable amount agreed on the successful example of “both the German and the Argentine experiences” (ibid.) in achieving a social pacification without increasing “social divisiveness” (ibid.). In 1992, in the city of Salzburg, Austria, the project *Justice in Times of Transition*, sponsored by the Charter 77 Foundation held its first, inaugural conference. The project was funded by a series of Western organisations alongside the Rockefeller Foundation, and, of course, the Charter 77 Foundation itself (Arthur 2009). This time, the considerations surrounding the problem of “how Eastern European leaders might learn from the experience of the Latin American transitions” (Leebaw 2008: 100) served as the basis for the discipline’s canonical book (Arthur 2009; Siegel 1998): the three-volume *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, published in 1995 by the United States Institute of Peace.

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66 She refers to the area of study as a “field” in a non-Bourdieuian sense. I am speaking of discipline, here, for the purposes explained in the first section.
67 For a detailed analysis of how this network influenced specific transitional interventions see Arthur (2009) and Leebaw (2011: chapter three).
68 Other funding bodies were the German Marshall Fund of the United States, the Charles Stewart Mott Foundation, the National Endowment for Democracy, Open Society, the Rockefeller Family & Associates.
The final two conferences happened in South Africa, in the years prior to the establishment of the TRC. In 1994, in Somerset West, the Institute for a Democratic Alternative for South Africa (IDASA) organised the event *Dealing with the Past*, funded by Open Society. In the following year, another conference promoted by the same institution *Truth and Reconciliation* featured a powerful talk from José Zalaquett on the cathartic function of truth-telling. The IDASA conferences fundamentally contributed for the further development and dissemination of therapeutic accounts to reconciliation. Leebaw (2011: 71) recounts how mesmerising Zalaquett’s ideas were to South Africans, especially to the poet and journalist Antjie Krog. In her memoir, she confesses that it only took “precisely seven and a half minutes” (Krog 1999: 35) to be convinced by Zalaquett’s powerful message that “courage has again evolved a new definition: […] To live within the confines of reality, but to search day after day for the progressing of one’s most cherished values.” (ibid: 36, my emphasis).

Featuring prominent professionals from the field of human rights, moral philosophy and political science, these meetings composed a forum, a space for the encounter of experts whose ideas modelled the “common ground” of the emerging discipline. Some of the most prominent works discussed in Chapter 1 were the fruit of these conferences. Aryeh Neier, Jaime Malamud-Goti, Diane Orentlicher, José Zalaquett and Lawrence Weschler were all present during the 1988 discussions. At the Charter 77 Foundation Conference (1992), Raul Alfonsín, Ruti Teitel, and Samuel Huntington joined the network. Finally, in South Africa, Alex Boraine, André du Toit and Tina Rosenberg were added to the new, burgeoning group of experts on the problems of implementing a just and everlasting peace.

The Aspen, Charter 77, and IDASA conferences provide a good starting point for a critical genealogical analysis, but with an important qualification. From a Foucauldian perspective, these conferences should not be seen as originary moments. It is not about framing them as instances when experts devised new, transitional techniques (trials or reconciliatory programmes) to handle a new external reality (the transition to the post-authoritarianism or the post-conflict). It is also not a question of agency or intentionality. From a critical genealogical perspective, it matters little whether this network of experts created a new area of expertise in a sort of self-interested, premeditated move. Genealogy does not operate at the level of external causes or hidden intentions. If the theories, statements and debates produced during these encounters, or influenced by them, are interesting it is because they suggest an emerging process of objectification.
If the analysis of the international fight against impunity is to move away from its conditions of implementation to its conditions of possibility, we must ask a few questions, in a critical, genealogical fashion. These questions are not about individuals, their interests, and the problems they faced. They are inquiries into the general grid of intelligibility that enable such individuals to see the realities they face as a problem. In this sense, the three conferences are interesting because they framed “punishment or pardon” as the sole political choices in the aftermath of violence. They are important expressions of a time when the post-conflict became a thinkable possibility; when “courage” became synonymous with the capacity to live “within the confinements of reality”.

One cannot speak of the late twentieth century without mentioning the by now weary trope of the end of history. But this “weary trope” set the foundations of the emerging discipline in the search for a just and peaceful political settlement that would bring an end to historical violence. Moreover, it deeply influenced the substance of its post-conflictual goal. Take, for instance, Samuel Huntington’s idea of a third wave of democratisation (Huntington 1991). Huntington’s ideas were highly influential amongst the participants of the three conferences. They helped to frame the debates on punishment, forgiveness and forgetfulness as part of a third fundamental moment of in the history of humankind. The (third wave) conferences were seen as the latest step in the fight against barbarism for the sake of peace, following the implementation of civil liberties by the American and the French revolutions (the first wave), and the post-WW II de-Nazification of Germany (the second wave). They were seen as part of an imaginary civilizational march that could be facilitated via the correct implementation of a set of techniques of justice (trials, truth-seeking, and reconciliation programmes) being discussed during these encounters.

The trope of the “end of history” is important because it reveals what is commonly masked by narratives about the origins of the fight against impunity. Claiming Nuremberg as a point of origin for the discipline of transitional justice was a political “strategy” employed by defenders of retribution during these conferences. It worked for symbolically connecting the specific “traumas” of the Dirty Wars, Eastern European Communism, and Apartheid with the epoch’s inaugural “trauma” of the Holocaust. By recuperating the mythical origins of the international fight against impunity, retributivists could gain a sort of moral high ground. They could set from the beginning the problems of extremely disparate transitions as a simple decision to abide by or reject the essential, and morally imperative, Nuremberg
model. On an abstract, argumentative level, anyone against criminal prosecutions (for whatever reasons) could be described as defending the enemies of humankind.

This is not to say that the post-WWII did not lay the foundations for the concept of universal jurisdiction (which it obviously did) or that it did not spur the first sketches of modern, liberal humanitarianism (which it also did). It is certainly not to say that perpetrators of crimes against humanity should enjoy impunity. My point is that if we claim that the question of punishment or impunity in the wake of violence spans back to the Holocaust we miss the fact there was no concern about “transitional justice” back in 1945, and that, more importantly, that idea was not about the “end of history”. In a sense, the trope of the “end of history” is part of what drives and enables the appearance of a body of knowledge specialised in the transition to a post-conflictual scenario (transitional justice). The conferences were permeated by the belief in the final breakdown of authoritarian modes of government and the predominance of liberal democracy as “the end point of mankind’s (sic) ideological evolution” (Fukuyama 1992: xi). As a discipline emerging at the end of history transitional justice was a knowledge that confined “the desire to realise social transformation beyond violent conflict” (Jabri 2010: 41) to the idea that “democracies are often unruly, but they are not often politically violent” (Huntington 1991: 28). A knowledge that expressed a general incapacity to think “a world that is essentially different from the present one” (Fukuyama 1992: 46). If we accept this logic, we start seeing the Aspen, 77 Chart Foundation and IDASA conferences as instances when this equation of liberal democratic peace was affirmed, performed or, to use Foucault’s terminology, objectified.

This awareness of objectification – lost with the narrative of Nuremberg as a point of origin – is fundamental. Because the body of knowledge specialised in the transition to the post-conflict is also the knowledge drawing the limits of what such post-conflict could possibly look like. This is the most important idea behind the reformulation of the international fight against impunity in the late twentieth century; the double, historical connection between a discipline (the knowledge about justice in the aftermath of violence) and a knowable and achievable object (the post-violent or post-conflictual liberal-democratic reality). This connection was not yet at stake in the immediate aftermath of WWII.

69 For a more thorough definition of the liberal peace project see (Andrieu 2010; Fourlas 2015; Jabri 2010; Richmond 2006; Mac Ginty 2008).
Furthermore, this connection is important because it suggests a reading of the punishment versus impunity debates and of the techniques of retribution (criminal accountability) or restoration (national reconciliation) as productive of such post-violent reality. The poles of punishment and pardon, the limits of trials and amnesties stand at the borders of a whole universe of possibilities, delineating the conceivable limits of both peace and justice. They alone, and their potential permutations, provide the measure of what is possible in the implementation of a future for which systematic violence is but a memory. In this sense, the theoretical profusion and practical creativeness of the first, transitional debates should not conceal one fact. Their fractious disagreements on whether to punish perpetrators or to forgive former political radicalisms could not work without the common dissociation between democracy and violence that presents the telos of both “history”, and of political transitions.

2.4 Violence and the Regime of Visibility in the Promise of “Never Again”

The trope of the end of history and the dissociation between liberal democracies and violence was never unanimously accepted. In Spectres of Marx, Derrida famously questioned the hypocrisy of affirming “the ideal of a liberal democracy […] as the ideal of human history” (Derrida 1994: 106). He insisted in reminding apologists of the end times that “never have violence, inequality, exclusion, famine, and thus economic oppression affected as many human beings in the history of the earth” (ibid.). In a similar vein, Randal Williams considers the liberal thesis of non-convertibility of violence into democratic, institutional arrangements as an “epistemological coup of no small import” (Williams 2010: 92). In his account, the reading of liberal, Western democracy “as the very antithesis to state violence” (ibid.) can only work “despite the realities of its historical record” (ibid.).

There are two pathways for criticism here. One could reject the liberal idea of a democratic post-conflict either as a hypocritical claim or as a pure blindness to the violent reality of liberal democracies. This is what both Derrida and Williams seem to do. Alternatively, one could look at the “epistemological coup” that allows advocates of such a theory to claim the primacy of non-violence in face of “inequality, exclusion, famine, and thus economic oppression”. I will decide for the latter in order to argue that the idea of a post-violent post-conflict – as the end of history and transitional justice – is based on a particular
liberal humanitarian representation of “violence” as a very narrow, visible phenomenon that conditions the possibility of both the idea of democracy as a postconflictual ethos (Williams 2010) and of the transitional promise of “never again”.

2.4.1 Violence as Intentional Violations of Human Rights

The Aspen, Charter 77 and IDASA conferences gathered experts with a significant background in human rights activism. It is important to acknowledge such humanitarian backgrounds for several reasons, but mainly because the discipline’s underlying humanitarianism helped to settle its main representation of violence. Behind the longstanding debates on the implementation of justice in post-conflict and post-authoritarian scenarios is a narrow understanding of violence as violations of human rights.

Brown argues “virtually everything encompassed by the notion of ‘human rights’ is the subject of controversies” (1997: 41). The idea of human rights has indeed a longstanding, conflictual history in terms of its universal applicability, its philosophical foundations and its maximalist pretensions (Beitz 2001; Brems 2009; Freeman 2009; Griffin 2001; Nickel 2008; Pogge 2000). All these problems are, of course, important for the implementation of justice and the enforcement of humanitarian standards in transitional societies. Different researchers have, time and again, criticised the top-down, one-size-fits-all formula assumed by the international fight against impunity. Nevertheless, these much discussed controversies still remain at the level of conditions of implementation. It is the liberal humanitarian representation of violence – above all, the concept of violations of rights – that directs us to the conditions of possibility of this reality named post-conflict.

Whether human rights are universal or not, whether transitional governments have a duty to punish perpetrators or not, the account of violence behind transitional interventions – in both their retributivist and restorative methods – remains delimited by the idea of violations. First, the notion of violations of rights was fundamental for the very development of the fight against impunity, for the presentation of historical memory, and the protection of human dignity. It offered a possible “framework for human rights movements to challenge the arbitrary power of dictatorships” (Humphrey 2002: 117) and provided “the legal discourse to frame investigations for truth commissions and the legal basis for the documentation of
evidence of [...] abuse” (ibid.). The role of documentation was extremely invaluable. Without this humanitarian basis, truth commissions, criminal tribunals and reconciliation programmes would lack a much required direction. It is from this understanding of violations that transitional interventions draw their clear focus on which forms of suffering to address on the road to implement justice.

The clear focus provided by this humanitarian frame, however, is also inevitably restrictive of the aims and scope of transitional interventions. In defining which forms of behaviour and which phenomena count as abusive, the humanitarian concept of violation also defines the scope of what requires reckoning. Their empowering of activists and resistance movements cannot outshine the fact that the “coming to terms” promoted by transitional interventions orbited a rather specific account of “wrongdoings”. Violence, in the punishment versus impunity debates has long meant violations of specific (human) rights listed under international treaties (United Nations 1948a; b; 1996 [1984]; 1992a; 1992b).

Violations of human rights are extremely important from the perspective of international law. Cases of genocide, torture, enforced disappearances and other “inhuman” mistreatments may seem as a disparate array of gruesome acts, but they share a common legal denominator. In order to constitute international crimes, they all require a level of intentionality (or acknowledgement thereof). Every convention typifying violations of human rights shows this pattern. Genocide is characterised as a set of actions “committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group” (United Nations 1948b: Art. 2, my emphasis). Torture is described as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him or a third person information or a confession” (United Nations 1996[1984]: Art. 1, my emphasis). Finally, enforced disappearances are violations of the right to liberty, and “presumably” the right to life, which “render their perpetrators and the state or state authorities which organize, acquiesce in or tolerate such disappearances liable” (United Nations 1992a: Art. 5, my emphasis).

The feature of intentionality (and its derivatives) is what turn a violation of a right (life, freedom of movement, liberty) into a crime that renders perpetrators accountable. As part of mens rea (the set of elements composing a “guilty mind”) the concept of “intention [...] is the main concept in criminal law” (Douzinas 2000: 239). The assignment of responsibility for a criminal act demands a level of culpability, and culpability involves a certain understanding of intentionality (Moore 1997). The proof that an act of wrongdoing
was intended is a significant way of assigning a degree of blame, and therefore of attributing adequate levels of punishment. In national legal systems, given the specificities of different traditions, intentionality (*mens rea*) is often used to suggest a worse degree of culpability in the presence of the criminal act itself (*actus reus*) (ibid: Part II). This does not mean that intention to commit a crime is a sufficient or sine qua non condition of punishment – certain crimes, in certain places do not need an element of *mens rea* (Lacey 1993). Individuals can still feel guilt for their unintended actions, and it is not always possible to evade responsibility by pleading the absence of a “guilty mind”. It solely means that an intended wrongdoing is somehow accepted as a worse form of wrongdoing. And when it comes to international criminal law, this difference plays a fundamental part (Schabas 2003). Precisely because the fight against the enemies of humankind deals with crimes that outrage humanness itself, they are amongst the *most heinous possible offenses*. With a few exceptions, their levels of culpability usually require that a perpetrator “shall be criminally responsible and liable for punishment for a crime […] only if the material elements are committed with intent and knowledge” (United Nations 1998: Art. 30).

Hence, intentionality plays a fundamental role for retributivist perspectives of justice in the post-conflict. Without the assignment of responsibility to a specific group of perpetrators neither the international duty to combat impunity, nor the idea of universal jurisdiction make much sense. The heinousness of a crime is what makes it a problem for humanity, as opposed to a local concern. Following a time when violations are often denied or excused as mere mishaps, transitional interventions use the concept of intentionality as in order to prove their systematic nature that is that the referred violations were *intentionally devised or knowingly allowed* by the former regimes. But, as “an artificial construction referring to fault” (Douzinas 2000: 239), the feature of intentionality is also fundamental for delimiting the scope of visibility of what constitutes violence.

The question of visibility (p. 7) suggests the first clue about the “epistemological coup” of the objectification of the liberal post-conflict. Violence is a concept that could be virtually “applied to countless phenomena” (Wieviorka, 2009: 3). But according to the liberal humanitarian frame violence becomes restricted to *intentionally perpetrated violations*. It is by logically delimiting violence to a series of intentional violations that the liberal democratic state (the *postconflictual telos of history*) can appear as the antithesis of state indiscriminate violence. Hence, there is no need for ignoring the world’s historical record; the liberal thesis does not require any blindness towards social inequalities, famine, and multiple forms of
exclusion. On the contrary this is simply a question of definition. By privileging a modern humanitarian view on a highly complex, and disputed phenomenon, scholars and activists can promise an *aftermath of violence* amidst enduring, and even rising, levels of suffering.

This humanitarian background, in itself, is not a sufficient condition for the objectification of the post-conflict. The idea of the end of violence requires, as the prefix *post* suggests, a particular conception of time. Most of all, it requires a conception of how violence (as intentional violations of human rights) happens over time. The post-conflict can only enter the realm of thinkable objects and achievable political goals once the intentionality of perpetrators is connected with the cyclical nature of violations. It requires the danger of uncontrollable revenge and the methodologies devised to prevent it.

2.4.2 Violence as a Dangerous Cycle of Revenge

Meister criticises modern humanitarianism for viewing the “*cyclicity* of violence – violence that begets violence – as itself the paradigm of evil” (Meister 2012: 41). This representation of violence as a self-sustaining cycle attributes a particular temporality to intentional violations of human rights. According to this logic, violations are not only problematic as individual acts, but also because of their cascading effects. For instance, Liberal Humanitarianism sees extra-judicial killings as abhorrent in themselves (they are, after all, offenses against the whole of humanity). But for the “theory” of cyclicity, the real danger of a violation lays in its capacity to invite counter violations. In a *quasi*-mechanical understanding, cyclicity affirms that “a self-propelling cycle or spiral of vengeance […] is the natural or predictable outcome of serious or violent wrongdoing.”(Walker 2006a: 81). And if violence truly breeds violence, then a single wrongdoing has the power to trigger an unstoppable sequence of wrongs.

Due to their modern humanitarian legacy, measures towards post-conflict or post-authoritarian justice are endowed with the goal of breaking with “a time of cyclical violence that is past – or can be put in the past by defining the present as another time in which the evil is remembered rather than repeated” (Meister 2012: 25). The discipline concerned with the implementation of post-conflict justice (the justice of a time when violence never happens again) must fundamentally transcend the cycle of revenge caused by past violations. The humanitarian framework to record abuses – in which violence is represented as intentional –
cannot be dissociated from the political goal of halting revenge. Violations must be made visible and perpetrators must be held accountable because their actions can spur an indefinite cycle, transforming social life into an endless time of conflict or into a culture of impunity.

The threat of revenge – the logical outcome of an intentional and cyclical understanding of violence – is what connects the internal debates of the “new” discipline of justice, and its techniques of retribution, restoration and holism. It is also what explains the field’s fascination with the philosophy of Hannah Arendt (1973; 1998; 2003). Hardly a single work of transitional justice goes without explaining the acts of forgiveness, promising, and punishing via Arendt’s thoughts on the menace of uncontrollable revenge in the public sphere. However, references to her work in the “punishment versus impunity” debates usually do not question her complex views on the phenomenon of violence. Presenting a rather boiled down version that fits the liberal humanitarian narrative, they do not acknowledge how Arendt’s thoughts “avoid the liberal solution of marginalizing and effectively denying violence” (Frazer and Hutchings 2008: 93). They miss the point that violence, in Arendt, is an inherent aspect of human existence. From her inquiry on the human condition (1998) there are at least three different senses in which one could speak of “violence”: consumption, fabrication and, only then, revenge.

In Arendt, consumption is a violent process because it destroys the object it consumes. This is pretty simple: an individual eating a fruit destroys (or extinguishes) the fruit as she eats it. In this sense violence is, tout court, a constitutive part of life, a form of defence against the inevitability of death (which is life being consumed in time). As time passes life constantly, violently consumes itself, taking human beings closer to their time of demise, when they are destroyed and extinguished. Therefore, since they are mortal beings, humans are bound to an endless and futile cycle in which their consumption of other forms of life cannot but postpone the consumption of their own. In this sense, human beings are both the agents of, and continuously subjected to, life’s violent and unrestricted consumption.

A second sense of violence is found in the idea of fabrication. In order to prolong their lives and diminish their never-ending toil, human beings can resort to another form of violence. This violence, the act of fabrication, channels the process of consumption (and its inherent force of destruction) in order to produce a result that is everlasting and not merely evanescent (such as the postponement of death via satiation). Human beings are also working beings, who build things that will endure, and therefore never be fully consumed by time. In their daily efforts to postpone death, they are compelled to create frameworks, shelters and
city walls for the sake of their own protection; for the purpose of easing the toils of subsistence. And when they work, humans also make use of a form of violence that is inherent in the act of consumption (fabrication, as it were, demands the consumption of the environment). But this is not the pointless violence that gives one immediate satisfaction (natural consumption). It is a fatalistic, necessary violence that comes with the process of fabricating an artificial sense of immortality (Arendt 1998).

Both human consumption (a “natural” violence) and fabrication (an “artificial” violence) are forms of violence that are “by nature instrumental” (Arendt 1970: 51). They are instrumental because they exist in a relationship with the final goal of survival, as a means to an end. They stand “like all means […] in need of guidance and justification through the end” (ibid.) pursued. Now this instrumentality brings interesting consequences in Arendt’s philosophy. If limited to the satisfaction of basic needs (consumption) or the fatalistic destruction required for building everlasting things (fabrication), violence is potentially justifiable. They respect the justifiable end of survival. An end that is justifiable insofar as it clearly delimits predictable and controllable boundaries for the violence being exercised. Both forms of violence involved in the act of consuming a fruit and of weaving a jumper are foreseeable (one knows how much violence will be needed), are controllable (one can easily stop violating the surroundings), and they end at a clear point. This is to say that, far from completely eschewing violence, Ardent accepts as justifiable those forms of violence that are predictable, controllable, and “that will bring about a particular outcome” (Frazer and Hutchings 2008: 100). The violence Arendt vehemently rejects is a third form of violence: “political violence”, or the violence employed in the realm of politics.

Arendt rejects the idea behind “political violence” – the idea that violence is a justified means to a particular political goal (Laqueur 1989)70 as a mistake based on a misconception of the nature of human interaction. According to her, humanness – or the condition of being human – is defined as a capacity to create things anew (Arendt 1998). This condition marks the realm of politics, the sphere where human beings interact as equals, as, by definition, an unpredictable and irreversible realm. One never knows what will come of the dealings between two equal individuals, and one can never simply undo the things that have been done

70 This will be further explained in the next chapter.
between them. And this is why, in Arendt’s conception, “political violence” rests on a dangerous liaison. It endows the destructive and instrumental nature of violence (consumption/fabrication) with the unpredictability and irreversibility of human interaction. In the capricious realm of politics, every action induces a reaction that, contrary to physics, cannot be assumed of equal nature. “Political violence” is unjustifiable because its revolutionary project mistakes the realm of work for the realm of politics. Their instrumental “consumption of lives” for the “fabrication of a new order” overlooks the danger of every violent act leading to disproportional and interconnected acts revenge. They risk creating a violence of uncontained unpredictability and frightening irreversibility, a violence always at risk of ended up consuming the whole political community. For Arendt, this is the reason why all modern revolutions have turned into a state of terror, a state when the violence knows no justifiable limits (Arendt 1970).

Here is the interesting part. Faced with an unpredictable and irreversible act of violence, human beings always have a choice. In Arendt’s philosophy, wrongdoing can be met either with retaliation (revenge) or with actions that break with the cycle of violence: most importantly punishment and forgiveness. What differentiates punishment and forgiveness from simple revenge is their relation with the essential political faculty of promising. Making and keeping promises binds human beings to an “agreed purpose” (Arendt 1998: 245). It allows them to create “islands of security without which not even continuity, let alone durability of any kind, would be possible in the relationships between men (sic)” (Arendt 1998: 237). Promising constitutes the very basis for political life. When human beings interact as equals “the force that keeps them together […] is the force of mutual promise” (Arendt 1998: 244-245).

Punishment is radically different from revenge. It is a predictable and controlled response to violence, that “attempt to put an end to something that without interference could go on endlessly” (Arendt 1998: 241). It also differs from mere retaliation because it is infused with a political promise. Controlled instances of retribution account for the “need of society to be protected against a crime” (Arendt 2003: 25) whilst promising “the improvement of the criminal” (Arendt 2003: 25). Likewise, when retribution is undesirable humans can forgive each other’s misdeeds. Once again, this action revolves around the faculty of

71 Arendt associates the capacity of creating things anew with the category of human nativity. In her conception, and as opposed to other species, every birth of a member of the human species brings, in itself, a universe of unforeseen possibilities (Arendt 1998).
promising. Wrongdoing can be forgiven so long as perpetrators promise never to wrong again. This is what prevents us from being “confined to one single deed from which we could never recover” (Arendt 1998: 237). Just like a transitional intervention, forgiveness intercedes in the cycle of revenge, freeing human beings from the shackles of the past.

2.4.3 Violence as an Exceptional Occurrence

A closer look at the measures of punishing and forgiving (or their correlate transitional techniques of retribution and restoration) reveal how they are fundamentally dependent, and also productive of, a certain idea of normality. According to the narratives of the punishment versus impunity debates, the function of punishing or forgiving perpetrators of mass atrocities, that is, the function behind the promise of “never again”, is exactly to reinstitute a state when violence is under control. A state of “normality” where the rule of law substitutes the ruthless reign of revenge or wanton cultures of impunity. This is why political communities need a promise that “locates the possibility of community between former enemies in the present intention to prevent the recurrence of wrongdoing” (Schaap 2005: 94). There is, however, a practical limit to this Arendtian politics of containment: the traumatic and unspeakable limits at which neither punishment nor forgiveness can make sense.

In her struggle to comprehend the terrors of twentieth century, Arendt faced a paradoxical point; a logical limit to the intricate relation of supplementarity between forgiveness and punishment. According to her, “men (sic) are unable to forgive what they cannot punish and [...] they are unable to punish what has turned out to be unforgivable” (Arendt 1998: 241). As seen in the first chapter, the unspeakable crimes of the Nazi regime rest at such limit. When trying to make sense of the extermination of European Jewry, Arendt reached a cul-de-sac. These crimes were so horrendous one could hardly imagine an adequate punishment, and yet they could never be forgiven or forgotten. They signal a point where “all our previous notions about punishment and its justifications have flailed us” (Arendt 2003: 26). This Arendtian paradox of the “traumatic crime”, to coin a term, discloses the exceptionalism of the enforcement of justice in the aftermath of “traumatic” events. It problematizes responses to events that do not fit in pre-established frames of philosophical and juridical judgment.
As also seen in the first chapter, narratives of origin about the international fight against impunity are built on this idea of transitional responses as responses to traumatic crimes. Here, Teitel’s concept of transitional jurisprudence is particularly enlightening. As responses to collective traumas, in the unspeakable hiatus between an unforgiving and unpunishable violation, transitional interventions play a very specific societal function as “the engine of revolutionary change” (Teitel 2000: 149). Retributive and restorative measures in post-conflict or post-authoritarian scenarios must account for factors exogenous to the legal order but fundamental for its re-establishment. They must transcend the cycle of violence by bringing the unspeakable back into a pedagogic language, that is, by exposing “the core illegitimacy of past rule” (ibid: 26) and by promoting the “stigmatization of past wrongdoing” (ibid: 50). In this sense, the extravagances and the limitations of the search of justice in times of political change – such as the creation of a new crime and a new, universal jurisdiction – “are justified […] for the purpose of construction of a new political order” (ibid: 169, my emphasis).

This idea is widespread in the punishment versus impunity debates (Sharp 2014b). The literature usually describes transitional justice responses as inherently exceptional measures envisioned to overcome particularly exceptional times (Teitel 2000; Sharp 2014; Teles and Quinalha 2015). In this sense, transitional justice is conceived of as producing a temporal break, of bringing about a “liberalizing transition” (Teitel 2014: 101) that promotes a “radical shift from repression to democracy” (Kritz 1995: xxi). This moment re-establishes normality and prevents “a culture of impunity in which violence becomes the norm, rather than the exception” (Sadat 2007: 227).

But from a genealogical perspective, this is not what happens. Once we accept Foucault’s ideas of objectification and the productive power of knowledge claims it makes little sense to speak of transitional responses solely merely as responsive practices. We ought, instead, to analyse how they account for moments when an object enters the space of thinkable things (the post-conflict), as a field enters the space of knowledge practices (transitional justice), as procedures enter the space of rigorous methods (punishment or forgiveness). The central point here is exactly the objectification of a postconflictual reality. A process of objectification that is enabled by a specific representation of violence. This representation acted as the point of internal coherence of the punishment and impunity debates as they were framed in the late twentieth century (the end of history). The vision of the post-conflict promised by narratives of “never again” could only become intelligible once the phenomenon of violence was restricted to intentional violations of human rights and their cyclical
consequences. This was, logically speaking, the condition of possibility of a postconflictual time, which both informed and enabled the methodologies and techniques of transitional justice.

As part of a discipline of justice in the aftermath of violence, retributive and restorative measures are instances of liberal humanitarianism that produce an association between violence and the exception.72 This association is created by making visible intentional violations of human rights and their cyclical consequences. It is this representation that is behind the idea of politics – or of a situation of normal rule of law – as the non-violence realm par excellence. And it is only through this representation that liberal humanitarian scholars and practitioners can promise a future where violence (in its intentional, cyclical and exceptional facet) never happens again. This is not an “epistemological coup”. As I will show in the next chapters, this is a political function of framing violence in terms of impunity. And if the promise of “never again” is strong and persistent, despite being frustrated time and again,73 it is because it constructs an easy explanation for the problem of the “traumatic crime”: it makes sense of it in terms of a violence that as intentional can be held accountable, as cyclical can be controlled, and as exceptional can be normalised.

2.5 Conclusion

In this chapter I have presented the first sketch of a critical genealogical analysis of the punishment versus impunity debates. This analysis flips traditional explanations of the transitional measures as responses to the traumatic, incomprehensible reality of the

72 This association between violence (as a concept) and the state of exception (as a temporal category) has been long discussed by the major exponents of modern political thought, in particular Carl Schmitt (2005), Benjamin (1978), Derrida (1992) and, in the last decades, Agamben (1998) and Mbembe (2003). These authors have all disputed the liberal humanitarian idea that violence and politics (or normality) are necessarily separate dimensions by focusing on the question of Gewalt, or the legitimacy of violence. Overall, their critique of the liberal humanitarian dichotomy between the normal and the exceptional is suggesting of a form of “violence” that is always already present in the legal order and is coterminous with the foundations of the political community. I will discuss this further when I touch on the problematic of Gewalt in the fifth chapter.

73 The liberal promise of “never again” has witnessed a recent wave of criticism considering this narrow understanding of violence. According to critics, transitional justice has historically shown an idea of violence associated primarily with the phenomenon of state-led, or non-state-led, political violence (Moon 2006) that incurs in “violations of civil and political rights” (Laplante 2008: 333). By focusing on these violations, criminal trials, truth commissions, and reparation programmes have continuously disregarded economic (Fletcher and Weinstein 2002; Miller 2013; Sharp 2014a; 2014b), gendered (Aoláin 2009; Bell et al 2004) and racialized violations (Humphrey and Valverde 2008; Wilson 2001) that are “historically informed and rooted in ongoing experiences of social marginalization” (Gready and Robins 2014: 10).
“aftermath”, the “post-authoritarianism” or the “post-conflict”. By bringing in the Foucauldian concept of objectification I suggested that the question of whether or not to punish perpetrators of mass atrocities is, in a certain sense, also productive of the post-conflictual reality. This does not mean to say that measures towards justice invent an otherwise fictitious situation of peace, or that they are deceitful about violence having receded. It means that, as mobilisations of a liberal humanitarian understanding of what constitutes violence, they are fundamental for identifying the postconflictual. In other words, one can only actually and reasonably say violence has receded because violence is represented as an intentional, cyclical, and exceptional phenomenon.

But this is only the logical condition of the promise of “never again”. My genealogical account also suggests another set of historically contextualised conditions: the postconflictual ethos that emerged in the late twentieth century with the narrative of the end of history. Liberal humanitarianism is much older than the Aspen, Charter 77, and IDASA conventions, and so is the international fight against impunity. But there was something very specific in the way those pre-existing logics were used and reframed during the progressive demise of the Cold War. In the next chapter I will turn to the history of the Brazilian transition, from the apex of the Cold War to the present days, in order to relate this specific representation of violence to a general politics of impunity. More specifically, on the road to the production of a postconflictual Brazil, the liberal humanitarian representation of violence affected the notion of political resistance. And by looking at this between resistance and post-authoritarian justice I will also begin to delineate two fundamental parts of my central argument: a sense wherein the fight against impunity can be seen as a disciplining function, and a sense wherein this function promoted its own practice of forgetting.
3 On Violence and Resistance: the Historical Production of a Postconflictual Brazil

3.1 Introduction

In the previous chapter I proposed to read the punishment versus impunity debates of transitional justice as part of a discipline. Inspired by Foucault’s understanding of “truth” as a historical relation of correspondence, I defined “discipline” in the sense of a body of knowledge (savoir) that emerges via the production of its own object of knowledge, in a process called objectification. From a historical perspective, I suggested that the emergence of body of knowledge specialised in post-conflict or post-authoritarian justice was the product, and produced, a postconflictual ethos. An ethos based on the narrative of the “end of history” and on a liberal humanitarian representation of violence as an intentional, cyclical and exceptional phenomenon. Together these two historical and logical conditions laid the foundations for the advent of a triple novelty; the appearance of a new object (the post-conflict); the appearance of a new knowledge (transitional justice); and the appearance of a series of new technologies to implement the transition to a postconflictual time (truth-seeking, punishment, and forgiveness). In this chapter my objective is to show the disciplining face of this liberal humanitarian representation, that is, to show how it takes on a paramount political role beyond the question of specialised knowledge. In the following pages I will turn to the history of the Brazilian transition and, most specifically, to the question of political resistance.

The question of resistance against the dictatorship is one of the most interesting facets of the memory of the Dirty War in Brazil. It is interesting partially because it is considered untouchable. Similar to other narratives about resistance movements in the globe – in particular the French résistance against the Vichy Regime (Jelin 2003) – the Brazilian resistance against the militarised dictatorship is surrounded by a certain irreproachable aura and a powerful political mystique (see Appendix, Figure 2). Different political segments, and often times opposing ones, all claim the heritage of those who fought for democracy against the period of state terror as an uninterrupted continuum of dissidence (see Appendix, Figures 3 and 4). As I have shown in the first chapter, this was exactly the rationale behind memorial-humanitarian struggles that reclaimed remembrance as a form of resistance and the assumption that a regime of silence has led to a culture of impunity in Brazil. But this collective and unreflective glorification of the past is misleading. It obscures the politics of impunity and the disciplining
effects associated with liberal humanitarianism and the discipline of transitional justice, most of all, because it tends to disregard the historical changes in the meaning and practice of “resistance”.

In this chapter I will show why, in the context of Brazilian transition, the fight against impunity took on a paramount political role. A role regarding the historical transformations of *practices of resistance*, their different understandings of what constitutes violence, and, most of all, their role in defining the limits of what is and what is not possible. In the first section I begin by describing the political crises of the 1961-1963 triennium that led to the establishment of a militarised dictatorship in Brazil. This works as a historical contextualisation of the appearance of the militarised left and of the path towards political violence in the late 1960s. The following section centres on the perspectives of these clandestine organisations regarding an invisible side to violence, and the theoretical justification for its instrumentalisation in a specific project of resistance. In the last section I argue how, and in which sense, the appearance of a memorial-humanitarian form of resistance against authoritarianism constituted a historical break. Instead of being a simple continuation of the resistance against the dictatorship, the struggle for criminalisation marked a point in time when another form of resistance had “disappeared”.

### 3.2 The Prelude to the Dirty War (1961-1963)

Every story has to start somewhere. A tale that has no point of origin, in other words, that does not begin from anywhere in time and space, is simply unintelligible. This truism works from simple, unpretentious conversations about our daily lives to the most sophisticated historiographical accounts about things and facts that never concerned us. But these points of origin “divide more than just time” (Zerubavel 1993: 457). Depending on “when” and “where” we decide our story begins, we might already define “how” the story will end and what lessons we can actually learn from it. This is why there is always “a critical political dimension to the way we […] begin a particular historical narrative” (ibid: 485).

It is hard to say exactly “when” the Brazilian left begun its process of militarisation during the Cold War. We find diverging accounts in both the historiography and remembrance of the period. Some consider that it begun with the occurrence of the first
militarised actions, that is, the actual resort to violence in 1966. Others argue that, even before the appearance of the guerrilla and urban “terrorism”, the left was already flirting with an endorsement of political violence, at least in theory. In this case, the victory of the Cuban Revolution (1959) and its overt adoption of socialism (1961) are much more obvious points of departure.

These two beginnings have a critical political dimension. More than dividing just time, they divide specialists as to the nature of the armed struggle as a movement of resistance. In other words, depending on “when” we say political violence started, we have different conclusions about “what” and “whom” the militarised left was meant to resist. If we chose 1966 as our “point of origin”, than the armed struggle has a clear antagonist: the dictatorship established after the 1964 coup d’état (Ridenti 2004). But, if we chose 1961, than we can claim the resort to political violence as a more complex form of resistance. In this case, the militarised left was resisting something much bigger than an authoritarian government.

As per usual, this dichotomy presents a false split. Neither of these political events, in and of themselves, satisfactorily explains the origins of the armed struggle and its character as a resistance movement. In fact, they are, together, indispensable for understanding the emergence of and the theory behind political violence in the Brazilian Cold War. Before the 1964 coup there was indeed an emerging group within the left that defended the resort to political violence (especially during the 1961-1963 triennium). But this form of action was framed as an imperative only after the coup. In 1961, the Brazilian president was João Goulart, a politician from the Partido Trabalhista Brasileiro (Brazilian Labour Party, PTB) who supported a programme of basic social reforms. Jango, as Goulart was also known, enjoyed the support of the Partido Comunista Brasileiro (Brazilian Communist Party, PCB), recently legalised for the second time in its history (de Carvalho 2007). Roughly, this alliance between the PTB and the PCB meant a path of pacifism and institutional change was still seen as a possible alternative to implement a future of socialism in Brazil, or at least something

74 Technically speaking, this marks two rather clumsy actions: a failed attempt at establishing a guerrilla focus in the south-eastern Caparaó Mountains, easily discovered and dismantled by the local police (Gorender 1987) and an anonymous bomb attack in a north-eastern international airport that left fourteen people injured and two dead (Gorender 1987). Victims “who had nothing to do with the attack’s final objective” (Ridenti 2005: 58). Ineffective in terms of their original purpose, these disconnected events were nevertheless extremely successful at instigating the dissemination of anti-communist tendencies within the armed forces (1985; Chirio 2012).
that slightly resembled it. In order to understand the appearance of political violence, we need to ask “how” and “when” this peaceful alternative was made impossible.

The Brazilian electoral system had an interesting feature in the 1960s: separate national elections were held for the positions of president and vice president. In this system the major parties still composed a single list and, ideally, because they shared a common political agenda, candidates from the same party should technically receive a similar amount of votes. Nevertheless, in practice the people could still elect a president and a vice president who came from the extreme opposites of the political spectrum. And this is exactly what happened in 1961. Originally, the elected president was Jânio Quadros, an independent candidate who personified the expectations of a more conservative electorate. Quadros’ campaign slogan promised a “crusading attitude toward corruption, a suspicion of grandiose reforms, a preference for free enterprise, and an emphasis on the values of home and family” (Skidmore 1988: 7). Jango, who would later on become president, was the elected vice president, a former minister of labour in 1954, and a persona non grata amongst the liberal elite, conservative urban segments and, of course, the extreme right. Often described as a “Peronist-syndicalist” and the major architect of the communisation of Brazil (Chirio 2012), Jango was clearly an intruding element in Quadros’ government.

How such an uncommon political arrangement could work and which problems it would face remains a question for imagination, because Jânio Quadros resigned after little longer than six months (Bethell 2008; Gaspari 2002a; Skidmore 1988). The resignation came when the vice president was in the middle of a diplomatic mission to the People’s Republic of China, a communist country with which Brazil had no diplomatic relations (Gaspari 2003). His move set a “red alert” in many sectors of Brazilian society, but most of all, in the high echelons of the Armed Forces. The clear possibility of a “Peronist-syndicalist” as a president prompted the first orchestrated attempt at a coup. General Denys (minister of war), Admiral Heck (minister of the navy) and Brigadier Grün Moss (minister of the air force) released a joint manifesto to veto the succession (ibid.). But the incipient military putsch faced strong resistance from pro-legality sectors. Governor Leonel Brizola, a southern politician, member of the PTB and Jango’s brother-in-law, organised a “national network of radio stations” (Bethell 2008: 138) in defence of the constitution and for the return of the legitimate president. Brizola gathered support from communists, students, intellectuals, and the clergy (Reis 2004). Eventually supporters of Jango were joined by the military who controlled the
III Army, the southernmost section of Brazilian terrestrial forces (Gaspari 2002a). With the threat of a civil war, Jango’s return to Brazil was assured.

At the time, the return of the legitimate vice-president suddenly turned president was considered a major victory of popular forces (ibid.). But in the long run, it would begin to look more like a Pyrrhic victory. The Jango supporters could not stop a constitutional amendment that curtailed the powers of the president (ibid.). Once in office, Jango was forced to share space with newly instituted prime ministers, in a newly created semi-parliamentarian system (Reis 2004: 33). Moreover, the presidency also struggled with “continued labour unrest” (Bethell 2008: 142), and an atmosphere of rising economic pressures and a climate of increasing political polarisation. As a bureaucrat from the PTB, Jango was no “man of the revolutionary Left” (Bethell 2008: 144), despite the claims from his opponents (Chirio 2012). It is true that his government enjoyed the support of the PCB, but the alliance was more suggestive of the particular agenda of Brazilian communists at the time than of Jango’s properly “radical” inclinations (de Carvalho 2007; Gorender 1987). In fact, the Labour politician was criticised by radical leftist sectors that were increasingly discontent with the pacifist agenda of the Partidão (big party). Rather than an agent of international communism, he became entangled in a historical process of fragmentation of the Brazilian leftist camp (Rollemberg 2003), a process that would break with the historical monopoly of the PCB and the PTB (Reis 1985).

This fragmentation started earlier in 1961, even before Jango became president, and after Cuba assumed a socialist perspective (Rollemberg 2003). In that year, a group of Trotskyists and Luxemburgists organised the first congress of a new clandestine organisation in the countryside of São Paulo, the Organização Revolucionária Marxista (Revolutionary Marxist Organisation, POLOP) (Reis 1985). The POLOP was the first group of dissidents from the PCB to question the pacifist route to socialism and, in particular, the belief in institutional reforms. It clandestine organisation was followed by the Maoist, Partido Comunista do Brasil (Communist Party of Brazil, PCdoB, founded in 1962), the peasant’s Movimento Revolucionário Tiradentes (Tiradentes Revolutionary Movement, MRT, founded in 1962), and the Christian-Maoist, Ação Popular (Popular Action, AP, founded in 1963) (Arquidiocese de São Paulo 1985; Gorender 1987; Reis 1985). Janto, the peaceful southerner

75 The levels of inflation reached 75% per year in 1963 (Gaspari 2002a).
who “was not known for his political skills” (Bethell 2008: 146), witnessed the rise of a new influential “Jacobinism” (Skidmore 1988) that eventually radicalised his own political party. Fundamentally, the new “Brazilian Jacobins” disturbed both Jango’s and the PTB’s historical strategy of conciliation. They demanded a programme of extensive land reforms “under the law or under force, with flowers or blood” (Rezende 2010: 54) and they saw the implementation of a semi-parliamentarian system as the proof the pacifist rout was simply unfeasible (PCdoB 1985 [1962]).

In the conservative imaginary, however, Jango’s return symbolised Brazil’s entrance into a state of emergency and a new kind of “warfare”. Since WWII, the Brazilian Armed Forces had nurtured close ties with the US military. This relationship was seen as an opportunity for the modernisation and professionalization of the national forces (Svartman 2011) since the North-Americans could provide money, training and weaponry. But in terms of military doctrine per se, the US-Brazilian alignment offered very little. The preparation for a total nuclear war against the Soviet bloc seemed extremely disconnected from the Brazilian geopolitical situation (Chirio 2012). This doctrinal vacuum was filled by the French after their experience during the first Indochina War (1946-1955) and the Algerian War (1954-1962). Faced with significant defeats, French military strategists blamed these setbacks on the development of a new form of warfare merging elements of the military and the non-military spheres (Martins Filho 2009a). In an innovative twist, the French theory put both the conventional and the nuclear forms of engagement at the end of the fight against communism. The new guerre révolutionnaire (revolutionary warfare) that would define the fate of the western world was a battle between “individuals and parties” (Estado-Maior das Forças Armadas 1959: 2), a clash between “opinions and ideas” (ibid.). In this new war, effective counter-insurgency practices required the “decisive control of information” (Martins Filho 2009a: 182) and, finally, the “unification between the political and the military commands” (ibid.). From the late 1950s onwards, these “French theories and techniques of anti-subversive fight” (Chirio 2012: 21) became an increasingly important part of the syllabus in Brazilian military academies.

Jango’s return intensified the dissemination of the theory of revolutionary warfare in the internal publications of the Armed Force (ibid.). It also strengthened a reading of the

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76 From 1961 to 1963, Brazil witnessed 435 workers strikes partially organised with support of these organisations (Bethell 2008: 148).
political situation in light with predicaments of the French. As the new Brazilian cadets were being instructed about the confusion between military and non-military elements in a new form of decisive warfare, the Brazilian political landscape was changing. The proportion of seats in the national congress held by centre/left and leftist parties significantly increased from 4% in 1954 to 12% in 1962, when the PTB became the second largest party in the chamber of deputies (Bethell 2008: 143). It does not matter if Jango was or was not a communist himself. From the way things looked, Brazil could be experiencing a dangerous “psychological transference of a population from a given political universe to a different political universe […] favourable to the USSR” (Estado-Maior das Forças Armadas 1961: 7). On the surface the country seemed like a peaceful society, but for the military intelligentsia, in its depths it was in a state of preparation for war.

In 1963, Jango won the right to restore presidentialism with an outstanding majority in a national referendum (Bethell 2008). At the same time, the social mobilisation around basic reforms hit the low ranks of the Armed Forces, also suffering from the high rates of inflation (Chirio 2012). In May 1963 around a thousand non-commissioned officers joined the struggle for reforms and, in September of the same year, 600 sergeants started a mutiny in the federal capital, Brasília, for the right of non-commissioned officers to run for legislative elections, a possibility forbidden at the time (ibid.). Empowered by the recent show of popular support, Jango made one of the most serious and consequential decisions in Brazilian contemporary politics. He chose to “radicalise” his own agenda whilst “breaking” with military hierarchy by supporting “the unionization of enlisted men” (Skidmore 1988: 17).

On 13 March 1964, the president held the first of a sequence of national rallies in Rio de Janeiro, at the Square of the Central Railway Station. In a spontaneous, impassionate speech broadcast nationwide, the president filled the Brazilian “Jacobins” (Rezende 2010) with hope by publically announcing a new plan for basic reforms (Gaspari 2002a) and “the nationalization of land lying within six miles of federal highways, railways, or national borders” (Skidmore 1988: 15). Two days later, Jango addressed the national congress emphasising “the need for agrarian reform” (Bethell 2008: 156), the need to widen suffrage legislation and, finally, calling for an extraordinary council in order to change the federal constitution. The response from the conservative side came in two ways. While civilians organised an open demonstration against the president, the high ranks of the military organised a secret plot to overthrow him. In São Paulo, 500,000 people took to the streets in a large Marcha da Família com Deus pela Liberdade (March with God, for the Family and
Liberty) calling for the end of Jango’s government. From his position as chief of the army, General Castello Branco issued a top secret communication to every Brazilian General accusing the Labour government for being contrary to the interests of the fatherland (Gaspari 2002a). As a longstanding defender of legality, Castello Branco rejected Jango’s agenda of constitutional change and emphasised the need for an imminent coup against what he saw as an illegitimate and illegal move from the presidency (Chirio 2012).

Castello Branco’s communication was followed by a tense stand-off. Jango still had the support of powerful segments of the military such as the II Army in São Paulo, the III Army in Porto Alegre, and the IV Army in Recife (ibid.). In the morning of 31 March the commander of the fourth military region, General Mourão Filho, moved 4,000 troops from Juiz the Fora to Rio de Janeiro, intending to topple the “communist” president (Bethell 2008). According to Gaspari (2002b), even the inner circles of the conspiracy were taken by surprise and stunned by Mourão’s bold move, including Castello Branco and the entire Ministry of War. On 1 April, Jango was finally and completely betrayed. On the verge of an open engagement with the insurrection forces, General Krue, the commander of the II Army and, until the very end a Jango supporter, made an ultimatum to the President; he was to leave the radical leftist support behind and dismantle his plans of basic reforms if he were to remain in power (Gaspari 2002b). The president refused to accept, and with his response Brazil entered a period of 21 years of military dictatorship.

3.3 Leftist Political Violence against the Violence of Normalised Injustices

April Fool’s Day seemed like an appropriate date for what had happened. The legitimate government had been overthrown by a disorganised, small-scale military operation that faced no real confrontation (Chirio 2012), no popular resistance (Reis 2010), and lasted less than a couple of days (Bethell 2008). Suddenly, the Armed Forces took power “virtually without firing a single gun at anyone” (Reis 2010: 178). For the left, this unbelievable coup showed an interesting conflation between anti-communist and misogynist tropes common in Brazilian conservative circles. As they marched, the demonstrators held placards with the slogans verde e amarelo, sem foice nem martelo (green and yellow, no sickle or hammer) and vermelho bom, só batom (red only looks nice on lipsticks) (Gaspari 2002a). This association will be explored in more depth in the next chapter.
d’état felt like an earthquake, releasing decades of anti-communist hatred. In its first Institutional Act the authoritarian dictatorship defined itself as the voice of the people (demoi), drawing its legitimacy from an indistinguishable connection with the Brazilian nation (ethnos) (Ato Institucional Nº 1 1964: preamble). Against the “bolshevisation” (ibid.) of the country, the act proclaimed the need “to drain the purulent communist boil that had long infiltrated […] the state bureaucracy” (ibid.). Through the Act, the high command had merely institutionalised the “witch-hunt atmosphere” (Skidmore 1988) of the immediate aftermath, and the extreme right’s desire “to clean everything” (Colonel Martinelli cited in Chirio 2012: 90). Following General Mourão’s bold military move, 50,000 “undesirables” were victimised by purges, arrests, torture and bans, losing their political rights for a decade (Chirio 2012).

The symbolism of April Fool’s Day is important. More than just truculence, 1964 represented a demoralising defeat from which the PCB would never recover (Ridenti 2005). And this is how the coup relates to the Cuban Revolution. Since the victory of Castro and Guevara, the PCB’s project of a pacifist transition to communism was already being contested by leftist militants. But after being made “fools” of, this contestation became a radical rejection. After a demoralising coup that sounded more like a joke than a serious military operation (Reis 1985), reacting became a question of honour (Reis 1985). Moreover, the resort to force in order to halt the Labour agenda of social reforms was read as a clear diagnosis: pacifism is an illusory fantasy (Marighella 1979), and reformism is but a sign of co-optation (COLINA 1985 [1968]). If in the leftist imaginary the Cuban revolution inspired a theoretical defence of political violence, the coup framed revolutionary violence as the only alternative for persecuted, but mostly ashamed, militants (Rollemberg 2003).

In this new context, the Caribbean island was also infused with a powerful new meaning. When the Brazilian left remembers Cuba after 1964 it is not only in terms of a victorious “communist” revolution, but also for its comparative value. Cuba was not simply the “first liberated territory of Latin America” (Rollemberg 2001: 15), it is also “a small island” (ibid.) that lies “120 kilometres away from the Yankee (sic) Empire” (Debray 1972: 116). The victory of the guerrilla in such conditions only magnified the failure of reformism in the largest Latin American country. But what also intensified the comparison was the specific foundational myth of the Cuban Revolution (Rollemberg 2003): the theory of the guerrilla focus (foquismo or castro-guevarismo). According to the alluring “legend” of castro-guevarismo, Cuba had been liberated from the tentacles of imperialism by no more than a group of twelve revolutionaries (Gorender 1987). Alone and unsupported, the brave few simply inspired the
Cuban masses with their courageous actions against tyranny, as a mesmerising spell (ibid.). This myth had been actively disseminated in the early 1960s by members of the Castro government (Gorender 1987; Rollemberg 2001) such as the charismatic figure of Ernesto Guevara (1999) and European intellectuals, such as French philosopher Regis Debray (1972). Such a fantastic tale, fruit of an equally fantastic blindness to historical events,\(^78\) supposedly showed a fundamental “truth”: the futility of both a central party and of strategies of mass mobilisation in producing the conditions for the socialist transition. Presenting a new, revolutionary theory of revolutions (Debray 1972), *castro-guevarismo* only required two ingredients: immediate “action” and an almost “purified” form of militarism (Gorender 1987). In this formula, there was no need for a party or grassroots activism; the resort to violent actions alone was a sufficient condition for the revolution (Rollemberg 2003).

In Brazil, this simple formula was extremely appealing to leftists who had no history of engagement with the masses (Gorender 1987). Between 1966 and 1969, the leftist camp was further fragmented by groups of communist dissidents who either disliked the immobility and pacifist orientations of the PCB but also found the slow pace of social mobilisation (defended by Trotskyists, Luxemburgists, Maoists and Christian-Maoists) to be equally unappealing. And it is from the shattered pieces of the communist party that Carlos Marighella, the icon of the militarised left would emerged.

In a moment when resistance was a question of honour, as a restoration of pride, Marighella was one of the few members of the PCB to outspokenly confront the cleansing operations of the dictatorship. On the day of the coup, the “undesirable” Marighella was cornered by the police in a local cinema of a middle class neighbourhood in Rio de Janeiro. Rejecting “conformism” as a form of death in itself and an endless source of humiliation (Marighella 1979: 9), Marighella resisted the order of arrest, shouting “Down with the fascist military dictatorship! Hail democracy! Hail the communist party!”(Betto 1982: 36). The policemen opened fire, Marighella was injured in the chest by a bullet, but survived and was taken prisoner (Skidmore 1988: 86). It was a short and vain act of resistance, but it was enough to secure a privileged place in the leftist imaginary.

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\(^78\) The success of Castro and Guevara relied on the extensive support of urban, pacifist mass movements (Gorender 1987; Rollemberg 2001).
After being released, Marighella abdicated from his position in the central committee of the PCB and formed a new clandestine organisation known as the Ação Libertadora Nacional (National Liberation Action, ALN) (Reis 1990). Operating clandestinely, the ALN leader became the main supported of the theory of the guerrilla focus in Brazil (Sales 2009). Marighella strategically adapted *castro-guevarismo* to the specific conditions of Brazilian reality (Betto 1982; Marighella 1979), and after Guevara’s death in Bolivia, he envisioned the idea of the “mobile guerrilla column”: a strategy based on historical colonial wars against Dutch settlers (Marighella 1979). The guerrilla column would be implemented outside of the immediate reach of state forces, avoiding the Atlantic coast (the regime’s capitalist strongholds) and operating in the Brazilian hostile wilderness (ibid.). Marighella’s innovation in relation to Guevara was the place of urban militarised actions, first in preparation for, and later in support of, the guerrilla. The mobile columns would be supplied by urban terrorism, which would theoretically expropriate funds and at the same time cut the enemy’s lines of supply. Terrorism was supposed to disorient the forces of the regime, creating a second internal front (Marighella 1982).

Gorender classifies Marighella’s thoughts as an anarcho-militarism in between Sorel’s anti-reflexion and Fanon’s understanding of a violence indifferent to historical determinations (Gorender 1987). He was indeed part of a broader tradition of “combat theories” (Williams 2010) that justified the resort to political violence as a progressive force. What is particularly interesting about these theories is that their conception of violence is often irreducible to the liberal humanitarian representation of an intentional, cyclical and exceptional violation. This is why the analysis of Marighella and the armed struggle is important for the critical genealogical understanding of the struggles against impunity in Brazil: in this irreducibility we find a sense of violence that sees no possibility of a *postconflictual* time so long as justice remains a question of criminal accountability.

A violence “indifferent to historical determinations” is, first of all, not the same as an abstract and ahistorical violation that could victimise anyone, anytime. This violence is a

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79 In the years following the coup, Marighella was still trying to convince other members of the PCB of the virtues of *castro-guevarismo* (Ridenti 2005). His definite break with the PCB only comes after the party’s decision to boycott the first congress of the Organisation of Latin American Solidarity (OLAS), an international socialist encounter held in Havana, in August 1967 (Rolleyberg 2001; 2003). Unauthorised by the central committee, Marighella travelled to Cuba and joined the conference, which cost him his membership (ibid.).
violence that is historical in the sense that it rests on a fundamental “vice [...] an original sin” (Marighella 1979: 9). The indifference to history here means an indifference to the mere passage of time, in itself incapable of amending this original sin. The militarised left considered violence as the consequence of an essential divide between two conflicting groups within society: the oppressors and the oppressed. Violence comes from this essential divide, and if this essential divide continues, so do its violent consequences. Here lies the first difference with the liberal humanitarian representation. The distinction between oppressors and oppressed is only violent because it represents a fracture, a wound, a division in the idealised homogeneity of social body (Foucault 2003). This wound is a vice because it introduces the rupture of differentiation (Williams 2010: 98) where, according to the left, there should only be equality. In this perspective, the quintessential division (oppressors/oppressed) is violent insofar as it produces, in a given social arrangement, the reproduction of unjust inequalities. Injustice, here, is the central concept. There can be as many violences, in the plural, as there can be expression of injustice.

As a consequence, these theories do not see violence only or primarily as a physical act or a destructive capacity. Of course, these are not ruled out as clearly violent acts — as we see in castro-guevarismo – but in the leftist universe of injustices, they coexist with deeper forms of oppression (the expression of differentiation). Hence “violence”, while coterminous with the concept of injustice, remains open to different interpretations. In the Marxian tradition, for instance, the most common expression of such amorphous and multifaceted violences are perceived in the differences “between what could have been [equality] and what is [differentiation]” (Galtung 1969: 168). In other words, they are expressed in unjust hindrances to the fulfilment of an individual’s potential. Examples are exploitation (a

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80 In a sense they could be explained as part of what Foucault considered race war discourses. For Foucault, race war narratives can be traced back, at least, to seventeenth century Britain, when a narrative about a society divided between two “races” (Normans and Saxons) began to dispute the claims of continuity between the English monarchy and the Roman Empire. These narratives recuperated the idea of the Norman conquest, recounted a “battlefront that runs through the whole of society” (Foucault 2003: 51) and, finally, described “peace itself is a coded war” (ibid.). Throughout the centuries, “race war” discourses focused on “revealing” the strategies and tactics wherein a dominant group (race) “installs each of its violences in a system of rules and thus proceeds from domination to domination” (Foucault 1984: 85). Foucault leaves ambiguous whether or not his genealogical method could also be seen a part of these discourses.

81 Gorender explains how this explicit or visible violence can become “latent” or, to use the terminology of this thesis, rendered invisible in unequal social arrangements. For an interesting discussion in the context of peace and conflict research see Galtung (1969).
hindrance to the full potential of someone’s labour),\(^{82}\) dispossession (a hindrance to the potential of someone’s well-being), and humiliation (a hindrance to the full potential of someone’s recognition).\(^{83}\) These impediments are unjust because they are *unjustifiable* given the principle of *equality*. They are the sign that Arendt’s precious principle of *men qua men* (the promise that sustains the polis) is from the very beginning an illusion.

This is the fundamental point where combat theories question humanitarianism: a social arrangement based on differentiation (oppressor/oppressed) is per se an unjust order. And in an unjust order – where the “original” and “natural” equality among humans has been broken – the “techniques” of forgiveness, promising and punishing are incapable of controlling violence. They are incapable of this because the injustices of differentiation are neither individualised, cyclical nor exceptional, but *structural*, *continuous* and *normalised*. Unlike the violence Arendt refers to, oppression is “not an extraordinary phenomenon in bourgeois societies” (Gorender 1987: 226) but a fundamental “part of the everyday” (ibid.). It is a violence that, because it “tends to look […] ‘natural’” (Balibar 2002: 143), presents an invisible form of “cruelty without a face” (ibid.).\(^{84}\)

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82 Marxian scholarship presents the classical example of an understanding of exploitation as a form of violence and injustice. Very briefly, for Marx, capitalism – a mode of production based on the generalised production of commodities and the private ownership of means of production – ends up alienating (separating) the natural relationship between the labourer and the final product of her labour. This separation can be measured in terms of labouring time, by the rate of surplus-value (the value added to the exchange-value of a thing by labour power). Exploitation would be given by the difference between the hours a worker has to labour in order to produce a value tantamount to her subsistence (necessary labour) and the hours she labours just to increase the value of the final product and, therefore, the profit of the capitalist (surplus labour) (Max 1990: chapters 9 and 11). It is this basic process of exploitation – a process in which a worker ends up “producing by his labour more of the necessaries of life than […] [the capitalist] has to give him to keep him fit to work” (Engels 1976: 113) – that Engels identifies in a symbiotic relationship with force (or violent, state institutions).

83 Fanon provides an astonishing account on racism, colonialism, and the denial of recognition as tremendous forms of violence leading to a psychopathological condition. According to Fanon, racism (which he identifies with a colonial mode of thinking) operates a tri-partition of the body of the colonised. Because of centuries of colonial domination and the dissemination of a racialized European philosophy the associates blackness (or non-Europeaness) as a sign of evil, the encounter between a black person (the colonised) and a white person (the coloniser), can never be an encounter among equals, of men *qua* men. Roughly, this encounter merely brings a reassurance of the former’s non-Europeaness that Fanon describes through the denial of her own individuality. According to a colonial, cultural narrative, blacks (colonised) and a white person (the coloniser), can never be an encounter among equals, of men *qua* men. Roughly, this encounter merely brings a reassurance of the former’s non-Europeaness that Fanon describes through the denial of her own individuality. According to a colonial, cultural narrative, blacks (colonised) and a white person (the coloniser), can never be an encounter among equals, of men *qua* men. Roughly, this encounter merely brings a reassurance of the former’s non-Europeaness that Fanon describes through the denial of her own individuality. According to a colonial, cultural narrative, blacks (colonised) and a white person (the coloniser), can never be an encounter among equals, of men *qua* men. Roughly, this encounter merely brings a reassurance of the former’s non-Europeaness that Fanon describes through the denial of her own individuality. According to a colonial, cultural narrative, blacks (colonised) and a white person (the coloniser), can never be an encounter among equals, of men *qua* men. Roughly, this encounter merely brings a reassurance of the former’s non-Europeaness that Fanon describes through the denial of her own individuality. According to a colonial, cultural narrative, blacks (colonised) and a white person (the coloniser), can never be an encounter among equals, of men *qua* men. Roughly, this encounter merely brings a reassurance of the former’s non-Europeaness that Fanon describes through the denial of her own individuality.

84 Balibar defines “cruelty” in a complex but intriguing sense. Cruelty is, in his account, “a violence which is not completely intelligible in the logic of power or the economy of Gewalt [authority]” (Balibar 2002: 168). What he means by this is that cruelty is a form of violence dissociated from the logics of instrumentality; it cannot be grasped in terms of a calculus between means and ends because it is essentially irrational (ibid: 142). In addition to the cruelty showed by cases of ethnic cleansing – which he agrees with Arendt, are
The radical ideal of justice emerges exactly against this understanding of an order pervaded by injustices and their invisible violences. Justice in the face of a structural, continuous and normalised violence – devoid of the resort to punishment, forgiveness and promising – can only come in an equally structural process of deep social reform. This reform is not, however, the illusory reformism of the pacifist; it is the creation of a new order that can only emerge from the complete dialectical denial (AP 1985 [1963]) of the old one (Martuccelli 1999). The violent guerrilla is this deep, structural and dialectical process of reform; the militant is a “social reformer who takes up arms [...] against special institutionalised conditions of a given moment and dedicates himself to rupture these frames, with all the vigour allowed by the circumstances.” (Guevara 1999: 26). And violence is his “cleansing force” (Fanon 2001: 94) used to give birth to new liberated men from the ruins of the old order.  

What the manifestos of Brazilian clandestine groups do is read the country’s political situation in light of this essential, violent divide (oppressors/oppressed). And the interesting fact is that, although their reading was based on an invisible idea of violence as normalised injustices, the documents all end up with a certain degree or regime of visibility: by giving a face to these faceless injustices. Due to the inherent economism of their theoretical background, the international capitalist order (the source of economic exploitation) becomes this face. It becomes the primary enemy to be annihilated (Marighella 1979; AV 1985 [1967]). On the other hand, and often less clearly, the documents also provide a “face” for the oppressed. They are either encapsulated in a wide and vague idea of “the people”; associated with the materially dispossessed and socially excluded layers of society (the peasantry and the proletariat), but also an ambiguous sense of a more general ethnos, a nation that has been historically dispossessed by colonisation itself. This ambiguity is fundamental for understanding both the logics of castro-guevarismo and also the double goal of the transition to communist.

incomprehensible –Balibar also theorises the cruelty of a Marxian-like process of over-exploitation or the systemic production of “disposable human beings” (ibid.).

85 The question of whether or not Marxian philosophy necessarily leads to the endorsement of political violence has a long and controversial debate. For a summary account see (Cohen-Almago 1991; Gilbert 1976; Avineri 1976).

86 Annihilation is a rather strong word, but Marighella (1979) clarifies its meaning as the goal of destroying the regime’s capacity to mobilise its forces (and not necessarily, but neither inconceivably, to destroy its human agents).
Leftist political violence is “revolutionary” because it is striking straight at the essential divide (oppressors/oppressed), subverting its hierarchy. As a political stance it represents the only possible response from those ancestrally violated. Every militarised action is understood as flipping what supports an unjust order: Bank robberies are revolutionary expropriations “taking back from bankers what they take from the people” (ALN and MR-8 1997 [1969]: 227); assassinations are justicamentos, the just execution “of executioners and torturers” (ibid.). To induce “terror and fear to the exploiters” (ibid: 228) is indistinguishable from bringing “hope and the certainty of victory to the exploited” (ibid.). This logic is what supports the central thesis of *castro-guevarismo*: the automatic overlapping between the guerrilla and the people as the masses and the nation as an ethnic community. As the military, the militarised left also envisioned itself as the expression of the Brazilian demos/ethnos. Because it fights those “symbolising oppression” (ibid.) it “counts […] with the entire support of the local population” (Guevara 1999: 23). And because this is “a sine qua non quality” (ibid.) revolutionaries only need “a small nucleus of combatants […] immune to the conventionalism of traditional leftist political parties” (Marighella 1979: 122).

After 1964 this relation becomes all the clearer. When Labour radicalises its demand, even if only slightly, the violence of oppression leaves its state of ‘latency’, invisibility, and facelessness and rises to the surface in an authoritarian coup. This coup is not simply a conservative move, it also represents a foreign element exogenous to the equation of demos/ethnos: the militarised dictatorship is a “neo-colonial troop of occupation” (AV 1985 [1967]: 123). Hence, the first step of the armed struggle in the process to create a country “in which every man (sic) enjoys equally and freely their common riches” (POLOP 1985 [1967]: 104) is the annihilation of the dictatorship (Marighella 1979; AV 1985 [1967]). It is this immediate goal that connects the liberation of Brazilian proletariat and peasantry (*demos*) from the oppression of international capitalism with the liberation of the Brazilian nation (*ethnos*) from the North-American empire (Communist Party of Brazil (PCdoB) 1985 [1962]). This is the underlying logic of Marighella when reclaiming terrorism87 as “a quality that ennobles any

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87 Not all members of clandestine organisations shared Marighella’s view on terrorism. In fact, most militants disagreed with this denomination (Rollemburg 1990). It is also important to clarify what Marighella understood by “terrorism”. According to his Mini-Manual of the Urban Guerrilla (1969), terrorism primarily means blowing up things (Marighella 1982); an instrumental use of explosives “the revolutionary can never relinquish” (ibid: 103). There was nothing particularly honourable in blowing up things. What he truly considered as an honourable quality was the political label of terrorism, that is, the sign that the guerrillas were disrupting the unjust and violent order of the dictatorship.
honorable man [...] against the shameful military dictatorship and its monstrosities” (Marighella 1982: 71).

The tactics of *castro-guevarismo* were extremely successful until 1969. Unidentified and employing sophisticated methods, radical militants faced little opposition from the state apparatus. They of course benefitted from the weakness of a divided regime[^88] — stuck in internal disputes — and the precarious state of Brazilian regular police forces. In preparation for the guerrilla, the number of bank robberies in São Paulo jumped from two in 1967, to eleven in 1968, and to 31 in 1969 (Gorender 1987). Amongst the victories of the left were cases of military personnel deserting to the struggle, taking with them small arms and ammunition (Rollemberg 2003), and an episode when one organisation invaded the mansion of a conservative politician, expropriating around 2.5 million dollars from his personal safe (Gorender 1987).[^89] At the time, armed groups assassinated West German and North-American officers, they ambushed a famous Scandinavian industrialist, and kidnapped a US ambassador,[^90] demanding the liberation of political prisoners and the broadcast reading of a manifesto (a tactic that would be used many times in the course of the armed struggle). The manifestoes were particularly uncomfortable for the regime, since they made public facts the government vehemently denied, such as the existence of political dissidence and of political prisoners (Rollemberg 2003).

At the time, the response to the exponential success of the armed struggle (1967-1969) came through a wave of right-wing, paramilitary groups.[^91] Frustrated with the softness of the Armed Forces, members of the extreme right triggered terror campaigns in the hope of promoting political radicalisation (Gorender 1987). Right-wing terrorists also resorted to

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[^88]: According to General Costa e Silva, the only threat to the military “revolution” in the aftermath of the coup came from “those who were excessively revolutionary” (cited in Chirio 2012: 76). Within the authoritarian state, a fragmented group of self-proclaimed “guardians of the revolution” — mostly in control of the initial purges and the violence following the coup (Chirio 2012) — constituted a main force of dissent. Based on an equation of repressive radicalism, ultra-nationalism, and anti-politicism (Chirio 2012; Coimbra 2000) these officers rejected the limits imposed by the legal order on the renovation of the Brazilian political body. Against leftist officers and liberal supporters of the military regime, the linha dura (hardliners) pressed for the complete militarisation of the Brazilian State (Bethell 2008; Gaspari 2002b; Skidmore 1988).

[^89]: This action was performed in May 1969 by Dilma Rousseff’s VAR-Palmares. Presumably writing before 11 September 2001, Elio Gaspari described the robbery as one of the most impressive moves in the history of international terrorism (Gaspari 2002b).

[^90]: Three days before the independence celebrations of 7 September 1969, militants of the ALN and a Student disidence from the PCB — renamed Movimento Revolucionário 8 de Outubro (Revolutionary Movement 8 of October) — organised and carried out the kidnapping of US ambassador Charles Burke Elbrick (Gorender 1987).

[^91]: The most important groups were the Comando de Caça aos Comunistas (Command of Communist Manhunting, CCC), founded by students of the prestigious Law School of the University of São Paulo, and the Grupo Secreto (Secret Group) formed by radical members of the intelligence services (Chirio 2012; Coimbra 2000; Motta 2002).
kidnappings and assassinations (Motta 2002) including a series of twenty bomb attacks (Chirio 2012) and a failed plan to explode a gas plant in Rio de Janeiro that could have cost the lives of approximately 100,000 people (Ventura 2008). On 13 December 1968, pressed by the rising tide of internal extremism, the regime finally decreed its draconian legislation, the Fifth Institutional Act (AI-5). Among a series of tough measures AI-5 shut down the national congress for an indeterminate time, it ruled out the right to habeas corpus, and it established an indefinite state of exception (Ato Institucional Nº 5 1968). In power and empowered, the extreme right implemented a brutal policy of pacification against the communist threat. Justified on the “tough” logic that “those who sow violence would fatally reap violence” (Médici cited in Figueiredo 2005: 186) the regime transposed the modus operandi of paramilitary groups to the state apparatus (Chirio 2012). This inaugurates the period of an “undisguised dictatorship” (Coimbra 2000:7). In this phase of “state terrorism” (ibid.) the presidency was subjected to the control of the extreme right, the channels of political opposition were dissolved, and members of the militarised left were subjected to a violent socio-political cleansing.

The most stunning feature of the Brazilian Dirty War was the inequality of forces between Repressão92 and insurgent groups. 4,935 individuals were accused by the authoritarian state of participating is clandestine organisations from 1964 to 1979 (Arquidiocese de São Paulo 1985). Of this total, only 1,464 were charged of taking part in violent or armed actions (ibid.). In the end, the leftist connection between itself and the people (in its nationalist/economic terms) was a spurious connection. 88 per cent of the militarised left

92 Repressão (political repression) is the word used here to describe the complex and multifaceted counterterrorist/counter-insurgency network created by the Brazilian dictatorship. The Brazilian regime had not one, but many “political polices” that jointly coordinated the fight “against terror” around the 1970s. This network was heterogeneously formed by military intelligence agencies, a civilian central intelligence service, and militarised and civil police departments simultaneously searching for foci of subversion and operating at times independently or collectively. The bulk of what became known as Repressão was formed by the Serviço Nacional de Informação (National Information Service, SNI) created by General Golbery do Couto e Silva and instituted by President Castello Branco after the 1964 coup; the Centro de Informações do exército (The Army Information Centre, CIE), created in 1967 by President Costa e Silva; the Centro de Informações de Segurança da Aeronáutica (Air Force Centre of Information and Security, CISA) created on 20 May 1970; and the old Centro de Informações da Marinha (Navy Information Centre, CENIMAR) and the civilian Departamento de Ordem Política e Social (Department of Political and Social Order, DOPS) respectively established in 1957 and in the early 1940s. In the 1970s, these bodies began to operate through local Destacamentos de Operações de Informações – Centros de Operações de Defesa Interna (Deployment Groups for Intelligence Operations – Centres of Operations of Internal Defence) known as the DOI-CODI system. Each DOI-CODI was composed of civilian and military officers (from the three forces) who were under the command of local sections of the Army and reported to the SNI. For a thorough, historiographic account of the methods of political repression during the Cold War in Brazil see (Fico 2001). For a journalistic description of the rise of this intricate system see (Figueiredo 2005).
was male, and approximately 56 per cent of it came from the educated middle classes (Ridenti 2005). In a time when only the 1 per cent had access to higher education (Arquidiocese de São Paulo 1985), the guerrilla was not, by any means, representative of the Brazilian people. “Stood up” by the revolution (Reis 1990), the dozens of clandestine organisations that composed the armed struggle were annihilated in less than four years (see Appendix, Figure 5). The assassination of Carlos Marighella by agents of state, on 4 November 1969 (Betto 1982), was the prelude of this tragic fall. In a period of approximately four years (from 1970 to 1974) most clandestine organisations had been “dismantled” and “neutralised”. Once the urban problem was solved, the Brazilian army deployed 10,000 soldiers and extensively employed napalm to hunt down and kill 64 members of the Forças Guerrilheiras do Araguaia (Araguaia Guerrilla Forces, FORGA) – a focus established in the south-eastern borders of the Amazon (Rollemberg 2003; Portela 1979). In the words of a veteran, once the extreme right took control, the whole experience of the Dirty War felt like using a “helve hammer in order to kill a bunch of flies” (General Fiúza de Castro cited in D’Araujo et al 1994: 75).

3.4 Disappearances, Remembrance, and the “Continuation” of Resistance

Despite its important political function, the concept of “state terror”\(^\text{93}\) can be elusive. At the apex of Brazilian “state terror”, the country faced a “miraculous” economic growth of 10.4% a year propelled by massive domestic investments in infrastructure (Gaspari 2002b: 208). Far from a terrorising scenario, it seemed as though the world was witnessing the “birth” of a future world power; a suspicion almost confirmed by the magic of Brazil’s football team. While the left was being “neutralised”, the unbeatable Golden Squadron – the metaphorical expression of military ultra-nationalism – won the World Cup title for the third time in Mexico in 1970, with a mesmerising performance (Ridenti 2005). General Garrastasu Médici (1969-1974), who created the repressive apparatus, was not only the most radical of Brazilian dictators. He was also an inveterate football fan who enjoyed 82 per cent popular support.

\(^{93}\) Recently, the concept of state terror has drawn increasing attention in critical security studies. See (Blakeley 2007; Dexter 2012; Ditrych 2013; Jackson 2008; Jackson et al 2010; Jarvis and Lister 2014).
The state of exception had an indistinguishable double face in Brazil: "years of lead, but also years of gold" (Reis 2010: 178).

It took a long and tortuous time before the violence of the regime was acknowledged as violations of human rights and the practice of torture was "unanimously" rejected by "Brazilian society". And it is during this tortuous period that the idea of state of terror appears, as a representation of the dictatorship by groups disputing the silence on the bloody side of pacification. Those groups mobilised a liberal humanitarian representation of violence in order to expose the truth of "the years of gold" as in fact "years of lead". They constituted a new form of resistance against the militarised dictatorship, insofar as they resisted the regime’s propaganda and the historical interpretation of the Brazilian reality as pacified, just and violent-less.

The Brazilian dictatorship is commonly downplayed as a mere "dicta-light" compared to other authoritarian regimes in the Southern Cone (Toledo 2009). The rationale is that in Brazil, the Dirty War was not as bloody and gruesome that in other countries (in particular Argentina and Chile). And the figures, in this respect, cannot lie; while the result of the regional anti-Communist crusade amounted to 3,000 assassinations in Chile (Camacho 2008) and 9,000 (CONADEP 1985) to 30,000 (Crenzel 2008) disappearances in Argentina, no more than a "few hundred" were murdered by Repressão (Arquidiocese de São Paulo 1985). The common explanation is that, based on these numbers, Chileans and Argentines were the ones who experienced a truly traumatising violence. Brazilians, on the other hand, were merely frustrated with the defeat of their political projects (Fico 2013). Interestingly, this is not the view held by all who fought in the Brazilian Dirty War. In a usual mix of pride, shame, and sometimes pure indifference, veterans explain Repressão not as a milder form of counterterrorism, but a smarter one. In the memories of those whose job and purpose was to kill "flies", Brazil created a modern apparatus whose "virtues" ranged from the professionalization of the political police to the practice of infiltrating clandestine organisations (D’Araujo et al 1994; 1995; Huggins 2000). The "helve hammer" metaphor is illustrative here. It suggests an extremely effective repressive apparatus (even if not a particularly efficient one) that contrasts with the sloppiness and unprofessional nature of

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94 This is not to say, however, that Brazilian society rejects "tough policing". In a study about the consequences of continuous exposure to violence Cardia (2003) interestingly describes how, within certain communities in São Paulo, “torture” is not understood as the same as any “mistreatments”. In her analysis, it is mainly the name “torture” – and not necessarily the practice – that is largely rejected as immoral.
other South American forces, who made too much of a “mess” (Malhães 2014a; 2014b). In this account, the authoritarian regime was not exactly a dicta-light, it was just aware that “repression with brutality is foolishness” (cited in Gaspari 2004: 34).

This smarter logic of effectivity is fundamental for understanding the idea of “state terror” and the resurgence of resistance as a struggle against forgetfulness. In the universe of techniques used by the Brazilian state in order to “neutralise” the militarised leftist opposition, the use of secrecy stood out. Secrecy (the effacing of violence from the eyes of the public) was the quintessential aspect sustaining the double face of the state of exception and preserving the narrative of the years of gold. In Brazil, the military fought in the shadows (Fico 2013), and this covert battle had, from the perspective of a cost/benefit calculation, an obvious conclusion: the resort to forced disappearances. The number of forced disappearances substantially increased in the early 1970s, when Repressão assassinated the largest number of political dissidents. The early 1970s were also a time when the regime faced the strongest international campaigns of “naming and shaming”, criticising Brazil’s human rights record (Skidmore 1988). In a Foucauldian lens, disappearances can be read as representing a modern form of power that dissociated the figure of “death” from the exercise of authority, or, in this case, the act of killing. At the precise time when Repressão was out to kill and killing had an increasing political cost, “death” was the first thing to disappear.

Apart from protecting the regime, the practice of forced disappearances maximised the effects of counterinsurgency. While reducing the political cost from international “naming and shaming”, it strengthened “fear” and “terror” within clandestine organisations. Disappearances operated through the production of three absences: “the absence of a body, the absence of a moment of grief, and the absence of a grave” (Catela 2001:100). As the testimony of a veteran suggests, the tripartite absences of forced disappearances also functioned as a strategic production of “uncertainty” in the context of the dirty war (Malhães 2014a; 2014b). The absence of a body, a grave and a moment of grief suggested a destiny of uncertainty to radical militants (ibid.), and uncertainty was the apex of terror for a movement based on the absolute scientific certainty of revolution (Reis 1985; 1990).

However, as power opens the space for resistance, this macabre but ingenious practice also produced a counter-effect: because disappearances vanished with the moment

95 Amnesty International (1972) published a report on allegations of mistreatments and sent a total of 2,800 letters to the Brazilian Justice Ministry denouncing the practice of torture by state agents (Meirelles 2014: 330).
of grief, they opened up the space for the politicisation of what would be an otherwise individual pain of relatives. From 1973 onwards, there was no longer any “news of casualties, dead bodies, death certificates” (Teles 2009: 154) that could suggest the end of someone’s life and the beginning of another’s mourning. If this modern form of power was “cost effective” it also created the conditions for a new movement of resistance by denying the “geographic, symbolic and semantic” (ibid.) functions of death as an endpoint (ibid.). After disappearing with the members of the radical left, the regime had to face the wives, mothers, and daughters who sought an end to their sorrow.

As I will show in the next sub-section, this politicisation of individual grief was one of the most important moments of the Brazilian political transition. It is via the mobilisation of relatives that resisting the dictatorship becomes a question of remembrance, a “war of memory” following the end of the dirty war (Martins Filho 2009b). In this new “battle” the search for knowledge (the whereabouts of the disappeared) was an undistinguished form of acknowledgment of their death (the disappeared as assassinated). If in Argentina the famous Madres and Abuelas de Plaza de Mayo demanded the disappeared were brought back alive (Edkins 2011: 159; Jelin 2003), the Brazilians’ fight for their relatives was for the return of “death” to the centre stage; it was a way to demoralise the state as a “terrorist” institution and assure criminal responsibility for those it assassinated. This new form of resistance became the first democratic movement to directly oppose the militarised dictatorship as an illegitimate government (Greco 2009; 2014). But it also, in many senses, signals the break with, and an end point to a previous idea of what was meant to be resisted, of what exactly the dictatorship represented. In Brazil, as in the Southern Cone, “the strong and visible presence of the human rights movement” (Jelin 2003: 33) in this second form of resistance demonstrates this break: a time when a change in the representation of violence reframes a whole political project of social change as a mere illusion.

96 According to Gallo (2015), Brazilian activists felt a certain feeling of superiority in relation the Argentine demand for aparición con vida (reappearance alive) (Jelin and Azcarate 1991). They believed that the practice of “denying” the identity of victims as disappeared – see (Edkins 2011) – was not politically antagonising enough. Because their focus was to decry state terror in its hidden facet (and reassert their loved ones were murdered by an illegitimate state) they felt they were “a thousand light years ahead” (cited in Gallo 2012: 335).
Besides the absence of bodies, grief and graves, it is possible to see yet another dimension to the disappearance of the radical left. A dimension related to the metamorphosis experienced by the survivors themselves at a time when they were witnessing more than the disappearance of their comrades, the “disappearance” of a whole political project. In the 1970s, this metamorphosis is usually associated with the period of the Brazilian diaspora, when survivors of the Dirty War were forced into exile.

The experience of forced migration is a heterogeneous experience, depending on individual choices and trajectories (Paiva 2009; Rollemberg 2004; Cavalcanti e Ramos 1978). But, in a certain sense, the Brazilian diaspora in the 1970s showed a more general meaning regarding the fate of militancy. According to Denise Rollemberg, the political figure of the exile is the embodiment of the defeat of a “socio-political project” (Rollemberg 1999: 25). It is “the defeat of this project or the unsurmountable difficulties for its implementations” (ibid.) that defines the condition of her exile. The first leftist militants to leave Brazil did not immediately experience the defeat of a political project. Remaining in Latin America – at that time, the geopolitical forefront of the revolution – they were still fighting, resisting, regrouping. Castro-guevaristas could seek guidance in Cuba, and more traditional grassroots activists could live the effervescence of Salvador Allende’s socialism in Chile (ibid.). This situation would, nonetheless, dramatically change following the internationalisation of the fight against communism, terrorism and subversion in the Southern Cone. Between 13 December 1968 (the Brazilian state of exception) and 11 September 1973 (the Chilean state of exception) radical leftists who were abroad were forced into exile proper, or into an “exile within the exile” (Rollemberg 2006:168). Those geographically residing in Santiago had to flee from a second coup, and those politically residing in the “socialist world” felt for the first time the weight of a serious “political defeat” (Rollemberg 2004: 282). And Chile was just the first safe haven to fall. In 1976, Argentina and Uruguay were also taken by right-wing authoritarian regimes (McSherry 2005), settling “the defeat of a continent” (Vera cited in Rollemberg 1999: 38).

Along with this “disappearance” of their political project, exiles witnessed the politicising of individual grief within Brazil, a process that, since 1973, gained the increasing support of liberal professional associations and Christian humanists. The most important association in this respect was the Comissão de Justiça e Paz (Commission of Justice and
Peace, CJP) presided over by Don Evaristo Arns from the Archdiocese of São Paulo (Panizze and di Britto 1998; Pereira 2000, Santos 2010). Cardinal Arns used his political prestige as a religious leader and the political prestige that “victimised” women enjoyed in chauvinist/conservative circles in order to unite relatives as a group (Pereira 2000). This strategy to politicise grief was tantamount to connecting the violence of the past waged on individuals (relatives, survivors, prisoners) with the fate of a collective future (the protection of the Brazilian *etnos*). It is in this respect that Arns coined what would become the historical motto of the Brazilian memorial-humanitarian struggles: *para que não se esqueça* (so it’s not forgotten), *para que nunca mais aconteça* (so it never happens again).

This incipient new form of “resistance” (ibid.) intersected with the devastating precariousness experienced by radical leftists-turned-exiles. Defeated, wounded and unprotected, certain groups of survivors saw in the politicisation of grief the possibility for “the continuation of their struggle” (ibid.) by other means. Paradoxically, the “disappearance” of their political project also offered a “liberation” (Rollemberg 2006: 164) from an old modus operandi of political resistance, based on militarisation, the complete politicisation of existence, and the resort to political violence. Here lies the transformation: if they reconsidered the rejection of legality as co-optation and democracy as an inherently flawed regime (Rollemberg 2004; 2009), exiles could reclaim their state of powerlessness and defeat and continue resisting the militarised dictatorship (Greco 2009; Rollemberg 2004). This metamorphosis was specifically intense in those leaving for western European countries such as France, Sweden, Portugal, and the United Kingdom (ibid.). Now transformed into exiles, they were outside the horizons of the revolution, living in a continent subsumed by the narrative of “civilisation” against “barbarism”. At this point, and under the strong influence of Amnesty International (an NGO extremely receptive to the Brazilian cause), some militants slowly reconsidered the belief in the progressive capacity of political violence. They began to associate themselves with the ideas of more “advanced political cultures” such as the notion of *universal human rights*. In many sense, the language of human rights offered, for

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97 This should not be taken in instrumental terms, nor should it be understood as “giving up”. Human experience is far too complex for this sort of moralising attitude. No one but the exiles themselves lived through the experience of outliving their dreams and loved ones, and their reasons for reassessing their positions do not concern anyone but themselves. I am only interested here in the historical transformation of the Brazilian left as it relates to the historical function of a liberal humanitarian discipline.
those who survived the Dirty War, a form of redemption for their past “mistakes” (Greco 2009; Rollemberg 2004).  

A brief chronology of events illustrates this phenomenon. In 1973 the regime faced the first lawsuit by the wife of a victim (Santos 2015). One year later the CJP requested clarifications on the whereabouts of 22 disappeared, and was granted a meeting with the regime’s authorities (Teles 2010; Gallo 2012). As attorneys continued to provide support for political prisoners and relatives in Brazil – in cases more likely to draw public attention (Santos 2015) – exiles participated in the Bertrand Russell tribunal on Latin America, held in Rome (1974 and 1976) and Brussels (1975) (Greco 2009). In 1975, members of the democratic opposition gathered 138 signatures requesting the institution of a commission of inquiry concerning violations of human rights (Gaspari 2004: 32). In the same year, the question of a state pardon first appeared in the Manifesto da Mulher Brasileira pelo Movimento Feminino pela Anistia (The Brazilian Woman’s Manifesto by the Feminists for Amnesty Movement) (Greco 2003, Teles 2010). The appearance of the feminists for amnesty was a turning point. From 1977 to 1978, different groups of feminists congregated as oppositional forces towards the creation of the first Comitê Brasileiro pela Anistia (Brazilian Amnesty Committee, CBA) (ibid.).

Amnesty was an unthinkable term for a regime that had never acknowledged any violations of human rights (or at least, never acknowledged institutional responsibility for them). In the eyes of the militarised dictatorship, the mobilisation around humanitarian issues was a clear “defamatory campaign against Brazil, as an integral part of the psychological warfare planned by the communist movement overseas” (Golbery cited in Gaspari 2004: 33). Even for liberal officers sympathetic to the “anxiety of relatives and friends” (ibid.), the memorial-humanitarian groups asked for too much. There would be no liberation of terrorists or sympathisers with terrorism.

98 It is interesting to note that this transformation took on clear colonial lines and appropriates a very pervasive civilizational narrative in Brazil.
3.4.2 Human Rights, Innocence, and the Uncomfortable Theory of Two Demons

The memorial and the humanitarian facets of the struggle for amnesty seemed to complement each other, as a perfect fit. Most of all, the language of human rights offered an impeccable mix between neutrality and partisanship. It allowed feminists to claim association with “no ideologies nor political jargons” (Zerbini 1979: 8), framing the struggle for amnesty as a defence of the principles of “love, liberty and justice” (ibid.) that “exist in the hearts of everymen (sic)” (ibid.). And by seeing justice as criminal accountability it offered, at the same time, an endpoint to the endless mourning of relatives. This endpoint was the promise to punish perpetrators. In return, the memorial connection between past and future opened space for the humanitarian administration of memory in terms of its representations of violence. It was easy to transpose cardinal Arn’s motto into a slightly changed one; so violations of human rights were not forgotten, so perpetrators would never commit them again.

There was, however, one central problem, and it concerned the question of political violence. The rejection of violent actions as a legitimate form of struggle was a fundamental principle of humanitarianism (Hopgood 2006; Leebaw 2011; Meirelles 2014). Amnesty International, the face of human rights in Brazil, had been created upon this idea and was an adamant defender of its non-violent principle (Williams 2010). The “foundational practice” (Hopgood 2006: 62) of its naming and shaming campaigns was “to bear witness to the private suffering of nonviolent innocents” (ibid, my emphasis) and “to demand their release on the sole ground that such suffering was unjust” (ibid.). But in a counter-intuitive way, the question of innocence presented an uncomfortable common ground between human rights groups and members of the authoritarian regime. The distorted justification for the crimes of the Dirty War was based on the idea that radical leftists were not innocent but had been long “sowing violence”. In conservative military circles, the regime’s narrative of pacification was that of a “just” war against communism, terrorism and subversion (Huggins 2000). This narrative denied the institutional responsibility (guilt) for torture and assassinations in three main ways; as a fiction, accusations of violations were treated as simple defamatory inventions of the international communist movement (Figueiredo 2005); as an excess, they were explained as the unprofessional accidents of a few rogue officers (the bad apples) (Huggins 2000); and as a necessity, justified because the regime had no other way except to wage a “dirty” war against “dirty” “terrorists” (D’Araujo et al 1994). The problem is, the humanitarian defence of innocence played directly into the last justification. By drawing on the idea of non-violence
as irreproachable, it suggested a “demoniac” side to leftist militants who took up arms against the regime. It reinforced, or at least it did not directly repudiate, the narratives of the “theory of two demons” behind the legitimisation of Repressão, a narrative according to which “state terror” was the result, and not the cause, of the armed resistance. To this extent, although for diametrically opposed reasons, both torturers and their detractors agreed that the defence of human rights should be left for those who were innocents. This rationalisation can still be seen in the recurrent jargon of Brazilian conservatives, direitos humanos para humanos direitos (human rights for the right humans).

This was problematic for the agenda of the emerging CBAs. Their proposal for an amnesty law was based on the defence of the interests of its three constitutive groups: the liberation of political prisoners, the return of exiles, and the justice demanded by the relatives of the disappeared (Greco 2009; 2014). By 1976 Amnesty International supported the “humane treatment of all prisoners” (cited in Meirelles 2014: 335), which did not go against the committee’s agenda, but also continued to endorse only the “release of […] non-violent prisoners” (ibid.). This policy was inconsistent with the demands of Brazilian activists for an anistia ampla, geral e irrestrita (ample, generalised, and unrestricted amnesty): a state pardon encompassing every oppositional group (ample), releasing every victim of the state (generalised), and punishing every perpetrator of human rights violations (unrestricted). While the question divided memorial-humanitarian activists, it also enabled the basis for the appropriation of the struggle for amnesty in more conservative terms. With the support of liberal, pro-re-democratisation officers, and to the displeasure of the extreme right, the regime made a complete U-turn. In 1979, President General Figueiredo promised to send the draft of an amnesty bill to the National Congress, breaking with the previous vehement rejection of such possibility by members of the authoritarian state (Gaspari 2004; Skidmore 1988). The dictatorship now accepted the possibility of pardoning political dissidents and exiles, under the condition that violent criminals remained between bars.

Supported by the mainstream media (Greco 2003), the military proposal was swiftly justified as a more reasonable means to reconcile a wounded society (Greco 2009). Conservatives now emphasised the need to virar a página do passado (turn the page of the past) so as to enable
a peaceful democratic transition (Silva Filho 2008: 174). In their perspectives, and against the question of criminal accountability, these groups framed the demand for punishment as a form of revenge that could trigger, once again, the entire cycle of violence. The imperative, in their view, was to prevent Brazil from “looking backwards” and “turning into a statue of salt”, as in the Biblical tale of Sodom and Gomorrah (Gaspari 2004). This is partially the reason why the humanitarian ideas of innocence and non-violence were strongly rejected by Brazilian feminists, during an International Conference in Rome (1979), when survivors, exiles and relatives engaged in direct collaboration for the first time. At the event, distinctions based on the non-violent principle were dismissed by Brazilian activists as a sign of conditional solidarity with the victims of state terror. Helena Greco, one of the most prominent feminists for amnesty, reaffirmed the overarching and non-discriminatory terms of the CBAs: “we cannot agree with the attempt to classify […] as ‘terrorists’ or ‘non-terrorists’, as ‘guilty’ or ‘non-guilty’” (cited in Greco 2003: 210). In order to contest the fiction of the “just war” and its theory of two demons, the (counter) memorial facet of the amnesty movements required the acceptance that “all who opposed the dictatorship […] deserve the same respect” (ibid.). At the end of the international conference, this became the central tenet of the internationalised movement. It also became the cornerstone of an emerging narrative of resistance.

The dilemma between innocence, legitimacy, and the resort to political violence was a recurrent theme in the nascent memoir literature. Simultaneously to the feminist mobilisation, survivors and journalists were recounting their experiences of torture as a form of unofficial, still incipient truth-seeking (Martins Filho 2009b). Of all the memoirs released during the struggles for amnesty and criminal accountability, O que é isso, Companheiro? (What’s going on, Comrade? 1979) by Fernando Gabeira is the one that best illustrates the duplicitous dilemmas of a liberal humanitarian representation of violence concerning the question of political resistance. Gabeira’s book is precious illustration of the metamorphosis of the radical leftist camp, explained through his own life experiences. He was an active member of the

99 Pro-amnesty groups were also targeted by a new wave of right-wing terrorism (Motta 2002). Bombs exploded in the headquarters of alternative newspapers and at the OAB buildings (Gaspari 2003), and a priest from the democratic “resistance” was kidnapped and severely beaten (Greco 2003).
100 The I Congresso Nacional pela Anistia (I National Congress for Amnesty, 1979) clearly stated its commitment to the struggle of relatives commanding “the radical and absolute end of torture and the repressive apparatuses and the judicial accountability of the agents of repression and the regime they serve” (cited in Greco 2014: 165).
101 Feminism has always had a problematic relationship with the question of non-violence. For a discussion on a different context see (Frazer and Hutchings 2014).
armed struggle, part of the MR-8, and one of the kidnappers US Ambassador Charles Elbrick (see note 90). Gabeira also lived through the Brazilian diaspora, having experienced the whole political meaning of defeat: he was first exiled in Algeria, then Chile and later, after the 1973 coup, in Sweden. What is interesting about O que é isso, Companheiro? is that it provides an insightful perspective into a narrative justifying the rejection of political violence by survivors and, at the same time, the rejection of criminalising violent actions against the regime. This narrative became one of the cornerstones of future memorial-humanitarian struggles.

First of all, Gabeira reaffirms the re-articulation of resistance against the dictatorship as a practice of remembrance against the regime of silence, forgetfulness and amnesia. In his epigraph he quotes Guimarães Rosa, a famous Brazilian poet, to emphasise that “stories are not simply detached from storytellers; they are also responsible for performing them: to recount a story is to resist” (Rosa cited in Gabeira 1981: v). This resistance via recounting as a performance of oneself, suggests the empowering of those victimised by the dictatorship through the politicisation of their grief. When recounting their individual grief as a collective question they could reframe the position from one of passive victimisation to one of political action (Edkins 2003; 2004). Now, what Gabeira performs differs from other memoirs in his daring use of humour. His book remembers the armed struggle in a tragicomic lens of absurdity. Militancy is made by “terrorists” who fail to terrorise old ladies during revolutionary expropriations (Gabeira 1981: 88) and barely knew how to assemble their weapons, let alone how to shoot (ibid.). The regime’s “demons” are so “evil” they look for souvenirs to present their American hostage with, minutes before his release (ibid: 126). Gabeira’s take on an extremely delicate topic provokes outbursts of laughter. But the book is not just the masterpiece of an incredibly intelligent humourist; it is the masterpiece of a (counter) memorial proposal. By focusing on its irreverent points, Gabeira brilliantly dissociates the regime’s “terrorists” from the “violent prisoners” of Amnesty International. He dissolves the uncomfortable common ground between torturers and humanitarians as simply ludicrous.

This dissociation is particularly powerful in one scene. A big chunk of the book refers to the period the ALN and the MR-8 militants were holding ambassador Elbrick in captivity. The writing explores the tensions, the dynamics, and also the exchanges between the militants and between them and their hostage. During his turn to watch over Mr. Elbrick, Gabeira remembers having had one specific conversation concerning the question of political violence, a discussion about the role of the Black Panthers Party in North-American politics. Gabeira specifically recounts having a stunning realisation midway into the debate: he was
heatedly discussing a controversial political topic with someone he disagreed, and also pointing a gun at his addressee. As he remembers it, he immediately puts down the weapon when grasping the inequality of terms, but continues to defend the Black Panthers with a “very good point” (ibid: 119). This is a brilliant “solution” to the memorial-humanitarian dilemma. Here, Gabeira clearly distinguishes the unjust, because unequal, resort to violent actions (pointing a gun at someone unarmed) from the just, because equal, theoretical defence of political violence (his argumentation in favour of the Black Panthers). The representation of the radical left here is, in his own words, a representation of mere “intellectuals, wanting to say something, while the tanks were pointed at us. Under no circumstances we would have wished to swap places” (ibid: 119).

But there is yet another quote in his epigraph: “what is life worth living for if not for amending our mistakes” (Rolland cited in Gabeira 1981: v). As a metonymic relationship with the memorial-humanitarian struggles, his memoir is an act of resistance via the re-creation of his former self, a practice that also inevitably passes through the re-creation of a former practice of resistance into a new, “amended” one. O que é isso, Companheiro? starts in Chile 1973 – when Gabeira’s real “exile” began – and proceeds as a flashback from Sweden, the place where his memory performs the tragi-comic re-enactment of the armed struggle. And this performance is by no means only individual; it expresses the historical transformation of the Brazilian left from a defence of political violence based on an idea of injustice and of a corrupted order, to a moment when its political project of deep social change “disappears”. What Gabeira illustrates is this progressive effacing of the radical leftist goal from the realms of the possible. How, at a particular point in time, a whole idea of social justice became associated with the “particular mythologies” (ibid: 36), the “fantasies” (ibid) and the “great illusions” (ibid: 18) of a political project that was simply impossible, doomed from the very beginning. In his memoir, militants cease be the perpetrators of crimes suggested by the reconciliatory theory of two demons, because they became simply the victims of an impossible agenda; “crushed by their utopian dreams” (ibid: 147).

O que é isso, Companheiro? displeased groups of survivors (who rejected the charge of utopianism) and relatives (who found it hard to see their grief as a matter of laughter). Nonetheless, the book was a huge bestseller, with more than more than 250,000 copies sold by 2009 (Martins Filho 2009b: 92). If its language of humour was offensive to those directly victimised by the Dirty War, it was a perfect fit for those seeking to consume the recent political history in a palatable way. The book was published in the same year the National
Congress voted in favour of the military’s blanket amnesty, a law that protected perpetrators of violations of human rights from future prosecutions and established the so-called “culture of impunity” in Brazil. Read against the amnesty law, Gabeira’s memoir seems like the *magnum opus* of a “nation” wishing to leave the past behind and willing to take a very serious matter with a pinch of laughter.

### 3.5 Conclusion

The Liberal humanitarian fight against impunity is founded on the central distinction between *punishment* and *silence* or *forgetfulness*. Struggles against impunity are often meant to symbolise a break with regimes of silence and political oblivion of violations of human rights that lead to a “culture of impunity”, regimes such as the one instituted by the 1979 Brazilian amnesty law. In the present chapter, I presented a different interpretation of the relationship between the international fight against impunity (as it was implemented in Brazil) and the silences surrounding the Dirty War. By focusing on the question of *resistance* during the Brazilian transition, I was able to describe the memorial-humanitarian struggles of local activists as more than mere responses to state terror. Building from my genealogical analysis of the objectification of a postconflictual ethos in the late twentieth century, I could show how, at that point in time, liberal humanitarian activism was also part of this process, by mobilising a particularly narrow representation of violence.

Moving beyond the simplified tropes of remembering versus forgetting, silence versus speech, and punishment versus impunity, I described the rise of CBAs in Brazil as a process where the practice and legitimation for acts of political resistance were substantially transformed. Investigating different representations of violence behind the armed struggle of the late 1960s and the memorial-humanitarian struggles of the 1970s, I argued that the punishment versus impunity in Brazil had a much larger meaning than mere interventions that “allow survivors a voice” (Edkins 2003: 18), present a “threat to sovereign forgetting” (Auchter 2013: 310) or pose the necessity of “working through” (Schick 2011). The appearance of these struggles, via the diaspora, the politicisation of grief and the acceptance of the language of human rights were in more than one sense, instances of a historical displacement; marks of the “disappearance” of a different form of struggle. I described how, instead of simply opposing an official policy of silence on the past, struggles for memory, truth, and justice (against impunity) actually stand for a *re-articulation of silence*. A practice of
forgetting based on the unrepresented or invisible outsides of the liberal humanitarian representation of violence that they endorsed.

According to Reis (2010), the amnesty law was responsible for not one but three fundamental silences that endured in post-transitional times: (1) the silence about human rights violations perpetrated by state agents; (2) the silence about society’s connivance with state terror; (3) and the silence about the radical political project of the armed struggle. My intention in this chapter was to show how the fight against impunity was historically, even if unintentionally, involved in producing this third silence. In other words, my deconstructive reading of the opposition punishment/silence suggested a way wherein the quest to “break the ‘sinister silence’ protecting perpetrators” (Pinheiro 2013a) was also a quest to silence a representation of violence by pushing it beyond “the realms of the possible”. In the next chapter I will show that this form of historical displacement – this disciplinary aspect of the punishment versus impunity debates – strongly influenced the CNV. I will argue that, to these days, the promise that violence will never happen again depends on the forgetting of forms of violence that will never cease to happen.
4 On Demons and Dreamers: the Disciplinary Function of Truth-seeking

4.1 Introduction

At this stage it seems only too reasonable to stop and reconsider where my argumentation has lead us. Numerous implications of my overall investigation start to come together here. At the outset, I begin with the historical development of international fight against impunity in the aftermath of violence, conflict, and authoritarianism. I described the rationale behind the ideas of universal jurisdiction and the mobilisation of the concept of 

*hostis humani generis* (the enemies of humankind) in the post-1945. I also explained how this project for criminal accountability was first challenged by reconciliatory ideas of collective forgiveness, and later appropriated the trope of reconciliation as part of a common language of justice. Subsequently, I made my own preliminary conclusions about the need to rethink this vision of transitional interventions as “responsive”. I argued one can only grasp the wider political effects of the fight against impunity if one moves beyond the conditions of implementation of justice in the aftermath and investigates the conditions of possibility behind the promise of “never again”. Resorting to a Foucauldian critical genealogical method, I showed how the liberal humanitarian discourse supporting the discipline of transitional justice relies on a representation of violence as an *intentional, cyclical and exceptional* phenomenon. A representation that is not only responsive but also productive of a *postconflictual time*, based on an idea that via the mechanisms of punishment and forgiveness, violence can actually be controlled. Lastly, the previous chapter, the historical displacement connected with this specific representation of violence. I showed how the memorial resistance against Brazilian state terror (mid-1970s) was also, and in a very specific sense, part of this historical production of the “non-violent post-conflict”. I argued that their mobilisation of representations of violence as a *visible phenomenon* – alongside the displacement of radical leftist ideas concerning its *invisibility* – entailed a metamorphosis of the lexicon of resistance. In other words, I described how the adoption of a liberal humanitarian discipline effected a *disciplining* of political conduct; how, in the end, certain forms of knowledge-practice were treated as imperative (the fight against impunity) whereas others (the radical leftist project) were rendered as dangerous illusions.

In this chapter, I reveal the effects of the liberal humanitarian power-knowledge nexus – a discipline of transitional justice that “produces” a *postconflictual ethos* and thus *disciplines*
political resistance – in the Brazilian truth commission. But, first, this “new” method requires an explanation. Following the scheme proposed in the previous chapters, I will divide the analysis of the CNV in two categories: (1) questions concerning the conditions of implementation of the truth commission and (2) questions concerning its conditions of possibility. I will then bring to light three different aspects of transitional interventions: their practical operation, their theoretical possibilities and, finally, their disciplinary function.

The aspect of practical operation is the most superficial of the three aspects. Being closest to the conditions of implementation of peace and justice in the “aftermath” it has been dealt with comprehensively in the literature. The practical operation of transitional interventions refers to the actual handling of a specific case. It assesses the organisational structure of truth commissions, criminal tribunals, and reconciliation programmes with attention to their concrete challenges. This aspect focuses on how specific interventions address the nature of violence in the past and the balance of political forces in the present. It measures an individual intervention’s capacity to deliver truth, justice and reconciliation. It is through this exploration that experts of post-conflict or post-authoritarian justice can identify good or bad “conditions” for the possible implementation of future interventions. In the first part of this chapter I will analyse the CNV in light of this first aspect. I will disclose the mandate, the organisational structure, the internal tensions and the decisions that impacted on the magnitude of the CNV’s final report. I will pay particular attention to claims that truth-seeking was “mishandled” by the state authorities in Brazil.

The aspect of theoretical possibilities refers to the theory behind the practical choices of an intervention. Since every practice is at some level informed or framed by certain theoretical commitments, particular theories of truth and justice have huge implications on official policies. So far I have shown how different understandings of truth – forensic truth, multiple truths, and truth as a human right – guided major cases from South Africa to East Timor. Different theories significantly changed the approaches to the post-conflict scenario (by instructing the fight against impunity, the need for social healing or a holistic strategy) and “all truth commissions have to make decisions about what will be recorded, investigated, and what they will ultimately report” (Hayner 2011: 75). In the middle ground between the conditions of implementation and the conditions of possibility of justice in the aftermath, this aspect enables us to connect these choices to an underlying theoretical foundation. In the second part of this chapter I tackle the way truth-seeking was theorised in Brazil. Moving
beyond the question of mishandling, I relate a particular theory of truth-seeking as an archaeological enterprise to the truth commission’s failure to achieve national reconciliation.

Finally, the last aspect of transitional interventions, their *disciplinary functions*, brings us back to the political effects of the theory-practice nexus. The working of disciplinarity is most visible in the construction of institutional and official narratives. Disciplinarity emerges when the past is looked upon, in all its full potentiality, and reduced to a cohesive and coherent chronicle, ensuring that a specific political lesson can be learned from. When it comes to truth commissions, this obviously points to the text in the final report. Disclosing the double meaning of discipline, the disciplinary aspect analyses the report promise of “never again”, and its position in the struggle against impunity, in what regards the creation of a possible postconflictual ethos against *unthinkable* alternatives. In the final part of this chapter I will show how the Brazilian report “reproduces” a vision of the *postconflict* based on three discursive strategies: limiting responsibility for violence in the past; limiting forms of resistance in the present; and limiting possibilities of justice in the future. I will also describe why these strategies depend on a liberal humanitarian representation of violence and in what sense they unveil the political side of impunity.

4.2 Facing the Past, the Present, and the Puzzle

The military’s unilateral amnesty law was a hard blow to members of the amnesty movement. The decision to pardon agents of the authoritarian state whilst criminalising leftist “terrorists”\(^1\) was a complete distortion of the “ample, generalised, and unrestricted” amnesty proposed by members of the memorial-humanitarian struggle. Effectively, the unilateral amnesty blocked demands for criminal accountability and inaugurated a semi-official regime of silence on the violations of the past. The CBAs were dismantled after 1979 and the political momentum brought by the politicisation of individual grief into a collective struggle for

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\(^1\) The amnesty law only fully pardoned one group state agents who perpetrated gross violations of human rights (Huggins 2000: 60; Schneider 2011b: 43; Silva Filho 2010). It enabled exiles to return and liberated some political prisoners but fundamentally excluded from state policy “forgetting and forgiving” those charged of committing crimes de sangue (blood crimes) and offenses against National Security (Lei Nº 6.683 1979; Abrão et al 2010: 63) such as the crimes of “terrorism and subversion” and the crimes conexos (crimes associated with “terrorism and subversion”) (Lei Nº 6.683 1979).
resistance was worn away. Nonetheless, even shaken by a frustrating political defeat, the fight of survivors and relatives for truth, memory and justice continued.

In the post-amnesty scene, the heritage of the CBAs was reclaimed by the direct relatives of the victims of the dictatorship. Reorganised as a Comitê de Familiares de Mortos de Desaparecidos Políticos (Committee of the Family Members of the Dead and Disappeared), groups of relatives begun to rearticulate the demand for justice in a renewed network of activists (Greco 2009; Telles 2010; Gallo 2012). Alongside other groups of individuals directly or indirectly victimised by the Repressão – such as the Associação dos Militares Cassados (Association of Deposed Military) and the Movimento Tortura Nunca Mais (No More Torture Movement) – these activists were responsible for continuing the unofficial efforts of truth-seeking started by feminists and the CBAs, despite the regime of silence. Based on their own individual accusations, relatives kept compiling lists with names of individuals murdered or disappeared by the forces of political repression, and also with the names of possible torturers. Released in unauthorised and constantly updated reports, these lists offered the first, rudimentary picture of the Dirty War.103

As forms of unofficial truth-seeking the reports of relatives and human rights activists had one problem. They were easily dismissed by state authorities during the political transition (1979-1988) as mere “inventions” or serious accusations that could not be properly, objectively proven. It was in order to counter the dismissal of unsupported claims that memorial-humanitarian activists – former members of the CBA, relatives of victims and their attorneys – devised an ingenious but dangerous strategy. Since the first unsuccessful lawsuits against the regime in 1973, a group of attorneys defending victims of state terror had one realisation. Because they handled charges against political opponents, they were legally granted access to the Military Supreme Court, meaning they had at least limited access to secret documents produced by the dictatorship. They realised that what they had in hands was, at least partially, hard evidence of the extent of Dirty War, evidence that could not be dismissed as subjective or unsupported. During the amnesty movements, these attorneys sought the support of the CJP to put into motion a plan of secretly photocopying such documents, moving them out of the Military Supreme Court, and producing an unofficial report of political repression as objective as possible (Arquidiocese de São Paulo 1985). Over

103 The most important reports were Amnesty International’s Report on the Allegations of Torture in Brazil (1972) and the relative’s Dossiê Ditadura: Mortos e Desaparecidos Políticos no Brasil (1964-1985) (Dictatorship Dossier: Political Deaths and Disappearances in Brazil) (1978, 1984, 1995).
years, activists photocopied 1 million pages (a total of 707 lawsuits) regarding accusations of crimes against national security (Catela 2009).

In 1985, the year military rule gave way to an (indirectly) elected civilian president, the result of the daring plan was published in the report Brasil: Nunca Mais (Brazil: Never Again) (1985). With an extensive but by no means exhaustive data, Brasil: Nunca exposed the unknown figures of Repressão in a hard blow for deniers of violations. The report was another best-seller, presenting a “study of repression […] from documents produced by the very authorities entrusted with such controversial task” (Arquidiocese de São Paulo 1985: 22). As I will show in this chapter, its standards of objectivity also set the bar of truth-seeking and the fight against impunity in Brazil. Standards that played a fundamental role in the institutionalisation of the right to the truth via the PNDH-3, and, almost three decades later, were still instructing the work of the Brazilian truth commission.

4.2.1 The National Truth Commission (CNV)

After decades of political pressure from memorial-humanitarian activists, the Brazilian state created a truth commission on 18 November 2011 as an official policy for the implementation of the right to memory and truth. The CNV was charged with the investigation of gross violations of human rights – “illegal and arbitrary detentions, torture, extrajudicial executions, forced disappearances, and the concealing of mortal remains” (CNV 2014i: Vol. 1, Book 1, 38) – committed between the years of 1946 and 1988 (Lei Nº 12.528 2011: Art. 1º). Envisioned as a measure for the defence of basic human rights in the present, the truth commission was expected to draw lessons from the past towards a future of non-recurrence. Located in the Federal District (Brasília), the commission was a “national” body both nominally and de facto: it was funded104 by the Brazilian presidency and entirely composed

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104 The CNV never published its total budget. However, the Brazilian Federal Budget Laws show a budget of R$19.3 million (approximately $5 million as of 2015) destined for truth-seeking over the mandate of the CNV (Lei Nº 12.798 2013; Lei Nº 12.952 2014; Lei Nº 13.115 2015). This estimate, nonetheless, does not account for the technical cooperation treaty with UNDP, which remains undisclosed (ISER 2013a; 2015). For the sake of comparison, the TRC had a yearly budget of $18 million (Hayner 2011: 28) and the CEH was budgeted $9.5 million for its 18-month mandate.
of “local” personnel. But it also relied on a few, international channels of cooperation on the Southern Cone, the US, and European institution, resorting to international organisations and non-governmental actors. As a result, the CNV was in constant exchange with state officials, intellectuals and human rights activists from overseas.

Structurally, the CNV was divided in three sub-commissions: (1) research, generation and systematisation of information; (2) Civil society and institutional relations; and (3) external communications (CNV 2012a). Each sub-commission was further divided in different, thematic working groups. The final report lists 245 individuals as members of the collegiate, technical advisors, researchers, and independent experts who took part in, or aided, the commissions’ efforts (CNV 2014i: Vol. 1, Book 1, 43). In a remarkable and unprecedented move, the CNV spurred a process of dissemination or “capilarisation” of truth-seeking (ISER 2013b; 2014). Following the establishment of a national truth commission, around one hundred independent, sub-national commissions were created nationwide (CNV 2014i: Vol. 1, Book 1). Working at all levels of the federation (states and municipalities), across the three powers (executive, legislative, and judiciary), in the public and private sectors (universities and professional organisations) these truth commissions were not hierarchically connected to the CNV. A few of them (around thirty) ended up working in

105 Six months after the legal creation of the CNV Rousseff nominated seven Brazilians of “renowned trustworthiness and ethical conduct, identified with the defence of democracy […] as well as the respect of human rights”(2011: Art. 2) as members of the commission’s collegiate.
106 Members of staff worked in Argentine, Chilean, and Paraguayan archives (CNV 2014i: Vol. 1, Book 1) contacting recognised experts like José Zalaquett (CNV 2014b). Also, the Argentine and Uruguayan governments provided the CNV with documents regarding the surveillance and mistreatment of Brazilian nationals during their own dictatorships (ibid.). In Germany, members of staff visited the archives of the Auswärtiges Amt (Federal Foreign Office) and Der Bundesbeauftragte für die Stasi-Unterlagen (The Federal Commissioner for the Records of the Stasi, BSTU). In 2012, the truth commission requested the declassifying of documents from the United States State Department, regarding political repression in Brazil during the Cold War. Finally, throughout its mandate the Brazilian commission also had technical support from the UNPD and the International Centre for Transitional Justice (ICTJ) (CNV 2014i: Vol. 1, Book 1, 70).
107 The working groups organised historical scrutiny around 13 different themes concerning the nature of political violence in the past. Some of the most important themes were: the history of the 1964 Coup, the structure of political repression, gross violations of human rights (torture, extrajudicial killings, and forced disappearances), violations of peasants’ and indigenous rights, the Araguaia Guerrilla, Operation Condor, and the relation between the dictatorship’s violence and gender. As I will explain in the next chapter, the differences of focus between members of these groups evidence a central contradiction of the CNV.
108 The CNV originally counted with seven members of the collegiate and fourteen technical advisors (Lei Nº 12.528 2011: Art. 9). When its internal charter was reorganised the number of technical advisors jumped from fourteen to twenty five (Resolução Nº 8 2013), and through the UNDP fifty nine new posts were advertised by 28 February 2014 (CNV 2014a). There is, however, no explanation for how those numbers increased to 245 collaborators (ISER 2015: 100).
cooperation with the CNV, as to prevent the “unnecessary overlapping of investigations” (Resolução Nº 4 2012) (see Appendix, Figure 6).

After 2 years and 7 months, overcoming a series of structural and organisational problems, the CNV released its final report on 10 December 2014, International Human Rights Day. The highly anticipated report was immediately made available online, on the commission’s website (CNV 2015b). Its extensive historical recollection and legal analysis was divided in three volumes: 976 pages presenting the CNV’s official narrative of the violent past, alongside recommendations for the enhancement of human rights (volume 1); over 400 pages of “thematic” essays produced under the responsibility of technical advisors (volume 2); and a 2,000-page biographical account of the killed and disappeared (volume 3). Physical copies of the three volumes were delivered to president Rousseff during an official ceremony, held at the presidency’s headquarters in Brasilia. Celebrating both the international date and the completion of the CNV’s works, Rousseff offered the official report as a tribute to “all who fought for liberty and democracy” (Rousseff 2014: my emphasis).

The final report was internationally praised as yet another achievement of the global fight against impunity (Amnesty International 2014a; United Nations 2014a; 2014b). Due to its thorough, historical analysis and user friendly, social media presence, the CNV “scored a six on the seven-point scale” (Sikkink and Marchesi 2015) regarding the general quality of truth commissions worldwide. However, the commission’s results were not so unanimously acclaimed in Brazil. Indeed, some activists saw the mere fact that a truth commission was finally implemented as “in itself, excellent” (R., personal interview, Vitória, 17 July 2014). But many others had higher expectations. They were displeased by the “wide process of bargaining” (Teles and Quinalha 2013) that had arguably curtailed the scope of truth-seeking. In their opinion, the CNV was a parody of the memorial-humanitarian project: a “non-ideal” (F., Vitória, personal interview, 9 July 2014) truth commission merely bound to what was conveniently “possible” (Monteiro 2012). With “extreme frustration” (V., personal interview, Rio de Janeiro, 22 July 2014), activists still perceived the CNV as just another expression of a longstanding strategy of political forgetfulness (Greco 2014).

109 In December 2013, the presidency announced the extension of the CNV’s mandate for an extra seven months (Medida Provisória Nº 632 2013). The Senate approved the measure on 28 May 2014 (CNV 2014f).
4.2.2 A Mishandled Implementation?

The criticism of memorial-humanitarian activists focuses on the primary (and primarily superficial) aspect of truth seeking: an analysis of its practical operation connected to the conditions of implementation of post-authoritarian justice. From the beginning to the end, and all over the political spectrum, the Brazilian government was accused of mishandling the implementation of the truth commission. This accusation followed a few basic charges: the absence of a vital, preparatory time before the beginning of truth-seeking; the “political composition” of the CNV’s collegiate; and the “alienation” of human rights activists from official remembrance. These questions were closely discussed by the most active NGO monitoring the CNV, the Rio de Janeiro based Instituto de Estudos da Religião (Institute of Religion Studies, ISER). According to ISER, the commission’s working methodology seemed to follow a “make-it-up-as-you-go-along” rule of thumb. Almost seven months after its legal creation, the CNV still lacked an internal charter. Until July 2012, the truth commission remained unstructured and its members remained without more substantial guidelines concerning their mandate, duties and activities (Resolução Nº 1 2012). As late as of November 2012, almost a year after law 12.528/2011 (that created the CNV) was passed, members of staff were still establishing new working groups on different possible themes of research (Resolução Nº 5 2012). These organisational measures, at such a late stage, suggest an initial void in the space between the commission’s legal creation (18 November 2011) and its effective establishment (16 May 2012). By the time members of the collegiate were appointed by the president, very little had been done, or at least publically advertised, in terms of planning and preparation.

The absence of a clear, preconceived plan, significantly affected the CNV’s initial activities. According to the testimonies collected by ISER researchers (alongside their own impressions) the first half of the commissioner’s mandate was permeated by an embarrassing sense of disorganisation (ISER 2012; 2013a; 2013b; 2014; 2015). Witnesses suggesting a disorganised and unstructured start to truth-seeking were far too many to be referenced here, and were analysed in-depth by ISER’s own reports. But, for the sake of illustration, it might be worthwhile revisiting some of these criticisms. For members of memory, truth and justice groups who attended the first events organised by the CNV, the commission’s agenda sounded, first, unclear. Instead of following a specific course (in line with the institution’s methodology) the plan “seemed, at times, to be dictated by the mass media, with certain
public hearings scheduled shortly after newspapers reports” (ISER 2012: 34). Second, the meetings were repeatedly criticised for basic faults such as “last-minute bookings, the constant no-show of staff members” (ISER 2013b: 22) presenting “confusing objectives” (ibid.) and, finally, “not [offering] enough time for civil society speakers” (ibid.). Along these lines, one survivor complained about the quick “invention” of “coffee breaks” (unspecified by the programmes) as soon as controversial issues were raised (F., Vitória, personal interview, 9 July 2014).

Besides the question of disorganisation, the CNV was also afflicted by internal frictions, the first of which concerned its political neutrality. Neutrality had been, from the beginning, a very real concern. Law 12.528/2011 defined “impartiality” (Lei Nº 12.528 2011: Art. 2, Paragraph 1, ii) as a sine qua non condition for holding a commissioner position. During the CNV’s inauguration, the president herself insisted she “was not moved by personal criteria or subjective evaluations” (Rousseff 2012) when selecting members of the collegiate. And this idea of political “neutrality” displeased activists. In the very early stages one of the commissioners appointed by Rousseff pushed the boundaries of non-partisanship too far. In a newspaper interview, Gilson Dipp, then coordinator of the CNV’s collegiate, revived the controversial theory of two demons. In passing, but in an extremely polemic remark, Dipp pondered the possibility of looking at “both sides of the story” (Folha de São Paulo 2012). The remark was the last straw, saturating activist’s discomfort with the text of Law 12.528/2011. A text that originally left unaddressed whether or not survivors from the radical left would also be investigated by the commission.

In the eyes of activists, survivors and family members this was absolutely preposterous. The theory of two demons was still seen as a “theoretical jugglery serving the purpose of oblivion” (Safatle 2011). As a conservative narrative, it reinforced the myth of a “dicta-light” underplaying the violence carried out by the Repressão. Supporting the fiction of a “Dirty War” between two radical groups, it disguised the imbalance of forces between the Armed Forces and the armed struggle. Against the idea of “two sides”, activists insisted that Brazil “had not endured a civil war” (F., Vitória, personal interview, 9 July 2014), but experienced a “massacre” (M., São Paulo, personal interview, 4 July 2014). Furthermore, the “terrorists” from the resistance side had already been extra-judicially, illegitimately, and brutally punished, whereas state terrorists enjoyed impunity (V., Rio de Janeiro, personal interview, 22 July 2014). Outraged, memorial-humanitarian groups urged the “withdrawing of any remnants of the theory of two demons from the activities of the CNV” (CMVJ-RJ et al 2012),
including Dipp himself. This strong refusal resonated within the commission itself, as other members of the collegiate were irritated by Dipp’s remarks. In line with activists, they affirmed the CNV’s commitment “to only assess the conduct of criminals and evildoers who distorted state institutions” (CNV 2012c). In response, the internal charter of the CNV was reformulated in August 2012, when the qualifier “violations perpetrated by state agents” was introduced in the commission’s mandate (Resolução Nº 2 2012). 110

Besides this “ontological” dispute over the past, members of staff were also supposedly divided in relation to “methodological” questions. During the first year of the CNV’s mandate, a fundamental tension was built up. Journalists and activists spoke of an internal polarisation between two opposing groups holding different views on transparency and accountability. This alleged tension involved two main figures. The commissioners aligned with Paulo Sérgio Pinheiro supported a mode of truth-seeking centralised in the CNV. Allegedly, in their view, the search for truth was best carried out in “isolation” from activists (who were too many and held too many views), centralised in a group of specialists. “Society” would of course remain informed by press releases, but would only have access to more substantial information when the final report was released (ISER 2013b: 82). However, another group, organised around Claudio Fonteles, opposed such a project (Folha de Pernambuco 2013). The parties to the quarrel never openly confirmed any differences or grudges held towards one another. But, when seen against the backdrop of staff’s behaviour, this “allegation” does make sense. As a member of the collegiate, Fonteles at least seemed like a frank enthusiast of a “pluralist form” of truth-seeking. Celebrated as the “best of them all” (F., Vitória, personal interview, 9 July 2014), he envisioned a collective search for truth where “everyone, together, would get involved, everlastingly, in the defence of democracy” (CNV 2013b). This idea did appear as more than mere bravado or empty propaganda. In the position of coordinator, Fonteles released a series of 24 short essays – entitled exercitando o diálogo (practicing dialogue) – revealing the research of the working groups under his leadership. The supposed clash with Pinheiro’s group, which eventually involved the presidency itself, finally lead to Fonteles’ voluntarily resigning in June 2013 due to “personal reasons” (Folha de São Paulo 2013a).

110 Gilson Dipp distanced himself from truth-seeking in September of the same year, supposedly in order to treat a respiratory infection. He would officially announce his resignation in April 2013 (Folha de São Paulo 2013b).
4.2.3 The Theory of Archaeological Truth-seeking

At no point during the CNV’s mandate did members of staff “epistemologically” reflect on their duties (or, at least, no reflection was ever made public). Unlike the South African TRC, and similar to other Southern Cone commissions, the CNV’s report does not discuss but rather assumes what constitutes the “truth”. Yet, one can see in the ways the CNV represented its own work, a theory of truth-seeking and truth-telling connected to the international fight against impunity. Members of staff reproduced a series of common tropes regarding the past, veracity, and the role of official history in unveiling the latter in the former. First and foremost, the commission repeated the common liberal humanitarian vision of official remembrance and policies of redress as the opposite of forgetting or denial (Eastmond and Selimovic 2012; Malksoo 2015; Misztal 2003; Obradovic-Wochnik 2013; Zehfuss 2007). At the CNV’s inauguration ceremony, the presidency endorsed this opposition by regarding truth as “the precise opposite of forgetfulness” (Rousseff 2012). Referring back to what she claimed as a millenary Hellenistic heritage, Rousseff defined “truth” as a force that could not be forcefully hidden (ibid.), nor prevented by tyranny (ibid.). The distinction between truth (the object of knowledge) and tyranny (a metaphor for the dynamics of politics) also replicates an equally common trope of liberal humanitarians concerning neutrality and non-partisanship. Inserted in this “Hellenistic” tradition, the search for truth in Brazil implied the weary idea of “telling truth to power” (Douzinas 2007; French 2009; Gready 2011; Richmond 2006), an idea that frames remembrance and truth-telling as in themselves forms of resistance against the will of an antagonistic power.

This opposition is the central metaphor of the CNV: the depiction of the past as a jigsaw puzzle (see Appendix, Figure 7). As we have seen, neither Rousseff nor the members of the collegiate invented this representation from scratch. The representation of the past as a puzzle is, in fact, a common imagery. The apolitical practice of truth-seeking, as a puzzle-solving exercise, involves gathering “pre-shaped jigsaw pieces of memory that refer to a completed picture, a completed narrative” (Humphrey 2000: 11). A truth commission, according to this “theory”, should look out for the “missing pieces” of the past; the knowledge of political events that remains unavailable or undesired by those still in power. As such, the CNV’s duty was “assembling the pieces of truth […] for our [Brazilian] history to be truly completed” (Pontual and Horta 2013).
Following the archival tradition of transitional policies in the Southern Cone (Bickford 1999), the jigsaw imagery was adopted with a twist. The missing pieces of truth were framed as the “archaeological remnants of Brazil’s political past” (Pinheiro and Pereira 2013, my emphasis). This metaphor, as it were, substantially affected the modus operandi of the CNV. Seeing truth-seeking as an archaeology accommodated fundamental elements of memorial-humanitarian resistance in the CNV’s non-partisan, objectively oriented puzzle-solving exercise. As yet another continuation of “resistance” against state terror, truth-seeking was rendered a meticulous, intricate, and at times exhaustive practice. Telling truth to an uncooperative power requires extreme attention to what is said “in between lines, in the headers, in the subtleness and scattered details of the [regime’s] documentary sources” (Pinheiro and Pereira 2013). Abiding by the tradition of Brasil: Nunca Mais, this form of truth-seeking demands a level of objectivity that dismisses, above all, charges of revanchismo. Just like in the 1970s, by conveying the dissociation between the domains of knowledge and the dynamics of politics, the archaeological metaphor could claim non-partisanship at the same time it claimed to “provide victims a voice” (Pinheiro 2013b) and break “the ‘sinister silence’ still protecting perpetrators” (Pinheiro 2013a).

The problems of implementation faced by the CNV and its theory of archaeological truth-seeking clearly affected the commission’s performance. On 21 May 2013, the CNV released a partial report in response to the demands of activists and intellectuals. The report was taken as an expected but nonetheless distasteful disappointment. Around twenty pages long, the text resembled a “cover letter” (Teles and Quinalha 2013) stating “more of a future project of information-management […] than of current data processing” (ISER 2013b: 103). On the theoretical side, it already showed the beginning of a methodological hierarchy. The CNV provided a first, initial map of the missing pieces of the past (see Appendix, Figure 7). It identified which archives had been recovered (in blue), which ones were partially unavailable (in green) and which ones were still completely hidden from the wider public (in white). While its archival research sounded solid, the commissioners had only held 15 public hearings (CNV 2013b: 9) and collected a mere 268 testimonies (ibid: 11) in the span of a whole year; a rather meagre engagement with survivors, relatives, and other activists. But problems of implementation cannot, on their own, account for some of the CNV’s decisions. This is particularly so regarding the centralisation of truth-seeking, detached from its historical basis of support (the activists, survivors, and family members who had always struggled, in one way or another, for thorough truth-seeking). Here is where the archaeological metaphor comes in handy.
The metaphor of archaeology already supports a hierarchy of methods: the archaeologist is concerned with objective, material vestiges from the past, disregarding other subjective sources. From the beginning, activists questioned the CNV’s focus on documents to the detriment of personal testimonies (ISER 2013b: 71). But archaeology is a technique, a work that demands a particular set of skills not necessarily available to common laymen. It is no accident that the CNV was seen as “not very permeable and too centralising” (ISER 2015: 138) and criticised for its “overly academic” approach (ISER 2013b: 73) and excessive formality (ibid: 82). In the end, the CNV was roundly criticised for “not being receptive to the demands of civil society and not being transparent during most of its work” (ISER 2015: 138). The archaeology of the political past failed to offer an open, official space where survivors could publically and legitimately recount their stories. The concern with objectivity and neutrality undermined the role of testimonies and individual’s memories (with their inherent intersubjective aspects). When the commission resorted to individual accounts, it was always in an auxiliary role, when no documents were available (this was particularly the case with veterans). The CNV’s figures are illustrative of this hierarchy. Over more than two years, the commission organised 75 public hearings (CNV 2014i: Vol. 1, Book 1, 43) collecting meagre 1,116 testimonies (ibid: 55). As a measure of comparison, CONADEP took around 7,000 testimonies in a much shorter period of time (Hayner 2011: 46), the CAVR received 7,669 statements (ibid: 40), and the TRC, a truth commission supporting a dialogical understanding of truth-seeking, listened to over 21,000 individuals (ibid: 28). But this, too, is understandable. Centralising truth-seeking in a technocratic commission was the only possible way of producing an unquestionably authoritative account on the authoritarian past: one that was (or was perceived as) at the same time neutral, objective and impartial.

4.3 The Irreconcilable Limits of a “Common” Language of Justice

The final report places the CNV in the “strict list of truth commissions whose work was justified based on the exercise of the right to the truth” (CNV 2014i: Vol. 1, Book 1, 34). This, in turn, places the truth commission in a specific position concerning the historic tensions in the “punishment versus impunity” debates between retributitive and restorative perspectives. As seen in previous chapters, the right to the truth assumes a holistic “common language” of justice whereby the fight against impunity (justice as criminal accountability) is inextricably connected with the fight against obliviousness (justice as historical
acknowledgment). This idea progressively emerged as a means to protect the imperative for retribution from the challenges of projects of reconciliation. Once knowledge became a right indissociable from the right to justice two things followed: “truth” could never again stand for a second-best form of justice (minimalist reconciliation), nor bargained with for the sake of national healing (maximalist reconciliation).

The long trajectory of the right to the truth overlapped with a time when peacebuilding was envisioned in more all-encompassing term. As a curious, and perhaps counterintuitive, result, the fight against impunity ended up appropriating the restorative project. Several transitional interventions designed to fight impunity in the aftermath have kept the trope of reconciliation intact. The Rwandan and the Yugoslavian tribunals, the ICC, the CARV, and the Sierra Leone TRC (among others) have maintained that the pursuance of justice – as the joint enforcement of criminal and historical accountability – leads to an endpoint of national reconciliation. This new “common language” of justice devised to assist a new global agenda for peace posed a holistic methodology that moved beyond previously intractable positions (Roht-Arriaza 1998). With a “clear option to adapt […] to the imperatives of international human rights law and its corollaries” (CNV 2014i: Vol. 1, Book 1, 36) the CNV was inserted at the heart of this new “transitional jurisprudence”. And, as a matter of fact, this is partially why Brazil is such an interesting case. Beyond a superficial analysis of its conditions of implementation, the CNV’s archaeological metaphor reveals what theory of truth-seeking is behind the third-phase, supporting the vision of a “common” language of justice.

Focusing on neutrality, objectivity and impartiality, the archaeological metaphor is a constitutive part of the CNV’s common language of justice. By asserting the retributivist goal of memorial struggles, the CNV’s archaeology supported a view for which truth “only completes itself with justice” (CNV cited in ISER 2013b: 56). Nevertheless, by framing the fight against impunity with an aspect of neutrality – the focus on objective evidence from documentary sources – it enabled the coexistence of a restorative trope with its strong retributivist inclinations. Befitting a holistic, “common language”, the CNV shared the “conviction that historical truth has not only the affirmation of justice, but also the preparation of national reconciliation as its main objective” (CNV 2014e). The problem is that this holistic understanding indeed “moved beyond problematic dichotomies that characterized previous eras” (Leebaw 2008: 106) but it has “not entirely resolved major dilemmas” (ibid.). The archaeology of Brazil’s political past still left many unresolved
dilemmas despite its efforts towards building a common language of justice. The best way to reveal these contradictions is to judge the CNV’s work on its own terms; or rather, on the terms of memorial-humanitarian tradition: the demands of truth (knowledge), memory (acknowledgment), and justice (criminal accountability).

In relation to truth (knowledge), the CNV faced a logical, or rather, chronological, abyss. As a “delayed” transitional intervention, the Brazilian truth commission was separated in time from the actual political transition by almost three decades. In a piece to Foreign Affairs, Sikkink and Marchesi (2015) identified this temporal displacement as a huge advantage. They argued a delayed commission was able to rely on the knowledge produced over decades of unofficial truth-seeking (done by activists themselves) and previous reparation commissions (as the CEMDP and the Amnesty Commission). Despite making sense (in logical terms, if anything), what this superficial assessment misses is the demand for knowledge as unavailable, new information. In this case, a more-of-the-same approach simply does not work. Activists often emphasise their “story is always told, one way or another” (V., Rio de Janeiro, personal interview, 22 July 2014), pointing towards the “need to know what the other side [the Armed Forces] produced” (ibid.). In their eyes, the temporal displacement actually works against the truth commission in a very simple way. Whatever finding the final report could disclose would be contrasted with an overwhelming background of old information (a story that had been told, “one way or another”). To compensate, the CNV would have to stand out, over and above more than twenty years of research in a two-year mandate. From the beginning, the prospects were very low.111

Against the odds, members of staff carried out 98 visits to public and institutional archives (CNV 2014i: Vol. 1, Book 1, 53) and, in the end, made 100,000 digitalised documents available online (EBC 2015). On many occasions, their efforts led to minor discoveries,112 and even potentially revealing ones.113 Other times, however, what seemed like bombastic

111 An example of this logic is the way the partial report (release in May 2013) was accused of presenting “facts – already widely documented through research carried out with no governmental support […] as important findings of the commission” (Coimbra 2013).
112 In the course of the CNV’s mandate members of staff discovered small public archives that had been previously considered destroyed, recovering “new” lawsuits and microfilm documentation that could help future investigations. They also retrieved the private archive of a deceased veteran, willingly offered to the CNV by his family (CNV 2012b; 2013c; 2013i).
113 The CNV’s international channels of cooperation proved reasonably fruitful; in both German archives the commissioners collected 3,500 documents concerning the surveillance of “undesirable” Brazilians during the Cold War (CNV 2013a; 2014i). And, in a remarkable move, a cooperative Obama administration accepted the
revelations led to disappointing results.\textsuperscript{114} And the biggest disappointment concerned the fate of the disappeared. From the beginning of memorial-humanitarian struggles only 33 mortal remains had been recovered, leaving 210 victims still missing (CNV 2014i: Vol. 1, Book 1, 500). Politically sold as a form of remembrance that concedes no space for oblivion, the CNV was only capable of identifying and recovering the mortal remains of a single victim.\textsuperscript{115}

In \textit{Nothing but the Truth}, Sikkink and Marchesi confuse the question of truth (knowledge) with another important demand of activists, the question of official memory (acknowledgment). With little prospect of obtaining any substantial, new information, the CNV still relied on “the symbolic recognition of what is already known but was officially denied” (Cohen 2001: 13). Here, the truth commission achieved more substantial results. While its hierarchy of truth-seeking largely failed to give victims a voice, it indeed offered a strong, official endorsement of the historical memory of the “defeated”. As the third official institution to validate the memory of state terrorism, the CNV ensured a commitment to humanitarianism by the Brazilian state, at least to a certain extent. The CNV raised the number of recognised victims of the dictatorship to 434 (CNV 2014i: Vol. 1, Book 1, 68). It produced 21 forensic reports countering previous versions of the authoritarian regime about the assassination of dissidents (ibid: 53), for which it was widely praised. Members of staff also requested new obituaries for major, public cases of death under incarceration,\textsuperscript{116} putting

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CNV’s request to declassify documents of the US State Department. Over 600 documents containing information about the role of the United States in the Brazilian Dirty War were shipped to Brazil in a series of three instalments (CNV 2015a).
\end{flushright}

\textsuperscript{114} Pressed by activists, the CNV investigated the deaths of two former presidents who opposed the dictatorship, Juscelino Kubitschek (who died on 22 August 1976) and Jango (who died on 6 December 1976). Both deaths occurred in a short period of time alongside the death of a third political leader of the oppositional moment, Carlos Lacerda (who died on 21 May 1977). As such, they raised suspicions over a coordinated plot to eliminate the leaders (or potential symbols) of political dissidence in the Southern Cone (CNV 2013d). Stirring up the mystery, a sub-national truth commission publically declared there was “no doubt […] Kubitschek was the victim of a political conspiracy” (Carta Capital 2013). However, further investigations of the CNV contradicted the sub-national commission, stressing the absence of “any material element capable of even suggesting the former president and his driver […] were assassinated, victims of intentional homicide” (CNV 2014k: 8-9). Jango’s case was more complex. A former Uruguayan veteran suggested Jango’s medicines were adulterated during his time in exile, causing a poison-induced heart attack. In this case, verification involved an exhumation (CNV 2013g), anthropological analysis and further laboratorial tests looking for any traces of poisoning. Notwithstanding, the results returned as inconclusive (CNV 2014i: Vol. 1, Book 1, 79).

\textsuperscript{115} The mortal remains identified by the CNV belonged to Epaminondas Gomes de Oliveira, a community leader disappeared in 1971 (CNV 2014i: Vol. 1, Book 1, 55).

\textsuperscript{116} The most emblematic case concerned Vladimir Herzog’s new obituary. Herzog was a journalist accused of having connections with the PCB by conservative MPs in 1975. He was subpoenaed by the political police to clarify his ties with the clandestine organisation. Herzog voluntarily walked in the DOI-CODI of the II Army, a place from which he would never come back alive. His death, the death of an innocent who was not part of the armed struggle, was met with outrage and intensified the memorial-humanitarian resistance against the
an end to fake, official versions of suicides and runaways. Finally, in a powerfully symbolic and widely broadcast event the CNV exhumed (see note 114) and commemorated Jango, the president overthrown by the military in 1964.

In a complex joint operation with the Federal Public Prosecutor's Office and the Presidency’s Secretariat for Human Rights (CNV 2013c; 2013d), the CNV reopened Jango’s grave. A group of national and international technicians carefully retrieved his mortal remains, while officers of the air force transported them over a distance of 2,000 kilometres: from the southernmost region of Brazil, where Jango was buried, to the Federal District, at the “heart” of the Republic. Once in Brasília, the coffin was received with military honours. Politicians, members of the Armed forces, members of the Goulart family, and the CNV’s collegiate payed respect to the returning president. At the hangar where it landed, Jango’s coffin was shouldered by officers of the three forces and, draped in a Brazilian flag, paraded for a short while (see Appendix, Figure 9). The remains were celebrated with a 21-gun salute during the execution of the national anthem, enacting the funeral procession of a recognised head of state. After laying a wreath of white flowers upon Jango’s coffin, Rousseff presented the Brazilian flag as an offer to the former first lady. The commemoration performed a symbolic refusal of a historical representation of the dictatorship. With a militaristic-nationalistic tone, the “reassurance of Brazilian democracy” and the “promotion of João Goulart’s memory” (CNV 2013f) were merged in a single act. By celebrating the head of state overthrown by the military coup, the ceremony reassured the democratically elected (vice) president as also the ruler of the Brazilian people (the demos). It also automatically refused the version of 1964 as a “revolution” in the name of the nation (the ethnos). Hence, the event carried the implicit tone of an official apology – perhaps not from the Armed Forces themselves, but from Rousseff, their commander in chief. When the president returned the flag covering Jango’s coffin to his widow, she was also returning their legitimacy; the idea they were and would always be remembered as the country’s rightful president and first lady.

The CNV also sought an overt apology, this time directly from the military (as an institution). In 2014, prior to the writing up of the final report, the CNV launched a series of reconnaissance visits to military facilities identified as previous sites of torture, extrajudicial

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regime. At that time, DOI-Codi officers claimed Herzog had hanged himself after the session of “interrogations”, a version later refuted by the forensic investigations of the CNV. Proving Vlado’s suicide had been forged by the authorities, members of staff requested a change in the official cause of his death to “deceased due to mistreatment”. The new document was promptly delivered to Vlado’s family (Santos 2015).
executions, and forced disappearances. In total, the commission investigated 7 military facilities belonging to the Repressão’s apparatus: three DOI-CODI, the Army’s Military village, The 12th Infantry Battalion, Galeão Airbase, and the Ilha das Flores naval base. Besides identifying the loci of past mistreatments, the reconnaissance expeditions also functioned as another means to objectively override the memory of 1964 as a “revolution” and of the following Dirty War as a just war against terrorism. The conclusions were released in partial report where the pattern of violations was found inconsistent with the original purpose of the military facilities. According to the CNV, these facilities – belonging to the Brazilian Armed Forces – possessed an original determination to defend the “public good” (CNV 2014g) and ensure the “satisfaction of society’s general will” (ibid). Instead, they were _misused_ for the systematic violation of the rights of political dissidents, which significantly deviated from these determinations.

Seen as the first step to create a “future of reconciliation with the army” (CNV 2014c), the partial report was used to support an official solicitation issued directly to the ministry of defence. Via _Ofício nº 124/2014_ the CNV specifically requested the opening of internal administrative investigations by the high command of the Army, Navy and the Airforce, on the aforementioned charges. The need for clarifications was based on a simple question: “[h]ow was it possible to employ these facilities for purposes other than their original ones?” (ibid.) (CNV 2014g). This exchange between the CNV and the Armed Forces is very interesting. It reveals the limits of the synthesis between retribution and the idea of political reconciliation, and also suggests a different meaning of “reconciliation” associated with the theory of archaeological truth-seeking.

On the eve of the 50th anniversary of the military coup, the ministry of defence communicated the acceptance of the request. Investigations were to be established and should proceed according to the determinations of the truth commission (Ministério da Defesa 2014a). Such a positive response was cherished by the members of staff. On 1 April, the CNV released a public note praising the military for “an extremely important gesture […] that could represent a great step forward in the investigation of gross violations of human rights” (CNV 2014d). This hope was crushed by the response of the Armed Forces. In June, the command of the three forces denied any grounds for supporting the accusation of misuse of public facilities in the past, or of the distortion of the authority of the Armed Forces during the Dirty War. Lieutenant-brigadier Saito blamed the difficulties posed by the “lapse of time” (Comando da Aeronáutica 2014), nonetheless stating that Galeão’s Airbase never diverged
from the provision of support to stationed units (ibid.). Vice Admiral Luz Filho also dismissed accusations that Ilha das Flores Naval Base had deviated from the defence of the public good. He emphasised the base – turned into a prison during the dictatorship – functioned in strict conformity with the National Security Law (Força Naval 2014). Finally, General Peri affirmed the DOI-CODI system was created in the 1970s for the purpose of “combating subversion and terrorism” (Exército Brasileiro 2014) and it had never deviated from this function.

Albeit somehow expected, the response outraged members of the CNV, putting the minister of defence (a civilian extremely cooperative with truth-seeking) in a difficult situation. Seemingly astonished, members of staff required further clarification; how could the Armed Forces ignore objective facts, denying the occurrence of gross violations in their own facilities? (CNV 2014h). The minister of defence, himself a former diplomat, diplomatically responded: looking carefully, no force had either denied or confirmed these objective facts (Ministério da Defesa 2014b). This response sheds light on the idea of national reconciliation behind the CNV’s investigation; behind the expectation that acknowledgement would create a future of reconciliation with the Armed Forces. This form of reconciliation is very different from the minimalist idea of “justice” within the realms of the possible, and also from the maximalist belief in mutually coexistent truths. Anchored in and working for the excavation of past state terror (the archaeological metaphor) and towards the purpose of criminalisation (a regime of forensic truth), “national reconciliation” has less to do with the production of consensus, than with the assimilation and acceptance of a factual occurrence. This form of “reconciliation” requires compromises not only of a political nature, but also at the order of interpretation.

From a theoretical perspective, this is but a consequence of the right to the truth and its conflation between historical and forensic “justices”. The CNV asserted the objective fact that those incarcerated by the military regime were murdered by agents of the state; it commemorated the objective fact that the rightful ruler of the Brazilian people was the one democratically elected (Jango); and it requested an explanation from the Armed Forces for their objective deviation from the determination of protecting the Brazilian people. Those were not frivolous claims; on the contrary, commissioners openly disavowed theories they believed were lacking in empirical support (see note 114). These “conclusions” that qualified “national reconciliation” were based on a rigorous method of neutral and impartial truth-seeking. They were ensured by a centralised, technocratic, and authoritative truth commission. And it is here that the theoretical “architecture” of the fight against impunity and its “common” language
of justice reveals a fissure: The CNV’s project of reconciliation failed. But it did not fail only because of an extremely uncooperative military (which was certainly the case) but also because of a weary, liberal humanitarian belief that neutrality would inevitably bring about a common ground of reconciliatory policies.

The problem with this liberal humanitarian logic is the indiscriminate amalgamation of different (and opposing) aspects of neutrality. We can conceive of neutrality as a methodological imperative, or, in Rousseff’s own words, the absence of any “personal criteria” or “subjective considerations” spoiling the investigations. In this case, neutrality is coterminous with objectivity. Otherwise, we can also think of neutrality as a political stance, an impartial attitude privileging no side of a dispute. In this case, referring again to Rousseff’s words, neutrality opposes revanchismo. As I have explained, the liberal humanitarian theory of archaeological truth-seeking works by merging forensic and historical “truths”, thereby equating these two different forms of neutrality. Without going into intricate debates in the philosophy of science and historiography, from the aspect of forensic truth, there is one and only one objective truth. Everything that cannot be proven via an objective assessment of a given situation – via a neutral methodology independent from each part’s “interpretation” of the event – cannot be true. The problem is, from the aspect of historical truth – the representation of historical events – the question of “interpretation”, or as Derrida would put it, the attribution of meaning to a specific event (Borradori et al 2003: 90) plays a massive role. Events – such as the Dirty War – generate a move towards “identification, description, determination, interpretation on the basis of a horizon of anticipation, knowledge, naming, and so on […] that remains evasive, open, indeterminate”(ibid: 90-91). They depend on historical representations that inevitably leave behind an unrepresented residue, an outside, another possible representation. And even though the memorial-humanitarian struggles for justice drew on the concept of objective neutrality – from Brasil Nunca Mais to the CNV – they could never relinquish a particular representation of the past as a period of state terror. A representation that was not based primarily on objective, forensic evidence but on the necessarily partisan description of the Brazilian “years of gold” in the 1970s as “years of lead”, torture, and assassination.

117 The distinction is less entrenched than I am making it sound here. Ultimately, the question of interpretation also plays a fundamental role in terms of “understanding” forensic evidence. Nevertheless, the distinction between forensic and historical modes of truth is appropriate to suggest the limits of a liberal humanitarian position.
The idea of a common language of justice – based on the interchangeability between retribution and reconciliation – is misleading because it overlooks this fundamental distinction. Because the fight towards “historical justice” (the acknowledgement of violence as violations) and “forensic justice” (the prosecution of perpetrators misdeeds), once merged, offer no space for “reconciliation” in the terms of the TRC; as the coexistence of multiple truths. Because neither of these goals – even when supported by an objective, archeological methodology – supposed a non-partisan account of the past. On the contrary, there can be no middle ground here founded on forensic evidence alone; the effort to “plainly reconcile them [the military] with Brazilian society” (Dallari 2014) is indissociable from the “imperative acknowledgment, by the Armed Forces, of their institutional responsibility” (ibid.). The need to promote a restorative “social catharsis” (Folha de Pernambuco 2013) and a wide ranging “healing process” (ibid.) was indissociable from the “need to excise the enduring metastasis of the dictatorship” (Dias 2014). In this misleading “common language of justice”, not only were the Armed Forces required to acknowledge their role in the violent past (which they in fact did) but to acknowledge their role as an instance of state terror (which, for obvious reasons, they refused to do). Determined to support their historical, institutional account of the “just war” the Armed Forces reinforced the version of the 1964 “revolution” as an internal war against terrorism and subversion. An internal war that did not deviate from the purpose of protecting the public wellbeing (as the CNV suggested), but was, in their understanding, waged precisely to protect the demos against the “communist infection”. The interesting point here is revealed in the response of the minister of defence. There is a limit in the practice of reckoning with a violent past where objectivity plays a very limited role. The Armed Forces, and in particular the Army, did not deny that violence took place. What they refused to do was to acknowledge violence as violations; that is, as a distortion of their original determination and as a misuse of their authority.

By merging historical and forensic forms of truth, and consequentially retributive and restorative forms of justice, the CNV made sure it could achieve neither. Without the final step in historical acknowledgment, the commission could only recommend future prosecutions. First, and for the first time in Brazilian history, the CNV disclosed the names of 377 state agents who were held responsible for gross violations of human rights in the past. These names were held accountable under three different degrees of responsibility: (1) a politico-institutional responsibility for the doctrine behind repression, (2) responsibility over the control of the procedures in which violations of human rights were perpetrated, and (3) the responsibility for the direct authorship of violations (CNV 2014i: Vol. 1, Book 2, 844).
Second, the final report also states the incompatibility of the amnesty law with “Brazilian law and the international legal order” (ibid: 965). Members of staff concluded state agents could not enjoy the protection state pardon because their “misdeeds, given the scale and systematicity in which they were committed, constituted crimes against humanity” (CNV 2014i: Vol. 1, Book 2, 965). Similar to other transitional interventions in the Southern Cone and in the World, the final report was received by the military with either silence or protest. Half a century into the Brazilian “aftermath”, the “neutrality” of the CNV was rejected as “ideologically contaminated” (Folha de São Paulo 2014). In reprisal to the list of names of state terrorists, a group of veterans’ associations released an in memoriam print listing the names of 126 state agents who allegedly lost their lives due to the “irrationality of terror” (Clube Militar s.d.) (see Appendix, Figure 10).

4.4 The Reproduction of a Postconflictual Ethos

Transitional interventions are always legitimised by a promise of non-recurrence, that is, by the need to affirm a future when violence never happens again. This promise of “never again” is what connects the practice of political transitions to the “post-conflict” with a knowledge about justice in times of political change (the discipline of transitional justice) and a series of “technologies” or methods of implementing this postconflictual ethos (measures for retribution, restoration or a holistic common language). The way this specific promise is composed reveals the disciplinary function of transitional interventions as sites of the production and reproduction of a postconflictual reality. The fact that particular “technologies” might pose irreconcilable, mutually exclusive choices (punishment or forgiveness) does not affect their common purpose regarding a disciplinary function. As I have argued, the different, possible “technologies” for enforcing the promise of “never again” still revolve around the central, liberal humanitarian representation of violence as an intentional, cyclical, and exceptional phenomenon. Even if a common language of justice (merging retribution and forgiveness) fails to accommodate the political demands of a “divided” society, and this is the stupendous force of discipline, it “succeeds” in promoting the liberal humanitarian framing of responsibility. Irreconcilable at the level of implementation, criminal accountability and

118 The in memoriam response took a tragicomic turn when one of the allegedly deceased officers came out as alive and well. The veterans’ list also counted casualties of the Repressão’s friendly fire (Estadão 2014).
reconciliation share the same disciplinary function – a function that, as I will explain, permeates the narrative of the CNV’s report.

In its twofold, memorial-humanitarian character, the CNV employs two discursive strategies in order to create its postconflictual ethos. First, due to its strong memorial legacy, the commission rejected the theory of two demons. Focusing instead on a thorough exposure of state terror, and a victimised view of the armed struggle, the report tells the story of the “protagonism of the Armed Forces” (Dallari 2014) as the one and only “demon” in the violent past. Second, due to its humanitarian instructions, this assignment of responsibility to the military depends on a liberal representation of violence that individualises its sources. It is by mobilising these two strategies that the CNV promises a future of “never again”. And it is by analysing them that I can reveal the wider politics of framing the post-authoritarian scenery in terms of a “culture of impunity”.

4.3.1 On Demons

In relation to the “protagonism” of the armed forces, the CNV’s mandate posed a problem. The commission was legally instructed to investigate violations happening between 1946 and 1988 (Lei Nº 12.528 2011). This determination could in theory dilute the leading role of the militarised dictatorship (1964-1985). After all, torture was not invented by the 1964 coup (D’Araujo et al 1994), but a constant presence in the Brazilian republican life and its eternal state of exception (Pinheiro 1990). With a mandate to analyse a historical period that was much wider than the authoritarian regime itself, the CNV could reach the conclusion that the military had not been as important for the general state of violence in Brazil as memorial-humanitarian activists would have it; that they had been an expression, rather than a cause, of a longstanding “culture of impunity”; that, in comparison with other periods, the regime was actually a “dicta-light”. In a wise twist, the CNV uses its enlarged temporal horizons to favour its own system of attribution of accountability. Instead of diluting the responsibility of the Armed Forces, the report uses the legal mandate to expose the historical and sociopolitical origins of the Repressão. Following the commissioner’s desire to criminalise state agents across ranks, the text recounts the rise of “ideologies” that would be used to legitimise future crimes against humanity during the Dirty War. And in turning an original disadvantage against itself, the CNV gave a major, commendable tone to Brazilian truth-seeking. Drawing
on an extensive historical and sociological account, the final report offers an important lesson of the relationship between forms of differentiation and exclusion and the dynamics of “wars on terror”.

Hence, the first volume does not start with 1964. Rather, the narrative situates the coup at the apex of a historical crescendo. According to the CNV, the overthrowing of Jango’s labour government represents the moment when longstanding concerns regarding Brazil’s socio-political order finally explode. These concerns were indissociably connected to the history of the early twentieth century. The report specifically emphasises how, from the 1930s onwards, a general fear of subversion progressively took shape among the Brazilian intelligentsia. This fear was based on patterns of segregation, racism, homophobia, and a desire for modernisation that would become a constitutive aspect of the Repressão. In this narrative, the Cold War plays the role of a catalyst; a moment when a plethora of different “subversions” to socio-political order were bound together, united by a fierce, anti-communist atmosphere. This analysis offered the CNV the possibility to disclose the role of the regime in a more controlled, and more clearly discriminatory use of violence. The final report acknowledges that violations might have always pervaded the Brazilian, eternal state of exception. But it also affirms that torture and other inhumane mistreatments only became a systematic reality intended to eliminate a particular part of the population when the Armed Forces began its anti-communist crusade (CNV 2014i: Vol. 1, Book 1, 95).

During the Cold War, the military elite envisioned the Brazilian Armed Forces as the spearhead of Western forces in the fight against Eastern communism (ibid: 88). Reaffirming the importance of this self-identification, the CNV thoroughly unearths the Franco-Anglo-US influence behind the institutionalisation of the Brazilian period of state terror. The report recounts how the theoretical basis of the Repressão referred back to the French theory of guerre révolutionnaire (revolutionary warfare), formulated during the Franco-Algerian wars. It describes how the secrecy of state terror mimicked the refined “English system” of “clean torturing” (ibid: 334) implemented in Northern Ireland. It finally connects the military’s internal war to the US National Security Doctrine (ibid: 336), adopted and reformulated by authoritarian regimes in the Southern Cone, including the Brazilian ESG. This trifold influence worked as the central node connecting subversion to the systematicity of the regimes’ violations. The French nouvelle warfare framed a new relation of enmity; it described individuals operating against national security as faceless, indistinguishable enemies (ibid: 330). This was a fundamental aspect of state terror. In order to fight communists and
terrorists, the *Repressão* had to be institutionalised in a constant exercise of surveillance. So as to drain this “invisible” boil, it was forced to operate a widespread dissection of the social body, continuously searching for different, and multiple faces to its faceless enemy. Here is where the concept of *subversion* comes in; as a sufficiently vague and yet frightening concept, it embroidered the perfect “strawman” of international communism, interweaving “deviant”, “abnormal”, and “uncivilised” behaviours as sources of imminent danger (ibid: 362). These behaviours were dangerous because they represented subversions of the Brazilian socio-political order, to the Western mode of life, and to Brazil’s rightful place as a future western power.

In the quest to neutralise abnormalities, the dissection of the social body spared no one. The cleansing of the “communist infection” began within the Armed Forces. From the mid-1940s to the 1980s 7,591 “subversive” military personnel were purged (CNV 2014i: Vol. 2, 11). Following the 1964 “revolution”, this pattern of vigilance spread into every aspect of life. Seeing blue collar workers as a class rife with “dissatisfaction” and “indiscipline” the regime criminalised unionism, hitting 536 workers unions and revoking the rights of 10,000 syndicalist leaders (CNV 2014i: Vol. 2, 59). Despite the absence of an overt intent to exterminate sexually deviant behaviours (CNV 2014i: Vol. 2, 291) “the vision that homosexuality represented a subversive threat to Brazilian society permeated writings in supports of 1964 and the military regime” (ibid: 292). Once torture was institutionalised “as a means to exercise power and total domination” (CNV 2014i: Vol. 1 Book 1, 402) ideas of “femininity and masculinity were mobilised in order to perpetrate violence” (ibid.). The Regime dismissed public servants over charges of “homossexualism (sic)” (ibid: 197), attempted to emasculate male prisoners, and constantly treated female dissidents as symbols of womanly decadence: “prostitutes, adulterous […] deviant mothers” (ibid: 402).

Racism and colonial hatred were also part of the dictatorship’s quest to defend the western mode of life and, above all, to ensure Brazil’s place within it. Anchored on a vision of civilisation, progress and industrialisation, the military intelligentsia saw backwards indigenous peoples and their ancient modes of life as “hindrances to the country’s development” (CNV 2014i: Vol. 2, 245). This was strongly present in the symbology of state terror. The counter-terrorist operation that originated the *Repressão* and assassinated Carlos Marighella was called *Operação Bandeirantes* (Operation Bandeirantes, OBAN), named after Portuguese colonial settlers who originally hunted and enslaved Amerindians. Defending Brazil’s destiny manifesto as a future global power, the military persecuted members of the
black movement who contested the myth of “racial democracy” supported “by the nationalist propaganda” (CNV 2014i: Vol. 2, 383). The consequences of this racialised component were startling. Based on a “very restricted sample” (ibid: 199), the second volume estimates at least “8,350 Amerindians were killed during the CNV’s period of investigation, as a result of direct action of government agents or the lack thereof” (ibid.).

In this ocean of unrestrained violence, the report officially holds 377 veterans responsible for an estimated 20,000 cases of torture (CNV 2014i: Vol. 1, Book 1, 350) and 434 fatal victims (ibid: 500). Emphasising the idea of *systematicity*, it refutes previous accounts of gross violations as the mistakes of a few rogue officers. The Brazilian war on terror is described as the opposite of an inhuman outburst of savagery or unprofessionalism: the crimes committed by the military were part of a carefully planned, meticulously waged strategy. They were elaborated by the Regime’s intelligentsia and impeccably executed in the capillary ends of the *Repressão*. The report recounts how violations were seen as an “object of knowledge” (ibid: 351), widely discussed in official documents, and even taught in torture-classes, on the living bodies of human subjects (ibid.). It exposes a serious methodology behind torture, listing twenty modalities of physical and psychological torments developed by the Regime (ibid: chapter 9). It locates those mistreatments as part of a scientific study pointing out the benefits of “psychologically pressing individuals during interrogations […] as to surpass their desire to resist” (*Manual do interrogatório* cited in ibid: 321). In other words, the CNV depicts the *Repressão* as a refined, modern strategy. This modern strategy followed both a logic of efficiency and an understanding of violence as a “force” to be managed. So as to make sure no prisoner’s life was “wasted” without the gathering of information, physicians stood “evaluating an individual’s capacities of enduring mistreatments” (CNV 2014i: Vol. 1, Book 1, 268-269) during interrogation sessions. Violence was to be imposed on a body only insofar as it could resist.

**4.3.2 And Dreamers**

The depiction of the *Repressão* as the one and only demon of the violent past creates a second, unintentional problem that connects the question of victimisation, the commission’s system of responsibility, and a liberal humanitarian representation of violence. Humanitarianism portrays victims as “powerless, helpless innocent” (Mutua 2002: 11) and
violated by “the primitive and offensive actions” (ibid.). The process of victimisation – or the representation of individuals and groups as victimised – carries a tacit acceptance of incorruptibility; a sense of unquestionable irreproachable character. A victim is someone whose “injury and suffering must be considered worthy or blameless (innocent) or at least able to be represented as such” (Humphrey 2002: 49). This representation creates an uncomfortable place for transitional interventions that “find it difficult to contend with victims who are not in fact entirely blameless” (McEvoy and McConnachie 2013: 500).

Victimisation poses a problem because it interferes with the depiction of state terror as a somehow ambiguous form of violence between a regime of visibility and invisibility. According to the report, as I have just described, the Repressão was composed of both structural, concealed forms of violent differentiation (its sexualised and racialized facets) and also of clearly visible and delimited acts of violence (the violations per se). What the question of victimisation does in the report is to bring to the forefront a distinction between who were the real victims of this all-encompassing violence of state terror that spared no one, and who can actually become accountable. The final report is clear about the responsibility of the 377 “demons” of the past. It is equally clear about the need to lift the amnesty, and promote a proper “exorcism”. However, the place occupied by the victims of political repression is more ambiguous. According to the narrative, an uninhibited Repressão victimised the whole of Brazilian society. In the search for its faceless enemies, the regime surveyed, censored and persecuted all who deviated from its idea of western, masculine and modern Brazilian identity. Nevertheless, following a representation of violence as an intentional, cyclical, and exceptional phenomenon, the CNV concludes that some segments were still more visibly victimised than others. The worst share of the regime’s gross violations of human rights was “fundamentally directed against militants of political organisations” (CNV 2014i: Vol. 1, Book 1, 183). Here lies the biggest conundrum. Those militants were, in a majority, members of the armed struggle against the Regime; they were the “subversive terrorists” who, in the views of conservatives, were far from irreproachable. Because of this “segregation”, the CNV was accused of producing a hierarchical distribution of victims, focusing on members of the armed resistance – mostly well-educated, male militants (Ridenti 2005) – to the detriment of other, marginalised populations, most notably peasants, blue collar workers, LGBT movements, and Amerindians. This uncomfortable hierarchy of victimisation is expressed in the tripartite division of the report. Whilst the CNV acknowledges authorial responsibility for the first and the third volumes – focusing on victims from the armed resistance – the second volume – an account of the suffering of marginalised groups – is listed under “the individual responsibility
of some of the commission’s advisors” (CNV 2014i: Vol. 2, vii). This avowal of responsibility creates a staggering imbalance between 2,000 pages commemorating 434 individuals, and 59 pages describing the plight of indiscriminate “masses”.

Interestingly, this point shows the central tension in the CNV’s memorial-humanitarian core. The fight against impunity is indeed empowered by a liberal humanitarian representation of violence, rendering visible the violence of state terror and breaking the silence on its intentional violations of human rights. Through the idea of systematicity (the proof these violations were not isolated misdeeds but had been clearly devised by the regime) the CNV can “dismiss” the amnesty law by accusing the 377 veterans of crimes against humanity (violations that are non-derogable, jus cogens norms and cannot be pardoned). Nevertheless, this framing of impunity in the “aftermath” also presented an objective challenge and a serious political consequence. In order to make it credible, the CNV had to rule out the view of the Dirty War as a clash between “two fundamentalisms”. In other words, it had to produce a pristine representation of the victims of such crimes: the “subversive terrorists”.

Now, the final report cannot objectively deny that more than twenty clandestine organisations raised arms against the last dictatorship. It cannot deny that in order to fight the brutal and unreasonable “gorillas” and their “neo-colonial force of occupation”, the radical left accepted and, in some cases, even glorified violence and terrorism. Therefore, absent any objective means to create its pristine depiction of victims, the report resorts to a different discursive move. It produces a romanticised, general caricature of the armed struggle as part of a vague, all-encompassing category of “resistance”. The second volume of the final report contains an astonishing reflection on the meaning of resistance. Resistance is seen as a mobilisation of society revolving around three main goals: “the defence and exercise of rights; the engagement against the violence and arbitrary power [of a dictatorship]; and the removal of consent with the dictatorial government.” (CNV 2014i: Vol. 2, 330). Illustrating the CNV’s romanticised account, commissioners affirm resistance requires political courage – since it involves the risks of opposing an “enemy of superior force” (ibid.) – and is supported by hope – since it “assumes a defeat while simultaneously declaring the hope for victory” (ibid.). In the move to render resistance an irreproachable political exercise, the text emphasises its unquestionable legitimacy “in any form” (ibid.). This automatic legitimacy, of course, comes under one specific condition; resistance is conceived of as a reaction to primitive offense, when the “rule of law is broken and the principles and values that support
it are broken” (ibid.). In this standardised picture, resistance becomes a fight for “rights, legality and justice” (ibid.). Such is the final caricature: those who resist no longer fight “exclusively or primarily in the name of ideological banners or a political project […] the essence of resistance is the defence of liberty” (ibid.).

Veterans and other conservative sectors accused the CNV of being biased towards the historical left, but this claim is unreasonable. In order to make the 434 victims of Repressão fit its caricature of “resistance”, the commission had to de-politicise the radical left by minimising or dismissing its ideology and political project. It had to make the radical left into a fight for “rights, legality and justice”. If we look attentively at the reports, speeches and interviews given by commissioners, this dismissal repeatedly appears, in many different forms. First, there is the strategy of silencing. The final report has more than 3,000 pages but it only engages with historical documents of clandestine organisations in a superficial, six-page discussion (CNV 2014: Vol. 1, Book 2, 680-686). This superficial engagement is also incredibly selective. The report only analyses the trajectory of one out of a dozen groups: the sixty revolutionaries who started the Araguaia guerrilla. Focusing on the guerrilla is a smart move; it evokes the powerful mythology of the guerrilheiro as a freedom fighter while displacing the representation of the revolutionary as the urban “terrorist”. This brings us to the second strategy, depiction of subversion as an empty political category. Logically speaking, when the CNV rejected looking at “both sides” of the Dirty War, it partially redeemed the radical left. The military, as the protagonists of the final report, monopolised responsibility for past political violence. This redemption is completed when the commission describes subversion as a “myth”, shattering the regimes’ equation between terrorism, communism and subversion. If the threat of subversion (the idea framing the Repressão’s relation of enmity) was a socio-political “myth”, then the danger of “terrorism” (the idea justifying the crimes of the dirty war) becomes just an excuse.

Here lies the brilliance of such narrative. By depicting subversion as a myth, with a single stroke, the CNV rejects the theory of two demons and opens up space for its romanticised and depoliticised view of resistance. This view comes through in a biographical reference to the most prominent nemesis of the Repressão: Carlos Marighella. The report does not focus on specific events that led to Marighella’s premature death. Neither does it share his Marxian-Leninist thoughts on democracy as a bourgeois illusion. When remembering Marighella, the CNV leaves aside the armed struggle, focusing on the essence of the revolutionary; his love for poetry that lingered on from an early age to his late days. And to
express this immutable essence, the report quotes one poem in particular: the poem *Liberdade* (liberty):

I will not stay merely in the field of art,  
and with a firm heart, focused and strong,  
I will do everything to exalt you,  
serenely, oblivious to my own fate.  
I will ubiquitously say you are beautiful and pure,  
despite the risks brought by this audacity,  
so that one day I can contemplate you  
domineering, in a boiling transit.  
I desire you so, and in sum, in such a fashion,  
no human force can deaden  
this intoxicating passion.  
And so I may, if ever tortured I am,  
in happiness and indifference to pain,  
die for you smiling, humming your name.  
(CNV 2014i: Vol. 3, Book 1, 493).119

At once, *Liberdade* fuses the essence of resistance (as a fight for liberty) with the essence of the symbol of past “terrorism”. *Liberdade* frames “liberty” as the ultimate, impassionate desire of a courageous “revolutionary” who is only too happy to die fighting for its sake. But liberty, here, is neither freedom from want nor from neo-colonialism. It does not revolve around the complete dialectical denial of the Brazil’s unjust, original sin. The poem has a very restricted meaning. Written during Marighella’s second imprisonment in 1939, Liberty is understood as a dual freedom: freedom from the incarceration tormenting the prisoner, so that he can leave his cell and “ubiquitously” move “in a boiling transit”, and freedom of speech, so he can exalt the beauty and purity of liberty “despite the risks brought by this audacity”. This symbolic connection also plays a role in the CNV’s attribution of responsibility. Liberty, as both freedom from incarceration and freedom of speech, connect the figure of Marighella (one of the 434 victims) back to non-derogatory human rights and, hence, to the reestablishment of the rule of law through the fight against impunity. Completing this connection, *Liberdade*’s clear reference to torture reinforces an account of violence as an individualised violation committed by an identifiable and accountable perpetrator. Written decades before Marighella embraced terrorism as “a quality that ennobles any honourable man” (Marighella 1982: 71) *Liberdade* paints a discursively suitable but objectively outdated

119 I wish to thank Dr Eklundh for helping me translating this poem.
picture: a resistance leader who is willing to die for democracy (as the normal rule of law), humming the name of freedom (as the defence of rights).

Finally, the CNV draws on the traditional narratives of the amnesty movements, mobilising the mea culpa of radical leftist militants to dismiss the ideological remnants of their political project. Many a time the report quotes testimonies of survivors denouncing their own “immaturity” (CNV, 2014j: 412); the incapacity to realise the gravity of the situation they entered, and the frailness of their position. Most of the time this quotes are epigraphs, setting from the beginning of the chapters, the frames of the CNV’s historical narrative. Exemplarily, the chapter on the Guerrilla, when we get to the six-page engagement with the armed struggle, starts with a letter from a militant to his parents:

São Paulo, February 1970.
Dear Parents,
The current situation requires a serious reflection about what to we should dedicate our lives. I have been thinking a lot about this, and I have reached a conclusion. […] as things stand, there are no prospects for the majority of our youth, and even less so for someone like me, incapable of remaining insensible to my surroundings. After thorough consideration I decided I cannot accept your proposal, I cannot leave everything behind; that would go against my own conscience. [...] at the moment there is only one way out, transforming this country and its government, who forces us into such a decision. Unjust violence spurs just violence. The reactionary violence is as unjust as the popular violence is just, for only the former works in favour of progress and social justice.
My refusal does not change the fact I’m still your son. I really love and respect you, but I also fear you may not comprehend the greatness of my path. I fear you do not understand the nobility of my ideals. I am moving out and I do not have an address yet, but I still wish to keep in touch.
Do not worry, I’m well and safe, I’m not alone.

The correspondence is enlightening in many ways. First and foremost, as the epigraph of the engagement with the armed struggle, it already defines, upfront, the conclusion we can draw from the belief that “popular violence is just because works in favour of progress and social justice”. The letter conveys an explicit family hierarchy; it is a letter from a naïve boy to his sensible parents, and not the other way around. Second, the boy’s belief in the “greatness of his path” and the “nobility of his ideas” – a belief he fears is not shared by his relatives – rests alongside his immature confidence that he was “not alone” but “well and safe”. Third, this disconnection from reality is reinforced by a contrast; the guerrilla boy emphasises his “wish to keep in touch”, but in a “tragic [turn of] events” (ibid.) he becomes another disappeared.
In another epigraph, this time opening the chapter on violations, we are told the story of a militant who devised an interesting strategy in order to endure the effects of psychological torture. While listening to the groaning and cries of his tortured comrades, and to avoid anticipating his own fate, he recounts forcing himself to sleep. The reasoning is macabre, somehow ingenious, and quite illustrative of the CNV’s de-politicisation. The revolutionary explains that he slept “because while I was sleeping I *could dream*” (CNV, 2014j: 278) and since he could dream he “was breaking into barracks, seizing them, collecting the weapons that should be in the hands of the people” (ibid.). Incarcerated, wounded, and afraid he thought of sleeping as his “revolutionary duty” (ibid.), by sleeping he dreamed of a revolution.

4.5 Conclusion

In this chapter I have presented an analysis of truth-seeking in Brazil in accordance with my critical, genealogical theory of struggles against impunity in the aftermath. I investigated the CNV not only as a response to the external reality – the enduring “culture of impunity” and regime of silence in Brazil – but a part of a set of disciplines of post-conflict or post-authoritarian justice that plays a role in producing their own object of intervention: a *postconflictual time*. Moving away from criticisms of the CNV as a “failure” or as a “mishandled” intervention I made explicit the ways in which the Brazilian truth commission was, in fact, extremely successful. My argument was that, even though the commission failed to bring about either criminal accountability or national reconciliation, it played a constitutive role in reproducing the conditions of possibility for the liberal humanitarian promise of “never again”: sticking to a representation of violence as an *intentional, cyclical, and exceptional phenomenon* and dismissing other possible, historical forms of resistance.

A genealogical perspective is important because it questions a simple analysis of specific transitional cases as individual, isolated intervention. Focusing away from the conditions of implementation allows us to trace both the vices and virtues of a single intervention back to the vices and virtues of the discipline they abide by. In terms of practical implementation, the CNV felt short of satisfactory. The lack of preparation time, internal divisions, and a technocratic take on truth-seeking alienated the commission’s historical bases of support, affecting its results and reception. However an analysis at the level of practical implementation leads to a simple question: would things have *turned out differently* had the
conditions also been different? Suppose the CNV was implemented in an immaculate manner, precisely as international handbooks on transitional justice recommend. Suppose it was given a six-month period to organise an internal charter and a clear methodology, and, in this period, it had built up consensus within its ranks. Would truth-seeking have been enough to put an end to violence? Would the CNV have been able to ensure an end to impunity were it not for the wide political bargain that curtailed its powers? This is the peculiarity of the aspect of implementation. Because it assumes a relation of exteriority between the intervention (a truth commission) and its goal (truth, justice and reconciliation) any analysis of implementation inevitably leads to a certain level of speculation. Rigorously speaking, there is no evidence pointing to an affirmative answer in any of the questions above. And, to say that yes, truth, justice, and reconciliation would have been delivered “were the CNV not the CNV” is nothing but a promise.

A move towards the conditions of possibility of post-conflict or post-authoritarian justice is a move that stops outsourcing responsibility to specific transitional cases. It is a move that focuses on the relationship between specific transitional policies (like the CNV) and the general, international trends they abide by (the configuration of the international fight against impunity). In the Brazilian case, this means that the “failure” to promote retribution or restoration is to be blamed on international standards as much as it is to be blamed on the individual members of the CNV. It was a failure that speaks of the irreducible limits of a “common language” of justice that presents mutually exclusive choices and is oblivious to the role interpretation plays in defining incommensurable historical narratives (such as the Dirty War and the “Just” War).

We can ask the same question again. Could things have been different? Maybe. I affirmed earlier that, from the beginning, the CNV was unlikely to produce any new information about the past. This is not completely true. There was at least one way to potentially produce ground-breaking revelations: by opening the archives of the Armed Forces (see Appendix, Figure 8). Had the commission decided to investigate “both sides” or had it implemented a more dialogical or social theory of truth-seeking (as in South Africa), maybe the military would have cooperated. But then again, all we are left with is speculation, a form of speculation that sounds offensive and obscene for those whose loved ones were treated as “terrorists”. What we can know, given the way things developed, is that the archaeological merging between “forensic” and “historical” truth dismissed this possibility. Incapable of seeing the differences between different ideas of neutrality, unresolved between
retribution and restoration, the CNV was either seen as “ideologically contaminated” – by those it was supposed to reconcile – or a vain “labour of Sisyphus” – by those it was supposed to empower.

It is only at the level of disciplinary functions that the question of “could things have been different?” expresses more than mere speculation. In addressing the disciplinary production, and the historical reproduction of a postconflictual Brazil (a status where “resistance” can never be resistance to the present political order) I revealed how the politics of impunity in the “aftermath” is a politics that defines the realms of the possible; the boundaries of what is acceptable political conduct (as opposed to demoniac terror) but also of what forms of justice can be reasonable achieved (as opposed to naïve dreams). The scrutiny of Brazilian state terror offers a timely and vital political lesson after 15 years of war on terror: the CNV affirms “the difficulties a country allegedly faces (as the supposed threats of ‘delinquency’, ‘subversion’ or ‘terrorism’) cannot be invoked in order to legitimise the practice of executions” (CNV 2014: Vol. 1, Book 1, 289, my emphasis). But this vital lesson comes at a cost. In order to attribute responsibility for the violent past the CNV has to abide to the regime of visibility behind a liberal humanitarian representation of violence. It needs to “victimise” the 434 victims of crimes against humanity (according to humanitarian standards) against the background of thousands of violated “masses”.

Furthermore, the report needs to create a pristine, depoliticised picture of the radical leftist movement as a fight for “rights, legality and justice”, a struggle wherein militants “were not terrorists” (CNV 2014: 23) but merely “idealist youngsters with the duty to fight against a dictatorship” (ibid, my emphasis). In this tale about the demons and dreamers of the past, disciplinarity is what instructs the marginalisation of an estimate of 9,500 claimed victims – not exactly of international state terror per se, but of a continuous state of terror that has characterised Brazilian republican life because it defines a space where discussions about a political, normalised, and invisible dimension to violence have been “disappeared”. In the end, the CNV not only tells a story of the perverse effects of counterterrorism. It tells a story in which the reorganisation of the realms of the possible can only happen in dreams. Commendably, the report separates the idea of “resistance” from the dictatorship’s paranoid narratives of “subversive terrorism”. But in doing so the truth commission also alienates “resistance” from its most subversive logics. In this context, asking how “things could have been different” is a powerful political practice.
In the next chapter I will explore this practice, by proposing a different account of Repressão, based on a different understanding of the Brazilian continuous “state of terror” that is not necessarily related “traumatic”, but rather normalised forms of violence. I will focus on the recommendations of the CNV, and how they are devised to tackle a “culture of impunity” where the exception has become the norm. I will end my exposition on the politics of impunity with an analysis of what it means to speak of violence in terms of the exception, legitimacy, and authoritarianism.
5 Contours of Impunity: Violence, Nomos, and the Problem of Normality

5.1 Introduction

The last two chapters were a central part of my critical genealogical project. In many ways they worked as a prolonged “case study” against which I could trace the historical effects of the process of objectification. Viewing the struggle against impunity as part of a discipline that not only responds to, but also produces its own “object”, I could then see how the production of this object (the *postconflictual*) was conditioned by a liberal humanitarian representation of violence, the historical “disappearances” of the radical left, and the reconfiguration of the meaning of resistance. By distinguishing between different aspects of transitional interventions (its conditions of implementation and its conditions of possibility), I moved beyond a critique of the CNV as a non-ideal, mishandled commission that failed to promote criminal accountability. My argument was that, in fact, as a transitional intervention, the CNV was also reproducing a disciplinary function related to production of a *postconflictual* Brazil. In this sense, far from being an unsuccessful case of mishandled intervention, the CNV’s final report executed this particular function to perfection. As part of a liberal humanitarian discipline, the tale on the *demons* and *dreamers* successfully individualised the causes of violence in the past (the individual and indivisible blame of the military) and depoliticised the possibility for resistance in the present (as the preservation of the rule of law).

In this chapter, I will more thoroughly explore the second meaning of the word discipline in the work of Foucault, a meaning related to the dynamics of power. I say explore here because, in one way or another, this meaning has already been introduced. When I accepted Foucault’s account on knowledge as a productive and not merely responsive activity, and when I looked at this activity through a historical lens, as delimiting the realms of possible political conduct. I already began to talk of the interconnection between the domains of knowledge and practice (between disciplines and disciplining techniques) when I presented the narrative of the CNV’s final report as reproducing a *historical silence* on the most subversive aspects of radical leftist resistance. In this chapter I will explain how this disciplining function affects the CNV’s list of recommendations to break with Brazil’s “culture of impunity” and its never-ending state of exception. This will be the final stop in my analysis of the politics of
impunity, especially regarding the CNV’s hierarchy of victims and, at a theoretical level, the limits of an analysis of violence in terms of a critique of Gewalt.

In the first section, I analyse the 29 measures recommended by the CNV towards a future of non-recurrence. I will describe how these recommendations – based on a narrow representation of violence – are suggestive of an equally narrow conception of power, based on what Foucault called a juridico-philosophical tradition. I identify, in this tradition a predilection to frame the problematic of violence in terms of legitimacy, authoritarianism, and exceptionality (feeding into an idea of “cultures of impunity” as temporally delimited dimensions). In the following section, I briefly historicise this understanding of power in what concerns the drive for political transitions. My argument is that a focus on exceptionality cannot account for the sophisticated political operations related to a form of power over life, and an understanding of violence in terms of normality and abnormality. For obvious reasons, this historical analysis cannot be a comprehensive exposé (which would require a whole thesis in itself) and should be taken merely as a reminder of the limitations of the juridico-philosophical tradition. Finally, in the last section, I discuss the reasons why, despite showing a commendable awareness to this question of abnormality, the CNV still framed its recommendations in terms of exceptionalism. It is in the gap between these two understandings of power that I recognise the most important political consequence of framing violence primarily in terms of impunity.

5.2 Punishment, De-Militarisation, and the Promotion of Human Rights

Based on a rigorous, historical account the dictatorial past, the CNV concluded that the 434 cases of political deaths and disappearances under the last dictatorship were the “result of a generalised and systematic action of the Brazilian state” (CNV 2014i: Vol. 1, Book 2, 963). As I have explained, this conclusion vehemently denied that “gross violations of human rights constituted a few isolated acts, or the excesses, of a few military” (ibid.). This was an important point considering the commission’s allegiance with the directives of the international fight against impunity. By proving the systematic nature of violations during the regime – that is, that fact that they had been part of an intentional plan of extermination – the CNV could denounce them as heinous “crimes against humanity” (ibid: 964). And because they were crimes that offended the essence of humanness, these violations constituted non-
derogatory offenses. In other words, they could not be disregarded or pardoned by state amnesties, that would only “created the conditions” (ibid.) for the continuation of gross violations and for the diffusion of a “culture of impunity”.

Building on this central conclusion, the CNV presents 29 recommendations to break with the eternal “cycle” of violence of the Brazilian culture of impunity, and to construct a future of non-recurrence. The recommendations were divided in (a) institutional measures, (b) constitutional reforms, and (c) follow-up recommendations. But, for the sake of clarity, it is easier to group them in relation to their themes. Following the narrative of the Repressão as the one and only demon of the violent past – and the continuation of its “methods” as the cause behind a still violent present – the recommendations represent a logical deduction connecting past and present. They reinforce the idea behind the argument of a culture of impunity; the logics according to which Brazil can only reach a postconflictual reality through an effort to “excise the metastasis of the dictatorship” (Dias 2014). In this respect, the commission suggests a whole range of important measures such as the opening of the archives of the Armed Forces (CNV 2014i: Vol.1, Book 2, 975), the suppression of homophobic references from the military criminal code (ibid: 972) and the provision of psychological assistance to survivors (ibid: 970). Most of all, the final report emphasises the need for the official acknowledgment of the “institutional responsibility of the armed forces” (Ibid: 964), the need to reconsider the “self-amnesty law” of state agents (ibid: 966), the need

120 The CNV recommends as institutional measures the (1) acknowledgment of responsibility by the Armed Forces; (2) the promotion of criminal, civil, and administrative accountability for violations; (3) the indemnity of state funds used by agents of state who violated human rights; (4) the prohibition of official commemorations of the 1964 coup; (5) a reform in the conscription process of the Armed Forces towards a focus on human rights; (6) a reform in the syllabus of military academies focusing on the promotion of human rights; (7) the rectification of obituaries of victims of gross violations; (8) the rectification of information held by the state considering past political persecution; (9) the creation of legal mechanisms to prevent and combat torture; (10) the dissociation of forensic public sections from the police forces; (11) the strengthening of public attorneys; (12) the dignifying of prison system and of the treatment of inmates; (13) the establishment of ombudsmen offices overseeing the prison system; (14) strengthening community councils for accountability of the prison system; (15) providing permanent medical and psychosocial support for victims of gross violations of human rights; (16) and the promotion of democratic values and human rights ideals in public education; (17) providing support for institutions promoting human rights values. (CNV 2014i: Vol.1, Book 2, Chapter 18).

121 The CNV also recommends as constitutional and legal reforms (18) revoking the 1983 National Security Law; (19) enhancing Brazilian human rights law; (20) the demilitarisation of police forces; (21) the extinction of state-level military justice systems; (22) the exclusion of civilians from military jurisdiction; (23) the suppression of homophobic references in the military penal code; (24) overruling the administrative figure of auto de resistência (death due to resistance to imprisonment); (25) and the introduction of audiências de custódia (custody hearings) in order to prevent mistreatments (ibid.)

122 Finally, CNV recommends as follow-up measures (26) the establishment of public sections mandated to implement the CNV’s recommendations; (27) continuing the efforts towards locating the whereabouts of the disappeared; (28) preserving the memory of gross violations of human rights; (29) strengthening official policies towards the opening of the archives of the Dictatorship (see Appendix, Figure 8) (ibid.).
for a “plain de-militarisation of the police corps” (ibid: 971) and the need to ensure “society’s commitment to the promotion of human rights” (ibid: 970). Roughly, and for the purpose of the present argument, the list of recommendations can be summarised as measures for fighting impunity (via both punishment and acknowledgement), ensuring the de-militarisation of public institutions, and promoting human rights.

This set of recommendations is essential, from a critical genealogical perspective. Essential not because the future of Brazilian society would be jeopardised without their implementation, but because they allow us to connect the silences and the disciplinary function of the CNV – fruit of the commission’s adherence to a liberal humanitarian representation of violence – to a specific conception of power. It should be clear by now that I reject any attempts at isolating the CNV from the wider body of knowledge and practice that informed it. I see the CNV as part of a set of historical disciplines that have a clear liberalising objective (Teitel 2014) and are a central component of a global project towards the production just and peaceful aftermaths (Fourlas 2015; Jabri 2010; Nagy 2008; Richmond 2010; Richmond 2006). Therefore, it is not at all surprising that the recommendations to avoid the misuses and distortions of state authority rely on a very specific, “liberal conception of political power” (Foucault 2003: 13).

Foucault defines the liberal conception of power as a form of “juridico-philosophical theory” (Foucault 2003: 50) or a “juridical model of sovereignty” (ibid: 43). This theory frames power as a potential or a capacity (potestas), as “something that can be possessed and acquired, that can be surrendered through a contract or by force that can be alienated or recuperated” (ibid: 14). Conveniently, the English language expresses this sense of “ownership” in a clear way. In English, one speaks of those who enjoy their economic, social and personal potential to a full capacity as the powerful, that is, those who are filled with power. These individuals or groups are filled with power because they hold or have, in the past, seized the “sources” of power in society. Depending on the perspective one adopts, this act of seizing produces the figure of the powerless, those who are destitute of power and, hence, lack the capacities for achieving their full potentiality.

This theory of power respects a specific economic model (ibid.). In this model, what dictates the relationship between the powerful and the powerless is the possession of a scarce “commodity” (ibid.). If an individual, let us say A, for the sake of convention, seizes the ownership of power, it decreases the power available to other individuals, for example B. According to this economics of power, politics is dictated by a fundamental equation: power
can be either “taken away” from “the market”, or it can be put back in there, as it were, “redistributed”. It is a mere question of institutional adjustments. What is important here is to understand that, from a philosophico-juridical perspective, it is the number of “empowered” individuals (those who are granted powers) that defines the number of individuals who will enjoy the benefits of such possession (who will be able to exercise their potentials).

In his characteristic historical awareness, Foucault traces this economics of power to late medieval times during “the reactivation of Roman law around the problem of the monarch and the monarchy” (ibid: 34). More specifically, he strongly identifies it in the political philosophy of Thomas Hobbes. And it is not by mere chance that the *Leviathan* – known for founding Western political theory around the themes of violence, power and authority – is also seen as “the founder of the modern tradition of individual rights” (Douzinas 2000: 69). Theories about rights often follow this liberal, economic logic. Rights are powers, entitlements, capacities attributed to individuals (Wenar 1984; 2003) that have been, to different degrees, “embedded in domestic legal systems” (Beitz 2001: 269). The promotion, protection and enforcement of human rights, in this perspective, has a very specific function. They offer at least a “minimal level of protection” (Brems 2009: 355) that “decreases the probability of harm” (Brandt 1983: 37) “against the misuse of state power” (Beitz 2001: 271). In other words, they function as a strategy of redistribution of power in a system suffering from an imbalance between the powerful (the state) and the powerless (the individuals). *Misure* is the central term here. It connects the liberal perspective of power as a scarce commodity to humanitarian representation of violence as an *intentional, cyclical and exceptional phenomenon*.

The question of misuses of power also points to the dubious way in which the juridico-philosophical tradition conceives of the relationship between power and violence. Scholars within this tradition see the relationship between violence and power as a relation of reciprocity. They see the instrumental resort to violence (defined as the potential for destruction) as an empowering force in at least two different senses. First, there is an understanding that violence is somehow necessary to sustain the conditions for the establishment and maintenance of a political community. As one should conclude from the truisms about life in communion with others, covenants required the support of force (Hobbes 1968). So “force”, here, is a prerequisite to ensure promises between individuals who need the resort to violence in order to protect themselves and to protect their place of
interaction, the public place. It is in this sense that we need the faculty of punishment (a controlled form of violence) to protect the “promises” binding together a political community.

But the empowering nature of violence could also be seen in a different way. Some understand the use of violence (or the threat to use violence) as a strategy to enhance what they believe is the quintessential feature of power: the potential to command. In the context of transitional justice debates, we can see this idea beneath a minimalist account on reconciliation. Minimalists see the resort to violence (destruction) as empowering when they emphasise the need to pay attention to the different demands of post-authoritarian, “authoritarian enclaves”. Because these “authoritarian enclaves” (such as the military) detain control over the means of violence, they can endanger the implementation of transitional measures by threatening to reinstitute a cycle of violence. And because they can impose their interests via this resort to violent means, they are seen as “powerful”, or still holding too much power (Elster 2004; O’Donnell and Schmitter 1995; Verdeja 2012). In this equation, to be capable of exercising a visible form of violence is to be in possession of power (empowered) and to enjoy a sharp increase in the capacity to exercise authority (command).

In yet a third way, “liberal” theorists can think of the instrumental resort to violence as the opposite of empowerment. They believe, as Arendt herself does, that the intersection between violence and politics could become extremely dangerous. According to this rationale, once violence is waged upon the political arena it risks assuming the uncontrolled nature of revenge (See, for instance, my previous analysis of Arendt). At first, the resort to violent means might offer the illusory empowerment of command, but what it actually does is to dissolve the power that holds a political community together (Arendt 1970). In Arendt’s perspective the simple equation between violence and power is misleading since the most powerful of all human things is the potential to create things anew (a potential embodied in a political community) and not the potential to destroy. Thus, instead of translating power into “authority”, “political violence” simply transforms power into authoritarianism.

The debate opened by these perspectives on the relations between power and violence is at the core of the problematic of Gewalt, or the legitimacy of the use of force defining the boundaries between authority and authoritarianism (Agamben 1998; Benjamin 1978; Derrida 1992; Schmitt 2005). It is also a question that recurs in works on justice during times of political change, since it is related to the very foundation of a political community. To be very succinct, the basis of this question is exactly to qualify violence in regards to legitimacy. This is why it poses a challenge to the philosophico-juridical tradition. That is to
say, to define and delimit what constitutes the *uses or misuses of violence* in a given legal, moral, and political arrangement. Here, we can make a clear parallel with the 29 recommendations of the CNV. First, one of the central conclusions of the commission was that the anti-communist crusade in the 1970s constituted a misuse, or distortion of state power. Now, for the Armed Forces to re-establish their legitimacy as *power holders*, they need to acknowledge their past wrongdoing. They need to understand why their actions represented *misuses of power*, so as to make sure they do not reproduce them in the future. This also requires changes in the legal system. In order to promote a liberalising transition away from the remnants of authoritarianism, Brazilian legislators must make sure everyone else realises the nature of *violation as misuses*, thereby pedagogically combating impunity. Finally, the promotion of human rights in terms of education follows a logic of redistribution of “powers”; they are meant to re-establish the balance of the Brazilian system between the powerholders and the powerless: to protect individuals from the abuses of state authorities.\(^{123}\)

This juridico-philosophical (and, also liberal-humanitarian) scrutiny of violence has a simple logic to define what constitutes misuses of authority. Because it sees power as an identifiable possession it searches for those empowered; and because it reads the relationship between power and violence as a question of legitimacy, it judges the legitimacy of their actions, that is, their rightfulness. This procedure is *juridical* because it is concerned with the question of *jurisdiction*, in other words, the right (*ius*) \(^{124}\) to dictate (*dictio*) the boundaries between the uses and the misuses of power. This procedure is also *philosophical* because the question that follows, that of legitimacy, spurs an abstract metaphysical dilemma about the search for the origins of political authority (Derrida 1992). To talk about rights in terms of the rights of the sovereign is to focus on the questions of a constituting form of violence (Benjamin 1978), as the violence that draws the boundaries of a political community

\(^{123}\) The de-militarisation of the police forces and of parts of the Brazilian legal system is a more complex measure. One could say that it follows a logic to take away from the public space the number of state agents capable of resorting to violent means (or at least reduce their capacity to do so). However, in Brazil, the question of whether or not policing should be militarised goes deeper than that and is connected to a particular narrative of a “culture of impunity”. First, the de-militarisation of policing cannot be disentangled from historical acknowledgement. As part of the armed forces (in the conditions of reserve forces), the militarised police shares much of its institutional memory of the last dictatorship as a “glorious revolution”.\(^{124}\) Vincent (2010) argues the modern concept of “rights” is in a constant tension between its two possible interpretations; the idea that an action is right because it constitutes a legal right, that is, an entitlement (*jus positivism*), and the idea an action is wrong because it constitutes an offense not to a specific set of rules, such as a country’s constitution, but to the natural order of things (*jus naturalism*).
(Agamben 1998; Mbembe 2003) or as the levels of acceptable violence required to protect life amongst plurality (Arendt 1998). As the *Leviathan* refers to an abstract and ahistorical state of nature in order to sustain the legitimacy of a centralising authority, the philosophico-juridical tradition the right to use violence based on abstract and ahistorical ontological act of line-drawing.\(^{125}\)

That such juridical and philosophical discussions often end in the question of “exceptionalism” is hardly surprising. Because the liberal tradition understands power as a possession (a right or an entitlement) and sees violence as instrument (a means to an end) what concerns this tradition the most is the figure of the *dictator* – the identifiable individual, meaning indivisible, source who misuses power – and the period of the *dictatorship* – the identifiable time when authority turns into authoritarianism. The question of the exception or the exceptionalism of violence naturally leads to a question about the rightfulness or the rightlessness of dictators. A question that focus on the capacity to define who are the enemies (*hostis*) (Schmitt 2005) and to “dictate who may live and who must die” (Mbembe 2003: 11). It is this question that, taken to an absurd degree, drives scholars to inquire whether or not there is or there should be a “right” to torture “dangerous” individuals based on the threat they pose to a political community (Allhoff 2005).

To fully appreciate a critical genealogical perspective, we need to understand why Foucault does not share the same interest of the liberal tradition.\(^{126}\) Moreover, we need to understand why he sees this focus on the potentiality of dictators as a rather dangerous one. Dangerous because oblivious to a form of power that does not fit in the economic schemata. In his understanding, the liberal response of “redistribution” – the endowment of rights to the dispossessed in order to protect them from the misuses of power – has a very clear consequence:

> the essential function of the technique and discourse of right is to dissolve the element of domination in power and to replace that domination, which has to be reduced or masked, with two things: the legitimate rights of the sovereign on the one hand, and the legal obligation to obey on the other […] in other words, ultimately an elimination of domination and its consequences. (Foucault 2003: 26).

\(^{125}\) This metaphysical problematic abounds in the area of human rights, a field constantly debating the philosophical foundations of universality and humanness. For a critique of this sort of juridico-philosophical reasoning in the context of human rights see (Rancière 2004).

\(^{126}\) Despite claiming a connection to Foucault’s work, several researchers in different contexts have continued to discuss violence and power in the terms of the philosophico-juridical tradition (Douzinas 2000, 2007; Hunt 1992; Mbembe 2003; Valverde 2008).
What is this element of domination that Foucault construes as being masked by the juridical question of rights and legitimacy? This cannot be the domination exercised by a dictator during a state of exception since those are central topics in the liberal discourse. The idea behind the provision of rights (human rights included) is precisely to end with the “domination” that comes from the misuses of authority in an “unbalanced” system. They redistribute powers (rights) and impose duties (limits) on the functioning of sovereignty exactly to normalise the situation, to put violence under control. The domination Foucault speaks of is of a different kind. It relates less to the illegitimate misuses of sovereignty (which the juridical model certainly tackles) than to the dynamics of “subjection”, “subjectivity” and “submission” (Foucault 1982: 781). According to Foucault, the juridico-philosophical theory misses, or conceals, a form of domination unrelated to the problem of legitimacy and indifferent to the question of “misuse”.

5.3 Violence at the Limits of a Juridico-Philosophical Discipline

What Foucault means by subjection is a process through which “subjects” come into being. A process that is, so to speak, “eliminated” from the liberal understanding of power, the focus on authoritarianism, and the obsession with the figure of dictators. If we take a closer look at the formulae of “redistribution”, we see that the provision of rights and the reestablishment of normality are practices that, at least in theory, target individual subjects and their indivisible worth. The strategy for redistributing power (potentials) in the form of rights is devised exactly to protect individuals (with their individual needs, individual desires, and individual liberties) from the abuses of power. And it is because it sees society as pervaded by pre-existing individuals that liberal humanitarianism fails to analyse the ways in which individuals are created, subjected to the dynamics of local and global authorities. Authoritarianism, of course, also constitutes a certain form of domination. But the process of subjection, or subjectification, refers to something else. It points to a different mode of domination based on more nuanced and less visible dynamics of power that cannot be held by anyone and cannot be intentionally exercised. This “invisible” power is not related to the potentials of an authoritarian figure, such as a dictator or a junta, but to an authoritative
foundation, such as a specific body of knowledge, or rather a discipline. It is a power that no individual can dictate, because, in principle, everyone's lives are dictated by it.

As we move beyond the limits of a liberal conception of power, into the question of subjectification, we can see how a promise of justice based on a liberal representation of violence and informed by an economy of power is problematic. Since the process of subjectification pierces through the visible face of pre-existent individuals and their relations with political authority, it reveals a violence that does not fit in the economy of Gewalt (Balibar 2002) – a form of violence that is left outside the regime of visibility of the fight against impunity. In order to understand this violence behind the production of “subjects” and to comprehend why it actually matters for the study of “transitional justice”, we need to rethink the idea of political transitions. We need to contextualise them as a part of the set of political operations opened by the advent of modernity.

5.3.1 Why Transitions Are Not as Old as Democracy Itself

In previous chapters I have argued that the project of a liberal transition has to be seen in light of a series of historical struggles, a re-articulation of silences, and the production of “disappearances”. To this end, I have historicised the rise of the liberal humanitarian fight against impunity in Brazil through the appearance of memorial-humanitarian struggles in the mid-1970s. However, there is more to be done in terms of clarifying the idea of the disciplinary power political transitions. There is a whole dimensions connecting different faces of violence, different conceptualisations of temporality, and different faces of political authority. These are related to the fact that the idea of political “transitions” carries a particular sense of temporality, that is, a certain relationship with the passing of time. On can clearly see this from the prefixes post and after in the terms post-conflict, post-authoritarianism, and the aftermath. They all express an intrinsic relationship with time as “a way of structuring experience” (Hutchings 2008: 24) and a manner in which “action in the world is organised” (ibid:6). From a genealogical point of view, it is precisely this relationship that helps us to understand both the modality of power and the multiplicity of forms of violence related to projects of political transition.

According to Guilhot, “[t]he concept of transition cannot be separated from a specific representation of history as a process oriented in accordance with general laws of historical
evolution.” (Guilhot 2002: 221). If we accept his statement, then the mere idea that “transitional justice is almost as old as democracy itself” (Elster 2004: 3) seems, for the lack of a better term, hard to admit. Because the representation of history as a general law of evolution is not, as it were, “as old as democracy itself”. Rather, as Koselleck argues, for much of Western history, the passing of time had nothing to do with the idea of an evolutionary progression. The way time structured experience “both for classical antiquity and for Christians awaiting the Last Judgment” (Koselleck 2004: 133) followed the predicament of “nil novum sub sole” (ibid.), nothing new under the sun. In very simple terms, this perspective suggested an absolute equation between the temporal dimensions of the “past” and the “future”. It anticipated a complete symmetry between the realities of experience and the possibilities of expectation. This means that, for much of Western history, human beings could not expect more of their days to come than what had already happened during their days past. The “future” could only bring about events that were, in one way or another, already encompassed in the compilation of historical, mythological or religious texts.

This has obvious implications concerning Elster’s trivialisation, in particular as to the way his alleged “birthplace” of democracy conceived of political transitions. According to Hutchings (2008), the Hellenic world had two concepts for time; chronos (a homogenous time) and kairos (a heterodox time). Time as chronos represented a natural, endless flow via which days, seasons, and successive generations of “mortals” followed each other. This chronological time comprised an eternal cycle wherein things recurred and, hence, could be predicted. The night followed the day, winter followed summer, and death would certainly follow from the never-ending fight for survival. The one thing that could rupture time as this “linear, irreversible continuum that moves at a certain pace” (ibid: 48) was time as kairos, an exceptional intervention external to the cyclical, chronological order. If we were to look for Elster’s “transitional time”, kairos offers the closest option.

The problem is the Hellenic concept of kairos was never oriented according to laws of historical evolution. The kairontic moment was indeed “an exceptional time” (ibid: 5) that interrupted the flow of “normal time” (ibid.). Nevertheless, this interruption was neither evolutionary nor revolutionary in the modern sense of the terms. As an external intervention

127 Elster traces the problems of democratic transition to Athens 403 B.C.
128 In her work, Hutchings uses the term chronotic instead of “chronological” because she wants the term to “encompass the ways time is thought to work naturally as well as the ways in which natural time is represented as working chronologically through human social life” (Hutchings 2008: 25) note 6. Since I do not need this distinction, here, I am keeping the term “chronological”, for the sake of clarity.
in the chronological order, *kairos* could only produce a “revolution” in the sense conveyed by the Latin verb *re volvere*: an action that interrupts the course of events only to *revolve* back into the past. During ancient times, the *kaironitik*, exceptional intervention, could only produce a U-turn, in this very mechanical sense. Ancient political “revolutions” respected the rhythms of Plato’s *metabolē politeion*, or Cicero’s *mutatio rerum* (Arendt 1990); they envisioned as subjected to the eternal processes of generation and corruption of political regimes from democracy to tyranny and back again to democracy (2004: 68). They represented a “quasi-natural transformation of one form of government into another” (Arendt 1990: 21). If it was true that *kairos* offered the archetype of transitional interventions, it was only in the sense of resetting the chronological cycle.

This model was still present, to a certain extent, as late as the Machiavellian analysis (Arendt 1990; Bartelson 1995; Hutchings 2008). It was only with the specific temporality inaugurated by modernity that the character of exceptional interventions would change significantly. I have explained how, in the *Order of Things*, Foucault describes a process via which time invaded every aspect of knowledge in the late 1800s. In his account, the subjection of all forms of existence to the passage of time replaced the order of visibility in the general system of verediction (the attribution of truth as a rule of correspondence) with the progressive march of historicity (and the opening of a space pervaded by the invisible depths of the world). The changes Foucault describes were consequences of a long and complex historical process. This was a process by which the Western perception of time was fundamentally re-signified, the first signs of which can be seen, according to Fasolt, in the “development of three-dimensional painting techniques” (Fasolt 2004: 20) during the Italian renaissance. Irrespective of when, the fact is that, at a certain point, “history jumped on the scene of European mental life with the force of a revolution” (Fasolt 2004: 16) – a revolution that did not merely restart the chronological order but opened the space for creating “an entirely new story […] never known or told before” (Arendt 1990: 28).

It is hard to find a central cause for such an unsurmountable phenomenon. Nevertheless, the “discovery” of a completely “new world” at the turn of the sixteenth century certainly helped to disturb the millenary rule of *nil novum sub sole*. In many regards, America presented the European imaginary with the promise of an emancipatory reality.
The “new world” seemed capable of redefining the questions of famine (Arendt 1990) – long seen as an “inevitable misfortune” (Foucault 2009: 52) – and the boundaries of political authority – long established in the juridical medieval tradition as the *dominium mundi* the church (Fasolt 2004). In the “new world”, scarcity could be overcome by labour (Arendt 1990) and the sovereigns who had ruled based on a divine right stretching back to the Roman Empire became *conquistadores* (Bosi 1992; Campbell 1992; Foucault 2003; Inayatullah and Blaney 2004).

Regardless of the role of colonisation in the formation of a new temporality, which is a question for qualified historians, the important thing is that, over approximately three hundred years, scientific, political, and religious events would pave the way for the multifaceted appearance of the question of emancipation. Coming back to Hutchings’ categories, this meant a reassessment of the relationship between *chronological* and *kairontic* experiences of time (Hutchings 2008). When a new, modern temporality dissociated the expectations for the future from the experiences of the past (Koselleck 2004) the exceptional *kairontic* interventions were infused with new potentialities. Much more than a mere rearranging of political regimes, modern time opened the possibility for transforming the entire order. In different words, modern temporality converted exceptional interventions into moments when the very order of time could be changed. If neither famine nor political subjection are inevitable predictions, human beings can transform their realities by acting in the world (respectively by increasing the production of consumable goods and, as it were, by revolting against tradition). This change is revolutionary; not in the pre-modern sense of revolving into the past, but in the modern sense of an “action in time” that can restructure the very ways in which time “structures experience”. With a modern temporality that emancipates the future from the past, political revolutions became infused with a new power; the power by which human beings could create the conditions for “freedom and […] a new beginning” (Arendt 1990: 29).

This new relationship with time might have influenced the breaking out of civil wars (Arendt 1990; Foucault 2003) and the fragmentation of the Church (Fasolt 2004) from the sixteenth century onwards. But this debatable, early “revolutionary” content lacked an

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129 On 22 April 1500 a fleet of caravels (sailing ships) from the Portuguese kingdom arrived on the north eastern shores of present day Brazil, a piece of land they called Terra de Santa Cruz (the Land of the Holy Cross) (Holanda 2000; 2004). In the land of the Holy Cross the subjects of the crown found a place where “only age could bring an end to life” (Caminha cited in Faoro 2001: 118) and where innocent people lived free from “authority, ‘observance and fear’”(ibid.).
evolutionary nature that would only appear in the American and the French Revolutions of the late eighteenth century (1780s), a period that, as we have seen, is contemporaneous with the appearance of a body of knowledge that studied “life” as an existence subjected to the passing of time. In order to become “evolutionary”, the emancipatory and revolutionary rupture of chronological time still required, as a last ingredient, the emergence of a new discipline of biology. To be more precise, it required the transposition of the biological discourse to the realms of politics (Arendt 1990; Foucault 2009).

5.3.2 Why Reinstating Normality Brings No End to Violence

At the turn of the nineteenth century “life” resurged from an Aristotelian conception of anima (animation or mobility) into an evolutionary struggle for survival. We have seen how this affected the taxonomy of living creatures, in what regards the emphasis on the principle or organic functions as opposed to the principle of visible articulation. But the objectification of life had far deeper implications regarding the question of authority, the dynamics of power, and the need for political transitions. Foucault affirms that the absence of a concept of life prior to the eighteenth century also meant the absence of an “epistemological consciousness of man (sic)” (Foucault 2002b: 336). Before biological life was objectified, and before temporality assumed an evolutionary sense, the genre of human beings was no different from the other genre of animae. Obviously, in pre-modern times, human beings held a different status in the general hierarchy of nature. Throughout the medieval Christendom they were seen as a distinct, naturally superior form of being, and their behaviour followed such distinction. Because they were made after the image of the creator who ruled in heaven, humans (in fact, men) were meant to rule on earth (Bartelson 1995). At a time when nature was thought as immutable (Vincent 2010), time as homogeneous (Hutchings 2008) and the future as the repetition of the past (Koselleck 2004), the question of political authority merely reproduced this quintessential resemblance. The most divine-like of all human beings (the pope and the monarchs) were the ones who had the natural right to rule over the rest of humanity (Bartelson 1995; Campbell 1992; Fasolt 2004). In more specific terms, this meant that the “people” of a given territory or kingdom was envisioned as a “collection of subjects of right differentiated by their status” (Foucault 2009: 104). In the words of the juridico-philosophical tradition, the differentiation between the powerful and the powerless was based and justified via resort to a “natural”, objective right (Vincent 2010). In this scenario, even
external, *kaironotic* interventions meant to topple tyranny and liberate the people from oppression could not change the natural order of things (Arendt 1990).

Modern historicity broke with this truism. By subjecting the natural order of the world to the passing of time and opening up the possibility for changing even the most natural of things (Vincent 2010), modernity significantly transformed the potentiality of “political transitions”. The pre-modern concepts of *metabolê politeion* and *rerum mutatio* described a process of regime change based on a natural cycle (the generation and corruption of authority) that could only be reset and remained, in essence, unchangeable because nature itself remained, in its hierarchical essence, unchangeable. What a modern, progressive, emancipatory, and evolutionary temporality did was to open the space for deeper political operations, in a very literal, medicalised sense.

The modern, epistemological consciousness of the human species opened the space for a different relationship between knowledge and power.\(^{130}\) A relationship that put human beings in the “ambiguous position as an object of knowledge and as a subject that knows” (Foucault 2002b: 340). Foucault’s theory is that this ambiguous position problematised the challenges of authority. It did so, because the art of governing a given population subjected to biological determinations took the question of ruling beyond the problems usually associated to it.\(^{131}\) Living populations required more than a knowledge on how to give orders and how to settle disputes; it required “intervening to modify and impose norms on living

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130 The liberal tradition defined a very strict relationship between knowledge and power summarised in the formulae *scientia potestas est* (knowledge is power) (Hobbes 1968). This formula is, of course, interpreted in different ways by those who see power as the potential to destroy and those who see power as the potential to create. For the former, scientia means information about the interests of other actors fighting for the monopoly over power. For the latter, scientia not as information but as the very capacity to reason, is the only thing that can preserve power and protect the polis from the destructive nature of violence. In Arendt this reasoning (judgment) is what constituted the power of forgiveness and what differentiates punishment (legitimate violence) from revenge (illegitimate violence). It is in reference to this perspective that Moon (2009) speaks of the rise of a burgeoning “industry” of reconciliation after the South African TRC and Mcevoy (2007) describes the technocratic legalism of international humanitarianism. It is this understanding of knowledge as an exterior know-how that instructs the alleged a-politicism of international humanitarianism, the focus on the question of implementation and even the CNV’s archaeological theory of truth-seeking.

131 Foucault claims that the philosophico-juridical tradition is based on a reactivation of ancient, Roman law during medieval times. Now, it is interesting to have an overview of what was at stake in this reactivation, based on the Justinian codes. It is fair to say this reactivation took place from the fifteenth to the seventeenth centuries, throughout the breakdown of the Christendom and the reorganisation of the modern state system (Bartelson 1995; Walker 1993; 2006b). At this time, medieval jurists sought in the roman imperial legislation ways of reorganising the structure of authority based on the problems of command (imperium), the question of possession (dominium) and the administration of disputes (jurisdiction) (Fasolt 2004: 182-183). Roughly, with the historical rise of absolutist monarchies, these three questions, often taken as separate facets of authority during medieval times, were unified via the concept of indivisible sovereignty (Bartelson 1995), a concept wherein the sovereign king, individual and indivisible in his position, commanded, possessed, and decided over the fate of his subjects (Faoro 2001).
conditions” (Foucault 2009: 474). Governing the human species demanded policies “capable of reducing the infant mortality rate, preventing epidemics and lowering the rates of endemic diseases” (ibid.). Those were complex policies that saw in the problems of folly (Foucault 2006), crime (Foucault 1995), and sexual conduct (Foucault 1978: 37) the expressions of a “pathological gap” (ibid: 256), of “morbid syndromes” (ibid.), and an "aberration of the genetic instinct” (Foucault 1978: 40).

Governing the human species, hence, required much more than an adequacy to the juridical or philosophical nomos (law) – that is, the Hellenic “good” or the knowledge of the “perfect constitution, the most beautiful and harmonious arrangement of the social bond” (Douzinas 2000: 45). It required a form of knowledge about the ways in which individuals bodies, actions, conduct and thoughts previously outside the realm of public affairs should conform to a biological norm. Now this norm was not accessible via the contemplation of philosophers, the sacred scriptures or the decision of specific magistrates. It was a norm derived from the internal dynamics of the human species, accessed through the observance of a given population “in which we can note constants and regularities” (Foucault 2009: 104). In other words, the normality of a collective of human beings envisioned as a single organism.

This new art of governmentality is relevant because it created the conditions to rethink the possibilities of exceptional, kaironic interventions as “therapeutic” interventions upon the very “fabrics” of the social body (Humphrey 2005; Moon 2009; Pupavac 2004). An intervention that sought more than the liberation of subjects from authoritarian rule, it sought the creation of better human beings (Arendt 1998). Envisioned in the context of a progressive (heterogeneous), revolutionary (unforeseen), and evolutionary (transformational) temporality, modern time opens the space of “transitions” to political operation that pulverised the exercise of power into the most banal, capillary instances of life. It opened a form of power over life whose object was “to improve the condition of the population, to increase its wealth, its longevity, and its health” (Foucault 2009: 141). This form of power over life was, in principle, qualitatively different from the visible, sovereign power over the right to live. 132

132 Foucault describes this historico-epistemologico-political change as opening the space for a new form of biopolitics, a political operation connecting practices of governing the body and conduct of individuals with the expected normality of the human species (Foucault 1978). Giorgio Agamben became incredibly famous for popularising this idea of biopolitics in philosophico-juridical term, in his book Homo Sacer (1998). For Agamben, sovereign power is essentially a form of power over the right to live, based on distinction between
This is where the idea of subjectification steps in. The juridico-philosophical tradition relies on a view of pre-existent individuals as subjected to a specific legal norm. The rationale behind the measures of liberalisation (such as fighting impunity, de-militarising policing, and enforcing human rights) is exactly to make state authorities conform to this “norm”, enforcing at least minimal levels of decency. This re-establishment of normality is meant to put an end to recurrent patterns of violations, leaving behind a state of exception. But because this tradition envisions the problem of political transitions as a problem of institutional architectures, it misses a fundamental point; a form of violence that does not cease once normality is re-established, but works through the very idea of normality. This tradition does not question the violent ways in which subjectivity is produced within a given population, the ways in which the redistribution of power cannot affect a form of power over life that is not a possession. In other words, it leaves aside decentralised political operations in which individuals are subjected to a socio-political norm delimited by that identification and exclusion of abnormal behaviours, operations that are not necessarily intentional, are not cyclical but continuous, and are inextricably related to the norm. Related by a process of continuous

bios – a political existence worthy of being lived – and zoe – the simple, natural life of survival. Drawing on the work of Schmitt (2005), Benjamin (1978) and Derrida (1988; 1992) Agamben redefines the Foucauldian biopolitics in term of sovereign power, as the limits of indiscernibility between bios and zoe. His conceptualisation leads to an understanding of the power over life as the decision over forms of life that are non-political. In this sense, sovereignty includes in the legal order an original ban, the exclusion of a form of life that can be killed – since it rests unprotected by law – but cannot be sacrificed – since they are not seen as properly political. This banned existence is the reality of homo sacer, the non-political, unworthy life that conditions the exercise of sovereignty. In the present work, I refrain from engaging with Agamben’s thoughts. In my perspective, his appropriation of Foucault has distorted the suggestion of bio-political power beyond any recognisable resemblance with Foucault’s original formulation. First, Agamben takes the discussion back to a philosophico-juridical understanding of power, doing a great disservice to the analysis of modern disciplines as related to sovereignty (but as essentially something other than sovereign power). Second, his marked transcendentalism completely diverges from Foucault’s critical historicism. As Caldwell (2004) notes, Agamben’s theory overlaps a Roman legal category (Homo Sacer) with an ancient Greek distinction (Bios/Zoe) and applies it to cases of modern ethnic cleansing without any consideration towards epistemological breaks. This unreflective ahistoricism, finally, results in a grave misappropriation: neither bios nor zoe are the modern, biological, and evolutionary life that concerns Foucauldian biopolitics.

133 Gilhot (2002) analyses the history of this modern concept of transition, expressed in the Marxian project of a transition to communism (see chapter 3), the post-war modernisation theory, and the neoliberal agenda in the post-1989. In his understanding, both Marxism and theories of modernisation perceived transitions in a twofold ambiguous way, as disruption of the existing legal order (revolutionary) and at the same time as a natural progression of stages (evolutionary) in the course of human evolution. Transitions appeared as equally produced by deep forces within the social body (genetic) and artificially imposed by an external intervention (coercive). Their different “revolutionary projects” stood in an ambiguous relation, framed as expressions of a determined finality (teleological) and yet still in need of an immediate action that implemented this finality (non-teleological). For Guilhot, the liberal concept of transition that emerged in the 1980s was fruit of the progressive “separation of political from social structures” (Guilhot 2002: 235). A separation that simplified the problematics involved in the question of transitions, creating a “policy-oriented approach whereby social change would no longer be an autonomous and all-encompassing phenomenon but could be seen as an outcome dependent upon the specific strategies and choices of a distinct political elite” (ibid.).
dissection of the social body, driven towards the creation of a better political community, excised of its deformities, deviances, and abnormalities, this process cannot be traced to an individual and indivisible source.

5.4 Impunity and the Politics of a Parsimonious form of Justice

The CNV is an impressive transitional intervention when analysed in light of this modern power over life and its political operations. Far from being ignorant about the questions of “normality”, “abnormality” and the wider aspects of state violence as a common reality in Brazil members of staff were aware of these issues. As I have shown, the CNV devoted a huge amount of time and space in the final report to a description of the socio-political foundations of the Repressão. These foundations were intrinsically connected to the modern political operations concerning the health, safety, and improvement of the Brazilian political body. For all its problems and shortcomings, the final report offers an astonishing description of how practices of counter-terrorism and the fight against internal “subversion” in the 1970s was framed alongside the “dissection” of the Brazilian population; of how state terror worked as a drive towards the cleansing of the deformities, deviances, and pathologies of the Brazilian people. This drive finally lead to the extermination of the “subversive” infection. In other words, the CNV is strikingly aware of how the state of exception—the intentional “orders” and “decisions” of the militarised dictatorship—emerged out of historical concerns with threats to socio-political normality.

Yet, the tripartite strategy of punishment, de-militarisation, and the promotion of human rights focused on the problematic of violence around the question of misuse and the rightlessness of dictators. They identify in the continuation of violence a “systemic” imbalance defined by the militarisation of state institutions and all-encompassing culture of impunity based on the disregard for human rights in Brazil. For the CNV, such imbalance is the sign of an incomplete transition to democracy, jeopardised by a blanket amnesty and a veil of silence that normalised the misuse of authority by the last dictatorship. To overcome this “imbalance” the CNV proposes an institutional and legislative reform of the Brazilian state in order to complete the transition away from authoritarianism into a new, post-conflictual reality (see note 133). This reveals an unabridged gap, a central contradiction or aporia that rests between the narrative and the recommendations of the CNV. While
constructing a historical narrative that represents state terror as a modern management of violence – based on the power of life and the problem of abnormality – the commission ends up recommending institutional and legal reforms – based on an economics of power and a representation of violence based on exceptionalism. This contradiction is fundamental for the problem of victimisation (discussed in the previous chapter) and it reveals a relationship between violence and the “norm” that attributes an essential political character to struggles against impunity.

The role of the legal norm (nomos) is problematic in the narrative of the CNV, partially because it relies on the logics behind the argument of a “culture of impunity”. That is to say that the commission individualised the causes of violence in the past in the individual and indivisible figure of the military demons. In this reasoning, violence continues in the present because the past (militarisation in its different forms) has not been overcome. Nevertheless, in several places the very narrative of the report contradicts this central premise. The report affirms the need to promote human rights in order to overcome the remnants of the dictatorship, but it recognises, at the same time, that the regime “did not suppress” (ibid: 304) a range of “fundamental rights and warranties” (ibid.). On the other hand, these rights were transformed into something “of a merely formal character” (ibid: 937) as the regime was progressively militarised and the anti-subversive crusade against terror begun. Curiously, the CNV frames the dictatorship as the source of political repression, but it also affirms that the apparatus of “repression violated inclusively the norms edited by the very military dictatorship” (CNV 2014i: Vol. 1, Book 1, 322). According to the CNV, the Repressão depended on a “judiciary mainly committed to interpreting and applying the legal order in consonance with the dictates of the dictatorship” (ibid: 957, my emphasis).

As one of its measures for de-militarisation, the CNV recommends the suppression of certain legal dispositions enacted during the dictatorship and enduring in post-transitional times, such as the 1983 Lei de Segurança Nacional (National Security Law, LSN). The report recommends the withholding of the LSN because, as part of the legislation of exception, it “contributed to the vulnerability of prisoners, risking their physical and psychical integrity” (ibid: 315) and worked “stimulating the emergence, dissemination and consolidation of arbitrary and illegal practices” (ibid, my emphasis). This idea makes perfect sense, and I am by no means defending the maintenance of the dictatorship’s legislation. The problem, again, lies in the “gap” between the socio-political and the legal sides of the CNV’s narrative. Of course, it is important to protect individuals against the misuses of political authority, a
purpose this recommendation certainly conveys. But the truly puzzling realisation is that state terror was “illegal and arbitrary” (ibid.) even for the standards established by the Brazilian dictatorship. Because it relies on a liberal humanitarian representation of violence – its regime of visibility and its economics of power – CNV interestingly proposes revoking the LSA whilst, at the same time, acknowledging that in the course of the Brazilian Dirty War, “not even the LSN was respected” (ibid: 315).

This creates an ambiguity about the role of the legal norm as either producing or supporting the violence of the Repressão, an ambiguity that far transcends the scope of the Brazilian truth-seeking, and hits at the core of the juridico-philosophical tradition. On one hand, the regime’s institutional and legal orders are seen as the individual and indivisible causes of the misuses of authority in the past and their perpetuation in the present. This is the core argument behind the idea of a culture of impunity. In this case, a process of institutional and legal change indeed seems like an opportunity to overcome the current “metastasis” of state terror. The conclusions of the final report are based on this logic. Notwithstanding, the CNV also provides elements for disrupting this neat supposition. Because, if one focuses on the fact that the Repressão emerged out of socio-political concerns with the health of the Brazilian population, that it was merely supported, assisted or intensified by the legal order and the judiciary, then there is one fundamental problem. There is little reason to believe that legal and institutional policies (such as those recommended by the CNV) could interfere in a reality that is not, in its essence, either juridical or institutional.

The contradictions do not stop there. The second problem that arises from this “tension” between liberal and socio-political views on violence, power and authority refers to the victims of the militarised dictatorship. The lesson learned from the extensive historical analysis produced by the CNV is that political repression was built around a “myth” of subversion that spared no one. The regime supposedly persecuted everyone and everything that represented a potential subversion to its ideal of Western, Christian and masculine socio-political normality. But, as I have discussed, one of the most intriguing aspects of the Brazilian truth commission is related to the production of a “hierarchy of victims”. The fact that, albeit describing the Repressão as an uncontained violence that targeted the whole of the social body, the narrative on the demons and dreamers of the past privileges the plight of certain social groups. Due to its adherence to a liberal humanitarian regime of visibility the CNV focused on the violence directed to the members of the radical left – the intentional and systematic
violations – over the violence committed against other groups, namely women, LGBT groups, afro-Brazilians, peasants and Amerindians (Schettini 2014).

The very structure of the report, in particular its division into different volumes, points to this uncomfortable “hierarchy”. While the third volume, mortos e desaparecidos (killed and disappeared) has 434 short bibliographical, individualised accounts in a total of 2,000 pages, the second volume, textos temáticos (thematic texts) describes the plight of Brazilian “abnormals” (groups regarded as sexually deviant, biologically inferior, and economically unproductive) in meagre 400 pages. Pages that are not considered as part of the CNV’s institutional responsibility but are rather defined as “an ensemble of texts produced under the individual responsibility of some advisors” (CNV 2014i: Vol. 2, vii). As I have already mentioned, this imbalance generates a stunning difference between the claimed victims of state terror (around 9,500) and the ones the CNV actually acknowledges and, most important, commemorates in their individual and indivisible worth (the 434). Once again, it is not the case that the CNV was unaware of those casualties, the second volume itself recognises that, at least, 8,000 Amerindians were killed. The problem is deeper and much more complex than a simple absence of knowledge: it concerns the system of attribution of responsibility behind a liberal humanitarian representation of violence.

The incapacity to draw on a socio-political understanding of violence both in terms of its sources (exceptionality vs. abnormality) and in terms of its consequences (the hierarchic of victims) could be seen as faults of implementation. One could say that, as a single transitional intervention, the CNV was mishandled due to the incapacities of some members of staff; that it represented an intentional postponement of justice based on the power held by authoritarian segments (Greco 2014; D’araujo 2012); or yet, that it was simply an act of political opportunism. Most likely, some of these factors indeed played a role in affecting the outcome of truth-seeking and the quest of criminal accountability. But none of these factions touch on the political nature of impunity and on the disciplinary function of producing the postconflictual, establishing the limits of justice, and most important, defining the individualisation of blame in the figure of hostis humani generis.

Framing the struggles of post-conflict or post-authoritarian scenarios as struggles for impunity has a political, disciplining effect. In the context of the discipline of transitional justice this effect refers to the production of the conditions that enable a promise of “never again”. In the context of the CNV this effect is to reduce the socio-political complexities of everyday, invisible forms of violence in Brazil. It is create a system of responsibility that, based
on a liberal humanitarian regime of visibility, creates the conditions for rendering someone and something accountable. The commission commendably decries the question of abnormality as providing the basis for the operation of state violence, but it still focuses on the military demons as the main protagonists of the violent past. The report knows that around 9,500 human beings lost their lives because they stood for subversions of an ideal projection of the Brazilian population (demos/ethnos), but since it sees violence as intentional violations of human rights, it ends up marginalising suffering caused in “the absence of an overt intent” (CNV 2014: Vol. 2, 291) or due to the neglect of state agents (ibid.). Finally, the CNV knows that misuses of state authority constituted violations even under the legal order of the dictatorship, but because it needs to create a parsimonious promise of justice to prevent the cyclical return of violence it has to represent impunity as the main cause for the continuation of violations. On the contrary, and against its own historical scrutiny, the report has to explain the continuation of violence in post-transitional times as an exceptional phenomenon. It has to treat them as the remnants of an unresolved past: the “indelible marks” (ibid: 426) of a “traumatic heritage […] transmitted to the new generations” (ibid.) or an “anomaly that lingers on” (CNV 2014: Vol. 1, Book 2, 971).

It is this “disciplinary function” that not only allows, but almost compels, the CNV to ignore the most important lessons of its own investigation: the realisation of a form of violence that is not an “[i]ndividual idea or act of abuse” (Humphrey 2003: 184) but, on the contrary, represents “the foil of collective identity” (ibid.) and presents a sense of “shared responsibility” (ibid.). It is a form of violence that is not connected to the problem of sovereignty as a political decision or of the rightlessness of dictators, but rather to the idea of sovereignty as the tensions that inherently compose a given population, the overlapping of the demos (the people), the ethnos (the nation) and the topos (the territory). These tensions are well beyond the grasp of the CNV’s final list of 377 perpetrators and are at the core of the historical, political, and sociological search for brasilidade, or the idea of Brazilianhood, as an individual and indivisible form of identification. Indeed, in the liberal humanitarian spirit, the CNV holds these 377 individuals responsible for crimes against humanity due to the systematic nature of their offences. But the concept of systematic – as it is philosophically and legally mobilised by liberal humanitarian scholars and activists – is miles away from the idea of systemic or structural forms of violence. The regime of visibility connected to the idea of systematicity builds on forms of violence that can be seen and held accountable; that are intentionally committed or acknowledged, that pose the risk of a returning cycle of revenge, and that are contained in the well-drawn boundaries of states of exception. But this regime
of visibility connected to the liberal humanitarian representation of violence has another side. Its discursive function has the, perhaps unintended but nonetheless present, effect of rendering a series of other forms of “violations” invisible or less-than-visible. Violations and forms of suffering that cannot be proven systematic – for they are not the fruit of intentionally devised policies drawn by the sovereign authority – but are systemic because they are deeply entrenched in what is meant to be part of a specific population, in Brazil and elsewhere.

To acknowledge this point is to see struggles for post-conflict or post-authoritarian impunity in rather different contours than those posed by the liberal humanitarian tradition. Not as practices that aim to normalise a “culture of impunity” where the exception has metastasised into the norm, infected it, and changed its liberal democratic nature. But as a set of historical disciplines that conceals how impunity – as the absent of punishment for the perpetration of wrongdoing – respect very specific, geo-political, gendered, and racialized contours of the Brazilian population. That an analysis of impunity that fully takes into account the Brazilian “eternal state of exception” cannot disregard a historical question of abnormality. A question that not only does not fit in the frameworks of the juridico-philosophical tradition, but also, and more profoundly, re-appropriates and curtails any attempts to breach these limited boundaries. This is what I meant by a disciplinary function of struggles against impunity and for truth-seeking. A function related to the preservation of the order in multiple senses, which takes us to most uneasy point considering the CNV. In the previous chapter I have argued that the politics of impunity in Brazil followed a clear path: the liberal humanitarian promise of justice displaced a deeper discussion about what constitutes violence (suggesting it as the illusion of dreamers) thereby rejecting wider accounts of justice (pushed outside the limits of the possible). But this is not the worse part. The seriously upsetting fact goes much beyond the oblivion of a radical leftist project of political change or the depoliticisation of resistance. What is really shocking is how the neglect of a wider concept of social justice by the CNV was met by the production of a hierarchy of victimisation.

Abiding by the principle of systematicity was a necessary move. It was the condition for framing the crimes of the military as heinous crimes against humanity and of overruling, or attempting to overrule, the regime of silence of the 1979 amnesty law. As I repeatedly insisted throughout this thesis, the CNV cannot be faulted for this choice, in isolation. The problem is much bigger and much more difficult to handle than that. But the regime of visibility associated with the question of systematicity in Brazil lead to the production of a hierarchy
of victims; between those who suffered during the state of exception in the 1970s and those who suffer irrespective of it. This distinction is scary exactly because it mirrors patterns of exclusion and differentiation in present day Brazil, a country where the question of impunity is not, so to speak, egalitarian. That “terror” never actually reaches “the whole population” (Gibney et al 2015), and violations of human rights usually respect very clear contours whereby the worth of a “non-Europeanized poor […] is compared of that of a domestic animal (Souza 2007: 24). The CNV promised to break with the regime of silence at the basis of an alleged “culture of impunity”, and in many senses this is what members of staff did. But in reproducing the very same basis of historical, social, and political differentiations that define everyday violence in Brazil, the CNV revealed the limits of a parsimonious form of justice. The limits of a promise of “never again” that disregards the dynamics herein violence never ceases to happen.

5.5 Conclusion

In the previous chapters I argued that struggles again impunity are part of a discipline based on a logical, discursive condition (the liberal humanitarian representation of violence) and a historical displacement (the “disappearances” of the period known as the end of history). In this chapter, my aim was to go one step further into the power-knowledge nexus behind the “disciplinary function” of a politics of impunity in the aftermath. Moving from the narrative on the demons and dreamers of the past towards an analysis of the conclusions of the final report I argued that the recommendations of the CNV a central contradiction. I explain that, despite being aware of the socio-political bases of state violence the CNV still recommended measures that framed political repression as an authoritarian “misuse” of power; it still abided by the liberal humanitarian logics of culture of impunity to the detriment of the wider socio political contours of impunity. The result of this disciplinary function was the reproduction of a regime of visibility concerning violence and, consequently, a “parsimonious” form of justice.

What I mean by parsimonious is a vision of justice that relies on a promise to overcome longstanding, complex socio-political problems – the promise of never again – via legal and institutional reforms. This promise only works at the intersection between a specific representation of violence (as an intentional, cyclical and exceptional phenomenon) and a limited
economy of power (as the possession held by the powerful). This interjection that is directly related to the reproduction of a historical displacement; the marginalisation of other forms of thinking and acting that disturb the theoretical and practical monopolies of a liberal humanitarian discipline of justice in times of political transitions.

The central problem with such parsimonious justice is not the fact that it operates through state institutions. Legal and institutional reforms are fundamental for tackling codified patterns of exclusion and differentiation. The problem is the subjection of these reforms to a juridico-philosophical reasoning (a specific equation of power and legitimacy, sovereignty and the right to a decision). It is this logical subjection that produces the central contradiction of the CNV' report: a text that decries the socio-political basis of state terror in Brazil only to ignore, or at least to marginalise them in its final conclusions. The important thing to realise is that, under a genealogical perspective, this contradiction is not a specific flaw to be amended; it is not simply a narrow concept of violence that can be transcended, augmented, ameliorated. This parsimonious justice is part of a politics of impunity, of a historical function of a discipline that enables the postconflictual future as a credible reality and reinstitutes the “realms of the possible” with all its forms of exclusion, normalising drives, and invisible violences. If it is parsimonious, it is because it creates a promise of “never again” that addresses the violations of the past but does not fundamentally disturb the violence of our present modes of life.
Conclusion

This thesis started as a critique of liberal humanitarian representations of violence in the context of struggles against impunity in post-conflict or post-authoritarian scenarios. This project was inspired by the longstanding preoccupation of critical global studies with the questions of violence, authoritarianism, and sovereignty as the right to draw the line between lives that should be protected, and lives that can be disposed of. My critique of liberal humanitarianism was located in the context of the Brazilian, never-ending political transition to democracy. From the outset, my main goal was to disrupt the narratives that have dominated the debates revolving around everyday patterns of violence in Brazil, especially the argument of a “culture of impunity”. I intended to criticise explanations that connect the “ugliness” of the Brazilian democracy – its unparalleled insecurity and lethality – to the historical endorsement of a blanket amnesty protecting perpetrators of violations of human rights after Brazil’s Dirty War in the 1970s. According to this argument, supported by academics, survivors, and activists, the 1979 amnesty effectively created a veil of silence and political oblivion in the country that normalised violations supposed to remain exceptional in a democratic scenario.

The argument developed throughout the chapters shows, quite simply, that the question of impunity in the aftermath of violence is not that simple because violence cannot be constricted to a liberal humanitarian idea of “cultures of impunity” and its supporting dissociations between normality and exceptionality, punishment and political obliviousness. I described a context wherein debates about punishing perpetrators of violations of human rights have a wider political sense that goes well beyond the question of which response to violence is appropriated. My idea was to reveal a politics of impunity that operates a clear disciplinary function in the so called aftermath. This function is specifically related to two fundamental aspects of life in a political community: (1) the acceptable limits of “resistance” in the present, (2) and achievable possibilities of “justice” and “accountability” in the future.

The main problem with liberal humanitarian analysis consists in understanding transitional interventions – the set of measures devised to implement justice in a post-conflict or post-authoritarian scenario – merely through their conditions of implementation. By drawing on a Foucauldian-Derridean methodology (a historical deconstruction of the central oppositions of liberal humanitarianism), I took a different path. Instead of focusing on the local and specific impediments to the implementation and full realisation of the promise of
“never again”, I decided to investigate the conditions of possibility of the international fight against impunity, as a global project. This meant I had to move my focus away from a critique of mishandled cases to the core of the discipline of post-conflict justice. I had to break with analyses that excuse the humanitarian promise of “never again” and protect the liberal idea of a final democratic telos. It was in this regard that I proposed to read the search for truth, justice, and reconciliation in the aftermath of violence as informed by a set of disciplines (in their double meaning evoking bodies of knowledge and the government of practice). And it was by looking at the question of justice in times of political change, as part of a liberal humanitarian discipline, I could deconstruct the central oppositions of sustaining the concept of “cultures of impunity”.

**Different Architectures of Silence**

As part of a liberal humanitarian discipline, the fight against impunity is built around one point of internal coherence. I was able to show this point by digging into the longstanding debates of the literature of transitional justice about the most appropriate response to the aftermath (either retribution or restoration). The fact that, at a certain point in time, it was possible to speak of a “common language” between these different strategies and to implement a holistic approach was quite telling. It offered a sign that apparently distinct positions actually shared a common ground. Their common ground rested on a liberal humanitarian representation of violence; an understanding of the concept of violence that was never at stake in transitional justice debates, because it provided the limits of what was debatable in the discipline. It was only by tacitly agreeing that violence was an intentional, cyclical and exceptional phenomenon that scholars and practitioners identified with the international fight against impunity could start the debate, to begin with. It was only through this representation of violence and the regime of visibility it offered that the promise of never again, in any of its configurations, could properly make sense.

This was the first step in rejecting the idea of “mishandling” or “misguidance”. Because I read this liberal humanitarian representation as a condition of possibility for promising a future where violence never happens again, I stopped thinking of the recurrence of violations (in the Brazilian context and beyond) as an amendable flaw. Instead, a genealogical position enabled me to reframe transitional interventions designed to fight impunity as productive
of the very reality they were meant to address. In other words, I suggested that it was precisely because liberal humanitarian responses to violence represented this concept in a rather narrow frame – excluding from their scope other forms of human suffering and violations – that activists and practitioners could promise a credible future of “never again” – a future where violence is under control, a postconflictual normality is restored, and the basis of a political community composed of men qua men are protected, but also a future where the suffering and the “fatalistic” violence necessary for fabricating this community is disregarded and forgotten.

I also argued that this logical condition of possibility for the disciplinary fight against impunity performed a historical function. The punishment or impunity debates could only emerge as a set of “new” technologies for the implementation of justice via the emergence of a postconflictual reality in the late twentieth century (1980s-1990s). This period offered the narrative about the end of history and the complete primacy of liberal democracy. And, perhaps more important, it also offered the historical “disappearances” of other, different visions of justice based on a representation of violence other than the liberal humanitarian. The late twentieth century brought a reconfiguration of the realms of the possible and the supposed end to ideas about different political transitions (the transition to a more egalitarian society) that enabled the monopolisation of the political agenda by the liberal project. This was not an “epistemological coup”. It was, at least in the Southern Cone, the fruit of policies devised by authoritarian regimes (and initially supported by liberal segments of society) towards the extermination of those who dreamed of a different world. It was a way of disciplining the South American, political scenery that first began with the disappearance of the bodies of radical leftist militants and ended with the disappearance of a whole political project. And the language of human rights played an important part in this disciplinary process. Whereas the punishment versus impunity debates of memorial struggles were fundamental for mobilising society against the silence on the Dirty War (and I must emphasise this), they were also responsible for silencing and forgetting the basis of a previous form of resistance. This is not to blame activists, but because of the dynamics of representation practices, these struggles against impunity and political oblivion also required the “forgetting” of different ideas about violence. In order to emphasise their own conditions of possibility, both at a theoretical and at a strategic level, they had to exclude different representations of violence as normalised and continuous violations of the principle of equality that would inevitably endure in an unjust, because unequal, order.
This is why I investigated the Brazilian transition as an exemplary case where one could see this specific form of disciplinary and representational “silencing” that constitutes the fight against impunity. In a first moment I described the rise of the militarised left and the Brazilian armed struggle in the 1960s. I explained how such sparse and heterogeneous “movement” had a very different understanding of violence opposed to, if not disruptive of, the liberal humanitarian representation. It was this notion of violence (as neither cyclical nor exception) and that lead to a project of social justice based on the systemic reformulation of the Brazilian order, the dialectical denial of past based on the “original sin” of colonial humiliation. This reformulation was also a political operation to recreate the fabric of the Brazilian people (demos/ethnos) and to liberate this people from the violence of neocolonialism and capitalism. I explained that, in itself, this political project required a dose of justified violence – in Arendtian terms, the fatalistic violence of fabrication – so as to subvert or deconstruct the source of all injustices: the hierarchies between oppressors and oppressed. Political violence was the means to this end. It was the strategic, representational, and even aesthetic overturning of this fundamental and fundamentally “violent” hierarchy.

This is why, at least in Brazil, the liberal humanitarian promise of “never again” was historically conditioned on the twofold disappearances of the radical left. First, it was only after the agents of the Repressão inhumanely disappeared the bodies of leftist militants that the grief of relatives could become politicised, that is, that they could move from the space of individual mourning to the practice of a collective struggle. By enforcing its sovereignty – in terms of a “decision” on those whose lives where disposable, who were undesirable and therefore could be disappeared – the authoritarian regime also created the basis for another movement of resistance; a “continuation” of dissent that eventually corroded the basis of legitimacy of this sovereign power. It is undeniable that the memorial humanitarian struggles against the regime brought back hope to survivors, political prisoners, and relatives of those violated by state terror. They presented the opportunity of reorganising a mode of resistance that was generally accepted both within and outside Brazil. This was a form of resistance coterminous with the defence of rights, the pursuance of justice, and the reestablishment of the political order. A promise of “never again” that rendered visible and inexcusable the faces of perpetrators of violations of human rights. But it is unhelpful to deny the breaks and silences promoted by this “continuation” of resistance. It was only after certain survivors comprehensively rejected their views on the violence of the oppressed that the language of human rights could monopolise the political arena as the only possible means of acceptable resistance. If this move had the virtue of de-militarising leftist thinking (as it certainly did) it also had the
Cultures and Contours of Violence

Understanding how the disciplines of the fight against impunity are based on specific architectures of silences was fundamental for the final step of my deconstructive-genealogical analysis: explaining how the politics of impunity is related to rather particular idea of power and authority. Besides showing that the framing of impunity as the most pressing issue in the aftermath served a disciplinary function, I also described how it was connected to the problematic reasoning of a juridico-philosophical tradition. This was mainly where I situated my critique of the Brazilian truth commission, despite its many invaluable virtues.

The CNV was an important political response in many regards. As a thorough historical analysis of the violent past its final report provided a rich scrutiny of “state terror”. It offered important lessons of the dangers surrounding counterterrorist and counterinsurgency operations. The CNV describes how exceptional measures in order to fight terrorism and subversion are drawn from longstanding historical concerns with the socio-political order. It recounts how their underlying narratives of “external danger”, “invisible threat”, and “faceless enmity” are informed by socio-political criteria. As the CNV emphasises, they depend on the way in which a given population is envisioned in its ideal, normal state; and they privilege a logic whereby terrorism is associated with a plethora of abnormalities, the deviant behaviours that must be neutralised. It is in this sense that the CNV offers one of its most commendable contributions. With this historical analysis, the report provides the elements for an interpretation of the past that connects the violence waged by the dictatorship to a double identitarian drive: the drive to secure the Brazilian people (ethnos) as part of the “Western” World and to neutralise the part of the people (demos) that subverted the “western” norm.

In this sense, it is illustrative that the CNV’s report on a bygone Dirty War was released at the same time the “CIA torture report” publicised the “dirtiness” of a more recent
war on terror. In the context of decades of global counterterrorist strategies these lessons are extremely invaluable. These are question that need to be addressed if political violence is to be understood and, more importantly, properly dealt with. But there is also a more problematic side to the liberal humanitarian politics of impunity. A side in which reports on violations and misuses of authority tend to reproduce the problems they were meant to “solve”. Even more illustrative of such limits was the response of Diane Orentlicher, an American legal scholar and one of the sturdiest defenders of the state’s duty to prosecute violations of human rights. In an article for the British newspaper The Guardian she praised both reports as important victories, but she made an embarrassing comparison. When comparing the simultaneous investigations of the CNV and the US Senate, Orentlicher affirmed that “it was hard to imagine” (Orentlicher 2014) that the Latin American experience of state brutality “would become relevant to my own country” (ibid.). What is “hard to imagine” is that Orentlicher could have made such remark after actually reading the report of the CNV, considering the importance it attributes to “her own country” in the Brazilian Dirty War. But Orentlicher was not the only one to overlook important aspects of truth-seeking in Brazil. Because they were tied to a liberal humanitarian representation of violence and they employed juridico-philosophical reasoning, the commissioners themselves made the same mistake.

Despite being almost unanimously praised oversees, the CNV was heavily criticised by survivors, activists, and NGOs as yet another frustrating case of “mishandling”. I analysed this criticism in terms of the irreducible and interconnected historical demands of memorial humanitarian struggles: truth (knowledge), memory (acknowledgment), and justice (criminal accountability). In light of all these aspects, the Brazilian truth commission felt short of satisfactory. Most of its findings were based on decades of unofficial and official research, and the commissioners could only find the mortal remains of one single disappeared: it failed to produce new, substantial information about the violent past. Although it raised the number of recognised victims to 434, amended individual obituaries, held ceremonies of commemoration, the CNV was incapable of forcing the Armed Forces to acknowledge their past misdoing: it failed to reconcile Brazilian society.

Both failures in the spheres of “truth” and “memory” can be explained with reference to the limits of a liberal humanitarian discipline. They are inherently connected to the aforementioned critiques of “mishandling” and “misguidance”. Activists and researchers claim the CNV was a non-ideal intervention. In other words, due to the compromises during its phase of constitution and the absence of a period of preparation, the CNV lost precious
powers (such as the power to hold trials or to make binding recommendations) and precious time (in effect, the first six months of the commission were extremely unproductive). One could also point out this failure as a consequence of the irreconcilable limits of the “common language of justice. The CNV conflated the question of truth, justice, and reconciliation assuming a theory of impartial truth-seeking that merged both historical (remembrance) and factual (forensic) understandings of truth. In Brazil, this conflation reduced the landscape of political reconciliation to a mere process of assimilation. Reconciliation meant that one side (the military) was supposed to simply accept the partisan interpretation put forth by the truth commission (a memorial-humanitarian vision of history). This created an uncomfortable situation wherein military officers neither rejected their factual role in the violent past nor accepted the historical truth of the CNV. Driven by this illusory sense that both sides actually shared a “common language”, the commission failed to achieve national reconciliation whilst failing to promote a policy of criminal prosecutions. Activists, survivors, and practitioners had to satisfy themselves with the shaming of 377 perpetrators and with the unbinding recommendations towards the withholding of the blanket amnesty.

The value of a genealogical account is that it enables one to find, beyond these numerous failures of implementation, a very particular success. The success of a transitional intervention that, in connecting the present and the past (in reinforcing the argument of cultures of impunity) successfully reproduced an architecture of silence. It is by analysing the narrative of the CNV’s final report, especially regarding its tale about the demons and the dreamers of the past, that I could show this disciplinary function at work. The final report rejected the theory of two demons, victimised the radical left, and obscured the complexities of its radical political project. The text not only shows a paltry engagement with the documents of clandestine organisations, but it also frames the complex ideas of a recurrent and normalised violence as part of a dream. In other words, it reproduced the historical silences that were fundamental for the production of a postconflictual Brazil during the political transition. And by reproducing these historical silences the CNV succeeded in at least three senses: creating a depoliticising idea of resistance, recommending a parsimonious vision of justice, and disregarding the most important of its very own lessons.
The Politics of Impunity

The CNV depoliticised resistance by defining it as a fight for liberation against authoritarianism, the defence of a strict idea of democracy, and the protection of rights. I explained how several discursive strategies channelled the narrative of the final report towards this depiction. This depoliticised view of resistance was problematic because devoid of any deeper discussion about violence in its socio-political, invisible facets. And this problematic account was obviously translated in the recommendations of the CNV; in the measures the commissioners deemed fundamental for the restoration of normality and the implementation of a postconflictual ethos. In accordance with a liberal humanitarian representation of violence, the report’s 29 recommendations exhibited a limited, liberal conception of political power. The themes of punishment, de-militarisation, and the promotion of human rights were based on an idea of power as a possession. They envisioned the redistribution of liberties and rights and the re-balancing of the systemic gap between the powerful and the powerless as possible ways of tackling the Brazilian “culture of impunity”. But this set of parsimonious promises was incongruous with the CNV’s own historical explanation of state terror as a modern political operation.

The CNV marginalised the violence associated to the normality of a political community in favour of a legal-institutional account of violence as a misuse of the norm (nomos). This was the case because members of staff needed to individualise the sources of violence in the past; they needed to prove the systematicity of violations so as to enable a promise of justice that was conceived as possible – that connected the effort to come to terms with the past with the necessity to come to terms with the present “reality”. The historical silence about leftist concepts of injustice was simply a consequence of this theoretical-practical imperative to fight impunity above all else. But this too, had surprisingly distasteful consequences. The commissioners were wise enough not to excuse the crimes of the past based on a violent reconciliatory fantasy of the Dirty War as the clash between two demons, as a “war” fought in equal terms between the armed struggle and the Armed Forces. They could prove the systematicity of violations thereby rejecting the historical representation of the “just war” against terrorism, communism, and subversion. But such is the nature of the politics of impunity. Since the CNV rejected the concept of the violence of the oppressed as an oneiric fantasy it inevitably silenced about the violence of everyday oppression. Because the members of staff had to
make visible the systematic nature of violence in the past, they rendered invisible the systemic violence that continued to instruct the political operations of the “ugly” Brazilian present.

I will end by explaining this politics of impunity in very simple terms. Against a “culture of impunity”, the CNV rejected the reconciliatory theory of two demons. It individualised the sources of violence that still “infect” the Brazilian present in the figure of the one and only demon of the past; the individual and indivisible source of responsibility for the hundreds of thousands of deaths during and beyond the state of exception. But in doing so, the commission produced a double act of marginalisation; it marginalised the concern with normalised and structural forms of invisible violence, and it marginalised the plight of groups (such as Afro-Brazilians, Amerindians, Women, and the LGBT population) that are still marginalised in Brazil to this very days. The violence they endure does not, as it were, fit in the exceptionalism that surrounds the argument of “cultures of impunity”. As a violence related to the systemic but not necessarily systematic dynamics of abnormality, it cannot be normalised by institutional and legal measures. It is a violence that comes exactly from a normalising drive. The modern drive to “improve” the Brazilian population, to discard its “dejects”, and to cleans its foci of ethnic corruption. I have spoken of the liberal humanitarian politics of impunity as the move that effaces these racialized, gendered, and economic contours of impunity into a neat idea of an amendable culture of impunity. This move, by representing violence as a question of Gewalt – of a decision over which lives will become disposable – misses a pattern of violence that precedes the moment of the sovereign decision (such as the Brazilian Dirty War), that outlives the state of exception, and that operates irrespective of legal or philosophical judgment. It is a violence for which no individual and indivisible source can be held accountable, because it rests on the limits between the individual and the collective. What the politics of impunity does is to conceal the aspect of sovereignty related to the overlapping of the demos and the ethnos (the problem of the normality of the population) underneath an idea of sovereignty as jurisdiction.

In relation to the Brazilian case, the problem is not to bring to the forefront the despicable wrongdoings of the military in the past. Punishing perpetrators of violations of human rights is the least the state can offer to survivors and family members, to those victimised by these violations both in the past and in the present. But this is the very least. Under no circumstances the parsimonious minimalism of the struggle against impunity can justify the abandonment of wider and more substantial programmes of social change. Under no circumstances can it rest on the disappearance of a dream.
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Appendix: Illustrations

Figure 1. A wall featuring the inscriptions “to Remember is to Resist”, photograph by the author at the Memorial da Resistência (Resistance Memorial) in Sao Paulo.

Figure 2. The rose of hope in a former torture dungeon, photograph by the author at the Memorial Resistance.
Figure 3. The Continuum of Control, Repression and Resistance Before and Beyond the State of Exception, photograph by the author at the Resistance Memorial.

Figure 4. The State of Exception (in Grey) that Continues into Democracy (in Gold and Green), photograph by the author at the Resistance Memorial.
Figure 6. Subnational and independent commissions listed by the CNV’s report, picture by the author.
Figure 7. Advert published in all Brazilian newspapers on 24 March, advertising by Secom/PR. In: Folha de São Paulo, (Sunday 24 March), Primeiro Caderno, A15.

Text:

[Bold Green] The past cannot be modified. But knowing it can change our Future

There was a time in Brazil when disagreement was forbidden. Hence, often times, many human rights were violated. The truth commission exists so as to complete the [missing] pieces [of the past] and clarify what happened between 1946 and 1988. Do contribute if you have any information or register of this period.


Figure 8. A map of the unavailable archives of political repression (in white), picture by CNV. In: CNV (2013b) Balanço de Atividades: 1 Ano de Comissão Nacional da Verdade. s.l.: Comissão Nacional da Verdade, 4.

The Naval, the Military, and the Air force Clubs pay posthumous homage to the 126 Brazilian soldiers who lost their lives to the irrationality of terror, in the decades of 1960 and 1970. Absurdly, their stories were scorned by the National Truth Commission, an act of disrespect to their memory and of their relatives. May we pray for their souls.

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**Figure 10. In Memoriam [List of Officers Allegedly Killed by Leftist "Terrorism" in Brazil], author unknown. Accessed 21 June 2016. At: http://clubemilitar.com.br/in-memorian/**

TOTAL: 126 CONHECIDOS E REGISTRADOS

Rio de Janeiro, 31 de março de 2009

Text:
The Naval, the Military, and the Air force Clubs pay posthumous homage to the 126 Brazilian soldiers who lost their lives to the irrationality of terror, in the decades of 1960 and 1970. Absurdly, their stories were scorned by the National Truth Commission, an act of disrespect to their memory and of their relatives. May we pray for their souls.