

Human Rights and Transitional Justice in Brazil: An Empirical Analysis of the Socio-Economic Profile and Education of Military Regime Supporters

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Abstract

The article is related to the apology and, in turn, to the expressed demand for military intervention/military government in Brazil. The objectives of this article are, 1) to verify whether there is empirical and not only theoretical data (without arguments of authority and/or ideology) on whether the demand for the return of military government in Brazil is the result of weak education, and 2) to verify the socio-economic profile of those who act in this way. The research suggests that it is in the social strata with the weakest education in the population that the greatest number of supporters of military government are to be found. The empirical research carried out indicates that today, counter-intuitively, a) the greater the need for social policies in a given social stratum, the more common it is the demand for the return of a military government, even though this type of government is historically known for its opposition to such policies; and b) the social strata in which there is a greater concentration of wealth are the least supportive of military government, which was, at that time (1964), more dedicated to this class and less to the former. Finally, the research suggests that where there is a higher educational level, there is a lower propensity to demand the return of a military government.

Keywords

Constitutional Courts, Inter-American Court of Constitutional Rights,

1. Introduction

This article addresses the apology¹ and, in turn, the explicit demand for military intervention, i.e. the return of military dictatorship in Brazil (Folha de São Paulo, 2017; Cruz, 2023; Lima, 2023; Serapião and Rocha, 2023; G1, 2023; CBN, 2020). The hypothesis to be verified is that the support for militarism is the result of a process of weak education, especially among those who demand military intervention. Although this is *commonplace*, the objective is to verify whether there is empirical—and not only theoretical—data capable of offering reasons that can be opposed by the academic community. That is to say, the search for empirical argumentation aims to verify if the idea that apologies to a military government are a consequence of a weak educational process is valid. In other words, to verify to what extent such premise represents nothing more than common sense, divorced from any data capable of sustaining such assertion more firmly. In this sense, seeking to avoid arguments of authority, sometimes criticized on the grounds of their impartiality and eventual political-partisan biases, an approach focusing on deductive methods and statistical-empirical analysis was preferred.

The first part of the article is dedicated to presenting a compilation, from a political-legal perspective, of what was the military government in Brazil. The methodology used in this first part is a theoretical study, with the use of data from official documents from both the Brazilian government *Comissão da Verdade* and the international community *Corte Interamericana de Derechos Humanos*.

To this matter, it should be added that given that one of the objects of analysis of this article is the premise that the military government was a comparatively superior political-legal scenario to the current one, *communis opinio* among

¹The newspaper *Folha de São Paulo* (2017) notes: “The Datafolha survey is a stratified sampling by sex and age with a random selection of respondents. The survey universe consists of the population aged 16 and over in the country. In this survey conducted from September 27 to September 28, 2017, 2772 face-to-face interviews were carried out in 194 municipalities, with a maximum margin of error of 2 percentage points more or less considering a confidence level of 95%. This means that if 100 surveys with the same methodology were conducted, in 95 the results would be within the predicted margin of error. The Datafolha Opinion Poll Management conducts this survey.” Even in this survey, it is possible to observe the following results: “For 56% of Brazilian adults, democracy is always better than any other form of government, while for 21% it does not matter whether the government is a democracy or a dictatorship, and for 17%, in certain circumstances, a dictatorship is better than a democracy. A share of 5% did not give an opinion”. On the topic of interest in this paper, this survey by the newspaper revealed: “It is observed that as the level of education and the monthly family income of the respondents increase, support for democracy increases: 76% among the most educated, compared to 44% among the least educated; 73% among the richest, compared to 50% among the poorest. In the age group analysis, no significant differences are observed in the rate of support for democracy (58% among the youngest versus 54% among the oldest)” (Folha de São Paulo, 2017: 2 and 5).

supporters^{2,3}, it seems reasonable to clarify what the characteristics of the scenario at that time were.

²However, in the research—carried out on April 2 and 3, 2019a—which is compiled below, it is not possible to believe that the desire to celebrate the date on which military rule began in Brazil would be completely isolated from, at least, a romance with its ideals. “Quantitative research, with a personal approach in points of population flow. The interviews were conducted through the application of a structured questionnaire, lasting about 25 minutes. A check covered at least 20% of the material from each interviewer. A total of 2086 interviews were carried out throughout Brazil, distributed in 130 municipalities. The maximum margin of error for the total sample is 2 percentage points, more or less, within the confidence level of 95%.” “For the majority (57%) of Brazilians, the date that marks the beginning of the military dictatorship in Brazil, March 31, 1964, should be disregarded, and 36% align with President Jair Bolsonaro and signal the opposite, that the date should be celebrated. There were also 7% who preferred not to give their opinion on the subject. Among the youngest, the rate of those who prefer to see the date of the anniversary of the military coup disregarded reaches 64% and is also above average among the most educated (67%). Among the oldest, 42% believe that the date should be celebrated, and 49% that it should be disregarded. Among those who voted for Jair Bolsonaro, 49% believe that March 31 should be celebrated, and 43% that it should be disregarded. In the group that considers his government excellent or good, 52% align with those who prefer to see the date celebrated, and 40% go in the opposite direction and prefer to disregard it,” *Folha de São Paulo*, 2019a: 2-3. (Translated from Portuguese)

³“The Armed Forces remain the most trusted institution for Brazilians, maintaining a clear advantage over others. A portion of 45% of Brazilians aged 16 and over have a lot of trust in the Armed Forces, and 35% have some trust. There are still 18% who do not trust the Armed Forces, and 2% have no opinion on the matter. The next most trusted institution is the Presidency of the Republic (29% trust it a lot, 41% trust it somewhat, and 29% do not trust it).

Following this are the Public Prosecutor’s Office (25% trust it a lot, 50% trust it somewhat, and 22% do not trust it), the Judiciary, considering judges and appellate judges (25% trust it a lot, 49% trust it somewhat, and 24% do not trust it), the press (24% trust it a lot, 48% trust it somewhat, and 26% do not trust it), and large companies (22% trust them a lot, 51% trust them somewhat, and 26% do not trust them). The Supreme Federal Court, which, despite being part of the judiciary, was the subject of exclusive consultation, is trusted a lot by 18%, somewhat by 46%, and not at all by 32%. The National Congress is considered very trustworthy by 8%, somewhat trustworthy by 49%, and not trustworthy at all by 41%. The set of deputies and senators surpasses only political parties, of which 5% trust a lot, 39% trust somewhat, and 54% do not trust at all.

The level of trust in social networks was also measured, with 10% saying they trust them a lot, 45% trust them somewhat, and 44% do not trust them at all. All the institutions surveyed improved their high trust index compared to the previous survey on the subject, carried out last year, with a special mention for the Presidency of the Republic. At the beginning of June 2018, only 5% trusted the Presidency a lot, a figure that has now risen to 29%. Leading the ranking, the Armed Forces saw their high trust indicator increase from 37% to 45% in the same period. Trust in the Public Prosecutor’s Office rose from 20% to 25% since June, similar to the increase in trust for the Judiciary (from 19% to 25%). Trust in the Supreme Federal Court rose from 14% to 18%. The press (from 16% to 24%), large Brazilian companies (from 15% to 22%), the National Congress (from 3% to 8%), and political parties (from 2% to 5%) also gained in the trust index.

In the case of Congress and political parties, the institutions with the lowest levels of trust, the shift from “not trustworthy at all” to “somewhat trustworthy” is significant. In other words, even if they have not made much progress in being seen as highly trustworthy, as it was the case with the Presidency of the Republic, deputies, senators, and their affiliated parties are being viewed differently by a large part of Brazilians. For the Congress, the rate of those who do not trust it has fallen from 67% to 41% since June last year. For the political parties, the decrease in distrust was more modest, from 68% to 54%.

The analysis by socio-demographic segments shows that the Armed Forces are seen as very trustworthy by 55% of men, a rate considerably higher than among women (36%). There is also a difference among the poorest (40% trust very much) and those in the 5 to 10-wage bracket (52%). In the South region, 50% trust the Armed Forces a lot, compared to 42% in the Southeast. Among Brazilians who approve Bolsonaro’s government, the degree of high confidence in the Armed Forces is 69%, and 62% among those who voted for the retired military officer in the second round of the presidential election.

Once this theoretical phase of data collection is over, the second part is dedicated to analyzing the socio-economic profile of those who were for or against the military government in 1964 and comparing them with those who are currently for or against the implementation of the aforementioned regime once again. The methodology used in this second part was a statistical-empirical sampling analysis.

The previously mentioned empirical analysis consists of questions capable of effectively clarifying 1) the degree of information and clarity that the population has about the military government, and 2) the socio-economic profile of the interviewees, especially in terms of income and schooling (formal and informal).

The last part of the article seeks to offer a conclusion beyond common sense, with respect to the hypothesis that it is those with the least knowledge (formal and informal) who demand military intervention and the return of the military dictatorship in Brazil. Moreover, within this first general hypothesis, the article also seeks to verify the following secondary hypothesis: the possible incoherence between the demand for military government and the social needs of those who demand it. Contingent upon this incoherence is proven, it would then be necessary to begin an in-depth discussion on the use of teaching and educational promotion tools as necessary strategies for strengthening democratic institutions which, being *sui generis*, represent the flip side of the military.

2. Development

2.1. The Historical Context

The first dataset used in this article is found on the website *Memórias da Ditadura* (n.d.), which was created in response to a direct request from the *Secretaria de Direitos Humanos da Presidência da República do Brasil*.

According to *Memórias da Ditadura*, in the early 1960s, the then vice-president of Brazil was João Goulart, also known as Jango (*Memórias da Ditadura*, n.d.). Although “only” the vice-president, Jango assumed the presidency of the country—Brazil—after a political crisis that resulted in the resignation of the initial president, Jânio Quadros.

The moment was delicate both politically and financially and had the added complexity of protests, union strikes, and complaints about low wages. All of these were, allegedly, the result of an economy that was growing very modestly, in contrast to what had happened in the preceding years.

The groups that most approve of President Jair Bolsonaro’s government are those who boost confidence in the Presidency of the Republic. Among men, for example, 36% trust the institution a lot, compared to 23% among women. In the older age group, the rate of high trust reaches 38%, while among young people it is 21%. In the family income segment of 5 to 10 salaries, 42% trust the President a lot, compared to 23% among the poorest, with incomes of up to 2 salaries. In the South region, the same index is 38% and drops to 26% in the Northeast region. The Supreme Federal Court also has a level of high trust above the average among those who approve Bolsonaro’s government (28%), and slightly above the average among those who say they voted for the president (23%),” *Folha de São Paulo*, 2019b: 2-3. (Translated from Portuguese)

Through constitutional modifications, Jango's government proposal was to carry out Basic Reforms that would have an impact on the agrarian, political, educational, and tributary aspects. Naturally, given that the proposals presupposed changes in income distribution, they were met with a great deal of resistance from the wealthiest sectors of society. According to *Memórias da Ditadura* (n.d.), therefore, in such a political scenario, Jango's government was labeled as left-wing and marked by its focus on social issues.

There were then popular demonstrations that marked history. The *Marcha da Família com Deus pela Liberdade*, held on 19 March 1964, which had demonstrators against a political proposal characterized by the reforms and changes mentioned in the previous paragraph. On the other hand, the *Comício da Central do Brasil*, held on 13 March 1964, was attended by supporters of Jango's government (*Memórias da Ditadura*, n.d.; Schwarcz and Starling, 2015; Fausto, 1995).

The sudden establishment of the military government, therefore, to make a huge summary, is the result of the dissatisfaction and fears of big businessmen, big landowners, foreign businessmen, and the Catholic Church. According to the above-mentioned references, it is necessary to add to this, the substantial US material and military support, which, fearing Jango's proposals for Basic Reforms (seen as typical of a left-wing governments), decided to participate in the process of seizing power.

2.2. The Three Major Periods of the Brazilian Military Dictatorship

The data provided by the *Memórias da Ditadura* website and the interpretation of the legal texts, as well as their Explanatory Memorandum/Notes or, as it is also known, Statement of Purpose, make it possible to perceive that the military government in Brazil had three main periods: the first aimed to justify its existence and decisions from a legalistic perspective (1964-1968); the second was characterized by an upsurge in violence and State aggressions against opponents of the military government (1969-1978); the third and last was characterized by political flexibility, the Amnesty Law and the movement for direct elections for president (1979-1985).

The first period was marked by five Institutional Acts that represented substantial changes in all legal-political order.

Institutional Act No. 1 of 1964 amended the 1946 Constitution concerning elections, the mandate, and powers of the President of the Republic. Based on this Act, the commanders of the Armed Forces were authorized to suspend political rights and to proceed to the revocation of legislative mandates, so that judicial assessment was dispensable. Similarly, for subsequent acts, the justifications were the preservation of national order, the maintenance of peace, and the assurance of progress (Brasil, 1964).

All the acts have their explanatory memoranda and, for better contextualiza-

tion, the explanatory memorandum for N° 1 is transcribed in its integrality. The explanatory memoranda of the other acts are not transcribed because, although different and dealing with different aspects, they use almost the same justifications mentioned in the previous paragraph.

It is essential to establish the concept of the civil and military movement that has just opened a new perspective for Brazil's future. What has occurred and will continue to occur at this moment, not only in the spirit and behavior of the armed classes but also in the national public opinion, is an authentic revolution.

A revolution is distinguished from other armed movements by the fact that it represents not the interest and will of a group, but the interest and will of the Nation.

A victorious revolution takes on the exercise of Constituent Power. This is manifested through popular election or through revolution. The latter is the most expressive and radical form of Constituent Power. Thus, the victorious revolution, as a Constituent Power, legitimizes itself. It deposes the previous government and has the capacity to constitute the new government. In it lies the normative force inherent in Constituent Power. It enacts legal norms without being limited by the norms preceding its victory. The leaders of the victorious revolution, thanks to the action of the Armed Forces and the unequivocal support of the Nation, represent the People and exercise the Constituent Power in their name, of which the People are the sole holders. The Institutional Act issued today by the Commanders-in-Chief of the Army, Navy, and Air Force, in the name of the revolution that became victorious with the support of almost the entire Nation, aims to provide the new government to be instituted with the indispensable means for the economic, financial, political, and moral reconstruction of Brazil, to directly and immediately address the serious and urgent problems on which the restoration of internal order and the international prestige of our Homeland depends. The victorious revolution needs to institutionalize itself and hastens its institutionalization to limit the full powers it effectively possesses.

This Institutional Act could only be issued by the victorious revolution, represented by the Commanders-in-Chief of the three-Armed Forces, who are currently responsible for achieving the revolutionary objectives, which they are determined to prevent from being frustrated. Constitutional processes did not work to depose the government, which was deliberately prepared to Bolshevize the Country. Deposed by the revolution, only the revolution can dictate the norms and processes for constituting the new government and grant it the powers or legal instruments necessary to ensure the exercise of Power in the exclusive interest of the Country. To demonstrate that we do not intend to radicalize the revolutionary process, we decided to maintain the 1946 Constitution, limiting ourselves to modifying it only in the part related to the powers of the President of the Republic, so that he can fulfill the mission of restoring economic and financial order in Brazil and taking urgent measures to drain the communist stronghold, whose purulence had already infiltrated not only the top of the gov-

ernment but also its administrative dependencies. To further reduce the full powers of the victorious revolution, we have also decided to maintain the National Congress, with the reservations regarding its powers contained in this Institutional Act.

It is thus clear that the revolution does not seek to legitimize itself through Congress. Rather, the Congress receives its legitimacy from this Institutional Act, which results from the exercise of Constituent Power inherent in all revolutions.

In the name of the victorious revolution, and intending to consolidate its victory, ensure the achievement of its objectives, and guarantee the Country a government capable of meeting the aspirations of the Brazilian people, the Supreme Command of the Revolution, represented by the Commanders-in-Chief of the Army, Navy, and Air Force, resolves to issue the following [italics added] (Brasil, 1964). (Translated from Portuguese)

As it can be seen, the first act's explanatory memorandum demonstrates the military government's concern to appear legitimate. The Institutional Act N°. 2 presents the following modifications:

- 1) Reinforced the concern with the appearance of legality.
- 2) Amended the 1946 Constitution.
- 3) Extended the powers of the President of the Republic.
- 4) Changed the organization of the three branches of government by further centralizing acts of governance.
- 5) Changed the legislative process.
- 6) Determined that elections for president and vice-president would be by nominal and indirect vote (through the National Congress).
- 7) Suspended the constitutional and legal guarantees of life tenure, irremovability, and stability, as well as the very guarantee of the exercise of functions for a certain period (Brasil, 1965).

Textually, all these changes were not subject to judicial scrutiny.

For its part, in February 1966, the Institutional Act No. 3 made further amendments to the 1946 Constitution and, like the others, used as justification the need to preserve the country's political and social harmony and tranquility (Brasil, 1966a).

This act is characterized by:

- 1) Changing the elections for governors and vice-governors, who were to be elected by indirect votes, in the manner of the elections for president and vice-president in the previous act.
- 2) At the Federal level, the voters were the members of the Legislative Assembly.
- 3) Governors acquired the power to choose the mayors of their state capitals.
- 4) Senators and federal congresspersons, with the permission of their chambers, could interfere with the state capital's mayor's office (Brasil, 1966a).

The Institutional Act No. 4 of December 1966 called for an extraordinary ses-

sion of the National Congress for the period from December 12, 1966, to January 24, 1967. In it, the parliamentarians were to discuss, vote, and promulgate (in record time) the Constitution presented by the President of the Republic (Brasil, 1966b).

On that occasion, the official text itself stated that after so many amendments to the 1946 Constitution, it no longer met the wishes and objectives of the (at that time) current government. According to *Memorias da Ditadura* and Fausto (*Memorias da Ditadura*, n.d.; Fausto, 1995), despite the many and substantial modifications made to the old Constitution, it was still a limitation, a resistance to the interests of the government that wished to concentrate the acts of governance. Thus, the next step was the creation of a new constitution that would not restrict the acts of governance. The result, in 1967, was the 1967 Constitution, present in Brasil (1967).

On December 13th, 1968, the Institutional Act N°. 5 was promulgated; according to *Memorias da Ditadura* (n.d.) and what can be deduced from a textual interpretation of it, it was the most rigorous Institutional Act up to that time. Once again, the justification presented was to combat corruption, subversion, and ideologies contrary to the traditions of the people (Brasil, 1968).

Its main characteristics were:

- 1) The president's power to decide to close the National Congress, the Legislative Houses, and City Halls for an indeterminate period, even without declaring a state of siege.
- 2) The president could decree intervention in the member states, without the limitations stipulated by the constitution.
- 3) The possibility of suspension of the political rights of any citizen for up to ten years.
- 4) Likewise, the revocation of federal, state, and municipal elective mandates (Brasil, 1968).

Once again, the reasons were—most of the time—that these measures and adoptions were for the defense and/or benefit of the nation.

According to the web portal *Memorias da Ditadura*, Schwarcz and Starling and Fausto (*Memorias da Ditadura*, n.d.; Schwarcz and Starling, 2015; Fausto, 1995), between 1969 and 1978 the statistics related to violence increased. There was a gradual escalation of rights limitations that began with the seizure of power in 1964, followed by the 1967 Constitution and numerous Institutional Acts. Although this article deals more with the first five acts, which for its purposes are the most important, it is necessary to mention that there were others. In short, these were times of closure of Congresses and Legislative Houses, revocation of mandates, suspension of political rights, kidnappings, warlike resistance by those who were against the regime, life imprisonment, and, finally, the possibility of death by firing squad, etc. *Id est* the Institutional Acts 13, 14, and 15 (Brasil, 1969a; Brasil, 1969b; Brasil, 1969c; *Memorias da Ditadura*, n.d.; Schwarcz and Starling, 2015; Fausto, 1995).

In order to present official numbers, the final report made by the *Comissão Nacional da Verdade* (Brasil, 2014) gives an account of 191 dead, 210 disappeared and 33 bodies subsequently located, for a total of 434 from 1964 to 1985.

In terms of political rights, 333 representatives of the people had their political rights annulled in 1969. That is to say, 78 federal deputies, 5 senators, 151 state deputies, 22 mayors, and 23 municipal councilors.

As mentioned above, this first part of the article is guided by official figures directly requested by the Brazilian government. The statistics and legal texts suggest the conclusion that this period was marked by advances and setbacks in legal/constitutional rights and guarantees. Over the years, the opposition gained more and more space in the National Congress, and it is worth highlighting the controversial Amnesty Law, which is the subject of consideration in the following lines.

2.3. Transitional Justice and the Controversial Amnesty Law from the Inter-American Court of Human Rights and the Brazilian Federal Supreme Court (STF)⁴

2.3.1. Transitional Justice

The *sui generis* objective of the article is to deepen the analysis of the socio-economic aspects of those who demand a military government. One of the hypotheses that permeate these academic pages is, in general terms, that the demand for a military government would be, among other things, the result of a weak educational process. In this regard, not knowing enough about what a military government represents is the reason why this social group demands it. As innumerable legal and doctrinal sources mention, Brazil has already had a military government, which, after consulting the theoretical framework (Souza, 2007; Gomes, 2012; Dallari, 2014; Teitel, 2000), has not ended with the due fulfillment of what is usually called “transitional justice”.

Among the innumerable objectives, paraphrasing the *Joinet* Principles, the transitional justice would be the appropriate tool to seek Accountability, Truth and Reconciliation, reparation, Institutional Reform and Guarantees of Non-Repetition. Thus, by failing to comply with the precepts of adequate transitional justice, society would end up not knowing the reality of a government that was in the process of being removed from power at that time. In the absence of final accountability, a search for answers, and a provision of “real” data, what remains are fragments, sometimes distorted, of an idealized, but arguably false, image of the previous (military) government. In this sense, a literal reading of the Institutional Act n.º 1 (Brasil, 1964), in the light of a critical reading of authors such as Souza, Gomes, Dallari, or Teitel (Souza, 2007; Gomes, 2012; Dallari, 2014; Teitel, 2000), as well as an even more cautious one of Ellul (Ellul, 1973), is recommendable.

⁴This is the crux of this article, that is to say, the correlation between the so-called transitional justice, the Amnesty Law, and the request for a military government. In order to avoid any leaps, it is important to clarify what each of these concepts is, as well as, what they represent.

Having made this brief introduction to the issue of transitional justice, it is important to return to the axis of the article, that is to say, the Brazilian reality.

In 2002, the Brazilian State righteously committed itself to comply with the Rome Statute, a document formally created by the International Criminal Court (ICC) in 1998. Some of the main functions of this international court is to judge war crimes, crimes against humanity, and genocides.

In this context, guided by the United Nations (UN), the Brazilian State gravitates around the commitment to prosecute the aforementioned war crimes, crimes against humanity and genocides, or others that fall under the so-called “transitional justice” (Segato, 2012; Lima and Silva, 2017).

The definition, as well as the guiding principles of transitional justice and the legal framework, so to speak, have been pulverized by various international bodies in different documents, such as the United Nations, the Inter-American Court of Human Rights (IACHR), The *Joinet* Principles, The Updated Set of Principles to Combat Impunity, *The Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms* (van Boven, 2006), *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, among others.

The following is a compilation of The *Joinet* Principles which, to a large extent, represent rights that are covered, at least in terms of purpose, by the documents and sources mentioned in the previous paragraph. Thus, for exemplification rather than exhaustive listing, observe:

- 1) The rights of victims, namely:
 - a) Extrajudicial commissions of inquiry: i) guarantees of independence and impartiality; ii) protections for witnesses and victims; iii) protections for accused individuals; iv) transparency of the commissions’ reports.
 - b) Preservation of records related to human rights violations.
- 2) Victims’ right to justice:
 - a) The right to an effective remedy.
 - b) Restrictions justified by the fight against impunity: i) statutes of limitations; ii) amnesties; iii) right of asylum; iv) extradition; v) trials in absentia; vi) due obedience; vii) laws of repentance; viii) military courts; xi) principle of irremovability of judges.
- 3) The right to redress:
 - a) Restitution,
 - b) Compensation,
 - c) Rehabilitation,
 - d) Guarantees of non-repetition of violations.

In short, transitional justice is the stage that represents the response to internal conflicts, systematic human rights violations, and/or mass violence against social groups or individuals. The method and guiding principles are those mentioned in the *Joinet* Principles⁵. Thus, the more non-compliance with these prin-

⁵United Nations (UN) Economic and Social Council (October 2, 1997).

ciples is verified, the more weaknesses in transitional justice shall be verified.

2.3.2. The Brazilian Amnesty Law by the Federal Supreme Court (STF) and the Inter-American Court of Human Rights (IACHR)

The military dictatorship in Brazil came to an end in 1985, an end that began in 1979 with the Amnesty Law⁶ or Law 6.683 of 28 August 1979 (Brasil, 1979).

The hypothesis is that the reason for many still calling for the return of military rule is the questionable observance of the precepts of transitional justice in Brazil. Indeed, it would seem a very difficult task to talk about transitional justice in Brazil without also talking about the Amnesty Law (Souza, 2007; Gomes, 2012; Dallari, 2014).

Regarding the Brazilian transitional justice, between 1966 and 1979, by legal determination, there were only two political parties in Brazil: the ruling party, called *Aliança Renovadora Nacional* (ARENA), and the opposition party, called *Movimento Democrático Brasileiro* (MDB) (Memórias da Ditadura, n.d.).

According to the portal *Memórias da Ditadura*, the text of the law was proposed by the then president and voted by a Congress composed of senators from the ARENA and MDB political parties (both elected by ballot), as well as the “bionic senators”, i.e. those who were selected directly by the president of the Republic (32% of the total) (Memórias da Ditadura, n.d.). Considering the aforementioned data, there is reasonable doubt about the impartiality and bias of the Amnesty Law. In this sense, what is at issue is whether or not the Amnesty Law only served the direct interests of the military government, given that it was voted by a Congress made up, for the most part, of situational representatives, as opposed to social representatives.

Although society had called for a broad, general, and unrestricted amnesty, according to *Memórias da Ditadura* (Memórias da Ditadura, n.d.) the Amnesty Law only represented the interests of the government at the time. It was not broad, general, or unrestricted; it was unilateral, biased, and restrictive.

From a literal interpretation of the law, it can be inferred that the amnesty covers political and political-related crimes. Thus, crimes of homicide, abuse of authority, rape, bodily harm, and so many others, if committed for political reasons, were related and therefore covered by the benefits of the law.

It is important to say that only the Government and its members were covered

⁶In the report *Question of the impunity of perpetrators of human rights violations (civil and political)*, a final report prepared by Mr. Joinet pursuant to Sub-Commission decisions 1996/119, it is possible to observe the division of the process of awareness-raising in the fight against impunity into four stages. The second stage is related to the amnesty, from which the following is extracted: “This stage occurred in the 1980s. Amnesty, the symbol of freedom, was more and more seen as a kind of “down-payment on impunity” with the emergence, then proliferation, of “self-amnesty” laws proclaimed by declining military dictatorships anxious to arrange their own impunity while there was still time. This provoked a strong reaction from victims, who built up their organizational capacity to ensure that “justice was done”, as would be shown in Latin America by the increasing prominence of the Mothers of the Plaza de Mayo, followed by the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM) which later fanned out onto other continents.” United Nations (1997). *The question of the impunity of perpetrators of human rights violations (civil and political)* (E/CN.4/Sub.2/1997/20). United Nations Economic and Social Council.

by the legal interpretation referred to in the previous paragraph. Those who were against it did not have the same legal fate. Hence the term “unilateral” (*Memórias da Ditadura*, n.d.).

The Brazilian Amnesty Law is currently the subject of national and international controversy. The Supreme Federal Tribunal (STF), Brazil’s highest and constitutional court, judging the *Ação de Descumprimento de Preceito Fundamental* (ADPF) 153/DF (Brasil, 2008)⁷, considers the law to be valid and in force, as well as compatible with both the Constitution and the rest of the national legal system⁸.

On the other hand, the IACHR understands that the Brazilian Amnesty Law, as it stands, constitutes non-compliance with the Inter-American Convention on Human Rights. Thus, according to the IACHR, Brazil is failing to honor its commitment to the international community to honor the rights inherent to transitional justice.

“[...] the provisions of *amnesty*, the provisions of *prescription*, and the establishment of exclusions of responsibility that aim to prevent the investigation and punishment of those responsible for serious human rights violations, such as torture, summary, extrajudicial or arbitrary executions, and enforced disappearances, all of which are prohibited for violating non-derogable rights recognized by International Human Rights Law, are inadmissible [emphasis added].” (*Corte Internacional de Derechos Humanos*, 2010)⁹. (Translated from Portuguese)

Beyond these controversies, what is certain is that the Amnesty Law is still in force in Brazil. While some argue that the law achieves its objectives (Brasil, 2008; Vital, 2020)¹⁰, there are also critics (those who filed the *Ação de Descumprimento de Preceito Fundamental* n° 153).

2.3.3. Between the Ideal of Transitional Justice from the *Joinet* Principles and the Brazilian Experience

The further one advances in the study of the subject, the clearer it is that Brazil did not comply with a series of legal provisions present in The *Joinet* Principles and in the international codification. These codifications cite and refer to each other, in a profound self-endorsement and self-validation relationship. Moreover, legal clones can also be found¹¹, i.e. provisions with identical wording

⁷“Brasil. Ação de Descumprimento de Preceito Fundamental n° 153”, *Diário da Justiça Eletrônico* (August 6, 2008).

⁸In this regard, the book *Democracy and its Critics* by Robert A. Dahl eloquently asks the limitations an unelected judiciary should observe (Dahl, 1989).

⁹“Caso Gomes Lund e Outros (‘Guerrilla do Araguaia’) vs. Brasil. Sentence November 24, 2010”, *Corte Internacional de Derechos Humanos* (November 24, de 2010).

¹⁰E.g. Brazil’s own “Brasil. Ação de Descumprimento de Preceito Fundamental n° 153”, *Diário da Justiça Eletrônico* (6 August 2008); and Vital, 2020.

¹¹The principle of non-impunity is found in the *Joinet* Principles, UN Economic and Social Council (October 2, 1997); in *The Updated Set of Principles to Combat Impunity*, UN Economic and Social Council (February 8, 2005); and in *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Security Council (August 3, 2004). The principle of restitution, compensation, and rehabilitation is present in *The Right to Restitution, Compensation and Rehabilitation*

and/or objectives. Thus, as a logical corollary, if one codification is not observed, there will be, almost automatically, non-observance of other codifications.

While the *Joinet* Principles represent principles-as-means, it could also be argued that they represent principles-as-ends. That is, transitional justice not only involves informing victims about the events of the past but also pursuing the ultimate goal of making victims mindful of those events. A similar conclusion can be reiterated for the other principles similarly related to the fight against human rights violations. The promotion of justice and reparation for victims is not only a means to achieve adequate transitional justice, but also an end in itself.

Thus, having a historical overview of the military government in Brazil and its legal aspects (Brasil, 1964; Brasil, 1965; Brasil, 1966a; Brasil, 1966b; Brasil, 1968) been presented, as well as the national and international aspects related to transitional justice, especially the Amnesty Law, identifying procedural biases in transitional justice would arguably be tantamount to verifying material biases.

In the following section, by looking at the reasons that lead a segment of society to demand the return of a military government, it may be possible to make connections between the reasons listed by them and their cause, which seems to be a biased transitional justice.

2.4. The Reasons for the Demand for the Return of Militarism

The demand for the return of militarism by a segment of society in general has the following pattern.

2.4.1. Militarism as a Solution to the Problem of Lawlessness and the Fight against Corruption

The first example to address is complaints aimed at combating lawlessness and corruption. In the various demonstrations recorded by a variety of journalists and media outlets (Folha de São Paulo, 2020; Cruz, 2023; G1, 2023; Lima, 2023; Serapião and Rocha, 2023; CNN Brasil, 2023; UOL Notícias, 2021); Folha de São Paulo, 2020), it is possible to perceive the demand for the return of military rule, with the justification being the dissatisfaction¹² with the legal system and an enormous perception of impunity, with special emphasis on corruption. In other words, the complaints are about a selective justice system that, according to popular perception, fails to hold the guilty accountable.

for Victims of Gross Violations of Human Rights and Fundamental Freedoms, by T. van Boven, 2006. It is also addressed in the UN Security Council (August 3, 2004). The principles of justice and accountability are addressed in the UN Economic and Social Council (October 2, 1997); the UN Economic and Social Council (February 8, 2005); and the UN Security Council (August 3, 2004). The principle of truth and memory is addressed in the UN Economic and Social Council (October 2, 1997), UN Economic and Social Council (February 8, 2005), and UN Security Council (August 3, 2004).

¹²In line with this, O'Donnell and Schmitter's book about the Transitions from Authoritarian Rule opportunistically comments on a generalized feeling of disenchantment, institutional decay, and policy disagreements.

In a survey conducted by *Folha de São Paulo* in June 2020, 2016 people over the age of sixteen from all Brazilian states were interviewed¹³. The survey consists of questions whose answers, when combined, may indicate patterns between the respondents and their socio-economic profile. The survey has a margin of error of 2 percentage points, providing a statistical sample with a 95% confidence level.

Based on this representative sample from *Folha de São Paulo*, the following points can be deduced:

- 1) 28% of the respondents believe that the Brazilian government should have the right to detain suspects without the authorization of the judiciary.
- 2) 17% believe in it absolutely, without any restraint.
- 3) 2% believe that the Brazilian government should have the right to torture suspects to extract confessions or information.
- 4) 7% believe in it without any restraint.
- 5) 20% of the respondents believe that the government should have the right to shut down the STF, Brazil's highest judicial court.
- 6) Among those who believe and those who do not know or do not answer, 38% believe that the dictatorship was more beneficial than not.
- 7) 18% believe that the government should have the right to censor the media.
- 8) 33% believe that the government should have the right to control individual social networks.
- 9) 45% believe that the more people are under surveillance, the better for society (*Folha de São Paulo*, 2020).

Given that the demands are for homogenization, law enforcement, and combating corruption, it is ironic that the population believes that military rule is the appropriate means to that end. Ironically, the military rule, as referred to in the sources above, would involve the closure of institutions theoretically dedicated—among other things—to fighting corruption and criminality, as well as ensuring equality among peers.

Still, on this matter, another investigation carried out by *Folha de São Paulo*¹⁴ highlighted the protests following the two-round election for the Brazilian presidency. Dissatisfied with the results, protestors blocked accesses and set up encampments in front of headquarters, demanding military intervention. In that survey, it was asked, for example:

Since the end of the second round of elections, groups of supporters [...] have

¹³Although this research is not the only one that deals with the issues addressed so far, we arbitrarily chose to use it for a more in-depth analysis because it brings together the largest number of questions and answers on the subject in question. Thus, it should be noted that this source illustrates and exemplifies the Brazilian scenario, without any intention of ignoring or disregarding other sources, given that they have already been mentioned in other sections.

¹⁴“Quantitative research, with a personal approach at points of population flow. The interviews were conducted by applying a structured questionnaire, lasting about 25 minutes. The checking covered at least 20% of the material from each interviewer.” As for the technical sheet, “[...] 2026 interviews were carried out throughout Brazil, distributed in 126 municipalities. The maximum margin of error for the total sample is 2 percentage points, plus or minus, within the 95% confidence level,” *Folha de São Paulo*, 2022.

been in front of barracks and blocking highways, demanding military intervention against the election results. Are you for or against these protests? (*Folha de São Paulo*, 2022).

The result was that 75% were against and 21% in favor. Among those interviewed, 40% believe that protesters should not be punished because they have the right to demonstrate, even if it is against democracy (*Folha de São Paulo*, 2022).

In this regard, a curious point is the ideological inconsistency, not of the survey itself, but on a conceptual/ideological level, between the results of the surveys conducted by *Folha de São Paulo* newspaper (*Folha de São Paulo*, 2020, 2022). In the 2020 survey, 33% of the population in the statistical sample said that the government should have the right to control individual social networks, while 45% said that the more people are monitored, the better for society (*Folha de São Paulo*, 2020). On another occasion, the 2022 survey revealed that, in a context where demands for military intervention were more concrete, 63% of respondents were against the judiciary in Brazil, as well as against blocking accounts and profiles on social networks of individuals protesting against democracy and calling for a military coup (*Folha de São Paulo*, 2022). In other words, in the 2020 research, a governmental intervention to control freedom of speech seemed adequate. On the other hand, in the 2022 survey, limiting freedom of speech was not advisable.

In this respect, the results suggest two possible conclusions: 1) pro-military government demonstrations should not suffer interferences/limitations from the government, in full compliance to freedom of speech and assembly; 2) conversely, as it is unclear whether demonstrations are pro-military government, the rights to demonstrate and express oneself are not absolute and should not, therefore, enjoy the same level of protection.

Again, vis-à-vis the Amnesty Law, it would seem that the law itself indicates how selective the military government was in Brazil, as to this day members of the former military regime are still protected by the legislation (*Brasil*, 2008). In other words, it is logically problematic to advocate for the return of the military government as a sufficient or necessary means for addressing crimes such as corruption and impunity, since this government was marked by the evils that society now seeks to confront.

Solely for the sake of argument, the hypothetical fact that society heard—little or nothing—about corruption in the military government does not mean that it did not exist. In other words, the silence appears to be contingent. The fact is that the institutions that normally serve as a control and limit to corruption and criminality had derisory powers, not to mention their almost inexistence at the time. There was no media capable of airing scandals as there are today, those were times of censorship; the National Congress was closed for a large part of the military dictatorship, and when it was not closed it had laughable powers and reach (*Brasil*, 1964; *Brasil*, 1965; *Brasil*, 1966a; *Brasil*, 1966b; *Brasil*,

1968).

The judiciary lacked the means to pursue criminal prosecutions of potential crimes. *Id est*, rather than inexistent convictions, there were not even criminal prosecutions, as observable today. In light of it, it is noteworthy that 20% of those interviewed consider the STF, Brazil's highest court, to be dispensable (Folha de São Paulo, 2020). In addition to the 20% who believe that the government should have the right to close the STF, 18% believe that the government should also have the right to close the National Congress.

Indeed, what seems to be an extreme lack of credibility to these institutions is not entirely unmotivated (Folha de São Paulo, 2020, 2019b). However, considering that their remit is to oversee issues of social dissatisfaction and criminality (particularly corruption), there is no empirical data or deductive inferences to conclude that closing such institutions would be beneficial. If the mentioned lack of empirical data premise is accepted, the aforementioned ideas are at best explainable, but never justifiable.

Closing the National Congress or the STF, permitting censorship, and controlling social media content—essentially restricting freedom of speech—in other words, the right to express dissent against the government (whether situational or opposition) would, paradoxically, create a scenario even more advantageous to the very evils that are now being addressed. Hence the example of protesters who demand military rule but complain about police violence when demonstrating against the sitting government.

If at present times the belief that the absence of these institutions would help in the fight against corruption is a mistake, even more ingenuous is the belief that in the past, in an even more favorable scenario—because the institutional limitations were absent—corruption did not exist.

It is not premature, therefore, to conclude that advocating for the return of militarism as a means to combat corruption and impunity is incoherent. It is even more illogical to engage in actions such as shutting down the STF or the National Congress, implementing censorship, and surveillance of social networks—essentially disregarding fundamental rights and guarantees embodied in the Constitution as a means to achieve the aforementioned ends.

2.4.2. Fear of Welfare Policies

As observable in the *Memórias da Ditadura* (n.d.) website, in 1964 the segment of civil society that defended the military government was that of the wealthiest, the big businessmen, and those who held financial power. In that sense, with a certain logic (the capitalistic logic of property maintenance), they opted for a government proposal that would guard the *status quo* in force. They did not want a government with socialistic proposals that aimed at income distribution or agrarian reform. In short, they did not want changes that would prioritize the lower classes' interests. Thus, it is possible to perceive that while the lower classes wanted basic reforms, the maintenance of democracy, and social policies, the upper classes were against them.

In this regard, the author O'Donnell (1973: p. 1) had long stated that,

Historical experience shows clearly that there is no necessary one-to-one correspondence between socio-economic structure and type of political system, but there is little doubt that knowledge about the former allows us to make certain predictions concerning the latter. Under given socio-economic conditions, some types of political systems are very unlikely, while there is a strong tendency for other types to emerge and/or consolidate themselves.

The opposite is currently observable. *Folha de São Paulo's* research categorized the interviewees, among other filters, by income and by the number of minimum wages per family. (m.w.) (*Folha de São Paulo*, 2020). The categories are:

- 1) income \leq 2 m.w; Group D
- 2) 2 m.w < income \leq 5 m.w; Group C
- 3) 5 m.w < income \leq 10 m.w; Group B
- 4) income > 10 m.w.; Group A.

When respondents were asked whether the democratic regime was better or worse than the dictatorship, class D was the majority in favor of the military regime. Class D is also the one that believes the most:

- 1) On the possibility of a new dictatorship.
- 2) That human rights should not be applied to criminals.
- 3) That the more people are under government surveillance, the better for society.
- 4) On the benefits of censoring the media.
- 5) The right to detain without judicial authorization.
- 6) On the right to torture to extract confessions or information.
- 7) On the legitimacy of the government control of social media content.
- 8) Class D is also the second most accepting of torture practices and upholds the government's right to shut down the National Congress.

When asked if they knew, at least by hearsay, what were the Institutional Act n°. 5, the *Guerrilha do Araguaia*, and the Amnesty Law, class D remained the class with the worst numbers. It is the class that knows the least about the mentioned historical events. In line with this, Hooper (2016).

By and large, the lower the income, the worse the outcomes, the higher the income, the better the outcomes. Likewise, the higher the income, the higher the level of education, and the lower the supportive stance toward a military government (*Folha de São Paulo*, 2020). Conversely, counter-intuitively, the lower the income, the greater the appreciation for the military government that began in 1964.

Most counterintuitively of all, the research shows that the more a social class relies on public policies, the higher their support for a governmental regime that would be less likely to implement them.

3. Final Considerations

Many still deny that militarism existed in Brazil. Sometimes even the political

representatives themselves say so. The situation is such that the judiciary must prohibit official festivities dedicated to exalting the coup (Folha de São Paulo, 2019a).

Thus, unfortunately, it is not possible to say that this is just one or another regrettable and isolated statement (Folha de São Paulo, 2020). Indeed, what is evident is that there is a substantial, albeit still minority, political-ideological group of negationists that deny that a military government was installed in Brazil in 1964, resulting in massive human rights violations, as per what has just been sustained.

One of the main objectives of transitional justice is to reduce as much as possible the possibility of mistakes being repeated. Some of its pillars are the right to memory and truth, the right to justice, the right to reparation, and the right to institutional reforms, as discussed in the respective sections before.

The right to memory and truth is the right for society to know about the history of the facts as well as the almost indescribable human rights violations. When the STF refuses to follow up on actions that aim to judge those responsible for violations that occurred during the military government, the right to justice is substantially threatened (Brasil, 2008; Corte Internacional de Derechos Humanos, 2010)¹⁵. The same could be said about the right to reparation.

This article aims to examine to what extent the demand for the return of military rule in Brazil comes from social classes with the least knowledge about militarism, and secondly, to analyze the socio-economic profile of those making this demand, with the specific goal of identifying any patterns. In this context, a key point that deserves reiteration is the effort to ensure that the approach and presentation of the data were conducted without relying on appeals to authority. In other words, the work was not focused on a theoretical compilation of perspectives from various authors. On this matter, it is worth noting that the newspaper reports that were cited are meant solely to demonstrate the facts being discussed. *Prima facie*, there was no political or ideological bias in the selection of the websites referenced in this article.

Beyond the attempt not to use inductive methods, the work is strongly supported by empirical research published by the newspaper *Folha de São Paulo* (Folha de São Paulo, 2017, 2019a, 2019b, 2020, 2022), which, *per se*, aims to be statistically representative.

Through the analysis of these statistical samples, it was possible to perceive major tendencies and characteristics, as well as the socio-economic profile of those who support the return of militarism.

The work is relevant not only for the academic community but also for civil society, as it demystifies the hypothesis that it is the economically upper class

¹⁵See “Brasil. Ação de Descumprimento de Preceito Fundamental n° 153”, *Diário da Justiça Eletrônico* (August 6, 2008). See also “Case of Gomes Lund e Outros (‘Guerrilla do Araguaia’) v. Brazil. Julgamento 24 de novembro 2010”, International Court of Human Rights (November 24, 2010).

that supports military rule and its possible return.

Statistically, not only is it not the highest social-economic stratum that advocates for the return of military rule, but, on the contrary, the lower the stratum, the more support it tends to find for such a form of authoritarian regime.

Reaching such a conclusion without the fear of ideological bias was a major concern throughout the development of this article. By identifying which segment of society flirts with military rule and how such flirtation is numerically inseparable from a lack of knowledge (as direct questions about this were indeed posed), it becomes more than just common sense to suggest that this issue may be rooted in a poor educational system. To all intents and purposes, other aspects are likely to play a role in this complex equation.

Ultimately, non-compliance with the legal precepts on transitional justice leads to, among other things, a societal lack of awareness. It seems that the keyword is *publicity*. When even the victims are not sufficiently informed; when processes of reparation and justice are obstructed (ADPF 153/DF); and when amnesty becomes synonymous with impunity, it becomes unclear to society why such a regime should so vehemently be rejected. Borrowing terminology from criminal law, this could be seen as a form of general deterrence. In other words, non-compliance with the legal principles of transitional justice impacts on education and, therefore, the likelihood of historical reprisals.

A weak and biased transitional justice leads to a weak education, which, in turn, leads to calls for a return to militarism. The study does not aim to establish an absolute causal relationship. That is to say, the article does not claim that demands for military regimes are solely caused by inadequate transitional justice, nor that addressing this issue would necessarily result in social change. However, the logical assumption is that altering the political agenda regarding this issue could, in the best-case scenario, contribute to a more stable democracy.

In a country with continental dimensions and limited resources, focusing efforts on class D seems to be the most appropriate course of action based on the data presented. This is a matter that could be explored further in future research.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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