


AMNESTY NOW? A Look at the Past and the Present

ANISTIA JÁ? um olhar para o passado e para o presente
¿AMNISTÍA YA? Una mirada al pasado y al presente

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ABSTRACT

This paper analyzes the historical evolution of amnesty in Brazil, from the Empire to the 1979 Law, aiming to demonstrate how this institution was used as a strategic mechanism of power to end cycles of violence and restore the political game, often at the expense of justice. The methodology employed is based on a bibliographic review and the hypothetical-deductive method, examining the contradictions of the Brazilian amnesty. The research argues that the 1979 Law, by granting a bilateral pardon for crimes against humanity, functioned as a "pact of impunity," creating a conflict with the principles of Transitional Justice. The conclusions point out that the legacy of impunity from this law has weakened the moral framework of democracy, contributing to a lack of faith in institutions and the system's vulnerability to contemporary challenges like polarization and authoritarianism. Amnesty, therefore, did not end the past but turned it into a "present past," which demands constant reflection.

KEYWORDS: Amnesty; History of Amnesty; Democracy; Amnesty and Democracy; Political Risk.

"A democracy cannot coexist with the impunity for state crimes".
Dalmo de Abreu Dallari

Introduction

This research aims to analyze the Brazilian amnesty as a strategic mechanism of power, examining how this legal instrument was used to restore the political game after democratic ruptures and violent conflicts.

According to Roberto Ribeiro Martins in his work *Anistia Ontem e Hoje* (Amnesty Yesterday and Today), amnesty in Brazil has historically functioned as a tool of governance to end crises and consolidate the power of new regimes, maintaining a political arrangement that favored the power holders (Martins, 2010a, p. 15).

The general objective of this work is to analyze the historical evolution of the concept of amnesty in Brazil, in order to understand how its characteristics and

limitations influenced the transition to the Democratic Rule of Law (Estado Democrático de Direito). The research seeks to answer the question: did the 1979 amnesty, conceived as a transition pact, fulfill its role of promoting a genuine closure with the past, or, by pardoning crimes against humanity, did it establish a political game based on impunity that continues to weaken Brazilian democracy? (Souza & Chaves, 2024, p. 25).

To guide the research, the hypothesis was adopted that the 1979 Amnesty Law, by including state agents responsible for atrocity crimes within its scope, functioned as a "pact of impunity" forced by the declining regime to ensure its exit from the political game without punishment.

This arrangement, although it enabled a negotiated transition, compromised the principle of accountability and the search for justice for the victims. This amnesty, which pardons the oppressors, was classified as a legal anomaly by the jurist Dalmo de Abreu Dallari (Dallari, 1999, p. 75).

The methodology employed for the development of the research was the bibliographic review, which allowed for a deeper theoretical and historical understanding of the topic, consulting reference works in political science, constitutional law, and history (Santos, 2007, p. 45).

Complementarily, the hypothetico-deductive method was used to test the validity of the central hypothesis. The analysis of the ADPF 153 in the Supreme Federal Court and the subsequent ruling in the Gomes Lund Case by the Inter-American Court of Human Rights served as empirical evidence to validate the thesis that the 1979 amnesty generated a profound legal and moral conflict (Assis, 2020, p. 15).

The structure of the research is organized into five main sections, following a chronological and thematic flow, to demonstrate how forgiveness has always been linked to the resumption of the political game (Araujo, 2012, p. 17). The conclusions reached reinforce the idea that the 1979 Amnesty Law represented a lost opportunity for Brazil, weakening the moral framework of democracy (Comparato, 2008, p. 250).

Amnesty: A General Theory and International Context

In the Western political model, the cycle of power is fundamentally defined by the alternation of parties and ideas through periodic and transparent elections. This system is based on pluralism and fair competition, where different groups and ideologies vie for the electorate's trust (Sartori, 1987, p. 115).

The group that obtains the majority of votes assumes the government and the responsibility of implementing its political program. The opposition, in turn, is not annihilated but acts as a mechanism of control and oversight, presenting alternatives and preparing for the next electoral cycle.

The legitimacy of power therefore lies in a group's ability to obtain popular support through the vote, accepting that defeat is an integral part of the democratic game and that alternation is the only guarantee that representation and popular will will be respected in the long term (Dahl, 2005, p. 55). As democracy theorists affirm, the stability of a democratic regime resides precisely in its capacity to absorb and manage the alternation of power without resorting to violent conflicts (Linz & Stepan, 1991, p. 55).

In opposition to this democratic cycle, a political rupture occurs when a group, dissatisfied with the loss of power or fearful of alternation, uses force, violence, or extra-constitutional influence to subvert the electoral result and prevent the change of power.

This rupture can manifest in various ways, ranging from the traditional military coup d'état, which uses brute force to overthrow an elected government, to what modern political science calls "democratic erosion" (Levitsky & Ziblatt, 2018, p. 25). In this second case, the subversion of the constitutional order happens more subtly, through the weakening of institutions, the instrumentalization of the Judiciary, attacks on press freedom, and the dissemination of disinformation to undermine popular trust.

Both forms of rupture violate the social pact that sustains democracy, transforming legitimate political dispute into an existential conflict, where the loser does not accept defeat and delegitimizes the system as a whole. In these moments, impunity becomes a tool of power, where those who attack the Rule of Law seek the pardon for their crimes as a way to seal the new political arrangement, compromising justice and historical memory (Dallari, 1999, p. 75).

In Brazilian history is marked by political ruptures, coups, and civil conflicts, scenarios in which the theme of amnesty becomes central. The term, derived from the Greek *amnestía* (ἀμνηστία), means "forgetting" and suggests the act of erasing an offense or a crime from collective memory.

Legally, amnesty is an act of the public authority that extinguishes the punishability of crimes committed during a specific period. The jurist Fernando Capez differentiates amnesty from indulto (pardon/clemency) and *graça* (commutation),

explaining that amnesty erases the crime itself, while the others forgive the sentence of a specific individual (Capez, 2018, p. 574).

The granting of an amnesty is subject to both legal and political criteria. From a legal standpoint, the main condition is that amnesty must apply to crimes of a political nature, and not to common crimes or atrocity crimes. Fábio Konder Comparato, one of Brazil's most important jurists, argues that the pardon for crimes against humanity, such as torture, genocide, or mass murder, is a "legal aberration" because it violates the fundamental right of victims to truth and justice (2008, p. 250).

The political conditions for an amnesty are also crucial. Amnesty should be an act of clemency by the constituted power towards the opposition, and not the reverse. The jurist Dalmo de Abreu Dallari criticizes the amnesty that pardons the oppressors themselves as an "inverse amnesty," a mechanism that distorts the essence of the institute of pardon and compromises the integrity of the Rule of Law (Dallari, 1999, p. 75).

From a political perspective, amnesty is an instrument of power that transcends its legal function of extinguishing the punishability of crimes. It is, in essence, an act of governance used to end cycles of conflict, stabilize regimes, and negotiate transitions of power. Granted by a government or a new regime, amnesty seeks to create a "pact of oblivion" concerning the past of violence and polarization, allowing political life to resume its course without the immediate need for accountability. The goal is not necessarily justice, but pacification and the maintenance of order.

In Brazil, this perspective is well-documented. As the historian Maria Paula Nascimento Araújo explains, historical amnesty in the country was a mechanism of pacification used to consolidate the authority of the constituted power after rebellions and coups, serving more as a political agreement than as an act of reparation (Araujo, 2012, p. 11).

Despite its political appeal for stability, amnesty raises profound contradictions. When used to pardon crimes against humanity committed by state agents, it can become a pact of impunity, where reconciliation is bought at the cost of justice. This political maneuver, which grants forgiveness to the oppressors and not only the oppressed, delegitimizes the Rule of Law and undermines confidence in institutions.

The jurist Fábio Konder Comparato, a leading defender of human rights in Brazil, criticizes this practice, stating that an amnesty for atrocity crimes is a "legal aberration" that violates the fundamental right of victims to truth and justice (2008, p. 250). Thus, what is presented as a political solution to close the past often only

postpones the debate and creates a "present past" that continues to erode the moral foundations of democracy. The research of Ananda Simões Fernandes and Tatyana de Amaral Maia reinforces this view, showing that amnesty for crimes against humanity remains a "present past" in the Brazilian legal and political landscape (Fernandes & Maia, 2022, p. 70).

To understand the specificity of the 1979 Brazilian amnesty, it is crucial to compare it with the experiences of other countries that also dealt with the legacy of dictatorial regimes. The way forgiveness was applied in each place demonstrates the variety of paths toward Transitional Justice. The Nuremberg and Tokyo trials, held after World War II, are essential milestones in this debate.

The International Military Tribunal at Nuremberg, established in 1945, judged the main Nazi leaders for crimes against peace, war crimes, and crimes against humanity, with the historical and cultural particularity of preserving the centuries-old figure of the Emperor. For the first time in history, leaders of a sovereign state were held accountable for atrocities committed in their own country. As the historian Jon Ackerman emphasizes, the Nuremberg trial established the thesis that the order of a superior is not a valid justification for committing atrocity crimes, a fundamental basis of international law (Ackerman, 2019, p. 45).

In parallel, the International Military Tribunal for the Far East, in Tokyo, judged Japan's military and political leadership for similar crimes. Historian John Dower details in his work that the Tokyo Tribunal was fundamental for dismantling the militaristic power structure and delegitimizing the imperialist ideology that led Japan to war (Dower, 2000, p. 550). These trials did not grant amnesty but sought full accountability, establishing an important precedent in international law.

In contrast, in Argentina and Chile, military dictatorships also passed self-amnesty laws with the goal of ensuring the impunity of state agents. However, the outcome was radically different. The jurist Eugenio Raúl Zaffaroni points out that in Argentina, the *Ley de Punto Final* (Full Stop Law) and the *Ley de Obediencia Debida* (Due Obedience Law), which sought to protect military personnel, were revoked and annulled by the Congress in 2003 (Zaffaroni, 2011, p. 45). This decision in Argentina, driven by social and political mobilization, allowed those responsible for crimes against humanity to be tried and convicted, marking a decisive step toward democratic consolidation.

With the redemocratization of Argentina in 1983, President Raúl Alfonsín's government promoted a historic event for Transitional Justice: the Trial of the Military

Juntas (the "*Juicio a las Juntas*"). The popular name "Alfonsín's Courts" refers to this unprecedented judicial process. Unlike other countries that opted for amnesty, Argentina became the first country to try the leadership of a military dictatorship for human rights violations in its own courts. The initiative was a landmark in the fight against impunity, ensuring the accountability of the leaders who commanded the regime of state terrorism that resulted in the disappearance of thousands of opponents (Vizcarra, 2019, p. 88).

The result of the trial, held between 1984 and 1985, was the conviction of the main commanders of the military juntas. The court found the leaders guilty of various crimes, including homicide, kidnapping, and torture, and sentenced them to prison terms. The trial, however, faced strong opposition from military sectors, and in 1986 and 1987, the Alfonsín government succumbed to pressure and enacted the Full Stop and Due Obedience Laws, which limited the investigations and trials of other military personnel (Mignone, 2005, p. 112).

However, this attempt at amnesty was not sustained, and years later, the laws were revoked, allowing the reopening of judicial proceedings. The conviction of the dictatorship leaders in Argentina remains a symbol of the victory of justice over impunity and an international reference for democratic consolidation.

In Chile, the 1978 Amnesty Law, enacted during Pinochet's dictatorship, was not formally revoked, but Chilean courts, starting in the 2000s, began to interpret it as inapplicable to crimes against humanity, allowing the investigation and trial of those responsible. Javier Vizcarra highlights that this judicial interpretation was fundamental for overcoming impunity (2019, p. 88).

The Spain's experience with its "Pact of Forgetting" offers a direct contrast. After the death of dictator Francisco Franco in 1975, the country opted for a transition based on silence regarding the crimes of the past. The 1977 Amnesty Law granted a general and unrestricted pardon for crimes committed during the Civil War and the Franco dictatorship. The main objective of this arrangement was to ensure a peaceful transition and avoid reopening historical wounds that could destabilize the new democracy (Mignone, 2005, p. 112).

However, this law has been subject to criticism from human rights organizations, and in 2013, the UN recommended its annulment, arguing that amnesty for crimes against humanity violates international law and the victims' right to truth and justice (UN, 2013).

The transition from the Apartheid regime to democracy in South Africa is one of the most emblematic examples of Transitional Justice. Instead of a generalized amnesty or the full trial of those responsible, the country created the Truth and Reconciliation Commission (TRC) in 1995. The South African model was based on amnesty in exchange for confession: individuals who admitted their crimes, provided they were politically motivated and the confession was complete and truthful, could receive judicial pardon.

As the activist and jurist Desmond Tutu explains, the TRC sought "restorative justice" instead of "retributive justice," focusing on the revelation of the truth to promote national reconciliation and build a more cohesive society (Tutu, 1999, p. 125).

These examples demonstrate that amnesty, although a mechanism of forgiveness, carries lasting political and moral consequences. The decision to pardon the oppressors, as in Spain and Brazil, contrasts with the choice of accountability and truth, as in Argentina and South Africa, and profoundly shapes historical memory and the quality of democracy.

Amnesty in Brazil's Historical Construction: From the Empire to the Old Republic

Amnesty in Brazil has been a recurrent instrument for the consolidation of political regimes. For the historian Maria Paula Nascimento Araújo, the granting of amnesty indicates more a "pact of domination" than an act of genuine reparation (Araujo, 2012, p. 11).

Amnesty was a central tool of Imperial power to consolidate its authority after rebellions. Following the Independence of Brazil, the *Carta de Lei* (Charter Law) of May 24, 1824, granted amnesty for political crimes, aiming to seal the wounds and reintegrate the elites of the rebellious provinces into the new monarchical system (Neves, 2018, p. 87).

The Ragged War (Guerra dos Farrapos) or Farroupilha Revolution was the longest and most costly civil conflict in Brazilian history, lasting ten years (1835–1845) in Rio Grande do Sul. Its causes were primarily economic, with the gaúcho landowning elite, the "ragged ones" (farrapos), protesting against the high taxation on charque (dried, salted meat), their main product, which competed unfairly with foreign charque. The quest for greater provincial autonomy was also a determining factor.

The Empire initially struggled to contain the movement, which even proclaimed the Riograndense Republic. The definitive pacification of the conflict, however, did not occur through a total military victory but through a political agreement mediated by

Caxias. The Imperial Decree of December 14, 1845, known as the Peace of Poncho Verde, granted general amnesty to the rebels. Furthermore, the Empire met some of the rebels' demands, such as incorporating their officers into the Imperial Army and reducing taxes on salt and charque, in a clear demonstration that amnesty, in this case, was the political solution found to reintegrate a powerful economic and military elite into the Empire's order (Flores, 2002, p. 110).

The Balaiada Revolt, which took place in the province of Maranhão between 1838 and 1841, was one of the most expressive social movements of the Regency period. Its causes were deeply rooted in local social and political tensions, exacerbated by the power struggle between liberal ("*bem-te-vís*") and conservative ("*cabanos*") elites. Popular dissatisfaction, fueled by extreme poverty, drought, and forced military enlistment, transformed into a mass revolt, led by figures such as the cowboy Raimundo Gomes, the artisan Manuel Francisco dos Anjos Ferreira (the "Balaião"), and the quilombola (leader of an escaped slave community) Cosme Bento.

The Brazilian Empire's action to suppress the revolt was led by Luís Alves de Lima e Silva, the future Duke of Caxias, who combined military force with the promise of pardon. Pacification was consolidated with Law No. 281, of September 14, 1840, which granted amnesty to rebels who surrendered. According to the historian Maria de Lourdes Mônico Janotti, amnesty was a political maneuver to disarticulate the rebellion's support base, serving more the consolidation of central power than the reparation of the social injustices that motivated it (Janotti, 1990, p. 195).

In turn, the Praieira Revolution (*Revolução Praieira*), which occurred in Pernambuco between 1848 and 1850, was the last major revolt of the Empire. The liberal-leaning movement was motivated by dissatisfaction with the centralism of the imperial government, the domination of Pernambuco politics by a conservative elite, and the defense of ideas such as federalism, free voting, and the end of the local commerce monopoly.

The leaders of the revolt, linked to the "Beach Party" (Partido da Praia), opposed the government of the Cavalcanti brothers, whom they accused of oligarchic control over the province. The Empire's response was swift and military, leaving no room for negotiations as in the Farroupilha Revolution. After the definitive defeat of the *praieiros* in Olinda, the imperial government granted an amnesty to pacify the province. Law No. 592, of November 4, 1850, offered pardon to the rebels, but, in practice, this amnesty served more as a formal act of ending the conflict than as a genuine reparation.

The historian José Honório Rodrigues highlights that, after the defeat of the rebels, amnesty was used to consolidate the authority of the central power and suppress any remnants of organized opposition, ending the cycle of great rebellions of the Regency Period and the Second Reign (Rodrigues, 1974, p. 211).

Thus, it can be stated that since the Empire, amnesty has been an instrument used by the Brazilian State, acknowledging the existence of conflicts and subsequently deploying political action to pacify the situation in some way.

The Old Republic and the Vargas Era

The end of the Empire and the advent of the Republic in 1889 marked the beginning of the Old Republic (*República Velha*), a period that lasted until 1930. The Republic, although formally established to ensure equality and political participation, was characterized by an oligarchic and exclusionary political system. The concept of the Old Republic refers to a model of government where the force of political power did not reside in law or popular will, but rather in the alliance between the agrarian elites, mainly those of São Paulo and Minas Gerais, who controlled national politics through the "governors' policy" (*política dos governadores*) (Carvalho, 1987, p. 57).

The political effects of this model were profound and lasting. Firstly, the alternation of power was an agreement between the elites, and the population had no real participation. The 1891 Constitution, although it provided for the separation of powers and direct voting, was hollowed out by mechanisms such as the coercive voting system (*voto de cabresto*) and the colonelism (*coronelismo*) policy. Votes were manipulated by the "colonels" (*coronéis*), large landowners who controlled the political and economic life of their regions, ensuring that election results served the interests of the oligarchies.

As José Murilo de Carvalho explains, the Brazilian Republic was born with a contradiction: a formal liberal-democratic model coexisting with a highly unequal and clientelist social and political structure (Carvalho, 1987, p. 105).

It was in this context that amnesty became a central tool of power, serving not to repair, but to seal political agreements and neutralize threats to the system. The amnesty granted shortly after the proclamation of the Republic, with Decree No. 85-A of December 23, 1889, aimed to pacify the transition and integrate the old elites into the new regime.

However, the most emblematic turning point in the relationship between amnesty and political betrayal was the Revolt of the Whip (*Revolta da Chibata*) in 1910.

Sailors, led by João Cândido, revolted against the terrible working conditions and physical punishments (Morel, 2010, p. 77). Following negotiations, the National Congress approved Law No. 2,212 of November 25, 1910, which promised pardon to the rebels in exchange for surrender. However, the effect of the amnesty was betrayal, as the government initiated persecution and violent repression, as Ricardo Lessa explains (Lessa, 1982, p. 102). The amnesty did not materialize as an act of forgiveness but as a subterfuge to demobilize the revolt and repress its leaders.

Getúlio Vargas's rise to power in 1930 also depended on an amnesty to consolidate his support base. Tenentism¹ was a movement of young Army officers who opposed the oligarchic structure of the Old Republic. To reward and integrate these officers, Decree No. 19,398 of November 11, 1930, granted amnesty to those involved in political crimes committed from 1922 onwards (Lira Neto, 2013, p. 201).

These examples demonstrate that, in the Old Republic, amnesty was a pragmatic instrument of governance, used to maintain the power of the elites and control the opposition, reinforcing the fragile and unequal nature of the political game at the time.

The Estado Novo and the Theory of Power

The Estado Novo (New State, 1937–1945), imposed by Getúlio Vargas, represented the culmination of authoritarianism in Brazil. The consolidation of the regime was not achieved merely through the dissolution of legislative powers and the

¹ Tenentism (*Tenentismo*) was a political-military movement of young officers of the Brazilian Army that emerged in the 1920s, in a context of intense dissatisfaction with the oligarchic politics of the Old Republic. Led by lieutenants (*tenentes*) and captains, these military personnel opposed the domination of the agrarian elites, electoral fraud, and corruption, seeking to moralize public life and implement social reforms to modernize the country (Fausto, 2014, p. 115). Their main demands included the adoption of the secret ballot, the end of the coercive voting system, and the centralization of power, which, they argued, would be the only way to break with the "coffee with milk policy" (*política do café com leite*). The movement, though heterogeneous, represented the desire of the urban middle class and progressive sectors for a fairer society and more legitimate political representation. The *tenentes* took their dissatisfaction to the battlefield, and the federal government's response was implacable. After the failed Revolt of Fort Copacabana in 1922, the movement's main articulation took place in São Paulo, in July 1924. On that occasion, about 1,000 *tenentes* and soldiers took the city, facing loyalist troops (Carone, 1989, p. 301). The government's reaction was violent: the center of São Paulo was literally bombed by airplanes and heavy artillery, causing destruction and deaths that resulted in the largest urban battle in the country up to that point. Defeated, the remnants of the São Paulo uprising fled to the interior of the country. There, they joined other groups of rebellious *tenentes* from Rio Grande do Sul and formed the Prestes Column (*Coluna Prestes*), which, under the leadership of Luís Carlos Prestes, marched across Brazil for over two years in a guerrilla war, resisting the attacks of loyalist forces and denouncing the evils of the Oligarchic Republic.

persecution of opponents, but also through an elaborate legal and ideological structure.

The central figure in this process was the jurist Francisco Campos, known as the "philosopher of the regime." Campos was the main redactor of the 1937 Constitution, nicknamed "a Polaca" (the Polish one) due to its inspiration from the authoritarian constitutions of Poland and, to a lesser extent, Fascist Italy (Campos, 1937, p. 45).

For Francisco Campos, the State should not be a mere arbiter but the engine of social transformation, with powers centralized in the chief executive to ensure order and progress. The 1937 Constitution reflected this philosophy, concentrating power in Vargas's hands, dissolving political parties, and suppressing the right to strike (Carvalho, 1987, p. 57).

The legal legitimacy of a regime that tore up the previous constitution was a problem. The solution came from an unexpected and symbolic source: the Austrian jurist Hans Kelsen. Kelsen's consultancy to the Vargas government regarding the constitutionality of the 1937 regime, although questioned by some historians, acquires a symbolic character in the legitimization of the new legal order. Kelsen's Pure Theory of Law² advocates that the validity of a legal norm does not depend on its morality or justice, but on its efficacy and its position in a normative hierarchy, where the superior norm legitimizes the inferior one (Vianna, 1999, p. 88).

² Hans Kelsen's work, "Pure Theory of Law" (Teoria Pura do Direito), is of fundamental and structuring importance for Brazilian Law, serving as the main theoretical basis for understanding the national legal order. The essence of Kelsenian thought, which seeks to purify the science of law from foreign elements such as morality, sociology, or politics, provided the framework for visualizing the legal system as a hierarchical and formal structure. In Kelsen's theory, the validity of an inferior norm derives from a superior norm, culminating in the Federal Constitution as the fundamental norm (*Grundnorm*) of the system. This conception of a normative pyramid, where the Magna Carta occupies the apex, has become the hegemonic and essential model for the organization of Law in Brazil (Kelsen, 2002, p. 115). It is based on this structure that the supremacy of the Constitution is defined and the logic of validity for laws, decrees, resolutions, and other normative acts is established, which can only be considered valid if they comply with the constitutional text. Kelsen's influence on Brazilian Law is most evident in the theory and practice of constitutional control (*controle de constitucionalidade*). The idea that inferior norms must submit to the Constitution provides the theoretical foundation for the Judiciary, especially the Supreme Federal Court (STF), to act as the guardian of the Higher Law, ensuring its supremacy (Dallari, 1999, p. 75). Legal instruments such as the Direct Action of Unconstitutionality (ADI) and the Declaratory Action of Constitutionality (ADC) are direct applications of this hierarchical theory. When judging an ADI, the STF verifies whether an inferior law is in disagreement with the constitutional norm — that is, whether it is not "valid" within the Kelsenian normative pyramid. For this reason, the "Pure Theory of Law" is a pillar of legal education in Brazil, serving as the starting point for the study of Constitutional Law and the General Theory of Law. Although Kelsenian theory is criticized for its formalism and its separation between law and justice, it continues to be the central reference for understanding the structure, validity, and efficacy of the Brazilian legal order (Vianna, 1999, p. 88).

It is in this context that the profound dichotomy of the Vargas regime is revealed: it was a government that produced laws almost at the same speed with which it broke them. On the one hand, the Estado Novo invested massively in creating a legal framework that, on the surface, seemed modernizing. The Consolidation of Labor Laws (CLT), for example, was enacted in 1943, guaranteeing a series of social rights, such as holidays, working hours, and the 13th salary. This legislation represented a significant social advance and created the image of Vargas as the "Father of the Poor" (Pai dos Pobres) (Lira Neto, 2013, p. 201).

On the other hand, the same regime that created the CLT instrumentalized the political police to arrest, torture, and kill opponents. The Department of Press and Propaganda (DIP) controlled the media, while the National Security Law was used to justify the persecution of intellectuals, artists, and political militants. The dichotomy between a "zealous" State and a "repressive" State demonstrates the fragility of a legal system based on efficacy to the detriment of justice. The Vargas regime used the law as an instrument of power, not as a guarantee of rights, exposing the fragility of the Rule of Law in the face of authoritarianism.

The amnesty granted at the end of the Estado Novo in 1945, with Decree-Law No. 8,163, served to seal the past and allow redemocratization without the need to hold those involved in the repression accountable, evidencing that impunity became a tool of transition in Brazil.

Amnesty, Military Dictatorship, and the Legal Conflict

The Military Dictatorship (1964–1985) represents Brazil's greatest and most profound democratic rupture. One of the darkest chapters of the repression was the Araguaia Guerrilla (Guerrilha do Araguaia), with the adoption of the "disappearance policy" for bodies (Stuart, 2006, p. 28).

The regime ended with the enactment of Law No. 6,683, of August 28, 1979, the Amnesty Law, which granted a bilateral pardon, covering both the political crimes of opponents and the crimes committed by state agents. The jurist Renato Luís do Couto Neto e Lemos deepens the analysis of the 1979 amnesty, arguing that the law was the result of an "exit pact" forced by the military regime itself, which sought to ensure a controlled and negotiated transition, excluding the possibility of accountability for the crimes committed (Lemos, 2018, p. 77).

The transition to democracy was not a spontaneous or peaceful process, but the result of a complex interplay of political forces. General Geisel, in his government,

initiated the policy of a "slow and gradual opening" (*abertura lenta e gradual*), but control remained in the hands of the regime. For the historian Boris Fausto, the amnesty was part of a broader plan, which included measures such as the "April Package" (*pacote de abril*) of 1977, which closed Congress and strengthened the Executive, and the *Lei Falcão* (Falcon Law), which limited electoral propaganda (Fausto, 2014, p. 75).

Concurrently, civil society mobilized intensely. The campaign for "Broad, General, and Unrestricted Amnesty" (*Anistia Ampla, Geral e Irrestrita*), led by the Brazilian Bar Association (OAB) and committees of families of prisoners and the disappeared, was one of the largest mass movements during the dictatorship (Comitê Estadual da Anistia do Rio de Janeiro, 1985, p. 45).

The demand for amnesty was co-opted by the regime to include its own agents, making the pardon bilateral. Law No. 6,683/79, in its Article 1, pardoned "political or related crimes" (*crimes políticos ou conexos*), and it was this ambiguity that allowed crimes of torture, assassinations, and disappearances of opponents to be framed as "related" (*conexos*) to the political crimes of the opposition, resulting in impunity (Silva, 1984, p. 115).

This characteristic, the so-called "self-amnesty," generated the main legal and political conflict. The jurist Dalmo de Abreu Dallari coined the expression "inverse amnesty" (*anistia inversa*) to describe this phenomenon, in which the law, instead of being an act of clemency for the oppressed, became an instrument to amnesty the oppressor himself, a "legal anomaly" (Dallari, 1999, p. 75). Daniel Souza and Gylmar Chaves, in their work, re-examine the legacy of the 1979 amnesty, demonstrating how the law, despite being a milestone in the transition, created a deadlock that still resonates in the public and legal debate on impunity and historical memory (Souza & Chaves, 2024, p. 45).

The Legal Conflict: ADPF 153 and the Inter-American Court of Human Rights

The legal debate regarding amnesty intensified in 2010 with the analysis of two emblematic rulings: that of the Supreme Federal Court (STF) in ADPF 153 and that of the Inter-American Court of Human Rights (IACHR) in the *Gomes Lund and Others v. Brazil Case*.

The Brazilian Bar Association (OAB) filed ADPF 153 (Allegation of Non-compliance with a Fundamental Precept) with the goal of reinterpreting the 1979 Amnesty Law and excluding state agents who committed crimes against humanity from

its pardon. However, in April 2010, the STF decided to maintain the validity of the law, arguing that amnesty was a necessary political pact for the democratic transition (Brazil, 2010).

The majority thesis of the STF was based on three main arguments. Firstly, most justices defended that the 1979 Law was the result of a "political pact" of national reconciliation, a necessary compromise between the dictatorship and the opposition to enable the transition to democracy.

The second central argument was the impossibility of the Judiciary reinterpreting a past law to reopen a historical process that had already been closed by the Legislative Branch. The understanding was that the interpretation of the law should be maintained based on the original intent of the legislators at the time.

Finally, the STF decision treated the crimes against humanity committed by state agents as "related crimes" (crimes conexos) to the political crimes of the opposition, an interpretation that, in practice, equated state violence with armed resistance (Assis, 2020, p. 15).

If this thesis were to prevail in isolation and be considered the final word on the matter, Brazil would be legally prevented from investigating, prosecuting, and punishing the dictatorship's crimes. The Amnesty Law would function as a definitive and incontestable "full stop law" (lei de ponto final), ensuring the impunity of state agents irrevocably within the scope of domestic law.

In contrast, seven months later, the Inter-American Court of Human Rights (IACHR) delivered its judgment in the *Gomes Lund and Others v. Brazil Case*. The Court condemned the Brazilian State and declared the 1979 Amnesty Law to be "devoid of legal effects" for crimes against humanity (Corte IDH, 2010, p. 28).

The main difference between the rulings lies in the hierarchy of norms and the nature of the crimes. The IACHR, as a court of international law, considered that international human rights norms, such as the prohibition of torture and forced disappearance, are hierarchically superior to national laws, even if they are constitutional (Soares & Kishi, 2012, p. 88).

The IACHR's arguments were based on the thesis of the imprescriptibility and non-amnesty eligibility of crimes against humanity. For the Court, amnesty for crimes such as forced disappearance and torture violates the fundamental rights of victims to truth, justice, and reparation and cannot be justified by a "transition pact."

The adoption of the IACHR ruling in Brazil — that is, its internalization into the Brazilian legal system — would pave the way for the investigation, prosecution, and

punishment of state agents responsible for crimes against humanity. This decision, if implemented, would bring Brazil into compliance with international human rights obligations and with the jurisprudence of other Latin American countries, such as Argentina and Chile, which annulled their amnesty laws to prosecute those responsible for atrocity crimes (Zaffaroni, 2011, p. 45).

The conflict between the two decisions is, therefore, not only legal but also political and moral. The STF thesis prioritized the political stability of the transition, while the IACHR's privileged justice and human rights. This tension demonstrates the complexity of the legacy of the Brazilian amnesty and the difficulties in reconciling the "pact of the past" with the demands for justice in the present, especially since the post-transition 1988 Brazilian Constitution incorporated international human rights treaties.

Amnesty and Transitional Justice: Concepts in Conflict

The conflict between amnesty and Transitional Justice is the central point of the contemporary debate. While amnesty, as seen in the 1979 Brazilian law, has been historically used as a political instrument for "forgetting," Transitional Justice is a paradigm that seeks memory, truth, and accountability to consolidate democracy (Martins, 2010b, p. 34). In Brazil, the implementation of Transitional Justice has been incomplete, weakening the democratic process.

Transitional Justice is a set of legal and political measures adopted by countries moving from authoritarian regimes to democracies, with the objective of dealing with the legacy of massive human rights violations. This model is founded on four essential pillars: the Right to Truth, the Right to Justice, the Right to Reparation, and Guarantees of Non-Recurrence (Fernandez, 2018, p. 55). In Brazil, the application of these pillars generated a profound conflict with the Amnesty Law.

The Right to Truth, one of the pillars of Transitional Justice, sought the reconstruction of historical facts. The creation of the National Truth Commission (CNV)³

³ The National Truth Commission (CNV) (*Comissão Nacional da Verdade*) was a temporary, collegiate body, created by Law No. 12,528, of November 18, 2011, with the purpose of investigating and clarifying serious human rights violations that occurred in Brazil between September 18, 1946, and October 5, 1988. Its main objective was to break the "pact of silence" that shrouded the military dictatorship (1964–1985) and dismantle the regime's official narrative (Pinheiro, 2014, p. 110). The CNV was part of the set of Transitional Justice measures adopted by the Brazilian State, focusing specifically on the pillar of the Right to Truth, which seeks to reconstruct historical facts for victims and society, without, however, having the power to punish. The CNV's main function was to investigate, listen, and document. To this end, the body held public hearings, collected testimonies from victims, family members, and former state agents, and analyzed thousands of documents, many of which were kept confidential by the Armed Forces archives. Its work culminated in a final report, delivered in 2014, which

in 2011, though late, played a crucial role. As Paulo Sérgio Pinheiro highlights, the CNV was essential for producing a detailed report that documented human rights violations, identified victims, torture sites, and named responsible state agents (Pinheiro, 2014, p. 110). However, its limitations were evident: the CNV did not have the power to criminally prosecute offenders, and the Amnesty Law itself continued to be a legal shield.

The Right to Justice, the second pillar, was therefore the point of greatest friction. The application of this concept is the main conflict with the Brazilian Amnesty Law. While countries like Argentina and Chile annulled their self-amnesty laws and began the prosecution of those responsible for the crimes of their dictatorships (Vizcarra, 2019, p. 88), Brazil, through the STF's decision in ADPF 153, maintained the validity of the law, creating a legal obstacle to criminal accountability.

The third pillar is the Right to Reparation, which seeks to compensate victims. In Brazil, the Amnesty Commission (*Comissão de Anistia*), created in 2002, granted financial reparations and recognized the status of political anistiado (amnesty beneficiary) for thousands of victims of the dictatorship. However, the jurist Fábio Konder Comparato argues that this reparation, by not being accompanied by justice, can be interpreted as a form of "buying the victims' silence," since the State exempts itself from investigating and punishing those responsible for the crimes committed (Comparato, 2008, p. 250).

Finally, the Guarantees of Non-Recurrence have a prospective applicability, focusing on the reform of state institutions to prevent violations from happening again. This pillar, although crucial, is the most difficult to implement in a context where historical impunity remains, as Soares and Kishi point out, because without accountability, the guarantee that institutions will reform permanently becomes fragile (Soares & Kishi, 2012, p. 88).

The Legacy of the National Truth Commission: Challenges and Contradictions

The creation of the National Truth Commission (CNV) in 2011 represented a belated yet significant advance in the pursuit of Transitional Justice in Brazil. The main

documented 434 deaths and forced disappearances, in addition to identifying the names of 377 state agents (military and civilian) responsible for such violations (CNV, 2014, p. 256). Although it lacked the power of criminal accountability, the CNV report played a fundamental role in establishing the truth about the dictatorship's violence, refuting, for example, the official version of suicide in cases such as that of the journalist Vladimir Herzog (Assis, 2020, p. 15). The CNV's legacy resides, therefore, in its ability to give visibility to the atrocities of the past, feeding public debate and serving as a historical landmark for national memory.

objective of the CNV was to investigate human rights violations that occurred between 1946 and 1988, with a special focus on the period of the Military Dictatorship. The Commission's Final Report, released in December 2014, detailed 434 deaths and forced disappearances, identifying the state agents responsible for these atrocities and systematic torture (CNV, 2014, p. 256).

The work of the CNV brought to light the brutal reality of the repression, refuting the official narrative that the dictatorship had been a period of order and stability. The Commission, for the first time in the country's history, published the names of 377 state agents (military and civilian) who were responsible for human rights violations, which generated a strong public and institutional debate.

However, the legacy of the CNV is complex and, in some respects, contradictory. The main challenge was the absence of a legal mechanism that would allow for the criminal accountability of the identified agents. The Supreme Federal Court's decision in ADPF 153, in 2010, which upheld the validity of the Amnesty Law, functioned as an insurmountable obstacle. The CNV report's recommendation that the Amnesty Law be reinterpreted to exclude crimes against humanity was not accepted by the Brazilian judicial system (Machado, 2015, p. 98).

One of the most emblematic cases analyzed by the CNV was that of the journalist Vladimir Herzog⁴, murdered in 1975 on the premises of the Detachment of Operations and Information – Center for Internal Defense Operations (DOI-CODI). The

⁴ The case of Vladimir Herzog, a journalist and news director at TV Cultura, became one of the most emblematic symbols of state repression and violence during the military dictatorship in Brazil. On October 25, 1975, Herzog voluntarily presented himself to the Detachment of Operations and Information – Center for Internal Defense Operations (DOI-CODI) in São Paulo to provide clarification. Hours later, the official version released by the regime was that he had committed suicide by hanging, a narrative that was widely contested (Fausto, 2014, p. 115). The image of his body, exposed with signs of torture in a photograph that simulated suicide, generated an immediate and intense popular reaction. The most significant act of repudiation was the ecumenical mass at the Sé Cathedral, which gathered thousands of people and became a landmark in civilian resistance. Herzog's death not only exposed the brutality of the military regime but also mobilized society and the press in the fight for freedom and the right to truth, consolidating him as a martyr for democracy and press freedom. The pursuit of justice for Herzog's murder continued for decades, and over time, the truth of the facts was gradually established. The Final Report of the National Truth Commission (CNV), in 2014, refuted the official version of suicide and concluded that the journalist had been killed under torture on the DOI-CODI premises (Comissão Nacional da Verdade, 2014, p. 320). Subsequently, in 2018, the Inter-American Court of Human Rights (IACHR) delivered a historic judgment in the Herzog and Others v. Brazil Case, condemning the Brazilian State for its inertia in investigating, prosecuting, and punishing those responsible for the crime. The Court declared that the 1979 Amnesty Law could not serve as an obstacle to accountability for crimes against humanity and highlighted the State's obligation to guarantee the right to truth and justice for the victims. This international decision, which reinforces the IACHR's previous judgment in the Gomes Lund Case, represented a legal victory for the families and for the advancement of Transitional Justice in the country, confronting the legacy of impunity left by the dictatorship (Corte IDH, 2018).

Truth Commission's report refuted the official version of suicide and proved that Herzog was tortured and murdered.

This conclusion, corroborated by new evidence, led to a rectification of the journalist's death certificate, changing the cause of death to "injuries and ill-treatment" (CNV, 2014, p. 320). This case is a clear example of the CNV's potential to recover the truth, but also of its limitations. The revelation of historical truth was not accompanied by justice.

The CNV's legacy is, therefore, a symbolic battle for memory. The Commission was successful in dismantling the dictatorship's official narrative but failed to translate this truth into justice. The lack of punishment for the crimes of the past contributed to a continuous sense of impunity that weakened the moral framework of democracy, as argued by Zaffaroni and other jurists (Zaffaroni, 2011, p. 45).

The CNV report, although it did not lead to criminal penalties, had a profound impact on public and educational debate. It served as a knowledge base for the production of films, documentaries, and books about the dictatorship period, besides being a reference for human rights education. The CNV's legacy ultimately lies in its ability to transform the "present past," ensuring that Brazilian society can no longer ignore the brutality of state repression (Souza & Chaves, 2024, p. 55).

Amnesty, the Crisis of Democracy, and the Fragility of the Rule of Law in the 21st Century

Amnesty is an exceptional measure that arises after a severe political rupture. The tension between amnesty and democratic consolidation was one of the "problems of consolidation" analyzed by political scientists such as Juan J. Linz and Alfred Stepan, who, in their work *Problems of Democratic Transition and Consolidation*, demonstrate how political arrangements at the moment of transition can create legacies of impunity that weaken the Rule of Law in the long term (Linz & Stepan, 1991, p. 55). Contemporary democracies, however, face even more complex challenges that go beyond historical legacies.

Currently, the Democratic Rule of Law (*Estado Democrático de Direito*) is under attack on a global scale. The political scientist Manuel Castells, in his work *Rupture: The Crisis of Liberal Democracy*, argues that distrust in institutions, the crisis of representativeness, and political polarization erode the social foundation of democracy (Castells, 2018, p. 105). The proliferation of disinformation and conspiracy theories,

fueled by social media, weakens public debate and undermines confidence in science and journalism, essential elements for an informed and critical society.

This scenario creates a fertile environment for the growth of authoritarian regimes, a phenomenon that Steven Levitsky and Daniel Ziblatt call "democratic backsliding" in *How Democracies Die*. They demonstrate how democratically elected leaders can dismantle the system from within by attacking the press, the judiciary, and oversight institutions, using legality itself to subvert democracy (Levitsky & Ziblatt, 2018, p. 25).

Western democracy, which considered itself consolidated, faces the rise of extremisms and the normalization of hate speech. The Brazilian amnesty, by pardoning crimes against humanity and weakening the principle of accountability, left an "open wound" in the national memory, as pointed out by Ananda Simões Fernandes and Tatyana de Amaral Maia (Fernandes & Maia, 2022, p. 12). Historical impunity allowed denialist narratives to thrive and debates about the authoritarian past to remain polarized.

This legacy of impunity resonates sharply in contemporary Brazil. The country is experiencing a moment of intense discussion about the protection of the Democratic Rule of Law, especially after events that jeopardized institutional stability. The approval of Law No. 14,197/2021, which repealed the old National Security Law and included crimes against the Democratic Rule of Law in the Penal Code, is a landmark in this debate. This new legislation criminalized offenses such as the "violent abolition of the Democratic Rule of Law" (*abolição violenta do Estado Democrático de Direito*), a direct response to recent threats and an attempt to strengthen legal defenses against coup attempts.

In the context of this new legislation, the institute of amnesty returns to the center of the debate. Part of society and the political spectrum advocate for amnesty for individuals involved in attacks on democratic institutions, arguing that this could pacify the country. However, this thesis is vehemently rejected by jurists and human rights defenders, who see it as a serious setback.

For them, granting amnesty for crimes that seek to annihilate democracy would be analogous to repeating the error of the 1979 amnesty, which pardoned the oppressors. This amnesty, which pardons violence against the State, was classified as a legal anomaly by the jurist Dalmo de Abreu Dallari (Dallari, 1999, p. 75). Pardoning those who attack democratic institutions would signal that the State is incapable of protecting itself and that impunity is a political bargaining chip.

Historical memory, therefore, emerges as a pillar of resistance. The struggle for memory, truth, and justice is not just a demand from the past, but an urgent necessity of the present so that democracy can strengthen itself and be protected from new attacks.

Final Considerations

The general objective of this research was to analyze the Brazilian amnesty as a complex political and legal instrument, examining its historical evolution and its consequences for democratic consolidation in the country. From the Empire to the 21st century, the study demonstrated that amnesty frequently served as a strategic mechanism of power to end conflicts and restore the political game, often to the detriment of full justice.

The initial sections addressed the theory of amnesty and the international and historical contexts, with a detailed look at the Empire, the Old Republic, and the *Estado Novo* periods, in which pardon was used to consolidate the power of the elites and control the opposition, as evidenced in the amnesties for the Balaiada, Praieira, and Chibata Revolts.

The methodology employed, based on the bibliographic review and the hypothetico-deductive method, allowed for an in-depth analysis of the contradictions of the Brazilian amnesty. The research focused on the hypothesis that the 1979 Law, by including state agents who committed atrocity crimes within its scope, functioned as a "pact of impunity."

This thesis was tested and validated through a comparative analysis of ADPF 153 in the Supreme Federal Court and the Inter-American Court of Human Rights ruling in the Gomes Lund Case. The literature review showed that the STF's decision prioritized the political stability of the transition, while the Inter-American Court privileged justice and human rights, demonstrating the legal and moral conflict generated by the bilateral pardon.

The legacy of impunity left by the 1979 amnesty became the focal point of the discussion. The analysis demonstrated that the absence of accountability for the crimes of the military dictatorship created a dangerous precedent, weakening the fundamental principle of the Democratic Rule of Law: the equality of all before the law. The amnesty for the oppressors, described by the jurist Dalmo de Abreu Dallari as a "legal anomaly," signaled that state violence could be pardoned in the name of "reconciliation," undermining the credibility of institutions and confidence in justice.

In this context, discussions about Transitional Justice and the National Truth Commission (CNV) gain relevance. The research highlighted the CNV's action as an advance in the search for the Right to Truth, which recovered historical facts and refuted official narratives.

The case study of Vladimir Herzog exemplified how the Commission was successful in establishing the truth, but the work was hampered by the absence of an effective justice mechanism. The lack of punishment for state agents, such as those who tortured and killed at the DOI-CODI, reinforced the idea that impunity became a structural characteristic of the Brazilian democratic transition.

Historical impunity allowed denialist narratives to thrive and debates about the authoritarian past to remain polarized. This legacy of impunity, which Ananda Simões Fernandes and Tatyana de Amaral Maia call the "present past," has become a structural vulnerability of democracy. The lack of consensus regarding state violence and the inexistence of effective punishment for human rights violators in the past have allowed hate speech and anti-democratic rhetoric to resurface with greater force in the present, putting the Rule of Law itself at risk.

The conclusions of this analysis reinforce that the 1979 amnesty was a lost opportunity for Brazil. The transition, while avoiding violent rupture, compromised the consolidation of a strong and mature democracy, which demands full accountability. For Desmond Tutu, the remembrance of the past and the search for truth are the first steps toward genuine reconciliation, something that Brazil opted not to fully follow, leaving an "open wound" in the national memory.

Given the current risks to democracy, the debate over amnesty in contemporary Brazil resurges with urgency. The new legislation that criminalizes the violent abolition of the Democratic Rule of Law and the discussion about the possibility of amnesty for those involved in attacks on institutions demonstrate that history is not resolved. Pardoning those who attack democratic institutions would be repeating the error of the past and signaling that the State is incapable of protecting itself.

Ultimately, the research concludes that to overcome the deadlock of the amnesty legacy, it is fundamental that Brazilian society and public institutions invest in memory policies and an educational system that reinforces the importance of debating and understanding the past, so that the errors are not repeated. The debate on amnesty, therefore, is not merely a historical topic but an urgent necessity of the present so that democracy can strengthen itself and protect itself from new attacks.

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RESUMO

Este trabalho analisa a evolução histórica da anistia no Brasil, desde o Império até a Lei de 1979, com o objetivo de demonstrar como este instituto foi utilizado como um mecanismo estratégico de poder para encerrar ciclos de violência e restaurar o jogo político, muitas vezes em detrimento da justiça. A metodologia empregada baseia-se na revisão bibliográfica e no método hipotético-dedutivo, examinando as contradições da anistia brasileira. A pesquisa argumenta que a Lei de 1979, ao conceder um perdão bilateral para crimes de lesa-humanidade, funcionou como um "pacto de impunidade", gerando um conflito com os princípios da Justiça de Transição. As conclusões apontam que o legado de impunidade dessa lei enfraqueceu o arcabouço moral da democracia, contribuindo para a descrença nas instituições e para a vulnerabilidade do sistema a desafios contemporâneos como a polarização e o autoritarismo. A anistia, portanto, não encerrou o passado, mas o tornou um "passado presente", que exige constante reflexão.

PALAVRAS-CHAVE: Anistia; História da Anistia; Democracia; Anistia e Democracia; Risco Político.

RESUMEN

La investigación analiza la evolución histórica de la amnistía en Brasil, desde el Imperio hasta la Ley de 1979, con el objetivo de demostrar cómo este instituto fue utilizado como un mecanismo estratégico de poder para clausurar ciclos de violencia y restaurar el juego político, a menudo en detrimento de la justicia. La metodología empleada se basa en la revisión bibliográfica y el método hipotético-dedutivo, examinando las contradicciones de la amnistía brasileña. La investigación argumenta que la Ley de 1979, al conceder un perdón bilateral por crímenes de lesa humanidad, funcionó como un "pacto de impunidad", generando un conflicto con los principios rectores de la Justicia Transicional. Las conclusiones señalan que el legado de impunidad de dicha ley debilitó la estructura moral de la democracia, contribuyendo a la desconfianza en las instituciones y a la vulnerabilidad del sistema ante desafíos contemporáneos como la polarización y el autoritarismo. Por lo tanto, la amnistía no clausuró el pasado, sino que lo convirtió en un "pasado presente" que exige una constante reflexión.

PALABRAS CLAVE: Amnistía; Historia de la Amnistía; Democracia; Amnistía y Democracia; Riesgo Político.