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**Democratic Transparency Pacts on Defense:**  
Assessing change in civilian access to military information in Brazil  
and Mexico.

**Pactos Democráticos de Transparência em Defesa:**

Avaliando as mudanças no acesso de civis a informações militares no Brasil e no México.

**Pactos Democráticos de Transparencia en Defensa:**

Evaluando los cambios en el acceso de civiles a informaciones militares en Brasil y en  
México.

**Karina Furtado Rodrigues**

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**Orientação: Prof. Octavio Amorim Neto**

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KARINA FURTADO RODRIGUES

**"DEMOCRATIC TRANSPARENCY PACTS ON DEFENSE: ASSESSING CHANGE  
IN CIVILIAN ACCESS TO MILITARY INFORMATION IN BRAZIL AND  
MEXICO"**

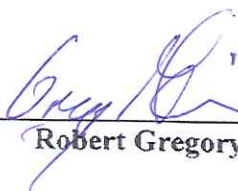
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**ASSINATURA DOS MEMBROS DA BANCA EXAMINADORA**



Octavio Amorim Neto  
Orientador (a)



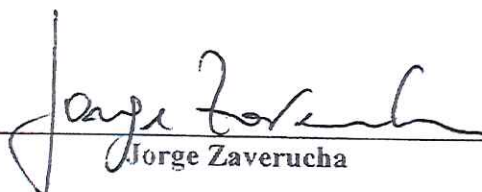
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## **Abstract**

What were the conditions that generated change in the civilian access to military records in Brazil and Mexico? Through these case studies, this dissertation explores in depth how these changes occurred and what were the strategies used by change-agents to promote or refute change. The study presents a discussion about the concept of transparency and how it can be properly applied to restricted documents of the armed forces, using the literature on concept formation. In addition, the theory of Gradual Institutional Changes and process tracing methods in order to undertake the historical analyzes of both cases. In both case studies, I concomitantly analyze the course of civil-military relations and transparency reforms in the XX Century and the beginning of the XXI Century. The study concludes that the changes in Brazil followed a layering pattern predominantly, with a long period of gradual reforms from 1988 to 2011. Mexico in turn presented the same mode of institutional change, nevertheless, political hegemony and the cooptation model of civil-military relations of the country leded it to less, but more drastic changes. Both countries present many challenges to transparency in defense, which is addressed in the final conclusions.

**Key-words:** institutional change, transparency in defense, civil-military relations

## Resumo

Quais foram as condições políticas que desencadearam mudanças no acesso de civis a documentos e arquivos militares no Brasil e no México? Através destes estudos de caso, este estudo se propõe explorar com profundidade como estas mudanças ocorreram e quais foram as estratégias utilizadas pelos atores para promover mudança ou preservar o status quo. A tese apresenta discussão sobre o conceito de transparência e como pode ser aplicado às forças armadas, utilizando-se de literatura focada na formação de conceitos. Além disto, utilizou-se da teoria de Mudanças Institucionais Graduais e o método do *process tracing* para análise histórica dos casos do Brasil e México. Em ambos os estudos de caso, analisou-se a trajetória das relações civis-militares conjuntamente às reformas em transparência durante todo o século XX e início do século XXI. O estudo concluiu que as mudanças no Brasil foram predominantemente no formato de camadas (*layering*), com um longo percurso de reformas graduais desde 1988 até a aprovação da Lei de Acesso à Informação em 2011. Já no México, o tipo de mudança predominante também foi no formato de camadas, contudo, a hegemonia política e o modelo de cooptação das forças armadas pelos governos levaram o país a ter menos mudanças, porém mais profundas. Ambos países enfrentam muitos desafios à transparência em defesa, o que é explorado nas conclusões finais.

**Palavras-chave:** mudança institucional, transparência em defesa, relações civis-militares

## Resumen

¿Cuáles fueron las condiciones políticas que desencadenaron cambios en el acceso de civiles a documentos y archivos militares en Brasil y México? A través de estos estudios de caso, este estudio se propone explorar con profundidad cómo estos cambios ocurrieron y cuáles fueron las estrategias utilizadas por los actores para promover cambios o preservar el *status quo*. La tesis presenta una discusión sobre el concepto de transparencia y cómo puede ser aplicado a las fuerzas armadas, utilizando la literatura enfocada en la formación de conceptos. Además, se utilizó la teoría de cambios institucionales graduales y el método del *process tracing* para el análisis histórico de los casos de Brasil y México. En ambos estudios de caso, se analizó la trayectoria de las relaciones cívico-militares conjuntamente con las reformas en transparencia durante todo el siglo XX e inicio del siglo XXI. El estudio concluyó que los cambios en Brasil fueron predominantemente en el formato de capas, con un largo recorrido de reformas graduales desde 1988 hasta la aprobación de la Ley de Acceso a la Información en 2011. Ya en México, el tipo de cambio predominante también fue en el formato de capas, sin embargo, la hegemonía política y el modelo de cooptación de las fuerzas armadas por los gobiernos llevaron al país a tener menos cambios, pero más profundos. Ambos países enfrentan muchos desafíos a la transparencia en defensa, lo que se explora en las conclusiones finales.

**Palabras-clave:** cambios institucionales graduales, transparencia en defensa, relaciones cívico-militares

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## Glossary

**ABIN** – Agência Brasileira de Inteligência ([Brazil] Brazilian Intelligence Agency)

**ANAC** – Agência Nacional de Aviação Civil ([Brazil] National Agency of Civil Aviation)

**BNDES** – Banco Nacional do Desenvolvimento ([Brazil] National Development Bank)

**CAPES** – Coordenação de Aperfeiçoamento de Pessoal de Nível Superior ([Brazil] Coordination of High Education Improvement)

**CCAI** – Comissão Mista de Controle de Atividades de Inteligência ([Brazil] Joint Commission for the Control of Intelligence Activities)

**CCJC** – Comissão de Constituição e Justiça e de Cidadania ([Brazil] Senate's Commission on Constitution, Justice and Citizenry)

**CCT** – Comissão de Comunicação e Tecnologia do Senado ([Brazil] Senate's Communications and Computing Commission)

**CGI** – Comissão Geral de Investigações ([Brazil] General Commission of Investigations)

**CGU** – Controladoria Geral da União ([Brazil] Federal Comptroller-General)

**CIDIC** – Código de Indexação de Documento que contém Informação Classificada (Documental Indexation Code)

**CISEN** – Centro de Investigación y Seguridad Nacional ([Mexico] Center of Investigation and National Security)

**CNDH** – Comisión Nacional de Derechos Humanos ([Mexico] National Commission for Human Rights)

**CNDH** – Comisión Nacional de Derechos Humanos ([Mexico] National Commission on Human Rights)

**CONARQ** – Conselho Nacional de Arquivos ([Brazil] Council for National Archives)

**CRE** – Comissão de Relações Exteriores e Defesa Nacional do Senado ([Brazil] Senate's Commission of Foreign Affairs and National Defense)

**CREDEN** – Câmara de Relações Exteriores e Defesa Nacional do Conselho de Governo ([Brazil] Chamber of Foreign Affairs and National Defense)

**CSN** – Conselho de Segurança Nacional ([Brazil] National Security Council)

**CTASP** – Comissão de Trabalho, de Administração e Serviço Público ([Brazil]

**DOU** – Diário Oficial da União ([Brazil] Brazilian Federal Register)

**EMCFA** – Estado-Maior Conjunto das Forças Armadas ([Brazil] Joint Chiefs of Staff of the Armed Forces)

**EME** – Estado-Maior do Exército ([Brazil] General Staff of the Army)

**EMFA** – Estado-Maior das Forças Armadas ([Brazil] Chief of Defense Staff)

**END** – Estratégia Nacional de Defesa ([Brazil] National Strategy on Defense)

**e-SIC** – Serviço Eletrônico de Informação ao Cidadão ([Brazil] Electronic Citizen Information Service)

**EZLN** – Ejército Zapatista de Liberación Nacional ([Mexico] Zapatista National Liberation Army)

**FEMOSPP** – Fiscalía Especial para Movimientos Sociales y Políticos del Pasado ([Mexico] Special Commission for Social and Political Movements of the Past)

**FOI** – Freedom of Information

**GLO** – Operações de Garantia da Lei e da Ordem ([Brazil] Operations for Law and Order Enforcement)

**IACHR** – Inter-American Commission on Human Rights

**IFAI** – Instituto Federal de Acceso a la Información y Protección de Datos ([Mexico] Federal Institute for Access to Information and Data Protection)

**IFE** – Instituto Federal Electoral ([Mexico] Federal Electoral Institute)

**IGSAS** – Instruções Gerais para Salvaguarda de Assuntos Sigilosos ([Brazil] General Instructions for the safeguard of restricted subjects)

**INAI** - Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales ([Mexico] National Institute for Access to Information and Personal Data Protection)

**IPEA** – Instituto de Pesquisa Econômica Aplicada ([Brazil] Applied Economic Research Institute)

**LFTAIPG** – Ley Federal de Transparencia y Acceso a la Información Pública ([Mexico] Federal Law of Transparency and Access to Public Information)

**LSN** – Ley de Seguridad Nacional ([Mexico] National Security Law)

**MOD** – Ministry of Defense

**NSC** – Núcleo de Segurança e Credenciamento ([Brazil] Accreditation and Security Nucleus)

**NUP** – Número Único de Protocolo (Unique Protocol Number)

**OGP** – Open Government Partnership

**OM** – Organização Militar ([Brazil] Military Organization)

**PAN** – Partido Acción Nacional ([Mexico] National Action Party)

**PDN** – Política de Defesa Nacional ([Brazil] National Policy on Defense)

**PGR** – Procuraduría General de la República ([Mexico] Attorney General Office)  
**PNR** – Partido Nacional Revolucionario ([Mexico] Revolutionary National Party)  
**PRD** – Partido de la Revolución Democrática ([Mexico] Democratic Revolution Party)  
**PRD** – Partido de la Revolución Democrática ([Mexico] Democratic Revolution Party)  
**PRI** – Partido Revolucionario Institucional ([Mexico] Institutional Revolutionary Party)  
**PRM** – Partido de la Revolución Mexicana ([Mexico] The Mexican Revolution Party)  
**RTI** – Right to Information  
**SAE** – Secretaria de Assuntos Estratégicos ([Brazil] Strategic Matters Secretary)  
**SEGOB** – Secretaría de Gobernación ([Mexico] Ministry of Interior)  
**SIAN** – Sistema de Informações do Arquivo Nacional ([Brazil])  
**SIC** – Serviço de Informação ao Cidadão ([Brazil] Citizen Information Service)  
**SINAR** – Sistema Nacional de Arquivos ([Brazil] National Archival System)  
**SISBIN** – Sistema Brasileiro de Inteligência ([Brazil] Brazilian System of Intelligence)  
**SNI** – Serviço Nacional de Informação ([Brazil] National Service of Information)  
**SNI** – Serviço Nacional de Informações ([Brazil] National Information Service)  
**TCI** – Termo de Classificação de Informação ([Brazil] Information Classification Term)

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# **Part I – Setting the scene**

## **Chapter 1 – Introduction**

Which conditions define change, for better or for worse, in the civilian access to military records? What are the strategies political actors use to conquer change, and which political actors are the most important ones for these changes to happen? These are the questions this work aim to answer.

The idea of transparency in national security issues is quite new for democracies, and most governments and civilian groups still do not know how to deal with the issue - especially in the Latin American context. The very essence of the dilemma is that democracy requires participation and openness, but keeping the state secure often involves keeping secrets.

With the emergence of a global advocacy for transparency in governments, the topic naturally gained attention and resistances. The challenge for states is how to find a balance between the right to secrecy and the right to know. However, this is not a simple task: it involves the perception of threats of each country, the recognition of new blind spots related to technology and open data, the education of civilians in defense matters, and also the building of new consensus among defense forces and civilians regarding safe thresholds of disclosure.

Some of the most affected institutions in this discussion are the armed forces. The nature of their work is somewhat related to being able to surprise the enemy or build deterrence capabilities – things that are impossible to make without secrecy (Colaresi, 2014). However, unrestricted powers to operate in secrecy can create spaces that favor corruption, inefficiency and the impossibility to make judgements regarding the success of military strategies.

The fact is that, regardless of an agreement on what should be disclosed or not, transparency demands are higher every day. Today nearly 110 countries have laws defining ways to citizens to access public information. According to the Right-to-Information Rating, Latin American Freedom of Information laws are among the strongest ones worldwide: Mexico in the 1<sup>st</sup> place, El Salvador is in the 8<sup>th</sup> position, Brazil is in the 22<sup>nd</sup> position, and Colombia holds the 30<sup>th</sup> position. The only countries in Latin America that do not have any specific legal provisions about freedom of information are Costa Rica, Cuba and Venezuela.

It is important to answer these questions for policy and theory-oriented reasons. First, they affect our notion of the military in relation to democratic stability: democratic civilian control (and also a military effectiveness and efficiency assessment) is not possible without the

military being subject to some form of accountability. This assertion is true even for non-democracies: if an institution is to be trusted the security and defense of a country, civilian trust should come from well assessed knowledge of security institution, which in practice is way more than the trust showed in opinion polls with the population in general.

Second, they relate to transparency advocacy in defense topics. If civilian leaders want to promote more transparency in defense issues, the establishment of a democratic civilian control (not constantly subject to political bargaining with the military), is essential. In order to do that, a better civilian understanding of the topic is needed, to assess properly what they must know and what they might not. On the contrary of the belief that civilians are not interested – maybe the legislature, but not other civilian groups – we contend that when they want to be informed, but there are many barriers.

Third, there is a theoretical gap in the discussions about transparency and national security. The conceptual description of transparency rarely takes into account the legitimacy of secrecy. Nevertheless, secrets in democracies should be just ‘transparency in retrospect’, using Hood and Heald’s (2006) terminology. In order to solve this gap, Chapter 2 explores in depth the concept of transparency and how to apply it to secret documents.

In this sense, and from a Brazilian scholar perspective, choosing Mexico to compare Brazil with can bring a better understanding of transparency and the challenges of building democratic civilian control in contexts where the armed forces are increasingly being deployed internally. Mexico is the great international model of Freedom of Information legislation and institutional practice, both countries struggle with police corruption and the use of the armed forces as a stopgap solution, and last, but not least, according to the Government Defence Anti-Corruption Indexes of 2013 and 2015 the advances in the Mexican right-to-information seemed to had real effects in the country’s tendency to face corruption in defense, and exactly the opposite occurred in Brazil

However, some questions remain unanswered: does this general progressive transparency agenda really apply to the conservative institutions being called to provide national security – the armed forces? Do they comply with the norm? If yes, are they complying with the norm because the norm is loose and benefits secrecy?

This context leads us to the following proposition 1: *talking about transparency in general is not the same as talking about transparency of defense policies and actions. Sometimes strong transparency laws can mean nothing to information disclosure for the*



*military, since these regulations often do not override secrecy laws. These laws can be tricky, and their exceptions are not always clear.*

Methodologically speaking, I use the historical-comparative approach of Mahoney and Thelen's (2010) through their theory of Gradual Institutional Change, which I present in Chapter 3. Historical analyses help to understand *how* political process happened and *what* were their results, especially when they are gradual changes. These ongoing-based changes are often overlooked by the literature, but through the years they can evolve into big structural changes.

In sum, the authors contend that there are four modes of gradual institutional change: displacement, layering, drift and conversion: **displacement** happens when there is the removal of existing rules, with the introduction of new ones; **layering** happens when there is the introduction of new rules without removing previous ones – new rules are on top of or alongside the old ones; **drift** occurs when existing rules assume new meanings and impact due to changes in the environment; and **conversion** occurs when there is an intentional and strategic redeployment of existing rules.

Each mode is related to the locus of institutional transformation and are generally related to a certain type of Dominant Change-Agent. The types of different change-agents are: **insurrectionaries**, when agents do not seek to preserve institutions and do not follow institutional rules, mobilizing against the institution; **sybionts**, who benefit from existing institutions to achieve their own goals (which the institution can benefit or not), not necessarily playing by the book (high discretion); **subversives**, who play by the book, working within the system to change it; or opportunists, who can often lead to organizational inertia if they are satisfied - when there is dissatisfaction, they can work in favor of or at expense of the institution in a context of high discretion and low veto powers.

The aim of this study was to apply the Gradual Institutional Change framework of analysis to each legal change in the 'transparency of secret records' variable in both countries during democratization (1985 – 2014), also having in mind previous historical institutional developments in transparency and civil-military relations. I also apply the process-tracing methodology to test the strength of the evidence in characterizing the types of change and the change-agents.

My main findings show that both countries followed a Layering pattern of change. In Brazil changes were slow and constant, showing a solid maintenance of some military veto possibilities that eroded with time, but specially because of some political actors often as presidents (Fernando Henrique Cardoso, Dilma Rousseff), as ministries of defense (Nelson

Jobim), or the state bureaucracy (Ministry of Justice, National Archives). Political pluralism enabled a series of changes, nevertheless, in the face of strong consensus, no radical changes had space.

The two most important changes in Brazil were the ‘secrecy decree’ 2.134/02, representing a setback; and the Freedom of Information Law 12.527/11. Both changes caused friction between civilians and the military. Regarding the military, there is the prevalence of the symbiont change-agent because Symbionts benefit from current institutions (in a beneficial way or in a parasitic way), and since they benefit from the status quo, they act against change.

Mexico presented fewer but more drastic changes, which can be explained by its majoritarian political system and by the extraordinary hegemony of PRI in the country for decades. At the same time, the Mexican military faced very few variations in their veto possibilities and discretion interpreting the laws until 2002. At this point of the study the reasons are well understood – due to a deep proximity between PRI, the state machinery and the armed forces, civilian control was possible; not because of a civilian democratic control, and more because of cooptation and non-interference in military issues. The resulting changes followed the layering pattern of change, with one major setback in 2005 with the National Security Law.

The comparisons between the two cases highlight mainly three issues regarding institutional change and transparency in defense: pluralist environments burst change; civilian engagement is important in strengthening transparency provisions; strong military prerogatives do not favor transparency in defense if we take the archival perspective of access. Since military documents are mostly classified, disclosure depends on good archival management and a good access to those files.

This chapter is organized as follows: in this introduction, I present an overview of the research; in the first section, I present the dependent variable ‘transparency of secret records’; the second section explores the problem of civilian knowledge regarding defense issues; the fourth section presents the research design and the fifth section presents the plan of the dissertation.

### **1.1. ‘Transparency of secret records’ as the dependent variable**

It is often difficult to accommodate secrecy in democracies. As Thompson contends:

Some of the best reasons for secrecy rest on the very same democratic values that argue against secrecy. The democratic presumption against secrecy (and in favor of publicity) can be defended, but not so simply as is usually supposed. The conflict

involves this basic dilemma of accountability: democracy requires publicity, but some democratic policies require secrecy (Thompson, 1999, p. 182).

As exposed in the last subsection, many international initiatives have already debated ways of moderating secrecy, establishing legal standards and suggesting the creation of specific institutions. However, between setting standards and solving the secrecy dilemma in democracies, there is still a long road.

For example: among the right-to-know principles (Article 19, 1999), the Maximum Disclosure one establishes that transparency should be the rule and secrecy the exception. This principle implies that the burden of proof of the legitimacy of disclosing a piece of information should rest on the state. However, that is not what happens in practice. The legitimacy of the requester's right-to-know is still contested by the state, which is the institution that carries the responsibility of the decision of disclosing the information or not, and also the responsibility to protect the information. Concomitantly, in practice citizens have to prove their right in order to access the information.

Then how can democracies build more democratic secrecy systems? One could blindly trust the agency that produced the information to judge its sensitiveness – which is what happens in several cases where the political class is not interested enough in defense issues. However, it is already known that giving unlimited discretion to a bureaucracy can be a formula for ineffectiveness, corruption and corporatism (Mendel, 2008; Michener, 2010; Stepan, 1980). “Officials’ ability to make optimal judgments is undercut by their obligation to disregard many relevant concerns and by their largely unchecked freedom to base conclusions on political and personal self-interest” (Schulhofer, 2010, p. 10).

The goal of being transparent in defense gets more difficult also with the new challenges technology brings. Internet opened a vast possibility of information gathering, and intelligence has also adapted to that through Open Source Intelligence (OSINT) (Mercado, 2003). This new environment raised concerns that can be represented by the ‘mosaic theory’: “In the context of national security, the mosaic theory suggests the potential for an adversary to deduce from independently innocuous facts a strategic vulnerability, exploitable for malevolent ends” (Pozen, 2014, p. 630).

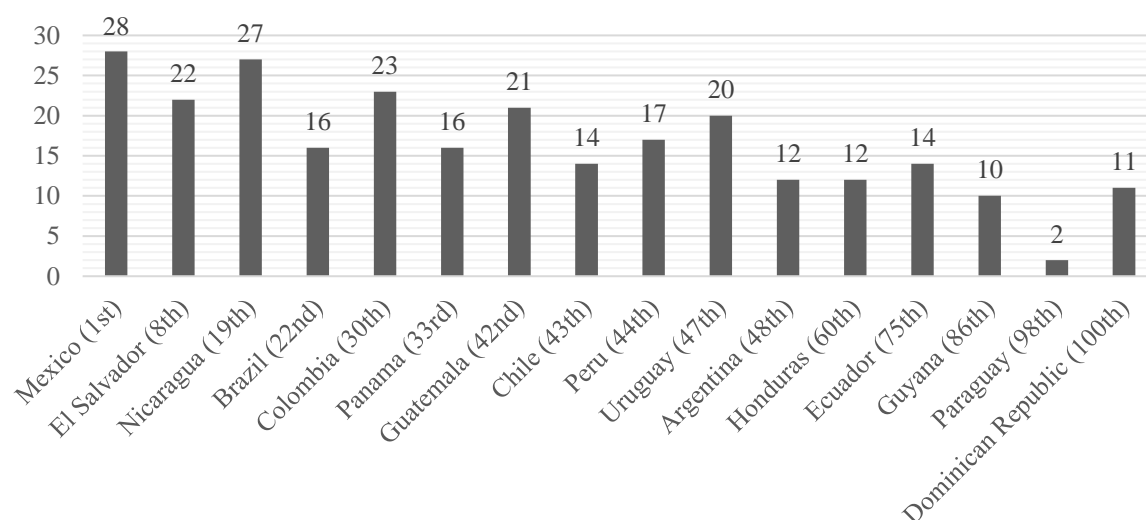
The mosaic theory can be used only rhetorically to justify secrecy in disclosure appeals, but can also be formalized in the law, which implies a dangerous institutionalization of the

theory in government's practices. In practice, this theory can justify any information withholding (Pozen, 2014; Wells, 2006).

Despite the challenges, there are still some ways of giving this burden to the state and making secrecy democratic. Some mechanisms can redistribute this decision power, creating checks and balances forces to ensure that secrecy is being used in a democratically and legal way. For instance, The RTI Rating evaluated the legal strength of Freedom of Information laws for Exceptions and Refusals<sup>1</sup>, and in Latin America the only countries with more than 60% of compliance with international standards are Mexico, Nicaragua, Colombia, El Salvador and Guatemala. Unfortunately, many Freedom of Information (FOI) Laws establish loose limits to information withholding on military and national defense issues.

Figure 1 shows the scores for this category of all Latin American countries. It is interesting to notice that it is not quite clear if being in a higher position in the rank indicates necessarily better provisions in Exception and Refusals. One example of that: Brazil stands in the 22<sup>nd</sup> position of the general ranking, but has less points in the category 'Exceptions and Refusals' in relation to Colombia (33<sup>rd</sup> position), Guatemala (42<sup>nd</sup> place), Peru (44<sup>th</sup> place) and Uruguay (47<sup>th</sup> place).

**Figure 1 – The Global Right to Information Scores on Exceptions and Refusals.**



Source: Global Right to Information Rating (RTI Rating, 2013)

<sup>1</sup> This category of the ranking provides substantial information about how FOI laws can influence secrecy on National Defense, since its indicators measure: (1) the prevalence of the FOI law over other secrecy regulations, (2) reasons to classify in concordance with international standards, (3) the existence of harm tests to confirm exceptions to access, (4) the existence of mandatory disclosure of documents when classification ends, (5) recollection and protection of third part information; (6) the existence of mechanisms that ensure the partial access to documents that are not fully classified, and (7) the mandatory need to respond the requester, even if the answer is the impossibility to deliver the information. The maximum amount of points of this category is 30 points.

What Figure 1 shows is that transparency in general is not the same as transparency on defense: that is the main reason I devote a whole chapter to discussing where transparency on defense really fits into the debate of access to information. The Exceptions and Refusals category of the RTI Rating comprises legal features of freedom of information laws that does not necessarily translate into practice. The de facto dimension of these laws is a different subject. However, if legal provisions are not sufficient to guarantee transparency, they are definitely necessary.

**Table 1 - Indicators of the transparency of secret records concept**

Transparency of secret records				
Visibility			Inferability	
Completeness		Findability		Verifiability
1	Are there limits to the reasons to classify documents?	10	Are there public lists of classified documents?	16 Are there harm tests?
2	Can documents be released with only classified parts hidden?	11	Are there public lists of declassified documents?	17 Are there Public Interest tests?
3	Does the AF have to make public versions of documents?	12	Do classified documents become automatically public when the classification period is over?	18 Supervision of third parts: access to information
4	Is the right to access public records legally ensured?	13	Are there public lists of existent archives?	19 Supervision of third party <b>with sanction powers</b> : access to information
5	Are there classification tiers / is there a classification system?	14	Are we able to find legal provisions that establish that the content of each archive should be summarized and public?	20 Supervision of third parts: archival management
6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	15	Are we able to find a clear process for citizens to contest a classification decision?	21 Supervision of third party <b>with sanction powers</b> : archival management
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?			22 Are we able to find a clear definition of who can classify documents?
8	The FOI legislation trumps other secrecy provisions?			
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?			

Despite giving a clearer glance on which elements constitute transparency on defense, these elements still do not offer a conceptual understanding of how this constitutes transparency and how to evaluate transparency in secretive institutions.

In Chapter 2 I show the principles of concept formation under Goertz (2006b) view, and how it translates into different types of transparency which better accommodate the nature of these institutions. The concept of transparency I use as the starting point of the operationalization of conceptual adjectivation is Michener and Bersch's (2013), which is composed by *visibility* and *inferability* as necessary and jointly sufficient elements for transparency to exist. Considering different levels of visibility and inferability in a 2 per 2 matrix, four types of transparency emerge: from a fuller transparency to the transparency of secret records.

The dependent variable of this thesis is 'transparency of secret records' and it takes into consideration the natural restrictions on the visibility and inferability levels of the transparency concept when dealing with defense-related issues. In order to correctly assess transparency in these cases, it is necessary to consider different indicators, which are 16 – presented in Table 1.

In practice, the evaluation of 'transparency of secret records' indicators can focus both on de jure and de facto practices, and a joint evaluation of the four types of transparency regarding a particular institution is also possible. The aim of focusing solely on transparency of secret records relates to the very essence of the research question, which is about democratic secrets. When these secrets do not have a democratic processual basis underpinning them, they can represent much more than national defense – they can be a safe place for corruption, inefficiency and lack of cooperation.

## **1.2. Civil-military relations as an explanatory variable**

The civil-military relations' literature has arisen mostly from the necessity of answering the question "Who guards the guardians?", especially after World War II. (Bruneau & Matei, 2008). As Serrano contends,

In its broader sense, the concept of civil-military relations refers to the relationship between the armed forces and the rest of society. A narrower definition relates to the state of subordination of the armed forces to the legally constituted authorities of the state. Other definitions have underlined the idea of a balance between the armed forces and society, which results both from the interaction and resulting patterns of behaviour between the armed institution and political actors, and from the actual power held by the military institution in its role as a political actor. In fact the idea of civil-military relations poses a dual problem: on the one hand, that of achieving the effective

subordination of the armed forces by the civilian government, and on the other, that of ensuring that the resort to force by civilian authorities takes place within constitutional and legitimate limits. (Serrano, 1995, p. 425)

Information availability and its relation to civil-military relations have been overseen, though. The only debate regarding this relationship happened more than a decade ago, with no follow ups. In 2005 two major scholars of the field of civil-military relations raised an interesting debate about information asymmetry and the lack of incentives Latin American civilians have to engage in debates about national security and defense.

In his article “*Political Management of the Military*”, Pion-Berlin (2005) argues that the expectation of civilian involvement with defense comes from a western model of civil-military relations, which doesn’t apply to less consolidated democracies. In some of them, civilians are simply not interested in defense and national security, especially when there is an absence of inter-state conflicts.

In these cases, being a defense specialist simply does not help politicians that much to get more votes, which he considers the ultimate incentive to undertake policies and legislation. They list the reasons why this subject would not translate into votes: the absence of external threats in the majority of Latin American countries, the avoidance of the topic due to the region’s legacy of military coups, the expectation of peace that shaped defense policies in a way that makes countries simply unprepared to go to war with each other, or the low impact of military employment in these countries (Pion-Berlin & Trinkunas, 2007).

Bruneau (2005) wrote the article “*Civil-Military Relations in Latin America: The Hedgehog and the Fox Revisited*” in response to Pion Berlin’s article. He argues that in a consolidated democracy, there should not exist parts of the state ‘not controlled’ by civilians. Politicians are expected to know little about many issues (like the fable’s fox<sup>2</sup>), but should know sufficiently about defense in order to be able to maintain the democratic civilian control.

There are some examples that support the need for civilian knowledge about defense in a corporatist environment. One of them is Nicaragua, in which the military refused to execute the order of the president Enrique Bolanos and Defense minister Jose Guerra to destroy thousands of soviet missiles stored in the country. Another example is Venezuela, where the

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<sup>2</sup> The Fox and the Hedgehog Fable: “A FOX swimming across a rapid river was carried by the force of the current into a very deep ravine, where he lay for a long time very much bruised, sick, and unable to move. A swarm of hungry blood-sucking flies settled upon him. A Hedgehog, passing by, saw his anguish and inquired if he should drive away the flies that were tormenting him. "By no means," replied the Fox; "pray do not molest them." "How is this?" said the Hedgehog; "do you not want to be rid of them?" "No," returned the Fox, "for these flies which you see are full of blood, and sting me but little, and if you rid me of these which are already satiated, others more hungry will come in their place, and will drink up all the blood I have left."

military has publicly declared fidelity to Nicolás Maduro, after Chávez's death (Bruneau, 2005; Presse, 2013).

Notice that using incentives as a central element of his argument implies a rational-choice institutionalist view of behavior. The underpinning question of his rationale is: is it worthwhile to know something? Is this knowledge going to be an unnecessary cost or it will bring benefits? As an illustration, Bowles, Hamilton and Levy (Bowles, Hamilton, & Levy, 2013) give an example of the calculation behind the decision of not knowing:

“even if a voter cares deeply about politics and new information would help alter his selection of candidates, the likelihood that a single individual's showing up at polls and casting his ballot will alter the election outcome is so small that the costs of becoming better informed outweigh the benefits of searching out additional information.” (p. xiv)

This calculation is called rational ignorance, a concept created by Downs (1957), which for the example mentioned above means that *“from an individual perspective, investing in gaining more knowledge about government and politics might not pay, even though society as a whole might benefit if voters were more informed”* (Bowles et al., 2013).

Bruneau (2005), Pion-Berlin & Trinkunas (2007) and Pion-Berlin (2006) do agree that Latin American politicians have chosen rational ignorance over knowledge on national defense, even if they do not agree in the depth of knowledge required for civilians to sustain civilian control. Nonetheless, only recognizing that there is a lack of incentives to knowledge, or pointing out that it would be beneficial to democracy if civilians knew the minimum of defense to be considered ‘foxes’ does not solve the dilemma. This viewpoint overlooks some important elements of the discussion, which I point out in the following paragraphs:

**1. The lack of incentives today does not necessarily imply a lack of incentives-to-knowledge tomorrow.** Institutions only are institutions when they tend to last over time. However, at the same time they are constantly changing – gradually, most of the times. The timeframe of analysis, then, is crucial in understanding the dynamics of changes on incentives. Incentives are not always the same, and the enactment of one single reform in civil-military relations could change them – increasing or decreasing the veto possibilities of some political actors, restricting or broadening discretion in the implementation of the law (James Mahoney & Thelen, 2010; Vieira, Câmara, & Gomes, 2014).



**2. Politicians are the most mistrusted group of actors in modern Latin American democracies, while the armed forces are one of the most trusted ones<sup>3</sup>.** This makes it almost impossible for strong coalitions of change to emerge including these two actors<sup>4</sup>. The tension between these two groups is already given, unless they share values to some extent – which is the case of Mexico. Secondly, in societies that lived military authoritarian regimes, citizens who trust the military will tend to overlook mistakes and oversight of the forces, while opposition civilian groups will tend to have difficulties in accessing relevant information.

**3. These authors imply the presence of a divided pattern of civil-military relations for Latin America.** which implies a deeper separation between civilians and the military. In this view, defended mostly by Huntington, civilians should not get too much involved in defense issues, since this involvement would politicize the armed forces and reduce their professionalism. However, not all countries follow this pattern, and even among countries that follow it, there can be different levels of separation under very specific institutional forms.

**4. Civilians who are interested in defense issues might not be considered legitimate to have access to some information and to influence defense decision-making.** This is an outcome of divided pattern of civil-military relations: if civilian involvement in defense is seen as unqualified or helpless, requests for information from civil society or other civilian parts of the government can be easily ignored or answered in a superficial way. In conclusion, it is not clear if there is lack of interest or if civilians are just being ignored.

If one side of the coin is civilian unwillingness to know about defense, the other side of the coin is military resistance to openness – as the 4<sup>th</sup> consideration above mentions. Serra (2010) states that the military have created ‘reserve domains’ on defense, making it harder for civilians to access these policy areas. Using another term to define reserve domains, Stepan (1988) talks about military prerogatives, which are areas where the military “have an acquired right or privilege, formal or informal, to exercise effective control over its internal governance, to play a role within extra military areas within the state apparatus, or even to structure relationships between the state and political or civil society” (Stepan, 1988, p. 93).

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<sup>3</sup> Power and Jamison (2005); Latinobarómetro (2015).

<sup>4</sup> I would like to thank Prof. David Mares for this insight.

Some scholars even argue that more transparency does not necessarily lead to the strengthening of democracy in an international context. The reason for that is that more transparency can help simultaneously well-intended organizations, governments, and fundamentalist groups (Lord, 2006; Pozen, 2014).

Despite the lack of incentives for discussing defense in Latin America, globally the subject has been the focus of many organizations attempting to create democratic standards for secrecy on national defense. The first attempts to set boundaries to national defense secrecy were translated into the Johannesburg Principles, released in 1995; and the Principles of Oversight and Accountability for Security Services in a Constitutional Democracy, launched in 1997<sup>5</sup> (Gutiérrez, 2010; Open Society Justice Initiative, 2013).

In 2013, the Open Society Foundations launched another similar work called the Global Principles on National Security and the Right to Information, The Tshwane Principles (Open Society Justice Initiative, 2013). They establish guidelines for right to information laws to be in accordance with freedom of information and expression, and human rights international standards. Among these guidelines, some important features are the existence of independent transparency oversight authorities, full review of denied information requests by the courts, and government's ownership of the burden to prove the need of secrecy.

The Transparency International UK has also been an active advocate for more transparency in defense. Supporting the Tswane Principles, they have launched in September 2014 the study 'Classified Information: A review of current legislation across 15 countries & the EU'<sup>3</sup>. They also have built two transparency indexes in defense: The Government Defence Anti-Corruption Index<sup>4</sup>, and the Defence Companies Anti-Corruption Index<sup>5</sup>.

These initiatives are in consonance with the transition of an 'absolute risk avoidance' doctrine of managing military records, towards a more open and 'risk management' approach. This means a mind shift where transparency is the rule and secrecy is the exception. However, the challenges of implementing and enforcing regulations are still there.

Given the increasing importance of transparency, including in defense issues, it is possible to try to predict patterns of openness and civilian engagement through the main theory streams of the civil-military relations' literature. In the debates regarding how to achieve this

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<sup>5</sup> Launched by the Centre for National Security Studies and the Polish Helsinki Foundation for Human Rights.

<sup>3</sup> See more in <http://www.ti-defence.org/publications/dsp-pubs/304-classified-information.html>

<sup>4</sup> <http://government.defenceindex.org/>

<sup>5</sup> <http://companies.defenceindex.org/>

effective subordination of the armed forces, the literature follows two main opposite paths: the divided and the integrated patterns of civil-military relations<sup>6</sup> (Egnell, 2009).

The premise of the **divided approach** is that civilians should not interfere in military actions and decisions, respecting their professionalism. In this view, professionalism and military subordination would emerge as a response to the civilian respect for military knowledge, under the assumption that the armed forces would remain apolitical if not bothered (Feaver, 1996; Huntington, 1957; Pion-Berlin, Ugues, & Esparza, 2012). The rationale is that “a professional military will become less and less professional the more autonomy on military matters is violated” (Feaver, 1996, p. 161). This statement suggests that civilians should not interfere in “technical” military decisions, in order to keep them professional.

Nevertheless, Huntington might have been somewhat naive when implying these assumptions. There is already an agreement among scholars that the military profession is a political activity in essence, and professionalism alone is not enough to guarantee military subordination (Feaver, 1996; Jaskoski, 2013; A. S. Velázquez, 2008; Zaverucha, 1994). Others contend that this separation between civilians and the military cannot generate effectiveness and efficiency in military operations (Egnell, 2009; Feaver, 2009).

Under a corporatist view of the State, the armed forces will tend to be suspicious about rulers and politicians, who would not guide their actions in favor of the nation, but only for the benefit of themselves. As political actors, they will tend to act in favor of their own survival. This element changes the perception about the motivation behind the armed forces’ actions, that are partially for the benefit of the society, and partially to benefit themselves (Pion-Berlin et al., 2012; Stepan, 1980).

This belief leads to a self-protection behavior of the armed forces or, in other words, the justification of a corporatist behavior. Accordingly, military officials would not see any harm in deviating some of their functions to gain political leverage. This includes developmental missions that might include the construction of roads and bridges, agricultural assistance, the distribution of food, or the provision of health and educational services, and also internal missions that might involve repression of citizens (Pion-Berlin et al., 2012; Stepan, 1980).

The premise of the **integrated approach** is that the armed forces are a creation of the larger social structure. They are a microcosm of the society and should reflect it; civilians and the military should reflect each other and work closely to achieve effectiveness. Civilians

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<sup>6</sup> Egnell’s (2009) terminology.

should not be laymen in defense matters, which would change the armed forces from an institutional model of functioning to an occupational one: a model in which compensations are monetary but primarily symbolic, constituting a special and distinguished group. The occupational model, in turn, follows the marketplace logic, where compensations are mainly monetary and reflect individual skill levels (Feaver, 1996; Janowitz, 1960; Moskos, 1977, 1986).

One of Janowitz claims is that the military should be prepared to deliver deterrence and limited war, accepting also a constabulary (policing) role. This means that external threats would no longer be the only drivers of the military role. He admits that this role creates new challenges to the civilian control, since being responsible for domestic military operations can boost the armed forces' political power within the state. His answer to these challenges is having more civilian oversight (Feaver, 1996; Janowitz, 1960).

The integrated approach has made several critiques to the classic-professional approach, advocating a greater integration between the military and the civilians. The main difference here is the extent of defense knowledge considered healthy sharing with the civilians (Barany, 2012; Feaver, 1996, 2009).

Another innovation of the integrated approach is the relativity of civilian control. According to Feaver (1996), in this approach "the military will obey in part out of Huntingtonian 'self-imposed standards' and in part out of "meaningful integration with civilian values" (p. 166). This implies new challenges in enhancing civilian control, and the Janowitz's answer to these challenges is having more oversight.

Each one of these patterns brings different levels of legitimacy to civilian actors to master defense issues and to exert influence on it. This debate leads to two propositions:

**Proposition 1:** countries that followed a divided pattern of civil-military relations will tend to offer more barriers to civilian access to information. This will happen because under Huntington's view of professionalism, civilian participation would undermine the actions of the state's 'expert on defense'.

**Proposition 2:** countries that followed an integrated pattern of civil-military relations will tend to impose less barriers to civilian engagement and access to military strategy and general information. Since they are institutionally considered as legitimate actors, they can be part of building defense solutions in an easier way.

This session showed how two competing models of civil-military relations can be explain the level of openness in military records in a country. The next sections presents the methodological design of the study, defining the case selection, how the study managed the data gathering and its use, and how evidence were treated using process tracing as the method.

## **1.4. Research Design**

### **1.4.1. Managing evidence and testing causal mechanisms**

Dealing with qualitative and historical evidence to explain causal mechanisms is often a challenge. Without a clear methodology, researchers often err by only telling stories and anecdotes, with no proper testing of their propositions.

How to assess the explanatory strength of historical-qualitative sets of evidence? Process Tracing can give us some answers about how to do it because it offers a framework to test causal inferences in qualitative studies (Amorim Neto & Rodriguez, 2016; Collier, 2011; Falletti & Lynch, 2009).

The broad definition of process tracing methods is a set of tools to investigate causal mechanism in a single case. However, process tracing is not a single method of qualitative studies, it can embrace several distinct research aims, such as theory-testing, theory building and explaining-outcome (Beach & Pedersen, 2013).

The present study focuses on the last one, the ‘explaining-outcome’ one, since the goal of this research is to understand how changes took place and what they have generated. As Beach and Pedersen contend, the type of process-tracing ‘explaining-outcome’ “attempts to craft a minimally sufficient explanation of a puzzling outcome in a specific historical case”, privileging the case instead of the theory. (Beach & Pedersen, 2013, p. 3).

How can we tell if an explanation is minimally sufficient? “Sufficiency is confirmed when it can be substantiated that there are no important aspects of the outcome for which the explanation does not account”, having in mind that observations are case specific and cannot be easily applied to a broader population, simply because the nature of the evidence in explaining-outcome process-tracing vary from one case to another, and from one within-case to another (Beach & Pedersen, 2013).

**Table 2 – Types of evidence in process-tracing methods**

<b>Evidence</b>	<b>Definition</b>	<b>Example</b>
Pattern evidence	Relates to predictions of statistical patterns in the evidence.	In testing a mechanism of racial discrimination in a case dealing with employment, statistical patterns of employment would be relevant for testing parts of the mechanism.
Sequence evidence	Deals with the temporal and spatial chronology of events predicted by a hypothesized causal mechanism.	A test of a hypothesis could involve expectations of the timing of events where we might predict that if h is valid, we should see that that event b took place after event a. However, if we then found that event b took place before event a, the test would suggest that our confidence in the validity of this part of the mechanism should be reduced (disconfirmation).
Trace evidence	Evidence whose mere existence provides proof that a part of a hypothesized mechanism exists.	The existence of the official minutes of a meeting, if authentic, provides strong proof that a meeting took place.
Account evidence	Deals with the content of empirical material.	Meeting minutes that detail what was discussed or an oral account of what took place in a meeting.

Source: adapted from Beach and Pedersen (Beach & Pedersen, 2013, pp. 99–100).

There are two essential elements of process tracing that have to be acknowledged: the existent types of evidence and the causal mechanisms tests. Regarding the first topic, there are four types of evidence in process tracing: pattern, which is related to the frequency of an observation; sequence, which is related to the temporal and spatial chronology of a case; trace, which, solely by its existence it determines the existence of a mechanism (scheduling a meeting is partial evidence of the existence of meetings); and account, which is the content of an event (the transcription of the meeting) (Beach & Pedersen, 2013; Collier, 2011; J. Mahoney, 2012). Table 1 shows each type of evidence, its description and an example.

Regarding causal mechanisms testing, the four tests that help to establish causal inferences<sup>7</sup> in process tracing are often overlooked by those willing to use the methodology. These tests are: (1) the straw-in-the-wind test, (2) the hoop test, (3) the smoking gun test, and the (4) doubly decisive test (Collier, 2011; J. Mahoney, 2012).

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<sup>7</sup> Causal mechanisms are not the same as intervening variables - causal mechanisms should be considered like portable concepts (Falletti & Lynch, 2009).

**Table 3 – Process Tracing tests for causal inference**

		SUFFICIENT FOR AFFIRMING CAUSAL INFERENCE	
		No	Yes
NECESSARY FOR AFFIRMING CAUSAL INFERENCE.	No	<b>(1) Straw in the wind</b>	<b>(3) Smoking-Gun</b>
		<b>Passing:</b> affirm relevance of hypothesis, but does not confirm it.	<b>Passing:</b> confirm hypothesis
		<b>Failing:</b> Hypothesis is not eliminated, but is slightly weakened.	<b>Failing:</b> Hypothesis is not eliminated, but is somewhat weakened.
		<b>Implications for rival hypotheses:</b> Passing slightly weakens them, and failing slightly strengthens them.	<b>Implications for rival hypotheses:</b> Passing substantially weakens them, and failing somewhat strengthens them.
	Yes	<b>(2) Hoop</b>	<b>(4) Doubly Decisive</b>
		<b>Passing:</b> Affirms relevance of hypothesis, but does not confirm it.	<b>Passing:</b> confirm hypothesis and eliminate others.
		<b>Failing:</b> Eliminates hypothesis.	<b>Failing:</b> Eliminates hypothesis.
		<b>Implications for rival hypotheses:</b> Passing somewhat weakens them, and failing somewhat strengthens them.	<b>Implications for rival hypotheses:</b> Passing eliminates them, and failing substantially strengthens them.

Source: Collier (2011, p. 825)

The straw-in-the-wind test is the most superficial one, and only shows the plausibility of the hypothesis, without eliminating other hypotheses. It is like a collection of general information that supports the hypotheses. The Hoop test is stronger than the previous one, since the hypothesis has to pass through the sieve of necessary conditions that can eliminate rival explanations. “[I]n criminal trials, questions such as, ‘Was the accused in the town on the day of the murder?’ and ‘Was the suspect too big to squeeze through the window through which the murderer entered the house?’ are hoop tests through which a hypothesis would need to pass” (Beach & Pedersen, 2013, p. 102).

The Smoking-Gun test “passage strongly confirms a hypothesis, but failure does not strongly undermine it. A smoking gun in the suspect’s hands right after a murder strongly implicates the suspect, but if we do not find the gun, the suspect is not exonerated.

The Doubly Decisive test is when an event is necessary and sufficient for an outcome to happen, but is hardly found in social sciences. The common solution to this is combining different tests to strengthen hypotheses of causal inference (Amorim Neto & Rodriguez, 2016; Collier, 2011). The meaning of each one of these tests for causation is in Table 2.

The three first tests are not decisive – they serve mainly for the analyst to eliminate competing hypotheses.

#### 1.4.2. Case selection

Why choosing Brazil and Mexico? From a Brazilian scholar perspective, choosing Mexico to compare Brazil with can bring a better understanding of transparency and the challenges of building democratic civilian control in contexts where the armed forces are increasingly being deployed internally. First, Mexico is the great international model of Freedom of Information legislation and institutional practice, which adopted the most advanced settings to fight governmental opacity. Their National Institute for Access to Information even has constitutional independency, can review any secrecy decision, and can even undertake extensive searches for documents within governmental institutions.

Second, both countries struggle with police corruption and the use of the armed forces as a stopgap solution, which for many authors it is a complicated solution to security issues since it brings complications to the maintenance of civilian control of the military, and which for the Mexican case, caused more opaqueness in the military operations and human-rights violations (Dammert, 2005; Desch, 1999; Jaskoski, 2013; López-Montiel, 2000; Open Society Foundations, 2016; Pinheiro, 1997; Sotomayor, 2013; Youngers & Rosin, 2005; Zaverucha, 2008b).

Third, according to the Government Defence Anti-Corruption Indexes of 2013 and 2015 the advances in the Mexican right-to-information seemed to had real effects in the country's tendency to face corruption in defense, and exactly the opposite occurred in Brazil, as we can see in Table 1.

**Table 4 – Corruption risk measurement from the Government Defence Anti-Corruption Indexes of 2013 and 2015**

Country	Corruption risk	
	Band (2013)	Band (2015)
Brazil	C (moderate)	D (high)
Mexico	D (high)	C (moderate)

Both countries have much in common: At the same time, over time they assume completely different patterns precisely in both explanatory and dependent variables of this study – transparency and civil-military relations. Brazil and Mexico also are representative of Latin



America: Brazil has a consensual political system and Mexico has a majoritarian one; Brazil has a past of military rule, while Mexico has a historical subordination of the military, etc.

Brazil, in turn, has fought for long years to establish a democratic control of the armed forces, and as we will see in Part II, a stable democracy was only a reality in Brazil when Fernando Henrique Cardoso assumed the presidency. Institutionally, it has achieved an even better democratic control if compared to Mexico - which does not have a civilian Ministry of Defense.

As Barany (2012) contents, the type of authoritarian regime a country has faced brings distinct challenges to the democratization of the armed forces. Democratization in Brazil and Chile, e.g. have one similar trace of military power maintenance even after the end of the regime. “They built up reasonably strong economic records, they retained the support of a significant part of the electorate, and, consequently they were in a relatively advantageous bargaining position when negotiating their own withdrawal from politics” (Barany, 2012, p. 8).

Brazil had a long authoritarian military regime and a slow transition to democracy – which seems to have reached stability at least within the timeframe of this study. There were no electoral problems and no direct military influence in Fernando Collor’s impeachment process in 1992. Nevertheless, the increasing use of the armed forces in internal policing missions already started to worry specialists – which include Mexico as an example of an unsuccessful strategy of counterdrug effort.

Mexico, for instance, has been ignored by scholars of civil-military relations for quite a while, always being considered one of the most stable countries in terms of civilian control and never acknowledging the price of this concordance<sup>8</sup>. Nevertheless, this situation changed with the uprising in Chiapas, in 1994. After that, under US American influence, Mexico started to intensively deploy the armed forces in policing missions – action which did not result in good and democratic processes (Claire, 1992; Open Society Foundations, 2016).

Finally, I hope this comparison can bring mutual learning for both countries, one that already knows the path of militarization of civilian activities and its consequences, and another one that have been avoiding to address border issues and organized crime.

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<sup>8</sup> This terminology comes from the work of Schiff (1995, p. 7), in which she argues that “three partners – the military, the political elites, and the citizenry – should aim for a cooperative relationship that may or may not involve separation but does not require it”. This theory is called concordance theory.

### **1.4.3. Data gathering**

In order to build an historical perspective of the processes of reforms on defense transparency this study made use of an extensive academic literature; analysis of the media coverage of specific subjects; interviews with military and intelligence officials, civilian and military archives, legislative bodies, diplomats and other public officials related to the theme; and finally, the analysis of a large amount of legislation. Table 3 shows the Interviews that I undertook in the research process. Some of the interviewees asked not to be identified in the study, so their professional area is listed, but not their name or specificities of their position.

**Table 5 – Interviews for the Brazilian case**

Reference	Organization (Portuguese)	Organization (English)	Interviewee	Position at the time of the interview	Date	Location
Interviewee 1	Exército Brasileiro	Brazilian Army	General Etchegoyen	High patent army official who worked in the MOD during the FOI draft bill discussions.	May 2013	Rio de Janeiro
Interviewee 2	Itamaraty	Brazilian Diplomatic Corps	Alsina Jr.	Diplomat who worked in the MOD.	May 2013	Rio de Janeiro
Interviewee 3	Ministério da Defesa	Ministry of Defense	Nelson Jobim	Minister of Defense	May 2013	Rio de Janeiro
Interviewee 4	Ministério de Justiça	Ministry of Justice	Pedro Abramovay	Secretary of Legislative Issues at the time of the FOI draft bill discussions.	May 2013	Rio de Janeiro
Interviewee 5	Escola de Comando-Maior do Exército (ECEME)	Brazilian Army's High-Command School	N/A	Medium patent army official that worked with military education and training.	May 2013	Rio de Janeiro
Interviewee 6	Escola de Comando-Maior do Exército (ECEME)	Brazilian Army's High-Command School	N/A	Medium patent army official that worked in a bureaucratic position.	May 2013	Rio de Janeiro
Interviewee 7	Marinha Brasileira	Brazilian Navy	N/A	Medium patent navy official that worked in a bureaucratic position.	May 2013	Rio de Janeiro
Interviewee 8	Arquivo Histórico do Exército (AHEx)	Army's Historical Archive	N/A	Head of the DHAI (Divisão de História e Acesso à Informação - Historic and Access to Information Division)	January 2015	Rio de Janeiro
Interviewee 9	Arquivo da Marinha - DPHDM	Navy's Archive	N/A	Archivist, responsible for the Consults Section	February 2015	Rio de Janeiro
Interviewee 10	Comissão Estadual da Verdade do Rio de Janeiro (CEV-Rio)	Rio de Janeiro State Truth Commission	Nadine Monteiro Borges	Member of the Rio State Truth Commission. She was na assessor of the National Truth Commission.	February 2015	Rio de Janeiro

**Table 3 – (continuation)**

Reference	Organization (Portuguese)	Organization (English)	Interviewee	Position at the time of the interview	Date	Location
Interviewee 11	Arquivo Nacional - Unidade Brasília	National Archive - Brasília unit	Pablo Franco	Supervisor de Acesso e Difusão de Acervo – COREG	March 2015	Brasília
Interviewee 12	Comissão de Relações Exteriores e Defesa Nacional (CRE) do Senado	Senate's Commission of Foreign Affairs and National Defense	José Alexandre Girão	Secretary of the CRE	March 2015	Brasília
Interviewee 13	Comissão Mista das Atividades de Inteligência (CCAI)	Joint Commission of Intelligence Activities	Marcos Mello	Secretary of the CCAI	March 2015	Brasília
Interviewee 14	Comissão Nacional da Verdade (CNV)	National Truth Commission			March 2015	Brasília
Interviewee 15	Centro de Comunicação Social do Exército (CCOMSEx) - Serviço de Informação Ao Cidadão (SIC)	Army's Citizen Information Service at the Centre of Social Communication fo the Army	Colonel Alexandre	Head of the Army's Citizen Information Service (SIC EB)	March 2015	Brasília
Interviewee 16	Ministério da Defesa (MD) - Serviço de Informação Ao Cidadão (SIC)	Ministry of Defense - Citizen Information Service	Marília Fidalgo dos Anjos	Coordinator of the SIC-MD	March 2015	Brasília
Interviewee 17	Arquivo Nacional - Sede no Rio de Janeiro	National Archive - Headquarters in Rio de Janeiro	Vitor Fonseca and Silvia Estevão	Professor and specialist of the management of military archives from the National Archive / Responsible for the SIC of Arquivo Nacional	May 2015	Rio de Janeiro

**Table 3 – (continuation)**

<b>Final Reference</b>	<b>Country</b>	<b>Organization (in its original language)</b>	<b>Organization (English)</b>	<b>Interviewee</b>	<b>Position at the time of the interview</b>	<b>Date</b>	<b>Location</b>
Interviewee 18	Brazil / México	Exército Brasileiro	Brazilian Army	Colonel Martins	Military Attaché of Brazil in Mexico	June 2016	Mexico City
Interviewee 19	Mexico	Universidad Nacional Autónoma de México (UNAM)	National Autonomous University of Mexico	Raúl Benítez Manaut	Professor, specialist in civil-military relations in Mexico	June 2016	Mexico City
Interviewee 20	Mexico	Gobierno de México	Mexican government	Sigrid Arzt	Former member of the National Institute for Access to Information (INAI) and former secretary of Mexico's National Security Council.	May 2016	Mexico City
Interviewee 21	Mexico	Ejército de México, Dirección General de Archivo e Historia	Mexican Army - General Administration of Archives and History			June 2016	Mexico City
Interviewee 22	Mexico	Instituto Nacional de Acceso a la Información	National Institute of Access to Information	Angel Celis Camargo and Luísa Fernanda Valdés Ugalde	Commissioned agents of INAI	June 2016	Mexico City
Interviewee 23	Mexico	Archivo General de la Nación	General Archive of the Nation	Linda Arnold and employees from AGN	Independent researcher / AGN employees	May 2016	Mexico City
Interviewee 24	Mexico	Sector de Inteligencia de México	Mexican Intelligence sector		Member of the Mexican intelligence sector	June 2016	Mexico City

The purpose of the interviews was to trace history and mainly recollect pieces of evidence as showed in Table 2 (pattern, sequence, trace or account evidence), which were categorized and served to explain, reinforce or eliminate hypotheses. Propositions were tested with process tracing evidence-based tests, and then discussed along chapters 6 and 9.

The interviews undertaken in Brazil were made with relatively ease. The exception happened with the Brazilian National Truth Commission (CNV), since the official did not want to make any comments since she was not officially related to the CNV anymore. She ensured that she could answer the questions under the authorization of the presidency. However, an answer never came.

I would like to acknowledge that the Brazilian Army's Access to Information Unit, in Brasília, the Brazilian Army Historical Archive and the Brazilian Navy Archive all received me very well and were available for many hours – even through many days, to clarify my doubts regarding legislation and the practices of the armed forces.

In Mexico there were more challenges, since many of the governmental entities did not answer to any of my interview requests. When the Mexican National Archive, e.g., refused to talk to me, I scheduled a guided visit in the building to find out if personally they could give me some information. No official representative of the institution was willing to give me information, but luckily, I was able to talk to Linda Arnold, a retired U.S. American scholar that is a specialist in Mexican archives.

## **1.5. Plan of the dissertation**

This dissertation is divided into four parts. Part I sets the context with three chapters, including this introduction. Chapter 2 builds a conceptual framework that can bring a better understanding of transparency in democracies, especially transparency regarding 'secretive institutions' like the armed forces. In order to conceptually accommodate the necessity of secrecy, this chapter used the concept formation method of adjectivation, which generated four types of transparency: fuller transparency, nominal transparency, transparency conditioned to the right-to-know and transparency of opacity. Among the four different types of transparency this study makes use mainly of one of them: the transparency of opacity.

Chapter 3 presents the civil-military dimension of transparency and the theory of Gradual Institutional Changes to understand causal mechanisms and causation between our variables. In one hand, we use the theories of civil-military relations to understand the context

of change and, in the other hand, we use the gradual institutional change theory to explain change over the democratization period of Brazil and Mexico.

Part II presents the case of Brazil in three chapters. Chapter 4 presents the history and context of civil-military relations in Brazil. Chapter 5 presents Brazil's approach to transparency of defense issues over time. Chapter 6 applies the analysis of institutional gradual changes in the Brazilian transparency of opacity from 1985 to 2014.

Part III follows the same structure of Part II and presents the case of Mexico. Chapter 7 presents the history and context of civil-military relations and access to information in Mexico since before the Mexican revolution, until 1988. Chapter 8 presents the history and context of civil-military relations and access to information from 1988 to 2014.

Part IV has two chapters: Chapter 10 explores comparisons between Brazil and Mexico, and presents final considerations and challenges for practitioners and legislators.

## **Chapter 2 – Unveiling transparency in defense**

This chapter challenges the view of transparency as a synonym of full disclosure. Democracies have traditionally and importantly generated secrets since their very beginnings, legitimate secrets, we say. These secrets are related to the nature of the information and, being created and maintained by democracies, they are implicitly the result of a normative pact (written and unwritten) each democracy makes. One same institution can generate all sorts of documents, some of them highly sensitive and others open to full disclosure.

Beyond disclosure, the understanding of transparency in contexts of sensitive information brings attention to the processes that regulate secrecy and puts limits on it: systems of checks and balances that ensure a fair creation, storage, elimination and maintenance of information. In other words, in a democracy transparency is also making transparent the rules and processes of opacity.

In order to understand and build a conceptualization of transparency that fits our research question, this chapter is divided in three sections. The first one explores the already existent literature on the concept of transparency. The second section explores the state of art of the literature on dissecting the concept of transparency to its roots. The third section presents the four concepts of transparency built from the adjectivation method of concept formation, and their framework of analysis. The fifth section presents conclusions and the way this analysis will be operationalized in each case of the study.

### **2.1. Transparency: where does it live and what does it eat?**

The idea of transparency is not new, despite the relatively new use of the word: in political and economic terms, its first use was in 1987. Since the XIX Century the works of Rousseau, Bentham, and the concept of liberal marketplace of ideas' showed, the publicity of all acts of agents acting in behalf of the State was a point of attention (Bentham, 1843; Colaresi, 2014; Hood & Heald, 2006; Ingber, 1984; Michener & Bersch, 2013).

In the end of the XIX Century Bentham deeply explored the legal implications of the publicity of state-agents acts. The author stated that publicity would be the antidote to the temptation of abuse of power, and that any state position should apply charges to any type of abuse and, in order to do this, the public opinion would be the most powerful court (Bentham, 1843; Gaonkar & McCarthy, 1994).



For Bentham, the existence of small groups of people watching the government would not be sufficient to exert oversight properly. With optimism, the author sustained that with full transparency, the discussions and idea exchanges of assemblies could be amplified to the whole population, restricting even more the illegal acts of public figures (Bentham, 1843).

Bentham's thoughts on publicity resemble his proximity to the liberal ideas of the 'marketplace of ideas'. This term had its first appearance in the debates of the first constitutional amendment of the United States, which establishes the free speech rights. The marketplace of ideas assumes that in a society where citizens have unrestricted access to information, there would be a free competition of ideas, leading to the persistence of only the better ones (Blocher, 2008; Ingber, 1984).

Both concepts – Bentham's publicity and the liberal marketplace of ideas – neglected several difficulties of information exchange and public opinion formation. They mistakenly assume that all citizens and groups of citizens would have the same capacity to understand, filter and find well-grounded information, ignoring the existence of ideologically closed groups that tend to access only information that corroborates their perspective, and other sources of asymmetry (Blocher, 2008).

In order to solve this dilemma, the concept of informational asymmetry gains a lot of strength in the works of several economists of the second half of XX Century. This discussion emerges also in the middle of the democratization waves around the world, considering the political opening of many countries and the creation of institutional mechanisms that could restrain frauds in the public, private and financial realms (Michener & Bersch, 2013).

Transparency became more than a tool to fight corruption, but also a moral concept and a value itself. In this logic, it assumes that it is always good for a democracy to have more transparency – or full transparency: "the bigger is the involvement of society in the acts of public governance, the more one can find an efficient, effective and efficacious management of public resources. Only by being able to access these information citizens can better chose their representatives" (Bairral, Coutinho, & Alves, 2015, p. 646, our translation). However, there is no clear evidence that having more transparency in a democracy will lead to better governance.

Many other types of conceptual stretching came along with transparency as a value – as the confusions between transparency/democracy and transparency/accountability make evident (Hollyer, Rosendorff, & Vreeland, 2011; Hood, 2010; Schedler, 1999). Nevertheless, some authors had already started to question the limits of the benefits related to transparency in many

topics: in national defense (Pozen, 2014; Thompson, 1999), in international relations (Lord, 2006), in central banks (Moore, 2011).

In order to understand the complex phenomenon of transparency, one must dissect through what forms it can be exerted. The works of Hood and Heald (2006) and Michener and Bersch (2013) gives us some helpful analysis of these forms, and we explore them in the next two subsections.

### **2.1.1. Dimensions and varieties of transparency**

Heald, in Hood and Heald (2006) states that many concepts of transparency are ambiguous because they do not take into consideration the directions and the varieties of transparency. There are four directions of transparency, two vertical and two horizontal. The vertical directions of transparency are the (1) transparency upwards, which is the hierarchical one, where the principal oversees the actions of the agent; and the (2) transparency downwards, which is the opposite of transparency upwards, where the agent oversees the principal.

Among the horizontal directions of transparency are the (3) outward transparency, where the agent observes the outside of the organization; and the (4) inward transparency, where outsiders can observe what is going on inside the organization.

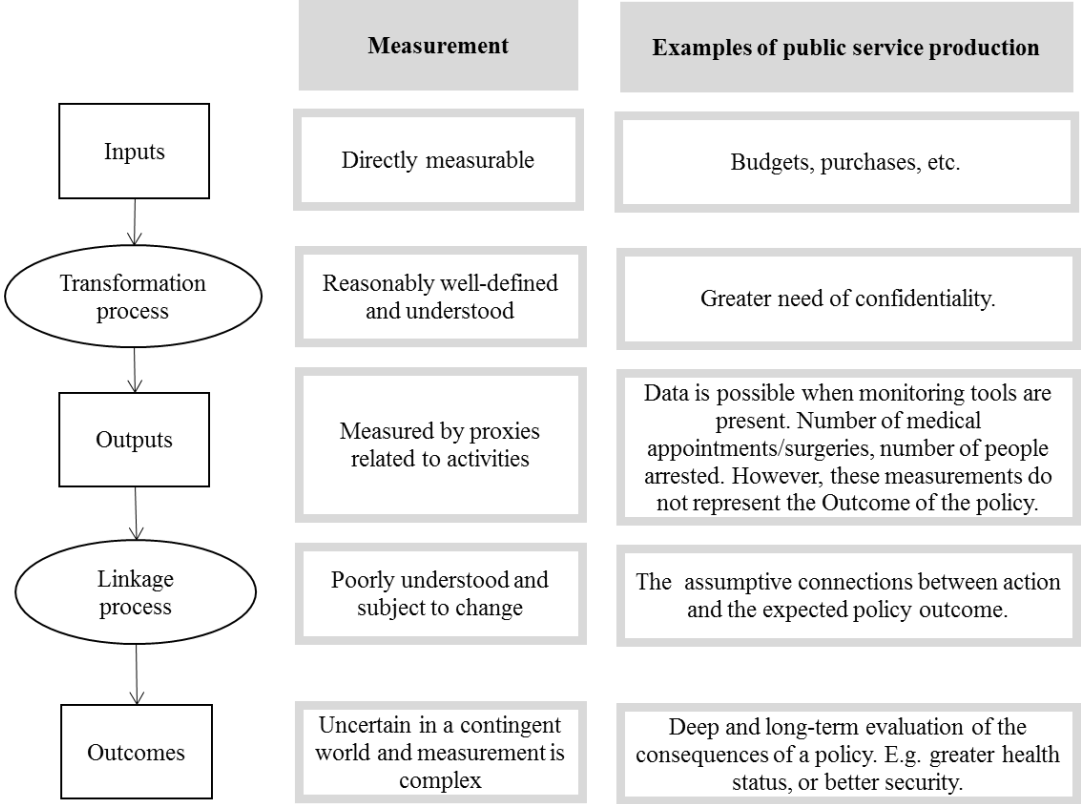
Most of the works on transparency focus in the transparency upwards, in which citizens are the principals and the government is the agent (Alianza Regional, 2010, 2012; Barros & Rodrigues, 2017; Birkinshaw, 2010; Cejudo & Rubach, 2011; Fernández, 2009; Grimmeliikhuijsen & Meijer, 2012; Michener, Velasco, & Furtado, 2014; Moncau, Michener, Barros, & Velasco, 2015; Open Society Justice Initiative, 2006). However, there is a diversity of combinations among transparency directions that can be explored, often left forgotten by scholars.

Hood and Heald (2006) also recognize varieties of transparency not necessarily related to direction, basically with three dichotomous oppositions that establish many varieties of transparency: the (1) event versus process transparency, the (2) transparency in retrospect versus real time transparency, and the (3) nominal versus effective transparency.

In the *Event vs process transparency*, events and processes cannot be measured in the same way. Events are points or states of the public policy that are visible and easier to be measured. Processes are divided in transformation and linkage processes. The difference between both is that the former is related to practical and generally confidential measures

undertaken to conclude the policy; the later regards to policy effects in general and outside the policy itself, which is more difficult to measure. Figure 2 shows graphically the difference between those concepts, where rectangles are events and oval circles are processes.

**Figure 2 – Event and Process Transparency**



Source: adapted from Hood and Heald (2006, p. 30).

Process transparency can even be subdivided into two: procedural components, which would be the transparency related to the flow of processes inside the organization and operational components, related to specific tasks the institution is in charge. This distinction is useful to understand if institutions are following their own internal rules - a fact easily acknowledged if they are transparent about their internal procedural components.

*Transparency in retrospect versus transparency in real time* is a really important variety of transparency when dealing with national security transparency. Transparency in retrospect is the one “that allows an organization to conduct its business and then, at periodic intervals, to release information relevant to its performance, on which assessment will actually or potentially be based.” (Hood & Heald, 2006, p. 32). In other words, between the production of information

and its release, there is a 'report window'. There will be different 'time sensitivities' according to the types of information.

Regarding military operations, most of its processes are disclosed only in retrospect, and this is the logic that underpins the existence of classification systems – access restriction related to the information sensitiveness. When the document is declassified, it should not present any harm to the security of the state or the policy.

Real time transparency is the constant monitoring and surveillance of an action. An example of that is the execution of internal military operations in the middle of urban areas. In this situation, the contact points with the media and citizens are vast, which makes real time transparency a reality. This variety of transparency can undermine some policies, but can be beneficial to others, like in 2014 in Brazil: in order to avoid a bloodshed in the Maré favela, the military police<sup>9</sup> and the army warned the population that the place would be 'occupied' by the police elite squad in a Sunday - the number of soldiers and policemen was also released (G1, 2014). The strategy was successful in making drug dealers to run away, avoiding probable future backlashes.

Finally, there is the difference between *the nominal versus the effective transparency*. the nominal transparency is the fact of disclosure itself. However, having nominal transparency does not mean that an institution or a government has effective transparency. "For transparency to be effective, there must be receptors capable of processing, digesting, and using the information." (Hood & Heald, 2006, p. 35). Furthermore, if the information available is not used by the society, or the people interested in it does not have the capacity to process it, nominal transparency happens.

### **2.1.2. How to identify transparency**

In the middle of so many types, dimensions and varieties of transparency, how to identify when an institution is transparent or not after all? There is little discussion about how to identify transparency, and one of the few works that deal with this issue is the article *Identifying Transparency* of Michener and Bersch (2013).

Michener and Bersch (2013) were inspired by Andreas Schedler's chapter *Conceptualizing Accountability* (Schedler, 1999) to build their own three-level concept of

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<sup>9</sup> The military police in Brazil is not some internal police of the armed forces. It is, instead, a preventive state police that responds to state governments, but it is linked to the armed forces through the Army's Inspector General of the Military Polices (Inspetoria-Geral das Polícias Militares).

transparency. These authors rely on the work of Goertz (2006b), determining the relationship between constitutive elements of the concept.

The study has as a premise that one can identify transparency through two elements: *visibility* and *inferability*<sup>10</sup>. *Visibility* is composed by the indicators *completeness* and *findability*. *Completeness* is an important element because if the data is not available to a large extent it is impossible to visualize the big picture. Sometimes, hiding part of the information can even make impossible for the user to understand it or make any use of it. *Findability* is also a constitutive of *visibility* since if an information is available but really hard to find, it is restricting access to legitimate users of that information who could not find it (Michener & Bersch, 2013).

The *visibility*<sup>11</sup> of information has been one of the most discussed topics of pro-transparency movements until recently. However, the issue of the quality of the information is gaining attention. The lack of intelligibility, difficult data visualization and barriers to the free manipulation of the data started to worry advocates, raising the necessity to a broader evaluation of transparency. That is where the capacity to infer something from a given information – or *inferability* – emerges as a constitutive element of transparency. It stands in the same level of importance as visibility as a necessary condition for transparency to occur (Michener & Bersch, 2013).

Within *inferability*, the authors contend that three attributes increase how inferable a data is: *disaggregation*, *verifiability* and *simplification*<sup>12</sup>. These three attributes are not the only ones that can define what inferability is, since they follow the family resemblance rationale, which precludes ‘necessary’ conditions<sup>13</sup>. Nevertheless, in this study I intend to use these three elements as a general and initial reference to analyze the implications of this concept of transparency in the research question.

*Disaggregation* is an important indicator because it contains a high level of details, increasing possibilities to statistically work with data. *Verifiability* is also a constitutive element that makes possible to verify if data is accurate. This could occur through the existence of third parts overlooking the creation and storage of the information, and also through crossing databases from different institutions with similar content<sup>14</sup>. The constitutive element

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<sup>10</sup> According to Michener, the relationship between these variables is of family resemblance, which means that not all elements must be present for inferability to exist.

<sup>11</sup> Which resembles Hood and Heald's (2006) **nominal transparency**.

<sup>12</sup> The relationship between those variables is family resemblance, as I show further in this Chapter.

<sup>13</sup> I would like to thank Prof. Michener for the valuable corrections and observations regarding his concept.

<sup>14</sup> We challenge and complement this indicator in the Section “The results of adjectivation: four transparencies”.

*simplification* is key for citizens with a lower background on a specific subject to be able to access information, and this includes all types of user-friendly interface to access data (Michener & Bersch, 2013).

Therefore, the aim of the next section is to explore the literature on conceptual formation at the same time we apply it to Michener and Besch's (2013) concept of transparency. Later, this chapter will show how to apply this concept of transparency to restricted-access information, through a process called adjectivation.

## 2.2. The challenges of conceptualization

In the 1970's Sartori identified a general lack of rigor in conceptualizations in the social sciences, when he published the famous article "*Concept Misformation in Comparative Politics*". According to him, the broad access to statistical analysis tools started to be in such evidence that scholars simply chose to left conceptual discussions aside (Sartori, 1970).

Sartori's debate is still alive, and important publications have arisen in the last two decades. The works of King, Keohane and Verba (1994) , Goertz (2006b), Mahoney (2014), George and Bennet (2005) and Adcock and Collier (2001) revived the subject. New possibilities to qualitative research emerged with the convergence with the positivist paradigm, eliciting conceptual stretching and challenging the overrated focus on measurement (Amorim Neto & Rodriguez, 2016).

Goertz (2006) contends that concepts can be seen as containers of meaning, and this definition has necessarily theoretical and empirical premises about the object, far beyond what reaches a semantic understanding. "*Concepts are theories about ontology: they are theories about the fundamental constitutive elements of a phenomenon*" (Goertz, 2006b, p. 5), in the sense that they define the main characteristics of a phenomenon and its interrelations. A given ontology about a concept can therefore generate really different compositions of these constitutive elements, which translates into different ways of measurement and classification.

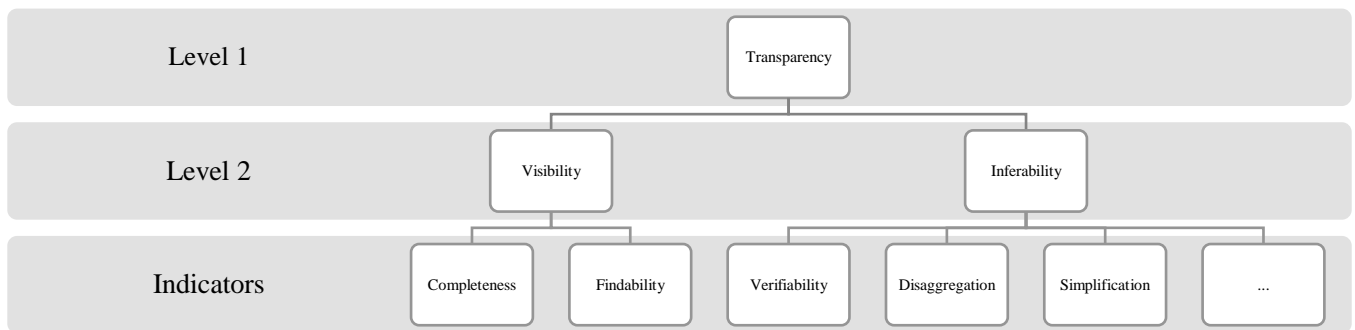
**How, then, to build concepts?** Goertz (2006) suggests that all major concepts in social sciences have a structure of only three levels<sup>15</sup>. The first is the basic level, which is the central theoretical concept used in the hypotheses and propositions. The secondary level of the concept consists in all the constituent elements of the basic level, which should reflect the concept's

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<sup>15</sup> Adcock and Colier (2001) present a step-by-step model that is very similar to Goertz' model. Besides building the concept with many levels, the authors suggests that the researcher should analyze the way back from the indicators to the concept, to verify if the theoretical assumptions that connect the elements are really proper.

ontology. The third level is the operationalization level, in which the cases are measured or classified. Figure 3 shows the application of this method to Michener and Bersch's concept of transparency.

**Figure 3 – The concept of transparency and its levels (without their interrelations)**



According to Goertz' definition of each level, transparency is the central theoretical concept. Visibility and Inferability, which are in level 2, are the elements that reflect the concept's ontology. However, the work is not done yet. After knowing the constitutive elements and indicators of the concept, **the next step is defining the relationship between each element.**

Working with conceptual levels brings a better understanding of the concept's ontology not only to justify the chosen secondary elements, but also to clarify the relationship between constitutive elements. What is the relationship between level 2 elements and how this relationship affects the concept's ontology. There are many different possible types of causation, from which I summarize the most important ones for this work: (1) necessary/sufficient conditions and (2) family resemblance.

*Necessary/sufficient conditions.* A necessary but not sufficient causation occurs when there are no occurrences of a phenomenon without the presence of the element, but this presence itself is not sufficient for the phenomenon to occur<sup>16</sup>. A sufficient but not necessary causation, in turn, occurs when the presence of the sufficient element alone can cause the phenomenon, but the phenomenon still can occur through other means<sup>17</sup> (James Mahoney, Kimball, & Koivu,

<sup>16</sup> An example the authors give is 'sun shower' as a necessary element for 'rainbow' to occur. A sun shower cannot for sure determine the existence of a rainbow, but for it to happen, a sun shower is always present (James Mahoney et al., 2009).

<sup>17</sup> The authors mention a study that contends that in the Nazi Germany, a culture of anti-Semitism was sufficient to cause the holocaust. The holocaust could have happened as a result of other combining elements, but anti-Semitism alone was enough the motivational basis for it (James Mahoney et al., 2009).

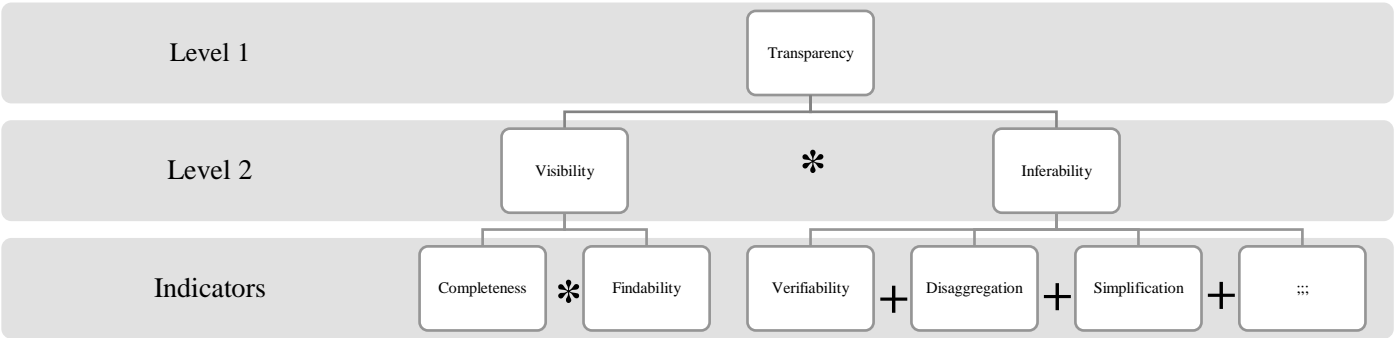
2009). When establishing that each constituent element is necessary for the concept to be present, the logic operator AND (or the signal \*).

*Family resemblance.* Goertz (2006b) presents another type of causation called *family resemblance*. This type of causation explores the idea that in some cases some elements (or groups of elements) are substitutable. In other words, there are cases where elements are not necessary nor sufficient for a phenomenon to occur. This logic of causation uses the logic operator OR (or the signal +), meaning that element A or element B might be necessary or sufficient for the existence of the phenomenon.

As an example, the author uses the concept of the Welfare State. While analyzing its constitutive elements, there could be present either unemployment compensation, old age pensions, health insurance, or workplace compensation. Of these four elements, the presence of at least one of them would be enough to characterize a Welfare State (Goertz, 2006b).

In this study, the notion of substitutability is the same as the notion of trivialness: the more an element is trivial for a phenomenon to occur, the more it can be substituted. This also means that the most substitutable necessary condition tends to trivialness, and the least substitutable one tends to sufficiency (Goertz, 2006a; James Mahoney et al., 2009). In terms of our transparency concept, the relationship between variables is presented below, in Figure 4:

**Figure 4 – The concept of transparency: the relationship between constituent elements**



The fact that *visibility* and *inferability* are necessary conditions for transparency to occur is well explained in Michener and Bersch’s (2013) article: visibility is not sufficient for transparency to exist. They also contend that there can be some overlap between the two variables “in part because as necessary conditions these dimensions are jointly sufficient to produce ‘transparency’” (p. 237). In addition to that, they consider *completeness* and *findability* also as necessary elements for *visibility* to occur.



*Inferability* in turn, presents a different relationship with its constituent indicators. According to the authors,

although mathematical formulas describing inflation may be visible, not all people will understand unsimplified mathematics, hence inferability depends on the target audience. This asymmetry suggests an interactive concept, and it is also why we insist on what qualitative scholars refer to as a ‘family resemblance’ framework for conceptualizing inferability. Within this framework, the degree of inferability increases as attributes are added, and attributes are substitutable as opposed to being necessary conditions. For instance, information may be rendered more inferable by the attribute of a simplifying heuristic, such as a pie chart, or it might be presented in disaggregated form or verified by a third party. All of these attributes – which are all forms of mediation – tend to increase the inferability of information, meaning that they help lead us to more accurate conclusions (Michener & Bersch, 2013, p. 238)

If these elements are substitutable, what remains undiscussed is what type of *inferability* is necessary for transparency in defense and security information, which is what we will start to discuss in the next section. The underpinning assumption is that this conceptual model, until now, has the maximum disclosure underpinning it, which not necessarily apply to national defense information. *Visibility* and *inferability* are generally restricted to a minimum disclosure standard for security reasons – how to evaluate transparency in these cases then?

### **2.3. Four Transparencies**

This section aims to build concepts of transparency that can cope with national defense restrictions with information disclosure. It is important to have in mind that Michener and Bersch (2013) build a clear and easy to apply concept of transparency, already explored in the previous section of this work. However, according to their concept, any institution with secrets could not be considered transparent, even if their archival management and law adherence were impeccable. An institution that has to classify many documents could never fully score Michener and Bersch's indicators of *visibility* and specially *inferability*.

Generally, one of the few things that can be disclosed from classified documents is their classification code, but often the motives for classification are also restricted. At least in the case of Brazil, one can infer about a classified document is the general category of the classification justification and the classification expiration. Could this information be considered enough for inferability? To what extent?

I use the strategy of adding adjectives (adjectification) to build other transparency concepts that can encompass different levels of *visibility* and *inferability*. Adding an adjective

to a concept can help in the understanding of specific topics without restricting the number of possible applicable cases, since the ontology of the concept is well explained (Collier & Levitsky, 1996; Goertz, 2006b).

Considering the possibilities of transparency of (1) the budget of a state and (2) strategic plans to control a country's border, the second one is very limited. However, it should still be subject to some kind of transparency evaluation. The fact is that both secondary level elements of Michener and Bersch's concept can considerably vary in the way indicators are measured and in secondary level element's 'trivialness'<sup>18</sup>.

To understand the many possible levels of information disclosure we use Michener and Bersch's (2013), Figure 5 presents a 2x2 matrix with the possible levels of trivialness of each secondary-level element, and the resulting adjectivized transparency concept. The results of the analysis generated four types of transparency that can be found in democracies: (1) Fuller Transparency, (2) Normative Transparency, (3) Transparency conditioned to the need-to-know and (4) Transparency of secret records.

**Figure 5 – Degrees of trivialness within necessary elements.**

		Visibility	
		(-)	(+)
Inferability	Degrees of Trivialness / restriction	(3) Transparency conditioned to the need to know	(4) Transparency of secret records
		(1) Fuller transparency	(2) Nominal transparency

Source: the author

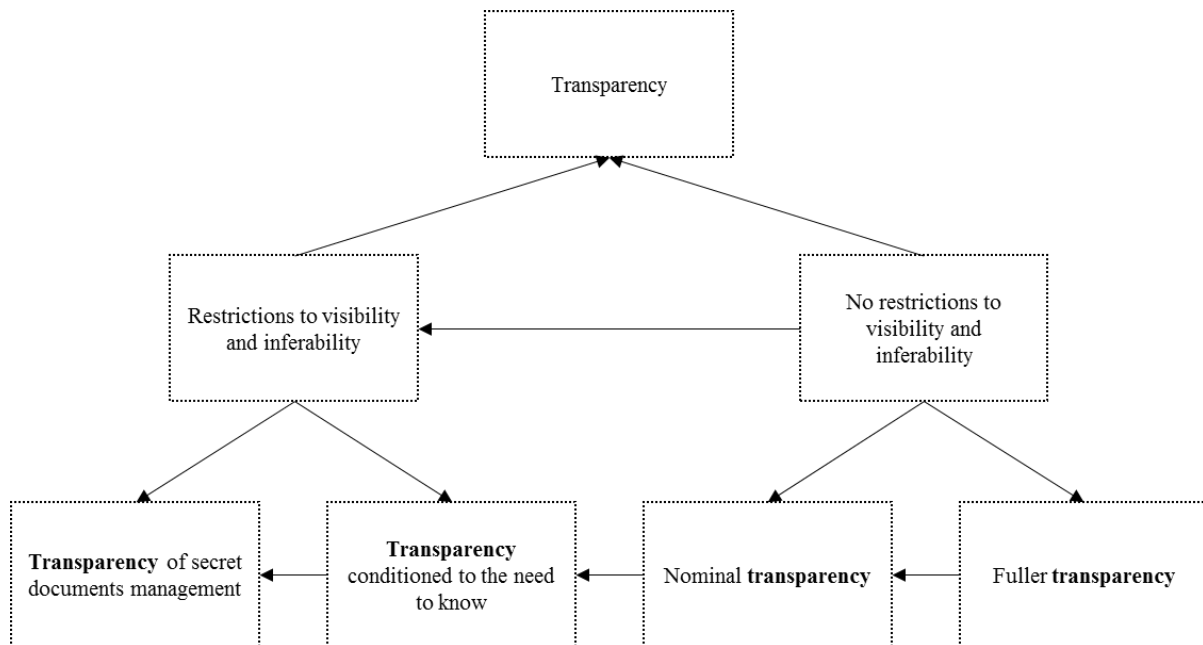
At this point, there is an important distinction to be made between Hood and Heald's (2006) effective transparency and what we call 'fuller transparency'. For these authors, transparency can only be considered effective when one can understand it and use it; ultimately, when it has inferability.

In order to better visualize the four types of transparency, we present them in the same format Goertz presents in his book (see page 82 for his representation of the adjectivation of

<sup>18</sup> By trivialness, I mean the different degrees of disposability a necessary element can assume. If there are too many transparency restrictions to one of the elements, e.g., there is no point in even evaluating it as transparency.

the concept ‘electoral regime’). Through Figure 6 it is possible to understand from which opposite poles – restrictions vs no restrictions in the second-level elements – each of the types of transparency emerged.

**Figure 6 – Adjectivation and the four transparencies**



The next sections present details and a proper definition to each one of the types of transparency. In addition, these sections also explore the effect restrictions can generate in each indicator proposed by Michener and Bersch (2013).

Most of the military documents on national security are concentrated in two types of transparency: the transparency of opacity and some cases of transparency conditioned to the right to know. Because of that, in this study it is not necessary to explore in detail the other types, which are briefly analyzed in the following subsection.

### **2.3.1. Fuller and nominal transparency**

#### ***Fuller transparency***

In the transparency continuum this work proposes, the Fuller transparency occurs in cases in which there are no special restraints in the implementation of the maximum disclosure principle of the right to information. It can be through data previously available online or given under an information request and it is the most recurrent view of transparency in the literature.

The indicators of *visibility* and *inferability* remain the same as those suggested by these authors. The indicators *completeness* and *findability* are necessary for *visibility* to occur. *Disaggregation*, *verifiability* and *simplification* are possible constitutive indicators of *inferability* (or the capacity to infer something from a particular piece of information).

### ***Nominal transparency***

Restrictions on inferability are not always due to a lack of transparency. Nominal transparency happens when a piece of information is visible (complete and easy to find) but not necessarily inferable. It is just a little bit more distant from the fuller transparency. In some cases, it can also be the result of what Michener (2011) calls ‘administrative dilemmas’ of the right to information.

One recurrent complaint bureaucrats make is the lack of investment in new systems that could make easier to aggregate data. Some archival systems are paper-based or in versions that limit data visualization and manipulation. Of course, there is always the risk that bureaucrats will use these arguments to hide information from the public. However, especially in underdeveloped countries the prioritization of resources hardly considers archival and documental management.

Another consideration about nominal transparency has to do with the responsibility to produce simplification. According to some of the interviews with military officials made for this study, some information requests practically ask for the public officials to do the research for them. The bureaucrats then tend to give poor answers, since they feel that those requests are illegitimate.

Concluding, nominal transparency is not a synonym for non-compliance, but it is located in a gray area where non-compliance can indeed exist. That is why the more distant transparency gets from Fuller Transparency, the more democracies should create mechanisms to ensure that the limits to transparency are not just an excuse for misbehavior.

### **2.3.2. Transparency conditioned to the need-to-know**

It is quite simple to understand the logic of the need-to-know: in order to avoid creating an overflow of information in an institution, bureaucracy assigns access to some information only to those involved in the processes that generate it. In a company information system, e.g., it is like denying a marketing employee access to documents from the Department of Finances.

The lack of access does not happen necessarily because it is a sensitive information whose disclosure could cause some sort of harm to the company – it exists only because the marketing employee could not benefit at all from accessing these documents to do his or her job. It is a matter of information efficiency.

It is easy to explain transparency restricted to the need to know giving examples from the corporate private world. The hardest part is to understand its applicability in democracies: how many principal democratic institutions have to respond to? Way more than private companies for sure.

Two main views of democratic principals influence the way democratic institutions behave in relation to the need-to-know: the first way is through the direct democracy perspective and the other one is through the representative democracy perspective. If their perspective is of a direct democracy, they will use the need-to-know for efficiency purposes and at the same time will consider that each and every citizen has the “need-to-know pass” to access any information requested.

The second and most common view (at least in the defense sector) is the perspective of representation. This perspective does not see citizens as legitimate actors to make direct demands to the public administration. As a result, they tend to deny access to information even if its disclosure is harmless.

This was the case of the contact made with the Brazilian Navy Archive<sup>19</sup>. During an interview undertaken for this study a copy of a manual from the Navy was requested. In person, the official denied the access asserting that the established need-to-know of the document was settled as internal to the Navy. The official also stated that only the producer of the document could decide to give a copy of the document or not, and I could only take photos and notes of the manual’s content. However, when a Freedom of Information request was made through the federal FOI platform, they disclosed the document.

Notice that there was no harm implicit in making the document available. This reaction from the bureaucracy might change with the strengthening of the legitimacy of the right-to-know of civil society. An institutional change is necessary, enforcing the so-called ‘transparency as the rule’ and the opacity as an exception argument. Unfortunately, a stronger legislation is not sufficient to promote this institutional change, since it seems that in many

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<sup>19</sup> Interview 7.

classification and freedom of information guidelines there are few or no limits to the capacity for secrecy<sup>20</sup> of the “need-to-know”.

First, legislation often mentions terms like ‘controlled document’ or ‘restricted access document’ calling the need-to-know rationale without putting any restraints to the use of those terms to deny information.

One example of the unrestricted use of those terms is the case where the Brazilian journalist Francisco Leali, from the O Globo newspaper, asked the three armed forces for all the declassified documents of 2013 and received a clear ‘no’ for an answer (Leali, 2015). The Army denied access to the documents asserting that despite the declassification of the documents, they are of ‘restricted access’, with no indication of legal grounds that could base the decision.

At this point it is important to make one distinction: a classified document is naturally restricted to the need-to-know, however, the main difference between both is that classified documents – or trade secrets and personal information – might cause harm to third parts, other states or a specific policy if disclosed unrestrictedly.

Since transparency ‘is the rule’, one of the few varieties of transparency possible in these cases is ‘transparency in retrospect’ (Hood & Heald, 2006), which is based on the rationale that disclosure risks decrease with time. After the stipulated timeframe of restriction, information should be public. “Hard ‘historical disclosure’ time limits create a presumption that the original harms no longer pertain, after which continued withholding of the information needs to be specially justified” (Mendel, 2008, p. 37).

Legislation can be considerably distant from the ideal of specifications on the need-to-know. In the realm of the Tshwane Principles<sup>21</sup>, Principle 12 highlights the need of public access to classification rules, and Principle 16(d) highlights the need of a formal and clear process to withhold information after declassification. They mention the classification system, but who would tell there could be other mechanisms to perpetuate opacity? They are numerous.

Then what is the impact of this type of transparency in the indicators of Michener and Bersch (2013) of visibility (findability and completeness)?

#### *(Restrictions on Findability)*

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<sup>20</sup> Colaresi (2014) uses the term ‘capacity for secrecy’ to describe the mechanisms that governments have to hide or classify information.

<sup>21</sup> The Tshwane Principles (Open Society Justice Initiative, 2013) is a report made in collaboration with several FOI advocates around the world, setting standards to the right to information regarding national defense.

Within transparency restricted to the need-to-know, bureaucrats are expected to disclose information only when it is requested (passive transparency), and less through active transparency. This implies that you will probably have to know the existence of the document to request it.

It is important to note that some FOI laws only mention access to documents (the Colombian law, e.g.), which means that public bodies are not obliged to create new records with condensed information. This is problematic because it restricts the capacity of passive transparency to absorb requests on nominal and full transparency.

#### *(Restrictions on Completeness)*

It can be really difficult to tell if something is complete or not, especially when access is conditioned to the need-to-know: in this context, scrutiny by a wider spectrum of actors is limited. In this case, an indicator that compensates the lack of awareness regarding completeness is the *inferability* indicator *verifiability*. If *verifiability* is high, one can consider that the expectation to access complete information is higher too.

### **2.3.3. Transparency of secret records**

The definition of secret information that underpins this study is: information or pieces of information that, if disclosed unrestrictedly, might cause harm to third parties, other states or public policies where the benefit of disclosure is not as great as the possible harm. According to Duchein (1983), one of the classic authors of Information Sciences, there are three categories of secretive documents:

- (1) **Documents related to national defense and the public order:** these documents are related not only to the national defense and foreign affairs of a country, but also related to a country's currency and credit; public security; financial or commercial negotiations.
- (2) **Documents related to the private life of citizens:** this includes family information; health; stipend; criminal procedures; professional life; political, philosophical or religious beliefs; among others.
- (3) **Documents related to secrets protected by law:** including patents industrial and technological information; banking secrecy; commercial transactions; information

on geological and mining prospections; and others that can translate into economic interests.

Due to the aim of this work, this section focusses only on documents related to national defense and the public order. There are overlaps between these three types of secretive documents, and further studies will address the complexities of trade secrecy in defense.

As the introduction debates, there has not been a change in the burden of proof to access sensitive information: the citizens still need to prove they have the right to access some information, instead of this burden resting on the state.

How to change this practice? Sagar (2013) contends that new and well-designed oversight institutional frames are not sufficient to regulate secrecy. For him, “the only credible regulatory mechanism that we have to monitor the use of state secrecy does not sit easily with our moral and political values, especially not with key democratic norms.” (Sagar, 2013, p. 3). For him, each democratic actor can have motives to disclose or withhold information regardless of being a necessary national defense secret. In other words, he defends leaking to part the veil of secrecy.

I agree that institutional frameworks do not offer all solutions, but its discussion is extremely important and salutary because information disclosure through leaks are the exception and involve lots of risks for those who leak. As we will see in Chapter 3, gradual institutional change can have huge impacts on policies in the long-run, and the daily practices of bureaucracy and civil society are the key to understand past and future changes.

Despite having all secondary elements – *visibility* and *inferability* - restricted to a minimum, there are ways of moderating secrets, creating a democratic secrecy system, “lifting the veil of secrecy just enough to allow for some degree of democratic accountability” (Thompson, 1999, p. 183). Some mechanisms can redistribute this decision power, creating checks and balances forces to ensure that secrecy is being used in a democratically and legal way. The literature mentions a variety of tools:

- The Freedom of Information law should trump any exceptions of the access-to-information right in other laws and regulations (secrecy provisions) to the extent of any conflict<sup>22</sup>.

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<sup>22</sup> Right-to-Information Rating (2013).



- There should be a list of acceptable justifications<sup>23</sup> and themes for information withholding;
- There should be a clear classification system, with publicized secrecy tiers and their respective restriction timeframe, and also who can classify;
- There should be time limits to withhold information (the RTI Rating considers a maximum of 20 years as a good standard);
- There should be public lists of classified documents;
- There should be public lists of declassified documents;
- There should be mechanisms for automatic disclosure for declassified documents;
- There should be harm or public interest test, evaluating if the harm is risky enough to prevent from disclosing the information, or if the public interest is higher than the risk<sup>24</sup>;
- There should be the supervision of third parts regarding the right to information<sup>25</sup> with and without sanction powers;
- There should be the possibility of partial disclosure of documents, when only specific parts of a document need to be restricted<sup>26</sup>;
- It should be possible to require public versions of classified documents<sup>27</sup>;
- When the access to a document is denied, giving a response with a legal justification should be mandatory.

The restrictions on what type of information subject to classification is of great importance to avoid over classification. It is not only a matter of democratic participation, simply because secrecy also have costs: it obstructs citizens to have a better understanding of the risks their country face; it obstructs studies and a critical view of the policies being undertaken; paralyses inter-agency communication and increases the likelihood of making mistakes; and, finally, it obstructs any performance evaluation from other interested parts of the government (Gutiérrez, 2010).

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<sup>23</sup> “National security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities” (RTI Rating, 2013).

<sup>24</sup> See Mendel (2008).

<sup>25</sup> Michener (2011).

<sup>26</sup> Right-to-Information Rating (2013).

<sup>27</sup> This mechanism is present in the Mexican FOI Law.

In addition to that and still according to Gutiérrez (2010), the operational details of security and defense policies should be restricted, but this restriction does not include policies themselves. The very fact that these operational details are a secret should not be a secret for citizens too. *“Si las excepciones al principio de publicidad son discutidas, aprobadas previamente y revisadas periódicamente, entonces éstas pueden ser plenamente aceptables desde una perspectiva democrática y liberal”* (Gutiérrez, 2010, p. 23).

Another important mechanism often related to transparency of secret records is the ‘transparency in retrospect’ (Hood & Heald, 2006; Thompson, 1999). This is a common practice to protect the information, following the rationale that the risks of disclosure decrease with time (Mendel, 2008) and, after the risk has diminished to safe levels, the information can be public.

‘Transparency in retrospect’ in national defense documents call attention to an overlooked aspect of effective disclosure: the importance of a good archival management. Documents could be withheld for decades, and the way they are stored, using what type of technology, under whose custody, under the supervision of which institution, are important elements for classification systems really serve their purpose: to protect information when its needed, and release it when it is safe.

I found really few works regarding the relationship between archives and access to information in defense<sup>28</sup>. Thereafter, I add to the previous list some important mechanisms regarding archives, and others related to mechanisms already existent in some FOI Laws that are generally not mentioned in the literature:

- It should be prohibited to destroy documents of historical value;
- It should be mandatory for defense and security-related institutions to make public lists of existent archives, with a summary of their content;
- There should be clear processes for civilians to contest classification decisions;
- There should be the supervision of third parts regarding defense and security-related institutions with and without sanction powers.

All these 16 mechanisms and their ramifications are indicators of the concept of transparency of secret records, and somehow fit into one of the third-level indicators of the concept. The

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<sup>28</sup> Much of the insight about the importance of archival management came from a consultancy I gave to a project of National Security Archive and Open Society Justice Initiative. Therefore, I would like to thank Prof. Michener for the recommendation and to Sandra Coliver and Carlos Osorio for the opportunity to work with them.

result of this organization is presented in Table 4 below. Two indicators of *inferability* were found to be hard to relate to transparency of secret records, which are *simplification* and *disaggregation*.

**Table 6 – Indicators of the transparency of secret records concept**

Transparency of secret records					
Visibility			Inferability		
Completeness		Findability		Verifiability	
1	Are there limits to the reasons to classify documents?	10	Are there public lists of classified documents?	16	Are there harm tests?
2	Can documents be released with only classified parts hidden?	11	Are there public lists of declassified documents?	17	Are there Public Interest tests?
3	Does the AF have to make public versions of documents?	12	Do classified documents become automatically public when the classification period is over?	18	Supervision of third parts: access to information
4	Is the right to access public records legally ensured?	13	Are there public lists of existent archives?	19	Supervision of third party <b>with sanction powers</b> : access to information
5	Are there classification tiers / is there a classification system?	14	Are we able to find legal provisions that establish that the content of each archive should be summarized and public?	20	Supervision of third parts: archival management
6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	15	Are we able to find a clear process for citizens to contest a classification decision?	21	Supervision of third party <b>with sanction powers</b> : archival management
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?			22	Are we able to find a clear definition of who can classify documents?
8	The FOI legislation trumps other secrecy provisions?				
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?				

The evaluation of the transparency of secret records can focus both on de jure and de facto practices. Of course, generating de facto measures for the past is sometimes impossible. That

is why, in the case studies I present more *de jure* analyzes for the historical approach, and *de facto* analyzes for the current situation of each country's transparency of secret records.

## **2.4. Final considerations: transparency of secret records as the dependent variable**

This chapter brings a conceptual framework that can bring a better understanding of transparency in democracies, especially transparency regarding 'secretive institutions' like the armed forces. In order to conceptually accommodate the necessity of secrecy, this chapter used the concept formation method of adjectivation.

Among the four different types of transparency – fuller transparency, nominal transparency, transparency conditioned to the right-to-know and 'transparency of secret records' – this study makes use mostly of one of them: the 'transparency of secret records'.

Having 'transparency of secret records' as our dependent variable allows this study to understand national security secrecy within a clear conceptual framework, composed by *visibility* and *inferability* requirements. The framework also allows a *de facto* or a *de jure* approach, which can vary according to the researcher's goals.

All four types of transparency can exist in the same institution at the same time, and in the case of the armed forces, 'transparency of secret records' is only a part of its information system. Studies that analyze the four types of transparency altogether of an institution can offer a very accurate view of the institution's transparency practices, and future works will explore this design.

The next chapter will explore how to analyze changes in a country's 'transparency of secret records' as a result of a balance of power between civilians and the military. In order to identify the strategies of each change-actor and the resulting type of each change, Chapter 3 will also present in detail the Gradual Institutional Change theory of Mahoney and Thelen (2010).

### **Chapter 3 – Civil-military relations and gradual changes in transparency of secret records.**

In Chapter 2 I developed the concept of ‘transparency of secret records’, which is a derivation of Michener and Besch’s (2013) concept of transparency. ‘Transparency of secret records’, and not transparency in a broader sense, is the dependent variable of this study. Overall, this concept refers to a type of transparency when the visibility regarding the information is low, and generally conditioned to be transparent in retrospect; and also when inferability is low, since the specific motives for the restriction of access to the information are also hidden.

How, then, assess the changes in ‘transparency of secret records’ over time? In order to undertake this analysis, this work uses Mahoney and Thelen’s (2010) theory of Gradual Institutional Changes in the context of the civil-military relations of a country (which is the explanatory variable).

As explored in Chapter 1, civil-military relations are about “on the one hand, that of achieving the effective subordination of the armed forces by the civilian government, and on the other, that of ensuring that the resort to force by civilian authorities takes place within constitutional and legitimate limits” (Serrano, 1995, p. 425). Nevertheless, as already presented there are different ways of defining the meaning of civilian control, that is why I presented the two main theoretical lines of the civil-military relations’ literature: the divided and the integrated approaches.

It is important to note that, when talking about transparency in the armed forces, one has to acknowledge the unbalance between informational demand and informational offer. On the demand side, there are few interested politicians, a considerably high interest from academia especially in Brazil and Mexico, and a suppressed demand from civilian organized groups related to reconciliation issues (Bowles et al., 2013). On the other side, there are military officials who want to preserve their power as any other bureaucrat, but they are the only professionals capable of ensuring a country’s safety, with many prerogatives to restrict access to information.

This study works with the premise that secrecy is still a military prerogative of power in Latin America – a reserve domain, according to Serra (2010). However, only stating this fact will not promote any changes or a better understanding of what is behind that.

The first section presents the theory of Gradual Institutional Change, and how it relates to civil-military relations. The second section presents Mahoney and Thelen’s explanatory framework for change. The fourth section explores how the framework can be applied in the

present study to explain changes in the ‘transparency of secret records’ as gradual changes. The fifth section present some conclusions and expectations for the application of the theory in the case studies.

### **3.1. Targeting a relationship: civil-military relations and gradual change**

The concept of institution carries in itself a notion of persistence through time. Institutions are created to last and to shape agents’ behavior, and large institutional changes are attributed to changes on the outside – using the technical terms, exogenous shocks, which create critical junctures. This view is present in many analysis of historical and rational-choice institutionalism (James Mahoney & Thelen, 2010).

How changes in the transparency of secret records happen? How these processes developed? Are transparency and secrecy laws being able to avoid the hiding of corruption, misuse of resources or human rights violations? Is an exogenous shock always necessary for these changes to happen? Mahoney and Thelen (2010) argue that there was an absence of theories that could help provide an answer. Most of the literature has been focused on external elements of change, considering institutions as a consequence of a series of external causes.

According to these authors, though, institutions flirt equally with stability and change, but what really defines them are changes in the balance of power. In other words, they contend that what animates change is the power-distributional implications of institutions.

[...] institutions are fraught with tensions because they inevitably raise resource considerations and invariably have distributional consequences. Any given set of rules or expectations – formal or informal – that patterns action will have unequal implications for resource allocation, and clearly many formal institutions are specifically intended to distribute resources to particular kinds of actors and not to others (James Mahoney & Thelen, 2010, p. 8).

This is exactly the point of using the theories of civil-military relations as an explanatory variable, since they are about establishing a power-balance between civilians and the military which can benefit a stable democracy and, going further, a better military efficiency and effectiveness<sup>29</sup>.

In general, the authors contend that institutional outcomes are a dubious compromise of these opposing actors, but “in some cases, the power of one group (or coalition) relative to another may be so great that dominant actors are able to design institutions that closely

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<sup>29</sup> See Bruneau and Matei (2008) for a detailed description of the concepts of military efficiency and effectiveness.

correspond to their well-defined institutional preferences” (James Mahoney & Thelen, 2010, p. 8). Would it be the case of the ‘policy reserve domains’ of the military, which Serra (2010) talks about?

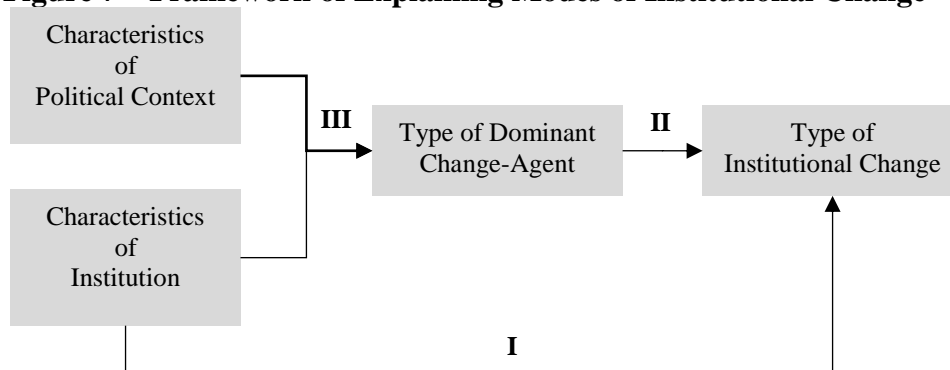
The distribution of power within institutions can also influence the relationship between one institution and a set of other institutions, which is precisely the case of this study: analyzing the armed forces and several civilian institutions and their relationship with each other. According to the authors, actors in disadvantaged groups of the institution can use their status to promote change through other institutions (James Mahoney & Thelen, 2010).

According to Mahoney and Thelen (2010), **we can expect change in the soft spots or gaps between rules and their interpretation**, and that is precisely the place where institutions take place – in the variations in enforcement of (formal or informal) rules, due to an specific set of positive and negative incentives (which in the model is measured by the element ‘characteristics of the institution’, as we will further explore). The next subsection presents the framework of analysis itself and how it will be applied in the cases of the present study.

### 3.2. Explanatory framework of the Gradual Institutional Change theory

The Gradual Institutional Change theory model has three causal linkages. The first one considers that two different variables can drive the type of institutional change (link I): (1) the characteristics of the Political Context and (2) characteristics of the Institution. The other linkage (link II) is about the emergence of a certain type of dominant change actor in a change environment and their common strategies towards change. The last one (link III) is that together, both variables can shape the types of dominant change actors. Figure 11 shows graphically how these links are configured.

**Figure 7 – Framework of Explaining Modes of Institutional Change**



Source: Mahoney and Thelen (2010, p. 15).

Using this framework, the authors contend that there are four modes of gradual institutional change: displacement, layering, drift and conversion. Each mode is related to the locus of institutional transformation and are generally related to a certain type of Dominant Change-Agent.

- (1) **Displacement:** displacement happens when there is the removal of existing rules, with the introduction of new ones.
- (2) **Layering:** happens when there is the introduction of new rules without removing previous ones. The new rules are on top of or alongside the old ones.
- (3) **Drift:** occurs when existing rules assume new meanings and impact due to changes in the environment.
- (4) **Conversion:** occurs when there is an intentional and strategic redeployment of existing rules.

**Link I** am about how (1) *political context* and (2) *characteristics of the institution* affect the type of institutional change. In order to understand the *political context*, the authors suggest to analyze the veto powers of status quo defenders. If they are strong, there will be a tendency of maintenance of old rules, leading to Layering and Drift modes of institutional change. If veto powers are low, change will tend to literally replace old rules for new ones. Table 5 shows the sources and change agents of institutional change and how they relate to each other.

**Table 7 – Contextual and Institutional Sources of Institutional Change**

		Characteristics of the Targeted Institution	
		Low level of discretion in Interpretation/ Enforcement	High level of discretion in Interpretation/ Enforcement
Characteristics of the political context	Strong Veto Possibilities	Mode: <b>Layering</b> Change-actor: <b>Subversives</b>	Mode: <b>Drift</b> Change-actor: <b>Parasitic symbionts</b>
	Weak Veto Possibilities	Mode: <b>Displacement</b> Change-actor: <b>Insurrectionaries</b>	Mode: <b>Conversion</b> Change-actor: <b>Opportunists</b>

Source: adapted from Mahoney and Thelen (2010).



To understand the influence of the *characteristics of the institution*, in turn, the authors suggest the analysis of the possibilities actors have to exert discretion in their interpretation of regulations and overall enforcement. If discretion is high, rules may not change but their exercise will, leading to Drift or Conversion modes of institutional change. In the opposite side, when discretion is low new rules tend to emerge, whether above or in place of old rules – which leads to change into the Layering and Displacement modes.

**Link II** relates change agents and specific forms of institutional change. **Link III**, in turn, is related to the likelihood of a certain type of dominant change-actors to emerge from a specific configuration of Political Context and Institution. Two variables define which change agent can emerge: (1) their will to preserve existing institutional rules and (2) their tendency to abide by the institutional rules. The authors identified four types of change agents, as described below:

- (1) **Insurrectionaries:** they do not seek to preserve institutions and do not follow institutional rules. They actively mobilize against the institution and are specially connected to a Displacement mode of institutional change.
- (2) **Symbionts (parasitic/mutualists):** they benefit from existing institutions to achieve their own goals (which the institution can benefit or not), not necessarily playing by the book (high discretion).
- (3) **Subversives:** they play by the book, working within the system to change it. Since they face strong veto powers to change and low discretion, they tend to seek a Layering mode of institutional change.
- (4) **Opportunists:** this type of agents can lead to organizational inertia if they are satisfied. When there is dissatisfaction, they can work in favor of or at expense of the institution in a context of high discretion and low veto powers. They are often related to a Conversion mode of institutional change and can be allies of other types of change agents if it suits them.

I would like to acknowledge that **it is not my intention to make any kind of insult to the armed forces or any civilian group or agency by using these terms**. The use of the terms ‘insurrectionaries, parasitic or mutualist symbionts, subversives or opportunist is solely due to the character of Mahoney and Thelen’s (2010) theory.

The authors sustain that it is important to differentiate agent's short-run and long-run strategies – a historically opportunist agent can temporarily act as a subversive agent. Link III is important because it shows that types of change agents also emerge from a specific set of incentives, and the historical analysis is key to understand which political conditions shaped these actors.

Thereafter, the next subsection explores how the theory can be applied in the aim of the research goal: to understand how these actors interacted and how change processes developed.

### **3.3. Change-agents and coalitional dynamics**

This section aims to explore how the theory of Gradual Institutional Change can help us understand change in a country's 'transparency of secret records' over time. According to the theories of civil-military relations already presented in Chapter 1 and the difficulties of building transparency de jure and de facto in defense and security-related institutions, it is possible to infer some possible findings.

A brief analysis of the types of change-actors in the context of this research might indicate that the armed forces, as a pro status quo agent, will act as opportunists or symbionts, and often as subversives. As opportunists, they might promote organizational inertia in regard to 'transparency of secret records' while they are satisfied with the current set of rules. Nevertheless, if they are not satisfied with a rule and do not have enough power to change them, they can act at the expense of the institution.

One example of that: imagine if the armed forces of one country is dissatisfied with an archival law that puts strict conditions to the elimination of documents (note that their lower veto possibilities could not avoid the enactment of this rule), demanding the institution to make public lists of the content of archival units, even if they have restricted access. If agents of the armed forces have enough discretion, as opportunists, they will probably eliminate these documents claiming the – at expense of the preservation of the institution's history – destroying proofs of the operations or any misbehavior.

As parasitic symbionts, if they benefit from the current institutional setting they will try to preserve the status quo, and since they have strong veto possibilities besides having high veto possibilities, they will manage to have their own internal regulations about access to information of some sensitive areas (discretion), and will strongly influence general legislation not to promote significant changes regarding transparency in the armed forces.

As subversives – playing by the book with high veto possibilities – they might not fight for changes in one specific legislation, but rather they will enact additional rules that exempt them from previous transparency reforms – which was precisely the case of Mexico (a little spoiler here) in relation to the FOI Law (from 2002) and the National Security Law (from 2005).

Civilian groups, in turn, will hardly have the same discretion in ‘transparency of secret records’ as the armed forces have. Maybe a few might have more discretion, such as the president, the legislature<sup>30</sup> (despite its general lack of interest in defense in Latin America) and the Ministry of Defense<sup>31</sup> (when the Ministry is not militarized itself). Other groups from the state itself such as federal archivists and human rights agencies might have more veto power possibilities, and consequently will be able to promote change through layering, working the system towards a layering type of change.

Regarding civil society, which include journalists<sup>32</sup>, academia<sup>33</sup> and NGOs, might tend to operate as insurrectionaries by their own, and often as subversives if they decide to align with sectors of the state to promote change.

In fact, another important point in the theory of Gradual Institutional Change is that there can be many types of coalitional dynamics in gradual change. According to Mahoney and Thelen (2010, p. 29), “the relative power of various actors is enormously important in affecting their ability to assemble the coalition they need to change (or defend) existing arrangements”. Table 6 shows the possibilities of alignments between types of change-agents.

**Table 8 – Coalitional Alignments**

	Allies with <i>status quo</i> Supporters	Allies with <i>status quo</i> Challengers
Insurrectionaries	No	Yes
Symbionts	Yes	No
Subversives	No	No
Opportunists	Yes/No	Yes/No

Source: adapted from Mahoney and Thelen (2010, p. 30)

<sup>30</sup> See Amorim Neto (2010), Cleary and McConville (2006), Díez (2008) Schulhofer (2010) and Peters and Wagner (2013).

<sup>31</sup> See Bruneau and Tollefson (2009), Zaverucha (2005a) and A.C.S Velázquez (2008).

<sup>32</sup> See Bowles (2013).

<sup>33</sup> See Velázquez (2008).

Opportunists may ally with either institutional supporters and challengers. Some alliances are unlikely to occur, like insurrectionaries with *status quo* supporters (since the goal of insurrectionaries is precisely extinguishing old rules) and symbionts with *status quo* challengers (since symbionts are already taking benefit from institutions). Subversives do not cooperate either with *status quo* supports or challengers because, to some extent, they need to act ‘under the radar of the dominant actors’.

### **3.4. Final considerations: the theory on the field.**

This chapter presented how the Theory of Gradual Institutional Change can help us understand the gradual institutional changes of transparency in defense, given the civil-military relations of a country. ‘Transparency of secret records’ is the dependent variable of a context in which more or less autonomy of the military influence. From the discussions of this chapter some propositions have emerged:

**Proposition 3:** While there is democratic control of the armed forces, the military will tend to resist to transparency reforms generally assuming the form of opportunists, symbionts or subversives.

**Proposition 4:** Civilian state actors will tend to assume change-agent roles of subversives, playing by the rule and working for incremental reforms.

The next chapters then explore the historical background of Brazil and Mexico, and will also analyze the main changes in ‘transparency of secret records’ in the light of civil-military relations and the theory of Gradual Institutional change.

## **Part II – Brazil**

### **Chapter 4 – Brazil's Historical Background**

This chapter will present the reader with a brief overview of Brazil's political history focusing in three elements: the democratic consolidation in a broader sense, civil-military relations and the evolution of the legislation body in 'transparency of secret records'. The period this chapter covers goes from the Getúlio Vargas administration (1937-1945) until the first democratically elected government after the military regime (1964-1985), which is the Fernando Collor administration, followed by the Itamar Franco administration – due to Collor's impeachment process.

In short, this chapter shows how the Brazilian democracy, even in the democratic window between 1945 and 1964, did not lay in solid grounds, relying on the military support to a great extent. Advances in the realm of 'transparency of secret records' in this period were low. However, the beginning of the New Republic in 1985 brought the first legal evolutions, with the right-to-information being ensured by the constitutions and with the Archives Act of 1991.

#### **4.1. Before 1964's military coup**

Before 1964's military coup, Brazil was walking in the tightrope of international pressures against communist ideas, the relatively high political power of the military and the thirst for development. Civil-military relations and transparency were not an issue to each other, since the international advocacy for transparency would only gain political strength in the 90's.

However, during this period one can say that Brazil showed some incrementalism in the setting of rules for classification and 'transparency of secret records'. It was in 1936, one year before Getúlio Vargas coup d'état, that Brazil enacted a decree that settled a definition for "secretive documents"<sup>34</sup>. The aim of this decree was to establish standards for the country's international relations correspondence, despite the lack of a strategic definition of terms such as "security", "integrity of the state", and no considerations regarding maximum restriction timeframes (Hott, 2005).

During Getúlio Vargas' autocratic regime, there were no advances in the realm of transparency. However, with the advent of democracy and the 1946 Constitution, the first

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<sup>34</sup> Decree 1.081/1936.

constitutional reference<sup>35</sup> of what we call habeas data<sup>36</sup> emerged. Following the pace of reforms, in 1949 and 1950 two more regulations were enacted: the first one is the Decree 27.583/49, and established clear secrecy tiers<sup>37</sup>; and the second one is the decree 27.930/1950, which established the regulation for the safeguard of secretive national security information could be applied also for topics unrelated to national defense (Hott, 2005).

This democratic window was not a bed of roses, though, and the major frictions started in 1995, when Juscelino Kubitschek was elected and had João Goulart<sup>38</sup> (a left-wing politician) as his vice-president. The very fact that Goulart was the vice president made most of the conservative political groups in Brazil – which include a considerable part of the armed forces – to stay on guard (Bueno, 2012).

Even the process of taking office was complicated for Juscelino. Right after his victory, tensions increased to the extent of General Henrique Teixeira Lott, Ministry of War of Café Filho's administration, felling the necessity of making a coup d'état in order to ensure that Juscelino was able take office and become the president of Brazil (Bueno, 2012).

Juscelino was capable of maintaining a political balance in Brazil despite party fragmentation and resistances directed to his vice-president. However, as Santos (1986) contends, this balance was a merit of the president himself, and not due to the strength of Brazilian institutions. This assertion shows its accuracy some years later, when in the next elections João Goulart won as the vice-president of Jânio Quadros.

According to Santos, many elements that would indicate the imminence of a coup d'état were present in 1961, when Jânio Quadros decides to abdicate from his position. However, Santos (1986) argues that the difference between the two crisis was that in 1961 there was no 'decision-making paralysis'<sup>39</sup>. In 1964, in turn, the situation got to a point where there was no governability at all, together with a strong military interventionism (Amorim Neto & Rodriguez, 2016; Santos, 1986).

## **4.2. The military regime (1964-1985)**

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<sup>35</sup> 1946 Constitution, article 141, §36, paragraph II – ensures the inviolability of many rights, including the knowledge about documents and information regarding the citizen.

<sup>36</sup> Habeas data is the right of a person to have access to data about herself that the government withholds.

<sup>37</sup> Top-secret, secret, confidential and reserved.

<sup>38</sup> When Goulart was a Minister of Getúlio Vargas' administration, he was known to be an unionist and a 'strike articulator', which related him to communism.

<sup>39</sup> A decision-making paralysis is defined by a low rate enactment of draft bills and a high ministerial turnover due to the presence of two necessary conditions: high political (1) fragmentation and (2) radicalization (Santos, 1986).

With the outset of the 1964 military regime, the three forces could give the impression of being very well coordinated, but in fact they were more autonomous than anything else (D'Araújo, 2010; Jobim, 2012). Chronologically, the military regime can be divided in 4 different phases<sup>40</sup>, as Table 7 presents.

**Table 9 – The phases of the Brazilian military regime**

Phases (Codato, 2005)	Sub-phases (Codato, 2005)	Other important acts and facts
<b>Phase 1:</b> the building of the authoritarian regime. Governments of Castello Branco and Costa e Silva	<b>1st sub-phase:</b> the coup d'état (1964) and the extinction of the party system (1965).	The SNI, Serviço Nacional de Inteligência (National Intelligence Service) was created by Golbery in 1964, right after the coup. Castello Branco signed the AI2 (Ato Institucional nº 2), which allocated the judgements of political crimes under the Executive branch of government. This was how the political repression started to have a legal basis.
	<b>2nd sub-phase:</b> indirect presidential elections (1965) and the enactment of the new Constitution (1967).	AI3 (Ato Institucional nº 3) established the indirect elections to the state legislatures and that the majors of capital cities were going to be indicated by the governor (1966). Other cities were declared as national security territories, not having direct elections too. According to D'Araújo (2000), an important change was the establishment of compulsory retirement for officials ( <i>lei da expulsória</i> - L4.902/65).
	<b>3rd sub-phase:</b> the beginning of Costa e Silva's term (1967) and the beginning of the civilian armed struggles (1967).	Important changes in the military career were enacted.
	<b>4th sub-phase:</b> the beginning of student protests and demonstrations (1968) and the increase of political repression (1968 Dec).	AI5 is instituted: this normative act formalized the political censorship and the power of the state to punish and imprison anyone considered a threat to the state. AI5 is called 'the coup inside the coup', characterized by the hardline of the dictatorship in power, and was the apex of violent repression. The 'Walk of the One hundred thousand' ( <i>Passeata dos Cem Mil</i> ) showed the strength of the student movements, and come branches of the Church as political actors against the regime (D'Araújo, 2015; Fico, 2004b).
<b>Phase 2:</b> consolidation of the regime. Governments of Costa e Silva and Médici.	<b>5th sub-phase:</b> Costa e Silva illness makes the Military Junta to assume the presidency (1969) and General Médici is elected (1969).	In 1969 was created the Sistema Codi-Doi of 'internal defense'. Torture was formalized as a means of extracting information. With this, the Codi-Doi system, the SNI turned itself into the controller of all the repression machinery of the military regime (Fico, 2004).
	<b>6th sub-phase:</b> enactment of a new Constitution (1969 Dec) and strengthening of the armed struggles (1973).	
	<b>7th sub-phase:</b> General Geisel is elected (1974).	

<sup>40</sup> I am aware that there are many other ways of dividing the periods of the military regime, as D'Araújo (2014) contends. Using Codato's way of dividing these periods is just illustrative and does not aim to qualify this standpoint as better or worse.

**Table 7 – The phases of the Brazilian military regime (continuation)**

<b>Phase 3:</b> the changing regime. Geisel government.	<b>8th sub-phase:</b> Geisel assumes the presidency (1974) and announces the gradual changing of the regime.	Lamounier (2005) describes this phase as the Brazilian glasnost. Geisel and Golbery were the ones 'architecting' the political opening, controlling every step of it (Fico, 2004).
	<b>9th sub-phase:</b> victory of MDB party in the Senate elections (1974) and the closing of the National Congress by Geisel (1977).	According to D'Araújo in Fico (2004b), Geisel was not a democrat, but knew how to follow the rules. He had to face the hard-liners in the case of Vladimir Herzog's death, in October 1975. He accepted the suicide explanation from the São Paulo Doi-Codi unit, making explicit that this could not happen again. In 1976 happened the Lapa massacre, in São Paulo, in which the military police murdered all the Communist Party higher members.
	<b>10th sub-phase:</b> dismissal of the minister of the Army (1977) and the revocation of the AI5 (Ato Institucional nº 5 - Institutional Act nº 5) (1979).	In the attempt to control the hard-liners of the regime, Geisel transfers the command of the Army to the presidency (Fico, 2004). The Habeas Corpus right came back to the legal provisions of the country.
<b>Phase 4:</b> disaggregation of the regime. Government of General Figueiredo.	<b>11th sub-phase:</b> Figueiredo assumed the presidency and reform the two-party system (1979).	The <b>Amnesty Act</b> (6.683/1979) negotiations occurred after the end of AI-5, driven by General Geisel, and the act was signed by General Figueiredo.
	<b>12th sub-phase:</b> working-classes strikes (1980) and the resignation request from General Golbery - the responsible for the intelligence agency of the regime, the SNI (1981).	
	<b>13th sub-phase:</b> direct elections for the state governors (1980) and the defeat of the direct elections proposed Constitutional addition.	In 1981 occurred the Rio Centro attack, organized by the radical right wing to implant a bomb during the party of the Workers Day. The bomb exploded in the car of the two military officers responsible for implementing the action, before they get near Rio Centro, the location of the Workers Day commemoration.
	<b>14th sub-phase:</b> indirect elections for a civilian president and the winning of the opposition and the beginning of Sarney's presidency (1985).	In 1984 there was an important movement in Brazil asking for direct elections. The 'Diretas Já' gathered more than a million people on the streets and pressured the military regime to finally open the regime to civilians (Fico, 2004).

Ruptures in the constitutional order can change political values and policies of a country. However, the military regime preserved some democratic characteristics such as indirect elections (but still elections), fixed presidential terms and bi-partisanship. These elements created some sort of institutional memory that might have helped the democratization process (Lamounier, 2005).

The most important change of the General Castello Branco administration (1964-67) was the changing of rules for military officers to enter political life, in 1967. Before this measure, a military officer remained within the armed forces while he was in a political



position, going back to be on duty after the end of the term. After the change, once the military officer was elected, he would be automatically retired. This measure avoided the politicization of the armed forces. Besides that, to be a candidate in a city or state, anyone had to have lived at least four years in that place, which avoided many generals to try to run for governors (Jobim, 2012).

According to Jobim (2012), the military also changed the premises for military officials to enter in politics in a way that avoided the formation of new military elites and leaderships. Among these reforms were the establishment of a time limit of 12 years to a military officer to be a general. This meant that one general with 12 years of service would be automatically retired. There was also the establishment of a mandatory High-Command renewal of 25% every year. Besides that, from this reform, in order to run for any political position, the military official needed to have a four-years permanent residency in the city or state, which made impossible for many military officials to participate as candidates in the state level elections.

The Brazilian political opening from the military regime was a gradual process, often at risk of a setback. The need of democratization was already a topic during Geisel's government (1974-79), and it was an intent to lower the political temperature and avoid civilians from taking the leadership of the process (D'Araujo, 2010; Lamounier, 2005; Versiani, 2010).

Notwithstanding, Geisel's presidency has opened many communication channels between civilians and the government, through the reedition of the habeas corpus right in cases of political crimes, the end of capital punishment, the end of banishment from the country and the end of the Institutional Act nº 5 in the very last year of his government (Versiani, 2010).

In terms of access to information there were still more setbacks. In 1967, the Decree 60.417 gave birth to a new secrecy and documental regulation, called 'General Instructions for the safeguard of restricted issues'. Only the manager of the archives had access to military documents, which implied severe restrictions to access to information. In 1971, the decree 69.534 altered some features of the same general instructions, like the list of authorities able to classify documents. However, the major setback occurred in 1977 under Ernesto Geisel presidency, which enacted a decree (Decree 70.099/1977) stipulating that public servants could have their own criteria to classify, with no third part supervisions (Hott, 2005).

In 1979, João Figueiredo is indirectly elected, asserting that he would go through with the political opening. Right in his first presidential term in 1980, six political parties were created in Brazil (PMDB, PDS, PT, PP, PDT, and PTB), resulting not only in the weakening of

military political power, but also of the civilians, who turned out to be fragmented among all the new-born parties (Lamounier, 2005; Versiani, 2010).

Despite the progress, these reforms did not exactly made civilians and the military closer, since the tacit agreements under the Amnesty Act – which forgave all ‘political’ crimes committed by both civilians and the military – led to mutual mistrust: the military stayed inside the barracks and civilians turned out to be less interested in defense issues each day (D’Araujo, 2010; da Rocha, 2010).

#### **4.3. The rebirth of Democracy (1985-1995)**

With massive civil demonstrations, the military regime had no option but to leave power. However, they still owned the rules of the game, and carefully picked two candidates that would not turn themselves against them too harshly. These two candidates were Tancredo Neves (opposition) and Paulo Maluf (situationist) (Fico, 2004a).

Tancredo Neves won the indirect election in January 15th of 1985. Despite his great sickness, Tancredo wanted to take office no matter what, since he thought the military might want to take over power again. Unfortunately, he was hospitalized one day before the ceremony, dying in April 21 of the same year. José Sarney<sup>41</sup> took office in March 15<sup>th</sup>, waiting for the elected president to get better, which never happened (Fico, 2004a)<sup>42</sup>.

Under Sarney’s administration, Brazil formed a Constitutional Assembly<sup>43</sup> to write the new constitution. According to Versiani (2010), the creation of the Constitutional Assembly was not simply given to the Brazilian society. It was a strong civilian movement through the demonstrations called *Diretas Já* (‘Direct elections now’), and many others. However, the military was aware of the importance of this assembly and the fact that it was a congressional – and closed to civil society in general Constitutional Assembly clearly denoted their conservative veto power (Oliveira, 1994).

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<sup>41</sup> It is important to notice that at the time there were two possible substitutes for Tancredo: the vice president Sarney and the chief of the Deputies Chamber Ulysses Guimarães. President João Figueiredo believed that since Tancredo did not formally take the position of president before dying, he would be the legal successor. However, the military demanded Sarney to take the position, thinking they could not control Guimarães. As a matter of fact, Sarney was once affiliated to the ARENA party, who supported the military regime (Zaverucha, 2005b).

<sup>42</sup> According to Zaverucha, it was only possible for Sarney to take office because he had support from General Leonidas, which called him congratulating him for being president even before Tancredo Neves’ hospitalization.

<sup>43</sup> To know more about the Brazilian Constitutional Assembly, Versiani (2010) asserts that there is a Historical Archive in the *Museu da República* (Museum of the Republic), in Rio de Janeiro, with a vast variety of documents from the period.

President Sarney played along and accepted the military tutelage in his government. The military interests pretended to be in favor of the state, and not only based in political pressures. Using this discourse they made pressure on two main points: the maintenance of the unrestricted political amnesty, the constitutional prerogatives of the military regarding its role (Oliveira, 1994).

They appointed thirteen military officials to lobby in the thematic sub-commissions (Zaverucha, 2005b). In general, there was little interest from the main civilian leaders to engage in the discussion and writing of defense-related topics – new leaderships did not want to link themselves with anything from the old regime. However, there was also many civilian politicians and sectors of the media supporting the military agenda (Oliveira, 1994; Vasconcellos, 2012).

The Commission for electoral organization and institutional assurance<sup>44</sup> was the responsible for writing the parts of the Constitution related to the armed forces. The deputy in charge of the Commission was Ricardo Fiúza, a well-known supporter of the military regime. In this position, he managed to accept all the suggestions made by the military, denying proposals of the creation of a Ministry of Defense. He was also a supporter of the maintenance of state-level military polices and the maintenance of the Intelligence institutions of the repression<sup>45</sup>, which all came to endure (Dicionário CPDOC, 2017; Zaverucha, 2005b).

The new constitution, as fully approved in 1988, accommodated right-wing as well as left-wing political demands. This is the most progressive Constitution Brazil has ever had, and through Article 5 created a solid basis for the emergence of access to information measures (including the Archives Act 8.159/1991 and the Freedom of Information Law 12.527/2011). This is because the article 5, line XIV<sup>46</sup> of the Constitution establishes the right of every citizen to access to information.

Despite the many progresses, only one month after the enactment of the new Constitution the armed forces were called to contain protests from labor unions in the city of Volta Redonda. The results: three deaths and a wave of pessimism regarding the new constitution. The operation was possible precisely because of one of the articles<sup>47</sup> the armed

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<sup>44</sup> In Portuguese, *Comissão de Organização Eleitoral Partidária e Garantia das Instituições*.

<sup>45</sup> The National Service of Information (*Serviço Nacional de Informação*, or SNI).

<sup>46</sup> In Portuguese, “é assegurado a todos o acesso à informação e resguardado o sigilo da fonte, quando necessário ao exercício profissional”.

<sup>47</sup> Article 144 of the 1988 Brazilian Constitution.

forces lobbied for, the one that made legal military deployments within the country, which later would be known as *Operações de Garantia da Lei e da Ordem*<sup>48</sup> (GLO).

#### **4.4. Collor's and Itamar Franco's Administrations (1990 – 1995)**

Fernando Collor de Melo was the first directly elected president of Brazil after the military regime. Before him Brazil was under military tutelage, since the former president José Sarney was a spokesman of the military. The country was breathing hope and there were high stakes on democracy as a means of diminishing poverty and providing and ensuring political rights and participation. Fernando Collor represented a lot of that: a young, almost mature man driving on a jet ski, capable of making Brazil's dreams come true.

He defeated Luis Inácio “Lula” da Silva, a unionist who would become president three terms later. According to Oliveira (1994), the military were satisfied with Lula's loss because it represented a rupture to the left-wing of politics. However, Collor de Melo was no military's puppet as the former president was. In his campaign, he was aligned with a democratization agenda of reforms, proposing the creation of the civilian Ministry of Defense and the distancing between the military and politics.

President Collor tried the most to exercise his authority as the High-Commander of the Armed Forces and started well by choosing military generals with a neutral profile for the military Ministries. Oliveira (1994) asserts that this was crucial for the military's acceptance of the president and the democratic context. Collor also had a well-planned schedule of visits to military units, and discourses directed to military officials reinforcing his authority.

In general, the military demands on Collor's government were four. First, they demanded the postponement of the creation of the Ministry of Defense. According to Oliveira (1994), it was delayed under the excuse that a Ministry of Defense would better suit a parliamentary system. Second, they demanded raises in salaries and investments, but these were conditioned to general economic plans, which means that the armed forces were not in a special place to receive a fatter slice of the governmental budget. This was not a simple matter, since the absence of investments put many military facilities in difficult situations.

Third, they demanded the definition of a strategic mission for the armed forces, which suffered setbacks with the extinction of the National Intelligence Service (SNI), transformed in

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<sup>48</sup> In English, Operations for Law and Order Enforcement.

an Intelligence Department within the Presidency's Secretary of Strategic Issues<sup>49</sup> (Oliveira, 1994). In this regard, the reform veto powers of the military were challenged with the dissolution of the regime intelligence apparatus. Another (civilian) intelligence agency was created only after nine years, in 1999. What could be a reform towards a better civilian control, ended up not occurring, though: the civilian intelligence agency was filled with military officials.

Fourth, the military wanted to preserve the most the authority of their ministers, demand which was accepted by the non-recognition of civilian associations of military officials as strategic actors by the presidency (Oliveira, 1994).

Regarding access to information, the most important piece of legislation enacted during Collor's administration was the Archives Act (Act 8.159/1991). This law was elaborated by jurists, archivists and other specialists and represented a huge step forward in terms of archival legislation. Its draft law circulated in Congress for many years, and its final version had a regulatory role, not including access to information procedures (Costa, 2003; Hott, 2005).

It established the right of citizens to access public records, military archives were subordinated to the Executive branch, it created the Permanent Commissions for the Evaluation of Documents<sup>50</sup>, it established a 30-year maximum limit plus one renovation for the classification of documents, and created CONARQ, a public body responsible for the national archival system.

Another important feature of this law was that it set clear rules regarding access and protection of personal information. Personal information became an issue with the many violation of privacy cases occurred during World War II. These violations motivated the presence of this topic in many international agreements and treaties, like in the United Nations' Declaration of Human Rights, in the European Convention of 1950 and others (Hott, 2005). On this subject, the Brazilian archives act determined a maximum restriction of 100 years for documents which could contain personal data (G. M. Rodrigues, 2011).

At this point, Brazil already accounted for several advances in civilian control and access to information. However, political turmoil was lurking around. In May of 1992, the brother of the president accused the Collor of being involved a corruption scheme during elections. After the accusation, a parliamentary committee of inquiry was created to investigate

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<sup>49</sup> The decree 339/1991 establishes the creation of this secretary. Available in [http://www.planalto.gov.br/ccivil\\_03/decreto/1990-1994/D339.htm](http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D339.htm)

<sup>50</sup> In Portuguese, *Comissões permanentes de avaliação de documentos*. These commissions could evaluate and decide about the reclassification of documents.

the president, and in September of the same year the Chamber of Deputies authorized an impeachment process.

As a result of the huge pressure made by the media, civil-society, and specially political groups in disagreement with the president's political agenda (Sallum Júnior & Casarões, 2011), Collor decided to resign, leaving the position to the vice-president Itamar Franco. Collor's impeachment offered positive signs to democracy, since the military did not make any apparent moves towards intervention (D'Araujo, 2010).

Unlike Collor, Itamar did not have constraints to rely on the military political leverage. One of his first actions was to ask for the military ministries' 'blessing', trying to ensure the resilience of democracy despite the impeachment process<sup>51</sup>. This led to political disputes among the military that resulted in the nomination of military ministries linked to the former president Sarney – who ensured the military tutelage in his term (Oliveira, 1994).

Two steps forward, one step back.

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<sup>51</sup> Itamar Franco appointed the Admiral Mário César Flores as the head of the Strategic Matters Secretary (*Secretaria de Assuntos Estratégicos* – SAE), strengthened the Intelligence Department and appointed Colonel Wilson Romão to be in charge of it (Zaverucha, 2008a).

## **Chapter 5 - Information and civil-military relations in Brazil's democracy**

Following the rationale of the previous chapter 4, the aim of chapter 5 is to present the reader with a brief overview of Brazil's political history focusing on three elements: the democratic consolidation in a broader sense, civil-military relations and the evolution of the legislation body in 'transparency of secret records'.

This chapter covers the following democratic Brazilian presidential terms: the Fernando Henrique Cardoso administration (1995 – 2002), the Luis Inácio 'Lula' da Silva administration (2003 - 2010 and the first three years of the Dilma Rousseff administration (2011 – 2014).

In short, this chapter shows that the reforms in defense-related policies and prerogatives followed the same slow-paced rhythm of the Brazilian democratization process, but showed some consistent – but still incomplete – progress throughout the years specially with the creation of the Ministry of Defense in 1999, the 'New Defense' Law of 2010, and with the publication of Brazil's Defense White Paper in 2012.

The quest for access to information showed consistent progresses too, however, dubious reforms were present, such as the secrecy decree of 2002. The persistence of this regulation for nine years, which represented a major setback in previous access achievements, signals for the political bargain power the military still had at that time. The resistances to the 2011 Freedom of Information Law point to the same direction, and the posterior military acquiescence to the law can be related to the high level of discretion in implementing and interpreting rules the military have.

Besides that, the stable veto power of the military in relation to the Amnesty Law, the difficulties in having access to official information from the armed forces regarding the military regime, and civilian acquiescence shows that the nature of reforms in civil-military relations did not affect the armed forces autonomy to a great extent (D'Araujo, 2012).

### **5.1. Cardoso's Administration (1995 – 2002)**

Fernando Henrique Cardoso was elected with 53,06% of valid votes, and came with a bucket list of reforms for the defense sector (with the creation of the Ministry of Defense as the main proposition). In general, his government was capable of building a majority in Congress

and, at the same time, used a lot of Provisional Legislative Measures<sup>52</sup> to implement policies that are historically difficult to be enacted in democracies (Alsina Jr, 2003; Figueiredo, Fernando, & Valente, 1999).

Cardoso came from a military and politician family that participated in many important moments of Brazil's political life<sup>53</sup>. His early political path was leftist: since the beginning of his academic life, he wrote to communist university journals and knew really well the Marxist academic elite. Nevertheless, with the beginning of the military regime, he was forced to move from Brazil in a voluntary exile. He had lived in Chile and France from 1964 to 1968 as preventive caution regarding the military regime and his political thoughts (Garcia Jr., 2004).

His political life started in the 1970s and it is marked by a different standpoint than before. Instead of affiliating himself to the leftist and workers' parties, he decided to follow old and well established political connections and assumed a center-right political point of view in the 1999 presidential dispute (Garcia Jr., 2004).

Despite the changes in his political approach, he fostered democratization reforms that were being avoided since the elaboration of 1988 Constitution. His campaign was already marked with promises of reforming the Defense sector, and the possible creation of a Ministry of Defense was already expected – despite only being a reality in his second presidential term (Vasconcellos, 2012). Nevertheless, important changes already happened in the very first year of his presidency, with the creation of the Commission for Political Deaths and Disappearances.

#### **5.1.1. 1995: 'Missing persons Act' and the Commission for Political Deaths and Disappearances**

The Commission for Political Deaths and Disappearances<sup>54</sup> was created in 1995 through the act 9.140/1995, as result of 25 years of families fighting for some answer from the state in cases where it was impossible to confirm the death of missing people. It also took five years to be enacted in Congress.

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<sup>52</sup> In Portuguese, *Medidas Provisórias*. This is a legislative mechanism held by Brazilian presidents to legislate regardless of the Chamber of Deputies' approval. However, the measure has to be accepted by the Chamber to be validated as a Law.

<sup>53</sup> His grand grandfather was a politician and party leader during Brazil's Second Empire, his grandfather was a military official that was very active in the Proclamation of the Republic, and his father, besides being a military official that helped Getúlio Vargas to become president, was also a politician in the democratic window of 1945-1964 (Garcia Jr., 2004).

<sup>54</sup> In Portuguese, *Comissão Especial sobre Mortos e Desaparecidos Políticos*. It was created by the Act 9.140/1995.



Before the enactment of this act, people who suffered with the repression during the military regime, along with family members of missing people, started many processes of investigation of clandestine cemeteries, the recognition of the locations where torture and illegal imprisonments occurred, and the recollection of testimonies of survivors. There was also the emergence of civil-society organizations like *Tortura Nunca Mais* (Torture, never again), that conducted many studies and gave support to those families (CPDOC, 2015).

This commission worked for eleven years to identify the location and identification of bodies of people who have disappeared. The commission gave 354 financial compensations for the families with missing members, most of them related to the Araguaia guerrilla<sup>55</sup>. The underlying premise of the enactment of this commission is that the state was the one responsible for those deaths, despite the absence of mechanisms to identify and punish the officials of the repression system (CPDOC, 2015; D'Araujo, 2010; Rotta, 2008).

The responsible for its creation was the Ministry of Justice, which had an important role in their activities, in the figures of Nelson Jobim<sup>56</sup>, and later José Gregori – Minister between 2000 and 2001.

There was no special treatment or access to documents for the commission: they used sources like newspapers, interviews with family members and public servants, and consultation to open archives. Besides that, the families were the ones responsible for bringing documents proving the death of the missing ones to the Commission. The burden of proof was not with the state (CPDOC, 2015; Rotta, 2008).

According to many interviewees of the CPDOC Report “*Arqueologia da Reconciliação*” (2015), the Act 9.140/1995 was clearly an achievement; however, the state has chosen a financial ‘reconciliation’ instead of a criminal one, which did not comprise justice.

The military profoundly disliked the creation of this commission precisely because it implied the culpability of the state regarding the deaths occurred during the military regime. Despite the culpability of the state, this initiative was clearly not a direct step to criminal reconciliation and, after the many years of this commission’s work, “everything was like before. The Armed Forces continued to control the keys to the Archives of the military regime” (Martins Filho, 2000, p. 3, our translation).

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<sup>55</sup> “The guerrilla occurred between the middle 1960s, when the first activists of Communist Party of Brazil (PC do B) arrived in the region, and 1974, when the last guerrillas were hunted and killed by militaries, trained to combat the guerrilla and determined not to do prisoners.” (Peixoto, 2011, p. 479)

<sup>56</sup> Minister of Justice between 1995 and 1997, who turned out to be the Minister of Defense in 2007.

### 5.1.2. 1996: Policy of National Defense

The tension between civilians and the military resulted from the Missing Persons Act did not affect the enactment of the Brazilian National Policy on Defense (in Portuguese, *Política de Defesa Nacional*, PDN from now on), in 1996.

According to Alsina Jr. (2003) the enactment of PDN and the creation of the Ministry of Defense were interconnected events, since the plan politically reinforced the necessity of the creation of a civilian defense institution.

While the PDN involved an evaluation of the international strategic-political context in the eyes of the Brazilian foreign affairs objectives, the Ministry of Defense instilled the establishment of new ways of coordination (unified dialogue) between the diplomatic corps and the armed forces. (Alsina Jr, 2003, p. 53, our translation)

At first, president Cardoso chose to give to the military themselves the task of designing the new Ministry of Defense (MOD), putting the EMFA Commander in charge of it. As a result of the assignment, many studies and meetings were held by the armed forces in order to design the institution between 1995 and 1996. However, the material did not find support in the Executive and ended up being discarded by the president (Alsina Jr, 2003; Oliveira, 2005).

In the same year, president Cardoso creates the CREDEN – *Câmara de Relações Exteriores e Defesa Nacional* (Chamber of Foreign Affairs and National Defense), within his government council. CREDEN would be the responsible for undertaking studies in National Defense Policy, movement which the military were uncomfortable with. As a result, the military decided to engage in the discussions, making a document that would only formalize what the forces have already been doing. Within two months and a few meetings, the PDN was launched (Alsina Jr, 2003).

The ultimate understanding of the PDN is that the document was not a defense policy, but an effort to harmonize the views between the many defense-related agencies in the country, including the armed forces (Alsina Jr, 2003; Martins Filho, 2000).

However, this was the first time in Brazil's democracy that there was a document built among civilians and military officers stating some of the Brazilian vision about defense, representing the symbolic opening of the Brazilian defense to civilians (Alsina Jr, 2003; Martins Filho, 2000).

### **5.1.3. 1997: Decree 2.134, the “access decree”, the Decree 2.190 and the Habeas Data regulation**

The military veto powers in reconciliation issues did still hold true. However, in 1997 Brazil had the first main legal upgrade in terms of access to information, with the enactment a habeas data regulation and the decree known as the Access Decree (D 2.134/1997).

The regulation of habeas data happened also in 1997 with the enactment of the Act 9.507 (1997). According to the article 7 of this act, the habeas data right can be used in the cases of: (1) the need of assurance of personal information knowledge by the government, (2) for the information correction, (3) and for the justification of correct information, when the interested part is involved in judicial processes. The Judiciary is the one responsible for receiving habeas data request, and the judge determines whether the information will be released. In the case of habeas data within the armed forces, the court responsible for judging the habeas data related to military institutions is the Military Superior Court (Painel Acadêmico, 2012).

For instance, the access decree guaranteed public access to archives and established the categories of secretive documents. This decree was one of the most advanced access regulations, which included a set of restrictions to secrecy and also administrative punishments for those officials not accomplishing the law. The only reservation against it was the necessity of giving motives to access documents (Hott, 2005).

The military were concerned with the Decree 2.134 (1997) and its absence of rules and procedures for maintaining and dealing with classified information. Before this decree, the procedures to manage classified information were settled by the Regulation for Safeguard of Secretive Issues<sup>57</sup> through the decree 79.099 (1977), which was enacted during the military regime.

In response to that concern, the decree 2.910 (1998) was elaborated by two servants of the Brazilian National Archive and two military officials, and established regulations exclusively to secretive documents, materials and cryptography, with no additional restrictions further than the ones of the decree 2.134 (1997). It also stipulated the publication of a list of available declassified documents that were open to consultation each six months (Hott, 2005).

It was a promising period for those working with transparency, even with the need to enact the decree 2.910 (1998), and the next year would present even more advances in terms of civil-military relations, not as big steps, but as constant little ones.

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<sup>57</sup> Regulamento para a Salvaguarda de Assuntos Sigilosos.

#### 5.1.4. 1999: The creation of the Ministry of Defense

Five years had passed since the National Policy on Defense was enacted. The military reaction to the PDN at the time of its enactment was unfavorable, vehemently criticizing the creation of a civilian Ministry of Defense. According to Martins Filho (2000),

its creation constitutes the clearest example of the military strategy of backlash regarding institutional domains where external and internal pressures are unavoidable. In this case, the argument that prevailed was that no country the size of Brazil could not have a unified Ministry of Defense (p. 3).

However, some reluctant parts of the military changed their minds. The Navy, e.g., was afraid of losing influence power if an Army official took on the Ministry, situation which made the force to embrace change. In this context, president Cardoso proposes a Constitutional Amendment in the end of 1998 creating the Ministry, which became law in 1999 (Martins Filho, 2000).

Alsina Jr. (2003) also argues that the nominations of military ministers made by president Cardoso were a clear statement that the president wanted to create the Ministry of Defense, specially by the fact that the chosen minister for the EMFA<sup>58</sup> (Chief of Defense Staff) was one of the most favorable military generals to the creation of such institution.

After fourteen years of democracy, finally Brazil would have a civilian Ministry of Defense. The creation of the Ministry of Defense was a successful endeavor of Cardoso's government, despite not mobilizing congressmen – a reflection of civilians' lack of interest in defense issues in the country. It was a gradual process of acceptance of the armed forces through cautious steps (Alsina Jr, 2003; D'Araujo, 2010; Oliveira, 2005).

According to Martins Filho (2000) the creation of the ministry affected positively the Brazilian Defense in two ways. The first one is stimulating an integrated defense approach among the three forces – which until today is utterly superficial. The second one was the promotion of an integration between civilians and the military.

However, the authority struggles between the military and civilians came quickly: in the end of 1999, allegations that relatives of the Minister defended drug traffickers on criminal processes led the Air Force Military Commander Brauer to make comments against the civilian leader. The president then decided to fire the Commander (Martins Filho, 2000; Zaverucha, 2005a).

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<sup>58</sup> Estado-Maior das Forças Armadas.

Oliveira (2005) contends that the process of creating the Ministry of Defense was relatively peaceful, since all the tensions that emerged stayed within the Constitutional arena. However, The reactions of the Brazilian Air Force were many: from the missing airplane in the official event of nomination of the new Commander, representing the former Commander's absence, to abusive interventions in private airlines 'for purposes of inspection' (Zaverucha, 2005a).

Before the creation of the MOD, there were four military ministries: The Ministry of the Army, the Ministry of the Navy, the Ministry of the Air Force and the Joint Chiefs of Staff of the Armed Forces (Estado-Maior das Forças Armadas - EMFA).

The EMFA was extinguished, and the previous military ministries were changed into Commands. However, according to Zaverucha (2005a), the minister had no real powers over the armed forces: no veto powers over budgetary issues - the budgets were in fact totally made by each force themselves, no power or influence over General and other Officers nominations, and was treated with the same distance the former military ministries treated EMFA). It was a power rotation between the three forces and civilians had no real authority, specially before the Chief of the Defense Staff (Jobim, 2012).

Most of the ministers of defense had very few knowledges about the topic, which never instigated authority and respect from the armed forces – this was the case of the two first ministers Élcio Álvares and Geraldo Quintão. In addition to that, the military officials were generally very suspicious about the preparation of any civilians starting to deal with defense issues (Cleary & McConville, 2006; Pimenta, 2014; Zaverucha, 2005b).

According to Pimenta (2014) differences between the organization of civilian and military institutions also caused difficulties to this integration, since civilians are not included in the military chain of command. Together with the lack of specialization, the entrance of civilians in the defense debate is constrained.

#### **5.1.5. 1999: The creation of the Brazilian Intelligence Agency**

In 1999, the same year he created the Ministry of Defense, president Cardoso creates the Brazilian Intelligence Agency, through the act 9.883 (1999). Its creation, alongside with so many other defense-related reforms in Brazil is institutionally hybrid, since it represents some important changes in civilian control, but not deep enough to contest the authoritarian veto powers still existent (Zaverucha, 2008a).

Interestingly, president Cardoso used the same strategy he used with the first projects of the Ministry of Defense: he asked for a military general to design and define the civilian intelligence agency. This led to the prevalence of a military perspective in the very foundations of the agency, repeating the structure of SNI: ABIN would be an intelligence agency controlling a national intelligence system (the SISBIN, *Sistema Brasileiro de Inteligência*, or in English, the Brazilian System of Intelligence) (Zaverucha, 2008a).

There were many criticisms against the enacted law, which left open the definition of national interests, details regarding the forecasted legislative commission responsible to oversee intelligence activities, with no definition and clear limits to the performance of intelligence officials and term-limits, and also with a lack of definition of who controls SISBIN and what are its purposes. Regarding the military intelligence agencies, they remained intact with the creation of ABIN (Zaverucha, 2008a).

Civilians were afraid that ABIN could turn out to be another SNI. In response to that, president Cardoso gave his word that this could not happen since the agency would be subordinated to the presidency. However, as Zaverucha (2008a) points out, the Provisional Measure 1.994-4 of 2000 changes this premise, locating ABIN under the Institutional Security Cabinet – an institution filled with military personnel.

One year after the creation of ABIN, in 2000, a joint legislative commission on intelligence<sup>59</sup> was created. However, its regulation was only enacted in 2005.

#### **5.1.6. 2001: Ministry of Justice's Amnesty Commission**

Following the creation of the Ministry of Defense and a civilian Intelligence agency, in 2001, reconciliation issues got back in the agenda with new data about the Operation Condor: According to Martins Filho (2000), a series of newspaper articles from the *Jornal do Brasil* published in 2000 showed that a secret operation between the dictatorships of Brazil, Chile and Argentina – which is called Condor Operation – could have targeted with murder two Brazilian presidents: Juscelino Kubitschek and João Goulart. At the time, president Cardoso contended that would open the military archives to undertake a proper investigation.

The opening never happened, however, an Amnesty Commission was created within the Ministry of Justice to implement the benefits for those under the Amnesty Act. This commission

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<sup>59</sup> CCAI, *Comissão Mista de Controle de Atividades de Inteligência* – Joint Commission for the Control of Intelligence Activities.

followed the same rationale of the Special Commission for Political Deaths and Disappearances: it focused on financial retreatments instead of focusing on identifying and prosecuting the ones responsible for murders and torture. There was a high tension about the fact of giving the benefits to the military personnel forgiven by the Amnesty Act (Agência Estado, 2010; CPDOC, 2015).

Moreover, in Brazilian history the military veto power over reconciliation issues override civilian attempts to make change in this realm. However, the military resistance to reconciliation also acted at the expense of general transparency measures, as the next section explores.

#### **5.1.7. 2002: Last breaths and... a surprise.**

The last year of Cardoso's government began with an important decree: the regulation of the Archives Act (Act 8.159, 1999) through the decree 4.073 (2002). The decree established an institutional ground for CONARQ (the Council for National Archives) to function, doing the same for SINAR (National Archival System). In the overall balance of Cardoso's two presidential terms, there were great achievements in terms of civilian control of the military: there was a publicized National Policy on Defense, and a civilian Ministry of Defense that had already shown to be strong enough to face some institutional crises and the military disagreement.

However, in his last moments as a president, the president signs the decree 4.553 (2002), establishing the possibility of 'eternal secrecy' through the possibility of endless renewals of documental classification "without reading it". The ones signing the decree together with the president were Pedro Parente, the presidency's Chief of Staff and Alberto Mendes Cardoso, Army General and Minister of Institutional Security (Hott, 2005; Revista Veja, 2011; K. F. Rodrigues, 2013).

It is important to notice that at that time civil-military relations were facing challenges. The Ministry of Defense Geraldo Quintão was dealing with some disagreements with the armed forces. In 2000 president Cardoso fired the Army General Gleuber Vieira, who made insubordinate declarations. From this point on, a series of retaliation started to come from the military, who even scheduled a meeting of 155 generals in Brasília (Brazil's capital), without calling the Minister – another clear sign of insubordination and disagreement with civilian leaders. Besides that, the Minister still had to deal with his broken promises of higher wages and budget for the military. These animosities continued until the end of president Cardoso's

term, worsened by a resource block to the military from the federal government (Zaverucha, 2005a).

## **5.2. Lula's Administration (2003-2011)**

Luís Inácio “Lula” da Silva (who we will refer to as just “Lula” from now on) started his path in politics as a syndicalist in the “ABC” region of São Paulo state. He is originally from the Northeast of Brazil, and had only the basic education, with a strong history in Brazilian syndicalism and an icon of the Brazilian political left-wing.

He was present in every and each presidential dispute Brazil has known since its democratization in 1985. However, his winning of the presidential campaign of 2002 was only possible with a major change in his speeches, where he proposed a ‘social pact’ for development, instead of the prevalence of workers over employers (Bezerra & Lima, 2007).

The transition from Cardoso’s administration to Lula was relatively easy, since the Brazilian armed forces were not satisfied with him: president Cardoso imposed to the military innumerable budget restrictions and the disallowance of any salary raises (Martins Filho, 2010).

However, the optimism with the arrival of president Lula lasted less than one year. Right at the beginning of his mandate there were discussions about combining military and civilian pension systems, the president decided to delay the acquisition of fighter jets and another petition for salary raise (of 30%) was denied (Martins Filho, 2010).

Besides that, in Lula’s first mandate the Minister of Defense was the Ambassador José Viegas – who had already represented Brazil in Peru and in the former USSR. The main source of military resistance to the minister was the fact that Viegas was a diplomat, he represented another corporation that is historically a ‘rival’ of the armed forces (Jobim, 2012; Martins Filho, 2010; Zaverucha, 2005a).

Cardoso’s eternal secrecy decree was also an issue. Many human rights movements protested against the decree, hoping that the new president could cancel it, and he could: the decree was only signed, not sanctioned. Nevertheless, Lula decided to sanction it answering to a demand from José Dirceu (minister of the Presidency’s Chief of Staff), who used to have great political power at that time in the government<sup>60</sup>.

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<sup>60</sup> I would like to thank Prof.<sup>a</sup> Maria Celina D’Araújo for her comments and suggestions in this regard, since she was ANPOCS’ (Brazil’s National Association of Research in Social Sciences) representative in CONARQ at the time.



Besides that, CONARQ – the National Council of Archives – spent two years exchanging letters with the presidency’s Chief of Staff trying to revert Cardoso’s decision. Later, this pressure resulted in the promulgation of the Provisional Measure nº 228/2004 – which later became the act 11.111 (2005), solving partially the problems CONARQ has complained about, but leaving the eternal secrecy clause intact (Hott, 2005; K. F. Rodrigues, 2013).

Meanwhile, the deputy Reginaldo Lopes (Worker’s Party) presents the first Freedom of Information draft bill to the Brazilian Congress (PL 219, 2003). The draft bill did not draw enough attention from other deputies, despite the initial discussions in the Commissions of Work, Administration and Public Service<sup>61</sup> and in the Commission of Constitution, Justice and Citizenry<sup>62</sup> - these discussions were paralyzed in the same year president Lula enacted the act 11.111/2005, as I show in a forthcoming subsection.

In Brazil, it is already known that it is easier for the Executive to enact laws. Deputies generally present draft bills alone, without the support and discussion with other political actors, while the Executive is used to create consensus among many actors before presenting the bill to the Congress (Figueiredo & Limongi, 1999). This is one of the reasons why a Freedom of Information Law would be enacted only seven years later.

#### **5.2.1. 2004: Missing Persons Act, eternal secrecy and military insubordination**

Despite the prevailing secrecy, Lula’s government started implementing the changes enacted by the edition<sup>63</sup> of the Missing Persons Act (Act 9.140/95), which expanded the timeframe within one could receive compensations (D’Araujo, 2012; Rotta, 2008).

In Lula’s second year of mandate, he enacted the Provisional Measure 176/2004, that later became the Act 10.875/2004. This act expanded the coverage of the legislation to those cases of death as a result of armed conflicts and police repression (in manifestations and other circumstances), and also the suicidal cases occurred as a result of torture made by public agents (Rotta, 2008).

In 2004, new concerns regarding Cardoso’s secrecy decree also emerged, especially with some Army officials’ declarations in favor of the military regime and also an assertion that the documents regarding the military regime no longer existed. The government responded to

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<sup>61</sup> In Portuguese, Comissão de Trabalho, de Administração e Serviço Público – CTASP.

<sup>62</sup> In Portuguese, Comissão de Constituição e Justiça e de Cidadania – CCJC.

<sup>63</sup> These changes were made through the Act 10.536/2002.

civil society pressures and created a sub-commission within the Legislative Commission for Justice and the Constitution<sup>64</sup> (D'Araujo, 2010).

Meanwhile, the minister of defense was in a tight spot. He was drowned into a crisis within the armed forces with the supposedly disclosure of photos of the journalist Vladimir Herzog hanged. In fact, they were not the journalist's photos, but from a priest, Leopoldo D'Astous, considered a revolutionary (D'Araujo, 2010, 2012; Quadrat, 2004).

The whistleblower, a former military official that worked for the Army Intelligence during the military regime also indicated the location of other documents regarding human-right violations, and spoke to the Inter-American Court on Human Rights. Besides that, the official made implicit that intelligence activities under the Army supervision were still being held to control politicians (D'Araujo, 2010).

The fact is that this picture was not supposed to become public any time soon, and this called attention to the eternal secrecy decree, something not well acknowledged by the public until this event. This context shed light into the lack of transparency in military archives, which ended up being the final straw in the defense ministry Viegas (D'Araujo, 2012; Hott, 2005).

The resistance from the military to accept civilian orders was clear, specially from the Minister of Defense. The minister of Defense José Viegas did not understand quite well the political dialect of his position and worsened the scenario making negative declarations about the armed forces. In addition to that, the fact that Viegas was a diplomat made harder for him to submit himself to the wishes of the armed forces. The army did not help either, publishing a long official statement defending the measures taken during the military regime. Facing the inability to manage the situation, Viegas was dismissed from his position in October 2004 (D'Araujo, 2012; Zaverucha, 2005a).

As a result, president Lula appointed his vice-president, José de Alencar, as the new Minister of Defense. Alencar stayed in the position for two years and, as a good politician and despite his lack of interest in defense matters, knew how to calm down the situation (Dieguez, 2011; Jobim, 2012).

In archival terms, the worried relied in the fact that there were rumors about the armed forces destroying considerable amounts of information. Three of the interviewees clearly said that destroying some documents is a very common procedure. The procedures of the National Archive to control the elimination of historical documents are far from being effective.

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<sup>64</sup> In Portuguese, *Comissão de Constituição e Justiça*.

### 5.2.2. 2005: Act 11.111, the opening of the repression files

As I said before, Lula could have ended the ‘eternal secrecy’ prerogative in the moment he assumed his office. However, only after all these crises: the leaking of photos of a hanged priest, insubordinate declarations from the military and the difficulty of the Minister of Defense in gaining authority over the armed forces, president Lula decided to make a move.

In 2005, the president enacts the Act 11.111 (2005), which recovered many features of the Archives Act (8.159, 1991) like the maximum secrecy tier of 30 years – instead of 50 years. It also established the creation of Commissions of Secret Information inspection and analysis within the Presidency Chief of Staff<sup>65</sup> (D’Araujo, 2010; K. F. Rodrigues, 2013).

Along with this decree, two civilian initiatives started to have an increased importance: The ‘Right to Memory and the Truth’<sup>66</sup>, from the Special Secretary of Human Rights within the Presidency, and also the project “Memories Reveled”<sup>67</sup>, from the presidency’s Chief of Staff (D’Araujo, 2012).

However, the military influence in the elaboration of this decree was pretty clear, since the main issue of Cardoso’s eternal secrecy decree was not changed: the possibility of unlimited classification renovations<sup>68</sup>. Note that among the public officials that signed the decree there were president Lula and General Jorge Armando Felix – who would be the next Chief of the Cabinet of Institutional Security<sup>69</sup>. Another ambiguity was the fact that the decree 11.111/05 did not revoked the previous decrees (Hott, 2005; K. F. Rodrigues, 2013).

Besides the legal elements already mentioned, the decree gave back to citizens the right to access public archives and records, putting access limits only to information related to the security of society and the state. According to Ruela (2012), it ensured the access to information without establishing clear mechanism to achieve it.

G. M. Rodrigues (2011) asserts that most of the laws and decrees in this period were ‘reactive’, ways to contain general dissatisfaction that were careless of public debate and long-

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<sup>65</sup> G. M. Rodrigues (2011) contends that according to her research undertaken in 2007, the commission had its last meeting in 2005 – meeting which was not listed in the public record of meetings of the Chief of Staff.

<sup>66</sup> Direito à Memória e à Verdade.

<sup>67</sup> Memórias Reveladas.

<sup>68</sup> Many civil-society groups reacted to this decree. Among them, ANPOCS (National Association of Research in Social Sciences or, in Portuguese, *Associação Nacional de Pós-Graduação e Pesquisa em Ciências Sociais*) wrote a manifest in favor of the opening of the repression archives, also asking the president to revoke such decree (G. M. Rodrigues, 2011).

<sup>69</sup> This Cabinet is responsible for the Brazilian Agency of Intelligence (in Portuguese, *Agência Brasileira de Inteligência*, or ABIN).

term planning. As a result of this reactive behavior of the president, in the end of 2005 president Lula enacts the decree 5.584, which stipulated the recollection of any documents produced by institutions responsible for the repression during the military regime. The decree was a response to the reprimands made by the UN Committee of Human Rights.

The archival gathering included The National Security Council (Conselho de Segurança Nacional – CSN), the General Commission of Investigations (Comissão Geral de Investigações – CGI), and the National Information Service (Serviço Nacional de Informações – SNI) (G. M. Rodrigues, 2011).

The event was broadly publicized by the media, who followed every step of the archival transfers to the National Archive in Brazil's capital Brasília. At that time, the soon-to-be president Dilma Rousseff was the Presidency's Chief of Staff, and made declarations on the media supporting the opening of those archives, stating the importance of memory in the continuous process of democratization (G. M. Rodrigues, 2011).

### **5.2.3. 2005: The edition of the National Defense Policy**

The edition of the National Defense Policy was an important step for the Brazilian civil-military relations since its process because, in the beginning of 2000, aggregated many civilian groups like the Academia, the press, the industry and the Congress (Vasconcellos, 2012).

At the time, the minister of Defense was Geraldo Magela da Cruz Quintão, who insisted to hear from the civil society to make a new version of the National Defense Policy. In 2003 Viegas was appointed as Minister and decided to follow the civilian-inclusive discussion about defense. There were many seminars and meetings in 2003, known as the “Itaipava meetings”. These meetings generated four volumes of studies, published by the Ministry of Defense<sup>70</sup>, but little was done with them (Vasconcellos, 2012).

Viegas was replaced by José Alencar in November 2004, however, the research and integration efforts still had impact in the National Defense Policy update, launched in June 2005 through the decree 5.484/2005.

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<sup>70</sup> These studies are available in Portuguese in the following links (accessed in 04/10/2017): Volume 1 (reflections): <http://www.defesa.gov.br/arquivos/colecao/reflexao.pdf>; Volume 2 (Brazil's context): <http://www.defesa.gov.br/arquivos/colecao/brasil.pdf>; Volume 3 (Science and Technology): <http://www.defesa.gov.br/arquivos/colecao/cientecnol.pdf>; Volume 4 (challenges of the armed forces): <http://www.defesa.gov.br/arquivos/colecao/desafios.pdf>.

#### **5.2.4. 2007: The air control crisis and the release of the book ‘Direito à Memória e à Verdade’**

In 2006, a crisis in the aviation sector unfolded. There were serious problems in the Brazilian air control<sup>71</sup>, and in addition to that, air controllers were threatening to start a riot. José de Alencar, then Minister of Defense, was substituted by Waldir as an attempt to contain the crisis, however, in the moment he defended the demilitarization of the air control, he lost the military support and, as a consequence, the ability to solve the problem (Dieguez, 2011; Jobim, 2012; Vasconcellos, 2012).

In 2007, Nelson Jobim came into president Lula’s administration to solve the problems regarding the country’s civil aviation. He was an experienced politician, former Minister of Justice and a jurist with a long career. He managed not only to solve the crisis, but he was also the first minister of defense that inspired authority and respect among military officials (da Rocha, 2010).

Jobim accepted the position with the condition to be free to make the necessary decisions (Interviewee 1, 2013). Two main questions had to be solved by the new minister: would the air control remain under the military command and how the military officials on strike would be treated. He enforced the political independency of ANAC (*Agência Nacional de Aviação Civil* or, in English, National Agency of Civil Aviation) and organized the sector.

In addition to that the reconciliation agenda was alive, and in 2007 the Special Secretary for Human Rights within the presidency released the first federal government-authored book publicly recognizing the responsibility of the military regime for cases of decapitation, dismemberment, among other crimes against humanity (D’Araujo, 2012).

#### **5.2.5. 2008: The National Strategy on Defense is released**

Jobim was up to change. Under his administration, the first National Strategy on Defense (in Portuguese, *Estratégia Nacional de Defesa*, END from now on) was launched, in 2008, as a the result of a presidential decree of 2007<sup>72</sup> (Barcelos, 2014). The ultimate goal of the 2007 presidential decree was to update the National Defense Policy of 2005, constituting a committee with the following members: the ministers of the Ministry of Defense, the Ministry

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<sup>71</sup> The crisis began after two serious accidents, one in an airport of the state of São Paulo and another one in the skies of Rio de Janeiro (Oliveira, 2009).

<sup>72</sup> *Decreto de 6 de Setembro de 2007.*

of Finances<sup>73</sup>, Ministry of Planning, Budget and Management, Ministry of Science and Technology, and the presidential chief-secretary for Long-term Planning.

According to Barcelos (2014), the document was elaborated by the ministers of Defense (Nelson Jobim) and of the Strategic Issues (Roberto Mangabeira Unger). However, according to Oliveira (2009), they signed the document, but the ones who really wrote it were many military officials devoted to the necessary changes in the armed forces.

In a strict sense, the aim of the END was to solve the loss of regional power after Venezuela's acquisition of ships, aircrafts and weaponry. The Brazilian context was of an outdated military capacity, dealing with low investment rates (Oliveira, 2009).

In a broader sense, the strategy sought "to define clear strategic goals in medium and long terms, besides the promotion of an approximation between civil society and the armed forces" (Barcelos, 2014, p. 68, our translation). According to D'Araújo (2010) the document gives the armed forces the sense that they are responsible for helping Brazil's development. The developmental discourse assumes that the armed forces are the 'cradle' of Brazilian society, in a technology-based model of development.

In general, the criticisms concentrate in the lack of an economic view of defense, that did not considered the economic costs and the availability of resources; the absence of definition and support for peacekeeping operations; the lack of clarity regarding enemies and threat scenarios; the absence of a discussion with the military, which considered the document a 'governmental' strategy, and not a state strategy; and finally the neglect of the defense industry as an important player in the development of defense goals (Barcelos, 2014).

It was clear that the PDN and the END were unlinked. "It is like if the END was created from nothing, assuming, without saying it, the 'first time syndrome' with which the president qualified previous policies" (Oliveira, 2009, p. 74, our translation). Many important objectives present in the PDN are absent in the END, which focused almost solely in a new attitude consonant to Brazil's more important role as a regional power and in the field of Defense.

If Brazil was publicizing its military general strategies, secrecy regulations were still stronger than transparency ones in the realm of military archives. However, unlike the common sense would say, civilians were engaged in changing those circumstances: in 2008, the Brazilian Association of Lawyers<sup>74</sup> (OAB) created a petition of unconstitutionality of the decree 11.111

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<sup>73</sup> In Portuguese, *Ministério da Fazenda*.

<sup>74</sup> Ordem dos Advogados do Brasil.

(2005), stating that unlimited classification renewals harms the fact that there is a great interest of the society in those documents (Fórum de Direito de Acesso a Informações Públicas, 2017). Besides that, the year of 2008 made publicly available and online all the contents of the project 'Memories Revealed', in the National Archives' website.

According to D'Araújo (2012), this project also gave birth to a recollection campaign of documents hidden in clandestine ways in several ministries. The answer of the armed forces to the campaign was the expected one: they did not have those archives anymore, they were all eliminated.

#### **5.2.6. 2009: the 3rd Human-Rights National Program and the Executive's Freedom of Information draft bill**

In the end of 2009, president Lula enacts **the 3rd Human-Rights National Program**, which foresaw the creation of a Truth Commission. There were strong reactions from the armed forces and the minister Nelson Jobim even threatened to ask for a dismissal - this gave him power over the armed forces, who started trusting him more. President Lula, in turn, complied with the military complaints and postponed the creation of the commission (D'Araujo, 2012; Dieguez, 2011; Quero, 2010).

Concomitantly, two other events happened in the period: The Executive's Freedom of Information draft bill is presented to the Congress and, one year later, the Brazilian Supreme Court decides for the constitutionality of the Amnesty Act.

The Freedom of Information draft bill<sup>75</sup> was presented in congress by the Executive in the beginning of 2009, and in May of the same year it starts being discussed in the Chamber of Deputies. The project had direct influence of the head of the Chief of staff, which was Dilma Rousseff, the soon-to-be president of Brazil.

The draft bill represented another step to a more open government, not only in the defense sector, but in the Brazilian state as a whole. In terms of access to information on defense, the draft bill left many important mechanisms aside, like damage tests or public interest tests. The first draft had also maintained the "eternal secrecy" article enacted "by mistake" by the former president Cardoso (Article 19, 2009).

However, in the reconciliation realm the situation was not so promising. In 2008, the then Minister of Justice started projects to contest the validity of the Amnesty Act, which

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<sup>75</sup> Draft Bill number: PL 219/2003.

forgives not only political crimes, but also crimes against humanity. This argumentation underpinned the discussions. In response to that, the military organized themselves an event to discuss the Amnesty Law, and many active military officials attended and made declarations in favor of the military regime. The declarations could be considered as lack of discipline, harming the military authority code. Nevertheless, minister Jobim chose not to undertake any punishments (D'Araujo, 2012).

Having passed this political turmoil, in 2010, the Brazilian Supreme Court decides for the constitutionality of the Amnesty Act, absolving all political crimes committed during the military regime; and not narrowing the meaning of 'political crimes' not to include crimes against humanity.

#### **5.2.7. 2010: The 'New Defense' Act, issues with the IACHR and resistance with the FOI draft bill**

As a strategic minister of defense, Jobim was clever about going against any attempts to revise the Amnesty Act. It was already well known by previous experiences that a minister of defense who cannot have the support of the forces can do less than nothing to promote changes. In this sense, one of the major reforms in terms of civilian control of all Brazilian democracy was the New Defense Act.

The creation of the Ministry of Defense was a great accomplishment. However, the minister did not have many powers to interfere in the military autonomy. With the advent of the New Defense Act was enacted (Complementary Act 136/2010), the authority of the Ministry and the minister was strengthened. In general lines, this act establishes (Jobim, 2010; Marques, 2009; K. F. Rodrigues, 2013):

- (1) The inclusion of the ministry of defense within the military chain of command and the creation of the Joint Chiefs of Staff of the Armed Forces (In Portuguese, *Estado-Maior Conjunto das Forças Armadas*, EMCFA);
- (2) The minister earned the power to indicate to the president who he wants to be the Commander of each force,
- (3) The creation of collective purchases for the three armed forces, and
- (4) The creation of other campus of the Superior War.
- (5) Determines the elaboration of the White Paper on Defense.



Before this Act the minister of defense was almost, in Zaverucha's (2005a) words, a "queen of England": had no real powers. The "New Defense" Act was a milestone to the civilian control in Brazil, and it was only possible because of the personal power and charisma of the minister with the military. This law was one of the main results of the Brazilian Strategy on National Defense (END), and establishes that EMCFA would be the responsible for the deployment, and the singular forces are responsible for their readiness (Romildo, 2010).

Unfortunately, in reconciliation matters there were no good news. Concomitantly to the achievements of the New Defense Law, the Inter-American Commission on Human Rights (IACHR) questioned the Amnesty Act and decided for the responsibility of the Brazilian state in the deaths occurred in the Araguaia Guerrilla. The families have been asking for the location of the bodies of disappeared relatives since 1982.

Regarding general access to information, in March 2010, the draft bill on Freedom of Information had a special discussion session in the Chamber of Deputies. Most of the deputies were in favor of the bill, and at this point the main resistances were from an opposition party<sup>76</sup> that raised concerns related to national defense and foreign affairs. They disagreed with two points: the automatic disclosure of classified documents after the classification period ends; and the independency of agents in reevaluating classifications and making them available to the public.

It is clear the influence of the military and the diplomatic corps in this regard. At this point, it is clear that the main resistances to the Freedom of Information Law – and future acquiescence – would come from these two sectors. The debates regarding secrecy were intense along all the way, and the military did not like the project (Interviewee 1, 2013; Interviewee 2, 2013).

In this regard, Interviewees 1 and 2 contend that the Defense Minister Nelson Jobim made an important work on convincing the armed forces that the Freedom of Information Law was not going to affect them in a negative way. The relationship between Nelson Jobim and president Lula was close, and the military felt that Jobim would act in favor of the military interests. This consonance between the two politicians gave the armed forces enough trust to resist, but later acquiesce (not without pressure) the right-to-information legislation. This consonance also affected the lack of prosecution power of the soon-to-be-approved National Truth Commission (Dieguez, 2011; K. F. Rodrigues, 2013).

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<sup>76</sup> These deputies were from PSDB, the Brazilian biggest liberal right wing party.

Interviewee 4 asserts that despite Jobim's intermediation, the military stood with the position that civilians and their acts were more a liability than an asset to State issues. When asked why to continue with so strict secrecy regimes – like the one Brazil already had, that permitted eternal secrecy for national security documents – the answer was that that could not be discussed openly, but had to do with territorial issues (K. F. Rodrigues, 2013).

One of the interviewees<sup>77</sup> contends that there was a non-official discourse that there was nothing to be afraid of. The Interviewee 5 confirms this statement by saying that the existence of many sensitive documents might be difficult to be proven. The existence of many documents from the military regime, e.g., is not known by the citizens or even parts of one armed force, which gives the military a broad discretion regarding which information they want the public to know, according to another interviewee that did not want to be identified. In addition, the president sought to paralyze the discussion about the draft bill, since he foresaw the risk of the Senate not approving it (Interviewee 4, 2013).

Despite the similarity of the resistance of the Ministry of Defense and Itamaraty, Interviewees 1 and 2 stated that both institutions did not coordinate resistance: they are ultimately rivals. In fact, the Ministry of Defense and the armed forces have always been against the loosening of secrecy regulations, but they were not the ones pressuring the government: The Diplomatic corps was (Interviewee 4, 2013).

In the beginning of 2010, the draft bill (now called PL 41/2010) was approved by the Chamber of Deputies and went to the Senate. In June 2010, the Senate's Commission of Constitution and Justice (CCJ) and went to the appreciation of the Senate's Commission on Science, Technology, Innovation, Communications and Computing (CCT).

In the beginning of December 2010 president Lula decides that the decision regarding the 'eternal secrecy' issue would be decided in Rousseff's administration. The reason why president Lula did not want to make this decision himself was due to disagreements in the meetings with Itamaraty, the Ministry of Defense and the Chief of Staff Office (Machado, 2010).

Lula left in the hands of the next president, a former guerrilla supporter, the decision regarding openness affecting the armed forces.

### **5.3. Rousseff's administration (2011-2014)**

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<sup>77</sup> This interviewee did not want this affirmation to be related to him/her.

Dilma was elected with great success, as the protégée of the former president Lula. She had never participated in an election before and came to the presidency following the same social agenda of Lula. The military was suspicious about her because of her background – she is a former supporter of an armed group that acted as resistance during the military regime. Ironically, to some extent they were right: she indeed supported policies of reconciliation.

### **5.3.1. 2011: Resistances and pressures around the FOI Law**

In 2011, the discussions on the FOI draft bill were still on course. Both the Senate's Commission on Science, Technology, Innovation, Communications and Computing (CCT) and the Commission on Human Rights (CDH) approved the draft bill in April. The main resistances started when the draft bill goes to the Senate's Commission of Foreign Affairs and National Defense (CRE).

The draft bill waited for the approval of this commission for four intense months. This was a critical phase of the debates regarding the FOI legislation, since CRE had more than discursive powers – they could push changes in the legislation that could weaken the draft bill considerably.

Two main actors were in favor of changes in the draft bill: The Ministry of Defense and Itamaraty. According to the interviewees 2, 3, and 4, president Lula used to accept the suggestions of both actors. However, who was in charge of the president at the time had historically positioned herself in favor of the opening of archives, something that would not change in this crucial moment.

In July 2011, the head of CRE, the former president Collor, publishes in the newspaper *Folha de São Paulo* an article defending the possibility of eternal secrecy for documents related to the security of the state. He also argues that the measure nothing had to do with his impeachment, since presidential archives had a restriction of 15 years, which would not apply to his term (Collor de Mello, 2011). Among the changes he suggests, were:

- (1) The defense-related agencies should not be obliged to publish any information on internet which, according to the Senator, would be “the institutionalization of Wikileaks”;
- (2) Requesters should present the motives to request a piece of information;
- (3) The Ministry of Defense should not be subordinated to the Federal Comptroller-General (CGU, *Controladoria Geral da União*) in appeal processes;
- (4) Documents related to the presidency should automatically be classified as ‘secret’.

Collor's propositions were definitely not aligned with international standards on Freedom of information. There were already many flaws in the stronger version of the draft bill, like the absence of harm tests and the necessity of the requester to identify him or herself – which has been proven to be a fuel of discrimination (Michener & Rodrigues, 2015; K. F. Rodrigues, 2013; Velasco, 2017).

The military justified the resistance to the legislation stating that the armed forces have to deal with an unimaginable amount of information recollected since the beginning of Brazil's state formation, unlike many public agencies created in a considerable smaller timeframe. The great majority of those documents are in different and old formats, sometimes requiring specialized software and hardware to provide access to them (*Interviewees 5 and 7*).

Many politicians contact senator Collor asking him to let the draft bill go to voting in the Senate. This included the former president Fernando Henrique Cardoso, the minister of defense Nelson Jobim<sup>78</sup> and also the minister of the Presidency Chief of Staff Antonio Palocci.

President Dilma was one of the main supporters of the law, and set a strategy to pressure the Senate – regardless of military and diplomatic pressures. First, she enacted the Decree on a National Plan for Open Government, with the support of eighteen ministries (Prete, 2011). Besides that, she called for international pressure by signing and co-founding the Open Government Partnership (OGP)<sup>79</sup>, together with Barack Obama.

Despite these actions, she did not stop the pressures: In September 2011, she gave her first speech in UN Assembly, contending that she decided that the National Truth Commission would be created in that very same year; and then in the same week, she pressured for the law to be voted before a convention in Transparency she would be attending (K. F. Rodrigues, 2013).

After many debates and months, in October 2011 the Senate votes against the eternal secrecy prerogative. The alternative bill proposed by senator Collor was rejected by 43 votes, against 9 in favor. Dilma enacts the Brazilian Freedom of Information law in November of 2011 (G1, 2011).

### **5.3.2. 2012: Freedom of Information Law and Decrees**

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<sup>78</sup> He himself contended that during the interview.

<sup>79</sup> “OGP was launched in 2011 to provide an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to citizens” (OGP, 2017).

In the end of 2011 both the Freedom of Information Act and the Truth Commission are enacted by president Dilma Rousseff. The FOI Law enactment had override the several secrecy acts and decrees which ensured limitless renovations of classification. In 2012, new decrees are enacted, regulating the FOI Law in the Executive's federal sphere. They are the following:

- Decree 7.724/2012: Regulates the Act 12.527 in general and creates the Joint Commission of Information Reevaluation (CMRI<sup>80</sup>).
- Decree 7845/2012: Regulates procedures for security accreditation and treatment of classified information in any secrecy tier. Determines provisions regarding the Accreditation and Security Nucleus (NSC)<sup>81</sup>.

The previous legislation stipulated four secrecy-tiers: top-secret (*ultrassegredo*), secret (*segredo*), confidential (*confidencial*) and reserved (*reservado*). However, the FOI law extinguished the confidential tier, level a legal void that was not fulfilled by the FOI decrees and left it open for reclassification – which gave a lot of work to all agencies with classified documents (*Interviews 2, 5, 6 and 7*).

In addition to that, extinguishing the confidential tier made it harder to classify in upper tiers – in order to classify a document as secret, one needs the approval of high hierarchy officials, which is difficult to get and creates a bureaucratic classification overflow in some positions (*Interviewee 4*).

Both the FOI Law (Act 12.527/2011) and the Decree 7.845/2012 establish the creation of a **Security and Accreditation Nucleus** (*Núcleo de Segurança e Credenciamento*, or NSC), responsible for designating accredited institutions on three levels<sup>82</sup>. The NSC has the power to monitor, oversee and inspect any activities of the accredited institutions, as the Decree 7.845/2012, article 3, incises V and VI establishes.

According to a FOI request directed to the Institutional Security Cabinet (or GSI, which is responsible for the Nucleus) the Ministry of Defense was accredited as a level 1 institution<sup>83</sup>, which automatically makes it responsible for accrediting each one of the armed forces.

According to the Interviewees 8 and 9, until 2015, when NSC was created, the military organizations did not experience any changes in classification. There is no practical change in

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<sup>80</sup> In Portuguese, *Comissão Mista de Reavaliação de Informações*.

<sup>81</sup> In Portuguese, *Núcleo de Segurança e Credenciamento*.

<sup>82</sup> In Portuguese, *Órgão de registro nível 1, 2 e 3*.

<sup>83</sup> The accreditation decision was published in the Brazilian Federal Register (*Diário Oficial*) nº 241 (12/12/2014).

the armed forces with NSC also because the GSI is historically presided by a military official, that is to say – there are no incentives for the NSC to exert real oversight over the classification of the military institutions.

Another institution created by the Act 12.527/2011 is the **Joint Commission of Documental Reevaluation (CMRI<sup>84</sup>)**. The CMRI has an important role in the decisions of declassification or reevaluation of a classification. It is responsible for two main things: solving 4<sup>th</sup> instance FOIA appeals, and deciding over declassification requests. The commission also has the important role of revising the top-secret classification every two years, regardless of who has classified.

Unfortunately, the CMRI has no powers to change regulations, orders or guidance governing classification and declassification. The Commission only has power to establish general legal orientations<sup>85</sup> when gaps in the Act 12.527/2011 and Decree 7.724/2012 are noticed. Article 1 of the CMRI Internal Rules (Resolution nº 01/2012 - *Regimento interno da CMRI*) establishes these roles. Despite that, it is mandatory for all public bodies to send the TCI (*Termo de Classificação de Informação* – Information Classification Term) to CMRI, whenever classifying documents as secret or top-secret, according to the article 32 of the decree 7.724/2012<sup>86</sup>.

### 5.3.3. 2012: The Truth Commission

The Truth Commission was created in the same day of the Freedom of Information. For president Rousseff, it might have been a signal that with enough will, considerably strong reforms could have been made. However, to the same extent it was a sign of civilian will too change, it was a sign of the ‘stable veto power the military has in reconciliation issues’, as D’Araújo (2012) entitles her article.

The veto is due to the Truth Commission’s lack of powers to criminally investigate or prosecute anyone who committed crimes related to torture and murder. If the Brazilian government first decided for a financial-only compensation, now it was deciding for an informational-only retreat.

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<sup>84</sup> In Portuguese, Comissão Mista de Reavaliação de Documentos.

<sup>85</sup> These general regulations are available in <http://www.acaoainformacao.gov.br/assuntos/recursos/recursos-julgados-a-cmri/sumulas-e-resolucoes>

<sup>86</sup> “Art. 32. A autoridade ou outro agente público que classificar informação no grau ultrassecreto ou secreto deverá encaminhar cópia do TCI à Comissão Mista de Reavaliação de Informações no prazo de trinta dias, contado da decisão de classificação ou de ratificação.”.

However, it needs to be acknowledged that if a criminal liability never happened, this is a result of the society itself. D'Araújo presents some data regarding the commission from the Applied Economic Research Institute IPEA<sup>87</sup>, showing that in 2012:

- 42,9% of Brazil's population had never ever acknowledged the existence of an Amnesty Law;
- 31,9% had heard of the Amnesty Law, but did not know its subject;
- 24,3% of the interviewees knew what the Amnesty Law was, and among them:
  - 33,4% were in favor of punishment for all who committed crimes during the period, whether from the state or regular civilians;
  - 22,2% were in favor of punishment only for state agents;
  - 20,3% believed there should not be any investigation or punishment; and
  - 11,4% believed there should be punishments only for the civilian armed-groups.

The Truth Commission, then, did not have the power even to demand presence of repression agents in its audiences; according to the plan, its duration was of two years, and did not offered special access to military archives or any type of document. Indeed, this is the path many Truth Commissions take: they use correlate archives and interviews, with no use of historical documents from the armed forces or any other agencies in charge of the repression.

According to Nadine Borges (*Interview 10*), the access to military documents was really difficult, even when the requested information was not classified. The interviewee heard from an Army General that it was worthless to ask for information to the Ministry of Defense. Only the information he wanted to disclose would be disclosed. The National Truth Commission asked for many documents, and the majority of the requests were denied on the basis of the non-existence of the information, or an alleged documental destruction.

#### **5.3.4. 2012: The Brazilian White Paper on Defense and tensions due to the National Truth Commission**

In 2011, minister Jobim was successful in getting the project PROSUB (*Programa de Desenvolvimento de Submarinos* - Program of Submarine Development) approved. This was the biggest military program ever approved in Brazil.

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<sup>87</sup> Instituto de Pesquisa Econômico Aplicada.

Notwithstanding the advances in the defense sector, minister Jobim is withdrawn from the Ministry as a result of polemic declarations regarding other two ministers, Ideli Salvatti and Gleisi Hoffman, published in the article of a magazine. Celso Amorim, former chancellor and former minister of the Ministry of Foreign Affairs took Jobim's place (Marques, 2009; K. F. Rodrigues, 2013).

The year of 2012 had other transparency developments in defense, with the publication of the Brazilian Defense White Paper, which better defined the role of the armed forces in the country, the regional role of Brazil and Brazil's strategic position towards other countries.

There are two main reasons that make White Papers important: first, it promotes dialogue between civilians and the military due to the publicity of doctrine, threats and goals; second, these document serve in the building of mutual trust between a country's military and the world (Mares & Kacowitz, 2016; Rocha, 2010)



## Chapter 6 – Gradual changes in Brazil’s ‘transparency of secret records’

In Chapter 4 and 5 we traveled in time to understand the development of civil-military relations and its interconnections with right-to-information reforms in Brazil, since before the military regime. Many changes in civil-military relations, transparency and archival management were identified, and in many cases all three of these variables showed interdependency.

In order to undertake the analysis of gradual institutional changes, I first make a brief visual overview of the reforms discussed in the previous chapters and then I identify the most relevant changes in the ‘transparency of secret records’ variable – the variable developed in Chapter 2 – within the timeframe between 1985 and 2014.

Thereafter, to each one of these changes this chapter applies the theory of Gradual Institutional Changes, testing the strength of the evidence with process tracing tests, in order to: understand each change-agent’s strategy to maintain the status quo or not; and characterize the type of change that occurred. Finally, the last subsection analyzes the country’s most general pattern of change, also addressing the confirmation or refutation of the propositions of the study.

I would like to acknowledge that **it is not my intention to make any kind of insult to the armed forces or any civilian group or agency by using these terms.** The use of the terms ‘insurrectionaries, parasitic or mutualist symbionts, subversives or opportunist is solely due to the character of Mahoney and Thelen’s (2010) theory.

### 6.1. An overview of reforms in Brazil

Studying in detail reforms of almost one century of history was challenging, however, in Brazil the relationship between civil-military relations and the reforms (and the avoidance of reforms) found a solid ground of evidence. The aim of this chapter is not to rewrite what has already been written in the two previous chapters, but it will make references to their content constantly. Table 8 summarizes reforms undertaken in Brazil from 1985 to 2014, as well as the two variables that are the essence of the theory of Gradual Institutional Change, which are *veto possibilities* and *discretion in interpretation / enforcement of rules*.

**Table 10 – Timeline of reforms in Brazil**

Historical timeline of the Brazilian tale of information disclosure and civil-military relations																																
Year	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	
Type of government (Polity IV)	Closed Anocracy					Democracy																										
Military Veto Possibilities on Transparency	High					Moderate/High			High	Moderate/High				Moderate/Low			Moderate/High								Moderate/Low							
Military discretion in Interpretation / Enforcement on Transparency	High										Moderate/High							High	Moderate/High								Moderate/Low					
Presidents	Pres. Sarney					Pres. Collor			Pres. Itamar	1st mandate Pres. Cardoso				2nd mandate			1st mandate Pres. Lula				2nd mandate			1st	Pres. Rousseff					2nd		
Defense reforms affecting CMR						SNI is extinguished			First PND*				Creation of the MOD and ABIN			* Crisis: photos of the repression			*	Review of the PND	New National Minister Defense of Strategy Defense			The "New Defense" Act	Defense White Book							
Changes in Reconciliation											Missing Persons Act 9.140			Amnesty Commission				Missing Persons Act 9.140 is expanded			* 3rd Human-Rights National Program			*	Creation of the Truth Commission							
Changes on Defense-related Access to Information	Elaboration of the 1988 Constitution		Article 5º of the Constitution.		Archives Act: 8.159/91							Access decree 2.134/97		Regulation for Secretive Issues (D2.910)		Eternal Secrecy decree 4.553		Decree 11.111 and Opening of milit. archives (D 5584)			Executive's FOI draft bill					FOI law	Decree 7983 and					

Source: the author

In the first row of the timeline I present Polity's type of government (Marshall, Gurr, & Jaggers, 2013), which for Brazil shows that in 1985 the country still was a Closed Anocracy<sup>88</sup>. I chose to use this variable due to the absence of studies showing levels of civilian control in countries.

The second row of Table 8 shows an important variable from Mahoney and Thelen's (2010) theory, which is 'Veto possibilities'. As I show in Chapter 3, this is an important element to identify which strategies actors will use to promote change, as well the resulting type of change.

As I show in Chapter 4, Sarney's government was under military tutelage, besides being the result of an indirect election, which shows that the military had high possibilities to veto policies they disagree with. Collor's election brings progress in civil-military relations in discourse and in the campaign promises – that included the creation of the Ministry of Defense. However, this progress was undercut by the impeachment process. That is why while Collor is president I consider moderate/high possibilities of military vetoes, and a high possibility in Itamar's presidency, which closely reported himself to the military, afraid of an intervention.

During the second mandate of president Cardoso, the military had lower veto powers, which culminated in the creation of the Ministry of Defense. Veto powers were not absent because of the long work on convincing them that the civilian institution would not jeopardize them. Besides that, international pressures had its place – the very few countries with no civilian ministry of defense were considered non-democratic countries.

However, a major setback was the enactment of the 'Eternal Secrecy' Decree, which implied higher veto possibilities for the military. The persistence of the eternal secrecy clause in other legislation, like the 2005 Decree 11.111 is evidence that president Lula did not want to use his political capital confronting the military – despite all the ongoing reconciliation processes.

The winning of president Rousseff marks a lower level of military veto possibilities – although not absent, since in her first mandate two major reforms were undertaken: the enactment of the Freedom of Information Law in the same day she created the National Truth Commission.

The third row follows the same logic of the previous one, showing the military's level of discretion in the implementation and interpretation of rules according to the Institutional

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<sup>88</sup> "Many polities have mixed authority traits, and thus can have middling scores on both Autocracy and Democracy scales. These are the kinds of polities which were characterized as "anocratic" and "incoherent" in the Polity I studies. As a group they proved to less durable than coherent democracies and autocracies (Marshall et al., 2013, p. 16).

Gradual Changes theory. Discretion is considered high until the beginning of president Cardoso term, and diminishes when, in his turn, reforms in the defense sector are proposed, and the first steps towards a financial reconciliation to the victims of the military regime's repression were given.

There is a peak of discretion when the enactment of the Eternal Secrecy Decree occurs – and this discretion remains moderately high during all Lula's term – in many occasions he avoided conflict, preferring to give the final incumbency of ending eternal secrecy to the president Dilma Rousseff.

## 6.2. Changes in 'transparency of secret records'

From all the reforms in civil-military relations, reconciliation and transparency, a few brought changes to 'transparency of secret records'. The aim of this subsection is to understand the mechanisms that led to these changes, which I characterize as any changes in at least one of the components of the concept of transparency of secret records, explored in Chapter 2 and showed again below in Table 11.

**Table 11 - Indicators of the transparency of secret records concept**

Transparency of secret records			
Visibility		Inferability	
Completeness	Findability	Verifiability	
1 Are there limits to the reasons to classify documents?	10 Are there public lists of classified documents?	16	Are there harm tests?
2 Can documents be released with only classified parts hidden?	11 Are there public lists of declassified documents?	17	Are there Public Interest tests?
3 Does the AF have to make public versions of documents?	12 Do classified documents become automatically public when the classification period is over?	18	Supervision of third parts: access to information
4 Is the right to access public records legally ensured?	13 Are there public lists of existent archives?	19	Supervision of third party <b>with sanction powers</b> : access to information
5 Are there classification tiers / is there a classification system?	14 Are we able to find legal provisions that establish that the content of each archive should be summarized and public?	20	Supervision of third parts: archival management

6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	15	Are we able to find a clear process for citizens to contest a classification decision?	21	Supervision of third party <b>with sanction powers</b> : archival management
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?			22	Are we able to find a clear definition of who can classify documents?
8	The FOI legislation trumps other secrecy provisions?				
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?				

In order to do that, first it has to be clear which are these reforms, listed below in Table 12. Any change in any of the indicators showed in Table 11 configures a change to be analyzed by this study. There were mainly five changes, starting with the Archives Law in 1991, following with the Access Decree in 1997, the ‘Eternal Secrecy’ decree in 2002, the Act 11.111 of 2005 and, finally, the Freedom of Information Law of 2011.

**Table 12 – Changes in civilian access to military documents in Brazil, from 1991 to 2011.**

Change	Nº	Name	President	Indicators changed	Result
1	8.159/1991	Archives Law	Collor de Mello	(1), (5), (7), and (20).	Better access
2	2.134/1997	Access Decree	Fernando Henrique Cardoso	(5), (10), (12), and (15).	Better access
3	4.553/2002	Eternal Secrecy Decree	Fernando Henrique Cardoso	(1), (10), (12) and (15).	Worse access
4	11.111/2005	NA	Luís Inácio Lula da Silva	(6) and (12).	Slightly better access
5	12.527/2011	Freedom of Information Law	Dilma Rousseff	(1), (2), (10), (11), (12), (15) and (20).	Better access

The next subsections present each of those changes in detail, applying the theory of Gradual Institutional changes and process tracing tests.

### 6.2.1. 1991 and the enactment of the Archives Law

The Archives Law (Act 8.159/1991) was one of the most important laws in terms of practical access to information since the beginning of the democratization in the country. The

Archives Law was the first archival regulation in Brazil's democracy – a great step towards the full right-to-information, and was elaborated by jurists, archivists and other specialists (Costa, 2003; Hott, 2005).

It established the right of citizens to access public records, military archives were subordinated to the Executive branch, it created the Permanent Commissions for the Evaluation of Documents<sup>89</sup>, it established a 30-year maximum limit plus one renovation for the classification of documents, and created CONARQ, a public body responsible for the national archival system. However, it did not established clear means and processes to accede information – as Hott (2005) explains in her work.

In spite of these achievements, it was still difficult to have access to military documents and archives – even old ones, since many access mechanisms were absent: there was no list of classified and declassified documents, no clear processes to ask for information or contest classification, among others. Table 13 presents 'transparency of secret records' after the enactment of the Archives Law. The Archives Act 8.159/1991 together with the Decree 79.099/1990 set the access panorama when Fernando Henrique Cardoso took office.

The enactment of this law also resembles the leadership that president Collor was trying to build among the military. The president tried the most to exercise his authority as the High-Commander of the Armed Forces and started well by choosing military generals with a neutral profile for the four military Ministries, which was crucial for the military's acceptancy of the president and the democratic context. Collor also had a well-planned schedule of visits to military units, and discourses directed to military officials reinforcing his authority (Oliveira, 1994).

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<sup>89</sup> In Portuguese, *Comissões permanentes de avaliação de documentos*. These commissions could evaluate and decide about the reclassification of documents.

**Table 13 – Brazil’s ‘transparency of secret records’ in 1991**

Legislation: Archives Act 8.159/1991 and Decree 79.099/1990								
Visibility					Inferability			
Completeness		Findability			Verifiability			
1	Are there limits to the reasons to classify documents?	Broadly.	10	Are there public lists of classified documents?	No.	16	Are there harm tests?	No.
2	Can documents be released with only classified parts hidden?	No.	11	Are there public lists of declassified documents?	No.	17	Are there Public Interest tests?	No.
3	Does the AF have to make public versions of documents?	No.	12	Do classified documents become automatically public when the classification period is over?	No.	18	Supervision of third parts: access to information	No.
4	Is the right to access public records legally ensured?	Yes.	13	Are there public lists of existent archives?	No.	19	Supervision of third parts <b>with sanction powers</b> : access to information	No.
5	Are there classification tiers?	Partially.	14	Are we able to find legal provisions that establish that the content of each archive should be summarized and public?	No.	20	Supervision of third parts: archival management	Yes.
6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	Yes.	15	Are we able to find a clear process for citizens to contest a classification decision?	No.	21	Supervision of third parts <b>with sanction powers</b> : archival management	No.
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?	Yes.				22	Is there a clear definition of who can classify documents?	Partially
8	The FOI legislation trumps other secrecy provisions?	Yes.						
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?	No.						

Therewith, Tables 14 and 15 show the anatomy of change in the case of the enactment of the Archives Law, using process tracing tests and the theory of gradual institutional changes. It brings many evidence of change-related propositions and their respective process-tracing

tests. In sum, the analysis answers the question ‘what can be inferred from the gradual change that led to the enactment of the Archives law?’

**Table 14 - Archives Law of 1991: the anatomy of change in the military perspective**

The military		
	Before	After
Supports the status quo?	Yes.	Yes.
Proposition	The military is satisfied with status quo, since they have moderate veto power and high discretion.	The military was not a change-agent since the law affected superficially the ‘transparency of secret records’.
Evidence and its type.	<b>Sequence evidence:</b> the democratization process was conducted to great extend the way the military wanted.	<b>Trace evidence 1:</b> the content of the law. The Archives Law subordinated the military archives to archival institutions that had no sanction powers and special access to national security documents.
	<b>Account Evidence 1:</b> the prevalence of military prerogatives such as the Amnesty Law and articles in the constitution that allowed some forms of internal deployment.	<b>Trace evidence 2:</b> the absence of acknowledgement by the literature regarding resistances to the law
	<b>Account Evidence 2:</b> according to Oliveira (1994), many of the military demands to president Collor were embraced, such as the postponement of the creation of a Brazilian MOD.	<b>Account evidence:</b> one newspaper article witnessed access restrictions to documents related to the Paraguay War (1911).
Veto possibilities	Moderate/High	Moderate/High
Discretion in interpretation / enforcement of rules	High	High
Change-agent type	Symbionts or opportunists	Symbionts
Passes which test?	It passes a <b>hoop test</b> , since the evidence does not confirm the proposition, but failing would mean the elimination of the proposition.	It passes a <b>hoop test</b> , since the evidence does not confirm the proposition, but failing would mean the elimination of the proposition.

An underlying proposition of this analysis is that the military was satisfied with the access status quo since before the Archives Law, and the absense of any laws regulating musts and shoulds. This leads to the belief that the military was acting as subversives or opportunists, in the sense that they benefit from institutions and will tend to avoid change. According to Mahoney and Thelen, the opportunist type of change-agent can lead to some organizational inertia, which could be the case of this change.



The military acquiescence with the law was due to the superficiality with which it changed ‘transparency of secret records’. It can be said that the Archives Law was more important for the public administration in general than it was for the military. There were also less battles in the field of reconciliation that time – only three years had passed since the Constitution and the reenactment of the Amnesty Law took place.

The application of the process-tracing tests shows that the proposition passes a hoop test, because the set of evidence does not confirm the proposition, but failing would mean the elimination of the proposition. That is to say, there were no signals of military discontentment in his regard, since there is a sequence of evidence showing that the democratization process was dominated by the military, with the extensive military presence in the Constituent Assembly; since account evidence 1 shows the prevalence of military prerogatives such as the Amnesty Law and articles in the constitution that allowed some forms of internal deployment; and since account evidence 2 demonstrates that Collor was still answering favorably to most of the military’s demands, e.g. in leaving for future administrations the creation of the Ministry of Defense.

After the enactment of the Law, my proposition is that the military was not a change-agent since the law affected superficially the ‘transparency of secret records’. Evidences of that were that the Archives Law subordinated the military archives to archival institutions that had no sanction powers and special access to national security documents; there is an absence of acknowledgement by the literature regarding resistances to the law; and one newspaper article<sup>90</sup> witnessed access restrictions to documents related to the Paraguay War (1911). With this set of evidence, the proposition passes a hoop test, since the evidence does not entirely confirm the proposition, but failing would mean the elimination of the proposition.

The civilian perspective of this change was positive, nevertheless, it stays clear that in 1991 the access to public information was completely out of the political agenda and distant from civil society’s discussions – practically no mention<sup>91</sup> to the law’s enactment in the media was found. Table 15 shows the anatomy of this change in the civilian perspective.

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<sup>90</sup> As the result of a search for comments on the Archives Law in the registers of the Brazilian National Library and in one of Brazil’s main newspapers *Folha de São Paulo*.

<sup>91</sup> Two mentions were found and were listed as evidence.

**Table 15 - Archives Law of 1991: the anatomy of change in the civilian perspective**

<b>Civilians</b> ( <i>mostly civilian state agents</i> )		
	<b>Before</b>	<b>After</b>
Supports the status quo?	No.	No.
Proposition	Civilians (bureaucracy and academia) were not satisfied with the archival legislation and right-to-information provisions and acted as subversives	The reform did not increase civilian access to military documents. Civilians still are not supportive of the status quo.
Evidence and its type.	<b>Trace evidence 1:</b> the elaboration of the draft law congregated many different civilian groups, such as jurists, archivists and other specialists - according to the literature.	<b>Account evidence 1:</b> problems with the implementation of the law publicized in an article in <i>Jornal do Brazil</i> , in 1992. There were no sufficient investment nor space in the National Archive.
		<b>Account evidence 2:</b> one newspaper article witnessed the access restrictions to documents related to the Paraguay War (1911).
Veto possibilities	Low	Low
Discretion in interpretation / enforcement of rules	Low	Low
Change-agent type	Subversives	Subversives
Passes which test?	It passes a <b>straw-in-the-wind test</b> , since the evidence only shows the relevance of the proposition and do not confirm it.	It passes the <b>smoking-gun test</b> , since the evidence confirms the proposition and strongly weakens rival explanations.

The underlying proposition for the period before the Archives Law enactment was that civilians were not satisfied with the status quo – but not in a bad way, since democratization was bringing many important changes and reforms in all sectors of the society. Note here that civilians in this case are limited to the state bureaucracy and the academia, which are precisely the groups directly benefited by this change. There was no great commotion in the Legislature or from civil society – maybe due to the specific character of the law, which did not fully comprised access to information.

The type of change-agent these civilians assumed was layering, since they played by the book and mostly from within the state to promote this change. A trace-evidence of that was the joint elaboration of the draft bill among jurists, archivists and specialists. The proposition passes a straw-in-the-wind test, since the evidence only shows the relevance of the proposition and does not confirm it.

After the enactment civilians followed the same change-agent strategy, since some attempts to accede to military information failed – such as in the account evidences reported in newspapers contending that information about the Paraguay war was denied. For these reasons, the proposition is that civilians (the bureaucracy and academia) were still dissatisfied with the status quo, which passes the smoking-gun test, since the evidence confirms the proposition and strongly weakens rival explanations.

The resulting type of change was Layering since no other legislation was removed with the introduction of the new one. It can be said that the Archives Law was more important for the public administration in general than it was for the military, and only with state bureaucracy and academia supporting archival changes, hardly more audacious bills could be enacted. There were also less battles in the field of reconciliation that time, which might have generated less resistances from the military.

#### **6.2.2. 1997 and the enactment of the Access Decree 2.134**

During Cardoso's presidency, many reconciliation measures were undertaken and important steps towards civilian control were made. Altogether, in Brazil there was a civilian Ministry of Defense, the beginning of at least a financial reconciliation to those who suffered with repression during the military regime (through the Act 9.140/1995) and finally, a really advanced right-to-information decree: The 'Access Decree' 2.134/1997.

The Access Decree guaranteed public access to archives and established the categories of secretive documents. This decree was one of the most advanced access regulations, which included a set of restrictions to secrecy and also administrative punishments for those officials not accomplishing the law, the mandatory publication of lists with declassified documents became a reality, besides the establishment that declassified documents are automatically public. The only reservation against it was the necessity of giving motives to access documents (Hott, 2005).

However, in terms of 'transparency of secret records', a decree enacted one year later – the Decree 2.910/1998 – deserves special attention, since it was an initiative from the armed forces. The military were concerned with the Decree 2.134 (1997) and its absence of rules and procedures for maintaining and dealing with classified information. Before this decree, the procedures to manage classified information were settled by the Regulation for Safeguard of

Secretive Issues<sup>92</sup> through the decree 79.099 (1977), which was enacted during the military regime.

**Table 16 – Brazil’s ‘transparency of secret records’ in 1997/1998**

Legislation: Archives Act 8.159/1991, 'Access Decree' 2.134/1997, Decree 2.182/1997, Act 9.507 and Decree 2.910/1998								
Visibility					Inferability			
Completeness			Findability		Verifiability			
1	Are there limits to the reasons to classify documents?	Broadly.	10	Are there public lists of classified documents?	No.	16	Are there harm tests?	No.
2	Can documents be released with only classified parts hidden?	No.	11	Are there public lists of declassified documents?	Yes.	17	Are there Public Interest tests?	No.
3	Does the AF have to make public versions of documents?	No.	12	Do classified documents become automatically public when the classification period is over?	Yes.	18	Supervision of third parties: access to information	No.
4	Is the right to access public records legally ensured?	Yes.	13	Are there public lists of existent archives?	No.	19	Supervision of third parties with sanction powers: access to information	No.
5	Are there classification tiers?	Yes.	14	Are we able to find legal provisions that establish that the content of each archive should be summarized and public?	No.	20	Supervision of third parties: archival management	Yes.
6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	Yes.	15	Are we able to find a clear process for citizens to contest a classification decision?	No.	21	Supervision of third parties with sanction powers: archival management	No.
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?	Yes.				22	Are we able to find a clear definition of who can classify documents?	Yes.
8	The FOI legislation trumps other secrecy provisions?	No.						
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?	Yes.						

In response to that concern, the decree 2.910 (1998) was elaborated by two servants of the Brazilian National Archive and two military officials, and established regulations exclusively to secretive documents, materials and cryptography, with no additional restrictions

<sup>92</sup> Regulamento para a Salvaguarda de Assuntos Sigilosos.

further than the ones of the decree 2.134 (1997). It also stipulated the publication of a list of available declassified documents that were open to consultation each six months; the classification of a group of documents should follow the classification of the most sensitive document; and the admission of visitors in restricted access areas and facilities should be regulated by each agency (Hott, 2005).

Among the determinations of this decree there were rules for classification, including the following ones: the classification of a group of documents should follow the classification of the most sensitive document; and the admission of visitors in restricted access areas and facilities should be regulated by each agency. Table 16 shows how this regulation, among others, are translated in the ‘transparency of secret records’ concept. How this change impacted the military? Table 17 shows these impacts.

**Table 17 – Access Decree 2.134/1997 and Decree 2.910/1998: change in the military perspective**

Change agent: The military		
	Before	After
Supports the status quo?	Yes.	No.
Proposition	The military was caught off guard with the enactment of the decree 2.134, fact that decreased their veto power momentarily and led them to act as subversives.	The military will no longer show lack of readiness to delay or avoid changes in transparency of opacity, since tensions regarding reconciliation started to appear from the Missing Persons Act on.
Evidence and its type.	<b>Trace evidence 1:</b> Hott (2005) contends that the armed forces were 'concerned' with the absence of specific rules to manage classified information, not in an opposition tone.	No evidence until this point.
	<b>Trace evidence 2:</b> the decree 2.910 was jointly written by two military officials and two officials from the National Archive.	
Veto possibilities	Low	Moderate/High
Discretion in interpretation / enforcement of rules	Moderate/High	Moderate/High
Change-agent type	Subversives	Subversives
Passes which test?	It passes the <b>hoop test</b> , since it confirms the proposition and does not substantially weakens other explanations.	To be tested further.

The proposition that emerged from the context of before the ‘Access Decree’ enactment is that the military was caught off guard with the enactment of the decree 2.134, fact that decreased their veto power momentarily and led them to act as subversives. I found two trace evidence to confirm this proposition. First, Hott (2005) contends that the armed forces were 'concerned' with the absence of specific rules to manage classified information, not in an opposition tone. Second, the decree 2.910 was jointly written by two military officials and two officials from the National Archive, according to the same author. These pieces of evidence pass a hoop test, since it confirms the proposition and does not substantially weakens other explanations.

Nevertheless, after this change one proposition still unanswered emerged. After the enactment of the access decree, I believe the military would no longer lack readiness to delay or avoid changes in ‘transparency of secret records’, since tensions regarding reconciliation started to appear from the Missing Persons Act on’. Its lobbying will likely be more effective and include information disclosure in the agenda. The general evaluation of the military’s veto power in 1997 and 1998 was considered to be *moderate/high*. However, cooperation with civilians in the elaboration of the decree 2.910 (1998) showed a subversive change-agent behavior from the military that generally leads to *layering* modes of change – which was what happened. If this proposition is right, the next changes will face the military as symbionts or opportunists.

Regarding the role of civilians and the effects of this change on them, they partially supported the status quo before the access decree because of the advances the Archives Law brought. Note that the civilians involved in the elaboration of this decree still the same ones involved in the Archives Law: jurists, archivists and other specialists. There was no general mobilization or commemoration for such an achievement in terms of access to information (at least in the federal level) in the country.

**Table 18 - Access Decree 2.134/1997: change in the civilian perspective**

<b>Civilians (mostly civilian state agents)</b>		
	Before	After
Supports the status quo?	Partially.	Yes.
Proposition	Regulating the archives law - touching ‘transparency of secret records’ would only be possible if made by a president with a forward-looking agenda in regard to civil-military relations, which was the case of president Cardoso.	With the advent of the decree 2.134, civilians felt comfortable with the status quo.
Evidence and its type.	<b>Trace evidence:</b> president Cardoso had a progressive agenda regarding civil-military relations, since he was responsible for the Missing Persons Act and the creation of the Ministry of Defense.	<b>Trace evidence:</b> the decree 2.910 did not change the access prerogatives of the decree 2.134.
Veto possibilities	Low	Moderate/Low
Discretion in interpretation / enforcement of rules	Regulating the archives law - touching ‘transparency of secret records’ would only be possible if made by a president with a forward-looking agenda in regard to civil-military relations, which was the case of president Cardoso.	With the advent of the decree 2.134, civilians felt comfortable with the status quo.
Change-agent type	Subversives	Symbionts
Passes which test?	It passes the <b>straw-in-the-wind</b> test, since evidence is weak and not strictly related to the proposition.	It passes the <b>hoop test</b> since the evidence does not confirm definitively the proposition. However, it will be re-tested further.

This is why the following proposition emerged: in regulating the archives law including changes in ‘transparency of secret records’ would only be possible if made by a president with a forward-looking agenda in regard to civil-military relations, which was the case of president Cardoso. Evidence of that is the very fact that president Cardoso had a progressive agenda regarding civil-military relations, since he was responsible for the Missing Persons Act and the creation of the Ministry of Defense; and also the publicization of the National Defense Policy in 1996.

The second proposition asserts that with the advent of the decree 2.134, civilians felt comfortable with the status quo. If civilians did not mobilize to change or expand – which they did not do until the ‘Eternal Secrecy Decree’ – the proposition will be confirmed. The resulting type of change was Layering since no other legislation was removed with the introduction of the new one. The 1997/1998’s legislation shows important progress in terms of access. Before the Access Decree there were no findability elements in the Brazilian legislation.

No evidence of opposition nor to the Decree 2.134 (1997) nor to the Decree 2.910 (1998) was found. However, the stillness might have been the result of a miscalculation from the military who, after five years of the enactment of the access decree 2.134/07, decides to make an access to information ‘coup’, acting under the hood to gat the decree 4.553 (2002). This will be the subject of the next subsection.

### **6.2.3. The year of 2002 and the enactment of the Eternal Secrecy Decree**

The positive access panorama brought by the decree 2.134 (1997) persisted from 1997 to the end of 2002. However, the most important right-to-information conquest in Brazil’s democracy rapidly faded away with the enactment of the decree 4.553 (2002). The suspicious circumstances in which the decree was signed signal that the military acted as insurrectionaries to make this change happen, not preserving the institutional mechanisms already built to guarantee the right-to-information, and displacing the old rules – the new decree abrogated both 2.134 (1997) and 2.910 (1998) decrees.

Recalling chapter 5, in his last moments as a president, Fernando Henrique Cardoso signs the decree 4.553 (2002), establishing the possibility of ‘eternal secrecy’ through the possibility of endless renewals of documental classification “without reading it”. The ones signing the decree together with the president were Pedro Parente, the presidency’s Chief of Staff and Alberto Mendes Cardoso, Army General and Minister of Institutional Security (Hott, 2005; Revista Veja, 2011; K. F. Rodrigues, 2013).

The suspicious circumstances in which the decree was signed signal that the military acted as subversives or insurrectionaries to make this change happen, not preserving the institutional mechanisms already built to guarantee the right-to-information, and displacing the old rules – the new decree abrogated both 2.134 (1997) and 2.910 (1998) decrees.

Many access mechanisms were eliminated with this decree, as Table 19 shows, which was sanctioned by president Lula in the following year. The decree allowed unlimited classification renewals for documents, eliminated the publication of lists of declassified documents and did not even mentioned directly the obligation to follow CONARQ’s rules and determinations for archival management.



**Table 19 – Brazil’s ‘transparency of secret records’ in 2002**

.Legislation: Archives Act 8.159/1991 and the "Eternal Secrecy" Decree 4.553/2002									
Visibility					Inferability				
Completeness			Findability		Verifiability				
1	Are there limits to the reasons to classify documents?	Broadly.	10	Are there public lists of classified documents?	No.	16	Are there harm tests?	No.	
2	Can documents be released with only classified parts hidden?	No.	11	Are there public lists of declassified documents?	No.	17	Are there Public Interest tests?	No.	
3	Does the AF have to make public versions of documents?	No.	12	Do classified documents become automatically public when the classification period is over?	It is not clear.	18	Supervision of third parties: access to information	No.	
4	Is the right to access public records legally ensured?	Yes.	13	Are there public lists of existent archives?	No.	19	Supervision of third parties with sanction powers: access to information	No.	
5	Are there classification tiers?	Yes.	14	Are we able to find legal provisions that establish that the content of each archive should be summarized and public?	No.	20	Supervision of third parties: archival management	Yes, but weaker.	
6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	No.	15	Are we able to find a clear process for citizens to contest a classification decision?	No.	21	Supervision of third parties with sanction powers: archival management	No.	
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?	Yes.					22	Are we able to find a clear definition of who can classify documents?	Yes.
8	The FOI legislation trumps other secrecy provisions?	No.							
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?	Yes.							

It is important to remember that at that time civil-military relations were facing challenges, as described in Chapter 5. In 2000 president Cardoso fired an insubordinate army general, and a series of retaliation started to come from the military, who even scheduled a meeting of 155 generals in Brasília (Brazil's capital), without calling the Minister – another clear sign of insubordination and disagreement with civilian leaders. Besides that, the Minister still had to deal with his broken promises of higher wages and budget for the military. These animosities continued until the end of president Cardoso's term, worsened by a resource block to the military from the federal government (Zaverucha, 2005a). Table 20 shows the anatomy of change in the military perspective.

**Table 20 - Decree 4.553/2002: change in the military perspective**

Change-agent: The military		
	Before	After
Supports the status quo?	No.	Yes.
Proposition	Increased tensions within the armed forces due to the loss of autonomy led them to act at the expense of previous right-to-information legislation.	The military will act as symbionts 'in favor of the law', since it benefits them.
Evidence and its type.	<b>Account evidence 1:</b> military insubordinate declarations	<b>Trace evidence:</b> absence of other access legislative initiatives directly pushed by the military.
	<b>Trace evidence 2:</b> military dissatisfaction with budget cuts.	
	<b>Trace evidence 3:</b> military partial loss with the Amnesty Commission, since it declared that the government was responsible for political deaths during the military regime.	
Veto possibilities	Low	High
Discretion in interpretation / enforcement of rules	Moderate	High
Change-agent type	Subversives or Insurrectionaries	Symbionts
Passes which test?	Unfortunately, with the set of evidence available it passes only the <b>straw-in-the-wind</b> test.	It passes the <b>straw-in-the-wind</b> , since evidence elucidates the relevance of the proposition.

Before the enactment, increased tensions within the armed forces due to the loss of autonomy led them to act at the expense of previous right-to-information legislation. In order to

understand what might have made the armed forces to undertake such strategy, it is important to note that since 1998, with the governmental decision to create the Ministry of Defense, the armed forces were facing for the first time in decades a significant loss of autonomy (sometimes just symbolic, sometimes *de facto*). Some of the challenges:

- a) Adapting to the creation of the civilian Ministry of Defense (1999);
- b) Creating consensus within the armed forces regarding subordination;
- c) Struggling with budget cuts, which jeopardized many military activities;
- d) Dealing with pressures for reconciliation of the Amnesty Commission within the Ministry of Justice, despite the fact that military officials could also benefit from the financial compensations of the Amnesty Commission.

Unfortunately, due to the general character of the set of evidence, the proposition only passes the straw-in-the-wind test, which reinforces the importance of the proposition but does not provide enough information to weaken rival explanations.

**Table 21 - Decree 4.553/2002: change in the civilian perspective**

Change-agents: Civilians		
	Before	After
Supports the status quo?	Yes.	No.
Proposition	With the advent of the decree 2.134, civilians felt comfortable with the status quo.	Civilians - state agencies and civil society - will act towards the abrogation of the secrecy decree.
Evidence and its type.	<b>Trace evidence:</b> absence of other legislative initiatives for more than four years.	<b>Pattern evidence:</b> the biggest press coverage regarding the right-to-information since the 1988 Constitution.  <b>Account evidence:</b> letters exchanged between the National Archive and the presidency, asking for president Lula to abrogate the decree.
Veto possibilities	Moderate/Low	Low
Discretion in interpretation / enforcement of rules	Moderate/Low	Low
Change-agent type	Symbionts	Insurrectionaries
Passes which test?	It passes the <b>straw-in-the-wind</b> , since evidence elucidates the relevance of the proposition.	It passes the <b>smoking-gun test</b> , since it confirms the proposition and considerably weakens other explanations.

On the civilian side, the piece of legislation triggered some reactions in the press that stating that in terms of access to information, Brazil had come back to dictatorship levels of transparency. It is important to notice that according to searches made in the newspaper *Folha de São Paulo* and the *Biblioteca Nacional* news repository, the press did not get quite involved in the enactment of the Archives Law (1991) and the access decree 2.134 (1997), and the right-to-information started to be in the national agenda because of this decree. Table 21 shows the anatomy of change in the civilian perspective.

It can be said that the eternal secrecy decree was the most important event in the effort of making access to information a topic of the political agenda. There were simply no media coverage regarding the previous legislation. For instance, the enactment of the decree 4.553/2002 received extensive attention from the media, counting also with the activist bureaucracy in the attempt to reverse the situation.

The resulting change was Displacement, which happens when there is the removal of existing rules, with the introduction of new ones. It is interesting to notice that insurrectionaries, according to the Gradual Institutional Change Theory, generally emerge in a context of low veto possibilities and low-level discretion, which seemed to be the military evaluation of their position. Interestingly, the evidence gives support to the instability of that period, but do not offer explanations of the exact trigger that led them to the decision of play the role of insurrectionaries.

#### **6.2.4. The year of 2005, with the enactment of the Act 11.111/05**

President Lula had the change to abrogate the secrecy decree and many human rights movements protested against it, hoping that the new president could cancel it. Nevertheless, Lula ran away from important and unpopular decisions in both of his governments, and so he did in regard to the armed forces and the secrecy decree. After many requests from civil society and civilian state agencies, he decides to enact a new access law, the 11.111 (2005), which did not change the most polemic prerogative of the previous one: the eternal secrecy one. There was only one major advance between the Eternal Secrecy decree and the act 11.111/2005, which are the automatic public-character of unclassified documents. Table 22 shows the ‘transparency of secret records’ elements of the act 11.111 (2005).

The result of this controversial law was only more dissatisfaction. As mentioned in chapter 5, Lula’s administration was marked by reactive measures, and this decree might have

been a result of this pattern of behavior. 2005 was the third year of the Lula presidency, and after the initial optimism, the Mensalão scandal emerged, starting a crisis in his government.

**Table 22 – Brazil’s ‘transparency of secret records’ in 2005**

Legislation: Archives Act 8.159/1991 and the Decree 11.111/2005

Visibility				Inferability					
Completeness		Findability		Verifiability					
1	Are there limits to the reasons to classify documents?	Broadly.	10	Are there public lists of classified documents?	No.	16	Are there public lists of classified documents?	No.	
2	Can documents be released with only classified parts hidden?	No.	11	Are there public lists of declassified documents?	No.	17	Are there public lists of declassified documents?	No.	
3	Does the AF have to make public versions of documents?	No.	12	Do classified documents become automatically public when the classification period is over?	Yes.	18	Do classified documents become automatically public when the classification period is over?	No.	
4	Is the right to access public records legally ensured?	Yes.	13	Are there public lists of existent archives?	No.	19	Are there public lists of existent archives?	No.	
5	Are there classification tiers?	Yes.	14	Are we able to find legal provisions that establish that the content of each archive should be summarized and public?	No.	20	Are we able to find the content of each archive summarized?	Yes, but weaker.	
6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	No.	15	Are we able to find a clear process for citizens to contest a classification decision?	No.	21	Are we able to find a clear process for citizens to contest a classification decision?	No.	
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?	Yes.					22	Are we able to find a clear definition of who can classify documents?	No.
8	The FOI legislation trumps other secrecy provisions?	No.							
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?	Yes.							

It seems that Lula wanted to please all the sectors of the society, but surely, he would never be able to do that in two interconnected subjects, which are the military and civilians advocating for criminal reconciliation measures. He tried, though.

**Table 23 - Decree 11.111/2002: change in the military perspective**

The military		
	Before	After
Supports the status quo?	Yes.	Yes.
Proposition	The military were successful status quo defenders, in a parasitic symbiosis with the government since the decree 4.553/2002.	The military were status quo defenders, in a parasitic symbiosis with the government since the decree 4.553/2002, and were ahead in relation to civilians, reinsuring a secretive legislation while pressures for reconciliation persisted.
Evidence and its type.	<b>Account evidence:</b> the enactment of the decree 4.553/02.	<b>Account evidence:</b> the decree is co-authored by a military official.
	<b>Trace evidence:</b> the persistence of the decree after the many civilian attempts to abrogate it.	<b>Trace evidence 1:</b> the Brazilian eternal politics depended on the military in order to have success (Minustah).
		<b>Trace evidence 2:</b> there were two initiatives to study the repression period in strategic governmental agencies.
Veto possibilities	High	High
Discretion in interpretation / enforcement of rules	High	High
Change-agent type	Symbionts	Symbionts
Passes which test?	The proposition passes a <b>smoking-gun test</b> , since evidence is strong enough to considerably weaken rival explanations.	The proposition passes a <b>smoking-gun test</b> , since evidence is strong enough to considerably weaken rival explanations.

The civilian side of the equation: in the second year of his term he broadened the scope of the Missing Person's Act, to those cases of death as a result of armed conflicts and police repression (in manifestations and other circumstances), and also the suicidal cases occurred as a result of torture made by public agents (Rotta, 2008). However, unknowingly he only

reinforced a feeling of impunity, by not providing means for criminal liability of tortures and murderers.

In addition, in 2004 there was already some other initiatives within the state that were historically investigating the period of the repression, such as the ‘Right to Memory and the Truth’<sup>93</sup>, from the Special Secretary of Human Rights within the Presidency, and also the project “Memories Reveled”<sup>94</sup>, from the presidency’s Chief of Staff.

Looking into the military side of the equation, the military were just assigned the leadership of MINUSTAH, in 2004. The operation was the most ambitious participation of Brazil in peacekeeping operations, and was followed by a flow of resources in equipment and training to the armed forces (Anselmo, 2014).

**Table 24 - Decree 11.111/2005: change in the civilian perspective**

Civilians		
	Before	After
Supports the status quo?	No.	No.
Proposition	Civilians were dissatisfied with the legislation, including civilian state agencies (subversives) and civil society (insurrectionaries), and will try to enact a new legislation.	Civilians were dissatisfied with the legislation, including civilian state agencies (subversives) and civil society (insurrectionaries), and will try to enact a new legislation.
Evidence and its type.	<p><b>Pattern evidence:</b> the decree 4.553/02 had the biggest press coverage regarding the right-to-information since the 1988 Constitution.</p> <p><b>Account evidence:</b> letters exchanged between the National Archive and the presidency, asking for president Lula to abrogate the decree.</p>	<b>Pattern evidence:</b> the immediate reaction from the media to the decree 11.111/05 was bigger than to the decree 4.553.
Veto possibilities	Low	Low
Discretion in interpretation / enforcement of rules	Low	Low
Change-agent type	Insurrectionaries / subversives	Insurrectionaries / subversives
Passes which test?	It passes the <b>smoking-gun test</b> , since evidence confirms the proposition and considerably weakens other explanations.	It passes the <b>smoking-gun test</b> , since evidence confirms the proposition and considerably weakens other explanations.

<sup>93</sup> Direito à Memória e à Verdade.

<sup>94</sup> Memórias Reveladas.

To aggravate the dissatisfaction, the act 11.111 (2005) was doomed to redundancy and had a clear direct relation to the military themselves, since one of the officials signing the decree was an army general. However, as usual the government responded criticisms with another reactive measure: the decree 5.584 (2005), which opened the access to archives from extinguished repression institutions, such as The National Security Council (CSN), the General Commission of Investigations (CGI), and the National Information Service (SNI) – that is to say, archives that would not interfere directly in the military archives.

Finally, it is not clear which were the specific drivers of the act 11.111 (2005): a signal of support to the military, who were in charge of projecting the image of Brazil internationally? The result of some sort of veto? The fact that pleasing only a part of the civil society in the middle of a political crisis, while displeasing the military, would not be politically advantageous? Table 24 assesses the available evidence of this institutional change in the civilian perspective.

In the end, a Layering mode of change happened in the case of the Act 11.111 (2005), since the previous regulations were curiously not abrogated. The military strategy prevailed again in the second successful endeavor of avoiding furthering the Brazilian ‘transparency of secret records’. Change would only emerge after six years, with the enactment of the Brazilian Freedom of Information Law. The enactment of the law is no reason to believe that there were no resistances, which I explore in the next subsection.

#### **6.2.5. The year of 2011 and the enactment of the Freedom of Information Law**

The enactment of the Brazilian Freedom of Information (FOI) Law 12.527 (2011) was really an achievement. Chapter 5 shows that since 2003 a draft bill of a FOI law was already in the Chamber of Deputies, walking alone in the middle of the many draft bills Brazilian deputies write and never get the chance to be debated. In Brazil, if the Executive presents a draft bill, it is more likely to be discussed, voted and enacted, which was the case of the Brazilian FOI law. Table 25 presents Brazil’s ‘transparency of secret records’ in 2012.

If compared to the ‘access decree’ 2.134/02, the law 12.527/11 offers a way stronger freedom of information regime, establishing procedures to request information, to make appeals, to classify and evaluate documents, among others. The two 2012 decrees that regulate the FOI regime are also in accordance with many international standards on FOI.



Chapter 5 gives a detailed description of how the FOI legislation was debated and confronted military and diplomatic resistances. The evidence of the opposition could not be clearer in the case of this legislation, and its enactment, together with the creation of the Brazilian Truth Commission, is a sign of the connection between these two fights in the country: information and reconciliation. They are connected battles which in 2011 could go through different paths, because access to information is not only about the past, but also about the present and the future.

**Table 25 – Brazil’s ‘transparency of secret records’ in 2011/12**

Legislation: Archives Act 8.159/1991, FOI Law 12.527/2011, Decree 7.724/2012 and Decree 7.985/2012

Visibility					Inferability			
Completeness			Findability		Verifiability			
1	Are there limits to the reasons to classify documents?	Broadly	10	Are there public lists of classified documents?	Yes.	16	Are there harm tests?	No.
2	Can documents be released with only classified parts hidden?	Yes.	11	Are there public lists of declassified documents?	Yes.	17	Are there Public Interest tests?	No.
3	Does the AF have to make public versions of documents?	No.	12	Do classified documents become automatically public when the classification period is over?	Yes.	18	Supervision of third parts: access to information	Yes.
4	Is the right to access public records legally ensured?	Yes.	13	Are there public lists of existent archives?	No.	19	Supervision of third party <b>with sanction powers</b> : access to information	No.
5	Are there classification tiers?	Yes.	14	Is the content of each archive publicly summarized?	Partially	20	Supervision of third parts: archival management	Yes.
6	Is there a time-limit to restrict access to a document?	Yes.	15	Is there a clear process for citizens to contest a classification decision?	Broadly	21	Supervision of third party <b>with sanction powers</b> : archival management	No.
7	Is it prohibited to destroy documents of historic value?	Yes.				22	Is there a clear definition of who can classify documents?	No.
8	The FOI legislation trumps other secrecy provisions?	Partially						

9	Is it mandatory to legally justify a declined information request?	Yes.
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The military justified the resistance to the legislation stating that the armed forces have to deal with an unimaginable amount of information recollected since the beginning of Brazil's state formation, unlike many public agencies created in a considerable smaller timeframe. The great majority of those documents are in different and old formats, sometimes requiring specialized software and hardware to provide access to them (according to interviewees from the Brazilian Army and Navy).

These affirmations might not be entirely true: according to Maria Celina D'Araújo, one of the most prestigious academic institutions in history and archives, which is called CPDOC<sup>95</sup> (Center for Research and Documentation of Brazilian Contemporary History), offered to organize the Army's historical archive for free. Nevertheless, in the final stages of the cooperation negotiation, the Army decided to give up the project.

**Table 26 - Act 12.527/2011: change in the military perspective**

The military		
	Before	After
Supports the status quo?	Yes.	No.
Evidence and its type.	<b>Account evidence 1:</b> an interviewee who worked in the Ministry of Justice at the time of the draft bill discussions witnessed many meetings with the military where they tried to maintain unlimited renovations of classification.	<b>Account evidence 1:</b> military officials stated that many documents were destroyed before and after the FOI Law.
	<b>Account evidence 2:</b> the head of CRE stated in a newspaper article why he defended more strict legislation regarding national security.	<b>Account evidence 2:</b> journalist Leali requested access to declassified documents, which has not been given because the information could be 'of restricted access'.
		<b>Account evidence 3:</b> in the face of a request for documents from the Truth Commission, the Army stated they have been eliminated. However, they were found inside an old ambulance in an Army hospital parking lot, after a whistleblowing.
Veto possibilities	High	Moderate/Low

<sup>95</sup> Centro de Pesquisa e Documentação de História Contemporânea do Brasil.

Discretion in interpretation / enforcement of rules	High	Moderate/High
Change-agent type	Symbionts	Opportunists
Proposition	The military played by the book making opposition to the FOI draft bill.	With high level of discretion and low veto possibilities, the military will act as opportunists to maintain old secrecy practices despite the new legislation.
Passes which test?	The proposition passes a <b>smoking-gun test</b> , since evidence is strong enough to considerably weaken rival explanations.	The proposition passes a <b>smoking-gun test</b> , since evidence is strong enough to considerably weaken rival explanations.

The military and diplomatic resistances to the FOI law concentrated in the figure of the Senate's Commission of Foreign Relations and National Defense (CRE), which tried to delay the most the enactment of the bill. In the news, the topic was nothing more than 'will the eternal secrecy be over?'. In the end of the process, interviewees stated that the military embraced acquiescence. The Minister of Defense was able to convince the forces that the law would do no harm to them.

It is good to remember the context in which the armed forces were before the resistance to the FOI legislation. The tensions started with the air control crisis that resulted in a new minister of defense. Nelson Jobim positioned himself absolutely in favor of the military, against any revisions in the Amnesty Law (which was condemned even by international courts), in favor of the development of ambitious projects, such as the nuclear submarine.

At the same time Jobim worked in favor of the strengthening of military projects, he had an important role in enhancing democratic civilian control within the Ministry of Defense. The major event in this regard was the reform of the armed forces a reality with the New Defense Law, establishing many important mechanisms of civilian control and giving de facto powers to the minister of defense.

The launching of the Third Human-Rights National Program in 2009 also increased tensions, since it had the creation of a Truth Commission as one of its goals. However, the exclusion of criminal liability of the commission's scope is evidence that the military had nothing to worry about. No special access to information was granted to the commission and no one could be obliged to speak in the audiences.

This context made resistances inevitable: it was symbolic 'from who' they were resisting, and president Rousseff's personality and history – being a former ally of the armed

resistance during the military regime – gives more weight to that. In addition to that, the stable veto power over reconciliation measures still held true – and still does.

However, summing the fact that civilian control had improved recently, the international advocacy regarding transparency, the fact that being against transparency could harm politicians' image, and specially the presence of an opposing political figure in charge of the presidency, the law was approved by Congress.

My proposition is that in this context, the military had not enough veto power nor discretion to change the soon-to-be transparency law and had to act as subversives, playing by the book through lobbying, to try not to avoid a transparency law, but to smoothen it. Table 27 shows the evidence that supports this proposition, which passed a smoking-gun test.

**Table 27 - Act 12.527/2011: change in the civilian perspective**

Civilians		
	Before	After
Supports the status quo?	No.	Yes.
Proposition	Civilians were dissatisfied with the legislation, including civilian state agencies (subversives) and civil society (insurrectionaries), and will try to enact a new legislation.	Civilians support the status quo in legal terms. However, with the emergence of the Conversion type of change in the side of the military, they will act as subversives, working to foster compliance, which in this case means decreasing the military discretion in the interpretation of the laws.
Evidence and its type.	<p><b>Account evidence:</b> engagement of many civilian state agencies in the making of the draft bill, together with the advocacy of the media and NGOs through public hearings.</p> <p><b>Pattern evidence:</b> good media coverage of the discussions about the law especially involving the eternal secrecy issue.</p>	<p><b>Account evidence:</b> engagement of many civilian state agencies in the making of the draft bill, together with the advocacy of the media and NGOs through public hearings.</p> <p><b>Pattern evidence:</b> good media coverage of the discussions about the law especially involving the eternal secrecy issue.</p>
Veto possibilities	Low	Moderate/High
Discretion in interpretation / enforcement of rules	Low	Moderate/Low
Change-agent type	Insurrectionaries / subversives	Symbionts
Passes which test?	It passes the <b>smoking-gun test</b> , since evidence confirms the proposition and considerably weakens other explanations.	It passes the <b>smoking-gun test</b> , since evidence confirms the proposition and considerably weakens other explanations.

For instance, civilians involved in the enactment of the law were mainly the bureaucracy, jurists, the Ministry of Justice, the media and civil-society groups. It is possible to note that, if eternal secrecy was abolished, it was due to two things: a broader support from the society regarding freedom of information measures and a president unwilling to forever-bargain with the historical military political power of Brazil. Michener (2010) also points out that

Civilians supported the status quo in legal terms. However, with the emergence of the Conversion type of change in the side of the military, they will act as subversives, working to foster compliance, which in this case means decreasing the military discretion in the interpretation of the laws.

In the end, the Brazilian FOI Law came to life through two types of change: Layering, as an additional besides the Archives Law and article V of the 1988 Constitution, and also in the sense that all actors played by the book, following clear democratic norms of discussion and opposition; and also through displacement, where secrecy laws lost their prominence.

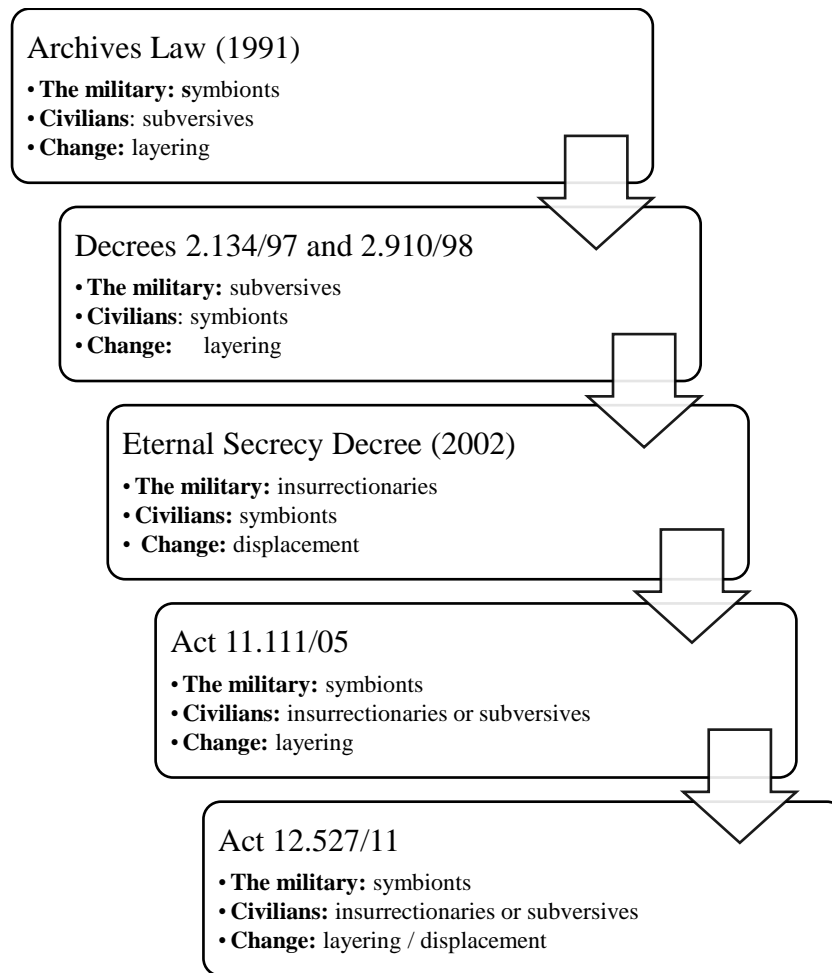
### **6.3. Types of institutional change in Brazil: a broad view**

The Gradual Institutional Change theory was really useful to understand the changes in ‘transparency of secret records’ in Brazil., Figure 8 presents an overview of these changes.

In general lines, Brazil has shown a Layering pattern of change. This result is in consonance with what Chapter 4 explored: since the very first steps of democracy in Brazil, there was the tendency of establishing pacts and conducting change slowly. From the moment the military decided to undertake our Brazilian ‘glasnost’, until the first indirect elections occurred, almost a decade had passed. Our constitution was deeply influenced by the military, and they directly participated in the writing of the chapters of the constitution that talk about them. The first president was practically appointed by the military. A simple direct election does not change the importance and relevance of such institution in the society.

During the period of this analysis, the military had varying possibilities of veto, but they were especially high regarding reconciliation initiatives. Their strategy of change varied between symbionts, subversives and insurrectionaries, and as I contend in this chapter, they now assume the change-agent type of opportunists, using their high discretion to make new interpretations of the law.

**Figure 8 – Brazil: overview of changes and change-agents**



Indeed, the change of strategy to promote or avoid change is natural in a changing environment, especially in the light of the institutional developments in civilian control Brazil has experienced during Cardoso and Lula's terms. However, searching for a pattern of military behavior, there is the prevalence of the symbiont change-agent. This is because Symbionts benefit from current institutions in a beneficial way or in a parasitic way, and since they benefit from them, they act against change.

In the case of access to information, I characterize it as parasitic because many resistances from the military came from the "revanchista" argument against being accountable for the repression occurred in the military regime - which had nothing to do with the global orientation towards transparency. If many reforms were triggered by the lack of transparency related to the military regime, the ones with different motivations could have been considered assets for the future, as leverage for the military to have better relations with civilian leaders and the society.

The symbiont type of change-agent can also be identified in the creation process of several civilian institutions. To exemplify, the Ministry of Defense suffered from many military vetoes before being enacted. However, when there was finally a green sign for its creation, the responsible for designing it were the military themselves. Another example is the lack of power given to the minister of defense. Only after eleven years, a ministry of defense was able to change this reality, with the 'New Defense' law.

In addition to that, examples of high discretion in enforcement limited with great success, the access to information of many research initiatives. Interviewee 10 (2015) stated that being from the Regional Truth Commission (state of Rio de Janeiro) closed more doors than kept them open. Access to military facilities were denied, Freedom of Information requests were forbidden – one of the researchers of the Regional Truth Commission tried to ask for information using the Act 12.527/2011 and access was denied – information to Truth Commissions should be delivered through specific requests to the Ministry of Defense.

The result is that, as the veto possibilities vary, the military changes its dominant change-strategy from symbionts to opportunists. It is important to notice that both change-strategies are marked by a high level of discretion in Interpretation and Enforcement of the law. Evidence that support this affirmation are the absence of archival and access-to-information agencies with sanction powers over military management of documents and classification, the experiences with the Truth Commissions and, especially, the process of acquiescence with the Freedom of Information law.

Regarding civilian change-agents, their behavior varied between symbionts, insurrectionaries and symbionts. However, there are different tendencies for what I could identify as two distinct groups: civilian-state agencies and the civil society (media, Academia and NGOs).

The first group is part of the state, and will tend to promote layering more often than civil society. An example of that was the joint elaboration of the FOI draft bill between the Ministry of Justice and the Presidential Chief of Staff. However, in one case a civilian state-agency acted as an insurrectionary: when the National Archive and president Lula had an intense exchange of letters, where the archivists asked for the abrogation of the secrecy decree.

The second group, the civil society, act as insurrectionaries, especially regarding reconciliation measures. They have weak veto possibilities and weak discretion in interpreting and enforcing the law, and are not as restricted in action since they are outside of the system, but can easily act as subversives when aligned with sympathetic parts of the state.

These two actors often made coalitions that resulted in the necessary political strength to enact changes – this is the case of the FOI law. These conflicting opinions within the state itself, between the armed forces, the president, the legislative and the bureaucracy, settled the bases for change. Change is about friction.



## Part III – Mexico

### Chapter 7 – Mexico's Historical Background

If Antonio Carlos Jobim said that “Brazil is not for beginners”, we could certainly say the same about Mexico too. Mexico is a continental country with a really rich history of popular revolutions, whose people managed to survive a myriad of governments insensible to social inclusion.

Despite its inequalities, Mexico was considered for a long time the Latin American haven of civil-military relations. While most countries were struggling with military and civilian coups, the Institutional Revolutionary Party governed peacefully, since “[n]o successful coup has occurred in Mexico since 1920, and no serious threat has manifested itself since 1930s. Civilians dominate the political life of the nation” (Ackroyd, 1991, p. 81). Nevertheless, despite civilian control,

It is true that little is known of the Mexican military. The reason for this lack of information appears not to stem from a lack of academic interest, but rather from an institutionalized secrecy which pervades the military structure. Even "routine activities" tend to be classified "as highly sensitive and subject to security restrictions." (Claire, 1992, p. 17).

The difficulties regarding acceding information from military activities are present in most historical works that focus on Mexico (Claire, 1992; Ronfeldt, 1975) and also in the interviews I undertook for this study (specially the Interview 23). Mexico was one of the first Latin American countries to enact a Freedom of Information Law, but still is the one who maintains its main strategic defense document almost fully classified (Camacho, 2016).

It is also difficult to talk about Mexico's civil-military relations without mentioning three things: the influence of the United States, the Mexican Revolution and the consequent trajectory of the Institutional Revolutionary Party (*Partido Revolucionario Institucional*), or just PRI; and the drug trafficking related violence.

This Chapter will give the reader an understanding of the main political drivers that arose from the Mexican Revolution, how PRI build its hegemony and exerted it, until the last government before the crisis that would change Mexico's democracy, civil-military relations and economy.

## 7.1. The Mexican Revolution and before

One of my interviewees told me: “if you want to understand Mexico, you have to get back to its revolutionary roots”. That is what I intend to do in this section, at least sufficiently for myself and the reader to capture the complexity of the political processes that evolved from the revolutions to democracy.

According to Nunes (1975), agrarian issues were at the heart of the three main revolution of Mexican history: the independence in 1810, the process that led to the Constitution of 1857 and the Mexican Revolution in 1911. He states that despite the efforts of creating a liberal society with a productive bourgeoisie – with the abolition of slavery, for example – independence only reinforced other types of work relations quite similar to slavery.

In 1884, General Porfirio Díaz deflagrated a coup d'état and remained in power until 1911. In his regime, a great flow of foreign investment from the United States was established. P. Díaz land policies favored the concentration of land ownership to few people, generally linked with his government (Nunes, 1975).

Besides promotion an external-oriented industrialization, P. Díaz government already had established civilian control, with the absence of political influence from the military, accompanied by a process of professionalization and size reduction (Serrano, 1995).

However, social inclusion was not a part of P. Díaz agenda, and the political climate, if not bad for its own, was aggravated by the already ongoing agrarian-socialist movements in the country since 1856's revolution. The country was in a semi-feudal production system, and socialism came as an option to that condition (Nunes, 1975).

Between the publication of the Communist Manifest, the repression of many journalists, strikes (and the consequent bloody repression) of recently created labor movements, P. Díaz government began to be massively contested. Even the liberal middle class and land owners started to have doubts about the effectiveness of the positivist view of the ‘scientific’ elite of the government.

The Revolution happened between 1910 and 1917 and was mainly constituted by the movement of Madero – a rich Mexican land owner who focused in anti-reelection and universal suffrage; and Emiliano Zapata, whose army believed in the agrarian reforms.

In 1912, after initial Guerrillas Madero comes to power and starts his political arrangements. However, Zapata questions Madero about the pieces of land taken from the habitants of his region. Despite Madero's promises that all the land would return to the peasants

after he turns president, the central government attacks Zapata's army and the Zapatist guerrilla begins (Nunes, 1975).

Porfiristas and former allies of Madero also turn themselves against Madero's army, but terror is really installed with the counter-revolution of General Victoriano Huerta, in favor of the interests of former landowners of Mexico. After Madero is murdered, V. Huerta is recognized by many states and political elites but one: Venustiano Carranza and his Constitutional Army (Nunes, 1975).

In 1914, an incident between Huerta and some U.S. American military triggered an economic embargo towards Huerta and also the suspension of the Law that forbade the United States to sell weapons to Mexican revolutionaries.

In the same year, the alliance Villa-Carranza ends and a Convention is organized with all the leaderships of the revolution since 1910, to set an agreement of what would be the next steps toward a national constitution. The essence of the many conflicts related to this convention is that Madero was a man of the elites, not necessarily sensitive to the agrarian demands of other revolutionary groups (Nunes, 1975).

In 1917, under Carranza's rule, a new constitution is enacted with some labor and agrarian demands, but far from being what some revolutionary groups envisioned in terms of rural and social inclusion, but with sufficient nationalist interest to defend some natural resources – mainly oil – from foreign companies that historically had explored Mexico's labor force (Nunes, 1975).

The Revolution had an important role for civil-military relations stability in Mexico. According to Serrano (1995),

The impact of the Revolution played an important role in generating a climate relatively free of the tensions and suspicion which has often accompanied relations between civilians and soldiers. The relevance of the Revolution for civil-military relations in Mexico became evident in at least two distinct, but related aspects: first, the provision of a context favourable to 'subjective civilian control'; and secondly, its effect on the population's hostility towards violence. The victory of the Revolution and of the Constitutionalist Army brought to power a *sui generis* army whose popular roots were also shared by the civilian elite. Although this was a long and complex process which also involved the pacification of the revolutionary family not only did the armed forces eventually consider themselves as guardians of the Revolution, but also as active participants in the process leading to the fulfilment of revolutionary goals (Serrano, 1995, p. 428).

Thus, the Revolution was the common ground for establishing a mutually supportive relationship between civilians and the military, which I explore in the next subsection dedicated to the first decades of the revolutionary party in power.

## 7.2. The building of PRIs hegemony and civilian control (1928 – 1958)

The Mexican Revolution had many key players. Many of them were left behind along the way, but still, the winners did not agree in every public policy direction. The first years after the revolution were made of many negotiations among the groups that fought for it. At that time, the today's well known *Partido Revolucionario Institucional* (PRI) was called *Partido Nacional Revolucionario* (PNR, in English, National Revolutionary Party). This was the very first party created after the Mexican Revolution, and it was organized by the summit of the revolution, including army generals, regional leaders, and other influent actors.

According to Camín (2002), until 1952, there was always more than one presidential candidacy – including many military officials. The military influence in the political settlements of that time were minimal precisely because there was no clear separation between civilian and the military. However, in the 1920s and 1930s, a series of reforms led to an effective decrease of political influence of the military in politics (Claire, 1992; Ronfeldt, 1975). These measures included:

The rotation of zone commands so that officers do not acquire large personal followings; the splitting of infantry commands around Mexico City among the Presidential Guard, the Secretary of National Defense, and I Zone Commander; retention of political generals in top commands; presidential control of the promotion and assignment system for the ranks of Colonel and above; limitation of the size, budget and equipment of the armed forces; establishment of professional education and training programs; the encouragement of private economic, rather than political, profiteering by individual officers; and also – since 1940 – government restrictions placed on military relations with the United States and with the hemispheric security activities (Ronfeldt, 1975, p. 18).

Despite the advances of these reforms, Andersen (1996) contends that the “wide transformation of the revolutionary national project to the industrial capitalism did not include the creation of democratic institutions, characteristics of a modern state [...]” (p. 199, our translation). Claire (1992) states that the Revolution did not made profound changes in the authoritarian character of politics in Mexico, but somehow managed to modernize it.

Regarding the post-revolutionary elections, if not militarily influenced, one thing was present since the beginning of Mexican post-revolutionary history: the electoral fraud. The first elections were controlled and managed to offer the victory only to candidates aligned with the revolutionary roots, in opposition to the group called ‘reactionaries’, with a more liberal view of economy and the state (Camín, 2002).

Nevertheless, fraud was no reason for a great dissatisfaction, since there was a general agreement regarding the prestige of the candidate, mostly military generals that commanded the country for almost 30 years after the Revolution ended (Claire, 1992).

Claire (1992) states that PRI, since the beginning of the post-revolutionary era has made use of two strategies to remain in power: co-optation and incorporation<sup>96</sup>. Of course, this strategy included the military indirectly. There were no substantial divergences between civilians and the military during PRI's rule simply because there was not a clear separation between them – it was a process of accommodation of many interests, different armies and political elites. Besides that, one evidence of the political presence of the Armed Forces in Mexican civilian governments were the presence of many military officials in bureaucratic positions within the government, which decreased over time, but were high at that period (Ronfeldt, 1975).

In 1938, under General Lázaro Cárdenas presidency, divergences within PNR led to the changing of many internal guidelines of the party and a consequent change of name to *Partido de la Revolución Mexicana* (PRM). It is important to note that Lázaro Cárdenas is the most well remembered president of Mexico, since he promoted many of the policies that were revolutionary demands. He is from the statist stream of revolutionary leaders, as opposed to the liberal one that later (under Miguel de la Madrid presidency until nowadays) took place (Nunes, 1975).

According to Camín (2002), PRM still was a party of the 'revolutionary family', however, it added some actors like a worker sector, a military sector, a peasant sector, and a popular sector, characterizing it as a corporatist mass party. In regard to the military, since the 1940s they played an important, close and collaborative role in governments as a result of its reliance on PRM (Claire, 1992; Garcíadiego, 2013).

In fact, the first civilian president of Mexico was elected in 1946. Until 1949, national archives had a high position in the presidency agenda. It is true that the process of professionalization and separation between the military and politics started some terms before the first civilian president: it began first with president Alvaro Obregón (1920-24), second with president Calles, and had its peak in the presidency of Lázaro Cárdenas<sup>97</sup>.

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<sup>96</sup> Others can call it 'a country's commitment to ideological plurality'.

<sup>97</sup> To see downsizing numbers see Claire (1992), page 20.

President Cardenas knew that within the military there were groups against his policies, and the bargaining strategy he chose to use was raising salaries, putting trustworthy officials in the Executive, and investing in new education programs (Claire, 1992).

The imprint made by Cardenas on the modern military structure remains. While many of the changes were not popular with military leaders at the time, the generals remained loyal to their president in return for relative autonomy in operations and training. They also received virtually *carte blanche*, direct access to the president, yet were able to retain sufficient distance from political involvement to preserve a reputation as unsullied and above the political fray (Claire, 1992, p. 27).

The military was like a fourth pillar of PRM since the end of the revolution, but the changes the (military) presidents made ensured that the military respected civilian control in the 1940s (Chamberlin, 1969; Claire, 1992; Ronfeldt, 1975).

In 1946, during the party meeting, a change of name is decided: the party of the revolution started to be called *Partido Revolucionario Institucional* – PRI (Institutional Revolutionary Party). The rupture between these two parties was with the ‘mass party’ characteristics of PRM. PRI was born to focus in another political agenda that involved the capitalist developments of post-World War II (Camín, 2002).

“[Cardenas’] reorganization of the PRI increased the power of the popular sector as a major source of PRI support, which also helped to break the monopoly of the generals on political power” (Claire, 1992, p. 22). This change is important because it influenced the beginning of the one party-rule with an all mighty president, well known by the international media. From 1952 until PRI’s decay in 1988, presidents would indicate their successors, which would certainly be elected through the forged electoral frauds (Camín, 2002).

However, the presidency of Adolfo Ruiz Cortines (1952-1958) was not even close to peace, and was marked by a strong internal use of the armed forces, with repression of protests and strikes, like the Henriquista demonstrations of 1952, the repression of the strike made by rail operators by the 49<sup>th</sup> Infantry Battalion, and the repression of the armed group *Asociación Cívica Guerrerense*, among others (Garciadiego, 2013).

### **7.3. Hegemony is settled (1958 – 1988)**

In 1958’s election, for the first time a candidate was indicated by the president without any opposition within the party. This unanimity continued for the next four terms (1964, 1970, 1976, 1982 – that is to say, for 24 years) (Camín, 2002).

The relationship between the PRI and the state during this period is defined by symbiosis, and this was only possible due to the roots of the revolution. The Mexican president had a great amount of power – he controlled the Legislature, the Judiciary, the armed forces, the state governments and the municipalities (Camín, 2002; Fuser, 1995).

Some say that PRI's extremely rigid control over the country was good, since the last coup attempt was in 1929, when a group of generals rebelled against PRI. Since then, the military has played by civilian book (Fuser, 1995).

Since the 1920s the armed forces had been used in counternarcotic missions. However, it was never clear the relationship between politics, the military and drug trafficking, since in the 1960s, as Astorga (2005, p. 103, our translation) contends, “the famous crop destruction actions to which the press used to be invited, and the ones with great publicity, were undertaken when the plants were already harvested”.

The army was also very present internally, in the routine of several popular turmoil between 1960 and 1964: it efficiently repressed many rural, industrial and labor political disturbances, and also guerrilla insurgency and urban terrorism<sup>98</sup>. In 1967 the military was called again, this time to control the resulting violence of the electoral campaigns of the state of Sonora (Ronfeldt, 1975). In addition to that, the army was an important factor in avoiding violence during elections, whether in the state or municipal level (and also covering some frauds).

The first president that marks the settlement of PRI's hegemony in Mexico is Gustavo Díaz Ordaz (1965-1970). The use of the military in counternarcotic missions were present in the Plan Canador, and the military deployment for social needs was legitimated in the Plan DN-III – a strategic document that settled rules and boundaries for the use of the military in cases of natural disaster, among others. DN-III was responsible for a general positive reputation of the armed forces (Garciadiego, 2013; Hachemer, 2017).

His presidential term is remembered by one of the saddest events in the Mexican post-revolutionary history: the Tlatelolco massacre, occurred in October the 2<sup>nd</sup>, 1968, on the eve of the Mexican Olympic Games. In the face of massive student protests in Mexico, president Díaz Ordaz sent orders for the Army to (heavily) repress students in uprising at UNAM and the result was a bloodshed with uncountable deaths (Andersen, 1996; Fuser, 1995; Hachemer, 2017; Young, 1985).

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<sup>98</sup> See Ronfeldt (1975) for more details of rural, industrial and other disturbances of this period.

President Diaz Ordaz took the blame, but so did the army, who apologized for the indiscriminate violence (Hachemer, 2017). This event created the first great cleavage between civilians and the military that has clearly appeared many times since then:

The massacre left a deep scar on the collective psyche of the military, and has effectively dampened for nearly 25 years the level of repression the military is willing to use in maintaining social order. Following Tlatelolco, the military could have chosen to respond with either continued repressive force or its current repulsion to another such event. The fact that Mexico's army has chosen a decreased role in politically motivated crowd control situations is significant. It stems at least in part from the continued level of identification that Mexican military men maintain with their civilian heritage. Since 1968, Mexico's armed forces have been reluctant to forcefully engage civilian resistance to the government, and are likely to remain so despite the increasing potential for government pressure in the coming years (Claire, 1992, pp. 32–33).

This decision of decreasing their role in crowd control situations was translated in a practical change of strategy: instead of controlling demonstration, the Mexican armed forces invested their efforts in intelligence to identify ‘subversive individuals’ (Andersen, 1996). It is interesting to notice that, despite 1968’s bloodshed, Mexico has never been offered the international repudiation that was offered to the Latin American dictatorships. There were ferocious guerrilla movements all over Mexico during the 1970s that, according to Fuser (1995), were as cruel as the Argentinian *guerra sucia*.

In the 1970s, under the presidency of Echeverría (1970-1976), Mexico was economically important to the United States and, at the same time, politically important for the communists. It was really intriguing that Mexico warmly received leftist political refugees from all Latin America, despite the U.S. American fight against communist ideas (Fuser, 1995).

The fact is that Mexico have always carefully chosen enemies, avoiding to prohibit individual freedoms related to the arts and academia: intellectuals were free to come and go in Mexico; journalists from the international press were treated luxuriously, even and especially during the full-of-frauds 1994 elections. “Mexican repression is efficient because it is selective” (Fuser, 1995, p. 20).

Who, then, the Mexican government chose to repress? Mexicans involved in strikes, demonstrations, and small guerilla groups. The only and important difference between Mexican guerrillas to other Latin American ones is that Mexican guerrillas did not have communist support, which did not represent a threat to the United States (Fuser, 1995).



According to Galván (2014) the repression followed pretty much the same code and style of the U.S. American counterinsurgency strategies – all of them largely applied in the Latin American dictatorships, despite the apparent ideological distance from the United States.

The influence of United States in Mexico was not only in the code of internal repressions, but continued to be alive and strong in the country's counternarcotic efforts. In 1969, the Interception Operation was announced by Nixon, as a part of what he called 'war on drugs', which consisted in harsh verifications on the border, in order to reduce the amounts of marijuana in the U.S. (Astorga, 2005, 2015; Hachemer, 2017).

This was one of the major pressures the U.S. government made in Mexico at that time as a response to the lack of interest of the president Díaz Ordaz in answering the White House's requests to act in cooperation against drug trafficking. The result is that in 1970 the Operation Cooperation was settled, increasing the influence of United States' vision about drug policies in Mexico (Astorga, 2005).

What about information availability in the 1970s? Considering that Mexico pretended to be a democracy, it had to be low. Much of information availability of older times can be measured by the difficulties specialized researchers had been to develop their works. In Ronfeldt's (1975) article of 1975 asked "what, in fact, does the Mexican army do?". His question was answered not by official means, but through the content analysis of newspapers. He also states that despite being possible, research in military archives can be extremely difficult – a reality until today.

There is no readily accessible, running record of its activities – and this fact makes it an extremely difficult subject for historical analysis. Contemporary Mexican institutions are among the most studied in Latin America. Yet, civil-military relations since 1940 remain quite a mystery. [...] Indeed the contemporary Mexican military may be the most difficult such institution to research in Latin America (Ronfeldt, 1975, p. 8).

Ronfeldt (1975) contends that a careful researcher should look carefully to the military subordination in Mexico: subordination exists, but also do the political residual roles of the military. He states that the Mexican army was indeed less political than its Latin American neighbors in the federal level. Nevertheless, on lesser political conflicts the Mexican army was even more involved, exerting influence in the relationship between the federal government and state political elites. The deployment of the armed forces in a specific region has always been a political currency for the central government to preserve power.

Under the presidency of Luis Echeverría, in 1971, a new organic law of the armed forces was enacted, incorporating the role of internal security among the duties of the military. There were difficult times, with many small guerrilla groups emerging – which the armed forces never called guerrillas, preferring to call them ‘regular delinquents’, (Garciadiego, 2013).

In 1975, the Operation Condor was settled. It was one of the most expressive military deployments against drug trafficking that mobilized ten thousand soldiers. As a result of this measure, there was a massive emigration to the cities, since many peasants only had jobs because of the crops (Artz, 2003; Astorga, 2005).

The ‘elections’ of 1976 gave the presidency to José Lopez Portillo (1976-1982), who launched a modernization program to enhance the reputation of the Mexican armed forces, amplifying the possibilities of internal deployment of the military. The program was later cancelled by the 1982 crisis, however, the plan turned active again in 1989 (Andersen, 1996; Claire, 1992).

Despite the frauds in the election of 1976, in which the president, all the governors and 82% of all deputies were from PRI, the term of Portillo brought good news in terms of transparency. In 1977, the right to information is added in the Mexican Constitution. In practice, the change in the Constitution did not reflect in changes in the public access to documents, however, it set the bases for stronger right-to-information legislation in the future (López-Ayllón, 2005; E. Velázquez, 2009a).

However, the Operation Condor started to present setbacks. What looked like a good governmental plan to combat drug trafficking later turned into violations against rights, in the form of the usage of dangerous pesticides and torture as an investigation method in prisons (Astorga, 2005).

At the same time, in 1978 Mexico was undertaking many political reforms, with the amnesty of armed groups who intended to become political parties; the political reform that conceded a proportional representation of small parties; and with the legalization of the Mexican Communist Party (Camín, 2002; Garciadiego, 2013; E. Velázquez, 2009c).

In 1981, the first initiative to regulate freedom of information in Mexico occurred. In fact, this initiative was part of a series of reforms undertaken by president Luis Echeverría (1970-1976) and Portillo (1976-1982), which started with the Constitutional reform of 1977: it added the right to information to the Constitution. According to Michener (2010) and López-Ayllón (2005), there was an intense debate for the next four years until 1981, when president Portillo presented a draft bill.

The López Portillo administration elaborated sweeping legislation for the regulation of Article VI in 1981. The bill included 424 articles, the product of more than 40 experts and 30 tomes of reports. Three central interpretations of “the right to information” can be delineated: 1) the media had an obligation to provide citizens with truthful, objective information; 2) political parties and citizens were to be allowed greater input and access to the media; and to a lesser extent, 3) government should provide the public with access to information in its possession.

The focus, however, was clearly on the obligations of the media. For example, the bill stipulated that the role of the media should respond to collective interests, “effectively contributing to the dissemination of official information.”. The initiative additionally included provisions for the creation of five new institutions to govern media and cultural production, including a General Committee on Social Communication whose delegates were to be appointed by the president (Michener, 2010, p. 87).

Part of the media – around 30% of the press – were in favor of it since they were coopted by PRI. However, the massive campaign against the draft bill made it never to even be voted in the Mexican Congress. As a result, the right-to-information article of the Constitution remained with no specific regulation (Michener, 2010).

The 1980s and the 1990s saw an increase of drug trafficking in Mexico since the Colombian Cartels were dissolved and Mexico became the main route to deliver drugs to the U.S. American market. The government followed an increasing trend of using the military to solve those issues, but in 1985, with the murder of a DEA agent, the United States became even more strict and insistent with the militarization of the counternarcotic actions in Mexico (Claire, 1992; Freeman & Serra, 2005; Paul, Clarke, & Serena, 2014).

As a matter of fact, Miguel de la Madrid’s presidential term (1982-1988) increased the possibilities of internal deployment of the forces because he also had to deal with a great economic and social crisis in Mexico, and also with a wave of violence in Central America. It was also during his term that: drug trafficking started to be considered a national security thread; and the Third Developmental (DN-III) Plan was launched, including the military to assist social and natural disasters, which increased the political influence of the military once more (Andersen, 1996; Freeman & Serra, 2005).

During the presidency of de la Madrid, the current Mexican intelligence agency was created, the CISEN (*Centro de Investigación y Seguridad Nacional*, or in English, Center for Investigation and National Security), marked by the end of the Cold War. The First Director of CISEN was General José Carrillo Olea (Instituto de la Judicatura Federal, 2011), marking the tendency of a militarized intelligence agency in Mexico within the *Secretaría de Gobernación* (SEGOB).

Salinas de Gortari's term is a landmark for México, since it is the presidential term where economic crisis, democracy and tensions in civil-military relations flourish. For this reason, Chapter 8 explores all these elements and Mexico's quest for democracy. As we will see, PRI's historical legacy explored in this Chapter elucidates the rapid changes Mexico has faced in the rising of the XXI Century.

## **Chapter 8 - Information and civil-military relations in Mexico's democratic opening**

Following the rationale of the previous chapter 7, the aim of chapter 8 is to present the reader with a brief overview of Mexico's political history focusing on three elements: the democratic consolidation in a broader sense, civil-military relations and the evolution of the legislation body on 'transparency of secret records'.

The analysis comprises the presidential terms of (1) Salinas de Gortari (1988 – 1994) and Ernesto Zedillo (1995 – 2000) as two terms that headed to democracy; and (2) the democratic terms of Vicente Fox (2001 – 2006), Felipe Calderón (2007 – 2012) and the first two years of Peña Nieto's term (2013 and 2014). The development of this chapter and the previous one will serve as input for the analyses in Chapter 9.

In short, the presidential term of Salinas de Gortari is a landmark in PRI's gradual decay. Interestingly, Mexico's civil-military relations started to be a topic worth of attention only with (1) the economic crisis, (2) increased violence and (3) the emergence of the insurrectionary movement Zapatist Army of National Liberation (*Ejército Zapatista de Liberación Nacional*, EZLN from now on), (Andersen, 1996; Serrano, 1995).

### **8.1. Salinas de Gortari Administration (1988 – 1994)**

In 1989 Salinas de Gortari was elected, in the most scandalous electoral fraud Mexico can remember. The frauds occurred in the counting of the votes: after a "problem in the system" the counting stopped – the next morning, 90% of the votes of each ballot box were to Salinas. In December, the papers with the votes were incinerated, which made impossible to recount them (Fuser, 1995).

Every Mexican was waiting for Cárdenas Cuhatémoc to win, and the partial electoral poles indicated Salinas de Gortari to be in second place. The U.S. government supported the "elected" president without doubts of his legitimacy, and with positive comments (Camín, 2002; Fuser, 1995).

However, even with quite elaborate strategies to fraud elections, nothing could hide PRI's electoral lost in the country. PRI had few votes even with the frauds, which indicates the party's desperate effort to survive. In 1988, after almost sixty years of hegemony in the federal government, PRI loses its majority to PAN in the Chamber of Deputies. Right after that, in 1989, Ernesto Ruffo from PAN is elected governor, the first opposition candidate to win state disputes since Mexico's democratization. The motives for such loss of power are also said to

originate from a deep seizure within the party itself: some of PRI's leaders did not want Salinas de Gortari as a candidate, since they did not agree with his strong pro-capitalist agenda (Camín, 2002; Fuser, 1995).

Indeed, Salinas de Gortari was the representation of the anti-Mexican revolution: it made retreats in the land reform, in the state's secularism, spent less in education and industrial capacities. Corruption was also a very present element in Salinas de Gortari's term. However, Camín (2002) contends that the electoral fraud was fuel for a strong pressure from the society toward anticorruption reforms and electoral neutrality in the country. As a result of those pressures, many democratic institutions were created in the end of the 1990's: the Electoral Federal Institute<sup>99</sup> and the National Commission for Human Rights are examples (Andersen, 1996; E. Velázquez, 2009c).

Together with the economic agenda of reforms, Salinas de Gortari also came to power with a modernization of the armed forces campaign. In 1989, the National Defense Secretary, General Antonio Riviello Bazan made an official announcement that the government were to begin these reforms, heading to a prevalent internal deployment policy.

In 1989, there was a continuation of many demonstrations and strikes in the country - like the strike in a Ford's factory in Cuautitlán, repressed by several gunmen hired by their representative union. As Fuser (1995, p. 21) states, "There is no Mexican Lula": Unions in Mexico are historically coopted by the government in the name of the revolution. Despite the repression there was no use of police forces nor the military in this event - As Amnesty International reports contend, most reported human-right abuses came from the police<sup>100</sup> at that period (Amnesty International, 1991).

In addition, the year of 1989 also experienced the arrest (by the armed forces) of the oil industry leadership Joaquín "La Quina" due to a corruption scandal in PEMEX, the Mexican state-owned oil company. The scandal had less to do with corruption and more with reducing the influence power of unions in the government, effort in which Salinas was successful (Andersen, 1996; Fuser, 1995).

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<sup>99</sup> In Spanish, *Instituto Federal Electoral* (IFE).

<sup>100</sup> "The most serious abuses were reported in the states of Guerrero and Michoacan, two strongholds of the PRD. In March, at least 250 police agents surrounded the municipality of Omatepec, Guerrero, to evict approximately 50 PRD protesters. According to witnesses the police shot at the protesters, wounding many and killing at least one, Roman de la Cruz Zacapela. Many were detained for short periods during which some were reportedly tortured" (Amnesty International, 1991, p. 157).

### **8.1.1. 1990: “Mexico is the perfect dictatorship” and U.S. American opinions**

The tensions in Mexican politics were escalating fast, and the event which would define the Mexican political regime for decades happened in 1990, in a conference of intellectuals to discuss eastern Europe held in the country. Mexico was known to receive all types of political exiles with a great reception. There was also an unspoken rule that, if you are in Mexico as an intellectual, you should not talk about Mexican politics. However, what nobody expected was that Mario Vargas Llosa would make sharp criticisms about Mexico’s political scenario in the middle of the conference (El País, 1990; Fuser, 1995).

Besides saying the famous phrase that “Mexico is the perfect dictatorship”, Vargas Llosa made harsh criticisms to the opposition parties, who used to receive money from the government they should fight against; and to intellectuals, ‘bribed’ by superficial benefits and governmental nominations (Fuser, 1995).

The urge for a real democracy in Mexico was increasing, and Vargas Llosa speech was only a sign of the popular will. However, the ‘border pal’ of Mexico, the United States, also had its own opinion of what should be done with the country’s political system: in 1990, during a workshop in the Pentagon, the relationship between Mexico and US was discussed and the final report of the event asserted that *“A democratic opening in Mexico could challenge this special relationship, in case it results in the rising of a government more interested in challenging the US in a more nationalist economic perspective”*. (Fuser, 1995, p. 20).

In another conference in the same period, sponsored by one of the major think-tanks of the united states, it was said that it was a pity that Mexico had been facing such representation problems and that they did not know if a political opening would be well received by financial markets, since an expansion on democracy increases uncertainty (Fuser, 1995).

Indeed, it is difficult to talk about Mexican politics without mentioning the United States. Since before the Mexican Revolution U.S. political forces acted to influence Mexico in some way, and this fact is true until today. However, these allegations made by U.S. Americans were not able to stop the democratization process in Mexico, as we will see in the next sections.

### **8.1.2. 1991: Human Rights Commission and allegations of electoral fraud**

Despite foreign resistances, the government felt that they had to give some sort of response to general dissatisfaction. After many reports of human rights violations, the government decides to create the National Human Rights Commission (CNDH, from now on). The creation of the Commission took place in June 1991, with the purpose of examining reports and elaborating

recommendations. However, these measures were not sufficient to make recommendations truly implemented, which was subject of criticism (Amnesty International, 1991). In the face of the accusation of an ineffective CNDH, the Legislature undertook reforms launching a new law against torture (under Gortari's blessing). The previous law, as the Amnesty international report contends, is from 1986 and had no single individual convicted by it (Amnesty International, 1992).

While the government was dueling with the people's general dissatisfaction, it was also relying in the military to undertake many policies. For instance, the constant deployment of the armed forces crop destruction is well acknowledged by Astorga (2005) even though they did not have the 'national security threat' status the U.S. already set (Claire, 1992).

Despite the worries of many specialists, it is true that the Mexican modern military did not have one single case of external deployment since the revolution, and still, for all these many years, maintained civilian obedience and professionalism executing tasks when called to them, regardless political objectives. However, their role in counternarcotic operations went to a new level in Salina's term, since o the first time the armed forces were official participants in counterdrug decision-making bodies of the Mexican government (Claire, 1992; Freeman & Serra, 2005).

What Salinas' administration was not expecting is that their liberal reforms, which put social and economic inclusion off the agenda, would set up the stage for one Mexico's most important landmarks in terms of civil-military relations: the Zapatist Army of National Liberation (*Ejército Zapatista de Liberación Nacional*, EZLN from now on) uprising in 1994.

### **8.1.3. 1993: Chiapas as the eye hurricane**

Salinas de Gortari continued to follow his liberal agenda. The great promise of development of the time was the Mexican participation in the Free Trade Agreement with Canada and the United States – which became true in 1993 (Fuser, 1995; E. Velázquez, 2009b).

However, dissatisfied reactions from some Mexican groups came rapidly, and the most significant one happened in Chiapas, with an agenda that followed pretty much the opposite direction of Gortari's liberalism: land reform, an anti-capitalist rhetoric and a claim for more democracy and justice. It was January 1994 when many indigenous people from Chiapas militarily took over some cities under the seal of the EZLN. They managed to take over control of practically one quarter of the state of Chiapas, and used the internet to publicize their demands (Benítez Manaut, Carrasco, & Luna, 2011; Camín, 2002; Wild, 1998).



It is important to acknowledge that an upheaval like that was a sign to foreign investors that Mexico was not sufficiently stable to invest in. Gortari had just opened the doors to an international and vast market, but the willingness of some international actors to use the open door started to be questioned.

Even more than financial speculations, Chiapas represented the social failure of the ongoing process of liberalization in including Mexican peoples and regions in the country's development. In addition to that, there was also a clear racist informal habitus in the state of Chiapas - before the beginning of the uprising, indigenous people were considered inferior, leaving empty places on the bus for white people and mixed people to sit down. Besides that, the state has a considerable important role in generating electricity, liquified natural gas and sulfur (Benítez Manaut et al., 2011; Fuser, 1995; Wild, 1998).

The poverty, marginalization, and exclusion of Chiapas' indigenous population in 1994 mirrored the social conditions in Guatemala and El Salvador when insurrections broke out in the early 1980s and before. Local representatives of the Mexican political system regulated the conflict in a corporatist fashion; when co-optation was not possible, they turned to the security forces, to paramilitary *guardias blancas*, and to the military to contain peasant and indigenous protests. In Chiapas, the systematic violation of human rights was common (Benítez Manaut et al., 2011, p. 241).

The repression to the movement lasted twelve days, and was leaded by police forces and the army. Any Mexican can remember the images of dozens of bodies organized on the ground, as if they were systematically shot to death. A catholic bishop conducted a series of peace negotiation meetings that resulted in nothing. The military presence in the region was massive, however, the country's armed forces were not the only military group acting to control the situation. In Chiapas the government empowered a paramilitary civilian group to help the official armed forces to restrict Zapatista's territory, a group called "Paz y Justicia" – in English, Peace and Justice, that later started to follow their own security agenda (Benítez Manaut et al., 2011; Fuser, 1995; Wild, 1998). According to the Mexican scholar Monica Serrano (1995, p. 493):

"it was only with the uprising in Chiapas in January 1994 that the place of the armed forces in the liberalization process entered the public debate. Since 1988 not only the debate and analysis of political change, but also the various proposals for political reform had practically ignored the question of the armed forces."

As a justification for failure, PRI has often alleged that Chiapas was a surprise for everyone. However, according to Hachemer (2017), some months before the uprising there

were already intelligence reports contenting urgency in moving soldiers to Chiapas and warning the presidency of the Army unpreparedness to contain such popular movement.

The response from the army to the uprising was indeed not successful: the years of 1994 and 1995 were marked by the massive presence of the army in the state of Chiapas, with no success in capturing Comandante Marcos, the EZLN leader (Wild, 1998).

#### **8.1.4. 1994: Reforms in the Constitution, elections**

Salinas made important reforms in the Mexican political system. His motives to undertake these reforms were not detached from private interests, however, Salinas and Zedillo's terms made a major change to happen: from a symbiont relationship between the state and one party to more independency from PRI. These reforms centered in electoral fairness were an attempt to somehow preserve PRI's chances in really competitive elections (Fuser, 1995; Michener, 2010).

Nevertheless, the major challenge of Salina's government was due the Zapatista movement. The movement put into question Mexico's success with neoliberalism. In the end, the Mexico case of success in implementing and following each and every reform speculators wanted failed, showing an unequal and poor country, now with a *campesino* army challenging the government (Fuser, 1995).

The crisis worsened when PRD (*Partido de la Revolución Democrática*, or in English, Party of the Democratic Revolution) asked for an investigation on the president due to the arrest of his brother, suspected of being involved with the political murder of Ruiz Massieu, which exposed also the relationship between the government and drug traffickers. As a result, Salinas quickly moves to Canada, with no further punishments (Fuser, 1995).

Despite the political turmoil, in 1994 there were important reforms in the constitution, which established the judicial resolution of political conflicts, it reformed the Justice Court of the Nation<sup>101</sup> and, most importantly, established a major reform in Mexico's electoral system. In this very same year Freedom House classified Mexico as 'partially free', after years being classified right beside dictatorships like Strossener's Paraguay and Nicaragua 'sandinista' (Fuser, 1995; Roett, 1996; E. Velázquez, 2009b).

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<sup>101</sup> In Spanish, *Corte de Justicia de la Nación*.

## 8.2. Zedillo's Administration (1994 – 2000)

The change of governments between Salinas de Gortari and Ernesto Zedillo was tense, since he inherited the Tequila crisis<sup>102</sup>. In order to contain the damages, Ernesto Zedillo showed commitment with building trust and credibility diminishing presidential powers, setting the political agenda with anticorruption reforms, the strengthening of institutions, and even appointed an opposition member to be the Federal Attorney General (Michener, 2010).

Regarding the uprising in Chiapas, Zedillo's campaign focused on reconciliation and understanding with the Zapatista movement. However, his patience lasted 58 days: in February 9<sup>th</sup> of 1995 the Army invaded the state of Chiapas in the attempt of capturing EZLN's leader. However, the mission failed, which caused political turmoil and a gradual change of opinion towards negotiation instead of repression of the movement (Benítez Manaut et al., 2011; Fuser, 1995).

The fact is that before this second failure, the army insisted to be protagonist of the repression process, as Andersen (1996) contends. With their loss in the first military conflict, they felt that they deserved to solve the situation militarily. There were even recurrent public declarations from the Army against civilian leaders after Chiapas. They argued that leaving a considerable part of the Mexican territory under an armed group was the same as giving up sovereignty (Fuser, 1995).

However, the event that really affected Zedillo's decision to go offensive in Chiapas was international declarations from a consultant of Chase Bank, saying that the Mexican government should 'eliminate' the rebellion in order to obtain economic stability (Fuser, 1995).

In this context, the opposition was empowered, especially the Party of National Action (*Partido de Acción Nacional*, PAN). The military interventions in the state ceased, but paramilitary groups kept fighting Zapatistas and sympathizers, which resulted in the December 1997 massacre of dozens of women, elderly and children in a church in the city of Acteal (Benítez Manaut et al., 2011).

Internationally, transparency in defense was already an important topic and in 1995 the Johannesburg Principles was launched (Gutiérrez, 2010). Nevertheless, the Mexican government was far from considering furthering transparency in the country – Mexico did not have even a fair election heritage.

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<sup>102</sup> The Tequila effect was a currency crisis which generated an increased capital flight.

Locally, violence and public security were already topics that no longer could be ignored by public officials. Chiapas, political murders, murders related to drug trafficking, and the many kidnappings of Mexican businessmen started to really worry the majority of the society, and triggered the increasing use of the armed forces in constabulary roles.

Concomitantly, the modernization plan of the armed forces started by president Portillo, which was not finished because of the 1982 crisis, came back to the political agenda in Zedillo's presidency. His policy for the armed forces increased the size of the forces in nearly 25% during the 1990s, made declarations putting organized crime as the major threat to Mexico's national security, created special forces to combat drug cartels and increased U.S.-Mexican cooperation on military training (Freeman & Serra, 2005; Hachemer, 2017).

In general, the military's roles were broadened and strengthened under Zedillo's presidency not only regarding counterinsurgency. "Zedillo placed the armed forces on the front lines of the drug war" through the Chihuahua Pilot Project<sup>103</sup>, the creation of the National Public Security Council and the allocation of a military officials in the PGR (*Procuraduría General de la República* or, in English, Attorney General) (Artz, 2003; Freeman & Serra, 2005, p. 278).

In addition to that, in Zedillo's administration there was the National Defense Plan IV, which allowed a territorial rearrangement of the armed forces in order to better undertake counternarcotic missions; and the creation of a federal police under the command of a Marine admiral (Artz, 2003). According to Hachemer (2017), later these reforms made things even more complicated for Vicente Fox administration to establish civilian control of the armed forces.

### **8.2.1. 1997: Attempts to enact a media law with access to information provisions**

In 1995, the Mexican congress started to debate the then prevailing Press legislation, written in 1917. They organized forums with hundreds of presenters and thousands of legislation proposals and, a 'Special Commission on Social Communication' carried out the work for more than two years. The result of this work was the 1997 draft bill called Federal Social Communication Law, which encompassed some freedom of information legal devices<sup>104</sup> (Michener, 2010).

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<sup>103</sup> The Chihuahua Pilot Project replaced many officials from the Federal Justice Police by army officials. Nevertheless, a few months later there were accusations that the military officials in this project had links to the Juárez Cartel (Freeman & Serra, 2005).

<sup>104</sup> "Article 2 affirmed the right; Article 24 addressed the reserved period for exempted information (30 years); and Article 51 defined the scope of disclosure" (Michener, 2010, p. 112)

However, this draft bill suffered from the same disease the last reform attempt suffered from: it had many provisions setting press regulation, to which communication companies and newspapers were against. Between a mediatic turmoil regarding the draft bill, much of Zedillo's will to support the law faded out, even with key legislative supporters appeals to the Organization of American States (OAS) (Michener, 2010).

Nevertheless, what seemed a failure actually prevented Mexico from having a weak and incomplete freedom of information legislation, and these discussions motivated groups and advocates in search of better practices in the realm of the right-to-information – which also resembles the Brazilian case and the increasing popularity of the right-to-information after the eternal secrecy decree 4.553/02.

### **8.2.2. 1999: Advances in democratization and the violence explosion**

In the last subsection, I showed how unsuccessful some reforms underwent in Zedillo's term. In the urge to gain credibility from the Mexican people and from international actors, the president indeed was able to promote positive changes. In 1999, e.g., the National Human Rights Commission gained full constitutional autonomy; and in the same year, the Organic Law was able to institutionalize a minority government, ending for good the one-party rule. The debate on the right to information was still on too, and in the years of 1999 and 2000, several meetings with academia specialists, the press and NGOs were mobilized around the topic of freedom of information (Michener, 2010).

These reforms were not sufficient to contain a major problem that accompanies Mexico until today. It was 2000 when a violence wave has taken over the country, which led to the increase in the deployment of the armed forces in constabulary missions. Some specialists argue that violence exploded as a result of broken cooptation laces with PRI, which left power in 2000. There was indeed a considerably high increase in the number of cartels operating in Mexico, but other elements are important to explain the phenomenon: the demand for drugs was also increasing; the impact of the demographic growth, and the lack of reform of the security forces (Artz, 2003; Mares, 2014; Paul et al., 2014).

With the election of Vicente Fox, the president would have to face these many problems, besides dealing with the hope for renovation of the great majority of the Mexican population. The next section explores the changes occurred in his term.

### 8.3. Vicente Fox' Administration (2000 – 2006)

The election in July 2<sup>nd</sup> of 2000 was the main democratic milestone of Mexico. It represented the end of 71 years of PRI in the government. The president, no more an all mighty character, stated to lead a country in a more parliamentary way, as state institutions were already more balanced and independent (Camín, 2002).

However, Camín states that the Mexican civic culture was not prepared for modern democracy – the Mexican people, institutions and social rules had not advanced together with fair elections. It is about having a modern society resembling democratic values, and not clientelism and patrimonialism (Camín, 2002).

The new things about this election were: the uncertainty about who was going to win, the change in the political power, the PRI's recognition of PAN's victory and the following normality of daily life in the post-electoral period (Camín, 2002).

His agenda included liberalization, privatization, tax reforms and the promotion of small and medium companies. This was not precisely what made him win the election: what ensured his victory was the possibility of new things to happen. He also represented a rupture with old links of clientelism (Camín, 2002).

In the beginning of his term, a security-sector reform was one of the main policies in his political agenda. Besides creating internal security-dedicated agencies (like the Ministry of Public Security<sup>105</sup>), Vicente Fox decided to remove troops from Chiapas promising a series of indigenous rights and land reforms. Regarding the use of military officials in police positions, the initial plan pointed to demilitarization. At the same time, he decided not to include the armed forces in his change-driven agenda in order to maintain the military loyalty to the constitution, and not only to PRI (Benítez Manaut, 2010; Benítez Manaut et al., 2011; Freeman & Serra, 2005; Hachemer, 2017).

Despite the many plans for change, without the support of the Chamber of Deputies president Fox could not do much with his propositions: the expected land reforms in Chiapas did not occur, which led politicians to avoid supporting other constitutional reforms; and intelligence agencies remained in an unfinished democratization process, with CISEN still involved with strategic political intelligence. It was only in 2000 that CISEN launched its first website (Benítez Manaut, 2010; Michener, 2010).

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<sup>105</sup> *Secretaría de Seguridad Pública.*

In addition to that, the United States keep pressuring for Mexico not to demilitarize the counternarcotic efforts, in which they were successful. In his campaign promises, demilitarization was one of the main topics but, according to Astorga, the U.S. Ambassador asked for a meeting with the recently elected president and, after that, the plans changed (Astorga, 2007).

The fact is that the increase of violence that started in 2000 would not disappear without a plan, and the easier plan available was to keep using the armed forces. As Arzt (2003) contends, violence increased so much that the states of the federación asked for a closer assistance of the armed forces. Nevertheless, 2000's reality also carried the burden of a historical legacy with the military. According to Hacheman (2017, p. 89):

The most problematic authoritarian legacy for civil-military relations in Mexico is the fact that due to the civilian character of the regime, with the army as a loyal servant, the armed forces never came under scrutiny—that is, the civilian leadership was made responsible—even when the armed forces used brutal force and committed human rights violations against the population. To the contrary, until this day, they remain one of the most trusted institutions in Mexico.

The trust in the armed forces and the belief that they are less corrupted than the police forces is, as Freeman and Serra (2005) contend, a result of internal developmental assistance missions and, mostly, a result of opaqueness<sup>106</sup>. The Mexican military has never been subjected to transparency, and it is considered one of the most secretive military of Latin America.

In exchange for the Mexican military staying out of politics, PRI granted the military almost complete internal autonomy, and placed it beyond public scrutiny or even legislative oversight. Mexico's Congress exert little real control over military budgets. The military is responsible for making its own decisions about its size and about weapons and equipment purchases, budgets and contracts. Circumventing civilian oversight, the defense minister comes within the military (Freeman & Serra, 2005, p. 268).

In addition to the opaqueness of the Mexican army, many of the soldiers that committed human rights violations were trained by the U.S. American military, and its government have been choosing to close its eyes to the impunity, the reports on torture and murder. It is important to take note that Mexico has a strong nationalist feeling that historically marked its relationship with the United States (Astorga, 2007; Benítez Manaut, 2010; Freeman & Serra, 2005).

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<sup>106</sup> “After all, military corruption scandals are legion: soldiers protecting a drug flight gunned down federal police in Veracruz in 1991; a general offered an official U.S.\$1 million a month to go easy on the Tijuana cartel; and General Jesús Gutiérrez Rebollo, once considered by U.S. officials to be a man of ‘absolute integrity’ as Mexico’s drug czar scored major victories against one cartel as a favor to its rivals” (Freeman & Serra, 2005, p. 269).

However, when Vicente Fox became president, those rivalries practically disappeared, and an intense military and diplomatic collaboration began. In diplomatic terms Fox supported NAFTA and the U.S. American position of keeping Venezuela out of the Security Council. In military terms, this collaboration made possible, e.g., the capture of Arrellano Félix in 2002, the Gulf Cartel's drug lord Osiel Cárdenas, and many others (Freeman & Serra, 2005; Mares & Kacowitz, 2016).

Fox did want to decrease military influence in Mexico's counterdrug efforts, however, the U.S. American contrary opinion about that, as Freeman and Sierra (2005) contend, might have influenced Fox's decision of not making huge changes in the status quo. The president even nominated a military general to be the nation's attorney general which, again, increased the number of military officials in civilian positions related to counterdrug efforts.

### **8.3.1. 2000-2002: The Freedom of Information and the Reconciliation Quest in Mexico**

The increased violence did not deterred Mexico from fostering democratic institutions, and discussions about right-to-information did not die with the unsuccessful attempt to reform the media law in 1997. According to Michener (2010, pp. 118–119),

Upon the election of Vicente Fox in July of 2000, an impressive flurry of activity for an access law erupted. Four different conferences—with direct involvement and sponsorship of several media outlets—considered the topic of access to information over the course of the year. In the summer of 2000 the Mexican Club of Journalists celebrated Freedom of the Press Day by declaring their support for an access to public information law. In August, the influential non-governmental organization Transparency International met with President Fox to discuss strategies to diminish corruption and increase transparency. Two months later, in October, Transparency International insisted upon the need for several access-to-information provisions. At the same time, a leading business organization, the COPARMEX, demanded identical transparency measures. And in September of 2000, the same broad alliance of NGOs that had demanded access to information a year earlier again sought reconfirmation from government that reform would be forthcoming. NGOs, press associations, business organizations and the international community had clearly increased their activity in support of information legislation. Most importantly, their voices were being heard because media outlets were providing space for the issue.

Nonetheless, after being elected Vicente Fox did not show much enthusiasm with the FOI initiative, and despite having created a National Transparency Commission, he was not able to convince his PAN pals to cooperate with an anticorruption agreement (Michener, 2010).

. The fact that changed the incentives to support a FOI law came from the leaking of a FOI draft bill written by the Secretary of Comptroller. The ineffective draft bill fueled civil society to organize a meeting to discuss legislation possibilities. The meeting happened in the



state of Oaxaca, giving the name for the group of academics and journalists that worked together to present an alternative draft bill, and due to a massive media support, the government was obliged to cooperate (Michener, 2010).

In the end of 2001, the Mexican Congress had two FOI bills to vote, one from Grupo Oaxaca and another one written by the Executive. PRI, as an opposition party, supported the Grupo Oaxaca's stronger version of the draft bill, which was approved by the Congress and the Senate in April 2002, and actually became law in June 2002 (Michener, 2010).

When the Mexican Freedom of Information Law (*Ley Federal de Transparencia y Acceso a La Información Pública Gubernamental*, - LFTAIPG) was enacted in 2002, it was one of the strongest laws in the world, and today it is the number one in *de jure* strength. The Mexican LFTAIPG and its previous access platform InfoMex was emulated in many other Latin American countries (Michener, 2010).

Regarding exceptions related to national security and military information, the LFTAIPG established that all the information that could harm national security could have restricted access, following pretty much many of the international standards available (Gutiérrez, 2010). However,

Notwithstanding the law's many strengths, it does include some notable shortcomings. Although all reserved government information must be justified by the list of exceptions to disclosure, one category of exempted information refers to secrecy laws themselves (Article 14). Thus, the law maintains the existing secrecy regime. This weakness is partially offset by the IFAI's power to review existing secrecy legislation, placing an important check on past and future decisions to withhold (Michener, 2010)

Indeed, according to the Interviewees 22 (from INAI), 24 (from the Mexican Intelligence sector), the FOI law did not actually change the way the armed forces operate, since the norms for classification and access restriction did not change. What Interviewee 24 contends echoes in what Sigrid Arzt, one of the specialists interviewed for this study, told Freeman and Serra (2005, p. 276) in 2002, that "[n]ow the military is making arrests and carrying out investigations. Drug suspects are being arrested and interrogated by the military before they're handed over to civilian authorities."

The fact is that the Mexican notion of national security has broadened quite a bit, especially after Ronald Reagan considered drug trafficking as a national security matter. Between rivalries and cooperation attempts, the Fox administration got really close to the United States and its counterdrug agenda – which leads to the increasing of military autonomy

over public security and, as consequence, to all information that it generates (Artz, 2003; Astorga, 2007; Mares & Kacowitz, 2016; Peón, 2006).

Not much after the law was enacted, in 2003, the then recently created IFAI (Instituto Federal de Acceso a la Información – Federal Institute of Access to Information) launched guidelines<sup>107</sup> for the classification of documents. These guidelines set a series of criteria to classify or to generate public versions of documents related to national security. It establishes access restrictions to documents in the cases of, among others, the internal security of the country, affecting intelligence and other measures to combat organized crime (Gutiérrez, 2010).

Besides the pressures for more transparency in Mexico, another delicate subject also came into the spotlight: the possibility of the creation of a Truth Commission in Mexico, to investigate historical abuses. President Vicente Fox promised to create a truth commission in his first presidential speech, in December 2000 (Doyle, 2006; HRW, 2001; Michener, 2010; Vivanco, 2001).

Unfortunately, the initiative never really came true in its full extent, despite the efforts of international human rights organizations like the Human Rights Watch. Willing to make concessions with PRI, Fox creates a weaker substitute for a Truth Commission, which he called “Special Prosecutor for Social and Political Movements of the Past” (*Fiscalía Especial para Movimientos Sociales y Políticos del Pasado* – FEMOSPP) (Doyle, 2006; HRW, 2001; Michener, 2010; Vivanco, 2001).

FEMOSPP was created to investigate and prosecute public officials responsible for human rights violations in the presidential terms of Gustavo Díaz Ordaz, Luís Echeverría and José Lopez Portillo. However, not a single person was convicted after four years of the existence of the *Fiscalía*. “Worse still, the incompetence and failure of the effort have been persistently glossed over by assurances from President Vicente Fox and Fiscal Especial Ignacio Carrillo Prieto that all was well” (Doyle, 2006, p. 1)

### **8.3.2. 2001: Changes in the U.S. American national security orientation and the militarization of the Mexican Attorney General office**

In the very beginning of his term, president Fox appointed a General on duty to be Mexico’s Attorney General (Procuraduría General de la República – PGR), following an opposite direction from his campaign promises. The appointed military official was General Rafael

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<sup>107</sup> *Lineamientos generales para la clasificación y desclasificación de la información de las dependencias y entidades de la Administración Pública Federal.*

Macedo de la Concha, who had been an attorney in the Military Justice system during president Zedillo's administration (Artz, 2003).

The militarization of Mexico's national security, including here the public security, had already started in Zedillo's administration through two distinct processes: first, through the direct deployment of the armed forces in policing and counterdrug missions; second, with the inclusion of military officials in many civilian agencies, councils and decision-making bodies related to security (Artz, 2003; Freeman & Serra, 2005). The nomination of a general for this position was just a clear sign of the increasing political importance the armed forces had been accumulating in Mexico.

What worries Arzt (2003) is the increasing militarization together with the lack of checks and balances and civilian counterparts in the security decision-making process, and according to the CNDH, the PGR was the institution with the greater number of complaints for two consecutive years. The author also states that through PGR it was possible a better coordination between SEDENA and the Navy (la Armada), but having a general in charge of the PGR generates subordination problems that undermine this cooperation.

### **8.3.3. 2005: National Security Law and its setbacks in transparency**

In the end of Vicente Fox administration, the government stepped increased even more its reliance on the armed forces, and the main evidence of that was the National Security Law (*Ley de Seguridad Nacional*, LSN from now on). With this law, not only access to information and archives were harmed, but there was also an increase in the military political influence in internal affairs and counternarcotic efforts.

Some authors believe that such national security view is closely related to the U.S. American view of security, which got even more strict after the 2001 terrorist attack. Before 09/11, a whole system of incentives and investment was set between U.S. American authorities and the counterdrug efforts in Mexico and, to justify the continuation of these investments terms like 'narcoterrorism' emerged (Astorga, 2007; Freeman & Serra, 2005; Piñeyro & Barajas, 2008; R. Velázquez & Schiavon, 2009).

From the intelligence sector perspective, the LSN brought advances in setting a clearer national security policy for the country. Peón (2006), a specialist who had worked for CISEN and SEGOB, contends that

Después de superado un difícil periodo de transición de gobierno en 2001, en el que por ignorancia o por falta de claridad de objetivos se puso en riesgo la existencia

misma de las instancias de seguridad nacional, se han logrado dar pasos significativos que permiten contar con un piso más firme para la formulación e instrumentación de políticas en ese ámbito. Quizás el más importante haya sido la aprobación de una Ley de Seguridad Nacional en febrero de 2005, asignatura que era urgente resolver hace por lo menos una década (Peón, 2006, pp. 371–373).

However, the settled policy itself is subject of many critiques. The notion of national security in Fox's national security plan focus almost exclusively in terrorism, spying, separatism, and massive destruction weapons, instead of giving a holistic approach to national security that should include decreasing poverty and environmental issues. In addition to that, the law was too much centered in CISEN, confusing intelligence with national security issues and stating that all CISEN employees should be 'trustworthy', which erodes professionalization (Benítez Manaut, 2010; Piñeyro, 2006; Piñeyro & Barajas, 2008).

The LSN established the National Security Council, "of whose 103 members 75 were military servicemen (such as the Secretary of Defense, the Secretary of the Navy, and the commander of the Presidential Guard)" (Hachemer, 2017, p. 91). According to Peón (2006), the three previous governments had risk annual or monthly risk assessments, and with LSN more planning started to be possible, however, the absence of sectors unrelated to the use of the force demonstrate the short-term view of these policies, as well explored by Piñeyro and Barajas (2008).

Regarding information access, Gutiérrez (2010) contends that the LSN pretends to be about transparency, but in fact, created many legitimate instances to increase governmental secrecy. Among these instances the author cites the increase and strengthening of the reasons to restrict access to information<sup>108</sup> aside from IFAI and LFTAIPG resolutions.

There were many other restrictions to transparency, though: Article 52 determines that the default classification for information generated by CISEN will be to restrict access, ignoring the principle of maximum disclosure; agents from intelligence units are obliged to keep secret of all information they acceded; budgetary secrecy for all activities related to national security; classification by default of all meetings of the National Security Council – an *ex ante* classification measure (Gutiérrez, 2010).

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<sup>108</sup> Article 51 of the LSN expands classification adding to possible cases: (1) "those which implicates in the explosion of norms, procedures, methods, sources, technical specifications, technology or working teams that can be used in intelligence generation, regardless the nature or origin of those information"; or (2) "those information whose revelation can be used to maximize any threat" (Gutiérrez, 2010, p. 36, our translation).

It does not matter if a country has the number one FOI Law if there is another law regarding national security overriding the FOI provisions. With the LSN, secrecy was institutionalized.

#### **8.3.4. 2006-2007: FEMOSPP results and demise**

One year after the LSN, the FEMOSPP releases a preliminary report with the information gathered in all the working years of the *Fiscalía*. Not a single public officer was convicted by any investigation undertaken by FEMOSPP, pretty much following the same path the Brazilian National Truth Commission has taken – the action limited by solely the production of a historical document (FEMOSPP, 2006).

However, FEMOSPP could not even launch an official report after its work: a preliminary version of the document was publicized by the National Security Archive and generated a crisis within the Mexican government, which declared that a ‘leak’ occurred, and started investigations to hold accountable possible leakers. After the publication, “two of the report’s authors, José Sotelo and Alberto López Limón, have been served subpoenas, requiring them to give a sworn declaration about their role in its premature publication” (Doyle, 2006, p. 3). As FEMOSPP’s (2006, p. 2) preliminary document says:

La información de tales hechos ominosos se ha mantenido oculta, principalmente en los archivos de los órganos de seguridad del Estado –que han sido las policías políticas y el ejército mexicano. Parte de esta información ha podido ser consultada. La documentación central y la más explícita en torno al tema no fue entregada al Archivo General de la Nación (AGN), fue negada por las instancias que la generaron o la aseguraron, no estuvo disponible para la consulta que requerimos, o fue destruida. No obstante, con la información obtenida se han podido reconstruir los hechos sucedidos y gran parte de la trama de la historia.

According to Ortíz (2007), the greatest achievement of the *Fiscalía* was a suspension order against the former president Luis Echeverría, who was not arrested in the end. FEMOSPP’s dissolution occurred in 2007, when the same president who created the *Fiscalía* at first, decided to end its activities. The reaction from the media was full of criticisms, since the initiative did not result in a real reconciliation.

### **8.3.5. 2006: Fox' legacy and new presidential elections**

The violence situation did not improve at all, despite the increased deployment of the armed forces to solve security issues. According to Astorga (2015), drug trafficking has always been subordinated to politics, and the various factions of cartels were, simultaneously contained, fought, and also subject of extortion, control. However, the growth of the market and a rupture in old control mechanisms of the state led criminal organizations to the fight for hegemony.

Nevertheless, it is mistaken to consider that the military only had benefits with counternarcotic operations. As Kenny and Serrano (2012) contend,

The army was in crisis. In a 2007 Congressional hearing the army itself conceded that during the Fox administration more than 1000,000 soldiers had deserted. This was roughly half of the army's total. Low salaries and fear of the cartels' superior firepower were the main reasons. They had also been, inevitably, motives for corruption. In one case, an entire 600-strong infantry battalion had been disbanded on suspicion of being in the pay of the Sinaloa cartel. That was 2002, just before the appearance of an enemy hatched from itself drained the army's will. Not all of the 49 deserters a day – 18,000 a year – joined the cartels. Not all had to for it to be a disaster (Kenny & Serrano, 2012, p. 68).

The control-gap in civil-military relations was already a given fact, and the lack of reforms only worsened a scenario easy to predict. According to Astorga (2012, 2015), the empowerment of the organized crime in Mexico led politicians with three options: (1) to surrender to their power; (2) to become partners in crime, or (3) to try to enforce the law – and a complex mix of these alternatives became a reality in Mexico.

Fox, a president under duress to use the armed forces to solve violence and drugs in Mexico, did want pacific alternatives though. However, the emergence of the Zetas and the governmental strategy to fight them also gave leverage for its enemies, worsening the situation (Kenny & Serrano, 2012). That is the legacy Calderón had to deal with.

### **8.4. Calderón's Presidency (2006 – 2012)**

Mexico's 2006 elections still brought doubts about the existence of fair elections in the country. Felipe Calderón (PAN) won with a considerable small percentage of more votes than the opposition candidate. Together with this electoral suspicion, the president sets right in the beginning of his term a brutal 'war against cartels', with a poor planning and regardless of any worries about corruption in the armed forces, and with the minister of defense public statement

of endorsement of the elections (Astorga, 2015; Hachemer, 2017; Kenny & Serrano, 2012; Piñeyro, 2013).

In December 2006 there was already deployments, in a mission called Michoacán Joint Operation<sup>109</sup> which engaged the navy, the army and police forces, and with this, more than 50.000 soldiers were deployed against drug cartels. There was a considerable increase in the military budget and the process of militarization of police institutions escalated fast. According to Hachemer (2017) “More than 100 high-ranking officers took over public security positions, and in 2011, 17 of the 32 federal states had a military officer either as minister of public security (12 states) or as commander-in-chief of the police forces”.

Military officials themselves protested against Calderón’s war on drugs, in a rising discord between civilians and the military. Indeed, the rate of homicides increased overwhelmingly, which is something inherent of an unequal cooperation with the United States: why there was no violence burst in the United States, if they are the consumers? Violence ends up with the weaker side of the cooperation, because cooperating implied only blocking the entry of drugs. However, once they are inside the country, militarization is out of question (Hachemer, 2017; Mares & Kacowitz, 2016).

According to Mares (2014), Calderón had no option but to use the army. Besides being the only armed option not – supposedly - completely corrupted, the good image the population has about the forces could increase trust and confidence in the government. The U.S. government even wanted Mexico to send troops to combat drug trade in central America, but they refused that. Thereafter, the strategy undertaken by the Mexican authorities was to try to reduce the profits of drug trafficking. However, the lack of economic alternatives makes it harder to create positive incentives to leave criminal activities. As well explored by Bailey (2014), informality is one of the main challenges of Mexico’s economy, which generate high rates of tax evasion.

In addition to that, many of the strategies used did not work well: killing narco leaders did not work because other people easily and rapidly assumed their places. Nevertheless, the results were disastrous: there were an average of 170 torture cases, 39 disappearances and many extrajudicial murders under Calderón’s term. Even in Juarez – one of the most violent cities of Mexico – citizens are asking for the armed forces to leave (Paul et al., 2014).

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<sup>109</sup> *Operación Conjunta Michoacán.*

Interestingly, the rising homicide numbers<sup>110</sup> were not a bad thing per se, from the government standpoint. For them, the resulting killings of the fights between cartels were a sign that the security policy was working – that they were having less profits, needing to fight even more for space. This unhuman strategy did not work, despite the presidential allegations that the country was not that violent (Kenny & Serrano, 2012).

Regarding transparency, it was only in 2008 that the president invested political capital in fostering transparency policies, launching the Accountability, Transparency and Anti-Corruption National Program<sup>111</sup> (2007-2012) (Pardo, 2015).

#### **8.4.1. 2008: The Mérida Initiative and the loss of violence control**

In general politics, the erosion of trust in PAN's policies started to show in the ballots: in 2008, PAN lost its majority in both the Chamber of Deputies and the Senate; 18 states were under the PRI, 8 under the PAN and 6 under PRD administration (Astorga, 2015).

The war on drugs was used to politically unify the country and suppress possible cleavages between parties. This claim for the combat of violence got even stronger when a transitory moment of peace between cartels was undone: the violence only got worse after that (Kenny & Serrano, 2012). Who would think that violence could target civilian unrelated to the drug cartels, as it happened in 2008 when a grenade was thrown in the middle of a crowd during the celebrations of the Mexican Independence Day<sup>112</sup>?

This context was also fuel for the enactment of many reforms related to security, broadening the investigation possibilities of the security forces in very alarming levels<sup>113</sup>. The reforms were enacted in March 2008.

According to Kenny and Serrano (2012), in the beginning of 2007 president Felipe Calderón was already negotiating with the presidency of the United States an assistance in the counterdrug efforts. Soon enough, the term 'failed state' started to be commonly related to Mexico and its increasing violence.

After months of negotiations, the result was the Mérida Initiative, a collaboration program between the two countries involving training, technical and financial aid from the

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<sup>110</sup> Drug related executions: in 2006, 2,221 people; in 2007, 2,673 people; in 2008, 5,207 people; in 2009, 6,587 people; in 2010, 12,658 people (Kenny & Serrano, 2012).

<sup>111</sup> *Programa Nacional de Rendición de Cuentas, Transparencia y Combate a la Corrupción.*

<sup>112</sup> Eight people died. See Rosen and Zepeda (2016).

<sup>113</sup> See Chabat (2010) for more details.



United States, which also comprised a modest assistance to some Central American countries. It has to be acknowledged that Mexico had always had mixed feelings about receiving help from the U.S. However, if the opposition parties did not like the collaboration project, they did not clearly stand in its way (Emmerich, 2010; Isacson, Haugaard, Poe, Kinosian, & Withers, 2013; Kenny & Serrano, 2012; R. Velázquez & Schiavon, 2009).

The initiative plan predicted a three-year assistance of U\$1,500 million, with the condition that no U.S. American troops would be allowed to be deployed in Mexican soil. After the discussion of the project in the U.S. American congress, the Merida Initiative was approved, and Mexico received the money in December 2008 (Chabat, 2010; R. Velázquez & Schiavon, 2009).

Political resistances to the cooperation with the United States also influenced aspects of the civil-military relations in Mexico. For instance, the Navy (la Armada) showed more flexibility and willingness to accept missions where they were not the leaders. According to Interviewee 24, assigning missions to the Army always brought cooperation problems, since they would only accept a mission if they were the ones coordinating it. Indeed, according to Kenny and Serrano (2012) and Interviewee 20, the most important missions started to be given to the Navy instead of the Army.

In terms of access to information of national security, between 2003 and 2008 IFAI received 176 appeals which generated many resolutions. Among these 164 resolutions, in 80% of the cases IFAI changed the decision of the institution, defining, among other guidance: the publicity of the security agenda if there is no confirmed harm in publicizing it; the publicity of aggregated statistical data, which does not assume a violation of national security; in the case where security agencies allege that documents do not exist, IFAI is allowed to make an extensive search; IFAI has the right to verify the process through which security agencies make public versions of documents (Gutiérrez, 2010).

These are great tools to avoid over classification, considering that IFAI is an autonomous oversight agency. Unfortunately, we will see further that even constitutional autonomy can be undermined by a Conversion mode of change, where rules have alternative interpretations.

#### 8.4.2. 2009: Professionalization of the police

Calderón started some initiatives in order to contain corruption and to make security agencies more effective. One of his attempts was the substitution of the Preventive Federal Police<sup>114</sup> (PFP), for the Federal Police (PF). Calderón was also invested in better developing security systems, reason why he created the Unified System of Criminal Information<sup>115</sup>, consolidating a better information structuring for the security intelligence. In order to exchange information, Calderón's administration created the *Plataforma Mexico*, where the many security agencies could have access to others reports (Chabat, 2010; Rosen & Zepeda, 2016). According to Interviewee 20, this platform was not used to exchange really sensitive information, and serves more as a more restrict official communication channel.

In this realm, the Mérida Initiative provided training and assistance to prosecutors, police, and helped to improve the penitentiary system. In addition, the Mexican government created an academy, to provide federal correctional personnel with proper training. Nevertheless, it seems that his efforts were in vain, and the police continued to be a mistrusted and corrupt institution. "In 2010, it was estimated that state and local police officers in some regions in Mexico accepted 100 million dollars per month in bribes from drug traffickers and criminals" (Rosen & Zepeda, 2016, p. 9).

The Mérida Initiative also deepened the militarization of the counterdrug policies of Mexico. According to Rosen and Zepeda (2016), there was an increase of 133 percent in the use of the military in policing missions. Despite the complaints about the desertion of many soldiers, made in 2007 regarding Vicente Fox administration, Hachemer (2017, p. 94) contends that "[t]he Mexican military openly supported the militarized approach and further-more demanded a supply of heavy weapons to attack the cartels".

Unfortunately, the Mexican army continued to follow the 'kingpin' strategy of killing leaders of the cartels. The strategy had already showed itself ineffective in the Fox administration, and did not show different results this time: proof of that is that in Calderón's government 25 of the 37 most wanted drug lords were captured, and still the bloodshed (more than 70,000 people died) and violence were still a reality.

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<sup>114</sup> Policía Federal Preventiva

<sup>115</sup> Sistema Único de Información Criminal.

#### 8.4.3. 2012: Calderón's legacy

In 2006, there were four main cartels in the country: (1) the Tijuana/Arrellano Félix cartel, (2) the Sinaloa Cartel, (3) the Juárez / Vicente Carrillo Fuentes Cartel, and (4) the Gulf cartel. In 2011, this number increased up to eleven cartels, showing the division of power in the country. This fragmentation is often referred by specialists as the cockroach effect, which is the displacement of crime networks to other places in the same logic that cockroaches leave a dirty kitchen when someone turn on the light (Paul et al., 2014; Rosen & Zepeda, 2016).

The great majority of the literature on Mexico counterdrug efforts argues that it was a mistake to involve the armed forces in such constabulary missions, and that the political leverage and explosion to corruption endangered the historical civilian-control in the country. Nevertheless, Pion-Berlin points out that reality is more nuanced than that. According to the author, there are two types of constabulary missions: the ones purely constabulary, and others policing missions more soldierly alike (Pion-Berlin, 2016).

A military might be more easily trained to conduct a mission within urban area that fits more comfortably with its traditional notions of soldiering, which gives it the ability to engage in limited combat and use of lethal force while observing the appropriate rules of engagement. [...] By contrast, it is very difficult to find any evidence of Mexican soldiers training for pure police work, even though they have been performing these functions for decades. In the 1990s, the government ordered the armed forces increasingly to supplant police forces, with cartel violence rising along with police corruption. Officers were called on to run police agencies, and by 1999, 37% of the army was embroiled in police, antinarcotics functions. But neither it nor any army in Latin America for that matter has a good record of knowing how to engage in police-like work without also trampling on the rights of citizens (Pion-Berlin, 2016, pp. 5–6)

In this sense, the militarization of police and civilian institutions seem to be a major problem, and not the use of the military in the war on drugs *per se*. Nevertheless, the population payed a high price, and the human right abuses reached unimaginable levels, drawing attention from the world, governments and scholars, for the risks of using the armed forces in internal issues without proper training and risk evaluation.

In terms of access to information, in 2012 Calderón enacted the Federal Archives Law (*Ley Federal de Archivos*). It was the first federal law regulating the archives of the public administration. Before that, the Archive of the Nation (*Archivo General de la Nación*) did not have basis to interfere in other institutions' archives. There were only 'general guidelines' for the conservation of documents, from 2004. Nevertheless, real implementation of the law was missing (Murguía, 2011).

However, where PRI paying attention to that when assumed the presidency in 2012? Enrique Peña Nieto represented PRI in power again, after twelve years of PAN governing the country. The population was tired of the consequences of the war on drugs, and Peña Nieto's promise to change this policy led him to power. The next section explores his first two years as the president.

### **8.5. Peña Nieto's Administration (2012-2014)**

Was Peña Nieto faithful to his campaign promises of changing the policy of the war on drugs? He definitely stopped putting the war on drugs as the main policy of his term. According to Rosen and Zepeda (2016), the new president wanted to do other things in the country besides fighting the drug cartels. However, the change in rhetoric did not translate necessarily into less military deployment to fight the cartels – on the contrary, they continued and were even increased in the beginning of the term.

Giving less focus to the war on drugs also did not translate into less human rights abuses. In most of the cases, prosecutors do not work properly to find missing people, blaming the families and even losing social rights tied to the missing person. Torture is a common practice, and 64% of Mexicans were afraid of torture (Rosen & Zepeda, 2016).

Regarding transparency, no other reforms occurred since the LSN, however, there were new challenges regarding the implementation of the rules. IFAI, for instance, had great powers over classification of documents and the possibility to open them to public scrutiny. They were an autonomous body, which later earned even constitutional independence. How could that be harmed?

The fact is that the members (all of the five commissioners) of IFAI started to be the haunted in 2013, under many allegations of irregularities (Justice in Mexico, 2013). According to Interviewee 20, the goal was to make sure all IFAI commissioners were aligned with the new government. No surprises: PRI's cooptation style is well known by Mexican politicians.

In 2014, the government continued its program of legislative reforms affecting the energy sector, education, telecommunications and political organization. There was still little evidence of substantive measures to address the human rights abuses in the Country. However, a National Human Rights program was launched, and some Mexican states discussed and adopted changes in the laws regulating the use of law enforcement agents in demonstrations (Amnesty International, 2015).

Historically, many were the governments that tried successfully to protect the armed forces from criminal liability in cases of crimes against humanity. However, for the first time in the Mexican history, in 2014, the Mexican Supreme Court decided to put limits in the military jurisdiction in cases of abuses of human rights. The resistances were strong, but Congress was able to enact the changes (Open Society Foundations, 2016).

The reforms did not include all possible cases of human rights abuses, but the majority is covered. It remains to be seen the willingness of prosecutors and other judicial instances to go through with conviction. The first criminal case with the conviction of a military official occurred in August 2015 (Open Society Foundations, 2016).

This conviction might have been a response to the atrocities that happened in Iguala, when 43 students were killed by armed groups and the police. Iguala was only one of the dozen names of Mexican cities that acquire the meaning of massacres. When the Interamerican Commission of Human Rights started to investigate this case, it found evidence of other 28 missing persons between 2009 and 2014 involving not only the police, but also the Federal Police, the Mexican army (SEDENA) and PGR (Open Society Foundations, 2016).

Mexico still has a long way towards the decrease of violence, but without addressing the political, social and economic aspects of the problem, violence will keep generating violence.

## Chapter 9 – Gradual changes in Mexico’s ‘transparency of secret records’

The aim of this chapter is to analyze the Mexican history through the lens of our variables. In Chapter 7 and 8 I explored the history of reforms in two main fields: civil-military relations and transparency reforms that affected access to military documents since the post-revolutionary presidential. Differently from Brazil, Mexico presented fewer reforms in both areas, weaker in civil-military relations and stronger in transparency.

This chapter is organized as the following, similarly to Chapter 6’ organization: first, I show the most meaningful changes in the period of democratization described in Chapter 8. Second, I characterize these changes in terms of the transparency – as a result of the discussion of Chapter 2. Third (and concomitantly with the transparency discussion), I investigate through the Gradual Institutional Change Theory how actors within the civil-military field managed to enact or veto reforms. Fourth and finally, I draw the current level of transparency in Mexico, pointing out debilities and future possible reforms.

I would like to acknowledge that **it is not my intention to make any kind of insult to the armed forces or any civilian group or agency by using these terms**. The use of the terms ‘insurrectionaries, parasitic or mutualist symbionts, subversives or opportunist is solely due to the character of Mahoney and Thelen’s (2010) theory.

### 9.1. An overview of reforms in Mexico

As well explored by many Mexican and American authors, civilian control in Mexico came with an expensive price – opacity and a rigid and unnegotiable autonomy. However, Mexico’s militarization of public security resulted not only in challenges regarding autonomy, but also regarding politicization, the difficulty of reforming police forces when former military officials are the leaders of these organizations, and the lack of policies regarding social and economic development.

Table 28 summarizes the reforms showed in detail in Chapter 8, from which we will analyze the levels of transparency and the patterns of institutional change. In the first row of the timeline I present Polity’s type of government (Marshall et al., 2013).

Polity IV considers Mexico as a democratic state only after 2000, with the end of PRI’s one-party rule. However, the reforms made in 1994 under Salinas’ and Zedillo’s administrations reflected well in the evaluation, reducing the powers of the president, creating a more pluralist political system and enhancing the state’s capabilities to undertake fair elections.

**Table 28 – Timeline of reforms in Mexico**

Historical timeline of the Mexican tale of information disclosure and civil-military relations																															
Year	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15
Type of government (Polity IV)	Closed Anocracy									Open Anocracy					Democracy																
Presidents	(PRI)			(PRI)					(PRI)					(PAN)					(PAN)					(PRI)							
	Pres. de la Madrid			Pres. Salinas de Gortari					Pres. Zedillo					Pres. Vicente Fox					Pres. Calderón					Pres. Peña							
Military Veto Possibilities on Transparency	High																	Moderate / High													
Military discretion in Interpretation / Enforcement on Transparency	High																	Moderate / Low			Moderate / High										
Changes on Defense	Salinas' PND institutionalized the use of the FFAA in policymaking missions			Creation of CISEN, within Secretaria de Gobernación		EZLN uprising in Chiapas					Modernization plan for the FFAA / CNSP			Violence explosion		A military official as Attorney General		Senate with + rights to rule NS		Ley de Seguridad Nacional		Mérida Initiative									
Changes in Reconciliation						Creation of CNDH							CNDH with constitutional autonomy		The Creation of FEMOSPP		FEMOSPP's extinction - no publicized report								End of the military jurisdiction on HR abuses						
Changes on Defense-related Access to Information																		The FOI law is enacted		Guidelines for classification		Ley de Seguridad Nacional							Nueva Ley Federal de Archivos		

The third row shows Mahoney and Thelen's (2010) variable 'veto possibilities'. As I show in Chapter 3, this is an important element to identify which strategies actors will use to promote change, as well the resulting type of change.

It may sound dramatic to consider high veto possibilities for the military during most of the period analyzed by this study. However, as Benítez Manaut (2010, pp. 170–171) contends, "[...] Mexico lacks two of the key structures of a democratic state: a civilian ministry of defense and a joint staff of the armed forces".

The influence of the U.S. American policy vision in Mexico is undeniable and, especially in the beginning of Fox's administration, exerted a political boycott of a very clear intent to take steps back regarding the use of the armed forces in most counterdrug efforts (Amorim Neto & Malamud, 2015; Astorga, 2007).

This influence in this special moment can be quite disappointing – Fox' administration was the major landmark of the rise of Mexico's democracy, after almost a century of frauded elections. Democratic institutions were in constant development in Mexico, especially after the reforms of 1988. However, the democratization of civil-military relations was left aside in this process<sup>116</sup>.

Regarding transparency, Mexico stands out as the country with the strongest Freedom of Information Access. The highest international standards for restricted access documents are present in Mexico. Still, all these legal strengths are not enough to bring light into budgets, human rights violations and operations. That is why transparency laws should never be evaluated alone – FOI laws often do not override alternative secretive laws – in the case of Mexico, the National Security Law plays this role and, worryingly, classified laws that citizens are not aware of.

The second variable of Mahoney and Thelen's theory is Military discretion in Interpretation / Enforcement on Transparency. Before the 2002 Freedom of Information Law, discretion was high simply because of the lack of regulation and the coopted relation between state, PRI and the armed forces. With the FOI Law's enactment, the military stated to have the legal duty to answer information petitions, besides having to respond and trust de disclosure

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<sup>116</sup>“As it became clear during the Tlatelolco and the Chiapas crises, the military supported the regime to the extent of self-abandonment, but this also came at a price for civilian leaders: rising military influence in the decision-making process and the importance of the armed forces in the intensifying “War on Drugs” in the 2000s left civilian decision-makers unable to “break” military prerogatives. Quite contrary to the theoretical argument that civilian actors would always seek to enforce oversight and civilian decision-making after a democratic transition, comprehensive reform of the Mexican armed forces is stalled for as long as civilian authority depends on military fealty.” (Hachemer, 2017, p. 92)



decision to a third part, which was IFAI (now called INAI, *Instituto Nacional de Acceso a la Información*). Nevertheless, these powers have decreased with the enactment of LSN, the National Security law. His law stipulated more possible justifications for information withholding, classification ‘by default’ of many documents, budgetary secrecy for all activities related to national security, among other provisions. Presidents Calderón and Peña Nieto did not show any signs of interest in changing this reality, which is why this variable remains classified as ‘high’ until 2015.

The reconciliation row, unfortunately did not show many successes. In fact, despite less initiatives arriving in the governmental level, the terms in which the Mexican and Brazilian commissions on reconciliation, since they had no special access to military archives and facilities and were not successful in prosecuting public agents that committed human rights violations. There is one aggravation to the Mexican case, though: not even cooperation with the U.S. government to track documents from their side; nor a collaboration with Argentinian forensic specialists were possible because of Executive’s unwillingness to address the issue (Doyle, 2006). This is a clear evidence of the symbiosis – a mutualist one – between state and armed forces, regardless of civil society.

The next section explores the ‘transparency of secret records’ features of each of the most important changes in civilian access to military documents in Mexico.

## 9.2. Changes in ‘transparency of secret records’

The aim of this subsection is to understand the mechanisms that led to changes in the Mexican transparency of secret records, which I characterize as any changes in at least one of the components of the concept of transparency of secret records, explored in Chapter 2 and show again below in Table 29.

**Table 29 - Indicators of the transparency of secret records concept**

Transparency of secret records				
Visibility			Inferability	
Completeness		Findability		Verifiability
1 Are there limits to the reasons to classify documents?	10	Are there public lists of classified documents?	16	Are there harm tests?
2 Can documents be released with only classified parts hidden?	11	Are there public lists of declassified documents?	17	Are there Public Interest tests?

3	Does the AF have to make public versions of documents?	12	Do classified documents become automatically public when the classification period is over?	18	Supervision of third parts: access to information
4	Is the right to access public records legally ensured?	13	Are there public lists of existent archives?	19	Supervision of third party <b>with sanction powers</b> : access to information
5	Are there classification tiers / is there a classification system?	14	Are we able to find legal provisions that establish that the content of each archive should be summarized and public?	20	Supervision of third parts: archival management
6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	15	Are we able to find a clear process for citizens to contest a classification decision?	21	Supervision of third party <b>with sanction powers</b> : archival management
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?			22	Are we able to find a clear definition of who can classify documents?
8	The FOI legislation trumps other secrecy provisions?				
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?				

In order to do that, first it has to be clear which are these reforms, listed below in Table 30. Any change in any of the indicators showed in Table 29 configures a change to be analyzed by this study. There were mainly three changes in Mexico that were included in the analysis: the Freedom of Information Law of 2002, the National Security Law of 2005 and the Archives Law in 2012.

**Table 30 – Changes in civilian access to military documents in Mexico, from 2002 to 2011.**

Change	Year	Name	President	Indicators changed	Result
1	2002	Freedom of Information Law	Vicente Fox	(1), (2), (3), (4), (6), (7), (9), (10), (12), (16), (17), (18), (19), (22)	Better access
2	2005	National Security Law	Vicente Fox	(1), automatic classification for some documents, full budgetary secrecy.	Worse access
3	2012	Archives Law	Felipe Calderón	(20) and (21)	Better access

The next subsections present each of those changes in detail, applying the theory of Gradual Institutional changes and process tracing tests.

### 9.2.1. 2002 and the enactment of the Freedom of Information Law

Mexico definitely fired the perfect shot when enacted the Freedom of Information Law in 2002. Such strong law would not be possible in any other moment of Mexican politics: before that, political hegemony and attempts to control the press in previous draft bills that included transparency made it impossible to happen.

**Table 31 – Mexico’s ‘transparency of secret records’ in 2002**

Legislation: Ley Federal de Acceso a la Información Pública Federal

Visibility					Inferability			
Completeness		Findability			Verifiability			
1	Are there limits to the reasons to classify documents?	Yes	10	Are there public lists of classified documents?	Yes	16	Are there harm tests?	Yes
2	Can documents be released with only classified parts hidden?	Yes	11	Are there public lists of declassified documents?	No	17	Are there Public Interest tests?	Yes
3	Does the AF have to make public versions of documents?	Yes	12	Do classified documents become automatically public when the classification period is over?	Yes	18	Supervision of third parts: access to information	Yes
4	Is the right to access public records legally ensured?	Yes	13	Are there public lists of existent archives?	No	19	Supervision of third parts <b>with sanction powers:</b> access to information	Yes
5	Are there classification tiers?	No	14	Are we able to find the content of each archive summarized?	No	20	Supervision of third parties: archival management	Partially
6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	Partially	15	Are we able to find a clear process for citizens to contest a classification decision?	No	21	Supervision of third parties <b>with sanction powers:</b> archival management	No
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?	Partially				22	Are we able to find a clear definition of who can classify documents?	Yes
8	The FOI legislation trumps other secrecy provisions?	No						
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?	Yes						

Nevertheless, I argue that later it would also be difficult, since the focus of the Fox administration started to be the War on Drugs, a never ending bloody and secretive effort to suppress violence, only escalating it. Table 31 shows the ‘transparency of secret records’ of 2002 in Mexico.

Interestingly, the law affected the military in innumerable ways: it created an Institute capable of searching for documents in military units, to challenge classification and restriction decisions. Nevertheless, according to many of the interviewees, there was no single sign of resistance and attempt of interference in the enactment process of the law. The common answer was that the law did not really affect the military. This assertion must be challenged, and I offer some possible explanations. Table 32 shows the anatomy of change in the military perspective.

**Table 32 – FOI Law of 2002: the anatomy of change in the military perspective**

The military		
	Before	After
Supports the status quo?	Yes.	Not sure.
Proposition	The military is satisfied with status quo, since they have moderate veto power and high discretion.	The military was not a change-agent since they were not aware of the extent to which the FOI Law would affect them. They would use the political leverage of the War on Drugs to modify the rules.
Evidence and its type.	<b>Account evidence:</b> testimony of the military resistance to transparency before the law. <b>Trace evidence:</b> the close and loyal relationship between PRI and the armed forces.	<b>Account evidence:</b> the enactment of more access restrictions three years later under a 'National Security' Law.
Veto possibilities	Moderate/High	Moderate/Low
Discretion in interpretation / enforcement of rules	High	Low
Change-agent type	Symbionts	Subversives
Passes which test?	It passes the <b>smoking-gun test</b> , since evidence confirms the proposition and considerably weakens other explanations.	It passes the <b>hoop test</b> , since evidence confirms the proposition and does not substantially weakens other explanations.

First, the Mexican FOI Law allows the classification of Laws and Decrees, which puts any analyst in the middle of a dense fog. There is no way to know for sure if a classified law overrides transparency measures of the Mexican FOI Law (article 15). Second, the 12-year time-limit to restrict a document works only in theory – an agency could request IFAI for an

extension, which had no time-limits (article 15). Third, there were unclear archival norms at the time, and the first Archives Law was only enacted ten years later. The lack of such legislation makes it hard to clearly define what is a 'historical document', which should not be eliminated in any circumstances.

Forth, the FOI Law did not establish clear classification tiers. That is to say, documents can be classified from 1 to 12 years, with no clear determination of which type of document and which type of risk can be classified in the maximum timeframe. This can lead to over classification of documents.

The proposition I make for the period before the FOI law enactment is that the military was satisfied with status quo since they had a lower veto power and high discretion. Evidence of that is the absence of statements among the interviewees regarding clear resistances to the law. Another evidence is the close dependent relationship between the government and the military. It is important to note that these two groups are not acquainted to each other, but rely on each other to maintain status quo in a mutually beneficial relationship. This relationship, off course, ignores other civilian groups interested in changing policies.

Nevertheless, there was an institutional rupture in 2000 with Vicente Fox winning for president, and in this precise moment these other civilian groups could have enough space to be heard and considered in a decision. Thereafter, the uncertainty regarding political alliances and how they were going to work reduced the military veto power.

There was another factor that might have influenced the lack of resistance from the Mexican military: the 2001 terrorist attack. Before 09/11, a whole system of incentives and investment was set between U.S. American authorities and the counterdrug efforts in Mexico and, to justify the continuation of these investments terms like 'narcoterrorism' emerged, giving leverage to the military to keep secrets under the government's blessing (Astorga, 2007; Freeman & Serra, 2005; Piñeyro & Barajas, 2008; R. Velázquez & Schiavon, 2009). The proposition passes a **smoking-gun test**, since evidence confirms the proposition and considerably weakens other explanations.

Table 33 shows details of the change in the civilian perspective. In this case, some sectors of the bureaucracy, the media and civilian organized groups had a decisive role in enacting such a strong law. Note that a really weak law could have passed, and that is what the bureaucracy proposed. A strong law was possible because of the previous attempts to regulate

the Mexican media and access to information, in very pernicious ways. This was enough fuel to stimulate a better civilian engagement around the right-to-information topic.

From this scenario, the following proposition emerged: Civilians were not satisfied with the access-to-information legislation and acted as subversives and insurrectionaries, since there was not the elimination of other laws. Civil society and civilian state agents were not allies, but pressured the FOI draft bill in the same direction. The evidence for that is the creation of Grupo Oaxaca and the massive media coverage regarding the subject. This proposition passes the smoking-gun test, since the evidence confirms the proposition and considerably weakens other explanations.

**Table 33 – FOI Law of 2002: the anatomy of change in the civilian perspective**

Civilians		
	Before	After
Supports the status quo?	No.	Yes.
Proposition	Civilians were not satisfied with the access-to-information legislation and acted as subversives, since there was not the elimination of other laws. Civil society and civilian state agents were not allies, but pressured the FOI draft bill in the same direction.	Civilians support the status quo.
Evidence and its type.	<b>Account evidence:</b> the meeting of Grupo Oaxaca.	<b>Account evidence:</b> international recognition of the strengths of the law (in TI Rating, e.g.).
	<b>Trace evidence:</b> The Executive launched a separate draft bill.	<b>Account evidence:</b> the testimony of several researchers about the advances the law brought.
	<b>Account evidence:</b> media coverage of the bill's discussions.	
Veto possibilities	Low	High
Discretion in interpretation / enforcement of rules	Low	Moderate/High
Change-agent type	Insurrectionaries	Symbionts
Passes which test?	It passes the <b>smoking-gun test</b> , since the evidence confirms the proposition and considerably weakens other explanations.	It passes the <b>smoking-gun test</b> , since the evidence confirms the proposition and considerably weakens other explanations.

The advances of the FOI law and the creation of IFAI – which later became INAI – an autonomous institution responsible for fostering and to some extent enforcing transparency in the country, is not a bulletproof measure either: the nomination of the five commissioners

responsible for deciding appeals, including the ones related to national defense, is made by the Executive and confirmed by the Legislative. In majority governments, the nominations of IFAI's commissioners might suffer from political biases.

Fortunately, the impact of the FOI law was huge, at least through the eyes of many researchers. According to Doyle (2004),

Trying to report intelligently on the Mexican military is like trying to see in the dark - it's all shadowy outlines and no details. The army is famously secretive, opaque, and hostile to public scrutiny. Just ask the people who write about it. "The army has never provided information to outsiders on its own initiative," explains Raul Benítez Manaut, a scholar for the Center for Research on North America at UNAM and visiting professor at the National Defense University in Washington who has written extensively about the Mexican armed forces. "Its policy is to have no contact with the press or academia." [...] That may be changing. The Federal Law for Information Access, which came into effect in 2002, required the Secretariat of Defense - along with all federal agencies - to make information about its functions, organization and staffing voluntarily open to the public. SEDENA is also obliged for the first time to respond to individual citizen requests for information. [...] Roderic Ai Camp, professor of political science at Claremont McKenna University in California, and the author of one of the few authoritative studies on the Mexican armed forces, *Generals in the Palacio: The Military in Modern Mexico* (New York: Oxford University Press, 1992), describes a "dramatic change" in the military's attitudes toward openness. In a telephone interview, Camp said he has used the law over 30 times to obtain data such as the names of current military zone commanders and a list of the members of a graduating class at the National Defense College - information, he pointed out, that would have been virtually impossible to get just two years ago (Doyle, 2004).

In this sense, despite the lack of complaints or resistances, and after a long period of complete autonomy, some sort of change should be expected from this point on, which came to be true in 2005. The type of change in this case was Layering, but in some aspects, it can be considered Displacement, simply because the absence of such a law as a way of allowing secrecy was almost as institutionalized as the alliance between the PRI government and the military.

### **9.2.2. 2005 and the enactment of the National Security Law**

Gutiérrez (2010) contends that the LSN pretends to be about transparency, but in fact, created many legitimate instances to increase governmental secrecy. Among these instances the author cites the increase and strengthening of the reasons to restrict access to information aside from IFAI and LFTAIPG resolutions. Table 34 shows Mexico 'transparency of secret records' in 2005.

For instance, Article 51 of the LSN expands classification adding two possible cases: (1) "those which implicates in the explosion of norms, procedures, methods, sources, technical specifications, technology or working teams that can be used in intelligence generation,

regardless the nature or origin of those information”; or (2) “information whose revelation can be used to maximize any threat” (Gutiérrez, 2010, p. 36, our translation). Table 34 shows details of the process of change in the legislation.

**Table 34 - Mexico’s ‘transparency of secret records’ in 2005**

Legislation: Ley Federal de Acceso a la Informacion Pública Federal y Ley de Seguridad Nacional

Visibility				Inferability				
Completeness		Findability		Verifiability				
1	Are there limits to the reasons to classify documents?	No	10	Are there public lists of classified documents?	Yes	16	Are there harm tests?	Yes
2	Can documents be released with only classified parts hidden?	Yes	11	Are there public lists of declassified documents?	No	17	Are there Public Interest tests?	Yes
3	Does the AF have to make public versions of documents?	Yes	12	Do classified documents become automatically public when the classification period is over?	Yes	18	Supervision of third parts: access to information	Yes
4	Is the right to access public records legally ensured?	Yes	13	Are there public lists of existent archives?	No	19	Supervision of third parts <b>with sanction powers</b> : access to information	Yes
5	Are there classification tiers?	No	14	Are we able to find the content of each archive summarized?	No	20	Supervision of third parts: archival management	Partially
6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	No	15	Are we able to find a clear process for citizens to contest a classification decision?	No	21	Supervision of third parts <b>with sanction powers</b> : archival management	No
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?	Partially				22	Are we able to find a clear definition of who can classify documents?	Yes
8	The FOI legislation trumps other secrecy provisions?	No						
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?	Yes						

There were many other restrictions to transparency, though: Article 52 determines that the default classification for information generated by CISEN will be to restrict access, ignoring



the principle of maximum disclosure; agents from intelligence units are obliged to keep secret of all information they acceded; budgetary secrecy for all activities related to national security; classification by default of all meetings of the National Security Council – an ex ante classification measure (Gutiérrez, 2010).

“Paradoxically, the new democratic governments of Fox and Calderón, both from the PAN, were plagued by corruption and inefficiency even more than their PRI predecessors. The levels of corruption between 2000 and 2012 increased dramatically, according to transparency international, as Mexico moves from 57<sup>th</sup> to 105<sup>th</sup> on the list, which ranks the most corrupt countries, with 1 being the least corrupt country and 174 being the most corrupt country (Rosen & Zepeda, 2016, pp. 14–15).

**Table 35 – LSN of 2005: the anatomy of change in the military perspective**

The military		
	Before	After
Supports the status quo?	No.	Yes.
Proposition	The military was not a change-agent since they were not aware of the extent to which the FOI Law would affect them. They would use the political leverage of the War on Drugs to modify the rules.	The military will act as symbionts 'in favor of the law', since it benefits them.
Evidence and its type.	<b>Account evidence:</b> the enactment of more access restrictions three years later under a 'National Security' Law.	<b>Trace evidence:</b> absence of other secrecy reforms.
		<b>Account evidence:</b> some FOI requests made by the National Security archive asked for documents of 2012 - which 'disappeared'.
Veto possibilities	Moderate/High	High
Discretion in interpretation / enforcement of rules	Moderate/High	High
Change-agent type	Subversives	Symbionts
Passes which test?	It passes the <b>hoop test</b> , since evidence confirms the proposition and does not substantially weakens other explanations.	It passes the <b>hoop test</b> , since evidence confirms the proposition and does not substantially weakens other explanations.

This law can be considered a clear response to U.S. American interests. After the 9/11 attack Mexico positioned itself as a fighter against ‘narcoterrorism’, in an attempt to maintain the flow of investment and support from the United States. Nevertheless, this relationship between narcos and terrorism was not proven to be that relevant. The fact is that the strategy was needed

for Mexico to be included in a war against terror, and LSN was just a consequence of this inclusion.

In this regard, the military used the international context and the increasing internal violence to modify the rules, acting as subversives. Evidence of that is the increasing financial and training aid from the U.S. to the Mexican armed forces after 9/11; and the enactment of more access restrictions three years later under a 'National Security' Law. The proposition passes the hoop test, since evidence confirms the proposition and does not substantially weakens other explanations.

After the change, the military will act as symbionts 'in favor of the law', since it benefits them, and as opportunists by not following the rules and hiding documents. Evidence of that is some FOI requests made by the National Security archive asked for documents of 2012 - which 'disappeared', and the absence of other attempts to increase secrecy. This proposition also passes a hoop test.

**Table 36 – LSN of 2005: the anatomy of change in the civilian perspective**

Civilians		
	Before	After
Supports the status quo?	Yes.	Partially.
Proposition	Civilians support the status quo.	While there is a majority government or a political union around the War on Drugs, civilians will act as subversives, mostly with no success in changing this regulation. Nevertheless, there is partial dissatisfaction with the status quo, since general FOI mechanisms are strong.
Evidence and its type.	<b>Account evidence:</b> international recognition of the strengths of the law (in RTI Rating, e.g.).	<b>To be tested.</b>
	<b>Account evidence:</b> the testimony of several researchers about the advances the law brought.	
Veto possibilities	High	Moderate/High
Discretion in interpretation / enforcement of rules	High	Moderate/High
Change-agent type	Symbionts	Subversives
Passes which test?	It passes the <b>smoking-gun</b> test, since the evidence confirms the proposition and considerably weakens other explanations.	To be tested.

Table 36 shows the anatomy of change in the civilian perspective. An unanswered proposition that emerged was the following: while there is a majority government or a political union around the War on Drugs, civilians will act as subversives, mostly with no success in changing this regulation. Nevertheless, since general FOI mechanisms are strong, civilians will not necessarily try to promote legal changes, first trying to use the existing mechanisms to accede to information. Evidence of that is the calculation that civilians made: Mexico already has a strong FOI law, and opening the space for debating reforms regarding the legislation could make the situation worse.

The resulting type of change is Layering, since the National Security Law is an additional law which did not eliminate others. This law is evidence of the close link between the plans of the Executive (political and of national security) and the armed forces in the War on Drugs.

### **9.2.3. 2012 and the enactment of the New Archives Law**

In 2012, Calderón enacted the Federal Archives Law (*Ley Federal de Archivos*). It was the first federal law regulating the archives of the public administration. Before that, the Archive of the Nation (*Archivo General de la Nación*) did not have basis to interfere in other institutions' archives. There were only 'general guidelines' for the conservation of documents, from 2004, despite the lack of real implementation of these guidelines (Murguía, 2011).

In terms of access, the Archives Law gave a clear definition to what historical archives are, giving to the General Archive AGN the responsibility to define what should be discarded. Researchers can access the lists of documents from the military that are in AGN, but a direct access to the military archives themselves does not exist. An interviewee contended that doing research in military archives is still difficult today – when a researcher is allowed to go inside them, they generally get lost in an infinite number of unimportant documents, not ever finding the ones they were looking for.

If the Mexican armed forces often contend that they could not find documents from 2012, one can imagine how easily documents from previous periods can be lost, or not found. During the interviews, it was not acknowledged resistances from the military regarding this law, and the probable reasons are the ones stated in this section. Table 37 shows the 'transparency of secret records' of 2012.

**Table 37 - Mexico's 'transparency of secret records' in 2012**

Legislation: Ley Federal de Acceso a la Información Pública Federal, Ley de Seguridad Nacional y Ley de Archivos

Visibility				Inferability				
Completeness		Findability		Verifiability				
1	Are there limits to the reasons to classify documents?	No	10	Are there public lists of classified documents?	Yes	16	Are there harm tests?	Yes
2	Can documents be released with only classified parts hidden?	Yes	11	Are there public lists of declassified documents?	No	17	Are there Public Interest tests?	Yes
3	Does the AF have to make public versions of documents?	Yes	12	Do classified documents become automatically public when the classification period is over?	Yes	18	Supervision of third parts: access to information	Yes
4	Is the right to access public records legally ensured?	Yes	13	Are there public lists of existent archives?	No	19	Supervision of third parts <b>with sanction powers:</b> access to information	Yes
5	Are there classification tiers?	No	14	Are we able to find the content of each archive summarized?	No	20	Supervision of third parts: archival management	Yes
6	Are we able to find legal provisions that set a time-limit to restrict access to a document?	No	15	Are we able to find a clear process for citizens to contest a classification decision?	No	21	Supervision of third party <b>with sanction powers:</b> archival management	Yes
7	Are we able to find legal provisions that prohibit to destroy documents of historic value?	Yes				22	Are we able to find a clear definition of who can classify documents?	Yes
8	The FOI legislation trumps other secrecy provisions?	No						
9	Are we able to find legal provisions that make mandatory to legally justify a declined information request?	Yes						

This law did not bring many changes, but it gave strength to possible liability for those accused of eliminating documents illegally. Nevertheless, this provision exists in Brazil for a long time and had never been used. Mexico's advantage is the oversight mechanisms provided by the FOI law and through IFAI/INAI, which ensure to a great extent the right-to-information in the country. Provisions such as the extensive research in the archives of an institution, in

order to find missing documents, is not just features of a law: they do happen (Quadratín, 2017). Table 36 shows details of this change in the perspective of the military.

**Table 38 – Archives Law of 2012: the anatomy of change in the military perspective**

The military		
	Before	After
Supports the status quo?	Yes.	Yes.
Proposition	The military will act as symbionts 'in favor of the law', since it benefits them.	The military was not affected by the law.
Evidence and its type.	<b>Trace evidence:</b> the absence of direct mention to the armed forces in the Archives Law.	<b>Trace evidence:</b> no direct mention to the archives of the armed forces.
		<b>Account evidence:</b> according to the interviewee from the Mexican army, I could not have access to internal archival regulations simply because they complied with the Archives Law, so I should see the law itself.
Veto possibilities	High	High
Discretion in interpretation / enforcement of rules	High	High
Change-agent type	Symbionts	Symbionts
Passes which test?	It passes the <b>hoop test</b> , since evidence confirms the proposition and does not substantially weakens other explanations.	It passes the <b>smoking-gun test</b> , since it confirms the proposition and considerably weakens other explanations.

This change did not affect the military in a way pretty similar with the Brazilian Archives Law. Even with better sanction powers than Brazil, the Mexican Federal Archives Law falls in the same lack of real results because of the administrative nature of those sanctions, or the political unwillingness of carrying out any charges. Evidence of that is that the Federal Archives Law does not make specific mentions to the armed forces. Besides that, according to the interviewee from the Mexican army, I could not have access to internal archival regulations simply because they complied with the Archives Law, so I should see the law itself.

Regarding the civilian perspective showed in Table 39, the group of civilians who took benefit from this regulation are mostly the bureaucracy and researchers that make use of other archives not related to national security or defense. The difficulties of accessing archives within the military and in some other civilian agencies such as the PGR still exist – as an interviewee states.

**Table 39 – Archives Law of 2012: the anatomy of change in the civilian perspective**

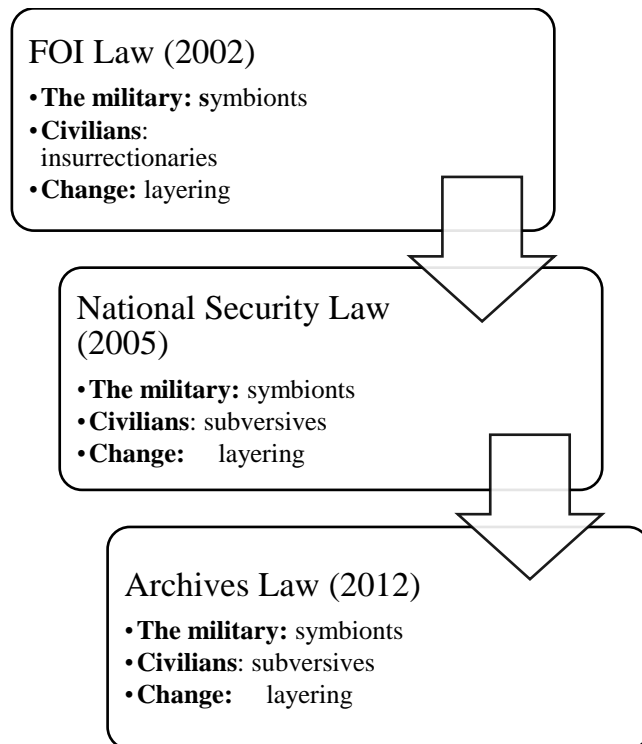
Civilians		
	Before	After
Supports the status quo?	Partially.	Partially.
Proposition	Since general FOI mechanisms are strong, there is not enough dissatisfaction to promote change.	Since general FOI mechanisms are strong, there is not enough dissatisfaction to promote change.
Evidence and its type.	<b>Account evidence:</b> international recognition of the strengths of the law (in RTI Rating, e.g.). <b>Account evidence:</b> the testimony of several researchers about the advances the law brought.	<b>Account evidence:</b> international recognition of the strengths of the law (in RTI Rating, e.g.). <b>Account evidence:</b> the testimony of several researchers about the advances the law brought.
	<b>Account evidence:</b> the testimony of several researchers about the advances the law brought.	<b>Account evidence:</b> the testimony of several researchers about the advances the law brought.
Veto possibilities	Moderate/High	Moderate/High
Discretion in interpretation / enforcement of rules	Moderate/High	Moderate/High
Change-agent type	Symbionts	Symbionts
Passes which test?	It passes the <b>straw-in-the-wind</b> , since evidence elucidates the relevance of the proposition.	It passes the <b>straw-in-the-wind</b> , since evidence elucidates the relevance of the proposition.

The proposition here is that since freedom of information regulations are strong, civilians such as the media and part of the organized civil society were not expected to engage with this law. Evidence of that is the international recognition of the strengths of the law (in RTI Rating, e.g.). The resulting type of change is Layering, with no exclusion or drastic changes from previous legislation.

### 9.3. Types of institutional change in Mexico: a broad view

The Gradual Institutional Change theory was really useful to understand the changes in ‘transparency of secret records’ in Mexico., Figure 8 presents an overview of these changes.

**Figure 9 - Mexico: overview of changes and change-agents**



In Chapter 3 I explored Mahoney and Thelen’s theory of Gradual Institutional Changes. In their work, they present a model of change that depends on three Links. Starting from links II and III, the following paragraphs will explore how the political context (Veto Possibilities) and characteristics of the target institution (level of discretion in interpretation/enforcement) shaped the type of dominant change-agents.

The military in Mexico, unlike in Brazil, have faced very few variations in their veto possibilities and discretion interpreting the laws until 2002. At this point of the study the reasons are well understood – due to a deep proximity between PRI, the state machinery and the armed forces, civilian control was possible; not because of a civilian democratic control, and more because of cooptation and non-interference in military issues.

To some extent, this autonomous behavior of the Mexican military and the resulting civilian control reminds us of Huntington’s divided approach to the armed forces. However, in Huntington’s approach there is no such thing as militarization of public security and other sectors of the civilian government; it does not presume a civilian reliance-by-necessity on the military, due to the failure of other institutions; and ultimately, it does not presume that high levels of autonomy could undermine civilian control and military effectiveness, due to the increasing exposure to corruption.

Civilian control in Mexico came at the expense of building armed forces suitable for democracy, where, as any other state institution, they have to be accountable for their behavior and actions, whether related to human-rights violations, doctrine, or archives.

It is also necessary to be careful and not forget the role of civilians in this relationship. The very fact that civilian leaders never really showed intention to reform this institutional configuration leads me to understand that the military have been a symbiont change actor, but differently from Brazil, the Mexican military is a **mutualist symbiont**<sup>117</sup>, and that is precisely why there have been so few changes in the civilian access to military records in Mexico.

The civilian groups that contested this status quo were able to succeed with the Freedom of Information Law because of a period of change, when a new political party in power still had to build alliances to settle more of the agenda. The weak veto powers and low level of discretion these civilian groups face leads them to act as **insurrectionaries**, being able to push for a strong law independently from government attempts to pass weaker laws.

The United States is an external actor that is hard to separate from the analysis. This country is the one that fostered and keep fostering the militarization of the war on drugs, forgetting the developmental issues that could diminish violence and the number of people willing to join the organized crime in Mexico. Together with this, the few attempts of the U.S. to reduce drug consumption failed, and there has never been an effective policy to combat money laundering. Using Mahoney and Thelen's terminology, they act as **opportunistic change actors**, which means that they can lead to organizational inertia if they are satisfied and, when they are dissatisfied, they can work in favor or at expense of the institution.

As Amorim Neto and Malamud (2015) contend, the Mexican pattern of foreign policy is driven by realistic systemic factors, which drives it to respond positively to U.S. American pressures, despite the complicated relationship between the two countries.

The resulting change pattern in Mexico is Layering – for the best and the worst cases. The reason why, despite the high veto powers of the military do not enable them to enforce a Drift mode of change is because, at least regarding the Freedom of Information Law, it did not really operate against the classification system already installed. Nevertheless, this might have drawn attention away from the fact that final classification decisions would be in charge of IFAI.

With the high political states of the War on Drugs, the very same government that ensured freedom of information passes the National Security Law - configuring the Layering

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<sup>117</sup> Symbionts benefit from existing institutions to achieve their own goals, not necessarily playing by the book.



mode of change because it did not invalidate the FOI Law - which invalidates many of the transparency elements of the 2002 FOI legislation.

Nevertheless, with the occurrence of mass disappearances and a recurrent lack of accountability from the police forces and the military – as in the Iguala case, the military's veto powers might show signs of decrease, especially with the end of military jurisprudence over human rights violations cases. The eventual resistance of the armed forces to these accountability changes may change their behavior to parasitic symbionts (in cases where they still have veto powers) or opportunists (when the veto power decreases).

## Part IV – Final Considerations

### Chapter 10 – Comparisons and final considerations

If Antonio Carlos Jobim said that “Brazil is not for beginners”, we could certainly think that about Mexico too. In six chapters, three devoted to each country, this dissertation aimed to explore the strategies change-agents from both countries used to promote or avoid change in transparency – not any type of transparency, but one that is conceptually well rooted, as we explored in chapter 2.

The research question focused on exploring *under which conditions transparency and opacity in defense were defined; what the successful strategies political actors use were, and which political actors are the most important ones for change to happen*. In order to do that, the theory of gradual institutional changes provided an effective framework to undertake the analysis.

Mainly, the main conditions to **positive change** in transparency observed through the case studies were: political fragmentation, the presence of a president with a reconciliation agenda, and civilian advocacy (the media, organized civil society and sectors of the bureaucracy).

Political fragmentation is considered a necessary condition for change to happen in both cases, and this finding is consonant with Michener’s (2010) findings. In the case of Brazil, since democratization there has always been political fragmentation, but since it is a consensual political system, change happened through small steps, in a slow incremental process. These constant and slow-paced changes even follow a similar pattern of political opening of the military regime – the Brazilian ‘glasnost’ took practically a decade (Lamounier, 2005).

Mexico, for instance, presented fewer but more drastic changes, which can be explained by its majoritarian political system and by the extraordinary hegemony of PRI in the country for decades. It is important to notice that the Mexican armed forces could be under civilian control, but not a *democratic* civilian control, fact that can have made it easier to establish stability<sup>118</sup>. In such environment, civilian advocacy was not enough to promote change, and only after a political rupture from PRI to PAN this advocacy had its voice listened.

I could even say that the moment to promote change in access to information in Mexico could not be any later, since many of Vicente Fox’ promises of drastic change were falling apart, and one example of that is that his plans to demilitarize the fight against cartels had

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<sup>118</sup> I would like to thank Prof. Zaverucha for the comments on this topic.

already weakened with U.S. American pressure. The *Ley de Seguridad Nacional* of 2005 was just a reflection of the increasing importance of the role of the Mexican armed forces in the (internal and external) political arena.

Civilian advocacy is then a necessary but not sufficient condition for change to happen, and if they are not sufficient for change, they are an important element that can determine to a great extent the strength of FOI provisions.

In Brazil, the military has also played an important role in politics historically since the proclamation of the republic (driven by military officials and civilians), in 1889. The military has always established their own doctrine – Huntington’s principles of civilian non-intervention in military issues have always been ‘respected’ by Brazilian politicians. To some extent, however, this made possible for the military to remain in government for so long during the military regime of 1964-1985, and still ensure them some autonomy prerogatives.

In terms of access to public records, it has always been difficult for researches to investigate inside archives or have partial access to those files in Brazil. Access to information had some constitutional reference since the Empire period, but access was always conditioned to knowing someone who was influential and willing to award it. The Republic period made improvements in this sense, however, there have been always the absence of restriction rules. Only with the 1988 Constitution the access to public records became clearer as a right of any Brazilian citizen (Hott, 2005).

The right-to-information only emerged as a topic in the Brazilian political agenda with the Secrecy Decree 4.553/02. An attempt to reinforce the military veto power in defense-related policies ended up being the fuel to the civilian support to the FOI law, more than ten years later. It was needed a president with a low willingness to bargain with the military, a dedicated group of civilian state agencies, and the media support.

In the case of Mexico, the advocacy from civil-society not only ensured that the law could not be left aside by the newborn government, but also ensured its strength. Mexico has always had many intellectuals, many of them linked to the U.S. American academia, besides historically receiving many of them from all over Latin America. The newest ideas of reforms have always circulated in Mexico, but one major ingredient for change was missing in the country: political pluralism.

This argumentation follows the same rationale of Michener’s (2010) dissertation, where he argued that stronger FOI regimes are more likely to emerge in minority governments. This

happens because minority – or plural -governments naturally allow more space for more groups to bargain for change.

In Mexico, the breakage with the historical majority government history offered good conditions for the military not to resist to or veto transparency reforms, since tacit agreements between the government and the military were still to be settled.

If we attribute one point to the presence of each indicator of ‘transparency of secret records’ through time, we have the following chart (Figure 10):

**Figure 10 – Presence of the indicators of ‘transparency of secret records’ (TSR) in Brazil and Mexico (1985 – 2014)**

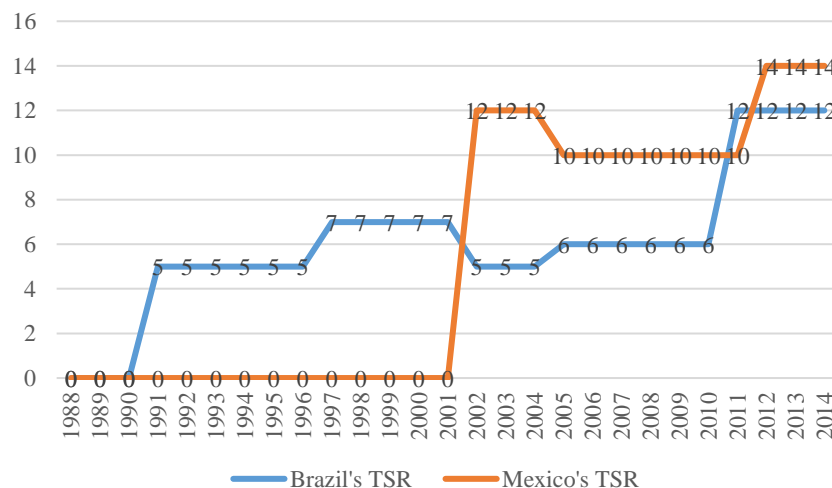


Figure 10 shows the number of present elements of the ‘transparency of secret records’ variable from 1988 to 2014 in both countries. Graphically it stays clear the gradual character of change in Brazil, and the great step forward that the Mexican FOI provisions presented.

It is important to acknowledge that there might be indicators that, if not present, can invalidate the importance of other ones; there can be indicators more important than other ones to ensure the de facto access to information; the indicators might not express the effectiveness of these measures, e.g., the institutional design of the supervision third parties, etc. This should be the topic of future evaluations using the ‘transparency of secret records’ concept.

Through figure 10 it is also evident the legal setbacks the right-to-information legislation has suffered. The main conditions to **negative change** in transparency were similar for each case study, but the strategies of change-agents were different. In both cases, setbacks in transparency happened in a context of decreasing military discretion and veto powers. In the case of Brazil, the opportunist behavior of the military happened in a context filled with changes

in civil-military relations, with the creation of the Ministry of Defense and the increasing pressures for stronger reconciliation measures. In Mexico, two elements made possible for the National Security Law (LSN) to be enacted, which are the influence of the U.S. and its fight against terrorism, and also the increasing militarization of public security.

Thereafter, Table 40 shows transparency of secret records of Brazil and Mexico in 2014. It is interesting to notice that Mexico has provisions for all the indicators of inferability, at the same time it has loose provisions regarding time-limit to withhold information.

**Table 40 – Transparency of secret records of both countries in 2014.**

Transparency of secret records		Brazil*	México**
Visibility	Completeness		
	Are there limits to the reasons to classify documents?	Yes.	No
	Can documents be released with only classified parts hidden?	Yes.	Yes
	Does the AF have to make public versions of documents?	No.	Yes
	Is the right to access public records legally ensured?	Yes.	Yes
	Are there classification tiers?	Yes.	No
	Are we able to find legal provisions that set a time-limit to restrict access to a document?	Yes.	No
	Are we able to find legal provisions that prohibit to destroy documents of historic value?	Yes.	Yes
	The FOI legislation trumps other secrecy provisions?	Partially	No
	Are we able to find legal provisions that make mandatory to legally justify a declined information request?	Yes.	Yes
	Are there public lists of classified documents?	Yes.	Yes
	Are there public lists of declassified documents?	Yes.	No
	Findability		
	Do classified documents become automatically public when the classification period is over?	Yes.	Yes
Inferability	Verifiability		
	Are there harm tests?	No.	Yes
	Are there Public Interest tests?	No.	Yes
	Supervision of third parties: access to information	Yes.	Yes
	Supervision of third parties <b>with sanction powers</b> : access to information	No.	Yes
	Supervision of third parties: archival management	Yes.	Yes
	Supervision of third parties <b>with sanction powers</b> : archival management	No.	Yes
	Are we able to find a clear definition of who can classify documents?	No.	Yes

\* Legislation: Archives Act 8.159/1991, FOI Law 12.527/2011, Decree 7.724/2012 and Decree 7.985/2012

\*\* Legislation: FOI Law of 2002, LSN of 2005 and the Federal Archives Law of 2012.

Besides establishing different weights to each of the indicators, in future studies, I suggest adding one variable to the transparency of secret records variable: the possibility of classifying laws and decrees. In Mexico, the existence of this legal precedence puts at stake many of these transparency provisions.

## **10.1. Specific topics**

### **10.1.1. Civil-military relations**

Authors have already argued that civil-military relations in Latin America are driven by two main elements: the relationship between civilians and the military is tense; and due to the lack of regional and international threats, which led to a culture of internal deployments (Pimenta, 2014; Skaar & Malca, 2014).

Indeed, Interviewees 19 and 24 stated that despite the close reliance that the government has on the armed forces, they are completely different groups in every manner, that can be noticed in the differences between the indigenous and simple heritage of the soldiers and the gray-suits-white-skin of the politicians, and also between their tastes, dreams for life, traditions, habits, etc. They are different peoples, and despite the resemblance with the integrated approach of Janowitz, in many aspects, both classes are completely divided.

It could be said that in Mexico, an integrated approach existed in the first phase of PRI after the revolution, while the winning groups were dividing power and settling their power arenas. From the reforms of Lázaro Cárdenas on, the professionalization of politics led politicians and the armed forces to build their own worlds. In this context, the price of civilian control was cooptation and preservation of military prerogatives of groups that had only Mexico in common. For Ronfeldt (1975), the military have been:

1. A major institutional pillar of the government: through the protection of the president, the party and the Constitution;
2. Has served as important participant in the broad ruling coalition, the Revolutionary Family.
3. As a partner for political responsiveness and democratization, through social assistance in isolated areas.
4. As a significant force for authoritarian control and occasional political repression.

Any of the reforms towards a healthier civilian control were made, such as the creation of a civilian Ministry of Defense or a Joint Defense Staff, which leaves Mexico behind in democratic civilian control.

For instance, in Brazil one could say that the armed forces played the same roles the Mexican armed forces played, except for point 2. Regarding point one, the Brazilian armed forces definitely did not play the role with the same intensity, since democracy was able to split power among a greater number of actors. The Brazilian army have also been playing an important social assistance role, which tends to be pretty well informed to citizens (Pion-Berlin et al., 2012). In regard to point 4, Brazil seems to gradually be following Mexico's strategy of avoiding important reforms in the police forces, using the armed forces to provide security.

Brazil has many examples of that: the government used the armed forces to secure many international events such as the World Cup and the Olympics, and recently has sent the military to control the security chaos of the broken state of Rio de Janeiro. The fact is that following the easiest path to solve urgent problems can worsen the situation in a long term, and Mexico understands it in the flesh.

#### **10.1.2. Reconciliation and the legitimacy of violence**

There were many expectations from a part of the civil society whose family members or even themselves faced the repression of the regime. These expectations were about justice regarding abuses of human and political rights. As I show in Chapter 5, the long reconciliation road fought by many civilian organizations and individuals led only to monetary compensations – which could never solve the question.

In this process, Carvalho (2005) states that civilians – politicians and the Academia – left aside defense-related matters, consolidating even more this separation between the two worlds. In the one hand, civilians did not want – and still do not – to think about national defense and security issues. In the other hand, the military was happy to continue their activities without civilians giving opinions about their work.

However, gradual changes in this regard show that military veto powers decreased considerably. Since Cardoso's administration the presidents properly positioned themselves as the High-Commander of the armed forces when needed, firing Generals and creating control institutions like the Minister of Defense. Not without military political resistance, though. Between one and another political game e economic crisis, the military managed to remain intact in many reforms like in pensions, public spending, also maintaining their own military

justice system, denote that they still are an important veto player in some policies – far away from being a threat to democracy (Pimenta, 2014).

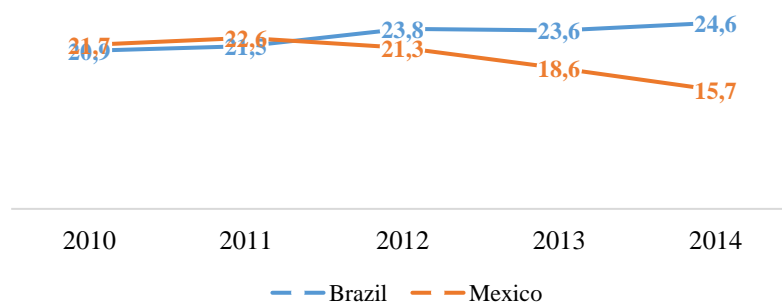
The military in Mexico also managed to preserve prerogatives, and in this case, not even a civilian Ministry of Defense was created. In turn, many civilian agencies were militarized. The only initiative towards reconciliation was the creation of FEMOSPP (Fiscalía Especial para Movimientos Sociales y Políticos del Pasado - Special Commission for Social and Political Movements of the Past).

However, FEMOSPP could not even launch an official report after its work: a preliminary version of the document was publicized by the National Security Archive and generated a crisis within the Mexican government, which declared that a ‘leak’ occurred, and started investigations to held accountable possible leakers. After the publication, “two of the report’s authors, José Sotelo and Alberto López Limón, have been served subpoenas, requiring them to give a sworn declaration about their role in its premature publication” (Doyle, 2006, p. 3).

Why reconciliation regarding human rights abuses is put in a second place in these countries? My guess is that it has to do with the legitimacy of violence as a means of solving problems, never acknowledging that violence is nothing more than a symptom of a never-cured disease.

Violence and repression of specific groups have been used for centuries in Brazil and Mexico, and the only difference between the two countries in this regard is the myths that surround national identity. For instance, there is a myth that Brazil is made of extremely pacific people, and also the myth that Mexico is inherently violent. Both myths are untrue, as Figure 9 shows. Homicide rates in Brazil are much higher than Mexico’s.

**Figure 11 - Homicides per 100,000 people in Brazil and Mexico**



Source: World Bank Open Data.



Interestingly, despite the high rates of homicides in Brazil, few are the news about it if compared to Mexico. The rule in Brazil is not to talk about Brazilian drug cartels and criminal groups. The few times they are noticed in the media are due to crisis prisons that have the power to threaten a whole country, from north to south<sup>119</sup>.

For instance, Mexico has built an aura that it plays with death in every moment since its first national symbols of warriors and revolutionaries, often the losers of the battles. Nevertheless, they ended up trapped in this myth, a false myth if we compare Mexico's reality with other Latin American countries.

## 10.2. Propositions

In the first three chapters of this dissertation propositions were set, as expectations emerged from the literature, to be evaluated on the field. In this subsection, I evaluate each one of them for each of the cases.

**Proposition 1:** talking about transparency in general is not the same as talking about transparency of defense policies and actions. Sometimes strong transparency laws can mean nothing to information disclosure for the military, since these regulations are not above secrecy laws, but by their side. These laws can be tricky, and their exceptions are not always clear.

Proposition one was the first puzzle that came into my mind that encouraged me to undertake this study, and the *theory of gradual institutional changes* fits well the purpose of testing this inquiry for some reasons. First, the theory takes into account a very important variable in this realm: discretion in the implementation and enforcement of a given norm, which can lead to silent changes under the names of Drift and Conversion. These changes are silent – they will be noticed in the implementation of the rules.

Using the dependent variable of this study as a reference, the Brazilian military would acquiesce with the FOI law, but would (1) illegally eliminate parts of sensitive documents; (2) rely on the conviction that no archival authorities would have power of prerogatives to search for documents or impose sanctions.

This acquiescence might mistakenly lead the reader to think that if the military continues to have high discretion in the manner they are implementing a rule, the importance of these

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<sup>119</sup> See Alessi (2017)

reforms is decreased somehow. However, this is not necessarily true: the military is one of the most traditional institutions of the state, and the memory of old battles and the pride of belonging to the institution and its history has always played an important role in the doctrine of the military. Eliminating documents and stretching the meaning of the rules also have costs for the institution, which is precisely the fuel to go against transparency reforms.

**Proposition 2:** countries that followed a divided pattern of civil-military relations will tend to offer more barriers to civilian access to information. This will happen because under Huntington's view of professionalism, civilian participation would undermine the actions of the state's 'expert on defense'. In turn, countries that followed an integrated pattern of civil-military relations will tend to impose less barriers to civilian engagement and access to military strategy and general information. Since they are institutionally considered as legitimate actors, they can be part of building defense solutions in an easier way.

Unfortunately, the differences in civil-military relations between Brazil and Mexico did not result in a comparison between one case of integrated and another of a divided approach. Both cases are considered as following a divided approach of the armed forces. The integrated approach advocates a greater integration between the military and the civilians. One difference from the separated approach is the extent of defense knowledge considered healthy sharing with the civilians (Barany, 2012; Feaver, 1996, 2009).

There is also the fact that it was not clear in the moment of the case selection that Mexico would not fit an integrated approach, due to the vast literature contending the harmonic civil-military relations existing in Mexico. Nevertheless, in future studies it is possible to add cases which follow an integrated approach in order to make comparisons and test the proposition.

**Proposition 3:** While there is democratic control of the armed forces, the military will tend to resist to transparency reforms generally assuming the form of opportunists, symbionts or subversives.

This proposition was not confirmed, since in Brazil, the enactment of the secrecy decree 4.553/2002 characterized the armed forces as insurrectionaries: by pressuring the president to sign the decree to the point of him alleging it was an honest mistake, it is implicit that the military did not play by the book. This proposition had the premise that under a democratic

control, the armed forces would respect the rules of the game, exerting influence in less drastic ways.

**Proposition 4:** Civilian state actors will tend to assume change-agent roles of subversives, playing by the book and working for incremental reforms.

This proposition holds true for both cases: in Brazil, civilian state agents acted proactively in all transparency laws and decrees, excluding the secrecy decree 4.553 (2002). The same occurred in the Mexican case of the FOI law, despite the lack of information exchange between the civilian group Oaxaca and the state civilian agencies.

### 10.3. Challenges and the future ahead

The challenges in ‘transparency of secret records’ are many, but the two cases highlighted two important elements that should be considered in future legislation reforms.

- (1) **Military Archives:** if most restricted documents will only be available for consultation after many years (in Brazil, 50 years; in Mexico, there is no clear limit), the processes of storage, maintenance and being able to trace the location of the document are vital for an effective ‘transparency of secret records’. In Brazil and Mexico, the federal archival authorities have limited powers and resources to make sure archives are being managed properly. In an interview with the Brazilian Historical Archive of the Army, it was said that the many military organizations spread throughout the country, may not have trained personnel to deal with archives. In addition to that, a general has the right to keep some archives in his unit, which leads to a complex lack of control of what is being produced in terms of documents. FOI laws and Archives Laws are not often well coordinated in terms of ‘transparency of secret records’, and even in Mexico, with a strong FOI law and an autonomous transparency agency, the access to archives is still difficult.
- (2) **Concurrent laws and regulations:** especially in the Mexican case, the possibility of classifying laws and decrees creates a gigantic blind spot for any analysis. The fact that IFAI/INAI are able to verify the classification of these laws and decrees is a solution for the dead end. Nevertheless, in cases of majority government, the very nomination of

IFAI commissioners might lead to biases (they are nominated by the Executive, with the Legislature approval) and, consequently, to more secrecy.

One of the lessons we can learn from this study is that if civil society and specific parts of the bureaucracy do not mobilize and engage in change, specially in moments of power transitions, transparency reforms (regarding defense or not) will not be taken seriously by representatives. Even more, if the support is insufficient, weaker laws might be enacted.

Another lesson is that militarization does not favor transparency in defense if we take the archival perspective of access. Since military documents are mostly classified, disclosure depends on good archival management and a good access to those files. Despite all the legal features showed through the ‘transparency of secret records’ indicators, researchers in Mexico still have a hard time getting permissions to do research, and to have access to the documents that really matter. Future analysis should add, besides the legal provisions of these indicators, an assessment of the *de facto* perspective.

A third lesson is that without a proper conceptualization of transparency, many details can be missed. This is why in Chapter 2 there is an extensive conceptual consideration, which led the work to find four types of transparency and to choose to explore one of them, relying on international parameters to establish the constituents of ‘transparency of secret documents’.

Finally, why is transparency in defense important? Here I repeat the excerpt of Milan Kundera’s book I presented in the very beginning of this thesis:

“Yes, it was when Zemanek was reading from Fucik’s *Notes from the Gallows* in the lecture hall that I should have gone up to him and punched him in the face, then only then. When it is postponed, vengeance is transformed into something deceptive, into a personal religion, into a myth that recedes day by day from the people involved, who remain the same in the myth though in reality (the walkaway is in constant motion) they long ago became different people: today another Jahn stands before another Zemanek, and the blow that I still owe him can neither be revived nor reconstructed, it is definitely lost.” **Milan Kundera, in his book *The Joke*.**

The importance of discussing transparency is not about the past. As Zemanek says, that blow he once needed to give will never regain its meaning after so many years. The military institutions of yesterday might have similarities with the ones of today, but they are certainly not the same. Discussing the institutional patterns of change in transparency has to do with the future, with the building of a participative democracy where secrecy serves the State as an ally of its people, and not as a political leverage to specific empowered groups.

It is about giving Defense the proper importance in times where wicked problems emerge and no simple answer is found. How to wisely deploy the armed forces? What do non-state civilians need to know to make sure that representatives are well intended and thinking ahead? What do state-civilian agents need to know and which type of authority they need to foster efficiency, efficacy and civilian control in their countries? Reconciliation and the lack of actions regarding the subject is just a symptom of a society's values, which may be right or not. How to fight the disease?

Ultimately, transparency and secrecy will always fight with each other somehow in democracies. The challenge of this work was to take some of these battles out of the dark.

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