

“PERSECUTION AND FARCE”:
The Origins and Transformation of
Brazil’s Political Trials, 1964–1979*

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The containment of communism
was for the United States a
problem of external defense;
for the underdeveloped countries
like Brazil, it was a problem
of internal development.
Roberto Campos, *A lanterna na popa*

The authoritarian regimes that in recent decades ruled Argentina from 1976 to 1983, Brazil from 1964 to 1985, Chile from 1973 to 1990, and Uruguay from 1973 to 1984 all used violence to crush dissent and the law to regulate and legitimate that violence. Repression under the Brazilian regime was particularly legalistic in the sense that the number of killings was relatively low but the rate of judicial prosecution high. Available evidence suggests that more individuals were brought into military courts for political crimes in Brazil than in any of the other authoritarian regimes in the region.¹

Considering the importance of military court documents to political repression and the fact that only in Brazil are they available to the pub-

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1. In Uruguay, 4,933 persons were prosecuted in military courts and later imprisoned between 1972 and 1985; in contrast, 282 died in prison or were disappeared (Uruguay, *Servicio Paz e Justicia* 1992, 121, 338–41). In Argentina several hundred persons were tried in military courts during the military regime (1976–1983), but an official commission found that in the same period, 8,960 persons had been “disappeared” (Argentine National Commission on the Disappeared 1986, 447). The Chilean armed forces after 1973 used *consejos de guerra* (war

lic, these political trials have been little studied (for exceptions, see Reis Filho 1989 and Ridenti 1993). The best-known source of information on the trials is *Brasil: Nunca mais*, compiled by the Arquidiocese de São Paulo in 1985 and published in English in 1986 as *Brazil: Never Again* (Dassin 1986). The clandestine compilation of this book, its publication, and its ascendance to the Brazilian best-seller list in the mid-1980s have been justly celebrated (see Weschler 1990). Whereas this volume is human rights advocacy, my own study is an attempt to understand the power relations within an authoritarian regime through the lens provided by the political trials.

Of particular importance in this study is understanding the relationship between the military courts and the security forces operating on the front lines of the “war against subversion” and more generally the connection between the regime’s legality and its repressive practices. Little theorizing about this relationship has appeared in the literature on state repression. One group of analysts has rightly pointed out, “there are many ways in which state policies involving the creation of extreme fear or terror can be made to conform to the legal code (or vice versa)” (Mitchell et al. 1986, 13). But they did not list the ways or examine their different political implications. Some analyses of national-security doctrine in Latin America have implied that it was translated into state practice in a relatively uncomplicated manner. George López claimed that the doctrine decreed that “under all conditions, individual security is subordinate to national security” (López 1986, 84). But he neglected to mention the considerable contradictions and tensions experienced by judiciaries when faced with such a principle.

My main point is that military justice in Brazil was not a simple “extension of the military-police repressive apparatus” (Arquidiocese de São Paulo 1991, 178). If that had been the case, the usefulness of military justice as a legitimating device for the regime would have been negligible, and it would be hard to understand why anyone was put on trial at all. I will argue instead that the courts were embedded in a “judicial field” that was connected to a civilian legal establishment, which afforded them some autonomy from other state institutions. In this field, conflicts within the military regime over the treatment of dissent were worked out, and center-periphery loyalties were consolidated. In a complex and contradictory fashion, the courts legitimized state repression and provided space in which that repression could be resisted and contested under a regime that

tribunals) to try more than 6,000 political prisoners (Barros 1996, 131). This number compares with the number killed or disappeared in extrajudicial actions, listed as 2,279 in an official investigation (Chile, National Commission on Truth and Reconciliation 1993, 900). In Brazil more than 7,378 persons were tried in military courts, and an estimated 345 were killed or disappeared between 1964 and 1979 (Comissão de Familiares de Mortos e Desaparecidos Políticos 1995, 7–18). Consequently, the ratio of those tried to those killed extrajudicially appears to be the highest in Brazil.

gradually closed down most other public spaces. The courts neither upheld individual rights consistently against the claims of "national security" nor reflexively ratified every individual application of coercion by the security forces. The courts were also used by factions within the regime in ways that went beyond controlling the opposition. Careful examination of the political trials in the courts will lead scholars to reevaluate models of state repression as well as the nature of authoritarian legacies in Brazil today.

The first section will describe the data set on which this research is based and some basic attributes of military justice that it reveals. The second will demonstrate that the military regime's prosecution of opponents built on a tradition of judicial repression of political opposition and national-security doctrine in Brazil. The third section will review the proceedings of the military courts, showing that while the system "stacked the deck" against defendants and maximized the prosecution's room to maneuver, some judges also exhibited the resilience of traditional (albeit elitist) notions of individual rights. The fourth section will present as a key to understanding the role of the courts in the regime an analysis of how the treatment of cases changed over time in response to different phases of the repression. The fifth section will summarize the implications of this research for general understanding of repression and authoritarian legacies in Latin America.

BRASIL: NUNCA MAIS

The archive compiled by the team that produced *Brasil: Nunca mais* offers a fascinating and thus far underutilized source for discovering the nature of political dissent and official views of "national security" under the Brazilian military regime. The archive covers some seven hundred military court cases involving more than seven thousand individuals charged with "crimes against national security," cases that were appealed to the Superior Tribunal Militar (STM) between 1964 and 1979. Another six thousand persons were investigated in military-police inquiries but were never charged formally, while thousands of others were tried in regional court cases that were never appealed to a higher level. The cases tried range from high politics, such as the attempted assassination of presidential candidate Artur Costa e Silva in 1966, to minor provincial dramas, like the case of a drunken man caught scrawling pro-Castro graffiti in a small town in Goiás in 1975. Most of the cases involved defendants whose expressed opinions or associations were deemed to have threatened national security in some way. Frequently, these defendants were also accused of ties either to groups supportive of the government of President João Goulart (toppled by the military coup in 1964) or to numerous factions of the armed and unarmed Left that were driven underground by the repressive crackdown in the late 1960s and early 1970s.

My study is based on a data set of 259 cases, about 37 percent of all the cases in the archive amassed by the compilers of *Brasil: Nunca mais*. This smaller data set involves 2,126 defendants.² The largest category of cases involves students (26 percent), but other groups represented are members of the military (17 percent), trade unionists (16 percent), politicians (16 percent), clerics (6 percent), and other professional categories (16 percent).³ This data set provides a window on the entire universe of cases and allows for the testing of generalizations about the political trials when complemented by careful textual and conjunctural analysis.⁴

A review of the cases in the data set confirms the finding in *Brasil: Nunca mais* that torture of political prisoners was widespread, systematic, and largely condoned by the courts. One defendant refused to cooperate during his trial and denounced the proceedings as an “enormity of persecution and farce . . . mounted against me.”⁵ Yet quantitative analysis of the cases reveals some surprising aspects of the political trials. For example, the acquittal rate was rather high: 48 percent in the regional military courts, the lowest level of the court system, according to Wolfgang Heinz (1992, 90). My sample of 259 cases yields an even higher acquittal rate of 54 percent. In addition, the available evidence suggests that the appellate court in the military justice system, the Superior Tribunal Militar (STM), often overturned convictions and gave out shorter average sentences than the lower courts. In my sample, the STM handed down an average sentence of thirty-four months, compared with the lower courts’ average of forty-seven months.⁶ Evidence also suggests that the STM was more likely to distinguish between acts and speech and less likely than the lower

2. This data set was created from the case summaries provided in *Perfil dos atingidos* (Profile of the Victims), volume 3 of the twelve-volume *Brasil: Nunca mais* “Project A,” which summarizes the entire archive. I added data on 52 other cases whose documents I consulted directly in the archive of *Brasil: Nunca mais* (BNM) in 1992 and 1994–1995. The archive is housed in the Edgar Leuenroth Archive at the Universidade Estadual de Campinas (UNICAMP), in the state of São Paulo.

3. In some instances, data on the professional background of defendants were unavailable. Moreover, some cases involved defendants from more than one professional category, which explains why the percentages do not add up to 100.

4. As explained earlier, most of the cases in this data set were chosen for summary by the team of Projeto Brasil: Nunca Mais. The team dealt only with cases that were appealed to the Superior Tribunal Militar, ignoring all cases that for one reason or another did not proceed beyond the first level of the military justice system. The criterion they used in selecting cases to summarize was comprehensiveness: the team wanted to show the broad range of the defendants in these cases, which involved persons from 6 different occupational groups and 45 organizations over a fifteen-year period. The cases I selected in the archive were chosen on the same basis. Thus my data set provides a large and fairly representative sample of the entire universe of cases.

5. Defendant Paulo de Tarso Vannuchi, 14 Mar. 1973, in a military court trial in São Paulo. From STM appeal no. 40,577, as contained in BNM case no. 68.

6. The number of cases in this sample is 246 cases and 1,830 defendants in the lower courts, and 40 cases and 204 defendants in the STM. It should be noted that any convictions in the

courts to consider speech a crime against “national security.” The average prison sentences in the courts were not draconian: 63 percent of those convicted (and for whom data are available) were given four years or less (Heinz 1992, 91). In my sample, the average sentence is also about four years.⁷ The courts avoided using the ultimate sanction—the death penalty—even though it was permitted after 1969.

Another noteworthy aspect of the trials is the selection and background of the judges in the military courts. Most military court judges were officers who lacked legal training and were part of the chain of command within the armed forces. During most of the military regime, all civilian judges (including the ones who served in the military courts) lacked the job stability they had enjoyed before and can now count on again in Brazil. The courts thus lacked both the competence and independence of a genuinely autonomous judiciary. Yet not all the judges were necessarily hard-liners connected to the security forces. Some scholars have asserted that moderate military officers were sometimes placed in the courts in order to remove them from active-duty command and control over troops (Skidmore 1988, 131; Oliveira 1992, 138). Although systematic evidence on the political views and backgrounds of judges is not yet available, it is likely that hard-line officers connected to the security forces, more moderate officers distrusted by the hard-liners, and officers with views and affiliations falling somewhere in between these two poles probably all served as judges in the courts. This variety is reflected in the diverse opinions expressed by judges on similar cases in the data set.

In summary, the relatively high acquittal rate and the apparently mixed backgrounds of the judges suggest that military justice played a complex political role within the regime. Military justice made some concessions to traditional legal concepts and was not always severe in its judgments and sentencing. The military courts also served as a site for resolving some of the regime's internal conflicts, which reflected disagreements over how to deal with the opposition and who should dominate the coalition supporting military rule. The political trials thus had multiple political purposes, and military justice changed significantly over time.

lower courts that were not appealed to the STM are not included here because those cases were not available in the archive. Their inclusion might result in a somewhat lower average sentence in the lower courts.

7. The objection might be raised that the real punishment for political prisoners was torture (and sometimes death), not prison, an outcome that would make the acquittal rate and average sentence relatively unimportant. Moreover, many defendants who were eventually acquitted had to await the decision in prison. While denying neither the centrality of torture to the repressive apparatus nor the problem of incarcerated defendants, I would argue that

THE TRADITION OF BRAZILIAN LEGALISM

The courts became venues for resolving internecine conflict in part because they enjoyed some measure of legitimacy among most supporters of the regime and were able to deliver benefits to them. The practice of using the law to repress political opponents as well as the doctrine of national security were far older than the “revolution” of 1964, which for all its rhetoric relied heavily on tradition to legitimate its rule. That is to say, judicial repression of political opposition was not unheard of in other periods of Brazilian history.

In Brazil, appointing judges linked to particular landed elites was traditionally a reward extended by the center in return for loyalty. Brazilian sociologist Fernando Uricoechea has noted the prominence of center-periphery relations in Brazilian history, in which state builders faced the difficulties of centrally administering a continental-sized political community dominated by an array of powerful landed oligarchies. More than in Chile, Uruguay, and even Argentina, the centralization of state power in Brazil was accompanied by a delicate balancing act of accommodating local and private power. In this sense, the Brazilian central state was somewhat more societally embedded than in the other three cases, “unable to rule effectively without striking bargains with, and gaining the cooperation of, private groups . . . , [and thus] keenly conscious of the fragile limits of its authority” (Uricoechea 1980, 54). Brazilian national power rested on a dualism between the central state and its expanding bureaucracy of universal rules and impersonal administration, on one hand, and a landed oligarchy riven by competing networks of kinship and patron-client ties, on the other.

Thus the 1841 Law of Interpretation represented an expansion of central-state capacity in taking the power to elect local judges away from municipal governments. But due to a lack of qualified personnel, judgeships originally intended for qualified lawyers designated by the central administration were often entrusted to local notables (Uricoechea 1980, 54). As the legal apparatus grew by leaps and bounds in the remainder of the nineteenth-century, control over the local judiciary became a key prize in political conflicts among different clans within the landed upper class.

The ideological roots of the political trials of the 1960s and 1970s can be traced back to global changes occurring after 1900. According to U.S. criminologist Barton Ingraham, a relatively liberal nineteenth-century view of political dissent gave way around World War I to a much more repressive conception of the requirements of national security in Western Europe and elsewhere. This new authoritarianism tended to dissolve the

convictions and prison sentences imposed by the military justice system also inflicted considerable additional human suffering on political prisoners and should not be discounted in any thorough consideration of repression.

distinction between external and internal threats to national security, so that certain forms of domestic opposition to the government came to be seen as treasonous, especially after the Bolshevik Revolution of 1917 (Ingraham 1979, 219–20). This view came to be shared by the rulers of many Latin American states, especially those for whom heavy European immigration in prior decades had produced concern over the internalization of “foreign threats.”

Latin American political elites defined themselves in reference to U.S. and European political models, and they were consequently influenced by this turn toward more repressive conceptions of national security in the industrialized countries. Because of weak civil societies and states with relatively dependent judiciaries and strong militaries, this repressive trend went farther in Latin America than in the advanced capitalist countries. The role played by the military in this shift has already been studied extensively and will not be examined here. Much less attention has been paid to the judiciary. In twentieth-century Latin America, large masses of disenfranchised persons were effectively deprived of access to the courts, and the citizenship rights of the lower classes were generally not recognized, especially in rural areas. Furthermore, in the prevailing civil-law tradition, judges were viewed not as the creators of law through interpretation, as they are in the Anglo-American common-law tradition, but as enforcers of laws created only by the executive or legislature. In practice, Latin American judges in civil-law systems often created law through interpretation, especially in areas such as national security, where laws were new and vague. But these same judges tended not to assert their independence vis-à-vis other branches of government as much as their common-law counterparts in other countries.⁸

Brazilian society, with its history of slaveholding on a grand scale and preservation of an empire, was more hierarchical and politically conservative than Argentina, Chile, and Uruguay. Those three countries had experienced much larger mass mobilizations during their wars for independence and were more influenced by republican and democratic ideas. Brazil's political distinctiveness contributed to the development of a particular tradition of political repression that became noticeable after World War I. The tradition entailed the periodic use of exceptional state powers and the linkage of political dissidents with common criminals in official pronouncements. State leaders periodically used the exceptional powers granted during states of siege to move against “undesirables” among the lower classes as well as political opponents, flouting legality in their treatment of the former and creating more sophisticated legal cover for re-

8. Here I disagree with a previous generation of scholars who believed that Latin America's system of civil law contained a philosophical bias against protecting individual rights and favoring the reflexive legitimation of state power. As Joel Verner has pointed out, this opinion was derived more from assertion than from empirical research (1984, 470–71).

pressing the latter. For example, an insurrection in 1924 touched off a wave of trials of political opponents and the “cleansing” of cities like São Paulo and Rio de Janeiro (Pinheiro 1991, 87–116, 320–22). In addition, the routine powers of the state were used to identify, monitor, and repress politically suspect individuals. For instance, the São Paulo political police, the Delegacia (later Departamento) de Ordem Política e Social (DOPS) established in 1925, was entrusted with “a most serious and ongoing vigilance against the activities threatening to the traditional principles of Religion, Country, and Family” (Pinheiro 1991, 111). By 1928 the DOPS had dutifully registered in its files more than one-third of the state’s three hundred thousand workers (Pinheiro 1991, 111).

The most important precursor of the political trials of the 1960s and 1970s emerged in this period in reaction to the Communist uprising of 1935. The *intentona*, as the conspiracy was called by its opponents, was perceived by the military as an attack on the state and nation but also as a “betrayal from within” because the plot found some support within the armed forces. Although it was quickly suppressed, the *intentona* was invoked by the armed forces for decades as a symbol of the boundless perfidy of the Communists and the consequent need for the military to remain permanently vigilant in defense of the nation. The *intentona* was cited more specifically to justify the internal purge of the armed forces and the repression of the rest of Brazilian society during the coup in 1964 and afterward.⁹

The government’s response to the Communist uprising in 1935 was to enact a series of repressive measures designed to go beyond what one government minister called “outmoded judicial traditionalism” (Pompeu de Campos 1983, 39). To this end, the regime created the Tribunal de Segurança Nacional (TSN) for prosecuting those accused of political crimes. Established in 1936 (before the creation of the dictatorial Estado Novo) and in operation until 1945, this special court tried thousands of suspected Communists, fascist *integralistas* (following their failed insurrection in 1938), and merchants accused of violating the regulations of the Estado Novo’s “popular economy.” Initially part of military justice, the TSN was declared an independent tribunal in 1937. The special powers wielded by its civilian and military judges (such as the right to decide according to “free conviction” rather than the weight of the evidence) and many aspects of its procedures made the court a place in which the distinction between political dissent and subversion, fundamental to constitutional government, could be repeatedly ignored. This possibility worked to the advantage of

9. For example, Giordani (1986) defended the military regime and attacked the book *Brasil: Nunca mais*. His book begins with a chapter entitled “Remember 35!” The armed forces’ annual commemoration of the defeat of the *intentona* on 17 Nov. has long been an important date in the calendar of military ritual in Brazil.

officeholders in the government of President Getúlio Vargas (Pompeu de Campos 1983, 126; Loewenstein 1942, 212–34; Pinheiro 1991, 325).

While the Tribunal de Segurança Nacional perished along with the Estado Novo, the mentality that produced it did not. The period following World War II ushered in the United States' rise to global dominance, the cold war, and a new era of concern for national security. Brazil's close ties with the U.S. military, furthered by the Brazilian Army's participation in the Italian campaign under U.S. command, were strengthened in the late 1940s and 1950s through U.S. military aid and the formation of transnational communities in international organizations involving Brazilian and U.S. policymakers. These communities reinforced shared ideological orientations and fostered the development of a Brazilian version of national-security doctrine that drew heavily on U.S. models, which were adapted creatively. An example of the "updating" of legislation for the new era was Brazil's national-security law passed in 1953, which permitted the prosecution of civilians in military courts for crimes involving external threats to national security. The growing strength and confidence of the military within the Brazilian state thus helped create an authoritarian regime in 1964 that lasted considerably longer than the Estado Novo (1937–1945).

The contrast between the TSN and the military courts highlights the militarization of the Brazilian state in the period following World War II. Whereas the TSN had been dominated by civilians and tried defendants arrested primarily by a civilian political police force, the military courts in force from 1964 to 1979 were dominated by the military and dealt with those arrested mainly by the armed forces.¹⁰ When civilians were brought under the jurisdiction of military courts in national-security cases in 1965, military justice effectively usurped the civilian judiciary's traditional role of serving as an intermediary in local political conflicts. Thus the delicate Brazilian art of accommodating particularistic local interests along with those of the center became a military specialty.

The coup-makers of 1964, ardent opponents of Getúlio Vargas and his followers, did not re-create the TSN, but they used military courts for much the same purposes. Brazil's political trials between 1964 and 1979 thus continued and greatly expanded the use of courts by political elites and the central state for political ends. These trials reflected a long process of state formation, not merely the innovation of a particular political regime. In the process, executive power grew steadily, along with the role of the military in the executive and the development of a distinctive national-security ideology.

The growth of this ideology reveals the importance of societal influences in shaping patterns of judicial repression. The ideology of na-

10. Wolfgang Heinz has presented data on the agencies responsible for imprisoning 5,104 political prisoners between 1964 and 1979 (Heinz 1992, 86–87). Of the three main agencies

tional security resulted from global trends and from their adaptation to the needs of domestic rulers, accomplished jointly by military and civilian policymakers and theorists over several decades beginning in the 1920s. Although this national-security alliance eventually led to militarizing justice and criminalizing dissent, it represented the work of “civilian militarists” inside and outside of government as well as the military itself (Vagts 1959, 453). In sum, authoritarian elements in civil society—not just an authoritarian state—produced the political trials witnessed in Brazil.

THE POLITICAL TRIALS

Between 1964 and 1979, these trials took place in twenty-one military courts divided into twelve regions. Each court consisted of five judges: four military officers and a single civilian judge. Verdicts could be appealed to the Superior Tribunal Militar, which consisted of fifteen judges appointed by the president and approved by the senate, ten of them selected from the armed forces and five civilians (Ronning and Keith 1979, 233). In some instances, appeals reached the civilian Supremo Tribunal Federal. Prosecutions in these cases were conducted by civilian lawyers in the Ministério Público. Defense lawyers were usually civilians.

Brasil: Nunca mais documented how the courts manipulated the law and “stacked the deck” against defendants who were mainly young, unarmed, middle-class civilian males. These unlucky individuals were apprehended by the security forces for engaging in “subversive” acts or speech or were accused of subversion by a witness in a police or military-police inquiry (*inquérito policial-militar*). Numerous cases involved petty crimes (such as political graffiti) or acts that had been permitted by the Goulart government and were defined retroactively as crimes following the coup. Other cases cited incidents that would not have been considered criminal under a democratic regime, such as trade-union strikes and the everyday expression of political views in speech, in print, or in other media. When viewed strictly from the point of view of probable threats to the state, little real subversion can be found in these trials.¹¹ Nor was there much mass mobilization but rather many small isolated groups and individuals. The Brazilian armed Left, when compared with its counterparts in the Southern Cone, was small and disconnected from the working-class and peasant social base in whose name it spoke.

responsible, the army accounted for 1,043 prisoners (20 percent); the Destacamento de Operações Internas—Comando Operacional de Defesa Interna (DOI-CODI), controlled by the military with some civilian police involvement, accounted for another 884 (17 percent); and the political police for 821 (16 percent).

11. As Mark Osiel has pointed out, it is military officers’ “conception of the threat their country faced, not our own, that is pertinent in making sense of their curiously perverse behavior” (Osiel n.d., chap. 4, 9). But for purposes of examining the degree to which liberal

The charges of violating national security were taken seriously nonetheless. Worse yet, confessions extracted under torture were frequently used to convict defendants in the absence of corroborating evidence, even when defendants retracted their confessions in court. The few defense lawyers involved in the cases were intimidated. Thus the politics of "coerced consensus," in which consensus supposedly exists even though state coercion is intense, was extended from the macro to the micro realm (Schirmer 1996, 90). Moreover, the regime stiffened the law in 1969 to require prosecutors to appeal all cases in which defendants were acquitted, even if their own recommendation had been not to convict. Consequently, defendants who were acquitted often languished in prison for several more years until their appeal was decided by the Superior Tribunal Militar. Thus procedural techniques were employed to inflict punishment without sentences ever being rendered.

Despite these aberrations, the courts strove incessantly to gain the legitimacy that the judiciary of a *rechtstaat* is supposed to enjoy. The military regime did not succeed entirely in extinguishing liberal juridical notions, however. Hard-line interpretations of national-security legislation coexisted with more discriminating readings of the rights of individuals in the courts. This situation resulted partly from the close interweaving of military justice with civilian justice: the Brazilian military courts were formally part of the judiciary and involved considerable civilian participation.¹² Thus a strong tension existed within the courts between traditional legal notions of individual rights and authoritarian and statist conceptions of law. This situation allowed defendants some room to maneuver.

On one level, military justice did not oppose the logic of the repression. After the suspension of habeas corpus in cases of national security on 13 December 1968, detainees in the hands of the security forces had no legal existence. Until they were formally charged, they ran the risk of being killed and were frequently tortured. Judges in the military courts played no role in investigating the arrest and detention of suspects or allegations of torture (save in one exceptional case to be discussed) and merely responded to legal procedures initiated by the government after detainees had been "processed" by the security forces. Consequently, lit-

conceptions of individual rights survived in authoritarian Brazil, a comparative and historical assessment of the degree of "subversion" faced by the regime is also necessary.

12. This arrangement contrasts with that in Uruguay, where most defense lawyers in the military courts were members of the military (Uruguay, Servicio Justicia e Paz 1992, 28–29, 115). Furthermore, the judiciary (of which the military courts were also a part) was more thoroughly subordinated to the executive branch than in Brazil. Uruguay's Acto Institucional Número 8 of 1977 went so far as to strip the judiciary of its status as an independent power and incorporate it into the Ministerio de Justicia, while the name of the Suprema Corte de Justicia was changed to Corte de Justicia. This absurd state of affairs endured until Acto Institucional Número 12 of 1981 was decreed.

the evidence exists that the hard-liners who ran the security organizations viewed the courts as an impediment to their operations at the height of the regime's repression. For example, a general who had been in charge of army intelligence in the late 1960s, General Adyr Fiúza de Castro, told an interviewer in 1993: "I would say that more than 80 percent [of those detained by the security forces] were acquitted—they returned to the life of a petit bourgeois. . . . And we thought that forty-five days [the maximum time allowed after 1968 to detain a person before legal proceedings were required to start] were sufficient punishment when there was not a crime involving death, when it was only a bank robbery, graffiti-writing, this, that. . . . I, at least, thought that it was sufficient in the majority of cases for the comrade to abandon his subversive activity" (D'Araujo, Soares, and Castro 1994, 66). While this estimate of the acquittal rate is exaggerated, the comment is significant in suggesting the lack of any great pressure from the security forces for military justice to be more punitive than it already was.

But once detainees were caught up in the formal legal procedures of military justice, they usually enjoyed some protections unavailable to prisoners in clandestine captivity. By obliging authorities to keep written records and observe certain formalities, the legal requirements of the courts (or more accurately, the actions taken by defense lawyers who tried to get the courts to enforce those requirements) probably saved lives. Furthermore, the moderation and legal scruples of certain judges led to some acquittals, thereby diminishing some of the human suffering. In terms of the effect on prisoners, it is immaterial that much of this legal formalism was maintained by the military regime merely to legitimate its power in domestic and world opinion, amounting to the hypocritical compliment that vice pays to virtue. The point is that at a certain stage in the treatment of detainees within military justice, the regime's desire to maintain legal and formal appearances mitigated some of its repressive tendencies.

The judges in the military justice system did not always require that the accused individual be punished. In fact, the regime pointed to the courts to claim legitimacy. To make this claim credible, the courts had to maintain at least the pretense of upholding certain legal principles consistently. Jurists within the military regime spent considerable effort commenting on the military courts' decisions and noting the refinement of the vague national-security laws that was taking place in them.

The moderation of some military judges thus amounted to a kind of liberalism, but it was liberalism of a timid and highly inegalitarian nature. By *liberalism* I mean a doctrine that extolled and sought to preserve certain formal individual liberties in the political sphere. In general, this view involved "the defense of the individual against the hypertrophied state" (Campos 1994, 857). In institutional terms, it implied the separation of powers and the existence of a judiciary capable of upholding individual

rights against the claims of the state. But the judges' liberalism was mitigated by the conviction that not all individuals were equally capable of exercising their liberties in "a responsible manner." Hence some citizens were more equal than others. An underlying conception of social hierarchy thus undercut the premise of the radical equality of citizenship inherent in political liberalism. It is this uneasy combination of doctrines that I call "elitist liberalism."

Opinions of the judges in the military court cases frequently reflected elitist liberalism in that contestation within societal elites was expected and tolerated, while political appeals made to the lower classes were frowned on as upsetting the rules of the game. In macro political terms, this view meant that restricted contestation was tolerated, but mass participation was not. In micro terms, it signified that the interpretation of the law and the delivery of justice depended on the individual defendant's social status and political connections.

One example occurred in a case brought before a military court in Rio de Janeiro in 1971. A young filmmaker had been accused of making a "subversive film." This film contained scenes of student demonstrators being beaten by police and was exhibited by the Museu de Arte de São Paulo in 1969 in a private session attended by about ten people. The judges noted the small and select nature of the audience of the movie and argued that the work of art therefore did not constitute subversive propaganda. They reasoned that the members of the cultural elite who saw the film were more discerning than the uneducated masses and that the same film would have been truly dangerous if exhibited to a larger audience. The defendant was acquitted by the STM, and the film was later ordered to be returned to him.¹³

The elitist liberalism of many of the judgments in the political trials enhanced the military courts' claims to legitimacy while mitigating their repressive weight. In the pursuit of legitimacy, the interest in punishing individuals sometimes mattered less than using symbolic power to "normalize" the established order for domestic and international audiences. In the official discourse of the courts, legal boundaries demarcated the state's enemies, who by definition fell "outside the boundaries of law (with the military, by definition, within it), and simultaneously reinforce[d] the idea that violence occurs only outside state structures" (Schirmer 1996, 92).

The courts' claim to legitimacy was bolstered by a certain measure of autonomy derived from their embeddedness in a larger "juridical field" (Bordieu 1987). Military justice was not entirely military. The participation of civilian lawyers and the use of traditional legal procedures were important. Although the Brazilian legal profession was (and still is) highly dependent on state employment and thus often uncritical of the govern-

13. According to Case 44/70, as contained in BNM 148.

ment of the day, it contained many practitioners with traditional conceptions of law based on individual rights that contradicted the repressive and authoritarian legalism of the military regime. The tension between these two conceptions of law can be detected in the court records. They are also evident in statements made by the *Organização dos Advogados do Brasil* (the OAB, or Brazilian Bar Association) in 1972 and 1977, calling on the military regime to protect human rights and dismantle the most extreme features of the national-security legislation (Gardner 1980, 110).

PHASES OF REPRESSION AND THE CHANGING ROLE OF THE COURTS

The military courts' objective was to make state violence more efficient in maintaining order. These courts also legitimated state violence and disseminated news about the fate of enemies in order to deter those who did not accept the regime as legitimate. But not all their activities concerned the opposition. The courts also gathered information on the security forces and provided a kind of balancing mechanism to political leaders, effecting compromises between different factions within the regime and the national territory by investigating and prosecuting defendants in national-security cases. In this sense, the courts were involved in "two-level games," dealing with opposition but also mediating conflicts within the regime and providing information to its various components (Putnam 1988). The nature of these games changed over time. Tracing the three main phases of the military trials reveals that in each phase, the intensity of court activity, the relationship of the courts to other state institutions (particularly the security forces), the targets of prosecution, and the political purposes of the trials differed significantly.

The First Phase, 1964–1967

The first phase of court activity occurred during the mid-1960s, when supporters of the Goulart administration were being prosecuted. The primary targets of this repression fell into several categories: Communists and members of the Catholic and socialist Left (especially in state bureaucracies, trade unions, peasant leagues, and student organizations); members of the armed forces who had defied their officers or remained loyal to the constitutional government immediately before and during the military coup; and politicians associated with the toppled government of President Goulart. This round of trials was part of a concerted action to use the courts to vilify the previous regime and purge the state administration of its supporters.

Compared with the brutality following the coups in Chile in 1973 and in Argentina in 1976, these purges were relatively restrained. General Humberto Castelo Branco, named the first president after the military took

power, expressed a desire to restore rule to civilians relatively quickly, and his supporters (the *castelistas*) wanted to bar "extremists" from the political arena while retaining much continuity with the old order. The *castelistas'* extensive ties outside the military, revealed most clearly in their consultations with the governors of the most powerful states before and after the coup, drew them into the traditional Brazilian political art of regional accommodation. More hard-line "revolutionary" officers, centering around General Costa e Silva and having fewer ties to civilians and a more radical commitment to the military's corporate autonomy, remained subordinate in the first few years of the regime. Although they favored a more radical "cleansing" of society, they did not achieve it. But as they became disgusted over the mild treatment of old regime supporters in the civilian courts, they managed to promulgate Ato Institucional Número 2 (AI-2). This 1965 presidential decree gave military courts sole jurisdiction over cases against civilians accused of crimes against national security.

During this first phase, the courts served as the main venue for punishing regime opponents under the old national security law of 1953. Many cases in this phase were based on post-facto denunciations of defendants made in official inquiries. Consequently, regional power-holders were probably more involved in determining who was to be investigated than they were in later years of the military period. The enemies in these cases were also well known to the creators of the new order. The conviction rate during these years (1964–1967) was relatively high, 59 percent, according to my sample, compared with 32 percent from 1968 to 1973. This finding suggests that participants in the political mobilizations supporting the Goulart government were far more likely to be convicted in the military courts than were the nonviolent dissenters against the military regime who were tried in later years. Repression in the courts seems to have been harsher during the foundation of the regime than under the consolidated regime of the late 1960s and early 1970s.

Unlike the situations in Argentina and Chile, the Left was easily defeated at the time of the coup, and the new leaders' perception of threats was relatively low. On taking power, the military regime faced only pockets of potential resistance spread over a wide geographical area, which included supporters of Leonel Brizola in Rio Grande do Sul in the South, industrial workers in São Paulo and Rio de Janeiro in the Center-South, and peasant leagues and followers of Miguel Arraes in Pernambuco in the Northeast. The wide dispersion of these targets of repression differentiated the Brazilian situation somewhat from that facing the rulers of the other military regimes in the Southern Cone, where left-wing mobilization was more massive and concentrated.

As a preexisting institution, military courts offered a cheap means of coordinating the prosecution of targets spread over a huge geographical area. At the same time, these courts afforded opportunities for local

discretion. They also allowed the military to oversee the work of the state-run political police forces, whose competence and loyalty were doubted by the military regime. In the absence of an effective nationwide intelligence capability, the courts in this early phase served as a stopgap measure until a more rigorous security apparatus could be constructed (Campos 1994, 283). A central intelligence organ, the Serviço Nacional de Informações (SNI), was founded after the coup on the foundations of the prior Serviço Federal de Informações e Contra-Inteligências (SFICI).

The Second Phase, 1968–1973

A few years after the coup, it became clear that the regime's initial "cleanup" had not dampened dissent but merely shifted its loci from trade unions, peasant leagues, and other groups to the student movement. At the same time, the gradual closing down of public space helped alienate many, particularly young persons, and encouraged the formation of an armed Left. Regime hard-liners, calling for more repression, gained power after the coup and initiated a second phase of military justice. It was marked by the ascension of President Costa e Silva in 1967 and by the issuance of Ato Institucional Número 5 (AI-5) and the shutting down of the congress, both occurring at the end of 1968. By suspending habeas corpus in political cases, AI-5 awarded tremendous discretion to the security forces and greatly reduced the courts' powers. The investigations and trials became not the first line of defense against subversion but an intermediate stage that followed the clandestine operations of the security institutions. Successive revisions of the national-security laws broadened the state's right to suppress subversion to allow virtually anyone to be prosecuted. Nonviolent critics of the regime were deemed to be potentially as dangerous as urban guerrillas because they allegedly fostered an intellectual climate in which the actions of the guerrillas could flourish.

By the end of the 1960s, a network of security forces had been created that could hunt down the shadowy, fragmented armed Left throughout the national territory. Unlike prosecution in the courts, which aimed at regulating dissent, the security forces' goal was absolute suppression of the armed rebels, an operation likened by General Fiúza de Castro to "killing a fly with a sledgehammer" (D'Araujo, Soares, and Castro 1994, 20). At this time, a two-track repressive policy was operating: death-squad killings for those deemed most dangerous to the regime, and trials for those whose dissent was said to facilitate the guerrillas. In this phase, the courts played an auxiliary role in gathering information on the armed Left (initially unknown to the security forces) and a major public-relations role in denigrating the "terrorists" and "subversives."

The repression of these years generated a climate that altered the nature of politics in Brazil. This change can be detected in the military

court archives in at least two aspects. First, the heightened repression induced citizens to censor themselves for fear of exhibiting ideologically incorrect attitudes. Some individuals accused of subversion in the military courts recanted their previous views, but the change also intimidated members of Brazilian society as a whole. Second, the repression transformed many political conflicts previously conducted at a purely local level into issues of "national security." The reason was that local officeholders could draw on contacts with patrons within the regime to prosecute their opponents in the military courts. In this way, residents of small towns who did nothing more than criticize local officials got caught up in the national-security dragnet.

Examples of attestations to ideological correctness abound. Many military court cases contain testimony from friends and patrons of the defendants regarding their scrupulous conformity to the ruling ideas of the military regime, or at least their lack of opposition to it. Perhaps the most striking instance of the effects of the politics of fear is the case of two married students, who contacted the São Paulo political police in 1973. Although they were living in West Germany, they wanted to return to Brazil and contacted the DOPS through a third party to request guarantees that they would not be prosecuted on their return. On receiving these assurances, they came back to Brazil. The next day, they went to the DOPS to report that they had been students at the University of São Paulo from 1967 to 1969 and were willing to examine police photographs to identify possible "subversives" whom they had encountered during that time. In their testimony, the students assured the DOPS that they had not been interested in leftist politics and "did not have time for anything else" other than their new jobs as high school teachers. This incident reveals the extraordinary degree to which ideological policing could be internalized and a self-preserving, each-against-all mentality could develop in individuals attempting to cope with the uncertainties of a repressive regime.¹⁴

The second noticeable trend in this period was the use of national-security legislation by local political officials. In one 1968 case, a fired municipal employee in São Sebastião in the state of São Paulo called his mayor "corrupt" and "a thief." The former employee was charged in the military court with an "offense against authority" under national-security legislation, and the case wound its way to a decision in the Superior Tribunal Militar three years later. In a similar case, a shopkeeper in Agudos, São Paulo, predicted in 1968 that a candidate for mayor for the Aliança Nacional Renovadora (ARENA), the dominant party of the military regime, would win the upcoming election because he had "bought" the local electoral judge. This remark led to the shopkeeper's prosecution for an "offense

14. Arquivo de DOPS, Arquivo do Estado de São Paulo, Ordem Social, File 14 (Miscellaneous).

against authority” and “political-social nonconformity.” The case was not decided by the STM until 1974. Both cases involved local officials who used the regime and its military courts for their own ends. But the pressures could also work the other way, as in a 1970 case in which ARENA politicians in Amazonas were prosecuted for beating and expelling a judge who challenged their list of registered voters. In this case, political clients of the regime were not rewarded for harassing their enemies but punished for violating the prerogatives of the judiciary.¹⁵ In my sample, about 15 percent of the cases involved defendants who were prosecuted for criticizing or engaging in other kinds of conflict with local political officials rather than with the military regime itself.¹⁶

The Third Phase, 1974–1979

Once the armed Left had been defeated and “political decompression” was initiated in 1974, the courts entered yet another phase. During this period, the importance of the security forces within the regime gradually subsided and political liberalization began to occur. Judges in the military courts were frequently more sensitive to individual rights and tended to interpret the national-security legislation more narrowly than before. The acquittal rate in my sample rises to 89 percent in this period (20 cases involving 75 defendants). Impressionistic evidence from court documents suggests that with the political threat to the regime apparently receding, judges became more likely to be scrupulous in safeguarding individual rights in their decisions. Certainly, the volume of court cases dwindled, as national-security prosecution became a tactic of last resort for the regime. In addition, military-police inquiry became a potential political tool that the regime’s top leaders could use against the security forces themselves. Such inquiries could always be used against individual members of the military and police. But before, they targeted only personnel suspected of being leftists, whereas now they could be used to expose and disarm zealously hard-line officials impeding the president’s planned liberalization. For example, President Ernesto Geisel overruled the protests of his Army Minister (whom he later fired) to order a military-police inquiry into the death of journalist Vladimir Herzog while in custody in São Paulo in 1975. This case provoked widespread public protest and outrage (D’Araujo, Soares, and Castro 1995, 65–66). Here the legal procedures used previously to repress dissent on the Left were utilized by the presidency to rein in renegades on the Right within the security forces.

15. The three cases discussed in this paragraph are, in the order mentioned, STM case no. 38,628 in BNM no. 480; STM case no. 40,271 in BNM no. 538; and STM no. 38,791 in BNM 405. In each case, the defendants were eventually acquitted.

16. The number of cases used to produce this figure is 255 (4 additional cases had insufficient information). If this category were expanded to include cases of trade unionists accused of “subversive strikes” or “land occupations,” the number would increase substantially.

Perhaps the most extraordinary example of opposition to the arbitrary violence of the security forces from military justice was a decision made by the Superior Tribunal Militar in October 1977. In this case, the STM decided to overturn the lower-court conviction of Paulo José de Oliveira Morães of bank robbery because of a medical examination revealing that he had been tortured (Oliveira 1982, 139–40). According to one judge, Admiral Júlio de Sá Bierrenbach, "What we cannot admit is that a man, after being imprisoned, has his physical integrity attacked by cowardly individuals, in the majority of times of worse character than the detainee. . . . It is time that we end, once and for all, the methods adopted by certain police sectors of fabricating evidence, perversely extracting confessions by the most vile means. . . ." ¹⁷

This unprecedented decision attracted considerable press attention. The STM's findings in this case challenged a fundamental part of the security forces' *modus operandi* and a major basis of the military regime's rule. Nothing like this opinion occurred in the first two phases of military justice. The court went even further in demanding that a military-police inquiry be made into the circumstances of the suspect's torture and that legal proceedings be initiated against the torturers if appropriate.

Closer examination of this case, however, reveals the limits of the opposition that took place within military justice, even during a period of regime liberalization. First, this acquittal occurred late in the military regime's rule, after the most severe repression had already been carried out and President Geisel had already embarked on his program of gradual political opening. Second, the suspected torturers were members of the civilian DOPS in Rio de Janeiro, not the military. Such an action against the military was far less likely. Third, the STM judges were careful not to implicate any other members of the security forces in their statements. Rather, they strove to legitimate the regime and its repressive policies by refusing to accept the "systematic allegations of torture that the accused who appear in military justice have made" and condemning only "the action of bad policemen who, happily, constitute a minority in this country." ¹⁸ Finally, the inquiry called for by the STM judges was quietly closed by the Rio authorities, who never took any action against the suspected torturers.

Moreover, attempts by the STM judges to mount a broader challenge to the military regime's policies were carefully curbed. In November 1978, another STM judge, General Rodrigo Otávio Jordão, protested against the arbitrariness of the security forces and suggested revisions in the national-security laws. He declared, "The security of the state cannot be founded on the insecurity of citizens" (cited in Oliveira 1982, 140). The general's

17. Comments made by Admiral Júlio de Sá Bierrenbach, judge of the Superior Tribunal Militar (1977–1987), to his fellow judges on appeal case no. 41,264.

18. See Godinho (1982, 49–51). Information on this case was also obtained in the author's interview with Júlio de Sá Bierrenbach, Rio de Janeiro, 17 Nov. 1996.

comments displeased President Geisel and his inner circle, who then prevented the general from assuming the presidency of the STM in March 1979, as he was supposed to do according to the court's usual rotation. This interference led General Jordão to resign (Oliveira 1982, 140–41).

In summary, the courts played multiple roles in the Brazilian military regime, and those roles changed over time. The courts' actions cannot be explained exclusively in terms of the government leaders' perception of the threat to their rule posed by various opposition groups. A significant amount of the political conflict in the courts was not dyadic but triadic, involving contenders for power within the regime as well as the opposition. These two types of conflict need to be disentangled by viewing political trials as exercises in institutional coordination that are oriented externally as well as internally and are embedded in a complex and dynamic trajectory of repression.

MODELS OF REPRESSION, LEGACIES OF AUTHORITARIANISM

The political impact of Brazil's political trials from 1964 to 1979 remains difficult to gauge. Scholars who view Brazil as engaged in a holistic process of "democratic consolidation" might be tempted to dismiss the era as negligible, a quirky detour that has now been entirely corrected by the country's return to a multiparty, electoral, and civilian regime. It seems more reasonable, however, to disaggregate the notion of democratic consolidation (Schneider 1995, 220–21) by perceiving it as involving various transformations, each of which may be more or less advanced and more or less integrated with another. For example, legal norms may contain substantial authoritarian residues despite the ending of the military regime in 1985. Yet evaluating the extent of such an authoritarian legacy is problematic because the "revolutionary legalism" that gave primacy to the state's national-security concerns never totally colonized the legal establishment, even during the most repressive periods of the military regime.

It could be concluded that the Brazilian military court trials constituted "a perfect political crime" by giving the regime a liberal façade, making its claims of tolerance and consensus more plausible to many inside and outside Brazil, even after it had ended. This façade enabled the military to engineer one of the most controlled democratic transitions in the region, in which military prerogatives were rarely challenged even when the armed forces formally withdrew from direct control of the executive. Such continuity is revealed in the area of human rights. Unlike the situations in the other Southern Cone countries, no one in Brazil has yet been convicted for human rights abuses committed under the military regime, despite extensive documentation as to who carried out these abuses.¹⁹

19. In Argentina, well-publicized trials of some military regime leaders took place under

At the same time, political trials in Brazil engendered an extensive countermobilization that successfully contested the regime's "official transcript" of the repression. A movement that began in the early 1970s fought successfully for the eventual release of political prisoners and the return of some ten thousand exiles, goals both accomplished by an amnesty in 1979. Although some military court trials for national-security violations occurred after this date, they were relatively few, especially after the national-security legislation was modified in 1983. Widespread prosecution of political opponents ceased to be a weapon in the military regime's arsenal. For this reason, the 1979 amnesty was opposed by many regime hardliners even though it protected the security forces from future prosecution. In addition, many activists in the amnesty movement and former political prisoners and exiles entered party politics in the 1980s, building up coalitions that have altered the Brazilian political landscape.

Some human rights activists in Brazil today identify the falsification of history involved in the official versions of the deaths of the killed and the disappeared as the most nefarious legacy of the military regime. Groups such as *Tortura: Nunca Mais* have campaigned for further investigation of crimes committed under the regime as well as for compensation of families of the disappeared. This campaign succeeded in part when law 9140 was passed in August 1995, acknowledging the state's responsibility for the deaths of 136 persons under the military regime and ordering compensation for each family. The law also created a commission to study the requests of families of more than two hundred other victims who were not on the original list.²⁰ The symbolic importance of these actions is immense: they constitute the first official admission of responsibility by the Brazilian state for the crimes of its "dirty war."

Yet the most significant legacy of the military regime is probably its contribution to—rather than its creation of—an authoritarian legal culture that tolerates abuses by security forces but remains intolerant of political dissent. Brazil's new Constitution of 1988 is considerably more democratic than the 1967 document it replaced, but it still contains traces of such a culture in allowing for the prosecution of "political crimes." Although not defined, such crimes fall formally within the jurisdiction of the Supremo Tribunal Federal.²¹ The point here is not that the present civilian regime is intolerant of political dissent—political criticism is currently flourishing in Brazil. The point is that the legal machinery for prosecuting

the government of President Raúl Alfonsín. His successor, Carlos Menem, later pardoned all those convicted. In Chile, some 20 cases involving human rights abuses that occurred after the 1978 amnesty have been tried in the courts. In Uruguay, some cases were tried before the *Ley de Caducidad* put a stop to them in 1986 (see Kritz 1995, 323–460).

20. Interview with Jaime Wright, Presbyterian minister and project coordinator of *Brasil: Nunca mais*, 6 Sept. 1996; and with national deputy Nilmário Miranda, 10 Nov. 1996.

21. See chap. 3, sec. II, Article 102, IIb of the Constitution of 1988.

political dissenters still exists.²² The conflict between authoritarian and statist conceptions of law on one hand and more tolerant and societal notions on the other runs through the archives of the political trials and persists in Brazil today.

CONCLUSION

This article has demonstrated the complexity and ambiguity of Brazilian political trials between 1964 and 1979 as venues in which authoritarian notions of national security clashed with traditional precepts of individual rights. In these trials, the legitimation of state violence coexisted with resistance to it. Because law is a social and ideological construct, it can be made an intrinsic part of an arbitrarily abusive state, whether military or civilian. This possibility makes contemporary reformers' invocation of the need for "a rule of law" in Latin America somewhat ambiguous because prior repressive regimes also spoke of the rule of law, although they invoked a body of law and a style of judicial interpretation that gave primacy to the state and its prerogatives.

I have argued here that the evidence from Brazil's political trials under the military regime reflects a general need to rethink models of repression under authoritarian regimes. Such approaches should be able to link repression to historical patterns of state coercion and intra-regime dynamics and recognize the special role that courts and legal maneuverings can play in the deployment of violence by the state. Dyadic and functionalist accounts that explain repression in terms of a single economic or political imperative should be supplanted by more nuanced interpretations. The use of the military courts by regime clients to harass local political enemies who did not oppose the national regime is one example of a type of repression not commonly recognized by existing accounts of authoritarian regimes. The kind of analysis offered here could be extended to other countries in the Southern Cone. Even though those military regimes were not as legalistic as Brazil's, they all used the courts in similar ways, albeit on a smaller scale.

The legal repression of the 1960s and 1970s was rooted in long-established practices and mentalities that continue to exist. In particular, elitist liberalism seems to be an enduring feature of Brazil's highly inegalitarian social order. The revisionist picture offered here therefore posits more continuity in the present legal order with that of the military regime. It also offers an expanded recognition of authoritarian precedents in civil

22. Jorge Zaverucha has argued that because the complementary legislation treating political crimes has not been passed by the Brazilian Congress, these crimes continue to be the responsibility of military courts, which have been known to handle such cases (1996, 108, 127). Zaverucha cites a 1993 case in which four secessionists who advocated independence for southern Brazil were prosecuted in a military court in Paraná for political crimes.

society, as well as in the state, than many previous accounts. At issue in the politics of contemporary Brazil and much of the rest of Latin America is not merely the right to interpret history or to compensate victims of past injustices. At stake is citizens' right to a legal order that ensures, through a precarious balancing during a period of generalized violence, protection both from other citizens and from the arbitrary abuses of the state.

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