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Repression, Legality, and Authoritarian Regimes

On April 5, 1971, Vinicius Oliveira Brandt sat in a military court in São Paulo to testify on his own behalf.[1] Oliveira Brandt, a young sociology student, was charged with membership in an illegal organization, the Revolutionary Workers' Party (Partido Revolucionário dos Trabalhadores, or PRT), and of organizing the armed robbery of a supermarket. Oliveira Brandt told the court that he had been arrested in São Paulo on September 30 of 1970 and immediately taken to a military-police intelligence facility (known as Departamento de Operações Internas, Department of Internal Operations or DOI). There he was stripped, placed naked on a *pau de arara* (parrot's perch, a beam from which the victim was hung upside down), beaten and given electric shocks. Brandt testified that "the shocks were applied all over the body, especially the genital organs, ears, and mouth," and that after this he was taken down from the parrot's perch and seated in what his torturers called the "dragons' throne," where he was again given electric shocks. His torturers also burned him with cigarettes and lit paper. This first torture session lasted from 7:30 at night until 10:00 the next morning. After a one-hour break another torture session started and lasted all afternoon. At one point, according to Oliveira Brandt, he was threatened with death.

On September 30, 1971, the military court convicted Oliveira Brandt and sentenced him to five years in prison. The court, consisting of one civilian judge trained in the law, plus four active-duty military officers without legal training who served on the bench for three months, gave the defendant the maximum sentence and deprived him of his political rights for ten years.[2] The evidence

against him was practically nonexistent. In the twenty-six-page court decision (signed by all the judges), the civilian judge wrote that Oliveira Brandt was "highly dangerous" and a "political delinquent." The judge proclaimed that "the trial proceeded with all the guarantees of humane and democratic laws" while the defendant had made "a profession of faith of a true political delinquent, at the service of international communism."[3] The judge suggested that the defendant was paranoid, sick, and perverse, and had made up his allegations of torture. He also did not explicitly acknowledge a telegram demanding humane treatment and judicial guarantees for Oliveira Brandt from a group of French professors including Roland Barthes, Roger Bastide, Pierre Bourdieu, Michel Foucault, Claude Lefort, Emmanuel Le Roy Ladurie, Serge Moscovici, Nicos Poulantzas, and Alain Touraine. Oliveira Brandt had studied in Paris at the Sorbonne, and because his detention was public knowledge, professors at his former institution had tried to come to his aid.[4]

Oliveira Brandt's lawyer, Idebal Piveta, immediately appealed the verdict. Over a year later, on October 27, 1972, the Superior Military Court (Superior Tribunal Militar, or STM), the appeals court in the military justice system made up of ten active-duty, senior military officers and five civilians, ruled on Oliveira Brandt's appeal. It upheld Oliveira Brandt's conviction but lowered his sentence from five to three years. Defense lawyer Piveta then made yet another appeal, this time as far as it could go—to the civilian Supreme Court, made up of eleven civilian judges. On March 26, 1974, the Supreme Court upheld Oliveira Brandt's conviction. The decision contains a detailed discussion of the defendant's Marxist political views, but no discussion of the charge that he was a member of the PRT nor the lack of evidence for that charge. There was also no discussion of his allegations of torture. Oliveira Brandt was eventually released from prison after serving his three-year term, and he later became a university professor in his home state of Minas Gerais.

Oliveira Brandt's case is representative of a particular type of authoritarian legality. However, the authoritarian legalities of other military regimes in Latin America were often quite different from that of Brazil. While Oliveira Brandt was serving time in prison, political "criminals" were also being prosecuted on the other side of the Andes in Chile. On September 19, 1973, eight days after the start of a military coup that toppled the government of Salvador Allende, seven military officers serving temporarily on a "wartime" military court (*consejo de guerra*) in Antofagasta, northern Chile, issued a sentence in the case of Jorge Bolaños and Carlos Perez. Bolaños and Perez, members of the Socialist Party,

were accused of fabricating and distributing homemade grenades, engaging in "subversive indoctrination" of others, trying to infiltrate the police and armed forces, and hiding a cache of weapons. The military court considered the defendants to be "highly dangerous to the security of the armed forces and police, public order, and social peace, due to their intellectual condition and level of cultural preparation," and declared that Bolaños and Perez constituted "a permanent risk to human lives that is necessary to impede at whatever cost" (Arzobispado de Santiago 1989–1991, 1990, Tomo 2, Vol. 1, Rol 347–73, 98–100). The court proceedings were not public, and no French professors sent a telegram on behalf of Bolaños and Perez. The judges sentenced the defendants to death.[5]

Lawyers who later analyzed Bolaños and Perez's case argued that because the alleged crimes had been committed before the military coup and the declaration of a state of siege, the military court was retroactively imposing a wartime penalty on peacetime crimes, violating the 1925 constitution. This did not matter to the military commander of the region, who had the defendants executed by firing squad the next day, in the early morning of September 20, 1973.

Less than three years later, a different kind of execution took place in the River Plate region of South America. Monica Mignone was a twenty-four-year-old medical student in Buenos Aires, Argentina, in May 1976.[6] A military coup d'etat had occurred on March 24 of that year, and the new military junta was carrying out severe political repression. Monica's father, Emilio, was an educator and longtime Peronist activist, and Monica, who lived with her parents, donated some of her limited spare time to a clinic for the poor in one of Buenos Aires' less privileged neighborhoods. Perhaps this alone was what displeased members of the security forces, or perhaps she was apprehended because she was a young and attractive woman. Whatever their motives, plainclothes security agents kidnapped Monica in her home at 5:00 a.m. on the morning of May 14, 1976, and she was never seen again.[7]

The cases of Vinicius Oliveira Brandt, Jorge Bolaños and Carlos Perez, and Monica Mignone are broadly representative of three very different ways of institutionalizing political repression under military rule. The first represents the greatest degree of civilian-military cooperation, the slowest and most public proceedings, and the widest latitude for defendants and their supporters in civil society to maneuver within the system. The Brazilian military regime used peacetime military courts to prosecute political dissidents and opponents without ever suspending the constitution. Torture was widespread but disappearances were rare, and trials in military courts involved civilian participation on the

bench and at the bar and left some room for the defense of the accused. Courts issued death sentences in only four instances, and these were never carried out because they were reversed on appeal. In the case of Oliveira Brandt, a suspected member of a revolutionary organization was tortured and then tried in a military court, and his lawyer appealed the case all the way to the civilian Supreme Court, as was possible during the entire period of military rule in Brazil. Lacking evidence, the military court still sentenced the defendant to five years in prison, in part because of his declaration of his oppositional political ideas. In the appeals process, which took almost three years, the conviction was upheld, but the sentence was reduced.

The second case represents a highly autonomous and punitive military court system. The Chilean military regime, created nine years after its Brazilian counterpart, was draconian in comparison to Brazil. The Chilean military suspended the constitution, declared a state of siege, and executed hundreds of people without trial. Torture was common, and most prosecutions that did take place occurred in "wartime" military courts, insulated from the civilian judiciary, for the first five years of the regime. The defendants faced rapid verdicts and sentences, including the death penalty. In the case of Bolaños and Perez, a military court hastily sentenced and executed two political activists whose alleged crimes were not subject to the death penalty at the time they were committed. The defendants had few procedural rights and no effective right of appeal. The Chilean Supreme Court refused to review any military court verdicts, including this one.

The third case was part of a "dirty war."[8] The Argentine institutional matrix, instituted three years after the Chilean coup, was the most drastic of all. In it, courts were largely uninvolved in the repressive system, except to deny writs of habeas corpus and serve as a cover for state terror.[9] Security personnel instead picked up a defenseless person at her home, took her to a secret detention center, interrogated and tortured her, and then "disappeared" her without explanation or record, part of a repressive strategy that had become almost entirely extrajudicial. The ability of victims to maneuver within such a system was very small, and family members were not even given the consolation of the right to grieve over the body of the victim. In institutional terms, the Argentine regime was the most innovative and the most daring of all three military dictatorships. It was the only one of the three that accomplished the rare political feat of creating something truly new.[10]

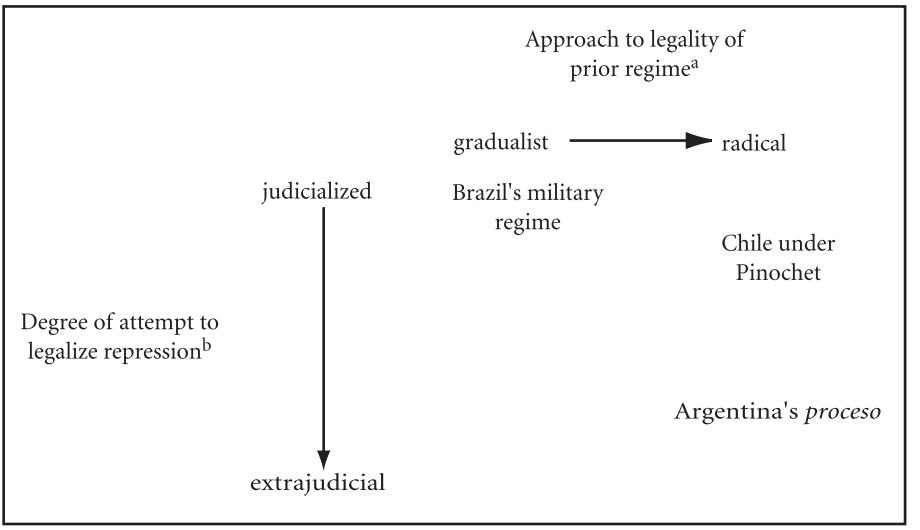

Figure 1.1: Variation in legal approaches to repression

[a]Measured by the ratio of the number of political prisoners prosecuted by the courts to the number killed extrajudicially.

[b]Based on a qualitative assessment of the degree to which the legal system under military rule was different from the legal system prior to military rule, as seen in constitutional changes, institutional acts, decrees, and laws issued by military rulers.

Although all of the regimes that created these institutional complexes were broadly similar, their legal strategies vis-à-vis opponents and dissidents were markedly different. Figure 1.1 highlights two aspects of this difference. The regimes varied in the degree to which their authoritarian legality broke with preauthoritarian legal forms, as well as in the extent to which the treatment of political prisoners was regulated by law (what I call the judicialization of repression).

Authoritarian Legality

To date, few studies of authoritarian regimes have focused on their application of the law.[11] Most studies of authoritarianism assume that regimes that come to power by force cannot rely on the law to maintain control of society or to legitimize themselves; their unconstitutional origins are seen as making such an effort contradictory and impossible. A recent survey of authoritarian regimes in

the twentieth century, for example, devotes no attention to legal manipulation, political trials, or the relationship of repression to the legal system; indeed, it does not even list "law" in its index![12] Yet a cursory glance at actual authoritarian regimes should lead to a questioning of this lacuna and the assumption that seems to underlie it. In fact, authoritarian regimes use the law and courts to bolster their rule all the time, in ways that a simplistic distinction between de facto and constitutional (or de jure) regimes obscures. In particular, many regimes resort to trials of their political opponents and the legal foundations and procedures of these trials vary enormously. In 1975, the political scientist Juan Linz wrote, "Unfortunately, we have no comparative analysis of political trials under different types of political system to capture the different styles of the proceedings . . ." (224). His complaint is still valid today.

There are several reasons to care about political trials and differences between types of authoritarian legality. First, the decision to use trials and not sheer force in dealing with regime opponents can—under certain circumstances—make a difference to the overall pattern of repression by an authoritarian regime. In the words of Otto Kirchheimer, political trials can be a "saving grace" of repression that, due to the "very character and procedural hurdles of the judicial system, together with the limits to the powerholders' ability to exercise total control by informal devices, often make the actual administration of a policy of repression fall short of the original blueprint" (1961, 422).[13] When rulers of a state are concerned about legal procedures—even when they manipulate those procedures in their own interest—defense lawyers then may have opportunities to monitor the safety of their clients, and this can save lives (see Shklar 1964, 1–2). Admittedly, trials sometimes lead to executions, as the case of Bolaños and Perez in Chile in 1973 makes clear. Nevertheless, they require adherence to formal procedures that can sometimes mitigate the worst effects of repression.

A second reason for studying political trials and the legal strategies and politics surrounding them is for the insights into authoritarian regimes that this study can produce. Despite the initial tendency to see the military regimes of Brazil and the southern cone as part of a single category of "bureaucratic authoritarian" regime,[14] considerable scholarly effort has been made in recent years to analyze the significant differences between them. For example, Schamis (1991) and Remmer (1989) have shown the important differences in economic policy among these regimes. Linz and Stepan (1996) have argued that variations in five different aspects of authoritarian regimes influence the nature of their subsequent transitions to democratic rule. Similarly, Arceneaux (2001) claims

that institutional differences within the military regimes of Brazil and the southern cone influenced each regime's control over the transition, and hence the nature of post-transition democracies. And Feitlowitz shows how the most recent of Argentina's military regimes used rhetoric that drew on the language of Argentine ultraconservative movements and previous regimes (1998, esp. chap. 1). Numerous other studies have provided similar insights, slowly unpacking a generic "bureaucratic-authoritarian" regime type into a more nuanced array of subtypes.

Studying national security legality and political trials can contribute to this effort. Each regime examined here struggled with the legality of its repression and attempted to "frame" at least part of that repression with a scaffolding of laws and legal procedures. Using courts to try political opponents was an effort to gain greater legitimacy but one purchased at the cost of a certain loss of control over the outcome of individual trials. Analyzing how each regime managed this trade-off provides an important insight into its politics and in particular the historical conflict that each was trying to recast or overcome. Political trials record the struggle of the regime to maintain its dominance at a practical and symbolic level; to articulate its core values; and to refute the beliefs of perceived opponents, ranging from those who had risked their lives to take up arms against the established order to others who made apparently innocuous statements construed by someone as subversive. Examining a regime's alleged enemies and how it treated them can therefore reveal much about the motives and aspirations of the regime's leaders.[15]

The third reason for studying authoritarian legality and political trials is that they allow us to construct a more detailed picture of exactly how the law was manipulated, distorted, and abused—or maintained unchanged—under authoritarianism. Such a project is important in an era in which the lack of a strong rule of law in many new democracies is widely recognized as a serious problem (e.g., Holston and Caldeira 1998; Prillaman 2000; Ungar 2002; Linz and Stepan 1996; Méndez, O'Donnell, and Pinheiro 1999; O'Donnell 1999). Furthermore, the distinction between authoritarian and "semi-authoritarian" or "illiberally democratic" regimes also usually hinges on the functioning (or malfunctioning) of the rule of law (see, e.g., Zakaria 1997, 2003, esp. chap. 3; Ottaway 2003). Some scholars also argue that states of emergency or exception are becoming more and more common in established democracies, blurring the distinction between authoritarian and democratic regimes.[16]

An important insight to be gained by examining political trials in Brazil

and the southern cone is that none of these regimes was able to completely recast the law to fit its perceived national security interests. Judges in the political trials struggled to reconcile newer national security conceptions of law with older liberal notions, and sometimes—surprisingly—upheld the latter at the expense of the former, at least in Brazil.[17]

Just as there was much legal continuity from democracy to authoritarianism, however, the transitions to democracy in the 1980s did not entirely dismantle the repressive legal apparatus that had been constructed under military rule. For example, the verdicts of the political trials in Brazil and Chile were never repudiated by the state, even after the transitions to democracy. Some of the laws on which the trials were based—and the institutions that prosecuted and tried political defendants—still exist. Looking at the trials helps us to understand exactly what has and has not changed in the legal sphere as a result of democratization in Brazil and the southern cone, and to identify those vestiges of authoritarian legality that still exist there.

Finally, the historical record allows us to give voice to actors whose passions, convictions, and deeds have been largely forgotten in the post–Cold War world.[18] It might well be thought that political trials in Brazil and the southern cone involved only hardened revolutionaries on one side, and committed defenders of the national security state on the other. Yet most of the defendants in the political trials of Brazil and the southern cone were not prosecuted for armed actions against the government. Far more frequently, they were charged with crimes of association or opinion, and their views about the regime and its opposition were often considerably more complex, ambiguous, and varied than might be supposed. Similarly, prosecutors and judges in the military courts sometimes disagreed with hard-line interpretations of the national security laws and conceded to defense lawyers' arguments that their clients had a right to disagree with the official pronouncements of military rulers.[19] Indeed, hard-liners in these regimes sometimes distrusted members of the judiciary as much as they did the "subversives" that they were fighting.

Political trials and the framework of authoritarian legality in which they were conducted in Brazil and the southern cone thus deserve the attention of social scientists not just because ample documentation about them exists, but because they can help us answer important questions about the politics of authoritarian rule, the relationship between law and repression, the role of political trials in authoritarianism, and the views and actions of specific historical actors.

The Argument

The military regimes of Brazil, Chile, and Argentina are good candidates for comparison. They were founded in opposition to left-populist movements that had much in common and they were strongly connected by historical epoch, geographic proximity, common external influences, and roughly equivalent internal dynamics. The three cases are also comparable in terms of level of economic development, position in the global economic system, and cultural traditions of authoritarian rule. They thus allow for structured, focused narratives that control for several factors and explore particular explanations of the differing authoritarian legalities of the regimes.[20]

It might be thought that the regimes' various legal strategies can be accounted for simply by the strength of the opposition faced by each. The Brazilian coup was preemptive and the military's opposition very weak; the Chilean coup was a "rollback" coup,[21] but armed opposition to the military regime was relatively insignificant; and the Argentine regime faced what was probably the strongest armed left in Latin America at that time.[22] However, the scope and intensity of regime repression should not be confused with its form. The strength of the opposition does not account for the distinctive institutional matrix of each regime or the different organizational arrangements for dealing with subversion in each case.[23] Why did the Argentine military regime not prosecute more suspected guerrillas in military courts? Why were so few members of the Brazilian armed left disappeared? Why were Chile's military court trials so insulated from the civilian judiciary? These questions are important, because the institutional form of authoritarian repression can influence its breadth and intensity and, in particular, how open it is to resistance, challenge, and modification by victims and their supporters. Furthermore, the institutional form of repression may influence in important ways the attempts of a new government to engage in transitional justice.

This book advances a different argument to unlock the puzzle of legal variation in Brazil and the southern cone. It argues that to answer the questions above, one must study the timing and sequence of institutional changes in the realm of political repression. The key lies primarily in history, or more specifically, the cumulative influence of previous political decisions about institutions.

I argue that the variation can be explained primarily by the differing degrees of integration and consensus between judicial and military elites prior to

those regimes, as well as the interaction between the legal system, defense lawyers, and civil society groups. Judicial and military elites constitute corporate status groups, each with its own powerful organization within the state apparatus, and these status groups strongly influence the development and application of law under authoritarian regimes.[24] Consensus is defined here as substantial elite agreement about the overall design, goals, and tactics of policy (Melanson 1991, 1–12). Key factors in the formation of consensus between the groups are the organizational contours of the military justice system, the extent to which the dominant military factions and their supporters perceive themselves to be threatened, the history of relations between military officers and the judiciary, and the degree of conflict between these groups over interpretations of national security law. My contention is that this kind of integration and consensus was highest in Brazil and lowest in Argentine, with Chile occupying a middle position.[25] My argument is historical, because I argue that political and social conditions in place before the formation of each political regime were important in shaping subsequent decisions by regime leaders. While policies that shaped the legal system under military rule were all put in place after military coups, conditions prior to the coups were important in shaping attitudes among and relations between judicial and civilian elites. The policy decisions that occurred after regime change were important because they formed systems that endured for a relatively long period of time. It is striking that once established, the basic legal orientation of the military regimes examined here did not fundamentally change during the course of their rule.

It might be objected that it is difficult to measure judicial-military integration and consensus independently of the variable they are supposed to explain —the legal strategy adopted by the military regime. It is difficult, but not impossible. In this book, I have used two indicators to gauge the degree of consensus and integration between military officers and judicial elites. First, the organization of the military justice system is a key variable. The degree of formal connection between military and judicial elites in the application of national security law matters. Where military courts are part of the civilian justice system, with the participation of civilian judges and prosecutors, as in Brazil, military and judicial elites are compelled, through their common participation in the same hybrid system, to construct and maintain a cross-organizational understanding of the concrete meaning and applicability of national security law. Where military courts at the first level are completely separate from civilian justice, as in Chile, the military can more easily act upon its own view of polit-

ical justice, without regard for the ideas of civilian judges and lawyers. This variable can be discerned in the formal architecture of the military justice system, but its significance goes beyond the architecture itself and affects the attitudes, dispositions, and mutual understandings of military and judicial elites.

Consensus is harder to measure. Consensus refers to the extent of agreement across status groups about key national security ideas and how to apply them. To gauge consensus, I have examined the opinions of both civilian legal experts and military officers on national security legality, political trials, and the regime's treatment of opponents. These views can be found in newspapers, memoirs, academic studies, legal decisions, and specialized journals dealing with the military, the law, and military justice. This is a qualitative judgment, but consensus between military officers and civilian judicial elites can be inferred to be high, medium, or low, depending on the harmony between the military and civilian views expressed in these sources. I have coded Brazilian sources as reflecting a high degree of consensus, Chilean sources as indicating medium consensus, and Argentina as low consensus. The sources used for these judgments are referred to in the narrative that follows and are described in the appendix and references at the end of the book.

Consensus between and integration of military and civilian elites on national security issues does not imply "hegemony" or some other term connoting consensus beyond these elite groups. Many views of the political trials and national security legislation prevailed in all three of the countries analyzed here and can be found in the historical record. Defendants in the political trials certainly held their own views, and when they indicated that they accepted the legitimacy of the courts and the national security legality under which they were being prosecuted, this was usually done for tactical reasons and was unlikely to have been completely heartfelt. Evidence also suggests that defense lawyers who exalted the legitimacy of military courts during trials publicly questioned them and the national security legality they enforced in other venues.

Some scholars might prefer the more inclusive term "legal culture" to my terms consensus and integration. However, legal culture connotes many aspects of the judicial sphere that I do not cover in this book; therefore, I prefer to focus on institutions in the sense used by Douglass North, as the formal and informal rules regulating behavior, including both consciously created rules and those that evolve gradually over time (1990, 4). These rules include the internal rules of organizations such as the military and judiciary.

While I examine the Brazilian, Chilean, and Argentine cases along similar

dimensions, I should mention three limitations of this study. First, when I examine the regimes' legal strategies, I concentrate primarily on the treatment of dissidents and opponents in courts, and not the many other aspects of legal policy under these regimes. This makes sense because political trials were important in shaping state-society relations and in revealing the concrete meaning of national security laws as they pertained to citizens. Second, I concentrate primarily on the Brazilian case, using the Argentine and Chilean cases to highlight the distinctiveness of the Brazilian trajectory of political justice. I also assert that only in the Brazilian case were defense lawyers able to significantly alter interpretations of national security laws. Third, for the Chilean case, I concentrate only on the period of "wartime" military courts from 1973 to 1978, due both to lack of data from the period after that and to clarify the comparisons of types of authoritarian legality made in the book.[26]

Studying judicial-military consensus and integration prior to and during military rule reveals new insights into the issue of regime legality. In Brazil, the 1930 revolution involved civilian-military cooperation that resulted in the organizational fusion of civilian and military justice in the 1934 constitution. Civil-military cooperation and integration remained a hallmark of the Brazilian approach to political crime. The repression initiated by the 1964 coup was highly judicialized and gradualist; the regime slowly modified some aspects of traditional legality but did not engage in widespread extrajudicial killing, even after the hardening of the regime in the late 1960s.

In Chile, in contrast, the military was much less closely associated with a civil-military political project in the interwar years. Instead, it disdained civilian politics, and gained a reputation for a "Prussian" degree of professionalization and autonomy. Military justice in the first instance was strictly separated from civilian courts. When the military occasionally intervened in local areas at times of conflict, it temporarily usurped judicial authority rather than working within civil-military institutions established by consensus, as in Brazil. This pattern can be seen again after the 1973 coup. The legality of the Pinochet regime was more radical and militarized than Brazil's, even after the adoption of "peacetime" military courts in 1978 and the ratification of the 1980 constitution.

Argentina represents yet another path that puts it in the lower right quadrant—radical and extrajudicial—of figure 1.1, a radical break with previous legality and a largely extrajudicial assault on regime opponents. If the Chilean military tended to usurp judicial authority, its Argentine counterpart tended to reject and override it altogether. Mediating conflict in a highly polarized polity,

the Argentine military was prone to use force directly, and then induce a dependent judiciary to ratify its de facto power. Here we see the least amount of civil-military cooperation and integration in the judicial realm. While rulers in the period of military rule from 1966 to 1973 tried to build authoritarian legality along the lines of their Brazilian and Chilean counterparts, these efforts were reversed. This set military officers on a collision course with the judiciary as they concluded that a judicial solution to the problem of political crime would not work.

My argument therefore distinguishes between authoritarian regimes based on their approach to the law. I contend that under authoritarian rule, military-judicial consensus and integration moderates political repression by allowing for its judicialization. Under judicialized repression, defense lawyers and civil society opposition groups can defend democratic principles to some degree, even if this opportunity is highly constricted. Where the military views the judiciary with suspicion or outright hostility, on the other hand, it is likely to usurp judicial functions and engage in purely military court proceedings, as in Chile, or completely ignore the law altogether and treat defense lawyers and sometimes even judges as subversive enemies, as in Argentina. The scope for the defense of democratic principles is more limited in the former and almost nonexistent in the latter. The danger in military regimes is that the military will bypass or even destroy the judiciary and engage in all-out war with its perceived opponents; in such an outcome, defense lawyers and civil society groups must wait for the end of the authoritarian regime to demand justice with any hope of success.

In addition to demonstrating the applicability of the overall argument to the three cases, this book pursues another related goal: to analyze in depth political trials under those regimes—in Brazil and Chile—that used this tactic extensively. Because there has been so little scholarly analysis of these trials, it is important to describe them empirically and to confirm to what degree they were both similar and different.[27] Who was prosecuted in political trials in the military courts, how, and why? What happened to them in the courts? In much of the literature on authoritarian regimes, such legal maneuvers are regarded as relatively unimportant compared to the presumably more fundamental logics of dependent capitalist accumulation or national security ideology that are seen as having driven each regime's repression. Yet these trials were not mere charades that simply put a gloss of legality on the regime's repression. They were legal exercises conducted by individuals who seemed to believe in the legitimacy

and coherence of the laws. These prosecutors and judges made careful efforts to examine vague national security laws and apply them to concrete instances of individual behavior, deciding what was or was not subversive. Although the regimes took power by force, their efforts to legalize and legitimize their repression were important to their consolidation.

This book therefore uses the historical record to explain how and why political trials were initiated, maintained, and abandoned under military regimes in Brazil, Chile, and Argentina. It is not an attempt to compare those regimes in toto. It is also not a study of the opposition to military rule. While some knowledge of the opposition groups that were targeted for repression is indispensable for understanding authoritarian legality, the goal of the book is to understand legal institutions, not opposition groups. The book is not a detailed study of national security ideology in each country nor an analysis of the entire legal structure that each regime created, although some understanding of the latter is necessary for the case studies. I do assume that the way in which the regimes dealt with opponents and critics is a vital element of their respective legal strategies and can be used as a way to characterize them comparatively.

The next chapter frames the issue and describes the political repression that was the context of the authoritarian regimes' legal strategies. I then trace the historical background to the distinctive approaches to authoritarian repression in Brazil, Chile, and Argentina, arguing that patterns of repression between the countries look similar at the beginning of the twentieth century, gradually emerging on slightly different pathways in subsequent decades. Chapter 4 examines the distinctive way in which political trials in Brazil worked, while chapters 5 and 6 deal with two distinctive institutional matrices, the Chilean and the Argentine, respectively. Chapter 7 returns to the analysis of Brazil, examining a variety of cases in which the boundaries between free speech and subversive propaganda, terrorism and ordinary crime, offenses against authority and legitimate criticism, and foreign and Brazilian ideas and behavior were drawn. Chapter 8 asks what difference the variation in the modes of repression made to the different patterns of transitional justice in each country. At the end of the book, I extend the analytical framework developed for Brazil and the southern cone to three European authoritarian regimes—Nazi Germany, Franco's Spain, and Salazarist Portugal—showing how the framework developed here, with some modification, can help understand the degree of judicialization of authoritarian regimes that are not ruled directly by the military. I also suggest that a fur-

ther modification of the framework is necessary if it is applied to democracies by examining the case of the United States since September 11, 2001.

In the United States, unlike the southern cone military regimes, military-judicial consensus and integration are unlikely to be a moderating force on repression, because they reduce rather than expand the space in which defense lawyers and civil society groups can defend individual rights. The U.S. case suggests that under democratic regimes, military-judicial conflict, rather than cooperation, is a moderating force, opening up space for the defense of constitutional guarantees. In authoritarian regimes, in contrast, too much military-judicial conflict threatens to spur the military into extrajudicial repression; judicial-military integration and consensus provide a rule-bound system in which some physical guarantees for political prisoners can be preserved. The dynamics of political justice therefore may be very different depending on the nature of the political regime. Put another way, authoritarian legality must be studied within the broader political context of which it is a part.