

# The Political Economy of Remembering Past Violence

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When we think back on the 1960s–1980s Latin American authoritarian period, it cannot be forgotten that this was as much an economic project as a political one. Indeed, the recent protests that erupted in Chile, particularly the claim, “No son 30 pesos, son 30 años,” remind us that authoritarian violence was, in fact, primarily economic. Yet one of the criticisms of the transitional justice initiatives aimed at addressing that past violence is its focus on the political side of authoritarian rule and armed conflict without sufficient attention to the economic side. As we have seen in the eruption of protests around the region, it may be time to reconsider that orientation.

The project in which I have been involved—forthcoming in the book *Corporate Accountability and Transitional Justice: Deploying Archimedes’ Lever* (Cambridge University Press)—explores that orientation. It rescues from invisibility the aspects of transitional justice that do not fit the criticism. That is, they address the political economic roots of violence.

## The Political Economic Roots of Violence

The Cold War was raging. Following the successful Cuban Revolution, revolutionary and guerrilla movements and mobilization of civil society groups for social justice and equality throughout Latin America signaled an impending left-wing threat to the capitalist order. The mobilization demanded an end to the skewed distribution of wealth and resources that resulted in social, political, and economic marginalization of most of the region’s population.

The response came quickly: a violent civil-military backlash against urban workers’ and trade union mobilization; poor rural communities demanding rights; political and social activists engaged in redistributive struggles; leftist guerrilla and revolutionary groups that had taken up arms to bring change in the economic model. Disentangling the mobilization from the repressive reaction to it poses the question of when existing movements were crushed by authoritarian violence and when movements rose up to struggle against authoritarian regimes. The violence perpetrated by the authoritarian forces against these mobilizations is undeniable, even if the order of the emergence is not always clear.

The violence unleashed in Brazil and the Southern Cone against social mobilization was referred to by Argentine political scientist/sociologist Guillermo O’Donnell as the bureaucratic authoritarian state, an alliance formed among three sets of actors—business, the military, right-wing politicians, and technocrats—to thwart the perceived threat of communism, to establish a national security state, and to strengthen capitalism in the region. In Brazil, sociologist Peter Evans referred to the *tri-pe*, a tripod of economic, political, and military elites with the objective of rolling back hard-won working-class victories in the benefit of a capitalist model. Historian Peter Winn wrote about labor struggle in Chile that attempted, but failed, to push socialist president Salvador Allende in a more radically redistributive direction, before his overthrow in the 1973 coup. The role of US multinational corporations and US policymakers in the backlash against distributive and nationalizing processes also formed part of the alliance behind the coup and its repressive policies, as Cynthia Arnson’s work shows. The coup alliances and the authoritarian

regimes they implanted aimed to “roll back” the gains made by the political left and the working class and the rural and urban poor. The language of revolution used by the leaders of the Brazilian coup and authoritarian regime made unambiguous the violent and radical political and economic transformation envisioned by the private sector-military-political alliance.

The political economic roots of the armed conflicts in Central America and Colombia are not dissimilar. The rise of guerrilla warfare encompassed indigenous communities, rural and urban workers, the poor, and other marginalized communities in the armed struggle for freedom and equality and for economic, social, and cultural rights. That redistributive threat to the economic, social, and cultural status quo was the reason such mobilizations had to be halted in violent counterrevolutionary and counterinsurgency warfare.

### **The Transitional Justice Political Project**

Scholars critical of transitional justice, Paul Gready and Simon Robin, for example, and critical human rights scholars such as Samuel Moyn focus on its failure to address the political economic roots of past violence. The underlying liberal and political rights tradition—maintaining the capitalist status quo—has won out in the creation of mechanisms for political transitions from authoritarian rule and armed conflict. These critics contend that the economic, social, and cultural roots of the violence are ignored along with economic, social, and cultural forms of transition and justice. They ask what we can expect for sustainable transitions to peace and democracy when the institutional pathways do not confront the social, economic, and cultural causes of past violence.

Pragmatists might suggest that we cannot know the answer to a counter-factual question: If transitional justice addressed the political economic root causes of violence, would peace and democracy prove more stable and sustainable? The research in which I have been engaged suggests that the answer is partially knowable. Specifically,

it contends that transitional justice has, in fact but largely invisibly, dealt with the economic roots of past violence.

In doing so, transitional justice processes begin to address a victims’ gap in which victims of certain types of violations—that is, those carried out by economic actors complicit in authoritarian and armed-conflict abuses—have rights on the books, but the legal mechanisms to realize them are missing. No binding and enforceable international law or court exists to bring justice for these wrongs. As a result, there is little to no international pressure on states to address these kinds of violations and the rights of victims. Therefore, when transitional justice mechanisms begin to bring justice for these types of corporate wrongs, they occur from below. They create examples of state practices of truth and justice for past abuses. They implement a strategy that has the potential to shape, and even transform, global human rights norms and practices regarding accountability for crimes against humanity committed by private actors. They thus present a transitional justice model that addresses the root causes of past violence: the underlying conditions of inequality and marginalization that led to mobilization and armed conflict and authoritarian state violence in which economic actors were involved in response. Moreover, the model fits well within the existing transitional justice framework, employing truth commission and retributive justice tools adaptable to different country contexts.

### **Corporate Accountability and Transitional Justice**

These conclusions are drawn from the Corporate Accountability and Transitional Justice (CATJ) project. Together with my colleagues Dr. Laura Bernal-Bermudez and Dr. Gabriel Pereira (and others) at the University of Oxford, and in collaboration with Dejusticia in Colombia, the Centro de Estudios Legales y Sociales (CELS) and Abogados y Abogadas del Noroeste Argentino en Derechos Humanos y Estudios Sociales (Andhes) in Argentina, and other NGOs such as Londres-38 in Chile, we constructed a database of all accountability mechanisms dealing with corporate accountability and transitional justice around the world, from Nuremberg to the present. We tracked

accountability mechanisms for economic actors accused of crimes against humanity in international and foreign civil and criminal trials, domestic civil and criminal trials, truth commissions, and the Justice and Peace special prosecution in Colombia.

Our analysis of these data show that corporate accountability has been part of each type of transitional justice mechanism even if the scholarship and practice of transitional justice has not explicitly recognized the ongoing practice. Perhaps one reason for the lack of attention is that these are primarily “from below” types of processes in countries of the global South, and particularly in Latin America. Latin America has nearly 60 percent of the truth commissions in the world that have identified economic actors by name who are alleged to have been involved in crimes against humanity. There are more guilty verdicts and pending legal decisions in Latin America than in courts in any other region. Two countries in Latin America, Argentina and Colombia, have rendered more judgments on corporate complicity in armed conflict and authoritarian regime violence than any other domestic courts in the world, any foreign courts, or any international court. The only domestic criminal court that has found executives of a multinational corporate guilty for crimes against humanity during armed conflict and authoritarian state violence is in Argentina, in the trial against Ford Motor Company in December 2018.

What explains the region’s protagonism for truth and justice for economic actors’ human rights violations? One might assume that the legacy of transitional justice in the region provides an explanation. However, neither the transitional justice history nor its robustness in Latin America seem to explain the region’s leading role in corporate accountability. While Argentina and Colombia have gone the furthest in criminal accountability for economic actors’ complicity, Argentina arguably represents the oldest and most robust adopter of transitional justice in the world, and Colombia is the latest adopter. In addition, Brazil is considered one of the most reluctant adopters of transitional justice in the region, and yet its truth commission named more economic actors

connected to corporate complicity in the crimes of the dictatorship than any other commission in the world.

We contend that the relationship to transitional justice is endogenous. That is, the same factors that explain the region’s leadership in transitional justice also explain its protagonism behind corporate accountability and transitional justice. We use the analogy of Archimedes’s lever to illustrate this relationship.

### Archimedes’s Lever and Corporate Accountability

Archimedes asserted that “with the right tools, weak actors can lift the world.” Our analogy focuses on the features of Archimedes’s lever that help us explain Latin American protagonism: weak actors, the right tools, the world or the weight that needs lifting, the force holding down that weight, and the position of the fulcrum.

The process of corporate accountability begins with weak actors with the right set of tools. The weak actors in our analogy are victims, survivors, and civil society forces in the global South. They have to mobilize to exert pressure on the lever, that is, to demand justice for corporate complicity and to begin the process of accountability. Because they are weak actors, they need a set of *tools* to successfully lift the weight of corporate accountability. The tools, or the lever, are institutional innovators who have the capacity to translate civil society demands into truth commission reports that name economic actors allegedly involved in crimes against humanity, or into judicial action in courts. The innovators include truth commission staff; human rights lawyers working with victims, relatives, and nongovernmental organizations; other organized groups in civil society, such as trade unions; and other judicial actors including prosecutors and judges. In truth commissions, their innovation involves hewing to the broad mandate of investigating internationally recognized crimes against humanity even when the commissions’ mandate does not include corporate complicity, as few do. It also involves retaining in the final commission report, after editing and redaction,

those victims' and relatives' testimonies to economic actors' violations. In judicial processes, lawyers, prosecutors, and judges innovate by blending ordinary domestic law such as labor law, money-laundering legislation, and criminal law with international human rights norms incorporated into the country's national legislation. This allows for processes to move forward, getting around statutes of limitations, for example, or other constraints imposed on the application of domestic law alone.

The *world* that civil society and institutional innovators attempt to lift up is global accountability for corporate human rights abuses. This weight is held down by two main forces. First, veto players in the economic sector often have powerful alliances in the government and the judiciary to apply more pressure than the civil society forces demanding justice. In addition, while international pressure proved crucial in advancing transitional justice in the region, it has been almost nonexistent in the area of corporate complicity and transitional justice. This could be explained by veto players at the international level. More specifically, however, binding and enforceable international human rights norms regarding economic actors' human rights obligations and state's duties to address those violations when they occur simply do not exist. Thus, institutional innovators have to rely on general international human rights norms regarding crimes against humanity incorporated into national legislation. Judicial action tends to be brought using local civil and criminal jurisprudence, bolstered by international norms related to the nature of the crime and international norms in domestic legislation regarding how to address those crimes, particularly suspending statutes of limitations on crimes against humanity. We contend that when domestic processes in truth commissions and courts advance corporate accountability, they are lifting up global human rights by addressing impunity. They begin to put into practice victims' rights to truth, justice, reparations, and guarantees of nonrepetition, thereby lifting up the global weight of corporate accountability.

Another key component of Archimedes's lever is the fulcrum. The closer the fulcrum is to the weight, the less pressure has to be applied by the weak actors. In our analogy, the closer the fulcrum—or the political context—is to corporate human rights accountability, the less pressure civil society has to apply to lift that weight. The position of the fulcrum thus represents propitious conditions in the domestic political environment, a neutral context, or an unfavorable context in which civil society actors and institutional innovators have to apply tremendous force or seek additional pressure from international actors, to lift the weight of corporate accountability for past human rights violations.

### Illustrations from Case Studies

Two illustrations—from the Brazilian National Truth Commission and the Argentine case against the Techint company—allow for an explanation of the application of Archimedes's lever to explain Latin America's protagonism in corporate accountability.

Despite Brazil failing to hold even one state perpetrator accountable for past human rights violations, the National Truth Commission went further than any other in naming economic actors allegedly complicit in human rights atrocities. The decentralized truth commission process in the country meant that different subnational commissions focused their investigations on local matters. The São Paulo State Truth Commission took a lead in examining corporate complicity. Behind these investigations were unions, workers, victims, and families, but also institutional innovators on the staff of the commission who carried out research in archives. Doubting that these findings at the state level would make it into the national commission's final report, pressure from below was exerted to pressure national commissioners. As a result of this pressure, Brazil's report names 123 economic actors, compared to the next highest number in Guatemala (45), Liberia (34), and South Africa (30). The combination of weak actors (the mobilization of victims and families connected to a mobilized trade union movement in São Paulo) with the right tools (innovative staff working in archives and guaranteeing that testimony and evidence made it into the final report), and absent veto players, allowed for the

National Truth Commission to begin to lift up global accountability for corporate complicity. Although it could be said that the findings of the truth commission are unknown in the world, and even in Brazil, the trade union movement has followed up by working with innovators in the state prosecution office to bring a civil claim against one of the companies mentioned in the truth commission report: Volkswagen. With a victim capable of giving testimony, and work with activist shareholders and the media in Germany, this case is moving forward and lifting global accountability for victims of corporate complicity. The unfavorable context of negative views in Brazil regarding accountability for past human rights violation has thus been overcome.

The Techint case illustrates how propitious domestic conditions can turn unfavorable over time with negative outcomes for victims. The daughter of Enrique Roberto Ingegnieros brought a civil case against the company for violating labor laws regarding the protection of her father's safety on the job. In 1977, he was called to the company's administration office, ostensibly to meet a relative, and was never seen again. The company is alleged to have worked with the repressive military apparatus in the disappearance of Ingegnieros and other workers for their radical trade union activity. The company denied its involvement in the disappearance and also claimed that the two-year statute of limitations under labor law had long since lapsed by the time the case was brought. The first court's decision concurred with the company but was subsequently reversed on appeal. The Supreme Court then heard the case and agreed with the lower court; the Court's composition rendered the decision favorable to the company, discounting the application of the suspension of the statute of limitations for crimes against humanity in labor cases. Techint, as a very powerful steel company linked to the previous dictatorship, with a recent chief justice linked to businesses in the Supreme Court, and an unfavorable environment under President Macri in which pressure was against human rights accountability, provides an example of veto players and unpropitious contexts weighing down corporate accountability. Recent efforts to take the case to

the Inter-American Commission of Human Rights may provide the international pressure that could outweigh the pressures against accountability.

## Final Reflections

To conclude, transitional justice has attempted to address the political economic root causes of violence in armed conflicts and authoritarian regimes through truth commissions and trials. It has done so mainly in Latin America and largely without international recognition or pressure. These "from below" processes begin to overcome a "victims' gap" by holding economic actors accountable for crimes against humanity. Yet, the same inequalities of wealth and power that contributed to the violence may also prevent the remedy. The absence of clear, binding, and enforceable human rights obligations of businesses and duties of states to address corporate complicity have limited the capacity to fulfill those rights. The global context is thus unfavorable to victims, reinforcing impunity. Even in these unfavorable political contexts at the international level and at the domestic level, mobilization by civil society groups accompanied by institutional innovators' tools have sometimes been able to lift up the weight of corporate accountability for human rights violations from under powerful veto players. This is primarily a process under way in Latin America, but it is a process that has potential to spread across country and regional borders because of the accessibility of these accountability tools available "from below." //