Law & Society REVIEW

Human Rights Prosecutions and the Participation Rights of Victims in Latin America

Verónica Michel Kathryn Sikkink

Since the 1980s, there has been a significant rise in domestic and international efforts to enforce individual criminal accountability for human rights violations through trials, but we still lack complete explanations for the emergence of this trend and the variation observed in the use of human rights prosecutions in the world. In this article, we examine the role that procedural law has had in allowing societal actors to influence in this rising trend for individual criminal accountability. We do this by focusing on participation rights granted to victims, such as private prosecution in criminal cases. Based on an exploration of an original database on human rights prosecutions in Latin America and fieldwork research in three countries, we argue that private prosecution is the key causal mechanism that allows societal actors to fight in domestic courts for individual criminal accountability for human rights violations.

Since the 1980s, we have witnessed a significant rise in domestic and international efforts to enforce individual criminal accountability for past human rights violations in democratizing states, a phenomenon that some have defined as a "revolution in accountability" (Sriram 2003), or a "justice cascade" (Lutz & Sikkink 2001; Sikkink 2011). Human rights prosecutions undermine longstanding beliefs and practices of impunity of state officials for past abuses, making them important vehicles for bringing about change in world politics. Recent research suggests that such prosecutions

This article is based upon research supported by the National Science Foundation (Grant no. 0961226) and the Arts and Humanities Research Council (Grant no. 0AH/I500030/1) relating to the project titled "The impact of transitional justice on human rights and democracy." Parts of this material are also based upon research funded by the Pre-Dissertation Fieldwork Grant from the International Center for the Study of Global Change, the International Thesis Research Grant, and the Doctoral Dissertation Fellowship of the U. of Minnesota. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the University of Minnesota, the NSF, or the AHRC. We would like to thank the editors and anonymous reviewers who provided insightful comments and suggestions that greatly helped us improve this article. We also wish to thank our NSF/AHRC research teams for their assistance with data for this article, and in particular, Geoff Dancy for preparation of Figure 2.

Please direct all correspondence to Verónica Michel, Department of Political Science, John Jay College-CUNY, 524 West 59th St., New York, NY 10019; e-mail: vmichel@jjay.cuny.edu.

Law & Society Review, Volume 47, Number 4 (2013)
© 2013 Law and Society Association. All rights reserved.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

can have an impact on improving human rights conditions, consolidating democracy, and preventing the renewal of conflict in the long term (Kim & Sikkink 2010; Sikkink 2011; Dancy 2013). Therefore, understanding the origins and prevalence of such prosecutions warrants our attention.

The literature has already put forward various explanations of the rise of human rights prosecutions, among these the type of transition to democracy, the degree of independence of the judiciary, and regional diffusion figure most prominently. Furthermore, previous research has highlighted the importance of international law and the presence of nongovernmental organizations (NGOs) to the efforts against impunity in human rights cases. However, the literature has failed to address the *causal mechanisms*[1] that allow NGOs and international law to impact human rights prosecutions. Here, we argue that by taking into account participation rights of victims, we improve our theoretical understandings of *how* NGOs use domestic and international law in domestic courts to push for individual criminal accountability. Domestic human rights NGOs have an impact on human rights prosecutions because they do not simply engage in "naming and shaming," but also *litigate* using participation rights such as private prosecution, which allows them to bring claims to domestic courts and introduce legal arguments that draw on international human rights treaty law.

In this article, we introduce the right to private prosecution, an often-overlooked institutional feature of some criminal justice systems, as the key causal mechanism that determines where and how societal actors are able to influence human rights prosecutions. The right to private prosecution allows victims and their lawyers, including domestic human rights organizations, to open a criminal investigation and actively participate throughout every stage of the criminal proceedings. In this article, we make two main claims: (1) private prosecution works as the vehicle through which societal actors engage in legal mobilization, bring human rights claims to the courts, and use and introduce international human rights law; and (2) that legal fights take place within a political and institutional context in which, at the very least, private prosecution opens doors for accountability by offering legal resources for societal actors to push for justice. Private prosecution also helps overcome barriers that state prosecutors face in holding other state officials accountable. Since human rights violations usually involve crimes committed by state officials, we might say that the state has a conflict of interest when it comes to human rights prosecutions. Even where the state is efficient in prosecuting ordinary crime, it may not be

[1] A causal mechanism is defined here as an intervening variable through which explanatory variables produce causal effects (George & Bennett 1997).

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

good at prosecuting itself. Private prosecutors thus assist in initiating and in keeping open human rights cases that would not have prospered without their involvement.

We make two contributions. Theoretically, we introduce participation rights of victims as the causal mechanism that accounts for where and how societal actors impact human rights prosecutions. In those countries where participation rights include private prosecution and a support structure is in place, we should see societal actors seize the opportunity to use litigation as a strategy to fight against impunity. When the political context is not ripe for justice, private prosecution also helps us understand how societal actors use legal resources to keep cases open. Empirically, we support these arguments drawing on a new database of human rights prosecutions in Latin America[2] that for the first time includes data on private prosecution, and offer preliminary evidence that shows that private prosecution has indeed been a legal right used by societal actors to push for justice for past human rights violations. Furthermore, we compare countries that have private prosecution (Argentina and Chile) with a country that does not offer the right to private prosecution (Uruguay) to show why and how victims' participation rights enable societal actors to bring and sustain their fight through domestic courts.

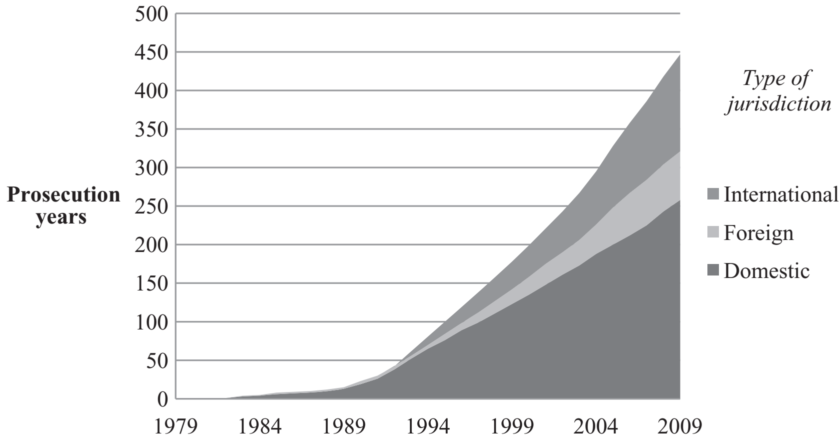
Global and Regional Trends in Human Rights Prosecutions

The justice cascade refers to a shift in the legitimacy of the norm of individual criminal accountability for human rights violations and an increase in criminal prosecutions on behalf of that norm (Sikkink 2011). We can gauge the strength of the justice norm by documenting the increasing use of criminal prosecutions at the domestic and international levels, drawing on data from the Transitional Justice Database on human rights prosecutions for all transitional countries, that is, countries moving from an undemocratic regime to a more democratic regime.[3] Figure 1 visually depicts the global norm cascade, and shows that until the mid-1980s, an increase in prosecutions is hardly noticeable. By the early 1990s, the number of such events began a steep increase. As is evident here, the bulk of trials are domestic prosecutions, i.e., they are occurring in the national courts of the country where the human rights violations originally occurred. Any explanation for the

[2] This database was coded in collaboration with the University of Minnesota/Oxford Transitional Justice Database project.

[3] The Transitional Justice Database project is available at: http://www.transitionaljusticedata.com

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press



Source: Phase one of updated data of the Minnesota dataset for transitional human rights prosecutions.

Figure 1. The Justice Cascade (Stacked Area Chart of Cumulated Prosecution Years by Type of Jurisdiction).

increase in criminal accountability must be able to address this increase in domestic prosecutions and not only the rise in international tribunals or foreign universal jurisdiction trials.

There is significant variation in the frequency of domestic human rights prosecutions in different regions of the world. As Figure 2 indicates, the trend toward domestic human rights prosecutions has been most pronounced in Latin America and in Central and Eastern Europe. Prosecutions are underway in Asia, Africa, and the Middle East, but to a lesser extent than in Europe and the Americas.[4]

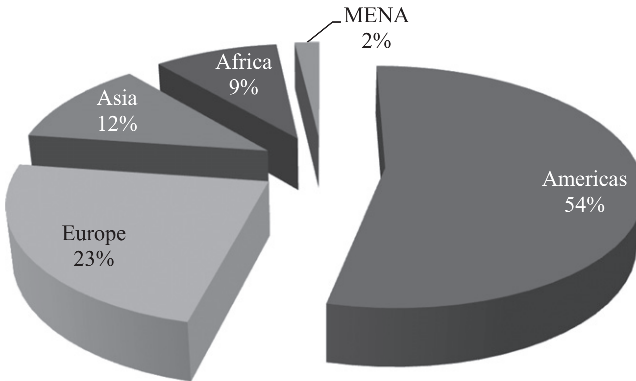
Participation rights for victims have long existed in most countries in Latin America. The most relevant of these rights is the right to private prosecution, which allows victims of crime or their surviving relatives to participate in the criminal proceedings. The fact that Latin America is the region that figures most prominently in domestic human rights prosecutions raises the question of if, and how, private prosecution relates to the increase in domestic human rights prosecutions.

Explaining Domestic Human Rights Prosecutions

The rise of human rights prosecutions was facilitated by two broader structural changes in the world, the third wave of democ-

[4] Although international and foreign prosecutions also form part of the Transitional Justice Database project, Figure 2 only shows data for domestic human rights prosecutions.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press



Source: University of Minnesota/Oxford Transitional Justice Database, transitionaljusticedata.com. Data for Latin America include North, Central, and South America, as well as the Caribbean.

Figure 2. Regional Distribution of Domestic Transitional Prosecutions, 1970–2009 (Ongoing).

racy (Huntington 1991) and the end of the Cold War. The first multiplied the number of transitional countries open to the trends described here, and the second opened space for countries to consider a wider range of policy options. There is a growing literature that has already identified various factors that help explain the rise in human rights prosecutions, including the type of transition to democracy (Elster 2004; Olsen, Payne, & Reiter 2010), the degree of independence of the judiciary (Skaar 2007, 2011), and the role of international human rights law and regional diffusion (Dancy & Sikkink 2011; Kim 2012). The research we present here does not call into question these explanations, but rather provides additional theoretical and empirical work to reveal the *causal mechanisms* behind the rise of domestic human rights prosecutions.

The presence of domestic human rights NGOs and transnational advocacy networks has been shown to be associated with the use of prosecutions. The literature assumes that these societal actors rely mostly on international and regional human rights law as a tool to mobilize and defend rights. Simmons (2009) has demonstrated persuasively that international human rights treaties improve human rights practices in transitional countries. She hypothesizes that international human rights law has this effect via domestic mobilization by groups that use treaties as a tool to pursue their rights agenda. Authors focusing on the role of NGOs on accountability politics argue that these advocacy groups work mainly through "information politics," by publicizing human rights violations and by "naming and shaming" regimes (Keck &

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Sikkink 1998; Murdie & Davis 2012; Risse, Ropp, & Sikkink 1999). But even when the literature recognizes the role of societal actors in activating judicial proceedings (Peruzzotti & Smulovitz 2006), in general, the literature has neglected to address how the *domestic* legal framework empowers and constrains activists to participate in such legal efforts. Thus, previous accounts do not explain how societal actors bring accountability politics into domestic courts, how exactly they can influence judicial outcomes, nor fully explain the ways in which these actors introduce international human rights law in domestic cases. In this article, we argue that victims' participation rights, in particular private prosecution, fill those gaps in previous theoretical explanations.

Until recently, relatively few authors have noticed the role that participation rights play in the efforts toward individual criminal accountability for human rights violations. Scholars working on *foreign* human rights prosecutions and universal jurisdiction have discussed the role of private prosecution in facilitating such trials (Kaleck 2009; Langer 2011; Reydams 2004; Roht-Arriaza 2005). Kaleck (2009) has stressed that such participation rights "cannot be underestimated" in universal jurisdiction cases, where NGOs play an important role gathering information more efficiently because of their privileged access to victims as private prosecutors, as well as to international experts and lawyers. Reydams (2004: 222) concurs that the exercise of universal jurisdiction for human rights violations is "primarily victim driven." There also has been some attention to the role of victims' participation rights in international human rights tribunals, especially in the International Criminal Court (Reydams, Ryngaert, & Wouters 2012). These works, however, do not explain or elaborate the nature and origins of participation rights for victims in criminal prosecutions, although the practice is very unfamiliar to the U.S. audience. Nor do they treat participation rights as an intervening variable to help account for the scope of human rights prosecutions in some countries, but not in others.

The literature has given less attention to the role that participation rights, such as private prosecution, play in promoting *domestic* human rights trials, the topic of this article (for exceptions, see Brinks 2008; Collins 2010; Sikkink 2011; Stephens 2001). We presume that such neglect or lack of engagement with the role of participation rights in domestic human rights trials may be due to a lack of awareness on the existence or importance of such provisions in domestic procedural law, or because of data limitations. Until now, the absence of data on the existence of such provisions in transitional countries made any cross-country comparison impossible.

Our work aims to fill these empirical and theoretical gaps in the literature, by developing and testing a theoretical framework that

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

introduces participation rights as a causal mechanism that determines how and where societal actors will be able to influence human rights prosecutions. We argue that countries offering strong participation rights to victims, such as private prosecution, provide the legal structure for societal actors to bring claims to the courts. However, drawing on the legal mobilization literature, we also hypothesize that for this right to be mobilized, a support structure must be in place (McAdam, Tarrow, & Tilly 1997; McCarthy & Zald 1977). Thus, where NGOs have mobilized *and* the right to private prosecution exists, we hypothesize that societal actors are able to move beyond "naming and shaming" strategies, and pursue litigation strategies within domestic courts. We further hypothesize that strong participation rights like private prosecution provide societal actors with the legal resources to influence prosecutions, as well as serve as the vehicle through which NGOs introduce international law into domestic courts to support their fight for individual criminal accountability.

Before turning to our empirical findings, in the next section, we offer a brief overview of what is the right to private prosecution, in order to understand its power and limits in supporting efforts toward individual criminal accountability in domestic courts.

Victims' Participation Rights and Private Prosecution

Private prosecution as such is not new in the history of common law and civil law systems. The most ancient antecedent to private prosecution can be traced back to Roman law and the institution of "*actio popularis*" or popular action (Pérez Gil 2003). Popular action, which remains a right for victims in countries like Spain, allows any citizen to file a claim in the name of the collective interest (Gimeno Sendra, Moreno Catena, & Cortes Dominguez 1999). With the consolidation of the state, the investigation and prosecution of crime was gradually centralized into the hands of the state, but with some nuances across countries. In the United Kingdom, private prosecution for criminal offenses was practiced until the nineteenth century, when the state instituted an office of public prosecution empowered to prosecute criminal offenders in the name of the public interest (Doak 2008). Similarly, in other common law countries like the United States or Australia, private prosecution eventually fell out of use by the twentieth century (Kirchengast 2008; Sidman 1975).[5] Even though common law systems have recently

[5] In the United States, private prosecution became a vestige of colonial times that eventually fell out of use. Some states even saw private prosecution as a figure contradictory to an adversarial system; hence, states like Massachusetts, Michigan, Wisconsin, Nebraska,

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

witnessed a rise of new victims' rights bills, in general, the victim has not been granted participation rights beyond the right to be heard and the right to be informed about the criminal proceedings.[6]

In civil law systems, some legal traditions have maintained throughout the centuries certain rights for victims that allow them to participate in the criminal proceedings as private prosecutors (for retribution purposes) or as civil actors (for restitution purposes). In some countries, for instance, the victim retained the right to participate as a *partie civile* or civil actor (a right that is present in all Germanic, Romanistic, and Nordic traditions) if he or she wants to receive restitution from the offender in the course of the criminal process (also known as civil action or *acción civil*).

Private prosecution seems to have taken its current form in Latin America mostly from German criminal procedural law,[7] which first introduced in the late nineteenth century the right of victims to participate in the investigation and prosecution of a criminal case (a right called *Nebenklage* or auxiliary/adhesive prosecutor; Pérez Gil 1997). Currently, private prosecution in Latin America allows victims or their surviving relatives to intervene at every stage of the criminal investigation and prosecution under the legal advice of a lawyer, who formally acts as the private prosecutor. Whereas the public prosecutor represents the interests of the state, the private prosecutor represents the interests of the victims or their relatives. The private prosecutor has several rights during the criminal proceedings, such as to introduce a criminal complaint, to request investigations, to have access to the investigation files, to participate during the hearings and trials, to bring evidence and question witnesses, and probably the most important right is the right to appeal any decision that can put an end to the prosecution (dismissals, acquittals, and plea bargains). For example, when the public prosecutor wishes to dismiss the case or drop the charges, the private prosecutor can introduce an appeal, requesting the judge to ask the state to reconsider its decision.

Today, we find two different types of private prosecutors in Latin America. The *auxiliary private prosecutor* "stands next to the

---

or Iowa, even prohibited its existence starting in the mid-nineteenth century (Sidman 1975: 768). Even though it appears that some states still allow victims to hire counsel to aid the district attorney, its practice seems to be rare and its influence limited to the investigation, as the counsel does not have the right to present an indictment or the right to interrogate witnesses during trial.

[6] There is variation within the United States as well: important participation rights have been established in New Mexico, Washington, and Illinois, through the establishment of "victims' service advocates," but at the end, the public prosecutor has the ultimate control over the investigation and the prosecution of the case. Also, Wisconsin, West Virginia, and New Hampshire allow victims' representatives to have an input regarding admissibility of evidence for rape and sexual assault cases (Doak 2008: 141).

[7] Interview with Alberto Binder, Santiago, Chile, September 2, 2010.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

public prosecutor." As an auxiliary to the public prosecutor, the private prosecutor helps with the investigation providing evidence and suggesting lines of investigation, and has the right to speak during the hearings and the trial. That is, an auxiliary private prosecutor is given certain "cooperation" rights, but the state remains as the main prosecutor (Eser 1989: 24). The auxiliary private prosecution can participate during the trial if he or she adheres to the charges pressed by the state in the indictment. The *autonomous private prosecutor*, in contrast, allows the private prosecutor to push for the continuation of the criminal investigation even when the public prosecutor decides to refrain from prosecution, if approved by a judge (Brienen & Hoegen 2000). Also, an autonomous private prosecutor is allowed to press charges independently from the state, which allows the private prosecutor to press charges for a more serious crime. In this article, we indistinctly refer to both types as "private prosecution."

In addition to private prosecution, the right to participate as a civil actor (or *partie civile*) allows victims to receive compensation from the offender in the course of the criminal process (also known as civil action or *acción civil*). In practice, when coding private participation in criminal cases, it is often difficult to distinguish between private prosecution and civil action in a criminal case. Indeed, one important research center for judicial reform referred to civil action as a weak form of private prosecution.[8] Even the literature on universal jurisdiction, which tends to be more aware of participation rights of victims, often fails to distinguish between these two different forms of victim participation (e.g., Langer 2011; Roht-Arriaza 2005).

Our research allows us to offer for the first time a still preliminary list of countries around the world where individuals have participation rights in criminal cases, either as private prosecutors or as civil actors. Table 1 lists countries where such participation rights have been used, according to our research. The list shows that these rights are quite widespread around the world, as they are in use in 91 countries, or slightly less than half of the countries in the world. For this reason alone, scholars of comparative law and society need to understand the practice better. Because of the limitations of the data discussed below, it is likely that the total number of countries using private prosecution is even larger than those listed in Table 1. Although it is often thought that private

[8] We are indebted to Silvina Ramirez and Augustín Territoriale, of the Instituto de Estudios Comparados en Ciencias Penales y Sociales, in Buenos Aires, Argentina, for sharing with us the very first coding of types of private prosecution in Latin America, in which they apparently coded civil action as a weak form of private prosecution (*querellante débil*).

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Table 1. Countries Granting Participation Rights to Victims by Legal System

Civil law	Common law
Algeria	Bangladesh
Argentina	Canada
Armenia	Dominica
Austria	England/Wales
Belgium	Guyana
Benin	Jamaica
Bolivia	Malta
Bosnia and Herzegovina	Nepal
Brazil	Pakistan
Bulgaria	Papua New Guinea
Cambodia	Samoa
Chile	Scotland
China	Seychelles
Colombia	Solomon Islands
Congo, Republic of	South Africa
Costa Rica	St. Vincent and the Grenadines
Cyprus	Sri Lanka
Czech Republic	Trinidad and Tobago
Denmark	Uganda
Dominican Republic	Zambia
East Timor	Zimbabwe
Ecuador	
El Salvador	
Finland	
France	
Germany	
Greece	
Guatemala	
Haiti	
Honduras	
Hungary	
Iceland	
Italy	
Japan	
Korea	
Liechtenstein	
Luxembourg	
Mexico (only some states)	
Montenegro	
Morocco	
Mozambique	
Namibia	
Netherlands	
Nicaragua	
Norway	
Panama	
Paraguay	
Peru	
Philippines	
Poland	
Portugal	
Romania	
Russia	
Senegal	
Slovakia	
Slovenia	
Spain	
Surinam	
Swaziland	
Sweden	
Switzerland	
Syria	
Tajikistan	
Taiwan	
Thailand	
Tunisia	
Turkey	
Uzbekistan	
Venezuela	
Yugoslavia	

Source: Michel (2012).

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Table 2. Participation Rights of the Victim in the Criminal Procedure Codes (CPC) of Latin America

Country (EIF)	Civil action within criminal proceedings	Autonomous private prosecution	Auxiliary private prosecution
Argentina (federal CPC 1991)	X	X	–
Bolivia (2001)	X	X	–
Brazil (federal CPC 1941)	X	–	X
Chile (2000)	X	X	–
Colombia (2000)	X	–	–
Costa Rica (1998)	X	X	–
Ecuador (2001)	–	X	–
El Salvador (2011)	X	X	–
Guatemala (1994)	X	X	–
Honduras (2002)	X	X	–
Mexico (only in some states after 1994 constitutional reform)	–	–	X
Nicaragua (2002)	X	X	–
Panama (2011)	X	X	–
Paraguay (1999)	X	–	X
Peru (2004)	X	–	–
Uruguay (1981)	–	–	–
Venezuela (1999)	X	X	–

Source: Michel (2012).

prosecution is primarily associated with civil law countries, Table 1 shows that common law countries still make some use of such participation rights.

A large percentage of human rights prosecutions have taken place in Latin America, as demonstrated earlier in Figure 2. We think it is no coincidence that this has happened in a region of the world with strong participation rights for victims. For example, 26 percent of the countries with private prosecution shown in Table 1 are Latin American countries (including South America, Central America, Mexico, and the Caribbean), although these countries only account for 16 percent of the countries in the world.

Table 2 provides a list of Latin American countries[9] describing the kinds of participation rights available today. Table 2 illustrates how widespread participation rights are in the Americas. Except for Uruguay, every country in the region today allows victims to participate in the criminal proceedings either as a private prosecutor or a civil actor. Most of the countries that use private prosecution use the stronger form of autonomous private prosecution. Also, most countries of the region except Ecuador, Mexico, and Uruguay also have provisions for civil action in criminal cases.

In the next section, we offer some descriptive statistics of the use of private prosecution based on our original database of human

[9] Here, we focus only on Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela. Figure 2 shows data for both Latin America and the Caribbean.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

rights prosecutions in Latin America, followed by case studies that highlight how the right to private prosecution works and show how it has contributed to the increasing numbers of domestic human rights prosecutions.

Human Rights Prosecutions and Victims' Participation Rights in Latin America

As mentioned earlier, cross-national data on the use of victims' participation rights in human rights cases were nonexistent until now. Our database is the first systematic attempt to code the use of private prosecution in Latin America in the prosecutions of human rights crimes that occurred before, during, and between democratic transitions. Each observation constitutes a prosecution against one or more defendants, and includes information on the *entire* judicial process, which includes indictments, arrests, extraditions, preventive detention, duration of the proceedings, and the outcome of the prosecutions themselves, even when these do not necessarily result in a conviction. That is, outcomes included were pending prosecutions, dismissals, acquittals, plea bargains, and verdicts.[10] In our database, we focus exclusively on criminal cases and do not include civil cases. Nevertheless, many of the criminal cases we coded may also include civil actions introduced within the criminal proceedings by a civil actor.

We also gathered information on the type of prosecution that participated in the case: the state's public prosecutor or if there was any other actor participating as private prosecutor (NGOs or victims' relatives). Despite the important contribution that we believe our database is making, the data are still not without limitations, two of which are worth mentioning. First, in order to be replicable and manageable, the database does not pretend to include every prosecution that has been initiated in the Latin America, but only prosecutions and trials initially mentioned in the U.S. State Department Annual Country Reports on Human Rights Practices. And second, although coders followed up with additional research on prosecutions initially mentioned in the State Department reports, gathering complete information for every prosecution was not always possible, especially information concerning the type of prosecutor.

Even for Latin America, a region of the world for which information tends to be easier to gather when compared to other

[10] An outcome was coded as acquittal only when the defendant received a "full acquittal," i.e., for all the crimes. If the defendant was sentenced for one crime at least, but acquitted for others, the case would have been coded as "guilty" and in a comments section, coders explained that the defendant was acquitted for other crimes.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Table 3. Efforts for Criminal Accountability in Latin America by Type of Prosecutor, 1978–2009

	Number of human rights prosecutions
Prosecutions with information on type of prosecutor	244
State only	152
Private prosecution	92
Do not know type of prosecution	350
Total number of prosecutions coded	594

Source: Original database on human rights prosecutions in Latin America.

regions of the world, finding information on private prosecution is a daunting task. Because private prosecution is such an unfamiliar concept in the United States, this information is not always reported on the sources from which we are coding (State Department reports or newspapers). For this reason, we were able to gather information about the type of prosecutor for less than half of all coded domestic prosecutorial activities in Latin America (i.e., for 244 out of 594). Albeit small, we believe this is still a considerable sample to explore if private prosecution has been used in criminal accountability efforts for past human rights abuses, especially considering that it is the first effort of this kind (see Table 3).

Table 3 shows that from all prosecutorial efforts in Latin America for which we have data on the type of prosecutor (i.e., 244), 92 cases have had some societal actor participating in the prosecution (i.e., victims, their relatives, or NGOs). That is to say that in over *one-third* of these prosecutorial efforts, private prosecutors have been actively engaged in seeking criminal accountability for past human rights violations. Furthermore, we know this is a *very* conservative estimate based on this database, the first attempt to record this legal institution in a systematic comparative way. For instance, as we explore in more depth later in our case studies, NGOs in two countries—Argentina and Chile—have done an excellent job at documenting prosecutions in their territories. Based on their work, we know that *almost every* human rights prosecution in these two countries has included a private prosecutor in the case. Although our database is unable to show this reality because of the strict coding procedures discussed above, the data show (1) that there is variation in the number of prosecutions across the region, (2) that private prosecution has been used across time, and (3) that private prosecution cases do seem to have different outcomes when compared to cases litigated only by the state. Table 4 reports all prosecutions we coded in Latin America (i.e., 594), disaggregated by country and type of outcome. Here, Argentina and Chile clearly emerge as leading the region in terms of number of prosecutions, and it also shows that Uruguay has prosecutions below the regional average.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Table 4. Outcomes of Human Rights Prosecutions Disaggregated by Country, 1978–2009

	Guilty	Acquittal	Dismissal	Ongoing or unknown	Total
Argentina	70	4	3	53	130
Bolivia	5			1	6
Brazil	4	1		3	8
Chile	64	4	10	47	125
Ecuador				1	1
El Salvador	9	4		3	16
Guatemala	42	5	3	28	78
Honduras	1	5	3	11	20
Mexico	24	2	3	28	57
Nicaragua	9	3		4	16
Panama	9	4		5	18
Paraguay	5			10	15
Peru	48	13	2	35	98
Uruguay	3	1		2	6
Grand total	293	46	24	231	594
Average in the region	22.54	4.2	4	16.5	42.43

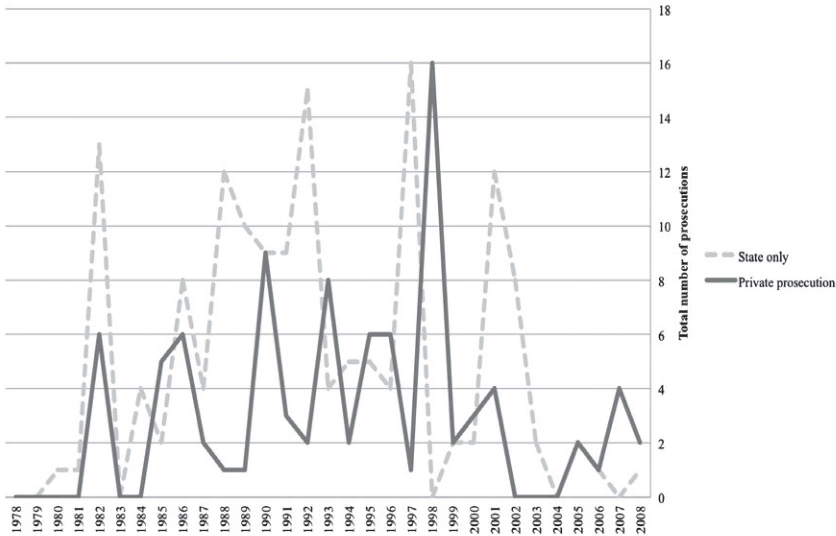
Source: Original database on human rights prosecutions in Latin America. Includes all prosecutions on past human rights violations, including cases for which we cannot distinguish the type of prosecutor.

If we look only at the prosecutorial efforts across time in Latin America for which we have information on the type of prosecutor (i.e., 244 cases), we find interesting trends. In Figure 3, we can see the year in which a prosecutorial activity began, disaggregated by type of prosecutor. As countries transitioned toward democracy in the region, more investigations and prosecutions took place, and private prosecutors have been actively engaged in these efforts. As Latin America made a full transition to democracy, new cases declined, but accountability for past human rights violations continues to this day. Interestingly, both type of prosecutions are highly correlated over time.

There are other interesting parallels between private prosecution and state-only prosecutions. Looking only at those human rights prosecutions for which we have complete information on the type of prosecutor and on the rank of the defendant (see Table 5), we find that both state and private prosecutors follow similar trends in targeting both lower or higher ranking officials. Whereas private prosecutions seem to have split evenly their efforts against high-ranking and low-ranking officials, state-only prosecutions seem to be slightly more inclined (54 percent) to prosecute low-ranking officials. To the degree that prosecuting high-level officials is more difficult politically, the data suggest that private prosecutors are participating in both "difficult" and "easy" investigations.

Table 6 illustrates the distribution of outcomes by type of prosecution, including only those cases for which we know what type of prosecutor participated in the proceedings and how the case ended. What this table shows is that private prosecution cases are

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press



Source: Original database on human rights prosecutions in Latin America. N = 244. Only covers prosecutorial activities for crimes that occurred before, during, and between democratic transitions.

Figure 3. Number of Human Rights Prosecutions per Year in Latin America, by Type of Prosecutor (1978–2009).

Table 5. Human Rights Prosecutions by Type of Prosecutor and Rank of Defendant

	High ranking	Low ranking	Total
State only	63	72	135
Private prosecution	41	41	82
Total	104	113	217

Source: Original database on human rights prosecutions in Latin America. High ranking includes heads of state, generals, admirals, or heads of security forces, legislative leaders, etc. Low ranking includes soldiers, members of local security forces, or paramilitary groups, prison guards, etc.

almost equally successful in achieving convictions (79 percent) when compared to state-only prosecutions (80 percent). But private prosecution cases seem slightly less likely to end in acquittal (12 percent compared to 17 percent of state-only cases) and more likely to end in dismissal (8 percent compared to only 4 percent of state-only cases).

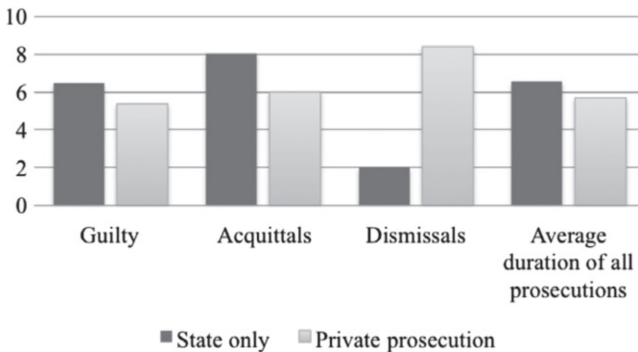
However, private prosecution cases show other interesting prosecutorial achievements when compared to those of state-only cases. When we evaluate the total duration of the prosecutorial efforts, meaning how long it took for the case to end (in a conviction, acquittal, or a dismissal), we can appreciate that private prosecution cases do behave differently and have a considerable impact

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Table 6. Outcome by Type of Prosecutor (Cases Where We Know Outcome Only) (In Parentheses as a Percentage of Total Prosecutorial Efforts)

	Guilty	Acquittal	Dismissal	Grand total
State only	79 (79%)	17 (17%)	4 (4%)	100
Private prosecution	49 (80%)	7 (11%)	5 (8%)	61
Total	128	24	9	161

Source: Original database on human rights prosecutions in Latin America.



Source: Original database on human rights prosecutions in Latin America. This figure only includes cases for which we have complete information on the type of prosecution, the rank of the defendant, and the outcome of the prosecutorial effort. N = 147.

Figure 4. Average Duration of Prosecutions, in Years (1978–2009).

on the fate of a prosecution. Figure 4 shows the average number of years that it took for prosecutions to reach a judicial ending.[11]

This figure shows that private prosecution cases, on average, achieve convictions faster (about a year faster), which suggests private prosecutors may buttress the overall prosecution of a case. This does not necessarily suggest that private prosecutors take easy cases because, as we saw earlier, they target a similar percentage of low-ranking and high-ranking officers, and because a closer look at private prosecution cases shows that these achieve a conviction earlier than only-state cases regardless of the rank of the defendant. Although private prosecution cases have a lower acquittal rate, the figure also shows that when their accused is acquitted this happens faster when compared to state-only cases.

[11] Our database does not include information on reversals of convictions or acquittals. We acknowledge that having that information in the future may me relevant to further compare the fate of state-only versus private prosecution cases.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

But perhaps our most important finding is that private prosecution has its strongest impact on keeping cases open. When there is a private prosecutor in a case, there is a clear long fight aimed to avoid dismissals. Even though private prosecution cases have higher dismissal rates (see Table 6), private prosecutors fight for more years to avoid that outcome. Regardless of the rank of the defendant, private prosecutors persist, on average, 8 years before a judge rules on a dismissal, when compared to state-only cases that take only 2 years, in average, to reach such an outcome. This finding was also corroborated in our qualitative research, and we explain later in the case studies that victims' lawyers are quite aware that one of the most important roles of private prosecution is to keep cases open in the hope of a more propitious political or judicial environment in the future.

These preliminary findings based on the Human Rights Prosecution Database demonstrate that private prosecution indeed has been used in Latin America, and suggests that private prosecution may strengthen a prosecution. These findings thus indicate that it is a procedural right that comes with both limits and powers, as its role is subsidiary to the prosecutorial efforts of the state, and its legal fight is often dependent on the context in which these prosecutions are taking place. To better assess how participation rights work as a causal mechanism shaping the role that societal actors play in human rights prosecutions, we now turn to our case studies, which illustrate how the use (or nonuse) of private prosecution impacts human rights cases, and that show how victims' participation rights can help us understand variations on observed prosecutorial efforts across countries.

Case Studies of the Use of Private Prosecution in Latin America

We selected the cases of Argentina, Chile, and Uruguay following a most similar research design (George & Bennett 2004; Mahoney 2007). These countries are similar in their levels of economic and human development, factors that may influence access to justice, but offer variation on the main variable of interest here, the availability of private prosecution, since Chile and Argentina have provisions for private prosecution and Uruguay does not. All countries experienced intense state repression around the same time (1970s) that concentrated on similar kinds of individuals, largely leftist political activists in urban areas, including students and urban workers, which eventually triggered domestic NGOs to mobilize around the issue of transitional justice. Likewise, all three countries have quite high ratios of lawyers to the population, which

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Table 7. Outcomes of Human Rights Prosecutions in Argentina, Chile, and Uruguay Disaggregated by Type of Prosecution, 1978–2009

	Guilty	Acquittal	Dismissal	Ongoing or unknown	Total
Argentina	19	4		14	37
State only	9	4		10	23
PP	10			4	14
Chile	16		4	9	29
State only	8		1	2	11
PP	8		3	7	18
Uruguay	3	1		2	6
State only	3	1		2	2

Source: Original database on human rights prosecutions in Latin America. Includes all prosecutions on past human rights violations, including only cases for which we can distinguish the type of prosecutor.

could also influence the likelihood that victims will seek justice.[12] These factors set these countries apart from other important cases of repression in Latin America, like Guatemala and Peru, which are poorer countries where the great bulk of the victims were indigenous people living in rural areas. Thus, in these three cases, some of the other factors that might affect access to justice by victims of human rights abuses are held constant, permitting us to focus on the differences in participation rights of victims.

Our database shows that these countries present interesting variations in terms of their prosecutorial efforts against past human rights abuses: Argentina and Chile are leading the region in transitional justice efforts, and Uruguay has clearly lagged behind. If we consider the number of prosecutions in these three countries in relation to their population size, we find that Chile has the most, followed by Argentina, and that Uruguay still is an outlier for the relatively small number of prosecutions. In Table 7, we show data on Argentina, Chile, and Uruguay, comparing the outcome of cases by type of prosecutor. Given the limitations of our data, what our database does not show is the extent to which, as we know from our fieldwork research, private prosecution is actually driving transitional justice efforts in these countries. Although all three countries eventually moved ahead with holding former state officials individually criminally accountability for past abuses, we argue that the timing and quantity of prosecutions has been influenced by the availability of private prosecution, which allowed societal actors to bring claims to the courts.

[12] In the 2011 human development index ranking of all countries in the world, Chile ranked 44, Argentina ranked 45, and Uruguay ranked 48. See http://hdr.undp.org/en/media/HDR_2011_EN_Complete.pdf. For the ratio of lawyers to 100,000 habitants, Chile has 133, Argentina has 353, and Uruguay has 420, compared, for example, to Guatemala, which has 68. See Dossier: La Abogacia de las Americas, Revista Sistemas Judiciales, http://www.sistemasjudiciales.org/content/jud/archivos/notaarchivo/447.pdf

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Argentina

Argentina had a "ruptured" transition to democracy in 1983, after the military defeat in the Falklands/Malvinas war delegitimized the military regime. This process made it more possible for the new democratic government of Raúl Alfonsín to hold former military Junta members accountable for past human rights violations in the historic Trials of the Juntas in 1985. Although the initial Trial of the Juntas was a prosecution initiated and carried out by the state, virtually all human rights prosecutions in Argentina since that time have used some form of private prosecution.[13] Argentina exemplifies the impact that private prosecution can have in opening doors for future prosecutorial efforts. Private prosecution became particularly important after the fears of a military coup led the Alfonsín government to pass an amnesty law—the Due Obedience law—that blocked future trials. Most human rights prosecutions were closed after the amnesty law, but domestic NGOs began to mobilize using all legal tools at their disposal, including private prosecution, and managed to keep some of these cases open. They also litigated those human rights crimes that were not covered by the amnesty laws, including the kidnapping of the children of the disappeared, and the illegal appropriation of real estate and other property from disappeared people. This illustrates the point that in countries with extensive participation rights for victims, like Argentina, NGOs influence human rights prosecutions not primarily through information politics or "naming or shaming," but through actual litigation. In 1998, as a result of these efforts, federal judges in Argentina ordered preventive detention for both ex-president Rafael Videla and Admiral Emilio Massera, the two most powerful leaders in Argentina during the most intense period of repression, for the crimes of kidnapping babies and falsifying public documents.

Perhaps the most important case leading to accountability for past human rights violations in Argentina was a private prosecution case, the Poblete case, led by the NGO *Centro de Estudios Legales y Sociales* (CELS), which achieved the goal of having the amnesty laws declared unconstitutional. The Poblete case is a good example of

[13] Interview with Martin Abregu, July 1999, Buenos Aires, Argentina; interview with Alcira Rios, Buenos Aires, Argentina, December 2002; and e-mail communication with Carolina Varsky, CELS, Buenos Aires Argentina, July 17, 2012. Discrepancies between our database on private prosecutions and the total amount of criminal complaints filed by private prosecutors in Argentina as reported by CELS result from our coding methods. We are coding cases that are mentioned in the State Department Country Reports on Human Rights Practices; hence, we are aware that we may be underreporting actual instances of prosecutorial activities in each country. The CELS information thus is far more accurate for Argentina, but such detailed data on private prosecution exist for only two or three countries, including Argentina and Chile, and thus cannot be the source for a regional database such as ours.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

how Argentine NGOs used private prosecution as an essential tool in a broader process of legal mobilization and strategic litigation. The case was against a member of the Argentine Federal Police, Julio Simón, who was involved in the 1978 kidnapping, torture, and murder of José Poblete and his wife Gertrudis, along with the abduction of their then 8-month-old daughter, Claudia, who was stripped of her identity and turned over for adoption to a military family. Two CELS lawyers, María José Guembe and Carolina Varsky, litigated the case as private prosecutors. Guembe and Varsky argued that the amnesty laws put the judicial system in the untenable position of being able to find people criminally responsible for kidnapping a child and falsely changing her identity, but not for the more serious crime, the murder and disappearance of the parents (which later gave rise to the crime of kidnapping). Additionally, they argued that the amnesty laws were a violation of international and regional human rights treaties to which Argentina was a party, and which were directly incorporated into Argentine law.

The Poblete/Simon case was the first time that CELS lawyers, working together with lawyers from the group the Grandmothers of the Plaza de Mayo, made the argument in a legal case that the amnesty law was unconstitutional and should be overturned. CELS lawyers were particularly well connected to international human rights networks and experts, and very knowledgeable about international and regional human rights law, and thus were more likely to incorporate such arguments than public prosecutors. More than other private prosecutors in Argentina, CELS engaged in strategic litigation of leading cases that had the chance to make a bigger impact.[14] CELS lawyers Varsky and Guembe believed that the Poblete case brought together a series of characteristics that made it a particularly good case to overturn the amnesty laws. First, they had concrete information of where Jose and Gertrudis Poblete had been secretly detained and who had participated in their disappearance. From signals they perceived from the judicial branch, they believed that the moment was propitious for such a challenge to the amnesty laws. In addition, the case had been assigned to the tribunal of a judge, Federal Judge Gabriel Cavallo, whom they thought would be receptive to their arguments.[15] Judge Cavallo found the private prosecution's arguments compelling, and wrote a judgment that was a lengthy treatise on the significance of interna-

[14] The Argentine civil law system does not use precedent in the same way as a common law system, in the sense that judges are not required to follow earlier Supreme Court decisions on the same topic, but in the majority of cases, they do imitate earlier Supreme Court jurisprudence. E-mail communication with Carolina Varsky, April 23, 2013.

[15] E-mail communication with Maria Jose Guembe, April 23, 2013.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

tional human rights law in Argentine criminal law, drawing on some of the arguments of the CELS lawyers (Cavallo 2001).

Thus, the importance of the case was not just that it invalidated the amnesty, but that it did so using private prosecution and combining arguments from domestic law with arguments from regional human rights law, especially from the Inter-American Court and the Inter-American Commission of Human Rights.[16] Argentina offered a propitious environment for this kind of decision because the 1994 Constitution gave international human rights treaties constitutional status, and because the courts had earlier found that customary international law could be applied by domestic courts. An appeals court later supported Judge Cavallo's decision in the Poblete case.

These crucial legal decisions, both in the cases of kidnapping babies, and with regard to the amnesty law, took place in the judicial branch at a time of political unrest in Argentina when the various presidents in power (Carlos Menem, Fernando de la Rúa, and Eduardo Duhalde) were not supportive of reopening human rights prosecutions. This is an essential aspect of private prosecution: it allows progress on cases that the executive branch does not support, and may even actively wish to discourage.

In 2003, before the Poblete case reached the Supreme Court, however, the political situation shifted in Argentina with the election of Nestor Kirchner as President. Kirchner was a member of the generation of leftist Peronists who had suffered the brunt of repression in Argentina. He was committed to accountability and put the support of the Executive Branch and his majorities in Congress behind human rights prosecutions. In August 2003, the Argentine Congress, with the support of the Kirchner administration, passed a law that declared the amnesty laws null and void.

In June 2005, the Argentine Supreme Court, whose composition had been altered by Kirchner appointments, in a 7-1 majority vote, declared in the Poblete case that the amnesty laws were unconstitutional. The effect of the Court's decision was to permit the reopening of hundreds of human rights cases that had been closed for the previous 15 years, most of which involved private prosecutors. Without the efforts of the private prosecution in the Poblete case, it is highly unlikely that the Supreme Court would have declared the amnesty laws unconstitutional. CELS lawyers and other private prosecutors would have continued to push cases forward to invalidate the amnesty laws, but the Poblete case, for reasons outlined above, was a particularly promising leading case. Yet, the election of an executive committed to accountability gave

[16] Interview with Pablo Parenti, Buenos Aires, Argentina, December 6, 2002.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

further impetus to the process initiated by private prosecutors and key actors in the Argentina judicial branch.

Since the Poblete case, CELS has continued to litigate hundreds of human rights cases, acting as a private prosecutor. CELS is not the only organization in Argentina acting as a private prosecutor for victims of human rights. Other human rights organizations, such as the legal team of the Grandmothers of the Plaza de Mayo as well as many groups working in diverse provinces of the country, also work as private prosecutors for victims, and Argentine law also permits some state agencies to constitute themselves as private prosecutors on behalf of victims, including the National Human Rights Secretariat and some provincial agencies.[17] Nevertheless, CELS is the most important private prosecutor in human rights prosecutions in Argentina, and it also maintains a database of all the human rights prosecutions in which it is a party, which gives us an idea of the scope and success of private prosecution in Argentina. According to CELS data, in August 2012, approximately 368 human rights cases involving private prosecution, against over 1,926 defendants, had advanced in Argentine courts. Almost 20 percent of these cases have reached a sentence, and 262 individuals have been convicted. However, as yet, only 11 percent of these sentences have been confirmed by final appeal to the Supreme Court.[18] This is largely due to the length of time it takes these complicated cases with multiple defendants to make their way through the Argentine judicial system. There is no indication that the Supreme Court is acting to block or delay these processes. We are not able to compare conviction rates or duration of prosecution of these private prosecution cases with other cases where only the state prosecutors participate because virtually all of the human rights prosecutions in Argentina involve private prosecution, but the CELS data illustrate the scope and effectiveness of human rights trials using private prosecution in Argentina.

Given that Argentina had a series of factors that facilitated accountability, including a ruptured transition, strong human rights movement, high level of ratification of human rights treaties under a monist legal system, and a judiciary that is relatively independent from the executive branch, it is difficult to say which of these factors contributed most to the high level of human rights accountability in the country. We believe, however, that the existence of strong provisions for private prosecution enhanced the possibility for accountability and worked as a causal mechanism

[17] E-mail communication with Carolina Varsky, CELS, Buenos Aires Argentina, July 17, 2012.

[18] See on CELS webpage, "CELS Juicios, Crimenes del Terrorismo de Estado, Weblogs de las Causas," at http://www.cels.org.ar/wpblogs/estadisticas/ (accessed 7 February 2013).

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

allowing NGOs to push for justice. Private prosecution provided the legal resources for domestic human rights organizations to pursue their agendas within domestic courts. Furthemore, domestic NGOs were particularly well informed about international human rights law and were more likely to include arguments from treaties in their legal arguments, which were then taken up and sometimes expanded by judges, as in the Poblete case. Thus, private prosecution is the key causal mechanism through which human rights organizations and international human rights law have had positive effects on domestic trials in Argentina.

Chile

Like in Argentina, in Chile, almost every human rights case began as a private prosecution, and every human rights case that has remained opened has done so because of the work of a private prosecutor. In short, the fight for justice and for accountability regarding human rights violations committed during the dictatorship era in both Chile and Argentina has been a fight fought from the private prosecution's front. However, different circumstances in Chile created a different trajectory for human rights prosecutions: the combination of a negotiated transition and powerful institutional factors initially blocked successful prosecutions.

During the first years of the dictatorship, victims or their relatives were so afraid that they refused to file criminal complaints. Relatives of victims, however, came to know of civil organizations to which they could resort if they wanted to initiate legal action (Collins 2010). The driving force behind the first steps of litigation was an organization of the Catholic Church, the *Vicaría de la Solidaridad* (Vicariate of Solidarity). The *Vicaría* gathered for years large amounts of information from the victims' families, and in 1978 decided to present, in the name of 70 victims, a private prosecution against various high-ranking officials, including General Manuel Contreras Sepúlveda, head of the DINA (the National Intelligence Service).[19] After this act of defiance, more prosecutorial efforts were initiated, but the majority of these through private prosecutors.[20]

A self-amnesty law was enacted in 1978 that precluded prosecution for crimes committed between 1973 and 1978, unless the cases were already in trial or had been convicted (Collins 2010: 68). Courts, in compliance with the regime (Hilbink 2007, 2008), were

[19] Interview with Nelson Caucoto, Santiago, Chile, July 27, 2009.

[20] Collins (2009: 67) mentions that some few cases started through police investigations; however, "these tended to be Kafkaesque affairs where victims or potential witnesses were accused of terrorist crimes."

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

hesitant to pursue any investigation and readily applied amnesty to most cases or submitted them to military jurisdiction where amnesty was also automatically applied (Collins 2010). Nelson Caucoto, a prominent Chilean human rights lawyer, explains that in Chile "the defense of human rights took place mostly in the courts—which did not mean that the cases were solved promptly and successfully." [. . .] "The goal of human rights advocates was to keep the cases open [. . .]." (DPLF 2007: 4). Without obtaining real legal gains, a handful private prosecutors representing hundreds of victims fought for decades to keep their case files open. From the hundreds of complaints filed during the 1970s and 1980s, by the end of the dictatorship, only 100 or so still showed some activity, as most of the investigations had been suspended by the courts.

After the transition to electoral democracy in 1990, the luck of human rights prosecutions did not change immediately. On the contrary, the negotiated way in which transition to democracy took place made any real progress almost impossible, since General Pinochet and his supporters continued to hold significant power in the new regime. The focus was set on truth, rather than justice, as evidenced in the 1991 report of the Rettig Commission (*Comisión Nacional de Verdad y Reconciliación*). The courts did allow some justice, most prominently with the conviction of Manuel Contreras in 1995 for the assassination of Orlando Letelier in Washington, DC, but this was largely due to U.S. interest and pressure in this particular case of a violation on U.S. territory.

By the late 1990s, important events changed the course of transitional justice prosecutorial efforts in Chile. Of the utmost importance were the changes introduced in the judiciary through reforms that by 1998 created specialized judicial benches in the Supreme Court and changed appointment procedures, improving judicial independence. By 1998, four out of 21 Supreme Court justices were from the Pinochet era (Collins 2010: 81). After the reform, judges started to move away from the automatic application of amnesty law to every human rights case that reached their desk (Hilbink 2007: 192). Another important change in 1998 came from abroad: the arrest of Pinochet in the United Kingdom in October of 1998 brought the issue of accountability back into the debate (Roht-Arriaza 2005). Various human rights activists took advantage of the momentum created by the conjunction of all these circumstances, and by the end of 1998, a new wave of approximately 60 private prosecution cases hit the courts, which came to be known as "the *querellas* (or private prosecution cases) against Pinochet."

Like in Argentina, the role of private prosecution was key in allowing NGOs to introduce important legal arguments that would later be picked up by the now more receptive judiciary. In January

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

1998, the first criminal investigation against former dictator Augusto Pinochet began. This was triggered by a private prosecution complaint introduced by the Communist Party in Chile for the disappearance of several of their leaders, and by a group of victims' relatives. The Communist Party aimed mostly to signal the party's disapproval of the prospect of Pinochet becoming a lifetime senator, a post to which he was entitled after his retirement as army commander-in-chief according to the 1980 constitution (Collins 2009: 76). Against most expectations, however, the Supreme Court assigned Judge Juan Guzmán to reopen the investigation of the cases involved in the complaint, which included the "Caravan of Death" case.

The Caravan of Death was a military unit, headed by General Sergio Arellano Stark, which between September and October 1973 went from town to town with the mission to arrest and execute political opponents of Pinochet. As a result of this military operation, 97 people were killed. The amnesty of 1978 made any attempts for justice futile. In 1986, however, the development of a new strategy to circumvent amnesty began to take shape. The mother of a victim of the Caravan filed a private prosecution complaint for the premeditated kidnapping and first-degree murder of her son Jose Gregorio Saavedra. The private prosecutor for the family argued that kidnapping was excluded from amnesty law as it remained an ongoing crime until the person was either released or a body found. This is a very early version of a legal argument that was later incorporated into the United Nations Declaration on the Protection of All Persons from Enforced Disappearance of 1992. So, in this case, the private prosecutor was not drawing on existing international law, but rather articulating a new legal argument that will later be incorporated into domestic and international human rights law. In this example, we see Latin American private prosecutors also as innovators of novel legal doctrines that will later gain international stature. Initially, the lower court judge accepted to investigate the Saavedra case and refused military jurisdiction, but the Supreme Court upheld a military's challenge on the case and sent the case to a military court.[21]

Various human rights lawyers working as private prosecutors later incorporated the legal argument about kidnapping as ongoing crime in other human rights cases. However, it would take more than a decade for this logic to take hold among *judges*. The eventual success of this legal argument would be the result of yet another private prosecutor who was litigating the case of the Caravan of Death victim Enrique Poblete-Córdova. After a long battle in

[21] See Avenues and Obstacles to Justice, at http://www.memoriayjusticia.cl/english/en_avenues.html, last consulted in April 12, 2012.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

military and civil courts, the lawyer for the family, Sergio Concha, brought an appeal to the Supreme Court challenging a renewed attempt by military courts to permanently close the case (Collins 2010: 83). In September of 1998, the new Supreme Court criminal bench argued that when no bodies were returned to the families, the crime involved was that of kidnapping, which remained ongoing and, therefore, was not covered by amnesty.[22] After this groundbreaking ruling, the kidnapping argument would open the door for future cases to circumvent amnesty. This case highlights that developments in prosecutorial efforts against state agents for human rights violations in Chile depended also on changes in the receptivity of the *private prosecutors' claims* and *legal arguments* within the judicial bench. As a result of Poblete-Córdova ruling, 74 cases related to the Caravan of Death were reopened in military courts.

Today, all ongoing cases of human rights violations are "ongoing" as a result of the efforts by private prosecutors and the groups of victims' relatives. By February 2012, a total of 1,342 cases remained open, most of these for cases of forced disappearance or political execution, and covering more than 65 percent of all known victims for those crimes. Also by 2012, 799 state agents had been tried and convicted since 2000. In a very short time, Chile became a worldwide exemplar of transitional justice (ODH 2012). Two important changes within the courts contributed to the speed in which this happened. First, was the designation of "full-time" judges to human rights cases. In 2002, the Ministry of Justice authorized twenty judges to work exclusively on cases of disappearances and 51 judges to give preference to such cases. And, second, and perhaps more important, was the effect of the Poblete-Córdova ruling, setting precedent for judges to interpret that the 1978 self-amnesty does not apply to unsolved cases of disappearances, which are designated as "continuing crimes" (Tiede 2004). In great part due to the creation of the kidnapping argument in the private prosecution's front, later picked up by more receptive judges, since 2000, 238 state agents have been found guilty (ODH 2012).

The previous discussion shows that most of the ongoing or open cases in Chile were brought after 1998, but also that the legal fight for justice began much earlier during the dictatorship. The fact that during the Pinochet era these legal attempts were not repressed, in conjunction with the availability of private prosecution rights, opened the space for existing human rights NGOs to support victims and their relatives to bring their fight for account-

[22] It must be noted that the Supreme Court, in its ruling, additionally used the argument that the Geneva Conventions invalidated amnesties for disappearance cases. However, the argument of the Geneva Conventions did not take hold as precedent among judges in future cases.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

ability within the courts. More importantly, in Chile, most of the human rights cases that have reached the courts have had an NGO behind them, such as the Vicaría, CODEPU, AFEP, or FASIC. These societal actors know that the political context matters for legal success, so the momentum observed in private prosecution cases after 1998 is in part the result of important contextual factors, such as the consolidation of democracy and the reforms within the judiciary, which provided a more favorable environment for private prosecutors to make another push for justice. However, litigation had already been a strategy followed by NGOs for decades, using private prosecution to their advantage to keep case files open.

Uruguay

Uruguay had far fewer cases of death and disappearance during the military regime that held power from 1973 to 1983 than did either Argentina or Chile, but the number of arbitrary detention and torture cases in relation to the size of population was much greater in Uruguay. Given the severity of the repression the population experienced, we consider Uruguay a likely case where we would have expected human rights prosecutions to occur in high numbers. However, Uruguay remains one of the few countries in the Americas that do not have provisions for private prosecution in criminal cases. One reason it does not have such provisions is because it has not carried out a major judicial reform, as have most other countries in the region, although plans for such a reform are being considered. The absence of the right to private prosecution, we argue, helps explain why more human rights trials have occurred in Argentina and Chile than in Uruguay.

In Uruguay, victims of human rights violations and other affected individuals can file a criminal complaint ("*denuncia*") with the judicial system, describing the nature of the crime and providing legal arguments about why the courts should investigate the case. Prosecutors who learn by other means, such as the media, of a possible criminal act also have an obligation to file a complaint. Victims often received assistance from private lawyers and from human rights organizations and other NGOs in filing their complaint. We will call these victims who file complaints the "claimants," to distinguish them from private prosecutors, since they lack the additional strong participation rights associated with private prosecutors. The public prosecutor does not have investigating functions, so the information the prosecutor has is that which is provided by the claimants. But the prosecutor is never obligated to take up the case, and in many human rights cases, the criminal complaints were archived. Public prosecutors in Uruguay still

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

maintain a monopoly on criminal prosecution, deciding which individuals to indict and when to do so (Peralta 2011).

Claimants in Uruguay have more rights of participation than do victims in criminal trials in the United States. After the indictment, victims have participation rights related to the *criminal investigation*, for instance, they can "request evidenciary proceedings and/or can file for an injunction relief." Victims and their lawyers are permitted to be present in hearings, they can formulate questions, and they should be notified of developments in the case, although in practice, the justice system does not always comply with these provisions. Because Uruguay does not have oral argument, most judicial proceedings are written, and thus, victims may not always be notified of developments. Claimants can also raise issues about the constitutionality of and interpretation of the amnesty law in various occasions (de Leon 2011). However, claimants in Uruguay have no role in the actual *criminal prosecution*, i.e., they cannot adhere to an indictment nor press charges on their own, like private prosecutors do. Also, they "do not have access to remedies, except those related to an injunction."[23] Claimants, contrary to private prosecutors, have no legal means to appeal any decision the public prosecutor or a judge makes, including dismissals, dropping charges, or closing an investigation.

In criminal proceedings in Uruguay, the judge controls the investigation and decides the case. The Uruguayan judiciary lacks full autonomy from the executive branch, both financially, and administratively, and the prosecutor's office is also dependent on the executive. The prosecutor controls the decision to archive or close the case, and if the prosecutor decides to close the case, the judge has no alternative but to do so, and the victim has no say in the matter.[24] Some commentators have explained Uruguayan delay in human rights prosecutions mainly to this lack of judicial independence, and to executive interference with efforts to prosecute state officials (Skaar 2007). However, measures of judicial independence in the world rank Uruguay as having a de facto independent judiciary, and its score for recent years is as high or higher than that of both Argentina and Chile (Camp Keith, Tate, & Poe 2009; Hathaway 2002). So, although the Uruguayan judiciary may lack some important attributes of formal autonomy, this cannot fully explain why it has moved ahead more slowly on human rights prosecutions.[25]

---

[23] E-mail communication with Ariela Peralta, August 14, 2012.

[24] Ibid.

[25] Another important difference between Chile and Uruguay is when international and foreign prosecutions impinged upon domestic courts. In the case of Chile, the foreign prosecution of Augusto Pinochet in the United Kingdom in 1998 was one important factor

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Similar to Chile, Uruguay had a negotiated or "pacted" transition, not a ruptured one like in Argentina, and the military were able to impose some conditions, including some kind of informal guarantee that they would not be prosecuted for human rights violations. Nevertheless, after the transition to democracy, there was a mobilization for justice, and victims and human rights organizations filed many criminal complaints for past human rights violations between 1985–1986. Some judges started to investigate these complaints, and despite executive and military pressures not to pursue human rights cases, by the end of June 1986, "civilian judges were examining 40 disputed cases involving 180 military and police officers," and one court had called for the arrest of three military officers implicated in these cases (Skaar 2007: 55).

In 1986, the Uruguayan Congress, at the request of the new government, passed a sweeping amnesty law that protected the military from prosecution for human rights violations committed during the dictatorship. At this point, *all* the human rights cases that were still ongoing in courts were archived because they were covered by the amnesty law. Lacking the right of private prosecution, it was more difficult for victims and NGOs to fight the amnesty law in the courts, especially after the Supreme Court, by a narrow majority, found the amnesty law to be constitutional in 1988. Instead, without legal resources to keep their struggle in the courts, Uruguayan human rights activists took a more political approach by initiating a plebiscite to try to remove the amnesty law by a popular vote. To their dismay, however, they failed on two different occasions to win a majority vote against the amnesty law, thus solidifying the law with the legitimacy of popular support (Lessa 2013: 151–53). In response to their defeat in the plebiscite, and we argue, given the lack of legal options available to them in the absence of private prosecution, Uruguayan victims and NGOs gave up seeking legal recourse for human rights violations in domestic courts for almost a decade.

Thus, in the case of Uruguay, with the exception of a single conviction in 2003, successful human rights prosecutions had to wait until a government more sympathetic to such prosecutions was elected.[26] Most of the victims of human rights violations during the

facilitating the reopening of closed human rights cases. Uruguay had no such international pressure until 2011 when the Inter-American Court of Human Rights decided in the Gelman case that Uruguay's amnesty law was contrary to its obligations under the American Convention of Human Rights. It was after this court case that the Uruguayan Parliament eventually decided to annul the Amnesty Law.

[26] Juan Carlos Blanc, former Minister of Foreign Affairs, was convicted in 2003 for complicity in the disappearance of Elena Quinteros, a labor activist who was dragged away from the very garden of the Venezuelan embassy where she was attempting to seek asylum, and never seen again.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Uruguayan dictatorship were leftists. The leftist coalition, the *Frente Amplio* (Broad Front), in 2004, won for the first time both a majority in both houses of Congress and the presidency. The Broad Front retained its majority and the presidency in the 2009 elections. It was not until after the Broad Front took political power that human rights prosecutions began to move ahead in Uruguayan courts. This was facilitated by the wording of the amnesty law itself, which required judges to consult with the executive to see if a case was covered by the amnesty law. Thus, the new *Frente Amplio* government was able to respond that a case was not covered by the amnesty law in order to permit cases to move ahead again in the courts. This is quite different from the situation observed in Argentina and Chile, where private prosecutors sustained a legal battle in the courts and kept case files open even when the political context was not supportive of accountability efforts against state officials.

In 2006, a Uruguayan judge indicted the civilian authoritarian president, Juan Maria Bordaberry and his Minister of Foreign Affairs Juan Carlos Blanco, ordering them into preventive prison to await trial for the murder of their political opponents, including a leading member of the Frente Amplio, during the dictatorship. In 2010, the 81-year-old Bordaberry was convicted and sentenced to 30 years in prison. Other top officials of the dictatorial government, including Blanco, and Gregorio Alvarez, the military president after Bordaberry, shared his fate, having since been convicted and sentenced to prison terms of 20 to 25 years. In 2011, the Uruguayan Congress passed a law that overturned the amnesty law by declaring that the serious human rights violations during the dictatorship were "crimes against humanity" and thus not subject to amnesties or statutes of limitations. But in a surprise decision in February 2013, a recomposed Supreme Court found the new law to be unconstitutional because, the majority argued, by redefining ordinary crimes like murder as crimes against humanity, a characterization not present at the time in Uruguayan law, it involved the retroactive application of criminal law.[27] At this point, it is not clear whether human rights cases from the period of the dictatorship will continue to move ahead in Uruguayan courts.

We do not argue that private prosecution is a necessary condition for human rights prosecutions, since Uruguay has prosecuted some human rights violations even though it does not have private prosecution. But, rather, where only public prosecutors can initiate

[27] N/A (2013) "Cierran en Uruguay las Causas por Crimenes de la Dictadura," *Clarin*, February 2; at http://www.clarin.com/mundo/Cierran-Uruguay-causas-crimenes-dictadura_0_871113027.html

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

and sustain criminal prosecutions, the fact that such public prosecutors are themselves state officials means that they often lack the autonomy necessary to prosecute human rights violations by previous state officials who may still wield considerable power, as former President Bordaberry did as long as his party was in power. Also, lacking private prosecution makes it very difficult for societal actors to push for justice within the courts. Hence, in countries that lack private prosecution, we would expect human rights prosecutions to depend more on political factors, and would be more likely to occur only after opposition political parties connected to victims of human rights violations take national office, or after foreign and international prosecutions place considerable external pressure for accountability on domestic institutions. Even in countries with provisions for private prosecution, like Chile, powerful political pressures can block human rights prosecutions for many years. But strong participation rights for victims, like private prosecution, give legal resources for societal actors to circumvent those political forces and at least keep the struggle for justice within domestic courts.

Conclusions

This article constitutes the first concerted attempt to understand the use and impact of participation rights of victims on domestic human rights prosecutions. Previous research had failed to explain the causal mechanisms that allow domestic NGOs use international law and promote human rights prosecutions. Our research suggests that in countries with provisions for private prosecution, NGOs promote accountability efforts more directly through legal mobilization and litigation on behalf of victims. Furthermore, private prosecution serves as the vehicle through which NGOs bring international law to advance their claims. This research thus provides a "missing link" in the story of domestic legal mobilization for transitional justice efforts.

Theoretically, our research makes an important contribution by introducing participation rights as a causal mechanism explaining how societal actors can influence accountability efforts. Empirically, we have shown how participation rights help us understand observed trends of human rights prosecutions in some Latin American countries. We do not argue here that strong participation rights like private prosecution are either necessary or sufficient for human rights prosecutions to happen, but rather that these rights provide the legal framework that allows societal actors to push for accountability from below. We know that participation rights are common around the world, but given the little research and data

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

on this topic, we cannot yet fully determine whether the patterns we see in Latin America, the region with the highest proportion of domestic prosecutions, hold for other countries and regions. At this stage, we can only hypothesize that, ceteris paribus, for private prosecution to be used, countries should have an adequate support structure that allows societal actors bring their claims to the courts and hence influence prosecutions in similar ways as those observed in Latin America.

Future research should thus help us further assess under what conditions victims' participation rights matter to explain variances across countries and regions. For instance, Paraguay, another small country with many human rights violations and relatively few human rights prosecutions (see Table 4), nevertheless, has more prosecutions than Uruguay, both in absolute terms and in relation to its population, despite being poorer and with weaker resources for legal mobilization, including many fewer lawyers in relation to the population. One reason for this may be that Paraguay offers the right to private prosecution, which helps civil actors push for justice when the state is unwilling to do it. In contrast, in Spain, the right to private prosecution was available after the fall of the Francoist regime, but for decades, the issue of justice was not even considered by societal actors. These examples raise interesting questions of when and where participation rights matter, how important is a support structure, and what are the conditions that allow societal actors to mobilize around justice and seize the legal tools at their disposal.

The importance of victims' participation rights in explaining how human rights violations transition from neglect to criminal investigation and, in some cases, to trial, requires that we incorporate in our theoretical frameworks the impact that rights, like private prosecution, have in making the justice cascade possible. We thus propose that participation rights should be included in future research as a causal mechanism to explain the timing of the prosecutions, the quantity of the prosecutions, as well as the variations observed across countries and regions. We should not further neglect in our theoretical explanations the role of that these procedural rights have on the efforts toward individual criminal accountability for past abuses.

References

Brienen, Marion, & Ernestine H. Hoegen (2000) *Victims of Crime in 22 European Criminal Justice Systems: The Implementation of Recommendation (85) 11 of the Council of Europe on the Position of the Victim in the Framework of Criminal Law and Procedure: Proefschrift*. Nijmegen: Wolf Legal Productions (WLP)/Vidya in cooperation with the Global Law Association.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Brinks, Daniel (2008) *The Judicial Response to Police Killings in Latin America: Inequality and the Rule of Law*. New York: Cambridge Univ. Press.
Camp Keith, L., Neal Tate, & Seven C. Poe (2009) "Is the Law a Mere Parchment Barrier to Human Rights Abuse?," 71 *J. of Politics* 644–60.
Cavallo, Gabriel (2001) "Resolución del Juez Gabriel Cavallo, Juzgado Federal, No. 4. Caso Poblete-Hlaczik." March 6, 2001. Buenos Aires, Argentina.
Collins, Cath (2009) "Human Rights Trials in Chile during and after the 'Pinochet Years,'" 4 *International J. of Transitional Justice* 67–76.
——— (2010) *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador*. University Park, PA: Penn State Press.
Dancy, Geoff (2013 forthcoming) "The Impact of Human Rights Law in Time." PhD dissertation, Department of Political Science, University of Minnesota.
Dancy, Geoff, & Kathryn Sikkink (2011) "Induced Enforcement: Treaty Ratification and Domestic Human Rights Prosecutions." Paper presented at the conference "From Rights to Reality." New York University Law School, October 14.
Doak, Jonathan (2008) *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties*. Oxford; Portland, OR: Hart.
DPLF (2007) *Después de los Procesos de Justicia Transicional ¿Cuál es la Situación de las Víctimas? Los Casos de Chile y Guatemala*. Washington, DC: Due Process of Law Foundation (DPLF).
Elster, Jon (2004) *Closing the Books: Transitional Justice in Historical Perspective*. New York: Cambridge Univ. Press.
Eser, Albin (1989) "Acerca del Renacimiento de la Víctima en el Procedimiento Penal," in Kaufmann, A., & G. Dornseifer, eds., *Gedächtnisschrift für Armin Kaufmann*. Koln-Berlin-NewYork-München: Carl Heymann Verlag KG.
George, Alexander L., & Andrew Bennett (1997) "Process Tracing in Case Study Research." Paper presented at the MacArthur Foundation Workshop on Case Study Methods, October 17–19.
——— (2004) *Case Studies and Theory Development in the Social Sciences*. Cambridge, MA: MIT Press.
Gimeno Sendra, V., Victor Moreno Catena, & Valentin Cortes Dominguez (1999) *Derecho Procesal Penal*. Madrid: Editorial Colex.
Hathaway, Onna (2002) "Do Human Rights Treaties Make a Difference?," 111 *Yale Law J.* 1935–2042.
Hilbink, Lisa (2007) *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile*. New York: Cambridge Univ. Press.
——— (2008) "Agents of Anti-Politics: Courts in Pinochet's Chile," in Ginsburg, T., & T. Moustafa, eds., *Rule by Law: The Politics of Courts in Authoritarian Regimes*. New York: Cambridge Univ. Press.
Huntington, Samuel (1991) *The Third Wave: Democratization in the Late Twentieth Century*. Norman: Univ. of Oklahoma Press.
Kaleck, Wolfgang (2009) "From Pinochet to Rumsfeld: Universal Jurisdiction in Europe 1998–2008," 30 *Michigan J. of International Law* 927–80.
Keck, Margaret, & Kathryn Sikkink (1998) *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca: Cornell Univ. Press.
Kim, Hun Joon (2012) "Structural Determinants of Human Rights Prosecutions after Democratic Transition," 49 *J. of Peace Research* 305–20.
Kim, Hun Joon, & Kathryn Sikkink (2010) "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries," 54 *International Studies Q.* 939–63.
Kirchengast, Tyrone (2008) "Private Prosecution and the Victim of Crime." In Macquarie Law Working Paper Series. Macquarie University.
Langer, Maximo (2011) "The Diplomacy of Universal Jurisdiction: The Role of Political Branches in the Transnational Prosecution of International Crimes," 105 *American J. of International Law* 1–49.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

de Leon, Walter (2011) "Juan Maria Bordaberry: El Dictador Latinoamericano Condenado Por Delitos De Lesa Humanidad," in Fried, G., & F. Lessa, eds., *Luchas Contra La Impunidad: Uruguay 1985-2011*. Montevideo: TRILCE.

Lessa, Francesca (2013) *Memory and Transitional Justice in Argentina and Uruguay*. New York: Palgrave Macmillan.

Lutz, Ellen, & Kathryn Sikkink (2001) "The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America," 2 *Chicago J. of International Law* 1–33.

Mahoney, James (2007) "Qualitative Methodology and Comparative Politics," 40 *Comparative Political Studies* 122–44.

McAdam, Doug, Sidney Tarrow, & Charles Tilly (1997) "Toward an Integrated Perspective on Social Movements and Revolution," in Lichbach, M. I., & A. S. Zuckerman, eds., *Comparative Politics: Rationality, Culture, and Structure*. New York: Cambridge Univ. Press.

McCarthy, John D., & Mayer N. Zald (1977) "Resource Mobilization and Social Movements: A Partial Theory," 82 *American J. of Sociology* 1212–41.

Michel, Verónica (2012) "Access to Justice, Victims' Rights, and Private Prosecution in Latin America: The Cases of Chile, Guatemala, and Mexico." PhD dissertation, Department of Political Science, University of Minnesota.

Murdie, Amanda M., & David R. Davis (2012) "Shaming and Blaming: Using Events Data to Assess the Impact of Human Rights Ingos," 56 *International Studies Q.* 1–16.

ODH (2012) "Human Rights Trials Statistics for Chile." Observatorio de Derechos Humanos, Universidad Diego Portales, Chile.

Olsen, Tricia, Leigh A. Payne, & Andrew G. Reiter (2010) *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy*. Washington, DC: U.S. Institute of Peace.

Peralta, Ariela (2011) "El caso Gelman y los Desafios a la Ley de Caducidad," in Fried, G., & F. Lessa, eds., *Luchas Contra La Impunidad: Uruguay 1985-2011*. Montevideo: TRILCE.

Pérez Gil, Julio (1997) "La Acusación Popular: Memoria de Tesis para la Obtención del Grado de Doctor." PhD dissertation, Facultad de Derecho, Universidad de Valladolid.

——— (2003) "Private Interests Seeking Punishment: Prosecution Brought by Private Individuals and Groups in Spain," 25 *Law and Policy* 151–71.

Peruzzotti, Enrique, & Catalina Smulovitz (2006) *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies*. Pittsburgh, PA: Univ. of Pittsburgh Press.

Reydams, Luc (2004) *Universal Jurisdiction: International and Municipal Legal Perspectives*. Oxford: Oxford Univ. Press.

Reydams, Luc, Cedric Ryngaert, & Jan Wouters (2012) *International Prosecutors*. Oxford: Oxford Univ. Press.

Risse, Thomas, Stephen C. Ropp, & Kathryn Sikkink (1999) *The Power of Human Rights: International Norms and Domestic Change*. New York: Cambridge Univ. Press.

Roht-Arriaza, Naomi (2005) *The Pinochet Effect: Transitional Justice in the Age of Human Rights*. Philadelphia: Univ. of Pennsylvania Press.

Sidman, Andrew (1975) "The Outmoded Concept of Private Prosecution," 25 *American Univ. Law Rev.* 754–94.

Sikkink, Kathryn (2011) *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. New York: W. W. Norton & Co.

Simmons, Beth (2009) *Mobilizing for Human Rights: International Law in Domestic Politics*. New York: Cambridge Univ. Press.

Skaar, Elin (2007) "Legal Development and Human Rights in Uruguay: 1985-2002," 8 *Human Rights Rev.* 52–70.

——— (2011) *Judicial Independence and Human Rights in Latin America: Violations, Politics, and Prosecution*. New York: Palgrave Macmillan.

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press

Sriram, Chandra L. (2003) "Revolutions in Accountability: New Approaches to Past Abuses," 19 *American Univ. International Law Rev.* 310–429.

Stephens, Beth (2001) "Translating Filartiga: A Comparative and International Law Analysis of Domestic Remedies for International Human Rights Violations," 27 *Yale J. of International Law* 1–57.

Tiede, Lydia B. (2004) "Committing to Justice: An Analysis of Criminal Law Reforms in Chile." UC San Diego: Center for Iberian and Latin American Studies.

Verónica Michel *is an Assistant Professor of Political Science at John Jay College of Criminal Justice–CUNY. Her research interests include comparative criminal justice, victims' rights, rule of law, and legal mobilization, with a regional focus on Latin America.*

Kathryn Sikkink *is the Regents Professor in the Political Science Department at the University of Minnesota. Her current research interests focus on the influence of international law on domestic politics.*

https://doi.org/10.1111/lasr.12040 Published online by Cambridge University Press