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Human Rights in the Corporate Context

The Challenge of Accountability

Society may subsist, though not in the most comfortable state, without beneficence; but the prevalence of injustice must utterly destroy it.

—Adam Smith (1759, p. 64)

It might be surprising that a book about business-related human rights abuses would begin with a quote from Adam Smith, the so-called "father of economics" or "father of capitalism." Yet, capitalistic systems are rife with challenges for human wellbeing; Smith knew this. Even before he wrote his best-known *The Wealth of Nations* (1776), he had already published a book 17 years earlier titled *The Theory of Moral Sentiments* (1759). While others have explored his seemingly paradoxical texts,[1] the quote above is an important admonition that the "father of capitalism" thought deeply about the ways in which (informal) rules of morality and (formal) rules of the market keep one's self-interests in check and ensure individual rights are respected. Smith understood the fundamental idea that for a society to function, economic relationships need to foster individuals' opportunity to thrive and that, without such, the public order may be at risk. Smith's first book, like this one, is about how people engage with one another when individual rights come into conflict with economic activity. Both books underscore the importance of redress or justice for wrongdoing and, quite significantly, the great danger for our existing political and economic systems if we allow injustices to persist.

Consistent with Smith's observations, human exploitation is ubiquitous in our modern economy. This exploitation constitutes human rights abuses when it violates the standards that recognize and protect the basic freedoms and dignity that all humans are guaranteed by virtue of being human (e.g. physical integrity rights, political and civil rights, as well as economic, social,

[1] See Otteson (2002); Roberts (2015).

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and cultural rights).[2] Many people may think of human rights abuses as an unusual, worst-case scenario in business. Yet, individuals are regularly injured, trafficked, enslaved, forcibly displaced, or killed in the corporate context. Recent examples include enslavement of migrant workers across agricultural communities in Argentina; over 4,500 employees working in a sweatshop in Peru, some of whom were dismissed for trying to form a union; and forced displacement of communities by paramilitary forces in Colombia on behalf of a palm oil company. Claims such as these are widespread, suggesting that businesses abuse, neglect, or fail to protect the basic human rights of workers and communities.

Such human rights abuses occur in a context of increasing interest in, and activism around, improving corporate human rights conduct. The challenge of improving corporate behavior is frequently summarized by scholars and policymakers as the need to close the "governance gap," or the oft-cited idea that states are weak relative to large, multinational enterprises that span the globe. In response to this gap, there has been a marked rise in international- and industry-specific voluntary initiatives, monitoring bodies, and global campaigns. Such efforts have attempted to redress human rights abuses and mitigate future occurrences by engaging states, firms, and civil society to address concerns about corporate misconduct. Initiatives include well-known multi-stakeholder efforts like the Extractive Industry Transparency Initiative or the Kimberley Process and newer efforts, such as the Equitable Food Initiative. In 2011, the United Nations (UN) Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs) to improve companies' respect for human rights, including a framework for remedy provision, when human rights are not respected. A decade later, the UN Working Group on Business and Human Rights launched the "UNGPs 10+" project to assess what has been done and create a road map for the next decade of work on business and human rights.[3]

That human rights abuses can occur is well understood, but *what* happens – and to whom – is not well explained by existing perspectives. The governance gap does not explain the wide variation in victims' access to remedy mechanisms, defined as judicial or non-judicial efforts that seek to redress corporate wrongdoing. From the examples above, Adecco Argentina and Manpower – the human resources companies in Argentina that provided staffing services for Monsanto contractors – denied enslaving migrant workers and stated that

[2] A more detailed explanation as to how human rights are defined in this analysis is provided in Chapter 3.

[3] See OHCHR (2021b).

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they comply with "all applicable regulations relating to agricultural work" (*La Voz* 2011). A Monsanto spokesperson vowed the company has always "respected human rights" (Associated Press 2012). Even so, victims did not have access to remedy. On the other hand, in Peru, one of the world's largest fashion retailers, Inditex (Industria de Diseño Textil, S.A.) engaged in negotiations with labor representatives, other buyers, and its supplier, Topy Toy, where employees endured sweatshop conditions. Inditex's code of conduct requires suppliers to sanction worker exploitation and meet local and international labor laws (Just Style 2007). As such, Inditex led a negotiation in which all parties agreed to what labor representatives called a "historic agreement" that allowed employees to form a union and reinstated ninety-three employees who were wrongfully dismissed (CCOO 2007). And, in the final example, a Colombian court convicted five palm oil company employees in October 2014, and in June 2017 convicted a majority shareholder of the company, Antonio Nel Zuñiga-Caballero, for colluding with paramilitaries in the forcible displacement of Afro-Colombian communities (Ballvé 2009; El Espectador 2017).[4] The focus of this book, thus, is to explore and understand the variation in access to remedy mechanisms for corporate human rights abuse. As I argue, the business and human rights literature, in general, needs to adopt a more victim-centered approach to better understand access to remedy mechanisms and the possibilities of improved democratic practices through claim-making.

This book asks the following fundamental questions: Why do victims have access to remedy mechanisms in some instances and not others? More specifically, when corporations are confronted with allegations of past abuse, what characteristics of the contestation (e.g. who is involved and in what context?) explain governance outcomes (e.g. why do some victims have access to judicial or non-judicial remedy mechanisms while others do not)? And to what end does contestation about businesses' respect for human rights have positive spillover effects for democratic practices in the long term?

[4] Upon the initial 2014 ruling, the defendants appealed by arguing that they did not directly inflict harm on those who were forcibly displaced (e.g. they had no weapons and did not injure anyone). The court upheld the initial ruling and, what is more, the same tribunal revoked a lower court's decision and convicted Zuñiga-Caballero, due to his direct links with the paramilitary, a member of which owned the company, Urapalma SA (El Espectador 2017). As described in Payne, Pereira, and Bernal-Bermúdez (2020), the innovation in this case was the broader interpretation of the crime of forced displacement to convict company employees and recognize the rights of internally displaced people to return to lands occupied by private actors (p. 261).

Seeking Justice puts forward a novel argument: I develop the "varieties of remedy" approach, which explains when and why victims are likely to obtain access to remedy mechanisms for corporate human rights abuses. This approach explores how specific characteristics of non-violent contestation – who is involved and in which institutional context it occurs – shape the governance of corporate wrongdoing, or access to remedy mechanisms. Every day, victims around the world confront corporate actors for various ills and do so to seek remedy for those abuses. Some victims confront small- or medium-sized locally owned businesses while others confront large multinationals for their role in wrongdoing, including forced labor, environmental destruction, or death. Some victims confront corporate actors in countries with weak institutional frameworks and disregard for rule of law, while others bring these claims to light in countries with more robust institutions. Acts of claim-making are sometimes supported by local non-governmental organizations (NGOs) while other claims are broadcast by international non-governmental organizations (INGOs). Some victims gain access to judicial or non-judicial remedy mechanisms, but many victims are ignored or, worse, further victimized. What unifies all of them, however, is that they engage in non-violent contestation to gain access to remedial mechanisms for corporate wrongdoing. The arguments and analysis in this book seek to shed light as to when and why those efforts are more or less likely to work in democratic contexts.

To begin, the book challenges the widely accepted governance gap narrative.[5] The governance gap proves to be a useful heuristic to motivate action at the international level, as indicated by the creation of, and a groundswell of activism around, the UNGPs. Yet, it has numerous shortcomings. It overlooks the policies (e.g. neoliberalism) that prompted policymakers and human rights advocates to advocate for improved corporate respect for human rights. A somewhat myopic focus on the governance gap has also led policymakers, scholars, and human rights advocates to pay little heed to local efforts to obtain access to remedy mechanisms for victims. In short, the governance gap framing casts aside the complexity of the business and human rights space.

[5] Scholars argue that rulers have incentives to maintain, or even weaken, state apparatuses for personal gain (Reno 1997), but this idea has yet to be developed in the context of the governance gap. Instead, the governance gap relates more closely to how state and society scholars depict a "weak state" or, quite simply, that states do not have the capacity to hold corporate actors to account. Though beyond the scope of the book, the arguments herein suggest that the governance gap framing, at best, ignores the paradoxical quality of the state (e.g. not a monolith) or, worse, deteriorates both the practice and image of the state (Migdal 2001), thereby exacerbating the issue at hand (see Olsen and Bernal-Bermúdez 2023 for a study of economic complicity, or state-sponsored abuses in the corporate context).

The theoretical contribution developed here tells a new story. It draws together two streams of political theory – pragmatism and agonism – to make sense of the simultaneous, complicated, and dynamic nature of domestic-level efforts to provide access to remedy mechanisms for corporate human rights abuse. Pragmatism – distinct from its more common use (e.g. pragmatic action or, even, Ruggie's (2006, 2010) "principled pragmatism") – is an approach that allows for knowledge to evolve, rather than assume it is immutable, waiting to be discovered. My use of pragmatism is ontological (the origins of our knowledge about the world) and not epistemological (the ways in which we know about the world), though the latter is making a resurgence in international relations scholarship.[6] Pragmatism-as-ontology avoids the dualisms and parsimony that define much of the political science scholarship (see Pratt 2016 for a thorough review). Pragmatism is not precise, by design, in that it embraces "complexity, intersubjectivity, and contingency in social relations" (Gould and Onuf 2009, p. 27). This approach upends the way mainstream analyses have, thus far, understood the governance gap and access to remedy. Pragmatism leaves open the possibility that while there may be similarities in corporate human rights violations, local contingencies make a parsimonious theory in this domain unlikely. In other words, we learn the value of stepping away from the false dichotomy of "gap or no gap" and begin to investigate the multiple, sometimes circuitous, ways in which victims may access remedy mechanisms, while also discovering that new claims continue to emerge.

The second stream of political philosophy upon which I draw is agonism. Agonism is a philosophical orientation that stresses the central role of contestation in democratic contexts and underscores that contestation can be productive, leading to greater institutional legitimacy. This literature challenges traditional notions of consensus through deliberation and, instead, integrates confrontation into an understanding of institutional change and democratic endurance.

Taken together, pragmatism as an ontology encourages the reader to consider an alternative approach to much of the mainstream BHR literature, by questioning the parsimony of the governance gap narrative and considering the complexity of the business and human rights landscape. Meanwhile, agonism encourages the reader to consider the potentially productive role of non-violent contestation. This theoretical framework is a key contribution of this book, as the governance gap narrative risks prioritizing parsimony over precision – even

[6] See Bauer and Brighi 2002; Sil and Katzenstein 2010.

when the latter reveals multiple, possibly circuitous or synonymous pathways. These literatures are discussed at length in the next chapter.

This foundation sets the stage for the book's second contribution, which is the development of the varieties of remedy approach. The name of this approach is a play on – and, quite possibly, a needed complement to – Hall and Soskice's (2001) *Varieties of Capitalism*, in which the authors compare how variation in actors' engagement shapes national economies. Alternatively, this book compares how actors' engagement and the institutional context shapes access to varieties of remedy for some of the more serious ills of capitalism (e.g. corporate human rights abuse). While Hall and Soskice (2001) illustrate how institutional infrastructure facilitates a nation's comparative advantage, the elaboration of the "varieties of remedy" approach improves our understanding as to how the characteristics of contestation (e.g. claim-making) shape governance outcomes (e.g. access to judicial or non-judicial remedy efforts).[7] Thus, by building on research in political science, management, and human rights, the varieties of remedy approach develops three potential pathways to remedy efforts: *Institutional Strength*, *Corporate Characteristics*, and *Elevating Voices*. These pathways, described later, challenge assumptions associated with the governance gap. They also contribute to related sets of scholarship that seek to address corporate human rights abuse, but only apply what we know about states' respect for human rights to the corporate context (Risse, Ropp, and Sikkink 2013; Bauer 2011), or consider the legal responsibility firms might face for human rights abuses (Martin and Bravo 2016; Karp 2014; Bird, Cahoy, and Prenkert 2014; Deva and Bilchitz 2013; Gatto 2011). Instead, this book takes a victim-centered approach through which "remediation turns into one of the most important, if not the most important element, of corporate responsibility because it addresses the plight of those who have already suffered harm" (Schrempf-Stirling, Van Buren, and Wettstein 2022 pp. 26–27).

To answer the questions posed here I utilize unique, newly collected data, the Corporations and Human Rights Database (CHRD), which is the third

[7] Chapter 2 includes an in-depth discussion of governance, which is defined as "the traditions, institutions and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern" drawn from the Institute on Governance (IOG). Other scholars' research corroborates this definition (Amin and Hausner 1997; Avant, Finnemore, and Sell 2010; Newman 2001; Pierre 2000), which departs from the traditional notion of bureaucratic administration, previously used in governance research.

contribution of this research.[8] My team and I created the CHRD, which includes over 1,300 allegations of corporate human rights abuse across Latin America from 2000 to 2014.[9] Importantly, the dataset includes a broad range of corporate human rights abuse: physical integrity (i.e. murder, disappearance, illegal detention, torture); development (i.e. exploitation of land, license to operate); environment (i.e. water, air, land contamination); health (i.e. health consequences of corporate activity); and labor (i.e. child labor, substandard working conditions). The empirical chapters systematically and longitudinally explore allegations of corporate human rights violations in the modern era, which is a relatively understudied phenomenon (Payne, Pereira, and Bernal-Bermúdez 2020; Wright 2008). The data facilitate new learning about victims' access to remedy, which is of great import and interest to practitioners and scholars.[10] For example, in 2014 the UN launched an Access to Remedy Project which is aimed at "continuing the work to facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses" (United Nations OHCHR 2014). And yet, existing business and human rights scholarship tends to focus on single firms (Reygadas 2003; Taylor 2004; Wheeler, Fabig, and Boele 2002), particular countries (Hamann et al. 2009; Chesterman 2008; Santoro 2000), and small-*N* comparisons of firms or business sectors (Chandler 1998; Drimmer 2010; Handelsman 2003; Woolfson and Beck 2003). Anecdotal evidence alone can result in uninformed decisions or policy.[11] The CHRD avoids that pitfall.

[8] In this book "corporation" is used interchangeably with "business," "firm," or "company," and defined as the group of individuals who legally engage in commerce with the goal of making a profit.

[9] Note that the data used in this book are a subsample of the data included in the CHRD, which covers all countries in the world between 2006 and 2018. I am grateful to the University of Denver for initial seed grants for this project and, ultimately, the National Science Foundation (Award ID #1921229) for making the data collection possible. This analysis, however, began with the pilot project of the CHRD, which focused on Latin America. Thus, this book analyzes those countries that transitioned to democracy since the so-called "third wave" of democratic transitions or were already democratic: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Uruguay. Microstates (those with a population under one million) were omitted from this analysis because consistent information from other data sources was unavailable.

[10] See, for example, the OHCHR's recent work on access to remedy: "Accountability and Remedy Project: Improving accountability and access to remedy in cases of business involvement in human rights abuses." www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx

[11] Note that this book does not address whether such mechanisms make the victim whole. Though that line of inquiry would be a valued and welcomed contribution to the literature, this book helps us understand when victims have access to such remedy mechanisms – a

Seeking Justice unlike many books about political economy, business ethics, or business and human rights, narrows in on the act of contestation, whereby actors express an alternative vision to the status quo or articulate a social criticism about the conduct of others to seek remedial mechanisms for, in this case, corporate wrongdoing. Contestation is a fruitful focus because it is the source of both interesting variation and important pathways to remedy. Institutional scholars, for example, might focus on the rules or norms (structure) to determine whether they facilitate access to remedy. Those studying collective action or contentious politics (agency) might focus only on the people who bring these claims to bear. Neither approach would be satisfactory here because, as I argue, greater respect for human rights in the corporate context is not only about structure or agency, but something much more complex. A focus on contestation, however, accomplishes two things: first, it facilitates a deeper look at who participates and in what context; it allows us to build a more robust understanding as to when it is more or less likely to shape governance outcomes while recognizing the multiple ways in which this may occur. Second, contestation brings into focus the foundational and fundamental need to recognize the irresoluteness and continuity of discord. The perennial nature of contestation has consequences not only for communities living in the sphere of influence of corporations but also for the longevity and health of our political and economic systems, generally.

In summary, this book provides a novel theoretical framework with which to understand the relationship between contestation and governance in the business and human rights arena. Below, I situate the book by outlining the business and human rights agenda and current policy discussions in this arena. Next, I introduce the varieties of remedy approach, which is empirically examined throughout the book, to develop a multilevel perspective that identifies three key pathways to judicial and non-judicial remedy mechanisms. Contrary to narratives about the governance gap, this book uncovers how contestation-level dynamics create pathways to governance outcomes – institutional strength, corporate characteristics, and elevating voices. Using unique data to test hypotheses in the literature, this book presents new findings and provides the first systematic study of access to remedy in the contemporary business and human rights context. The overall framing supports an exploration of how local forces of contestation shape access to remedy, whether provided by states or corporations, and what that

foundational and necessary step to subsequently understand whether remedy addresses the harms and satisfies victims' needs. In other words, this project lays the foundation for future work assessing the quality and effectiveness of such remedy mechanisms.

might mean for enhancing the future protection of the most vulnerable in our global economy. Finally, I provide an overview of the book and end with a brief discussion of the broader implications of the varieties of remedy approach.

THE BUSINESS AND HUMAN RIGHTS AGENDA

Historically, most human rights research has been concerned with states' respect for human rights in post-transition or post-conflict settings. Today's human rights regime began in the post-WWII era with the adoption of the Bill of Human Rights in 1948 and codification of such norms through international or regional accountability bodies. Around the globe, the wrongdoing of past state-sponsored human rights abuses has been recognized and, at times, those individuals have been held to account (Finnemore and Sikkink 2001; Olsen, Payne, and Reiter 2010). While a new norm for state respect for human rights has been established, respect for human rights in the corporate context continues to evolve.

Today, an increased focus on business actors as perpetrators of human rights abuse has been driven by multiple factors. First, multinational enterprises have more power and influence today than ever before. Some companies' assets are larger than the GDP of the countries in which they work. For example, General Motors produces more revenue ($135 billion) than the GDP of Hungary ($129 billion) where GM opened a plant in 1991. Were Walmart a country, its revenues would have made it the 10th largest GDP globally in 2016 (World Economic Forum 2016). A study by Global Justice, a UK-based non-profit organization, found that the world's top ten corporations have a combined revenue of more than the combined 180 "poorest" countries in the world, which include Ireland, Indonesia, Israel, Colombia, Greece, South Africa, and others (Global Justice 2016).[12]

[12] Those outside of the firm often assume economic power leads to political power; indeed, some of the corporate political activity literature confirms this intuition (on bargaining see Schuler, Rehbein, and Cramer 2002; Schuler 1996; on lobbying see Drope and Hansen 2006; Hillman et al. 2004; Schuler and Rehbein 1997). Even so, I find this view in stark contrast with the firm-perspective as depicted in the strategy literature, where firms operate in a highly competitive environment in which risks lurk around every corner (see discussion in Chapter 4). Again, in the spirit of a pragmatic approach, it turns out both are true – as we will see in Chapters 4 and 5, some corporate characteristics are correlated with impunity while other characteristics, from the corporate perspective, make them at greater risk for accountability. Uncovering this nuance is essential to improving victims' access to remedy.

A second and related point is that many external stakeholders – consumers, civil society organizations, and policymakers – expect improved corporate behavior in general, and seek to apply human rights norms to the corporate context, more specifically. For example, in the United States, Soule (2009) documents that citizens increasingly aim to elicit change from corporations by pressuring them directly. Scholars have documented how repeated confrontations by civil society through boycotts or protests make firms more receptive to such challenges and improve corporate conduct (McDonnell, King, and Soule 2015). Policymakers have also played an important role in creating "soft law" or voluntary mechanisms, such as the Extractive Industry Transparency Initiative, among others (Knudsen and Moon 2017).

More recent efforts include more detailed reporting requirements or direct regulation. For example, the United States Congress passed the Dodd-Frank Act in 2014, which included provision 1502, requiring firms to disclose whether they procure minerals from the Democratic Republic of the Congo.[13] In addition, the UK's Modern Slavery Act of 2015 strengthened and reformed existing laws about human trafficking and modern slavery to reduce occurrence and to prosecute those involved.[14] In 2017, France adopted a law on the corporate duty of vigilance which requires large French companies to publish an annual "vigilance plan" that is meant to both identify risks and prevent severe human rights and environmental impacts due to company operations. In 2021, the Netherlands adopted legislation to combat child labor in Dutch companies' supply chains. In the same year, Germany adopted the Act on Corporate Due Diligence Obligations in Supply Chains, which requires companies to systematically identify and address human rights and environmental risks in their own business operations and in those of their first-tier suppliers.[15] In 2022, the Norwegian Transparency Act took their legislation a

[13] In 2017, the United States' Securities and Exchange Commission stated it would suspend enforcement of the due diligence and audit requirements of 1502. Even so, companies are still required to file disclosures about the source of materials in their products. Perhaps more concerning, however, is recent research questioning the effectiveness of this supply chain transparency effort (Stoop, Verpoorten, and van der Windt 2018).

[14] Some observers have expressed frustration with the slow progress of the UK Modern Slavery Act, which was passed in 2015. An NGO, After Exploitation, shows that only one-third of modern slavery victims were referred through the National Referral Mechanism (Bulman 2022). Moreover, non-profit and political leaders are concerned that the Nationality and Borders Bill, passed in 2022, will further limit victims' access to support. Scholarly research highlights the slow progression, as well (see Mantouvalou 2018).

[15] Importantly, the legislation includes clauses for special litigation and outlines that firms may be fined up to 2 percent of their average annual turnover if they do not take remedial action or implement an appropriate remedial action if a violation is found within their direct supplier.

step further than other countries have by requiring companies to account for the human rights and labor practices of direct suppliers, as well as those vendors or subcontractors who make up the entire supply chain. It is limited in some respects, though. While citizens "will be entitled to request information from companies, and the Norwegian consumer authority may issue injunctions and fines for non-compliance. . .victims of human rights abuses will regrettably still not have the right to seek remedy in court" (ECCJ 2021). On the heels of this upward trend in domestic legislation, the European Commission proposed mandatory due diligence legislation in February 2022 (Abnett and Strupczewski 2022).[16] If adopted this law would oblige approximately 13,000 European Union (EU) firms and 4,000 non-EU firms to assess their supply chains for environmental and human rights risks and mitigate them when and if they do occur (Bruneau et al. 2022).[17]

As a result of increased pressure and legal obligations, businesses are beginning to understand the importance of human rights. Many scholars argue that when firms engage directly or indirectly in human rights violations, the firms put their own future at risk. The costs of malfeasance may involve reputational or operational risks, costs associated with legal liability, and possibly loss of consumer or investor confidence (Bernstein 2008). Many observers followed a series of cases against Royal Dutch Shell in Nigeria and the United States for the hanging of Ken Saro-Wiwa and eight other activists who protested the company's environmental pollution in the Niger Delta. Ultimately, the company settled out of court fourteen years later (Pilkington 2009), though Esther Kiobel and three other women whose husbands were killed in 1995 are still seeking justice (Amnesty International 2022).[18] And,

[16] McCorquodale and Nolan (2021) provide a comprehensive discussion about human rights due diligence, how it has been applied to date, and its relevance for various areas of law.

[17] Many other examples exist that are indirectly related to business and human rights. Since 1996, Belgian TNCs and Belgian subsidiaries of foreign companies have been required to report on their social performance in their annual accounts. As of 2001, Australia required corporations listed in the Australian stock exchange and other investment firms to complete an annual corporate social responsibility report. And, also as of 2001, nationally listed French companies are required to submit a corporate sustainability report, which should include information on "how they will ensure that subcontractors and subsidiaries comply with ILO's core conventions" (Abrahams 2004: 35). In Argentina, Law 2594 of the City of Buenos Aires requires companies with over 300 employees to report on their social and environmental performance (Legislatura de la Ciudad Autónoma de Buenos Aires 2007).

[18] While the widows of the Nigerian activists are still seeking justice for the murder of their spouses (Amnesty International 2022), Shell has been found responsible for oil spills in the region. In 2021 the Hague Court of Appeal found the Shell Petroleum Development Company of Nigeria responsible for oil spills and resulting harm. The Court also found the company violated its duty of care regarding operations overseas; this is the first time a Dutch court has

twenty-six years after the Bhopal disaster, in 2010, Indian courts found seven executives of Union Carbide India Limited guilty of criminal negligence (Press 2010). Cases brought to courts in the United States against the parent company, Union Carbide Corporation, however, were dismissed (Lakshman 2016). More recently, in January 2019, Vale's stock price plummeted after news of a catastrophic tailings dam collapse in Minas Gerais, Brazil, which killed 270 people. The company lost nearly $19 billion or a quarter of its market value and, in February 2020, Brazilian state prosecutors charged the former CEO, Fabio Schvartsman, and fifteen others involved in the collapse with homicide (Nogueira 2019; Pulice 2022). In April 2022, the United States' Securities and Exchange Commission sued Vale for fraudulently misleading investors, governments, and communities about the safety of its dams in Southern Brazil.

Together, these trends have created a space in which human rights norms are increasingly applied to business. The following section offers a broader historical context for business and human rights. It provides a primer as to how today's business and human rights agenda was developed and what this trajectory tells us about the potential challenges and opportunities for victims' access to remedy mechanisms.

The Promotion of Voluntary Mechanisms and the Challenges of Hard Law

Since the early 1970s, worldwide initiatives have attempted to curb corporate human rights abuses. In 1974, the UN established the Commission on Transnational Corporations (UNCTC). The UNCTC created a code of conduct that, while not explicitly about human rights, sought to outline best practices with regard to international trade, treatment of foreign enterprises, and dispute settlement efforts. The UNCTC only produced a series of drafts and was discontinued in 1992. Other initiatives during the 1970s were also voluntary in nature. In 1976, the Organization for Economic Co-operation and Development (OECD) issued Guidelines for Multinational Enterprises. A year later, in 1977, the International Labor Organization published the Tripartite Declaration of Principles Concerning Multinational Enterprises. The Sullivan Principles, which are codes of conduct that were widely adopted by U.S.-based corporations to put economic pressure, on South Africa to end

held a parent company based in the Netherlands accountable for wrongdoing abroad. Observers note that this opens the door for more corporate accountability cases in Dutch courts; a lawyer for Friends of the Earth Nigeria, Chima Williams, stated, "Now the oil companies will know they cannot continue to act with impunity. And that a day will come when they will be held accountable for their misdeeds" (Peltier and Moses 2021).

its apartheid, and the Foreign Corrupt Practices Act in the United States – also adopted in 1977 – were also part of the effort to change the norms and standards for global business. While the UNCTC and the Sullivan Principles were considered important catalysts in ending the apartheid regime of South Africa, overall these initiatives failed to create widely agreed-upon sets of standards that would transform expectations and business practices (Sagafi-nejad and Dunning 2008, p. 118).

By the late 1990s and early 2000s, efforts to promote both hard law (e.g. international regulatory frameworks) and soft law (e.g. voluntary actions) were underway. In the 1990s, the UN gathered a group of five independent experts to draft a code of conduct for transnational corporations, which became the "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" (hereafter the "Draft Norms"). The Draft Norms set out human rights standards for companies and drew heavily from existing international law in civil, political, economic, social, and cultural rights that addressed issues from labor concerns to environmental issues to consumer protection.

The breadth of the Draft Norms, however, was met with both trepidation and strong opposition by businesses and governments, alike. The main point of controversy was that the Draft Norms placed direct, legal responsibility on corporations as "organs of society," a term that is employed in the Universal Declaration of Human Rights. The Draft Norms also included implementation mechanisms (monitoring, reporting, and verification) and stipulated obligations of corporate financial redress for wrongdoing. Pushback came from the private and public sectors. Businesses, in general, opposed binding regulation on corporate conduct, including international law. The International Chamber of Commerce and the International Organization of Employers actively lobbied against the Draft Norms (Mantilla 2009, p. 288). State leaders in some developing countries questioned their capacity to enforce such a regulatory framework. Others suggested that the political will to do so would be weak; many developing country leaders would struggle to hold companies accountable for wrongdoing given the state's reliance on companies for much-needed economic growth and investment. Developed states were hesitant to sign on to hard law mechanisms that would challenge state sovereignty through extraterritoriality procedures. And, one might imagine, state leaders in more developed states would have been likely to face significant pushback to enforcement, as well. And so, in April 2004, amidst this political backlash, the UN Commission on Human Rights set the Draft Norms aside, declaring they "had not been requested by the commission and thus, would not be considered" (Mantilla 2009, p. 286).

Meanwhile, voluntary initiatives and multi-stakeholder initiatives (MSIs) proliferated.[19] In 2000, UN Secretary-General, Kofi Annan launched the Global Compact, a voluntary mechanism to facilitate discussions and best practices for corporations. The Global Compact promotes "shared values and principles" for state and non-state actors alike and represents one of the first efforts to encourage non-state actors to explicitly commit to respecting human rights. To date, the Global Compact has 16,537 members, of which 6,214 are companies (UN Global Compact). Industry-specific initiatives have also become popular. In 2000, the Voluntary Principles on Security and Human Rights (VPs) were published, providing guidelines to assess risk associated with employing or dealing with private and public security forces. The VPs were signed by governments, key international NGOs, and more than fifteen large multinationals working primarily in the extractive industry. The Extractive Industry Transparency Initiative, established in 2003, facilitates greater openness between member companies and states with regard to revenues generated from large-scale extractive projects. In an effort to reduce corruption and bribery, states and companies agree to publicly disclose payments associated with large-scale extraction projects. The Kimberley Certification Scheme, established the same year, is another industry-specific initiative established to reduce the flow of illicit diamonds fueling conflicts in Sierra Leone, Angola, and the Democratic Republic of the Congo, among other countries.[20] Nonetheless, voluntary initiatives have fallen short. A 2020 report by MSI Integrity, a watchdog organization for multi-stakeholder initiatives, does not mince words: "MSIs are not effective tools for holding corporations accountable for abuses, protecting rights holders against human rights violations, or providing survivors and victims with access to remedy" (p. 4).

This summary highlights the long history of voluntary efforts associated with improving corporate conduct – and why many are left wanting more. This discussion also illustrates the challenges that arise when seeking to create binding international law to hold firms accountable for violating human

[19] Kirkebø and Langford (2018) document nearly 100 different standards that have been adopted since 1976 in the business and human rights context; they find that voluntary initatives have changed over time and find a modest increase in commitments to more substantive standards over time. See also Erika George's (2021) book, which argues for a more holistic approach to improving corporate respect for human rights in which she sees greater potential, as well, for "soft" law.

[20] Numerous MSIs exist, over forty of which are catalogued in a database created by MSI Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics, see: https://msi-database.org/

rights and informs the subsequent formation of business and human rights policy.

Business and Human Rights Today

When the Draft Norms were discarded amid the lack of support from key state and corporate actors in 2004, many within the UN were concerned that the business and human rights agenda might be abandoned completely. Kofi Annan appointed Harvard Professor John Ruggie as the Secretary-General's Special Representative for Business and Human Rights to revive the discussion. Ruggie, who also spearheaded the Global Compact, consulted with businesses, states, and civil society organizations to try to formulate a set of standards and principles that outlined all actors' responsibilities to ensure greater respect for human rights in the corporate context. In June 2011, Ruggie's work culminated in the UN Human Rights Council's unanimous endorsement of the UN Guiding Principles on Business and Human Rights.

The UNGPs – the principal document for today's business and human rights agenda – outlines principles that describe the role and responsibilities of business, the state, and civil society in aiming to reduce human rights violations by corporate actors and to improve access to remedy for victims of such abuse. The three pillars of the UNGPs are: 1) the state duty to protect human rights; 2) the corporate responsibility to respect human rights; and 3) access to remedy mechanisms for victims of business-related abuse (UNGPs 2011).

While many celebrated the passage of the UNGPs, others expressed concern.[21] The UNGPs, for example, have been described as the "lowest common denominator" (Blitt 2012). Others note that without formal accountability mechanisms, the UNGPs will not be effective in creating a significant improvement in corporations' respect for human rights and redress when abuses do occur. One scholar writes that "the Guiding Principles provide no sanction whatsoever for companies that fail to fulfill their responsibility for tracking and reporting adverse human rights impacts in their business activities" (Footer 2015, p. 52). Some argue the UNGPs are a step backward. Prior to assuming a position on the UN Working Group on Business and Human Rights, Surya Deva wrote that the UNGPs have been viewed as having "the

[21] To be clear, in his final presentation to the Human Rights Council, Ruggie (2011a) noted that the Council's endorsement of the UNGPs was only the beginning of a much longer process, thereby explicitly recognizing that much more work was left to be done to implement and build upon all three pillars.

effect of rolling back the legal concretization of corporate human rights obligations" (2013, p. 80).

As of this writing, a new set of actors are seeking to create an internationally binding treaty on business and human rights.[22] Though early in the process, many of the same challenges the Draft Norms faced in the 1990s are reemerging today in response to recent treaty efforts. While voluntary mechanisms continue to proliferate, hard law remains a quandary due to entrenched interests among other issues, making international, legal accountability efforts challenging to implement. As the Business and Human Rights Resource Center reported, 2020 UN treaty negotiations saw increasing polarization between states regarding specific provisions like mandatory due diligence, protection of migrant workers, as well as access to justice (BHRRC 2020).

As shown in this brief summary of the various attempts to shape business conduct, only moderate success has been achieved, if that. This is, perhaps, because of the disconnect between global conversations and local action. Rodríguez-Garavito (2017) aptly makes this point:

> The dominant debates at the UN level – such as those on the implementation of the UN Guiding Principles on Business and Human Rights and the future of the ongoing discussion within the intergovernmental working group tasked by the UN Council with developing a treaty on BHR – do feel oftentimes a world away from litigation, campaigning or fieldwork on human rights violations stemming from corporate practices. . . (p. 2)

Beyond the UNGPs, most of the global governance initiatives are centered around "do no harm," rather than redressing past abuses or ensuring victims have access to remedy mechanisms, which is the focus of this study. The UNGPs stand out in this sense by including access to remedy. Prior to her appointment to the UN Working Group on Business and Human Rights, Anita Ramasastry wrote that corporate responsibility is "a core obligation of companies to respect human rights wherever they operate, to do no harm and when harm is caused to provide a meaningful remedy to victims" (2015,

[22] In 2014, the UN Human Rights Council adopted a resolution by Ecuador and South Africa to create an open-ended intergovernmental working group (IGWG) on Transnational Corporations and Other Business Enterprises with respect to human rights. The group's mandate is to elaborate an international legally binding instrument for such organizations and, as of October 2022 (OHCHR 2022), the third revised draft was still being discussed by the IGWG. While the third draft has made some marked improvements, the European Union, United States, China, Japan, Israel, and the United Kingdom are participating in ways they have not before. At the time of this writing, it is too soon to tell what their participation will mean for the treaty's fate.

p. 240). Even so, some lament that the third pillar – access to remedy – is the "forgotten pillar" (McGrath 2015). Schrempf-Stirling, Van Buren, and Wettstein (2020, p. 26) call remediation a "blind spot" while the title of an OECD Watch report pithily summarizes their findings about redress: "Remedy is Rare" (Remedy Remains Rare 2015). Despite numerous efforts to improve corporate respect for human rights, we know very little about why some victims have access to remedy mechanisms while others do not. This book seeks to fill this void by uncovering three pathways to remedy mechanisms, as described below.

INTRODUCING THE VARIETIES OF REMEDY APPROACH

The next chapter lays out the theoretical foundation of this book and how it engages the literature in depth. Here, I provide a brief introduction to the varieties of remedy approach, which draws from pragmatism and agonism. Pragmatism allows us to accept the complexity and simultaneity of multiple pathways to remedy mechanisms, while agonism brings into focus the perpetually contested nature of business and human rights.

Pragmatism is making a resurgence in political science scholarship, as it helps make sense of complex, multifaceted, dynamic areas of inquiry, like this one. First, pragmatism recognizes that social transformation is a fluid process that involves the ongoing interaction of actors and their environment. A focus on action can incorporate local actors – victims, their advocates, and businesses – more meaningfully than the governance gap narrative does. Second, pragmatism recognizes the multiplicity, and possible simultaneity, of pathways to remedy efforts. Finally, pragmatism allows for moments of equilibrium; however, it recognizes that outcomes may be suboptimal and that new solutions may emerge. In sum, this perspective facilitates an analysis of local actors' interactions with one another with a focus on action (e.g. reflexive innovation), a multiplicity of pathways, and suboptimal equilibria (Dewey 1927).

However, scholarship on pragmatism provides only a tacit role for confrontation, despite its central observation that actors continually shape one another. Pragmatism does not have a full-fledged account of how contestation occurs. To address this gap, I draw on agonism, which is a philosophical orientation that stresses the irreducibly contested nature of democracy (Honig 2007; Mouffe 2013). In contrast with Habermasian notions of deliberative democracy, which assume consensus will be achieved through deliberative processes, agonism recognizes "the multiplicity of voices that a pluralist society encompasses, and the complexity of the power structure that such a

network might imply" (Mouffe 2013, p. 757). Agonism recognizes the perpetual contest of democracy and – importantly – theorizes about the affirmative dimension of that contestation.

Agonism scholars note that *who* participates in confrontation is also political. "Agon thus does not occur between co-citizens but between first- and second-class citizens, between those whom are included and those excluded" (Schaap 2009). In this sense, agonistic thought makes explicit the power and inequality of democratic politics so as "to bring them to the fore, to make them visible so that they can enter the terrain of contestation" (Schaap 2006). Adopting an agonistic lens shifts our attention toward democratic or institutionalized pathways for confrontation (e.g. access to non-judicial or judicial remedy mechanisms). Agonism is pertinent to the inquiry at hand, as it focuses on who participates and, importantly, how such contestation can improve the legitimacy of democratic institutions and associated practices. Agonism recognizes the multiplicity of voices and the complexities of power differentials. Honig (1993, p. 15) writes that to "affirm the perpetuity of the contest is not to celebrate a world without points of stabilization; it is to affirm the reality of perpetual contest, even within an ordered setting, and to identify the affirmative dimension of contestation." In sum, instead of lamenting the inherent tensions and perceived instability of contestation, agonism suggests that institutions that flourish will be those that manage to absorb contestation in a productive manner.

Bringing these literatures into discussion provides the foundation for framing questions about business and human rights in terms of contestation and governance. In other words, how does the context (institutional strength), the characteristics of those making the claim (victims or those advocating on their behalf), and to whom such a claim is made (large/small, foreign/domestic firms, profitable/unprofitable) shape access to remedy efforts?

In the case of business and human rights, an agonistic perspective can still promote access to remedy for human rights abuses, but it pushes against the strong desire to "find" the right balance between states and markets or to identify a specific model adopted through consensus. Instead, the varieties of remedy approach requires an understanding of how contestation can be constructively incorporated into democratic, non-violent processes. The task, then, "is not to eliminate passions nor to relegate them to the private sphere in order to render rational consensus possible, but to mobilize those passions toward the promotion of democratic designs. Far from jeopardizing democracy, agonistic confrontation is in fact [democracy's] very condition of

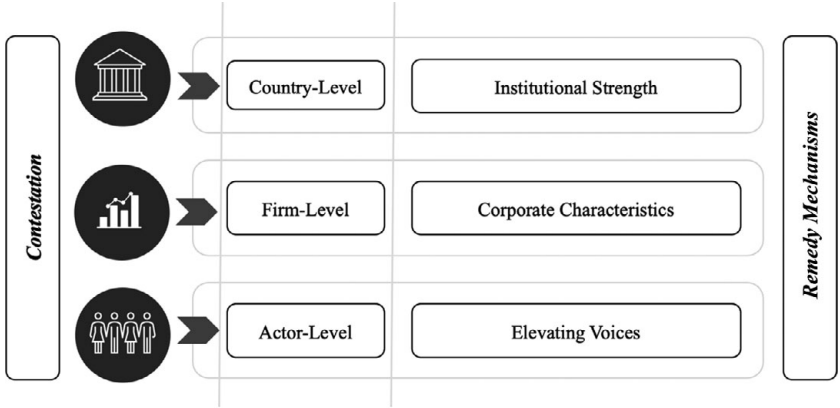

FIGURE 1.1. Schema of the varieties of remedy approach

existence" (Mouffe 1999, pp. 755–756). In other words, the ultimate test is whether a democracy can absorb contestation.[23] I build on this call by exploring three specific pathways to remedy. The pathways, described in brief here – Institutional Strength, Corporate Characteristics, and Elevating Voices – represent efforts to address contestation in the business and human rights context (see Figure 1.1).

Institutional Strength: Shaping Incentives to Engage in Remedy Efforts. The first pathway explores agonism's observation that institutional capacity to absorb contestation is critical to the longevity of democratic regimes. Scholarship on democratic transitions in Latin America highlights the fundamental role that rule of law plays in shaping democratic consolidation and respect for human rights, generally. Strong legal structures play dual roles; they can serve as a deterrent and can also serve to identify clear standards and norms about remedy for human rights abuses, including issues such as labor violations or lack of consultation with local communities. Subsequent chapters illustrate that strong rule of law correlates with access to judicial remedy mechanisms while victims are more likely to have access to state-led non-judicial remedy mechanisms in contexts with weak rule of law. Respect for rule of law, however, has no effect on corporate-led non-judicial remedy efforts.

[23] Note that issues associated with corporate human rights abuse and access to remedy are likely more acute in non-democracies. This is a crucial aspect to explore, but is beyond the scope of this study, which focuses on access to remedy mechanisms in varying levels of democratic contexts.

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Corporate Characteristics: Accountability Efforts Despite Corporate Power. The second pathway assesses the characteristics of who engages in the contestation and focuses on the resources and capacity of firms. The governance gap narrative generally assumes that firms are likely to enjoy impunity, yet the data provide a more nuanced story. While profits protect foreign firms from judicial accountability, high profit margins are associated with more accountability efforts for domestic firms. Moreover, foreign firms do not always enjoy impunity; large foreign firms are more likely to face criminal charges than their smaller counterparts. The pathway to non-judicial remedy is more likely for victims of firms that are large, profitable, or have a previous record of human rights abuse. The characteristics of the firm engaged in contestation shape access to remedy mechanisms in ways unanticipated by the existing literature.

Elevating Voices: Remedy through Reflexive Innovation. The third pathway centers on the role civil society can play in facilitating access to remedy mechanisms by using their local expertise, practicing reflexive innovation, and amplifying victims' voices. In particular, the business and human rights literature assumes a productive role for NGOs and INGOs in shaping access to remedy for victims of business-related human rights abuse. Such actors seek to augment victims' voices that might otherwise be excluded, as agonistic scholars suggest. The varieties of remedy approach highlights local knowledge and local action; when victims have the support of domestic NGOs, they are more likely to access judicial processes. With NGO support, victims are more likely to access non-judicial remedy mechanisms when the firm has a history of abuse. However, INGOs are negatively associated with access to judicial remedy and have no effect on access to non-judicial remedy mechanisms. This finding relates back to the important role local actors play in agonistic contestation and in shaping victims' access to remedy mechanisms.

Structure of the Book

The remainder of the book is organized as follows. In Chapter 2, I take a deeper dive into the literatures on pragmatism and agonism to illustrate how, when combined, they provide the intellectual framing and underpinnings of the varieties of remedy approach. While pragmatism highlights the need to analyze the dynamics between local actors, their advocates, and the firms involved in the abuse, agonism asserts that non-violent contestation and confrontation could have a potentially positive role. With this foundation, I develop the varieties of remedy approach, exploring how contestation

(e.g. claim-making) shapes governance outcomes (e.g. access to judicial or non-judicial remedy mechanisms). Three pathways are discussed in greater depth in Chapter 2 – *Institutional Strength*, *Corporate Characteristics*, and *Elevating Voices* – and tested empirically in subsequent chapters.

In Chapter 3, I present the CHRD by exploring patterns and trends with descriptive data to illustrate the variation in access to remedy. The CHRD includes over 1,300 allegations of corporate human rights abuse between 2000 and 2014. Chapter 3 explains how my team and I created the CHRD, which is the first systematic database on contemporary corporate human rights abuses and access to remedy. This chapter discusses the data collection process and includes descriptive statistics on key details about the claim, corporate responses, and associated judicial and non-judicial remedy efforts included in the database. Chapter 3 will familiarize the reader with the data, discuss verification processes, and provide a basic landscape of how the CHRD informs business and human rights in democratic countries across Latin America.

Chapter 4 provides the first empirical assessment of the pathways developed earlier in the book. It focuses on access to judicial remedy mechanisms, defined as any processes initiated in the court of law. In it, I ask: how does confrontation shape governance outcomes in terms of access to legal remedy efforts? I draw from political science and legal scholarship on the logic of deterrence to illustrate how *Institutional Strength* represents an important pathway to judicial remedy mechanisms. I develop the *Corporate Characteristics* pathway by engaging with political economy and management scholarship to explain the ways in which firm-level characteristics associated with resources and capacity (e.g. foreignness, profitability, and size) explain variation in access to judicial remedy. Finally, this chapter explores the *Elevating Voices* pathway by drawing from the human rights scholarship, which illustrates how civil society support (e.g. NGO or INGO involvement) can amplify claims and shape governance outcomes. Using case studies from the CHRD, this chapter also provides rich illustrations of victims' access to judicial remedy mechanisms.

Chapter 5 presents the same pathways but draws on different scholarship, as non-judicial remedy mechanisms represent a much broader set of administrative or mediation-based activities that can be initiated by state or non-state actors. This chapter explores the *Institutional Strength* pathway by assessing how the rule of law influences access to non-judicial remedy. To inform the mechanisms that drive the *Corporate Characteristics* pathways, this chapter draws from slack resource theory, which suggests that when firms have extra resources to do good deeds, they will do so. Other scholars explore how firm size can also shape firm involvement in such activities; larger firms are more vulnerable to civil society pressure and, thus, may be more likely to

engage in non-judicial remedy mechanisms as a result. Finally, I further develop the *Elevating Voices* pathway by exploring the contentious politics literature, which theorizes on the importance of local actors pressuring state or corporate actors to incite change. Detailed vignettes provide concrete illustrations of victims' efforts to access non-judicial remedy mechanisms.

Engaging directly with agonistic thought, Chapter 6 asks whether contestation about corporate human rights abuses, over the long term, shapes democratic practices more broadly. What is clear is that agonism requires confrontation to be incorporated or integrated into democratic institutions. As Mouffe (2000) states, "Modern democracy's specificity lies in the recognition and legitimation of conflict" (p. 103). What is less clear, then, is what type of confrontation could have a positive effect on democratic practices. This chapter empirically tests this relationship. It finds that contestation improves measures of respect for human rights and civic empowerment. That is, without any formal or informal response, simply speaking out and making abuses known improves respect for human rights, generally. The data also illustrate that, there is a positive cumulative effect of trials over time, regardless of the outcome, which demonstrates the importance of reflexive innovation, as emphasized in pragmatic thought. In addition, there is a positive, cumulative relationship between respect for human rights and non-judicial remedy efforts, but this finding is driven by non-judicial remedy efforts that are state-led. Corporate-led non-judicial remedy efforts, however, do not fulfill the agonistic vision; those mechanisms are not associated with improvements in democratic practices over the long term.

Finally, the conclusion provides an overview of the argument and findings, which together call for a departure from the more traditional narrative around the governance gap. Instead, this research illustrates that while impunity does exist, there are many more efforts to hold corporations accountable than the governance gap narrative would suggest. The varieties of remedy approach focuses on the real shortcomings associated with *governing* in the corporate context. I argue that, as Smith recognized, we must have a more just approach to business conduct. As such, greater attention must be paid to the ability to engage with an adversary, absorb contestation, and explore creative solutions to find a better path forward. This concluding chapter also addresses the generalizability of this work and shares some areas of future research.

BROADER IMPLICATIONS

An improved understanding of access to remedy is of great import for the lived experiences of those facing such abuse. Agonism brings into focus how the

business and human rights context serves as a microcosm for thinking about the future quality and, quite possibly, the endurance of democratic institutions. As illustrated by each claim in the CHRD, the gains promised by democratic systems and free markets have not arrived quickly enough. This analysis highlights the conditions under which contestation can create more productive outcomes, as the contours of market economies and democracies continue to be drawn.[24]

For individuals and victims of corporate human rights abuse, this research outlines what type of confrontation will lead to remedy mechanisms. For firms seeking to better promote remedy for human rights abuses and wrongdoing, this research proposes a new understanding that might make their engagement in remediation efforts more meaningful. For policymakers and advocates, this research highlights local efforts to improve access to remedy and shows where democratic institutions should be strengthened to deliver greater access to remedy for victims of business-related abuse. For advocates of human rights, the findings herein have important implications for the type of involvement by NGOs and INGOs needed; not all participation is the same and some involvement can stymie, rather than support, access to remedy.

In addition to the specific context of victims' access to remedy for corporate wrongdoing, more is at stake. At its core, this book delves into the contestation around the type of economy or the type of market that citizens want. It brings to bear tough questions about the trade-offs associated with economic development and the conflicting values around economic growth. Keohane (2002) notes that "the choice is not globalization or not, but relatively legitimate globalization with a measure of democratic and pluralistic external accountability over powerful entities, and illegitimate globalization without such accountability" (p. 27). As economic power has shifted from the state to private actors, the achievements made around states' respect for human rights only have value if private actors are held to such expectations as well. Each event, each confrontation analyzed here, represents a moment at which the contours of what is acceptable or unacceptable begin to take shape.

[24] There is, of course, a robust literature on contentious politics that explores how social mobilization (e.g. demonstrations, strikes, and civil disobedience) shapes government policy (see Chenoweth and Stephan 2011; Tarrow 1996; Tilly and Tarrow 2015). The exploration here is distinct in two ways: first, this analysis focuses on how individuals make their claims heard by corporations *and/or* the state; second, the notion of contestation has a broader definition and wider scope. Contestation may well fit into definitions of contentious politics – certainly there are strikes and protests associated with the abuses explored in this text – but, as used here, it can also fall well outside of those bounds. Contestation can include publicizing one's grievances, participating in negotiations, or filing a claim with the state for corporate wrongdoing.

Seeking Justice presents a study of contestation and governance by exploring access to remedy mechanisms for corporate human rights abuse. To be clear, I do not argue that contestation will always result in accountability; there are numerous instances in which victims have no access to remedy mechanisms. However, without access to remedy in some portion of contested events, the strength and longevity of political and economic systems may suffer. For example, trust in political and economic institutions could dwindle as victims of corporate human rights abuses sense there is no institutionalized outlet for their concerns to be addressed. Without sufficient avenues for contestation, civil society and economic actors may abandon this collective, democratic experiment, altogether. In short, civil society may begin to disengage from accountability efforts and, instead, opt for more violent means of protest, while economic actors, questioning the profitability of projects that face persistent, violent conflict, may simply close their doors. Smith understood the gravity of this point, as well: "Justice. . .is the main pillar that upholds the whole edifice. If it is removed, the great, the immense fabric of human society, that fabric which to raise and support seems in this world, if I may say so, to have been the peculiar and darling care of Nature, must in a moment crumble into atoms" (1759, p. 64). Without justice, in short, there is no wealth of nations.

In sum, for democracy to thrive, contestation needs to occur in a way that promotes democratic values – *even in the corporate context*. If contestation has an outlet – if pathways to remedy mechanisms are clear and accessible – it can facilitate the type of reflexive innovation and experimentation that pragmatic and agonistic scholars suggest is fundamental for the creation, strength, and endurance of democratic institutions. It can also facilitate more meaningful participation by rights holders and other local stakeholders. "The challenge of institutional imagination, therefore, cannot be met but by privileging the excluded as actors and beneficiaries of new forms of global politics and legality" (Santos and Rodríguez-Garavito 2005, p. 9). *Seeking Justice*, in short, identifies pathways for productive contestation by victims of corporate human rights abuses while also addressing whether such instances could prompt an opportunity to facilitate what Honig (1993) calls the "affirmative dimension of contestation" (p. 15). This book informs how confrontation can shape governance in productive ways; it facilitates our understanding, and creation, of democratic designs that can harness discord in a productive manner.