

The Politics of Justice ‘from below’: human rights defenders and atrocity crime trials in Latin America

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Forthcoming in Garbett and Wastell (eds.) Transitional Justice beyond Blueprints. Routledge.

This chapter discusses prosecution of past atrocity crimes as a site of political action that increasingly crosses state-non-state and intergenerational boundaries in post-authoritarian and post-conflict Latin America. It shows how the structure and politics of the formal justice field in the region have been made and re-made by relatives, survivors and others pressing for investigation and prosecution of enforced disappearance, extrajudicial execution and torture. In doing so, it contributes to understanding of how close attention to micro- and meso-level activist dynamics and biographies can illuminate interstitial aspects of post-authoritarian polities, complementing analyses focused on structural change, institutional culture, and/or the logic and drivers of collective action or movement politics. Organisation around the prosecution of past atrocity crimes, including disappearance, has variously served as a means of holding perpetrators to account, constructing new citizenship relationships with the post-authoritarian state, and colonising spaces of purposive collective action at both state and (sub) regional level. In the transitional justice field, the supposition that survivors of past political violence, and relatives of absent victims of such violence, do not necessarily highly value formal justice against its perpetrators seems remarkably persistent. It is true that prosecutions, and related forms of judicialisation,¹ can ‘crowd the field’, handing centre stage to human rights lawyers, judges, and other practitioners of the arcane arts of formal retributive justice. On the other hand, non-prosecutorial measures such as truth-telling, reparations or reform are not invariably or inherently more victim-centred, more ‘humanitarian’, or more empowering than trials. This chapter shows how perpetrator prosecutions, like other forms of transitional justice, can be built ‘from below’, representing at least in part the outcome of deliberate, empowered, and self-empowering strategic action by survivors, relatives and other actors. It discusses at least two generations of such actors, arguing that they constitute ‘accountability entrepreneurs’, a notion which borrows from Elizabeth Jelín’s well-known discussion of memory entrepreneurship.

¹ Courts are now regularly used for transitional justice matters other than criminal prosecution, including setting or challenging the limits to secrecy surrounding official state archives; questioning sufficiency of reparations, or lobbying for or against permission to install memorials in public space. See C. Osorio (ed.) *Judicialização da Justiça de Transição na América Latina*, PNUD/RLAJT: Brasília, 2016 for multiple examples from Brazil. The Inter-American human rights system has also acted and ruled on a broad range of truth, reparations and memory questions. See F. González, *El Sistema Interamericano de Derechos Humanos*, Valencia: Tirant lo Blanch, 2013; O. Parra Vera, ‘La jurisprudencia de la Corte Interamericana respecto a la lucha contra la impunidad’, *Revista Jurídica de la Universidad de Palermo*, 13.1, 2012 or K. Salazar and T. Antkowiak, (eds.), *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America*, Washington, DC: DPLF, 2007.