

## **HOLDING LEADERS ACCOUNTABLE FOR HUMAN RIGHTS ABUSES IN CHILE, ARGENTINA, AND THE UNITED STATES**

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### ***I. Introduction***

In 1970, U.S. President Richard Nixon, in collusion with National Security Advisor Henry Kissinger and the CIA, began the planning stages of a covert operation to remove Chile's democratically elected president, Salvador Allende. In September 1973, the operation came to fruition through a CIA-supported coup that included aerial bombardment of the *Palacio de La Moneda*, the seat of the President of Chile, and placed General Augusto Pinochet and his military in power. By the end of Pinochet's seventeen-year dictatorship, the Chilean regime was responsible for the murder, torture, and disappearance of more than three thousand people. Twenty-five years after he came to power, Pinochet was arrested in London, setting in motion a tortuous and unprecedented legal process in Chile that led to his immunity being stripped. Although Pinochet died without ever facing trial, many of his lieutenants faced trials and imprisonment, and the military saw both its shield of invincibility and its code of silence effectively dismantled. In the United States, by contrast, neither Nixon nor Kissinger faced indictments for their role in the coup in Chile. Nor were they held accountable for human rights abuses elsewhere, such as the indiscriminate bombing of Cambodians during the Vietnam War.

During Argentina's so-called Dirty War, the junta of 1976-1983 was responsible for as many as thirty thousand people killed or disappeared. Since the country's democratic transition in 1983, heads of state have been held accountable for their crimes on a scale that has set a new precedent for the hemisphere. Top leaders of the military regime, including General Jorge

Videla and General Luciano Menéndez, have been tried, convicted, and sentenced to life in prison. The trials, which remain ongoing, have benefited from a concerted effort to document the regime's brutality, from the truth commission of 1984 to the even more groundbreaking truth trials of the 1990s. The judicial process in Argentina has been a complicated and contentious one, as tortuous as that in Chile, with the military rebelling against the trials on several occasions and with human rights advocates pressuring the courts repeatedly. However, Argentina's successes and innovations in this process have been championed by human rights protagonists throughout the world.

Human rights abuses committed by leaders in Chile and Argentina have resulted in legal consequences, whereas human rights abuses committed by U.S. heads of state have not been met with accountability either internationally or at home. This paper will examine the question, why do we observe higher levels of accountability in Chile and Argentina than we do in the United States? Considering that accountability has proven more evasive in the country where a dictatorship did not take place – in the country where democracy and a judicial system have long been established and consolidated – this presents a puzzle.

## ***II. Argument and Research Design***

This will be a qualitative analysis of three case studies: Argentina during the military regime of 1976-1983, Chile during the Pinochet dictatorship, and the United States during the administration of President Richard Nixon. In each case, we observe heads of state who were directly responsible for human rights abuses. However, each case presents its own set of circumstances. The aim of this analysis, therefore, is to identify the variables that account for the disparity in accountability that we observe between these cases. We must consider

whether the crimes were committed on domestic or foreign soil and whether or not the human rights abuser's country was undergoing regime change.

The fact that Argentina and Chile were transitioning out of an era of dictatorship is important. In transitioning from dictatorship to democracy, these countries were not only reconstructing their institutions; they were attempting to heal. The human rights abuses were committed on their own soil, and the torment of those years of dictatorship still lives in their collective memory. In Argentina, this need to heal manifested itself in a formidable human rights movement, made up of a well-educated and highly motivated network of people, and that movement had its effect on the courts in deciding the fate of aggressors. In the United States, by contrast, the most violent human rights abuses committed by leaders like Nixon and Kissinger were carried out on foreign soil, often under the cloak of secrecy, and so the imprint on the collective memory at home was negligible in comparison to the imprint abroad.

The conditions of the transition are also important to consider. Argentina's military saw its power largely dissolved at the point of transition and so could not negotiate the terms of its exit, which left the military more vulnerable to prosecution. In Chile, when Pinochet's reign came to an end, the dictatorship's top brass retained considerable influence as well as outright immunity. It took the intervention of foreign governments in arresting Pinochet to galvanize Chile's judiciary and civil society and create the conditions that made accountability possible. These conditions, in both Argentina and Chile, contrast starkly to those in the United States, where power has long been consolidated. With power so consolidated, U.S. presidents transfer impunity from one administration to the next. With the immense global power that the United States has amassed, justice is unlikely to come from outside its borders, as it did in the case of

Pinochet. U.S. economic and military dominance, as well as its control over international financial institutions, set it apart in terms of who can file charges against whom.

The approach I take in pursuing this research question most resembles the "contrast of contexts" approach (Skocpol and Somers 1980), which seeks to illuminate the unique features that define each case, creating a historical framework that identifies emerging patterns, benchmarks, and various points of differentiation between cases. In this respect, I do not intend to test a succinct hypothesis that can be universally applied. Instead, I intend to demonstrate how justice is administered on an *ad hoc* basis and how a host of factors contribute to the outcome when justice hangs in the air.

### ***III. Literature***

Scholars have delved into these cases from a number of angles and have laid the groundwork for answering the question at hand. Sikkink (2008) provides a comprehensive account of the process that transformed Argentina from a "pariah state" to a "global protagonist" for human rights. A broad activist faction within Argentine civil society played a major role in this transformation, with a movement that ranged from involvement in the Inter-American Commission on Human Rights to the creation of the Mothers of the Plaza de Mayo, an advocacy group of Argentine mothers whose children had been disappeared during the dictatorial tenure of the military regime. Argentine civil society, it is important to note, is not a single definable entity, but rather an amorphous amalgamation of different groups, whose combined action amounted to a movement of endurance and consequence. Sikkink also points out that there were many lawyers in Argentine society, which has made a qualitative and

quantitative difference in pressuring the courts as legal cases dragged through the 1990s and have continued all the way to present day.

As court battles played out in Chile in the 1990s, civil society was not as formidable as that of Argentina, and progress was slower. The military's relative grip on power during these times is an important factor as well, which has been analyzed by several scholars, Roehrig (1998) being one of them. As Roht-Arriaza (2005) points out, it was not until the Pinochet arrest drew international attention that members of the foreign press swarmed Chile and energized a civil movement. In their work on human rights trials in Latin America, Sikkink and Booth Walling (2007) add that there is often interaction between domestic and international courts, wherein domestic amnesties may lead to foreign trials, which in turn can lead to a resuscitation of domestic judicial proceedings. This was certainly the case in Chile. Once that civil movement was stoked by international pressure, it was able to gain momentum, leading the push that eventually led to judicial change and the prosecution of high-ranking members of the Pinochet regime.

Collins (2010) has compared the accountability achievements in Chile to the lack of such achievements in El Salvador, and identifies pressure from domestic actors as a key determinant in explaining this difference. Both Chile and El Salvador preserved immunity for their respective outgoing regimes through amnesty laws after undergoing transitions in the early 1990s. Although El Salvador was targeted by foreign litigation just as Chile was, El Salvador's past aggressors retained their immunity. Domestic civil society groups have been active on a number of issues in El Salvador since the transition, but they did not take on an accountability agenda. Human rights abusers have rarely been held accountable for their actions in Latin America, and

Collins' comparison helps explain why Chile was able to break this pattern in the region and El Salvador was not. In doing so, she makes a strong argument for the essential role that domestic civil activism plays in attaining accountability.

Twenty-six years after the coup in Chile, tranches of U.S. documents were declassified that revealed the extent of U.S. involvement in the coup, as well as U.S. efforts to destabilize the Allende government leading up to the coup. Kornbluh (2003) has recounted this involvement in detail, referencing these declassified documents throughout his account. He has also outlined the level of resistance mounted by the CIA and the executive branch to keep these documents off the record for so many years, including efforts to thwart the Church Committee in its Senate investigations in 1975. The level of secrecy and impunity maintained in the United States, even after heads of state leave office – coupled with the global power that shields the United States from any outside enforcement of international law – helps explain the disparity in accountability pathways we observe between the United States and the post-regime environments of Chile and Argentina.

#### ***IV. Chile***

In December 1977, the U.N. General Assembly condemned the Pinochet regime for human rights violations by a measure of ninety-six to fourteen – the widest margin in history (Munoz 2008). But accountability for the regime would not gain any significant traction in Chile, or internationally, until 1998 – the year Pinochet was arrested in London. Unlike the military junta in Argentina, which left power with its influence in the country greatly diminished, the outgoing Chilean dictatorship retained a substantial level of influence – especially over the courts – after the 1990 transition to democracy. Judges who were appointed during the

dictatorship and who had proven to be reliable regime collaborators, stayed in their positions. Pinochet himself would stay on as commander-in-chief of the army until 1998, after which he would become a senator for life with full immunity. The prospect that any high-ranking members of the dictatorship would be subject to criminal investigations was slim, as portended by Pinochet's pronouncement two months before the democratic elections of 1989, "The day they touch any of my men, the rule of law is over." Incoming President Patricio Aylwin realized the hard truth of this residual power when his campaign promise to repeal the 1978 self-amnesty law – which shielded military officials from prosecution – went unfulfilled, as cooperation from the military would be required for Aylwin to successfully repeal the law. Likewise, fraud investigations involving one of Pinochet's sons "produced military unrest amounting to outright threats of authoritarian reversal" (Collins 2010, 72).

Although Aylwin's hands were essentially tied in the justice arena, his administration in 1991 set up the Chilean National Commission for Truth and Reconciliation, otherwise known as the Rettig Commission, to investigate violence and disappearances that took place during the dictatorship years. Six months after establishment, the Commission documented 2,279 cases of execution or disappearance and found that members of the regime were responsible in a majority of them (ibid.). The number of cases would later rise above three thousand, but the Commission was not permitted to name perpetrators. Even though the Supreme Court could not bring suspects to trial, Aylwin submitted a copy of the Commission's report to the Court, arguing that amnesty could not be applied until the Court knew what had happened. This tactic did not fly, as "A majority of the Supreme Court would have no part ... arguing that amnesty meant that no crime ever existed, and so there was nothing to investigate" (Roht-Arriaza 2005,

72). Nevertheless, the Commission managed to begin constructing a record of the regime's crimes, which Spanish Judge Baltasar Garzón later used to build his case against Pinochet. Also, by making recommendations for reparations to victims' families, it laid the groundwork for what Hite calls a "human rights culture" in Chile (2006, 196). Meanwhile, human rights lawyers worked tirelessly to keep alive cases brought against the regime, pushing to have them closed temporarily, instead of permanently, in the hopes that they might be reopened later. As one such lawyer, Héctor Salazar, said, "We practically earned ourselves doctorates in keeping alive cases that should have died a death. ... We invented new procedures, requested paperwork. ... If a case was going to be closed, we'd open a new one for the same crime in a different court. ... We told ourselves, 'As long as this thing is open, we might get some information that we can use'" (Collins 2010, 77). For much of the 1990s, the battle for accountability was a fruitless one, but with the arrest of Pinochet in 1998, that began to change.

Until January 1998, neither Pinochet nor any high-ranking military official had ever been named as a defendant in Chilean courts. Efforts at accountability had reached only the occasional low-ranking individuals who could be disowned by the military, which sought to distance any recognized misconduct from official policy. The arrest of Pinochet signaled what Roht-Arriaza called "the breaching of a dam" (2005, 68). Feitlowitz described the effort to bring Pinochet to justice as a "pivotal moment in international human rights law. Longstanding assumptions about sovereignty, impunity, and popular will have been rearranged in a new calculus that should make the world less hospitable to abusive heads of state" (2009, 33). The incident not only redefined the concept of universal jurisdiction; it also infused justice seekers in Chile with new energy. With Pinochet detained in London, the courts received a cascade of



new complaints against him. By the time he returned to Chile in March 2000, more than sixty new complaints implicated Pinochet and high-ranking members of his regime in cases of murder, torture, and disappearance. Two months later, there were more than one hundred. "Every day saw a new parade of lawyers march down the halls of the Santiago court to register a complaint, accompanied by somber family members of the victims" (Roht-Arriaza 2005, 69). The Spanish prosecution brought new visibility to the matter, both internationally and domestically. Chile managed to wrest control of the trials from Spain, but the increased visibility was coupled with waves of judicial reform that began to chip away at the fortress of immunity within which the Chilean military had been protected.

One step toward accountability occurred in September 1998, when the new Supreme Court Criminal Chamber upheld an application of the Geneva Conventions that invalidated amnesty in disappearance cases, resulting in the reopening of seventy-four previously suspended cases (Collins 2010). The applicability of international law would be expanded over the next several years in the Chilean justice system, gradually dissolving the application of the 1978 self-amnesty law in the process. These changes were facilitated in part by the replacement of old judges who had supported the military for decades. The post-regime civilian governments had not been able to dismiss the old judges, but in 1998 the government invited turnover by implementing reforms that included a mandatory retirement age of seventy-five and enticing retirement packages. One challenge to replacing judges and reforming a judicial system on a broad scale, however, is that new judges had to learn new procedures amid a pile of new case files. Judge Juan Guzmán stood at the head of this enterprise, taking on what became an enormous investigation that involved a wide array of charges and hundreds of

alleged victims. At the center of the maelstrom was the drawn-out process of determining the fate of Pinochet, which in itself was quite the "rollercoaster ride, with each set of charges needing to be separately defended on the grounds of his putative immunity (as a former president) and supposed unfitness to stand trial" (ibid., 80).

Before Pinochet returned from London, Guzmán proceeded against members of the Caravan of Death, the Pinochet-appointed death squad that brutalized and killed political prisoners following the 1973 coup. Surprisingly, the Criminal Chamber of the Chilean Supreme Court unanimously upheld Guzmán's motion that the defendants were not subject to amnesty. The decision was based on a strange matter of technicality – because certain facts about the case had not been entered into evidence, the crimes were considered to be of a continuing nature and therefore fell outside the bounds of amnesty – but the ruling gave Guzmán, and his lawyers, momentum. In March 2000, they went after Pinochet, just as he was returning to Chile, for ordering the crimes carried out by the Caravan. In April, the Santiago Court of Appeals heard arguments to strip Pinochet of parliamentary immunity, which in itself broke precedent. A month later, the Appeals Court voted thirteen to nine to strip Pinochet of immunity, and in August the Chilean Supreme Court upheld the judgment, allowing Pinochet to stand trial. In December 2000, Guzmán issued an indictment against Pinochet, charging him with homicide and kidnapping in the Caravan cases, and ordered him confined to house arrest (Roht-Arriaza 2005).

The events that followed over the next few years took on a certain ebb and flow, whereby Pinochet was stripped of his immunity multiple times and the question of whether he was fit to stand trial on mental health grounds was revisited repeatedly. In the end, the Chilean

courts determined that Pinochet's dementia made him unfit for trial, and the long legal process against him was closed. An interview in 2004 stood among a number of events that put Pinochet's dementia into serious question, but he remained a free man. However, as Kornbluh points out, "Although Pinochet managed to escape judicial reckoning, many of his once untouchable lieutenants faced indictments, trials, and imprisonment" (Kornbluh 2003, 490). The Chilean courts continued to dismiss amnesty protections, citing international human rights law, including the Inter-American Convention on Forced Disappearances and the Inter-American Court of Human Rights. As of 2009, more than five hundred regime agents were under investigation for human rights abuses, and an additional 276, including high-level operatives of the DINA and CNI intelligence agencies, had already been sentenced, some of them to life terms (Collins 2010). "By the time the Pinochet affair closed," Roht-Arriaza writes, "a different political and legal landscape existed in Chile. A kind of rough and partial justice, perhaps the only kind of justice available after such terrible crimes, seems to have prevailed" (2005, 95).

#### ***V. Argentina***

In Argentina, the military regime of 1976-1983 committed human rights abuses that included murder, torture, kidnapping, and imprisonment without trial. The number of deaths and disappearances varies depending on the source, but human rights organizations estimate that the number is around thirty thousand. In 1980, before the transition, a report by the Inter-American Commission on Human Rights recommended that the members of the military who committed the abuses be prosecuted. When democratically elected President Raúl Alfonsín took office in 1983, he set out to do just that. During the dictatorship, Alfonsín had been a

member of the human rights organization Permanent Assembly for Human Rights, and he intended to establish transitional justice upon taking office. The power of the military collapsed after its defeat in the Falklands War fought with the United Kingdom. Because the military had not been in a position to negotiate the terms of the transition, the door was open for Alfonsín to take action. He began by calling for the repeal of the regime's self-amnesty and for trials of the members of the first three juntas. He also established a truth commission, called the National Commission on Disappearances that published a voluminous report in 1984 detailing crimes committed by the regime. As Sikkink accounts, "The trial of nine commanders-in-chief who had been members of the three military juntas," otherwise known as the trial of the juntas, "lasted almost an entire year in 1985, was attended by large numbers of the public and the press, and produced a vast historical record" (Sikkink 2008, 7). Of the nine tried, five were convicted, including General Jorge Videla and Admiral Emilio Massera, both of whom were sentenced to life in prison.

This initial push towards transitional justice was met with resistance and sparked a series of military rebellions between 1986 and 1990. In part, these were protests over military budget cuts and signified an attempt to reestablish military influence, but they stemmed mainly from the continued and expanded effort to prosecute regime operatives (Roehrig 1998). Although Argentines widely condemned the rebellions, Alfonsín began to backpedal on the prosecutions. In 1986 and 1987, he passed two laws that essentially amounted to amnesty laws – *Punto Final* (Full Stop) put a deadline on case filings for families of victims, while *Obediencia Debida* (Due Obedience) protected officers who could claim they were following orders.

This reversal of transitional justice accelerated when President Carlos Menem took office in 1989. Menem struck a deal with the military whereby he would pardon those who had been convicted in exchange for an end to military rebellion. Menem's pardons included Videla, Massera, and some fifty-odd officers still under indictment (Roht-Arriaza 2005). Argentina's Supreme Court upheld Alfonsín's amnesty laws and refused to overturn Menem's pardons. But then the tides of transitional justice began to turn back in the other direction.

When accountability seemed blocked in Argentina, human rights groups made an important move by turning to international institutions. In 1992, the Inter-American Court on Human Rights found that Full Stop, Due Obedience, and Menem's pardons were all incompatible with the 1978 Convention on Human Rights. A group of delegates to the 1994 constitutional convention pushed through a clause (Article 75) stating that Argentina's international human rights obligations trumped any contrary domestic laws. The human rights treaties cited by Article 75 include the Universal and American Declarations of Human Rights and the American Convention on Human Rights. Given this new precedent, "Seminars, books, and academic forums began training judges, prosecutors, and lawyers in the content and implications of the international human rights treaties" (ibid., 99). Human rights groups and judges also continued to pursue cases that were not covered by Due Obedience, particularly ones involving children who were abducted from people who were "disappeared" by the regime. In 1998, federal judges ordered preventive detention for Videla and Massera for crimes of kidnapping babies and falsifying public documents. Hite writes, "By 2004, four of the formerly pardoned junta leaders and dozens of lower-ranking officers had been charged and imprisoned for child kidnapping and illegal adoption" (Hite 2006, 203).

As the human rights movement continued to gain steam in Argentina, many of these procedures were being invented as the process unfolded. A lack of precedent in a country still defining its transition left doors open for the widely diverse assortment of human rights groups and lawyers – from the Mothers of the Plaza de Mayo to the Center for Legal and Social Studies – to mold a new judiciary out of wet clay. In 1998, this diverse set of actors felt its collective sense of what was possible in this battle wholly re-imagined when Pinochet was arrested in London. Universal jurisdiction had been exercised by European countries in prosecuting low-level perpetrators in the Balkans and Rwanda, but never had universal jurisdiction targeted a head of state. Mirta Mántaras, a complainant lawyer in Argentina, said:

When the truth trials began, we had no possibility of demanding trial and punishment of the guilty, because Pinochet was not then detained, the House of Lords had not yet ruled, Baltasar Garzón had not yet asked for the extradition of the Argentine military officers. All of this created a universal judicial consciousness, an understanding that crimes against humanity can be prosecuted anywhere in the world (Roht-Arriaza 2005, 107).

The mounting evidence against the Argentine regime compiled by the truth trials, coupled with this international awakening, pressured judges to take the next logical steps. In 2000, notorious torturers Juan Antonio del Cerro and Julio Héctor Simón, along with seven other military officers, were arrested for the kidnapping of Claudia Poblete and the disappearance of her parents. In determining that it was nonsensical to investigate the kidnapped child and yet not investigate the deaths of the parents, which happened under the same set of events, the court was forced to once again confront the amnesty laws—only this time within a new judicial atmosphere. In March 2001, Judge Gabriel Cavallo, in a decision exceeding one hundred fifty pages that drew from both Argentine law and a host of

international laws and treaties, declared the Full Stop and Due Obedience laws null and void (ibid.). Appeals courts upheld the ruling, citing the unconstitutionality of the amnesty laws. In 2003, President Néstor Kirchner took office vowing to support the advancement of justice, replaced corrupt judges with new judges who had human rights backgrounds, and supported Congress in passing a law that annulled the amnesty laws. In 2005, the annulment was fully solidified when the Supreme Court ruled in a seven-to-one vote that the amnesty laws were unconstitutional, thus reopening hundreds of human rights cases that had been closed for fifteen years. Ever since, officials from the military junta have been tried and sentenced to heavy prison terms for human rights abuses committed during the Dirty War. At the time of this writing, Argentina is in the process of launching its largest trial ever, which is expected to last two years, with sixty-eight defendants facing close to eight hundred charges of murder, torture, and other human rights abuses. Accountability has come home for Argentines.

#### ***VI. The United States***

To Nixon and Kissinger, Allende's leftist government was a threat not only to U.S. interests in Chile, but also to the political leanings of the region at large. In order to create more favorable conditions in Chile, the pair orchestrated a covert campaign to destabilize the Chilean economy. As Kornbluh notes in his thorough accounting of the U.S. role in the Pinochet coup and dictatorship, "U.S. efforts to isolate Chile and quietly curtail bilateral and multilateral economic support constituted an 'invisible blockade' against a country whose economy was deeply dependent on financial, industrial, and commercial relations with the United States" (2003, 83). In their attempt to "make the economy scream," U.S. officials used leverage within international financial institutions to block critical monies, as they did at the World Bank to

disqualify Chile for a pending \$21 million livestock-improvement credit as well as future loans. In addition, the United States spent millions of dollars supporting opposition parties within Chile in an effort to create the climate for a coup. As evidenced by the more than one hundred fifty thousand pages of U.S. documents declassified in 1999 and 2000, CIA operatives played an instrumental role in the 1973 coup, training operatives and supervising strategic and logistic preparations. "To be sure," Kornbluh says, "the Chilean military applied the electrodes, pulled the triggers, and dug the secret graves during the dictatorship; but in the eyes of many victims, and many observers around the world, the United States served as an active-to-tacit accomplice in the denouement of Chilean democracy and consolidation of Pinochet's dictatorship" (*ibid.*, 494).

One of the early victims of the U.S. effort to undermine Allende's presidency was Chilean General René Schneider, who was murdered in a botched kidnapping attempt in 1970. Three decades later, on September 10, 2001, two of Schneider's sons filed a wrongful death lawsuit against Kissinger and former CIA Director Richard Helms, alleging that they aided and abetted the right-wing Chileans who murdered Schneider. The complaint drew extensively from the declassified U.S. documents that outlined U.S. involvement. The United States did not help Chilean authorities find Schneider's killers, even though the documents show that Kissinger and Helms knew who they were (Roht-Arriaza 2005). Kissinger's lawyers contested the suit on the grounds that Kissinger was acting in an official capacity, and that any actions taken within that capacity were protected by the immunity afforded to him as a U.S. policymaker (*ibid.*). In March 2004, the District Court for the District of Columbia dismissed the lawsuit on grounds essentially



aligned with the argument made by Kissinger's lawyers, and in June 2005, the Court of Appeals affirmed the ruling.

This is not the only time Kissinger has been targeted from abroad for actions related to the coup in Chile. In November 2002, eleven victims of the coup and their families filed a civil suit against Kissinger and the U.S. government. It too was unsuccessful. In May 2001, while Kissinger was in Paris, a French attorney served him a summons to testify on the disappearance of Chileans after the coup, after which Kissinger quickly fled the country. In 2002, Kissinger was pressured in Argentina and Brazil to answer questions about his knowledge of Operation Condor, the state-sponsored network of terror and repression coordinated by dictatorships in the Southern Cone of South America. International actors were emboldened by the arrest of Pinochet in 1998, and wanted to believe that universal jurisdiction could extend so far as to snag Kissinger in its net. However, this did not prove to be the case; Kissinger remained impervious to efforts at international prosecution.

CIA involvement in the Pinochet coup represented only one bullet point on the resume of human rights abuses overseen by Kissinger. The indiscriminate bombings conducted by Nixon and Kissinger in Cambodia during the Vietnam War – which were carried out under the cloak of secrecy, without the knowledge of Congress, without even the pilots themselves fully informed – amounted to war crimes under the U.N. Charter by any objective measure. Yet no serious punishment has come for Kissinger. He may be limited as to where he can travel overseas these days, but in the United States he is still treated with celebrity status. Although Nixon suffered a more shameful fall from grace, his leaving office was precipitated by a domestic scandal, not by his violent, covert acts of foreign policy. Declassified documents may have set the record

straight on the U.S. role in Chile, but as Kornbluh points out, accounting and accountability are not the same thing (Kornbluh 2003).

It should be noted, however, that bringing those documents into the light did not come without a struggle. With each of the four tranches that were declassified, the CIA resisted, withholding documents that were to be released and redacting sections of those that were released. In 1999, one CIA official stated that the Agency was not "legally obligated" to divulge files on clandestine operations in Chile because those operations "had never been officially acknowledged." (ibid., 481). As Loch K. Johnson argues, intelligence accountability in the United States has been an "uneasy" battle that dates back to 1974, when *The New York Times* published a series of articles that accused the CIA of spying on U.S. citizens as well as taking out the democratically elected president in Chile (2004).

While the capacity to hold U.S. heads of state accountable for human rights abuses is limited on a domestic front, foreign actors are even more impotent in this capacity. Regardless of any advancements in the precedent of universal jurisdiction achieved by the Pinochet case, U.S. economic, military, and geopolitical power sets the country apart in terms of who can effectively bring charges against whom. The case that Nicaragua brought against the United States in 1984 in the International Court of Justice at the Hague is a telling example. Nicaragua charged that U.S. intervention in the ongoing Nicaraguan civil war – which involved supporting the counterrevolutionary Contras, attempting to overthrow the government, mining harbors, and launching attacks on Nicaraguan territory – violated international law under the U.N. Charter as well as the Charter of the Organization of American States (Chayes 1985). In anticipation of these charges, the United States attempted to suspend its acceptance of the

Court's jurisdiction over Central America. The Court ruled that it retained jurisdiction and that it would consider the merits of the case. In 1985, the United States disputed jurisdiction again and announced that it would not participate in the case. The Court proceeded to hear the case without U.S. participation, and in 1986 it handed down its decision and awarded damages, which the United States ignored. The United States has played an instrumental role in establishing international legal institutions, including the International Criminal Court, but it has not shown the same enthusiasm when applying that international order to its own actions.

Regarding U.S. disengagement at the Hague in the Nicaragua case, Harold G. Maier writes, "The ultimate authority of the International Court of Justice flows from the same source as the ultimate authority of all other judicial bodies. Every court's decisions are an authoritative source of law in a realistic sense only because they are accepted as such by the community whose controversies the court is charged to resolve" (Maier 1987, 77). In other words, the efficacy of the international legal system depends on voluntary compliance. It is not what you can prove; it is what you can enforce. Granted, this maxim does not apply only to superpowers. After the U.N.-sponsored truth commission in El Salvador condemned human rights violators, urging that they be held accountable, El Salvador passed a sweeping amnesty law (Hite 2006). In Guatemala, the government's endorsement of the Peace Accords in 1996 did little to slow human rights abuses. Clearly, though, U.S. leverage is unmatched in the arena of enforcement, wielding its immense power on both ends of the stick: able to sanction other states with effectiveness while also able to deflect states' efforts to administer punishment for U.S. actions. This power emanates from a range of sources, from its ubiquitous military presence to its control over international financial institutions.

In reaction to the case brought against Pinochet, the Chilean armed forces threatened to alter its military contracts with the United Kingdom and Spain, a threat that was inconsequential. Compare this to how successful the United States has been in deflecting efforts by Chilean, Salvadoran, and Guatemalan citizens to press U.S. courts to hold U.S. officials accountable for human rights abuses over the decades. Those citizens filed complaints related to U.S. military interventions in their countries – interventions similar to the numerous others carried out by the United States all over the world throughout the Cold War – but saw no results, largely because their governments lack the leverage to effectively sanction, coerce, or otherwise restrain the United States.

Latin American governments have worked to enmesh the United States in treaties and international law, but those agreements have yet to mitigate U.S. leverage. For example, the United States signed but never ratified the American Convention on Human Rights, which renders the instrument effectively toothless in effecting accountability for the region's hegemon. U.S. exceptionalism in this regard extends beyond the Americas of course. Despite calls by people like Archbishop Desmond Tutu to drag former U.S. President George W. Bush before the International Criminal Court for violating international law with the Iraq War, such a thing will never happen, partly because the United States has resisted becoming a party to the ICC, but mostly because it would be an affront to U.S. global power that would be quickly quelled by whatever means necessary.

### ***VII. Conclusion***

Holding leaders accountable – whether transnationally or within borders – requires leverage that is matched by sufficient will. While the state can certainly play a role in advancing

accountability, in post-regime Chile the impetus for advancement came from private actors. Collins writes, "Although improved judicial disposition has been key, it has operated as a necessary but insufficient condition for successful prosecution of any particular case. ... The cases that advance most satisfactorily are still those triggered and then actively pursued by capable private lawyers representing engaged and motivated relatives or survivors" (2010, 83). The situation was similar in Argentina, where a civil society made up of a large number of determined lawyers led the charge in pressuring the courts to hold heads of state accountable for human rights abuses on an unprecedented scale. Consequently, justice was not distributed evenly in Chile or Argentina, since convictions and leniency depended on which lawyer was arguing a case and which judge was hearing it. Nevertheless, civil society had a momentous impact on a shifting justice paradigm. That impact was bolstered by an international outcry when the crimes in those countries claimed the attention of the foreign press, but the will to fight for accountability grew out of the bloodstained soil at home.

While the United States may seem like a disparate case when comparing its accountability mechanisms to those of Chile and Argentina, it appears that way only because the U.S. record has been so different from the other two. In fact, in the United States, the process for prosecuting its leaders should have been easier, as the United States was the only country of the three where amnesty for its highest offenders was not written into law. But as these contrasting contexts demonstrate, having all the necessary ingredients to administer justice does not in itself make a cake, and the path toward accountability is lined with challenges. The judicial reforms that led to accountability victories in Chile and Argentina took decades to fight for and implement, with plenty of losses dotting the way. The human rights

groups, lawyers, and judges who fought those long battles had the perseverance to see the process through because the process was a meaningful one for the country. A country rebuilding itself in the wake of dictatorial rule has a much different context than one where human rights abuses have not directly impacted the citizenry. Granted, there are a number of examples in Latin America where crimes committed on home soil have gone unpunished, even after the aggressors have left power, but that fact only reinforces the notion that each context is different, and that there is no universal recipe for accountability. The post-regime cases of Chile and Argentina demonstrate international and domestic movements that were able to penetrate long-standing fortresses of immunity. The case of the United States – ever the exceptionalist – demonstrates an undisturbed status quo.

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