The responsibility of any state is to protect its citizens. But if a state, either through omission or through commission, fails to investigate and prosecute crime then what remedies do citizens have? Verónica Michel investigates procedural rights in Chile, Guatemala, and Mexico that allow citizens to call for the appointment of a private prosecutor to initiate criminal investigations. This right diminishes the monopoly of the state over criminal prosecutions and thus offers citizens a way of insisting on state accountability. This book provides the first full-length empirical study of how the victims’ right to private prosecution can impact access to justice in Latin America, and shows how institutional and legal arrangements interact to shape the politics of criminal justice. By examining homicide cases in detail, Michel highlights how everyday legal struggles can help build the rule of law from below.

Verónica Michel is Assistant Professor of Political Science at John Jay College of Criminal Justice, The City University of New York. Her article “Human Rights Prosecutions and the Participation Rights of Victims in Latin America” (coauthored with Kathryn Sikkink, Law and Society Review) received the 2014 Best Journal Article Award from the Law and Courts Section of the American Political Science Association.
Prosecutorial Accountability and
Victims’ Rights in Latin America

VERÓNICA MICHEL

John Jay College of Criminal Justice, City University of New York
University of Cambridge

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
34-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.
It furthers the University’s mission by disseminating knowledge in the pursuit of
education, learning, and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781108422048
DOI: 10.1017/9781108380034

© Verónica Michel 2018
This publication is in copyright. Subject to statutory exception and to the provisions
of relevant collective licensing agreements, no reproduction of any part may take
place without the written permission of Cambridge University Press.
First published 2018
Printed in the United States of America by Sheridan Books, Inc.

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

NAMES: Michel, Verónica, author.
TITLE: Prosecutorial accountability and victims' rights in Latin America /
Verónica Michel.
references and index.
IDENTIFIERS: LCCN: 2017042282 | ISBN 9781108422048 (hardback)
SUBJECTS: LCSH: Private prosecutors—Latin America. | Victims of crimes—
Legal status, laws, etc. — Latin America. | Victims of crimes—Civil rights.
CLASSIFICATION: LCC KG797 .M53 2018 | DDC 345.8/326 — dc23 LC record
available at https://lccn.loc.gov/2017042282

Cambridge University Press has no responsibility for the persistence or accuracy
of URLs for external or third-party internet websites referred to in this publication
and does not guarantee that any content on such websites is, or will remain,
accurate or appropriate.
A mi padre, Guillermo.

In memoriam.
Contents

List of Figures  ix
List of Tables xi
Acknowledgments xiii

Introduction: Private Prosecution, Access to Justice, and Rule of Law 1
Legal Opportunity Structure and Prosecutorial Accountability 4
Private Prosecution in a Nutshell 5
Overview of the Argument 8
Data and Methodology 10
Outline of the Book 14

1 Private Prosecution as an Accountability Tool 17
Private Prosecution and the Sovereign Modern State 18
Private Prosecution as an Accountability Mechanism 21
Conditions behind the Use of Private Prosecution 23
Building the Rule of Law from Below (and Abroad) 28
Conclusion 32

2 Private Prosecution as a Victim’s Right in Latin America 33
The Historical Seeds of Private Prosecution in Latin America 35
The Victims’ Rights Movement and Its Impact on International and Domestic Law 37
Expanding Victims’ Rights in Latin America 45
The Diffusion of Victims’ Rights in the Region 54
Conclusion 58
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>David and Goliath: Private Prosecution in Guatemala</td>
<td>62</td>
</tr>
<tr>
<td></td>
<td>Democratic Transition and Judicial Reform in Guatemala</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>Private Prosecution as a Tool against State Terror</td>
<td>69</td>
</tr>
<tr>
<td></td>
<td>Sins of Omission: The Never-Ending Cycle of Violence and Impunity</td>
<td>81</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>99</td>
</tr>
<tr>
<td>4</td>
<td>Against Oblivion: Private Prosecution in Chile</td>
<td>101</td>
</tr>
<tr>
<td></td>
<td>Democratic Transition and Criminal Justice Reform</td>
<td>102</td>
</tr>
<tr>
<td></td>
<td>Sins of Commission and Prosecutorial Accountability</td>
<td>108</td>
</tr>
<tr>
<td></td>
<td>Private Prosecution as a “Normal” Right</td>
<td>120</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>134</td>
</tr>
<tr>
<td>5</td>
<td>Discovering the Power of Rights: Private Prosecution in Mexico</td>
<td>136</td>
</tr>
<tr>
<td></td>
<td>The Judicial System and the Transition to Democracy in Mexico</td>
<td>137</td>
</tr>
<tr>
<td></td>
<td>Impunity in an Era Lacking Victims’ Rights</td>
<td>141</td>
</tr>
<tr>
<td></td>
<td>Discovering Rights: The Experience of Private Prosecution in Chihuahua</td>
<td>146</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>167</td>
</tr>
</tbody>
</table>

Conclusions: Prosecutorial Accountability and Rule of Law from Below

References

Annex 1 Participation Rights for Victims by Legal System

Annex 2 Rights of the Victim in Latin American Criminal Procedure Codes

Annex 3 Private Prosecution Rights in Latin America by Country

Annex 4 Sample Methodology of Homicide Cases in Guatemala

Annex 5 Sample Methodology of Homicide Cases in Chile

Annex 6 Statistical Analyses of Murder Cases in Santiago, Chile

Annex 7 Database of Homicide Cases in Chihuahua, Mexico

Glossary

Index
Figures

2.1 Cumulative number of countries with CPC reform in Latin America, by year (N = 17) 55
3.1 Prosecutorial activity in human rights cases in Guatemala 73
3.2 Estimated total loans and foreign aid for the justice sector in Chile, Guatemala, and Mexico 83
3.3 Rate of impunity in homicide cases in Guatemala, 2004–15 84
3.4 Distribution of human rights cases by outcome of the proceedings in Guatemala 98
4.1 Prosecutorial activity in human rights cases in Chile, 1980–2009 111
4.2 Types of private prosecutors in homicide cases in Santiago, Chile, 2007–9 124
5.1 Comparison of human rights prosecutions by country and outcome of the case from 1980–2009 141
5.2 Total number of homicide deaths in Mexico from 1990 to 2015 151
5.3 Distribution of homicide cases by outcome of the proceedings in Chihuahua 162
Tables

2.1 Comparison between inquisitorial and adversarial criminal procedure systems 46
2.2 Private prosecution rights in Latin America 51
2.3 Loans and aid for judicial reforms in Latin America 59
2.4 Number of countries that have made reforms based on the Model Code 60
3.1 Cases with and without private prosecutors in two courts in Guatemala City 87
3.2 Sample of homicide cases in two courts of Guatemala City 89
4.1 Cases of homicide with private prosecutors in FRMS 122
4.2 Cases of crimes against life that reached the courts in the jurisdiction of the FRMS 122
4.3 Number of prosecutions by type of homicide and presence of a private prosecutor in Santiago, 2007–9 123
4.4 Predicted probabilities of having a private prosecutor depending on type of homicide in Santiago 126
4.5 Distribution of homicide cases by outcome of the proceedings in Santiago, 2007–9 128
4.6 Predicted probabilities of how a first-degree murder case ends depending on the presence of a private prosecutor in Santiago 129
<table>
<thead>
<tr>
<th>Table</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>Criminal procedure reform by state in Mexico</td>
<td>140</td>
</tr>
<tr>
<td>5.2</td>
<td>Homicides in the state of Chihuahua and the City of Chihuahua, 2005–9</td>
<td>152</td>
</tr>
<tr>
<td>5.3</td>
<td>Homicide cases that reached the courts in the City of Chihuahua, 2005–9</td>
<td>153</td>
</tr>
<tr>
<td>5.4</td>
<td>Unsolved homicide cases in the City of Chihuahua, 2007–9</td>
<td>154</td>
</tr>
<tr>
<td>5.5</td>
<td>Homicide cases with and without private prosecutors in the City of Chihuahua, 2007–9</td>
<td>158</td>
</tr>
<tr>
<td>5.6</td>
<td>Cases of homicide by type of crime and by gender of the victim in the City of Chihuahua, 2007–9</td>
<td>164</td>
</tr>
<tr>
<td>4A.1</td>
<td>The Population Size in Guatemala</td>
<td>208</td>
</tr>
<tr>
<td>4A.2</td>
<td>The Sample Size in Guatemala City</td>
<td>208</td>
</tr>
<tr>
<td>5A.1</td>
<td>The population size in Chile</td>
<td>211</td>
</tr>
<tr>
<td>5A.2</td>
<td>The sample size in Santiago</td>
<td>212</td>
</tr>
<tr>
<td>5A.3</td>
<td>Random sampling method in Santiago: number of cases sampled, per year, per crime type</td>
<td>212</td>
</tr>
<tr>
<td>6A.1</td>
<td>Logit estimates of determinants of having a private prosecutor in Santiago, Chile</td>
<td>214</td>
</tr>
<tr>
<td>6A.2</td>
<td>Ordered logit estimates of determinants of how a murder case ends in Santiago, Chile</td>
<td>214</td>
</tr>
</tbody>
</table>
Acknowledgments

I grew up in Mexico City believing that in Latin America the legal system worked only to support the elite, to incarcerate the poor, or to repress opponents. If social change was possible, I then thought, it was through demands pressed on the streets, not the courts. Then, in the 1990s, human rights trials started to make headlines across Latin America, and to the surprise of many the judiciary began to adopt a new role in Latin American politics. As a graduate student, I became curious about the changes introduced by judicial reforms in Latin America and the new emphasis these reforms placed on victims’ rights. Along the way, many people helped me convert this curiosity into a research question, then into a thesis, later into an argument, and finally into a book about how the law and courts matter for victims and can produce meaningful social change. In this journey a vast network of friends, relatives, colleagues, and institutions helped me in many more ways than I can account for in just a few pages.

First and foremost, I must thank my advisors and mentors, Lisa Hilbink and Kathryn Sikkink, for being an invaluable source of guidance and inspiration. More than anyone, they saw this project evolve over the years. They both believed in me and in the potential of this project, even at moments when I did not, and for that trust and support I will forever be grateful. I also wish to thank Elizabeth Boyle and David Samuels for their insightful feedback when these pages took the form of a dissertation to graduate from the University of Minnesota. I also received invaluable feedback and support from members of my doctoral dissertation group: Sandra Borda, Ralitsa Donkova, Susan Kang, Denis Kennedy, Moira Lynch, Giovanni Mantilla, Jennifer Rutledge, Darrah McCracken, and Zhenquig (Rock) Zhang. Guys, I still miss our group meetings.

Along the way, many others contributed in one way or another to this project, sometimes by reading a chapter, other times just by talking about ideas related to my project. For this I am deeply thankful to Karina Ansolabehere,
Karen Brown, Jo-Marie Burt, Cath Collins, Javier Couso, Geoff Dancy, Mauricio Duce, Janice Gallagher, Ezequiel González-Ocantos, Lucrecia García Iommi, Silvia Inclán, Mathew Ingram, Barbara Frey, Francesca Lessa, Ana Laura Magaloni, James Mahoney, Rodrigo Nunes, Leigh Payne, Cristian Riego, Julio Ríos-Figueroa, César Rosado, Miguel Sarre, Joachim Sølvberg, Pedro Salazar, Catalina Smulovitz, Juan Vargas, and various panel participants at annual meetings of the American Political Science Association, the Law and Society Association, and the International Studies Association. I would also like to thank my editor, John Berger, the anonymous reviewers who provided such thoughtful comments, and everyone at Cambridge University Press who worked on this book. Special thanks to Steven Koskela for improving my prose and for his careful copy-editing.

The writing of this book was possible because I received support from several institutions along the way. With assistance from the International Center for the Study of Global Change at the University of Minnesota, during the summer of 2009 I traveled for pre-dissertation fieldwork to Mexico City, Santiago, and Guatemala City. The fieldwork trips I conducted during the end of 2009 and 2010 were possible thanks to the International Thesis Research Grant of the Graduate School at the University of Minnesota and the Doctoral Dissertation Fellowship. Parts of my research were also funded through the Transitional Justice Research Collaborative (TJRC) financed under grant No. 0961226 from the National Science Foundation. I am very thankful to the TJRC for letting me be part of such an amazing project. The Law School at the Universidad Diego Portales in Chile gave me important institutional support during the fall of 2010; and FLACSO in Guatemala and Mexico were important spaces for me to meet with other scholars. I am also grateful for the opportunity to present early drafts of this book at the Early Career Workshop of the Law and Society Association, the Law and Politics Seminar of Columbia University, and at the Department of Political Science in Fairfield University.

I must also mention the support that I have obtained from The City University of New York (CUNY). Funding for this work was provided by a grant from the Office for the Advancement of Research at John Jay College and from a PSC-CUNY Research Award (Number 66543-00 44). My colleagues at the Department of Political Science at John Jay College at CUNY provided important support and encouragement as I learned to navigate the demands of teaching while maintaining an active research agenda. I am also very grateful for the support received from the Faculty Fellowship Publication Program (FFPP) from CUNY and will always be thankful to my FFPP writing buddies for their feedback. Without research assistants, a lot of the data
in this book would have been impossible to gather. I am grateful for the work done by Megan Johnson, Maggie Loeffelholz, and Alec Albright at the University of Minnesota for helping the TJRC team code human rights trials and private prosecution cases around the world. I am also greatly indebted to the research assistance of Leeandra Boodelal, Timica Eastman, Karolina Kedzierska, Victoria Moreno Cárdenas, Andrea Ordonez, Michael Segnan, and Axel Sosa.

This book would not have been possible without the generosity of all the judges, prosecutors, lawyers, and activists who agreed to be interviewed. This book is about their passion and love for justice and the rule of law in their countries. I am also thankful to the Organismo Judicial in Guatemala, the Supremo Tribunal de Justicia de Chihuahua, and the Corporación Administrativa del Poder Judicial in Chile for granting me access to their archives and allowing me to conduct my research. This book was also greatly enriched by the archival research I was allowed to do at the Centro de Investigaciones Regionales de Mesoamérica in Antigua, Guatemala, and at the Organización de Derechos Humanos del Arzobispado de Guatemala. There were a few key people who made an enormous effort to make me feel welcome at each research site, and for that I am deeply grateful to Ramón Cadena, Mayte Migueles, Ermy Araya, Roxana García, Miriam Cardona, José Luis Alba Michel, Luis Ramírez, and Bob Perillo.

Some parts of the book draw on material previously published. For this reason I must thank Kathryn Sikkink and the Law and Society Review for allowing me to use material from our coauthored article “Human Rights Prosecutions and the Participation Rights of Victims in Latin America” for Chapters 1 and 2, in particular Table 2.2 and Annex 1. Also, Geoff Dancy and the International Studies Quarterly allowed me to build on some of the arguments first developed in our coauthored article “Human Rights Enforcement from Below: Private Actors and Human Rights Prosecutions in Europe and Latin America,” in particular the idea that private prosecution helps build the rule of law over time. Parts of Chapters 1, 3, and 4 also draw on some material published by the Journal of Human Rights in the article “The Role of Prosecutorial Independence and Prosecutorial Accountability in Human Rights Trials,” in which I first developed the concept of prosecutorial accountability. Finally, Table 2.1 and some of the language explaining it was drawn from the chapter “Public Prosecutor’s Offices in Latin America,” published by Routledge in the volume edited by Karina Ansolabhere and Rachel Sieder entitled Routledge Handbook of Law and Society in Latin America.

Finally, I would like to thank my friends and family, who made this project (and my life) more enjoyable. In addition to those already mentioned,
Acknowledgments

I would like to thank my friends Andrés Malcolm, Aída Martínez, Amy Lerner, Anayansi López, Carla Manzoni, Debi Koetzle, Marina Tavares, Mayu Molina, and Rox Rivera for all those moments when I needed a friend (and wine). To Mark Larrimore, for making NYC feel like home from the first day I arrived in the city, and to Candace West, Gina Drew, Michael Pettinger, and Xiaoshan Ding for giving soul to Sunday dinners. To Janette Luviano for always being there for me, no matter the time or day. Thanks as well to the rest of my Luviano NY family. To Jorge Álvarez del Castillo and María Luisa Haces, who were great pillars of support in times of great need. Thanks too to the Michel family for welcoming me with love, food, and shelter while I was conducting research in Chihuahua, and in particular to my adorable aunt Blanca Michel, who with her wit and humor made me forget that I was doing research on murder cases (que en paz descanses . . .). To Erika Döring, whom I love as a second mother and who has always been there for me. To my sister, Claudia Michel, and my favorite brother-in-law, Fernando Beyer: not even the widest ocean will ever make me feel distant from you guys. To my mother, Virginia Luviano, who supported this project in so many ways, including joining me in the adventure of fieldwork in Guatemala. And last but not least, thanks to Adam Braverman, my husband and best friend, whom I was lucky enough to meet in the process of writing this book. Thank you for your patience and continuous encouragement. Your love and support are imprinted in each one of these pages.

This book is ultimately about resistance against injustice and about hope. For these reasons I dedicate this book to my mom, who taught me about the importance of caring for one another; to my father, Guillermo Michel, who spent his whole life committed to causes of social justice; and to my daughter, Gabriela, whose smile has brought hope and joy into our hearts.