Bruno Tesch was tried, found guilty, and executed for his company’s production and sale of the Zyklon B gas used in Nazi Germany’s extermination camps. Tesch was not alone. More than 300 economic actors faced prosecution for crimes against humanity during the Holocaust. This book examines those trials and subsequent judicial and nonjudicial (truth commission) efforts up to the present to hold economic actors accountable for complicity in gross violations of human rights during armed conflict and authoritarian rule. It probes what these accountability efforts are, why they take place, and when, where, and how they unfold. It also explores obstacles blocking accountability efforts, particularly business veto power and weak international law. The book uses an original one-of-its-kind Corporate Accountability and Transitional Justice database to develop its argument. It claims that the truth and justice processes underway around the world constitute “accountability from below,” a kind of Archimedes’ Lever in which the right tools in weak hands can lift weighty international human rights.

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Transitional Justice and Corporate Accountability from Below

DEPLOYING ARCHIMEDES’ LEVER

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Acknowledgments

This project was never conceived as a wholly academic enterprise. From its very origins it has been part of an “action-research” agenda. Our aim has been to produce knowledge that can advance victims’ rights to truth, justice, reparations, and guarantees of nonrecurrence. We hope we have – even in some small way – delivered on that promise. We could not have even attempted to fulfill those objectives without support from so many people and institutions around the world.

The project could be said to have begun when Alexandra Guaguetá from the United Nations Working Group on Business and Human Rights discussed with us the possibility of our building a database to test the success of the Ruggie Principles. We became intrigued by the idea of constructing the database and started to work on that with Tricia Olsen from the University of Denver’s Daniels School of Business. As we told Alex, our project would not test the Ruggie Principles, but it would attempt to create the first database and empirical study of corporate accountability. We are grateful to Alex for this spark of an idea that then ignited several projects, this book being one.

We undertook the coding of corporate accountability as part of the “Alternative Accountabilities” grant funded by the National Science Foundation-Arts and Humanities Research Council. On that project we collaborated with Kathryn Sikkink’s team at the University of Minnesota. We thank Kathryn, Geoff Dancy, Verónica Michel, and Bridget Marchesi, in particular. Additional members of the research team included: Alec Albright, Brooke Coe, Emalie Coplan, Holly Dunn, Grace Fiddler, Katherine Franzel, Marie-Christine Ghreichi, Katrina Heimark, Daniel Johnson, Meagan Johnson, Maggie Loeffelholz, Moira Lynch, Cameron Mailhot, Florencia Montal, Zachary Payne-Meili, Farrah Tek, and Marcela Villarrazo. We also thank the Oxford team including Andrew Reiter (based at Mount Holyoke College),
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The project took on a dynamic of its own. We sought and received specific funding for the study of Corporate Accountability and Transitional Justice (CATJ). With the generous support from a range of agencies – British Academy; John Fell Fund – Oxford University Press; Economic and Social Research Council; Ford Foundation; and the Open Society Foundation – we began to build the CATJ database. That endeavor involved not only the three of us, but also Kathryn Babineau, Lina Malagón, and Julia Zuiver. A part of that project involved studying the roots of transitional justice, corporate accountability following the Holocaust. The University of Minnesota’s Human Rights Initiative and Grand Challenges grant provided support for Mary Beall and Ami Hutchinson to track down those cases. Others at Oxford also helped with the coding, specifically Ivo Bantel and Maike Sieben.

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The action-research component of the project involved collaborations with other human rights organizations in Latin America. The group at Londres 38 in Chile engaged us in a number of energizing sessions around Chile’s corporate accountability challenges. In particular, we thank Magdalena
Garcés. A core group of practitioner-researchers in Chile took a much broader approach to the economic accomplices of the dictatorship. We had an opportunity to work with them in Valparaíso in a book workshop organized by Juan Pablo Bohoslavsky, Karinna Fernández, and Sebastián Smart. Juan Pablo has been an enthusiastic supporter of our project from its very origins, involving us not only in the Chilean project, but also in projects on Argentina and Uruguay.

In Peru, Guatemala, and El Salvador we held stimulating workshops and discussions organized by APRODEH in Peru; Plataforma contra la Impunidad in Guatemala; and the Due Process of Law Foundation, the Instituto de Derechos Humanos de la Universidad Centroamericana (UCA), especially José María Tejeira, and the Comisión de Derechos Humanos de la Universidad de El Salvador in El Salvador. These workshops inspired working relationships that we look forward to continuing into the future.

We also participated in a working session in Cape Town, South Africa, organized by Louise Olivier and Borislav Petranov, of the Open Society Foundation, where we explored ways in which we could advance the impact of the project. Exciting ideas emerged from those sessions, some of which have made it into the book. In addition to Louise and Borislav, who have supported the project from the beginning, we also wish to thank Amanda Ghahremani, Daniel Marín, Emily Martínez, Michael Marchant, Angélica Neiszer, Nelson Camilo Sánchez, Karam Singh, Eleanor Thompson, Anneke Van Woudenberg, and Alan Wallis. The arrival of Pablo Camuña, Public Prosecutor of the Province of Tucumán, Argentina, and Pablo Gargiulo, an Andhes lawyer, simultaneously added levity and gravity. With Hennie van Vuuren we began to think about longer term collaborations around the issue of blood banking, one of the post-book projects we still hope to pursue, even if it will not mean a workshop in Llandudno.

Various units at the University of Oxford proved instrumental in advancing the project. With the Latin American Centre and St. Antony’s College we ran a number of conferences over the years. Mansfield College and its Bonavero Institute, particularly Katherine O’Reagan and Annelen Micus, have supported our work in various ways. We reflect fondly on the memorable lunch in which Baroness Helena Kennedy, the Mansfield College Head of House, greeted each one of us. The group included Phil Bloomer; Juan Pablo Bohoslavsky; Gastón Chiller; José Durand; Matt Eisenbrandt; Katherine Gallagher; Marjorie Jobson; Judith König; Mauricio Lazala; Sheldon Leader; Lina Malagón, Roddy Brett, and baby Federico; Fernando Mendiola; Sabine Michalowski; Annelen Micus; Tricia Olsen; Fernando Luis Rodolfo Poviña; Francisco Quintana; Kiran Stallone; and Horacio Verbitsky.
The Argentine Embassy in London held events with us in 2014 and 2015. Ambassador Alicia Castro opened up her residence for two panel discussions, warm and generous empanada and Malbec receptions, and dinners. One of the most telling remarks about Ambassador Castro’s role came from one of the participants, Fernando Mendiola, a Spanish scholar working on slave labor in the Franco-era working from the Public University of Navarre and a member of Memoriaren Bideak who participated in the 2014 event. He expressed his dismay at having an ambassador anywhere willing to take on these challenging themes.

In the final stages of the book, we held a workshop with those scholars and practitioners whose work we had relied on throughout the project. The North American Office of the University of Oxford opened up its offices to us. We have to particularly thank Alyson Goldman, Lisa Knudsen, and David Stiles for their help in making this a successful event. Some of the participants we had never met before; some were old friends and colleagues. Their incisive comments prompted us to make changes we really did not want to make, inspired us to make others, and motivated us to make one more round of revisions before submitting the manuscript to Cambridge University Press. They were tough, but constructive; exactly the kind of participants authors want at a book workshop. The book would have been out sooner except for the work they demanded; but it would have been a poorer version without their wisdom. We have thanked you before, but here we publicly thank you: Ruben Carranza, Douglass Cassel, Andrew Clapham, Pablo de Greiff, Michael Kelly, Daniel Marín, Verónica Michel, Tricia Olsen, Ron Slye, and Elizabeth Umlas. In particular, we have to thank Tricia Olsen for drawing the Archimedes’ Lever for us with pencil and paper, and to Michael Kelly for encouraging us to make it a central theme of the book.

The book benefited from the care of our editor, John Berger. He tolerated our delays. He encouraged us to make it the best book it could be. We have so enjoyed working with him. Thank you to the anonymous reviewers. And also to the production team: Danielle Menz, Kevin Eagan, Ishwarya Mathavan, Anoop S. Kumar, and Joshua Penney. Several others outside the Press provided assistance in going over the text. We owe a debt of gratitude to Dorian Singh, who courageously took on the index for the project. We want to thank Stephen Meili and Julia Zulver in particular. All three would want us to take full responsibility for any remaining errors in the book that snuck past their careful scrutiny.

One of the most gratifying outcomes of the numerous encounters we have had over the years of this project is the emergence and endurance of a collaborative spirit. In 2014 we held a foundational event in Oxford. We
invited human rights practitioners, legal practitioners, and academics to engage in a scoping exercise on corporate accountability initiatives, discuss challenges and opportunities to develop them, and explore potential collaborations and partnerships, many of which have been pursued further. Distinctive features of the action-research approach were praised by participants such as Gastón Chillier, executive director of CELS, who saw our initiative as crossing the deep north–south and academic-practitioner divides that often prevent equal partnerships and collaborations. Judge Poviña encouraged us to maintain at the forefront of the project the judicial actors working on the ground in isolated and often hostile environments, to consider how our study can bolster and encourage their human rights work.

The cover image for the book also represents partnership in the struggle for corporate accountability and transitional justice. We would like to thank La Garganta Poderosa for providing us with the photograph. Taken during the trial in Argentina of Ford Motor Company, it pictures the persistence of survivors, working in partnership with mobilized civil society groups and legal advocates, for justicia y castigo (justice and punishment) for crimes against humanity in which economic actors participated. The trial rendered justice and punishment, finding Ford Motor Company executives guilty and sentencing them to prison. The years represented in the image encompass the long struggle, from the beginning of the Argentine dictatorship with the 1976 coup to the year of the Ford Motor Company trial in 2018. Corporate complicity is represented by the iconic Ford Falcon automobile, the vehicle linked to the kidnapping of those who subsequently faced torture, illegal detention, death, and disappearance during the dictatorship. The years, the car’s representation of companies’ violations, and the call for justice, are emblazoned on the well-known pañuelo blanco, the white headscarf worn since the beginning of the dictatorship by Argentine mothers and grandmothers in search of their disappeared family members. The headscarf remains a powerful symbol of solidarity in Argentina, uniting civil society behind justice and “Never Again!” Here it extends that call to unity for corporate accountability for crimes against humanity.

The collaborative spirit that was essential to our research and impact also infused our working together. We recognized that we were demanding a lot of each other, but we also enjoyed each other tremendously. We communicated throughout with caring, understanding, laughter, and joy. None of us could have carried out this project alone. It was a true partnership.

That collaborative spirit was also found at home. Our partners picked up the slack for us when we travelled, spent weekends meeting deadlines that still seemed to slip into more weekends with deadlines. We have always given
back, or tried to. Not every partner would have been as understanding. We cannot thank you enough, Stephen Meili, Fernanda Doz Costa, and Julian López Murcia. Our kids, even the older ones, continue to bring us joy in a troubling world. They remind us why we do this work. It is not only for us, or for them, but it is for a better world for their generation, future generations, and the generations of victims of corporate complicity. Never Again!