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ARTICLE

A Long History of Universal Jurisdiction in US Policy: The Quest to Redress Survivors of Egregious Human Rights Violations

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Abstract

This article examines a 40-year policy history of efforts to redress survivors of egregious violations, such as torture, massacres, and genocides. Using oral history interviews and document analysis, it first focused on the ideas and creative advocacy that undergirded a burgeoning redress movement. By juxtaposing classic ideas with a relatively obscure statute (the Alien Tort Statute or ATS) and modern strategies, advocates won an improbable court case. Their case inspired Congress to introduce, debate, and pass the Torture Victim Protection Act, explicitly to support, affirm, and expand the ATS and the idea of universal jurisdiction, locally and globally. After advocates further developed these ideas with new court cases and NGOs, the Supreme Court began whittling the policies away, despite congressional intent, prioritizing the ideas that Congress had rejected, until the Court stripped the ATS of its universal jurisdiction power. This human rights retrenchment in the United States drove the advocates to seek new bases for human rights justice and to develop their ideas abroad where legal actions have succeeded in advancing some redress. In expounding this history, the article sheds light on four phenomena: the power and limitations of aspirational and practical ideas in constructing new pathways to justice; the role of creative advocacy to frame and amalgamate ideas toward developing paradigm-shifting policy and law; the flow and interactions between government branches and civil society with the ideas and policies, including how the courts initially led in advancing human rights redress then later reversed and truncated the pathway counter to Congressional intent.

Keywords: US Universal Jurisdiction Policy; Torture Victim Protection Act; human rights violations; victim redress; Alien Tort Statute

Introduction

In 2018, a US Federal District Court jury awarded a group of Bolivian massacre survivors $10 million in their lawsuit against former Bolivian President Ganzalo

Sanchez de Lozada (Goni) and former Defense Minister, Jose Carlos Sanchez Berzain. The survivors, eight Indigenous Bolivian families, had sued the political leaders using the Torture Victim Protection Act (TVPA), which was passed by Congress and in 1992, signed into law by George H. W. Bush. Five years after the 2018 jury award, in October 2023, the Bolivian survivors' leaders settled for an undisclosed sum.[1]

The TVPA remains one of the few legal pathways that survivors of gross human rights violations, such as torture, massacres, and genocide, can use to pursue redress in the face of systemic, sociopolitical-legal barriers to justice. Although guaranteed redress and rights through international conventions and human rights declarations, most such survivors remain unredressed and without recourse.[2] Advocates have long sought to remedy these injustices, including through civil cases in the United States to simultaneously redress survivors and change law. The TVPA, a success of the movement, was meant to strengthen and affirm another law, the Alien Tort Statute (ATS), and the former's foundational idea, universal jurisdiction, as discussed below.

This four-decade modern political history delineates the ideas, creative advocacy, actions, and interbranch interactions that led to the TVPA, then follows their trajectory. Beginning with the core ideas, particularly universal jurisdiction (UJ), that supported the ATS-based legal actions, the researcher then analyzes the debates in Congress, which after years of deliberation, passed the TVPA, explicitly as a means of expanding and affirming the ATS and UJ. In these debates, Congress expressly favored ideas of extraterritoriality for human rights redress through civil actions over limiting legal concepts, such as territoriality and immunity. This history then examines the rights expansion in the courts via test cases, followed by the Supreme Court's retrenchment. Here, despite congressional intent, the Court embraced the counterideas rejected by Congress when it curtailed the ATS. Those court actions led advocates to shift strategies, including by taking their ideas abroad.

This study's 40-year, transinstitutional lens builds on previous research that has examined pieces of this history, such as the early ATS cases,[3] during a time when the US-based civil rights and international human rights movements were expanding. During this period, civil rights advocates were constructing redress rights through litigation for classes of aggrieved people, simultaneously redressing their clients and expanding these rights (with mixed success) for African Americans, women, the accused, and the impoverished.[4] Nonprofit legal organizations tried increasingly expansive cases to reckon with the daunting tasks of representing too many clients. Winning these "test cases" benefitted an entire class, giving them "more bang for their buck," and simultaneously helped reform the law.[5] As advocates won redress rights for one class, other lawyers framed their cases with the winning strategies to advance justice for additional classes.[6] Meanwhile, through NGOs, such as Amnesty International (Amnesty) and the International Federation for Human Rights, the human rights movement helped shaped these rights concepts and promoted legal protections for victims and survivors.[7] At this confluence of the human and civil rights movements emerged the strategy to redress foreign survivors of gross human rights violations in US courts.

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This history seeks to provide a more complete understanding of the policies' developments, their shifting interpretations, and their truncation, focusing largely on their early stages. It first shows the transcendent nature of aspirational ideas, brought to life, then expanded and made relevant through creative advocacy, framing, new statutes, precedents, and NGOs. However, this history also shows their contestation and interactions in and between the branches of US government and local-international civil society and their shifting prioritization over time. Third, in this realm where multiple impediments often thwart the course of justice, the research demonstrates how ideas and creative advocacy can sometimes overcome entrenched, seemingly insurmountable status quo obstacles to create new policies and law and how they can then be dismantled.

The congressional record, court documents, media reports, and 46 oral histories with advocates involved in the movement provided the basis of the history: Analyzing congressional debates from 1984–1992 on the TVPA, court rulings, media coverage on the relevant cases, and oral histories helped trace the ideas, strategies, and interactions that led to policy developments. During interviews, the advocates discussed their motivating ideas, case development, thoughts, ideas, legal theories, the cases' origins, key events, and circumstances alongside their influences, networks, obstacles, and case outcomes. Named interviewees gave permission to be identified. Two oral histories were retrieved from Columbia University's Oral History Project, one of which was supplemented with a follow-up interview. The material was organized chronologically and analyzed thematically to reconstruct the timeline, identify the main ideas, their framing, and trace the development of the cases, NGOs, policies, and other important pieces of the burgeoning movement.

Where It Began: The Modern Life of Aristotle, Cicero, and Aurelius Marcus

Peter Weiss did not know that his audacious blend of ideas would lead to new legislation and a body of case law supporting the human rights cause.[8] Though a trademark lawyer, the Holocaust survivor[9] and refugee's passion remained focused on classic legal and moral concepts from Cicero, Aristotle, and Marcus Aurelius, particularly on UJ, the idea that some violations are so serious and threatening to the international community that they should be prosecutable anywhere, untethered by jurisdictional restrictions, and that states are morally obligated to prosecute them. Drawing especially from Aristotle and Aurelius, Weiss argued that certain norms and laws should govern all societies—which he argued was the basis of UJ.[10] Historically, the concept was used to prosecute piracy, then for war crimes in the aftermath of the second World War, and in the 1961 trial, *Adolf Eichmann v. Attorney General*, in Jerusalem.[11] And although international law scholars have mostly emphasized that UJ is a "criminal jurisdiction based solely on the nature of the crime" without regard for the nationality of the perpetrator, victim, or connection to the states involved,[12] Weiss argued that it also applied in civil cases.[13] Universal jurisdiction, he argued, was part of the "constitution of the world."[14]

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Steeped in both the human rights and civil rights movements, Weiss wedded their ideas together: Using civil litigation, civil rights organizations like his, Center for Constitutional Rights (CCR), were pushing on the precedents' boundaries to stretch rights and redress to new classes of aggrieved people.[15] But Weiss's idea to expand redress rights to foreign survivors of human rights violations was met with skepticism among his peers.[16] And although he could not recall how he found the two-century-old ATS, he saw its potential to bridge these worlds—classic and modern, human and civil rights—and to activate UJ in US courts.[17] Originating in the United States's first judiciary act, one of the country's first laws,[18] the ATS granted jurisdiction for district courts to adjudicate civil actions brought by aliens when a tort violated the "law of nations or a treaty of the United States." To Weiss, that language embodied UJ.[19]

Weiss first sought to use the statute to represent a 14-year-old survivor whose entire family was killed in the Mai Lai massacre. Initially, "we looked for a way to sue General Momyer," he said. Through journalist Seymour Hersch, who had gotten "Lieutenant Calley to talk," they compiled the necessary facts to build the case for the survivor's deaths. But with the war raging, the girl and "the people in the north, in North Vietnam" grew afraid of engaging with American courts. "So that suit was never brought," admitted Weiss.[20]

Weiss tried a different angle, representing an American, Joyce Horman, widow of journalist Charles Horman, who was executed by Chile's Augusto Pinochet regime. He and his colleagues sued US Secretary of State Henry Kissinger for his involvement with Chile's coup. The court was "fairly sympathetic," but because the evidence had remained classified, "we could never finish the case." They simply could not "get the evidence," Weiss said.[21] They later sued in Chile, a case that took "more than ten years" to be decided "and another few years before the government decided to pay up."[22]

The third case, representing Paraguayan doctor Joel Filartiga and his daughter, Dolly, was the breakthrough. After Dr. Filartiga's teenaged son, Joelito, was tortured to death in Paraguay by the Paraguayan police, Filartiga wrote to a young American historian, Richard Alan White, to help "unravel this wrenching tragedy."[23] Through a misdelivered piece of mail, the Filartigas discovered that Americo Norberto Pena-Irala, inspector general for the Police of Asunsion, was living in New York.[24] Dolly traveled there to confront him and "tell the world" about his crime.[25] Amnesty International introduced the Filartigas to Weiss, who, with his CCR colleagues, sued Pena-Irala in US district court on their behalf for the torture and loss of Joelito.[26]

Because plaintiff, defendant, and territory of the violation were all foreign, most of Weiss's CCR colleagues thought the jurisdictional hurdles were too high to pursue the case. But Weiss theorized that jurisdiction was granted through combined legal texts including international agreements, the Universal Declaration of Human Rights, the United Nations Charter, the UN Declaration on the Protection of All Persons from being Subjected to Torture or other Cruel, Inhuman or Degrading Treatment or Punishment, the American Declaration of the Rights and Duties of Man, customary international law, alongside federal statutes, the ATS and the US Constitution. Although the District Court dismissed the case, the Second Circuit Court of Appeals reversed. The case was "properly

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brought in federal courts," it decided, because the "international community" had recognized the "common danger posed by the flagrant disregard of basic human rights and particularly the right to be free of torture ... the torturer has become ... an enemy of all mankind."[27]

The Filartiga's win, the $10.4 million judgment, and Pena-Irala's deportation[28] inspired other survivors and advocates to try ATS cases.[29] But another case, *Tel-Oren v. Libyan Arab Republic*, decided in 1984, fell short for survivors. In *Tel Oren*, Israeli survivors of the "coastal road massacre" sued the Libyan Arab Republic and four Palestinian and Arab organizations. Although dismissed by the United States Court of Appeals, the judges disagreed on the legal reasoning, which prevented diminishing the precedent established by *Filartiga*.[30] *Filartiga* further inspired congressmembers to affirm and expand the ATS, with an additional tool to redress survivors, prevent future atrocities, and offer a model of UJ for the international community, as discussed next.

Congressional Debates on Human Rights Redress

"What can be done to stop [torture]?" And what can the US do to support torture survivors? asked Pennsylvania congressman, Gus Yatron, chair of the House Subcommittee on Human Rights and International Organizations at the May 15, 1984, hearing.[31] Advocates from Amnesty, the International Human Rights Law Group (IHRLG), the Lawyers Committee for Human Rights (LCHR), and Helsinki Watch responded first with details of torture—electric shocks to genitals, burning skewers forced into their anuses, victims forced to stay alive to suffer the excruciation. They proposed three main legislative ideas: strengthen UJ, offer victims asylum, and prohibit conditions that enable torture and secrecy.[32]

Amnesty's Executive Director, Jack Healey, added to the list: offer survivors medical care, rehabilitation, asylum, apology, affirm jurisdiction for them to sue their violators in federal courts, and prevent torturers from entering the USA. Jurisdiction, he observed, would affirm the use of UJ and the ATS "for the prosecution of torturers."[33]

Referring to *Filartiga*, IHRLG's Executive Director, Amy Young, agreed. She argued that jurisdiction offered the "most effective way to conquer" torture. Courts are uniquely "equipped to maintain custody over the defendant, to apply rules of evidence and procedure, to make findings in a less political context, and to enforce a judgment," she reasoned, adding that a series of *Filartiga*-like cases could deter torture, fortify the ATS, and prevent another *Tel-Oren*-type decision.[34]

Michael Posner, LCHR's Executive Director, concurred that affirming and strengthening the ATS could simultaneously support torture survivors with restitution and clarify the law in light of *Tel-Oren*, which had challenged the ATS's "scope and legitimacy" in the absence of explicit congressional authorization, he said. Posner further proposed to "extend the same protection" to American citizens who were tortured abroad.[35]

Opposing these ideas, the Reagan administration's Assistant Secretary of State for Human Rights and Humanitarian Affairs Elliott Abrams argued to the Senate

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Foreign Relations Committee that victims might be intentionally provoking their torture. Instead of granting them a right of action, Abrams proposed empowering the executive branch to "put down ... extremist groups" whose "provocation" of "government repression and torture" was a scheme to "polarize society and undermine democratic institutions."[36] He argued, for example, that in the Philippines, human rights had improved "since the [Marcos regime's] assassination of [opposition leader] Benigno Aquino," leading "to a great increase in the amount of political freedom, freedom of speech ... press ... assembly."[37]

The following September, Congress passed a joint resolution opposing torture and supporting the development of a global effort to help disrupt torture. H.J. Res. 605 required the Secretary of State to investigate reports of torture, to forward the information to the Assistant Secretary of State for Human Rights and Humanitarian Affairs, and to require meetings with Indigenous human rights monitoring groups. President Reagan signed the resolution the following October.[38] In December 1984, the UN General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which forbade torture and transporting people to countries where they might be tortured. It further called on states to prevent torture in their own territories and guaranteed a remedy for survivors, but without specifying the mechanisms.[39]

Less than two years after Abrams spoke favorably about the Marcos regime, the deposed Philippines dictator fled to Hawaii. Advocates and Filipino survivors sued Marcos, his family, and later, his estate, expanding Weiss's ideas in two ways: they sued a former head of state and, in one case, filed a class action lawsuit. The court-consolidated cases,[40] *In re: Estate of Marcos Human Rights Litigation*, featured contestation between UJ and counterideas, such as the "act of state" doctrine, which argues that courts should not judge other governments for acts committed within their own borders.[41] Ultimately, the survivors prevailed.[42]

In 1987, survivors of Argentina's "Dirty War" found and sued General Guillermo Suarez Mason, who was considered responsible for thousands of disappearances. Represented by Weiss, his CCR colleagues, private practice lawyers, and the ACLU's Paul Hoffman, the survivors again prevailed.[43] Both sets of cases —those against Marcos and those against Suarez Mason—featured in the TVPA's congressional debates. Although the 1986 bills, HR 4756 (Yatron) and S 2528 (Specter), failed passage, more than 100 cosponsors joined the authors on similar legislation, which was introduced into the 100th Congress, discussed next.

The Counterideas: Sovereignty, Extraterritoriality, Nuisance, and Age

Introduced by representatives Yatron, Peter Rodino, and Jim Leach and cosponsored by 113 House Members, HR 1417 proposed amending the United Nations Participation Act of 1945, "which includes obligations of the United States ... [for] protection of human rights." It would assist "the plight of torture victims and curtailing this practice" and offer a model for other countries toward building an international system to deter torture, hold violators accountable, and compensate

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survivors, explained Yatron.[44] Authorizing a federal right of action for foreign and US survivors against torturers and extrajudicial killers, who acted "under the color of law of any foreign nation," the TVPA affirmed *Filartiga* and expanded jurisdiction to US citizens when remedies were unavailable where the violations occurred.[45]

Human rights NGOs applauded the bill as a first step toward mitigating egregious human rights violations. If other countries followed with similar laws, "people who commit torture and other gross human rights violations will know that there is no place to go," argued Posner.[46] With groundwork laid by "court decisions, starting with … *Filartiga*," the legislation offered a "practical way to allow a few important symbolic lawsuits every year." Acknowledging the Suarez Mason cases, he added, offenders who "acted in concert with Suarez Mason … in the campaign of disappearances" might also face judgment.[47]

Professor Drinan agreed, observing that if allies followed, the TVPA could "[multiply] the deterrent effect," forcing torturers to face lawsuits in multiple jurisdictions.[48]

As a "small measure" toward addressing a wicked problem, the bill would fulfill part of the Torture Convention's requirements to redress victims, abate potential confusion in the courts, partly arising from *Tel Oren*, and deter use of "the judge-made 'act of state' doctrine" to avoid adjudication, added Alice Henkin, chair of the City of New York Bar Human Rights Committee.[49] Although it was based on UJ, the bill's tailored language would ensure that the most deserving and appropriate cases would be adjudicated while placing "the United States firmly on record as a leader in promoting respect for human rights," she said.[50]

While praising the "worthwhile piece of legislation," Representative Gerald Solomon expressed concerns about maintaining "the necessary option of offering sanctuary … to foreign leaders as an inducement for getting them to leave power in an orderly fashion," he said. "The case in point … is President Marcos."[51] Solomon nonetheless supported the legislation.

The authors reintroduced the TVPA as S 1629 and HR 1662, the latter of which passed the house on October 2 by 362-4. In the June 1990 Senate Subcommittee on Immigration and Refugee Affairs hearing, opponents argued the bill would open "floodgates" of litigation and expressed opposition to extraterritoriality.

Posner referred to the Suarez Mason cases then responded to both concerns: To the first, he replied, because "circumstances are so improbable," and "human rights violators rarely are made available to victims," only "five or six or even ten" cases would arise annually. The past decade featured only 10–12 ATS cases, despite the "sad reality" that "torturers and gross human right violators come in to retire in the United States," he said. The second concern, extraterritoriality, he observed, had a long legal history in the United States, including in the Sherman Act, the Securities Exchange Act, and the Anti-crime Act of 1984.[52]

The administration's Deputy Assistant Attorney General John McGinnis raised additional concerns, first about retaliations that might "haul our officials into court on … specious charges," including for prison management. He further asserted that "frictions and tensions with other nations" could follow and argued against granting foreign survivors the ability to "determine the timing and manner of making allegations in U.S. courts about the conduct of foreign

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countries and their officers."[53] Instead, McGinnis argued, the entities "responsible for the conduct of foreign policy" should determine remedies.[54]

US State Department Assistant Legal Advisor David Stewart added his concerns, which included "nuisance or harassment suits" brought by "political opponents for publicity purposes" and "expensive and drawn out proceedings." He also opposed extraterritoriality and favored counterideas, such as national sovereignty. Finally, he rejected granting individual-level remedies, preferring country or convention-level action. Individual victims, said Stewart, should pursue justice in "their own countries."[55]

"Is it not possible for us to do both?" asked Senator Paul Simon, noting that "no remedy" exists in many countries. "Is Libya, do you think, going to approve the U.N. Convention Against Torture?"[56]

Stewart responded by iterating prevailing ideas about international order: "It is a fact that the international community is made up of sovereign nations, and one cannot force a nation to become a party to the treaty," he said. "I would not want to speculate on what Libya would do."[57]

Should torture survivors from Libya turn "to the tender mercies of Colonel Qadhafi and sue in Libya?" asked Simon.[58]

Specter then asked Stewart for his position on *Filartiga.*[59]

"The department ... has been more sympathetic to ... *Hanaktel Orin* [sic]," Stewart said, adding that the ATS is "an extremely ancient statute."[60]

"Older than the Bill of Rights?" asked Specter, adding, "Age is not necessarily a disabler." Turning to address *Tel Oren*, Specter then noted that one purpose for the TVPA was to respond to Judge Bork's opinion in the case, which had called for Congress to determine whether foreigners had "an explicit grant of a cause of action." Thus, the TVPA would clarify the courts' jurisdiction "to provide compensation for victims of torture," he said.[61]

Senator Edward Kennedy then introduced another idea—litigation as a means of recovery for survivors. This idea developed further when advocates founded another NGO, dedicated to that purpose, discussed next.

Litigation as a Pathway to Recovery

Kennedy's constituent, Scott Nelson, an engineer at a Riyadh hospital, was seized, beaten from head to toe, forced to sign statements written in Arabic, and left disabled. After the Saudis admitted their "big mistake," Nelson and his wife sued Saudi Arabia in the District Court for the Southern District of Florida, asserting jurisdiction under the Foreign Sovereign Immunities Act. Their case was dismissed for failing to meet the "commercial activity" standard in the Act to meet the exceptions for a state's sovereign foreign immunity.[62]

"Denied any ... redress whatsoever," Nelson's post-torture trauma and medical complications upended "his daily life" and prevented him from working, said Kennedy, adding that in denying restitution, the Saudi Embassy had argued, "'Why should my country pay your claim if your country will not support it?'"[63]

Advocates, including Barbara Frey of the Minnesota Lawyers Committee, noted that Nelson's suffering was the precise goal of torturers: "Torturers seek

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to destroy, through both physical and psychological means, the very core of the victim's sense of dignity, humanity and personhood." Torture leaves "a lifelong impact on the victims, their families and communities," she said, adding that their suffering worsens when "their torturers are present in the United States" and "they have no right of legal action against them."[64] Frey and Douglas Johnson of the Center for Victims of Torture urged Congress to create another "legal tool" to help victims heal,[65] arguing that impunity generates "ongoing trauma," with symptoms including memory loss, confusion, inability to concentrate, loss of trust, impaired relationships, and decreased capacity to work.[66]

Could litigation offer "therapeutic effects?" asked Senator Kennedy.[67]

Both symbolic and real effects, Drinan responded.[68]

Both bills passed their respective houses. During their floor debates, most Congressmembers prioritized redressing survivors through UJ and civil litigation over concerns about extraterritoriality, international relationships, and caseloads. For example, Congressman William Broomfield argued, "Strained international relations" are a "small price to pay in order to see that justice is done for the victims of torture." The TVPA "makes an important statement about our commitment as a nation to take human rights seriously," he added.[69] Remedies for torture survivors "are long overdue," added Representative Bill McCollum.[70]

Some lawmakers still opposed the legislation, arguing against extraterritoriality, additional caseloads, and about impracticalities such as complicated fact-finding, language translation, and judgment collection. Senator Charles Grassley, for instance, asked, "Why should this country open its already overburdened federal courts to lawsuits that have absolutely no connection—neither parties nor subject matter—to the United States?" He also asked if the bill would involve the judiciary in foreign affairs or weaken sovereign immunity.[71]

Specter defended the bill, noting that the Convention Against Torture and Other Cruel Inhuman, or Degrading Treatment or Punishment required signatories to hold torturers accountable. He further explained that the ATS already offered jurisdiction and a cause of action for torture.[72] With two-thirds voting in favor, the rules were suspended and the bill passed.[73] And although this congressional intent was clear when the bill passed both houses, Grassley's arguments were later the ones used by the Supreme Court to curtail the ATS.

On March 12, 1992, President George H. W. Bush signed the TVPA into law, affirming universal jurisdiction through civil actions and a pathway to redress for survivors of torture and extrajudicial killing. The following year, in *Abebe-Jira v. Negewo*, three Ethiopian women who were tortured in their home country won a $1.5 million damage award against their torturer.[74] The case helped advance the idea espoused by Kennedy of litigation as recovery after a human rights advocate gave a talk about the case to health care practitioners, discussed next.[75]

New NGOs, New Approaches

Torture survivor EdgeGayehu Taye had taken refuge in Atlanta, Georgia, after she fled her home country, Ethiopia. At a hotel where she found work, Taye

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encountered Kelbessa Negewo, whom she recognized as the man who had tortured her in Ethiopia. He had also found work at the same hotel. Using the ATS, Taye and two compatriots sued him in the Federal District Court for the Northern District of Georgia. They won a monetary judgment and secured his deportation.[76]

On the other side of the country, Gerald Gray, a California-based counselor to torture survivors, heard a talk about the case, given by Paul Hoffman, one lawyers representing the women. Gray approached Hoffman, explaining that the survivors he was counseling could hardly recover if they feared reencountering their torturers.[77] By shifting victims into plaintiffs, restoring lost agency was possible. And remuneration and official acknowledgment of the wrongs they had endured would support healing and reparation.[78] He also thought litigation could replace cycles of violent revenge between adversaries within a civil process.[79]

Hoffman secured seed funds from Amnesty, for which he was then chair, and with Gray, cofounded the Center for Justice and Accountability (CJA).[80] Focused on actions against individual offenders in international human rights cases, the CJA used both the ATS and the TVPA and secured pro bono support from large firms. Its first clients, torture survivors from Latin America and Bosnia, successfully sued their abusers in US courts and reported psychological benefits from the actions. For some, the strategy was working.[81] The NGO continued supporting survivors from the Americas, Africa, Asia, the Middle East, and Europe.[82]

Meanwhile, the seeds for another strategy were planted, one that both advanced the cause of international human rights redress and ostensibly led to its setback. A summer research project transported three US-based law students, Katie Redford, Mark Bromley, and Tyler Giannini, to Southeast Asia. There, they encountered survivors living in the jungles between Thailand and Burma (now Myanmar) who had fled forced labor, torture, and extrajudicial killings, violations that arose from a partnership between two oil companies, Unocal and Total, and Burma's military regime.[83] When one survivor shared plans about a violent revolution, Redford suggested they instead sue their oppressors, using the ATS.[84] Having learned about the ATS in law school, the students thought the statute could apply to violating countries and corporations. With this idea at the core, alongside local activist Ka Hsaw Wa, they cofounded Earthrights International, a transnational human rights NGO operating in the United States and Southeast Asia.[85] Representing the Burmese (Myanmar) survivors, Earthrights joined with CCR and a Pasadena-based boutique civil rights firm, Hadsell Stormer Richardson & Renick, and sued Unocal, Total, and Burma's government.[86]

Representing another group of Burmese survivors, two labor lawyers,[87] also sued. The court consolidated the cases. Initially dismissed in the federal district court, Doe's lawyers sued Unocal in a California state court using common law claims including assault, battery, wrongful death, and unfair business practices while appealing the federal case.[88] The US Court of Appeals for the Ninth Circuit held that corporations could be held liable under the ATS if they knowingly encouraged, aided, and abetted violations of international law.[89] After years of litigating defendants' motions, largely on matters unrelated to the case's merits,

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the court set a trial, at a time when Unocal was in merger negotiations (2005).[90] Ultimately, the parties settled the case, reportedly for $30 million,[91] which funded infrastructure, training, and education for affected communities.[92] The case served as a model for future cases, including the strategy to also use common law when litigating against corporations (used successfully in *Doe v. Exxon*, briefly discussed below).

While attending a conference, Redford learned about additional mass violations, this time arising from a partnership between Nigeria and Royal Dutch Petroleum (Shell), including the hanging death of nine Ogoni community leaders. Like *Filartiga*, such a lawsuit would be "foreign cubed," meaning foreign plaintiff, defendant, and territory. But in this instance, instead of an individual defendant, the defendant would be a corporation, which had also been granted legal personhood.[93] Redford and her colleagues decided to try the case, which, if successful, might stretch the ATS and UJ to apply to the conduct of foreign corporations. In 2009, 13 years after filing the complaint, the parties settled for $15.5 million, funds that supported community projects such as literacy and enterprise.[94]

As these cases were being litigated, critics began asking congressmembers to amend the ATS. The most significant of the reform efforts came from Senator Dianne Feinstein in 2005. Her bill, S. 1874, would have set a 10-year statute of limitations, narrowed the law to specific actionable torts (torture, extrajudicial killing, genocide, piracy, slavery, or slave trading), and required courts to decline jurisdiction under two conditions: if local remedies had not been exhausted or if the president certified in writing that adjudication would have an adverse effect on foreign policy interests.[95] But with human rights advocates expressing strong opposition, the bill failed.[96]

Corporate defenses grew more aggressive. In another Earthrights case, the Ilaje people of Nigeria sued Chevron for an attack on demonstrators that left two dead, two injured, and one reportedly tortured in detention. Unlike the previous Earthrights' cases that settled before trial, nine years after filing,[97] this case, *Bowoto v. Chevron*, went to trial in the US District Court for the Northern District of California. And although the company had essentially admitted to having control over the security forces that had opened fire on the demonstrators, the jury sided with Chevron, citing uncertainty about the company's role in the violations.[98]

The more aggressive corporate defenses coincided with a "conservative" turn in the federal courts. And in 2013, despite Congress's stated intent to expand and affirm the ATS, and explicitly affirming extraterritoriality,[99] the Supreme Court limited the ATS to territorial concerns. In a second Ogoni case, *Kiobel v. Royal Dutch Petroleum*, the Supreme Court decided that cases must "touch and concern" the United States "with sufficient force" to overcome the "presumption against extraterritoriality."[100] The Court affirmed its position in 2021 in *Doe v. Nestle*, a case involving kidnapped children who had been enslaved on cocoa farms in Côte d'Ivoire (Ivory Coast).[101]

When facing corporate defendants in human rights violations cases, advocates turned increasingly to common law claims and grew more adept in moving from one body of law to another. For example, over 21 years of litigating *Doe v. ExxonMobil*, in which eleven Acehnese survivors of human rights violations

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sued the oil conglomerate, litigants argued under federal, state, and Indonesian law.[102] In 2023, the parties settled for an undisclosed sum, which one human rights advocate called a "great result that I think everyone is very, very happy with."[103]

Meanwhile, courts restricted the TVPA for use only against individual defendants and rejected its application for redressing "war-on-terror" survivors who suffered from US officials' actions. They dismissed lawsuits against the government and its high-level officials, leaving most without redress. And although privatization of military services raised ethical dilemmas, suing private military contractors remained one potential pathway for redress, discussed next.

Human Rights Redress at Home: The Aftermath of September 11

Despite the Bush administration's approval of extraordinary rendition, indefinite and offshore detention, and methods long considered torture,[104] initially, few advocates represented war-on-terror survivors.[105] This shifted after the Supreme Court's decision in *Rasul v. Bush* in which it upheld habeas rights for detainees at the offshore Naval Station Guantanamo Bay (Guantanamo Bay).[106] Still, however, except for survivors of abuse in US onshore jails and prisons, the courts dismissed redress cases, largely in favor of immunity, protecting state secrets, national security, separation of powers, or for lack of jurisdiction. For example, although the survivors in *Rasul v. Rumsfeld*,[107] *Celikgogus v. Rumsfeld*, *Allaithi v. Rumsfeld*, and *Hamad v. Gates* were not terrorists, the courts dismissed the cases, opining that the defendants were immune and, in the latter case, that the plaintiff lacked jurisdiction. In that latter case, Hamad had been detained for months after he was eligible for release.[108] The courts also rejected the use of the TVPA in war-on-terror cases.[109] In *Arar v. Ashcroft*, advocates used the TVPA to sue Syrian and US officials on behalf of a Canadian engineer, Maher Arar, who was seized in a New York airport, then renditioned and tortured in Syria, via Jordan.[110] The United States Court of Appeals, Second Circuit, affirmed the dismissal, rejecting the TVPA's application, in essence, because Arar's rendition and interrogation were not under the "color of foreign law."[111]

It looked like a dead end to redress the war-on-terror survivors, until advocates learned about private contractors involved in human rights violations and after Congress began taking action.[112] For example, on May 21, 2004, with S. Res. 356, the Senate condemned "the abuse of Iraqi prisoners" at Iraq's Abu Ghraib prison and called for an investigation "to ensure justice is served."[113] The following month, advocates sued two private military contractors (PMCs), CACI International, Inc., and Titan Corporation (Later called L-3 Services), reportedly involved in torturing Iraqi citizens detained at Abu Ghraib prison. Although the first case, *Saleh v. Titan*, was dismissed, lawyers sued the companies twice more, representing other survivors who had suffered similar torture. One of those cases, *Al-Quraishi v. Adel Nakhla*, representing 71 survivors, settled, reportedly for $5.28 million. The third, *Al Shimari v. CACI*, was declared a mistrial in May 2024. Then on November 12, 2024, a federal jury awarded the survivors $42 million.[114]

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Another congressional action preceded additional redress lawsuits. On October 2, 2007, the House Committee on Oversight and Government Reform held hearings related to Blackwater USA (also called Xe and Academi), which was found to have been involved in 195 "shooting incidents," that included shooting the Iraqi vice president's bodyguard inside the protected International Zone.[115] Later that month, survivors of Blackwater's Nisour Square shooting sued the company. And in 2010, they settled for an undisclosed total that reportedly paid $100,000 per death and approximately $25,000 per injury.[116]

In 2012, the Senate Committee on Intelligence conducted a study on the CIA's use of "enhanced interrogation" in detention. Its 2014 publication of the report included the program's details, including the alleged designers—two contract psychologists, James Elmer Mitchell and John "Bruce" Jessen.[117] In October 2015, a group of survivors sued the psychologists. Their lawsuit, *Salim v. Mitchell*, settled in 2017 for an undisclosed sum.[118]

Earlier cases against PMCs, including those against a CIA "travel agent," had failed to bring redress to survivors. The courts dismissed cases against Aero Contractors LTD and Jeppesen Dataplan, Inc., companies ostensibly involved in transporting suspects for extraordinary rendition.[119] The officials who made the decisions and directed these ends have also remained protected. These heightened thresholds for justice and narrowing of courtroom doors, particularly for cases involving high-level officials and corporations, drove some advocates to take their ideas abroad to Canada, the UK, Europe, and the Global South, discussed next.

Universal Jurisdiction and the Globalization of Redress

In the 1980s and 1990s, the United States seemed poised to lead a global human rights revolution using the concept of UJ. But in the next decades, concepts such as sovereignty, immunity, territoriality, and national security began to prevail over UJ, shielding high-level officials and corporate violators in US courts. Weiss had seen the dead ends before, such as when he sought redress for Joyce Horman. If the United States refused to address serious human rights violations, Weiss would seek other avenues, including in courts abroad. Because of the "war on terror" violations, "we wanted to bring a case against [Donald] Rumsfeld. And somebody pointed out that there was an ideal law in Germany, which would apply … one of the best universal jurisdiction laws," he recalled. Alongside German lawyers, including Wolfgang Kaleck, Weiss cofounded the European Centre for Constitutional and Human Rights,[120] which began coordinating universal jurisdiction cases throughout Europe. And although they failed on their initial case against Rumsfeld, Germany has since successfully prosecuted other violators, including high-level Syrian officials, such as Colonel Anwar Raslan, who oversaw torture, rape, and killing of dissidents. The German court found Raslan guilty of crimes against humanity and sentenced him to life in prison.[121]

Other advocates also looked abroad. For example, from CJA, Gray, Matt Eisenbrandt, Almudena Bernabeau, and Kathy Roberts began building new NGOs and cases in Canada, Spain, and the UK while working with NGOs and advocates in the territories where the violations were occurring.[122] For example, survivors in

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Latin America and Eritrea sued Canadian mining corporations in Canada for their role in human rights abuses, cases that resulted in redress settlements.[123] Earthrights' advocates continued to grow partnerships in Southeast Asia and Latin America, co-creating legal training programs, using Foreign Legal Assistance to support survivor-led actions in their own countries, and taking legal actions against international institutions, including the World Bank and the IMF.[124] And, CCR advocates engaged in global efforts that included treaty-level redress pursuits.[125] These and other strategic shifts suggest new cross-border partnerships and collaborations between survivors and advocates, some which can span two or more concurrent jurisdictions, sometimes with simultaneous actions in the territories of violations, domestic courts of other countries, and international venues. This phase is now developing and deserves further research.

Discussion and Conclusion

This 40-year history of the movement to redress survivors of egregious human rights violations began with the foundational ideas that undergirded and shaped new and established policy (the TVPA and the ATS, respectively), legal actions, and NGOs. By following the development of a fledgling movement's ideas from their introduction from civil society into American courts, to Congress, and back to civil society and the courts, this research provides a unique purview, shedding light on several phenomena: First, it shows how creative advocacy and aspirational ideas inspired a small but relatively successful rights movement toward solving a daunting, seemingly intractable problem that at the time was considered impossible to solve.

Grounded in the civil rights movement's tradition of using litigation to expand redress to additional aggrieved classes, creative advocates successfully weaved classic and aspirational ideas, an obscure statute (the ATS), and current facts to challenge conventional, accepted legal ideas, such as jurisdictional restrictions, which had long been barriers for survivors of egregious human rights violations. At the core of this strategy was integrating the idea of UJ into US law as a means of redressing survivors and holding their violators accountable.[126] The ATS's language seemed to be a perfect vehicle for that goal.

After two unsuccessful attempts to integrate UJ into the ATS, the case, *Filartiga v. Pena-Irala*, was groundbreaking.[127] With *Filartiga*, Peter Weiss and his CCR colleagues developed a legal basis that persuaded the Second Circuit Court to establish a new precedent that enabled torture survivors to sue their violators in US courts despite the foreign status of survivors, defendants, and territories where the violations occurred.[128]

Second, this research shows how, step by step, advocates and survivors built on the early wins to develop their ideas into policy and increasingly expansive cases.[129] For example, after the successful *Filartiga* precedent, the next wave of survivors and advocates successfully found and sued General Guillermo Suarez Mason, allegedly responsible for thousands of forced disappearances in Argentina's Dirty War.[130] They won redress from a former head of state, Philippines'

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President Ferdinand Marcos,[131] including through a class action.[132] And they inspired members of Congress to affirm and expand the ATS by passing a new law, the TVPA.[133]

In passing the TVPA, congressmembers expressed hope for building an international system to prevent future atrocities through victim-led actions that would both redress survivors and hold abusers accountable.[134] During the TVPA hearings, another idea emerged from Senator Edward Kennedy, that through the litigation process and by transforming victims into plaintiffs, survivors could recover psychologically and regain lost agency.[135] This latter idea was foundational for the founding of another NGO, the CJA, which also sought civilized alternatives to cycles of violence between victim and violator.[136] For more than two decades, advocates continued expanding these ideas through test cases in the United States, including by successfully redressing survivors from transnational corporations involved in or benefiting from the violations.[137]

Third, this political history shows the interactions, flow, and influences between civil society and the branches of government and how they shifted over time. For example, when debating the TVPA and its core idea of UJ in Congress, advocates and congressmembers referred to actions in the courts. Inspired by and based on the *Filartiga* precedent, Congress sought to expand and construct a more robust system to support future survivor-led lawsuits and to signal this affirmation to the courts, particularly in light of the United States Court of Appeals, District of Columbia Circuit's *Tel Oren* decision.[138] But these influences and interactions changed. For example, in passing the TVPA, Congress expressly built on the ideas and cases initiated in civil society and decided in the courts, particularly *Filartiga*, which created a pathway for redressing survivors of egregious human rights violations, and later the Suarez Mason cases.[139] Here Congress explicitly prioritized redress, advancing human rights, and universal jurisdiction over territoriality and sovereign immunity in its quest to expand survivors' access to redress, starting in the United States.[140] In so doing, Congress had followed the lead of civil society and the courts in their embrace of universal jurisdiction and sought to further expand victim-led actions for redress and recovery. However, after Congress affirmed and expanded the court-and-advocate-led precedent, the Court retreated—at two critical points.

One retreat occurred in the aftermath of the September 11 attacks and the war on terror. After President George W. Bush approved extraordinary rendition, "enhanced interrogation," and indefinite detention,[141] the Supreme Court affirmed habeas corpus rights for Guantanamo Bay's detainees.[142] However, the courts dismissed most civil redress actions brought by survivors, predominantly on grounds of immunity, state secrets, political questions, and jurisdictional constraints, protecting the government, its officials, and some PMCs, even when advocates sought to use the ATS or TVPA in their actions.[143] However, after congressional committees held hearings and published reports condemning PMC-related human rights violations, some courts pushed for the PMCs to redress the survivors through settlements. This occurred for example with cases against Blackwater, which had indiscriminately shot and killed civilians in Iraq.[144] It also occurred in a case against PMCs involved in the Abu Ghraib prison abuses and in an action against the contract psychologists, who reportedly

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designed the "enhanced interrogation" program in the CIA's covert locations, also known as "black sites."[145] Some survivors who were abused in US jails also received monetary redress.[146]

The second human rights retreat by the Court occurred at the confluence of two developments—an uptick in lawsuits against multinational corporations that were supporting and benefiting from human rights abuses and the changes in the Supreme Court's makeup.[147] After becoming populated with opponents of extraterritoriality for human rights redress, the Court again led the retrenchment, ultimately reversing congressional intent, which in passing the TVPA, had explicitly embraced extraterritoriality for cases involving torture or extrajudicial killing and sought to expand and affirm the ATS. But the Supreme Court instead narrowed ATS cases to those that "touch and concern" the US with "sufficient force" to overcome the "presumption of territoriality."[148]

The dead ends created by both retreats in US courts led human rights advocates to seek new strategies for human rights justice. Some turned to using common law, particularly to sue US-based corporations that aided or benefited from human rights violations. In narrow circumstances, advocates turned to different statutes, such as the Foreign Sovereign Immunities Act, the Anti-Terrorism Act, or the Justice against Sponsors of Terrorism Act. For example, in *Colvin v. Syrian Arab Republic*, the Colvin family successfully sued Syria and two of its ministers for the targeted killing of journalist Marie Colvin using the Foreign Sovereign Immunities Act, which allows lawsuits against states that sponsor terrorism.[149] A class of Yazidis used the Anti-Terrorism Act to sue French cement corporation LaFarge S.A. for supporting and partnering with the terror group, ISIS, which brutally destroyed the Yazidi community in their region.[150] But because of the specific terrorism conditions of these statutes, these laws apply to a narrow range of survivors for redress pursuits.[151] With such limited options, other advocates, including Weiss, necessarily turned abroad for human rights justice, cofounding NGOs in Europe, Canada, and the UK and collaborating with other advocates, such as in Latin America and Southeast Asia. These new efforts suggest a new human rights redress model, which ostensibly involves concurrent actions in more than one jurisdiction while supporting rule-of-law development in the countries where violations are occurring, a topic that deserves its own research. Future research could continue to study these shifts, particularly as the core ideas of universal jurisdiction and human rights redress are met with different cultures, systems, and Indigenous ideas to understand whether and how they endure, expand, change, or fall victim to counterideas. Researchers may also untangle other factors that influence government leaders and judges including culture, framing, ideology, profit ideologies, emotions, or other variables that affect the retractions, limitations, or expansions of human rights redress.

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