

BOOK REVIEW

## Seeking Justice. Access to Remedy for Corporate Human Rights Abuse, by Tricia D. Olsen (Cambridge: Cambridge University Press, 2023)

Business and human rights (BHR) scholars and practitioners have long lamented the scarcity of research investigating the nature, quality, and contours of Access to Remedy, the third pillar of the United Nations Guiding Principles. While the work of this journal is starting to reverse the situation, there is still a dearth of scholarship on remedy based on quantitative empirical research. Against this backdrop, this review will emphasize how Tricia Olsen's book is a much-needed and long-awaited contribution, not only because of its methodological uniqueness but also because of the theoretical advances she delivers.

Olsen aims to understand the variation in access to remedy mechanisms for corporate human rights abuse and the role that contestation may play in shaping this access. In the process, she empirically tests and discusses some previously unquestioned premises of the BHR field – e.g. the 'governance gap' narrative, and the complementarity between judicial and non-judicial remedies among others. The book is structured in seven chapters. Following the introduction, chapter 2 presents the fundamental premises underlying Olsen's theoretical model, the so-called 'Varieties of Remedy Approach'. Chapter 3 outlines the scope and breadth of the Corporations and Human Rights Database underpinning her research. Chapters 4 and 5 investigate access to judicial and non-judicial remedy mechanisms, respectively. Chapter 6 looks at whether and how contestation for corporate human rights abuse helps strengthen democratic institutions. Finally, chapter 7 concludes.

Olsen asks herself: Why do some victims of corporate human rights abuses have access to remedies while others do not? To what extent the characteristics of *who* is involved and the *context* in which access to remedy is (not) taking place can explain such variation? And, more broadly, does the contestation that often accompanies the claims for remedies for business and human rights abuses contribute to advancing democratic practices? From a methodological perspective, the way in which she addresses these questions is a unique and innovative contribution to the BHR field. Firstly, Olsen built the Corporations and Human Rights Database (CHRD), a unique large-scale collection of data about corporate human rights abuse and access to remedy in Latin America. The CHRD compiled more than 1,000 allegations of corporate human rights abuse with over 130,000 data points spanning a 15-year period (2000–2014). This contrasts with the typical small *N* analysis prevailing in the BHR literature relying on single firms, specific countries, and comparative analysis among firms or industries. Secondly, she engages in a quantitative empirical exercise where she tests her carefully constructed hypotheses, using mostly logistic regressions, accompanied by sound robustness checks. Altogether, in methodological terms, Olsen's work is unparalleled in the BHR domain.

Olsen utilizes this powerful methodological engine to develop and empirically test her 'Varieties of Remedy Approach' theoretical model. This approach allows her to refine the prevailing 'governance gap' narrative. Such 'myopic narrative', as Olsen describes it, may

lead us to believe that powerful companies, in weak institutional environments, enjoy open impunity as weak states may have neither the capacity nor the political will to hold those firms accountable. As a result, many scholars and practitioners in the BHR domain placed their attention on international accountability mechanisms while overlooking the efforts of local actors to deliver access to remedy. Yet, the ‘Varieties of Remedy Approach’ demonstrates that reality is far more complex than what the ‘governance gap narrative’ may make us believe. She demonstrates how local efforts to deliver judicial and non-judicial remedies for corporate abuses are crucial. Olsen finds that their relevance depends on different factors such as the strengths of the rule of law, the firm’s profitability, the firm’s foreignness, or victims receiving support from local NGOs.

The ‘Varieties of Remedy Approach’ also serves as a theoretical background to construct and test her hypotheses about how actors, namely states, firms, and NGOs, engage with, affect, and are affected by institutions when engaged in the provision of judicial and/or non-judicial remedy. To do so, Olsen structures her theoretical framework in three pathways covering the features of the confrontation that victims endure in their quest to obtain access to remedies. Each of these three pathways hosts several hypotheses for judicial (chapter 4) and non-judicial (chapter 5) access to remedies. The first pathway, *Institutional Strength*, serves as the platform to build hypotheses about the characteristics of the institutional setting that may influence access to remedy – essentially the strength or weakness of the rule of law. The second one, *Corporate Characteristics*, allows for building hypotheses related to the specific characteristics of a firm – e.g., firm’s size, profitability, national or foreign headquarters – and how these traits may shape victims’ access to remedies. Finally, the *Elevating Voices* pathway provides the ground for hypothesizing about the role civil society plays in supporting victims of corporate abuse to access remedy mechanisms. While these pathways are well-grounded in the literature, the analysis appears to eschew its stated victim-centred aim. In her theoretical model and hypothesis construction, Olsen uses variables connected to the characteristics of the state, the firm, and the supporting NGOs. Yet, variables related to the victims’ characteristics – e.g., indigenous communities, urban/rural, gender, race, and age – are missing. Introducing such variables may have allowed for producing insights about whether and how belonging to any of these traditionally neglected groups may condition their access to remedies.


The Varieties of Remedy Approach is founded on solid normative grounds, namely on pragmatism and agonism. Pragmatism, as defined by Olsen, supports the idea that social transformations are complex, intersubjective, and contingent. Pragmatism justifies suboptimal and temporary equilibrium in knowledge production. As a result, no parsimonious theory may be able to explain access to remedy. Instead, ‘multiple, sometimes circuitous ways’ may lead to access to remedies (p. 5). Given the limitations of pragmatism to inform contestation, Olsen introduces agonism as a complementary account of pragmatism. Agonism presents contestation as an instrument capable of strengthening democratic institutions. Rather than placing the focus on whether a claim is addressed or not, agonism emphasizes the political process that underlies it. Such refined normative architecture, however, has a cost. Would victims of corporate human rights abuse be satisfied with ‘suboptimal’ access to remedy? Would they have to accept unjust or incomplete access to remedy in exchange for a higher aim, namely democratic advancement? Furthermore, an uncritical endorsement of these accounts holds the risk of portraying victims as individuals who are always able and willing to be vocal and have the resources and empowerment to embrace contestation. A perhaps more cautious endorsement of these accounts, reflecting both their strengths as well as their potential pitfalls, would have further strengthened the already robust foundations of the book.

Olsen’s findings also serve to empirically confirm widely held assumptions in the BHR domain. For example, that non-judicial remedy plays a complementary role in remedy

provision where judicial remedy is not accessible. More relevantly, her data show that where the rule of law is weak, non-judicial remedy is more likely to come from the state rather than from corporate mechanisms. Olsen argues that this finding contradicts Political CSR scholarship which, as outlined by Scherer and Palazzo<sup>1</sup>, would have predicted that in weak institutional contexts, companies rather than states would be taking the lead in non-judicial remedies. I find this conclusion slightly misguided. Scherer and Palazzo's work is of a normative nature,<sup>2</sup> thus it is not meant to explain when and how firms are stepping in to provide goods traditionally delivered by the state. Instead, theirs is a normative political account outlining the circumstances in which firms *should* take responsibility for delivering such goods.

Finally, Olsen takes her enquiry on access to remedy to the next level by testing the main premise of agonism: does the act of being heard and contesting corporate human rights abuse enhance democratic practices? The data allows Olsen to conclude that yes, contestation leads to an increased respect for human rights and that its positive effects spill over to trials and state-led non-judicial mechanisms. This is an effect that cannot be observed in initiatives led by non-state actors.

Taken as a whole, Olsen's work is an outstanding contribution to the BHR field, both because of its substantive insights about access to remedy as well as the innovative methods it uses to reach them. It is also clearly written and filled with numerous relevant examples and testimonies. This book is the result of a long-term and slowly baked project, something that in current academia is, unfortunately, becoming increasingly rare and difficult to achieve. Furthermore, the book does justice to the interdisciplinary nature of the BHR discussion. Olsen masterfully alternates insights from law, ethics, management, and political science with such ease that it might lead the reader to believe that this was a minor effort. This makes the book even more recommendable for the diverse audience of the *Business and Human Rights Journal*. Finally, as young fields of study such as ours start to consolidate, we can and should expect to see some of its original paradigms and myths being refined, if not debunked. *Seeking Justice* does exactly this. To claim otherwise would be an injustice.

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<sup>1</sup> Andreas G Scherer and Guido Palazzo, 'Toward a Political Conception of Corporate Responsibility: Business and Society Seen From A Habermasian Perspective' (2007) 32:4 *Academy of Management Review* 1096–1120; Andreas G Scherer and Guido Palazzo, 'The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and its Implications for the Firm, Governance, and Democracy' (2011) 48:4 *Journal of Management Studies* 899–931.

<sup>2</sup> Scherer and Palazzo (2007), note 1.