



Uncovering Economic Complicity: Explaining State-Led Human Rights Abuses in the Corporate Context

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Abstract

Today's scholarship and policymaking on business and human rights (BHR) urges businesses to better understand their human rights responsibilities and remedy them, when and if abuses do occur. Despite the public discourse about businesses and human rights, the state—as the main duty bearer in international human rights law—plays a fundamental role as the protector and enforcer of human rights obligations. This is a problem because the existing literature overlooks state involvement as perpetrators of abuse in the corporate context. We develop the term economic complicity to shed light on the state's role in directly or indirectly abusing human rights within a corporation's sphere of influence, such as police violence toward protests or granting environmental licenses without adhering to legally required community consultations. We ask: What contributes to the state's engagement in economic complicity in corporate human rights abuses? We assess hypotheses emergent from the democratic change and development studies literatures with a unique database that includes economic complicity data from Latin America, the Corporations and Human Rights Database (CHRD). This research has important theoretical implications for the business ethics and BHR literatures, as understanding economic complicity highlights the need for businesses actors to avoid shirking their moral responsibilities to not only 'do no harm' but also to protect human rights when they are threatened by the state.

Keyword Business and human rights · Economic complicity · State actors · Political economy

Increasingly, policymakers and business leaders are engaging in initiatives to curb corporate human rights abuses.¹ In 2011, the United Nations Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights (UNGPs) after lengthy consultations with businesses, states, and civil society (Ruggie, 2013). A charge led by Professor John Ruggie, the UNGPs describe the role and responsibilities of private and public actors in reducing corporate human rights violations and improving access to remedy for victims of such abuse.² Since 2014, policymakers have engaged in an ongoing discussion around a legally

binding treaty on business and human rights (hereafter, the Draft Treaty).³

Yet, what the UNGPs and the Draft Treaty overlook is the role state actors play, not in protecting, but in *perpetrating* human rights abuses in the corporate context. While the UNGPs and the Draft Treaty are ostensibly about *business* and human rights (BHR), both instruments uphold states, in

¹ Note efforts existed prior to the 2000s but did not mark the groundswell of activity around BHR that we see today (see Olsen, 2023).

² The three pillars, which form the foundation of today's BHR agenda, are: (1) the state duty to protect human rights; (2) the corporate responsibility to respect human rights; and (3) all actors' participation in improving victims' access to remedy for corporate-related abuse.

³ More recently, global policymakers have been working on creating a binding treaty through the UN on BHR. In 2014, the UN Human Rights Council adopted a resolution to create an open-ended inter-governmental working group on Transnational Corporations and Other Business Enterprises with respect to human rights. The group's mandate is to elaborate an international legally binding instrument for such organizations and, as of 2021, there is now a third revised draft which has lost momentum and support by states as the process advances. For a more detailed account of the current treaty process see: <https://www.bhrrc.org/en/big-issues/binding-treaty/>.

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general, as protectors and enforcers of human rights. Yet, states are not monolithic. As we show, they can commit human rights abuses in the corporate context, by which we mean a corporation's sphere of influence.⁴

We develop the term “*economic complicity*” to uncover a different perspective on the state, which is currently missing from the scholarly and policy conversations about BHR. Economic complicity, or when the state engages in human rights abuses in the corporate context, has important implications for business ethics. Business ethics scholarship suggests firms have a moral responsibility to go beyond “doing no harm” (Fasterling & Demuijnck, 2013). Instead, scholars argue that businesses must take action to avoid shirking their moral obligation to others (Brenkert, 2016; Nolan & Taylor, 2009; Wettstein, 2010b). Understanding economic complicity, therefore, helps business leaders to identify the conditions under which states commit abuses in the business context and, thus, when businesses must be prepared to act. This research also facilitates state actors’ understanding of economic complicity and could inform policy around how to reduce its occurrence. We use a newly created dataset, the Latin American Corporations and Human Rights Database (CHRD), which the authors and a team of graduate students created over many years. The CHRD is, to date, the most comprehensive collection of data on allegations of corporate human rights abuse.⁵ We explore the conditions under which the state is likely to commit economic complicity. The notion of economic complicity may be controversial in some circles. First, many assume we have moved beyond state-sponsored abuse post-WWII. This is, unfortunately, untrue. Second, given that the thrust of the UNGPs and Draft Treaty is for states to facilitate corporations’ improved respect for human rights, it complicates these efforts to highlight the state’s role in perpetrating abuses. While we agree that corporations have much to improve upon—and have written

about that elsewhere (Olsen, 2017, 2023; Olsen et al., 2021; Payne et al., 2020)—this research goes beyond the notion of corporate abuses or corporate complicity to explore how the state’s past and present complicate its engagement with the BHR agenda in ways that, thus far, have been largely ignored.

We situate our inquiry by using the scholarship on democratic change and development studies to form testable hypothesis about the conditions under which states are more or less likely to engage in human rights violations in the corporate context. Development studies scholars suggest that states need to attract investment to meet their development goals (Davies & Vadlamannati, 2013; Dougherty, 2011),⁶ but this may be mediated by pushback from unions (Bardhan, 2016) or, as democratic change scholars uncover, by the (un)ruptured ties between violent economic and political elites who still hold power after a country has transitioned to democracy (Linz & Stepan, 1996). In turn, the state may seek to decrease the costs of doing business and commit human rights violations on behalf of corporate actors. State actors, for example, might lower labor costs by suppressing unions, facilitate extraction by fast-tracking environmental licenses while disregarding the rights of communities, or use force to disperse protest.

In this article, we ask: How does a country’s political past and its economic structure affect the likelihood of economic complicity? This work opens up important avenues of inquiry for the BHR and business ethics scholarship, which has largely focused on why businesses have human rights obligations (Karp, 2014), the nature of these obligations (Macdonald, 2011; Wettstein, 2010b; Wood, 2012), and the ways in which corporations can be legally held accountable for human rights abuses (Clapham & Jerbi, 2001; Kobrin, 2009; Kolstad, 2008; Ramasastry, 2002; Wettstein, 2010a, 2010b). This research, in contrast, fills two gaps outlined in Schrempf-Stirling and van Buren’s (2020) review of the BHR scholarship. First, we depart from the focus on businesses’ legality and/or responsibility for human rights and, instead, challenge the assumption that states are positioned to make meaningful improvements in business conduct. We find that under certain conditions, state actors may make matters worse. We bring together insights from the business ethics literature to argue that corporations have a moral responsibility to engage when state actors commit economic

⁴ The ‘sphere of influence’ allows scholars and practitioners to suggest that business’ human rights responsibilities include the impacts to which they contribute and, more broadly, to those over whom it may have some leverage and thus an ability to influence. With this logic, businesses are held responsible for the actions of its business network, supply chains, but also the actions of the state. In this way, this concept is related to the corporate complicity, as we explain later in the article.

⁵ Olsen, T. “Corporations and Human Rights Database, 2006–2014” See: www.bhrlab.com.

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⁶ Note we are offering only a cursory picture of the race to the bottom as it is broadly understood. There is a vast literature on its potential ill effects on labor and environmental protections while others have found that some factors (e.g., social spending) do not discourage increased foreign direct investment (Hecock and Jepsen, 2013). This literature is too broad to cover in its entirety but interested readers should explore the following references: Jensen (2008), Rudra (2008) and Bartley (2018).

complicity. Thus, this research has important implications for the strategies adopted by business leaders and policymakers alike, who are working to reduce human rights violations.

Second, we fill an empirical gap using large-N data to shed light on economic complicity. We explore a newly-created dataset—the CHR—better to understand economic complicity. These data illuminate a more nuanced story than traditional narratives about the BHR agenda. We base our study in Latin America, in part, because of the region’s tremendous advances in respect for human rights, generally. Since the “third wave” of democratic transitions spread across the region, respect for human rights and accountability for state-sponsored human rights abuses have been widely adopted (Olsen et al., 2010) while many countries continue to seek justice for historic corporate human rights abuses, as well (Payne et al., 2020). It is surprising, then, that we find that Latin American states have assisted in, or committed, over 30 percent of the allegations of abuse in the corporate context over a 15-year period. This analysis focuses on only those countries that transitioned to democracy since 1970. This is an important feature of the data, as this research allows us to understand the legacy effects of non-democratic rule or how state actors’ propensity for rights protection may be influenced by their country’s political past.

The article proceeds in five parts. First, it begins by providing a brief discussion of states’ central role in the UNGPs and the Draft Treaty. We include this abridged review to underscore how problematic it is that extant literature and policy efforts do not recognize states’ multiple roles—protector, enforcer, and perpetrator—in the BHR space. Second, we develop the concept of economic complicity to describe those instances in which states and corporations engage in human rights abuses in the corporate context and illustrate these trends with descriptive findings from the CHR.

Next, the article draws out hypotheses from the literature on democratic change and development studies that theorizes how political and economic factors may affect economic complicity. While one set of literature celebrates democratic strengthening in Latin America, another body of work highlights the tensions between economic development and human rights. The fourth section of the article discusses the data, estimation strategy, and findings related to the question posed above. We find that a country’s political past and economic structure influence the likelihood of economic complicity. The fifth and final section concludes with a discussion of the implications of this research, its limitations, and the practices or policies that could help curb this trend. We return to the argument made by business ethicists that firms have a moral responsibility to help prevent economic complicity. Overlooking this reality, at best, complicates both business leaders’ and policymakers’

engagement in the BHR agenda and, at worst, may render current policy efforts ineffective.

States as Protagonists in Business and Human Rights Policy

Why do states play such a prominent role—as the protector and enforcer—in the BHR policy space? We present two sets of arguments about the role of the state, with a specific focus on the UNGPs and the Draft Treaty. The first argument relates to the state’s responsibility to protect and guarantee human rights, generally, as codified under international law and the inability, thus far, to formalize such international legal obligations for corporations; the second argument outlines that enforcement mechanisms for corporate human rights abuse are ultimately at the state level.

In short, despite the enthusiasm for a new *business* and human rights agenda, the state is still the protagonist. We argue that this structure complicates practice in ways that have been recognized (e.g., Wettstein, 2015), but have not been brought to the fore in empirical terms as we do here. Without the willful support of states—and, at a minimum, the states’ ability to ensure state actors are not committing human rights abuses in the corporate context—both current policy efforts, the UNGPs and the Draft Treaty, face substantial challenges in improving corporations’ respect for human rights.

The State as the Protector of Human Rights

The state, from its origins, has a mandate to protect citizens and their rights. However, scholars that historicize the evolution of the BHR field (Bernaz, 2017; Santoro, 2015; Wettstein, 2020) have shown how human rights activists became increasingly frustrated with poor governance and lack of state responsiveness. In turn, activists began to target corporate actors in the hopes they would be more responsive to human rights campaigns (Soule, 2009). It was, therefore, the limitations of the state—by default or by design—which turned activists’ attention to corporate actors (Whelan et al., 2009).

Many also turned their attention to the possibility of international human rights *legal obligations* on corporations. While there is some consensus on social and moral responsibilities of corporations, this has not translated into legal obligations (Brenkert, 2016). These efforts have repeatedly failed because of legal and political constraints. The most well-known effort to codify legal obligations was the UN Draft Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. The Draft Norms were shelved in 2003 due to push back from states and corporations alike, who

opposed hard law efforts for corporate accountability either due to lack of capacity or concern about increased pressure for accountability, generally. Currently, the international legal personality of corporations is paradoxical. Corporations are viewed as having rights—for example, under international investment law—and they have legal standing to present claims before the European Court of Human Rights (Pentikäinen, 2012). Yet, corporations are not yet duty bearers under international human rights law, as this body of law is seen as only indirectly regulating corporate conduct (Seppala, 2009).

All current policy efforts to improve business conduct, go back to the state, whose inaction spurred the BHR discussion. As Surya Deva (2021, p. 151) argues: “it seems that states remain a critical, if not central, player in guiding business behavior, even in polycentric governance or non-state-centric regulatory approaches.” While Ruggie faced some outspoken critics for abandoning the Draft Norms he found “little movement in the responsibilities corporations may have under international law” (Ruggie, 2007a, p. 3), and thus, focused on the social responsibilities of businesses through the UNGPs.

Corporations, thus, do not have any international legal obligation, but rather a *social and moral duty* to respect human rights. The business ethics literature outlines what corporations are responsible for and how far the responsibility goes (Brenkert, 2016). Some have suggested that it goes far beyond a duty to ‘do no harm’, into a duty to act as ‘human rights advocates’ when systematic abuses occur at the country level (Wettstein, 2010b), while others argue that it should include the responsibility to protect and not only respect the human rights of others (Nolan & Taylor, 2009). Meanwhile other scholarship seeks to identify a corporation’s ‘sphere of responsibility’ (Macdonald, 2011) or ‘leverage-based corporate human rights responsibility’ (Wood, 2012) to determine the limits of corporate accountability regarding the actions of others (e.g. the state, business network, or supply chain). None of these arguments, however, translate to legal obligations. The state is still the only body with a direct legal obligation to uphold human rights.

While the UNGPs are the principal framework today, the UN Working Group on Transnational Corporations and other Business Enterprises has been developing a “Draft Treaty” since 2014 to move the BHR agenda from voluntary to binding. This treaty, if approved, would be another milestone in the effort to curb corporate-related abuses. Even so, it does not differ from the UNGPs in one vital way: states remain the driving force behind the enforcement of norms and accountability efforts. The Draft Treaty states that the (Open-Ended Intergovernmental Working Group (OEIGWG), 2019). As we discuss below, the challenges of state centrality, however, go beyond jurisdiction or political will. In short, the state’s centrality in accountability efforts is

a problem because the state itself is implicated in economic complicity.

The State as the Enforcer of Human Rights

The second reason states are the protagonists of global BHR policy is that the mechanisms to hold corporations accountable are state-level mechanisms. As noted above, in international human rights law, corporations cannot be held accountable before global and regional human rights bodies.⁷ This is the consequence of the state-centered indirect regulation of business’ obligations under international law described in the previous section. As such, states have the obligation to enforce human rights law at the national level. If states breach that obligation, they can be held accountable at the international level. This works, in a sense, as a decentralized system of adjudication.

Human rights advocates have attempted to hold corporations directly to account in international courts. The most prominent example is the attempt by the French delegation to include corporations (legal entities) under the jurisdiction of the International Criminal Court (ICC). However, this proposal was not passed in the 1998 Rome Conference. The window of opportunity closed, and the discussion has not been reopened (van Der Wilt, 2013). Instead, the courts and administrative authorities in home and host states have the obligation to investigate and hear complaints of corporate human rights abuse.

Thus, the UNGPs rely on state-based mechanisms to remedy victims of corporate human rights abuses and on state oversight of company-led mechanisms (Olsen, 2023). The Draft Treaty also entrusts domestic and foreign courts to adjudicate these cases. It even includes a set of norms on jurisdiction and applicable law to facilitate access to justice for victims in local courts.⁸ While the Draft Treaty includes a proposed monitoring body, it is not meant to hold companies to account but rather monitor the ways in which

⁷ Note differences, however, in other areas such as international economic law, where corporations have been gaining rights at the international level and standing to defend those rights—or be held liable for breaching them—before international bodies, including arbitration tribunals managed by the International Chamber of Commerce.

⁸ One of the main obstacles that victims face when litigating cases in the Global North relate to issues of jurisdiction and applicable norms. Courts in the US, for example, have repeatedly dismissed claims filed by victims against multinational courts arguing the legal doctrine of *forum non conveniens*, or that a court of the country where the abuse took place should hear these claims. The Draft Treaty states that Courts should avoid imposing these types of legal obstacles and clarifies that courts of the country where the abuse took place or where the abuse produced effects will have jurisdiction over the claim. See <https://www.business-humanrights.org/en/big-issues/binding-treaty/summary-third-revised-draft-of-the-binding-treaty-on-business-and-human-rights/>.

states are keeping their obligations to act as enforcers and protectors.⁹

Enforcement mechanisms at the state level include judicial proceedings, administrative processes, and, at times, oversight of non-judicial remedy procedures. Depending on specific jurisdictional characteristics, the state's judicial branch may agree to hear constitutional or civil claims brought by victims. For example, we have seen decades of tort litigation in Ecuador and elsewhere by residents of Ecuador against Chevron because of the environmental impact caused by Texaco's operations in the 1990s.¹⁰ States may initiate criminal cases against corporations or their executives for wrongdoing. In Honduras, the executives of the hydroelectric company DESA were put on trial and convicted for the murder of Berta Cáceres, a well known environmental activist (Tapias-Torrado, 2022). While compensation and guilty verdicts are rare, victims have access to legal mechanisms in about one out of three allegations of corporate human rights abuse in Latin America—a far greater rate than many would expect (Olsen, 2023).

Administrative proceedings might include initiating processes or fines that may halt existing work or punish firms for not having followed existing regulations. Large scale mining projects, for example, often rely upon environmental impact assessments—the state can stall or pull permits due to noncompliance. Companies may also be asked to pay fines when specific regulations are ignored. Finally, when states act as a mediator, they are often the de facto party to ensure that companies comply with their commitments to non-judicial remedy mechanisms. For example, in claims of labor law violations, some states act as mediators in conciliation proceedings that can result in fines to companies and orders to modify their conduct.

What we have outlined above is the central role the state plays in global BHR policies—as protector and an enforcer. We do this to highlight how problematic it is that states also participate in abuses that occur in the corporate context—an empirical reality that, thus far, has been overlooked by academics and policymakers alike. The phenomenon of *economic complicity* is further evidence that states are not monolithic, but instead have complex and multifaceted relationships with non-state actors. In the following section, we develop further the notion of *economic complicity* before exploring why we see states engage in this behavior in some contexts and not others.

Economic Complicity

Economic complicity differs from, but is complementary to, the more established concept of corporate complicity (Brenkert, 2009; Clapham & Jerbi, 2001; Khan, 2006; Kobrin, 2009; Kolstad, 2008; Payne et al., 2020; Ramasastry, 2002; Wettstein, 2010a, 2010b). Legal scholars rely on criminal law to argue for more restricted definitions of complicity (Clapham & Jerbi, 2001; Kobrin, 2009; Kolstad, 2008; Ramasastry, 2002; Ruggie, 2008). However, business ethics scholars, moving closer to moral accountability, have sought to explore the moral dimensions of corporate responsibility beyond the limited legal framework (Khan, 2006; Wettstein, 2010b). This approach, which makes the line of complicity more diffuse, has produced questions about degrees of complicity (e.g., the so-called 'sphere of influence' question) and whether there are some degrees that are acceptable from an ethical perspective (Kolstad, 2008; Monge, 2015).

Before diving into economic complicity, we give a brief primer on the more well-established concept of corporate complicity. Corporate complicity, in general, falls into three categories: direct, indirect and silent complicity (Clapham & Jerbi, 2001; Wettstein, 2010a). Direct corporate complicity requires intentional participation and knowledge of the foreseeable effect. For example, in Argentina, a corporation lent its cars to state actors so they could transport illegally detained workers to torture centers. Indirect complicity, on the other hand, occurs when businesses benefit from human rights abuses committed by someone else. For example, when firms finance military units that commit human rights violations to protect the infrastructure needed by firms to operate. In Colombia, mining and oil companies financed military units that have been involved in alleged abuses against union members and environmental leaders.¹¹ The last category is silent complicity, which occurs when companies neglect their duty to raise systematic human rights abuses with the appropriate authorities (Wettstein, 2010b). While the concept of corporate complicity recognizes that there is a main violator of human rights (mainly the state), by definition, its focal point is the corporation, underscoring how corporations are complicit in abuses that facilitate desired outcomes of states.

Economic complicity represents the other side of the coin, which sheds light on the role of the state in these abuses. The concept of *economic complicity*—and the focus of this article—broadens our understanding of the phenomenon by highlighting the scenario of collusion where the state participates in, or facilitates, corporate human rights abuses. We suggest there are two ways in which a state can

⁹ See <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf>.

¹⁰ See <https://www.business-humanrights.org/en/latest-news/texacochevron-lawsuits-re-ecuador-1/>.

¹¹ See <https://cerosetenta.uniandes.edu.co/petroleras-y-mineras-financian-fuerza-publica/>.

engage in economic complicity: direct or indirect economic complicity.

Direct economic complicity describes those instances in which the state committed the abuse (e.g., state police or military forcefully disperse protests in the corporate context; the state conducts substandard legally-required community consultations known as free, prior, and informed consultations or FPIC). In Panama, for example, unionized workers were violently repressed by police during a peaceful protest in July 2010; two workers were killed and several hundred more were injured, while more than 100 workers were unlawfully detained by Panamanian authorities.¹² The workers were protesting a proposed law that would eliminate manual union dues and allow companies to dismiss workers who joined unions (Sullivan, 2012). In Guatemala, there have been several incidents of police violence and illegal detentions of community members opposing the Marlin mine, owned by Montana Exploradora.¹³

Indirect economic complicity, on the other hand, includes those instances in which the state was alleged to have assisted in the abuse, which may have been driven by corporate actors (e.g., the state supports a company in union busting by denying its legal recognition, or the state refuses to implement labor regulation and as a result the company endangers its workers).¹⁴ This assistance can occur either by actively supporting the company's violation, or when the claim is raised before state entities, the state fails to respond. In Mexico, the state engaged in indirect economic complicity when it assigned over 300 people to work for Agropecuaria Las Mercedes, through the National Agricultural Laborer Government Program. In 2009, of 31 individuals that escaped from the facilities, five reported to the Office of Human Rights in Guanajuato that they were forced to work in slave-like conditions (e.g., owners were alleged to have made them work 12-hour shifts, locked employees in barracks, provided pieces of cardboard as beds and bean broth for meals). In Argentina, the state engaged in indirect economic complicity due to lack of action in the case of the Matanza Riachuelo river, where 44 companies dumped toxic waste into the river and the state assisted the abuse by failing to regulate, monitor, and intervene when the communities raised their claims.¹⁵

The concept of economic complicity recognizes the close relationship between states and corporations which comes

from state reliance on private investment to reach development goals, a revolving door in leadership between the state and the business sector, governments supported by the economic elite, and state involvement in business and joint ventures with corporations. Development studies scholars have referred to this as the state-corporate symbiosis, a historical account of the structural ties between state and corporations that explain complicity in corporate crimes (Whyte, 2014). Therefore, state actors—when directly or indirectly involved in the economic activity—may benefit politically from economic development and thus, tip the scales in favor of businesses operations. We ask, when are we more likely to see this?

The data, described in greater depth below, show that states were directly or indirectly involved in economic complicity in over 30% of the claims of corporate human rights abuse in the Corporations and Human Rights Database. Direct economic complicity occurred in 150 of 1,227 claims (12.2%) and indirect economic complicity in 231 of 1227 claims (18.8%). The extent to which economic complicity varies across the database. Direct economic complicity occurs in 27% of the cases in Panama, 23% in Bolivia and Nicaragua, and 21% in Peru (Fig. 1). Indirect economic complicity occurs in 35% of the cases in Argentina, 31% in Brazil, and 15% in Bolivia.

In short, scholars and policymakers focus on *business* in the BHR equation and have tried to move away, rhetorically, from a state-centered approach to human rights. In doing so, many in the BHR field have neglected to understand how states play multiple roles—as the enforcers, protectors *and*, as explored here, perpetrators of abuse in the corporate context. In the next section, we draw from well-established literatures on democratic change and development studies to better understand how a country's past and its current economic interests may shape economic complicity.

Explaining Variation in Economic Complicity

In this section, we draw from relevant theory to ask: what explains economic complicity? While the democratic change and the development studies scholarship are infrequently used in business ethics research, this literature is useful in understanding state actors' incentives to engage in economic complicity. Our focus on the state is distinct, of course, from the robust body of work in business ethics that seeks to understand firm-level behavior, including stakeholder engagement (Freeman, 1984; Greenwood, 2007; O'Riordan & Fairbrass, 2014), corporate complicity (Kobrin, 2009; Kolstad, 2008; Monge, 2015; Wettstein, 2010b), and other types of wrongdoing. Given the focus on the state in the BHR agenda, how states may or may not be incentivized to

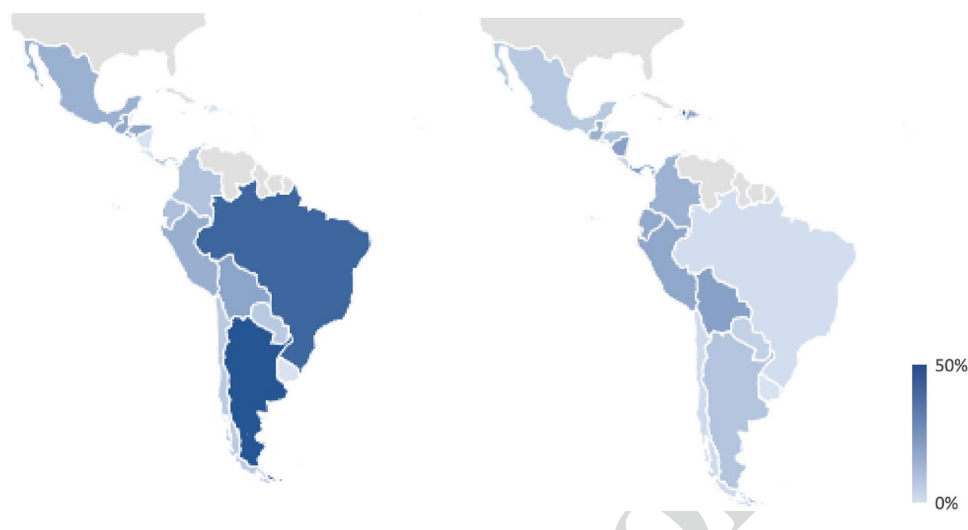
¹² Olsen, T. "Corporations and Human Rights Database, 2006–2014" UniqueID 101BOC0004. www.bhrlab.com.

¹³ See <http://www.mimundo-fotorreportajes.org/2008/11/minera-en-san-miguel-ixtahucan.html>.

¹⁴ State-owned companies fall outside of the spectrum of our analysis but would provide an interesting area of inquiry for future studies.

¹⁵ See <https://www.business-humanrights.org/en/latest-news/matanza-riachuelo-lawsuit-re-argentina/>.

Fig. 1 Variation in indirect (left) and direct (right) economic complicity, by country (Source: CHRD)



facilitate human rights abuses in the corporate context has important implications for business ethics research.

We draw from two well-established literatures to inform our focus on the state. First, the democratic change scholarship develops our understanding as to how the legacy of a country's political past might shape the likelihood of economic complicity. Second, we draw from the development studies literature to explore how the economic composition (e.g., reliance on specific industry exports) or actors within an economy (e.g., unions) shape the likelihood states engage in abuses in the corporate context. These hypotheses build on a more recent stream of work on human development to better understand when the state is likely to cast aside its human rights obligations to engage in abuse.

The Democratic Change Literature

Most business ethics and management scholars treat institutions as a static component of the organizational field and explore how a firm's compliance within the existing institutional framework shapes firm behavior (DiMaggio & Powell, 1983), competitiveness or profitability (Makino et al., 2004; McGahan & Victor, 2010), or ethical conduct (Olsen, 2017). The literature on democratic change, in contrast, asks about broader institutional changes or why countries transition from non-democratic to democratic regimes (e.g., transition to democracy). We engage with the democratic change literature because exploring a country's past is relevant to the inquiry here: *how* a country transitions to democracy may also have implications for the likelihood of economic complicity in the newly formed, democratic regime. In short, this scholarship suggests that a country's political past—specifically, the characteristics of its democratic transition—shapes its engagement in economic complicity.

Regime and Transition Characteristics

Scholars of democratic change refer to the 1970s as the “third wave” of democracy as countries in Latin America, Asia, Eastern Europe, and Sub-Saharan Africa transitioned to democratic rule (Huntington, 1991). The types of transitions, however, varied dramatically and, one might imagine, could have had important legacy effects in the post-transition economy. Democratic change scholarship outlines how authoritarian or post-totalitarian regimes can become democracies through pacted transitions, or those in which some type of agreement is made between opposing groups (Linz & Stepan, 1996, p. 356). These transitions are, by and large, negotiated transitions in which democratic leaders promise certain concessions to the non-democratic regime in return for a transition to democracy.

Brazil and Chile, for example, were both cases of negotiated transitions. In Brazil, the democratic “opening” began in 1985. The military regime negotiated a return to civilian rule and, in so doing, ensured their immunity and role in the newly democratized regime. In Chile, Augusto Pinochet, the leader of the military regime that governed from 1973 to 1980, held powerful positions in both the army (Commander in Chief until 1998) and Congress (Senator for Life until his indictment by the Chilean Supreme Court in 2002 for human rights abuses). Negotiated transitions allow former non-democratic rulers to influence the transition and post-transition governing processes as well as related efforts around economic growth and state-business partnerships.

Alternatively, “clean breaks” describe those scenarios in which “the institutions, procedures, ideas, and individuals connected with the previous regime were instead considered tainted” (Huntington, 1991, p. 147). Such transitions often are marked by the abrupt collapse of the non-democratic regime. In Argentina, the military junta that ruled the country between 1976 and 1983 began losing legitimacy due to

domestic and foreign claims about human rights abuses by the regime, a weak economy, and an unsuccessful invasion of the nearby Falkland Islands, an overseas territory of the United Kingdom. The Argentine military was forced to surrender in disgrace and relinquish control. In a “clean break” scenario, new democratic leaders may be more likely to create relationships with unestablished business leaders who were not associated with the outgoing regime. If such actors do not exist domestically, they may seek out foreign investors to fill that role.

As noted above, a negotiated transition means that political actors have changed but business leaders that were prominent during non-democratic rule are likely to maintain ties with the outgoing regime. Those non-democratic leaders that negotiate their departure or simply go “back to the barracks” will still have important economic ties to companies and industries that were previously instrumental to financing the non-democratic regime. Thus, we hypothesize:

H1 A negotiated transition to democracy, as opposed to a “clean break”, is more likely to lead to economic complicity in the post-transition era.

While the democratic change literature is about enduring political-economic ties and the ability of new democratic leaders to enforce human rights standards, we also want to understand when such state-corporate linkages are likely to exist in the post-transition era. In the next section, we explore the development studies literature, which underscores the tension between the multiple, and sometimes contradictory, role states can play.

The Development Studies Literature

The development studies literature is related to the democratic change scholarship in that it asks how the state engages in development, what type of development, and to what end. In this sense, democracy and development go hand in hand. Research on the political economy of regime type or change was initially inspired by Lipset (1959) who noted the strong empirical correlation between per capita income and democracy. His findings supported (now, largely discredited) modernization theory, which suggested that as economies grew and modernized (industrialization, urbanization, higher rates of education), democracy would emerge as well. Another set of development scholars suggested that the existing world system (with “core” and “periphery” countries) would not allow the Global South to move along the development path described by Lipset and others. Instead, the “periphery” states are structurally constrained to experience the kind of development that reproduces their low- to middle-income status (Cardoso & Faletto, 1979; Prebisch, 1950). Scholars thus coined the term “dependent

development” to characterize the process by which some development occurs in the semi-periphery, but at the mercy of Western multinationals (Cardoso & Faletto, 1979; Evans, 1979).

The state’s role in development, however, is complex, as development is “multi-dimensional” (Summer, 2006, p. 646). The state needs to be both strong and restrained. North and Weingast (1989, 2000), for example, argue that the state must be strong to support institutions that buttress markets and contracts, but not so strong that it expropriates property or assets. As Diamond and Plattner (1994) illustrate, the state may also need to introduce economic reforms that may well weaken a state during the democratic consolidation phase. Przeworski (1991) warns that if “losers” of reform are not appeased, they could derail the transition.

Development studies, however, has long emphasized development beyond economic growth. Evans (2010) argues that an expanded view of development requires increased and more effective state capacity. He writes that without this, states will be judged as failures: “first of all for not securing the well-being of their people, but also for not being able to create new foundations for economic growth” (p. 10–11). This expanded view of development grew with Sen’s (1994) “human development approach” which is focused on expanding human capabilities as the pathway to increased productivity and, later, economic growth. Human development has been found to increase economic development (Boozer et al., 2003, p. 25) rather than the other way around.

Yet, with a broader conception of development comes complex and, at times, conflicting goals that the state must manage. Bardhan (2016) adroitly explores the tensions therein—while states need to support broad-based development, a tension emerges “between [pluralistic institutions] and the ability to carry out collective action toward development goals” (p. 863). Newly established democracies are especially prone to such tensions, as they balance increased rights and the need for economic growth to consolidate the new, democratic regime. The political and economic uncertainty in democratic transitions has widespread implications for the prospects and longevity of the democratic regime. It is to these areas of inquiry to which we now turn.

State Incentives to Protect Key Industries

Newly appointed democratic leaders and their successors are under great pressure, as they often must improve economic opportunities for businesses and individuals alike, increase and expand rights protections, while also improving bureaucratic capacity to govern democratically, among many other demands. Political leaders may have strong incentives to protect those industries upon which the economy relies, whether due to political pressure from entrenched economic

actors or the pressure to attract what might be much-needed foreign direct investment to facilitate greater growth (Aarsonson, 2003; Kucera, 2002; O'Donnell, 1978). As Birchall (2020) notes, "The need to attract investment minimizes the developmental gains of investment" (p. 60) by negatively impacting different types of rights.

One might imagine this tension to be particularly fraught in countries with less diversified economies. While many Latin American economies have taken new shape since their transition to democracy, much of Latin America remains reliant on commodity exports. Thus, the state's dependence on these industries has not changed substantially with democratic transitions. Given the heavy reliance on exports of raw materials, the political economy literature would suggest that if a particular business or industry is integral to the overall economic health and growth of a country, state actors may provide preferential treatment for those entities. In this context, state actors may assist or commit violations in the interest of advancing strategic business sectors that are perceived as integral to the economic growth of the country.

The importance of economic development prompts a strong interest to ensure businesses grow and, for those that are multinational, choose to stay in the country. New democracies often seek to attract foreign investment; there is an incentive, in other words, to be 'business friendly'. Host states may not challenge businesses' operations for fear of establishing a reputation as unwelcoming to business and foreign investment. Thus, countries dependent on business for development objectives in key industries would likely keep the costs of violations low and, indeed, aid in such abuses. Alternatively, countries that have a more diverse economy may be less likely to engage in economic complicity, even if doing so increases the cost to businesses. In this scenario, political leaders are not as reliant on specific businesses and/or industries and may be able to play a more standard role in guiding business operations.

H2 States are more likely to engage in economic complicity when specific industries are integral to the country's economy.

State Incentives to Challenge Labor Groups

In addition to businesses and the state, a large body of literature explores how unions shape the composition of the post-transition economy. Scholarship on Western Europe (Hall, 1986; Soskice, 1990), for example, investigates the organization of labor and its effect in the formation of the social welfare state. In Latin America, scholars investigated the role unions played in pushing for democratization across the region and, subsequently, human, political, and civil rights during democratic consolidation. O'Donnell (1978) hypothesized that the more unionized and concentrated industrial

workers are, the greater the likelihood of their political activation. Rueschemeyer et al. (1992) argue that the most pro-democratic forces originate with the working class. Their argument does not rest necessarily on the role of organized labor but highlights the important role the laborers can play in regime change and consolidation. In an edited volume by Chalmers et al. (1997), numerous authors examine the way neoliberalism, in general, has altered traditional structures of labor representation and organization. Unions in Argentina and Brazil shifted their approach to be less reliant on the state, for example (see chapters by Murillo and Martin, respectively, in Chalmers et al. (1997). Alternatively, Bardhan (2016) notes political suppression of the labor movement was integral to Korea's development plan, to ensure "the profits of the business stakeholders were not threatened too much" (p. 873). More recently, Birchall (2020) documents the pressure to quell labor organizing due to increased competition to attract and maintain multinational businesses (p. 60).

In the context at hand, unions play an important role denouncing past violence and speaking out against economic reforms that undermine worker protections in the post-transition environment. Unions can be perceived as an obstacle to economic reforms and, thus, can become a target for state and corporate actors. As vom Hau (2015) aptly notes, "... states, or particular state agencies, may employ their social links, coordination facilities, and geographical coverage to deliver inclusive development (e.g., through economic transformation or redistribution), but they may equally use their capacities for repression, exploitation, or even genocide" (p. 136). States, in other words, are likely to facilitate economic complicity through direct or indirect action. For example, the state may directly repress labor organizers, implement legal obstacles for the creation of unions, or use criminal actions as means to intimidate union leaders. Given the tension between states and unions, especially during the post-transition era of privatization and neoliberal economic reforms, we might expect that states are likely to engage in economic complicity when unions are mobilized.

H3 States are more likely to engage in economic complicity when unions are involved in reporting the allegation of abuse.

Sample and Data

To test the hypotheses surrounding economic complicity in corporate human rights abuse, we turn to our data analysis. The universe of cases includes all Latin American countries that have transitioned to democracy since 1970 and have a population of more than one million. This case selection narrows the analysis to 17 Latin American countries, as listed in Table 1.

Table 1 Country sample, transition type, and year

Country	Negotiated	Transition Year (previous transition years are listed in parenthesis)
Argentina	No	1983 (1973)
Bolivia	Yes	1982
Brazil	Yes	1985
Chile	Yes	1989
Colombia	Yes	2016
Dominican Republic	No	1978
Ecuador	Yes	1979
El Salvador	Yes	1984
Guatemala	Yes	1986
Haiti	No	1994 (1990)
Honduras	Yes	1982
Mexico	Yes	1997
Nicaragua	Yes	1990
Panama	No	1989
Paraguay	No	1989
Peru	Yes	1980
Uruguay	Yes	1985

This article focuses on Latin America, which underwent a wave of democratic transitions during a relatively short window. This facilitates holding some variables constant while allowing us to narrow in on interesting variation around transition type. Second, there is also important variation in terms of the economic structure across countries in Latin America. While some countries are entirely dependent on natural resource extraction, other countries have more diverse economies, which facilitates estimating the effect of a country's reliance on a particular sector plays in explaining the likelihood of corporate complicity. Similarly, the role labor unions play also varies substantially, with strong representation in some countries, like Colombia and Argentina, while they are relatively weak or nascent elsewhere (e.g., El Salvador). As noted in the introduction, Latin America is an especially interesting region in which to study economic complicity as there have been great strides in terms of increased respect for human rights and accountability efforts, in general.

Dependent Variables

The data on direct and indirect economic complicity—the outcome or dependent variables of interest—are drawn from the CHRD, which was assembled by a team of researchers and is based on reports of human rights abuse from the Business and Human Rights Resource Center (BHRRC), a non-profit organization that has created an online archive

of information about BHR since 2000.¹⁶ Utilizing sources from around the world, including newspapers, wire services, government reports, and non-governmental organizations' reports, the BHRRC provides an unparalleled source of world events related to BHR. This archive has been used in scholarly, legal, and policy-oriented projects due to its strength in documenting the alleged abuse and the response.

To create the CHRD, the database used in this analysis, we first sorted through the BHRRC's online archive to create a list of corporate abuse allegations, as the BHRRC posts multiple news articles about a single allegation. With our sample of allegations identified, a team of trained coders conducted additional research and systematically answered a series of questions about each allegation.¹⁷ To date, the CHRD is the most systematic and comprehensive collection of data on corporate human rights allegations (see Olsen, 2022).¹⁸ While the broader dataset is global and includes more than 6,000 allegations, this analysis focuses on those countries that have transitioned to democracy since 1970 in Latin America, which reduces our sample to 17 countries, in which we observe 1,207 corporate abuse allegations between 2000 and 2014.¹⁹ We exclude cases where the violation is committed by paramilitary forces, because the link to the state is questionable. We also excluded cases where the violation is committed by a state-owned company or in collusion with a state-owned company, to avoid instances where the state and the company are one in the same.

¹⁶ BHRRC, <http://business-humanrights.org/>.

¹⁷ Corporations and Human Rights Database, <https://www.bhrlab.com/>.

¹⁸ One might be concerned that the violations included in the database are unsubstantiated or false. First, the BHRRC, to avoid libel lawsuits, vets each incident to ensure its validity prior to posting it on their website. BHRRC employees, based around the globe, rely on reputable news sources with high journalistic integrity. If anything, relying on the BHRRC may be a cause of concern about underreporting, due to their rigorous standards. Second, the CHRD team searched for additional information on each incident, again using only reputable news sources (e.g., LexisNexis Academic), thereby triangulating the violations curated by the BHRRC. Finally, it is important to underscore that such incidents are not made public without risk—human rights advocates and victims are often quite vulnerable, especially in developing countries. In 2021 alone, 358 human rights defenders were murdered in 58 countries (Frontline Defenders, 2021). Moreover, Reporters Without Borders highlight the seemingly constant threats, some deadly, journalists face across the globe (Reporters Without Borders, 2022). Those who bring such incidents to light, in other words, often take great risks in doing so. This also suggests that underreporting of incidents is more likely than the reporting of unsubstantiated events. Nevertheless, the BHRRC is recognized as a thorough and valuable source for reports of human rights abuses (Giuliani et al., 2014; Wright, 2008).

¹⁹ Note the total number of allegations is different above (1, 227) because Costa Rica was included in the maps; it is excluded here because it was already democratic as of 1970 and thus, is not included in this analysis.

Our analysis includes instances of allegations around five key areas: abuses of physical integrity rights, environment, labor, development, and health. Physical integrity abuse refers to the gravest abuses, such as torture, murder, or forced disappearances. Environment refers to those events in which the company is alleged to have polluted or exploited some natural resource (e.g., water, air, land contamination). Labor refers to violations of basic labor rights (e.g., freedom of association, freedom of expression, specifically around labor organization). Development refers to violations of economic, social and cultural rights (e.g., access to basic needs, displacement without force, no right to prior consultation, etc.). Finally, health includes those events in which the company is alleged to have negatively impacted the health of individuals and violated the fundamental element of the right to health (e.g., health problems attributed to pollution, access to medicine).

For this analysis, the data are aggregated up from the event-level data to construct a balanced panel with event counts at the country-year level. Data for allegations of economic complicity are drawn from the CHRD. Economic complicity, as developed earlier in the article, is defined as the collusion of state and corporate actors in human rights abuses in the corporate context. The literature does not indicate whether we might expect the state to engage directly or indirectly; thus, we use verifiable instances from the CHRD for both instances: *State Committed*, to measure direct involvement, or *State Assisted*, to measure indirect involvement in human rights abuses in the corporate context. We use the count of the number of times this occurred in any given country-year (*State Committed* or *State Assisted*) and a cumulative count to assess changes in overall trends of economic complicity (*Cum. State Committed* or *Cum. State Assisted*). Cumulative counts are simply yearly counts of new allegations that are summed over the duration of a panel; they allow for a measurement of the long-term effect of continued practice over time. Year-to-year correlations capture the relationship between allegations and changes in the independent variables of interest in the short-term. Results for both the short- and long-term effects are included in each table.

Independent Variables

To test the hypotheses outlined above, we rely on three additional data sources. To test the first hypothesis about the type of democratic transition, we use the Authoritarian Regime and Transition Type (ARTT) dataset (Reiter, 2009). The ARTT includes variables about the type of transition. To test H1, we include whether the country experienced a negotiated transition to assess the extent to which the nature of the transition influences state economic complicity. *Negotiated Transition* is defined as a transition in which the ruling

regime seeks to transition on its own terms. In these cases, the regime sets the tone, pace, and agenda of the transition process, which is usually quite gradual and aims to ensure that the outgoing regime maintains some control over the process. A negotiated transition contrasts with a “clean break”, in which there is an abrupt change of power or collapse of the previous regime. In this instance, historic ties with specific business actors are less likely under the new regime.²⁰

The second hypothesis (H2) requires data about the overall structure of the economy. We use data on rents collected from four industries—*Oil Rents*, *Mineral Rents*, *Manufacturing Rents*, and *Agricultural Exports*—drawn from the World Development Indicators. Rents, as a percentage of GDP, are the difference between the value of production and the total cost of production. The assumption here is that the more countries rely on rents from key industries, the more likely it is that the state depends upon these industries financially and will engage in economic complicity to protect those economic interests.²¹

Finally, we also estimate whether the involvement of unions is related to state economic complicity (H3). The *Union Representation* variable is drawn from the CHRD, which includes whether unions directly reported the allegation. Given the varied engagement of unions across Latin America both in instigating the transition to democracy and in more contemporary movements, this variable seeks to assess whether the state, perhaps in the interest of promoting economic development, is more likely to engage in economic complicity when unions are present.

Control Variables and Model Specification

In addition to the variables of interest, outlined above, we also include a series of controls. We include a lagged dependent variable to control for stickiness in repressive practices from one period to the next or temporal dependence, GDP per capita (logged), population (logged), rule of law, and a Polity2 score measuring level of democracy. Polity2 is from the Polity IV project and is comprised of “general institutionalized authority traits,” or those procedures through which citizens choose leaders and those institutions that constrain the executive (Marshall et al., 2013). We would expect states to be less likely to engage in economic complicity in states with stronger democratic

²⁰ While the ARTT database notes that countries may fall into multiple transition types, they are clear that negotiations lead to shared power whereas a clean break or collapse means the democratic opposition has greater control post-transition (see Reiter, 2009).

²¹ The calculation for mineral rents include tin, gold, lead, zinc, iron, copper, nickel, silver, bauxite, and phosphate; the calculation for oil only includes crude oil.

institutions. We also include the World Bank's Worldwide Governance Indicators rule of law estimate. This measures the extent to which actors "have confidence in and abide by the rules of society," including the quality of contract enforcement, property rights, the behavior of police and the courts, and the likelihood of crime and/or violence (The World Bank, 2021). The country-year score ranges from - 2.5 to 2.5. GDP per capita and population data are drawn from the World Bank's Development Indicators. All control variables are included in each specifications, which in addition to including a lagged dependent variable, allow us to better isolate the effect of the variables of interest for the hypotheses outlined earlier.²²

The allegations of abuse could be driven by time-invariant country characteristics other than those listed above. Thus, the ordinary least squares regression estimations provided in the tables below are calculated using fixed effects to account for unobserved heterogeneity within each of the country panels. When independent variables do not vary across the panel (such as the transition type), and thus, fixed effects cannot be employed, we include a time since transition variable to account for the effect of time and use robust standard errors.²³ Summary statistics and a correlation table are included in Tables 2 and 3, respectively.

Results

In this section, we present our results as well as figures that illustrate the marginal effect, or the effect of moving from low values to high values on the explanatory variables on the likelihood of economic complicity. Our findings uncover interesting and, thus far, overlooked realities of economic complicity in BHR. We find that a state's political past and economic present shape the likelihood of economic

complicity. We also find that union involvement is a catalyst for economic complicity. As outlined in the discussion, we suggest that these findings first, underscore the importance of further theorizing about the role of the state in BHR and second, should sound the alarm bells amongst policymakers and business leaders for a more robust discussion about the contradictory role states play as both perpetrators and protectors of human rights.

Table 4 presents specifications that model the extent to which negotiated transitions (H1) influence economic complicity. The models only vary insofar as the dependent variable reflects either indirect (*State Assisted*) or direct complicity (*State Committed*) for the short- or long-term (*Cumulative State Assisted* or *Cumulative State Committed*). All four models illustrate that economic complicity—both direct and indirect and in the short- and long-term—is more likely to occur in states in which there was a negotiated transition, rather than a clean break. Figure 2 illustrates the marginal effective of a negotiated transition; indirect economic complicity is about 21 percent more likely when the transition to democracy is negotiated with the outgoing regime. Direct economic complicity, however, is 33 percent more likely when a country has experienced a negotiated transition. The coefficient for negotiated transitions (in Model 3) is larger for *State Committed*, as is its marginal effect, as well. This finding makes intuitive sense, as those transitions that are negotiated are more likely to maintain the status quo political-business ties. Transitions that entail a clean break, alternatively, imply that former non-democratic leaders would be illegitimate business partners in the post-transition period.

The next hypothesis (H2) suggests that when countries are reliant on specific industries political leaders may be more likely to engage in economic complicity. Table 5 includes the estimations for the hypotheses about the political economy of a country's economic composition. These findings are relatively straight forward—mineral rents are likely to lead to direct economic complicity (Model 4, Table 5). Interestingly, no other sectors are correlated with economic complicity. Table 6 provides a closer look at the way in which mineral rents increase the likelihood of economic complicity across different operationalizations of the dependent variable. What these estimations illustrate is that states are more likely to engage in direct, not indirect, economic complicity in the short-term *and* in the long-term when mineral rents are a larger portion of their overall economic growth portfolio. The marginal effects (Fig. 3) indicate that increasing a country's reliance on mineral rents can increase the likelihood of economic complicity by as much as 59 percent—this is a very large effect and, as discussed below, has clear business ethics implications for firms working in countries that rely heavily on the extractive industry.

²² We have opted to use the standard 0.05 p-value in our tables, which means that when the p-value is greater than 0.05 there is no discernable effect between the independent and dependent variables and thus, those coefficients are not designated with stars.

²³ The gold standard for statistical analysis is randomized controlled trials (RCTs) in which populations are assigned to treatment or control groups randomly, but many important empirical phenomena, like the one at hand, cannot be randomized. Thus, we utilize other well-established techniques to ensure our findings are robust. First, we have carefully constructed, to date, the most comprehensive sample of economic complicity in Latin America to avoid concerns of bias. Second, we include a lagged dependent variable in each of our models to control for possible heteroskedasticity, or when the variation of a variable is inconsistent over time; the Hausman specification test results indicated our variables of interest are exogenous. Finally, we also include theoretically driven controls that are known to shape the relationships we are seeking to explore, thus avoiding omitted variable bias. These standard techniques help ensure that our empirical results are robust and make valuable contributions to the questions at hand.

Table 2 Summary statistics

	Mean	Standard deviation	Minimum	Maximum
State assisted	0.373	0.846	0	6
State committed	0.437	0.934	0	7
Negotiated transition	0.647	0.478	0	1
Rule of law	− 0.552	0.648	− 1.91	1.367
Oil rents (% of GDP)	2.701	4.583	0	25.310
Mineral rents (% of GDP)	1.668	3.747	0	20.962
Manufacturing rents (% of GDP)	16.435	4.115	5.755	26.132
Agricultural exports (% of GDP)	3.223	2.865	0.200	15.493
Union representation	0.171	0.600	0	5
Population (logged)	16.479	1.120	14.932	19.116
GDP/per capita	7.940	0.772	6.077	9.183
Democratic strength	7.618	2.075	− 2	10

Finally, Table 7 indicates that states are more likely to assist or commit economic complicity when union representation is present. All models in the table show that this finding holds in both the short- and long-term. When unions are involved, states are more likely to facilitate the abuse on behalf of corporations. For example, in Colombia, the state assisted in dismantling a union by illegally detaining the union's leaders, thereby giving the company Pacific Rubiales time to create a parallel, more business-friendly, union. In Peru, protests in 2019 led by the main mining union in the country (Federation of Mining and Metallurgical Workers of Peru) were met with police violence that left many injured and several leaders detained.²⁴ Figure 4 illustrates that indirect economic complicity is about 18 percent more likely when unions are present while direct economic complicity is 52 percent more likely with union representation. These findings indicate that the tension between state actors and labor unions is still prevalent, even in the post-transition era. Labor unions and the employees they represent will face an uphill battle as they work for greater protections and workers' rights while states seek to engage in human rights abuse in the corporate context.

In sum, the data illustrate that firms must be equipped to address economic complicity in those countries that had a negotiated transition to democracy, rely heavily on mineral rents for economic growth, and where union representation is present. Alternatively, firms operating in democracies with a clean break from the former non-democratic regime, more diversified economies, and less union representation are less likely to confront state economic complicity. In the final section of the article, we provide a brief discussion about the implications of this work and suggestions for future research.

Discussion and Concluding Remarks

Over the past two decades, human rights advocates, policymakers, and business leaders have sought to improve corporate respect for human rights. Yet, missing from this discussion is the complex role the state plays as enforcer and protector of human rights, while also acting as a perpetrator of abuse. The findings herein, at a minimum, complicate the BHR agenda as we show that states are committing abuses on behalf of corporations. Our research has important theoretical implications for BHR and business ethics scholarship as well as policy implications. We, first, provide an overview of our findings, discuss our empirical and theoretical contributions, and end by sharing our thoughts on the study's limitations and possibilities for future research.

This article uses an interdisciplinary approach to bring together scholarship from democratic change, development studies, business ethics, and BHR. We find that the state is more likely to engage in economic complicity when former non-democratic leaders maintain some power post-transition. This suggests that while non-democratic leaders are no longer in power, they may still play a role by engaging in human rights abuses on behalf of corporations. In the case of Chile's civil unrest in 2019 and 2020, some have argued that police brutality against protesters is a legacy of the continued relationship between the state and the company that operates local transportation (Fernandez & Smart, 2022). As transitional justice efforts, or those mechanisms of accountability to hold past state (and increasingly, private) actors accountable and address instances of past violence to avoid recurrence, scholars emphasize the importance of these mechanisms in bringing economic actors to account and untangling the ties between political and economic actors in the execution of past violence (Olsen, 2022; Payne et al., 2020).

²⁴ See <https://www.industrialunion.org/peru-mining-strike-met-with-violence-and-arrests>.

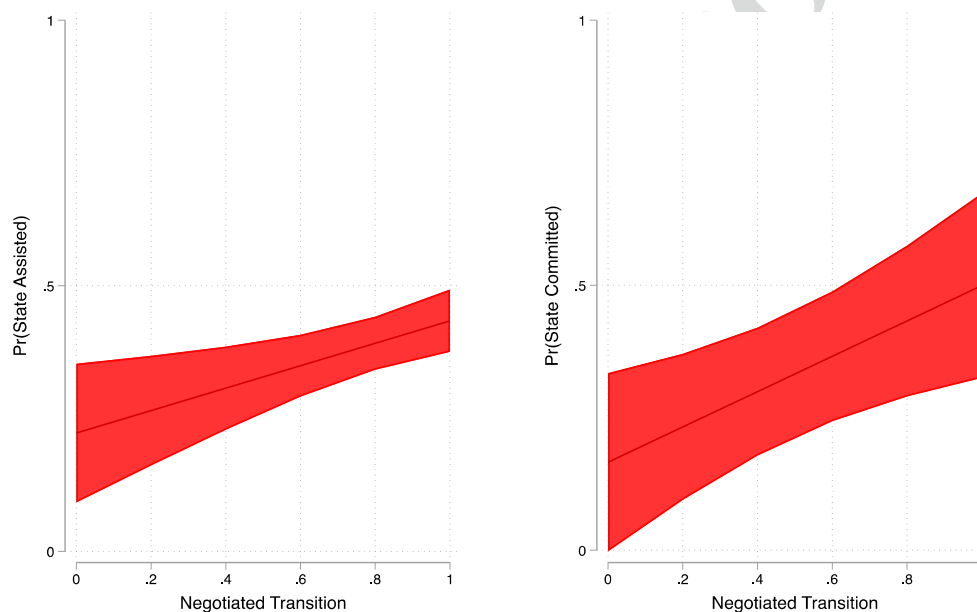
Table 3 Correlation Matrix

	S. assist	S.Commit	Negot'd	Oil	Minerals	Manufac	Agri	Unions	Rule of law	Pop'tn	GDP	Dem strength
State assist	1.0000											
State commit	0.3247	1.0000										
Negoti- ated transition	-0.0526	-0.0732	1.0000									
Oil rents	0.1633	0.3289	0.1220	1.0000								
Mineral rents	0.0115	-0.0413	0.1941	-0.1427	1.0000							
Manufacturing rents	0.0457	-0.0999	0.2878	-0.1167	-0.1892	1.0000						
Agricultural rents	0.0879	-0.0275	0.1726	-0.0234	0.2125	-0.1745	1.0000					
Union repre- sentation	0.2788	0.3495	-0.2363	0.1007	0.2091	-0.1665	-0.0081	1.0000				
Rule of law	0.0469	-0.1339	0.0979	-0.3068	0.6483	-0.2976	0.5140	0.1414	1.0000			
Population	0.4280	0.2342	0.0961	0.3077	0.1190	0.1614	-0.1114	0.1741	-0.0156	1.0000		
GDP/per capita	0.1885	0.0724	-0.1406	0.0156	0.3240	-0.1675	0.2067	0.1669	0.6398	0.4052	1.0000	
Democratic strength	-0.0869	-0.2665	-0.0063	-0.6547	0.3938	-0.2353	0.2969	-0.0279	0.7019	-0.2267	0.3489	1.0000

Table 4 H1: The effect of negotiated transitions on economic complicity

	(1) State assisted	(2) Cum. S. assisted	(3) State Committed	(4) Cum. S. committed
Negotiated transition	0.212** (0.077)	0.202** (0.069)	0.333** (0.126)	0.265** (0.087)
Population (logged)	0.241*** (0.031)	0.231*** (0.030)	0.010 (0.078)	0.010 (0.045)
GDP/per capita	0.283*** (0.074)	0.273*** (0.065)	0.309** (0.105)	0.253** (0.093)
Democratic strength	0.031 (0.019)	0.030 (0.018)	− 0.001 (0.036)	0.036 (0.040)
Time since transition	− 0.014** (0.005)	− 0.014** (0.004)	− 0.007 (0.007)	− 0.015* (0.007)
Rule of law	− 0.363*** (0.086)	− 0.350*** (0.075)	− 0.436*** (0.123)	− 0.371*** (0.069)
Observations	201	201	201	201

Standard errors in parentheses; lagged dependent variables not included to preserve space

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ **Fig. 2** Marginal effect of negotiated transitions on indirect (left) and direct (right) economic complicity

We also find that economic complicity is more likely when the economy is reliant upon mineral rents and when union representation is present. BHR scholars must pay greater attention to state-level interests and how they affect respect for human rights in the corporate context. Human rights due diligence,²⁵ a practice that is a core requirement

of business to comply with the UNGP's second pillar (e.g., business responsibility to respect human rights), does little to hold back state-sponsored repression in its current form. Human rights policies frequently reference training

²⁵ Human rights due diligence is comprised of four steps, as described by the UN Working Group on Business and Human Rights: (a) Identifying and assessing actual or potential adverse human rights impacts; (b) Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact; (c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order

Footnote 25 (continued)

to know if they are working; and (d) Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.

See: <https://www.ohchr.org/en/special-procedures/wg-business/corporate-human-rights-due-diligence-identifying-and-leveraging-emerging-practices>.

Table 5 H2: The effect of economic dependence on economic complicity

	(1) State assisted	(2) State committed	(3) State assisted	(4) State committed	(5) State assisted	(6) State committed	(7) State assisted	(8) State committed
Oil rents (% of GDP)	0.048 (0.042)	− 0.011 (0.044)						
Mineral rents (% of GDP)			0.037 (0.036)	0.119** (0.036)				
Manufacturing Rents (% of GDP)					− 0.015 (0.047)	0.001 (0.043)		
Ag exports							0.001 (0.049)	0.030 (0.050)
Population	0.238 (1.678)	0.335 (1.563)	1.264 (1.895)	0.278 (1.887)	0.857 (1.730)	1.021 (1.570)	4.251* (1.792)	1.685 (1.943)
GDP per capita	0.911 (0.782)	0.666 (0.766)	0.344 (0.969)	0.904 (0.812)	1.743* (0.809)	0.880 (0.770)	− 0.334 (0.897)	1.456 (0.830)
Democratic strength	0.027 (0.081)	0.015 (0.079)	0.096 (0.189)	0.098 (0.186)	− 0.034 (0.084)	− 0.066 (0.079)	− 0.000 (0.174)	− 0.000 (0.190)
Rule of law	− 0.077 (0.449)	− 0.099 (0.423)	0.038 (0.485)	− 0.214 (0.480)	− 0.330 (0.463)	− 0.201 (0.424)	0.012 (0.449)	− 0.239 (0.491)
Observations	207	214	185	200	207	214	185	200

Standard errors in parentheses; lagged dependent variables not included to preserve space

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

security forces, which is a tremendous advancement, but do here, unfortunately the UN reports, thus far, have focused

Table 6 H2: The effect of mineral rents on short- and long-term economic complicity

	(1) State assisted	(2) Cum. S. assisted	(3) State committed	(4) Cum. S. committed
Mineral rents (% of GDP)	0.037 (0.036)	0.036 (0.036)	0.119** (0.036)	0.103** (0.036)
Population	0.335 (1.563)	0.750 (1.700)	1.021 (1.570)	0.623 (1.741)
GDP per capita	0.666 (0.766)	0.661 (0.768)	0.880 (0.770)	0.695 (0.790)
Democratic strength	0.015 (0.079)	0.011 (0.079)	− 0.066 (0.079)	− 0.048 (0.080)
Rule of law	− 0.099 (0.423)	− 0.092 (0.425)	− 0.201 (0.424)	− 0.243 (0.436)
Observations	214	214	214	214

Standard errors in parentheses; lagged dependent variables not included to preserve space

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

not assess how companies could deter the federal or state police from engaging in physical integrity abuses. Finally, scholars must also pay greater attention to the role of labor representation, both because we find their presence increases the likelihood of state-sponsored abuse and because policymakers in the BHR space, thus far, have done little to call out the important role states should play in bolstering and protecting unions. An entirely new set of tools is needed to address the phenomenon we have uncovered

on state-based accountability mechanisms (United Nations, 2020) and how to improve human rights through “economic diplomacy” (United Nations, 2018).

This research has important contributions for business ethics and BHR scholarship. Business ethics and BHR scholars argue that human rights represent a “minimal ethical requirements that are universally valid” (Arnold 2010 as quoted in Fasterling & Demuijnck, 2013, p. 800). Thus, firms have a moral responsibility to act to prevent abuses

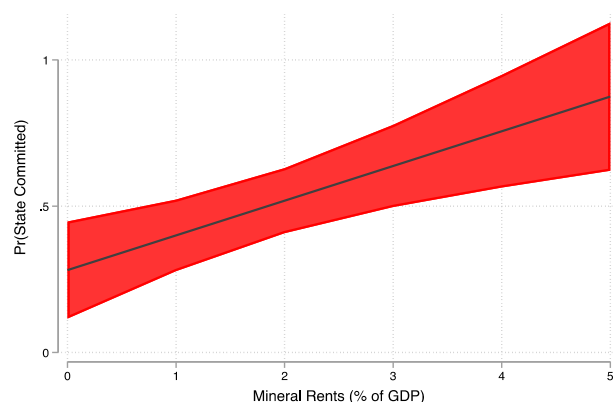


Fig. 3 Marginal effect of mineral rents on direct economic complicity

from occurring because human rights constitute what Fast-
erling and Demuijnck call a “perfect duty,” or one in which
“you know perfectly well that you have wronged some par-
ticular individual because of some determinate action that
you failed to do” (p. 802). In short, businesses have a duty
not to violate human rights and, in the context of economic
complicity, it also implies they take action. As Wettstein
(2010b) noted, “we are not merely expecting [business
leaders and employees] not to harm anyone, but to use their
authority for the benefit of the disadvantaged” (p. 41). Later,
Wettstein (2015) reiterates this point and writes that there is
general agreement that companies have “positive contribu-
tions to human rights improvement rather than merely with
negative impacts and nonviolation of human rights” (p. 171).
Companies, in other words, also have a role in facilitating
fewer human rights abuses not only for their own wrongdo-
ing, but for instances of economic complicity, as well.

Empirically, we make an important contribution to the
literature by analyzing a unique dataset to analyze these

questions. The CHRD, to our knowledge, is the most sys-
tematic collection of allegations of corporate human rights
abuse and economic complicity. These data have facilitated
our understanding of the interesting trends and patterns in
how state and corporate actors interact in the BHR arena.
Moreover, the CHRD facilitates uncovering new phenom-
ena like the one we have explored here; while many BHR
observers might be aware of the state’s involvement anec-
dotally, it is quite another thing to be able to systematically
track this behavior and uncover why it is more or less likely
to occur.

This analysis suggests that the current policy efforts to
encourage states to bring business to the table are misguided,
or at a minimum, are incomplete. International and domestic
policy discussions and subsequent plans or policies must
confront the conflicting messages states send to corporate
actors. Even if states have committed to international norms
about BHR, such as the UNGPs, corporations will adhere
to the reality on the ground. If states or international bodies
employ resources to improve corporate human rights prac-
tices, they will continue to be less effective without directly
addressing economic complicity. Van Ho (2018) argues
that the question is not whether the system should be state-
centered, but rather how to create the incentives needed to
tackle the unwillingness of states to act. Yet, we argue that
an unwillingness to act may not be the most egregious prob-
lem to address; if states continue to engage in economic
complicity, it is challenging to imagine a world in which the
state also has the authority or legitimacy to hold corpora-
tions accountable.

While this article makes meaningful contributions to the
BHR and business ethics literatures, there are still limitations
associated with the study. First, we explore the phenomena
of economic complicity, but have not investigated possible
solutions. One possible avenue would be to engage with the

Table 7 H3: Union
representation on economic
complicity

	(1) State assisted	(2) Cum. S. assisted	(3) State committed	(4) Cum. S. committed
Union representation	0.299* (0.121)	0.289* (0.120)	0.308* (0.124)	0.273* (0.129)
Population	0.146 (1.543)	0.598 (1.673)	0.730 (1.589)	0.637 (1.759)
GDP per capita	0.736 (0.728)	0.723 (0.731)	1.427 (0.752)	1.234 (0.767)
Democratic strength	0.039 (0.077)	0.034 (0.077)	− 0.019 (0.079)	− 0.011 (0.081)
Rule of law	− 0.254 (0.415)	− 0.240 (0.417)	− 0.491 (0.427)	− 0.474 (0.436)
Observations	214	214	214	214

Standard errors in parentheses; lagged dependent variables not included to preserve space

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

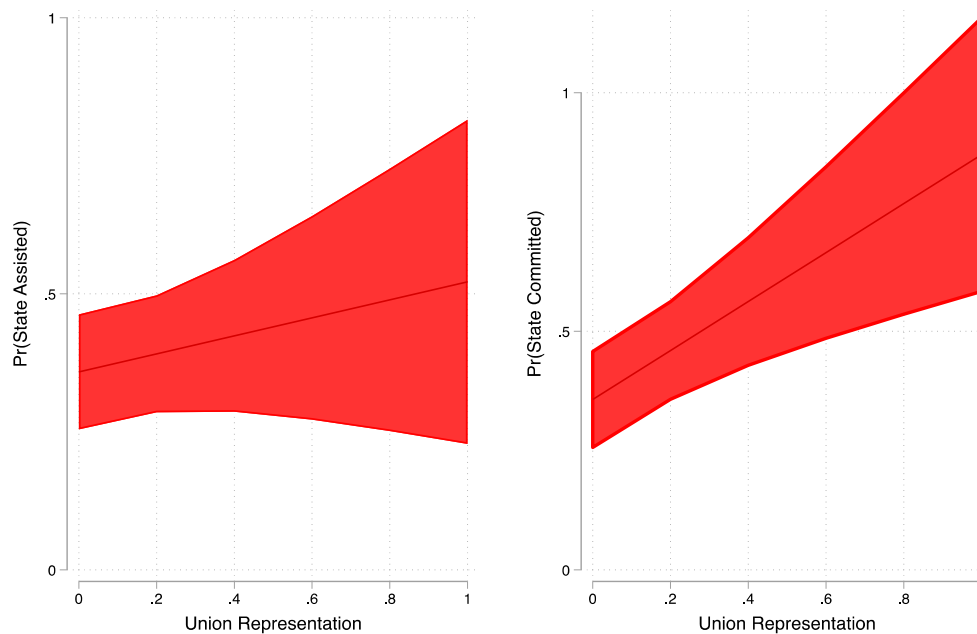


Fig. 4 Marginal effect of union representation on indirect (left) and direct (right) economic complicity

literature on polycentric governance, originally developed in the 1960s by Vincent Ostrom et al. (1961) and further developed by the Nobel-prize winner, Elinor Ostrom (2017). While all actors must recognize the complications a fragmented state creates, one would not rely on the beneficence of either actor to resolve the issue at hand. Ruggie (2014, p. 8–10) and Surya Deva (2021) echo this earlier work and call to develop an effective transnational framework through polycentric governance. This would entail combining different international, regional, and domestic approaches, while also engaging with different actors beyond the state and bodies of international law (e.g., international commercial and investment law). Future research, as well as business and public policy, might consider how shared governance could facilitate greater respect for human rights in the corporate context by both state and private actors.

Second, the data analyzed here only cover a certain period within a specific geographical location. There is important research to be done to assess how economic complicity may vary over time and across space. With the onset of environmental, social, and governance metrics, future research may seek to assess whether economic complicity continues to the same extent with this additional oversight from investors and human rights advocates. In terms of geographic variation, other scholars could build on this work to assess how economic complicity differs across various regions of the world, perhaps seeking to understand how it differs in more established democracies. More specifically, this is not a Global South phenomenon. Exploring this phenomenon further in the Global North is also needed. One might explore whether

the trends in the Global North are similar or if they are simply manifested differently.

Third, the unit of analysis of the CHRD is an allegation of human rights abuse in the corporate context. While the data includes which broad actors were involved, it does not track individuals. A network analysis of specific individuals would help unveil the constellation of actors that are more or less likely to be associated with economic complicity. Finally, additional research on broader implications of economic complicity is also warranted; one might ask whether economic complicity shapes victims' access to remedy mechanisms when corporations have committed human rights abuse.

Our findings show that business leaders, under specific conditions outlined here, need to take greater caution to keep the state in check. For example, corporations might include an analysis of the ways in which state conduct can increase the likelihood of abuse in the corporate context as part of their human rights due diligence practices. They may also reach out local community leaders to assess the possibility of this risk and formulate contingency plans to address it. Business leaders could also adapt their human rights policies on the 'sphere of influence' in the contexts and sectors where the company operates to incorporate the possibility of economic complicity. They might also engage with policymakers at the global level to bring this issue to the fore. Though some firms may not be incentivized to do so, others may want to avoid the possible reputational risk associated with human rights violations within their sphere of influence.

In short, we argue that the *business* and human rights agenda begins with the *state*, as the state is simultaneously central to, and an impediment of, the BHR agenda. Without direct engagement on this issue by policymakers and business leaders, efforts to improve corporate respect for human rights may be encumbered, if not thwarted entirely.

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Declarations

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Research involving Human Participants and/or Animals None.

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