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Staying Alive: Public Interest Law in Contemporary Latin America

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**Introduction**

This article explores the opportunities and challenges facing public interest lawyers in the Southern Cone of Latin America at this critical moment in the region's history. Public interest lawyers in Argentina, Brazil and Chile have played an important role in development of the post-authoritarian legal systems that have developed in each country. They have trained judges, taught in newly created law school clinics, and adopted a U.S.-style rights-based strategy of litigating cases which have provided concrete meaning and context to new constitutional provisions purporting to protect economic and social rights. In the process, these lawyers have helped to legitimize the judiciary and the entire legal system, both of which have long been held in contempt by much of the public. On the other hand, by casting their lot with the established legal system and its limited ability to effect meaningful progressive change for poor and otherwise marginalized persons, public interest lawyers run the risk of further alienating a general population (and social movements within it) already very skeptical about the rule of law in the region.

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1 I wish to thank University of Minnesota Law School student Claudia Lee for her assistance in conducting and translating several interviews for this article. I also wish to thank Mary Rumsey of the University of Minnesota Law School Library and Pamina Firchow for their valuable research assistance.
The irony is that in the past, public interest lawyers could join in that chorus of contempt for the legal system; indeed they often led it. Now, however, public interest lawyers are very much a part of that system, and their continued legitimacy depends in large part on the success of the rights-based strategy they have elected to pursue.

This article also updates my earlier work on public interest lawyering in Latin America. At various points over the past two decades, I have interviewed lawyers, judges, academics and social movement activists in Argentina, Brazil and Chile about the possibilities and limitations of public interest practice in those countries. The chief reason for focusing on those three countries in particular was that each had emerged from a period of brutal authoritarian control which had significantly curtailed the ability of public interest lawyers to advocate on behalf of disenfranchised groups. Moreover, each country featured a prior history of a dominant executive (typically supported by the military) and a weak and non-independent judiciary. Not surprisingly, therefore, the transition to democracy experienced by each country in the latter part of the 20th century included efforts to constitutionalize rights and invigorate the judicial branch of government, and thereby change a legal culture which viewed the law as an instrument of oppression and control rather than the means to vindicate political, social and economic rights. Public interest lawyers in each country played a significant role in these efforts, through a combination of litigating test cases under new laws and constitutional provisions, training newly appointed judges, reaching out to social groups historically denied access to the justice system, or educating the public about the rule of law in a democratic society.

As we approach the end of the first decade of the 21st century, and as much of the world endures a prolonged economic crisis whose full effect on public interest practice has yet to be realized, it seems an opportune time to gauge how these efforts by public interest lawyers have fared as their democracies mature. Accordingly, for this article my research assistant and I interviewed 13 lawyers, judges, academics and movement activists (including several people who combined two or more of these roles) in June and July 2009. The interviews featured open-ended questions ranging from the effect of the

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current global economic crisis on their public interest endeavors to the ten-
sion between social and economic rights on the one hand, and enforcement of
Constitutional rights, on the other. I had interviewed several of these same
people for my earlier pieces on cause lawyering, which made it possible to
mark the evolution of their views on these subjects. Interestingly, some of
those I had previously interviewed had left their domestic public interest
roles to take leadership in international legal process. For example, Luis Mo-
reno Ocampo, who prosecuted senior military commanders following Argen-
tina's Dirty War, is now the chief prosecutor of the International Criminal
Court at the Hague. And Christian Courtis, Professor of Law at the University
of Buenos Aires, is Legal Officer for Economic, Social and Cultural Rights at the
International Commission of Jurists in Geneva. This may speak to the power
that public interest law has had in key moments in Latin American history,
given its ability to position these individuals to launch international careers.

The results of these interviews demonstrate that public interest law-
yering in Latin America (as exemplified by these three countries) has reached
a critical juncture. Having gained both international and national legitimacy
through the prosecution of human rights abuses in the late 20th century, and
armed with constitutional provisions promulgated during transitions to de-
mocracy that protect an array of social and political rights, public interest
lawyers face great opportunities and significant challenges. Poverty rates in
all three countries remain high, particularly in Brazil, where over half the
population lives below the poverty line. Neoliberal policies in the late 20th
century favoring privatization and the shrinking of the State reduced social
services to aid the poor, though there has been some replenishment in that
area as a result of the so-called "Pink Tide" that has brought some leftist gov-
ernments into power in recent years. And while the general public consensus
in favor of legal norms protecting personal physical integrity (the so-called
first generation of human rights) provided both international and domestic
support for public interest advocacy during the early transition period, the
lack of consensus over the second generation of human rights (i.e. social and
economic rights) means less political and financial support for the enforce-
ment of such rights now incorporated into national constitutions. These chal-
lenges are made all the more daunting because of the current global economic
crisis, national populations that continue to view the rule of law and legal in-
stitutions with skepticism, and judges with cramped views of the laws they
are entrusted to interpret.

The first part of this article catalogues the increase in the number of
lawyers practicing public interest law in one form or another in Argentina,
Brazil, and Chile. The second part describes the interviewees' opinions about
the impact of the global financial crisis on public interest lawyering in each
country. The third part analyzes the interviewees' thoughts about the other
opportunities and challenges public interest lawyers face during an era of judicialization of politics and constitutionalization of rights, and how these opportunities and challenges play out in the relations between public interest lawyers and grass roots social movements in each country. It also analyzes the extent to which the post-transition form of public interest law has affected the legal culture in each country.

I. The Rise of Public Interest Lawyering In Latin America

One of the most striking aspects of returning to the subject of public interest lawyering in Latin America is the way in which it has grown in both size and scope in the past 15 years. Thus, whereas a Chilean law professor told me in 1998 that public interest lawyers in Latin America constitute "a very, very little group of people", the lawyers interviewed for this article were nearly unanimous in their assessment that the number of such lawyers has increased in the past decade. They identified several reasons for this growth. For example, in the wake of constitutional reforms in all three countries discussed later in this article, certain non-governmental organizations (NGOs) were created, or re-invented, with the explicit purpose of pursuing a cause lawyering agenda, be it in the area of human rights, environmental and consumer protection, women's rights, or the rights of indigenous persons. In addition, more lawyers in private firms have taken on pro bono cases, often the result of pro bono clearinghouses established by law schools or bar associations to facilitate free legal services to persons or organizations in need. And several law schools have played a direct role, as well, by establishing clinical programs that train students in public interest law. Thus, while law schools have generally not altered their fundamental pedagogical agenda of formalistic training in the civil codes that dictate much of legal practice, some - though certainly not all - have, in the words of the Roberto Saba of Argentina's Palermo University, "incorporate[d] law clinics in their academic programs to train their students in cause lawyering." In this way, many law schools throughout the region have followed the advice of Alejandro Garro, who in 1999 urged them to include public interest lawyering as an essential part of legal education and training.

3 Interview of Cristian Riego (Chile), May 1998, in "Latin American Cause Lawyering Networks" (Meili 2001).
4 One lawyer in Brazil, Sister Michael Mary Nolan, noted that while there were more public interest lawyers in the public sector, the overall number of public interest lawyers in Brazil had remained the same because those lawyers had previously practiced public interest law in the private sector. Interview of Sister Michael Mary Nolan (Brazil), June 2009.
5 Interview of Roberto Saba (Argentina), June 2009.
One cannot discount the influence of globalization on the growth in the practice of public interest law in Latin America. Several of the law school clinics referred to above received both advice and financial assistance from foundations and law schools in the U.S. Martin Bohmer, Dean of the newly created San Andrés Law School in Buenos Aires, noted that:

Most of us [i.e. public interest lawyers in Argentina] were trained in the U.S. and so we saw how public interest law was there. The clinics, the pro bono work, all that. And we transplanted some of that, most of that, here.⁷

Roberto Saba also cited the influence of transnational factors in the growth of public interest law in Argentina:

[T]here's greater interest by lawyers in pursuing such [public interest] agendas, sparked by some of the successes of cause lawyers and by the examples in other countries like India. And others have studied in Europe and seen how these themes work there.⁸

The global North's influence on the judicialization of politics in Latin America raises a host of intriguing and troubling questions. For example, is that influence largely responsible for the persistence of constitutional litigation in spite of what some observers see as limited results? And does the audience for such litigation extend beyond national and regional borders to include the foundations, law schools, and other institutions that have assumed a direct role in the development of public interest lawyering in Latin America?

In any event, all of these factors have combined to make public interest law a growing – some would say an entrenched - presence in Latin America. As Gustavo Maurino of Argentina's Civil Association for Equality and Justice (CAEIJ) puts it, "I think that the cultural butter has been warm for public interest law."⁹ Indeed, public interest law throughout Latin America is no longer a surprising or marginalized phenomenon delivered by an unlikely (authoritarian) midwife and a fragile democracy and rule of law culture, but is, instead, part of normal legal practice and, increasingly, legal education, in the region. Like its counterpart in the United States, public interest law is often at the forefront of constitutional litigation and other forms of advocacy. Some of its early practitioners, fresh out of law school during the transitions

⁷ Interview of Martin Bohmer (Argentina), July 2009.
⁸ Saba Interview.
⁹ Interview of Gustavo Maurino (Argentina), June 2009.
to democracy, have gone on to positions of prominence, both internationally and nationally, in law schools and NGOs. And while one might have expected the neo-liberalism of the Reagan era and beyond, as well as continuing economic distress, to have derailed the advancement of public interest law (as some would argue has been the case in the U.S. through budget cuts for legal services and a more conservative judiciary) the short but strong roots of public interest law in Latin America have allowed it to survive and thrive.10

Now that public interest law has established a solid foundation in many Latin American countries, it is faced with both opportunities and challenges as it attempts to expand its influence into heretofore unchartered legal territory. The next sections of this paper explore some of these phenomena; specifically the current global economic crisis and the effects of the constitutionalization of rights and the judicialization of politics throughout the region.

II. Impact of the Current Economic Crisis

As with many issues of global impact, the perspective from Latin America is far different than that in the global North. So while the North has been obsessed with the current recession and its various impacts since Fall 2008, the lawyers, academics, and NGO executives interviewed for this article tended to view it in less cataclysmic terms, acknowledging its somewhat limited influence on public interest practice in their country, expressing some apprehension about future impact, but generally placing it within the context of a host of more entrenched problems that have plagued disenfranchised groups in the region for generations.

Of course, as is also often the case with the discussion of politically or socially charged issues in Latin America, it is difficult to find consensus on this question. Thus, while several interviewees noted that the crisis had already resulted in a decline in funding for NGOs working on behalf of poor people and other public interest issues, others felt that the impact is negligible. This quote from Martin Segal, of ACIJ, is representative:

I would say that the global financial crisis has not affected [Argentina] yet. Argentina is a country that has had huge and recurrent financial crises over the last 30 years. In the first place, we are not so scared about having an economic crisis again and in the second place the crisis is not evident yet because of Argentina's isolated financial

10 Smulovitz, Catalina (2009) "Judicialization in Argentina: Legal Culture or Opportunities and Support Structures", in A. Huneeus, R. Sieder, and J. Couso (eds.) Legal Cultures and Political Activism in Latin America (Cambridge University Press, forthcoming) contains a detailed history of the rise of public interest law in Argentina over the past several decades.
system. We haven't had to adapt our strategies to the financial crisis yet.  

Other public interest lawyers and advocates acknowledged the impact that the crisis has had on donations from wealthier countries, which has had a direct impact on legal strategies and, in some cases, on the ability for organizations to survive:

Funds are now scarce from international [organizations]. And a lot of NGOs are facing financial constraints. We now have to be more selective about which cases to work on and to be more strategic in our actions and strategies.  

Perhaps the accurate view lies somewhere between these two poles. According to Maria Puga, a lawyer and former clinical law professor who works for Clínica Jurídica in Córdoba, Argentina (which promotes the idea of clinical legal education and the role of lawyers in society) the direct financial impact of the economic crisis depends on the type of organization and its location within the country, both geographically and within the NGO hierarchy:

I've seen many good organizations disappearing because they don't have the funds to cover their expenses. I also see new organizations in Buenos Aires raising funds well because they have access to embassies and other institutions that are located in that city and can engage in direct dialogue with them. It's in [less populous] places like Cordoba, Mendoza, and Santa Fe where NGOs and grass roots organizations have often disappeared because of lack of funds. . . . One of the effects of the economic crisis is that when international organizations start to decrease their funding to Argentina, the decrease occurs mainly for states and cities outside Buenos Aires.  

Puga's organization, while located outside Buenos Aires, has nonetheless remained protected from the crisis because it receives little outside funding:

Our organization has 70-90% volunteer work and we have learned to live with the scarcity of resources that always exists. The few resources that we receive come from voluntary work, either from university students and young professionals.

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11 Interview of Martin Segal (Argentina), June 2009.
12 Interview of Maria Beatriz Galli (Brazil), June 2009.
13 Interview of Mariela Puga (Argentina), June 2009.
14 Id.
Puga's comments suggest that financial crises tend to produce winners and losers and, not surprisingly, the public interest community seems to encompass those who have won (defined here as maintaining their position) and those who have lost. Status as a winner or loser has little to do with the merit of the cases that these organizations take on, or the skills of the lawyers involved. Instead, it seems to depend more on their sponsors and contacts. Those that rely on a variety of funding sources within and outside the country, for example, may have more capacity to survive crises than those limited to one source. And even if that one source provided more funds historically, its loss to a particular NGO will be more devastating than when one or more limited funds dry up for an organization accustomed to low levels of support from a variety of sources.

It became apparent while conducting this study that one of the most important sponsors insulating certain public interest lawyers from the negative effects of any financial crisis is the legal education infrastructure. Most of the clinical law professors I interviewed noted that they receive little outside funding for their work and are thus protected from the current crisis. Given that much public interest lawyering in Latin America is generated by law school clinics, this support from at least some law schools constitutes an important bulwark against global economic pressures.

Many interviewees placed the current crisis, and its impact on funding of public interest law, within a larger social and historic context. For example, many public interest lawyers and organizations had grown accustomed to a decline in outside funding as a result of (1) the end of egregious human rights abuses prevalent in the late 20th century, which rendered Latin American countries less attractive as recipients of charitable and foundation support; (2) the diversion of much funding to Eastern Europe in the aftermath of the Cold War; and (3) the resolution of economic crises with potentially devastating global consequences within the region. The most notable of these crises was in Argentine during 2001-02, the worst economic period in its history. During that time, the government placed severe restrictions on individual bank accounts, the poverty rate rose dramatically, many people were killed by police and other government forces during the now-famous *piquetes* and *escraches* demonstrations, several governments were toppled, and the judiciary did little to intervene. The outside assistance Argentina received during

15 Interviews of Luis Vidal (Brazil), Jorge Singh (Chile), and Mayra Feddersen (Chile), June 2009.
16 *Pi*queta*es* were roadblocks set up by protesters demanding work during the economic collapse of 2001-02. *Escraches* were forms of public shaming of perpetrators of state violence in Argentina's Dirty War, typically characterized by collective protests and guerilla theater performances at the perpetrators' homes.
this period ended after the crisis abated. To illustrate this point, Gustavo Maurino of ACIJ noted that:

There have been changes because Argentina is not as strong a priority as it was 5 years ago. Everybody is saying that this crisis will impact the funding for NGOs this year, but more strongly in the following years. We have not seen the impact yet, but everybody around us is saying there will be one. What has changed the most is the position of Argentina as a priority for international cooperation. After the 2002 crisis Argentina was a priority and now it is not.17

Indeed, given the judiciary's passivity during that crisis, Maurino sees the current global economic crisis as an opportunity for the legal system to redeem itself in the eyes of the public:

...now the judicial power is trying to present itself as a deliberative arena for structural cases or collective cases in public interest litigation. . .the way the courts would handle the conflict would be more sophisticated than in 2002, when the courts almost stopped deciding cases and public interest lawyers stopped presenting cases. I think the court would be more sophisticated in trying to create a dialogue between the state and the NGOs and to create more negotiation in the conflict resolution of these cases.18

Overarching any discussion of the financial impact of the current global economic crisis on public interest lawyering, of course, is the argument that outside support for the "rule of law" has never been sufficiently directed to the vindication of the rights of the poor and disenfranchised. Instead, most of the money from the World Bank and other sources to promote the rule of law was directed to commercial legal interests and had a limited impact on access to justice for the vast majority of citizens.19

In any event, the direct impact of the current global economic crisis on the activities of public interest lawyers in Latin America varies depending on the sources of financial support received by that lawyer's employer and the type of law that he or she practices. One suspects that this is similar to the effects felt in other parts of the world. A more intriguing issue is the nature of changes in public interest lawyering in these countries wrought not by the

17 Maurino Interview.
18 Id.
current economic crisis but by the justicialization of politics and the constitutionalization of rights in each country over the past few decades. It is to these developments that we now turn.

III. The Judicialization of Politics and Constitutionalization of Rights

According to Boaventura de Sousa Santos,

In the last two decades, many social movements and NGOs have been taking the rule of law seriously, launching capacity building initiatives in the field of legal education and access to justice, thereby expanding the popular knowledge of law and justice, and challenging the State and powerful economic forces in national and international courts for violations of human rights. It is too early to evaluate the real success of such legal and judicial strategies, but such strategies have accomplished at least two things: a) they have made two contradictions socially visible: between law in books and law in action and between individual and collective claims; as a result, the judicial system has become a field of social and political contestation; b) they have had enough success to create a new realistic expectation that the judicial system could, under certain conditions, perform progressive roles and become, not only more accessible, but also more sensitive to the needs and aspirations of the popular classes, i.e., the vast majority of the population. This new judicial mobilization has made more visible and more intense the ideological or political divisions within the judiciary.20

In the context of many Latin American countries, one might add a further accomplishment to Santos' list: as a result of reforms promulgated in many post-authoritarian societies over the past two decades, the earlier distinction between what has traditionally been thought of as constitutional rights (i.e. political rights such as freedom of speech and personal integrity) on the one hand, and social and economic rights such as housing, health care, and environmental protection on the other, has been blurred. Thus, for example, provisions guaranteeing social and economic rights added to the constitutions of Argentina, Brazil and Chile over the past two decades, including the adoption of various international human rights agreements, represent at least a theoretical recognition of the second generation of human rights by these countries. While this constitutionalization of social and economic rights

has provided public interest lawyers in all three countries with the tools to press for social equity on behalf of movement groups and individuals, it also poses a series of challenges. The following section of this paper explores these opportunities and challenges in more detail, following a brief review of the relevant constitutional reforms in each country.

A. Constitutional Overview

The 1994 revisions to the Argentine Constitution included provisions protecting of several specific social and economic rights, as well as the incorporation of international human rights treaties. Thus, the Constitution either explicitly guarantees or directs the Congress to guarantee a host of rights including health care, housing, education, consumer and environmental protection, equality of opportunity, indigenous rights, and affirmative action.\(^{21}\) Moreover, the Constitution incorporates a number of human rights conventions, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention for the Elimination of All Forms of Discrimination against Women.\(^{22}\) Perhaps even more important for purposes of effective public interest lawyering, while Argentina has not adopted a class action mechanism per se, the 1994 constitutional amendments created a process, known as the *amparo colectivo*, under which some of these rights could be enforced through collective legal actions.\(^{23}\)

Like its counterpart in Argentina, the Brazilian Constitution of 1988 (one of the largest in the world) contains a host of provisions dealing with social and economic rights, including education, consumer protection, environmental protection, health, work, habitation, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute. It also allows for collective injunctions, with standing to sue for political parties, unions, and legally constituted associations at least one year old. It also gives standing to Indians and their communities and organizations devoted to


\(^{22}\) Id. see also Smulovitz, Catalina (2009) "Judicialization in Argentina: Legal Culture or Opportunities and Support Structures", in A. Huneeus, R. Sieder, and J. Couso (eds.) *Legal Cultures and Political Activism in Latin America* (Cambridge University Press, forthcoming)

the defense of their rights.\textsuperscript{24} Most collective actions in Brazil are brought by the \textit{Ministério Público} (Public Minister), a government official akin to the Attorney General in the U.S.\textsuperscript{25}

The Chilean Constitution of 1981 also contains a series of social and economic rights, including provisions related to health, labor, the environment, human security and education. Unlike its counterparts in Argentina and Brazil, however, the Chilean Constitution does not permit class actions or other group-based litigation. On the other hand, the Consumer Act (originally enacted in 1997) allows for the rights of all similarly situated consumers to be affected by an individual lawsuit.\textsuperscript{26} The Consumer Act also permits group actions filed by the National Consumer Service (SERNAC), consumers associations, and groups of 50 or more consumers with the same interest.\textsuperscript{27}

\textbf{B. Public Interest Lawyering in Support of Social and Economic Rights}

These Constitutional provisions protecting social and economic rights have led to significant changes in the way that public interest lawyers advocate on behalf of disenfranchised groups in each of the three countries. They have created space for legal advocacy on social and economic issues either by representing affected parties in litigation, affiliating with – or putting pressure on - governmental entities (such as the \textit{Ministério Público} in Brazil) that litigate on behalf of the public, or engaging in various public education campaigns to promote the protection of rights. While these new spaces represent significant opportunities for public interest lawyers and their clients, they also pose dangers. The way these opportunities and dangers play themselves out over the next several years will determine much about the role of public interest lawyers and their relationships with social movements in each country.

\textbf{1. Opportunities}

Perhaps the most obvious opportunity provided by Constitutional changes in each country over the past two decades is a rights-based litigation

\textsuperscript{25} Id; Arantes, Rogério (2005) "Constitutionalism, the Expansion of Justice and the Judicialization of Politics in Brazil", in R. Sieder, L. Schjolden, and A. Angell (eds.), \textit{The Judicialization of Politics in Latin America} (New York, Palgrave Macmillan), pp. 231-262.
\textsuperscript{27} Id.
approach to public interest lawyering in a host of new areas, either on behalf of individuals or through collective actions.

Thus, according to Martin Bohmer of the San Andrés Law School in Buenos Aires:

The 90's were important because we changed our Constitution in 1994 and the international human rights treaties were constitutionalized . . . and also because the new Constitution gave us new remedies like collective action and collective standings for NGOs in order to sue anybody collectively based on rights. "..." And we used that just to sharpen our teeth and see what can happen."..."28

In a similar vein, Roberto Saba, Dean of the University of Palermo Law School, noted that these Constitutional provisions have fundamentally changed the way that public interest law is practiced in Argentina:

[T]here has been a change in the type of cause lawyering issues that are brought before the court. This is what is called structural litigation in the United States, or collective litigation. Rather than bringing an issue such as the right to education as an individual "harm," meaning someone wanting to enforce his or her right to education, the matter is brought as an attack to the State. The attack is directed to the public policy, either because it's deficient or because it doesn't exist. 29

One of the reasons public interest lawyers file claims under the Constitution is to give practical meaning to what are often very broad pronouncements. Thus, As Gustavo Maurino of ACIJ puts it, "These social and economic rights are very new in our constitutional practice so we still don't know what they mean, and [the] people don't know what they mean, either".30

This rights-based approach has led to some significant successes. For example, in the past few years the Argentine Supreme Court and lower courts have issued opinions ordering the Government to continue providing medical care to a child with disabilities, to ensure alternative housing when tenants threatened with forced eviction include children, and to adopt measures to assure children in a Mapuche indigenous group access to community bilingual

28 Bohmer Interview.
29 Saba Interview.
30 Maurino Interview
education. These examples are indicative of what several lawyers and movement activists described to me as the judiciary’s increased acceptance of these types of constitutional claims since the 2001-02 economic crisis.

This rights-based strategy has also been pursued in Brazil, as reflected in the following comment by Maria Beatriz Galli of the NGO Ipas Brasil, which focuses on public health and reproductive rights,

In the last twenty years, the Brazilian legal system has become more receptive since our Constitution of 1988 was enacted. The new Constitution addresses both individual and social rights as fundamental rights and creates constitutional remedies to address violations of fundamental rights. Also, the role of the Public Prosecutor has improved and they can present new instruments to monitor public policies implementation and government accountability... My organization adopted a rights-based approach to reproductive health in 2004 so we are beginning to develop policy materials on human rights, constitutional rights.

Among Galli’s current projects is an affiliation with a private criminal defense firm in advocating for the rights of women prosecuted for having abortions. In this case, as Galli describes it, the Ministério Público is working as a state perpetrator of human rights because it is working for the “massive criminalization of women.”

Empirical data supports the view that Constitutional changes have resulted in an increase in the number of claims presented to court. In Argentina, for example, the combined number of lawsuits filed at all levels of the judiciary (i.e. both federal and state) increased approximately 30% after the 1994 Constitution went into effect, and have generally remained at that level in the intervening years through 2005, the last year for which data is publicly available. The increase in filed cases in Brazil was even higher; fluctuating between a 100% and 400% increase in the years after the 1988 Constitution was enacted.

32 Galli Interview.
33 Beatriz Galli, email message to author, August 10, 2009.
success in court as their counterparts in the other two countries, they nevertheless see the potential for using a rights-based approach in their advocacy. According to Jorge Singh, a professor at the Diego Portales University Center for Human Rights:

We’re trying to use the Constitutional Court, which is the most significant amendment in the past ten years. We expect to be able to bring a case maybe in two or three years. We have tried to use the court, but have been denied. We presented a case about the morning after pill, but the court decided that our organization did not have standing to bring the case. 36

And according to Mayra Feddersen, Singh’s colleague at Diego Portales University:

There have not been changes in the Superior Courts [the courts of appeal and the Supreme Court], in which cases dealing with harmed constitutional rights are presented. In 2006 the Constitutional Tribunal was modified. Its members, however, do not incorporate the treaties on human rights systematically and they interpret the law restrictively in this area. . . The biggest problem in that regard is the scant reception to the demands of minorities and the absence of effective judicial resources which protect Constitutional rights. . . . Currently, there are discussions going on about changes in the civil justice [system] but there has not been progress to date. 37

Feddersen’s comments are illustrative of what other observers have noted as the Chilean judiciary’s “failure to perform an assertive defense of individual rights against government and legislative encroachment.” 38 Nevertheless, there is no indication that Chilean public interest lawyers intend to abandon a rights-based approach to their work. As Singh and Feddersen’s comment suggest, they will hope for better results in the future, perhaps after changes in the composition and/or attitude of the judiciary.

An additional barrier to a more progressive approach by the Chilean judiciary is the statutory literalism that remains prominent within Chilean legal education. Most law schools in Chile, as well as other Latin American nations, stress memorization of the various legal codes (e.g. civil, criminal and labor code) that constitute the country’s jurisprudence. Law students are

36 Singh Interview.
37 Feddersen Interview.
taught that judges must abide by the strict confines of the codes in ruling on a
given dispute. If a literal reading of the relevant code does not provide a reso-
lution, the judges are not to interpret the code otherwise.\textsuperscript{39} As a result, most
judges have been reluctant to look beyond the codes in adjudicating disputes.

A key feature of the constitutionalization of rights in Latin America is
the blurring of the former distinction between what had been viewed as tradi-
tional Constitutional rights (the so-called first generation of human rights
such as freedom of expression and physical integrity of the individual) and
social and economic rights (the so-called second generation of human rights).
While in some other parts of the world this distinction can create tension be-
tween public interest lawyers who focus on traditional Constitutional rights
and social movements more concerned with social and economic rights, such
tension is not apparent in post-authoritarian Argentina, Brazil and Chile. For
example, according to Sister Michael Mary Nolan, a Catholic nun and lawyer
who works for the Instituto Terra, Trabalho e Cidadania (the Institute for
Land, Work, and Citizenship), "They (Constitutional rights and so-
cial/economic rights) are not separate issues. The issues that we bring to
court are constitutional issues\textsuperscript{40} And in a similar vein, Martin Segal of ACIJ in
Argentina notes the lack of division between defending Constitutional rights
and working with grass roots organizations mobilizing for social and eco-
nomic justice:

\begin{quote}
We don't have a division [between Constitutional rights and
working with grass roots groups] because in the process of defending
constitutional rights we incorporate the community work. So we
don't think of the defense of constitutional rights without the com-
nunity work. For instance, if we take any case we work on, the time split
between the work spent in tribunals and that spent on finding facts
and talking to organizations is probably 50/50.\textsuperscript{41}
\end{quote}

Another opportunity flowing from the constitutionalization of rights
in many Latin American countries is the creation, or in some cases re-
focusing, of NGOs devoted to the protection of social and economic rights. As
Gustavo Maurino of ACIJ notes:

\begin{quote}
We are a product of this new constitutional framework. Our
organization is five years old and we were able to create it because of
\end{quote}

\begin{footnotes}
\item[39] Meili, (1999) "Legal Education in Argentina and Chile", in L. Trubek and J. Cooper (eds.),
(1989) "The New Legal Education in North and South America", 25 \textit{Stanford Journal of Interna-
\item[40] Nolan Interview.
\item[41] Segal Interview.
\end{footnotes}
this new constitutional arrangement. The new, strong rights, new ways to access justice, all these features have created opportunities for NGOs like ours to exist and have an institutional mission that we can pursue.\textsuperscript{42}

Galli indicates that the rights-based approach ushered in by constitutional changes can help an NGOs fundraising efforts, as well:

My organization has adopted a rights-based approach to reproductive health since 2004, so we are beginning to develop policy materials on human rights, constitutional rights. I guess this has been the turning point of my presence in this organization and I hope this will attract more funds and internal support. We have been providing training to grassroots [groups] and medical providers on these issues since then. \textsuperscript{43}

These comments are consistent with data illustrating the tremendous growth in rights-based NGOs after the constitutional changes in the late 20\textsuperscript{th} Century. For example, a recent study by Smulovitz and Urribarri demonstrated that 95\% of the rights advocacy NGOs in Argentina were created after the transition to democracy, with nearly half (45\%) created after the 2001 economic crisis. \textsuperscript{44} This data is also consistent with the opinion of nearly all interviewees for this article that the number of public interest lawyers and legal clinics has risen over the past two decades.

In addition, these NGOs, as well as many grass roots organizations throughout the country, have also become more rights-based because their leaders and advisory boards frequently contain lawyers. Indeed, as Martin Bohmer observes, many movement leaders (at least at the NGO level) are in law school.\textsuperscript{45} And given that many public interest lawyers in Argentina and throughout Latin America have received part of their legal education in the United States, it is not surprising that they would adopt a rights-based approach to their work on behalf of disenfranchised groups.

The constitutionalization of rights has also created an opportunity to bring legitimacy to judicial systems long tarnished by the stain of corruption, inefficiency, and lack of independence. As attorney Alejandro Carrió, who

\textsuperscript{42} Maurino Interview.
\textsuperscript{43} Galli Interview.
\textsuperscript{45} Bohmer Interview.
worked for a civil liberties NGO in Buenos Aires, noted during my interview of him in 1994:

[In Argentina] people don't trust the judiciary as a means to assert rights... It's more important to be on good terms with a politician or public official. We have made a culture of *amiguismo*. Rather than litigating disputes, we try to find someone who can help us get around the problem. It could be a friendly contact or a sheer bribe; we have a history of both. There is no culture that courts are the proper forum for litigating problems, or to find solutions to the problems.  

Carrió's view mirrored that of Brazilian scholar Paulo Sérgio Pinheiro, who told me in 1982 that:

The judiciary in Brazil was never perceived as an instrument of the rule of law. The rule of law was a disguise for domination... In Brazil the law is not supposed to be an instrument for guaranteeing the rights of the majority of the population. The traditional role of the judiciary was to regulate exploitation, repression, oppression.  

The judiciary in Chile at the start of the country's post-authoritarian period suffered from perhaps even worse problems, according to scholar Jorge Correa, because of a lack of legitimacy perceived by all sectors of society:

The decade of the 1990s [in Chile] thus started with a Judicial Branch that was in the worst of worlds. It did not have the democratic legitimacy that the new government authorities wanted for all state institutions, nor the (technocratic) aura of modernity of other state institutions. The right wing, although it considered the Supreme Court one of the core enclaves for the defense of the new institutionality, regarded it as an organ incapable of modernizing itself. Particularly within entrepreneurial circles, the judicial branch was perceived as inadequate for the resolution of their disputes. The "Concertación (government coalition), for its part, regarded the judicial branch as an entity whose behavior before human rights violations had demonstrated its lack of adherence to the democratic system.  

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Two decades later, many public interest lawyers and activists in each country are more cautiously sanguine about the judiciary. As Andrés Nápoli of Fundación Ambiente y Recursos Naturales (FARN), an environmental NGO in Argentina, put it:

From the human rights and collective rights protection perspective, the judiciary has improved in the last decade... As a consequence of the constitutional reform, the legal system has responded better to the citizens' demands, especially for the protection of human rights in general... the tribunals have been more receptive to these kinds of demands. 49

Roberto Saba makes a similar observation, and notes that the same trend is occurring in Colombia:

The new[Argentine] judges have tried to increase their own legitimacy by taking on these issues and giving judgments of high social content and value, especially since they've had to rebuild it from the lack of prestige they had in the 90's due to their closeness to the Menem administration.

The courts in Colombia have used a similar strategy recently. They have realized that in order to become stronger against the other political powers, they need support from society at large, which they attain by making decisions that improve their daily life. From this trend, Colombia developed a strong judicial line of cases related to health rights. For instance, they have made access to surgical treatments available to obese people through medical insurance. This apparently banal and minor issue allowed people in Colombia to see that they could use the courts to bring forth issues that affected their daily life. The court perceived this success and has continued with an agenda that has given it more popular support. 50

Similarly, Sister Nolan stated that, "[The Brazilian judiciary] is better because there is more awareness of collective rights, and more actions are being brought that are similar to class actions." 51 Even in Chile, where courts have been far less assertive in protecting constitutionalized social and eco-

49 Interview of Andrés Nápoli, June 2009.
50 Saba Interview.
51 Nolan Interview.
nomic rights, Jorge Singh noted that the judiciary is “better [because there is] more knowledge of human rights by the public.”

One of the more striking aspects of the opportunity for increased legitimacy of the judiciary is that it appears to be a conscious, joint effort by the courts themselves and the public interest lawyers and NGOs who appear before them. For example, Martin Bohmer observes that:

During the crisis in 2001-02 we found that we didn’t have a State. So the cause lawyers, who had long opposed the State during the post-authoritarian period, turned to public policy to figure out how to build the state. So the strategy was (and is) to defend rights but also to build up the legitimacy of the state through programs that, among other things, advance access to justice.... [The courts are] very enthusiastic ... They see this as an opportunity to legitimate themselves. They were in very bad shape before 2003. They were seen as pretty dependent on the executive ... and now they’re building their legitimacy with this kind of process.  

Roberto Saba offered a similar observation:

There seems to be a tacit agreement between NGOs and the courts, it is not thought out or discussed, but there’s a happy coincidence of objectives pursued by the NGOs and of courts that are beginning to be more receptive to those cases. And obviously the courts wouldn’t be able to decide on those issues if the NGOs doing cause lawyering didn’t bring the cases to them.

As Bohmer acknowledges, a newly invigorated judiciary has put public interest lawyers in the rather ironic position of seeking to legitimize the same State (through greater access to justice) that they spent much of the post-authoritarian period trying to tear down because of its human rights violations. This is another example of the way in which, as Austin Sarat and Stuart Scheingold have noted, cause lawyers both challenge the state and work within it.

52 Singh Interview.
53 Bohmer Interview.
54 Saba Interview
55 Id.
A final opportunity for cause lawyers in this era of constitutionalization of rights is related to the previous one. For just as asserting rights-based claims in court can enhance the legitimacy of the judiciary, so too can it improve the overall legal culture in society. Of course "legal culture" is comprised of a variety of factors and prone to a number of overlapping definitions, and thus one must be careful not to trivialize it. For our purposes, therefore, I will focus on legal culture as a measure of the public's confidence in the legal system as a whole (i.e. courts, lawyers, the legal process, etc.). To be sure, historically the legal culture in most Latin America countries has been very negative. The following two statements from my 1992 and 1994 interviews of Brazilian and Argentine public interest lawyers, respectively, are illustrative:

The Brazilian legal system is driven by the ideological perspective of protection of property. This means that the poor have been put out of the legal system, and have access to it only as bandits and murderers. This is one of the reasons why the legal system is in crisis in Brazil... The values that underlie the legal system are exclusively middle-class values, in a society in which the majority is poor.57

[In Argentina] people do not believe in the legal system, and they possess a very healthy intuition which tells them that the law is outside of their lives. Because generally the legal system... does not help them. The law claims one thing but has a different result in its application. So these people are in total disbelief of the law, and of those who apply the law – including the lawyers.58

Most of the lawyers and activists I interviewed for this article feel that the legal culture in their country has improved over the past two decades, but they warn that such a change is a long process, given the public's experience with the legal system. They are also aware of the risk that if their rights-based strategy fails, the legal culture may actually regress, plunging lawyers into a state of even deeper disrepute among the public. For example, Roberto Saba noted that:

I wouldn't say it's a radical change and that if tomorrow the Supreme Court were attacked by the executive there would be throngs of people protesting on the streets. But I do think that the legal culture is changing and could be more evident if the Argentine courts are able to continue this process that is just starting. However, it is a difficult

57 Interview of José Maria Faria (Brazil), August 1992, in Meili (1998).
58 Interview of Maria Elba Martinez (Argentina), August 1994, in Meili (1998)
process . . . the implementation is complicated and if it is not successful, the public acceptance of the courts could start to decline again. Today, there is a slightly improved conscience by society compared to 10 years ago and that people can bring their day to day concerns to the court and that the court will respond positively to those claims. In that sense, I think there's been a change and that cause lawyering has not been irrelevant in the process. I do think there is a change in legal culture/society's perception, but it's too early to say that it is consolidated or long lasting, but there's been a process during the last 10 years that is very interesting. 59

Beatriz Kohen, who works as a consultant to many public interest NGOs in Argentina, was similarly cautious in her assessment:

The main change [in the legal culture] was in the Constitution in 1994. We have had many changes, and many local new constitutions, like the one in Buenos Aires City. They are more progressive, but this doesn't mean that all these rights that are now recognized on paper are in force. But at least we have the international treaties of human rights in our Constitution, so supposedly our law has become more democratic. I don't know if the legal culture has changed in the same manner. This always takes more time. 60

While guarded, Kohen's opinion in 2009 is demonstrably more favorable than when I asked her a similar question in 1994, when she worked for Poder Ciudadano, a citizen advocacy and watchdog group that provides people with information about the government: 'People have more confidence in the media and the church than in the justice system,' she said then. 'If there is a conflict they would rather go to a TV program than into court.' 61

Most of the interviewees for this article noted a similarly slow but marked improvement in legal culture. For example, Gustavo Maurino observed that the post-authoritarian era in Argentina has created a "new dynamic in public discussions about the role of law in civil institutions.

When we have a social conflict, the law has something to say, whereas in the past guns and violence were the answer to political and institutional conflict. So democracy, a stronger constitution, new ways to access justice, a strong development of civic society, NGOs I think are the main features of these transformation. I would call it a

59 Saba Interview.
60 Interview of Beatriz Kohen (Argentina), August 1994, in Meili (1998)
61 Id.
transformation. Of course it's an institutional, structural, and cultural process and it takes time.\textsuperscript{62}

Similarly, Sister Michael Mary Nolan noted that the migration of public interest lawyers into government positions has lead to a greater responsiveness of the State to the problems of the poor:

In 1988 [Brazil] came out of a dictatorship. Public defenders are [now] much more active. Some of the lawyers that worked in public interest law have now started to work for the government, so in a sense there is better access for people of lower income to have their issues heard.\textsuperscript{63}

And Mayra Feddersen of Chile sees a shift in the legal culture, based on a new generation of judges who have recently entered the judiciary:

The legal culture [in Chile] has changed mainly because of the generational shift which occurred with the influx of a large number of young judges as a product of the reforms to the justice system during the last five years (reform of the penal, family and labor justice codes and systems).\textsuperscript{64}

On the other hand, several interviewees were skeptical about any real change in the legal culture, given the strongly embedded negative perception of the judiciary and legal profession throughout Latin America. As Luis Vidal put it with respect to Brazil:

It is not true that the legal culture [in Brazil] has changed. Our legal system still is very selective and discriminatory. We believe that the legal system is more accessible for people in general. But it does not mean a high quality of response. This is caused by a growing number of cases and also by difficulties in dialogue with lower income people, especially in the lower courts.\textsuperscript{65}

And even Feddersen, who, as noted above, has observed a change in Chilean legal culture, feels that the legal system and profession remains limited in their ability to improve the lives of the poor:

Minority groups [in Chile] still face great problems in accessing justice. There is a lack of free lawyers of quality. . . The current

\textsuperscript{62} Maurino interview.
\textsuperscript{63} Nolan interview.
\textsuperscript{64} Feddersen Interview.
\textsuperscript{65} Vidal Interview.
public law is practiced by the new law school graduates and their performance is not ideal. Regarding the defense of the rights of minorities, the legal culture is still very conservative. 66

Martin Bohmer of Argentina was perhaps most blunt of all the interviewees in his assessment of the public’s attitude toward lawyers, and in the difficult task of improving the legal culture:

The people, they don’t trust us. The law has been changing so fast and in so many bad ways. And the judges were so dependent on the executive for so many years that people don’t trust them. But on the other hand I think that the civil society, the organized civil society, is starting to see that this kind of public policy is working for them. 67

Many of these statements underscore what Smulovitz found in comparing public opinion data in Argentina regarding confidence in the legal system on the one hand and use of that system, on the other. Thus, for example, while only 8.7% of respondents expressed either a high or medium level of confidence in the Argentine judicial system in 2002 (during the economic crisis), 38.8% responded that making claims within that system solves problems. 68 While public interest lawyers filing claims would likely take solace in the latter figures, the statements above demonstrate their awareness of the challenges they face in altering the legal culture for the better.

2. Challenges

At the same time that many Argentine cause lawyers recognize the possibilities created by these new constitutional provisions, they also acknowledge the grave challenges they present. These challenges fall into three broad categories: lack of enforcement; lack of effect; and disaffection between public interest lawyers and grass roots social groups. Each is discussed in turn below.

As any first year law student knows, a right is meaningless without a remedy. As Christian Courtis observes, “due to the rhetorical value ascribed to these rights, and to the lack of interpreting practices regarding them by the judiciary and the legal academia, few categories were developed [in Argentine law] to cope with rights such as the right to education, the right to health, the

66 Feddersen interview.
67 Bohmer Interview.
68 Smulovitz, (2009). While the 2002 figure was somewhat unique because of the time of the survey, the “high and medium confidence” response had risen to only 26.2% in 2004, the most recent year for which figures are available. In contrast, 33.6% of respondents expressed such confidence in the judicial system in 1995.
right to adequate housing or the right to food.” To some extent, this problem will be alleviated by litigation, such as that described above, which results in decisions giving some practical context and definition to broadly phrased rights. Nevertheless, given the relative lack of resources in most Latin American countries, lawyers and movement activists see the lack of enforcement of newly created Constitutional rights as a major problem, both for the litigants involved in the particular case, as well as popular impressions of the legal system generally:

We . . . have the problem of enforcement of judicial decisions, with remedies. So when you decide to start a case, like rights to water, you never know how the judges will implement the decision or whether they will be able to implement the decision. We don’t have a strong practice regarding “...” social and economic rights litigation and the enforcement of these decisions. So, sometimes the outcome [is] very disappointing for lawyers and for the people.

The fact that many social rights were incorporated into the Constitution and that many NGOs were enabled to carry out litigation and continue with proceedings which were off limits for the judiciary has led to decisions in which the judiciary is deciding on cases involving these groups. The decisions are effectively declaring the violation of rights in situations in which basic services are not provided [to people]. We still have a long way to go because we need to have more of these decisions and also effective enforcement of these decisions, which is still hard to get.

Given this lack of enforcement, some public interest lawyers are skeptical about the ability of rights-based constitutional provisions to materially improve peoples’ lives. Such skepticism is likely to increase if the longer term effects of the current economic crisis deepen. In response to a question about whether the Argentine legal system has become more receptive to the needs of poor people or other segments of society who traditionally have had limited access to justice, Mariela Puga of Clínica Jurídica observed:

You’ll get a different opinion from every lawyer you ask. This is my particular opinion. There is a new language to refer to poor people, to refer to the problem of access to justice, there are new procedures, there are more lawyers working in NGOs, bringing lawsuits and trial issues related to causes that didn’t use to get to court. I have seri-

69 Courtis (2005).
70 Maurino Interview
71 Segal Interview
ous doubts about whether the fact that these causes are in court means an improvement in poor people's lives. Regarding structural litigation, we're stuck in the implementation [phase]. We cannot get good outcomes from the implementation phase. After the court hands down a wonderful [ruling] we're stuck there, like in *Brown*. It was a great judicial decision but it had too many problems in the enforcement. We are at a beginning level discussing the issues of implementation, so there are no good outcomes yet.  

Jorge Singh of Diego Portales University articulated a similar concern:

An interesting issue is to explore how the constitutional amendments can actually influence the lives of the people with fewer means. My feeling is that it would be difficult to reach them, but that is just my opinion.

Both Singh and his colleague Mayra Feddersen are also acutely aware of the third challenge facing public interest lawyers in the wake of the constitutionalization of rights that has swept across Latin America in the past two decades: the co-opting of social movement goals and strategies by lawyers. For in some case, these lawyers, acting no doubt with the best of intentions, transform grass roots social and economic disputes by placing them within the arena of constitutional adjudication, where they are controlled by the sometimes arbitrary doctrine and procedure (such as standing to sue) of the legal process. As a result, the disputes are no longer owned or controlled by the people whose lives are most directly - and adversely - affected by them.

Singh's method of dealing with this issue is to see his organization as offering technical/legal support to grass roots organizations such as indigenous people's groups, and separating the work of advocates on the one hand with lawyers litigating social and economic rights cases on the other:

Our agenda goes back and forth between what would be considered constitutional rights and social rights. We don't see a conflict of interest as long as our role is to provide technical support. When the [law school] clinics intervene they provide legal representation. The best [way] to illustrate this is to give you an example. A couple of weeks ago a group of Mapuche leaders asked us to sign a join petition

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72 Puga Interview
73 Singh interview
reappealing a case that is pending in the National Congress that aims at granting constitutional recognition of indigenous peoples in Chile. We agree with the substance of the letter but we declined their petition because we see ourselves as an autonomous academic center and thus committed to the promotion of human rights and not with being the advocates of a particular group. We don't plan to be the spokesperson of any kind of social group in Chile. We think the work of lobbying is not part of our strategy. We like to think of ourselves as human rights experts. We of course advocate for some causes, but we prefer that the advocacy work is done by activists instead of by our organization.  

Feddersen is also aware of the dangers to social movement agendas when rights become judicialized, seeing one of those dangers as the delegitimization of even an arguably successful lawsuit:

One of the effects of litigation is the result outside the legal process. In other words, the agreements reached after the public impact of a case. I think that in the future there must be more coordination with the grass roots organizations to have the changes occur from the bottom and in this way obtain greater percentages of legitimate of cases.

Feddersen's insightful observation underscores perhaps the greatest challenge to Latin American public interest lawyers as their work becomes more Constitution-based, and as their colleagues in the NGOs with whom they work most closely have increasingly stronger ties to the legal profession: they must not lose touch with the grass roots social movements whose trust they need in order to survive – and thrive – in this new world of judicialized politics.

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74 Singh Interview.
75 Feddersen Interview.
CONCLUSION

This is an exciting time to be a public interest lawyer in Latin America. New constitutional provisions have expanded the range of social and economic rights, as well as the procedural means through which they can be brought before tribunals. Many components of the legal profession that previously gave short shrift to the concerns of the poor (e.g. law schools, bar associations, large law firms) have demonstrated a greater willingness to devote time and resources to representation of the poor and other marginalized segments of society. Many judges at the highest levels of the judiciary, hoping to shed their negative public image, are offering expansive interpretations of constitutional rights. The following statement by Martin Segal of Argentina’s ACI summarizes these hopeful developments:

...[I]n the first place there has been a huge change in the kind of discussions we can have with the judiciary and in the second place, lawyers and professional organizations can have a more proactive role in defining an agenda and carrying out litigation of cases that are suitable to those agendas. This is also having an impact on the role that judges should have in this more complex and structural discussion which used to be considered off limits to the judiciary. ... [T]here is a change in the role the judiciary is playing in our democracy and it is gradually becoming a more important political actor who is openly dialoguing with other branches of government through huge decisions. ... Lawyers are getting used to this new type of discussion and the new role of the judiciary. These discussions are still on the margins of the legal mainstream but are starting to appear on the subject of the role of lawyers and activism and defense of rights. This change is still not explicit in the mainstream universities and the judiciary, but it is clearly appearing in the margins and is claiming more ground.76

Just as the litigation of human rights of physical integrity (e.g. to be free from torture, disappearance or death) in the early post-authoritarian period gave Latin American public interest lawyers prestige both internationally and domestically, these more recent developments, particularly the opportunity to shape and enforce social and economic rights, can do the same. The opportunities and importance are great, given the poverty rates in the region. But the impediments are also great. In addition to the challenges noted by those I interviewed for this article, the lack of consensus about social and economic rights looms large. As many of my interviewees have noted over the years, it was easy to achieve consensus over the right to be free from State-

76 Segal Interview.
sponsored violence that included torture, kidnapping, disappearances and death. It was also relatively easy to raise money in order to defend those rights. There is no such general agreement about rights to housing, or health care, or food, regardless of whether they have found their way into national constitutions. This is particularly true in a neo-liberal world of shrinking state support for programs offering direct assistance to the poor. It may also be true in those countries that have attempted to avoid the strictest form of neo-liberalism, those that are part of the “Pink Tide” (which includes Argentina, Brazil, and Chile). In these countries, public interest lawyers may find themselves fighting against those governments that they would otherwise support, attempting to push them to make real gains for the poor. Or they may find themselves with a greatly diminished role, when the government assumes control over the public interest.

Thus, in addition to the challenge of convincing a judge to accept one’s interpretation of a new social or economic right (which has been easier in Argentina than in Chile, for example), public interest lawyers must conduct this work without the high level of moral and financial support that helped them to flourish a generation ago. And with charitable contributions from wealthier countries and foundations reduced by the current economic crisis, this challenge is likely to become all the more daunting in the months and years to come. The resilience of the public interest community in facing up to authoritarian regimes, however, leaves one with hope that the same community will face these new challenges with the same creative and intrepid spirit.