Imagine going to the hospital to have a routine treatment. Imagine someone taking a blood sample from you in the context of that treatment. Then imagine being called back in to the hospital months later, with no indication of why you have been asked to go, walking in to a doctor’s office, and then being told: You are HIV positive. You’ll die in no more than ten years.

Scary, isn’t it? Sadly, this is not a made up story. This is what happened to Alex Cea, a 25 year old man, who, up until the results of the HIV test, was a member of the Chilean Armed Forces. And it gets worse. His right to confidentiality was not respected, and his work mates found out. Some acted sympathetic. Others simply turned away. Alex, with the phrase “you’ll die in no more than ten years”, thought of killing himself and spent two months in a psychiatric hospital. While he was there, the Armed Forces quickly arranged for his withdrawal from the Institution, of which he was informed upon his departure form the hospital.

HIV, said the Chilean Armed Forces, is a sickness that renders the person incapable of working in anyway and on any task. Therefore, Alex can no longer be a member of this Institution. And that was it. Imagine that: being 25 years old and being told that you are useless, that you can no longer work in any way. Because that is what happened. When Alex has tried to get work in other places, they ask for his settlement papers from his last job, and on those papers, it says that he is incapable of doing any kind of work. So he is turned away, over and over. Useless, useless, useless! This is what Alex has to deal with every day.

The Chilean Armed Forces allegation that HIV renders a person incapable and that, therefore, Alex must me withdrawn from the Institution, is not only a show of great ignorance of the effects of HIV, but is also illegal, as is taking the HIV test without consent, giving the results without first explaining it’s consequences, violating the person’s right to confidentiality, and terminating a persons contract because of the results of the test. All this is stated explicitly in the Chilean AIDS Law, which entered in force in December 2001.

Under the protection of this law, Alex, supported by lawyers of the Universidad Diego Portales, interposed a lawsuit against the Armed Forces on April
29th, of the present year. This is the first lawsuit in Chilean history to be based on the violation of the rights consecrated in the AIDS Law. Is this because there has been no discrimination of the people living with HIV/AIDS since December 2001 and until now? Certainly not. Many cases of discrimination occur daily. Those directly affected by it, though, haven’t dared, until now, to come forward and denounce it, because, if they do so, they face, on top of the discrimination that they have already been faced with, the discrimination of Chilean society in general: “social death”. Alex knew this, but was firm in his decision. As he says, “My rights have been violated. I am not the one that has to hide.”

When asked what he hopes to accomplish with this lawsuit, Alex has said that he hopes that “This will help so that this won’t happen to anyone else” and that the public debate that has arisen in Chile due to this case will help educate people and, consequently, diminish the social discrimination of people living with HIV/AIDS, as it is based on mere ignorance. By Claudia Ahumada

**False Similarities:**

**Affimative Action Programs in Brazil**

A Yale Law student who travels to Brazil these days might be surprised at how some discussions in Brazilian politics are linked to and somewhat inspired by the American experience. Affirmative action for university education, independent regulatory agencies in the public administration, and the role of stare decisis, for example, are topics that have informed the Brazilian political debate in the last year or so.

Finding characteristically American issues exported abroad might be disappointing for a student interested in learning about a different reality during her trip. For an acute observer, however, these issues display false similarities. They are, instead, an opportunity to learn how deep the differences between the American and the Brazilian realities are.

Take, for instance, the debate over affirmative action in Brazilian higher education. The Brazilian experience of affirmative action for university education started in March 2002 when the state government of Rio de Janeiro enacted a statute reserving 40% of the places in the Rio de Janeiro state universities for afro-descendants and mixed-race people (“pardos”). Following this trend, the Brazilian Congress drafted a bill that would create the same quota system for 20% of the places in federal public universities and for civil servants in the federal, state and municipal levels. The congressional statute was approved by a Senate committee in April 2002 and has been discussed in Congress since then.

Affirmative action measures should be more than welcome in a country
Where afro-descendents and *pardos* account for 64% of the poor population. Also supporting affirmative action is the fact that levels of illiteracy are higher among afro-descendents (21.5% of people above age 15) and *pardos* (18.2%) than among whites (8.3%), according to the 2000 census.

The way the affirmative action system was implemented, however, raised many questions. Some of the objections raised against these policies are familiar to Americans. For example, some argue that the Brazilian system of quotas may foster even more discrimination against afro-descendents and *pardos* when used in a country where access to universities and civil servant positions is made on the basis of placement on a test of knowledge. For these critics, an alternative solution would consist of implementing affirmative action through fellowships and direct assistance to give afro-descendents and *pardos* better preparation for these exams.

Another similarity to the American debate is whether the program should address afro-descendents and *pardos* alone. Some argue that other ethnic minorities, such as indigenous people, should be receiving the same benefits. Indigenous people account for a small fraction of the Brazilian population (around 0.4%), whereas afro-descendents and *pardos* account for roughly 45% of the current 180 million citizens of Brazil. But they are considered to be the object of discrimination as well. In this regard, the Federal University of Brasília has decided recently (June 2003) to implement a quota system for afro-descendents, *pardos* and indigenous people. Although the quotas for indigenous people have not yet been defined, they will probably be lower than those for afro-descendents and *pardos* (which is set to be 20%). The government of the State of Rio de Janeiro is also considering changes in the existing statute, mentioned above, to reserve 5% of the places in public universities for indigenous people.

But the Brazilian affirmative action debate has some peculiarities. One of the most controversial issues in Brazil at the moment is the definition of “black.” Despite having slavery in the past, Brazil had no segregationist policies such as those of the South of the United States or the apartheid in South Africa. In addition to that, racial miscegenation in Brazil is very common, and was especially so in the colonial period. As a consequence, the population is composed of different shades of colors and, most importantly, most of the non-white citizens do not classify themselves as blacks. “A cor denominada”, a governmental research with “open” responses (where people write down their skin-color, instead of choosing among pre-given options), found 127 different classifications. The 33 million Brazilians interviewed in this regard defined themselves, among other colors, as brown (*marrom*), chocolate, cinnamon, and nut-brown (*castanho/a*); but, only 17% of those interviewed defined themselves as blacks or *pardos*. In contrast, according to the regular 2000 census - where the pre-defined options include only “black”, “*pardo*”, “indigenous”, “white” and “yellow” - only 6.2% of the Brazilian population identified themselves as blacks whereas 39.1% defined themselves as
When I was in high school, my class entered into negotiations with the school authorities in order to have a Student’s Union. The authorities finally approved our project, but – since I was a senior at that time – I never had the chance to see how the Student’s Union actually worked.

My inexperience regarding these kinds of organizations made me admire Law School’s Students Union or “Centro de Alumnos de Derecho” (“CED”) of Universidad de Chile. The CED was organized and chosen by the students by means of democratic elections and had its own budget and statue. I have never known that students could have some kind of “influence” in the decision making process of educational institutions. As I already mentioned, in high school students never had the chance to say something about the authorities’ decisions; at least in the high school I used to attend to. But in contrast, almost every University in Chile – and many other Latin American Universities - has some kind of student’s organization.

CED is regulated by its own statue (“Estatuto del Centro de Alumnos”). The statue contains provisions regarding elections, members, and its budget among others. CED represents law students and negotiates with law school’s authorities every subject that could be of interest to the alumni. CED also organizes different kind of activities such as cultural events, seminars, debates, etc. (www.estudiantesdederecho.cl)

There are also other local “student authorities” such as “Representantes” who are chosen to represent their class position when discussing exams schedule, organization of events, etc., and the “Consejeros” who participate in a very relevant
organism inside the law school named the “Consejo Facultad”. This organism adopts the most important decisions regarding the law school and in which students are able to participate - but without the right to vote - represented by counselors chosen, again, in local elections.

It is important to mention that candidates to all the eligible positions often represent a specific political party existing in Chile or have a determined political tendency. Sometimes candidates are actual members of the juvenile division of a political party.

In Universidad de Chile there are also other organisms that allow the participation of the alumni and that involve the whole University. Perhaps one of the most important is “Federación de Estudiantes Universidad de Chile” or “FECH”. FECH was founded in 1907 as a symbol of the students’ movement of that time. Immediately FECH transcended the University developing social assistance programs, educational programs and giving legal and medical assistance to poor people. Members of FECH are chosen in democratic elections by students of all careers.

Perhaps what people most recognize of FECH is its continuous dedication and presence in political affairs, in public issues.

Perhaps what people most recognize of FECH is its continuous dedication and presence in political affairs, in public issues, often related to Universidad de Chile. Universidad de Chile is a University owned by the State, the only public University of Chile, so FECH has to deal with its authorities as well as with government authorities in order to represent student’s ideas.

FECH also has its own statue which contains a declaration of principles that declares that FECH is the most important participation instance of the students of Universidad de Chile and provides that the objective of this organization is to stimulate the student movement. (www.fech.cl)

It is important to mention that there is going to be a University Senate in Universidad de Chile which members will represent the professors, authorities and students of the University. It was created to define the institutional development policies and strategies of the University, as well as other subjects involving the University.

Finally, and in a national level, representatives of some of the most important universities of Chile get together in “Confederación de Estudiantes Universitarios de Chile” or CONFECH. This organism plays a significant role in Chilean society as it represents Chilean students and is often required to give an opinion in connection with national public affairs and projects of law, among others.

This is just a brief summary of the complex structure of organisms that represent students in Chile. These “representatives” transcend the law school, Uni-
“There were hundreds of thousands of Peruvians subject to torture and cruel and inhuman or degrading treatment, and countless women suffered sexual violence …”

The Peruvian Path to Rebuild the Country After its Most Violent Internal Conflict

Between 1980 and 2000 Peru has experienced its most intense and prolonged period of violence. The conflict, that covered a larger share of the national territory, not only caused enormous economic losses through the destruction of infrastructure and deterioration of the population’s productive capacity, but most importantly, resulted in almost 70,000 human losses.

Those human losses, most of whom were part of the poorest sectors of the country, were not only victims of the direct confrontations between the terrorist groups and the armed forces, or the massive as well as selective assassinations within the civilian population that the terrorists perpetrated. They were also the victims of the extrajudicial executions and forced disappearances that characterized the armed forces’ actions at that time. In addition, there were hundreds of thousands of Peruvians subject to torture and cruel and inhuman or degrading treatment, and countless women suffered sexual violence, an extended practice among both the terrorists and the armed forces.

At the end of this violent episode, there were many important unanswered questions that the Peruvian society had to solve in order to enter into a new stage. For instance, how many of those victims were killed by the armed forces and how many for the terrorist groups? How many of those declared “disappeared” are really dead and not alive in some prison? Who was the main responsible of all those human rights violations? Were they prosecuted and punished? How is the nation going to alleviate the pain suffered by the victims? What are the main lessons that the society must realize from this violent period?

To answer these and many other questions the Government organized in 2000 the Truth and Reconciliations Commission (TRC). After a tremendous effort that involved 17,000 voluntary testimonies along the country, interviews to both terrorist in jail and members of the military forces as well as forensic evidence collected through exhumations, the TRC, formed by some of the most prominent Peruvian intellectuals and professionals, has submitted its Final Report on last September.

The Final Report is extremely important for several reasons. First, this is the first time that an attempt was made to accurately count the number of...
victims. Moreover, the Final Report also addressed the responsibility of the armed forces, the executive, judicial system as well as the society as whole in the conflict.

It was established, among others, that “the tragedy suffered by the population of rural Peru, the Andean and jungle regions, the peasant, poor and poorly educated Peru, was neither felt nor taken on as its own by the rest of the country”, and this demonstrates to the TRC “the veiled racism and scornful attitudes that persist in the Peruvian society almost two centuries after its birth as a Republic”.

The TRC has also found that the conflict demonstrated serious limitations by the State on its capacity to guarantee public order and security as well as the fundamental rights of its citizens within a framework of democratic actions.

But the Final Report also includes a comprehensive plan for reparations in which individual and collective, symbolic and material forms of compensation are combined. It is intended that the program be financed by the State as well as by the society and international donors. It places emphasis on symbolic reparations, recovery of memory and the return of dignity to the victims; the plan also gives special attention to education and to mental health, along with individual and collective economic reparations (such as programs for institutional reconstruction, community development, basic services and generation of income).

The TRC has also submitted to the Public Ministry the identification of 24,000 victims of the internal armed conflict, and through these cases and in general through the findings of its investigations, it pointed out that it seeks to expand substantially the arguments supporting the demand for justice made by victims as well as by human rights organizations and society in general.

Since this second stage of the process requires an active involvement of the society as a whole, the head of the TRC, Mr. Salomon Lerner, who is also the President of the Pontificia Universidad Catolica del Peru, is currently organizing the establishment of a new institution for human rights under the hospice of the university aimed at promoting the active involvement of the academia, the University and the student body in the effective implementation of the TRC recommendations in the hope of reducing the pain of the victims and healing the nation.

The involvement of the student body of Yale in this important Institution would provide them with first hand knowledge on the virtues of basic human rights and decency, and why it is so important to preserve such rights especially in time of conflict. It would provide them with first hand knowledge on the ways in which a nation is prepared to heal its wounds and deal with such terrible and extended human rights violations. It will demonstrate why constitutional rights such as liberty, life and the pursuit of happiness are not trivial and why democratic institutions are
“My own knowledge before my Linkages trip was somewhat more comprehensive than this, but I was still startled by the immense variety of South America.”

Americans have many strengths, but a thoroughgoing understanding of the differences between foreign countries is not among them. One of my Argentine friends told me an anecdote from a recent business trip to Texas. After learning my friend was from Argentina, an American colleague remarked, “Oh, I was in your country recently!”

“Really? Where?” said my friend.
“Mexico,” the man replied.

“My own knowledge before my Linkages trip was somewhat more comprehensive than this, but I was still startled by the immense variety of South America. The United States and Canada are, for better and worse, thoroughly homogenized by language, culture, commerce, even mundane facts of daily life like interstate highways and national restaurant chains. A Californian like me can travel to Atlanta or Toronto and assume with basic confidence that my destination will be navigable and familiar. Some of my friends in Buenos Aires were taken aback by the nonchalance with which Americans move about our country—they goggled at the example of my brother, who grew up in Los Angeles, went to college in Maryland, married a woman from Minnesota and moved with her to South Carolina.

The rest of the hemisphere is different, as I learned when we attended a conference in Peru. The distance from Buenos Aires to Cuzco, where we arrived, is roughly the same as that from New Haven to Denver. Buenos Aires and Cuzco, though, could be on different continents. Of course, the physical differences are immediately noticeable: the Argentine capital sits on a river bank as flat as a plate, while Cuzco is the roof of the Andes, more than two miles above sea level in dizzyingly thin air.

Topography was the least of the differences, however. Geography isn’t destiny in the United States—witness again how little really changes on that trip from Connecticut to Colorado—while in South America it seems all-powerful. Argentines, famously, regard their country as a westerly outpost of Europe. People constantly invoked the old cliché about the “Paris of the South” in describing their city, with its ferociously wide boulevards, its Teatro Colón and its hundred sidewalk cafes under graceful plane trees. Even after the economic collapse, the nightclubs were thrumming and the malls on Avenida Santa Fe bustled at a First World tilt.

More to the point, everyone I met in Argentina was white. Few people
remarked on what struck me as a remarkable, and near-total, absence: on a tour of the Supreme Court, our guide insisted poker-faced that the natives had simply “moved” when the Europeans arrived. The Argentine 100-peso note still celebrates la conquista del desierto, the conquest of the “desert”—the word suggesting a pristine, sterile wilderness eagerly awaiting white farmers. And Buenos Aires’s Afro-Argentine community, once vibrant, has largely melted away. This is not a mestizo country, certainly not on the upscale streets of Palermo and Belgrano where we passed our time, where as in the U.S., the poor—dark-skinned or otherwise—cannot be seen. Only on the morning of soccer’s Superclásico in La Boca, where I watched police on horseback struggle to contain would-be rioters before the start of the game, did all the fans have native features. These people, I gathered, were the recent immigrants from the Andean countries I’d heard one acquaintance deride as “Bolivians.”

Their presence that day only accentuated their invisibility in other parts of the city, the homogeneity of such an otherwise cosmopolitan capital—but theirs were the faces I saw in Peru. Yucay and Cuzco, where we spent a week, are thoroughly given over to the tourist trade now, but behind the thin crust of Internet cafes and Western-style hotels on the main roads, the land and the people were rural and poor. Across the main highway through the Sacred Valley, I watched a man drag a squealing, unwilling pig behind a thick rope; packed buses trundled down the road next to men with burros and taxis carrying American backpackers.

The difference from Buenos Aires was not merely that there the people I encountered were rich and here they were not, or that Argentines are primarily white and Peruvians mestizo—though these things surely matter. Rather, the scale and objectives of life themselves were utterly different. Buenos Aires was more crowded, more urban, more self-consciously sophisticate than any place in the United States save for certain neighborhoods of New York. The Peruvian countryside outmatched even the remotest corners of the American South or West in its lack of development and seeming changelessness. The contrast was astonishing, uncomfortable, and fascinating.

The stark divide between these two worlds was illustrated best by the final morning of our conference in Peru. As an exclamation point to the event, the conference organizers planned a sumptuous luncheon on the rim of an Inca ruin, perched thousands of feet above the rim of the valley. Our noisy, overdressed party climbed into buses to make the winding ascent. My bus struck a donkey as we reached the crest of the valley; small boys on the side of the road ran towards our caravan to stare, while others hurried to sweep their animals away from the speeding vehicles. At the top, we spilled out of the buses to roam about and take pictures. The chatter of our party echoed over the hillside. Finally, we all sat down to a lavish, multi-course meal in a huge white tent, just yards from local children tending herds of sheep. Our group reminded me of nothing so much as a party of British officers riding through colonial India on elephants. As an American abroad,
Ecuador y Venezuela parecen haber sufrido de la misma enfermedad política en los últimos tiempos. Ambos países guardan interesantes similitudes: una crisis partidista y la aparición de líderes populistas destinados al fracaso.

Los sistemas partidistas de Ecuador y Venezuela han sufrido un colapso político de dolorosas consecuencias. Dos sistemas democráticos que parecían haber alcanzado cierto grado de estabilidad cayeron víctima de sus malas administraciones y las limitaciones de sus fallidos esquemas de gobierno. En Ecuador tres partidos habían aparecido dominantes en la escena política, el Partido Social Cristiano, La Democracia Popular y la Izquierda Democrática. Estos partidos habían consistentemente alcanzado el poder en elecciones nacionales y regionales. En Venezuela, los partidos dominantes eran el partido Acción Democrática y el COPEI. Ambos partidos habían dominado las elecciones en la nación gracias al pacto político de Punto Fijo, un pacto en que ambos partidos tranzaban para dominar la política nacional venezolana en desmedro de otros partidos.

Los grupos de poder en estas naciones basaban su hegemonía en exclusividad política: tanto en Ecuador como en Venezuela estos eran los partidos dominantes con exclusión de otros partidos con menos recursos y capacidad de representación. Los partidos políticos usaban sistemas de representación interna desfasados. Líderes políticos de élite se convertían en los caudillos y amos de sus partidos sin ofrecer oportunidad de recambio y representación a caras e ideas nuevas. En Ecuador los ejemplos de Rodrigo Borja, Oswaldo Hurtado y León Febres Cordero tres ex-presidentes de la república de los 80’s que continúan hasta hoy dirigiendo la política de sus partidos. O los casos de los caudillos Carlos Andrés Pérez y Rafael Caldera venezolanos que se convierten en las sombras recicladas de sus partidos AD y COPEI. La gestión gubernamental de los partidos de gobierno en Ecuador y Venezuela exacerbó la polarización económica en sus estados. La corrupción de estado con impunidad judicial y la pésima administración de recursos como el petróleo (ambos países son petroleros) empobrecieron a las clases medias ecuatorianas y venezolanas. Los exclusivistas partidos ecuatorianos no basaban sus políticas en el largo plazo sino el imediatismo político y el clientelismo electoral. Cuando las reformas neo-liberales dejaron al descubierto las deficiencias de las administraciones internas el régimen partidista empezó a mostrar sus debilidades y los castillos de naipes empezaron a derrumbarse.

Populismo y Partidocracia en Latinoamérica

I’m used to worrying about the image I project, but here the gaggle of out-of-place foreigners were mostly Argentines, Chileans and other Latin Americans. At a conference devoted to pan-Latin American issues, the gulf seemed vast. Above all, it told me that I will have to return, again and again, to understand this place as it deserves. By Adam Sofen (LL.M. 2003-2004)
El resultado es la elección de dos líderes populistas radicales, Abdalá Bucaram y Hugo Chávez. Bucaram fue en muy poco tiempo defenestrado por la misma población ecuatoriana descorazonada por su incorrecta gestión administrativa. Chávez ha durado más tiempo en el poder pero enfrenta un referendo político que amenaza con su destitución. Que hace tan atractivos a estos líderes políticos? Es obvio que una parte de la explicación está en la falta de consistencia en la administración por parte de los partidos políticos ecuatorianos y venezolanos. Los populistas tienen un mensaje de redención social para una gran mayoría de empobrecidos ecuatorianos y venezolanos que habían confiado sus votos por décadas a los partidos políticos y que habían recibido a cambio un fallo proyect de desarrollo nacional. Los líderes populistas proponían una inmediata redistribución de los recursos económicos en ambos países, una posición atractiva para grupos pobres de Ecuador y Venezuela pero irrealista. En Venezuela, por ejemplo, las medidas redistributivas de Chávez han hecho poco por ayudar a los empobrecidos venezolanos. Chávez no ha conseguido más que alienar a las potencias internacionales que critican su gestión y a las elites económicas de su país que se niegan a colaborar con su proyecto de estado.

La reaparición del populismo radical en Ecuador y Venezuela no hace más que empujar a buscar un nuevo balance. No se puede confiar en una democracia de papel, con partidos poco representativos, corruptos y elitistas. Que haya un maquillaje democrático no significa que exista democracia. Pero tampoco se puede vivir a la merced de irrealistas líderes populistas cuyas políticas alienan a la comunidad internacional y enfrentan a las propias clases sociales de sus países. El reto es buscar el justo equilibrio entre formas democráticas e intereses redistributivos de ciencia ficción. Por Carlos Barrezueta