Chile’s Constitutional Reform

We are now living in a real “constitutional moment” in my country. For the first time in nearly fifteen years of our new democratic life there is a profound social and political debate, which has convinced all branches of the Congress of the necessity of reforming our constitution in order to overcome the major traces of authoritarian characteristics that still remain from Pinochet’s time. The purpose of this brief paper is to present and try to explain those problematic issues of our constitution from an historical perspective, and to examine how social and democratic institutions have dealt with them before and after the constitution came into force.

Our current constitution has a non-democratic origin as it was designed during the Pinochet government by several state organizations (including the former military junta itself) and formally established in 1981 based on a 67.04% public referendum approval rate. This referendum did not comply with any minimum requirements of transparency and legitimacy.

The philosophic background that inspired our constitution explains most of its main characteristics and problems. On one side there are remains of Political Corporativism that was supported by the military group during their first years of rule (following Franco’s model in Spain), which reflects on the autonomy and protection that the constitution gives to organized social groups. The constitution also provides for the formation of a strong state with concentrated power in one person, the president and gives him nearly dictatorial faculties in “periods of constitutional exception” such as siege, assembly or establishment of an emergency state. It also imposes military discipline and authoritarianism on civilians, which is expressed through the creation of a national security council as a constitutional organ (giving it important political powers), the establishment of military as the protectors of the constitution and its institutionalism, and the constitutional duty to honour the nation and its national symbols.

There is also a tremendous influence of Hayekian Liberalism in two main parts of the constitution. First, there is the creation of a freedom principle as an individual sphere protected from any interference. This is reflected in the establishment and strong protection that the constitution gives to private property, the recognition of fundamental rights such as honour, privacy and private communications, and freedoms of association and development of economic activities. These all have constitutional actions to make them judicially binding, and combine
to form a powerful protection of free markets and capitalism. The other subject where Hayek had strong influence, connected with the philosophy of Schumpeter, is the concept of democracy, which is considered just as a mean or a method for making public choices and never as an end, as an instrument, and never as a value by itself. All of this made legitimate restricting its application to other areas, such as security or freedom. In that vein there were established important restrictions to freedom of thought and speech (being the former article 8º a paradigmatic icon), a non democratic integration of the congress with appointed senators, and rules or quorums of constitutional reform that made it practically impossible to change the document. All of this reflected a fundamental mistrust of democracy and universal vote as a threat to liberty and security that were the real values to defend.

The constitution also has a strong influence of the social doctrine of the Roman Catholic Church, expressed in the economic and social role of the state, the protection that the constitution gives to family, the ontological primacy of the individual over the state, and the establishment of several social rights – education, health, social security- which are not judicially binding. Finally, Carl Schmit’s constitutionalism was also used to provide the theoretical bases of justification for the constitutional power that the military board assumed and exercised since their first day of ruling. In that way the Chilean constitution emerged as a body of norms with a peculiar balance between a strong and authoritarian political state and a laissez faire economy.

Even though the constitution in its original version came only partially into force (there was no congress or public elections until 1989), a number of problems can be identified in comparing it with international standards of democracy and a basic respect for fundamental rights: a) Excessive presidential powers in legislative, political and judicial activities; b) Limited pluralism, by imposing important restrictions on public freedoms (the private ones were strongly protected and very assured), such as freedoms of speech, information, and association through the use of article 8º and a national T.V. council that could censor programs and other forms of cultural expressions; c) Serious restrictions on personal liberties during states of constitutional exceptionality; d) A certain fear of democracy and universal vote as deliberative ways of making public decisions, expressed by the non democratic integration of the congress, the limitations to congress of legislative and constitutional powers available for use against the president, and the restriction that the constitution established between holding of union positions and political party activities; and e) The lack of respect for the constitutional principle of civilian control of the military, because of the limited faculties that the president had over the designation of chief commanders in the four branches of the military forces; the clause that established military as protectors of the constitution and its institutionalism; and a national security organ, with important political powers, composed of more military personnel than civilians, all of which is consistent with the “national security doctrine” that informed the role of the armed forces in most of Latin American dictatorships.

Impetus for change came following the 5th of October of 1988, when the people of Chile voted NO in a national referendum to Pinochet’s continued presidency. That episode generated a real constitutional moment. The parties for democracy interpreted it as a popular cry of the people for the re-establishing of popular sovereignty, which generated an important political movement focused...
on a constitutional reform to enter our new democratic period. Several parties presented their projects. The negotiations with the government were not easy, but they finally arrived to a consensus that reformed the constitution in a substantial pro-democratic way: a) The faculty of the president to dissolve part of the congress for one time was abolished, which balanced a little more the excessive presidential powers over the congress; b) Also presidential powers during states of constitutional exceptionality were diminished; c) Article 8º was derogated, and replaced by a numeral on the bill of rights which expressly guarantees political pluralism, freedom of speech and information; d) The number of representatives was increased, so appointed senators had less influence in laws; e) One more civilian member was appointed to the national security council, so now military and civilian members were equal in number; and, most importantly f) a new clause was incorporated in the constitution that extended fundamental rights of people not only to those expressly declared in the constitution, but also to the ones established in international treaties in which Chile is a signatory.

As it can be seen, all of these reforms pointed toward the solution of most of the problems identified, but some important issues remained, mainly: a) The president still enjoyed tremendous political, legislative and judicial powers of decision; b) A T.V. council was still established as a constitutional organ, that could censor programs and other forms of cultural expression, affecting in that line freedom of speech and information; c) Non democratic integration of the congress; and d) A lack of respect of the constitutional principle of civilian control of the military that remained.

The congress, in our democratic period, has made 15 reforms to the constitution in exercise of the people’s constitutional power. Only three of these helped to overcome the “remaining issues” exposed during this brief presentation: in 1994 the presidential term was shortened, in 1997 a public defense and criminal prosecution bureau were created as a part of a complete re-structuring of the criminal system (which has become more protective in terms of judicial independence, impartiality principles, trial speed and victims’ rights) and in 2001 a reform eliminated all forms of prior censorship from our system and established in the constitution a freedom of artistic creation.

Many of the reforms that have now been proposed to congress seek a definitive solution of these remaining issues. They include abolishing all appointed senate seats, enforcing congress’s control powers over the government, reducing the president’s term, and the removing his faculty to convoque the congress to legislate during non-legislative period. Other reforms include more restrictions on the conditions of application of states of constitutional exceptionality, the abrogation of military’s role as defenders of the constitution instead giving it to all constitutional organs, the recognition of the presidential power to remove military chief commanders during their mandate, and the complete elimination of all of the national security council’s elective and decisional powers, transforming it into a mere consultive organ for security matters. Some of these reforms have already been approved, but most are still awaiting consensus. The congress now has a unique opportunity to overcome the institutional traces of authoritarian principles that still remain from Pinochet’s constitution and to develop our republican future based on democracy, pluralism, freedom and equal principles. Chileans hope that it is up to this challenge.

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The Argentine National Congress and the Right to Access Public Information

This paper considers the recent record of Argentina’s National Congress regarding the right to access public information. In this paper, I will discuss the existing normative framework in Argentina regarding this right, making special reference to the regulations that govern the National Congress and how they actually function in fact.

Firstly, I’d just like to say two words regarding the governmental system we have in Argentina. Argentina is a representative democracy with a republican federal form of government. Argentina has 24 relatively autonomous provincial states and a central government. Three powers comprise the central government: the Executive, the Legislative and the Judicial. Here I focus on the legislative power of the central government –the federal legislative power-.

The federal legislative power is comprised of the Chamber of Deputies and the Senate. The Chamber of Deputies represents the people of the Nation and the Senate represents the different provincial states. Inside Congress, the Chambers work as differentiated bodies. Each dictates its own regulations that establish its internal functioning. In agreement with its respective regulations, each Chamber chooses its own officers.

Both Chambers have a president who calls and directs the meetings, and has the power to appoint or remove its legislative staff. Each chamber has the power to formulate resolutions and the president of each Chamber has the power to make decrees in parliamentary and administrative matters. The parliamentary activity of both Chambers takes place, fundamentally, in its committees. It is at this point that a bill is examined carefully and its chances for passage are determined. These committees study and discuss the bills and vote on their recommendation to the Chamber of Deputies or the Senate. If the committee doesn’t act on a bill, it is essentially dead.

The Right to Access Public Information in Argentina

The right to public information is guaranteed in the Argentine Constitution. International conventions on human rights which have been signed by Argentina, and which accordingly have constitutional standing, guarantee the right to access public information.

The Congress and the Right to Access Public Information

In regard to the Congress, its own regulations contain rules that establish public access to certain information, though the two chambers’ regulations on this issue are very different.
The Chamber of Deputies
The regulations governing the Chamber of Deputies was issued in 1963. The Regulation contains only one article referring to the possibility of the citizens having access to information. This article establishes that parliamentary sessions are open to the public.

The Senate
The Senate modified its regulations at the end of the 2002, with new regulations entering into effect in 2003. The new regulations contain many articles that guarantee access to information. They require through the internet the broadcast of parliamentary meetings and votes and the posting of the day, hour and place where committee meetings take place, and decrees issued by the president of the chamber. However the committees themselves do not release transcripts of their meetings, hearings or maintain updated web sites.

Physical Access to the Congress
Despite this move to greater openness, there are still a number of problems with public access to information in the Congress. None of the Chambers' regulations concern public entry to the Congressional buildings, but they establish that parliamentary meetings are public. In addition, the Senate's regulations establish that the commission's meetings are also public. This issue is regulated through decrees issued by the president of each Chamber. However, in practice, access to buildings of the Congress, in order to attend plenary sessions or meetings of the parliamentary committees requires the authorization of a person employed in the building. Without such authorization, entrance is forbidden. This prohibition inhibits and obstructs civil participation in commission meetings and floor sessions.

Presidential decrees
A decree is an administrative or parliamentary internal decision adopted by the president of the Chamber. It is very difficult to obtain the printed text of the decrees. Neither the Chamber of Deputies nor the Senate publishes presidential decrees. While some are published others remain secret, The decrees that remain private are not even known to some of the members of the body. This gives a wide discretion to the majority that shapes the Chamber, and this can lead to the misuse of public funds, or to acts of corruption. The regulations of the Chamber of Deputies say nothing about of the decrees publication. But the regulations of the Senate establish that presidential decrees must be published in the Senate’s web page. But, in spite of this, no decrees appear on its web page.

Agenda of the committee meetings
As mentioned, most parliamentary business takes place in committee. All bills, before being passed, are studied and discussed in the committees. The Chamber of Deputies' regulations say nothing about committee meetings. Nevertheless, there is certain information about them on its web page. There is a list of all the committees, the topics that they address and their meeting place. In a few cases, there is also a list of all the members of the committee, the agenda for the
next meeting and the day and time of the meeting. On the other hand, the regulations of the Senate establishes that its committee meetings are public and that committees must meet every 15 days. Likewise, it establishes that committees will fix the day and schedule of their meetings, and must give notice of the agenda at least 48 hours in advance. According to the regulation, the notice has to be published in the Chamber’s web page. But in spite these clear requirements, only three of the Senate’s twenty-four committees fully comply with these regulations.

Access to information is vital for civic participation in legislative matters. Since there is a high degree of party discipline in Argentina, the commissions define the future of a bill. Inside the commissions is where the "real" parliamentary debate develops and where citizens should have the possibility to take part. In Argentina no written record is kept of a committee’s debates. The only information that can be obtained are the written reports of the committees that recommend or reject the approval of a bill.

Transparency in Voting
In order to exercise democratic control over the legislature, it is vital that the citizenship knows how its representatives vote. There are three types of voting’s in Argentina National Congress:

1) “Raised hand” voting, a method which doesn’t allow registering how each legislator voted. Legislators who vote affirmatively raise one hand. If the President of the Chamber -who conducts the session- observes that there is an affirmative majority he declares it passed, without making any other record of the voting. This type of voting is the most common in both Chambers due to the fact that the matters are resolved in the committees and the high degree of party discipline, both of which make it easy to get a clear majority.

2) Voting by name: This method registers each legislator’s name and how he or she voted. The traditional way of voting by name is that every legislator identifies himself/herself loudly and indicates his/her vote. Now by using an electronic display board, it is possible to identify every legislator’s vote immediately.

3) Electronic voting: This mechanism connects every seat with an electronic display board. The results of the voting are shown on the board. This method of voting can be conducted with or without identifying the voting legislator by name.

According to the Deputies’ Chamber Regulation the default rule is “raised hand” voting. Though it would help civil society monitor the legislature more effectively if all bills were voted by name, this procedure is used only if ten percent of the legislators present in the session agree. Though the record of these votes doesn’t appear on the Chamber’s web page, it is released when requested.

On the other hand, the Senate’s regulations establish an obligation to vote on bills by name. However, this regulation has only been in force since 2003. During that year, the Senators voted by name only 8 times. However Congress approved 91 laws that year, so the number of votes taken by name seems to be much lower than it should be.
Conclusion
Argentina still lacks a culture that allows free access to public information, regardless of the legal norms that regulate this right. In this sense, the lack of access to information generates serious problems within the democratic system in terms of popular control and civil participation, and in terms of checks and balances of state powers. This lack of transparency has obscured the Congress’ progressive abdication over the past three to four years of its constitutional powers. Citizens are unable to learn how their legislators voted, or to attend the committee meetings where decisions are made. Meanwhile the Congress has passed rules that support a transfer of its powers to the executive, in contravention to its constitutional role.

*By Celeste Braga—Universidad de Palermo, Argentina*
Buenos Aires is a city that seems to wear its paradoxes on its sleeve. Cartoneros (people who collect cardboard boxes from trash heaps and redeem them for money) seek shelter from the cold and rain in the eaves of ornate Art Nouveau buildings. Once palatial residences have been bricked up and subdivided into crowded housing for the poor. The tango, an art form once relegated to brothels, is ubiquitous. In a city filled with stray dogs and cats, the animals that do have homes are often dressed up in human clothes. And many Portenios insist that they are Argentine, but not quite “Latin American” and certainly not European. The Linkage students at la Universidad de Palermo – Celeste Braga, Victoria Ruiz and Natalia Volosin – worked heroically to assemble a schedule of events that would introduce us to the legal life and political history of this dazzling city, and of the country as a whole. This article is an my attempt to pay – at least in small part – the boundless debt of gratitude I owe to them and all the exceptional Portenios I met along the way.

Early in our visit, we met with Chief Justice Zaferoni in his Chambers at the federal supreme court. While chain-smoking his signature Virginia Slims cigarettes, he explained what he identified as one of the biggest problems presently facing the federal courts: case volume. If I recall the number correctly, the supreme court deals with upwards of 70,000 cases per year, not all of which are adjudicated, but all of which do require attention. He also discussed the harrowing appointment process he underwent, during which virtually every aspect of his private life was laid bare for public scrutiny. His liberal tendencies made his nomination to the court highly controversial, yet he conceded the importance of such intense public scrutiny to the preservation of an independent judiciary.

Our meeting with Judge Horacio Cattani was at once harrowing and refreshing. As a judge in the Supreme Court of the Province of Buenos Aires, Judge Cattani executes many functions, among which is overseeing inquiries into the atrocities of the military dictatorship. These are not necessarily prosecutions. Often they are merely inquiries into the location and identities of bodies. He explained that throughout these investigations, his office thinks first of certainty and then justice and bureaucracy – certainty in identifying the dead and the manner in which they died. In this effort, his office has a 60% success rate. The task, he said, is ‘dark and pathetic’ but must be done in order to pursue some sort of reparation for the past. When I asked Judge Cattani whether he believed that reparation could indeed exist in the face of such systematic violence, he replied, “No. Pero la verdad repara. Contra la muerte no podemos dar ningñın satisfacciñ.” He then showed us the files of two closed cases. Seeing the handprint of one of the victims whose body Judge Cattani helped to locate was one of the most arresting moments of our meeting.

Our meeting with Judge Leopoldo Schiffrin was likewise a revelation. In addition to being generous with his time, Judge Schiffrin was exceptionally warm and hospitable. Our meeting began in a conference room in the provincial court of Buenos Aires, where Judge Schiffrin explained to us his role on the Comisión Provincial por la Memoria. The court is the seat of the Commission, serving a fact-finding function that is quite profound. Through inquiries of victims, victims’ families,
Through inquiries of victims, victims’ families, witnesses, and former officials, the Commission collects testimony with which it assembles accounts of abuses under the military dictatorship. These are not trials, but hearings. “Somos pequecitos,” Judge Schiffrin said of the Commission, “pero tenemos que hacerlo... La objetivo es la historia. No se cuando sera un arbol, pero ahora hay semillas.”

He then invited us to sit in on a hearing over which he was presiding. The courtroom was very plain but for an enormous silver crucifix hanging behind the bench. As we sat down, I noticed the court stenographer enter. She filled each judge’s desk drawer with candy and removed heaps of old accumulated wrappers. The proceedings began with Judge Schiffrin taking the testimony of a woman regarding the disappearance of her husband in 1979. She explained that she was a simple woman—illiterate. All she knew was that her husband was taken from her home one night. Then, breaking into tears, she explained that the next time she saw him he was in prison. He was thin and bruised from beatings. Judge Schiffrin reassured her, telling her that he knew it was difficult to relive pain like this, but her testimony would help preserve the memory of her husband for generations to come.

Judge Schiffrin then asked whether her husband had any relationships with people who might have made him a target. She became silent. He reassured her that her husband was not on trial, and that the court only wanted to know the truth—that her husband was not the criminal. I don’t think I have ever admired anyone more than I did Judge Schiffrin at that moment. He was at once sober, dignified and professional without compromising humane sensitivity the this woman’s long suffering. The exchange also illustrated his awareness of his court’s function in Argentina’s process of reckoning. After the witness left the stand, Judge Schiffrin called a brief recess. He stepped off the bench and quietly approached the woman. He took her aside, touched her arm, and offered words of comfort and thanks.

Our meeting with Estela Barnes de Carlotto, co-founder and Director of Las Abuelas de la Plaza de Mayo, was an opportunity to learn about a different approach to dealing with Argentina’s troubled past—this time through victim activism. Ms. Carlotto’s work began when her pregnant daughter Laura, a primary school headmistress, disappeared. She searched for Laura and, at the time that Laura was due, for her newborn grandchild in hospitals and orphanages. Along the way, she met other women who were conducting similar searches of their own. They began meeting together in the Plaza de Mayo in order to protest the disappearances.

When Cyrus Vance visited Argentina during the 1980s, the Abuelas approached him with their stories. While the Argentine press decried them as “Las Locas” because of their public displays of anger and grief, Vance brought their stories abroad, where the foreign press gave them extensive coverage. During that early period of activism, Ms. Carlotto’s husband disappeared for 25 days. During that time he was detained and tortured, and returned home with stories of how fellow inmates were executed, their bodies blown up, buried, or thrown into the River Plate. People called him crazy, too, for telling such ‘tales.’

Ms. Carlotto learned relatively early what became of her daughter. “Yo tuve la privilegia” she explained, of claiming her daughter’s body on the day she was assassinated, two months after having given birth. Officials claimed that she was killed during an armed struggle with her captors; however, her body was unrecognizable when Ms. Carlotto claimed it. The child too was killed.
The work of Las Abuelas is mainly investigative in nature. They estimate that 500 children were taken from their parents during the Dirty War, most born in detention camps. Since 1979, they have located 75 such children, eight of which were killed. Las Abuelas used to act on tips, going to suspected homes and claiming to be selling children’s books. They would quickly snap a photo of the child when he followed his mother to the door and would get to work investigating. Recently, they began a free concert series for youth at which they make announcements inviting any person with doubts about his parentage to contact them. Earlier this year they identified their 75th grandchild at such a concert. They have also resorted to more high-tech approaches, among which was the establishment in 1985 of a national genetic bank containing genetic samples against which to compare the genetic composition of people who suspect that they were kidnapped and placed with non-birth families.

Ms. Carlotto explained of her work, “Buscamos con amor. No tenemos odio. No tenemos venganza. No queremos venganza. Queremos la verdad para que la historia no se olvide. . . para que seran la verdad y la justicia.” Speaking for the first time in English, she concluded, “You in the U.S. have many problems. But you have justice that works. You have democracy that works . . . Estamos pobres en un pais rico. We have natural beauty, minerals, you plant a seed and it grows on its own.” In these words plain and clear she framed the problem with which Argentina is grappling, and begged the question “Why?”

I am still grappling with the answer to that. In a way, I returned to the United States with more questions than I had when I arrived in Argentina. Some of these questions are new: How can Argentina shake off the specter of Peronism? Why is the question of public knowledge during the Dirty War so contentious? However, other questions are the same, having been answered in ways that were incomplete, unsatisfactory or contradictory. Yet even these questions are more informed than before.

By Tara Helfman—Yale Law School, USA
En 1966 el célebre grupo inglés de los Beatles le cantaba a la soledad de un ser humano imaginario, la mujer Eleanor Rigby. Eleanor cantaban los Beatles, con la ayuda de la vibración dramática de unos agudos violines, era la representación del abandono. El ser humano a quien sólo le quedaba “recoger el arroz de las afueras de la iglesia donde una boda se había celebrado.” El ser humano condenado a ser enterrado sin que “nadie viniese.”

Eleanor es una metáfora al desentendimiento de los seres humanos por los problemas del prójimo. Nada mejor que un esfuerzo humanitario para alejar los fantasmas de Eleanor. Eliminar fantasmas recurrentes y combatirlos con humanidad fue lo que intentó el Presidente de Brasil, Luis Ignacio da Silva, Lula cuando convocó una cumbre para discutir uno de los problemas más acuciantes de nuestros tiempos: el hambre en el mundo.

La Conferencia Contra el Hambre trajo a la mesa puntos de extraordinario interés para los países en vías de desarrollo. Ochocientos cuarenta millones de personas pasan hambre en el mundo y más de 1.1 millones de personas ganan menos de un dólar al día. Los objetivos de las Naciones Unidas de recortar a la mitad el número de desnutridos para el año 2015 está en serio peligro de no ser cumplido.

Los principales problemas son la falta de fondos. En algunos países es francamente imposible tener estados viables sin ingentes cantidades de ayuda para el desarrollo. Países como Mozambique o Etiopía poco se pueden beneficiar de reformas contra la corrupción o cambios a sus sistemas judiciales si su población es analfabeta y mal alimentada. Primero hay que leer y alimentarse bien para preocuparse después de un sistema judicial viable.

La meta de colectar 0.7 del producto interno bruto de las naciones desarrolladas ha sido un fracaso. En un mundo de electores mediáticos, los gobernantes de países desarrollados dicen no poder justificar el gasto para el desarrollo ante sus electores. Es que mientras la muerte de un ser cercano parece ser una tragedia, la muerte de miles y miles a distancia es sólo un triste evento.

El otro problema es la protección de los países desarrollados a sus mercados agrícolas. Algunos sectores de la agricultura europea y norteamericana gozan de amplios subsidios estatales y protecciones de tarifas que impiden a países en vías de desarrollo, especialmente los latinoamericanos, vender sus productos en el extranjero. Entonces, a más de correr con desventajas estructurales inherentes, los países en vías de desarrollo tienen que competir con poderosísimas economías que trasladan recursos de sus sectores ultra-eficientes y multimillonarios, como tecnología de la información y medicina, para proteger a sus poco eficientes campos agrícolas. Lujos proteccionistas que las endeblees economías del desarrollo no se pueden dar.

Algunas de las innovadoras propuestas de la Cumbre contra el Hambre tienen pocos visos de concretarse. Un impuesto a las transacciones internacionales, una idea plausible, es resistida rotundamente por la actual administración norteamericana por ir en contra de las ideas del comercio libre. La contradicción es evidente: la protección agrícola norteamericana también va contra las ideas del libre comercio pero es vista con normalidad en Estados Unidos.

El problema del desarrollo es un problema que involucra a todos los seres
humanos del planeta. Es importante tener políticas de asistencia con objetivos concretos para evitar muertes, violaciones a los derechos económicos de miles de personas y violencia.

A pesar de los esfuerzos de Lula la voluntad política en el mundo parece no tener al Hambre al frente de la agenda de problemas acuciantes. Como el padre Mackenzie en Eleanor Rigby, Lula pareció “escribir las palabras de un sermón que nadie escuchó” Es que para ejemplos hacen falta pocas muestras. En los países desarrollados la cobertura de prensa de la Cumbre contra el Hambre fue mínima con unas pocas excepciones (Inglaterra, Francia, España) Y a pesar de los saludos, fotos y buenas intenciones hubo pocos resultados concretos.

En 1982 el escultor Tommy Steele inmortalizó a Eleanor Rigby construyendo una solitaria mujer de bronce para la calle Stanley Street. Hoy, en algún lugar de Liverpool, la estatua de Eleanor Rigby yace solitaria como solitario está el clamor de los pobres del mundo.

Como en el triste final del poema-canción Eleanor Rigby, en la Cumbre Contra el Hambre, ninguno de los desnutridos fue salvado.

*By Carlos Barrezueta—Yale Law School, USA. Carlos tiene Licenciaturas summa cum laude en Historia y Ciencias Políticas de la Universidad de Columbia. El autor termina su Juris Doctor en la Universidad de Yale.*
Gosto de Linkages Brasil

No verão passado, eu visitei a faculdade de direito da Universidade de São Paulo (USP). A experiência foi, como tomar um copo de café brasileiro, impressionante: um sabor bem rápido e forte da melhor faculdade de direito no país. Embora o café da cantina de Yale não seja tão bom, se comparado ao que nossos anfitriões serviram lá, a visita à USP me ajudou a refletir, com critica e encantamento, sobre a minha própria experiência na faculdade aqui.

A situação, quando chegamos na USP, era bem conhecida pelos alunos de Yale: os funcionários da faculdade estavam em greve. Entretanto, quando eu conversei com um dos líderes dos grevistas, um bibliotecário da faculdade, achei que essa greve tinha aspectos bem diferentes daqueла que eu e meus colegas vímos em Yale. Enquanto os funcionários da USP eram empregados do setor público e estavam pedindo aumento do estado de São Paulo, a greve em Yale contrapunha trabalhadores em New Haven ao maior empregador privado da cidade.

Depois da greve, quando ele me mostrou a biblioteca da faculdade, eu pensei mais sobre as diferenças entre as duas instituições. Yale, como a maioria dos melhores faculdades de direito nos Estados Unidos, é uma instituição privada, com riquezas de recursos, apoiada por pessoas abastadas, e localizada no país mais rico do mundo. A USP, embora seja a faculdade de direito mais proeminente do Brasil, é uma instituição pública num país em desenvolvimento, sustentada pelos impostos de uma população na qual sessenta milhões de pessoas vivem com menos de um dólar por dia. Os ex-alunos da USP - que, como os de Yale, incluem muitos dos advogados mais notáveis do país - geralmente não contribuem financeiramente para ajudar a faculdade (embora exista um projeto para mudar esta situação), nem os alunos pagam mensalidades escolares.

Quando meu amigo Rodrigo, o aluno brasileiro que ficou hospedado na minha casa durante sua visita a Yale, me contou que mensalidades escolares não existe na USP, eu achei que isso era uma idéia agradável, não apenas de uma perspectiva pessoal. Isso, eu supus, gera mais diversidade de classe econômica, raça e origem étnica entre os alunos. Entretanto, embora as mensalidades escolares não existam, a admissão na faculdade é decidida só pelo vestibular. O resultado é que a maioria dos alunos são de famílias que têm dinheiro para pagar o custo dos colégios privados e aulas particulares que preparam estudantes para passar no exame.

Com uma rápida vista de olhos no pátio da faculdade, podia-se ver os efeitos. Num país onde quase metade de população se identifica como parda ou preta – a maior população afró-descendente de qualquer país à exceção da Nigéria – havia quase nenhum aluno negro. O Brasil é colocado em segundo lugar, só atrás dos Estados Unidos, em desigualdade econômica, e como aqui, no Brasil a pobreza é bastante associada a raça. Um professor da faculdade nos contou que nos quinze anos que ele estava lá, ele teve apenas cinco alunos negros.

Quando eu cheguei em Yale, o fato que quase metade dos alunos havia se formado em um punhado de colégios privados do “Ivy League”, me sugeriu a imagem de uma correia transportadora para o elite: pegando estudantes dos colégios de alto escalão, e preparando-os para os principais escritórios de advocacia do país. Mas antes eu não percebia completamente que o sistema da faculdade, ao ser tão seletivo com admissão e tão generoso em subsídios
financeiros, permitia também a criação de um certo grau de diversidade, por atrair e escolher alunos bem qualificados de diferentes origens sociais.

Além disso, uma segunda coisa chamou minha atenção. Yale, como muitas instituições grandes e sem fins lucrativos, e localizadas em cidades com populações mais pobres, algumas vezes é acusada de estar usando seus status para evitar pagar os impostos de cidade onde ela está localizada, Essas reclamações parecem perder sua importância em comparação com o sistema brasileiro de redistribuição. Como alguns alunos da USP me disseram, enquanto o cidadão brasileiro paga impostos para apoiar educação grátis para as famílias dos ricos, os jovens de famílias mais pobres precisam pagar a atender “fabricas de diplomas” oferecidas por universidades privadas e de qualidade mais baixa.

Mas apesar de estarem recebendo uma educação grátis numa melhor faculdade, alguns alunos da USP não parecem muito satisfeitos. Eles, e alguns professores também, estavam frustrados com o fato de que professores de direito no Brasil raramente pode lecionar na faculdade em tempo integral, e geralmente precisam trabalhar num escritório privado ou no setor público para complementar os salários que recebem na faculdade.

Uma coisa que é tanto maravilhosa como irritante para mim em Yale, é que muitas pessoas aqui parecem bem contentes com a situação aqui e não querem mudar nada. A coisa que foi mais interessante para mim no Brasil é que todas a pessoas parecem querer mudanças. Em alguns estados como Rio de Janeiro e Bahia, as universidades estão começando a introduzir programas de ação afirmativa com uma percentagem de vagas nas faculdades reservadas para alunos negros e para estudantes de colégios públicos. Ao mesmo tempo, alguns alunos na faculdade da USP apóiam a criação de uma nova faculdade de direito em São Paulo onde, em troca do pagamento da mensalidade, os alunos receberiam ensino por professores com dedicação em tempo integral.

Em um mês só não se pode aprender tanto sobre um país. Falta de fluência no idioma, falta de familiaridade com contextos culturais e sociais, pode dar para sentir o sabor de um lugar, mas não te dá nenhuma certeza sobre o que você descobriu. Quando eu tomo um golinho de café brasileiro em minha cozinha em New Haven, eu reconheço essa sensação: um pouco amargo, um pouco doce, e eu espero, mais atento.

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