Chapter 12

Something to be Proud of: The Response of the Legal Profession to the Argentine Social Crisis

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The 2008 crisis went almost unnoticed in Argentina. The country had seceded from the international financial markets half a decade earlier after producing the biggest sovereign debt default in recorded history. Coincidentally, the prices of Argentine commodities skyrocketed, thus enabling the country to recover, sailing on the favourable wind of commerce and a highly devalued peso. With the end of public deficit, Argentina paid its debt to the IMF and to most of its creditors after an aggressive negotiation, the government detached itself from external control and public expenditure was financed mostly with internal and export taxes. This situation, among others, let President Néstor Kirchner and his wife, Cristina Fernández, enjoy three four-year terms in power.

Thus, this chapter will tell part of the story of the reaction of the legal community to the 2001–2002 Argentine crisis and its effects on access to justice. I will also argue that the event in question was a continuation of a longer trend that had started two decades before, with the way Argentina's society dealt with radical evil, that is, the 1976–1983 military dictatorship and its systematic, massive human rights violations.

On 9 September 2001, I was in my office in Palermo University, where I was Dean of its law school. With me there were several colleagues and US visitors, prominently Joan Vermeulen (who had been with Lawyers for the Public Interest and the expert on pro bono clearinghouses and was helping me put together the first conference on pro bono and public interest ever in Latin America). Joan had been in Buenos Aires the year before to test the waters for the willingness of the Argentine legal professions, both the private and the public Bar, to start a pro bono programme. We had found enough support and on 9/11 we were in my office surrounded by the civil society representatives from the US and waiting for the private lawyers to come. In fact, having heard some weird news, we were on the phone with Evan Davis, at the time the President of the Association of the Bar of the City of New York, who was watching the Twin Towers being hit by something from the window of his office at Cleary Gottlieb.

The NYC lawyers could not come, so we had to split the conference in two. In September, overwhelmed by sorrow and worried about the people in New York and about what the future would bring to all of us, we had the conference for the NGO lawyers, both American and Argentine, on how to work with the private Bar, how to harness its energy to help in the civil society fight for democracy and the Constitution. We thought that, of the many ways we could honour the dead, this was a quiet, appropriate one. The members of the private Bar came on 29 November. They met with Argentine law firms and there were roundtables on the many issues lawyers have to deal with in general with PIL cases, and especially when these cases are taken on a pro bono basis and within an ongoing relation with civil society organisations.

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On 30 November, while we were working on panels, the Argentine lawyers' mobile phones started to ring all at once. These were not the eventual calls from clients; something ominous was in the air. Some of the lawyers, especially those who had banks in their list of clients, were frantically making calls and hastily leaving the room. The government had started to set limits to the amount of money people could dispose of from their bank accounts. The worst economic crisis in Argentina's history had just started.

In the months that would follow, the Bar of the City of Buenos Aires, a private, traditional institution that gathers the main corporate law firms of the country, started a Pro Bono and Public Interest Law Commission that functions as a clearinghouse for collective, impact litigation cases coordinating the needs of the civil society with the resources of the private Bar. The practice grew enormously and many of those law firms now count among their firms full-time pro bono coordinators who are developing programmes and focusing each firm's pro bono work in those areas where they have the most expertise. The range of cases in this long decade varied from helping NGOs to become legal entities, to fighting for the right of the people to access public officials' information, and to planning to make every school in Buenos Aires accessible to children with disabilities.

At the same time as this was happening in Argentina, Chile created the Pro Bono Foundation and had a similar impact on the profession. Then Brazil followed suit, and also Colombia, Peru and Mexico. Lawyers, law firms, law schools and bar associations all over the continent have signed the Pro Bono Declaration of the Americas, pledging a certain amount of hours to serve the public interest.

In this chapter I will offer an explanation for this development, in the hope that it will illuminate some aspects of the relationship between the legal profession and the society in which it works, the ethical duties that justify the latter's monopoly of access to and provision of justice as a public service and the opportunities that social crises offer for lawyers to step up and create, restore or enhance their legitimacy; a key for the development of the rule of law.

For just over a century, Argentine law (though in its inception a hybrid of the North American and the European systems) was characterised above all by its inclination towards the continental legal tradition. This conception of law and of the roles of legal actors was configured in line with the overall hyper-presidential political project that was aimed at centralising power. The idea was simply to homogenise law throughout the nation and to subject the other constitutional powers to a centralised discipline with the conviction that a well-grounded national authority would put an end to anarchy and would lay the foundations of a modern state, albeit an authoritarian and exclusive one.

The conception of law that existed until the mid-19th century was modified in accordance with this political conception. Indeed, this new conception of law and its correlative vision about the role of the judges affirmed, on the one hand, that legal systems can bring univocal solutions to every problem submitted to them (a conviction that is known by the name of 'formalism'), given that the denial of the existence of legal loopholes and of contradictions between rules in regulatory systems is part of this ideology. On the other hand, formalism is the condition of the possibility of upholding a deferential attitude towards positive law, regardless of its content or its source of legitimacy.

Thus, in this new conception, judges received and accepted as obligatory the normative contents of the diktats of whoever it was that wielded power, regardless of whether power was wielded through fraudulent elections, or elections in which a party that represented much of the population was proscribed, or directly through coups d'état. This deference towards political actors was justified because the role of judges was to be formalist and impartial. In fact, the conception of the task of adjudicators consisted of conceiving them as neutral enforcers of the legislator's will. In this sense, codification, and in particular the way in which the Civil Code was received by legal scholars and law schools, provided the tools to successfully carry out the formalist project and maintain the separation between politics and law. So on these shores an originally democratic idea was transformed into pantomime when judicial deference towards legislative supremacy was due to whoever obtained power, however they did. Thus, the formalist project began to disengage law from politics, leaving public policy in the hands of whoever was wielding power, and the judiciary in charge of the solution of controversies on a case-by-case basis, rested its decisions solely on the text of the law.

Judicial review (part of the American heritage of this mixed South American system) was a marginal activity and was reduced to exceptional circumstances. Accordingly, constitutional rights were divided between what legal doctrine deemed as 'operative' (enforceable) and merely 'programmatic' (rights

that required legal regulations in order to be enforced by the judiciary), a distinction that greatly reduced the powers of the judiciary to intervene in unconstitutional actions or omissions. The situation of the lack of enforceability of fundamental rights was even worse when the federal Supreme Court added the political question and the de facto doctrines, thus making judicial deference towards any political power explicit.

The notion of a legal 'case or controversy' was another aspect of this conception of law. It reduced the mission of the Court to the case in question, thus rejecting the doctrine of *stare decisis*. Similarly, a theory of administrative law deferential to the executive and contemptuous of citizens' rights afforded legal standing only to those who represented individual interests and high-entry barriers to the possibility of settling collective rights violations, and kept the judicial branch out of the deliberation over the constitutionality of public policies and in general out of the discussion about how to honour the promises of the Constitution. The main characteristic of this project consisted of a discretionary exercise of public power, and the virtual lack of a system of checks and balances. In these circumstances, international law, in particular international treaties, did not offer any solution. A long and unsatisfactory discussion over their applicability prevented their effective enforcement before the courts. In fact, the controversy about their status in the hierarchy of the legal system vis-à-vis the Constitution and, once again, the pretended programmatic and unenforceable character of their provisions kept the international community and its values at a safe distance from our courts. Therefore, the idea of rights as limits to the political will was situated at the margins of Argentine legal culture. Politics, on the other hand, stumbled from military interventions to scarcely legitimate civilian governments, until the radicalisation of the 1960s led to widespread political violence in the 1970s.

But unexpectedly, what happened in the beginning of the next decade was a complete cultural reconfiguration. In fact, through the action of certain groups of people, what was in the margins of our legal culture (and I would add our political culture as well), became central: the idea of rights. In particular, a certain way of understanding human rights reconfigured the conception of law and the role of social actors and the processes through which those actors are called upon to articulate the new paradigm, for the decades to come. As of 10 December 1983, the beginning of its democratic era, Argentina took a series of decisions that have drastically modified its legal culture; they were a response to the events that had scarred the country in the previous decade.

Argentina's experience of radical evil occurred in the mid-1970s, only 30 years after the Holocaust and fewer than that after Nuremberg. In 1976, (once again, the sixth time since 1930), a military coup d'état had taken over the democratic institutions amidst a generalised situation of political violence. The response, once the armed forces were in power, was to orchestrate a clandestine system of massive kidnappings, torture and killings under the cynical name of 'disappearances'. The State itself became terrorist and criminal even under the legal definitions valid at the time. The diagnosis of why it happened was contested but eventually one reason won the day: the problem was the breach of due process and the complete disregard of the rule of law. Through a crucial actor, the mothers of Plaza de Mayo, the families of their victims, asked for the truth of their whereabouts, for due process if they were indicted for a crime and for punishment if those who took their children away were acting unlawfully. There were many social trends that were blamed for this event: the traditional disregard for rules; corporatism; a system of concentration of powers; and the lack of a culture of liberal values. In any case, when the dictatorship collapsed under the pressure of an economic crisis, the defeat in the Malvinas/Falklands War against Britain, and crucially under the weight of the mounting internal and, very importantly, external pressure of human rights groups, a process of transition to democracy started.

The winning party campaigned using the Constitution as a rallying cry and promised to prosecute the perpetrators. It was not clear whether they would be able keep their word. After all, the military personnel responsible for the atrocities were still in office and had the firepower over the civilians. The international situation was not favourable. Most of Latin America was under dictatorships; the brief spring for human rights in the region that the Carter administration had brought from the US was gone and the Cold War was in full bloom under Reagan. The Berlin Wall was still standing, and Nelson Mandela was still in prison. In that context and only with Nuremberg as precedent, a civil government put together a truth commission to gather evidence, and with that information printed in the famous

'Never Again Report', prosecuted the members of the juntas (military-led government) that until recently were the proprietors of life, death and liberty in Argentina. In a few months, five civil judges sentenced them to prison. It was in that trial that the closing remarks of the prosecution ended with the same words of the Report: 'Your Honours: never again!'

After this trial (which was not the only one, as hundreds of military personnel were being tried at the time), the story has its highs and lows. There are violent eruptions of military pressure to limit the prosecutions that forced the hand of the government amid difficult economic circumstances; a hazardous change of government that brought a general amnesty; the permanent pressure of human rights organisations that would eventually open up trials based on the right to truth; the search for the children of the disappeared; and then the decision to prosecute again under the justification that amnesty in these cases was unconstitutional and illegal under international law.

But I believe that the success of the struggle for the right to due process and the application of the rule of law should not be evaluated against the story of the criminal prosecutions. If the diagnosis had been the lack of rule of law, evaluation of the strategy to address this issue has to focus on whether it changed the configuration of Argentine politics in order for it to never again produce dictatorships and violations of human rights. The strategy was the following: out of the demands of the families of the victims assumed by a political party, the democratic government decides to prosecute the worst perpetrators of State-sponsored massive human rights violations. It gathers a Truth Commission peopled by a group of notables, which compiles evidence to be used by the prosecutors and published in a Report. The perpetrators are prosecuted and sentenced to several years of imprisonment. In hindsight, the strategy is translated into the reconfigured Argentine politics as follows: a mobilised civil society becomes organised collectively and collectively identifies a public policy as a violation of human rights. The organisations demand the authorities to end the violation and when they do not respond, they look for alternatives. Eventually, the definition of the situation, the violation of a right, is translated into legal jargon and taken to the courts, which produce a decision that must be enforced by the authorities, and the enforcement is controlled by the civil society in an endless process we call constitutional democracy.

In effect, the courage of the Mothers and the human rights organisations is translated in Argentine democracy in the hundreds of new NGOs that collectively defend plural definitions of human rights. Now we have rights, where in the past there was only the common good defined by the State, even a non-democratic one. The shame produced by the Report (which became a bestseller) explains why social protests are not criminally prosecuted in Argentina, even when there are more than 3,000 street and highway blockades a year. No democratic government wishes to be equated to a dictatorship. The intervention of the courts, the use of constitutional rights and of the international human rights treaties opened up many spaces for deliberation about the adequacy of public policies. Some truth, some punishment, some reparations and even some amnesty in different proportions changed Argentine politics. Almost 30 years have gone by and we still find the possibility of a coup unimaginable and the ethics of human rights pervade every interstice of our political language.

There were many areas in which this reconfiguration resulted in staggering modifications for those who had been working in the previous paradigm. The conception of criminal law and criminal procedure to the interpretation of constitutional rights, or what due process entailed, were some of the political decisions that were strained by the demands for 'trial and punishment' of those who had massively and systematically violated human rights. But no less spectacular was the change with respect to the relationship with rules emanating from non-national actors, whose legitimacy has reached unheard records compared to our previous culture and practices; or the transformation of the relation between civil society (a new concept in Argentine politics as well) and the State through the emergence of new social actors; or the way these social actors now engage in procedures that allow them to claim their rights in public policy spaces previously forbidden to them.

In the context of this work it is particularly pertinent to enquire to what extent this process of reconfiguration is linked to changes in the legal profession as well to the phenomenon of globalisation. However, to the extent that traditional barriers between national and international and between private and public are exactly part of that which is at issue, what follows is a brief attempt to articulate this monumental cultural reconfiguration, whose final countenance is far from clear.

Foreign territories were a natural venue for Argentine political activity; they were the alternative to confronting political violence and risking death. Many of our founding texts were written in political exile. This fact highlights another: the lives of those who shaped our history were marked by the imprint of the diaspora, by the pain of not belonging to the community in which one lives, and the need to speak of and hear about stories of one's homeland. The success of immigration policies created at the turn of the 19th century produced a wave of people that, although eager to build their lives anew kept a longing for their countries of origin, a nostalgia that produced a permanent curiosity of what is said abroad about us. It is a known strategy among our politicians to take tours abroad in order for the press to cover what would otherwise go unnoticed. Argentine policies can be produced in exile.

These skills became useful during the last military government. Many of those who created the conditions that made a democratic system based in the defence of human rights possible were lawyers returned from their exile that helped articulate a new conception of law and politics. International law and the institutions and processes that would later give place to the phenomenon of globalisation had already shown their potential by the end of the 1970s. The power of the international arena to produce political events during the dictatorship linked the democratic transition to the transnationalisation of politics in both formal and informal settings.

This story began in the wake of political violence in the 1960s when lawyers began to work for social movements and violent revolutionary organisations, while at the same time keeping a clear separation between their different activities. As professors in the law schools, they continued the tradition of formalism and legal dogmatism, separating law from other disciplines and in particular from any normative or political discussions. In fact, legal education consisted, as it had been since the creation of the Civil Code in 1870, of the repetition of legal texts and the explanation of those texts by the jurists. In their profession as lawyers they defended their clients through the technical application of the law. And when these clients were fellow activists that had been detained, the technical defence consisted of the utilisation of traditional criminal law. Finally, in their political activism they participated as any other member of the organisation they belonged to.

The panorama changes drastically in the beginning of the 1970s and especially with the appearance of armed clandestine groups (linked to the Armed Forces and the government) that engaged in the repression of violent groups, but also of political and social organisations. Thus, when the institutional mechanisms, that even in military governments established a minimum of due process, disappeared, lawyers found themselves lost with respect to their role. Their old ways drove them to file unsuccessful writs of *habeas corpus* and request individual injunctions against a State that was taken over by clandestine and paramilitary groups in charge of political persecution. It is in this moment when lawyers began working against what they called 'repression and torture'.

The 1976 coup d'état would deepen that tendency and lawyers who were able to survive a relentless persecution would have to turn to exile. From abroad, most of them were instrumental in the strategies of the organisations that began to denounce human rights violations. In fact, by the end of 1975, just three months before the coup, the Permanent Assembly for Human Rights was created. In April 1977 the Mothers of Plaza de Mayo was formed: a group of women started to gather to ask for information about their disappeared children. Then, given the impossibility of being heard in a country taken over by state terrorism, exile once again became the sounding board and the place where news about kidnapping, torture and murders was disseminated. That is how the concept of human rights started to circulate and to become operative in Argentina.

The strategies of civil society organisations not only involved marches and the media, they used the institutional platforms that at that time international law weakly provided: prominently the former UN Under-Secretary-General of Human Rights at Geneva, the Inter-American Commission on Human Rights, and the Senate of the United States, among others. The reports on massive and systematic violations of law redirected the work to what we now call international human rights law: the agenda of constitutional democracy arrived in Latin America through the most unusual channels.

The return from exile coincides, of course, with the return of democracy. The internationalised agenda of human rights is turned into a demand for public policies consistent with the agenda of the human rights organisations: criminal trials and punishment. To a great extent, it is over this agenda that the victory of the Radical Party in 1983 is built. Alfonsín's human rights policy honours this demand

although without the retributivism (everyone involved in the violations deserved punishment) that the organisations pretended. This tension would face the democratic government in symmetrical opposition to the retributivist view (none of those involved deserve punishment) that the Armed Forces demanded.

The two candidates for the democratic presidency disagreed about the legal possibility of the trials: Alfonsín, for the Radical Party, and Luder, for the Peronist Party. The latter had admitted that the so-called self-amnesty law prevented criminal trials for crimes committed during the military government. The former proposed to distinguish between de facto decisions and de jure laws, ending the de facto doctrine begun by the Court in 1930, and allowing democratic authorities to have the power to include or not the rules generated in the legal system of the nation during military governments. The democratic Congress declared the self-amnesty laws void, allowing the prosecutions of those responsible for the atrocities.

Alfonsín's human rights policy assumed much of what was learned in exile. In fact, important laws were modified, and in particular several international human rights treaties were ratified, including the American Convention on Human Rights (which meant accepting the jurisdiction of the Inter-American Court of Human Rights as compulsory), the UN Covenant on Civil and Political Rights and the UN Covenant on Economic, Social and Cultural Rights. Thus, international law multiplied the contents of the list of rights as well as the jurisdictions to demand their enforcement. Since that moment, the rights of Argentines were not limited to the ones that were included in the four corners of the constitutional text but they were extended to those that the international community had agreed upon after the horrors of the Holocaust. But also, those treaties offered spaces for deliberation about the way to honour those rights and processes through which, increasingly, more actors (individuals and civil society organisations) could enforce those mandates even against the majoritarian will of democratic states.

None of this would have been possible without the consent of key institutional actors. It is interesting to point out, to its credit, how appropriate it turned out to be that the same institution that plunged the last nail in the coffin of democracy in Argentina in 1930 accepting the nonsense of the law of force, accompanied the birth of democracy affirming the force of law. In fact, the Supreme Court responded to these modifications, making room for the theory of the distinction between military governments and democracy, thus justifying an institutional break with its non-democratic past and assuming a foundational attitude from its jurisprudence:

> 'The first determinant circumstance, when the matter concerns the consideration of the reach of constitutional rights, is the awareness that our country is going through a particular historic and political conjuncture, in which, from the different instances of normative production and adjudication, it is attempted to rebuild the legal order, with the objective of re-establishing and securing for the future as a whole the Argentine democratic and republican ways of coexistence, so that that objective must orient the constitutional hermeneutic in every field' (in re Bazterrica, opinion of Justice Petracchi).

That attitude of the Court shows its will to become a political and active actor inaugurating a new vision of the role of the judiciary in democracy. The times of uncritical deference to decisions with respect to public policies have been left behind. From now on, the judicial branch would be turned into one more space of public deliberation about the constitutional adequacy of the decisions of the Argentines.

The fall of Alfonsín's government and the advent of Menem's deepened this vision of the Court. The government decided to carry on certain policies that were supposed to be hard to accept by the judges, such as the privatisation of state-owned enterprises and the process of the deregulation of certain markets; it secured the deference of the Supreme Court by increasing the number of its members and incorporating a majority of its own in fast secret sessions in the nation's Senate. The new Court denied the institutional and ideological proposals of the Alfonsín Court and conceived itself as a tribunal deferential towards the decisions of the political powers in particular, that of the President.

The legitimation of presidential decrees is the starting point that the government needed to face an ambitious policy of state reform without effective checks. If the President did not count with enough votes in Congress, he would legislate through decrees that the high court would recognise as if they were acts of Congress. Thus, the politicisation of the judiciary, for better or worse, became a fact of judicial life.

In the process of state reform it adopted the dictates of the Washington Consensus and advanced through executive decrees, some laws and judicial decisions with impressive speed and a general disregard for the rule of law. Thus state public services providers were privatised, many activities were deregulated and an array of regulatory agents was created. These entities were created with the mandate to control the public service in conformity with the new regulations. In order to do so, they had certain autonomy and some public participatory procedures were put in place and provided standing for the consumers, either individually or through organisations created for that purpose. Thus, with the force of international winds blowing in favour of the reign of market control, a new conception of administrative law eroded the centralist and exclusive regulations of the previous tradition. This new administrative law arrived in Argentina and produced a myriad of consumer associations that take hold of new (or forgotten) processes and find lawyers willing to defend their rights and judges willing to listen to them.

Taking the example of human rights organisations and their struggle in the courts to carry on their agenda of demands, NGOs started to multiply. With citizen enthusiasm, internal or external financing, or in the case of consumer associations even the financing of the state as a way to counterweigh the force of private enterprises, civil society organises itself in foundations and associations of the most varied nature. Together with them, the lawyers that had been the protagonists of national and international judicial struggles for human rights provide their recently acquired knowledge and skills to their new clients in the interest of the defence of their rights before tribunals and before the administrative tribunals that now proliferate.

Shortly before the end of his mandate, President Menem agreed with former President Alfonsín to reform the federal Constitution. Menem's need to attain his re-election met the latter's conviction to curtail the system's tendency towards hyper-presidentialism. But a popular demand to fight corruption and to increase the tools to multiply and enforce constitutional rights also defines the new text. Thus, in a bold move, an important number of international human rights treaties are incorporated into the text of the Constitution. Even though some of them were already part of our legislation, as of 1994 it is clear that these treaties are above ordinary legislation and that (as the Court would ratify later) the bodies in charge of their adjudication (like the Inter-American Court of Human Rights with respect to the Pact of San José) produce the final decision. The bill of rights is in this way extended through the incorporation of treaties in the constitutional text. The incorporation of more rights not only affects individual rights, but also collective ones such as the rights of native peoples and consumers, environmental rights, the right to free economic competition and the right not to be discriminated against.

To the complexity of dealing with an extended list of rights of the most varied nature, the new political agreement added the complex institutional issue of the multiplication of the sources of law. In fact, the previous continental law paradigm was sustained in the monotheism of honouring just one authority, the Code, which upheld its legitimacy in the artifice of the general will. That regime now becomes a polytheistic system. The Constitution, the international treaties, the decrees of the executive and the regulations of its decentralised entities that claim authority and demand obedience rest not only on the legitimacy of the votes, but also on the counter-majoritarian force of rights, the need to value economic efficiency and growth, or stability and legal certainty. These other sources of authority are now added to the authority of the Codes and the laws. Polytheism means that legal operators cannot assume just one authority but they have to defer to the claims of these diverse sources and do it in a way that users of the system would understand their decisions and respect them.

At the same time, the Reform of 1994 adds a crucial instrument: rights are recognised and protected by way of making them effective: the individual injunction known as the amparo, that had been created by the Supreme Court almost 40 years before as an immediate redress of evident constitutional violations, and the new collective amparo, which provides legal collective standing to the person(s) affected, to the national ombudsman and to the associations created to defend collective rights. As I mentioned before, since the beginning of democracy, civil society organisations emerged with new demands, inspired by the success of human rights organisations founded in the deterioration of political parties. The Reform of 1994 provided a wider agenda such organisations to constitutionalise their demands and tools to force both the judiciary, recently turned into an open political actor, and

the majoritarian powers to shape their actions in accordance with the promises of the new Constitution.

This is how the practice we call PIL emerges. The practice of PIL consciously uses the forms of law to include those who had been excluded in the democratic deliberation, to maintain the processes that guarantee that deliberation, and to preserve the semantic agreements in which the language of the law is expressed. In that sense, it is much wider than the practice of cases carried out through collective actions, but given its special history in our country, PIL and collective actions have gone hand in hand from a historical and conceptual point of view.

In Latin America, PIL has been linked from its inception to actions that have sought to modify the state of public positions through the intensive use of innovative legal tools. The different shapes that PIL assumes, generally subsumed into the category of impact litigation, have been diverse. Thus, there are many new PIL strategies, eg, judicial review; collective litigation; the coordination of judicial strategies with political agendas of social movements; a certain elitist vision (many times justified by the failures of majoritarian politics) of the legal needs of those excluded from the access to their rights, and even the activity of helping build legal entities for social actors that the cases need; generating associative and functional structures to defend the political agenda that they are trying to advance.

This is how what we can call counter-majoritarian politics was created: with the emergence of the discourse of human rights, the normative validity of constitutional rights and of those rights that arise from international treaties; with the new role that judges assume; with the availability of procedures for civil society organisations to effectively access justice; and with the emergence of private and public actors willing to exercise the sometimes peculiar roles of clients and lawyers in PIL cases.

This practice presupposes the existence, then, of two key actors: the PIL client and the public interest lawyer, and of a particular relation between them, the public interest contract. The PIL client must know (and be warned by their lawyer of the difficulties involved in) the particular role that he or she assumes when he or she decides to file a PIL case. Under such circumstances, the client must accept that, given the case, he or she must postpone his or her private interests in favour of the public interest that he or she claimed to be defending when he or she assumed the case. Given the complexity of the knowledge and skills required to be able to assume such a role, some of the initiatives of civil society organisations interested in this practice generated programmes of legal training and legal literacy in which they delivered the tools needed to assume this new role.

On the other hand, the PIL lawyer must inform the client of the tensions and difficulties to which they are exposed and carry out the case, taking into account that their case must centre on the cause that was agreed with the client when it was accepted. In this way, the ethics of the professional relationship that is created in a PIL case has certain particularities. The agenda of these lawyers (centred in issue-orientated or legal NGOs, or in law schools with PIL clinics) has been changing. In the beginning, the PIL lawyer's agenda consisted of accompanying the claims of the NGOs and offering them one more tool for advocacy. Nevertheless, as new procedural needs, characteristic in these cases, were discovered, the PIL lawyers started to create their own agenda. In fact, on the occasion of the defence of their client's case, the objective generally consisted of creating the procedural tools needed to do this task in the best possible way.

The creation of a pro bono practice recognises this PIL tradition as its own. Lawyers, out of the passivity and even complicity with regimes that disregarded human rights and the rule of law, organised responses to the recurrent crisis Argentina faced in the last decades. To confront radical evil, they sought for truth and punishment; to confront hyperinflation and stagnation, they organised a regulatory state and civil society organisations to control it; to enhance deliberation on public policies they developed procedural mechanisms for individual and collective interests to access the justice system; and to fight against poverty and corruption they organised legal services organisations to advice and advocate in the favour of those least advantaged. A new profession is working in a new political system.

Such tectonic changes require time to settle into practices. They need new ways of legal education, new professional ethics rules, new legal organisations and a new relationship with the judiciary and the political powers. But the Argentine legal profession has come this far – far enough to look back and have many things to be proud of.