

## **PANEL #1: THE RULE OF LAW AND ECONOMIC DEVELOPMENT: AN OVERVIEW ON THE REGION**

Democracy is key to development, but it is a true multidimensional concept. Since it is broader than the simple notion of majority rule, it is not satisfied only by abiding by proper elections. In fact, it requires both the power of a majority and the limitations on that power. Democracy has its own internal morality built on substantive principles and underlying values, like separation of powers, the rule of law, and the independence of the judiciary. Democracy simply cannot exist without the protection of human rights and the respect of civil and political freedoms. It is a concept based on a group of fundamental values like honesty, dignity, equality, tolerance, good faith, reasonableness, and public order. Respect for the rule of law is the foundation for creating conditions that foster business development. In addition, the rule of law must encompass clear and modern regulations for the formation and enforcement of contracts and the settlement of commercial and other disputes. This, in turn, requires a fair and efficient judicial system as a necessary pre-condition for the rule of law. The opening session will focus on all of the above providing the basic framework for the subsequent discussion on the specific matters to be dealt with by the various panels carefully organized for the subsequent work.

### **PANELISTS**

The Honorable Jorge Luis Battle Ibáñez  
Former President, Republic of Uruguay

Dr. Emilio Cárdenas  
Former Ambassador to the UN, Republic of Argentina

**DRA. MACARENA TAMAYO-CALABRESE:** Good morning. Thank you. Good morning, again everybody. My name is Macarena Tamayo-Calabrese. I am the director of the Latin America & Caribbean Law Initiative Council for the American Bar Association. And I have the honor of being the person that is welcoming you to this important conference about economic development and the rule of law. This is for me also a pleasure to thank the co-organizers of this event who are listed in your program. I am going to take two minutes, please, simply to offer the same welcome to everyone in English. As I have

mentioned, it is also my pleasure to, first of all, thank and to welcome Henry Horbaczewski. Henry Horbaczewski is Senior Vice President and the General Counsel for Reed Elsevier, the headquarters for LexisNexis. And with that, welcome.

**MR. HENRY HORBACZEWSKI:** Thank you, Dra. Tamayo-Calabrese. Thank you everyone. I am not nearly as fluent as Macarena. But let me say a few words of welcome. Distinguished presidents, Jorge Battle and Alejandro Toledo; distinguished ministers, the Honorable Guillermo I. Ortíz Mayagoitia, the Honorable Francisco A. Távora Córdova, and distinguished judges of the Supreme Court, lawyers that are present; and colleagues and friends, good morning and welcome to the first Latin American symposium focused on economic development and the rule of law. I am very pleased to be a part of a program that is highlighting some of the most privileged minds in Latin America. During the following days, we will have the benefit of the thoughts and opinions of ex-presidents, ambassadors, Supreme Court judges, and lawyer members from some of the most prestigious universities in addition to corporate lawyers from some of your most important corporations. I have reviewed the agenda of the conference, and the only thing that I can say is that it's very good; I am glad that I am speaking first because to talk after our panelists, it would be difficult to rise to their level. And now, you have been very kind and indulgent, and I will continue in my own language.

To begin, I would like to refer to some words from Roger Noriega, the former United States Assistant Secretary for Western Affairs. Two years ago, Mr. Noriega spoke to the American Bar Association and to the Association of International Lawyers, and I'm sure that some of you were there.<sup>1</sup> In his remarks, Secretary Noriega pointed out how far Latin America has come in the last years. Today, there are peaceful transitions and popular elections, and the exchange of words and ideas exist in a political context. This political progress has given birth to economic reform since the political infrastructure is much more stable than twenty years ago. But while many Latin American economies are much more stable and open than they were twenty years ago, many people in the region are still frustrated that the benefits of these stable and open economies do not flow consistently and uniformly to all citizens. Mr. Noriega pointed out that citizens

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1. Roger F. Noriega, Rule of Law in Latin America, Remarks Before the American Bar Association's Latin America & Caribbean Law Initiative Council, Washington, DC Apr. 13, 2005, available at <http://www.state.gov/p/wha/rls/rm/2005/q2/44606.htm>.

have no confidence or trust in their legislature, political parties, judiciary, or that democracy will be applied. He said that institutions are always too centralized and too bureaucratic and that many of these legal systems lacked legitimacy and pushed people outside the legal system; this conference is very timely. In the following days, we will look at the creation of economic reform through the rule of law to create economic support that will favor a sustainable economy in America. The situations and the results coming from this conference should capture the opinions of the public in the audience.

Before we begin, I hope you can come to understand the central premise for the current rule of government, that there can be no economic development without a rule of law, that it should be based on recognition of spontaneous, local activity and not based on large credit-based loans to support these activities. This can have a very large effect on economic activity because people will not invest if problems exist. They need to have confidence in laws that can be practicably applied and that are logical. This creates an environment of confidence/trust that is fundamental in business negotiations in these complex times we are living in. Recently, I read an article about the spread of AIDS in Africa. The article discussed what was being done in relation to property and the inheritances to the family members; there were many *ad hoc* ways to arrive at property distributions, and there are many problems with these systems. This is left to the doctors, the health organizations, and public government agencies to deal with some of these deficiencies. But it seems that lawyers would be better with these cases to identify, understand, and manage the issues.

Another issue that hits much closer to the homes of the Africans is the availability of a title security to property; in much of Africa there is no system for guaranteeing land ownership. Similarly, I believe that Latin American citizens would have more confidence in their institutions and would be more sensitive to investment if they saw the benefits of a reporting system for property, and laws that support this system. I think registry systems are very much compatible with regimes that support credit because this could help relieve poverty, unlinking the equity costs of owning property from ownership of the property.

Another topic that we will be discussing in this conference is intellectual property rights. Societies without healthy and dynamic creative communities argue that respecting the intellectual property rights of others is counterproductive to economic development. The United States of America was once one of those societies. In the 19th Century, the U.S. was notorious for disrespecting the intellectual property rights of foreign authors. Luckily, we have many reasons to

be grateful that our legislators had the wisdom to change that, reverse that policy and strongly protect intellectual property interests.

Protecting intellectual property rights under the rule of law is, I believe, critical to foreign trade and investment. But in addition, protecting intellectual property rights also creates an environment in which creative activity can flourish in the country. These cultural benefits to society are equal or possibly more important than the corresponding economic benefits.

The following are ideas on how economic development and its links to community roots can be beneficial. Rather than supporting foreign investors, we should construct transparent systems for local lenders, local creditors, local investors, and local legal systems for citizens; this system would be much more supportive of neighbor actors in creating economies with deep roots and ample benefits. In industry, it has been said that everything is based in brain power, and that the future is always now. I believe we have the brain power in this room to give Latin American citizens reason to have confidence in their institutions. But before we start our program, I need to know what you believe. Do you believe that the rule of law has a critical place in the economic development of Latin America? Do you believe that your neighbors and fellow citizens deserve access to stable open economies that they can trust? And do you believe that this will leave our children a better world than the world we have inherited from our parents? So, let's get to work. Lawyers live to solve problems—that is what we do. Let's exchange ideas. Let's create plans. I call on you to share your creativity, your critical thinking and your imagination with the rest of us. Let's put the incredible brain power in this room to work, to being, creating a future that those who come after us can be grateful for. Thank you very much. Thank you for your indulgence.

**DRA. MACARENA TAMAYO-CALEBRESE:** Thank you, Dr. Horbaczewski. We will start now with this panel, Economic Development and the Rule of Law in Latin America: A Global Vision in the Region. As you know, respect for the rule of law is the basis for the creation of conditions that will promote the industrial and commercial development. This necessarily requires a judicial system that is impartial and efficient. This panel will discuss this and will establish the base for the rest of the conference.

And for me, it is a pleasure and an honor also to introduce to you to our two first panelists, Dr. Jorge Luis Battle Ibáñez and Dr. Emilio Jose Cárdenas. Dr. Battle Ibáñez is a journalist, lawyer, and politician who served as president of the Republic of Uruguay from

March 1, 2000 to March 1, 2005. He is the son of Luis Batlle-Berres and nephew of Jose Batlle-Ordóñez, both charismatic presidents and protagonists in the history of Uruguay. He is the great-great-nephew of President Lorenzo Batlle. Before becoming president, Dr. Batlle Ibañez was elected senator and served between 1985 and 1999, leading the Lista 15 political party.

Our second panelist, Dr. Emilio Cardenas was designated ambassador and permanent representative from Argentina to the United Nations in September of 1992; he was also a provisional member of the Security Council of the United Nations. Before he entered public service, he was a lawyer in private practice specializing in international business transactions, gas and oil, shared risk ventures, governmental privatizations, infrastructure projects, and project financing. I ask you to welcome these two first panelists.

**DR. EMILIO CÁRDENAS:** Let's begin by sharing with you the mechanics of this session. Dr. Batlle will speak first for fifteen to twenty minutes. I will then follow with some additional reflections. We will plan to leave fifteen to twenty minutes of this segment dedicated to question and answers, with the understanding that the audience members will be asking the questions. Thank you very much. Dr. Batlle.

**DR. JORGE LUIS BATLLE IBÁÑEZ:** Good morning. I would like to, before starting, to make some clarifications. Technically, I am a lawyer. My professional practice was very brief because all my life I have dedicated myself to politics, journalism, and agricultural activities that sustained the other political and journalistic activities. Thus, I am not going to give you anything that's absolutely interesting regarding the specific legal topics that the group is going to analyze and discuss; rather, I will try to express thoughts and ideas of political character as a function of my extensive life experience. Even that is not due to my personal merit because I was born into a family that has been dedicated to politics over generations. Since I was a very young, I have participated in the political institutional changes experienced by this continent over the last seventy years of the twentieth century and continues into the present.

My insight into what you are undertaking will be grounded in a political context. When I received the invitation to speak from my friend Emilio Cárdenas, I was very thankful but I told him that I was not a person with the aptitude to participate in the analysis of these

issues because my interests were in other issues, prior and pre-existing issues.

I received the report from the Americas Society and Council of the Americas, which talks about the rule of law, economic growth, and prosperity.<sup>2</sup> And I have looked at the report and tried to follow the ideas in order to organize the few words that I will pronounce here today. This report organizes the agenda into four areas: administration of justice, regulatory framework for business and investment, alternative methods for conflict resolution (alternative jurisdictional functions and methods), and patent systems for intellectual property. This document establishes what the structure a legal order should have so as to provide those substantive essentials in order to attain confidence in investments that are necessary not only from local agents but also from foreigners in every circumstance and in any country. It is defined as a system in which the laws should be of public knowledge, clear in meaning, accessible to all, universally applicable to an independent judiciary that is free of influences. These laws should be handled by centralized legal institutions that are characterized by tribunals of permanent judges, full budgetary funding, reasonable equitable policies, competency, and efficiency. Government needs to engender respect for the law and make sure that government officials accept the premise that respect for the law starts with themselves. Laws should respond to general rules and principles and be transparent, stable, clear; they are to be treated as fundamental pillars to advance growth and development.

Without a juridical framework that provides a stable structure, I would say that a society cannot obtain either its moral or material objectives, cannot comply with the essential values of democracy and its material objectives, and cannot achieve a democracy characterized by justice, fairness, and plenary influence. Reading through this proposal, two main questions arise for me: Can there be growth with prosperity that is procured when the conditions we outlined here are present and only those conditions are present? And can there be growth if these conditions are not present although there might exist other basic essential features that can substitute for those of a “formal” democracy, that is, a constructive, essential democracy? These will be the two issues that I will deal with and then Ambassador Cárdenas can expand on the political side, since he is able to do that better than me.

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2. Americas Society, Council of Americas, Rule of Law Working Group, RULE OF LAW, ECONOMIC GROWTH AND PROSPERITY REPORT, July 2007, available at [http://www.as-coa.org/files/PDF/pub\\_562\\_363.pdf](http://www.as-coa.org/files/PDF/pub_562_363.pdf).

Regarding the first question, my answer is absolutely no; where these conditions exist but formal democracies do not, there can not be sustainable growth. Where these conditions exist but formal democracies do not, fundamental liberties cannot exist; where fundamental liberties are lacking, there is no democracy. If there is no democracy, material growth cannot be sustained and prosperity cannot be advanced—because property without freedoms are incompatible concepts. We are seeing in some instances, situations in which the legal order such as that being analyzed here, attempted to solve issues of investment, contracts, and patents but without a respect for fundamental liberties. This situation arose in Latin America a few years ago, where a military regime set up juridical norms that ensured the observation of this legal order and attempted to foster material growth at a time where fundamental liberties of any kind did not exist. Such a regime, for as much as it ensures the validity of norms, and for a time, promotes and ensures material growth, this regime cannot be considered either democratic or sustainable.

The second set of questions then becomes: What will the investor do? What will he focus on in order to decide on an investment? What advice should he hear from lawyers? Sometimes, after political upheaval in countries that have suffered the attacks of totalitarian ideologies in their governments, there emerged as a response, and we have seen, strong military governments that established a reliable legal order without political rights. With this reliable order they got, in certain terms, the confidence of investors and generated material progress. In my judgment, democracy sustains its being through justice and equity; this is the scenario where there is true progress, progress that we should sustain, support, and ratify. It is not because material progress is not valid in itself, but because material progress cannot be admitted if at the same time we pay a material price of disappearing fundamental rights.

So, in a few words, and in order to say it clearly and quickly, the lawyers who know the subject better than I, it is difficult to say to the potential investor—look, don't invest in countries where absolute and free democracy does not exist. Because in reality, the reality is that this brings later political consequences that will be difficult to resolve. Where legal processes were created in times with a lack of democracy, without a doubt, from the political view, it is much more difficult to deal with these processes once a democratic system has been instituted, even when taking into consideration that we have lived through years in regimes where we have suffered. With much certainty it can be said that commercial and industrial businessmen in Latin American should not be engaged in political action, especially if the person is foreign.

They should not judge what happens in a country. Although political and social extremes have played out in Latin American countries, when investment occurs, employment increases, technology improves, production increases, and there might be some profit. However, I believe that investment is not made to improve employment nor to increase production, but rather it is done because there is a chance for a profitable business, and the consequence of this are those other effects. It is not the other way. This cause and effect relationship begins when business is available. And business becomes available as a function of competent judges, contracts that are completed, enforced and respected, and patents that are respected despite pressure from all over the world. This is the situation that, I think, has propelled us towards the realization of democratic political mechanisms, widely liberal and respectful of fundamental rights of individuals, of institutions, and economic agents. When democratic institutions are not present, if investment is retained, the investor will have to accept, in regards to his rights, that the government has possibly suppressed fundamental rights, something that on the surface may not seem to affect him. However, it might be that this government could turn around and violate the investor's fundamental rights. This creates issues of trust and institutional redress when the investor attempts to continue his business activities.

In Latin America, in the Twentieth Century, there have been various instances of the issues that I talked about previously. The first example emerged after the Crisis of the 1930s [known as the Great Depression in the United States], a period of economic and social upheaval throughout Latin America. With the exception of Colombia and Costa Rica, all the other countries suffered either civil coup d'états or military coup d'états. These political events arose from repercussions of World War I, primarily economic depression created from commodity price collapses. Latin American countries, as purveyors of prime materials to the warring sides, depended on continued sales and revenues for their livelihoods, social lives, institutions, and the possibilities for all types of development. During this time, you can recall, two big ideological currents emerged from the same root. One expanded in Europe after the Nineteenth century, originated in Marx and perpetuated by Lenin. And the other side of the coin was made into a pretty successful political theory in Europe and in several places in the Americas. It originated in the political plans of old Italian socialists, who along with Pietro Aneni and with the anarchists who had actively participated in the "Semana Roja" (Red Week)—Mr. Benito Mussolini. Benito was known as "Juarez"; his father had given him the name in honor and memory of Benito Juarez.



He organized the flip side of Marxist theory—which was fascism. All of you know it, and all of you know it better than me. These ideas resounded in America, influencing the institutional movements that we have described. For example, in Uruguay, in the Revolution of March 1933 we experienced a coup d'état with an ideological profile based precisely on the theories and practices of Italian Fascism. Something similar happened in Brazil with Getulio Vargas' Estado Novo (New State) and the Revolution of the 30s. In that famous photograph, we see Getulio, wearing a military uniform alongside a young man, Adolfo Collor, who was to become Brazil's first Secretary of Labor,<sup>3</sup> taking possession of the National Palace. It was easy for everyone to observe a rupture in institutional order because of these civil and military coups d'état. They were all coups. Nevertheless, the investments that occurred in Brazil were not based on the rupture of this institutional order. If the institutional order that was damaged had eventually prevailed, the investments would be the same. Investment was not a function of whether there is or is not a state of full rights and of full democracy.

What is the situation today in Latin America? The situation today in America is one that is the opposite and contrary to the situation that we saw in the 1930s, but America is in a crisis situation nonetheless. I use the word crisis as an expression that supposes a change, or opportunities for change, though the change may be for the worse, it is still a change. This current crisis stems from extremely high prices and costs. I don't know if they are excessive, but in the eyes of those of us who have worked all our lives in production these are truly stunning prices, no? When one observes the cost of a ton of powdered milk to be \$1000 and then be sold to the open market at \$5000 per ton, one wonders. When one sees the price of flour, natural gas, and petroleum, of that of petroleum rising to eighty dollars,<sup>4</sup> one could think that these increases are not manipulated wrongfully, that perhaps the prices makes sense as a reflection of values/costs in an open market. But this has transformed the political climate in America and I want to make references to some things that go back to the second question that I posited regarding the existence of democracy in countries where elections exist. Is it necessarily true that countries that have elections are democratic? You might be able to find the conditions that make possible investment contributions, the existence

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3. These labor ministries were incorporated in constitutions following the example of the German Weimar Republic Constitution of 1919, which incorporated a number of social reform and labor reform ideals.

4. Editor's Note: At the time this went to press, the open market value of a barrel of crude oil was over \$130.

of development and growth and democratic systems where there are formal elections, but in reality there are many other things that are missing.

Those who study legal philosophy and do their theses on this topic in the U.S. and in Europe—they all agree that modern democracy is not based solely on public government with representatives in a formal democracy. Rather, it is based on a regime of separation of powers, judicial independence, valid law, and human rights, which together are called substantive democracy (as opposed to a formal democracy). And as Professor Barak, Supreme Court Justice of Israel, has said—we have learned that without the protection of human rights, democracy cannot exist. In the time since 1950, after the Korean War up to the present, one of the things that have most impacted life in our countries has been the increase in population and urbanization that Latin America's large cities have experienced. Mexico is an example of this. Sao Paulo is another. And all Latin American countries face the same impact because they have cities where is a high ratio of people living in the urban capital compared to the surrounding area. In Uruguay, we have three million inhabitants; in the urban capital Montevideo and its surrounding suburbs there are 1.2 to 1.3 million people. Thus, we have an increase in the difficulties encountered in creating an ordered and peaceful co-existence because we are not prepared to respond to this increase in population.

Just as in the Dickens tales, where urban population growth in England occurred due to industrial development that provided work and careers, we are seeing this in our Latin American cities. It has become difficult to live in peace in these cities. And this increase in population makes those who acknowledge this situation also acknowledge something else—that while there has been an increase in population and urbanization in the Latin America, there has not been a parallel and accompanying increase in the available resources and growth that would respond to those problems that today are labeled “social problems.” These problems appear to be different and distinct from the problems that other countries and democratic regimes have always had to deal with in maintaining their governmental and social systems.

So what is happening here in Latin America, why is this different than in other places? As it happens, Latin American countries that have been affected by the formidable increase in prices of basic materials, like gas, petroleum, soy, corn, flour, dairy products, food products, minerals, have adjust to these conditions in political manners. These are understandable political means, but these actions seem to have brought very negative effects when attempting to increase economic growth and using these accomplishments to create better

levels of justice and equality. Some countries have attempted horizontal populist proposals of benefits, of improvements, of growth and of material contentedness through the unnecessary, inadequate and mistaken use of resources, which are readily available when petroleum goes from twenty dollars to eighty dollars per barrel. Governments offering this populist wealth obtain popular majorities, laws are modified, the constitutions are modified, and formal democracies are formed where rights no longer rule even though governments can point to the fact that there is a president and constitutional reforms were supported by the people. We are living a new reality and it is a grave reality, very grave, because it not only affects legal institutions, it not only affects the rights of those that want to invest, but it affects in a fundamental manner, in an unconscious manner, those people who do not realize that they are losing their liberty a little bit every day, not until certain events all of the sudden happen.

When one observes political, legal, and actual structures, where there are elections, political parties, political forces that look for more just alternatives, where there are electoral tribunals, justice tribunals, and parliaments that are elected, political majorities are created and used in these formal democracies that begin to dictate norms, legislative as well as administrative, that apparently do not affect fundamental rights but in reality, violate all the extremes that this report has named. What is violated is the juridical system, the rule of law necessary to have the conditions for sustainable growth that will allow nations to reach levels of equality, justice, and liberty. In the end, it is always a question of liberty—that which human beings identify as essential to have available in dealing with the difficulties of life, as an essence of the same, we must recognize the dignity and respect in all people.

In some Latin American countries today, legitimately elected national assemblies can give the holder of executive power total legislative power in all areas of national concern without applicable limits for a specified amount of time. This conferral of power is more than those given to the ancient dictators of Rome, whose powers were constrained as a function of the exceptional circumstances that existed; the existence of legal constraints made a clear difference between a dictator bounded by legal conditions and a simple tyrant. When these conditions and constraints disappear, even though it is done in a perfectly legal way, all these rights and guarantees that we are analyzing here today, evaporate. For example, Venezuelan law authorizes the president of a republic, as a function of Constitutional Articles 203 and 236, so that the president of the republic can dictate decrees with the full rank, value and force of law in the matters that are

delegated to him by the National Assembly.<sup>5</sup> In this law, we see that the delegation of power is substantial, that it gives away powers related to the transformation of the state's institutions, public participation, to the social and economic environment, to the financial and tax environment. Poor John Lackland was born at a bad moment, in a place so distant, that if he had known about Venezuela, he would be so happy, no?<sup>6</sup> The Venezuelan National Assembly decided to disappear itself by giving away its powers to the executive regarding citizen and judicial security, science and technology, territorial boundaries, security and defense, infrastructure, transportation and services, and energy. This has been an irreversible year; the Venezuelan National Assembly was elected, the Organization of American States reviewed the election, and it confirmed its validity.<sup>7</sup> This is happening, and this is not democracy. And then, within a few hours, we saw a proposed reform in the constitution focused on the possibility of presidential re-election. Furthermore, the president of the Republic wants to reform the articles of the Constitution so that among other lovely things, the armed forces of that country can practice administrative police activity and criminal investigation.<sup>8</sup> The poor judges will have to ask the colonels how criminal investigations should be conducted.

When the use of the majority is modified and its power can be shaped by the executive, organizations such as magistrate councils can be changed by the "majority." The executive power can now determine how judges are promoted, transferred, and how they are chosen. Norms have been established through constitutional reform that explicitly state that the Central Bank is not autonomous, and that the executive power will decide along with president, with the Central Bank, what to do with governmental surplus. The disposition of this surplus is to be organized and parceled into areas and federal regions designed by the executive. These new institutions will be

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5. Ley Que Autoriza Al Presidente De La República Para Dictar Decretos Con Rango, Valor Y Fuerza De Ley En Las Materias Que Se Delegan. La Asamblea Nacional De La República Bolivariana De Venezuela (Ven.).

6. King John I "Lackland" of England, was forced by the English barons to sign the Magna Carta due to perceived abuses of the king's power.

7. Observers Report to OAS on Elections in Bolivia, Honduras and Venezuela, Feb. 2, 2006), *available at* [http://www.oas.org/OASpage/press\\_releases/press\\_release.asp?sCodigo=E-017/06](http://www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=E-017/06) (last visited Apr. 18, 2008).

8. Venezuela: Nuevo Esquema De La Propiedad, Antimperialismo En Las Fuerzas Armadas E Instauración Del Poder Popular, *available at* <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=2505> (last visited Apr. 18, 2008).

superimposed on top of the previous provincial, regional, and municipal organizations, akin to a federalization of powers. Executive power designates will substitute the current local officials. Chavez can now dismiss these local officials when he wants or how he wants by use of the constitutional structures even though he has the advantage of other articles and powers. This is an interesting thing to know—that a federal executive official may have a right to such a thing by constitution.

Before us exist formal democracies that are not true democracies—and this is happening right here in Latin America. This has happened as a result of and thanks to the poverty that we have suffered up to now after the economic depressions that emerged after the Korean War; that is one of the basic themes we should try to analyze and study. Between the latter half of the Nineteenth Century and 1930, we developed a system to protect rights based on English system. We then began to hesitate on this model, and we lived well based other countries' disgraces and ill fortunes until 1956.<sup>9</sup> In 1956, several important events occurred in the world. The U.S. government, through President Eisenhower, forced France and England to retreat from Egypt and the Suez Canal. Europe's leading role in world affairs came to an end; whether that is a good thing or a bad thing, it does not matter; it ended. Only Russia and the United States were left, and the one who really won the war was Russia because Russia destroyed the backbone of the German army; without this, Germany would not have been penetrable. This was achieved with the help of the U.S. and England, but it was Russia that actually did it. And as such, Russia ends the war representing "good" and those left on this side of the world represent the "bad"—because they represent the retreating protectors of imperial colonialism. Russia forced the U.S. to undertake work it never wanted because the U.S. is a basically an isolationist nation, as it was in 1914 and also in the first few years of World War II. And, if there had not been a Pearl Harbor, who knows whether the U.S. would have entered the war.

In the "this is good" and "this is bad" extremist world, Castro's revolution is born in 1952. And, as a consequence, we began to lose our relationship with the U.S. This is also what fundamentally occurs with the creation of MERCOSUR. The relationship between the U.S. and Europe, which we experience and live through, from which we received our roots, culture, religion, science, technology was cut

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9. The speaker is probably referring to World War II and Latin America's status of the purveyor of raw materials and food stuffs for war purposes.

off. From that point onward, we are doing nothing but wasting our own reserves that had been accumulated during the various wars. The resurgence of certain political movements in the MERCOSUR contributes to our economic decline, and the Economist comments that we were on a “slippery slope.” Luckily, Christopher Columbus’ dream came true and we found Asia; Asia saved us again. But Asia saves us because as prices skyrocket, we are left with a society that has turned backward with respect to what it had, and as such we have great masses that suffer in such form that they are easily seduced by government officials and entities that can manage at their pleasure through electoral results that beneficial to these governing individuals because they cultivate neediness and hopes and dreams in the public. This formidable surplus can be generated by anyone who produces petroleum with a cost of twenty dollars and can sell it at eighty. And if they have two million barrels a day, they can get 160 million dollars a day. This is destroying essential democracies, transforming us into formal democracies that attempt not only to limit the rights of those who want to invest—they fundamentally attempt to limit the essential liberties of the public that, in this case, worse than before, suffer a deception.

I am not speaking of a realization when there are changes, but a steady state realization when things are stable and functioning normally; the people will realize a system where liberties are weaker and become more fragile everyday. They will then realize how much time they have lost in trying to better their country. For example, there is the case of a country that has seen its fundamental natural resource, copper, generate an increasing amount of national riches; its revenues have increased three or four fold.<sup>10</sup> This country has managed to handle this new wealth well; there are situations in Latin America where things are run well and where things are run poorly. Either way, they not only affect the rights that this conference is going to analyze and study, but also in the short term and long term, they affect fundamental rights. It will be a difficult to say this, but I do not think it is anything new, nor do I think it will come to fruition, but it is good that I express my point of view, which is not objective because I see things from my political perspective where I have been all my life. By investing in a democracy, an investment can improve salaries and bring about new products and technology but it does not *per se* help

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10. The speaker is probably referring to Chile, whose main resource is the export of copper. Spot copper prices have increased from \$0.8/lb in 2003 to \$4.0/lb in 2008; see [http://www.kitcometals.com/charts/copper\\_historical\\_large.html#5years](http://www.kitcometals.com/charts/copper_historical_large.html#5years) (last visited Apr. 18, 2008).

liberties/rights—without liberties/rights, whether one is rich or a slave, the investment has no value. Thank you.

**DR. EMILIO CÁRDENAS:** Thank you Dr. Batlle. I will try to continue with your analysis from the point of view of the professional that, at times, gets possible external and internal investors that ask about the health of your democracy. He has to attempt a response, a response that is sincere and clear in order to orient the client, especially when one is asked for example, “tell me, Doctor, what is the legal and judicial power of this country like? I am willing to invest depending on how trustworthy your judges are.” How many of us have real difficulty in answering this question sincerely because we doubt the gravity of the problem even though we suspect the problem exists. Let me attempt an incursion into what could be the conceptual structure of our destiny by understanding where we are right now.

We start with the assumption that the current situation in Latin America, due to the phenomena described by Dr. Batlle; it is not very clear where governments stand today. He spoke about the rupture in democracy with military coups where it was easy, he said, to detect what institutional order was present in a given system. This was an obvious rupture, an evident rupture. Even today, we experience processes of rupture; moments of the degeneration of democracy, processes, which in some cases, not in all, cross at certain moments the threshold of political sensibility. In these instances, the leadership decides to “take off their mask” and reveal exactly what their intentions are towards democratic entities, but not always. My sense is that today we are far from that sort of black and white situation that we once had in the region, but we have a sense that it has a viral quality that will affect rule of law. We suspect that this virus has infected some corners of the region more than others, and we are certain that there are some corners of the region that have generated antibodies so that this virus does not contaminate them. When we try to analyze the rule of law in Latin America, it is important to note that today there are anomalies— anomalies with dangerous consequences because they are adverse to the life of the republics. And I want to give a name to these anomalies to help in the analysis, a name that I think we can attribute to a phenomenon that is not necessarily new, nor is it exclusive to Latin America. And the name that political science has been promoting recently, particularly following the definition provided by Marina Ottaway who works for the Carnegie Endowment of International

Peace in Washington. It is semi-authoritarianism.<sup>11</sup> It refers to a type of authoritarianism that is well-hidden in its purpose. I contend that this is nothing new because if one looks back, and those of us who have more white hair can look back more easily, semi-authoritarianism has manifested itself in Latin America in many different places: the phenomena of Peronismo in Argentina; what the Partido Colorado has done in Paraguay; and other examples, in I would say, in the majority of nations in the region.

Dr. Batlle mentioned that this phenomenon is not exclusive to Latin America. In political science research, the phenomenon of semi-authoritarianism appears to rise at the end of the soviet empire with the abrupt transformation of the countries that had been behind the iron curtain. In these transformations, the communist leaders merely took out the symbol of communism and passed themselves as democrats. But in reality, they belonged to the same oligarchy that controlled the country before the collapse. And they continued to control those countries after these ruptures, re-baptizing themselves politically, some with more luck than others.

I attempt to compliment Dr. Batlle's presentation with some brief reflections to see if we can help with the conceptualization of the ideas presented by Dr. Batlle. First, I think we should attempt to see if we can define when a government, beyond the exterior polish, can qualify as semi-authoritarian. It occurs to me that there are four criteria necessary for such an analysis. First, when the government has unity that is only formal and merely rhetorical to liberal democratic principles. It self-defines itself as a democracy, but when one looks beyond the surface, it does not appear as such. Second, the existence of formal structures of power that are characterized by weak branches and a tendency of submission and servitude toward the true political power—in general, the one that holds the executive power. Dr. Batlle told us cynically that, unfortunately, the region is full of occurrences where legislative power is increasingly delegated to the executive. He referred to my own Republic of Argentina, where this phenomenon is happening in a more subtle way. Argentina has a parliament that one can't say doesn't exist, but governs as a function of need and urgency, delegating to the President of the Republic its powers in a piecemeal manner. This is the same President that when he was a member of the political opposition did not support a democratic government to rule Argentina. He went from the opposition to the presidential seat, and

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11. Marina Ottaway, *Democracy Challenged: The Rise of Semi-Authoritarianism* (Washington, D.C., Carnegie Endowment for International Peace 2003).



now the government is his instrument, his own to govern. There are many more laws based on necessity and urgency that delegate power by the legislature to the executive than laws based using legislative powers. The Argentine Congress has gone into session less than ten times—and serves as basically a rubber stamp. The third criterion is an outspoken respect for individual rights, for the law, contractual commitment, and for the rule of law but only in general principles without much detail. And fourth, and most dangerous, and I would say most proximate to the problems that we have with the legal professional, an authoritarian and capricious exercise of the powers of the government. It is frequently characterized by intimidating tones and administrations that have a proclivity to abuse police power, where the courts are suspected of manipulation and partiality, not to mention corruption, where the parliaments are apathetic and institutions are in disrepute in public opinion. With these four criteria, I would say it is relatively simple to identify the degree to which the semi-authoritarianism virus has infected the sick, the degree of sickness in a democracy. But what is important is to note is that to disguise the reality, regimes play this sort of game exposing a certain level of political activity—but it, in reality, is mostly a smoke screen. And when confronted with any expression of political opposition that they consider dangerous to their hegemony supremacy, they react in threatening manners. To disguise their intents, these governments revert more and more to using their financial might. For example, through mass communication, at times brutally and disreputably but usually subtly, government focus all the political discourse in a manner to make third parties not belong to their own political oligarchy, thus preventing them to enter the political discourse or return to the power.

When does the temptation of semi-authoritarianism appear? I would say when at least three factors come together. First, countries that have had authoritarian occurrences, experiences of “caudillismo,”<sup>12</sup> and strong military government. In Latin America, this is a serious problem because most countries have had these experiences. Second, when governments have fragile political institutions. The fortification of political institutions is one of the responses to confront this phenomenon. When Dr. Batlle spoke about Chile, Chile is a country where the political institutions are strong and healthy, where the institutions enjoy the public’s respect; these are actions to protect a country moving toward substantive democracy. Third, is the existence

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12. *Caudillismo* is a type of militia leader with a charismatic personality and enough of a populist program of generic future reforms to gain broad sympathy, at least at the outset, among the common people. It may involve instances of patronage to foster loyalty.

of societies with large economic inequities. With these three criteria, the conditions are fertile for semi-authoritarianism. But I return to something I just said, it is important to note that semi-authoritarian governments that are not the product of chance, that do not appear through spontaneous generation, but rather they are the result of carefully conceived and precisely executed political strategies that encourage the opportunity to improve and to maintain a specific type of governmental power structure with the type of characteristics I have just described.

It is not like many in political science have believed until now—democracies in process, democracies that with the passage of time will improve their quality, evolving democracies. It is nothing like that, we are encountering a different monster, they are what they are, and they will continue to exist because their design is strategic so as to maintain and to concentrate power. As it happens, the cultivators of semi-authoritarianism encourage that nothing change over time because this is their political strategy. The cardinal of Buenos Aires, Monsino Bergoglio, referring to the reality of the Argentinean situation, with great risks of semi-authoritarianism, said that our current reality is like a lottery in which the same people always get the prizes. But the bad thing is that the lottery is designed and maintained by the prize winners as well. As such, it is no coincidence, no product of accident. This, in turn, generates a proclivity in people, a populist temptation. Why? Because feeling a political swindle, the populace takes refuge in the usual “let them all go,” that is, get rid of them all. At the same time, semi-authoritarian governments frequently assume the role of protectors of their societies, defenders of their people against the selfishness of individualists and against the exclusions that capitalism inevitably generates. These are governments that in reality distrust democracy because they fear the risks of democracy and they prefer to take refuge in options that have already knowingly failed, as history has shown—but they return to these options under a different guise. Semi-authoritarian leaders dabble in democracy, but they never put their power at risk. They appear to consciously be what they are not. Almost all seek refuge in populist patronage—in the art of resource distribution—with everyone else’s money or with “commodities” money, in some cases generated by the price of crude, in other cases generated by a much more simple form such as export taxes imposed by the National Treasury. So when there are increases in commodities prices, instead of going to the manufacturers, they go to the treasury. With that money, they distribute subsidies, more each time, to public employment, pensions, benefits, and the fate of all this in political science is called public services/social good. This is accomplished,

disgracefully, by changing loyalties at voting time, exploiting personal interests. Then they try to buy and sell votes. It is a very simple; this demagoguery ends up eliminating from public discourse the idea of a future hope. Because the politician himself falls into an eternal reality, as eternal as it is illusory, the politician pushes society into the mirage that he himself created.

At times, the semi-authoritarians install fear in these societies, and those fears are created through the installation of resentment and conflicts. Today there are politicians who are dedicated to systematically plant resentment, and over time a society which disintegrates because of the constant planting of such resentment is a society that generates possibilities for internal fighting in the medium term. These politicians try to keep society anxious, extremely anxious so that they may present themselves as saviors or as guides in a storm. Enveloped in this pretense, they are masters in the art of manipulating elections without any respectability. They control the electoral law. These are all questions that one needs to ask oneself: They carefully selected the election dates, which are made sooner, later, or extended for their convenience or for purposes of polls and investigation or because of events; whatever serves their purpose. This is simply a manipulation; they create even greater political machines with publicity teams that deafen the noise of the streets with groups of demagoguery addicts. They deafen the space with short slogans, as if the repetition of these slogans or phrases and not dialog or consensus could lead to the truth. These are new techniques with undoubtedly old antecedents that take advantage of the masses utilizing what one author has called “the ignorance of the masses.”

Semi-authoritarian leaders are also relatively easy to identify because they frequently have some characteristics that in private life generate immediate rejection, but in public life there is a delay in recognizing these attributes. They normally lack civility. They work in the cesspool of insults, of exclusion. They attain the means of competition, controlling them directly or through crooked politics—like the distribution of official propaganda to specific friends or enemies, depending on the circumstance. This is an exercise with which they plant opinion. It is the “*prêt à penser*” as some say, that deceive citizens, falsify democracy. The worst is that while they do all this they damage the institutions and run certain risk of being discovered for their deeds because they don’t realize that taking advantage of means of mass communication can bring the possibility of being subject to the mercy of these very means. It seems to me that for the purposes of our analysis, in relation to our local and external clients it is time to warn them about all dimensions of this category of politics

that is based on a parody of democracy. This political category makes judicial strength security relative. It puts in danger the effective relevance of civil and political rights and human rights. And this is the frame for the rule of law, fragile because the rule of law is only respected by authority when it is functional and useful to its objectives. When it is not, the rule of law is damaged and set aside. The danger of not avoiding these cyclical processes/occurrences and not avoiding these issues timely, is that societies become incapable of establishing strategies to confront/deal with these problems and for investors, it is not being warned when it is time to change, when it is time to exit before situations turn or end in a very poor fashion.

I will stop here. Thank you very much. Do we have time for questions? Is there someone who would like to ask a question? We have time and I am sure Dr. Battle and I would like to try to respond. Does anyone dissent? We've been so clear, right? Silence is golden. In the back.

**AUDIENCE MEMBER:** Good Afternoon. How are you? My name is Alisarma. I am from Caracas, Venezuela. I work with the Partnership for Development and Justice Organization. You have explained what semi-authoritarianism is, and we know what has happened in Venezuela, but the question that I want to ask you is: In a democracy, how does one combat a semi-authoritarianism that has pervaded all levels of society, such as enterprises, politics, and civil institutions?

**DR. JORGE LUIS BATLLE IBÁÑEZ:** From the political point of view, the first manner in which to defeat it is to describe and identify it and then denounce it. Only with truth can the systems change, denounce it without mincing words, with clarity. I am going to give you a brief history regarding your country. We were in Costa Rica, where all the region's presidents were congregated.<sup>13</sup> For a few days, we experienced the distancing of Hugo Chavez from his Presidency of the Republic in Venezuela.<sup>14</sup> In this meeting of Presidents in Costa Rica, there were some that thought we could intervene in some form to try to support what was happening. There were two meetings, one of presidents and the other of chancellors. In the presidents meeting, I

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13. The Rio Group Summit XVI of Latin American presidents was hosted in San Jose, Costa Rica in April 2002.

14. The head of state of Venezuela, Hugo Chavez, was temporarily deposed in a failed coup d'etat, on April 11-12, 2002.

was given the task of presenting the thesis that we should not support what had happened because we would then validate any congregation of people in Latin America getting together with a complaint and through a mobilization, attempt to replace the existing authorities with other new ones that no one knew, what they represented nor where they came from, even though they implicitly had a certain degree of reason. At that moment, we were living in a strong financial crisis, and I immediately thought, how wonderful—we are going to end up resolving the issue of rule of law through gatherings by presidents in public plazas. I was opposed to the use of this gathering to generate the new rule of law in Venezuela—something that President Chavez thanked me afterwards, and these things became institutionalized in Venezuela's Constitutional reform.

I told him in Guadalajara—you invented the machine that killed the inventor. There was sufficient constitutional confusion in Venezuela not to know how the myriad new institutions functioned. The history of National Assemblies today, is not the history of liberty. The history of National Assemblies to date is the history of restricted nuclei that control, manage, appoint, which transforms assemblies not into centers of democracy but rather into things that notably do not end in democracy—they grow into authoritarianism and that is to be denounced. We must denounce this because, if we do not fight it, we act against justice and the betterment of individual rights, and community. And what we are warning about is that there is something already amiss in Venezuela, not in terms of morality but of materiality; inflation is growing everyday. The wealth in Venezuela is formidable, I do not know how much it costs to drill oil from the well, but it probably does not surpass twenty dollars, which means that he has a margin to please everyone but that has not translated into making repairs to the bridge to Maiquetía.<sup>15</sup>

**AUDIENCE MEMBER:** My name is Jose Manuel Padilla, from Miami. Related to the question by the lady from Venezuela, I suppose that the majority of us here are lawyers but not necessarily all of us. Toward changing the state of things, what should be the role of the lawyer—individually and as a member of professional corporations—in order to redesign that “caselita” and to confront those few that now design it?

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15. Maiquetía is a city in Vargas, Venezuela, near Caracas.

**DR. EMILIO CÁRDENAS:** I think that President Batlle's response to the previous question can be synthesized, it can be summed up in one word: communication. To the legal profession, I would say, it primarily corresponds the defense of justice. If you look at the evolution of semi-authoritarian regimes, there are common patterns, common mechanics, and critical roads that everyone follows. And some of the first attacks are made on the judicial power. Those attacks, at times, are made against the highest courts because they are the ones that make decisions key to the success or failure of these attacks. But these attacks also often happen at the lower judicial levels, at the district attorney level, especially at the criminal justice area, trying to seek impunity and at the level of trial judges, trying to seek impunity because politicians need two things from justice—that justice be so addicted as to endorse their propositions, that justice be so addicted as to maintain the politician's impunity no matter what, so that politicians can avoid future legal repercussions.

I remember being in Quito, and although unfortunately Ecuador is not an example of the defense of democratic institutions yet, but I remember a touching episode in Ecuadoran history. It was during the fall of President Gutierrez that there was an exodus of the townspeople to the streets of Quito who were frustrated by the management of this vulgar leadership, who tried to manipulate the superior courts of the country.<sup>16</sup> And when one, as an attorney, sees the people clamoring for judicial independence and painting graffiti on walls, demanding the defense of judicial independence because at the moment they realized that with this defense there was the possibility of the freedom of arbitrariness, one thinks this is the inevitable road; we as attorneys should be the catalysts of this defense. It is our duty, through law bar activism, the activism of federations, and through our own personal activism. There is a lot we can do in the public arena positing the difficulties of democracy, defending our institutions, pointing out the dangers. It does not take a lot. If you look at countries dealing with these issues, you will see many of our colleagues utilizing the pen outside the judicial courtrooms, appearing on television programs within and outside of professional organizations. I believe that the primary obligation lies with the professional organizations, and this does not exclude the secondary obligation that we all have to defend the institutions of democracy. The worse thing we can do is be silent, be it because we don't think we can resolve it, or because we feel intimidated, our obligation is to overcome such intimidation and from

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16. *Ecuador Congress sacks President*, BBC Online News, <http://news.bbc.co.uk/2/hi/americas/4466697.stm> (last visited Apr. 19, 2008).

the point of view of respect and objectivity insist on what President Batlle said at the beginning of his discourse—something we all know—that the elections are a necessary condition but not sufficient for a democracy. Democracy is a mix of respect for minorities, for civil and political liberties of others, in defense of basic values, among them verbal pledges, verbal commitments; it is our obligation to defend these values that are the heart of democracy. Because of this, one sees the American Bar Association, the International Bar Association, Lexis Nexis, all pushing lawyers to approach the problem of the deterioration of the rule of law. Although one sees the leaders of these institutions have been warning about what we just described, acting as a consequence to these issues, I fear that this is not sufficient. I fear that, save having most of us lawyers jumping the professional fence and begin to signal to all society, not just the profession, of the risks that the profession and society are facing, these processes will invariably continue toward maturity. A maturity where the political leaders are trying to determine when is the right time to jump the fence of democracy and get closer to the phenomena of authoritarianism. They maintain themselves in semi-authoritarianism, others do not lie in semi-authoritarianism pool. I was saying that some of these attempts are concrete, planned designs, but others and I will not mention who they are, we all recognize that they seek out the threshold of sensibility where they can jump to semi-authoritarianism and pass to authoritarianism. This is a phenomenon akin to bringing people into slavery because it is a phenomenon of the loss of the most important thing man has—the capacity to exercise his liberty. We all have this responsibility.

**DR. JORGE LUIS BATLLE IBÁÑEZ:** I would like to say one thing regarding your impressions, observations. This is a process in which one day we will all have to come together, and lawyers are in an excellent position to do so. If we are able to analyze conceptually what we have talked about today, we need to refer to the “Glorious Revolution” of Cromwell, our friend Locke, and the rest of the English moral philosophers, and the America’s Hamilton, Jefferson, Madison, and Franklin. From these people, liberal democracy was generated. A two-way Atlantic civilization was created, east to west, west to east. Later, Queen Victoria would charge tolls, but the world mostly remained a free world. This liberal democracy affected Europe and particularly France. Many industries could not compete with growing Latin American and North American industries that produced better products. And when it broke, the liberal political axis broke that which

was prevalent in the life of the nations and that imbued the collective sentiment of all citizens that felt they were democrats though they could not explain what and why. This break came after the 1900s, it broke in Europe after 1900, it broke with Lenin and with fascism; Nazism is a separate and distinct category. Fascism and communism remained and produced the effect related to this talk. Their strategy was basically: "We don't want the power, we want a cultural movement where the accumulation of such effort and the passing of time will make the government eventually fall by itself." And then you will find a situation where all the civil forces, the independent actors, the universities, the unions, and the associations, they all walk together in a single lockstep line.

You then find Latin America, which is left without allies after the Korean War, who is cast adrift by Europe from the wealth it had generated through war time trade. At least in MERCOSUR, we grew from within, we knew where we came from, our culture, our philosophy, our politics, our religion, and our people; the U.S. did not exist. This only recently changed when we had to deal with the poverty that arises when population increases. We followed what Columbus wanted to do, when he came and stumbled upon America, announcing to the Queen: "We have arrived at Cathai, we will spread the Catholic faith in the fight against Mohammed and Islam, and in two weeks we will be doing business." It was 500 years before this economic goal became reality, that of trading with Asia. The Asian luxuries had arrived; our grandfathers used to talk about these things before—they would say when someone was very rich—that they lived surrounded in Asian luxuries. This trade arrives as Latin America is in the midst of increasing poverty. Now, imagine what can happen when I control 100 million tons of grain, and I can withhold this grain until the grain has a value of 300 dollars. From this transaction, imagine now the amount of money that I could give to people that have suffered due to poverty so that these people would remember me at the end of the day.

Overall, the political parties have had to deal with all these economic crises; in 1956 the level of income was here, and the economy was here, and in 1980 it was relatively much lower. Throughout this period of time, some countries were able to survive and maintain their positions, whereas other countries had to deal with the consequences of permanent upheaval where we lost all capacity to influence society because we lost the global opinion and force of teachers, professors, universities, intellectuals, of magazines, journalists. With that happening, how do we create a new paradigm of liberty? Political parties have suffered a lot, we have lost a lot of prestige because we have lived and suffered calamities after having



been apparently very rich and very successful. In Uruguay, during 100 years, every year, we lived better and more affordably than the previous year. We were few, there were twelve million cats, twenty-six million sheep and one million people and good and just people in government. Whatever the calculation, it was a world without equal. But what is it that we celebrate today in Uruguay? What happens in the day of the year where everyone gets together: the old, young, blonde, the one-eyed, everyone? It is the day and the night of nostalgia.<sup>17</sup> What nostalgia? Due to the increases in price of goods, such as oil and soy beans, certain political elements have recently started to promise things to the population. How do we act to counteract these actions if we do not do so through civil society? It is extremely difficult for individual lawyers to rise up and counter this movement, but as Emilio Cardenas said, institutions are the ones that have to begin the dialog, to point out where the true democracies exist, and to describe the features of these true democracies; because these other regimes not only bring destruction of the moral structure of society but it also brings poverty. It inevitably brings poverty because of how they remove themselves from the world and go against the current and the world, good or bad or regular.

The great truth that we can impart to you is that these political elements are the equivalent of a dead democracy, because they reflect something that does not exist. It is something that cannot be practiced—it is dead, they live simply because by some fortuitous opportunity; if they hang on for any period of time, they will enervate and kill the democracy because they lack any kind of knowledge to manage the public section. Not only is there lack of respect for the law, but also there is ecumenical ignorance about how to manage the public section. It is upon us to raise this subject and to point to where the real path to democracy lies; we need to go out and defend the consolidation

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17. See <http://www.from-uruguay.com/2006/08/la-noche-de-la-nostalgia.html> (last visited Apr. 19, 2008):

Every 25th of August Uruguay celebrates its Declaration of Independence. It's one of the five non-workable holidays in the year, meaning the night before it's a good time for partying, just like a Friday, or Saturday. Something like twenty years ago, sponsored by a local am radio, someone invented "La Noche de la Nostalgia" (the nostalgia night), to name a party where only "old hits" would be played. This party's idea spread along the years, like a virus, and now the night of the 24th it's a national phenomenon, that's even been passed as a law.

of authentic democracy. We can not ratify those things that have gone bad, not for anything.

**AUDIENCE MEMBER:** Renato Ygutierrez, president of the InterAmerican Bar Association. Dr. Cardenas, you indicate in your presentation that these authoritarian and semi-authoritarian leaders are not born of coincidence. Circumstances exist for this to happen, that perhaps explain it, but not that justify it. Don't you think that it is also important to analyze the socio-economic and political circumstances in these places that gave origin to these regimens, because the solution is not simply to eliminate an authoritarian but also rather to deal with the problems that a government perhaps had and made already bad since it gave rise to these regimens in the first place. Thank you.

**DR. EMILIO CÁRDENAS:** That is a good observation, but I think it is necessary to add to a sincere analysis—that in each case where we now find signs of semi-authoritarianism, the reasons are different. From the list of semi-authoritarians that we have highlighted today, each one has forged his own way. Evo Morales goes his way, Nestor Kirschner does things his way. What is similar is the phenomenon described by Dr. Batlle. Prior to 2002, Latin America had gone through a period of skinny cows. In 2002, the exhaustion of previous governmental models with social drawbacks produced a break in the international economy that benefits us enormously. In the Raúl Prebisch era, we would have been discussing the modification of the terms of trade. In 2002, Latin American trade characteristics were altered substantially, but less so when dealing with closed markets. Trade began to be something worth fair bit, permitting for the creation of wealth. The issue with this wealth creation is channeling this wealth to people believed to be indispensable to the design of the model when trying to recuperate the institutions and the values of democracy.

What I am trying to argue is that the Doha round is failing after 6 years of dialog because we, as countries of Latin America, have lost substantial interest in trading, to trade the end of European agricultural protectionism against the opening of our markets to industrial products. The primary agricultural material that a closed Europe stopped buying from us is being used by third parties. The same occurs with Chilean copper and with gas too, and that was the change in 2002. That was the wind in favor of all those that were circumstantially in power in 2002, some with semi-authoritarian temptations, and others not. Chile, without a doubt, has this tailwind,

and Chile is using it to deepen its model, in order to better its economic situation and to transform itself into the only country in Latin America that is reducing poverty year after year, without smoke and mirrors, and they continue to grow at six percent year to date. To me, it seems that what you say is true—we must analyze the endogenous and the exogenous factors, but there is one exogenous factor that is very crude, which is the change in the international economic reality. It is the international scene in which all of us were floating and today we are surfing, coming down with the wave. As we come down the wave, the issue presented is the proper usage of the current surplus, the destiny that we choose for it, and more serious than that, what do we think of tomorrow's world which is not what it was between 2002 and 2007. The jolts we are seeing everyday are jolts that announce that we might have a change ahead. And for these future years, the favorable wind may be transformed into years of unfavorable winds, or without wind, or with breezes. But I think that in this analysis, we have to recognize that the 60s were considered the dramatic years regarding our terms of trade, where we were abandoned from world trade. But today Asia has, again, absorbed us back into the global economy. In many cases, countries like Brazil, Mexico, and Chile are not afraid of the risk of globalization, playing the game of globalization, enjoying these benefits. In contrast, other countries take these benefits in order to concentrate power and take ownership of this wealth to buy votes and willingness. These are countries that have allowed or are letting a golden opportunity escape to return to reconstruct a democracy that with the passage of time has become weak and now continues to deteriorate.

I would say one small thing, we, as countries, have all committed errors sometime in our long history from 1492 up to today; some of us have achieved certain things before others and have been able to establish better organizations. Uruguay, for example has had great fortune. We were a small country with little population, but England practically oriented our economy for the first 60, 70, 80 years of its existence as a democratic republic and created a country that faced the sea, that was urban without much of a rural population. When the population started emigrating to the interior, international values continued to be available to the population. We were left with an elite that, at that moment when liberal currents were prevalent, created a liberal state that could grow.

We had a small crisis in the 1930s and a civil coup d'état from which we emerged in a few years due to the crisis Europe was going through. Wars in Europe seemed to start every 25 years, 1870, 1914, and 1939. When World War II ended and the Rome Treaty was

signed, I accompanied the Minister of Livestock of Uruguay in 1963 to England and then to Brussels to sell meat—a mainstay of our national income—with twelve million heads of cattle, the Uruguayan quota was four thousand tons. I should tell you that year we sold one half million tons, basically all to the U.S. under a more liberal trading regime. We had come to an extreme point, where we could not sell any meat in Europe without creating certain relationships. We had to sell everything through an Egyptian gentleman, a friend of Nasser, or afterwards, through a Greek gentleman who through unknown means, introduced the product behind the Iron Curtain. And now, you know what? In Uruguay these present days, to recognize a T-bone steak you will need a photograph because the world takes the meat and none is left in Uruguay; it is now a delicacy in our country. The great advantage that we have is that we never had great wealth, because we never had petroleum, or much in terms of minerals, neither copper nor tin, nor any other mineral. Since the government did not have a full treasury flush with resource dollars, the governments had to be more or less passable on their own merits. A country that has much unexploited wealth and a poor populace creates situations like the current one we are living through.

I recommend to you a very interesting piece of literature that we usually do not read, but I say, should be required reading in all schools in Uruguay. It is by Juan Bautista Alberdi, who wrote the basis of the Argentine Constitution in times of Urquiza.<sup>18</sup> He has written some wonderful economic studies, explaining very well who Carlos V was and who Felipe II.<sup>19</sup> The centralism of America, as the historian Velez said, is not that of Marx, it is of Carlos V and Felipe II. It is born there, not with Carl Marx—he is a small sprout of centralism compared to Carlos V and Felipe II.

**DR. EMILIO CÁRDENAS:** Thank you very much Dr. Batlle. We have one final question and then we will have to continue with the program—and I have a signal that this is the last question that we will take.

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18. See generally Juan Bautista Alberdi, <http://www.alberdi.org.ar> (last visited Apr. 19, 2008).

19. E.g., Juan Bautista Alberdi, *Sistema Economico Y Rentistico De La Confederacion Argentina Segun Su Constitucion De 1853*, available at <http://www.alberdi.org.ar/archivos/SistemaEconomico.pdf>.

**AUDIENCE MEMBER:** Well, my name is Beatriz Marzollas, Argentine lawyer. I am from the Argentine branch of the InterAmerican Bar Association. A comment and then a question. With respect to the question that Dr. Jose Manuel Padilla made to Dr. Cárdenas—your answer left me uncomfortable. You asked, how can we as lawyers generate change in these structures? I think that this is a very slow process. We in the Association, from the Argentine branch, we have generated a number of communications against the actions of the government, actions that were considered autocratic. Nevertheless, it is my impression that one cannot generate culture from the bottom up, from the regular citizenry. Creating a counter culture is hard where the culture, education, science has been already inserted with Marxist principles. It seems to me that the executive power and authoritarianism has manipulated this society, its freedom of expression and its journalists; this democracy is “played around” but is not been granted power as Dr. Cárdenas said. It would be very difficult, I believe, given our status as lawyers or our roles in associations, in legal colleges, etc. if we do not generate a conscience from those below from the masses, I think that lawyers and educators will have a hard time at delivering this message. I am very disturbed by the authoritarianism that my country in various ways; a few months ago we spoke about it in IDEA with Dr. Cárdenas and it leads me to the question here. I am worried about us, the people that don’t agree with authoritarian ideas, semi-authoritarianism, that we are plagued with a lack of coalition, of organization, of structure, of vision, of capacity that would opposite of these authoritarian ideas. This is what worries me in current Argentinean society. Recently, I created within the Law school of the University of Buenos Aires (UBA), a course that we are giving about the right to peace and from this right to peace we take a theme—this year it is love. Next year it will be liberty, education, democracy. These classes are open to everyone, not just law students. If we do not begin to educate ourselves to these values, it seems to me that it would be very difficult to later reform these cyclical social processes that abuse the total lack of education. Then my question is: Why do we do this class only at the UBA at the postgraduate level? Why is there a total abandonment of students in elementary school? Why do we have a lack of teachers? Why don’t we have capable teachers? Why don’t we pay good wages? I think the issue is cultural. The question was and is, more than this. I don’t know if this is a question or a commentary.

We work against authoritarianism as lawyers, and as an associations, institutions, college of lawyers; however, there is a third manner to fight, that is to instruct the public from elementary school, high school. The law school faculties, the lawyers, those of us who see

these authoritarian processes, I think, have to reach out to the public, through education, explaining how various social roles and social standings affect the authoritarian rule. The question is: What is happening to us? What do we need to do to create a coalition to create a force from within the opposition against all these ideas of authoritarianism? Is this an issue of egoism? Is it a lack of vision? What is going on with us, the opposition in Bolivia, Venezuela, and Argentina that we cannot organize ourselves? If done right, we can become a possibility of power, a possibility of options. Thank you.

**DR. JORGE LUIS BATLLE IBÁÑEZ:** I think that what you have said is very correct. And it is very correct above all, because until now, political parties navigated their presence in the world as a function of the structures originated in Montesquieu. Back then, it was a given that the structures functioned well. When there begins to be an economic decline, the feasibility of a movement emerges and the breakdown of the old structures. This movement emerged in 1919; social and political parties did not feel the need to intervene in the different social sectors in order to make an integrated structure of public opinion. We thought ourselves as absolutely democratic parties; we thought that we represented a plurality. However, others do not believe that democratic pluralities exist in traditional political parties and believe that social integration must be constructed. They provide a solution of global justice in which they include and integrate specific social groups, winning political positions under the protection against economic crisis. If there had not been an economic crisis, they would have been foiled in their attempts. In countries where they had success and gained control of the government, they failed in their own accord because of their incapacity to function. The great advantage that we have is that these regimes are anomalies that do not function; directly or essentially—they do not work. But while we try to prove that these governments do not work, we suffer everything you described.

Our lack of a strong organization is due in part to the fact that our political parties failed to become integrated, vertical parties, catering to specific social sectors. Because political parties are democratic in nature, they are unable to plan and organize their own actions, and they are unable to organize civil society in the same manner as these semi-authoritarian groups. Political parties and individuals were busy surviving the repeated economic crises that continued for years; we did not have time or the energy to busy ourselves within the structure of society, which was being robbed and destroyed of its vitality by these groups. The primary obligation is

ours, the political parties, to look beyond the mere alliances with people to seek out votes, which is an error; it is a mistake to seek personal alliances in order to garner votes in elections. What we need to do is seek five brief points, clear points, understood by everyone, that can be assumed as an obligation to the electoral process by everyone, by the parties, by all the social organizations; these organizations can then begin to commit themselves to a road map. You will then have a political model that dies and another political model that is born, one that respects the values that made us free countries; this is a basic responsibility of all political parties. There are four, five issues that are primary and fundamental—to which all must adhere; a model of liberty, security, educational freedom—these are things that are essential for us to be responsible for.

**DR. EMILIO CÁRDENAS:** Thank you, President. With this we will end this panel, I want to thank you for your questions, to Lexis Nexis for having invited Dr. Batlle and me and so we continue to the next panel. Thank you again.

