

Human Rights Under the Kirchner Administrations (2003-2012):
Domestic Policies and Global Leadership in “Modern” Human Rights

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Abstract (English)

This work essentially aims to synthesize the significant human rights issues that have characterized the beginning of the twenty-first century in Argentina. Under the Kirchner administrations (Néstor Kirchner 2003-2007, Cristina Fernández de Kirchner 2007-present), the Argentine government has worked to reconcile past abuses of its military dictatorship (1976-1982) and promote human rights on a regional and global scale. Additionally, globalization and new notions of “human rights” have proven to be significant components of the Kirchners’ political agenda. Economic rights—particularly in the wake of the 2001 collapse—gay rights, and migrant rights have all become important issues in the Argentine political arena.

Field observations in 2010, as well as extensive synthesis of research on the topics outlined above, are combined in this document in an attempt to understand how the Kirchners have dealt with complex internal issues and simultaneously promoted the image of Argentina as a global human rights defender. Furthermore, the work scrutinizes their approaches to each issue, analyzing and drawing conclusion about the sustainability of the Kirchners’ policies and the potential trajectory for Argentina in the next decade.

Resumen (Español)

Este trabajo intenta sintetizar los asuntos más chocantes referente a los derechos humanos que han caracterizado los principios del siglo XXI en la República Argentina. Bajo los gobiernos de los Kirchner (Néstor Kirchner 2003-2007, Cristina Fernández de Kirchner 2007-hoy), la Casa Rosada ha aspirado buscar justicia para las víctimas de los abusos que sucedieron durante la dictadura militar (1976-1982) y a la vez promover los derechos humanos en los ámbitos regionales y mundiales. Además, la globalización y nuevas definiciones de los derechos humanos han afectado las políticas kirchneristas. Los derechos económicos—sobre todo en la

estela de la crisis económica de 2001—los derechos de los homosexuales, y los derechos de los migrantes se han convertido en cuestiones importantes en el espacio político argentino.

Este trabajo es el producto de observaciones realizadas en Argentina en 2010 y la compilación de una bibliografía extensa desde entonces. Se intenta analizar como los Kirchner han abordado los problemas complejos en Argentina y a la vez promovido una imagen de la nación como defensora mundial de los derechos humanos. Asimismo, el trabajo intenta sacar conclusiones sobre la sostenibilidad de las políticas kirchneristas y las trayectorias posibles para la República Argentina en la próxima década.

Resumo (Português)

Este artigo tenta resumir as questões mais prementes em matéria de direitos humanos que caracterizaram o início do século XXI na Argentina. Sob o governo de Kirchner (Néstor 2003-2007, Cristina 2007-presente), a Casa Rosada tem procurado busca a justiça para as vítimas dos abusos ocorridos durante a ditadura militar (1976-1983) e simultaneamente promovendo direitos humanos a nível regional e global. Além disso, a globalização e as novas definições de políticas de direitos humanos têm afetado Kirchner. Os direitos econômicos—especialmente na esteira da crise econômica de 2001—os direitos dos homossexuais e os direitos dos migrantes tornaram-se questões importante no espaço político argentino.

Este trabalho é o resultado de observações feitas na Argentina em 2010 e a compilação extensa de uma bibliografia desde então. Ele tenta analisar como Kirchner abordaram os complexos problemas na Argentina e também promoveu uma imagem da nação como um defensor mundial dos direitos humanos. Além disso, o artigo tenta tirar conclusões sobre a sustentabilidade das políticas de Kirchner e os possíveis caminhos para a Argentina na próxima década.

I. The Kirchners and International Human Rights: A Perfect Union?

The fall of Argentina's military dictatorship in 1983 marked the beginning of a new age of human rights. Globalization and transnational organizations were becoming increasingly important actors in policy-making, and the democratic transition in Argentina was characterized by the insertion of human rights interests into the national discourse. Yet despite initial successes such as the 1984 Truth Commissions and the protection of a broad range of rights under the 1994 Constitution, the first twenty years of democratic governance failed to keep pace with the growing demands of human rights groups within Argentina.

When Néstor Kirchner became president in 2003, he promised to make human rights a national priority. The economic collapse of 2001 had opened the floodgates for a new set of rights-based demands from social groups; Kirchner's Peronist *Partido Justicialista* (PJ) reoriented its traditional structure to include historically marginalized social groups within the political discourse. As a result, Argentina has made significant progress in addressing "modern" human rights—socioeconomic, immigrant, and homosexual rights--relative to many other nations, including the United States. Néstor Kirchner's initiatives have been perpetuated and expanded by his successor and wife, President Cristina Fernández de Kirchner. Many observers assert that the Kirchners governed as a *de facto* team until Néstor's death in 2010, at which time Cristina unequivocally became the sole leader of the nation. Under both Kirchner administrations, the Argentine government has enacted a series of social programs to combat high poverty rates; promoted the legal inclusion of immigrants into Argentine society; and became the first Latin American nation—and tenth in the world—to recognize same-sex marriage.

In addition to addressing various internal rights-based issues, the Kirchners have been instrumental in promoting Argentina as a global leader in the international human rights regime. Néstor and Cristina's commitment to overturning amnesty laws and prosecuting military officials for abuses has served as a model for many other nations dealing with justice for past dictatorships. Furthermore, Argentina has been a primary actor in the promotion of United Nations international conventions for the protection of human rights; the Kirchners have effectively reasserted Argentina's global role by placing the country at the forefront of the movement.

The successes of the Kirchners cannot be overemphasized, but neither can the many challenges that continue to face Argentina as it moves well into the second decade of the twenty-first century. While President Fernández de Kirchner's rhetoric maintains its rights-based appeal, tangible successes are more elusive. The primary objective of this paper is to demonstrate the importance of the Kirchner regimes in the promotion of Argentine human rights, but it is equally imperative to analyze the future of the movement.

This investigation is organized in four distinct parts. The first provides a brief overview of Argentine human rights and the Kirchners' role in promoting a rights-based discourse in domestic and foreign policies. The following three sections offer in-depth analyses of the three "modern" human rights issues in Argentina: socioeconomic rights, migrant rights, and homosexual rights.

II. Lasting Kirchner Legacy: Argentina's Role as a Human Rights Promoter

Like several other Latin American nations that emerged from brutal military dictatorships in the 1980s, Argentina based its democracy upon the emphasis of human rights. Though this commitment was not necessarily apparent in the first 20 years following the democratic transition, the Kirchners have made human rights promotion one of their primary political objectives.

In the field of human rights, Argentina is a global leader. Under both Kirchner administrations, the government has overturned the impunity laws that protected war criminals, and has similarly eliminated statutes of limitation for human rights violators. In November 2011 alone, the government tried and convicted sixteen criminals in the fight to achieve justice for the atrocities committed by the junta¹. Together with France, Argentina is the principal sponsor for the International Convention for the Protection of All Persons from Enforced Disappearance, which as of 2012 has been ratified by thirty nations². Furthermore, as one of the five nations--and the only developing nation--to conceptualize the International Criminal Court, Argentina has differentiated itself and found its niche in the international community³.

Argentina's democratic transition established the embedding of human rights within the national discourse, but despite efforts by the first transitional president, Raúl Alfonsín, several administrations--Menem, de la Rúa, Duhalde--were characterized by less-than-enthusiastic support for the initiative. Alfonsín took an important step when he set up the trials for the leaders of the junta and established the 1984 Truth Commission. As Kathryn Sikkink affirms, these

¹ "Argentina convicts former military officials for 'Dirty War' crimes," *Amnesty International*, 27 October 2011

² "International Convention for the Protection of All Persons from Enforced Disappearance," *Office of the United Nations High Commissioner for Human Rights*, 18 December 1992, <<http://www2.ohchr.org/english/law/disappearance-convention.htm>>

³ Kathryn Sikkink, "From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights," *Latin American Politics and Society* 50:1 (28 June 2008), 15

actions placed Argentina at the forefront of a “justice cascade” of new strategies for transitional governments to employ when addressing past human rights abuses⁴. The initial successes of the human rights agenda in the 1980s were largely motivated by the mobilization of Argentine human rights groups; these organizations employed a variety of tactics and pursued diverse avenues to ensure the insertion of human rights into Alfonsín’s agenda⁵. However, Alfonsín’s efforts were met with only moderate success. The armed forces considered the human rights initiative and trials of officers an intrusion into their institutional autonomy, and the military’s insecurity nearly jeopardized the democracy. Alfonsín retreated from the human rights issue without achieving the sweeping human rights victories that many Argentines had desired⁶.

The 1990s Menem government largely repudiated the inclusion of human rights in politics; upon taking office in 1989, the neoliberal president promptly offered pardons to the junta officers convicted under the Alfonsín administration⁷. Menem’s policies on many aspects of human rights--not just justice and promotion--were regressive, and the successive de la Rúa and Duhalde regimes took an apathetic stance toward such issues⁸.

As mentioned, Néstor Kirchner assumed the presidency with the promise to push the human rights agenda and work closely with the increasingly vocal human rights organizations and social movements within Argentina. He began his human rights campaign by removing the ban on the extradition of Argentine nationals and pushing for the repeal of the Full Stop (*Punto Final*, which had established an expiration date cases against the junta) and Due Obedience

⁴ Sikkink, “From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights,” 1

⁵ Sikkink, “From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights,” 19

⁶ Terence Roehrig, “Executive Leadership and the Continuing Quest for Justice in Argentina,” *Human Rights Quarterly* 31 (2009), 747

⁷ Steven Levitsky and María Victoria Murillo, “Argentina: From Kirchner to Kirchner,” *Journal of Democracy* 19:2 (April 2008), 21

⁸ Roehrig, “Executive Leadership and the Continuing Quest for Justice in Argentina,” 746

(*Obedencia Debida*, which prevented cases against junior officers) amnesty laws⁹. Congress officially annulled the amnesty laws in 2003¹⁰.

Additionally, Kirchner sought to end the politicization of the judiciary that had occurred under the Menem administration by removing Menem's pro-military appointments and replacing the Supreme Court with a "heterogeneous tribunal of tested and apolitical judges" that would be more open to the prosecution of war criminals¹¹. In his analysis of Argentina's judicial proceedings, Terence Roehrig cautions that the reform of the judiciary in itself calls into question the independence of the Court; however, without Kirchner's efforts to reverse Menem's policies, very little progress could have been achieved in the efforts to secure justice for the criminals of Argentina's "dirty war"¹². Furthermore, Levitsky and Murillo assert that by reducing the overall size of the judiciary, the Kirchner administration essentially denied itself the appointment of two *kirchnerista* justices. The Kirchners' efforts to streamline the judicial process and allow the trial of former military officers finally came to fruition in 2007, when the Supreme Court deemed one of the Menem pardons unconstitutional; this permitted harsh scrutiny of the other pardons and has ushered in a wave of prosecutions that continue today¹³.

It is an especially important moment for Argentina because of its position in the world. Since the Kirchners took office in 2003, Argentina has been slowly regaining the trust of the international financial community, making regular payments to the International Monetary Fund (IMF) and the Paris Club. Its steady growth rate has encouraged more investment, and increasing

⁹ Levitsky and Murillo, "Argentina: From Kirchner to Kirchner," 18

¹⁰ Roehrig, "Executive Leadership and the Continuing Quest for Justice in Argentina," 746

¹¹ Pablo Mendelevich, *El final: cómo dejan el gobierno los presidentes argentinos, de Rivadavia a Cristina Kirchner*, Buenos Aires: Ediciones B (2010), trans. Daniel McCown, 281

¹² Roehrig, "Executive Leadership and the Continuing Quest for Justice in Argentina," 747

¹³ Levitsky and Murillo, "Argentina: From Kirchner to Kirchner," 21

trade--both globally and within the region--has spurred a rapid economic revival¹⁴. Bilateral ties with other Latin American nations have moved Argentina into a leadership position in the region, which has been further enhanced by participation in intergovernmental organizations such as the Union of South American Nations (UNASUR) and, most recently, the Community of Latin American and Caribbean States (CELAC). Argentina has consistently defended the interests of Latin America, particularly in trade negotiations for the Free Trade Area of the Americas (FTAA) with the United States¹⁵. Additionally, Argentina has been a leader in democracy promotion in the region, even as it works to consolidate its own young democracy.

Continuing to promote regional economic integration is a singularly important issue for the *kirchnerista* agenda. Mercosur, the world's fourth largest trading bloc, has the potential to be a dynamic common market in South America. The original goals of the bloc outlined in the 1991 Treaty of Asunción were both political and economic: democracy consolidation; integration of the Mercosur economies into the international trading system; development and economic reforms within member states; and the evolution of an FTA into a customs union and finally a common market. Returning to this essence through multilateral cooperation with other member states--Brazil foremost since 2009 figures show that Brazilian-Argentine trade represents 92 percent of all Mercosur trade--continues to be a primary aim for Argentina in President Cristina Fernández de Kirchner's second term¹⁶.

Human rights promotion in South America, achieved through participation in such regional organizations, has become a hallmark of Fernández de Kirchner's regime. Argentina's

¹⁴ Florencio Randazzo, "Reflexiones en torno a la historia reciente y al futuro," in *Anuario 2008 de la Institución Nacional de Capacitación Política* (Buenos Aires, 2008), 8.

¹⁵ Ana Margheritis, *Argentina's Foreign Policy: Domestic Politics and Democracy Promotion in the Americas*, Boulder: Lynne Rienner Publisher Inc. (2010), 26

¹⁶ Marc Schelhase, "The Successes, Failures and Future of Mercosur" in *Inter-American Cooperation at a Crossroads*, ed. Gordon Mace, Andrew F. Cooper and Timothy M. Shaw, New York: Palgrave MacMillan (2011), 171

foreign ministry notes that “the promotion and protection of human rights is a state policy that strengthens our identity as a nation and our leadership in the international community”¹⁷. Since 2003, Argentina has been particularly active on human rights and democracy promotion in the Americas; social crises such as the Bolivian case in 2005 were deemed threatening to the stability of the region and thus dealt with swiftly through diplomatic envoys and mediation efforts by the Kirchner administration¹⁸.

Argentina’s efforts have not been restricted to South America; the Kirchners have also expressed a strong commitment to human rights and humanitarian efforts in Haiti. Though a variety of factors affected Argentina’s decision to become involved in the Haitian political crises of the twenty-first century, the primary motivations were democracy consolidation of the Latin American region and oversight of humanitarian aid and human rights compliance. It is important to note that Kirchner approached the Haiti issue multilaterally through Mercosur, thus demonstrating the success of continuing democratic consolidation and cooperation within the South American economic bloc¹⁹.

Argentina’s regional efforts have been underscored, and perhaps overshadowed, by its global role as a human rights promoter. Sikkink characterizes twenty-first century Argentina as “an exporter of human rights tactics, ideas and experts”²⁰. She describes Argentina as a “protagonist” in the development of international human right norms, increasing pressure on violators, helping to construct the International Criminal Court, and furthering the proliferation

¹⁷ Jorge Taiana, “Argentina Celebrates 200 Years,” *Americas* 62:5 (2010), 50

¹⁸ Margheritis, *Argentina’s Foreign Policy: Domestic Politics and Democracy Promotion in the Americas*, 93

¹⁹ Margheritis, *Argentina’s Foreign Policy: Domestic Politics and Democracy Promotion in the Americas*, 106-107

²⁰ Sikkink, “From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights,” 2

of accountability mechanisms such as truth commissions and highly publicized trials for human rights abusers²¹.

Argentine human rights groups were responsible for classifying enforced disappearance as a crime against humanity, and the Kirchner governments campaigned to include protections against enforced disappearance in international law. Together with France, Argentina was the primary drafter of the International Convention for the Protection of All Persons from Enforced Disappearance²². The law was adopted by the General Assembly in 2006 and came into full force in 2010. President Cristina Fernández de Kirchner has been particularly adamant about promoting universal ratification of the law, which has yet to be signed by the United States, among other nations²³.

Additionally, Argentina has been instrumental in designing and sponsoring the International Criminal Court. Though Argentina's involvement in the creation of the ICC precedes the Kirchner administrations--informal meetings had begun in 1998--the Kirchners' global promotion of the organization cannot be ignored. Since its establishment in 2003, the Court has received full support from the Argentine government, and a number of Argentine human rights experts hold important positions in the organization. Most notably, Luis Moreno Ocampo, who served as an assistant prosecutor during the junta trials, has occupied the post of ICC Chief Prosecutor for nearly nine years²⁴.

²¹ Sikkink, "From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights," 23

²² Sikkink, "From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights," 14

²³ "International Convention for the Protection of All Persons from Enforced Disappearance"

²⁴ Sikkink, "From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights," 15

III. “Freedom From Want”: Economic Human Rights in an Economically Unsteady Nation

Néstor Kirchner took office amidst the utter collapse of the Argentine economy. After over a decade of irresponsible neoliberal economic policies, the age of “champagne and pizza”²⁵ had dissolved like the illusion it was. Kirchner pursued an aggressive economic policy that flouted the austerity measures stipulated by the IMF and developed nations. Instead of focusing on controlling inflation and debt repayment, Kirchner followed a heterodox economic program that intended above all to provide for the basic needs of the Argentine people. Néstor Kirchner and, since 2007, Cristina Fernández de Kirchner have promoted an internationally unpopular but domestically successful economic agenda that prioritizes the economic rights--the “freedom from want”--of Argentina’s citizens over the neoliberal demands of the international community²⁶.

The human rights debate in the first decade of the twenty-first century has been dominated by the rising importance of economic and social rights. Radhika Balakrishnan accurately explains this phenomenon as a consequence of globalization and the implementation of neoliberal practices in developing countries. Because economics directly affects quality of life, economic policies and human rights are intrinsically related²⁷. After decades of almost exclusive credence in neoclassical economics, heterodox economic theory has begun to attract disciples. Heterodox economics challenges the notion that neoclassicism provides the most efficient economic model²⁸.

The Universal Declaration of Human Rights (UDHR) outlines the basic rights that should be made available to all people. Economic rights figure in this declaration, and in the past several

²⁵ Sylvia Walger, *Pizza con champán: crónica de la fiesta menemista*, Buenos Aires: Planeta (1997)

²⁶ Julio Godio and Alberto José Robles, *El Tiempo de CFK: entre la movilización y la institucionalidad. El desafío de organizar los mercados*, Buenos Aires, Ediciones Corregidor (2008) 198-204

²⁷ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

²⁸ Radhika Balakrishnan, Diane Elson and Raj Patel, “Rethinking Macro Economic Strategies from a Human Rights Perspective,” *Society for International Development* 53:1 (2010), 27-28

decades, have become a flash point for critics of economic practices that essentially perpetuate income disparities. Articles 23 through 25 of the Declaration are particularly relevant to the discussion of *kirchnerista* policies. To understand the Kirchners' heterodox economic approach aimed at combining rights and productivity, it is essential to underscore several sections in these articles.

Article 23 is the first basic economic right, the right to employment. Two sections of this article are engrained in the Kirchners' policies. Section Three of Article 23 provides for "just and favorable remuneration ensuring...an existence worthy of human dignity," aided by social safety nets if necessary. Furthermore, Section Four highlights the importance of trade unions for the protection of workers' interests. Article 24 builds on these notions, affirming the right to "reasonable...working hours and periodic holidays with pay"²⁹.

Article 25 mirrors the social reforms more recently put forth during Cristina Fernández de Kirchner's first term: provision of social services such as medical care, housing, clothing, and food. Section One likens provision of these services to a security right, as those who suffer from "unemployment, sickness, disability, widowhood, old age," or other disabilities are unable to produce these necessities for themselves or their families. Furthermore, Section Two underscores the special status of care afforded to mothers and children³⁰.

The rights outlined in the UDHR are worded ambiguously, but nonetheless provide a framework for general standards. Balakrishnan explains that these rights can face obstacles in their implementation because "realization of equitable enjoyment of economic and social rights" frequently runs counter to neoclassical economic theory³¹. The refusal of the United States to sign the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)

²⁹ UN General Assembly. *Universal Declaration of Human Rights*. 10 December 1948, 217 A (III).

³⁰ UN General Assembly, *Universal Declaration of Human Rights*

³¹ Balakrishnan, Elson and Patel, "Rethinking Macro Economic Strategies," 28

exemplifies these difficulties. Many developed nations strictly adhere to neoclassical and neoliberal economic doctrine. In contrast, many developing nations--perhaps most notably in Latin America--have attempted to balance efficient economic practice with respect for economic rights and equitable wealth distribution. This can phenomenon can be seen with the expansion the *Bolsa Familia* program in Brazil³² and the National Plan to Address the Social Emergency (PANES) in Uruguay³³.

The ICESCR and the UDHR compel nations to “respect, protect and fulfill” the standards they have set forth. The principal goal of economic rights is to recognize the human aspect of economic functions--to view people “as more than just inputs to production processes or outlets for sales”³⁴. Before examining the specific programs that the Kirchners have promulgated to enhance social and economic equality in Argentina, it is fundamental us to study the basic tenets of *kirchnerista* economic policy. As opposed to the neoliberalism employed by most developed nations (and Argentina before the 2001 crisis), the Kirchners implemented a heterodox developmentalist economic model³⁵.

Heterodox developmentalism emphasizes internal industrial and manufacturing strength while placing high tariffs on imports. This model questions the efficiency of *laissez-faire* markets, and instead promotes some regulation to ensure the fulfillment of social goals. Subsequently, heterodox economists support expanded government budget and deficit spending during times of economic hardship. Furthermore, as is abundantly demonstrated in Argentina,

³² Fabio Veras Soares, Sergei Soares, Marcelo Medeiros and Rafael Guerreiro Osório, “Programas de transferência de renda no Brasil: impactos sobre a desigualdade,” *Ministério do Planejamento, Orçamento e Gestão*, Brasília: October 2006

³³ William Reuben, Marisa Miodosky and Eri Watanabe, “Building on Experience: Improving Social Protection in Uruguay and the Plan for Social Equity,” *En Breve* 132 (2008)

³⁴ Balakrishnan, Elson and Patel, “Rethinking Macro Economic Strategies,” 35

³⁵ Sebastián Etchemendy and Candelaria Garay, “Left Populism in Comparative Perspective, 2003-2009,” in *The Resurgence of the Latin American Left*, ed. Steven Levistky and Kenneth M. Roberts, Baltimore: John Hopkins University Press (2011), 288-295

heterodox economic theory discourages an overemphasis on inflation control. While not promoting extremely high levels of inflation (which harm production), the theory attests that inflation control disregards “real factors such as poverty, employment and investment” and emphasizes financial and banking interests over those of workers in other economic sectors. Heterodox developmentalism by its nature attempts to combine social and economic programs, and thus public expenditure is considered an essential component of economic policy; in theory, expanded public expenditure accrues greater private investment³⁶. This approach, at least in the Argentine context, is rooted in the historical precedents of Peronism³⁷.

Developmentalist policies can provoke problems in trade relations, as its focus on internal development can lead to higher trade barriers. This is particularly seen in Argentina’s interactions within Mercosur over the past decade. Though there has been increasing focus on the regional trade bloc, economic policies since 2003 have stalled effective integration. While partners (particularly Brazil) continue with neoliberal reforms, Argentina has returned to its economic nationalism through an increasingly state-led economic model. Fewer imports, a focus on exports, and the imposition of non-tariff barriers have resulted in an Argentine trade surplus within Mercosur, generating complaints from Brazil and damaging the economic capabilities of the smaller member states³⁸. The global economic crisis in 2008 compelled more nationalist economic policies, further damaging the process. Yet while the measures taken by the Kirchners have provoked criticism from other Mercosur members, and impeded rapid economic integration of Mercosur, they have been inarguably effective in the recovery of the Argentine economy. In response to criticisms, the Fernández de Kirchner administration has consistently affirmed its

³⁶ Balakrishnan, Elson and Patel, “Rethinking Macro Economic Strategies,” 34

³⁷ Margheritis, *Argentina’s Foreign Policy: Domestic Politics and Democracy Promotion in the Americas*, 17

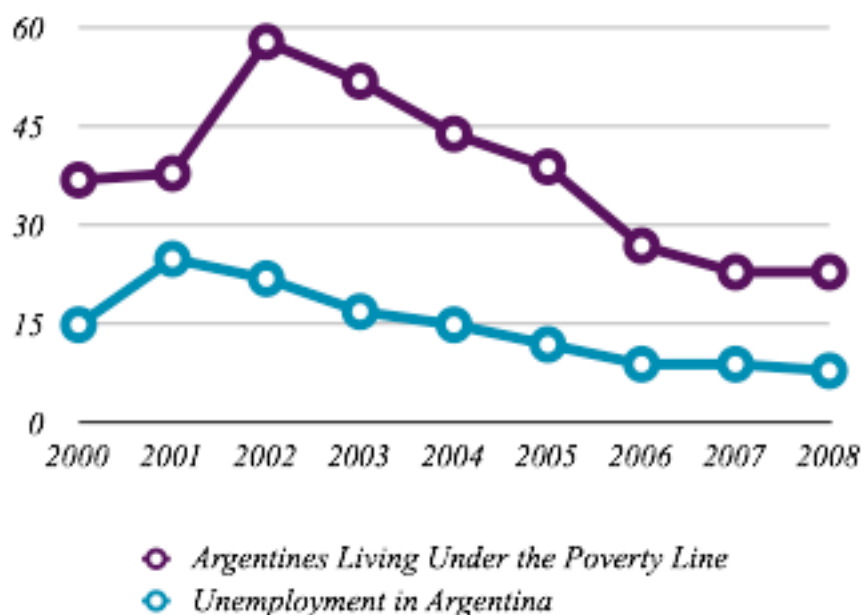
³⁸ Schelhase, “The Successes, Failures and Future of Mercosur), 178

commitment to Mercosur, but only after stabilizing Argentina's economy and redressing wealth disparities within the country³⁹.

Despite the issues created by Argentine economic policies in regard to its trade relations, the heterodox developmentalist model has proven effective within Argentina in promoting a

swift recovery from the 2001 economic collapse. Pía Riggirozzi explains that the neoliberal reforms imposed upon Argentina after the 1982 debt crisis and until the collapse "eroded welfare institutions" that had been fundamental components of the Argentine system since Juan Perón first began implementing a populist program in the 1940s⁴⁰. To

Table One. Poverty and Unemployment in Argentina 2000-2008



demonstrate the extent of the crisis that the Kirchners faced upon taking office--and the hard data showing the relative success of their efforts--the information presented in Table One proves illustrative⁴¹.

President Eduardo Duhalde (2002-2003) initiated a number of the reforms that would be continued by the Kirchners. These are characterized by several overriding themes: a focus on growth over inflation control; strengthening of bonds with trade unions and other popular social

³⁹ Jeffery W. Cason, *The Political Economy of Integration: the experience of Mercosur*, New York: Routledge, (2011), 114

⁴⁰ Pía Riggirozzi, "Social Policy in Post-Neo-liberal Latin America: The Cases of Argentina, Venezuela and Bolivia," *Society for International Development* 53:1 (2010), 72

⁴¹ Table Data: The World Bank

movements; and fiscal surpluses⁴². Reintroducing elements of import substitution and allowing devaluation of the Argentine peso engendered competition among Argentine companies and encouraged their expansion⁴³. The Kirchners further distanced themselves from the Menem years by reinitiating labor regulations, encouraging small business through government subsidies, and nationalizing the pension system. As a result of the shift in economic policy tactics, Riggirozzi cites that between 2000 and 2005, government spending on social programs grew from 0.65 percent of total GDP to 1.06 percent⁴⁴.

The fiscal surplus generated through *kirchnerista* policies was essential for the implementation of social programs. Daniel Kostzer of the United Nations Development Program (UNDP) explains that “the fiscal surplus generates a buffer stock that can be used in social policies and income distribution on a more universal basis”⁴⁵. Five of the programs most effective in pulling Argentina out of the crisis and stimulating growth were the *Programa Jefes y Jefas de Hogares Desempleados*, *Plan Remediar*, *Programa Adulto Mayor Más (PAMM)*, *Programa Familias por la Inclusión Social (IDH)*, and *Programa Manos a la Obra (PMO)*.

Plan Jefes y Jefas intends to provide government funds to ensure the survival of poor Argentine families. It is an ELR, or “employment of last resort.” Though ELR programs are generally unsustainable in the long-term and can be damaging to the private sector, they provide efficient poverty reduction and crisis aversion, as well as several political and social advantages. Since they are predicated upon the provision of employment, not charity, they cannot be criticized as mere welfare “bandages” or short fixes; they identify the root of poverty in each household; they increase human capital by enhancing skills through employment; they remove

⁴² Etchemendy and Garay, “Left Populism in Comparative Perspective, 2003-2009,” 283

⁴³ Daniel Kostzer, “Argentina: A Case Study on the *Plan Jefes y Jefas de Hogar Desocupados*, or the Employment Road to Economic Recovery,” *Levy Economic Institute* (May 2008), 10

⁴⁴ Riggirozzi, “Social Policy in Post-Neo-liberal Latin America,” 72

⁴⁵ Kostzer, “Argentina: A Case Study on the *Plan Jefes y Jefas de Hogar Desocupados*, 10

the risks associated with informal economic practices; and they improve infrastructure on a local, state, and national level⁴⁶. In 2003, 4.9 percent of the Argentine budget was allocated to the program's success. In contrast to a welfare handout, the government aid to families is predicated upon the household head working a minimum of 20 hours per week on some sort of public works project. Failure to comply with the work requirement results in the revocation of government benefits; similarly, benefits cease when the beneficiary begins working in the formal sector on a full-time basis. Kostzer asserts that the continued success of the plan has inarguably contributed to Argentina's growth and the government's capacity to alleviate inequality⁴⁷.

Plan Remediar built upon the employment possibilities and government subsidization program of *Plan Jefes y Jefas* by providing medical care and access to medications for Argentines who do not receive such benefits from employers. Partially funded by the Inter-American Development Bank, *Plan Remediar* has been instrumental in healthcare provision for the many Argentines living under the poverty line. In the three poorest provinces--La Rioja, Formosa, and Chaco--an average of 70 percent of the population were beneficiaries of the Plan as of 2007⁴⁸. Rosana Abrutzky of the *Asociación Argentina de Economía Política* affirms that the Plan has resulted in a comprehensive savings program for impoverished families by reducing healthcare costs and improving health quality through free services⁴⁹.

Similar to *Plan Jefes y Jefas* is the *Programa Familias por la Inclusión Social (IDH)*. The program (initiated in 2003) targets families deemed to be "in a situation of vulnerability and/or social risk." The benefits of the program (a small monthly payment of a maximum

⁴⁶ Kostzer, "Argentina: A Case Study on the *Plan Jefes y Jefas de Hogar Desocupados*, 17

⁴⁷ Kostzer, "Argentina: A Case Study on the *Plan Jefes y Jefas de Hogar Desocupados*, 30

⁴⁸ INDEC, Estimación realizada para el primer semestre del año 2007 en base a la Encuesta Permanente de Hogares (EPH)

⁴⁹ Rosana Abrutzky, Cristina Bramuglia, Cristina Godio, "Estudio de una política de salud: Ley de Prescripción de medicamentos por su nombre genérico y Plan Remediar," *Asociación Argentina de Economía Política* (November 2008), 17

AR\$200 per family) are available only to the mothers in the family. Furthermore, only women who have not completed high school may access the program. Therefore, a much smaller sector of Argentine society has access, and most importantly, women are the primary beneficiaries⁵⁰.

Programa Manos a la Obra (PMO) promotes training and education for workers, as well as development of sustainable economic practices. According to Eleanor Faur, the program's objective is to provide "technical support, training and financing for productive initiatives in agriculture and cattle-raising, industry, commerce and services...and the production and commercialization of goods and services and the development of the capacities of individuals." Like IDH, PMO is tailored for a specific group of beneficiaries, mainly because the program is overseen at the municipal level. This allows localization of the types of employment and skill development provided through PMO⁵¹.

Finally, the *Programa Adulto Mayor Más (PAMM)* is aimed at Argentines over 70 years of age who have no income flows or resources. Recipients of the program receive approximately 70 percent of the minimum retirement and health benefits provided in the federal government⁵².

Critics of these programs have argued that, from a human rights perspective, they include discriminatory criteria⁵³. However, many of these programs overlap and special programs are only available for minority groups such as women and the elderly (the PMO is more of a skills training program than a welfare program). These programs, though not without fault, have been instrumental in poverty alleviation over the past decade and they attempt to satisfy economic rights without unbalancing the economy.

⁵⁰ Eleonor Faur, Luis Campos, Laura Pautassi and Silvina Zimmerman, "Rights questioned. Limitations of poverty-reduction policies in Argentina," *International Social Science Journal* 60:197-198 (20 April 2010), 356

⁵¹ Faur, Campos, Pautassi and Zimmerman, "Rights questioned," 358

⁵² Faur, Campos, Pautassi and Zimmerman, "Rights questioned," 360

⁵³ Faur, Campos, Pautassi and Zimmerman, "Rights questioned," 368

Since the 2001 crisis, Argentina has experienced a wave of social movements whose primary purpose has been to secure economic rights. Key among these movements have been the *fábrica recuperada*, the *piqueteros* and the *cartoneros*. Discussion of these social actors is essential to understanding the complex framework of economic rights development in Argentina: the compromises that the government must make to ensure that economically marginalized groups receive adequate rights without endangering the macroeconomic social structure.

The *fábrica recuperada*, or “recovered factory” movement is rooted in collectivist ideology, which stresses the ability of workers to eliminate workplace hierarchy and run businesses based on communal agreement. In Argentina, when businesses are closed and the workers laid off, in several cases the workers have simply moved back into the factory and resumed work without their employers. A 2005 study by University of Buenos Aires (UBA) sociologist Julián Rebón concludes that the recovered factories are a practical means of avoiding unemployment; the worker’s wages, significantly, are five times the government unemployment compensation given to organized groups such as the *piqueteros* and the *cartoneros*⁵⁴. The worker collectives have received overall public sympathy, and in turn the government has reacted with tempered support. The Kirchner administrations have shown this support through the expropriation of a number of bankrupt companies that had since been converted into worker collectives; legislation passed in November 2004 affords workers the right to continue production without their employers, as long as the value of the company at the time of bankruptcy is repaid within 23 years to the company’s original owner⁵⁵.

⁵⁴ Julián Rebón, *Desobedeciendo al Desempleo: la experiencia de las empresas recuperadas*, Buenos Aires: Ediciones Picaso/La Rosa Blindada (2005)

⁵⁵ Peter Ranis, “Argentine Worker Cooperatives in Civil Society: A Challenge to Capital-Labor Relations,” *Working USA* 13:1 (March 2010), 77-105

The *piqueteros*, though linked to the *fábricas recuperadas*, are a distinct movement. The *piquetero* phenomenon arose in the 1990s to protest the Menem administration's neoliberalism, and it intensified after the 2001 collapse. The *piqueteros*, or picketers in English, block roads and otherwise cause mass disturbances to draw attention to a specific issue. The Kirchners viewed the *piqueteros* sympathetically in the immediate aftermath of the economic crisis, as many were the new poor whose situations received redress through various government programs. Opinion turned, however, when the blockades began to affect the functionality of employed Argentines. Edward Epstein notes that, with the normalization and rapid recovery of the economy, the "disruptive events were increasingly seen [more]...as inconveniences...than as a necessary strategy used by desperate fellow citizens"⁵⁶. Though recognizing the validity of the *piquetero* demands, the Kirchner administrations have been unwilling to jeopardize the rapid economic recovery. Therefore, the government's approach to the *piqueteros* has been one of appeasement, fulfillment of basic needs, and corporatist incorporation in the government to assuage social disruption. One such program targeted at the *piqueteros* was the previously mentioned *Plan Jefes y Jefas*, which since 2004 has been continually downsized as the economy has improved. While several radical *piquetero* groups have asserted that the Kirchners have not done enough to improve their situation, the larger and more moderate *piquetero* organizations have objectively acknowledged the difficulties that the social disruption has incurred⁵⁷. Consequently, several *piquetero* groups have been co-opted by the government, in much the same fashion as the powerful labor unions. In exchange for the cessation of massive protests and road blocks, as of

⁵⁶ Edward C. Epstein, "Perpetuating Social Movements amid Declining Opportunity: The Survival Strategies of Two Argentine Piquetero Groups," *European Review of Latin American and Caribbean Studies* 86 (April 2009), 4

⁵⁷ Hernán Ouviaña, "La autonomía urbana en territorio argentino: apuntes en torno a la experiencia de las asambleas barriales, los movimientos piqueteros y las empresas recuperadas," in *Argentina en pedazos: luchas sociales y conflictos interburgueses en la crisis de la convertibilidad*, ed. Alberto Bonnet and Adrián Piva, Buenos Aires: Ediciones Continente (2009), 126

2007, the moderate *piquetero* groups--now known as Unemployed Workers Organizations (OTDs)--are incorporated into the government structure in a clientalist fashion, thereby allowing them “some input into official policy-making”⁵⁸.

The third and final Argentine socioeconomic phenomenon to be discussed in this paper is that of the *cartoneros*. These individuals are part of the informal economic sector, working at night to separate rubbish from recyclable objects in the trash left on the streets. When the peso was devalued following the 2001 crisis, the price of recyclables surged: the value of paper went from 5 to 40 centavos, while that of aluminum surged by 160 percent. In 2002, it was estimated that approximately 25,000 people worked as *cartoneros*; due to Argentina’s economic recovery, that number is now deemed to be closer to 6,000⁵⁹. Relations between the government and the *cartoneros* were at first characterized by ambivalence or indifference. However, like the *piqueteros*, most *cartoneros* receive government assistance under *Plan Jefes y Jefas*, and in 2004 began to form organizations pressuring the government for *reconocimiento*--recognition--of their important function. Consequently, the government has condoned the *cartonero* phenomenon for a number of reasons; the Ciudad de Buenos Aires affirmed through its website that the “‘*recuperadores urbanos*’ [*cartoneros*] fulfill social, economic and environmental functions and....generate sources of employment”⁶⁰. By sanctioning the persistence of the *cartonero* movement while simultaneously providing for *cartonero* families under the *Plan Jefes y Jefas*, the Kirchners have taken an effective and heterogeneous approach toward combatting these citizens’ poverty.

⁵⁸ Epstein, “Perpetuating Social Movements amid Declining Opportunity,” 7

⁵⁹ Sabina A. Dimarco, “Experiencias de autoorganización en cartoneros: un acercamiento a la configuración de vínculos laborales, sociales y políticos en contextos de exclusión social,” *Programa Regional de Becas CLACSO*, (2005), 1-31

⁶⁰ Dimarco “Experiencias de autoorganización en cartoneros,” 25, trans. Daniel McCown

IV. Argentine National Identity in a Democratic Context: Migrant Rights

Globalization has engendered a renewed emphasis on transnational labor flows; improved transportation and information distribution encourages migrants to move frequently in search of better opportunities for themselves and for their families. Many communities in developing nations rely on remittances from emigrants for survival. Argentina has always been a nation of immigrants; it was the American nation most affected by the waves of European immigration in the late nineteenth century⁶¹. The labor and cultural flows of that period fundamentally changed the structure and development of Argentina. While the twentieth century saw some emigration due to the political instability, Argentina has generally remained a country that receives immigrants from other nations. In contrast to the European immigration of the previous century--a phenomenon encouraged by the first presidents of the nation to populate the vast Argentine territory--the latter half of the twentieth century and the beginning of the twenty-first century have been characterized by an influx of migrants from surrounding South American nations, particularly Paraguay, Bolivia, and Peru. With the economic crisis of 2001, many of the migrants who came to Argentina in search of employment were shut out of the formal job market and the slums--*villas miserias* en Argentine Spanish--grew exponentially. Despite Argentina's weak economy, migrants continue to flock to major urban centers, taking part in a growing informal sector that is for the most part tolerated by the authorities.

In the past decade, the living conditions and treatment of immigrants has become a growing human rights concern--not just in Argentina, but globally. During the administration of President Néstor Kirchner, the Argentine government promulgated a number of laws protecting the rights of immigrants and ensuring full citizenship rights. This was in reaction to the xenophobic policies in place since the military dictatorship and the harsh anti-immigrant laws

⁶¹ Silvia Lépore, "Inmigración hacia Argentina," *Universidad Católica Argentina*, September 2010

imposed by the Menem regime in the 1990s. President Cristina Fernández de Kirchner has repeatedly affirmed the need for more anti-discrimination laws and egalitarian wealth distribution for the migrants living within the country. Argentina has pushed itself to the forefront of the international community in its protection and inclusion of immigrants within the national discourse. Yet despite the legal protections and the Kirchners' human rights rhetoric on this question of migrant flows, the conditions of many immigrants living in the *villas miserias* of Argentina's major cities remain deplorable. Thus if it wishes to fulfill its projected image as a defender and promoter of migrant rights, the Fernández de Kirchner regime must begin to address the physical--not only the political--needs of the migrants within Argentina's borders.

The historical legacies of immigration in Argentina have been instrumental in shaping the policies of the twentieth and twenty-first centuries. The influx of Europeans in the second half of the nineteenth century completely altered the demographics of the largely unoccupied Argentine territory. Within several decades, the population doubled and urban centers--above all, Buenos Aires--had transformed into majority immigrant communities. This phenomenon unequivocally distinguished Argentina's development from that of other former Spanish colonies in the Americas, generating an Argentine culture distinct in its politics, language, music, religious sensibilities, and education. As Argentine migration expert Silvia Lépore asserts, "national identity was constructed around new foundations; Argentina's history became one of immigrants"⁶².

The 1853 Constitution's favorable stance toward immigration represents the beginning of Argentine governments' relatively continuous pro-immigrant rhetoric. Article 20 of the

⁶² Silvia Lépore, "Migraciones internacionales en América Latina," Class Lecture, Universidad Católica Argentina, Buenos Aires, Argentina, 25 August 2010

constitution afforded foreign nationals the same civil and political rights as Argentine citizens⁶³. The approach outlined in the constitution, and advocated by the presidents of the late 1800s, generated open and largely uninhibited immigration; the ensuing wave of 5 million European migrants to the country reflected the attractiveness of this decree. The inundation of Europeans--the majority of them Italians and Spaniards--contributed to the notion of Argentina's "European" character, distinct from the identities of other nations of Latin America that had a higher percentage of indigenous and *mestizo* populations⁶⁴.

Beginning in 1914, the immigration flows to Argentina continually diminished. However, while European migration fell, immigration from surrounding Latin American countries generally remained constant⁶⁵. Immigration policy continued to comply with the standards put forth under the 1853 Constitution, rejecting discriminatory practices against foreigners and perpetuating one of the most liberal approaches to migration in the world⁶⁶. Profound changes in immigration did not occur until the 1976-1983 military dictatorship. The junta enacted reforms for Argentine migration policies that fundamentally changed the open character of the country; these reforms were upheld through the democratic transition period under the Alfonsín and Menem governments. As all three of the regimes grounded their ideologies in neoliberal economic notions, immigration became a grave problem to be controlled and monitored by police efforts and by restricting employment opportunities for non-Argentines⁶⁷.

⁶³ Barbara Hines, "The Right to Migrate as a Human Right: the Current Argentine Immigration Law," *Cornell International Law Journal* 43 (2010), 477

⁶⁴ Silvia Léopore, "Inmigración hacia Argentina," *Universidad Católica Argentina*, September 2010

⁶⁵ Susana Novick, "La reciente política migratoria argentina en el contexto del MERCOSUR," in *El proceso de integración MERCOSUR: de las políticas migratorias y de seguridad a las trayectorias de los inmigrantes*, Instituto de Investigaciones Gino Germani, Facultad de Ciencias Sociales, Universidad de Buenos Aires, Document Number 46 (2005), 10

⁶⁶ Hines, "The Right to Migrate as a Human Right," 477

⁶⁷ Novick, "La reciente política migratoria argentina," 7

The military dictatorship's rhetoric regarding immigration blamed migrants from surrounding countries for the country's various problems such as unemployment, crime, and social unrest. The anti-immigrant discourse was embodied in the 1981 *Ley General de Migraciones y Fomento de la Inmigración* (*Ley N° 22.439*); its xenophobic basis is underscored in Article 2 of the document, which states that only immigrants "whose cultural characteristics permit his or her adequate integration into Argentine society" would be admitted into the country⁶⁸. The law also expanded the grounds for deportations, an action that had rarely been exercised under previous immigration policies. Immigrants without residency were unable to attend schools, engage in real estate transactions, seek medical treatment, or marry in Argentina. Furthermore, Barbara Hines explains that "equal protection, non-discrimination, and the right to immigrate were notably absent"⁶⁹. While this should not be shocking considering the military dictatorship's brutal treatment of Argentine nationals, *Ley 22.439* remained in place for twenty years after the democratic transition.

The restrictions on immigration and harsh policies for migrants living in Argentina failed to solve the nation's unemployment problems in the 1980s and 1990s. In addition to the policies' general repudiation of Argentine tradition, the removal of social and legal protections for immigrants tended to destabilize the nation's social fabric. The creation of Mercosur in the late 1980s further underscored the impracticality of such discriminatory migrant policies, which detracted from effective regional economic integration. Finally, the most persuasive argument against the *Ley 22.439*--particularly after the consolidation of democratic governance--was that it

⁶⁸ "Ley N° 22.439/81, Ley general de migraciones y fomento de la inmigración," Reproduced by *United Nation High Commissioner for Refugees (UNHCR)*, 25 June 1981, Buenos Aires
<<http://www.unhcr.org/refworld/docid/3db93ab74.htm>>

⁶⁹ Hines, "The Right to Migrate as a Human Right," 481

invalidated respect for the basic human rights that were enshrined within Argentina's 1994 Constitution⁷⁰.

Only toward the end of the twentieth century, as Argentina's neoliberal economy neared collapse, did efforts by non-governmental organizations begin to reshape conceptions of immigration in Argentina and promote a return to traditional inclusionary policies. Calls to change the *Ley 22.439*--also known as *La Ley Videla* for the junta's most infamous leader--increasingly garnered public support. The collapse of the Menem government and the rise of the Kirchners in 2003 signaled a new era for Argentine migration policy.

The calls for repeal of Argentina's *Ley Videla* reflect a broader phenomenon as immigrant communities began to actively pursue recognition of migrant rights at the end of the twentieth century. Globalization, technological advancement, and increased information exchanges permitted the organization of transnational migration networks to bring migrant rights into the international dialogue.

Attempts to achieve recognition of migrant rights were grounded in the vulnerability of migrant communities and the subsequent dangers of trafficking and slavery, as well as the omnipresent problems of discrimination and xenophobia. Immigrant groups asserted that exclusionary migrant policies--such as those in place in Argentina since the military dictatorship--violated human rights because they essentially derogated a person's ability to engage in society without fear of deportation or imprisonment⁷¹.

The international community has been slow to express its support for migrant rights. The United Nations put forth the International Convention for the Protection for the Rights of All

⁷⁰ "En defensa de los migrantes," *Revista Criterio* N° 2199, July 1997, <<http://www.revistacriterio.com.ar/iglesia/en-defensa-de-los-migrantes/>>

⁷¹ Comisión Económica para América Latina y el Caribe (CEPAL), "Cuatro temas centrales en torno a la migración internacional, derechos humanos y desarrollo," Montevideo, 24 March 2006, 32

Migrant Workers and Members of Their Families (ICRMW) in 1990, but did not accrue the twenty ratifications required for its enforcement until 2003. Argentina was one of the ratifying countries; no immigrant-receiving country in the developed world has ratified the treaty⁷².

The international attention of migrant rights, despite its lukewarm reception, signified the launching point for the Kirchners' sweeping immigration reform. Shortly after the ICRMW came into effect in 2003, the Kirchners introduced a new groundbreaking immigration policy aimed at promoting migrant rights as fundamental human rights even beyond the scope of the international convention.

Since the end of the twentieth century, the demographic makeup of Argentina's immigrant communities has continued to evolve. Today's largest immigrant groups are mostly from other Latin American countries--Peru, Bolivia, Paraguay, Colombia--but those are supplemented by large communities from Ukraine, Korea, and diverse African countries. Many of these groups arrived during the 1990s, when Argentina's relatively strong economy and low inflation attracted immigrants despite strict migration policies⁷³.

The calls of immigrant groups at the end of the century, in addition to the 1994 Constitution's explicit support for human rights, reinforced the need for a rethinking of the military's exclusionary migration policies. Notably, in 1996 the *Centro de Estudios Legales y Sociales* (CELS) filed case against the government for the deportation of an Uruguayan immigrant and resident of Argentina; the case was addressed to the Inter-American Commission for Human Rights as a violation of international human rights standards. The CELS case was still pending in court when Néstor Kirchner assumed the presidency and announced a complete

⁷² "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families." *Office of the United Nations High Commissioner for Human Rights*. 18 December 1990. <<http://www2.ohchr.org/english/law/cmw.htm>>.

⁷³ Mesa Nacional Por La Igualdad, "Migrantes y Refugiados/as," November 2011, <www.mesaporlaigualdad.com.ar>

overhaul of the *Ley 22.439*⁷⁴. A new law, *Ley 25.871*, fulfilled *kirchnerista* promises of human rights promotion and proved even more expansive than existing international conventions on the rights of migrants.

The migration law, which also sought to further Mercosur integration, is unprecedented in that it specifically recognizes that the “the right to migrate is essential and inalienable for any person, and the Republic of Argentina guarantees it in accordance with the principles of equality and universality”⁷⁵. More generally, the law affords equal protection to immigrants under Argentine law and overturns the xenophobic discourse of the *Ley Videla* through its anti-discrimination clauses. Whereas under the previous law immigrants were barred from most social benefits, the Kirchner legislation ensures access to all social and public services-- education, health, social security, etc.--regardless of migrant status⁷⁶.

The *Dirección Nacional de Migraciones* (DNM), the federal immigration agency, has also reoriented its policies to comply with the framework of the new migration law and to streamline the documentation process for immigrants to Argentina who wish to apply for residency or citizenship. To this end, the DNM has established the *Programa Nacional de Normalización Documentaria Migratoria* to help undocumented immigrants achieve legal status and to promote new policies that encourage the integration of the immigrant communities into Argentine society. Furthermore, in recognition of the risks of associated with immigration, the DNM has pursued a number of efforts aimed at combating human trafficking and other forms of exploitation⁷⁷.

⁷⁴ Hines, “The Right to Migrate as a Human Right,” 483

⁷⁵ Susana Novick, Alejandro Hener and Pablo Dalle, “El proceso de integración Mercosur: de las políticas migratorias y de seguridad a las trayectorias de los inmigrantes,” *Instituto Investigaciones Gino Germani, Facultad de Ciencias Sociales, Universidad de Buenos Aires, Argentina* (December 2005), 46, trans. Daniel McCown

⁷⁶ Hines, “The Right to Migrate as a Human Right,” 489-491

⁷⁷ Novick, Hener and Dalle “El proceso de integración Mercosur,” 57

Novick observes that the Kirchner migration policies encourage “a multicultural and inclusive society that respects the rights of foreign nationals and values their social and cultural contributions”⁷⁸. Though many of the immigration policies enacted since 2003 were the work of Néstor Kirchner’s administration, President Cristina Fernández de Kirchner has continued to promote the insertion of migrant rights into the human rights discourse. She has furthered social programs for migrants, particularly focusing on education and distribution of wealth. Under the 2004 migration law, immigrants are entitled to the same benefits as Argentines—including stipends from the *Jefes y Jefas* program. The president has also repeatedly criticized developed nations for their failure to sign on to the ICRMW and the persistence of discriminatory practices⁷⁹.

Despite the advances made by the Kirchner administrations in the realm of migrant rights, a number of challenges remain. Urban poverty and the growth of *villas miserias* has become a significant problem in Buenos Aires and several other cities across the country. The politics of Mercosur and the transfer of labor within the regional economic bloc have become complicated by the bloc’s slow and complex integration process. Finally, emigration from Argentina--a new phenomenon for a country that has traditionally been an immigrant receiver--is resulting in a gradual “brain drain.”

The past decade has seen the growth of urban *villas miserias*, which are mostly inhabited by migrants. The 2010 census revealed that the population of Buenos Aires’s largest and most notorious *villa miseria*, Villa 31, doubled from 12,204 inhabitants in 2001 to 26,403 in 2010. Furthermore, a third of the slum’s inhabitants do not have access to running water and nearly 20 percent have not completed primary education. Studies of Villa 31 affirm that over 50 percent of

⁷⁸ Novick, “La reciente política migratoria argentina,” 11, trans. Daniel McCown

⁷⁹ “Cristina Fernández critica la discriminación a inmigrantes en países ricos,” *El Periodiquito*, 28 May 2011, <www.elperiodiquito.com>.

the population are migrants and 68 percent are under the age of 30. Despite these sobering statistics, the city government, subsidized by federal funding, is formulating a strategy to improve the *villa*'s infrastructure--building roads, constructing low-cost permanent housing, and improving water access--without dislodging the current inhabitants⁸⁰.

Mercosur's integration, a slow and arduous process that has been repeatedly stalled since its genesis in 1991, faces a number of challenges in regard to the control of labor flows. Mercosur's successes in economic growth throughout the region are tempered by the lack of strong regional institutions. The Ouro Preto Protocol in December 1994 created the Council of the Common Market (CMC), which is composed of the foreign and economic ministers of each country, and the Common Market Group (GMC), which includes members of the aforementioned ministries as well as representatives of each nation's central bank. The difficulty arises in the nature of these councils' governing mechanisms. As opposed to the European Union model of a supranational organization, the Mercosur administrative bodies are intergovernmental⁸¹. This is largely dictated by the reluctance of member states to relinquish any national autonomy in economic policy; such reluctance, however, has resulted in stagnation in the integration process. The lack of a supranational body to ensure rights for intra-Mercosur laborers prevents the enforcement and proliferation of the Kirchners' pro-migrant agenda⁸².

Emigration, a previously unknown phenomenon in Argentina, has become a growing issue in the past several decades. The concern is not so much the number, but rather the demographic makeup, of the emigrants. A high percentage of emigrants are middle-class Argentines with university educations provided by the federal government. Most are in their

⁸⁰ "Se duplicó la población de la villa 31 y 31 bis," *infobae.com*, 14 April 2010, <www.infobae.com/home>

⁸¹ Marc Schelhase, "The Successes, Failures and Future of Mercosur" in *Inter-American Cooperation at a Crossroads*, ed. Gordon Mace, Andrew F. Cooper and Timothy M. Shaw (New York: Palgrave MacMillan, 2011), 172

⁸² Novick, "La reciente política migratoria argentina," 3

early twenties, with specified skill sets--medicine, engineering, etc.--that receive higher salaries in developed nations than they might expect in Argentina. This has contributed to a relative “brain drain” in Argentina; though not nearly as critical as in many other developing nations, it constitutes a distinct concern for future Argentine governments⁸³. Addressing emigration as a national “problem,” however, remains controversial because of the government’s firm support for the universal “right to migrate.”

V. Freedom of Sexuality: The LGBT Rights Movement in Argentina

The sexual revolution of the twentieth century paved the way for the rapid successes of the LGBT movement in the twenty-first century. Through efficient organization and the institution of a receptive and progressive democratic government in the 1980s, the Argentine LGBT movement achieved a virtually unparalleled level of visibility in a mere 25 years. On July 15, 2010, Argentina became the first country in Latin America, second in the western hemisphere, and tenth in the world to legalize same-sex marriage⁸⁴. This represents a distinct departure from the laws in place during the previous decade, which allowed for the detention of those suspected of committing homosexual acts⁸⁵. Under the Kirchner administrations, the LGBT movement has expanded, evolved, and made significant gains in its political and social agendas. The repression of Argentine homosexuality, ignored or blatantly endorsed by regimes until 2003, was cast off entirely in 2010 with the culmination of years of organizing efforts and public advocacy campaigns. The shift cannot be entirely credited to the liberal and populist ideologies of the Kirchners, though they did play an important role. The post-dictatorship

⁸³ Novick, “La reciente política migratoria argentina,” 10

⁸⁴ Dan Fastenberg, “A Brief History of International Gay Marriage,” *Time*, 22 July 2010

⁸⁵ Mikel Imaz, “Historia de la homosexualidad en la Argentina: de la conquista de América al siglo XXI,” *Chasqui* 34:1 (2005), 172

governmental structure and the post-2001 crisis's increased emphasis on human rights provided the essential framework to create a dialogue on the rights of the LGBT community.

The establishment of an independent Argentine republic in 1810 did not negate the Castilian legacies inherent in its social structures. Included in this heritage was the strict adherence to Catholic doctrine and--partnered with that--widespread and violent homophobia. Depictions of nineteenth century Argentina are rife with sexual violence, and particularly that of a homoerotic nature⁸⁶. Homosexuality pervades many literary works set during the civil conflict between the Unitarians and the Federalists that characterizes much of Argentina's early history. The most famous of these--and one of the most famous works of Argentine literature--is *El matadero* by Esteban Echeverría. The rape of the Unitarian by the mob was used by Echeverría as an allegory for the rape of Argentina by the Federalist Rosas dictatorship⁸⁷. The forced subordination of the Unitarian plays into the homosexual undertones of the violence, and David William Foster notes that "the added eloquence of conjoining the rape taboo and the taboo of male-to-male sex" succeeds in shocking the norms of nineteenth-century Argentine society⁸⁸. Furthermore, the perverse use of the *mazorca* underscores the allegory's multiple layers; the *mazorca* (corn-cob in English), was both a symbol of the Rosas regime and the principal torture instrument used for the anal rape of victims. The *mazorca* would later be appropriated by the 1976 military junta to torture victims accused of homosexuality⁸⁹. Anal rape reappeared in Argentine literature with Griselda Gambaro's *La malasangre*; though the work was similarly set

⁸⁶ Imaz, "Historia de la homosexualidad en la Argentina: de la conquista de América al siglo XXI," 171

⁸⁷ Esteban Echeverría, "El matadero," in *Huellas de las literaturas hispanoamericanas*, ed. John F. Garganigo, Upper Saddle River, NJ: Prentice Hall (1997)

⁸⁸ David William Foster, *Violence in Argentine Literature: Cultural Responses to Tyranny*. Columbia, MI: University of Missouri Press, 1995, 88

⁸⁹ Norma Thomas di Giovanni and Susan Ashe, "The Slaughteryard Project," in *Esteban Echeverría: The Slaughteryard*, 127

during the Rosas era, the 1982 play is widely considered to allude to the torture methods employed by the junta⁹⁰.

During the *generación de los 80*, the modernizing presidents of Argentina sought to “purify” Argentine society of its various “*lacras*,” including homosexuality. This end was most strongly advocated by José Ingenieros and Julio Argentino Roca; they spoke of the *mala vida*, the belief in the corrupting nature of homosexuality⁹¹. In theory, the *mala vida* was fairly well-documented; due to poverty, many homosexual men resorted to prostitution which in turn led to involvement in other criminal activities. In practice, however, the categorization of homosexuality as conducive to criminality is clearly colored by socioeconomic circumstances. The densely populated city of Buenos Aires and the overwhelming majority of young, single men in the early 1900s made monitoring of homosexuality virtually impossible. Homosexual acts between consenting adults in private were theoretically legal in Argentina; however, the law was subject to whether the act was deemed to have “offended public morality.” Bribes to police were a common practice of (mostly wealthy) homosexuals to avoid government persecution⁹².

Despite the general tolerance of homosexuality, the state continued to view “in homosexuality the atavistic, the criminal and the dangerous,” one of the clearest threats to Argentine society⁹³. The military dictatorships of the twentieth century pursued particularly repressive policies toward homosexuals. In 1932, the *Códigos Contravencionales* were passed to allow the detention of “any known homosexual found in the company of a minor”⁹⁴. Such a law directly violated the Penal Code and the Constitution, but was periodically enforced through

⁹⁰ Brenda Werth, 2012, Associate Professor of Language and Foreign Studies, American University, Author interview, Washington, DC, April 8

⁹¹ Richard Cleminson, “Transnational Discourse on the ‘Mala Vida’: Male Homosexuality in Madrid, Buenos Aires and Barcelona in the Early Twentieth Century,” *Journal of Spanish Cultural Studies* 10:4 (December 2009), 469

⁹² Cleminson, “Transnational Discourse on the ‘Mala Vida,’” 469-471

⁹³ Cleminson, “Transnational Discourse on the ‘Mala Vida,’” 465

⁹⁴ Imaz, “Historia de la homosexualidad en la Argentina: de la conquista de América al siglo XXI,” 172

much of the century. Peronism, though nominally tolerant of homosexuality, mostly used it as a weapon in its battle against the Catholic Church. The military dictatorship of Juan Carlos Onganía (1966-1970) increased repression of homosexuality, but the global sexual revolution pervaded Buenos Aires, and a series of bars and clubs began to open, culminating in the foundation of *Nuestro Mundo* (“Our World”) by Héctor Anabitarte in 1969⁹⁵. Though quickly shut down by the military, *Nuestro Mundo* was the first organized LGBT movement in Latin America and presaged the foundation of its more permanent successor, *Frente de la Liberación Homosexual (FLH)* in 1971. FLH was a middle-class movement with its primary objective being the removal of social structures that continued to repress Argentine homosexuals⁹⁶.

The fall of Isabel Martínez de Perón’s fragile government in March 1976 signified the renewal of aggressive persecution of homosexuals. According to Jordi Díez, the LGBT groups formed in the early seventies with the gradual softening of repression were quickly dispersed; attempts for enhanced rights were abandoned as survival became the primary objective of the LGBT community⁹⁷. Under the military junta, homosexuality became synonymous with subversion, and alleged subversives were disappeared. The detention of gays, lesbians, and transgendered people was marked by particular brutality and ingenuity in the methods of torture; though sexual violation was common as a torture tactic, it was applied almost universally to suspects detained for homosexuality. As previously mentioned, the *mazorca* served as a torture device reminiscent of Argentina’s past, together with the infamous *picana* (cattle prod). Diana Taylor describes the process: “Male- and female-sexed bodies were turned into penetrable,

⁹⁵ Federico Andahazi, “El sexo de las morsas, el sexo y la revolución” in *Pecadores y Pecadoras: historia sexual de los argentinos III, desde el golpe del 30 hasta Cristina Kirchner*, Buenos Aires: Planeta (2010), 233-250

⁹⁶ Guido Vespucci, “Explorando un intrincado triángulo conceptual: homosexualidad, familia y liberación en los discursos del Frente de Liberación Homosexual de Argentina,” *Hisotira Crítica* 43 (2011), 184

⁹⁷ Jordi Díez, “Argentina: A Queer Tango between the Lesbian and Gay Movement and the State,” in *The Lesbian and Gay Movement and the State: Comparative Insights into a Transformed Relationship*, ed. Manon Tremblay, David Paternotte and Carol Johnson (Burlington: Ashgate Publishing Company, 2011), 13-25.

‘feminine’ ones that coincided with the military’s ideal of a docile social and political body....Torture was organized as a sexual encounter, usually entailing motifs associated with foreplay, coupling, and penetration”⁹⁸. Taylor goes on to describe the experience of one male detainee, whose testimony was recorded in the *Nunca Más* report. According to the detainee, the torturer would force him to copulate with another male prisoner and then rape him with the electric cattle prod during the sexual act. As Taylor notes, “the guards...staged their assault...as a homosexual act, thus ‘feminizing’ the enemy in the cultural understanding of the feminine as penetrable”⁹⁹.

The military dictatorship was one of the most repressive periods for homosexuals in Argentina’s history. With the fall of the junta and the restoration of democracy in 1983, the movement was imbued with new hope. However, the brutality of the previous seven years had left the FLH scattered, its members disappeared, exiled, or simply keeping low profiles¹⁰⁰. Sociologist and author Néstor Perlongher asserts that “the kidnappings, tortures, robberies, imprisonments, ridicules, and shame” that Argentine homosexuals had endured before the dictatorship--and which factored in the dictatorship’s genocidal campaign--did not end with the restoration of democracy¹⁰¹. Though the LGBT movement began to slowly reorganize, repression and unwarranted detention of homosexuals continued through the eighties. The 1984 Balvanera raid represents a turning point in the movement’s determination. Police detained 200 homosexuals at a Balvanera nightclub, and the club’s owners received death threats until they

⁹⁸ Diana Taylor, *Disappearing acts: spectacles of gender and nationalism in Argentina’s “dirty war”*, Duke University Press (1997), 152

⁹⁹ Taylor, *Disappearing acts*, 153

¹⁰⁰ Federico Andahazi, “El destape” in *Pecadores y Pecadoras: historia sexual de los argentinos III, desde el golpe del 30 hasta Cristina Kirchner*, Buenos Aires: Planeta (2010), 315-320

¹⁰¹ Néstor Osvaldo Perlongher, Christian Ferrer y Osvaldo Baigorria, *Prosa plebeya: ensayos 1980-1992*, Buenos Aires: Colhuc (2008), 30

were forced to leave the country¹⁰². As a result of the Balvanera raid, the LGBT community began to mobilize, establishing the *Comunidad Homosexual Argentina (CHA)*, with the aim of raising public awareness¹⁰³. The campaign began by publishing a controversial article in the nationwide *7 Días* magazine in April 1984, a month after the Balvanera raid: “*Los riesgos de ser homosexual en la Argentina*,” (“The risks of being gay in Argentina”). The magazine’s cover featured the story and a photo of CHA founder Carlos Jáuregui embracing another man--the first time such an image had been printed in a national publication¹⁰⁴.

Though the LGBT movement gained momentum and increased visibility after the foundation of CHA and the *7 Días* article, detention of homosexuals and impunity for those committing homophobic violence continued. Consequently, the CHA began its lobbying of the government through the pursuit of “negative rights,” with its principal intent the repeal of the 1932 *Códigos Contravencionales*¹⁰⁵. Between 1984 and 1998, the LGBT community began to shift public opinion, but had generally less success with the government. In 1998, the city government of Buenos Aires ruled that discrimination based on sexual orientation was illegal and the *Códigos Contravencionales* were overturned--but only within the city of Buenos Aires, not federally. Furthermore, though the LGB community had gained its “negative rights”--in essence the right to live without fear of detention--transvestites and transgendered people were excluded from the anti-discrimination legislation and therefore forced to continue campaigning for basic rights¹⁰⁶.

¹⁰² *Comunidad Homosexual Argentina*, “Cronología del movimiento de gays, lesbianas, travestis, transexuales y bisexuales de Argentina,” <http://www.cha.org.ar/cronologia_glttbi.php?cat=42&menu=10>.

¹⁰³ Díez, “Argentina: A Queer Tango between the Lesbian and Gay Movement and the State,” 15

¹⁰⁴ Mabel Bellucci, *Orgullo: Carlos Jáuregui, una biografía política*, Buenos Aires: Planeta (2010), 44

¹⁰⁵ Bellucci, *Orgullo*, 44-55

¹⁰⁶ Díez, “Argentina: A Queer Tango between the Lesbian and Gay Movement and the State,” 16

The LGBT movement did not truly begin to gain ground until after the 2001 economic crisis and the rise of the Kirchner administrations. The chaos--both economic and political--in the country between 2001 and 2003 was fully exploited by the CHA, which in less than 20 years had become a powerful and organized lobby. The government granted civil unions in the city of Buenos Aires in 2002, making Capital Federal the first jurisdiction in Latin America to permit same-sex unions¹⁰⁷. In *La historia de la homosexualidad en la Argentina*, Osvaldo Bazán describes this achievement as an important step, but affirms that the campaign would not end until homosexuality no longer needed a political lobby. He summarizes this objective poetically: “*La homosexualidad volverá a ser lo que nunca debió dejar de ser: nada*”; that is, “homosexuality will again become what it never should have stopped being: nothing”¹⁰⁸.

The Argentine LGBT movement has met with such rapid success because of its organization and links to powerful sponsors. In 1987, the CHA began fostering ties with the other international movements and Argentina’s medical community to raise awareness about HIV/AIDS. The group’s strategy included importing campaign knowledge from other movements--most notably in Spain--and garnering international visibility and support¹⁰⁹.

By 1998, the influence of Spanish LGBT organizers had created a veritable political machine. Early that year, the National Administration of Social Security ruled that the widows or widowers of same-sex couples would not receive their partners’ pensions; the CHA raised an outcry, successfully arguing that the ruling disavowed the socioeconomic rights that should be

¹⁰⁷ *Comunidad Homosexual Argentina*, “Cronología del movimiento de gays, lesbianas, travestis, transexuales y bisexuales de Argentina”

¹⁰⁸ Osvaldo Bazán, *Historia de la homosexualidad en la Argentina: de la conquista de América al siglo XXI*. Buenos Aires: Editorial Marea (2004), 454

¹⁰⁹ Federico Andahazi, “Sida, la epidemia del siglo XX” in *Pecadores y Pecadoras: historia sexual de los argentinos III, desde el golpe del 30 hasta Cristina Kirchner*, Buenos Aires: Planeta (2010), 321-325

available to all Argentine citizens. The decision was rescinded several months later and replaced with an expansion of pension benefits for widows and widowers, regardless of marital status¹¹⁰.

In the twenty-first century, the LGBT movement has made significant strides in its rights agenda. While the CHA began to campaign for national civil unions after its 2002 success in Buenos Aires, several members broke off in 2007 and formed a parallel organization, *La Federación Argentina de Lesbianas, Gays, Bisexuales y Trans (FALGBT)*, to begin lobbying for full marriage rights. Almost entirely funded by Spanish LGBT groups and NGOs, FALGBT recognized the validity of the CHA's strategy but asserted that civil unions would be detrimental to the LGBT community in the long run. Instead of affording homosexuals more rights, the creation of civil unions would create a "separate but equal" situation--essentially "two types of citizenship." Subsequently, FALGBT decided to pursue gay marriage based on the argument of citizenship rights¹¹¹. The Argentine government could not easily dismiss this tactic of human rights framing.

The organization of the Argentine LGBT movement--aided by its counterpart in Spain--permitted an unprecedented level of success. However, efficient campaigning alone did not result in the movement's accomplishments; the specific Argentine context was fundamental.

Since 2002, The LGBT agenda has made impressive gains both in the political arena and combatting homophobia in Argentine society. These accomplishments are the result of the particular context of Argentine social movements in the 1990s and beginning of the twenty-first century. As Jordi Díez explains, calls for social reform are most easily heard when nations are in significant social and political flux. This has been the case in Argentina, with its peak times of change--the mid-eighties and the early 2000s--coinciding with the most radical shifts. The

¹¹⁰ Díez, "Argentina: A Queer Tango between the Lesbian and Gay Movement and the State," 18

¹¹¹ Díez, "Argentina: A Queer Tango between the Lesbian and Gay Movement and the State," 18-19

democratic transition in Argentina provides a more receptive context for social movements because of the brutality of the preceding military dictatorship¹¹². Human rights became the mantra of new democratic governments that were eager to distance themselves from the junta. This focus allowed sexual minorities to articulate their demands, negotiating with the government within a broader framework of human rights and social equality.

The administrations of the eighties and nineties permitted dialogue and minimal reforms, but real change remained elusive until the 2003 election of Néstor Kirchner. The new president, faced with the daunting task of rebuilding the defunct Argentine economy, declared human rights a national priority. Kirchner and current President Fernández de Kirchner have passed the most sweeping human rights legislation in Argentine history, serving as a model for the international human rights community¹¹³. The Kirchners' interest in human rights promotion coincided with the resurrection of democratic structures and a federal system in Argentina. Federalism allowed the LGBT movement to focus its campaign in the more socially liberal and receptive urban area of Buenos Aires (Capital Federal). Connections with the *porteño* political elite, combined with the relative autonomy of the federal district, resulted in the rapid gains of the late nineties and early 2000s. The focalization of efforts within Buenos Aires furthermore streamlined the campaign and demonstrated which lobbying strategies were most effective. Despite this advantage, however, the federal system provokes the issue of unequal distribution of rights; though demands were met in Buenos Aires and several other provinces, nine provinces and several cities continue to enforce the 1932 *Códigos Contravencionales*¹¹⁴. Consequently, while

¹¹² Díez, "Argentina: A Queer Tango between the Lesbian and Gay Movement and the State," 17

¹¹³ Julio Godio and Alberto José Robles, *El Tiempo de CFK: entre la movilización y la institucionalidad*, Buenos Aires: Ediciones Corregidor (2008), 206-207

¹¹⁴ Díez, "Argentina: A Queer Tango between the Lesbian and Gay Movement and the State," 19

activists in Buenos Aires have moved on to different goals, many LGBT communities across the country continue to fight for freedom from discrimination.

The distinct realities of Buenos Aires and the provinces provide a common theme in Argentine history. In the case of LGBT rights advocacy, localization was the only viable option for the community to make gains in the country. The primary obstacle has been the Argentine Senate, in which each province receives equal--and thus disproportionate--representation. Of Argentina's 42 million inhabitants, 92 percent live in urban centers, with 13 million in the city of Buenos Aires alone¹¹⁵. Yet rural conservative interests remain the most powerful in the senate because each province--regardless of population--has three senators¹¹⁶. Until the national gay marriage legislation of 2010, the success of the Argentine LGBT movement was thus largely confined to the federal district.

Another peculiarity of the Argentine context is the judicialization of the political process. Following the reformed 1994 constitution, an expanded Bill of Rights permitted citizens to make rights claims in the courts. Plaintiffs submit a *tutela*--essentially a written demand for constitutional rights protections--to be reviewed by a judge. Upon judicial approval of the *tutela*, the legislative branch is required to meet the demands of the plaintiff¹¹⁷. The LGBT movement efficiently utilized this legal avenue, allowing gradual normalization of rights until the Argentine Congress felt enough pressure to pass sweeping legislation. The only problem with the judicial approach is its focalization; because Argentina's judiciary is based in the continental civil code tradition, the notion of precedent does not exist. Each case, therefore, has to be evaluated separately, with the verdict applying specifically to the plaintiff and not universally. The only

¹¹⁵ "Censo Argentino 2010," *Instituto Nacional de Estadística y Censos (INDEC)*, <http://www.censo2010.indec.gov.ar/resultadosdefinitivos_totalpais.asp>.

¹¹⁶ Díez, "Argentina: A Queer Tango between the Lesbian and Gay Movement and the State," 20

¹¹⁷ Pablo Esteban Perrino, "El derecho a la tutela judicial efectiva y el acceso a la jurisdicción contencioso administrativa," *Revista de Derecho Público*, 2003, 257-294

possibility of universality is when a decision is passed down by the Supreme Court--both rare and improbable¹¹⁸. The judicial approach has succeeded in pressuring the legislative and executive branches, but has generally failed to produce a single, ubiquitous ruling on LGBT rights.

The final factor in the Argentine context of LGBT rights acquisition is the relative ideological malleability of the major political parties. The LGBT movement has been successful in nurturing alliances with legislators across a wide spectrum because issues of “morality” are essentially absent from the political dialogue. Despite the Catholic Church’s visibility and outspokenness in Argentina, socially conservative elements do not direct politics as they do in the United States, for example. The two largest parties in Argentina--the Kirchners’ Peronist (Justice) Party and the Radical Civic Union Party--have members with varying persuasions on ideological issues such as gay rights¹¹⁹.

The age of human rights arrived in Argentina with the election of Néstor Kirchner in 2003. Since then, the LGBT movement--among other social movements--has consistently furthered its agenda, from civil unions, to further expansion of pension benefits in 2008, and finally to gay marriage and adoption in 2010.

The turning point for the LGBT movement is, logically, the passage of the gay marriage bill on July 14, 2010. Though it had easily passed through the liberal House of Deputies, the Senate--for the demographic reasons previously mentioned--posed a challenge. The bill faced daunting opposition, including a particularly aggressive campaign by the Catholic Church. The first seven months of 2010 were characterized by constant debate on the definition of *matrimonio*, what constitutes a family, and the constitutionality of same-sex marriage. Several

¹¹⁸ Díez, “Argentina: A Queer Tango between the Lesbian and Gay Movement and the State,” 21

¹¹⁹ Díez, “Argentina: A Queer Tango between the Lesbian and Gay Movement and the State,” 23

days before the Senate vote, President Fernández de Kirchner gave a heartfelt interview on the subject, expressing concern over opponents' "aggressive...dismissive language invoking 'natural law' arguments....invoking questions such as the Devil, or 'God's War.'" She underscored that the fundamental basis of the bill was the question of minority rights and the upholding of the Constitution, and that the dialogue of a religious Crusade--*una guerra de Dios*--was unacceptable¹²⁰.

The *Ley de Matrimonio Igualitario* passed narrowly after 14 hours of debate in the Senate, with 33 in favor, 27 against, and three abstaining¹²¹. Some critics claim that the bill would not have passed had President Fernández de Kirchner not sent several opposing senators on a diplomatic mission to China during the vote¹²². Regardless of the political maneuvering, the passage of the marriage bill was met with overwhelming support by the Argentine community, 60 percent of which favored its approval¹²³. At the signing of the bill, the President noted that "today, we are a more equal society than we were one week ago....In reality, we have not passed a law; we have passed a new social construct"¹²⁴.

VI. Conclusions About the Kirchners' Human Rights Legacy

The Kirchners began governing Argentina in 2003 and remain in power. Through measures targeted at poverty reduction in the aftermath of economic crisis, they have brought Argentina back from the brink of disaster. Yet as Riggirozzi notes, "effective policies after crisis

¹²⁰ "Argentina: President Cristina Fernández de Kirchner defends marriage equality bill" [12 July 2010], video clip, YouTube, <<http://www.youtube.com/watch?v=ixVrmrQg9AM>>.

¹²¹ "Ley de matrimonio gay," *Argentina en noticias*, 22 July 2010, <http://www.argentina.ar/_es/pais/C2621-ley-de-matrimonio-gay.php>.

¹²² Díez, "Argentina: A Queer Tango between the Lesbian and Gay Movement and the State," 20

¹²³ Uki Goñi, "Defying Church, Argentina Legalizes Gay Marriage," *Time*, 15 July 2010

¹²⁴ "Ley de matrimonio gay," *Argentina en noticias*, 22 July 2010, <http://www.argentina.ar/_es/pais/C2621-ley-de-matrimonio-gay.php>. Trans. Daniel McCown.

do not equal sustainability over the longer term”¹²⁵. The co-optation of (unemployed) workers organizations such as the *piqueteros* and to some extent the *cartoneros*, reflects a clientelist approach that ignores the roots of permanent poverty and the problems posed by a large informal job sector¹²⁶. Furthermore, the manner of financing social programs--namely through trade barriers and failure to make more than minimum debt repayments--is simply untenable. Though the past nine years of Kirchner administration have benefitted the Argentine economy, as President Fernández de Kirchner moves into her second term, she must avoid myopic populist measures and instead reevaluate enduring policy choices.

With this economic critique in mind, it is fundamental to underscore the achievements of economic rights under the Kirchners. The social programs implemented since 2003 have significantly alleviated the extreme poverty that resulted from the 2001 crisis. Article 23 of the UDHR is provided through the *Plan Jefes y Jefas* by its stipulation of employment in addition to a government remuneration. The incorporation of worker groups--both formal labor unions and unemployed worker organizations--complies with Article 24 by permitting these traditionally excluded sectors to exercise appropriate policy-making power over internal economic matters. As previously stated, *Plan Remediar* and other general policies enacted during the Kirchner administrations--pension nationalization, enhanced maternity and childcare--reflect the framework of Article 25.

Argentina is a leader in economic rights because of its developmentalist economic policies and overarching emphasis on social programs. While these policies have made it somewhat of a pariah in the international economic community and may need to be rethought as

¹²⁵ Riggirozzi, “Social Policy in Post-Neo-liberal Latin America,” 71.

¹²⁶ Riggirozzi, “Social Policy in Post-Neo-liberal Latin America,” 73.

the economy continues to grow, the ideological basis of *kirchnerista* economic policies demonstrates the emergence of new age of human rights.

The Kirchners' approach to immigration has similarly set a precedent for other nations seeking to pursue policies based on a human rights framework. Argentina is a leader in its pro-migrant legislation, with the most inclusive immigration laws in the western hemisphere, if not the world. As opposed to viewing immigration as a problem or "threat to national security," Argentina, under the leadership of Néstor and Cristina Kirchner, has reaffirmed its historical openness; migrants, far from drains on society, are considered equal and important contributors to Argentine society.

Additionally, the government has demonstrated a strong commitment to alleviating the problems that continue to plague Argentina's migrant communities. President Cristina Fernández de Kirchner must continue to extend socioeconomic rights to migrants, and her policies have shown every indication that she will do so. The more pressing concern is whether her successors--regardless of their political leanings--will perpetuate the Kirchners' pro-migrant legacy amid deepening economic pressures.

Finally, the LGBT movement, bolstered by the Kirchners and popular support, has achieved a level of success unknown in most developed nations, let alone in the developing world. Yet much work remains; homophobia persists in many of the provinces, and while lesbian and gay rights have been realized, the rights of transgendered people remain unaddressed. The campaigning must continue, and the current political climate, with the reelection of President Fernández de Kirchner in 2011, remains favorable.

Both Kirchners have built upon the legacies of Argentina's past to promote human rights and democracy abroad. Domestic successes have made Argentina's transitional justice system a

model for other countries emerging from periods of military dictatorship. The organizational efforts of Argentine human rights groups have been bolstered by the Kirchner administrations' agenda to develop international human rights norms. Both Néstor and Cristina Kirchner have been instrumental in the insertion of human rights into both domestic and foreign policy discourses. Furthermore, Argentina's political history in the international community has been characterized by a constant need to assert its global role¹²⁷. Under the Kirchners, Argentina's leadership has been secured in the field of human rights.

President Fernández de Kirchner's words at the signing of Argentina's *Matrimonio Igualitario* legislation on July 21, 2010 provide a perfect conclusion to a discussion on human rights under her and her husband's administrations:

Nadie me ha sacado nada, y no le he sacado nada a nadie; al contrario, habíamos dado a otros cosas que faltaban y que nosotros teníamos.

No one has taken anything away from me, and I have not taken anything from anybody; on the contrary, we have given to others rights that they have lacked and we have always enjoyed.

¹²⁷ Margheritis, *Argentina's Foreign Policy: Domestic Politics and Democracy Promotion in the Americas*, 14

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