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Human Rights and the Pink Tide in Latin America: Which Rights Matter?

Jean Grugel[§] and Lorenza B. Fontana^{†*}

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Abstract

Latin America witnessed the election of ‘new Left’ governments in the early twenty-first century that, in different ways, sought to open a debate about alternatives to paradigms of neoliberal development. What has this meant for how human rights are understood and for patterns of human rights compliance? Using qualitative and quantitative evidence, we discuss the ways human rights are imagined and the compliance records of new Left governments through the lens of the three ‘generations’ of human rights (political and civil, social and economic, and cultural and environmental rights). We draw in particular on evidence from Andean countries and the Southern Cone. While basic civil and individual liberties are still far from guaranteed, especially in the Andean region, new Left countries show better overall performances in relation to socio-economic rights, with respect to the past and to other Latin American countries. All new Left governments also show an increasing interest in ‘third’ generation rights (cultural and environmental rights), though this is especially marked in the Andean Left. We discuss the tensions around interpretations and categories of human rights, reflect on the stagnation of first generation rights and note the difficulties associated with translating second and third generation rights into policy.

Key Words: Human rights, Latin America, new Left, political and civil rights, socio-economic rights, cultural and environmental rights

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More than twenty-five years after the end of the Cold War, the global human rights agenda is in a state of flux. Although global issues are frequently framed through the lens of human rights (Grugel et al., 2017), those rights are increasingly under challenge. According to Amnesty International, global rights abuses reached exceptional levels in 2014, and violations of basic freedoms continued to grow in number and scale in 2015-2016 (AI, 2014/2015 and AI, 2015/2016). It is clear that the task of upholding political and civil liberties and delivering social, economic and cultural rights, even for states that genuinely endorse the principle of rights-based governance, is fraught with difficulties. Governments sometimes lack the resources or the legitimacy to pursue rights policies and social and political conflicts arise around what upholding human rights means. These problems can be exceptionally acute in societies characterized by high levels of inequality and cultural intolerance.

Additionally, the human rights landscape has become particularly complex in recent years. Traditionally, most attention has been paid to rights as freedom from state oppression or political and civil rights. But the expansion of the human rights agenda, the resurgence of socio-economic claims framed as human rights and a greater emphasis on cultural and collective rights have created a more diffuse and nuanced debate. Few areas of the world exemplify the contemporary challenges in relation to rights 'delivery' and the expansion of the human rights agenda more than Latin America. Despite democratization, routine abuse of political and civil rights continue and levels of state violence, especially against the poor, remain high; and access to even basic services continues to be defined by race, gender and income. Yet social movements use rights standardly to claim entitlements and invoking international human rights standards is part of the everyday lexicon of elites. There is also evidence, as we discuss here, that human rights are no longer framed in exclusively liberal fashion. All of this means that it is not a simple matter to describe governments' compliance with human rights – we must ask compliant with which and with whose rights?

This question has come to the fore in a particularly pressing fashion following the election of an unprecedented number of left-wing governments in the early years of the twenty-first century across Latin America, including Venezuela (1998), Brazil (2002), Argentina (2003), Uruguay (2004), Bolivia (2005), Ecuador (2006), Nicaragua (2007) and, for shorter periods, in Honduras (2006), Paraguay (2008), El Salvador (2009) and Peru (2011). This conjuncture - a *unicum* in the region's history

(Madrid, 2010) - has been described as a 'Pink Tide', to reflect both its sudden and widespread rise as well as its leftist (but not communist) political orientation. In all these countries, the shift to the Left was born out of the discontent with a decade or more of neoliberal politics. It led to a moderate to radical shift in economic and social policies to improve social inclusion and redistribution. But instead of looking to the past and at the orthodox leftist tradition, some 'new Left' governments have sought to create more direct forms of citizenship participation by appealing to both 'old' and 'new' social movements, alongside a distinctive political style that draws to different degrees on populism, nationalism and Panamericanism (Arnson, 2007; Cameron and Hershberg, 2010; Grugel and Riggirozzi, 2012; Webber and Carr, 2012; Weyland et al., 2010).

All new Left governments promised a more radical engagement with human rights as part of a renegotiation of citizenship (Radcliffe, 2012); but they have not all understood the agenda of human rights in the same way or, at least, they have not all prioritized the same set of rights. Our purpose in this article is to draw out the ways human rights have been imagined and instantiated and to explore how far new patterns of rights compliance are emerging. Qualitative and quantitative evidence reveals shifts in how human rights are being interpreted by leftist governments, as well as differences in the rights they prioritise. There are advances in the delivery of some human rights and retreat in others.

To present our data and frame our argument, we use the established division of human rights into three generations – political and civil, socio-economic and cultural and environmental rights. Broadly speaking, Left governments perform marginally worse in protecting civil and political liberties and respect for the rule of law than governments in the rest of Latin America; but there are considerable national and sub-regional variations (notably between the Andean region and the Southern Cone) and, moreover, the regional trend as a whole is towards stagnation. New Left governments also seem to place greater stress on socio-economic rights than in the past and compared to other Latin American countries. Overall, the 'interruption' of neoliberalism' (Goodale and Postero, 2013) and the efforts to move 'beyond' neoliberal social governance led to the introduction of a raft of welfare policies that, taken together, reduced inequalities as well as poverty and extreme poverty. This approach emerged in the context of an export bonanza and economic growth that encouraged the adoption of more expansive public spending in much of Latin

America; the future of these policies, which have been much less consensual than earlier generations of welfare, may now be under threat as the era of expansive growth comes to an end (Madrid, 2010). Finally, there has been an expansion of the human rights agenda with the inclusion of third generation rights, namely cultural and environmental rights. This is the case across the Left but it is especially marked in the Andean countries where these rights have been incorporated into constitutional and legal frameworks.

Studying the Left and Human Rights in Latin America: Challenges of Interpretation, Data and Methods

How governments understand and enact human rights is an important window onto their vision of the ‘good society’. Human rights are not a set of normative principles ‘suspended in outer space’ (Mutua, 2002: 39). They are the ‘stuff’ of daily life and the decision to respect – or not – a particular set of rights can have far reaching consequences for the quality of life of individuals and social groups. There is agreement that state capacity plays a practical role in explaining the degree of compliance (Landman, 2002). But compliance is not just determined by whether governments have the resources to deliver rights. Even though human rights are set out in international agreements and conventions, what rights mean can be contested and the process by which rights are interpreted and prioritized is complex and subject to change. Geography, context, culture and politics matter.

National and regional contexts shape how the corpus of human rights is interpreted in a given place or time. The extent to which liberal and Enlightenment values that underpin political and civil rights are legitimate in the eyes of elites, civil societies and communities shapes engagement with international rights agreements. Additionally, right- and left-wing governments and movements, in Latin America and elsewhere, tend to understand human rights in quite different ways (Brooks and Kurtz, 2007; Cohrs et al., 2005; Mosley, 2008; Smith and Morton, 2006). And whether local civil societies are embedded in transnational advocacy networks can influence how far they see human rights as useful tool for advocacy or an end goal (Grugel and Peruzzotti, 2012; Keck and Sikkink, 1998; Simmons, 2009). Experiences of economic globalization also affect engagement with, and practices of human rights in the global South. The global neoliberal revolution that began in the 1980s impacted negatively

on the commitment and capacity of governments to defend both political and civil rights and socio-economic entitlements.¹ This may have contributed to something of a backlash against rights agendas associated with pro-Western liberal thought.

In Latin America, human rights ideas have traditionally found fertile ground despite the fact that they are said to reflect European and Enlightenment values (Donnelly, 2007; Gould, 2004). Some would argue this is because European values are themselves ingrained in the region's political culture (Fuentes, 1999). Claiming human rights generally makes sense for Latin American social movements and civil society (Peruzzotti, 2002; Sikkink, 2005;). For these reasons, considerable scholarly attention has been paid to unpacking the impact of democratization on human rights (Molyneux, 2008; Yashar, 2005; Panizza, 2009) and to examining cases of rights abuses in particular countries. But, much less attention has been paid as yet to how the election of left-wing governments has reshaped the human rights agenda in the region.

One of the challenges in doing so refers to whether we are witnessing a consolidated phenomenon: the rise of a regional Left with shared understandings of society, politics and human rights or the emergence of different political movements each seeking to implement its own vision (Altvater, 2009; Grugel and Riggirozzi, 2008; White and Williams, 2012). On the one hand, in the early years of the twentieth century, left governments, from Venezuela to Brazil, all openly questioned the preeminence of market and raised taxes to pay for public services and welfare. On the other, political styles differ significantly. Castañeda (2006) has been the most prominent advocate of the 'two Lefts' argument, tracing an essential distinction between radical leftist movements associated with populism, clientelism and autocratic governance, and those more firmly in the liberal democratic tradition. A number of authors have supported this distinction focusing in particular on different political styles and economic policies (Madrid, 2010; Petkoff, 2005; Weyland, 2009; Weyland et al., 2010), while others have criticized it for being overly simplistic and failing to account for the important variations between so-called 'left-populist' and 'left-liberal' governments (Levitsky and Roberts, 2011; Ramírez Gallegos, 2006). Examining the new Left(s) through their engagements with human rights adds another layer to this important debate.

¹ See Abouharb and Cingranelli (2007) who found that neoliberal reforms were associated with a

However, finding empirical data to address this deficit in the literature is not easy. Gathering systematic information on rights compliance and rights violations is, in general, not straightforward. Challenges in assessing the human rights records of governments include availability, access and trustworthiness of data, comparability across countries and rights sectors. Standard practice is to understand human rights as ‘bundles’ of different rights, usually referred to as first, second and third generation rights. Although this distinction is not explicit in the Universal Declaration of Human Rights, the classification, first theorized by Karel Vasak², has been used as an analytical tool to classify human rights norms according to broad overarching topics, while emphasizing the chronological evolution and the different time-lines of their codification in international agreements. Civil and political rights are the oldest and are rooted in the Eighteenth century bills of rights in early democratic states. Social and economic rights were recognized by states after the Second World War, while third generation rights have been partially codified only since the 1980s and refer to a heterogeneous sets of norms around the environment and climate change, cultural diversity and ethnic self-determination as well as access to development and communication rights. Different quantitative datasets have been created over time, for first and second generations (i.e. political and civil and socio-economic) but, for third generation rights, no standard codification has yet been developed.

Moreover, even standardized and widely used quantitative data on rights compliance have recognized and intrinsic limitations. There can, for example, be problems of validity and consistency³, and ‘information effects’ derived from how data are collected can affect interpretation (Clark and Sikkink, 2013). Measures and operationalization criteria inevitably reflect underlying normative assumptions. These problems can be accentuated by focusing on political orientation as an independent variable, carrying the risk of negative biases (Landman, 2002). When it comes to socio-economic rights, difficulties include the fact that it is not a question of

² This scholar suggested that the three generations of human rights stemmed respectively from the three ideals proclaimed by the French revolution (liberty, equality and fraternity) and thought of third generation rights as solidarity rights (Vasak 1977). For a critical perspective see Wellman 2000.

³ For socio-economic indicators, national statistics mainly rely on household surveys data. In most countries however those surveys have changed over time both in terms of questions and geographic coverage. Also for certain indicators (e.g. pensions and primary education access) only partially complete datasets are available.

monitoring violations so much as assessing performance and establishing the extent to which social and economic provision is grounded in rights in theory and practice. There is always a risk of attributing improvements in socio-economic outcomes to conscious decisions by governments, rather than, for example, the result of longer-term social, economic or infrastructural investments. With regards to cultural and environmental rights, meanwhile, we can certainly establish the extent to which governments recognize rights in law, but evaluating how far they are put into practice is more difficult, especially since these rights are so new. And while quantitative sources can be problematic, relying on the claims and assertions of governments, social movements and NGOs, generally based on qualitative data, also has limitations in terms of inference, comparability and generalizability. There is also a risk in monitoring compliance of ‘freezing’ it at a particular moment in time (though this can be offset by emphasizing context and the evolution of rights discourses and delivery, as we do here).

These difficulties mean that scholars tend to focus on human rights compliance in a limited set of issue-areas and/or in one or two countries. But there is an enormous value in trying to record the ‘big picture’ and compare a group of countries, linked by – broadly – a political preference for the Left. In order to do so, we have taken a multi-pronged approach, relying on a mix of available quantitative datasets and qualitative empirical accounts. We combine information from different – and different types – of sources, including human rights databases such as Cingranelli and Richards (CIRI)⁴, Freedom House⁵ and the Economic and Social Rights Empowerment Initiative⁶, socio-economic indicators from the World Bank (WB), the

⁴ The CIRI Human Rights Dataset contains standards-based quantitative information on government respect for 15 internationally recognized human rights for 202 countries, annually from 1981-2011 (www.humanrightsdata.com).

⁵ The American NGO Freedom House has been publishing global annual reports on political rights and civil liberties since 1972 (<https://freedomhouse.org>).

⁶ The Economic and Social Rights Empowerment Initiative provides a quantitative measurement and analysis regarding fulfilment of economic and social rights: the right to food, the right to adequate shelter, the right to healthcare, the right to education, the right to decent work, the right to social security, and protection against discrimination. At the core of the Initiative is the Index of Social and Economic Rights Fulfilment (SERF Index), which uses survey-based data published by national and international bodies to measure the performance of countries on the fulfilment of economic and social rights obligations (Sakiko Fukuda-Parr et al., 2008).

United Nations Economic Commission for Latin America and the Caribbean (ECLAC) and the Socio-Economic Database for Latin America and the Caribbean (SEDLAC), descriptive accounts in key countries from international sources (AI; Human Rights Watch, HRW; United Nations, UN), and media accounts. Whenever possible we have combined qualitative and quantitative evidence. When quantitative data are not available (as in the case of cultural and environmental rights), we focus on legal and policy changes.

Our sample includes Latin American countries where new Left governments committed to anti-neoliberal moderate to radical economic and social reform have been in power for a significant period of time (>5 years) between the late 1990s and the mid-2010s. This includes Venezuela, Ecuador, Bolivia, Argentina, Nicaragua⁷, Uruguay and, more marginally, Brazil⁸. Dealing with this set of countries creates its own challenges since national differences and sub-regional identities in Latin America are significant. There is also considerable variation in terms of political economy, Gross Domestic Product (GDP), ethnic diversity, historical legacies and state-civil society interactions between countries and sub-regions. Distinguishing between the Andean region (Bolivia, Ecuador and Venezuela) and the Southern Cone (Argentina, Uruguay and Brazil) takes these differences into account at least to some degree, and allows us to highlight some significant differences in terms of engagement with human rights. Our analyses spans a 20 years timeframe whenever possible, and include a comparative sample of other continental Latin American countries⁹.

⁷ Although Nicaragua can be included among Pink Tide countries, we exclude it here, since with only one Central American example (the Honduran example was of short duration and El Salvador is of more recent origin), we could not establish a separate sub-regional unit for analysis.

⁸ Chilean left governments are excluded here because they have neither promised nor led a significant political economy shift and because the Chilean Left is still rooted in the experience of the Concertación Democrática, which predated of almost a decade the rise of the so-called Pink Tide. Navia (2009), for example, identifies the Chilean left as proponents of ‘neoliberalism with a human face’. Paraguay, and Peru (as well as Honduras and El Salvador) are excluded because of the limited time the Left was in office.

⁹ This includes, whenever possible, all countries of continental Latin American (Belize, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Guyana, Honduras, Mexico, Panama, Paraguay, Peru, Surinam), but excludes the Caribbean.

Human Rights after Democratization

Latin America has historically played an active role in the global human rights movement (Sikkink, 2014). But the era of military dictatorships in the 1960s and 1970s put an end to liberal internationalism; and indeed the liberal consensus about rights had begun to break down before the military intervened. Democratization in the 1980s and 1990s served to realign the region with the international community once more (Finnemore and Sikkink, 1998). However, the new agenda of human rights was shaped by the legacy of extreme past violations of civil and political liberties, and the weight of a new political economy of neoliberalism, both of which permeated the institutions of democracy and understandings of citizenship.

In the immediate period after democratization, the human rights focus was on establishing mechanisms for transitional justice to address abuses of political and civil rights. A decades-long process, this led to the creation of an impressive institutional architecture, from legal reforms and truth commissions to memorialization and oral history initiatives (Jelin, 2003; Lutz and Sikkink, 2000). While transitional justice has left an important legacy of emphasizing protection of political and civil liberties, it has also contributed to the initial perception that the protection of other human rights was somehow less important. As Paige (2009: 326) argues, only ‘measures of prosecutions, truth-telling, restitution, and reform of abusive state institutions—not some other measures of justice, such as those associated with claims for distributive justice—were recognized as the legitimate justice initiatives’. But, as neoliberal policies led to the roll-back of the state, the introduction of market-driven conceptualizations of citizenship and the shredding of the region’s social fabric as a consequence of austerity generated new demands for socio-economic rights for reasons both of governance and justice.

This shift was accentuated by the fact that the international rights agreements, ratified enthusiastically by regional governments, increasingly addressed second and third generation rights and the importance of going beyond individualized political and civil entitlements. And, as the corpus of human rights was enlarged, the proliferation of Special Rapporteurs, Experts and Working Groups reporting to the UN Commission on Human Rights has kept the new rights agenda at the forefront of international politics. This context has influenced new Left governments more than has generally been understood. The Pink Tide emerged just at a moment when new

kinds of human rights were increasingly the focus of international attention, as well as the material of social claims being set out within the region. For this reason, some authors regard rights claims, socio-economic and cultural rights in particular, as constitutive of the new Left project (e.g. Grugel and Riggirozzi, 2012). It is clear simply by looking at the statements and claims made by left governments that human rights ideas are highly salient. Evo Morales, President of Bolivia (2005-present) has spoken of the need to treat the provision of ‘basic services [as] human rights’ (Sivak, 2015), while Tabaré Vázquez, President of Uruguay (2005-2010 and 2015-present), on taking office for the second time, linked human rights directly to social care. What is much less clear – and what we hope to begin to set out here – is how far this language of rights translated into policies.

Civil and Political Rights

Political and civil rights are set out in the International Covenant of Civil and Political Rights (1966), where they are linked to the ‘inalienable rights’ of the individual to freedom, justice, peace and dignity. Often referred to as the ‘first generation’ of rights, they comprise, on the one hand, freedom from unjustified interference by states and, on the other, the obligation of the state to protect citizens from violence and discrimination while guaranteeing their participation in the polity.

Despite advances in the restoration of political rights and freedoms as part of the democratization process, basic civil and individual liberties are still far from guaranteed in Latin America. Discrimination based on ethnicity, gender and sexuality is common. Latin American citizens have concerns about lawlessness, violence, policing and security, corruption and interference by the state in the judiciary (Latinobarómetro, 2011; Ungar, 2002). Disappearances and extrajudicial executions remain an issue in some countries, Mexico and Colombia in particular. Any judgment, then, about respect for civil and political rights by new Left governments has to be set in the context of a region where compliance with basic political and civil rights is work in progress.

All left-wing governments won power (and were reelected) through generally transparent and free processes. Citizens seem to place particularly high value on democracy in these countries: according to Latinobarómetro (2013), the greatest increase in support for democracy in the region, in comparison with the average for

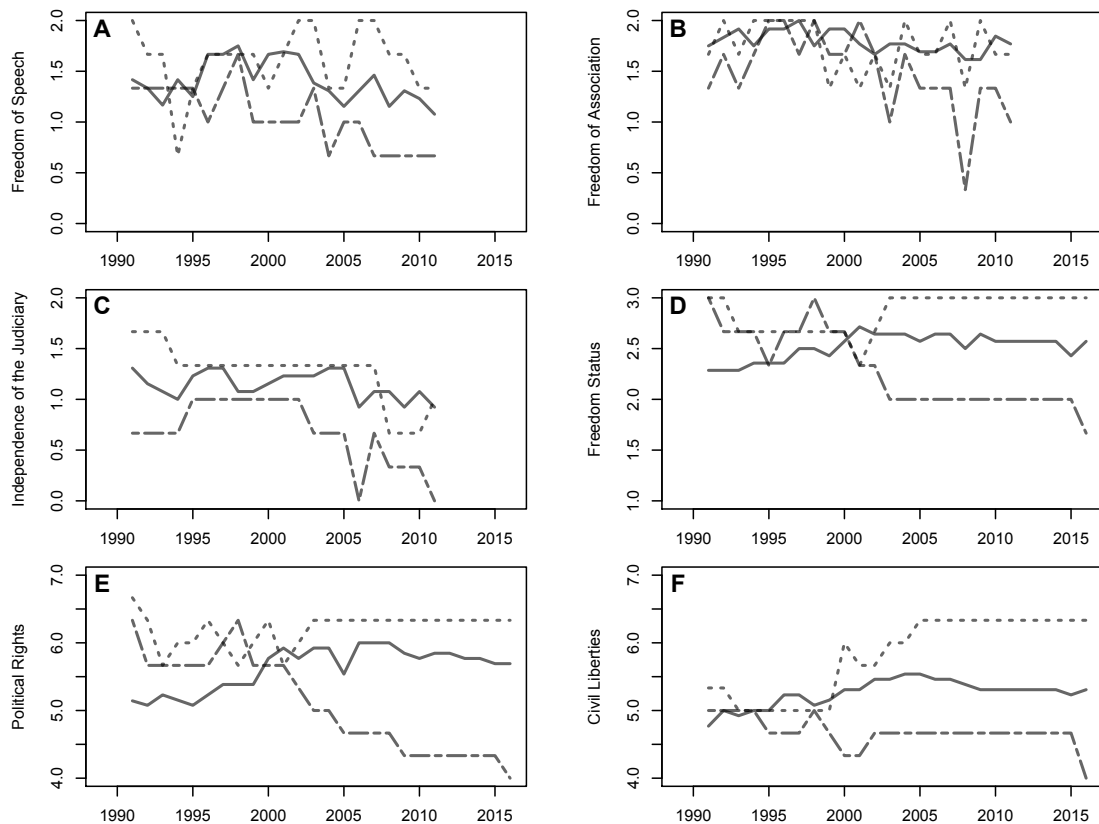
1995-2013, has occurred in Venezuela and Ecuador, followed by Chile, Argentina, Bolivia and Brazil. But, equally, there are issues of concern. According to CIRI data, while Latin America is not improving overall in terms of freedom of speech and association and the independence of the judiciary, Andean left-wing countries in particular are significantly below the average (Fig. 1A-1B-1C). Similar trends in the countries' in the respect of political rights and civil liberties¹⁰ as well as in their overall freedom status¹¹ are highlighted by Freedom House, with Andean countries showing a consistent and significant deterioration while the Southern Cone has been above average since the early 2000s (Fig. 1D-1E-1F). One of the root causes of this problem – and it is especially marked in the Andean countries - is the concentration of authority in the hands of a strong executives, permitting a 'winner takes all' approach to key positions within the state (Flores-Macías, 2012). Few incentives exist for cooperation with the opposition, or for governments to cede office since they know that in-coming administrations may seek to undo their work. Traditional political and economic elites, especially in the Andean region, reacted badly to the demands for radical change that carried the new Left into office. In both Venezuela and Bolivia, the political opposition and large landowners coordinated resistance against leftist governments and their supporters, ranging from targeted assassinations of peasant leaders and activists to promoting social unrest and trying to unseat the government via orchestrated *coup d'état* attempts¹² (Enríquez, 2013; Tsolakakis, 2008; Weisbrot and Sandoval, 2008). This has, in turn, fuelled cultures of intolerance of dissent in

¹⁰ Freedom House adopts a one-to-seven scale to measure political rights (considering variables such as electoral process, political pluralism and participation and functioning of government) and civil liberties (including freedom of expression and belief, associational and organizational rights, rule of law and personal autonomy and individual rights). While in the Freedom House dataset, one represents the highest degree of freedom and seven the lowest (<https://freedomhouse.org/report/freedom-world-2016/methodology>, accessed 11 March 2017), the scores were reversed here (i.e. higher scores indicate greater respect for rights and vice versa) in order to ensure consistency with the other figures.

¹¹ A country's freedom status (free, partly free or not free) is the result of the aggregated scores for the respect of political rights and civil liberties (<https://freedomhouse.org/report/freedom-world-2016/methodology>, accessed 11 March 2017).

¹² In Bolivia the 2008 social unrest resulted in 13 deaths and 30 injured in the clashes between supporters of Morales (most of them peasants from the remote Pando region) and opponents (Cusicanqui, 2015), while in Venezuela the coup attempt on the 11 April 2002 left 19 people killed and about 60 wounded (Wilpert, 2007).

government and accentuated the concentration of power in the hands of a restricted circle around the leader.



Dotted line = Southern Cone sub-region: Argentina, Brazil, Uruguay (average)
Dashed line = Andean sub-region: Bolivia, Ecuador, Venezuela (average)
Solid line = Other Latin American countries, excluding the Caribbean (average)

Fig. 1A: 0 = complete government censorship of media / 1 = some government censorship / 2 = no government censorship (authors' calculation based on CIRI data, 2014).

Fig. 1B: 0 = severely restricted or denied / 1 = limited for all or restricted/denied to a certain group / 2 = virtually unrestricted (authors' calculation based on CIRI data, 2014).

Fig. 1C: 0 = no independent / 1 = partially independent / 2 = generally independent (authors' calculation based on CIRI data, 2014).

Fig 1D: 1 = not free / 2 = partially free / 3 = free (authors' calculation based on Freedom House data, 2017).

Fig 1E: 1 = No respect of political rights / 7 = Full respect of political rights (authors' calculation based on Freedom House data, 2017).

Fig 1F: 1 = No respect of civil liberties / 2 = Full respect of civil liberties (authors' calculation based on Freedom House data, 2017).

In Venezuela, the centralization of state power by Hugo Chávez, President from 1998 until shortly before his death in 2013, led to high levels of media manipulation and government interference with the judiciary. These problems have persisted under Nicolás Maduro, Chávez's chosen successor (HRW 2015a). As just one example of the state's attempt to control the public sphere, opposition politicians

have experienced harassment, detention and even imprisonment; the decision to sentence the opposition leader Leopoldo López to 13 years in prison (recently been commuted to house arrest), has been condemned internationally because of its clear political motivation (Vivanco, 2015). Moreover, since April 2017, the Supreme Court's decision to revoke the legislative powers of the opposition controlled National Assembly triggered Venezuela's worst political crisis since the Left is in power. The decision was reversed a few days later but social protests have continued, exacerbated by the President's unilateral call for a Constitutional Assembly to rewrite the constitution drafted in mid-1999 as one of the first measures of late president Hugo Chávez. In just four months, almost hundred people have died and more than 360 people had been arrested across the country (BBC News, 2017).

Executive intolerance of opposition – and indeed its violent suppression - is not unique to Venezuela. In Ecuador, the government of Rafael Correa (replaced by Vice-President Lenin Moreno Garcés in 2017 in closely contested presidential elections) also sought to discredit opponents, although to a significantly lesser extent. Community leaders who criticize government policies have found themselves arrested, as was the case for Federico Guzmán, Efraín Arpi and Carlos Pérez, who served an eight-day sentence for obstructing a highway in protest against a proposed Water Law in 2010 (AI, 2015). The government also used new legislation to dissolve Fundación Pachamama, an independent indigenous and environmental rights organization (AI, 2015), and, in 2015, shut down Fundamedios, which monitored the freedom of the media (Layme, 2013). In Bolivia, President Evo Morales has been highly intolerant of indigenous opposition, especially following the 2011 conflict over the construction of a road through the National Park and Indigenous Territory Isiboro Sécore (TIPNIS). In 2015, the state attorney issued arrest warrants against indigenous leaders for murder, with some questioning whether a fair trial will be possible (HRW, 2015b), while the Danish NGO IBIS, well-known for its indigenous rights advocacy work, was expelled from the country in 2015 (Corz, 2013).

These examples are illustrative of a trend on the part of Andean Lefts to limit association rights and their growing distrust of independent civil society (HRW, 2015c). Inevitably, tensions are also developing with international human rights monitoring organizations as a result. HRW sent an open letter to President Morales criticizing the fact that the newly created national organization for the prevention of torture is not independent of the state and will, therefore, not be able easily to criticize

executive behaviour. HRW also pointed out that this apparently progressive law to eradicate racism potentially empowers the government to censor the media (Latin American Herald Tribune 2014). Still, the criticisms by international rights monitors of the Bolivian government pale in comparison with those aimed at Venezuela, which have repeatedly denounced both Presidents Chávez and Maduro for eroding human rights guarantees¹³.

These disputes have spilled over into conflict with regional human rights institutions. In 2010 President Chávez referred to the Inter-American Commission of Human Rights as a ‘mafia’, adding that the ‘last thing institutions such as that [one] (...) do is defend human rights’ (Primera, 2013). Venezuela left the IACHR in 2013 (Zamorano, 2013), when the Court raised concerns about the state of democracy in the country (Organization of American States OAS, 2013). President Correa also signalled his intention to withdraw from the IACHR (La Prensa, 2013), which was echoed by President Morales, who called the Commission ‘another military base’ under the control of the United States (El Comercio, 2013). To an extent, at the heart of these disputes is the distrust with a regional legal order that depends on the OAS and thus includes the US. But, more fundamentally, the problems are the result of a vision of human rights as a vehicle for the advancement of socio-economic and cultural rights, and a sense of frustration with human rights discourses that give precedence to respect for liberal individualism.

Not all Left governments share the view that there is an essential tension between collective and liberal rights, however. In particular, Uruguay and Brazil have combined commitment to advancing socio-economic rights with greater respect for civil liberties. The evidence from both the CIRI and the Freedom House datasets suggests that government performance in these two countries is above the regional average (Fig. 1). Argentina, meanwhile, occupies something of a middle position: there were tensions, with regard to freedom of the press, for example, with accusations of government intimidation against independent civil society, such as organizations that disputed official figures on economic performance and inflation, but they were much less extreme than in Venezuela or Bolivia (HRW, 2014).

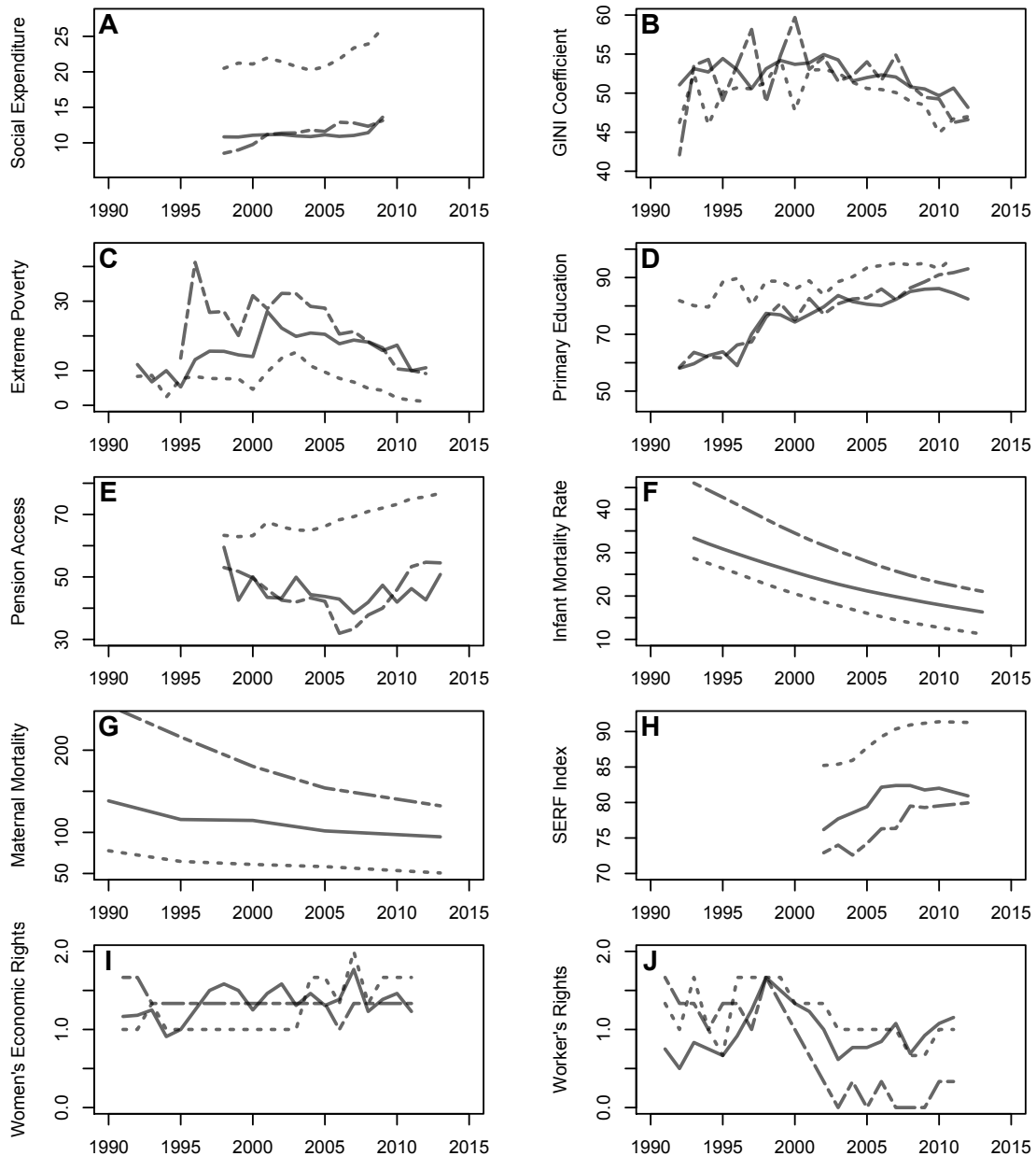
¹³ This report has been criticized, in turn, as a misrepresentation. Over 100 academic experts wrote to the HRW Board of Directors on Latin America in 2008 to complain that its work on Venezuela was motivated by an underlying political agenda and it did not “meet even the most minimal standards of scholarship, impartiality, accuracy, or credibility” (Various Authors, 2008).

The point, then, is that there is no automatic association between the new Left and a deterioration of civil and political liberties. But equally, the promotion and protection of civil and political freedoms in new Left regimes has been, at best, no better than the regional average and in some cases significantly worse. With the exception of Venezuela, whatever the rhetoric, the Andean governments are only marginally worse than the regional averages, pointing to the continuation of major abuses of political and civil rights and the need for progress almost everywhere.

Social and Economic Rights

Socio-economic rights were recognized as such in the 1948 Universal Declaration of Human Rights and set out in detail in the International Covenant on Social and Economic Rights (1966). But despite this early codification, they were not traditionally seen as justiciable in law. It is only in the last twenty years that they have obtained a more 'prominent place in advocacy, discourse and jurisprudence' (Langford, 2008; Rodríguez-Garavito, 2011:7).

In Latin America, socio-economic rights moved up the political agenda with the call in 1998 by international and regional NGOs for governments to take economic, social and cultural rights seriously. The Quito Declaration, as this came to be known, is viewed as the most important statement of economic, social and cultural rights to come out of the Global South (Jochnick and Mujica, 1999). In fact, Hugo Chávez's statement that social rights are 'public goods' that 'cannot be privatized' (Sarfati, 2011) is, broadly, a view shared across the region's Left. So it is not surprising that new Left governments have sought to take socio-economic rights more seriously than in the past and have used income generated from economic growth and corporate taxes for welfare.



Dotted line = Southern Cone sub-region: Argentina, Brazil, Uruguay (average)
Dashed line = Andean sub-region: Bolivia, Ecuador, Venezuela (average)
Solid line = Other Latin American countries, excluding the Caribbean (average)

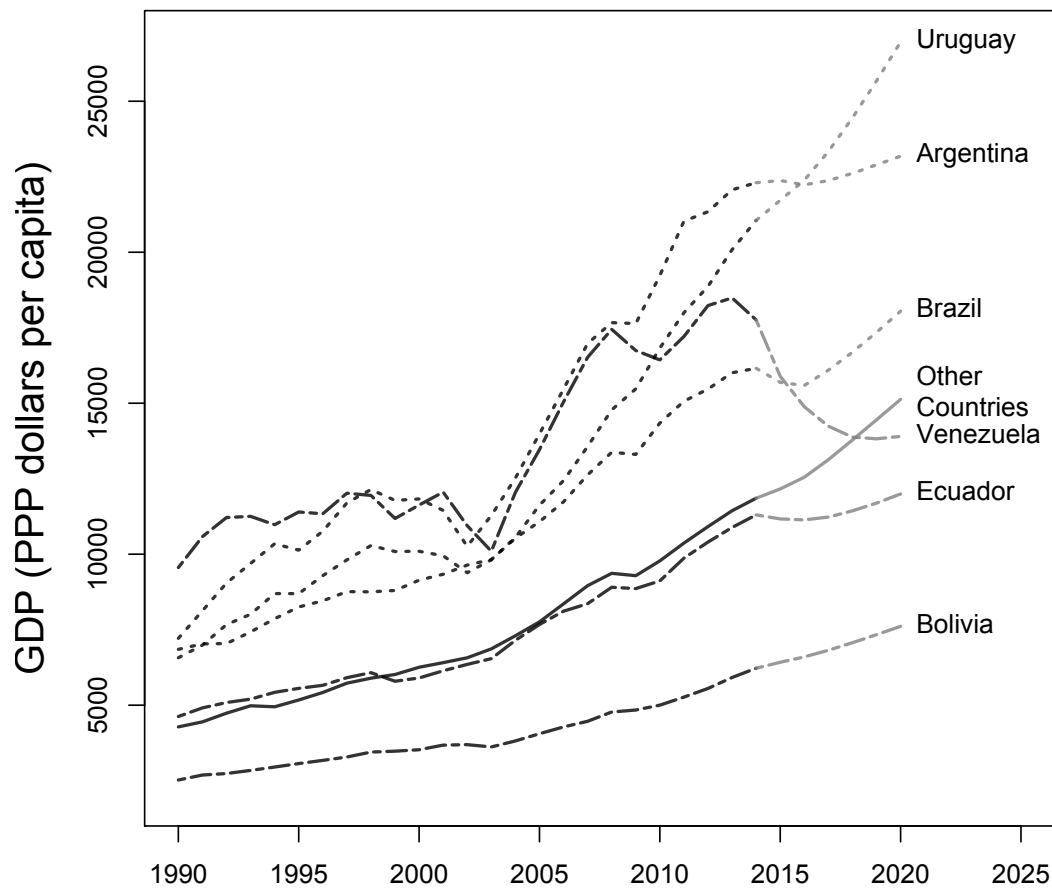
- Fig. 2A:** Social public expenditure as percentage of the Gross Domestic Product (GDP) (authors' calculation based on ECLAC data, 2015).
Fig. 2B: GINI coefficient (authors' calculation based on WB estimates, 2015).
Fig. 2C: Extreme poverty headcount ratio of households (US\$ 2.5 at 2005 PPP) based on national estimates (National Statistical Offices) (authors' calculation based on SEDLAC, 2015).
Fig. 2D: Percentage of pupils starting grade 1 who reach last grade of primary, both men and women (authors' calculation based on ECLAC data 2015).
Fig. 2E: Share of salaried workers with right to pensions when retired (authors' calculation based on SEDLAC data 2015).
Fig. 2F: Deaths per 1,000 live births (authors' calculation based on ECLAC data 2015).
Fig. 2G: Deaths per 1,000 live births (authors' calculation based on ECLAC data 2015).
Fig. 2H: SERF Index (authors' calculation based on SERF Index data, 2012).
Fig. 2I: 0 = no economic rights / 1 = some economic rights under law but not effectively enforced / 2 = some economic rights under law and the government effectively enforced these rights in practice while

still allowing a low level of discrimination against women in economic matters / 3 = all or nearly all of women's economic rights guaranteed by law and the government fully and vigorously enforces these laws in practice (authors' calculation based on CIRI data, 2014).

Fig. 2J: 0 = workers' rights severely restricted / 1 = workers' rights were somewhat restricted / 2 = workers' rights fully protected (authors' calculation based on CIRI data, 2014).

There was a rise in social expenditures across the region after 2004, particularly in new Left-run countries (Fig. 2A). Public spending has been used to create new forms of social incorporation (Rossi, 2015) and to establish a “floor” of social rights which cannot be left up to market forces’ (Martínez Franzoni and Sánchez-Ancochea, 2014: 275), including greater pension coverage, access to health and social insurance. Even in Uruguay, where social coverage was already high, access has been expanded and primary care strengthened. In Bolivia, where social coverage was previously very poor, reforms have included the introduction of a minimum non-contributory pension scheme, which offers a pension to the self-employed and workers in the informal sector for the first time (Renta Dignidad). New cash transfer programmes to improve education and infant and maternal health have also been set up (Bonos Juancito Pinto and Juana Azurduy). Similar schemes have been introduced in Ecuador¹⁴. New types of welfare programme targeted at specific sectors have also been established such as Discapacitados in Ecuador (for people with disabilities) and Cuidados in Uruguay (for domestic care workers). Uruguay has taken the lead internationally in recognizing the rights of the country's domestic workers and in implementing a wage bargaining system for them in 2012, as well as introducing a programme of labour inspections to enforce the law (ILO, 2012).

¹⁴ Cash transfer programmes have not been a prerogative of left-wing governments. In fact they were first introduced by neoliberal governments in the 1990s and funded by the World Bank and the Interamerican Development Bank. ECLAC has an open access dataset of these programmes, which includes information on duration, investments, goals, number of beneficiaries, among others. See <http://dds.cepal.org/bdptc/>.



Dotted line = Southern Cone sub-region: Argentina, Brazil, Uruguay (average)
Dashed line = Andean sub-region: Bolivia, Ecuador, Venezuela (average)
Solid line = Other Latin American countries, excluding the Caribbean (average)

Fig. 3: Gross Domestic Product (GDP) based on purchasing-power-parity (PPP) per capita (authors' calculation based on IMF data, 2015).

Growth across the region has contributed to the decline in income inequality in the 2000s in most of the region (Fig. 2B) (Lustig et al., 2013). But the performance of new Left governments is better (in the Southern Cone) or shows faster improvements (in the Andean region) than regional averages on a number of fronts, from poverty reduction (Fig. 2C), to primary education (Fig. 2D) and access to pensions (Fig. 2E). Furthermore, the gap has closed between the low-medium income countries under the Left and the rest of the region in relation to both infant and maternal mortality rates (Fig. 2F and 2G). These trends are supported by data from the Economic and Social Rights Fulfilment Index (SERF). As shown in Figure 2H,

between 2002 and 2012, while other Latin American countries saw their scores getting worse, on average, new Left-run countries show positive trends. In particular, these countries registered better performances, on average, compared to other countries in the area, on education access (95,7 vs. 86.3), right to food (76,4 vs. 71,7), housing (77,7 vs. 77), and workers' income (88,8 vs. 79,5). Overall, it is hard not to conclude that investments in social expenditure by the new Left have led to greater compliance with social rights, with greatest improvements in the countries of the Southern Cone.

Nevertheless, there are some important social and economic rights that remain unaddressed. Improvements in women's rights have been particularly disappointing. Most countries (with the noticeable exception of Uruguay) do not recognize reproductive rights as a fundamental human right and the Left has generally failed to challenge or reform some of the most restrictive reproductive health laws and policies in the world, particularly with regard to abortion (Center for Reproductive Rights and Inter-American Dialogue 2015). Women's economic rights – including equal pay, employment protection and equal access to the labour market - also show no marked improvements. Apart from Venezuela and Uruguay, which have pioneered a recognition of unpaid housework as work, no substantial improvements have been achieved with regard to women's rights in the last two decades, including in countries governed by the new Left. (Fig. 2I).

And, although income inequality is falling, workers' rights are also advancing slowly, and may even be deteriorating in some areas (Fig. 2J). Labour conflict is widespread, particularly in Ecuador and Bolivia (Calderón et al. 2012). According to some analysts, in Ecuador, the new Labour Code limits the right of strike (Santilla Ortíz and Webber, 2015). Local rights activists have denounced what they see as a new 'phase of deregulation and labour flexibilization' (Programa Andino de Derechos Humanos, 2010). In Bolivia, meanwhile, the labour movement has faced violent repression, especially in the mining sector (US Department of State, 2015) and despite having one of the highest numbers of working children internationally (US Department of State, 2011), the country has recently challenged international agreements on child labor by lowering the legal minimum age to ten years old for self-employed children and twelve years old for salaried children (Fontana and Grugel, 2015).

Cultural and Environmental Rights

Unlike the first and second generation of human rights, third generation, or cultural and environmental rights, are enjoyed collectively and, as such, are not primarily about the protection of individuals. They thus challenge the classic liberal rights framework and its presumptions of a universal model of citizenship. Third generation rights have been codified only relatively recently, with the ratification of the ILO 169 Convention on Indigenous and Tribal Peoples (1989) and the Rio Declaration on Environment and Development (1992). Latin America moved quickly to recognize the principle of indigenous rights and a number of countries in the region have introduced legal and constitutional reforms to operationalize them. In the 1990s, ‘multicultural constitutionalism’ replaced earlier assimilationist strategies that dated back to the colonial era (Van Cott, 2000). This was followed by new institutional architectures of recognition that attempt to reconcile collective rights with individual rights (Radcliffe, 2012). These, however, vary significantly, from pioneering reforms in Colombia, Ecuador and Bolivia, to more embryonic changes in Chile, Argentina and Venezuela.

Of the new Left governments, Bolivia and Ecuador have pioneered the most extensive recognition of cultural rights. Both ILO Convention 169 and the UN Declaration on indigenous rights have been incorporated in new constitutions. Bolivia has also redefined the basis of its statehood, becoming a ‘plurinational’ state to reflect the presence of multiple indigenous peoples. This has triggered a process of institutionalization of new local autonomy regimes as well as the introduction of parliamentary seats for ethnic minorities (Radcliffe, 2012; Fontana, 2014a). The pace of change is significantly slower in Venezuela, although the 1999 Constitution grants new rights to indigenous peoples, including representation in the National Assembly, the recognition of the distinctive social, political, and economic practices of their communities, and the rights to culture, language, and land. In Argentina, meanwhile, progress is distinctly patchy, with most indigenous land claims going unaddressed, although there was an agreement in 2006 to map indigenous territories and prohibit new land evictions until at least 2017 (Castro, 2013).

Some new Left governments have also opted for the introduction of affirmative action schemes as a way to promote the visibility of minorities and indigenous communities (Hernandez, 2013). Brazil passed what is considered ‘the

most extensive affirmative action law in the Americas, and possibly the world' in 2012 (Walsh, 2015: 26), as a result of which 50% of public university places must be reserved for low-income and Afro-Brazilian students. In 2013 Uruguay's law on affirmative action creates a quota of 8% in the workplace, the public sector and in education for Afro-Uruguayans and introduces Afro-Uruguayan history into the national curriculum.

Clearly, then, there are considerable legal advances. But these rights are still untested ground and the new legislation is difficult to implement. The process of indigenous land titling, which is considered the *sine qua non* of indigenous recognition, is moving slowly everywhere. Moreover, in some cases, land titling and indigenous empowerment is creating additional social conflict since it is not always clear who and why some communities are benefiting from the new legislation and others are not (Fontana and Grugel, 2016; McNeish, 2013).

The picture is not dissimilar with regard to environmental rights. Ecuador became the first country in the world to recognize the rights of nature in its Constitution. Article 71 boldly says:

Nature or Pacha Mama [Mother Earth, in Kichwa], where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature (...).

Bolivia's 2010 Law of Mother Earth was also a historic guarantee of the rights of nature. President Morales spoke out strongly in favour of an international recognition of Mother Earth rights at the 2009 Copenhagen Summit on Climate Change¹⁵ and his outspoken advocacy helped push the UN towards the recognition of the right to water in 2010.

Nevertheless, even more than indigenous rights, environmental rights are really only embryonic. In Ecuador and Bolivia, governments speak of the introduction of concrete measures such a ban on genetically modified crops, the creation of a 'biopolis', the protection of biodiversity, payment for ecosystem services and establishing an Environmental Ombudsman (Barié, 2014), but in practice, little of this

¹⁵ <http://laperspectives.blogspot.co.uk/2015/06/political-report-1049-corrupted.html>

has been achieved. There are also some contradictions between these outspoken endorsements to environmental rights and the practices of government-sponsored intensive exploitation of natural resources (Bebbington and Bebbington, 2011; Hill, 2015). In fact, in both Bolivia and Ecuador, natural resources exploitation in protected areas has increased under left-wing governments in order to provide the financial revenues for welfare. These contradictions are also reflected in the combination of enthusiastic ratification of the 2015 Paris Agreement on climate change by all Latin American governments, including the Left, and inadequate and lukewarm commitment to meeting global temperature targets in practice¹⁶.

The New Left Agenda of Human Rights: Evaluating the Record So Far

The new Left in Latin America has certainly created a broader and more diffuse rights agenda. There has been a shift away from purely political and civil rights associated with liberal variants of democracy. These changes challenge the still widespread view that socio-economic and collective rights are somehow ‘lesser’ rights than political and civil entitlements. But, not surprisingly, second and third generation rights are still very fragile in practice. Framing issues such as welfare, land ownership and the environment as human rights implies a major rethink in the purpose of policy and the nature of social policy, while arguing that the three generation of rights - political-civil, socio-economic and cultural-environmental - should be regarded as equally important is, in practice, very difficult in liberal democracies that have historically tended to protect the political and civil rights of citizens whilst resisting the justiciability of other sorts of rights.

The evidence suggests that governments have embraced elements of that canon more enthusiastically than others. In effect, rather than simply complying with international rights regimes, some new Left governments are also attempting to counter the traditional hierarchy of rights in which liberal individual rights take precedence (Farer, 1992). This is of immense significance practically for how rights are understood. It is also of considerable theoretical significance since there are relatively few examples where socio-economic, cultural and environmental rights have been taken so seriously.

¹⁶ <http://climateactiontracker.org>

The extent to which the human rights agenda has shifted in Latin America is only now beginning to be recognized. Certainly, the promotion and protection of cultural and indigenous rights has attracted scholarly attention, especially in Andean countries, for a number of years now (Brysk, 2000; Yashar, 2005). But commitment to second generation rights constitutes ‘a quiet revolution’, without precedent in the region, according to Magdalena Sepúlveda Carmona (2014), the UN Special Rapporteur on Extreme Poverty and Human Rights. From the introduction of pensions for workers in the informal sector to the shift from conditionality in child welfare programmes, from the advancement of domestic workers’ rights to new forms of ‘health diplomacy’ (Riggirozzi, 2014), the new Left – whatever its problems – has set fresh standards for social inclusion.

At the same time, it is clear that the enactment of all types of rights varies considerably between countries. There is a greater commitment to the ‘full spectrum’ of human rights in the Southern Cone, while Andean governments sometimes act as if there was a trade-off between respect for liberal political and civil rights and socio-economic and collective rights advances – and prefer to choose the latter. These differences have multiple causes, which range from the variation in leadership style, executive authority administration and tolerance of political transitions - with the Andean countries showing greater degrees of political tensions and radicalization - to historical differences - with the Southern Cone closer to Western liberal traditions. The stronger cut with Western influences has made it relatively easier for the Andean countries to follow less orthodox paths of human rights compliance, once popular dissatisfaction with the capacity of liberal democracy to deliver reduction in inequality and wellbeing became clearer.

As the era of leftist governance begins to draw to a close, we should ask whether this new agenda of human rights is secure. There are at least three intertwined issues to consider here: economic growth and its sustainability; the increasingly apparent electoral exhaustion of the Left in Latin America; and how governments will deal with the tensions and trade-offs between different kinds of rights.

Across the region, the expansion of second generation rights has been underpinned by economic growth, in the order of 4.2% in Latin America between 2004-2013. This period has come to an end. Growth fell to 1.3% in 2014 and some of the larger economies, Brazil notably, registered negative growth. Economic growth

enabled the creation of reserves –14.8% of regional GDP (Deloitte, 2015) – which minimised the social costs of the slow-down, but the global fall in commodity prices will mean a decline in government income and a drop in public spending over the medium term. There are risks of inequality rising once again, especially since the overall tax base remains narrow (Goñi et al., 2011). The Andean countries are particularly vulnerable here, with social gains in the Southern Cone significantly more protected.

These issues are exacerbated by the manner of the Left's electoral decline. In Argentina, Kirchnerismo was narrowly defeated in the Presidential elections of 2015. Argentina's new President, Mauricio Macri, represents a right-wing coalition that is not only ideologically opposed to key aspects of the new Left agenda, but a firm adherent to a return to market-led development. The economic context is not particularly buoyant, with rising levels of inflation – estimated to be in the order of 25-30% - falling export prices and renewed pressure from producers and investors. Retrenchment in terms of public spending has begun to happen, though haphazardly as yet, and there is little evidence that the poorest groups are being more protected in the process. Meanwhile, in Venezuela, hyper-inflation and severe shortages of even basic goods have wiped out social and economic gains established in earlier years and debt default is likely, as the Right – once again ideologically opposed to high levels of public spending – is gaining terrain. In Brazil, the dominance of the Worker's Party, which has overseen the most dramatic reduction in inequality in the region, was overthrown by an unprecedented political crisis that culminated in a controversial process of impeachment and destitution of the President Dilma Rousseff and a de facto shift to a centre-right government.

Meanwhile, in Ecuador and Bolivia, it is hard to see how tensions between the intensification of the extractive economy and the project of collective and environmental rights can be avoided in the future as conflicts between the state, private companies and rural communities increase (Bebbington and Bebbington, 2011; Fontana, 2014b). In the end, these governments have opted for a traditional understanding of development as growth and spending which is at odds with the idea of environmental rights and possibly even with the project of Buen Vivir. While this has not yet undermined their legitimacy, as the victory of Correa's party (Alianza-PAIS) in the 2017 Presidential elections in Ecuador testifies, there is no getting away from the fact that even the more radical 'postneoliberal alternatives' (Radcliffe, 2015:

864) have not developed a sufficiently innovative model of resource governance, capable of respecting the rights of the environment and driving growth to sustain public spending at the same time. There are therefore serious doubts as to whether the more radical reforms will survive (Weyland et al., 2010).

Conclusion

For Arnson (2007: 8), ‘regardless of whether the predominance of Left or populist governments in Latin America today is a transitory phenomenon – another “swing of the pendulum” – or whether it represents a more enduring shift, the specific practices and policies adopted by these governments will mark the future of democratic politics in the region’. This early assessment of the Pink Tide governments was remarkably prescient. It is now clear that the Left’s electoral dominance in the first fifteen years of the twenty first century has significantly reshaped the region’s engagement with human rights ideas and practices. But it has done so in complex and sometimes contradictory ways for, as Ruckert, MacDonald and Proulx (2016) conclude, it makes little sense to treat the Pink Tide (or postneoliberalism) as a single unified phenomenon. Policies and institutions – and, we would suggest, human rights practices - vary too much for that to make sense. The human rights agenda in the region is complex not simply because it is more diffuse – which rights matter? – but because different rights matter in different countries and sub-regions. Without going as far as accepting Castaneda’s simplistic and over-determined notions of the ‘two Lefts’, it is hard not to acknowledge that there are different understandings of human rights at play between the Andes and the Southern Cone that reflect a combination of cultural patterns of historical engagement and the priorities of governments.

It is clear, then, that we stand at a crucial moment in terms of Latin America’s engagement not only with the Left but with its record on human rights. With an eye to future research, therefore, we want to draw attention here to two issues. The first is the need to explore more fully what stands in the way in Latin America of governments accepting the full spectrum of human rights; or, put differently, how can the pursuit of socio-economic, cultural and environmental rights be made compatible with the agenda of democratization and full respect for political and civil liberties? All these rights are vital elements in the creation of more equal societies and more effective democracies, yet even in the Southern Cone, where conflicts over political

and civil rights are milder, there are still tensions between different rights agendas and generations of rights. Do the problems lie in the realm of ideas, social practices, institutional weaknesses or within the state itself? A deeper understanding of the obstacles that get in the way of to better delivery of the full human rights spectrum would make a considerable contribution to scholarly understanding of regional democratization.

Our second point refers to how we study human rights in the future. So far, the human rights literature on Latin America has been shaped above all around political rights and civil liberties and transitional justice. The influence of international law on the discipline of human rights is considerable and, in Latin America, judicial activism and the generation of imaginative mechanisms for dealing with the traumas of the past has encouraged this trend. Yet scholars of social movements often use ‘rights’ in a broader sense and, like the organizations they study, focus on the gap between the promise of international rights agreements and the reality of everyday rights experience (Farmer, 2004). There is a considerable literature, some of which we have drawn on here - in anthropology, geography, international development, ecology, and social movement studies - that explores the deployment of old and new rights in practice. Building bridges between those literatures and the detailed study of how second and third generation rights operate, discursively and in practice, is now necessary to fully comprehend the trajectory of human rights in Latin America and elsewhere.

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