Interview – Alicia Ely Yamin

Tony: Thank you for agreeing to an interview with us today. I just wanted to start by asking – what inspired you to host this panel?

Alicia: Sure! I had worked with Latin American reproductive justice organizations for years. Mostly in Argentina but I also had worked on an Amicus case in Colombia. And, in light of *Dobbs*, there's been a lot of interest in why Latin America, a region that has some of the most draconian laws against abortion in the world, is now moving towards liberalization.

There's been a number of different webinars on the "Green Wave" as it has been dubbed. But, this was an opportunity to hear from sitting Supreme Court Justices about the path in each of those countries, which I think is a tremendous privilege and very special.

Tony: Why do you think there has been this "Green Wave" spreading across Latin American countries while in the United States, which has traditionally been more liberal, has shown signs of decreasing access to abortion?

Alicia: For some background on the Green Wave, it's not just a matter of cutting and pasting strategies across different countries. The Green Wave did not begin just in the December of 2020 where there was legalization of abortion in Argentina. Feminists have been working towards liberalization of abortion for many years, since the early 1970s at least, and there has been iterative steps involving both litigation and issuing of guidelines, social mobilization, and attempts to introduce legislation in multiple forms, sometimes at the national level.

These Latin American countries also have a different universe of norms on which to draw upon. We, in the United States, have a traditional liberal Constitution with a very austere set of rights. The argument in *Dobbs*, as you know, were about Substantive Due Process questions. In contrast, Argentina, Colombia, and Mexico have Constitutions that have broader, more robust enumerations of economic and social rights, including heath rights. They interpret equality in a broader way compared to our formalist Equal Protection jurisprudence. It's quite a different landscape. And, I think there are a network of both law professors and also social movements advocates that have taken lessons from one country and brought them to another country and have continue the momentum.

Tony: Do you think there is anything the United States can take away from these movements?

Alicia: I think one of the key lessons is that abortion needs to be connected to other issues. Abortion is not just a narrow reproductive autonomy issue: it's a question of gender equality. It's a question of women's participation in the labor force. It's a question of violence—there is a lot of gender-based violence against women in Latin America. And this was seen as also, fighting against femicide and the violence in the streets and within intimate partnerships. So, it was much more broadly integrated into a number of different social struggles that was really aimed at expanding democratic access—who is considered an equal member of society?

Additionally, one aspect of this struggle, although it has played out differently in different countries, has been the social de-criminalization of abortion. The de-stigmatization and ability to discuss the issue not as something that is a personal or moral question. Instead, it is discussed as healthcare and as part of gender equality. And, that social de-criminalization has been very important.

Tony: What do you think helped support the social de-criminalization of abortion in these Latin American countries?

Alicia: I think it takes time. It's about the topic is covered on the media. It is about how the topic is taught and discussed over kitchen tables as much as in the legal institutions of the state. I think that the conservative anti-choice side has appropriated this moralistic language, similar to Latin America. Again, it's a process.

Tony: Jumping forward a little, I wanted to ask you a question that a student had asked the justices at the panel about *Roe v. Wade*. When the decision was passed, we saw this backlash against the opinion, and *Roe* seemed like a unifying banner for those opposed abortion. And, even after the decision, we saw a lot of states increasing restrictions on abortion through things such as mandatory waiting periods. So, my question is: do you think there will be a similar backlash in these Latin American countries in response to the decisions liberalizing abortion access?

Alicia: I think there will be a backlash. There is a lot of contestations whether this should be decided by the political branches of government as opposed to judicial review – the United States is not alone in this. In Colombia in particular, there was a dozen of motions filed to nullify the decision. And, I think in Mexico, there had been a back and forth, just as it has been in the United States, because Mexico is a federalist country as well, between state legislatures passing very restrictive laws after the court entered into this realm initially. And, I think we will see again, state legislatures in Mexico taking their time and changing criminal codes, legalizing and implementing abortion access. I think they will also take their time in Colombia – that is also a decision that requires political organs of government to pass legislation and financing and requires modifications in the health system. I do expect a backlash, and that's quite normal in this field. These are very unstable norms. I think in western Europe, there has been less instability because of the way it's framed and because of cultural acceptance.

Tony: We heard a lot about Mexico and Colombia during the panel. Looking into the future, what Latin American countries, if any, do you think will follow this trend?

Alicia: Ecuador has taken some steps towards liberalization, and we may see that. The Brazilian Supreme Court has had a case before it where feminists in Brazil are asking the court to find more exceptions to the criminalization of abortion than exists now – we'll see what happens in Brazil with that. In Central America, there are very restrictive abortion laws. Both El Salvador and Nicaragua completely bans abortions under all circumstances. In El Salvador, they often prosecute what could be considered exceptional emergencies as aggravated homicide. The

Inter-American court has found that to violate human rights; different treaty monitoring bodies have found also that violates human rights and called upon the government of El Salvador to change that. So, I'm engaged right now in another case at the Inter-American Court of Human Rights that is, again, challenging that absolute prohibition.

I think that over time, looking at the arc of international law, there is a clear trend towards liberalization. And I think comparative law in the region is also moving towards liberalization. I think that will happen in different ways based on each specific country's context.

Tony: You mentioned a few times that every movement in every country is different, and that strategies from one country cannot be copy and pasted into another. But, do you think there are any unifying themes among the countries that is pushing towards liberalization?

Alicia: Pushing to socially decriminalize is one theme. A second theme is that this requires a long ground game. Again, feminists have been working on this since the early 70s and it is only of late where it's broken through publicly. And I would say the anti-choice people in the United States have played a long ground game at the state legislative level, as well as litigating. But they played a long-term game, and we will need to learn the multi-pronged approach of continuing to litigate but adding social movement organizing, working with providers, and working with women's themselves–getting them actual access to care.

Tony: Are you optimistic about the future of abortion rights in Latin America?

Alicia: In the long run, I am optimistic because there is a very clear trend in international law and in most comparative law contexts. The United States has put itself among a small set of outlier countries. I think in the long run, I remain optimistic, but I think this is going to be a long struggle.

Tony: Thank you for speaking with us! Are there any final words you want to say about the topic in general.

Alicia: I would like to emphasize while there have been many webinars about the Green Wave, this was very special, to be able to hear from two sitting high court justices and the trajectories each country had taken. And, for students to be able to eat informally with them after the panel, I think that the generosity of these justices, who are both LL.M. graduates of Harvard Law School, is one of the things that made the event stand out among all of the events we've had looking at the Green Wave.

And, we often talk about the Justices on the American Supreme Court that court their law degrees from Harvard. But the LL.M. program at Harvard produces a lot of high court justices around the world and has certainly produced many high court justices in Latin America. So, I was really happy that Petrie-Flom could do something like this.