

Public Interest Law and Beyond An Interview with Robert García

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Aideen Collard BL with Robert García in the grounds of the Old Kilmainham Hospital – Irish Museum of Modern Art



Robert García delivering his paper with a slide of Central American children from the Anahuak Project in the background

As part of a ground-breaking initiative to examine the potential role of Public Interest Law and Litigation (PILL)¹, FLAC (Free Legal Advice Centres) has commissioned a series of conferences and seminars with the generous support of the Atlantic Philanthropies. The aim of the initiative is to explore how PILL can improve the position of disadvantaged groups² in Irish Society and FLACs efforts have been spearheaded by the trojan efforts of Noeline Blackwell, Director General. The positive response and level of interest generated both here and abroad over the last year was overwhelming and a host of eminent international speakers all eager to share their experiences have delivered enlightening papers. Most notable contributions were made by Julian Burnside QC from Melbourne who spoke enthusiastically about using the law to change the world, Roger Smith from JUSTICE on the explosive growth of test cases in the UK and by Fiona Doherty from the United States who described her suit against Donald Rumsfeld on behalf of former detainees in Iraq and Afghanistan. Outstanding contributions were also made by Geoff Budlender, who fought against the apartheid regime in South Africa and Andrea Durbach, author of 'Upington', who successfully represented 14 people wrongfully convicted to death for the killing of a white policeman in South Africa.³ But one speaker who struck a real chord with the audience for his passion and absolute commitment to the cause of Public Interest Law was Robert García, Attorney and Executive Director of the Center for Law in the Public Interest and the City Project in Los Angeles. At the last PILL Seminar in June, I was very privileged to have the opportunity to interview him.

By the time I came to meet with García, I had already listened to him deliver two inspiring papers at the FLAC Conference in October 2005⁴ and Seminar in June 2006⁵, both held in the magnificent surroundings of the 17th Century Royal Kilmainham Hospital, now home to the Irish Museum of Modern Art. So I was in no doubt that I was in the presence of an exceptional human being, a human rights lawyer who has dedicated his life to a diverse range of Public Interest Law work from defending the convicted on death row to leading the Urban Park Movement in the United States. A graduate from Stanford University, García is a practicing lawyer with extensive experience in public policy and legal advocacy, mediation and litigation involving complex social justice, human health, environmental and criminal justice matters. He has influenced the investment of over \$20 billion in deprived communities working at the intersection of social justice and sustainable regional planning. Along the way, he has achieved incredible victories in his tireless fight for equal access of the underprivileged to public resources and in particular, has saved dozens of acres of parklands in Los Angeles from development for the benefit of underprivileged communities. He has received numerous accolades and awards, including the Robert García Environmental Justice Award named in his honour for improving the environment in California, the President's Award from the California Attorneys for Criminal Justice and the Rigoberta Menchú Award.⁶ Not only is he an inspirational role model to young aspiring lawyers with a social conscience, but he has also

¹ PILL is not a term which is very familiar in an Irish context. It can be roughly defined as a way of working with the law for the benefit of vulnerable and disadvantaged people.

² The systematically vulnerable groups in Ireland's booming economy include children, the disabled, mentally ill, the homeless, single parents, the elderly, ex-offenders, migrants, refugees & asylum seekers,

travellers and the unemployed.

³ For a full set of papers from the Conference in October 2006, see *Public Interest Law in Ireland: The Reality and the Potential - Conference Proceedings* (2006) published by FLAC.

⁴ *Race, Poverty, Justice, Katrina: Reflections on Public Interest Law and Litigation in the United States* (2005) by Robert García, in *Public Interest Law in*

Ireland: The Reality and the Potential - Conference Proceedings (2006) published by FLAC.

⁵ *Equal Justice, Democracy and Livability: Lessons from the Urban Park Movement* (2006) by Robert García, available from FLAC.

⁶ From www.clpi.org (Website for the Center for Law in the Public Interest in Los Angeles).

been to the forefront in developing Public Interest Law and evolving it beyond pure litigation by successfully utilising diverse strategies to achieve Public Interest Law goals. With this in mind, I was curious to learn what had influenced and motivated Garcia to have such passion, drive and strength of conviction in his work and how he believed Public Interest Law in Ireland could glean from his experiences.

To a greater or lesser degree, as lawyers, our career paths are moulded by our background, influences and life experiences. Garcia is no exception. He was born in Guatemala but came to the United States as a young boy in the 1950's when his family fled the civil war there and was to claim the lives of over 200,000, mostly unarmed indigenous civilians, over the next fifty years. Garcia fondly described the three major influences which impacted on his life and led him to undertake his vocation in human rights and civil liberties work. The first major influence was his grandfather, who was a linotypist and politically progressive as a member of the Labour Union in the Guatemalan government before it was overthrown. "As a linotypist he read all the time and had to type in an encyclopaedia in Guatemalan for the publisher so he literally had an encyclopaedic knowledge and every time I saw him he was reading. Growing up, I went to a lot of schools and I think one of the ways I dealt with always being the new kid on the block was by constantly reading, owing to the influence of my grandfather." Secondly, growing up in down town Los Angeles, he attended Catholic schools and the Sisters there had a profound influence on him. "I remember I did something wrong once and one of the Sisters, for my penance made me read five books about the saints as children and I think the message I took away was that she expected me to grow up to be a saint. I don't think by any means I'm a saint but the notion that each of us has to do what he can to save his or her own soul, I think that's why I do what I do as an Attorney and I try to do justice and not just practice law."

Enriched by his diverse upbringing, Garcia developed a questioning mind and excelled academically, studying Law at Stanford Law School where he met the person who was to be his third major influence, his Professor. "Tony Amsterdam has been the architect behind the movement to abolish the death penalty in the Courts in the United States for the last forty years now- I studied with him and once I became an Attorney, I did a case with him and everything I've ever done as a lawyer was influenced by him." He instilled in Garcia the importance of not just practicing law, but doing justice, and undoubtedly set the foundations for his future career path and dedication to human rights.

Upon graduation from Stanford University, Garcia worked at a large New York Law Firm, litigating international cases against Iran in the wake of the Iranian Revolution and in an unlikely step for a budding human rights lawyer, he became a Federal Prosecutor under Rudy Giuliani prosecuting organised crime, public corruption and international narcotics trafficking cases. When I asked him how this work tallied with his social conscience, he was quick to reassure me that he only accepted the position on the basis that he would never seek the death penalty. It struck me that this added another sense of arbitrariness to the whole issue of the death penalty- that in addition to all the other factors such as race, income, quality of lawyer, State, etc., whether or not an accused faced the death

penalty in the United States also depended upon the personal beliefs of the Prosecutor in question. Garcia is vehemently opposed to the death penalty which he describes as being cruel and unusual in the way that being struck by lightning is cruel and unusual. "It depends on factors which should have no role whatsoever in deciding who lives and who dies. We are not qualified as human beings to decide who should live and who should die and certainly the Nazis couldn't make those decisions.....when we try to make those decisions, we are no better than Nazis." It seems that Garcia himself became dispirited by his role as a Prosecutor. "I did not like the fact that how hard I worked made the difference between someone going to prison or not and the longer I worked, the longer somebody went to prison."

Garcia also spent several years as a Defence Attorney representing people on death row in Georgia, Florida and Mississippi. Probably his most high-profile success during this time was working with Johnnie Cochran, Stuart Hanlon and others to overturn the conviction and death penalty in the case of the Black Panther member, Geronimo Pratt following twenty seven years in prison for a crime he did not commit. Pratt, a black man, was wrongfully convicted of the kidnap and murder of a white teacher as a result of a frame-up by the Los Angeles Police and Prosecutors as part of the war against the Black Panther Party conducted by the FBI and the LAPD.

However, the pressures of defending detainees on death row took their toll on Garcia and he talked candidly about the tremendous pressure involved in knowing that how you conduct a case can mean the difference between the life and death of a client. "I remember the first time I did a Supreme Court brief on behalf of a client on death row, I was sitting in my office writing and I saw red on the paper and I realised I was having a nose-bleed from the stress- it puts personal stress on the Defence Attorney, personal stress on the Prosecutor and personal stress on the Judge- there are Judges who resign from the Bench because they don't want to sentence people to death." Garcia also taught part time in Stanford Law School and served on the Board of Editors of the Stanford Law Review but turned down the opportunity of a career in academia as a professor owing to what he calls its 'monastic nature'. However, he continues to lecture widely and has published extensively on law and social issues.⁷ Ultimately, he made a smooth transition from Criminal Law to Public Interest Law bringing with him and building upon his invaluable knowledge and experience.

Garcia worked as an Attorney with the NAACP Legal Defence & Education Fund and became Executive Director of the Center for Law in the Public Interest in Los Angeles, which has just celebrated its 35th Anniversary. He describes the role of the Center as empowering communities through a collective vision for a comprehensive and coherent web of parks, schools, beaches, forests and transportation that promote human health, a better environment and economic diversity for all in a multi-cultural society. "Our goal is equal access to public resources with equal justice, democracy and liveability for all." His first major civil law victory was the landmark environmental justice class action in *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority (MTA)*. The plaintiff class alleged that MTA operated separate and unequal bus and rail

⁷ Robert Garcia's other publications can be sourced on www.clipi.org and include: *The Urban Park Movement: Equal Justice, Democracy and Livability in Los Angeles*, chapter in Dr. Robert Bullard's book on Environmental Justice to be published by the Sierra Club (forthcoming 2005); *Cross Road Blues: Transportation Justice and the*

MTA Consent Decree, chapter in book *Running on Empty* edited by Prof. Karen Lucas (2004); *Healthy Children, Healthy Communities: Parks, Schools, and Sustainable Regional Planning*, 31 *Fordham Urban Law Journal* 101 (2004)

systems that discriminated against bus riders who were disproportionately low income people of colour. The parties settled the case after two years of litigation and mediation through a Court-ordered Consent Decree in which the MTA agreed to invest over \$2 billion in the transport system, making it the largest civil rights settlement ever. MTA agreed to improve transportation for all the people of Los Angeles by reducing overcrowding on buses, lowering transit fees and enhancing country-wide mobility. Garcia proudly recalled what this victory meant to him personally. "After two years of litigation, with a team of twenty six attorneys who spent 10,000 hours on the case, 3,300 hours of which were mine, MTA agreed to settle the case by investing over two billion dollars to improve the bus system in Los Angeles making it the largest civil rights settlement ever. So that was a huge victory, we learned a great deal and the central issue was equal access to public resources."

Spurred on by this success, over the past five years, the Center for Law in the Public Interest focused on what has been coined the 'Urban Park Movement' which adopted diverse strategies to save lands from development and convert them into public parks. To set the scene to this aspect of his work, Garcia described the plight of Los Angeles as being park poor with unfair park, school and health disparities. He used a map to starkly illustrate the unequal distribution of parklands in favour of the wealthy and privileged areas and explained that: "Children of colour disproportionately live in communities of concentrated poverty without access to proper play areas or parks. The human health implications of the lack of places to play and recreate are profound. These children disproportionately suffer from obesity, diabetes and other diseases related to inactivity. This is the first generation in the history of the country in which children will have a lower life expectancy than their parents if present trends in obesity and inactivity continue."

It was Garcia's goal of achieving equal justice, democracy and liveability for all that drove him towards further landmark successes, most notably, the 'Cornfield' case. The 32 acre Cornfield was the last vast open space in the heart of Los Angeles near Chinatown in an area where there were neither green parks nor a blade of grass in any of the school playgrounds. In 1999, the City of Los Angeles and wealthy developers proposed building 32 acres of warehouses on the site without an environmental impact report. The Center brought together a diverse alliance of over 35 community, civil rights, environmental, business and civic organisations and leaders known as the Urban Park Alliance to stop this development and convince the State to purchase the site for a park. In this case, the Alliance challenged the proposed warehouses as one more product of discriminatory land use policies that long deprived communities of parks and recreation. The Alliance filed a complaint and persuaded the US Secretary of Housing and Urban Development to withhold any subsidies for the warehouses unless there was a full environmental review which considered the park alternative and the impact on people of colour and low income. Through this process, they were able to persuade the State to buy the site for what was to become the new Los Angeles State Historic Park. The Los Angeles Times heralded the Cornfield a 'heroic monument' and a 'symbol of hope'.

The Urban Park Alliance continued to gather momentum and was instrumental in stopping a power plant and rubbish dump in favour of a two square mile park in Baldwin Hills, the historic heart of African-American Los Angeles, which will be the largest urban park in the United States in over a century - bigger than Central Park in New York or Golden Gate Park in San Francisco. Last year, it also won an environmental law suit against the City and another developer to stop a commercial project at a former rail-yard known as Taylor Yard. It persuaded the State to purchase it and create a 40-acre park on the banks of the Los Angeles River, thereby greening the banks of the most environmentally degraded river in the world. It is notable that throughout this case, Garcia represented the interests of Anahuak (an organisation for underprivileged children from Central America including Guatemala) and is very much of the belief that "our children are the future". These children were delighted with the new park space to play football and spend time with their families. For Garcia, this had a deeper meaning and satisfaction as he had been afforded an opportunity to help less fortunate children from his home country to enjoy the quality of life to which they were entitled. Garcia says of these victories: "When we first won the Cornfield case, people dismissed that as a flash in the pan, when we stopped the power plant in Baldwin Hills, we started to build momentum and with Taylor Yard and three victories, we had a real Urban Park Movement going." These cases exemplify the struggle by low-income people of colour in Los Angeles for liveable communities and demonstrate the power of utilising diverse strategies to achieve Public Interest Law ends. They set the trend for further similar successes in Los Angeles and beyond.

Intrigued as to how a small Law Centre with limited resources could achieve such incredible outcomes, I ask Garcia about the strategies and mechanisms utilised. It is also evident from his papers that Garcia does not view recourse to the Courts as necessarily being the best way of achieving Public Interest Law goals so I begin by asking him about his apparent reluctance to resort to litigation. He informed me that unfortunately, with an increasingly conservative Courts system and Congress, it is becoming harder to achieve civil rights and environmental victories and it would be considered malpractice to bring certain claims in the current climate. The power of litigation was also curtailed by the US Supreme Court decision in *Alexander v. Sandoval* 532 US 275 (2001), which held that there was no standing for private individuals or groups (such as the class action in the MTA Case) to file a suit or enforce the discriminatory impact regulations issued by federal agencies under Title VI of the Civil Rights Act 1964. According to Garcia, this was a step to roll back civil rights protections and close the courthouse door to individuals and community organisations challenging practices that adversely and unjustifiably impact people of colour and low income. "So the bad news is that we can't win cases as easily anymore, and as a matter of survival, the Center for Law in the Public Interest for the past five years has sought to redefine Public Interest lawyering for the 21st Century. That may sound grandiose but its not. It is a matter of survival."

Garcia goes on to describe how the Center has evolved to address the limitations of litigation by adopting a diverse range of alternative strategies, including developing a collective vision to bring people together, coalition building and community organising, multidisciplinary

research and analysis, strategic media campaigns, legal advocacy outside the Courts, creative engagement of opponents to find common ground within the context of a broader campaign. He is however at pains to point out that litigation still plays an important role in the overall context of Public Interest Law and will depend upon the requirements of each case. Considering the procedural obstacles to Public Interest Law and litigation in the Irish Courts, including the difficulty in obtaining funding, *locus standi* issues and the risk of costs orders⁸, such strategies are certainly worthy of serious consideration.

I ask García to elaborate on how these strategies operate in practice, whether they could be easily adopted in Ireland and in particular, how to mobilise communities to become a powerful force against State authorities and large companies, which have unlimited resources and power. He explains that the Center works closely with community-based organisations and that this is key to 'coalition building and community organising'. On this point, it occurs to me that there are numerous voluntary and community organisations within Ireland undertaking similar work and all striving to achieve similar goals without cohesive networking or liaison. As a result, services are provided on an *ad hoc* and piecemeal basis, leading to either scarcity or duplication and without obtaining the benefits of shared experiences and a united front. However, it is very heartening to note that through its Public Interest Law initiative, FLAC have been in contact with over 400 such organisations, thereby paving the way for future networking and cohesion in this area.

The Center for Law in the Public Interest in Los Angeles has also used multi-disciplinary research and analysis as a powerful tool for persuading the State to succumb to its aims. Statistics, graphs and maps illustrating the extensive inequalities between the rich and poor, along with reports demonstrating the benefits of parks on communities, have had a massive impact in backing up their campaigns. García describes this strategy: "We've marked on maps, access to parks in Los Angeles by race, ethnicity, income, poverty, access to a car and so on using GIS tools and 2000 census data, along with historical analysis demonstrating that the distribution of parks and who they benefit is not an accident of unplanned growth but the result of a continuing pattern of discriminatory land use planning in the United States."

The Center also engages in strategic media campaigns, openly providing details of its various causes of action to reporters in an effort to ensure that they provide balanced coverage and fully enable public participation. Coupled with public education and innovative methods of alternative

dispute resolution, such as those used to broker the settlement in the Cornfield case, these strategies have become the preferred means of achieving Public Interest Law ends in the United States.

In conclusion, I ask García how he believes that Ireland can learn from his experiences in the United States. He modestly points out that this is very much a two way process and he is in Ireland as much to learn from the Irish experience as to share his own experiences. "Knowing that we are not alone strengthens us because we face similar challenges. There are brilliant lawyers around the world addressing the very same issues we're confronting on a daily basis."

He acknowledged that Public Interest Law is still very much in its infancy in Ireland and its untapped potential for enforcing the rights of the underprivileged in a rapidly changing society is enormous. The vulnerable groups in Ireland's booming economy include children, the disabled, mentally ill, the homeless, single parents, the elderly, ex-offenders, migrants, refugees, travellers and the unemployed. In the representation of the civil rights of such groups, he would like to see FLAC and other bodies involved in Public Interest Law take on board some of the lessons learned in the United States and in particular, the successful use of a diverse range of strategies for achieving its goals.

Undoubtedly, García's experiences in the United States will prove invaluable in the ongoing examination and analysis of the potential role of Public Interest Law and Litigation (PILL) in Ireland, following on from the preliminary research already carried out by Mel Cousins BL⁹. García also acknowledged the importance of building upon pioneering initiatives already in place such as the LEAP (Legal Education for All) Project and the Voluntary Assistance Scheme operated through the Bar Council which provides *pro bono* legal assistance to NGO's¹⁰. Finally, he complemented FLAC and the Atlantic Philanthropies on their fantastic job in organising such an impressive and successful series of conferences and seminars. He agreed with me wholeheartedly, that this initiative is just the beginning of an exciting venture to utilise Public Interest Law and Litigation (PILL) in improving the position of disadvantaged and vulnerable groups in Irish Society and beyond. I left from my interview with Robert García greatly energised by his infectious enthusiasm and enriched by his experiences and the knowledge of what can be achieved against all the odds through sheer conviction and commitment. ●



The Dream begins with Children playing at the opening of the Los Angeles State Historic Park with City Hall and the skyline in the background on 23rd

⁸ Procedural Obstacles to PILL. FLAC Conference, 12th May 2006, Papers available from FLAC

⁹ In his preliminary research, Mel Cousins BL has identified four strands of Public Interest Law and Litigation (PILL), namely, law reform, legal education,

community legal education and public interest litigation. See Report entitled 'Public Interest Law and Litigation in Ireland' by Mel Cousins BL (October 2005) in the FLAC Public Interest Law Conference Proceedings cited at n4 above at p.13.

¹⁰ For further information on the Bar Council's Voluntary Assistance Scheme, contact the Scheme Administrator, Jeanne McDonagh at jmcdonagh@lawlibrary.ie, Telephone 01 8175014