
☞ PROFILE

Cecilia Medina Quiroga,
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A Pragmatic Route to the Law

When Cecilia Medina Quiroga reflects on what put her on the path to her current position as international judge, she immediately evokes her upbringing.¹ Medina was born in the south of Chile, but after an earthquake her family moved north to Santiago, the city where she was raised and has lived most of her life. Medina characterizes her family as “progressive”:

They had very strong ideas about equality. For example, my mother and my aunts all went to university. My mother was born in 1905, so you can imagine that this was not the common standard. So it was my mother who had a university degree, not my father. My father had had to work as he had been fatherless since boyhood, and he had seven brothers and sisters to help. So I grew up in this home where you were always encouraged to talk, to explain, to discuss. Spanish was a very important thing in my house. And books, obviously. We would be having lunch and somebody would use a word in the wrong manner and we would be told to get up and get the dictionary and see what we were saying. This is the kind of family I grew up in.

Medina came from a family with few resources, and this reality shaped her ideas of what she wanted to do as an adult. She recalls that her economic situation made her first choices of livelihood difficult to pursue. Law was chosen for very pragmatic reasons.

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My first inclination was to study engineering. But engineering was a man's profession. I wasn't told not to do it, but my friends all joked about it. And then there was a major problem of money, because you could not possibly study engineering and work at the same time. And I felt responsible not to put any burden on my family. So I decided to study law—the classes were from 8:30 to 1:00 and afterward I could work. If I look back I think that actually this was the right choice for me. I took a job as a secretary in a cement factory; by then I could speak English. I had gone to the Chilean British Institute since I was twelve because I was very keen on languages. So three times a week I went for an hour to this institute, and by the end of five years I could manage quite well. So at the factory, they discovered that I could write in English, and they started asking me to answer letters.

Medina's next job was as assistant to the secretary of a court of first instance of Chile, which, at the time, had only a single judge. She continued in this position until her fifth year of law school, after which she worked furiously to complete her degree and her six months of practical training. Medina was anxious to become a "proper lawyer" and open her own practice. She did this in the north of Chile, where she had relocated with her first husband. She found the practice of her profession disappointing, however.

I realized that I didn't like to be a practicing lawyer. I was good at it, I really was quite good at it, but I couldn't keep detached from my clients. And I had a fatal attraction to poor people in very terrible situations. I would assist them all, and I never had the courage to charge them anything because I thought they had such terrible problems. Was I going to add another burden by saying that they had to pay me? So it was impossible because I didn't have money, and I had to live. I also did not like to assist people whose motives I didn't think were the right ones. I was not a good lawyer in that sense, because as a lawyer, you have to be able to defend any client to the best of your ability. I wasn't able to do that and therefore I didn't take certain people as clients.

After she separated from her husband, Medina found herself back in Santiago with children to support, and with no money and no work. She approached a former classmate, who was a professor at the law faculty at the University of Chile, about a position, and she was offered a low-ranking instructorship teaching constitutional law. Although she at first felt unqualified to teach students, Medina soon realized that she was wrong.

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I had a good sense of law and juridical thought, and I started reading and learning. I think I have the capacity to teach. I like teaching and I seem to be clear when I explain. So that compensated probably for my lack of knowledge at the beginning. I started moving up in the ladder from the lowest rank of assistants and went up. I submitted myself to examinations and competitions in order to advance.

By this time Medina had remarried; her new husband was a fellow law professor, someone who was to become an important supporter of the Allende regime, which came to power in 1970. When this government fell to a coup d'état in 1973, led by Augusto Pinochet, Medina's husband went into hiding and eventually left the country—reluctantly, as he was worried for his family. Medina had, in the meantime, become a *rappor-teur* at the Constitutional Court of Chile, in addition to working as a professor. This court was officially abolished upon the takeover by the military regime, which put Medina in a potentially dangerous position.

I was working at the university and at the Constitutional Court. The court was abolished, and we were summoned one day at the law school and told that anybody who thought himself to be a sympathizer of Allende had to leave. So I stood up to go. And somebody said "No, no!" and I said "Yes, yes! That is what I'm going to do." Then I left the room, and I was then submitted to a trial at the law school. I was so angry that I requested a copy of the charges, which were not being given to anybody. But I was so upset that the man didn't dare refuse. The charge was that I had a certain "temperament," that I might use my position to indoctrinate students. In other words, I was charged with a crime that I might commit in the future! And then we left Chile. So I never knew how that trial ended. I just left.

Discovering a New Niche Abroad

At this point began a long period of exile from her native country. Medina and her children rejoined her husband; the family first spent a period in East Germany, an experience that she found very difficult due to the constraints put on her movements and the lack of professional opportunities. Then came an opportunity to relocate to Washington, D.C., in part through the efforts of Orlando Letelier, a Chilean diplomat from the former Allende government who had taken up residence in Washington after running afoul of the Pinochet regime.

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Letelier arranged for me to get an academic visa to the United States. But there was no way that I was going to find a place in an American university. I spent months looking for a job in Washington. My husband was earning something like \$700 per month, and there were five of us. I remember we paid \$450 per month for rent. But finally I found a job that started my career again. Somebody told me that there was an opening in a place called the Institute for the Development of Indian Law. It wasn't an academic opening, but since it was a research institute, I thought they might give me something that would fit my visa. I went there, and they said they needed a fundraiser. And I said, "I cannot do this." And they said, "Well, what can you do?" I said, "I am a lawyer, and I used to teach constitutional law, and I was the undersecretary and rapporteur of the Constitutional Court," and I produced my CV. They took a look at the CV, and I knew they didn't believe me. I just knew. And I said, "Look, I know Americans are not in the habit of asking for references and certificates, but I have all my papers translated and authorized." Three days later, they called me and asked if I could write background papers for the first International Conference on Aboriginal Peoples, organized under the auspices of the UN, which took place in 1977. And it was 1976. And I said, "Yes, this I can do. I am no expert in indigenous rights, but I can do this." So my job was to select a few countries and see how the law treated indigenous people.

This was Medina's real introduction to international human rights. She carried out research every day on indigenous rights at the Library of Congress, which eventually led to work on a library project in the Hispanic Law Division. Finally she was starting to find her professional niche. Her desire to help people could be developed in the field of human rights, she realized. And approaching these rights from an international perspective encouraged Medina to believe that what appeared unreachable within the limits of a single state could be accomplished if pursued jointly by many peoples and individuals.

The peregrinations of Medina's family, however, were not yet at an end. In 1976, Letelier was killed by a car bomb, a crime that many believe was perpetrated with the complicity of the CIA. By sheer luck, Medina's husband was not with him that day; Medina's daughter had also been in the ill-fated car the day before the explosion. Her family decided that they had had enough of the United States. In the meantime, the Dutch government had established the Institute for a New Chile, which aimed to restore democracy in her native country, and Medina was recruited to work

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there. The family relocated once again, this time to the Netherlands. Medina realized how hard these frequent moves were becoming for her children, who had to face not only another new country but also another new language. Medina had difficulties also, this time with her new job. The Chilean men who were running the institute assigned her responsibilities based on gender rather than on her talent and experience.

I wasn't happy. . . . I was the only woman and, therefore, I ended up as a secretary. Although I had an academic training and was capable of writing, of researching, and of doing anything intellectually challenging, I nominally was the secretary. And I had to take care of the coffee and so on. I was back at the bottom. I remember telling someone once that it was like Sisyphus—I'd carry the rock up to the top, only to have it roll all the way back down. That's been the story of my life, actually.

Medina eventually ended up in Utrecht, teaching courses on international organizations—the IMF, the World Bank, the GATT, and so on. She worked with an expert on human rights, Pieter van Dijk, who suggested that it would be interesting to work on the inter-American human rights system. Medina decided to pursue her doctorate in Utrecht, undaunted by the fact that she was over fifty years old and already a grandmother. She chose the inter-American system as the topic of her dissertation, which placed her in a good position down the line to serve as a judge on the Inter-American Court.

Member of the Human Rights Committee

In 1990, Medina returned to Chile, as soon as the Pinochet regime ceded power through democratic elections. The new minister of foreign affairs was Enrique Silva Cimma, who had been her superior at the law school while she was teaching in the 1960s. She immediately went to him and said that she would like to be nominated to serve on a United Nations committee related to human rights. She wished to pursue her idea that human rights in Chile could be dramatically improved if international law could be brought to bear.

In those days, we were about to become a party to the Inter-American Convention on Human Rights. So Cimma said, "Certainly!" He wrote a little letter and I went to the Multilateral Relations Department with my CV and my letter and I said, "Well, I'm interested in really any committee dealing with human rights. I just want to have the United Nations experience." They took a look and

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said, "It's the Human Rights Committee for her!" So I suppose my career, what I had done before, was in that sense decisive about which committee to send me to.

The election procedure to gain a seat on the committee was not as easy as that first step, however. It was at this time that Medina realized how political the election process was, and how her background may have been less important, in some peoples' eyes, than other factors.

They organized meetings with me. I had to go to New York. Meetings would occur in the lobby at the UN. And it was really funny because I would be introduced and I would smile and the member of the Chilean embassy would start saying that I was such a good candidate. Then they would exchange views about whom Chile could vote for in order to reimburse my vote. And then they would say goodbye and I would smile again. I would never say a word. It was a bit humiliating, to be honest. Although I think that this procedure should be improved, I have to say that in spite of it, the group I found myself with on the committee was impressive. There were many professors and former judges of the highest rank.

Medina served for eight years on the Human Rights Committee, an experience she characterizes as extremely fruitful for her professional development and the most valuable she has had so far. The high qualifications of the members, and the fact that they came from different regions of the world and different legal systems, allowed her to expand her own knowledge of law and to fine-tune her approach to human rights problems. On the committee, she also met individuals from across the globe with similar concerns and a similar approach to the ailments of the world, all making his or her own contribution, however small, to improve the situation of human beings. Medina feels that she is now having a comparable experience at the court; she also feels the comfort of doing this for Latin America, which she considers "her" world.

A Woman on the Inter-American Court of Human Rights

Medina's election to the Inter-American Court of Human Rights, which took place in 2003, struck a contrast with her election to the Human Rights Committee a dozen years earlier. She was interviewed by representatives of other parties to the American Convention on Human Rights, the treaty that created the court, and, this time, a real exchange of opinions took place during the meetings. The Caribbean states, in particular, were curious about her views on certain topics.

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They were especially interested in the topic of the death penalty. And I told them my position, which was probably different from the one held in many Caribbean countries. Other interviews dealt with other problems with which certain countries were concerned, so the persons who were interviewing me had the opportunity to find out the way I looked at human rights and how I understood my role in the court should be carried out.

Medina was the second woman to be elected a judge of the Inter-American Court. In 2006, two more women were elected to the court. With three women out of seven members, the IAHCR became the international court with the highest ratio of women to men.² This increasingly even balance was due in large part to the efforts of civil society, in particular to human and women's rights groups and NGOs that have written to foreign ministries in American states, requesting that they nominate women to the position of judge. When asked whether it is important to have women on the court, Medina responds affirmatively:

Well, if you ask me if it is important to have women, just women, I would say, "Yes," because it shows that equality is respected. Why on earth not have women if we are half of the world? So it is important from a symbolic point of view for women to see other women on the court. And it is important for democracy, because it shows that women are not discriminated against. But it is also important in the sense of making progress for women's rights. For this, you not only need a woman on the court, you need one who is sensitive to the problems of being a woman and who is sensitive to doing whatever it takes to make people see that some of the situations that women undergo are actually violations of human rights.

Medina is particularly proud of a hearing where her perspective as a woman brought out certain aspects of human rights violations that might have been ignored in her absence. The hearing involved a massacre in Guatemala, where rape and other violations were committed. A psychologist was called as an expert witness to talk about the effects of the massacre on victims and how they might guide the determination of reparations.

At the end, judges had the right to put questions to the expert. And she had mentioned the fact that women were raped. I asked, "Could you please explain to me what is the additional suffering of a woman who has been raped in a case such as this?" I knew the answer, but I wanted it on record. And she answered, "Well, there is an additional suffering because not only have these women been raped, but they are later repudiated by their husbands if they are

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married or they cannot find a husband if they are single. They have to leave the community. So they are punished twice.” I said, “I think this is important for reparations.” And I thought, “I’m glad I was here today and asked my question!”

Medina has a special interest in the human rights of women. She has written on the subject and she organizes postgraduate courses for Latin American lawyers to train them in international human rights law with the aim of defending women’s human rights at the national and international levels. During her years on the Human Rights Committee, she participated actively in mainstreaming the gender perspective into its work, an effort that culminated in the adoption by that organ of General Comment 28 on the right of women and men to equal enjoyment of human rights.³ Her dedication won her the 2006 Women’s Rights Prize of the Peter Gruber Foundation.⁴

Medina, along with the other judges of her court, is not able to devote herself entirely to the important work she carries out. Unlike some other international courts, the Inter-American Court operates only part time. It generally meets four times a year, for two weeks at a time, at its headquarters in San José, Costa Rica. Outside of these meetings, most judges pursue other professions, often on a full-time basis. Medina still works at the University of Chile, where she codirects the Human Rights Center at the law school, a center that is engaged in research and teaching in the region. The part-time schedule of the court is especially problematic, as it has a heavy and ever-increasing caseload. Judges are required to work between sessions—as *rapporteurs* on cases, for example—yet they are not compensated for their work unless the court is in session.

It certainly poses a problem of dedication. I don’t know whether we need a permanent court, but certainly a court that could meet more often. And a court that would pay the judges an amount that would allow them to work less outside the court to earn their living! All judges are concerned with the lack of time and the enormous responsibility of judging cases for the region.

Like other regional courts around the world, the Inter-American Court functions in a particular sociopolitical context that, in turn, influences the work it does. This is particularly evident when one looks at the question of compliance with the court’s decisions. Whereas the record of compliance with the decisions of the European Court of Human Rights is very good—a fact which many believe comes from linking compliance with admission into the European Union—its inter-American counterpart has had less success in getting states to respect all aspects of its judgments. Medina ties the failure of states to respond

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faithfully to the court's decisions at least partially to the political climate that exists in Latin America and the kinds of abuses that states have historically committed.

We have a good record of compliance with parts of our judgments. And all the cases remain open while we monitor compliance. Most of them are open because of something that states almost never do—investigate, prosecute, and sanction in cases of disappearance, in cases of summary executions, and in cases of torture. Usually these requirements are not complied with. And so the cases are left open. But, for example, compensation is almost always complied with. And states don't just pay. For example, in all the cases of massacres, what do they do? As a matter of course, states will make a public act of regret. They will publish the judgment of the court, which is part of the reparations they make. They will put up a plaque in memory of the people that have disappeared. They will name a square or a street. States will always do this. What they will not do is prosecute and punish.

But at least the court has broken ground. I think what the court is aiming at is to start building up deterrence. So the court is trying to tell the states to beware, and to let the people who are thinking about staging a coup d'état, and thinking about torturing and disappearing people, that such crimes will have to be prosecuted, that no matter what, no matter how many commissions on truth and reconciliation a state establishes, this prosecution is an international obligation. In this sense, for example, the court has consistently said that some crimes can have no statute of limitations. There is a treaty on this that has not been ratified by many states. Even though it could be said that this treaty is a crystallization of a customary rule, some states are reluctant to commit to it so explicitly. The Inter-American Court is helping by clearly stating that this obligation holds even if family members of the victim are not interested in pursuing it. In other words, prosecution of such crimes is an international obligation to the world at large.

There are other disappointments in Medina's job, too. She is sometimes frustrated by the repetitive nature of the cases she hears—there are definite patterns to the violations that come before the court. Her frustration comes mainly because the nature of the cases speaks to the inability or unwillingness of states to solve the problems of the past within the boundaries of their own legal orders without individuals being forced to resort to the inter-American system. But these violations are starting to appear in other parts of the world, and the Inter-American Court now finds itself a model of how to deal with them judicially.

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Well, it is very disappointing to keep receiving cases of the same sort. That is very disappointing. And to get the odd case here and there of states that try to disguise what they have done, which is something that you notice, or resort to legal arguments in order not to be responsible for the terrible things they have done. It is also disappointing to see that, after so many years, we are still dealing mainly with violations of the rights to life and personal integrity because you realize that states have not done their job with regard to past violations.

Medina notes that the European Court of Human Rights has had increasingly to deal with the same kinds of violations in recent years, with the addition of new members from the central and eastern parts of the continent:

I already foresaw that when I was defending my dissertation in the 1980s. One of my committee said to me that he was surprised that I had written this book and I had taken almost nothing from the European system. And he wanted to know how Europe could help the inter-American system. And I said, "Well, at this moment, I think the question should be just the opposite, what can Latin America do for you because you are in for cases that will be 'Latin American style.' You have had three coups in Turkey. You have had a coup in Greece. You have not dealt with these problems, but we are experts in dealing with them!" And it was a premonition, because that's why the Europeans are now looking at the jurisprudence of the Inter-American Court.

Despite the challenges that arise in getting states to comply with all aspects of a decision or in respecting international norms, Medina is very clear about the importance of the work she is carrying out with the court; she believes that it is critical to the political evolution of the Western Hemisphere. But traces of her early difficulties with the legal profession—her inability to detach from her clients—are detectable in her reactions to judging.

What has given me the most satisfaction, and the most pain at the same time, is to listen to the victims in a hearing and their joy at being able to tell their story and be taken seriously for it. That is for me the greatest satisfaction I have had—when a victim comes and he says, "Finally I am being heard by a serious group of people, by a court, and I am taken seriously and I am seeing that there is somebody who thinks that what these people have done is wrong!" That has been for me the most satisfactory of all. But it is very painful. I often cry, right in court. But we are a bit far away so I

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hope it doesn't show. But tears will come to my eyes. So I take a drink of water—because it is terrible what you hear! Not only it is terrible what you hear, but it is terrible the way it is told, the emotions that are there. I don't know whether it is good or not to be so affected, but I think if you work in human rights, you have to be able to withstand this. But it is very, very difficult for me. I can't help reacting. What I can do is not let it show. I don't think it has shown in court, how painful this is for me. But it is terrible. In spite of that, you have to keep your emotions at bay in order to fulfill your role as an impartial judge. This is something that one also does when writing. My doctoral dissertation was on the handling of gross, systematic violations in the inter-American system and one of the cases I analyzed was that of Chile under General Pinochet. In that instance I had to curb my passion and let reason speak.

It is a great satisfaction, says Cecilia Medina Quiroga, to see states come to the Inter-American Court of Human Rights, recognizing their responsibility, and asking pardon of the victims who have come to testify. She looks back over the trajectory of her career—her pragmatic decision to pursue the law, her discovery of the field of human rights thousands of miles from her native country, her pathbreaking elections to the UN Human Rights Committee and the Inter-American Court—and she feels, “This is worth something!”