Hastings International and Comparative Law Review

Volume 30
Number 2 Winter 2007

1-1-2007

You Say You Want a Revolution: Argentina's Recovered Factory Movement

Adam David Cole

Follow this and additional works at: https://repository.uchastings.edu/hastings_international_comparative_law_review

Part of the Comparative and Foreign Law Commons, and the International Law Commons

Recommended Citation
Available at: https://repository.uchastings.edu/hastings_international_comparative_law_review/vol30/iss2/3

This Note is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings International and Comparative Law Review by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact wangangela@uchastings.edu.
You Say You Want a Revolution: Argentina's Recovered Factory Movement

By Adam David Cole*

Introduction

The Recovered Factory Movement in Argentina – in which workers assume control and ownership of factories abandoned by their owners – has piqued the interest of social activists worldwide. While the pragmatic impact of approximately 200 recovered businesses in a country of 38 million may be quite small, the movement’s symbolic effect has been profound. ZNet, CorpWatch, War Resisters League, No Sweat, IndyMedia, and other leftist groups and publications have lauded the occupation and recovery of bankrupt businesses as a praiseworthy example of the proletariat resisting the ills of capitalism through direct action.

Such groups look to the movement as a source of inspiration. Yeidy Rosa of Nonviolent Activist called it “a concrete economic alternative to corporate capitalism if ever there was one.”¹ The hope is that workers and activists in other countries will learn from the movement and apply that knowledge to their own situations.

Despite a noticeable buzz within leftist circles, the Recovered Factory Movement has received little more than a cursory examination from its enthusiasts. Missing from the discourse are more in-depth analyses and meaningful debates. The dearth of any

---

* J.D. candidate, May 2007, University of California, Hastings College of the Law. I would like to thank Ugo Mattei for giving me the idea for this article; Dr. Luis A. Caro for his time and thoughts on the movement; and the workers of the Recovered Factory Movement, whose daily struggle for existence is a source of inspiration.

significant legal analysis is especially troubling because workers must strategically navigate the Argentine legal system to become lawful factory owners. Occupied businesses currently fighting for expropriation – a process where the government takes the property from the absent owner and transfers it to the workers – are struggling against similar legal quagmires. Those seeking to learn from the Recovered Factory Movement can only do so by uncovering the legal processes that the workers endure and examining the policy implications of such property expropriation.

This note attempts to nudge the discourse in a substantive direction by explaining the pertinent law, discussing the changes sought by the movement, and analyzing the accompanying policy issues. This note seeks to serve as a starting point to encourage more exhaustive treatment of the relevant laws and issues. Part I discusses the historical context of the Recovered Factory Movement. Part II summarizes Argentine expropriation and bankruptcy law, as well as the legal changes sought by the two main groups within the movement. Part III frames the policy debate and analyzes the policy implications of the proposed legal changes.

I. Historical Background

A. Economic and Political Crisis

The Recovered Factory Movement in Argentina is preceded by a devastating economic and political crisis that reached its apex in 2001. In 1992, President Carlos Menem sought to retard inflation through privatization. Menem adopted a free market approach to trade and business, and instituted a one-to-one peg of the Argentine peso to the U.S. dollar. While these policies succeeded in slowing the rate of inflation and increasing growth, the peso-dollar peg devastated Argentine exports and created massive debt. Argentina slipped into a severe recession in 1998, culminating in $132 billion of debt by the end of 2001.

3. Id.
4. Id.
5. Argentina’s Economic Meltdown: Causes and Remedies: Hearing Before the Subcommittee on International Monetary Policy and Trade of the Committee on
President Fernando de la Rua was elected in 1999 and attempted to bail out Argentina’s depressed economy through austerity measures. On November 30, 2001, de la Rua put a $1000 per month cap on individual bank withdrawals. The country responded with violent protests and political upheaval ensued. De la Rua was ousted from office on December 20, 2001, and Argentina saw four presidents in office over the next ten days. That same month, Argentina defaulted on $88 billion in debt – the biggest debt default by any sovereign in history.

On January 1, 2002, Eduarde Duhalde became president and began to undo the peso-dollar peg by devaluing the peso. The government converted all dollar debts into pesos, which depleted middle class savings and caused widespread poverty.

Despite this economic downturn, Argentina has remained relatively stable in the wake of the 2001 crisis. Since the election of President Nestor Kirchner in May of 2003, public demonstrations have diminished. Thanks in part to Kirchner’s economic policies, Argentina’s economy has seen yearly growth of eight percent for each of the past three years. Unemployment rates have dropped while the amount of exports and investment has risen. Finally, Kirchner solidified political support in the 2005 legislative elections by gaining ground in the Senate and Chamber of Deputies.

Notwithstanding recent stability and growth, Argentina continues to face long-standing hurdles such as high unemployment.
low wages, and widespread poverty.

**B. Factory and Business Recovery**

President Menem’s inflation-fighting agenda of the 1990s favored big business and investment. Businesses were given state subsidies, private credits, tax breaks, and other forms of government assistance. Some companies skipped out on paying worker salaries and creditors.

During the 2001 crisis, thousands of factories and businesses went bankrupt, closed down, and were abandoned by their owners. Many owners left at the gravest point of the crisis. Avi Lewis, Filmmaker of *The Take,* a documentary about the recovered factory movement, remarked, “Forty billion dollars of foreign capital actually drove to the airport in the dead of night at the peak of the crash.” This left the workers with no jobs, and in some cases, unpaid wages.

While most workers of abandoned and bankrupt factories chose to look for work elsewhere, some workers occupied their factories. Their purpose was to keep the factory in production, prevent the government from auctioning the building and machinery, and establish a legal right to operate and eventually own the factory.

---


23. *Id.*


25. (Barna Alper Productions 2004).


27. *Id.*

28. *Id.*
In a typical case, the workers form a cooperative. The cooperative creates a plan for self-management and argues that, as a creditor of a bankrupt company, the cooperative should be reimbursed with the factory's physical assets—that is, the factory itself. The municipal or provincial legislature passes a temporary expropriation law, giving the workers a legal right to work for two years. After the temporary permit expires, the cooperative tries to raise enough money to reimburse the government for its indemnification of creditors. The workers then fight to have the legislature pass a permanent, factory-specific expropriation law that gives the workers ownership over the factory. Convincing the legislature to pass case-by-case expropriation laws is often difficult because many jurisdictions have never passed any expropriation laws. The process of writing legislation is more arduous when the legislatures have no model from which to follow.

While many workers endure this process in recovering factories, there is no such thing as a "typical" factory recovery because many of the cooperatives have pursued different channels in their fight for control. Keeping this divergence in mind is crucial when considering possible changes to existing Argentine law.

II. Legal Aspects

A. Current Argentine Law

The current Argentine Bankruptcy Law was passed in 1995 and

29. Id.
30. The workers are creditors of the bankrupt business because, among other things, the company owes the workers back pay and the workers have contributed money toward pensions. Id.
31. Id.
32. Id.
34. Telephone Interview with Dr. Luis Alberto Caro (Feb. 6, 2006) (unavailable).
35. Id.
38. The 1995 Bankruptcy Law is a modification of the previous Bankruptcy Law number 19,551, enacted in 1972 and later modified by law number 22,917 in 1983.
is codified in the Commercial Code as law number 24,522 de Concursos y Quiebras. Normally, when a business goes bankrupt in Argentina, the courts order the company’s assets to be liquidated through public auction. Liquidation must take place within four months of the date of bankruptcy, and in exceptional cases, can be extended for thirty days by the judge. The proceeds of the liquidation go first to the crediting banks, then to the workers, and finally to the state.

Under Article 189 of the Bankruptcy Law, a bankrupt factory can immediately restart production only by a judicially granted exception. A judge may grant such an exception if there is evidence that the interruption would cause grave damage to the creditors’ interests and to the conservation of the business’ assets.

The Argentine Constitution protects private property, but also sets forth the conditions for its expropriation. Article 17 of the Constitution provides, “Property may not be violated, and no inhabitant of the Nation can be deprived of it except by virtue of a sentence based on law. Expropriation for reasons of public interest must be authorized by law and previously compensated.”

In 1948, Argentina passed Expropriation Law number 21,499. Article 1 of the law states that public utility is the legal cornerstone of expropriation. To this end, the government has applied the law to

---

39. Id.
43. Law No. 24,522, Aug. 7, 1995, art. 189.
44. Id.
build public works such as infrastructure.\footnote{48}

The Law of Expropriation sets forth two types of expropriation: regular and irregular.\footnote{49} Regular expropriation requires the individual or individuals seeking expropriation to indemnify the judge before taking possession.\footnote{50} Irregular expropriation, on the other hand, occurs when possession precedes indemnification.\footnote{51} Argentine law allows irregular expropriation in the following cases:

(a) When a law exists declaring the good a public utility, the state may take the good prior to the completion of indemnification;

(b) When a law exists declaring the good a public utility but the good is unavailable or difficult to obtain under normal conditions;

(c) When the state imposes on the holder of the good an illegal restriction or limitation that injures his or her property rights.\footnote{52}

Factories and their contents can be expropriated\footnote{53} since the Expropriation Law provides that any good may be the object of expropriation.\footnote{54} Workers seeking to expropriate a factory must first create a cooperative, which makes the workers a legal entity.\footnote{55} Law number 20,377, as well as the resolutions passed by both the Instituto Nacional de Asociativismo y Economía Social (INAES) and the Organo Local Competente, govern the formation of cooperatives.\footnote{56}

A worker cooperative occupying a factory can seek irregular expropriation of the factory under subsection (a) of Title 51.\footnote{57} To do this, the cooperative must present a proposal to the legislature declaring the factory a common good and requesting expropriation.\footnote{58} If the government chooses to expropriate the factory, the government must pay an indemnity to the court, which is used to pay the creditors.

\footnotesize 48. Caro, supra note 46.
49. \textit{Id.}
50. \textit{Id.}
51. \textit{See id.}
53. Caro, supra note 46.
54. \textit{Id.} at art. 4.
55. Magnani, supra note 22.
57. \textit{See} Caro, supra note 46.
58. Magnani, supra note 22.
Finally, the workers must reimburse the government for the amount that it paid to the court. The property is deemed expropriated once the cooperative has indemnified the judge.

B. Bankruptcy Law Reform

Dr. Luis Alberto Caro, president of the National Movement of Factories Recovered by the Workers (MNFRT), has spearheaded an effort to reform Argentina's Bankruptcy Law. Proponents of Bankruptcy Law reform believe that the right to work should be preeminent during Argentina's times of crisis. This idea is supported by the Argentine Constitution, which grants the right “to work and perform any industry” to all inhabitants of the nation.

MNFRT seeks four principal reforms of the current Bankruptcy Law: 1) immediate continuation of production; 2) placing the rights of unpaid workers and creditors on equal footing; 3) direct sale of goods to the workers; and 4) suspension of mortgage and securities seizures.

1. Immediate continuation of production

As stated above, a judge may order production to continue only by exception. When this occurs, continuation is administered by a trustee who represents the business during the bankruptcy proceedings. If reformed, the law would allow a worker cooperative to keep a factory in operation simply by making a formal request. Under this law, the judge would be required to allow the cooperative to continue operating the factory immediately after notifying the trustee of continuation. The reformed law would also provide that

---

59. Caro, supra note 34.
60. Law No. 21,499, at art. 29.
61. Caro, supra note 34.
63. Caro, supra note 36.
64. Id.
65. Id.
66. Id.
67. Id.
continuation be administered by the cooperative, rather than the trustee. 68

2. Placing the rights of unpaid workers and creditors on equal footing

Workers' interests are subordinate under the current law. Their interests are suspended at the moment bankruptcy is declared and they are indemnified for only 50% of their interests. 69 In addition, their credits in the bankruptcy proceedings are given special privilege only regarding raw materials, merchandise, and machinery, but not with respect to the commerce fund, trademarks, and patents. Finally, their credits in the bankruptcy proceedings cannot be used toward expropriating goods. 70 71

By contrast, bank creditors' interests are privileged. Their interests are not suspended until the moment of effective payment, they are indemnified for 100% of their bankruptcy credits, and they can recover their bankruptcy credits when the goods are paid for. 72

The law as reformed would recognize the interests of workers from the moment of bankruptcy until effective payment and would allow the workers to be compensated for 100% of their bankruptcy credits. The law would also extend the special privilege of workers' credits to the commercial fund, trademarks, and patents, and would permit workers to use their credits toward the commercial fund and to acquire machinery, raw materials, merchandise, trademarks, and patents. 73

3. Direct sale of goods to the workers

As it stands, current Bankruptcy Law requires the judge to call for bidding or submit the goods to auction. 74 The judge may adjudicate the sale of the goods directly to the workers only in special cases. 75 The proposed reform would allow the workers to make an

---

68. Id.
70. Law No. 24,522, Aug. 7, 1995, art. 211.
71. Caro, supra note 36.
72. Id.
73. Id.
74. Id.
75. Law No. 24,522, art. 213; Waisberg, supra note 40.
offer for the direct purchase of the goods at a price appraised by the court.76

4. Suspension of Mortgage and Securities Seizures

Finally, MNFRT proposes to suspend all mortgage and securities seizures and extend liquidation by a period of no less than 24 months, as determined by the judge. This gives the workers an opportunity to purchase the goods directly.77

C. National Expropriation Law

Fronted by the National Recovered Businesses Movement (MNER), a faction of workers in recovered factories, such as the workers at Zanón ceramics factory, seek a more fundamental challenge to existing law.78 MNER seeks to nationalize the recovered factories, giving ownership to the government and control to the worker cooperatives.79 Specifically, MNER seeks a National Expropriation Law that applies to all recovered businesses; a government subsidy of 10,000 pesos for each recovered business; government indemnification of workers' credits; and the establishment of a special retirement plan for workers of recovered businesses.80 Under these changes, the state would pay the creditors and the workers, but the workers would not be required to indemnify the government.81

III. Analysis

A. Characterizing the debate

The changes sought by MNFRT and MNER vary greatly in scope and approach. The passage of MNER's nationalization plan would have dramatic and widespread consequences. A National
Expropriation Law would have the sweeping effect of expropriating every single occupied business in Argentina. MNER's plan would also require the government to subsidize all recovered businesses in various ways.

By contrast, MNFRT's Bankruptcy Law reforms take a more moderate, piecemeal approach. MNFRT's amendment to the law would favor continuing production, honor workers' rights to unpaid wages, and allow cooperatives to purchase factory goods. However, these reforms would still require recovered factories to undergo expropriation on a case-by-case basis, similar to current law.

The disparity between MNER's radical approach and MNFRT's more moderate approach is considerable. However, since the changes sought by both MNFRT and MNER will facilitate the expropriation of bankrupt businesses by worker cooperatives, the difference between the two approaches is merely one of degree. In the context of bankrupt businesses, both movements value the government's right to expropriate property and an individual's right to work over a citizen's inviolable right to property ownership.

Specifically, MNER and MNFRT believe the government should act as an intermediary to effectively transfer private property from one individual to another. This belief inherently devalues the sanctity of private property, which is why the Recovered Factory Movement has sparked heated debate between business interests, the government, workers, and social activists.

Two main issues encapsulate this debate: 1) whether the right to work is at least as important to the right to private property in this context; and 2) whether a cooperatively owned factory can be considered a "public interest" within the meaning of section 17 of the Argentine Constitution. The Argentine Constitution recognizes both the right to work and the right to private property, leaving the courts to interpret the public interest requirement of expropriation. An analysis of the two aforementioned issues turns largely on public policy.

The controversy outlined above centers around rights and duties that are substantially similar to the eminent domain debate in the United States. At issue in the United States is the government's use of its eminent domain power — stemming from the Fifth

---

82. As used here, "individual" includes cooperatives.
Amendment’s Takings Clause\(^{83}\) – to effectuate private-transferee takings, whereby the government expropriates property for private use. This note uses the policy arguments of the eminent domain debate as a framework for discussing the implications of the changes sought by MNER and MNFRT.

\textbf{B. Public Policy Analysis}

The public policy arguments commonly discussed in eminent domain debates fall into the following categories: theoretical issues, economic concerns, and social implications and fairness. While these arguments counsel against liberalizing Argentina’s expropriation laws, there are persuasive responses in favor of MNFRT’s proposed changes. On the other hand, the arguments in favor of MNER’s changes are less persuasive because the group’s statehood scheme is too threatening to the status quo.

\textit{1. Theoretical issues}

Skeptics are wont to characterize expropriation as a symbolic blow to the institution of private property. As one case recognized, “The power of expropriation is such an interference with the right of property that it should not readily be implied.”\(^{84}\) Expropriating property for private industry rather than public use is also considered contrary to the free market model because it infringes on economic liberalism.\(^{85}\)

While small modifications to expropriation law may not cause immediate drastic change, some argue such reforms may lay the groundwork for the government to further expand and eventually abuse its power of expropriation.\(^{86}\) In Cuba, for instance, Castro amended the constitutional laws protecting property from confiscation.\(^ {87}\) Castro’s amendment paved the way for discriminatory

\begin{itemize}
\item \(^{83}\) U.S. Const. amend. V.
\item \(^{84}\) Andrew Bechard, \textit{A Comparison of U.S. – Canadian Excess Condemnation, Expropriation and Property Taking}, 9 IN PUB. INTEREST 3, 7 (1989).
\end{itemize}
takings utilized to punish political opposition. The fear is that liberal expropriation laws in Argentina might similarly allow the government to take property arbitrarily.

These arguments are unpersuasive because they present quixotic conceptions of the institution of private property and the free market system. The right to private property is never absolute. Thomas Ross argues in his law review article, “The notion of absolute security of private property ownership is more an illusion than a reality in today’s society of zoning, eminent domain, and ‘balancing the equities.’ Thus, the threat from private-transferee takings may be equally illusory.”

Neither is any capitalist system truly laissez-faire. Even in the most hands-off neo-liberal societies, state interference in commerce is pervasive, including government subsidies of industry through tax breaks and other forms of assistance.

Considering the frequency with which modern governments compromise private property rights and the free market system, moderate reforms to Argentina’s Bankruptcy Law will not gravely alter these institutions, whether the effect is symbolic or real. Additionally, reforms that facilitate expropriation of bankrupt and abandoned businesses will not harm private property rights because the original owners of these businesses have already relinquished their rights upon abandonment.

However, MNER’s nationalization scheme threatens property rights and the capitalist system. Such a scheme would require significant government resources and would require the government to act in a capacity more attuned to socialism than capitalism. MNER’s proposal is more threatening; it strikes at the foundation of the capitalist infrastructure, giving critics more reason to fear a slippery slope into socialism.

2. Economic concerns

Critics of the Recovered Factory Movement believe that liberal expropriation laws will hurt Argentina’s economy. Neo-conservatives look to expropriation’s public use requirement as the primary means

88. Id.
89. Ross, supra note 86, at 380.
90. The “public use” requirement in the United States and the “public interest” requirement in Argentina are essentially the same – the government may take property only to serve a public purpose.
of protecting against the negative economic effects caused by expropriation. Thomas J. Coyne posits,

The Framers of the Constitution designed the public use clause to limit government power and, more specifically, to protect the rights of private property owners in the possession of their property. Such protection promotes security in property and, in turn, secures investment backed expectations. To this extent the public use clause encourages investment and economic growth.

However, expropriation critics believe liberal expropriation laws that allow for private property takings erode the public use requirement and chill investment. They argue that expropriation can have both specific and general demoralization consequences. Specific demoralization refers to the frustration felt by the individual whose property has been expropriated. General demoralization costs occur when citizens become aware of private expropriation and become hesitant to invest in property they believe may be subject to expropriation. If the specter of expropriation is felt widely enough, skeptics believe investors will be reluctant to invest, which will stagnate economic growth. In Argentina, for example, a change in the law might cause an investor to believe that her capital is more susceptible to government takeover, despite the fact that the Argentine government can only expropriate her property if her business goes bankrupt and she abandons her property. Such fears may actually be realized if Argentina’s legal climate remains uncertain and expropriation laws are further liberalized.

Although the government is required to compensate owners of expropriated property, critics point out that compensation is sometimes delayed and less than adequate. In Costa Rica, for example, expropriation is allowed only if the government provides fair and prompt compensation. In practice, however, the Costa Rican government does not always provide fair or prompt compensation to the affected property owners. If the Argentine

---

93. *Id.*
94. *Id.* at 377.
96. *Id.*
government similarly failed to provide prompt and just compensation to property owners, this could destabilize the economy.

Critics such as Cécile Raimbeau of *Le Monde diplomatique* further contend that transferring ownership of a business to a cooperative creates an inefficient market that is unattractive to multinational businesses. Raimbeau explains,

"Cooperatives benefit mutually from becoming each other’s clients and suppliers and allowing credit. Most of what they produce goes to other industries, rather than to the consumer... the multinationals don’t want to deal with cooperatives, and certainly not with salvaged businesses. The workers can get round this by selling to a go-between who sells on to the manufacturers, but they lose a percentage on these transactions."

While non-capitalist ownership models may be attractive to workers, neo-liberals fear cooperatives may not be best suited to function in a free market system. The fear is that Argentina’s economy will suffer if worker cooperatives cannot compete in the market.

Some also believe that liberal expropriation laws will threaten Argentina’s relationship with the International Monetary Fund (IMF). Argentina has relied on loans from the IMF to promote growth for the past 50 years. Opponents of expropriation argue that the Recovered Factory Movement challenges the IMF’s policy of normalizing property rights to create “certainty and stability” for capital. They believe the IMF might take measures to deter Argentina’s anti-capitalist economic policies in favor of fiscal conservatism. “If the IMF put pressure on the government of Argentina to crack down on the movement, the government would probably follow their wishes,” Lewis stated. The IMF may therefore be able to persuade the Argentine government to cut back

---

100. *Id.*
101. *Id.* Lewis also stated, “The workers understand they are a threat to the dictates of the IMF... ‘we have to see whether the IMF likes the fact that we’re running the factory, and if they decide to crush us, then we’re fucked.’”
on expropriation.

Despite these concerns, MNFRT’s reforms will not negatively affect Argentina’s economy. Expropriations for private use are unlikely to demoralize property owners and investors because such expropriations are extremely rare. As Ross argues, “[B]ecause private-transferee takings are relatively rare and scattered, they should not significantly contribute to the insecurity of private property owners. In making the decision to invest in land, an investor more likely fears adverse market shifts and land-use regulations than he fears a private-transferee taking of his land.”

Also, factory expropriations are not likely to chill investments in Argentina. In a country of 38.6 million inhabitants with a GDP of $152 billion, the expropriation of around 200 factories is relatively insignificant. “[I]n terms of a national economy,” Lewis asserts, “[the Recovered Factory Movement] is a blip. So it’s not in any way going to sponsor a national or global change of the economic order.” Even if the government pays inadequate or delayed compensation, and cooperatives are not as efficient as individual owners, the likelihood that such a small-scale movement will send waves of doubt through the national and multinational investment communities is quite small. By contrast, the importance of liberalizing expropriation laws to occupied businesses is immense.

Furthermore, the IMF’s potential disapproval may not be a legitimate concern because Argentina has recently shown signs of cutting its ties with the IMF. On December 15, 2005, President Kirchner announced that the Argentine government would repay its entire $9.8 billion debt to the IMF. The Economist noted, “Kirchner has made it clear that his main aim in repaying debt is to avoid further IMF restraint on his policies.” Argentina’s extrication from the IMF may prove to be sound economic policy given that Kirchner and many Argentines blame the IMF’s policies for the 2001 economic collapse. Some argue that “neo-liberal macro-economic
policies have actually undermined ‘stability’ for productive investment."\textsuperscript{109} Thus, pacifying the IMF should not be a primary concern.

If anything, reforming the Bankruptcy Law may be beneficial to the Argentine economy. Seventy-nine percent of occupied factories are productive.\textsuperscript{110} Factories such as Zanón, which has hired 170 new workers since its occupation,\textsuperscript{111} pay their workers 800 pesos per month (200 pesos above the national average) and has reduced factory accidents from 25-30 per month to zero.\textsuperscript{112} The idea behind the reforms is to avoid the waste caused by closing a factory, auctioning off its assets, and requiring the purchaser to build his own business from scratch. Instead, the expropriation process preserves existing business relationships and allows capital to stay in motion by letting production continue.

MNER’s more radical changes, on the other hand, may prove to be economically infeasible. The current law requires a cooperative to submit a proposal setting forth the workers’ business plan. A National Expropriation Law, however, would declare expropriation of all recovered companies, regardless of how well-suited a given cooperative is to carry on the business. MNER’s changes would also require the government to incur the cost of subsidizing recovered factories, while current law requires the cooperative to indemnify the government for payment of creditors. Given these inefficiencies, MNER’s changes do not make for a sound economic policy.

3. Social Implications and Fairness

Private-transferee takings are also criticized as being patently unfair. Expropriations for private use allow private actors to obtain desired property that might normally be available only above market price or not at all.\textsuperscript{113} Private takings therefore unjustly enrich the transferee.\textsuperscript{114}

Expropriation of private property is also considered unfair because it does not serve a public interest as required by law. Instead, private takings primarily create a private benefit and at most,
promote the public interest peripherally.\footnote{115} Critics in Argentina may similarly argue that worker cooperatives are unjustly enriched because they obtain ownership of a factory they otherwise would be unable to purchase on the open market. Also, factory expropriation only benefits the cooperative's private interests in keeping their jobs, rather than benefiting the public.

These contentions are not well founded. First, cooperatives of recovered factories are not unjustly enriched. In all cases, the workers were owed months of back pay when the owners left. This made the workers creditors in the bankruptcy process. MNFRT's reforms merely seek to apply the money owed to the workers to their purchase of the business. The supposed "enrichment" of the workers does not detriment the original owners since they have abandoned their property and no longer have any legal claim to it.

Second, the assertion that factory recovery does not serve the public interest is misguided. As Ross claims, "Private benefit is an inevitable aspect of all significant takings. The construction of a park, road, or a public building as a result of an ordinary taking will likely affect the property values of certain citizens. Yet, these private benefits and harms would not justify barring an ordinary taking."\footnote{116} Thus, the mere fact that worker cooperatives derive a benefit from the expropriation does not alone make expropriation unfair.

The argument against factory expropriation is also based on an overly narrow understanding of the public interest requirement. Allowing cooperatives to continue carrying on production benefits the public interest by keeping capital moving and strengthening the economy. The public also benefits from the factories in other ways. For instance, Zanón has donated its tiles to community centers and hospitals, organized community cultural activities at the factory, and built a community health clinic for an impoverished neighborhood.\footnote{117} Factory expropriation under MNFRT's reforms do not pose any serious fairness concerns.

In contrast, MNER's nationalization plan is questionable.  

\footnote{115. See Ross, supra note 86, at 370 ("If a private citizen is the transferee of property taken by eminent domain . . . [t]he taker's sole motivation for the taking may be to benefit a favored citizen").}
\footnote{116. Id. at 372-373.}
\footnote{117. FaSinPat 117. The “public use” requirement in the United States and the “public interest” Wikipedia, the free encyclopedia, at <en.wikipedia.org/wiki/FaSinPat> (visited Nov. 12, 2006).}
Giving the cooperatives 10,000 pesos per month in government subsidies, along with permitting the cooperatives to operate their businesses without indemnifying the government, smacks of unjust enrichment. While an universal expropriation law may serve the public interest in some cases, expropriation might harm the public interest in others. To preserve fairness, the government should have the discretion to adjudicate expropriations on a case-by-case basis. Universal expropriations may be too unfair to be accepted by the Argentine legislature.

**Conclusion**

In spite of recent growth, Argentina's economy is still coping with the fallout from its collapse in 2001. As of April 2004, 8,000 factories in Argentina were bankrupt. The vast majority of bankrupt businesses in Argentina will shut down for good and have their assets liquidated. This process, while perhaps a necessary evil of capitalism, takes its toll on the economy. Liquidation of assets leaves creditors with only partial payment, or in many cases, no payment at all. The closing of large manufacturing firms causes unemployment for thousands of workers, many of who dedicated decades of their lives to a single factory. Moreover, factory closures ruin buyer-supplier relationships and other delicate business relations that take time and resources to forge.

For these reasons, viable alternatives to bankruptcy liquidation that keep workers employed and factories productive are crucial to understand and utilize. Factory recovery poses such an alternative. Based on the above analysis, there are strong policy arguments supporting MNFRT's proposed Bankruptcy Law reforms. However, MNER's more radical changes are cause for concern, as they would pose too drastic a threat to established property and free market interests.

The Recovered Factory Movement comprises a mere 200 businesses and 15,000 workers, and therefore currently has only a marginal impact on the economy. However, the methods used and legal processes endured by the movement are instructive to similarly situated workers, social activists, policymakers, politicians, lawyers, and scholars in Argentina and other countries. Indeed, factory recovery is not limited to Argentina. Workers in Brazil, Peru,

---

Venezuela, and Uruguay are undergoing similar struggles for ownership of bankrupt and abandoned businesses. 119

While the response to the Recovered Factory Movement has been enthusiastic, thus far it is lacking in substance. Only through meaningful debate about the relevant legal and policy issues can the movement hope to develop an informed discourse.

119. See Waisberg, supra note 42.