

The attached project was first conceived in 2003 at Harvard Law School, where Professor Hernandez Crespo got her American law degrees. As of this writing in November 2006, its structure remains the same, but it will now take place through the University of St. Thomas, where she teaches. The American academic team and the group of national stakeholders are in the process of being updated. As part of this project, Professor Hernandez Crespo would be traveling throughout Latin America to start the dialogue about expanding options for conflict resolution, and more specifically the option of the multi-door courthouse as a vehicle to achieve this goal. The project is meant to be the first phase of an ongoing international ADR Research Network, and will conclude with a symposium sponsored by the St. Thomas Law Journal in April 2008.

## UST International ADR Research Network

Mariana Hernandez Crespo  
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### Action Research

#### **“Innovative Democratic Dialogues: Investing Judicial Capital to Maximize the Latin American Dispute Resolution Systems and Promote Human Rights”**

#### **Abstract:**

The main goal of this action research is **to foster Latin American political development, specifically in the area of democracy and human rights.** To that end, I will organize stakeholders in academia, civic society, the legal profession, and the judiciary to engage in a virtual forum of innovative democratic dialogues about the multi-door courthouse, an alternative dispute resolution concept created by Frank Sander, the former dean of Harvard Law School. These dialogues will occur at the local level in ten Latin American countries, and will conclude with a workshop in Boston, in which representative participants will share their experiences. We will explore the use of judicial resources to promote alternative methods of dispute resolution as a means to encourage the following goals: democracy and participation, transparency and accountability, equality and inclusiveness, efficiency and development, and empowerment and the promotion of human rights. Specific emphasis will be placed on the roles of the different actors in the socio-political systems of each of these countries. The dialogues will have two main purposes: education and democratic problem solving. This project aims to provide a transformative learning experience for decision-makers and to generate knowledge about the region.

#### **I. Background and Significance**

Recent events in several Latin American countries have exposed the fragility of democracy in the region. In the past, these countries have tended to vacillate back and forth between democracy and military regimes. Even within the democratic framework, the citizens often alternate between delegating complete power to the leaders and revolting in disorganized protests. Thus, a “*caudillo* mindset” permeates Latin American political structures, in which citizens delegate

unchecked power to the agents they elect and then passively expect these autocratic figures to solve their problems. They fail to realize that when stakeholders organize around their interests, they gain greater power to carry out their specific interests in the system. In a true democracy, the government has restricted power as an agent of its citizens, and has a fiduciary duty to them. An unorganized public without a specific agenda, however, has no benchmark to measure their leaders' actions and to hold them accountable. This abdication of power to representatives also occurs in other institutions: the judiciary, academia, and even in groups such as NGOs. In a culture dominated by "top-down" speeches, decision-makers talk and the audience listens. The discourse of the power-holders is unilateral and creates an attitude of complacency among citizens. It is also a culture of "right or wrong," in which there is no room for alternatives. It breeds an adversarial attitude where opinions clash, and stakeholders do not examine each other's arguments. A culture without meaningful dialogue lacks a holistic perspective and leads the power holders to craft policies in an isolated fashion. These policies can be incompatible and produce a negative or undesired effect.

As long as conditions are bearable under a *caudillo* mindset, the citizens are not politically engaged. When the situation becomes desperate, however, they react. Unfortunately, much of the reaction is through disorganized engagement. They riot, bang pots and pans, march, and perform acts of civil disobedience. There is a real need for alternatives that empower citizens and create options.

The multi-door courthouse opens the spectrum of options. It is a forum for handling cases that could be better resolved outside the court system through alternative methods of dispute resolution. In such a forum, as cases arrive at the court, they are referred to any number of processes of dispute resolution, such as mediation. In the traditional court system, in contrast, it is the judge, not unlike the authoritarian *caudillo*, who is supposed to adjudicate. However, what could be considered a just decision is not necessarily the most efficient solution to the given conflict. The conflicting parties themselves, unlike the judge, possess unique information and incentives which can be put to use in solving their problem. Therefore, as Amartya Sen suggests<sup>1</sup>, citizens must be empowered by knowing the different choices available to them in order to truly own responsibility for outcomes affecting them. No democracy can survive if citizens are not trained to make decisions at every level on their own, from the personal to the political. Participating in dispute resolution processes promotes democracy by giving citizens an experience of making choices and thinking for themselves. It is an exercise in freedom that can provide citizens with a transformative learning experience in which they become participants in the decisions that will affect their lives.

When exploring the option of the multi-door courthouse model in the Latin American context, we must not limit ourselves to asking whether or not the multi-door courthouse system is applicable in each country. Rather, we must ask *when, under what conditions, and for what purposes* it is an option. With this in mind, I propose that the following areas be addressed in my action research to provide an analytical and programmatic frame of reference: democracy and participation, transparency and accountability, equality and inclusiveness, efficiency and development, and empowerment and human rights.

## **II. The Problem**

The main task of this project is to overcome democratic illiteracy: the state in which the lack of

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<sup>1</sup> In Development as Freedom (1999).

an organized social power contributes to and perpetuates an absolute political power. *In Latin America, the lack of political participation among citizens is not only caused by a lack of channels through which to act, but also from a sense of complacency and a lack of political maturity. This constitutes what I have named the caudillo mindset, in which the citizen grants complete power to the decision-makers.* The citizens participate mostly through voting and occasional protests against unbearable conditions. This makes democracy unstable, because civic society is only reactive rather than active.

### **III. Specific Objectives**

1. To create an interdisciplinary, multidimensional problem-solving conversation.
2. To engage representatives from different sectors of the legal field and civil society in a transformative, interactive learning experience.
3. To demonstrate to stakeholders that they can gain political power in the public square by teaching them alternative methods of dispute resolution.
4. To build knowledge about Latin America by exploring a concept developed in the United States in a different historical, social and political reality.

### **IV. The Structure**

#### **A. The American Academic Team**

I will act as coordinator of the research project and facilitator of the dialogues. The academic team will also include a board of advisors, as well as technical and administrative support.

##### **1. The Coordinator of the Research Project**

As a lawyer trained in both civil and common law, I am particularly suitable for this enterprise. My goal is to craft an opportunity for stakeholders to collectively explore an issue and examine its possible solutions from different perspectives. I will design the modules and will facilitate the virtual forums, consulting with academic advisors in each area. I will also organize and design the final encounter and will then analyze and publish the results of the entire experience. My role is twofold: (1) to craft questions that challenge the participants' perceptions of reality and increase their awareness of the filters through which they assess conflicts and options, and (2) to help guide the process, ensure that participants value their differences and use those same differences to work collectively.

##### **2. The Academic Advisory Board**

A diverse team of professors from Harvard and MIT will make up a board of advisors for this project. Thus far, the core group of advisors includes Harvard Law professor Frank Sander, creator of the multi-door courthouse model and an expert in alternative methods of dispute resolution; MIT professor Lawrence Susskind, director of The Consensus Building Center and The Public Dispute Resolution System; and Kennedy School professor Archon Fung, an expert in the field of democratic innovation. Additionally, a number of faculty members will join the project to assist in crafting the modules in their specific fields of expertise: equality, development, human rights, the legal profession, transparency, and civic participation.

### **3. Technical and Administrative Support**

The website will be designed and administered by Cohn Rule, Director of the Online Public Disputes Project, who has extensive experience in designing and supporting online conversations, particularly those with international participants. The Online Public Disputes Project will also build and host the project website and online surveys and questionnaires. The Harvard Latin-American Society will be responsible for fundraising, publicity, reservation of facilities, and general administrative support.

#### **B. The National Stakeholders**

Ten Latin American countries are confirmed as participants: Argentina, Bolivia, Brazil, Chile, Colombia, the Dominican Republic, Ecuador, Haiti, Panama, and Venezuela. Each country will have a national coordinator who will be responsible for enlisting the participation of one representative from the judiciary, two from academia (a professor and a student), one from the legal profession, and one from civic society. These representatives will, in turn, enlist participation from nine more members of their respective sectors, making it a total of approximately 450 participants. Despite the time investment, they will be willing to participate for several reasons. First, all participants are already involved in one-way or another in the court system either as providers, clients, or analysts. Second, it is a novel educational experience for them. They will learn how to collaborate in a goal-oriented dialogue through discussing alternative methods of dispute resolution and the innovative American experience of the multi-door courthouse. They will have the opportunity to evaluate options based on a multitude of desired results. Third, by participating in this project, they stand to gain access to information that is normally difficult for them to access because of language barriers and financial limits.

This project mostly targets a specific constituency of professionals. The skills that the project promotes are ones that the privileged classes are particularly lacking. Through my extensive work in Venezuelan *barrios*, I have found that lower-income communities are already experts in consensus-building and creating value. This is not to suggest that these communities would not benefit from participation in the project. Given the analytical nature of this process, however, the project speaks in the language of the professional class and builds upon that strength. Bringing lower-income people to the table would serve to reinforce the bias of the professional class. The lower-income people would be at a disadvantage because the rules of the game would be unfamiliar to them. It is my hope that the skills learned by the participants in this project will help them value dissent as a rich resource for analysis and generation of options. A more inclusive mindset, in turn, can open the door to more widespread participation.

#### **V. Timeline**

The project, which will encompass the 2003-2004 academic year, has three phases. In the first phase, participants will interact with other stakeholders to explore the reality of each country's situation and be introduced to the concept of the multi-door courthouse. In the second phase, they will examine the multi-door courthouse in the context of several different goals it may help to achieve. In the third phase, they will build knowledge and innovate from the perspective of their roles in the legal profession. More importantly, the participants will get the opportunity to come together to exchange their experiences in their particular countries (gathered in the first two phases of the project) with those of their counterparts from other countries in the region.

- Initial Phase: Exploring Reality  
One preliminary questionnaire  
One module of two 1-week sessions
- Main Phase: Exploring Perspectives  
Five modules of two 2-week sessions
- Result Phase: Building Knowledge and Innovation  
One module of two 1-week sessions  
One 2-day interactive workshop at Harvard

## **VI. The Methodology:**

This action research project encompasses a preliminary questionnaire, virtual dialogues within ten different countries, and a two-day interactive workshop. The questionnaire and dialogues are analytical; the workshop is creative. The topic of the dialogues is “Investing Judicial Capital to Maximize the Latin American Dispute Resolution Systems and Promote Human Rights.” With the help of a facilitator, stakeholders will examine the current reality of the dispute resolution system in each country. They will then explore the use of the multi-door courthouse as a means of achieving the following goals: democracy and participation, transparency and accountability, equality and inclusiveness, efficiency and development, and empowerment and human rights.

At the start of the process, participants will be contacted by e-mail and asked to register at the main project homepage. Once registrations are collected, the participants will be asked to fill out an in-depth online survey (to provide a basis for comparison with post-project feedback). The dialogues will then be convened in state-of-the-art online threaded discussion forums, which will be custom designed to support the issues under consideration. Facilitators will work online with the participants, both synchronously (text, audio, and video chats) and asynchronously (email and threaded discussions) to make progress in the conversation. At the end of the dialogues, a comprehensive feedback survey will be circulated amongst the participants with the combined survey data (pre-dialogue and post-dialogue) evaluated and assessed.

## **VII. Impact on the Field/Society**

**This experience aims to affect the way decision-makers in these countries engage in the political process.** It especially aims to give them a new perspective through which to think about public policy, by studying an alternative way of achieving results. They will learn to talk to one another (avoiding deadlock) to define and work collectively toward common goals. Additionally, they will become aware of their assumptions in interpretation and the cultural values behind the logic accepted for each argument. Just as political institutions and innovative processes are not enough to change a mindset, an experience like these facilitated dialogues cannot itself break through the well-established *caudillo* mindset of the participants. In order to achieve real impact, in this project the facilitator plays the crucial role of an outside guide who provides a new perspective on an old situation and challenges old assumptions. As a result, during the process, the participants will become aware of the benefits of creating a forum for public discussion and interaction. Without this awareness, the participants would simply retreat to their sectors instead of maintaining open communication lines within and among sectors.

Finally, the results of this action research experience will allow us to build useful knowledge about the region in terms of factors that affect the implementation of foreign programs. The final product, which will be collected in a publication, aims to call attention toward the need for dialogue in international development to maximize value and learn from failure.