

DISPUTE SYSTEM DESIGN AND THE GLOBAL POUND CONFERENCE

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Since Roscoe Pound's famous 1906 speech to the American Bar Association on popular dissatisfaction with the administration of justice,¹ the field of dispute resolution has taken up his cause. Frank Sander's speech at the 1976 Pound Conference marked a turning point in the field's growth and development within the United States.² This symposium on its 40th Anniversary also marks a turning point: the globalization of alternative or appropriate dispute resolution ("ADR") in all its forms, in person and online, within and across national boundaries.

The Global Pound Conference ("GPC") is a groundbreaking effort to collect comparable data on perceptions of access to justice and dispute resolution around the world. The organizers are publishing reports describing the results in each city and aggregated data on the Internet, making the reports available globally.³ Organizers of the GPC are also inviting researchers and scholars to help analyze data by offering to make data available with certain confidentiality protections. We have no precedent for this in the field of dispute resolution.

To understand, take advantage of, and build upon this new knowledge, we need to focus on what the Global Pound Confer-

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¹ Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, Presented at the Annual Convention of the American Bar Association (1906), in 29 "ABA" REP., pt. I, 395-417 (1906).

² Frank E.A. Sander, *Varieties of Dispute Processing, Address Delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice* (Apr. 7-9, 1976), in 70 F.R.D. 111, 133-34 (1976). See also the Symposium on the 25th Anniversary of the Pound Conference, including L. Camille Hebert: Symposium, *Introduction—The Impact of Mediation: 25 Years After the Pound Conference*, 17 OHIO ST. J. ON DISP. RESOL. 527 (2002); Dorothy J. Della Noce, *Mediation Theory and Policy: The Legacy of the Pound Conference*, 17 OHIO ST. J. ON DISP. RESOL. 545 (2002); and Lela Porter Love, *Twenty-Five Years Later with Promises to Keep: Legal Education in Dispute Resolution and the Training of Mediators*, 17 OHIO ST. J. ON DISP. RESOL. 597 (2002).

³ *Global Pound Conference Series 2016-17: Shaping the Future of Dispute Resolution and Improving Access to Justice*, GPC, <http://globalpoundconference.org> (last visited Jan. 15, 2017).

ence data gives us and what is missing. I argue that what is currently missing from preliminary data collection and reports published to date are the differences in each country's justice system and its Dispute System Design ("DSD").⁴ A richer analysis of GPC data should control for DSD differences within and across national boundaries.⁵ The GPC organizers are offering the field of ADR the opportunity to build a shared body of knowledge by crowdsourcing.⁶ In this brief essay, I posit that as a global field of practitioners, we can readily address this gap by crowdsourcing the information ourselves;⁷ with the help of a central convening repository like the GPC websites, we can all help put GPC data in a system design context by providing information on the DSDs within which we all work in our national justice systems. This brief essay introduces the GPC, DSD, and provides examples of why crowdsourcing national justice system design information can help us all make best use of what the GPC is giving the field.

I. GLOBAL POUND CONFERENCE

The goals of the GPC are "to create a conversation about what can be done to improve access to justice and the quality of justice around the world in civil and commercial conflicts."⁸ The GPC is limited to civil cases entailing commercial disputes, specifically those involving businesses, including contract and tort.⁹ The GPC

⁴ Lisa Blomgren Amsler et al., *Christina Merchant and the State of Dispute System Design*, 33 CONFLICT RESOL. Q. S7, S7–S26 (2015).

⁵ The organizers hope to address this. Personal Conversation with Jeremy Lack, Mar. 7, 2017. However, the current 20 core questions in the GPCs do not cover this information.

⁶ *Crowdsourcing*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/crowdsourcing> ("Definition of crowdsourcing: the practice of obtaining needed services, ideas, or content by soliciting contributions from a large group of people and especially from the online community rather than from traditional employees or suppliers.").

⁷ Kevin J. Boudreau & Karim R. Lakhani, *Using the Crowd as an Innovation Partner*, HARVARD BUS. REV. (Apr. 2013), <https://hbr.org/2013/04/using-the-crowd-as-an-innovation-partner>.

⁸ *About the GPC Series*, GPC, <http://globalpoundconference.org/about-the-series/about-gpc#.WHv09dzVnRw> (last visited Jan. 15, 2017).

⁹ GPC defines commercial disputes in its introduction to the core questions. *GPC—Core Questions*, GPC, <http://gpc.powervote.com/globalpoundconference/infobooth/149820/42145> (last visited Jan. 15, 2017) ("For the purposes of the GPC Series, 'commercial disputes' includes disputes between business entities, business partners, or business entities and public sector entities, whether arising from contract, tort or any other grounds. They include disputes between individual entrepreneurs, small and medium-size enterprises, multinationals and state-owned enterprises.").

does not include family, consumer, criminal, or other kinds of cases. It brings together in each chosen city a representative group of stakeholders, including clients, their representatives, judges, and dispute resolvers.¹⁰ At each GPC, participants engage in real time voting on specific sets of questions.¹¹ The GPC web gateway provides publicly available information about the processes; to see reports of descriptive data on participant perceptions for Global Pound Conferences worldwide to date, the public may freely download Powervote, the app used for voting during a conference. So far, forty GPCs have been scheduled or organized to take place in thirty-one countries.¹² The International Mediation Institute (IMI) owns all the data; the IMI will make data freely available for analysis on the condition that authors credit them in any publication and grant them copyright permission to republish that publication on the website.¹³

¹⁰ *Welcome*, GPC, <http://globalpoundconference.org/about-the-series/welcome-to-the-gpc-series#.WHv3sdzVnRw> (last visited Jan. 15, 2017) (“[T]he GPC Series will convene all stakeholders in dispute resolution—commercial parties, chambers of commerce, business executives, entrepreneurs, lawyers, academics, judges, arbitrators, mediators, policy makers, government officials, and others - at conferences around the world.”).

¹¹ Powervote is a freely downloadable app that enables voting on the day you attend a GPC. GPC, <http://gpc.powervote.com>. To view any of the reports of data that contained detailed multiple-choice questions, you must register with an email address. Registration will be necessary to view any reports of results in specific GPC cities or cumulated data.

¹² *Attend a GPC Series Event*, GPC, <http://globalpoundconference.org/conference-series/attend-a-gpc-series-event#.WHvsvNzVnRw> (last visited Jan. 15, 2017). GPC events: Australia (Sydney), Brazil (São Paulo), Cambodia (Phnom Penh), Canada (Toronto), Colombia (Bogota), Cyprus (Limassol), Egypt (Cairo), France (Paris), Germany (Berlin), Greece (Athens), Guatemala (Guatemala City), India (Chennai and Chandigarh), Hong Kong, Italy (Florence), Mexico (Mexico City and Monterrey), Netherlands (Amsterdam), New Zealand (Auckland), Nigeria (Lagos), Pakistan (Karachi and Lahore), Poland (Warsaw), Romania (TBA), Russia (Moscow), Singapore (Singapore), South Africa (Johannesburg), Spain (Barcelona and Madrid), Switzerland (Geneva), Thailand (Bangkok), Turkey (Istanbul), United Arab Emirates (Dubai), United Kingdom (London), and United States (Austin, Baltimore, Los Angeles, Miami, New York City, San Francisco).

¹³ *Voting Results, Chats & Comments*, GPC, <http://globalpoundconference.org/gpc-series-data/local-voting-results#.WHvv0dzVnRw> (last visited Jan. 15, 2017).

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As of this writing, a public report has combined results from seven cities.¹⁴ There are four categories of questions:

Session 1: Party needs and expectations in commercial dispute resolution.

Session 2: Party expectations and current practice in commercial dispute resolution.

Session 3: Obstacles and challenges in commercial dispute resolution.

Session 4: Promoting better access to justice in commercial dispute resolution: what action items should be considered and by whom?¹⁵

One example of a specific multiple-choice question in Section 1 follows:¹⁶

Question 1: What outcomes do parties most often want before starting a process in commercial civil dispute resolution?

1. Action-focused (e.g. prevent action or require an action from one of the parties)
2. Financial (e.g. damages, compensation, etc.)
3. Judicial (e.g. setting a legal precedent)
4. Psychological (e.g. vindication, closure, being heard, or procedural fairness)
5. Relationship-focused (e.g. terminate or preserve a relationship)

Responses can be reported using cross-tabulations or cross-sorting by defined categories of participants (party, advisor, adjudicative provider, non-adjudicative, influencer).¹⁷ Generally, categories distinguish between parties, which include either a person or

mediation.org, granting IMI permission to republish it free of charge on its website and on any relevant GPC Series websites. The entire data set will be available on request, following the publication of the final IMI Report on the GPC Series 2016-17.

Id.

¹⁴ The GPC website takes you to Powervote, which links to the results of voting. *Cumulated Data Results March–December 2016*, GPC, http://eventmobi.com/api/events/11669/documents/download/21f202e9-60ba-4ab3-a2de-5888eebf577e.pdf/as/GPC_Cumulated%20Data%20Report_Mar-Dec%202016.pdf (last visited Jan. 15, 2017).

¹⁵ *GPC—Core Questions*, *supra* note 8.

¹⁶ *Cumulated Data Results March–December 2016*, *supra* note 14. Other examples of the front end of Section 1 questions include:

(4) What role do parties involved in commercial disputes want providers to take in the dispute resolution processes?

(5) What role do parties involved in commercial disputes typically want lawyers (i.e., in-house or external counsel) to take in the dispute resolution processes?

¹⁷ *Id.*

in-house counsel that uses dispute resolution in commercial disputes, and advisors, which include an external lawyer or consultant to a party. Adjudicative providers (a judge, arbitrator, or organization providing their services) are distinguished from non-adjudicative providers (a conciliator, mediator, or organization providing such services). The final category of influencers includes a researcher, educator, employee/representative of government, or any other person not in the above categories.¹⁸

This is just a brief introduction to the GPC and its processes. It is too soon for scholars to have published much analysis of the GPC, how it has functioned in given cities, or what the results to date can do to improve dispute resolution practice and access to justice worldwide.¹⁹

II. DISPUTE SYSTEM DESIGN AND GLOBAL RESEARCH ON DISPUTE RESOLUTION

As a term, DSD had its origins in management and industrial relations. William Ury, Jeanne Brett, and Stephen Goldberg introduced DSD by examining how systems for managing conflict in labor relations address disputants' interests, contractual and legal rights, or respective power.²⁰ They proposed viewing grievance procedures in collective bargaining agreements as DSDs, ones that could be improved with an array of steps from low to high cost, ideally from interest-based to rights-based processes. After introducing grievance mediation as new step before labor arbitration,

¹⁸ *Id.* The challenge of writing questions that make sense across national, cultural, and linguistic boundaries is daunting; for example, some organizations provide both adjudicative and non-adjudicative services. It is unclear how these distinguish themselves and in what role they answer questions.

¹⁹ The first call for a global Pound conference appears to be Michael Leathes & Deborah Masucci, *Rime for Another Big Bang in Alternative Dispute Resolution—The World Needs a Global Pound Conference*, *MEDIATE* (Jan. 2014), <http://www.mediate.com/articles/poundconference.cfm> (discussing the proposal of a Global Pound Conference, cited in Kimberlee K. Kovach, *The Mediation Coma: Purposeful or Problematic*, 16 *CARDOZO J. CONFLICT RESOL.* 755 (2015), also citing The 2015–16 Global Pound Conference Series, *INT'L MEDIATION INST.*, <https://immediation.org/global-pound-conference>, reflecting a plan for the existing series).

²⁰ WILLIAM L. URY ET AL., *GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COSTS OF CONFLICT* (1988); for early evaluation work on a system's accountability, see Jeanne M. Brett & Stephen B. Goldberg, *Grievance Mediation in the Coal Industry: A Field Experiment*, 37 *INDUS. & LAB. REL. REV.* 49, 49–69 (1983). For a more comprehensive history, see Carrie Menkel-Meadow, *Mothers and Fathers of Invention: The Intellectual Founders of ADR*, 16 *OHIO ST. J. DISP. RESOL.* 1, 1–37 (2000).

their ideas found later application in ombuds programs,²¹ mediation and/or arbitration programs,²² similar processes in court-annexed²³ or agency²⁴ programs, and new institutions in global governance. These institutions vary widely; analyzing them involves DSD. DSD goals always include some conception of justice, whether consciously and intentionally or as a by-product.²⁵ The range of design contexts varies from public and community justice, conflict and the organization, international and transnational institutions, and governance.

We can view GPC data through a DSD lens. Smith and Martinez introduced an Analytic Framework for DSD; they proposed a framework including goals, stakeholders, processes and structure, resources, and success and accountability.²⁶ Subsequently, context and culture were added to the framework.²⁷ While participants' goals in any system addressing commercial disputes may be somewhat similar across national boundaries, other elements of the Analytic Framework may inform our understanding of GPC participants' perceptions. Context, culture, processes, and structure are likely to vary across national boundaries. These can shape participants' experiences and perceptions. What follows is a brief discussion in the nature of a thought experiment. The GPC is collecting the same data in thirty-one countries and forty different cities. How might DSD inform our analysis of these data? The GPC has already published a report pooling seven different national

²¹ Mary P. Rowe, *Disputes and Conflicts Inside Organizations: A Systems Approach*, 5 NEGOT. J. 149, 149–57 (1989).

²² Moving to a non-union employment setting is DAVID B. LIPSKY ET AL., EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT: LESSONS FROM AMERICAN CORPORATIONS FOR MANAGERS AND DISPUTE RESOLUTION PROFESSIONALS? (2003). Lipsky, Seeber, and Fincher are all faculties at the Cornell University School of Industrial and Labor Relations and have conducted longitudinal research on the use of alternative dispute resolution by the Fortune 1000.

²³ NANCY H. ROGERS ET AL., DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES (2013).

²⁴ CATHY A. COSTANTINO & CHRISTINA SICKLES MERCHANT, DESIGNING CONFLICT MANAGEMENT SYSTEMS: A GUIDE TO CREATING PRODUCTIVE AND HEALTHY ORGANIZATIONS (1996). Costantino and Merchant each had careers in the federal government, where they were early innovators in developing DSD in the Federal Deposit Insurance Corporation and the Federal Labor Relations Authority respectively.

²⁵ Lisa Blomgren Bingham, *Designing Justice: Legal Institutions and Other Systems for Managing Conflict*, 24 OHIO ST. J. ON DISP. RESOL. 1, 1–50 (2009).

²⁶ Stephanie E. Smith & Janet K. Martinez, *An Analytic Framework for Dispute System Design*, 14 HARV. NEGOT. L. REV. 123, 123–69 (2009).

²⁷ Amsler et al., *supra* note 4.

events held in Singapore, Mexico City, Lagos, New York, Geneva, Toronto, and Madrid.²⁸

A. Context and Culture

Context and culture readily raise questions. What aspects of culture affect the workings of a system? Professor Mariana Hernandez Crespo Gonstead addresses the importance of culture (organizational, social, national, or other) in DSD for international investment treaties in our increasingly globalized world.²⁹ She observes that a fundamental premise of globalization is a world that is more connected than ever—with a level of interconnectivity that allows people all over the world instant access to each other through videoconferencing, free calls, or virtual platforms. People no longer live in small, independent villages where they mainly bond based on common ground; globalization has created increased interaction with those less familiar to us. Might we learn about culture's impact in the GPC?

Jeanne Brett has written a leading resource on the wide variability of culture's impact on negotiation within and across nations.³⁰ She reports on differences across the norms for communication and conflict management. For example, eastern and western cultures vary in degrees of collectivism compared to individualism, whether communication occurs in a high context compared to a low context, and the degrees to which a negotiating team is hierarchical compared to egalitarian. She reports on empirical research that sheds light on how these variations may affect the dynamics of cross-cultural negotiation, and hence those of mediation, which is assisted negotiation. She emphasizes that cultural characteristics reflect prototypes that should not be used to stereotype individuals, and that people will vary widely in where they fall on a given normal distribution for a prototype; she reports these differences nevertheless have been empirically validated.³¹

²⁸ *Cumulated Data Results March–December 2016*, *supra* note 14.

²⁹ See Mariana Hernandez Crespo, *From Paper to People: Building Conflict Resolution Capacity and Frameworks for Sustainable Implementation of IIAs to Increase Investor-State Satisfaction*, in *INVESTOR-STATE DISPUTES: PREVENTION AND ALTERNATIVE TO ARBITRATION II* 55 (Susan D. Franck & Anna Joubin-Bret eds., 2011).

³⁰ JEANNE BRETT, *NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES* (3D ED.) (2014).

³¹ E.g., Soroush Aslani, Jimena Ramirez-Marin, Jeanne Brett, JingJing Yao, Zhaleh Semnani-Azad, Zhi-Xue Zhang, Catherine Tinsley, Laurie Weingart, and Wendi Adair, *Dignity*,

How does the culture within which a justice system is designed and set affect its viability and success? How does culture affect participants' experiences of ADR and their resulting perceptions? GPC reports on individual cities allow for some comparison across geographic locations and national settings. The cities currently pooled in the cumulative report reflect contexts from Asia, Europe, North and Central America, and Africa.

The GPC developed twenty core questions after "extensive rounds of consultations with representatives of all stakeholders groups and members of the GPC's Academic Committee."³² Two of the questions include the word culture in one of the multiple choice answers:

Session 2 Question 2: The outcome of a commercial dispute is determined primarily by which of the following? (Please rank your 3 preferred answers in order of priority: '1st choice' = 3 points, '2d choice' = 2 points,, '3rd choice' = 1 point)

1. Consensus: the parties' subjective interests
2. Culture: based on cultural and/or religious norms
3. Equity: general principles of fairness
4. Rule of Law: findings of fact and law or other norms
5. Status: deferring to authority/hierarchies.

Cumulated data for 2016 revealed that participants ranked culture lowest as a determining factor in the outcome of a commercial dispute.³³ When organizers disaggregated answers by stakeholder group (party, advisor, adjudicative provider, non-adjudicative provider, influencer), both adjudicative and non-adjudicative providers ranked culture one notch above status (fourth of five) as a determining factor.

The second question uses the word culture in a considerably different context:

Session 3 Question 1: What are the main obstacles or challenges parties face when seeking to resolve commercial disputes? (Please rank your 3 preferred answers in order of priority: '1st choice' = 3 points, '2d choice' = 2 points, '3rd choice' = 1 point)

1. Emotional, social, or cultural constraints
2. Financial or time constraints

Face, and Honor Cultures: A Study of Negotiation Strategy and Outcomes in Three Cultures, 37(8) *J. OF ORGANIZATIONAL BEH.* 1178, 1178–1201 (2016).

³² Jeremy Lack, *A Preliminary Summary of the Voting Results from Global Pound Conference Events in 2016: Trends and Themes*, at 2. International Mediation Institute (IMI) (2017). Copy on file with author.

³³ *Cumulated Data Results March–December 2016*, *supra* note 14.

3. Inadequate range of options available to resolve disputes
4. Insufficient knowledge of options available to resolve disputes
5. Uncertainty (e.g. unpredictable behavior or lack of confidence in providers)

In 2016 aggregated data, social, emotional, or cultural constraints did not make participants top three choices for obstacles and challenges to resolving disputes. However, once disaggregated by stakeholder group, it ranked third among obstacles or challenges to resolving commercial disputes among non-adjudicative providers and influencers, at about 30-31 % of the maximum possible points for these two groups.

It is interesting that the word culture is used in different contexts in these two core questions, with each reflecting different aspects of research on culture: religious, emotional, and social. This raises the question of how we define culture in the context of dispute resolution. Brett defines it as “the distinct character of a social group” that “emerges from the patterned ways that people in a group respond to the fundamental problems of social interaction.”³⁴ Clearly, religion, the expression of emotion, and social relations are all different aspects of this general definition of culture.

However, these two core questions do not use culture, not as an independent variable to do quantitative analysis, but rather as a prior step to explore whether the participants generally believe that culture is a relevant factor in resolving disputes. The core questions themselves do not include the information specific to each participant or the demographic data that negotiation scholars typically collect to make various cross-cultural comparisons in research on negotiation and dispute resolution, such as nationality, race, age, professional training, and potentially the specific religious affiliation of a participant.

The GPC has what its organizers call ‘deep data’ from the registration records of participants.³⁵ In the Singapore Report, the organizers described this as including: “Their stakeholder category, The number of disputes in which they have been involved, The type of dispute processes in which they are typically involved, The jurisdiction in which they typically work as their nominated stakeholder type, The number of employees within their organizations,

³⁴ Brett, *supra* note 31, at 27.

³⁵ Jeremy Lack, *supra* note 33, at 1-2.

and Their gender.”³⁶ It may be possible to use the registration data to determine more information about individual participants (e.g., national origin). The Singapore Report reflects a 47% response rate on delegate deep data questions, a problem that may not affect later GPCs. There are preliminary efforts to augment the delegate questions with information generated using participant emails. In the Singapore Report, these efforts permitted some preliminary analysis of participants’ jurisdiction and practice as local, national, or international. This may or may not be the same as an individual participant’s national origin. While it may be possible and desirable to use registration data to obtain more complete demographic information on each participant (e.g., race, age, professional training, and nationality), it may also be labor intensive, difficult, and problematic.

At present, the Singapore and Cumulative 2016 reports do not analyze core question data by an individual participant’s country of origin. The reports on the core questions pool data and cross-tabulate it by stakeholder category. Are we seeing perceptions of the participant’s national justice system or international disputes addressed through a system that crosses national boundaries like international commercial arbitration? How might these perceptions relate to an individual participant’s national origin? Pooling data may mask some variation, though early data analysis has found consistent patterns.³⁷ Future analysis may permit disaggregating responses by participant nationality. The GPC questions do include opportunities for open-ended comments for each section analyzed using word clouds that may reflect the overall pattern of perceptions. Viewed through a cultural lens, these too might provide more detailed insight into individual participant’s experiences.

As organizer Jeremy Lack observes, ‘themes and trends will evolve and may change significantly as the GPC Series progresses and more results are obtained from additional countries and different dispute resolution cultures.’³⁸ As the Series progresses, we

³⁶ Danielle Hutchinson and Emma-May Litchfield, *Global Pound Conference Series 2016–17: Shaping the Future of Dispute Resolution & Improving Access to Justice: The Singapore Report*, at 110–111. Copyright International Mediation Institute (IMI) (2016).

³⁷ Jeremy Lack, *supra* note 32, at 15. These emerging trends include concerns over speed, efficiency, and cost; early advice to parties about procedural options and control over disputes to providers; pre-dispute/pre-escalation measures and increasing familiarity with non-adjudicative processes; and mixed adjudicative and non-adjudicative modes of dispute resolution. *Id.*

³⁸ *Id.* at 1. Lack also observes data needs to be approached with caution because there is self-selection bias among participants, limited numbers of representatives from some stakeholder groups in some cities, and *different cultural approaches to conflict prevention and resolu-*

need to find more ways to control for culture more specifically in the GPC data from events held in different national contexts.³⁹ It remains to be seen what we can learn about how culture shapes participants' responses.

B. *Processes and Structure*

Processes and structure also vary widely across national justice systems.⁴⁰ Which processes are used to prevent, manage, and resolve disputes? Wall and Dunne's review of mediation research shows the word 'mediation' means different things in eastern cultures such as Korea, China, Hong Kong, and Japan compared to western cultures.⁴¹ How do we know what access to justice means in different countries? The number of lawyers per thousand people in the population varies from country to country. For example, in 2011, the population of Korea was 49,989,000; the number of registered or certified lawyers was 12,590. In other words, the ratio was one lawyer to 3,970 people.⁴² By comparison, one source of most litigious nations reported that the U.S. has one lawyer for every 300 people.⁴³ This means that both the concept of what a lawyer is and the role lawyers play in dispute resolution and access to justice may vary widely from country to country.

Dispute resolution occurs in the shadow of a national justice system. If there is more than one process, are they linked or integrated with each other (*e.g.*, negotiation, mediation, and arbitra-

tion across professional and jurisdictional divides (e.g. civil law compared to common law systems)." *Id.* at 3.

³⁹ Organizer Jeremy Lack reports that they have put some thought into this.

⁴⁰ KONRAD ZWEIGERT AND HEIN KOTZ, *AN INTRODUCTION TO COMPARATIVE LAW* (3d Ed. 1998).

⁴¹ James A. Wall & Timothy C. Dunne, *Mediation Research: A Current Review*, 28 *NEGOT. J.* 217, 220–24 (2012).

⁴² Korean Bar Association, *Information Sheet—[Korea]*, NICHIBENREN, https://www.nichibenren.or.jp/library/ja/bar_association/word/data/Korea.pdf (last visited Jan. 15, 2017).

⁴³ *The Most Litigious Countries in the World*, CLEMENTS, <https://www.clements.com/sites/default/files/resources/The-Most-Litigious-Countries-in-the-World.pdf> (last visited Jan. 15, 2017). Clements also reports the following:

2. Brazil: 1 lawyer for every 326 people
3. New Zealand: 1 lawyer for every 391 people
4. Spain: 1 lawyer for every 395 people
5. UK: 1 lawyer for every 401 people
6. Italy: 1 lawyer for every 488 people
7. Germany: 1 lawyer for every 593 people
8. France: 1 lawyer for every 1,403 people.

tion steps in sequence) and with the national justice system (e.g., civil law versus common law)? What is the legal framework for access to justice in one nation compared to the next? The United States has a legal framework that permits large companies to impose adhesive arbitration clauses on employees and consumers, yielding what is called mandatory or forced arbitration.⁴⁴ This form of arbitration is likely illegal in the European Union.⁴⁵ If the legal framework for arbitration varies, how does this shape participants' answers to GPC questions about adjudicative dispute resolution services?

Wall's own qualitative research found that in Asian cultures, the actual mediation process is more formal and may look more like med-arb to a westerner.⁴⁶ The GPC did a survey on this point before adopting the final Core Questions; it found that the terms "adjudicative" v. "non-adjudicative" were the best compromise to be able to compare "apples to apples" globally.⁴⁷ This means that adjudicative providers include both judges and arbitrators.⁴⁸ While this may enable certain high level comparisons globally, it may raise issues within a national context such as the United States where arbitrators and judges most frequently attend different professional conferences and operate in different settings, i.e. national courts compared to third party provider rosters. (Retired judges who mediate and/or arbitrate would of course overlap professional groups.) Moreover, non-adjudicative providers include conciliators, mediators, or ombudsmen.⁴⁹ This category combines in-house and outside providers, as ombuds in a corporate setting differ from government agency ombuds.⁵⁰ The 'deep data' would permit more granulated data analyses, provided there are enough participants over time.

⁴⁴ E.g., Lisa Blomgren Amsler, *Combating Structural Bias in Dispute System Designs that Use Arbitration: Transparency, the Universal Sanitizer*, 6 Y.B. ON ARB. & MEDIATION 32, 32–55 (2014).

⁴⁵ European Parliament Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, *Legal Instruments and the Practice of Arbitration in the EU* (2014), EUR. PARLIAMENT, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/509988/IPOL_STU\(2015\)509988_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/509988/IPOL_STU(2015)509988_EN.pdf) (noting that mandatory pre-dispute arbitration clauses are often found invalid in most European jurisdictions).

⁴⁶ *Id.* at 244.

⁴⁷ Personal conversation with organizer Jeremy Lack, Mar. 7, 2017.

⁴⁸ Jeremy Lack, *supra* note 34, at 1.

⁴⁹ *Id.*

⁵⁰ Charles L. Howard, *THE ORGANIZATIONAL OMBUDSMAN: ORIGINS, ROLES, AND OPERATIONS, A LEGAL GUIDE*, at 1–24 (2010).

What are the incentives and disincentives for using the system? Who pays attorneys' fees and when? The American Rule is that each party pays their own attorneys' fees (although adhesive arbitration clauses can shift fee payment unilaterally). It is called the American Rule in contrast to the English Rule, in which the losing party pays the other party's attorneys' fees. What is a dispute resolution system's interaction with the formal legal system? In the United States, there is almost no meaningful appeal of arbitration awards. Most mediation and arbitration outcomes are confidential. How does this compare to other GPC countries? When GPC parties use mediation, is it court-annexed, with a third party provider, or a private ad hoc process?

These are only a few examples of how DSDs may vary across national contexts. The GPC asks participants to answer these questions about adjudicative and non-adjudicative processes based upon their own experience.⁵¹ This and the 'deep data' may afford opportunities for analysis of differences based on DSD context at least in terms of organizational affiliation in registration data. This is not the same as having detailed information about specific system designs in which they practice, particularly if they are likely to experience multiple different designs.

In a researcher's perfect world, we could control for aspects of DSD that vary across national boundaries if we can identify the specific local, national, or international jurisdictions within which participants have practice experience. A few scholars have attempted to build comparative ADR resources for the rest of us.⁵² It is labor-intensive work. Nevertheless, accumulating data about the DSD of each such jurisdiction is itself a major undertaking. However, we still lack a global resource that summarizes the many different DSDs in local, national, regional, and international contexts.

⁵¹ Personal conversation with organizer Jeremy Lack on Mar. 7, 2017.

⁵² E.g., Nadja Alexander, *Global Trends in Mediation*, ADR BULLETIN (Bond U. Disp. Resol. Ctr., Quensl. Austl.), July 2003, at 1; Nadja Alexander, Lisa Blomgren Bingham, Julie Macfarlane, and Margaret Ross, *Mediating in the Shadow of Different Law: Dispute Resolution and Dispute System Design across Four Anglophone National Court Systems*, presented at the American Bar Association Section of Dispute Resolution Conference, Apr. 15, 2004; and CHESTER A. CROCKER, FEN OSLER HAMPSON, & PAMELA AALL (EDS.), *HERDING CATS: MULTIPARTY MEDIATION IN A COMPLEX WORLD* (1999).

III. CROWDSOURCING DATA ABOUT NATIONAL DSDs AND JUSTICE SYSTEMS IN SUPPORT OF THE GPC

Crowdsourcing⁵³ is becoming a more common way of leveraging the work of people around the world. An example of the wisdom of the crowd is Galaxy Zoo, an experiment to see if people around the world on the internet would help a handful of scientists figure out what kind of galaxies they were looking at on satellite images. The result was a crowd-sourced evaluation and effort to classify all the photographed galaxies of the universe.⁵⁴ Galaxy Zoo illustrates how systems can emerge through spontaneous collaborative human interaction. It worked because it gave people recognition for their help. Parents and children acting as amateur astronomers stared into images of the night sky. They received credit on publications by the scientists. The incentives were sufficient to elicit the help of thousands of people.

What would it take to crowd source a global wiki on basic information about DSDs and justice systems at various jurisdictional levels? The dispute resolution community is already collaborative and increasingly connected worldwide through social media. We could recognize each other's contributions with a point system, like one that ranks software developers who help answer each other's questions and develop a reputation score.⁵⁵ Once we have this data, it may be more feasible to control for DSD differences in analyzing GPC data. We do have the location by city in which data were collected. However, with more information about the structure and processes in a justice system, we may learn more from the GPC about how perceptions vary and why than we might simply by controlling for location.

⁵³ Boudreau & Lakhani, *supra* note 6.

⁵⁴ GALAXY ZOO, www.galaxyzoo.org (last visited Jan. 15, 2017). From its website, Galaxy Zoo tells its own story:

The launch of this new version of Galaxy Zoo, the 4th, comes just a few weeks after the site's 5th birthday. It all started back in July 2007, with a data set made up of a million galaxies imaged by the Sloan Digital Sky Survey, who still provide some of the images in the site today. With so many galaxies, we'd assumed it would take years for visitors to the site to work through them all, but within 24 hours of launch we were stunned to be receiving almost 70,000 classifications an hour. In the end, more than 50 million classifications were received by the project during its first year, contributed by more than 150,000 people.

Id.

⁵⁵ An example is Stack Overflow, which does this and creates an employment market for computer programmers. STACK OVERFLOW, www.stackoverflow.com (last visited Jan. 15, 2017).

IV. CONCLUSION

The GPC is a valuable and important effort. As practitioners and researchers, we can help support the effort and make it more useful for researchers who examine the resulting datasets. In order to do this, there is additional data collection we need to undertake; we could do it collaboratively and collectively. We need to crowd-source the answers across national boundaries for questions from the DSD Analytic Framework:

- What is the legal framework for dispute resolution in different countries?
- How do context and culture vary by country?
- How do structure and processes vary by country?
- How do the predominant DSDs for adjudicative and non-adjudicative processes vary by country?
- How can we control for national variation as we analyze the GPC data?

If we pool our knowledge to build this online resource, we will learn more from the GPC data and for our increasingly global ADR community.

