

# Mediation across the Globe

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# Mediation across the Globe:

*Excerpts from the World  
Mediation Summit*

Edited by

Santiago Madrid Liras, Kevin Brown  
and Emilio Navas Paús

Cambridge  
Scholars  
Publishing



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This book first published 2018

Cambridge Scholars Publishing

Lady Stephenson Library, Newcastle upon Tyne, NE6 2PA, UK

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

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ISBN (10): 1-5275-1612-1

ISBN (13): 978-1-5275-1612-0

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## PREFACE

### MEDIATION FOR THE 21<sup>ST</sup> CENTURY

EMILIO NAVAS PAUS, KEVIN BROWN  
AND SANTIAGO MADRID LIRAS

Science teaches us that everything, whether we can see it or not, is connected to everything else. That electrons circle an atomic centre and in turn, atoms form links that become molecules, inanimate beings and living things, planets and constellations, and that, all these things circle at the heart of our Universe, which we can barely comprehend.

We are all connected. We call these relationships love, electro-negativity, gravity, friendship, or conflict, yet—by necessity—we are all connected. We live in a world, a universe really, of inter-relationships. As mediators, as with all professionals, we must earn the trust of our clients. In our case, this means creating a connection with the parties in conflict, giving us the opportunity for specific interventions.

In time, individuals will have to trust in their ability to resolve the specific conflict that brought them to mediation. And this trust should also necessarily extend to the pertinence and the capabilities of their "opposite" and the possibilities offered by the mediation process.

This system of systems by which the method of all mediators is guided, backed by scientific research, embraces a plethora of possible conflicts, of specialties and specificity in the application of mediation. Conversely, all these possibilities are united in this global system by a shared framework, specific modes of intervention, certain types of procedures.

The World Mediation Summit in Madrid was created to put the warmth of the city—not only that of its weather, but also the warmth that radiates from its people, and its mediation community in particular—at the service of the entire profession.

Its organizers believe that the bonds created by friendship and mutual trust are stronger than mere affection or conflict. It is this friendly



relationship between all mediators, regardless of their specialty, that we seek to encourage and celebrate the global meetings hosted in Madrid.

The fourth of these summits became the basis for the book you are currently reading. It contains a first general introductory chapter, a final section focused on reflections on the profession, and a middle section reviewing the current status of ADR practice around the globe.

Mediation is not an easy practice, neither for the professional nor the parties, since it is demanding for both. Parties need to become aware of their role as the first and foremost engine for the resolution of their conflicts, and they need to sustain their efforts to make the process work. The professional intervening must, in turn, maintain a high level of trust with each of the parties, while simultaneously refrain from taking sides.

Mediation is neither a cheap nor a quick practice. It requires running costs, before any intervention by the "system" or the "State". The time it needs—which is indeed much shorter than any official procedure—is our own time. It's not time spent and wasted on bureaucratic shenanigans, but the time it asks for is the expensive kind, our own.

Mediation is voluntary. The courts would empty out if direct methods were made available. As Rudolf von Ihering rightly points out, we did not reach our current situation, in which we reject the principle of "might makes right" without a fight. This fight is still going on to this day. The natural tendency is to take justice in our own hands, and this option, rendered null, to have recourse to the only way that the system authorizes us, whatever our opinions on it might be. Our current experience worldwide shows that conflict resolution does not happen without, at least, a substantial incentive from the community.

Against all the odds and natural tendencies, mediators have been making their way all over the world and betting on the growth of the Culture of Peace. Although initially, we believed in an "academic" approach to initiate and sustain mediation—a joint session with an almost immutable mediator—practicing side-by-side with other mediators, exchanging with professionals from different geographies or professional fields, and our inner explorations have propelled us to a quest for new perspectives.

There is a new mediation, no doubt about it, and this book is a clear example of it. But a unique mediation does not imply the outright rejection of what came before. There is no "old mediation" from which to move away from, but a permanent search effort, a continuum of breakthroughs and investigation, born from our practices and consolidated as theoretical principles. The simple objective of our work in this book is to present an overview of these theoretical principles, as they stand right now.

Thus, dear reader, we hope you'll find in these pages: a summary of the state of mediation and ADR around the globe at the beginning of this 21st Century; the fruits of a meeting of professionals, motivated by their will for friendship and for sharing that experience with you. This book is but a step in the road—ongoing and never-ending—towards a new professional practice, backed by a deeper scientific understanding, more attentive to the needs of those we mediate, more deeply committed to the Culture of Peace.

Thanks for joining us on this journey.

Madrid, Summer of 2018

# CHAPTER ONE

## MEDIATION AS GENERATOR OF CHANGE IN JUDICIAL SYSTEM AND LEGAL PROFESSION

SRĐAN ŠIMAC

*“The secret of change is to focus all of your energy, not on fighting the old, but on building the new”.*

Socrates

### Introduction

The court system, legal institutions, judicial proceedings and the legal profession that serve them, did not follow the significant changes, which occurred in modern societies. Therefore, it is believed that they have not been able to meet the needs and interests of the users. The law has almost entirely replaced justice;<sup>1</sup> the parties have become observers in their disputes<sup>2</sup> and the courts' forums for representing the public interests and the values of the legal profession. Judicial procedures are more complex and the legal language more incomprehensible to the parties. The quality of justice is increasingly giving way to efforts for increased efficiency, and the law has become a business in which the interests of clients are not primary. The Law and legal professionals seem to have lost sight of their original purpose. The result of which is confusion on several dimensions; the disputants tangled in legal mazes, their deep dissatisfaction with the system over which they have no control, and the alienation of the legal systems and the legal profession from citizens and society.

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<sup>1</sup> "There is something related to justice which is scary. Justice does not aim to be reasonable. Its main objective is to be neutral". HOWARD, Philip K., *Life Without Lawyers, Liberating Americans from Too Much Law*, W. W. Norton / Company, Inc., New York, 2009, pg. 74.

<sup>2</sup> See, AUERBACH, Jerold S., *Resolving Disputes Without Lawyers*, Oxford University Press, Oxford, New York, Toronto, Melbourne, 1983, pg. 12.

The current state of the legal system and the state of the judiciary has become distorted to such an extent that it claims to have become a barrier to further development of society. It is a kind of self-capitulation of the self-sufficient legal system regarding modern mass societies. It would be quite an exaggeration to say that such a state was only the contribution made by legal professionals. There is no denying that the holders of the legal profession as carriers of the legal system, through their daily and mostly unchanged practice, very often neglect the real interests and needs of the parties in the disputes, as well as the necessary need for positive change. The dissatisfaction with such a state among the growing number of representatives of the legal profession, only confirms this assessment.<sup>3</sup>

It seems that the judicial system and the legal profession in its traditional form experienced the peak of its historical activity and, also, the persistence in maintaining the status quo calls into question its relevance and existence in society. It is believed that to preserve the democratic culture and achievements of modern societies, legislative, executive, and judicial authorities, as well as the legal professionals, must not ignore the limitations of the traditional legal system and legal practice within it. On the contrary, they should confront such a situation and decide on affirmative action. The representatives of the legal profession should not only be intermediaries between the law and the parties in a dispute. They should not only count on the fact that their specialized knowledge and skills, rigor and formality of treatment<sup>4</sup> or the mere affiliation that a profession will guarantee a job position and reputation in society. The place and status of the legal profession in society cannot be guaranteed; it must be earned.

Access to justice does not only mean access to the courts. Therefore, it is considered that the time has come to revitalize the legal system, legal institutions, and legal profession and to adapt them to the environment in which they operate. Towards the transformation of traditional dispute resolution system and its institutions, we have, at our disposal, a number of tools - new dispute resolutions tools led by mediation, which has

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<sup>3</sup> AUERBACH, Jerold S., *ibid.* pg. 119-120.

<sup>4</sup> "A form of the judicial procedure was conceived as a guarantor of fairness, equal treatment of all parties by way of a just outcome of the case, based on accurate facts and the law prescribed. In practice, there has been a shift from an imaginary model, primarily due to utter inefficiency of the courts in the exercise of the primary tasks - dispute resolution. "BILIĆ, Vanja, *Alternative Dispute Resolution and Civil Proceedings*, doctoral dissertation, University of Zagreb, Faculty of Law in Zagreb, 2008, pg. 195.

become the synonym for the Alternative Dispute Resolution (ADR) movement.

The effects of mediation and the postulates it achieves during the practice of resolving conflicts and disputes, compared with the traditional system of dispute resolution, indicates its significant potential as an agent of positive change in the legal system as a whole and society. The benefits of mediation for the parties and the legal professionals,<sup>5</sup> regardless of such procedures, and barriers to their rapid development,<sup>6</sup> make peaceful dispute resolution and mediation possibly the most significant indicator in which direction society, the judicial system and its institutions should go. We are in the middle of the process of creating a dramatic shift in the dispute resolution system, which will incorporate the best of worlds, the public/formal and the private/informal justice.

## **Cooperation – A Basic Principle in Dispute Resolution**

Conflicts are an integral and indispensable part of life and are not, in themselves, negative.<sup>7</sup> Only the attitude towards conflicts can be negative, as well as the approach to their resolution. The most common and most potent civilized way of resolving severe conflicts is their conversion into legal disputes - litigation. In court disputes, the emphasis is given to a legal war between the opposing parties and their further confrontation. This is an increasingly less desirable approach to resolving disputes.

There are two biological evolutionary theories about human interactions. The first theory is predominantly conflicting and advocated by *Charles Darwin*. The other is predominantly cooperative, and its

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<sup>5</sup> KEVA, Steven, *Transforming Practices, Finding Joy and Satisfaction in the Legal Life*, Lincoln (Chicago), 1999, p. 30; See Chapter 9, The results of research on perception and impression of lawyers of the conciliation procedure and civil procedure.

<sup>6</sup> BELSKI, Scott, *Making Ideas Happen, Overcoming the Obstacles Between Vision and Reality*, Portfolio, 2010, pg. 8-9.

<sup>7</sup> "At the beginning of a conciliation session, the parties must acknowledge that the conflict is a normal state of being. Only when it becomes deeply-rooted and engrained does conflict become unhealthy, even pathological, and lead to endless judicial fighting. The task of the judge-conciliator is to break the deadlock and foster a meeting of minds. (...) Not surprisingly, experience often shows one conflict is hidden within another. The trick is to identify the one fundamental conflict?". OTIS, Louise, The Conciliation Service Program of the Court of Appeal of Quebec, *World Arbitration and Mediation Report*, Vol. 11, No. 3 March 2000., pg. 83.

founder is less known, *Peter Kropotkin*.<sup>8</sup> Darwin's theory is based on natural selection as the primary mechanism of reproduction and self-sustainability. The strength, ability, resourcefulness and personal interest of an individual or group are primary for self-sustainment. The strongest do not have compassion for the less powerful, the less capable or, the less resourceful. This theory was reinforced by the development of capitalism and became the subject of an interpretation of many economic theories. Simplified, the market provides everyone with equal chances of economic success, however, only the strongest and the most capable win. Equal access has been translated into many aspects of social life. It is claimed that today, in capitalist social systems, Darwin's theory of natural selection, competition and confrontation has reached its climax (with the accompanying negative consequences).

Where Darwin sees competition, personal interest and the strength of the stronger as the human driving force, Kropotkin considers cooperation. Kropotkin argued that human collaboration in relationships through history enabled the survival of the human species, its every success and progress.<sup>9</sup>

In everyday social life, individual interests prevailed over the interests of the community and the general good. In the mutual encounter and collision of the interests of individuals and their clash with public interests and vice versa, there have been countless new relationships, but also disputes that are often solved in one way - by judicial means. Such a method of resolving disputes seems to satisfy very few people. It is believed that precisely because of all these circumstances, the cooperation between people today is needed more than ever before, starting from individual to global issues. However, it is considered questionable<sup>10</sup> whether the human species, after long-term movement in one direction,

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<sup>8</sup> See, KRPOPOTKIN, Petr Harry, *A Mutual Aid, A Factor of Evolution*, Readaclassic.com, s. l., 2009.

<sup>9</sup> "Cooperation-not competition-underpins innovation. To spur creativity, and to encourage people to come up with original ideas, you need to use the lure of the carrot, not fear of the stick. Cooperation is the architect of creativity through evolution, from cells to multicellular creatures to anthills to villages to cities. Without cooperation, there can be neither construction nor complexity in evolution". NOVAK, Martin A., HIGHFIELD, Roger, *Super Cooperators, Altruism, Evolution and Why We Need Each Other to Succeed*, Free Press, New York, 2011. Preface xvii.

<sup>10</sup> "Maybe Darwin is right"? NOVAK, Martin A., HIGHFIELD, Roger, *ibid*, pg. 14.

can run the other way?<sup>11</sup> If they were to use at least a part of the inexorable optimism of a mediator, the belief could be expressed as an affirmative answer to the question above. On what belief can this be based?

We witness countless examples of common, visible and invisible forms of co-operation among people. Every day people work well together and help each other, starting from simple tasks, to very complex ones, and finally to the noblest ones, regarding the salvation of human health and life. People cooperate in the majority of conflicts. Conflict is a part of every-day human life, and by far the most significant number of them never reach the courts. Even the most severe conflicts, when given due attention, will crystallize the moment it activates the natural human strength with the potential for cooperation and its resolution.<sup>12</sup> Collaboration takes place at all levels: individual, institutional, national, international and global. Individuals, groups, and institutions often cooperate without previously established rules, control or oppression by a higher authority. Cooperation and helping occurs spontaneously without organization, simply because they are needed at a given time.<sup>13</sup>

The exceptional ability to co-operate, biologists claim, is encrypted in human genes.<sup>14</sup> Every co-operation, aiding or receiving help, fills people with a unique sense of satisfaction.<sup>15</sup> People are the most exceptional cooperatives among living beings.<sup>16</sup> They often help even complete

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<sup>11</sup> "Darwin's evolution refers to a mechanism of natural selection that ensures survival and reproduction. We all know that people are not angels and that they primarily think of themselves and their interests. We also know that there is cooperation between people and that our civilization is based on it, but, also in situations in which every individual is encouraged to be selfish, how to develop co-operation"? AXELORD, Robert, *The Evolution of Cooperation*, Revised Edition, Basic Books, Cambridge MA, 2006, pg. 3.

<sup>12</sup> See, OTIS, Louise, op. cit., pg. 83.

<sup>13</sup> "Why should the villagers have cared about a group of strangers"? When asked this question decades later, Roger Darcissac, a local pastor explained, "It all happened very simply. We didn't ask ourselves why. Because it's the human thing to do... something like that. That's all I can tell you". An elderly peasant echoed his explanation: "Because we were human, that's all". AXELORD, Robert, op. cit., pg. 25.

<sup>14</sup> "Our ability to cooperate is one of the main reasons why the human species can survive in every ecosystem on Earth "... NOVAK, Martin A., HIGHFIELD, Roger, op. cit., Preface xvi.

<sup>15</sup> RICHBELL, David, *Mediation of Construction Disputes*, Blackwell Publishing, Oxford, 2008, pg. 114.

<sup>16</sup> NOVAK, Martin A., *ibid.*

strangers.<sup>17</sup> Cooperation among people can be a rarity or of a more permanent nature. One-time co-operation takes place daily and sporadically, and most often is not conditioned by reciprocity by the behavior of the others. One side is satisfied with the fact that they have been helping, and the other has received their help. On the other hand, reciprocity is an inevitable and an integral part of human life. As a rule, it is not possible to expect more permanent co-operation without reciprocity, more precisely without hoping that both sides make a gain in their ongoing relationship with each other, irrespective of their nature. In other words, the very offer of co-operation from one side to another, without acceptance and expected reciprocity, has no significant prospect of success. The expected reciprocity represents a sufficient basis for the beginning and continuation of a relationship, and therefore carries a rather powerful self-regulating mechanism for most interpersonal relationships. The extension of reciprocal behavior solidifies the continuation of the relationship.<sup>18</sup>

For simplicity of understanding, the treatment described is most easily compared to the usual activities of business entities in the market.<sup>19</sup> Their relationships are based on mutual expectations and fair treatment within which both strive to achieve desired goals. Regardless of whether the parties have regulated their relationship legally, by contract or otherwise, they may not be in line with the law, but exclusively with business principles for the duration of that relationship. Their established relationship does not develop due to legal or legal threats related to its execution, but to meet mutual expectations. Such self-regulating rules in human relationships function if the reciprocity works. Reciprocity is the most popular reason for the establishment and duration of most interpersonal relationships. A relationship, cooperation, reciprocity, and

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<sup>17</sup> AXELORD, Robert, pg. 4.

<sup>18</sup> "The key factor is that the participants know that they will have to deal with each other again and again. Therefore every attempt to exploit such a relationship cannot succeed". AXELORD, Robert, *ibid.*, 178 AXELORD, Robert, *ibid.*, pg. 173, 174 and 178.

<sup>19</sup> Ordinary business transactions are also based upon the idea that a continuing relationship allows cooperation to develop without the assistance of a central authority. Even though the courts provide a central authority for the resolution of business disputes, thus authority is usually not invoked. A common business attitude is expressed by a purchasing agent who said that "if something comes up, you get the other man on the telephone and deal with the problem. You don't need to read legalistic contract clauses at each other if you ever want to do business again. (...) The fairness of the transaction is guaranteed not by the threat of a legal suit, but rather by the anticipation of mutually rewarding transactions in the future". AXELORD, Robert, *ibid.*, pg. 178-179.



trust do not last forever. They grow and grow, fall and reestablish. In this way, examples of exceptional co-operation among people are continually changing with their conflicts of different nature and intensity.<sup>20</sup> Humans resolve conflicts starting from the time of establishment of social groups and the time before lawyers or courts.<sup>21</sup> In the same way today, the most significant number of individuals and business entities solve their conflicts - without laws, lawyers or courts.<sup>22</sup> The most significant conflicts in human history have just ended in this way.

Along with the described elements as a part of human nature, numerous authors express their beliefs about the existence of robust internal human capacity related to their ability to resolve conflicts between themselves.<sup>23</sup> That human ability has been endorsed countless times throughout history.<sup>24</sup> It is believed that people can still have this ability and apply it daily.<sup>25</sup> The technological advances, endlessly multiplied numbers of people and their complexity, including the strong support of the law, lawyers and courts have deprived many people of their capacity and ability to resolve their disputes. Through time, people became more and more reliant on law, and lawyers, to resolve their disputes. The consequence of such treatment, is the legal system, with which very few are satisfied.

People should again find their own ability to cooperate, which appears to be lost. It is necessary that people again, regarding their problems and conflicts, reflect on, and cooperate respectfully without imposing their views on each other.<sup>26</sup> People need and want to apply their own life or

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<sup>20</sup> NOVAK, Martin A., HIGHFIELD, Roger, Preface xix.

<sup>21</sup> BOWLING, Daniel and HOFFMAN, David, pg. 188.

<sup>22</sup> "Termination of cooperation often results in expensive court battles". AXELORD, Robert, pg. 179.

<sup>23</sup> BOWLING, Daniel and HOFFMAN, David, *Bringing Peace Into the Room, How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution*, Jossey-Bass, San Francisco, 2003, pg. 5.

<sup>24</sup> POHOJNEN, Soile, Peace Versus Justice, electronic copy at <http://ssrn.com/abstract=1557890>, pg. 14.

<sup>25</sup> "The only thing that can break the human race is cooperation". Bertrand Russell

<sup>26</sup> "The primary idea is not to make others understand us, but to try and to improve our understanding of ourselves and one another. (...) a central starting point is the existence of difference and respect for this difference. Participants are not expected or assumed to have the same pre-understandings. No one is expected to become convinced of another's viewpoint and consequently change their opinion. The goal is not a compromise but a flow that carries the participants to unknown paths and places". POHOJNEN, Soile, op. cit., pg. 13.

business rules, as is customary, following their real needs.<sup>27</sup> The rules and logic of legal professionals and legal institutions designed to resolve disputes, cannot, as a rule, satisfy the human needs of the parties involved.<sup>28</sup>

Although it is commonly argued that it is difficult for individuals to resolve disputes, it is also argued that it is comforting that most people still have the internal capacity to deal with them and co-operate. The question arises, at the point of considering co-operating, is he willing to co-operate or to be selfish?<sup>29</sup> Biologists, neurobiologists, and sociologists teach us that every man has the choice of ways to deal with his conflicts.<sup>30</sup> The primary way of dealing with them, deeply rooted in people, is based on cooperation.<sup>31</sup> Resolving conflicts by opposing or clashing, even if civilized throughout the litigation, always remains as the last option.<sup>32</sup>

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<sup>27</sup> “The bushes still living in the Kalahari Desert live under the same conditions as a few hundred years ago, have their own internal, highly effective system of solving more serious conflicts (‘kgotla’) involving all members of the community as a ‘third party’. Their livelihood is: You never cause the problem you will have to deal with, try to live harmoniously”. (...) “Every day in these horizontal societies becomes a prevention exercise”. URY, William, *The Third Side*, op. cit., pg. 114; Regardless of the fact that this natural ability of small human communities seems to have been completely lost in living conditions in modern societies, it can be reliably argued that this ability to resolve disputes is still present in human beings as individuals and social communities. That potential and ability need only be awakened or released for its own disputes. Institutional dispute resolution is always available as the last option (author's note).

<sup>28</sup> POHOJNEN, Soile, pg. 18.

<sup>29</sup> AXELORD, Robert, op. cit., Preface, vii.

<sup>30</sup> URY, William, *The Third Side, Why We Fight, and How We Can Stop*, Including 10 practical roles we can play at home, at work, and in the world, Penguin Books, New York, 2000, pg. 42.

<sup>31</sup> “Conversely, the theory of positive law has a completely negative view of human nature. Collaboration is not considered a natural state. People are considered to be aggressive, uncontrollable and willing to take every opportunity to create their advantage over others. Even so, Thomas Hobbes, a supporter of this theory that prevails in the legal world today, claimed life in its natural state is characterized by loneliness, poverty, malice, brutality, and shortness of mind. A natural state exists where there is no civilization or society. It is a state of brutal competition and a state of war. According to Hobbes, the only way out of such a situation is right”. See, NOLL, Douglas, *Peace Making, Practicing at the Intersection of Law and Human Conflict*, Cascadia, Publishing House Telford, Pennsylvania co-published with Herald Press, Scottsdale, Pennsylvania, 2003, pg. 266.

<sup>32</sup> “The Court, in other words, replaces the war in a much more gentle form of combat”. URY, William, op. cit., pg. 151.

One of the most effective ways of supporting this rather robust but somewhat hidden co-operative aspect of human nature is for the parties, whose attention and ability for co-operation, have weakened, is to turn to lawyers with a reputation for cooperation to help them resolve conflicts.<sup>33</sup> Through various forms of co-operation or concessions, parties who are already in a conflict, can significantly assist in solving it, even if through litigation. Any form of co-operation that at least partially replaces confrontation,<sup>34</sup> whether expressed during outside litigation can significantly contribute to the well-being of the disputants and to the benefit of the legal system and the society. John Rawls treats society as a “*just system of social cooperation*”.<sup>35</sup>

Derek Bok, a former Harvard University Dean, expressed that the legal profession was about to lose a great opportunity. To be the center of the most creative social experiment of modern times it must contribute to involving the parties in a new movement to resolve disputes in which confrontation increasingly is replaced by cooperation, as a primary approach.<sup>36</sup>

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<sup>33</sup> “The notion of cooperation in a litigation context reinforces our views on positive health effects. If the positive role of adversaries can be expanded, benefits would occur for society and the legal system”. SELIGMAN, Martin E. P., VERKUIL, Paul R. and KANG, Terry H., *Why Lawyers are Unhappy*, Deakin Law Review 49, 2005, op. cit., pg. 12. <http://www.austlii.edu.au/au/journals/DeakinLRev/2005/4.html>

<sup>34</sup> “The process of becoming mediator is not easy. The job of teaching peace has always fallen on those who are willing to make sacrifices and who are willing to swim upstream. In some quarters, you will not be welcome. We have inherited an ancient legal decision-making system that is deeply entrenched and based upon an adversarial model. In addition, you will find that humanity has a tendency toward violence and confrontation. Your job is to change that tendency and offer new thinking, cooperation, and peace”. ERICKSON, Stephen K., MCKNIGHT, Marilyn S., op. cit., pg. 22.

<sup>35</sup> SAMMAR, Vincent, *The Practitioner's Guide to Mediation, A Client-Centered Approach*, John Wiley & Sons, Inc., New York, 2001, pg. 75.

<sup>36</sup> RISKIN, Leonard L., *Mediation in the Law School*, cit. (note 725.), str. 260; “Cancer is a fundamental mistake in the collaboration of body cells”. NOVAK, Martin A., HIGHFIELD, Roger, op. cit., pg. 1; “According to Thich Nhat Hanh, “If we are peaceful, everyone in our family, our whole society will benefit from our peace””. BOWLING, Daniel, HOFFMAN, David, pg. 39.

## Mediation - A Complementary Part of the Dispute Resolution System

Negative public perceptions of the courts and legal professions in all modern societies have prompted activities aimed at finding the best possible solutions to the misunderstandings between the law and citizens.<sup>37</sup> The multi-year coexistence of various ADR forms of dispute resolution and court litigation leads to the conclusion that there are substantial prospects for harmony between the informal and formal 'two-track justice system.'<sup>38</sup> A positive impact on their development, either individually or together is an additional benefits are achieved through their mutual interaction. It seems that this all points to the possibility of a symbiosis of both systems in a way that none of them diminishes the importance, value or reach of the other.<sup>39</sup> The goal of this mutual coexistence should be to maximize the benefits offered by these two controversial worlds of dispute resolution.<sup>40</sup> These benefits can be equally distributed to legal and judicial systems as well as the whole of society.

Mediation (negotiating with the help of a trusted third party) and litigation can no longer exist in a single society as separate dispute resolution systems.<sup>41</sup> No system can last forever without it listening to the needs of its users and understanding the demands that accompany new times and social relationships.

Mediation and other forms of ADR have no ambition to replace the traditional dispute resolution system but merely supplement it as a new option available to all parties in a dispute.<sup>42</sup> It seems that mediation does not want to play just a supporting role or, as it has been commonly said, to have an alternative role. Mediation cannot in any way diminish the

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<sup>37</sup> ERICKSON, Stephen K., MCKNIGHT, Marilyn S., pg. 219.

<sup>38</sup> AUERBACH, Jerold S., *Justice Without Law? Resolving Disputes Without Lawyers*, Oxford University Press, Oxford, New York, Toronto, Melbourne, 1983., pg. 144.

<sup>39</sup> OTIS, Louise, REITER, Eric H., *Mediation by Judges: A New Phenomenon in the Transformation of Justice*, Pepperdine Dispute Resolution Law Journal, Vol. 6:3, 2006., pg. 366.

<sup>40</sup> POHOJNEN, Soile, pg. 19; OTIS, Louise and REITER, Eric H., *ibid*.

<sup>41</sup> MENKEL-MEADOW, Carrie, Pursuing Settlement in an Adversary Culture: A Tale of Innovation coopted or "The Law of ADR": *Florida State University Law Review*, summer, 1991, pg. 2.

<sup>42</sup> OTIS, Louise, REITER, Eric H., *op. cit.*, str. 357. i 378; LANDSMAN, Stephan, *2005 Stanford Law Review Symposium: The Civil Trial: Adaptation and Alternatives: Symposium Article: ADR and the Cost of Compulsion*, Stanford Law Review, April, 2005, pg. 15.

importance, the legitimacy or the authority of the courts and court proceedings. As today's modern architecture is becoming more and more successful, examples of the interpolation of new architectural solutions in old buildings achieve modernization in terms of appearance, quality, durability and usability. The use of new forms within the old dispute resolution structures, together, form a new, more valuable and a more efficient whole.<sup>43</sup> In this way, the ADR movement, aimed at the realization of informal or private justice beyond the traditional formal dispute resolution system, has turned into a move to reform the entire legal and judicial system as well as the legal profession.<sup>44</sup> That is why mediation and other forms of ADR, assuming the success of this "reformist" role, seem to require a change in approach within the dispute resolution system. Litigation should no longer be the norm and mediation just an alternative or exception.<sup>45</sup>

Changes in the judiciary confirm that mediation has already taken its place in the dispute resolution system and continues to develop until it becomes a full and equal part.<sup>46</sup> Alan Uzelac believes that public and private justices are not mutually opposed. They are neither a competition nor an alternative to each other. There is no alternative to either public or private law. They need to act together as partners in achieving the common goal - meeting the basic needs of the users of dispute resolution systems.<sup>47</sup> With maintaining the integrity of both ways of resolving disputes, and reaching a higher level of mutual respect, it is possible to achieve and permanently secure pluralism within a single dispute resolution system.<sup>48</sup> Potential further delays in the adoption of desirable

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<sup>43</sup> MENKEL-MEADOW, Carrie, *ibid.* pg. 2.

<sup>44</sup> AUERBACH, Jerold S., *Justice Without Law?* Op. cit., pg. 15.

<sup>45</sup> SEELS, Benjamin, *The Soul of the Law*, Vega, Element Books, London, 2002, pg. 85; OTIS, Louise, REITER, Eric H., Op. cit., pg. 401.

<sup>46</sup> "Moreover, we contravene the spirit of ADR if we insist on 'winning' – if we insist on establishing that ADR is necessarily better than traditional litigation. ADR is not about being better than; it is about being an addition to it. ADR is not about subtracting; it is about adding". BRAZIL, Wayne D., *Court ADR 25 Years After Pound: Have We Found a Better Way?* Ohio State Journal on Dispute Resolution, 2002, pg. 2.

<sup>47</sup> UZELAC, Alan, *Public and Private Justice*, cit. (note 216), pg. 22. See, SPENCER, David, *Mandatory Mediation and Neutral Evaluation: Reality in New South Wales*, s.l., s.a., <http://ssrn.com/abstract1262094>, pg. 10-11.

<sup>48</sup> "...it appears that clash between two justices is somehow fabricated. The question arises: who did it?" (...) "the coexistence of two justices (...) Paramount significance belongs to the attempt of providing the consumers of the justice system with as many remedies of conflict as is possible. ADR methodologies

changes in the traditional dispute resolution system would seem only to strengthen the further development of mediation and other ADR forms. These forms have already demonstrated their ability and the capacity for independent development and maintenance, irrespective of the traditional dispute resolution system.<sup>49</sup>

## **Mediation - The Primary Way to Resolve Disputes**

With a sufficient degree of reliability, it can be argued that mediation has, to a lesser or greater extent, become part of the legal systems of most modern states. Mediation, however, has only partially evolved in its development. A further significant step is for mediation to become not only an integral and complementary part of the dispute resolution system but also the primary way to resolve disputes within that system.

There are authors among (Jay Folberg and Alison Taylor, for example), who believe that alternatives imply a deviation from the norm. Society can no longer afford to pursue lawsuits at courts as the norm. Mediation is based on the willingness of the parties and their consent to the desired solution of the dispute, without any imposition of authority, as is the case in lawsuits. Mediation promotes self-determination of the parties and their cooperation in solving the dispute instead of the courts imposing their decision. That is why litigation should become the last resort for all parties, the last solution in their dispute, after having unsuccessfully exploited all other consensual ways of solving it. Only then is it justified for the parties in a dispute to use the courts.<sup>50</sup>

Alan Uzelac is similarly approaching this question. He believes that modern legal systems, looking for methods that will enable states to fulfill their fundamental task and provide adequate and timely protection to citizens and legal entities, recognize the chances of out-of-court dispute resolution. Already in the term '*alternative dispute resolution*' there is an idea that there are methods that coexist with court proceedings because access to court should always be guaranteed. Court resolution of disputes, however, should be the last resort, and only used when there are no other quicker, simpler, more convenient or cheaper methods available. That is why European, and many other countries in the world today support and

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contribute to that final result, and due to that they are valuable as much as public justice". KNEŽEVIĆ, Gašo, op. cit., str. 79-80; See, KOVACH, Kimberlee K., LOVE, Lela P., *Mapping Mediation: The Risks of Riskin's Grid*, *Harvard Negotiation Law Review*, Vol. 3:71, Spring 1998, pg. 89.

<sup>49</sup> Benjamin, op. cit., pg. 86.

<sup>50</sup> FOLBERG, Jay, TAYLOR, Alison, op. cit., pg. 335.

promote mediation. It cannot entirely replace a trial. It can, however, make it easier to achievement three related goals: faster and better legal protection for citizens; relief of the state judiciary from the significant burden of many cases, and create a climate in which citizens and legal entities will actively and cooperatively seek the court solution of their dispute, only when it is essential.<sup>51</sup>

## **Introducing Democracy into the Law and the Legal System**

### **Introducing Democracy into Disputing**

The blindfold on the Goddess of Justice should no longer be just a fashion accessory. The task of every modern society and all its citizens is to provide an appropriate mechanism for the achievement of the highest degree of justice.<sup>52</sup> However, this ideal in most modern societies has not been attained. It turns out that the traditional system of dispute resolution, its institutions and supporting legal professions are not able to ensure equality and equal justice for all in court litigation procedures. Concerning the social reality that is reflected in unequal material wealth, power and opportunity, there is no formal legal system, regardless of its level of objectivity and formality that can ensure such equality and justice.<sup>53</sup>

Every attempt to solve the problems of the judicial system by increasing their legalization in the form of more substantive and procedural law increased the number of lawyers, judges, and courts. This is counterproductive and operates exclusively for the unilateral interests of the legal system and the legal profession.<sup>54</sup> It seems like the legal professionals handle the problems of the judicial system like extinguishing

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<sup>51</sup> UZELAC, Alan, *Mirenje kao alternativa suđenju*, Zbornik Hrvatske udruge za mirenje, Hrvatska udruga za mirenje, Zagreb, 2011, pg. 11-12.

<sup>52</sup> See, AUERBACH, Jerold S., *Resolving Disputes Without Lawyers*, Oxford University Press, Oxford, New York, Toronto, Melbourne, 1983, pg. 143.

<sup>53</sup> “Many people submit to the law simply because they believe that the institutions administering it are just. But what if a law itself is unjust”? SAMMAR, Vincent, *Justifying Judgment, Practicing Law and Philosophy*, University Press of Kansas, Pittsburg, 1998, the beginning of the text at the inner cover of the book; “have pointed out that the political responsibility of the courts in a democratic society is to do justice”. SAMMAR, Vincent, *ibid.* pg. 61.

<sup>54</sup> See, AUERBACH, Jerold S., *ibid.*, pg. 143-144.

a fire with gasoline.<sup>55</sup> When a system, in this case the legal system loses the function to serve, the only possible result is for it to begin to serve itself and to function as an airplane flown on autopilot.<sup>56</sup>

These legal system problems, in most countries, created mediation and the entire ADR movement. The goal is not to create a new system, but to improve the existing system of dispute resolution in a way that can better address their real needs. The initial rigid opposition by legal institutions and legal professionals to such initiatives was in many countries soon replaced by a selfish form of support, again through the prism of benefits to the judicial system and its potential relief from the significant number of cases. Users of the legal system, their needs and interests, are again being pushed into the background.<sup>57</sup>

How to resolve conflicts in every community largely determines the requirements for its development, but also the satisfaction of its members. It seems that the time has come when the state and its legal system, for the sake of general well-being, should ensure citizens and business subjects in disputes to have far greater autonomy in matters that are only important to them.<sup>58</sup> Most importantly, the time has come to provide them with the

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<sup>55</sup> “The world is changing ever more rapidly, and the reality in which legal concepts were created no longer corresponds to today’s reality”. POHOJNEN, Soile, *Peace Versus Justice*, electronic copy available at <http://ssrn.com/abstract=1557890>, pg. 18.

<sup>56</sup> FRITZ, Robert, *The Path of Least Resistance*, Fawcett Books, New York, 1989, pg. 263.

<sup>57</sup> The development strategy of the judiciary, fundamental values and strategic directions of development of the judiciary in the Republic of Croatia for the period 2013-2018, p. 1st to 23rd among the strategic development guidelines of the judiciary in this strategy is indicated and Guidelines 2.16., which only superficially mentions mediation through the identification of certain shortcomings in the previous implementation of the mediation and expressed need for their removal, while the need for systematic promotion of mediation and alternative dispute resolution methods exclusively related to the reduction of inflow of cases in the courts. About the users of judicial services and their needs and interests, again a word (AN). See also, Panel of the Law Faculty of the University of Zagreb and the Club of Lawyers of Zagreb, Development Strategy of Justice, Authorized exposure keynote speakers Mr. Orsat Miljenić, Minister of Justice of the Republic of Croatia and prof. Ph.D., Josip Kregar, the president of the Judiciary Committee of the Croatian Parliament, 174 forums, Bulletin No. 94, Zagreb, 14 February 2013.

<sup>58</sup> “Laws and institutions must go hand in hand with the development of human consciousness. (...) Institutions must improve together with the times”. Thomas Jefferson in a letter from 1816”; All should recognize the greatest freedom to regulate their relations with others “... PADJEN, John, *Maturing as a value: access*



opportunity to self-determine their disputes before the courts do. In each community, most citizens are understandably excluded from the possibility of creating the law and legal institutions. However, what is unacceptable for them is their substantial exclusion from a real influence on the resolution of their cases in court litigations. This relationship between the legal system and the legal profession to citizens in legal disputes is the principal basis for their dissatisfaction and distrust.

For the functioning of any society, it is of utmost importance that the citizens trust its institutions, especially the legal ones.<sup>59</sup> Neither the legal profession nor the government can wait any longer to have this trust between the citizens and the legal system restored. To regain this trust, the government and legal profession must take an active role in its restoration and demonstrate that they care about its users and their problems.<sup>60</sup> The easiest way to restore public confidence in the legal institutions and the legal profession is the introduction of democracy into dispute resolution.<sup>61</sup> This will help the parties in a dispute and enable them to participate in

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to research, *values of modern society*, Croatia in XXI. Century, CASA, Zagreb, 2011, pg. 74.

<sup>59</sup> “Trust is an essential feature in the public's perception of justice and fairness in the legal system. It is implicit in clients' subjective assessment of the experience. When people encounter the legal system voluntarily or not, the meeting is marked by process issues such as whether they felt respected, whether they experienced the legal professionals as fair-minded and nonjudgmental prior to the disclosure of facts, and whether they perceived that they had the opportunity to be heard”. BROOKS, Susan L., MADDEN, Robert G., *Relationship-Centered Lawyering: Social Science Theory For Transforming Legal Practice*, Drexel University Earle Mack School Series, 2009, pg. 24.

<sup>60</sup> “The government wants to ensure citizens' participatory partnership' in decision-making”. Joško Klisović, Assistant Minister of Foreign Affairs, TV shows Referendum on EU HRT 1, Sunday 22 January 2012, starting at 20:05 hours.

<sup>61</sup> “Deliberative democracy introduces a different kind of citizen's voice into public affairs than that associated with a raw public opinion, simple voting, narrow advocacy, or protest from the outside. It promises to cultivate a responsible citizen voice capable of appreciating complexity, recognizing the legitimate interests of other groups (including traditional adversaries), generating a sense of common ownership and action, and appreciating the need for difficult trade-offs. And one of the central arguments of deliberative democracy theory is that the process of deliberation is a key source of legitimacy, and hence an important resource for responding to our crisis of governance”. SIRIANI, Carmen and FRIEDLAND, Lewis, *Deliberative Democracy, Tools, Civic Dictionary*, <http://www.cpn.org/tools/dictionary/deliberate.html>, February 2, 2012, pg. 2.

civil law matters, which are important to them.<sup>62</sup> In this way, the already extensive autonomy of the parties in filing the lawsuits would be completed by other autonomous and democratic elements which could give them a wider choice on how to resolve their disputes. On the other hand, these elements would give them a much higher possibility to their direct involvement and control over the proceedings and the solution to their disputes.<sup>63</sup> Decision-making or co-decision making on matters essential to human life, liberty and their destiny, represent one of the fundamentals of life for every individual and in general for any democratic society.<sup>64</sup> There is a question of what constitutes state or public interest to have absolute control over every initiative aimed at correcting temporarily or permanently disturbed relationships of citizens or business subjects in a dispute.

Also, the question can be asked whether it is possible in the legal system to apply solutions that could restore balance to the public interest

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<sup>62</sup> “The democratic character of the methods of a dispute resolution system can be estimated through the fundamental values of democracy. If these values are promoted by the method or process of resolving disputes, it seems reasonable to conclude that the method or process can improve democratic governance and to be more legitimate by the democratic perspective. Political values: these are values that are perhaps closest to democratic values, and include participation, accountability, transparency and rationality. In the context of dispute settlement, participation refers to the degree to which the process provides a party to a dispute the opportunity to actually participate in decision-making. Similarly, the responsibility of the extent to which the process, or neutral as a substitute for the process, may be responsible. As the process of dispute resolution, which requires the consent of all parties before a dispute can be resolved, mediation can generally be viewed as an inherently more democratic process, but crucial process. ‘Co-democracy’ would mean the practice of democracy through consensus building and cooperation, instead of devastating battles”. URY, William, *The Third Side, Why We Fight, How We Can Stop*, Penguin Books, New York, 2000, pg. 212.

<sup>63</sup> “The point of democracy is not determined by a referendum, but through dialogue, negotiation, mutual respect and understanding and developing a sense of wholeness interest”. Vranken, J. B. M., Six Constraints and preconceptions of Mediation, Does mediation change the common interpretative framework (paradigm) and private law? Tilburg Law School, S.A., [Http://ssrn.com/abstract=905528](http://ssrn.com/abstract=905528), pg.13; “YES means to manage and NOT be managed. The decision is yours”. Vresnik, Viktor, Tjedni Komentar, Nedjeljni Jutarnji, 22 January 2012, pg. 6.

<sup>64</sup> “...Civil humanists see participation as a necessary privilege of a good life”. SAMMAR, Vincent, *Justifying Judgment, Practicing Law and Philosophy*, University Press of Kansas, Pittsburg, 1998, pg. 50

and the interests, needs and freedoms of its users.<sup>65</sup> It seems that there are already solutions available in which it is possible in a traditional dispute resolution system, and outside of it, to help the parties in a conflict to solve their problems and meet their interests and needs, and at the same time, does not jeopardize public interest and social needs.<sup>66</sup> These solutions are simple and do not require large-scale intervention in the existing legal system. This is more about changing the current legal point of view that should adopt the idea that there are alternative solutions for every problem other than the legal ones.

Liberal democracy is founded on the idea of citizen participation in a decision-making process. It is believed that there are no obstacles to allow democracy to a much higher degree and allow it in the legal area of social life. The law and its institutions are the basis of each social community and are involved in all social aspects. Therefore the law, legal institutions, and legal professions have a massive potential to act as social agents<sup>67</sup> with whose intervention, citizens will be provided with more active and direct involvement in dispute resolution procedures. This can be enabled by transforming the traditional system of dispute resolution and its amendment of non-formal ways of resolving disputes. In doing so, the systems of formal and informal justice should form a single unit.

In this way, citizens can realize the first crucial democratic right in the world of law - to choose among options for resolving disputes.<sup>68</sup> Freedom of choice is a powerful attribute of any democracy.<sup>69</sup> Studies have confirmed that the possibility of free choice, even in trivial matters, makes people happier and healthier. People find it difficult to experience a decline in the ability to choose because they believe that having more

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<sup>65</sup> BOWLING, Daniel, HOFFMAN, David, *Bringing Peace into the Room, How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution*, Jossey-Bass, San Francisco, 2003, pg. 94.

<sup>66</sup> BROOKS, Susan L., MADDEN, Robert G., *Relationship-Centered Lawyering: Social Science Theory For Transforming Legal Practice*, Drexel University Earle Mack School Series, 2009, pg. 3.

<sup>67</sup> HARRINGTON, Christine B., *Shadow Justice, The Ideology and Institutionalization of Alternatives to Court*, Greenwood Press, Westport, London, 1985, pg. 22.

<sup>68</sup> "What is freedom? Freedom is the right to choose: the right to create alternatives in a choice. Without the ability to choose, a man is not a human, but only an instrument, an item". Archibald MacLeish, Pulitzer Prize-winning American poet

<sup>69</sup> "A word 'choice' always has a positive connotation". IYENGAR, Sheena, *The Art of Choosing*, Little, Brown, London, 2010, pg. 179.

choices provides a greater feeling of control in their lives, and better coping with their problems.<sup>70</sup>

By introduction of parallel and complementary informal ways of a dispute resolution system or private justice system, citizens are allowed full and direct participation in their disputes and complete control over the dispute resolution processes and their outcome. In these procedures, among which mediation is in the lead,<sup>71</sup> the parties exercise their right for self-determination. They can present their side of the story and participate directly in the settlement of a dispute and therefore, experience it as fair. Such a solution accepted by the parties themselves is usually voluntarily executed. In this way, the parties have a direct, quick and cost-effective access to the justice they create.

The parties consider the customized solutions in mediation acceptable and therefore fair. This generally excludes further confrontation, renews their temporarily disturbed relationship, and prevents similar conflicts in the future. The realization of their interests and needs in the manner described also permits the realization of public interest at the highest possible level of harmony in society.

Any settlement reached in a dispute where the parties can freely manage their direct and active participation in the creation of its content is an expression of their freedom of choice. It is also their right to self-determination in matters that are important for them. The mediation procedure and possible settlement in this process allows them the realization of control over the decisions that affect their lives.<sup>72</sup> Is there a

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<sup>70</sup> IYENGAR, Sheena, *ibid.* pg. 226 and 232.

<sup>71</sup> “The values of the mediation movement are identical to the key values in a democratic society: freedom, equality, reconciliation, trust and peaceful conflict management. Conflicts are not necessarily lower in democracy, rather the opposite. One of the characteristics of democracy is that increasing numbers of people involved in decision-making. This increases the number of possible disagreements. There are more and faster changes in technology and society, the result is more decisions, more disputes and more conflict. This increases the need for conflict resolution methods that are more efficient, fast and cheaper - and that, at the same time affirm the values of democracy. (...) But more important is the fact that the conflict in mediation revitalizes democratic values. These are people who are free and peacefully gathering together and respecting each trying to solve a common conflict. Conflict mediation contains a protest against occupation and elites who are trying to steal the conflict of nations. The mediator is not there to judge, but to allow decisions to the owners of the conflict”. HAREIDE, Dag, *Conflict Mediation - a Nordic Perspective*, manuscript, Helsinki Conference on Mediation and Conflict Management, 28 of May 2006.

<sup>72</sup> BOWLING, Daniel, HOFFMAN, David, *op. cit.*, pg. 189.

need to emphasize how this approach can improve the position of the parties in their dispute, their attitude, and mood towards the legal system and the society that empowers them?

### **Introducing Democracy into Trials**

The following possibility for the introduction of more democratic elements into the law and the legal system can increase the direct participation of the parties at court litigations. Numerous studies have confirmed that the parties, no matter the content of a court's ruling, are satisfied with the litigation, the court and the judge conducting the process in all cases where they can present their side of the story, regardless of whether it is legally relevant or not.<sup>73</sup> Parties' satisfaction is significantly increased in all cases in which they are treated with care, humanity, dignity and respect.<sup>74</sup> Parties who experience such treatment in litigation are much more willing to express respect and trust in the judicial system.<sup>75</sup> What is equally important, is to be more willing to voluntarily execute a court decision that has not been issued in their favor (without the need to impose it forcefully through a judicial enforcement procedure).

It is believed that the introduction of such democratic elements in the civil court procedures cannot damage the legitimacy and authority of the courts and judges. On the contrary, it can only strengthen it, because in this way the element of repression is reduced, and at the same time, the element of empowerment is activated. In the described way, the legal system can achieve more valuable goals: increase access to justice for the parties in a dispute; reduce time and costs required for litigation; enable and facilitate settlements in disputes in and out of the courts; relieve the courts from the heavy burden of an excessive volume of cases; allow the disputants to choose between more options of solving their disputes, and thereby, teach them that before addressing the litigation in court, there are

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<sup>73</sup> "One of the research showed that 94% of the parties in the mediation procedure very highly rated the possibility of presenting their side of the story, while the assessment of the existence of such a possibility in a civil action was reported by 54% of respondents". GROVER DUFFY, Karen, GROSCH, James W., OLCZAK, Paul W., *Community Mediation, A Handbook for Practitioners and Researchers*, The Guilford Press, New York, 1991, pg. 17.

<sup>74</sup> BRONSTEIN, John, *Some Thoughts About The Economics of Settlement*, Fordham Law Review, Vol. 78, 2009, pg. 1140.

<sup>75</sup> BROOKS, Susan L., MADDEN, Robert G., *Relationship-Centered Lawyering: Social Science Theory For Transforming Legal Practice*, Drexel University Earle Mack School Series, 2009, pg. 24.

other options available. Finally, increase users' satisfaction with public judicial system, as well as the legal profession.<sup>76</sup> It seems that this approach to the law and the legal system for its users has a chance to reconcile what is at first glance, conflicting - public perception of the legal system and legal professions, and the personal perception of legal professionals of themselves, as well as private and individual interests with the public interests. This is a real example of the evolution of a society in which its alienated legal system becomes embraced again.<sup>77</sup> Therefore, Roscoe Pound sees this process and the new role of the courts, judges and the legal system, as the socialization of rights.<sup>78</sup>

### **Privatization of Justice**

To increase the efficiency of the courts in modern states, different measures are being taken. Some refer to the relief of the courts with a certain number of cases and transferring the jurisdiction for resolving them onto other bodies. All cases, which are not necessarily for the courts, are being removed from their scope. In Croatia, this trend began with public notaries who took on many cases concerning inheritance and enforcement. The next step was supposed to be the establishment of a public enforcement service that would take over the primary work on enforcement cases, and in particular, the immediate implementation of enforcement. Although the process of the establishment of this service has been stopped, it is believed that it is only a matter of time until it will be re-introduced (at a more favorable political and social moment). In many countries, the registry of companies is transferred to the jurisdiction of state bodies. Such efforts exist in Croatia, too. All of these are useful unilateral measures primarily aimed at relieving the courts, but rarely meet the interests and needs of the users of their services. As a result, the parties in disputes must address other bodies for specific actions, instead of addressing the courts. Despite that, from the point of view of the users of the legal and judicial system and its services, not much has changed.

You could say that the realization of interests and needs of the parties in a dispute reaches its full expression only when a consensual way of

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<sup>76</sup> SPAIN, Larry, PARANICA, Kristina, *Considerations for Mediation and Alternative Dispute Resolution for North Dakota*, North Dakota Law Review, 2001, pg. 3.

<sup>77</sup> SPAIN, Larry, PARANICA, Kristina, *ibid.*, page. 3; OTIS, Louise, *Judicial Mediation in Canada: When Judges Act as Mediators for the Benefit of Citizens and Lawyers*, s.l., s.a., pg. 6.

<sup>78</sup> HARRINGTON, Christine B., *op. cit.*, pg. 20.