

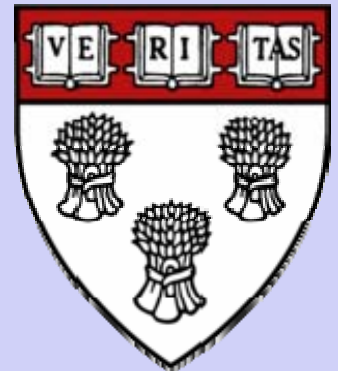
# Dispute System Design: An Introduction

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# What is Dispute System Design (DSD)?

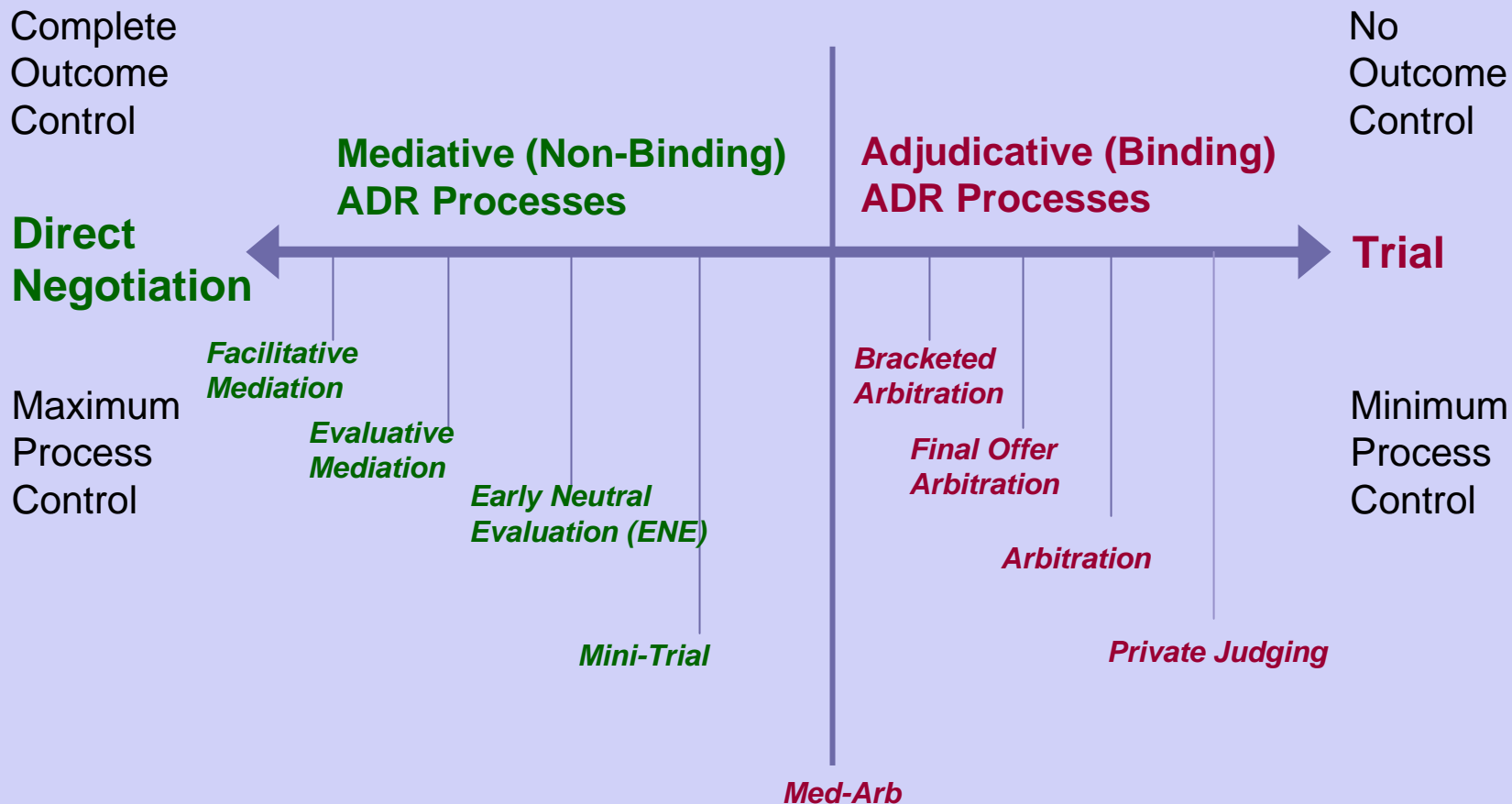
- ▶ **System:** “that which is not chaos”<sup>1</sup>; a *coordinated* set of processes or mechanisms that interact with each other to prevent, manage, and/or resolve disputes.
- ▶ **Design:** a *deliberate* and *intentional* harnessing of resources, processes, and capabilities to achieve a set of *specified objectives*.

<sup>1</sup>Kenneth Boulding, *The World as a Total System* (1985)

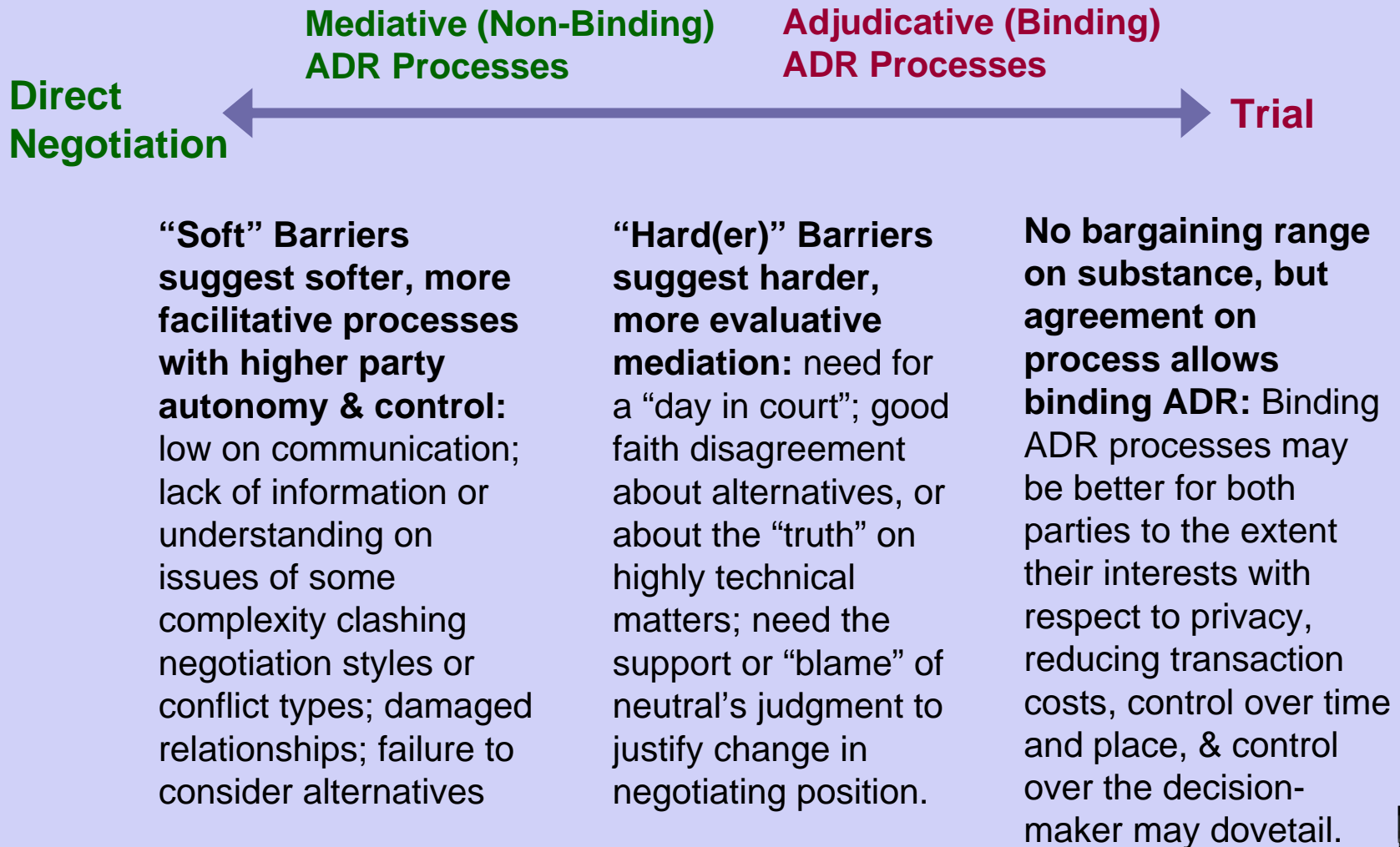


# Dispute Resolution Process Spectrum

## *U.S. Legal Context*



# Fitting the Forum to the Fuss...



# Dispute System Design Contexts

*Beyond the U.S. Legal Context...*

## Organizational

**International institutions**  
**Nation-States**  
**Companies**  
**Universities**  
**Government Agencies**  
**NGOs**  
**Non-profits**

## “Transactional”

**Mass Torts**  
**Class Actions**  
**Complex disputes**  
**Natural disasters**  
**Terrorism**  
**Repatriation**  
**Others?**

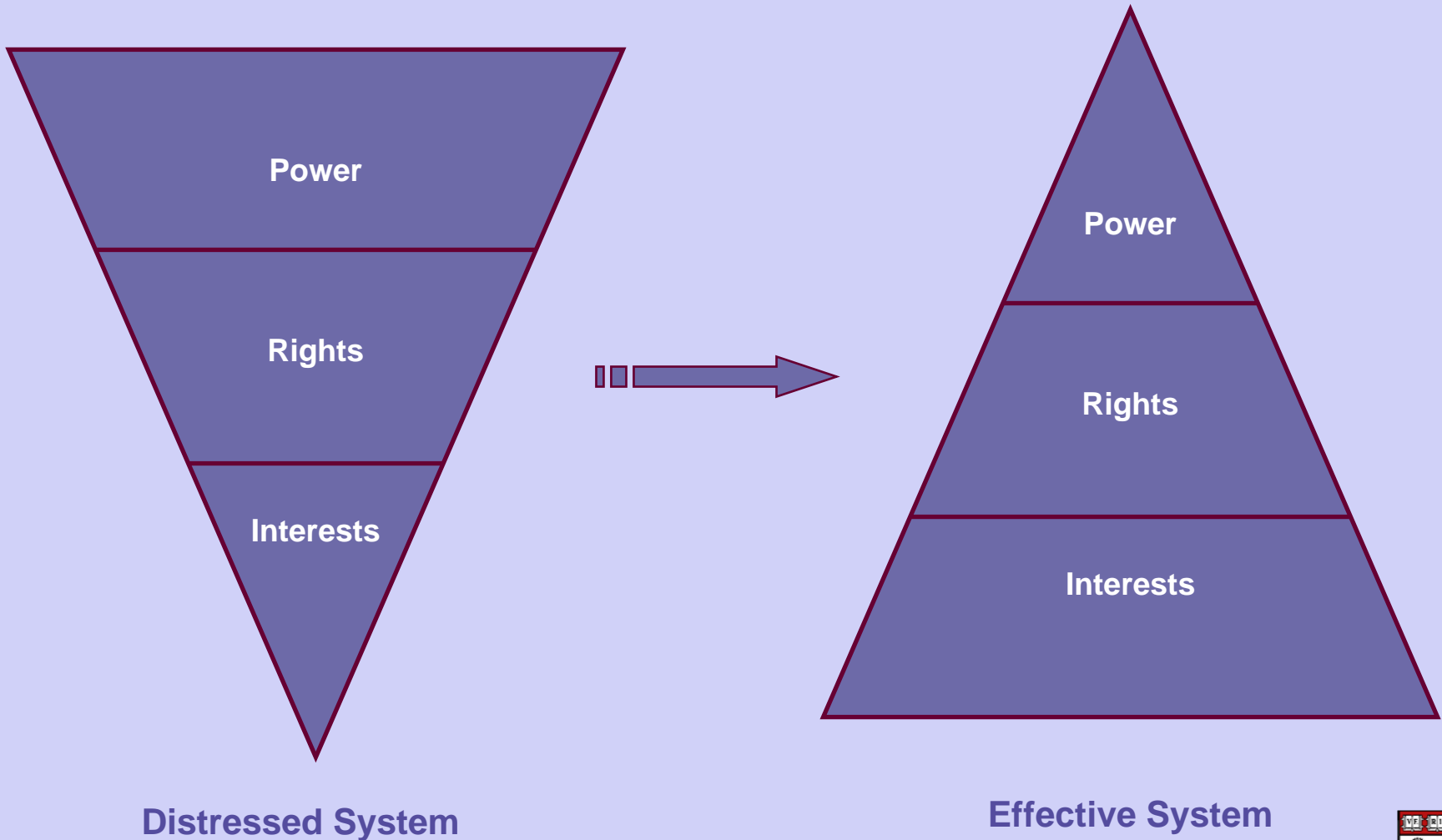


# Approaches to Resolving Disputes

- ▶ ***Reconciling interests:*** trying to meet the needs, concerns, desires, and fears – things that one cares about or wants.
- ▶ ***Adjudicating rights:*** looking to some independent standard with perceived legitimacy to vindicate who is “right” or “correct”
- ▶ ***Use power:*** using one’s leverage to force or coerce someone to do something



# Moving from a Distressed to an Effective Dispute Resolution System



# Steps for designing a system...

- ▶ (1) Conduct a *conflict or stakeholder assessment*.
- ▶ (2) Ascertain system *objectives* and establish *priorities* among them.
- ▶ (3) Develop the new system, working in concert with relevant stakeholders.
- ▶ (4) Implement the system, building in sufficient education and training along the way.
- ▶ (5) Evaluate the system and modify in accord with changing needs and objectives of the organizational/institutional stakeholders.



# Stakeholder Assessment

## ► Goals:

- To identify all stakeholders
- To understand stakeholder interests
- To map relationships and connections between the stakeholders
- To map the nature of disputes in the organization/institution:
  - ◆ What
  - ◆ How
  - ◆ Why



# *What are the disputes about?*

- ▶ **Questions to consider:**
  - **Who are the disputants?**
  - **What types of disputes?**
  - **How frequently do disputes occur?**
  - **What is causing the disputes?**



# *How are disputes handled?*

- ▶ Map out the procedures *available* and contrast with procedures *in-use*.
- ▶ Chart the sequence in which procedures get used.
- ▶ Assess the costs and impacts of the procedures.



# *Why are disputes handled this way?*

- ▶ **Lack of interest-based procedures?**
- ▶ **Lack of motivation to use them?**
- ▶ **Lack of skill?**
- ▶ **Lack of resources?**
- ▶ **Obstacles in the organization, relationships, or larger environment?**



# Principles for Design and Implementation

## ▶ Several emerging frameworks

- Ury, Brett, Goldberg (1993)
- Costantino and Sickles-Merchant (1996)
- Shariff (2003)



# Six Principles of Dispute Systems Design

- ▶ 1) Put the focus on interests.
- ▶ 2) Build in “loop-backs” to negotiation.
- ▶ 3) Provide low-cost rights and power backups.
- ▶ 4) Build in consultation before, feedback after.
- ▶ 5) Arrange procedures in a low-to-high-cost sequence.
- ▶ 6) Provide the necessary motivation, skills, and resources.



# Six Principles for Guiding Design Architecture

- ▶ 1) Develop guidelines for whether ADR is appropriate.
- ▶ 2) Tailor the ADR process to particular problem.
- ▶ 3) Build in preventive methods of ADR.
- ▶ 4) Make sure that disputants have the necessary knowledge and skill to choose and use ADR.
- ▶ 5) Create ADR systems that are simple to use and easy to access and that resolve disputes early, at the lowest organizational level, with the least bureaucracy.
- ▶ 6) Allow disputants to retain maximum control over choice of ADR method and selection of neutral whenever possible.



# Institutional Design Variables & Principles

<u><i>Variable</i></u>	<u><i>Principle</i></u>
<b>Membership</b>	<u><i>Principle 1:</i></u> Strive for <i>inclusiveness</i> .
<b>Scope</b>	<u><i>Principle 2:</i></u> Seek <i>broad coverage</i> of many related issues of interest to the institutional membership. <u><i>Principle 3:</i></u> Seek <i>depth of jurisdiction</i> on individual issue areas.
<b>Centralization</b>	<u><i>Principle 4:</i></u> Seek to build <i>central sources of information gathering and dissemination</i> . <u><i>Principle 5:</i></u> <i>Decentralize and proliferate discussions</i> among institutional members in multiple forums.
<b>Control</b>	<u><i>Principle 6:</i></u> Vest control over decisions in those <i>most interested and affected by them</i> .
<b>Flexibility</b>	<u><i>Principle 7:</i></u> Embed opportunities for <i>regular review</i> of principal design decisions in order to <i>integrate learning from experience</i> .

# Evaluating Dispute Resolution Systems

## ▶ Criteria for Evaluation

- Ury, Brett, & Goldberg, (1993)
- Costantino & Sickles-Merchant, (1996)
- Susskind, (1993)



# Criteria for evaluating a system...

- ▶ **(1) Transaction costs**
- ▶ **(2) Satisfaction with outcomes**
- ▶ **(3) Effect on relationship**
- ▶ **(4) Recurrence of disputes**



# Criteria for evaluating a system...

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## Criteria

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## Measurement

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Efficiency

Change in Cost

Change in Time

Effectiveness

Nature of Outcome

Durability of Resolution

Effect on Environment

Satisfaction

With Process

With Relationship

With Outcome



# Criteria for Evaluating a System

- ▶ **Outcomes produced by a system are:**
- ▶ **(1) *Fair*:** Perceived as legitimate in terms of
  - Substance
  - Process
- ▶ **(2) *Efficient*:**
  - With respect to process: low cost and speedy
  - With respect to substance: the most integrative and value-creating outcome
- ▶ **(3) *Stable*:** Outcomes “stick”; compliance is high; stakeholders do not expend resources looking for ‘ways out.’
- ▶ **(4) *Wise*:** At the time the outcome is reached, given what is known, the outcome is wise.

-- Susskind, 1993



# DSD Across Contexts and Continents

<b><u>Time &amp; Panelists</u></b>	<b><u>Context</u></b>
<b><u>Today, 3:45pm:</u> Bingham, Costantino, Martinez, Rowe, &amp; Sebenius</b>	<b>Dispute Systems Design in the Organizational and Institutional Setting</b>
<b><u>9:00am:</u> Blum, Brewster, Cohen, Miller, &amp; Schneider</b>	<b>Dispute Systems Design in an International/Global Setting</b>
<b><u>11:00am:</u> Alexander, Eiran, Feinberg, McGovern, &amp; Moffitt</b>	<b>Dispute Systems Design in Response to a Particular Claim, Crisis, or Emergency</b>
<b><u>1:45pm</u> Babbitt, Feldman, Mnookin, Najam, &amp; Ryan</b>	<b>Constitution Drafting and Post-Conflict Nation Building as Dispute Systems Design</b>
<b><u>3:45pm</u> Bloch, Bordone, Darwin, Menkel-Meadow, &amp; Smith</b>	<b>Dispute Systems Design: Emerging Questions for the Future</b>