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## **Proyecto ACCESO: The Use of Popular Culture to Build the Rule of Law in Latin America**

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## PROYECTO ACCESO: USING POPULAR CULTURE TO BUILD THE RULE OF LAW IN LATIN AMERICA

By James M. Cooper<sup>1</sup>

Since the 1990s, much of Latin America has transitioned from an inquisitorial model of criminal procedure to an adversarial model. This Herculean task, over a few short years, has been part of the overall process facilitating the return of democratic governance. In much of the region, countries like Bolivia, Colombia, Ecuador and Paraguay, have labored to achieve this transition, provide new transparent oral trials,

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improve judicial administration, modernize legal education and build the rule of law.<sup>2</sup> There has been, unfortunately, a checkered record of success.<sup>3</sup> Chile, however, stands out as the one country that has now fully completed this judicial reform, having implemented new oral trials in the metropolitan capital of Santiago in July 2005.

Much of the early work to prepare the long, thin Andean country for this transition occurred when General Augusto Pinochet left the presidency in 1990 following a national referendum in which he failed to win the people's support for a continued dictatorship.<sup>4</sup> A number of legal academicians, non-governmental organizations, and civil society groups began to push the new government to undertake criminal procedure reform.<sup>5</sup> This new government was a coalition of parties of the Center-Left Concertación, which still governs Chile under the Bachelet Administration.<sup>6</sup> As part of the inquisitorial system, the criminal law and its closed, secret trial procedures became a metaphor for the dictatorships.<sup>7</sup> Indeed, the criminal procedure

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<sup>2</sup> See Carlos Rodrigo de la Barra Cousino, *Adversarial vs. Inquisitorial Systems: The Rule of Law and Prospects for Criminal Procedure Reform in Chile*, 5 SW. J.L. & TRADE AM. 323 (1998). See generally James M. Cooper, *Access to Justice 1.1*, 30 CAL. W. INT'L L. J. 429 (2000).

<sup>3</sup> "In the majority view, most reforms are still on the wrong track and thus, if they get anywhere, will likely arrive at the wrong destination." LINN HAMMERGREN, *ENVISIONING REFORM: IMPROVING JUDICIAL PERFORMANCE IN LATIN AMERICA 2* (2007).

<sup>4</sup> David Osborne, *Augusto Pinochet 1915-2006: He Took his Crimes to the Grave*, INDEP. (London), Dec. 11, 2006, available at <http://www.independent.co.uk/news/world/americas/augusto-pinochet-19152006-he-took-his-crimes-to-the-grave-427949.html>.

<sup>5</sup> Pilar Domingo, *Judicialization of Politics or Politicization of the Judiciary? Recent Trends in Latin America*, 11 DEMOCRATIZATION 104, 105 (2004). "[P]romoting rule of law has become widely accepted throughout the region as a necessary aspiration for the consolidation of democracy, and is very much part of the remit of state reform and quest for 'good governance'." *Id.*

<sup>6</sup> David Rieff, *After the Caudillo*, N.Y. TIMES, Nov. 18, 2007, § 6 (Magazine), at 50.

<sup>7</sup> "The *código penal* provided government officials and police with the authority to combat unruly crowds, political protests, and, later, union organization and strikes without recourse to regimes of exception." BRIAN

has long been used to persecute, marginalize, terrorize.<sup>8</sup> This antiquated system is derived from the traditions of investigation brought over by the Spanish conquistadors/colonialists.<sup>9</sup> A truth-telling exercise, with leftovers from Papal Encyclicals and Canonist Law, the inquisitorial criminal process is conducted by a person - the investigating judge - who engages in finding out the truth about the crime and then also sentencing the defendant.

[E]vidence is gathered by judges or judge-like investigators, public officers who operate under a duty to seek the truth. Criminal investigation is understood to be a public rather than a private function. At trial, the presiding judge examines the witnesses. The lawyers for the prosecution and defense play subordinate roles, mostly recommending lines of inquiry, sometimes supplementing the court's questioning of witnesses.<sup>10</sup>

There are no oral hearings, no opportunities for the accused to confront his or her accusers, or to rebut testimony and impeach credibility of witnesses. Instead, the process is slow, held in secret and involves a court functionary taking depositions and reducing the testimony to writing for the investigating judge to read later. The defendant is an object of an investigation, rather than a subject with human and civil rights. It is no surprise that the inquisitorial system also

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LOVEMAN, THE CONSTITUTION OF TYRANNY: REGIMES OF EXCEPTION IN SPANISH AMERICA 347 (1993).

<sup>8</sup> There is a long tradition of using criminal procedure as political repression. The reforms "in the 1875 criminal code modeled on Spanish and Belgian legislation that defined crimes against the internal security of state. These would survive almost verbatim until late in the twentieth century." LOVEMAN, CONSTITUTION OF TYRANNY, *supra* note 7, at 347.

<sup>9</sup> "In the civil law world, the movement toward the extremes of the inquisitorial model was impelled by the revival of Roman law, the influence of canonic procedure, and, most important, the rise of statism." JOHN HENRY MERRYMAN, THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA 128 (2d ed. 1985).

<sup>10</sup> JOHN H. LANGBEIN, THE ORIGINS OF ADVERSARIAL CRIMINAL TRIAL 1 (2003).

permits on occasion, torture and other violations of human rights.

The inquisitorial system does not facilitate due process, transparency and participation.<sup>11</sup> To undertake the transition from the centuries-old inquisitorial system into a modern system in a matter of short years requires the efforts of all members of the legal sector – judges, judicial administrators, law enforcement officials, prosecutors, defenders, private lawyers, bar associations, judicial councils, and justice ministry officials. However, judicial reform must be led domestically through non-governmental organizations as actors within a civil society. Carol Graham and Moises Naim argue that,

[i]nstitutional reforms, however require a more elusive motivation of a broad national consensus about the direction of economic and social policies. The government must solicit the cooperation and participation of numerous agencies and organizations involved in the provision or regulation of public services. These groups tend to be politically powerful and highly organized and often have a strong stake in the status quo. Potential beneficiaries of reform - the users of public services – are numerous, but diffuse and poorly organized.<sup>12</sup>

In Chile, the impulses for judicial reform came as a reaction to the excesses of Pinochet dictatorship.<sup>13</sup> In a democracy with minor exceptions since independence, Chilean public

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<sup>11</sup> See MERRYMAN, *supra* note 9. See FRIEDRICH A. HAYEK, *LAW, LEGISLATION AND LIBERTY: RULES AND ORDER*, VOL. 1, 85 (1973) on the advantages of the case law system in using of socially accumulated knowledge and information and creating new law rather than designing it top down.

<sup>12</sup> Carol Graham & Moises Naim, *The Political Economy of Institutional Reform in Latin America*, in *BEYOND TRADE-OFFS: MARKET REFORM AND EQUITABLE GROWTH IN LATIN AMERICA* 322-23 (Nancy Birdsall et al. eds., 1998).

<sup>13</sup> “The Chilean military regime’s legal weapons of choice were old laws – the Law of State Security, passed in 1958, and the Arms Control Law, passed under Allende in 1972. The regime saw itself at least in part as defending a social and legal order that had been threatened by the Allende government.” ANTHONY W. PEREIRA, *POLITICAL (IN)JUSTICE: AUTHORITARIANISM AND THE RULE OF LAW IN BRAZIL, CHILE, AND ARGENTINA* 92 (2005).

institutions also required renewal after seventeen years of the military regime.<sup>14</sup> In the 1990s, following the return of democracy, criminal procedure reform became a major governmental policy. *Fundación Paz Ciudadana* and others led efforts, culminating in a legislative package for Chile's Congress concerning a reform in the country's criminal procedure.<sup>15</sup> New public institutions were created – the Public Ministry (or *Fiscalía Nacional*) would form the national prosecutors' office and the *Defensoría Penal Pública* would form the public defenders' office.<sup>16</sup> The judiciary, too, would have its role changed: from the investigating and sentencing function - which previously drove the prosecution, to the new paradigm, wherein the judge is an impartial trier of fact.

No longer would judges investigate. Instead, two new protagonists would be the litigating parties – the prosecutor and the defender. A burden of proof and a brand new procedure for evidence gathering, presentation, and weighing would be installed. Hundreds of years of leftovers from the Spanish Inquisition were replaced by a new system, whereby the accused would hear the charges leveled against him or her, have the opportunity to confront that evidence, and have a publicly funded advocate work on his or her defense.<sup>17</sup>

As with reform efforts in other countries, too often the human resources involved in a transition process are left to the

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<sup>14</sup> “Since the independence of the Anglo-American colonies from Britain and since the French Revolution political elites in Europe and the Americas sought legitimacy for governments by claiming adherence to constitutional principles.” See LOVEMAN, *supra* note 7, at 3.

<sup>15</sup> See generally Christian Riego, *The Chilean Criminal Procedure Reform*, 26 INT'L J. SOC. L. 437 (1998).

<sup>16</sup> Defensoría Penal Pública, <http://www.defensoriapenal.cl> (last visited Mar. 30, 2008).

<sup>17</sup> “A final point which emphasizes the relevance of the criminal justice system to the consolidation of democratic institutions relates to the need to replace a slow and arcane criminal process with a relatively speedy and open system of administration of justice. The establishment of open, oral and concentrated trials, to be held with relative speed after the commission of a crime, is crucial to providing transparency to the administration of justice.” Alejandro M. Garro, *Nine Years of Transition to Democracy in Argentina: Partial Failure or Qualified Success?*, 31 COLUM. J. TRANSNAT'L L. 1, 37 (1993).

last minute. Instead, there is a focus on funding of new courtrooms and other grand projects. Chile succeeded in its reform by ensuring, through a variety of resources and partners, that its legal sector was ready for the reform.<sup>18</sup> In its first several years, Proyecto ACCESO<sup>19</sup> provided training for the Public Defenders Office and many prosecutors, judges, and judicial administrators in the skill-sets they required to successfully execute their roles and responsibilities inherent in the reform process.<sup>20</sup> In Chile, workshops led by Spanish-speaking U.S. instructors, prepared the individuals who would later train and lead the various institutions involved. ACCESO correctly recognized that if Chileans were trained by other Chileans so as to avoid the charges of judicial imperialism, success was more certain. This was to be *their* reform after all, not an exercise in U.S., European or others' foreign policy. In addition, a coordinating unit in the Ministry of Justice worked to implement the reform.

In the process of moving from the inquisitorial to adversarial model of criminal procedure, it became clear that training the legal sector of the country was necessary but not sufficient in sustaining reform efforts.<sup>21</sup> The general public had to support the reform and that meant that it had to know something about the reform and why such vast public resources – Chilean state

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<sup>18</sup> See, e.g., Ambassador Harry Barnes, *Lessons of the Chilean Transition to Democracy*, in THE U.S. CONSTITUTION AND THE CONSTITUTIONS OF LATIN AMERICA 155 (Kenneth W. Thompson ed., 1991) (“The sense of law, the sense of doing things according to the rules, is very strong in the country.”); and Rafael X. Zahraiddin-Aravena, *Chile and Singapore: The Individual and the Collective: A Comparison*, 12 EMORY INT’L L. REV. 739, 808 (1998) (“In Chile there is a state of law.”).

<sup>19</sup> See *supra* note 1, describing Proyecto ACCESO.

<sup>20</sup> Proyecto ACCESO- Capacitacion, <http://www.proyectoacceso.com/web/guest/programs/capacitacion> (last visited Mar. 30, 2008).

<sup>21</sup> “[T]he public should be educated about the importance of judicial reform in order to obtain consensus and support for the reform efforts.” EDGARDO BUSCAGLIA JR., MARIA DAKOLIAS & WILLIAM RATLIFF, JUDICIAL REFORM IN LATIN AMERICA: A FRAMEWORK FOR NATIONAL DEVELOPMENT 31 (1995).



funds exceeding \$500 million dollars U.S.<sup>22</sup> – were being dedicated.

In 2002 and 2003, the Vice-Minister of Justice (*Subsecretaria del Ministerio de Justicia*) of Chile, representatives from the U.S. and German governments, the Public Ministry (*Fiscalia Nacional*), the Public Defenders Office (*Defensoría Penal Público*) and National Police (*Carabineros*) met to coordinate efforts to better inform the general public about the criminal reform process. A number of academicians and foreign advisors were involved as well. Several public opinion polls reported that very few people knew anything of the on-going Chilean criminal procedure reform.<sup>23</sup> Over sixty-eight percent (68.7%) of those surveyed believed that the government cared little about justice.<sup>24</sup> In another survey, the Public Defenders Office (*Defensoría Penal Pública*) concluded that there is a perception that it was the “poor parent” of the criminal procedure reform in that its resources were considerably less than to the Attorney-General’s Office (*Ministerio Público*).<sup>25</sup>

An earlier ADIMARK public opinion poll commissioned by the Chilean Ministry of Justice from 2002 reported that in the regions where the reform had been implemented, 32.4% of the

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<sup>22</sup> Meredith Fensom, *Judicial Reform, Military Justice, and the Case of Chile’s Carabineros*, 22 INT’L L.Q. 1, 10 (2007), available at [http://internationallawsection.org/modules/Static\\_Docs/data/International%20Law%20Quarterly/20070701\\_ILQ.pdf](http://internationallawsection.org/modules/Static_Docs/data/International%20Law%20Quarterly/20070701_ILQ.pdf) (Regular Publication of the Florida Bar, International Law Section) (citing Interview by Meredith Fensom with Jaime Arellano, Under Secretary of Justice, Chile, in Santiago, Chile (Dec. 15, 2004)).

<sup>23</sup> GOBIERNO DE CHILE, MINISTERIO DE JUSTICIA, DIVISIÓN DE SEGURIDAD CIDADANA, ENCUESTA DE OPINIÓN PÚBLICA “VICTIMIZACIÓN Y REFORMA PROCESAL PENAL” EN REGIONES EXTREMAS [Public Opinion Survey on “Victimization and Procedural Penal Reform” in Extreme Regions] (Audrey McGinn trans., 2008) 40 (2003) (on file with author). Seventy-one point six, four percent (71.64%) had not heard of the new system of justice with prosecutors and oral trials. *Id.* at 14.

<sup>24</sup> *Id.* at 34.

<sup>25</sup> ADAMARK PARA DEFENSORÍA PENAL PÚBLICA, “PERCEPCIÓN DEL SERVICIO DE DEFENSA PENAL PÚBLICA” EN REGIONES IV Y IX [Opinion Survey of Relevant Actors of the Procedural Penal Reform on “Perception of the Service of the Public Criminal Defendor’s Office” in Regions IV and IX] (Audrey McGinn trans., 2008) 13 (2002) (on file with author).

population had heard nothing about the reform, 27.6% had heard something but knew no details about the reform, and only 40% had heard something about the reform.<sup>26</sup> Moreover, only 10% of the population knew the role of the public defender and only 25% knew the role of the public prosecutor's office.<sup>27</sup>

An open and transparent legal system is vital to the economic and social well-being of all Latin Americans as they strive to consolidate their nascent democracies and flourish in the global economy.<sup>28</sup> Yet, much work remains to be done in a short period of time. Many Latin Americans are unaware that a legal reform process exists at all, let alone that it is already successfully implemented in some parts of their countries.<sup>29</sup> The manner in which laws are published and the public is notified of changes is arcane and poorly designed. Lost in a mass of text, the laws are published but remain inaccessible.

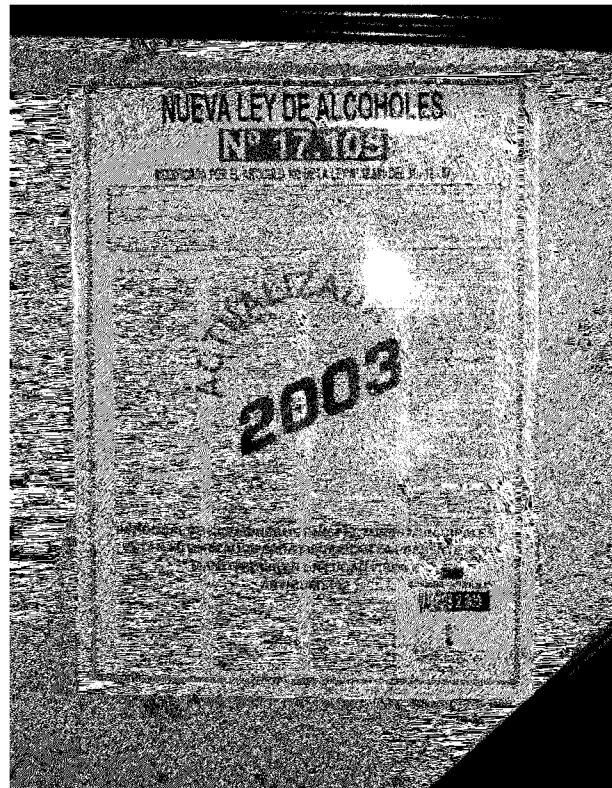
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<sup>26</sup> *Id.*

<sup>27</sup> These figures are discouraging, but are an improvement. Over a decade ago, the Corporation for University Promotion (CPU) reported that 87.8% of low income urban groups had little or no knowledge about their right in the legal system. Michael A. Samway, *Access to Justice: A Study of Legal Assistance Programs for the Poor in Santiago, Chile*, 6 DUKE J. COMP. & INT'L L. 347, 365 (1996).

<sup>28</sup> "The market system requires clearly established property rights and the courts to enforce them; but often these are absent in developing countries." JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 74 (2002).

<sup>29</sup> See BUSCAGLIA, *supra* note 21.



30

Once the legislative project had commenced, there was a need for human capacity building. It is one thing to have a new system and perhaps a few new shiny courtrooms with lots of glass to act as a metaphor for transparency, but without the right operators to administer the justice system, the criminal procedure reform could fail like other reform.<sup>31</sup> In 1998, Proyecto ACCESO, of California Western School of Law, partnered with Catholic University of Temuco in Chile. This partnership was designed to build human capacity by training judges, public officials, law professors, prosecutors, and private lawyers in fundamental legal skills needed to sustain reform

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<sup>30</sup> James M. Cooper, *Publication and Notification: A Mass of Unreadable Text*, Valdivia, Chile, Proyecto ACCESO (2004).

<sup>31</sup> Felipe Sáez García, *The Nature of Judicial Reform in Latin America and Some Strategic Considerations*, 13 AM. U. INT'L L. REV. 1267, 1310 (1998) (positing that the majority of reform programs have not met the objectives of judicial reform set forth for the Americas).

efforts.<sup>32</sup> The southern city of Temuco, in the Ninth Region of Chile, was an incubator for the reform and one of two first pilot sites for the transformation toward oral trials and other reformed criminal procedures. ACCESO - an acronym in Spanish for *Abogados Creativos Colaborando para Encontrar Soluciones Optimas* or Creative Lawyers Collaborating to Find Optimal Solutions<sup>33</sup> - initially created workshops focused on oral advocacy skills. ACCESO has taught everything from oral advocacy skills to defense attorneys and prosecutors, to computer forensics to law enforcement officials. We have conducted workshops for justice-ministry officials involved in implementing traditional indigenous justice techniques and tax inspectors investigating Intellectual Property rights violations.

Having engaged in much human capacity building for the legal sector, Proyecto ACCESO



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then set its sights on the dual task of educating the public about the legal reform process.<sup>35</sup> How does the Government explain

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<sup>32</sup> Proyecto ACCESO, About, <http://www.proyectoacceso.com/web/guest/acceso/about> (last visited Mar. 30, 2008).

<sup>33</sup> *Id.*

<sup>34</sup> *Proyecto ACCESO Team*, Proyecto ACCESO (video available at [http://www.youtube.com/watch?v=bHom4GFv\\_ho](http://www.youtube.com/watch?v=bHom4GFv_ho)).

<sup>35</sup> For Professor William Twining, “rules are not the only, nor even the main, phenomena that are transplanted; that the reception of ‘lawyers’ law’ and legal techniques is less problematic than matters that are closed related to local *mores* or political issues of the day; and that the main agents of reception of law

such fundamental principles like the presumption of innocence? How does one get represented by a new Public Defender? What are the fundamental rights that result from the judicial procedures enacted in the reform package? How does the judiciary impart confidence in the general public about the transitioning judicial system when public trust in the administration of justice continues to suffer in the post-dictatorship era? On the streets of Santiago it is possible to buy the most recent laws, but few could navigate their complicated structures and wording.



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as technology are the legal *honoratoires*, Weber's ironic term for the dominant legal elite." WILLIAM TWINING, *GLOBALISATION & LEGAL THEORY* 144 (2000).

<sup>36</sup> James M. Cooper, *Street Law: Legislation on Sale near La Moneda, Downtown*

*Santiago de Chile, Proyecto ACCESO (2002).*

The taxis refer to laws and incorporate by reference certain sections of governing statutes.



37

The results from the ADIMARK report indicated that there was work to do with the criminal procedure reform process beyond merely training all the operators of the criminal justice system - judicial administrators, judges, prosecutors, public defenders, and police officials. To address the bigger human capacity building challenge, the creation of public education campaigns was necessary: the general public had to know about its rights and how to get access to the criminal justice system.<sup>38</sup> It became clear that the Ministry of Justice had to focus on public education in order to ensure a smooth acceptance of the criminal procedure reform. It was clear also that popular culture would be an effective tool in educating a civil society.

This would not be the first time that popular culture would be used in civic education. Those working on this project had a playbook from state-funded public education and propaganda campaigns of the past – state-funded movements like Soviet Agitprop and the U.S. Public Works Administration. Both created popular culture for the purpose of promoting political, economic and social ends.

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<sup>37</sup> James M. Cooper, *No Smoking in Taxis*, Proyecto ACCESO (2004).

<sup>38</sup> See Samway, *supra* note 27, at 365.

## THE UNITED STATES AS A MODEL FOR THE USE OF POPULAR CULTURE TO PROMOTE GOVERNMENT POLICIES

In the United States, the symbiotic relationship between art, democracy and civil society has been evident in everything from political propaganda, to formal art installations, to children's cartoons and collectibles. In early days of the U.S. Republic, democrats like Thomas Paine believed in popular government and popular mores. The printing press made it possible for Paine's *Common Sense* to reach a large audience throughout the colonies. These and other modern instruments of communication of the post-Industrial Revolution era assisted in reaching mass audiences.

The advent of radio and television in the Twentieth Century enabled propagandists to reach even greater numbers. The United States became not just a great generator of popular culture, but turned it into a lucrative businesses. Institutions throughout "history ha[ve] seized upon various media of communication and used them to build up monopolies of knowledge."<sup>39</sup>

The U.S. Government quickly understood the value of using popular culture to promote policies. The political message, as an overt characteristic of images that permeate and comprise the fabric of popular culture, began in earnest in the years leading up to World War I. President Franklin Delano Roosevelt's Work Progress Administration in the 1930s sponsored the *American Today* mural by Thomas Hart Benton which provided a panorama of American workers burning the midnight oil working to make the nation great again.<sup>40</sup> Other

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<sup>39</sup> PHILIP MARCHAND, MARSHALL McLuhan: THE MEDIUM AND THE MESSENGER 122 (1989).

<sup>40</sup> RAPHAEL SASSOWER & LOUIS CICOTELLO, POLITICAL BLIND SPOTS: READING THE IDEOLOGY OF IMAGES 53 (2006) ("The Federal Art Project of the 1930s' Work Progress Administration (WPA) sponsored *American Today* murals of Thomas Hart Benton that provided a panorama of American workers toiling heroically in a multitude of activities . . .").

examples include mass-production poster campaigns during the Second World War. Norman Rockwell's Rosie the Riveter which was featured on the cover of the *National Evening Post* encouraged the domestic production effort and the newly independent role of women in the workforce vacated by the soldiers at war.<sup>41</sup>

Film was also used to promote national policy, and became a tool of international diplomacy under President Franklin Delano Roosevelt's Good Neighbor Policy.<sup>42</sup> Even U.S. agriculture used popular culture with *Popeye* and the drive to increase spinach consumption.<sup>43</sup> Smokey the Bear encouraged us to prevent forest fires and Uncle Sam himself was an image.<sup>44</sup>

ACCESO began its foray into public education with the U.S. Government as its client – a unique commission. In 2004, the U.S. Embassy in Santiago de Chile was quite concerned about the proliferation of pirated goods – fake music CDs, films on DVDs, software, and other innovations from U.S. rights holders – on the streets of Chile's major cities. Chile had appeared on the Special 301 Watch List despite the provisions of a bilateral free trade agreement between Chile and the United States that went into force on January 1, 2004. ACCESO was hired to

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<sup>41</sup> *Id.* (exploring the relationship between aesthetics and political events).

<sup>42</sup> Orson Welles' forays into South America during the early 1940s as part of this policy. Vincent Canby, *Review/Film Festival: Reconstructing the Tale of a Wellesian Disaster*, N.Y. TIMES, Oct. 15, 1993, at C8, available at ("Rockefeller's idea was for Welles to make an entertainment film to help promote President Franklin D. Roosevelt's Good Neighbor Policy."). See also FRANKLIN D. ROOSEVELT AND THE SHAPING OF AMERICAN POLITICAL CULTURE 29 (Nancy Beck Young et al. eds. (2001) ("... Senator Gerald P. Nye insisted that Hollywood was under the thumb of the Roosevelt administration.")).

<sup>43</sup> See Gwyn Mellinger, *Spinach-eating Popeye Served Up Life Lessons*, LAWRENCE J.-WORLD, May 14, 2003, [http://www2.ljworld.com/news/2003/may/14/spinacheating\\_popeye\\_served/](http://www2.ljworld.com/news/2003/may/14/spinacheating_popeye_served/) (last visited Apr. 2, 2008); see also The Australian Broadcasting Corporation, Great Moments in Science: Cold Iron-Deficient Women, <http://www.abc.net.au/science/k2/moments/s301760.htm> (last visited Apr. 2, 2008).

<sup>44</sup> See Pennsylvania Department of Conservation and Natural Resources, History of Smokey Bear, <http://www.dcnr.state.pa.us/FORESTRY/ffp/history.aspx> (last visited Apr. 2, 2008); see also *Uncle Sam Wants YOU!*, DAILY RECKONING, <http://www.dailyreckoning.com/IWantYou.html> (last visited Apr. 2, 2008).



create and produce a public service announcement about the dangers of Intellectual Property violations and the scourge of piracy.<sup>45</sup> ACCESO created a video that played as a trailer before movies released by United Pictures International and others, in Blockbuster video rental stores, theaters, and around public access television.<sup>46</sup> It has also been in regular rotation in Mexico on U.S.-based Galavision Television.<sup>47</sup>



The public service announcement plays to the youth and gives them reasons not to participate in the theft of ideas – a concept that appeals to young, idealistic South Americans with a history of this ideal. The use of the rhythm of the streets,

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<sup>45</sup> Proyecto ACCESO, Vision, <http://www.proyectoacceso.com/web/guest/programs/vision#> (last visited Apr. 2, 2008).

<sup>46</sup> Proyecto ACCESO, D.D.I.I., <http://www.proyectoacceso.com/web/guest/programs/ddii> (last visited Apr. 2, 2008).

<sup>47</sup> Proyecto ACCESO, Contact ACCESO, <http://www.proyectoacceso.com/web/guest/contactacceso> (last visited Apr. 2, 2008).

<sup>48</sup> *IP Public Service Announcement*, Proyecto ACCESO (video available at <http://www.youtube.com/watch?v=RHF4U2fPON8>).



49

both visually and through the soundtrack, speaks to different levels of theft including that from artists. The announcement tries to appeal to cultural sovereignty and economic nationalism, for the best artists, musicians, film-makers of Chile do not have much of a market internationally for their products. The public service announcement was aired as part of Chile's national Intellectual Property Week which included roundtable discussions with police, artists, congress members and Chilean intellectuals, co-sponsored by the Chilean Society for the Rights of the Author ("*Sociedad Chilena de Derechos de Autor*"), and concerts and children's programming.<sup>50</sup>

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<sup>49</sup> James M. Cooper, *Beware of Dirty Cops - Valparaiso, Chile*, Proyecto ACCESO (2004).

<sup>50</sup> News, California Western School of Law, *Chile Toughens Intellectual Property Protection and Rights Enforcement: California Western's Proyecto ACCESO creates Intellectual Property Week in Chile (June 10, 2004)* available at <http://www.cwsl.edu/main/default.asp?nav=news.asp&body=news/ACCESOI PWeek.asp>.



51

The announcement explained publicly that bootlegged, pirated, and fraudulent copies of Chilean authors' books, musicians' CDs, and film-makers' DVDs on sale on the street injures their ability to make a living. A look and feel that is decidedly urban, streetwise and hip resulted. The rap lyrics and song that was written for the public service announcement utilized local slang.<sup>52</sup>

Notwithstanding this assignment from the U.S. Government, Proyecto ACCESO's iconography and graphic style have also been informed by the Soviet Agitprop movement, a very influential campaign for the consolidation of the Soviet regime in the aftermath of the 1917 Russian Revolution.

<sup>51</sup> Trimedia Ltda. - Santiago de Chile, *Proyecto ACCESO's Intellectual Property Week Concert Poster*, Proyecto ACCESO (2004).

<sup>52</sup> See *IP Public Service Announcement*, *supra* note 48.

## THE SOVIET UNION AS A MODEL FOR THE USE OF POPULAR CULTURE TO PROMOTE GOVERNMENT POLICIES

An abbreviation from the Russian *agitatsiya* propaganda (meaning agitation propaganda),<sup>53</sup> Agitprop was a political strategy utilizing techniques of agitation and propaganda to influence and mobilize public opinion. In his 1902 pamphlet *What Is to Be Done?*, Vladimir Lenin emphasized the use of political agitation and propaganda to win the support of intellectuals and workers for the Communist Revolution.<sup>54</sup> Lenin wrote, “that the propagandist, whose primary medium is print, explains the causes of social inequities such as unemployment or hunger, while the agitator, whose primary medium is speech, seizes on the emotional aspects of these issues to arouse his audience to indignation or action.”<sup>55</sup>

The “term [*A*]gitprop originated as a shortened form of the Agitation and Propaganda Section of the Central Committee Secretariat of the Communist Party in the Soviet Union.... established in the early 1920s.”<sup>56</sup> The Agitprop section was

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<sup>53</sup> Encyclopædia Britannica Online, Agitprop, <http://www.britannica.com/eb/article-9004041/agitprop> (last visited Apr. 2, 2008).

<sup>54</sup> READING ABOUT THE WORLD: VOLUME 2 (Paul Briens et al. eds., 1999).

<sup>55</sup> Thus, agitation is the “use of political slogans and half-truths to exploit the grievances of the public and thereby to mold public opinion and mobilize public support. Propaganda, by contrast, is the reasoned use of historical and scientific arguments to indoctrinate the educated and so-called ‘enlightened’ members of society, such as party members.” See Encyclopædia Britannica, *supra* note 53. “The twin strategies of agitation and propaganda were originally paired by the Marxist theorist Georgy Plekhanov who defined propaganda as the promulgation of a number of ideas to an individual or small group and agitation as the promulgation of a single idea to a large mass of people.” *Id.*

<sup>56</sup> *Id.* In English, the word *agitprop* is now used to describe “any work, especially in the theatre, that aims to educate and indoctrinate the public. It typically has a negative connotation,

responsible for the content of all official information, overseeing political education in schools, watching over all forms of mass communication, and mobilizing public support for party programs.

Agitprop was instrumental in the maintenance of power in Stalinist Soviet Union, the era that followed Lenin's brief regime.<sup>57</sup> Most units of the Communist Party in the Soviet Union had an Agitprop section. At the local level, party-trained spokesmen were the chief points of contact between the party and the public.<sup>58</sup> In the period immediately Agitprop art was used to manipulate ideological beliefs, specifically to spread the ideals of Communism in Russia. Trains and boats were decorated to travel the lengths of Russia and educate the public about Communism.<sup>59</sup>

The trains usually had a cinema carriage that showed films of revolutionary leaders V.I. Lenin or Leon Trotsky, and in addition they were well-stocked with revolutionary manifestos, pamphlets and leaflets.<sup>60</sup> These vehicles were later used to promote the cause of the Red Army in the civil war that followed the 1917 Revolution.<sup>61</sup> Some of the trains painted by Alexandra Exter and her pupils featured the striking images of the Revolution and the resounding mottos of its leaders.<sup>62</sup>

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reflecting Western distaste for the overt use of drama and other art forms to achieve political goals." *Id.*

<sup>57</sup> Leon Trotsky epitomized the classic communist approach "that Marxism should concern itself exclusively with the economic and historical conditions that show the way to socialist transformation of society. Trotsky's argument was that full cultural emancipation must wait for the victory of the world socialist revolution." BARBARA BICK, *CULTURE & POLITICS: NOTES FROM A CONFERENCE 6* (Transaction Publishers 1976) (1976).

<sup>58</sup> Richard Taylor, *A Medium for the Masses: Agitation in the Soviet Civil War*, 22 *SOVIET STUD.* 562, 571 (1971).

<sup>59</sup> *Id.* at 570.

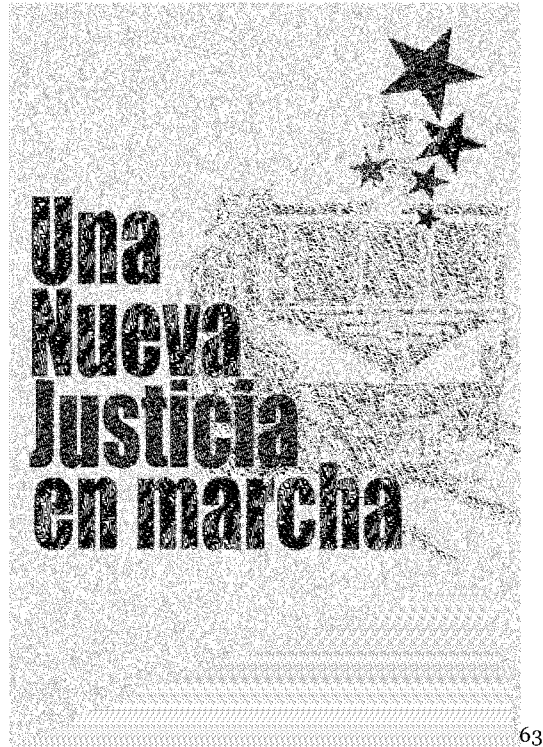
<sup>60</sup> *Id.* at 567, 570-72.

<sup>61</sup> *Id.* at 567.

<sup>62</sup> M. N.YABLONSKAYA, *WOMEN ARTISTS OF RUSSIA'S NEW AGE, 1900-1935* (Anthony Parton, ed., trans., 1990).

ACCESO's use of the star and a strong image can be seen as a descendent on this style of design.

ACCESO has also used trains, the very transportation method used in Agitprop, on several occasions. In December 2002, *Una Nueva Justicia en Marcha* came about as a set of workshops and happenings (public education events) that Proyecto ACCESO co-produced with the German Government Technical Cooperation Agency (GTZ) and the ministries of justice in both Bolivia and Chile, countries that do not have normalized diplomatic relations.

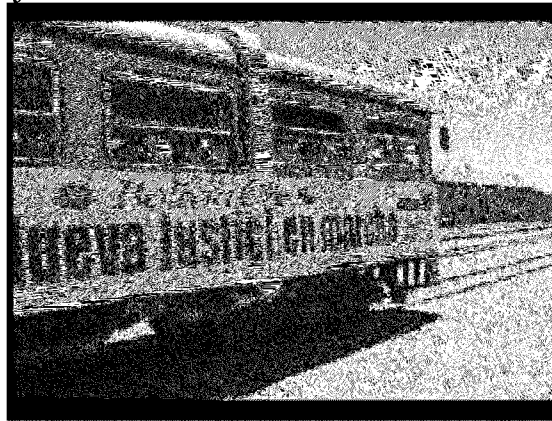


As Bolivia and Chile were both undertaking transitions from the inquisitorial to the adversarial systems in their respective criminal procedure laws, it was an opportune time to facilitate relations between the country's legal sectors and provide a comparative approach to the initiatives. In late 2002, a film was

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<sup>63</sup> Daniel Olivares - Proactivo, *Una Nueva Justicia en Marcha* [A New Justice in Motion], GTZ Chile/Proyecto ACCESO (2002).

produced about the variety of spontaneous workshops on this comparative justice movement.



64

It has been broadcast on television and in film festivals in Bolivia, Chile, Germany and the United States. (Insert Video Here)<sup>65</sup>

Based on the train experience, ACCESO began a series of animations wherein the lawyers from a variety of countries transform into superheroes defending the innocent, providing access to justice and building the rule of law. “Team Justice” (*Superheroes Legales* in Spanish) was debuted in the San Diego Latino Film Festival in 2006.



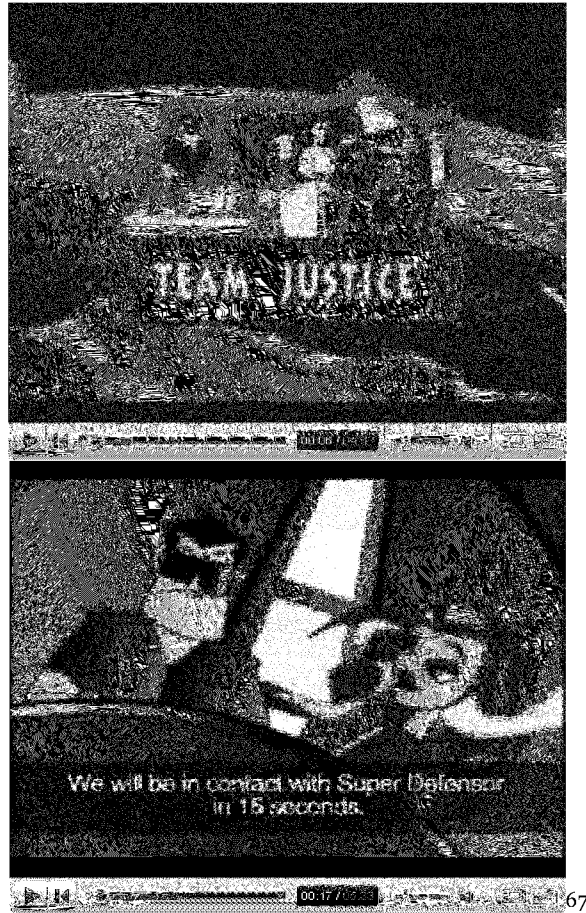
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<sup>64</sup> *Una Nueva Justicia en Marcha*, Proyecto ACCESO (video available at <http://www.youtube.com/watch?v=7We2k8ljQbo>).

<sup>65</sup> See *Una Nueva Justicia en Marcha*, *supra* note 63.

It was not long before an animation pilot was developed for Chilean television MEGAVISION.



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<sup>66</sup> Ricardo Amunategui & Alejandro Gonzalez, *Superheroes Legales [Team Justice]*, Proyecto ACCESO (2006).

<sup>67</sup> *Team Justice - Legal Superheroes*, Proyecto ACCESO (video available at <http://www.youtube.com/watch?v=oQGJqKdA8w8>); *SuperDefensor and the Fight for the Environment*, Proyecto ACCESO (video available at <http://www.youtube.com/watch?v=zXtoxArog4>) (showing a different train animation).



## THE SYNTHESIS: PROYECTO ACCESO AND THE USE OF POPULAR CULTURE TO PROMOTE LEGAL REFORM

ACCESO's approach was not just influenced by past U.S. or Soviet movements in public education. In Europe, there is a long history of art interacting with politics to which ACCESO turned for guidance. Bauhaus was particularly instructive here, for it had a universal foundation that combined functionalism with aesthetic simplicity. By cutting the wasteful and the trappings of elitism, the aesthetic is elevated.<sup>68</sup> Art was often a function of politics rather than the other way around. The social power of imagery was leveraged.<sup>69</sup> By making the law and its mechanisms more accessible, we had to show them in their universal application but also as an aspiration.

The ACCESO graphic, web design and animation team knew that it was helping shepherd in a new era for the rule of law – one in which there could be greater confidence in the administration of justice. How does one design when transparency, fairness, and participation are the goals? The team approached its work from the perspective that the rule of law be depoliticized and that all parts of society require a fair administration of justice – from those who hold intellectual property rights and require shareholder protections and to those whose interests lay in promoting labor, women's, student and human rights. The team focused on notions that the industrialized North takes for granted – procedural guarantees like the right to a fair trial or the presumption of innocence would become the norm. The animated public service announcement, *Soy Inocente* ("I am Innocent"), was the result of this paradigm shift in thinking.

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<sup>68</sup> See generally FRANK WHITFORD, BAUHAUS (1984).

<sup>69</sup> "Adorno proceeds from the quite romantic idea that works of art are the only, and so to speak, last refuge of a subversive uncompromised subject." WILLEM VAN REIJEN, ADORNO: AN INTRODUCTION 78 (Dieter Engelbrecht trans., 1992).



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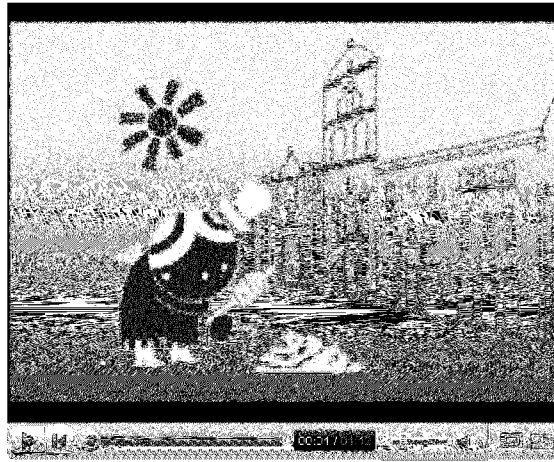
The team also built on local technologies, uses and customs. Based on ACCESO's successes during training workshops on *usos y costumbres* and other indigenous problem-solving techniques in Bolivia, which had been covered in the *Washington Post* in both English and Spanish,<sup>71</sup> the team was invited by Bolivian authorities to develop a public relations campaign for the President's office. The Morales Government started its work "refounding" the Republic of Bolivia through the workings of a new Constituent Assembly, tasked to create a new Constitution.<sup>72</sup> Proyecto ACCESO partnered with the President's office of the Constituent Assembly (*Representación Presidencial para la Asamblea Constituyente* or REPAC) on a public service announcement and a subsequent brochure campaign.

The public service announcement zebra (road crossing) and a blond *Sureña* from La Paz's southern upper-class neighborhood was broadcast on Bolivian State Television, TV Congreso and screened as a trailer in the local cinemas in La Paz, Cochabamba and Santa Cruz.

<sup>70</sup> *Soy Inocente*, Proyecto ACCESO (video available at <http://www.youtube.com/watch?v=KfzyFaIMfBA>).

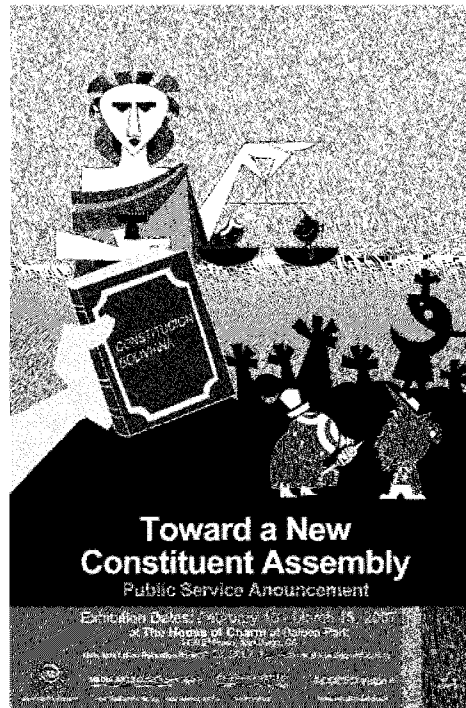
<sup>71</sup> Marcela Sanchez, *La Barrera a la Ayuda en Bolivia: Actividades Lucrativas no son las Únicas que Sufren en Ambiente Hostil*, WASHINGTONPOST.COM, Oct. 13, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/12/AR2006101201219.html>.

<sup>72</sup> *Friends, Not Clones*, ECONOMIST (London), June 7, 2007, available at [http://www.economist.com/agenda/displaystory.cfm?story\\_id=10309089](http://www.economist.com/agenda/displaystory.cfm?story_id=10309089).



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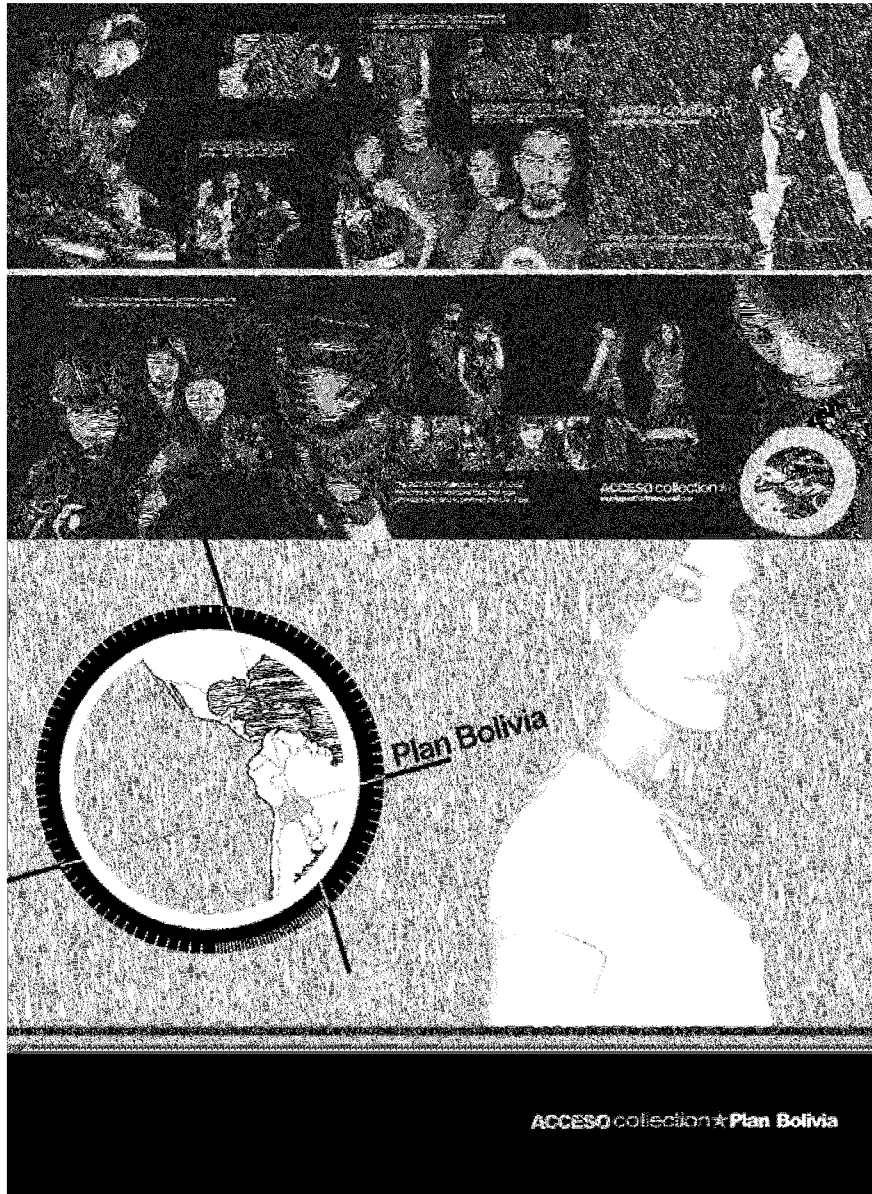
By using local codes, colors, Bolivian actors with Aymara accents, and Plaza San Francisco, which is at the heart of downtown La Paz, the team captured the excitement and unfettered chaos that defines this Andean capital.



74

<sup>73</sup> *Public Service Announcement: Bolivia Toward a New Constituent Assembly*, Proyecto ACCESO (video available at <http://www.youtube.com/watch?v=45V7N3mX5Tc>).

A fashion collection is a case in point.



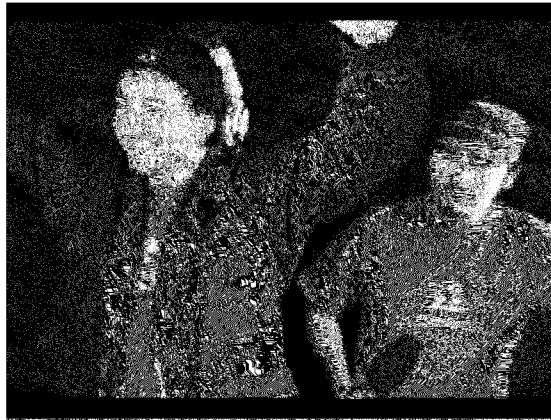
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<sup>74</sup> Ricardo Amunategui, *Toward a New Constituent Assembly*, Proyecto ACCESO (2007).

<sup>75</sup> Marcela Guadiana, *ACCESO Collection, Santiago de Chile*, Proyecto ACCESO (2003); James M. Cooper, *ACCESO Collection/Plan Bolivia - La Paz*,

The ACCESO Collection has been part of the public education campaigns that have run in many parts of Latin America to promote judicial reform.



76

On one hand, the team is trying to be provocative. On the other hand, working to get human rights on the radar by sewing and printing various rights (the right to a dignified wage, the right for children not to work, etc.) on the best moving billboard – the human being, is the goal. The ACCESO Collection has been featured on Bolivian and Chilean media about this work and debuted the collection in Quito, Tijuana and Asuncion.<sup>77</sup>

In this new era post-industrial era, there has been a renewed focus on teaching the skills necessary to build a sustainable liberal democracy. Law schools throughout the developed and industrialized world are assisting the construction of a world based on the rule of law, rather than the rule of the jungle.<sup>78</sup> Lawyers and professors can use their legal expertise to empower

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*Bolivia*, Designed by Marcela Guadiana Cerda/Yerko Ilijic, Proyecto ACCESO (2006).

<sup>76</sup> *ACCESO Collection*, Proyecto ACCESO (video available at <http://www.youtube.com/watch?v=pnEZdl1VNqU>).

<sup>77</sup> Proyecto ACCESO, Collection, <http://www.proyectoacceso.com/web/guest/programs/ddii> (last visited Apr. 2, 2008).

<sup>78</sup> See generally American Bar Association, Rule of Law Initiative, Legal Education Reform Programs, <http://www.abanet.org/rol/programs/legal-education.html#la> (last visited Apr. 2, 2008).

judicial innovation activists around the developing world. These activists can then pursue sustainable democratic governance and build the systems that are the basis of freedom and liberty. Judges, prosecutors, public defenders, law enforcement officials, and legal educators require training in a variety of preventive law and problem-solving skills. By developing new judicial skills – like oral advocacy, media advocacy, institutional advocacy, mediation, and cross-cultural negotiation – they can work with other professionals in the legal sector to construct sustainable legal institutions, provide access points to justice, and consolidate democracy. The judicial branch is the third power in the balance of powers. But it had a long way to go in order to win back the confidence of the Chilean people following the Pinochet dictatorship.<sup>79</sup>

While ACCESO has not yet been able to survey all the regions in Chile which have now implemented the new criminal procedures, there is a general feeling that the reform process has been a success. Due soon is a new set of public opinion polls and research in Chile to determine what was it that made the Chilean reform process a success, when similar criminal procedure reform elsewhere in the region has failed.<sup>80</sup>

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<sup>79</sup> Edmundo Fuenzalida Faivovich, *Law and Legal Culture in Chile, 1974 – 1999*, in LEGAL CULTURE IN THE AGE OF GLOBALIZATION: LATIN AMERICA AND LATIN EUROPE 129 (Lawrence Meir Friedman & Rogelio Pérez-Perdomo eds., 2003).

The legal system was no obstacle to the policies of the military government, which were directed at eliminating its adversaries and imposing a new normative mold for human life on the country. In particular, the courts of appeal, directed by the Supreme Court, denied numerous habeas corpus petitions submitted to help those who were detained by the armed forces or the police and who were not brought before a judge. Acting in this way, the courts did not follow through with their constitutional and legal obligations, and graver still, caused the citizenry to lose confidence in the idea that there existed an institution of the state to which they could turn to protest abuses committed by government functionaries. That is to say, they helped destroy the legacy of the history of a country respectful of the law and of human rights.

*Id.*

<sup>80</sup> At the time of publication of this article, an application for a grant from the Tinker Foundation had been filed to complete this additional research into public opinion and the success of the reform.

Most Latin American states are undertaking reforms in the administration of justice, regulation of business disputes, the enforcement of foreign arbitral awards and the development of conciliation procedures. Latin American business communities, transnational corporations engaged in local commerce, and members of civil society all require more efficient settlement of disputes.<sup>81</sup> There is a judicial reform movement which is sweeping the Americas.<sup>82</sup> Many countries are reforming their criminal legal procedures by introducing new oral and adversarial procedures. By replacing the older inquisitorial procedures, the criminal legal process is modernized and more transparent, providing better safeguards for the protection of fundamental human rights.<sup>83</sup> With a concurrent movement

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<sup>81</sup> “Law is a key element of both a true and a stable democracy and of efficient economic interaction and development both domestically and internationally....The quality and availability of court services affect private investment decision and economic behavior at large, from domestic partnerships to foreign investment.” BUSCAGLIA, *supra* note 21, at 1.

<sup>82</sup> PETER DESHAZO & JUAN ENRIQUE VARGAS, CTR. FOR STRATEGIC & INT’L STUD., JUDICIAL REFORM IN LATIN AMERICA: AN ASSESSMENT 1 (2006), [http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/0609\\_latin\\_judicial\\_reform.pdf](http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/0609_latin_judicial_reform.pdf) (last visited Apr. 2, 2008)

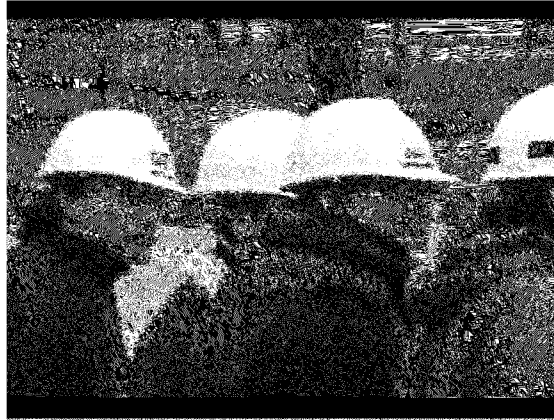
In recognition of these problems and with the encouragement and support of the international community, many countries in the region have undertaken programs and projects to overhaul their judicial systems and institutions. These efforts have spanned the gamut, from constitutional reform and the implementation of new criminal and civil codes, to structural change in the administration of justice, to far less ambitious schemes aimed at making technical improvements to the existing systems.

*Id.* See also Press Release, University of California at Santa Cruz, Nations Embracing Jury System as Part of 'Wave of Judicial Reform,' Says UC Santa Cruz Expert (Nov. 15, 2007) available at [http://www.ucsc.edu/news\\_events/press\\_releases/text.asp?pid=1746](http://www.ucsc.edu/news_events/press_releases/text.asp?pid=1746). (“The former Soviet republics of Russia and Kazakhstan have introduced the jury system to resolve legal disputes, and the trend is sweeping across many nations in Asia, East Asia, Central America, and South America.”).

<sup>83</sup> See, e.g., Felipe Saez Garcia, *The Nature of Judicial Reform in Latin America and Some Strategic Considerations*, 13 AM. U. INT’L L. REV. 1267 (1998).

towards judicial independence, democratic governance can be sustained.

A rare opportunity exists to affect meaningful and sustainable change in the legal systems of the Americas. We must call to action those who wish to build the rule of law.



84

As Tony Kushner has written: “Twenty-first-century admirers of great political graphic design can’t banish an uneasiness in appreciating design’s power to catalyze change.”<sup>85</sup>

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The judiciary in the Latin American region is facing a mounting challenge in terms of its credibility, its functional effectiveness, its standing vis-à-vis the other powers of the state, its contribution as a bulwark for the protection of human rights in societies with vulnerable democratic institutions, its role in promoting a predictable institutional environment in the economic sphere, and its obligation to provide a forum for the fair and effective resolution of disputes. This challenge has been mounting for decades, resulting from claims of various constituencies who have not seen their demands for justice met.

*Id.* at 1268.

<sup>84</sup> *Hacia la reforma [Towards the Reform]*, Proyecto ACCESO (video available at [http://www.youtube.com/watch?v=eMi98R2\\_ag8](http://www.youtube.com/watch?v=eMi98R2_ag8)).

<sup>85</sup> Tony Kushner, *The Design of Dissent*, Foreword of MILTON GLASER & MIRKO ILIC, THE DESIGN OF DISSSENT 222 (2002).