

**REFORMING THE DOMINICAN CONSTITUTION:
LESSONS FROM OTHER
LATIN AMERICAN COUNTRIES
AND FROM EARLIER REFORMS**

TRANSCRIPT

PRESENTATIONS BY THE PANELISTS, AND QUESTIONS AND ANSWERS

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My presentation will consist of a limited set of recommendations that I presented at FUNGLODE in May of 2006; and a broader view regarding constitutional changes throughout Latin America, which highlight the need to be cautious about constitutional reform.

My approach is as a political scientist and not as a constitutional lawyer.

Some of these recommendations may involve, strictly speaking, constitutional changes, and others may be more at the level of “leyes” rather than the formal changes to the Constitution.

I have been honored to be an observer at Dominican elections beginning in 1990; awe-inspiring because no matter how early I get up on Election Day, there are people waiting on line for hours on end to vote, and whenever I ask them “when did you come here to wait on line” they answer “2 or 3 a.m.” There is an incredible commitment to democracy as expressed through elections, which is of course, necessary but not sufficient.

My first recommendation is that if the Dominican Republic does nothing else, it should improve its electoral administration with regard to the way in which the *Junta Central Electoral* (“JCE”) is selected. Right now it has the narrowest procedure to select judges: the Senate, by simple majority, selects the judges of the JCE – that is a far narrower mechanism that exists anywhere else in Latin America.

Also, JCE combines regulatory, administrative and judicial functions. It is the unappealable arbiter of decisions with regard to electoral matters, which means that sometimes inevitably it must be the judge of its own actions, and that is a problem. I think it would be helpful to separate the judicial function from the administrative and regulatory functions.

With regard to the electoral calendar, the 1994 reform separated it to resolve a political crisis. I believe it is appropriate to unify it again, and if there is a concern with the *voto arrastre*, then have the congressional and municipal elections one month before the presidential elections.

With regard to election campaigns, I believe that more measures need to be carried out, focusing on party finance and on state abuse of resources. A minor point perhaps, but an easy one to fix in terms of governability, would be to limit the length of time between election and presidential inauguration, which is now extremely long. The inauguration, one could say, should happen a certain number of days after the proclamation by the JCE, or August 16, whichever comes first.

Finally, there are some measures to enhance the internal democratization of political parties, which would be useful, although they are also potentially among the riskiest.

I would add one caveat: Any political reform that imposes as a requirement state oversight and enforcement should require first that that state institution be effective, professional and autonomous. To institute a whole series of measures that are to be carried out by state institutions which are not that way, you're opening yourself up to a number of significant risks.

Now I would like to give a broader view. Not for the first time nor the last time, political scientists were wrong. They thought that the time when democratic transitions were occurring in Latin America in the 1980s, was a special moment for constitutional reform and for deciding the rules of the game, and that in that moment of transition things were in flux, the rules of the game were going to be decided and then states would carry on. But when looking around the region, we have seen a dizzying and ever constant series of constitutional and electoral reforms. I am combining electoral with constitutional because in some countries electoral reforms require constitutional changes while in others, electoral reforms can be carried out by law. Why is this the case? I believe it is because when the rules are perceived, paradoxically, as both "manipulable" and at least potentially significant, normal politics is also about constitutional politics: it is about changing the rules of the game to try to gain advantage or to try to expand rights. In a context in the region in which one important rule of the game, electoral democracy, is being respected much more extensively than in the past. This carries the risk of inflating potential benefits and of us underestimating risks. Constitutional and electoral engineering (often, when talking about constitutional reform, this language of engineering creeps in) is an imperfect science. It suggests coherent design with clear, long-term effects. But too often, constitutional reform is the result of bargaining across multiple actors, or even worse, imposition by a narrow set of actors, usually focused more on short-term goals than long ones. And also, it can be vulnerable to undermining by subsequent strategic adaptation, or by another other change in the rules, than the metaphor portrays.

In his opinion, the Dominican Republic today is not in a crisis due to issues of constitutional design. The constitution can be improved, and I think this is a special opportunity to do so, but at the end of the day, better no reform than a bad reform.

The review of different reforms and changes in Latin America highlights diverse motivations and types of reform. One type the Dominican Republic is familiar with is narrow political calculation, typically by the incumbent politician. Argentina, 1994, President Menem sought his immediate reelection; he opted to negotiate with the radicals; the radicals and Menem negotiated, there was a *núcleo de coincidencias básicas* which guaranteed Menem his immediate reelection and radicals thought guaranteed them a number of measures that would be to their benefit, most of which have largely been sidelined. The Dominican Republic in 2002, as you all know, there was a constitutional reform to allow the immediate reelection of President Hipólito Mejía. As it turns out, that is a reform that has occurred also in Peru, in Brazil, in Venezuela and in Colombia, and in all cases except for the Dominican Republic, it worked for the incumbents.

One political scientist has estimated that there have been over 60 constitutional reforms and electoral reforms in Argentina at the national level and at the provincial level, oriented toward trying to provide the incumbent with additional electoral advantage; so that is one kind that is, unfortunately, common. Another: democratic disenchantment often motivates significant overhauls of constitutional text. Colombia in 1991, Venezuela under Chavez, Bolivia now under Morales. Typically, these are carried out through constituent assemblies that are elected, widely considered the most participatory process with greater potential for reforms resulting that are democratically more inclusionary; clearly, on balance, participatory processes are to be preferred.

But much depends on the nature of the election rules, the political make-up of the assembly and short-term dynamics.

Constitutional text in Colombia did incorporate new types of rights; greater judicial autonomy, decentralization, popular election of governors, amparo. The Venezuelan Constitution also instituted a host of new rights under Chavez, that did not exist in the previous constitution. But sometimes a constitutional reform process may appear to be primarily about democratic inclusion, yet strategic short-term calculation is clearly a significant part of the story, and I would argue that is case with President Chavez in Venezuela, where constitutional reform ends up facilitating power concentration and the elimination of effective accountability. Other times, as the case in Colombia in 1991, constituent assemblies or other reform processes may involve extensive bargaining, which has its virtues, but coherence is rarely one of them.

Sometimes, serial reforms for purported good reasons can be contradictory. In the Dominican Republic, with electoral reforms, gender quotas were instituted that work best with close list proportional representation in large districts, but then people wanted to have tighter constituency links between the representatives in congress and the voters, so they instituted open-list proportional representation, *voto preferencial*, in smaller districts; that works against the gender quotas in congress.

Another risk that is common to recent constitutional reforms related to their inordinate length in many cases: the desire to lock in distributive benefits into the Constitution, incorporating articles into the constitution that should be handled through legislative processes.

I firmly believe that changes to formal rules and procedures can unquestionably be beneficial and can institute dramatic improvements when they are combined with political leadership, encouragement and monitoring from actors in civil society and changes in behaviors and attitudes.

Mr. Daniel Erikson, Director of Caribbean Programs at the Inter-American Dialogue in Washington, DC, U.S.A.

There has been some debate about the favorite pastime of Latin American politicians, but undoubtedly one is to reform their constitutions while they are in office. Since independence, there have been more than 250 constitutions throughout Latin America. Colombia is the most stable of the Latin American countries, with 13 changes since independence in 1810. Central American countries have changed constitutions about 14 times; Haiti, 25 times. There have been more than 30 constitutional reforms in the Dominican Republic, putting it in the major leagues.

Although it is difficult to change constitutions, it seems even more difficult to make it stick and make it last over time.

I want to point out that many changes that have been made to the Latin American constitutions have been necessary and helpful. There has been much done to improve the electoral system and the separation of powers, there has been greater inclusion of social and economic rights, and many of the changes that have taken place have helped these countries be more democratic and more prosperous. At the same time, the Constitution is really intended to structure and constrain government, and it really should not be a to-do list for the governments or something that can guarantee things that the state simply is not able to offer. It becomes a question of rights versus aspirations.

Some countries, in fact, do not even have constitutions, including Israel and Great Britain, which have sets of laws that have evolved over time, and have what is called an unwritten constitution, but neither country can point to a single document that lays out their system of governance, and yet they seem to function relatively well as democracies.

Why do Latin American countries historically like to change their constitutions? Historically, there seem to be four main reasons: power, money, politics and the pursuit of good governance. Regarding the first reason, sometimes presidents want to be re-elected and the constitutions constrain them in that sense. Regarding money, many constitutions lay out certain controls over the use of natural resources, or over questions of taxation, or of budgetary processes within the government; issues over which many leaders wish to have greater control. One constitutional reform that has been endlessly debated in a neighboring country is that of Mexico, where the constitution prohibits foreign investment in the petroleum sector, and there have been some steps taken to change that. Regarding politics, sometimes there are constitutional reforms that are put up simply to bolster the fortunes of the ruling party, whether or not they are actually enacted. And lastly, good governance, enhancing quality of democracy: this should clearly be the goal and often what you have is a number of these different factors that need to be taken into account. If you do not get the politics right, you will never arrive at a constitution that gets to good governance. Thus, there are some compromises that have to be made along the way.

If we talk about the issue of power, and obviously, the 2002 reform speaks of this, there is what could be called a bipartisan consensus where president incumbent was seeking a second term; also Cardoso, of Brazil; Uribe, of Colombia; Chavez, of Venezuela; Pérez Valladares, of Panama, did not win, like Mejía; and Fujimori, or Peru, the third time, where he did not win. In the U.S., the recent types of amendments that have been proposed have been more of a political nature than having to do with issues of good governance. For example, the recent proposal to outlaw same-sex marriage in the U.S., which President Bush proposed, others backed, Cheney complained about it a little bit, but this was basically to get votes during an election year, and not to change the constitution in any meaningful sense. Also, Orrin Hatch, the Senator from Utah, who proposed a constitutional change which would allow any non-native born citizen who has been a citizen for more than 20 years, to run for the presidency, known as the Schwarzenegger Amendment because its sole purpose is to make it legal for California Governor Schwarzenegger to run for the presidency.

Clearly, this is an auspicious moment to look at the question of the constitution anew. There are clearly many errors, some of which were outlined earlier, within the Constitution that should be looked at; after all, this is the governing document of the country. The fact that the PLD recently won a majority in Congress has given Fernandez the political support he would need to address these reforms. However, many of the main issues facing the Dominican Republic, like many countries in Latin America, are not constitutional problems per se and cannot be fixed by fixing the constitution. There are the questions of rule of law, the ability of the judicial system to work adequately, having a police and justice system that works, and all of this is extremely crucial. The same goes to economic prosperity as a whole, better health care, education and social goods in the Dominican Republic, which will not materialize immediately if they are written into the Constitution. Sometimes it helps to be a bit humble and a bit realistic in terms of what a Constitution can actually achieve.

Then, there are also the process questions. Often times, those who object the loudest are those who were not consulted. It often makes sense to have a more widely consultative process, because often when people complain about the results, it is simply because they were not heard. That is one way you can address the political issue of getting a constitutional reform through the

political system or through Congress. But also, ideally, this is a document that will govern the entire country and not just the political class or the economic elite, and to reach down and hear what people have to say about how they are governed, is a good exercise in itself. There is a saying that a good constitution is infinitely better than the best despot.

**Dr. Cristina Aguiar, Director of the Diplomatic and Consular School of the State
Secretariat of Foreign Relations in the Dominican Republic**

I will address the current discussions in the Dominican Republic regarding the issue of the constitutional reform. The decision to reform the Dominican Constitution is not as a consequence of a consideration that it is timely to reform the Constitution, but is more of a movement accompanying globalization. We have seen that the constitutional culture is also creeping into international organizations; there are issues of constitutions and of constitutional reform even within the World Trade Organization. So the Dominican Republic is getting into these same movements because globalization also fosters more democratic models. You have to get the same that your neighbors are getting in order to be in the movement and to take advantage of everything that happens or the benefits of globalization. In the Dominican Republic, we started talking about constitutional reform back in 1996, during the first term of President Fernandez, where he created a specific body, a Commission for the Reform of the State, which is now called CONARE, and which specifically worked on the aspect of the constitutional reform. Unfortunately, there was no political momentum because in 1998 the PLD lost the legislative election so President Fernandez did not have the ground of political support to push forward that project.

The amendment to the Constitution in 1994 came about because of political crisis, claims of fraud in the elections and the only way out between then-President Balaguer and the rest of the political parties that played the opposition role was to first shorten his period – 2 years were taken from his supposed new period – and to try to introduce some of the basic principles like no reelection, but it was personally directed to President Balaguer to prevent him from coming again, and also they introduced the National Council for the Judiciary, as a sort of mechanism to guarantee the independence of the judiciary.

Now we see that in 2006, we have this phenomenon: President Fernandez started to talk again about his project to reform the Constitution, not merely because we need a new constitution but simply because the 1966 Constitution, our current Constitution, lacks a number of aspects and needs to be more inclusive, needs to introduce some mechanisms on participatory democracy, specially because there is a general movement all over the world and this carries the emergence of some democratic models. It comes from the general and international obligations of the State that we are requesting more transparency and accountability from governments and that those are two of the main guidelines, I believe, directing these constitutional reforms, and that in 2006 the PLD, of course, has a massive victory in the legislative elections and so, the political support is there, so we have the basis to start to build the consensus with the rest of the political actors.

At this stage of the debate in the Dominican Republic, all the social economical actors seem to agree on the need for a reform. First, we needed to know whether or not we wanted to reform and why we wanted to reform; now it seems that consensus is built as to the necessity for this reform.

The second stage in the general consultations that have taken place in the Dominican Republic is how to achieve these reforms: using the current mechanisms provided for in the 1966 Constitution, which gives the Senate the initiative of the reform (the two houses together) and entire control over the process. President Fernandez has spoken openly since 1996 about his

preference for a Constituent Assembly. Now I believe that some consensus has been building in that direction in that maybe the best way to adopt the proposal for the new text prepared by the new Commission appointed by President Fernandez in July would be through the constituent assembly, but we do not have yet a definite or fixed position regarding this matter.

On what has been said about the pros and cons on which procedure to use to reform the Constitution, of course the political parties do not want to lose the grip they have on the whole process, because having a Constituents Assembly poses at least two questions: who will convene it and who will integrate it. Since up to now the political parties have had a very strong hold on the processes because of political miscalculations, this is one of the major hindrances in deciding how to proceed because of this political controversy.

Another set of questions currently debated in the Dominican Republic on the issue of Constitutional reform turns around whether there has to be reengineering the Constitution or reengineering of the State. Fundamental rights and freedoms that are scattered throughout the current Constitution and in the consideration of constitutional scholars all principles should be gathered together at the beginning of the document so that it is easy for anyone to read and comprehend. That is one of the arguments for reengineering of the Constitution to make it clear, modern and of easy access, and for easy interpretation. Also President Fernandez mentioned reengineering the State, which would mean that one will have to touch each one of the powers of governments. One would not touch the basic principles but rather it would be an exercise of going into the doctrine of checks and balances. For example, article 55 of the Constitution, which deals with the powers of the President; limiting the Supreme Court powers; making the mechanism to appoint the judges dependent on the National Judiciary Council incorporated in the 1994 reform, and perhaps even creating a different body to oversee the judiciary. There are, of course, many other aspects that should be reviewed such as the public functions of the civil servants, the rights of the military and of the police to vote, and others. The length of the presidential mandate and of the terms of senators and representatives, and even the composition of Congress – bicameral or unicameral, are other issues currently being considered.

One of the basic reasons to have a reform is the need to include the mechanisms of more participatory democracy. This is now a must, deriving from international legal instruments. The Rio Principles and the three conventions that resulted from the Summit of the Earth in 1992, you have the mechanisms for good governance, and this has to be applied also at the local level. I believe that this will ensure not only good governance, but also the much-needed transparency and accountability.

Since democracy has become a global right, then we have no other way out than to look into ourselves and try to push forward these reforms. But we can change the institutions and the Constitution, but if we do not change behaviors, attitudes, the need for a true constitutional culture, the rule of law, then we will have the best Constitution of all but still this will not guarantee good governance or being inclusive in all aspects – social, cultural, and all those different elements that enter into what has become this global right of democracy, not only of going to vote or being elected, but is to be able also to follow and to help enforce the international obligations of the state.

Questions from the audience

Three questions from the audience: [*The first question was barely audible:* “Is it possible to reform the Constitution in so little time, and how long is it going to take you to put it all together;

are we looking for too much at once, are we going to change the whole culture in a few months; are we Dominicans going to act differently all together?" *The second and third questions were not recorded in the audio*; they were regarding who punishes the violations to the Constitution, and the reason for having nine members, which could be viewed as too many, in the Junta Central Electoral.]

Answers: Mr. Erikson: Can this be done? Is this realistic? It will be difficult to work with the timeline laid out (with results expected in January/February of 2007); the only way it can be done realistically is to have great group of people working extremely fast and that can come up with a good product and then sell it to the nation, and that will be a challenge. Regarding the checks and balances and consequences for violating the Constitution, generally, the President is held in check by Congress or by the courts, and in many systems where the Congress is the same political party as the President's and the President appoints the judges to the courts, then it becomes difficult to be held into account. In the Dominican Republic, right now you see that it is evolving so the same distribution of power. However, there are many non-judicial tools available today in the Dominican Republic, which have to do with increased transparency: the role of non-governmental organizations, the media, that can help shape the agenda of congress and of the courts. These are important tools for citizens who want to get engaged and are concerned about potential constitutional violations.

Prof. Hartlyn: Ambassador Aguiar made an interesting comment that a lot of the impulse for constitutional change is coming from abroad. Clearly, there is a very powerful defusing effect of certain constitutional changes when you look at decentralization, popular election of governors and mayors, gender quota, the introduction of the figure of the ombudsman, these are things that have defused across the Continent. There has also been a ratchet effect, which means that when a certain reform is instituted in the Constitution, you cannot go back on it, at least not by changing it in the Constitution; you can undermine it and weaken it, but once it is there in the Constitution, at least in Latin America, it has not been possible to undo it. This has certainly been the case regarding voting rights (when they have been extended to women, they have never been taken back; and when extended to younger people, they have not been taken back); popular elections of governors and mayors have been introduced in Latin America, and so far there has not been a reversal (Puttin in Russia has reverse it, but one might argue that reversing it involves to a certain extent a change in regime from a democratic one to a competitive authoritarian (as called by political scientists) regime). In that sense, there is a sense of forward movement regarding some of these reforms that could be beneficial because they are at least on paper, even if they are not necessarily enforced.

The notion that instruments of direct democracy are always good because they help to ensure good governance, transparency and accountability: I am not so clear that this is always the case. The United Kingdom, for its own reasons, decided that it was going to have a referendum on the Constitution of the European Union, and that defused to the rest of Europe and now Europe is in a mess over the European Union's Constitution. It is not clear that was the best mechanism to debate those particular issues, and this is something that can be debated and discussed. There is something about referenda and plebiscites, as they present stark alternatives "either this or that", and there are many issues in politics that require . . . making laws is like making sausages, it is not a pretty process, you do not want to see it while it is happening, but one hopes that the end result is good.

Regarding who provides the punishment to the President for violating the Constitution, looking at the rest of Latin America, it stands out in the world for being the region that may have suffered the worst of all exports from the United States: the presidential form of government. Latin

America is uniformly presidentialist, and many fear the excessive power of the president, and that is why there is this constant tension about trying not to permit the immediate reelection of the president, because the president can have too much power. Parliamentarism is not on the table, so he will not discuss it (though he is a strong advocate); no presidential system has switched to a parliamentary system, and it is not going to happen in Latin America, but what is seen in Latin America over the past several decades is that presidents have lost power in a very significant way. They have not been able to get rid of Congress except for two cases (more on that in a minute), and a lot of presidents have not finished their term in Latin America. How are presidents removed? Usually through impeachment and conviction, and that happened in a number of cases. Other cases have been more complicated processes, involving mobilization. One can be of mixed mind and say: is it not good that this kind of crises has happened within the democratic rules of the game, so democracy has been sustained and very unpopular presidents have been replaced; but on the other hand, is it not bad in terms of political stability and trying to channel conflict through regularized means, that is happening often through mass demonstrations in the street and other kinds of processes. We need to find a better way to institutionalize conflict and debate serious differences that exist in Latin America. The two cases in which congresses were replaced were Venezuela and Colombia, and in those cases, the constituent assembly assumed *poder originario*, something that the Bolivian constituent assembly, Evo Morales has informed, is now also going to do. When you have a constituent assembly elected, you have Congress and the Constituent Assembly; so what is the relationship between those two? That has to be made very clear. In the case of Argentina in 1994, it was very clear: the Constituent Assembly was elected to reform certain articles of the Constitution; there was no question that it could assume *poderes originarios* and tell Congress “we are the more direct voice of the people than you are, we can shut you down”; but this is what happened in Colombia and in Venezuela: they shut them down, and that is part of the goal in Bolivia. That is something else that needs to be clarified, what powers the Constituent Assembly can assume and what is its relationship going to be with regards to Congress.

Why nine members for the Junta Central Electoral? Because there has been a series of crises, in which in order to deal with the crises, the lack of representation from other political parties, the Central Electoral Board was expanded to include members of the opposition. There is no fixed number as to how many members it should consist of; an odd number, for obvious reasons, but the issue is to have people who are professional and autonomous, independent. They can be named through any process, but is harder to do when you only require a majority in the Senate to do it. It is much better if you do it through a process that ensures that opposition parties are involved, that enables perhaps members of the judiciary and actors from civil society to also be involved. It helps to provide legitimacy for it. Mexico would be in a totally different place today if the *Instituto Federal Electoral* that oversaw the past elections had participation from members of the PRD on the IFE, but instead the PAN and the PRI made a deal which excluded the PRD from being able to name judges to the IFE, so there was in Mexico (as has been the case in the DR too) a *pecado de origen* which we are seeing the consequences of now.

Dra. Aguiar: When I said selection I meant by election, but then there is the question of the actual Congress that has been elected. How would they feel about this new Assembly? The procedure may be very difficult. To what extent would we reform the constitution through a Constituent Assembly? I do not see the Congress members stepping aside to let the Constituent Assembly do their job and even maybe shutting them down, like Prof. Hartlyn has said.

Three questions from the audience: [*Parts of the first question were not recorded in the audio.*]
(1) “Do you believe that the Constitution and the Congress will be for the next ten years the main ruling power of the nation or will it be more of a peoples’ power, in that eventually presidents and

congresses will have a more difficult time in Latin America.” (2) “Articles 116 – 120 establish how the Constitution will be reformed: ‘*sólo podrá hacerse en la forma que establece ella misma y no podrá jamás ser suspendida . . .*’, which means that if a constituent assembly will be part of the process to reform the Constitution, there will have to be a reform before the reform, which would be convoluted and a bit destabilizing. We would have to be cautious in playing with a constituent assembly; the Dominican Republic has already been through two Constituent Assemblies, one in 1927 which allowed the Horacio Vasquez administration to remain in power, and another one in 1963 that did not cause any problems, but the process would have to be thoroughly negotiated if we want to give legitimacy to the reform, because the current text on how to reform the Constitution is very restrictive.” (3) “Globalization was mentioned by Dra. Aguiar as the response for reforming the Constitution; what do the other speakers think of the role that international investment treaties and the aspects of globalization, the BITs that are being negotiated and so on, play in reforming a constitution?”

Answers: Dr. Aguiar: A number of international legal instruments usually have *cláusulas democráticas*, seeking to guarantee the respect of the constitutional order by the recipients of loans and other facilities given by financial international institutions. That may not alone push for a constitutional reform. But when you do not have the necessary mechanisms for popular consultations or to insure citizens’ access to certain basic information to, for example, environmental protection, citizens must be made part of remedies, etc.

Prof. Hartlyn: In answer to the first question, John Coatsworth, Harvard Economic Historian, has said that the period in Latin America from 1980 through 2005 was the worst period economically for Latin America since the early to mid-19th Century. It was a period of tremendous economic difficulty that at a minimum led to ousting the incumbent. In fact, if you look at Latin America, outside of the 5 that changed the constitution to allow for their immediate reelections, incumbents were not successful in getting reelected. It was a terrible time for incumbent parties, with some instances in which the incumbent party would not even present a candidate for elections. Situations differ now. Latin America is experiencing an incredible commodity boom. It is now a good time to be an incumbent in Latin America: Uribe in Colombia, Chavez expected to win in Venezuela, the Concertación in Chile with a different candidate. The big question is will this allow party systems in Latin America to regain a sure footing or not. It is the essential question in terms of whether we will shift to continued people’s movements deciding that at this point there is such public opinion that the president should go, or whether we will permit more proper institutional channels to operate. Democracy always confronts a dilemma between wanting to be more democratic, more inclusive, more participatory, and wanting to be able to govern more effectively. There is always going to be a tension and a tradeoff between democracy and governability, and typically, that tension has been managed by political parties. Political parties increasingly are viewed as part of the problem for both democracy and governability in Latin America. But inevitably, they have to be viewed as part of the solution.

Mr. Erikson: This has been a hard time for political parties. As the saying goes, all happy families are the same, but all unhappy families are unhappy in their own unique way. In Latin America, rather than presenting a broader trend, the countries that are unhappy are so due to unique circumstances.

Regarding globalization, a slightly different angle is the *diáspora*, and how different countries are trying to figure out how the *diáspora* fits into their political system. Mexicans in the U.S. were allowed to vote in the Mexican elections for the first time – but not that many people show up. In Haiti, a Haitian-born Texas businessman tried to run for president in Haiti and was not allowed because of the Haitian Constitution. President Fernandez has said he wants to engage the

diáspora in a more robust way, perhaps allow them to run for office. The challenge in places like the Caribbean countries, where so many of their people have left and where many people who have great skills and talents live outside the region, is how do you somehow engage the talents of the *diáspora* without creating a type of moral hazard where you have people living outside the country who can make political decisions for people who are still living in the country. That is something that needs to be looked at very closely.

Prof. Hartlyn: Regarding globalization, one of the most difficult challenges that the Dominican Republic is going to face in this constitutional is to define who is a Dominican citizen. This is an issue that will be very tricky, since it involves delicate relations with its neighbor Haiti. It speaks to this broader issue of Globalization, international human rights, international treaties and how to balance the complicated internal politics within the Dominican relationship with Haiti and the Dominican Republic's obligations under international treaties.

Three questions from the audience: (1) "During a television interview, Deputy Pelegrín Castillo was asked 'are you going to be handling who is and who is not a Dominican?' to which he replied that indeed the Commission was going to address that issue and that it was considered a central part of the Commission's work, and that the Supreme Court had already clearly decided who is and who is not a Dominican citizen, and that what was left for the constitutional reform process was to specify very clearly who is and who is not so that it is not a debatable matter anymore." (2) "How long does a 'decent' constitutional reform take; where do you strike the balance?"

Answers: Dra. Aguiar: In my opinion, the issue of nationality should not be addressed in the Constitution; the only principle that is of a constitutional nature is that everyone is entitled to have a nationality, which is guaranteed by international treaties. Otherwise, you do not have to expound on who is a Dominican in the Constitution. I believe that, this should be out of the Constitution, in a nationality code or any other adjective law. I believe that to include it in the Constitution, would just add to the confusion and to the controversy.

Prof. Hartlyn: But the issue of nationality is currently in the Constitution. And with remarkable lack of clarity [although a member of the audience disagrees]. We can argue how clear "*in tránsito*" is.

Regarding how long should a reform take, there is no obvious answer, but one that is done within a week, is suspicious. The constitutional reform should enable the actors engaged in these reforms to set aside their immediate short-term interest, operate, in the words of political philosopher John Rawls, "as if there were behind a veil of ignorance" and did not know who was going to be in power subsequently or not and therefore allow them to think in the long term for the good of the country and think of a reform therefore that could last and not one that would be reformed a few years later.

One final question from the audience: "Should we have a reform of Congress before we embark in a reform?"

Answers: Dra. Aguiar: What we need more than anything is a change in attitudes and behaviors. If we begin by abiding to the current legislation, we would have a better situation.

Prof. Hartlyn: There is no single obvious way to improve democratic governance in a country. Many people argue that what you need is a strong independent civil society that will enrich democracy, and yet you might argue, where is this strong independent civil society going to come

from in a country that has high levels of inequality and a lot of poverty and therefore, has unfortunately, client-elism and patrimonial-ism and those kinds of traits. Is it instead that a stronger democracy will enable a more independent strong civil society. I think that you have to think of the need to try to create a virtuous circle where improved institutions, improved parties, a stronger civil society and a more independent media can all begin to try to interact with each other and move the country away from certain kinds of vicious cycles that it is in. Is there a single point of entry to try to make that change, like reforming Congress before the Constitution? I think you just improve whatever you can and in that sense, everyone has a potential to contribute in their particular areas of specialization.

Mr. Erikson: The example of Congressmen not being able to read and write is more of a human capital development issue than a reform issue. There is a lot that can be done not just in the Dominican Republic, but throughout the hemisphere, in terms of giving adequate training and staffing to new members of Congress so they can be as effective as possible in terms of representing their constituents.