

1. Delivering collective redress

Hodges' first contribution outlined the factual development of collective redress and a direction of travel away from court systems to new architectures such as ombudsmen and public regulators for consumer-trader claims. This development in fact accords with the prescient prediction by Cappelletti that the development of access to justice would proceed in 'waves', and that the third and final wave would be ADR rather than courts and lawyers. A number of these techniques will be illustrated by case studies, and other developing architectures for other types of disputes will be analysed in greater detail, including specific architectures for B2B disputes (eg Small Business Commissioners), and (no fault) compensation schemes for mass personal injury or product liability claims. The contrasting models in the UK will be analysed: an opt-out collective action procedure for competition damages claims; a regulatory power to approve a redress scheme for competition damages; a wide and flexible approach towards delivering consumer redress in the Consumer Rights Act 2015.

How should ADR entities be evaluated? Is the law applied? Is access to justice increased? Is compliant behaviour increased? What quality criteria can and should apply to ADR entities? What should be the relationship between courts and the separate ADR architecture?

The availability of optional tracks raises issues of comparison, competition, innovation, prioritisation, and evolutionary selection. The criteria that will apply should be empirical rather than political: speed, cost, outcomes. What data are available on the various mechanisms? Which mechanisms will be preferred or will wither? What do the choices reveal about the fundamental socio-political values of a state? Does it favour aggressive challenge and polarisation, or collaborative seeking of agreed solutions? What do the choices say about the balance between public and private enforcement of law – or some other new 'enforcement' mechanisms? It may be difficult to identify a broad EU statement of fundamental values, but it is certainly different from USA, and has stronger core elements of social solidarity and cohesion. The models based on ADR and regulators in fact enlist the populace in widespread democratic involvement in 'enforcement' (or behaviour) but use different intermediaries: not lawyers but ombudsmen or other quasi-public entities, paid for by business.