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Quo Vadis civil justice?

Filling the gaps in civil justice in the U.S. and Europe

Hosted by

Emory University School of Law

The University of Oxford’s Centre for Socio-Legal Studies, Swiss Re Programme for Civil Justice Systems

Spring 2021 -- A Three-Part Zoom Event

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| 26 March | 9:00 -12:00 (Eastern U.S.) | Panel 1: Current Tendencies in Civil Litigation |
| 30 April | 9:00 – 12:00 (Eastern U.S.) | Panel 2: American and European civil justice on the cutting edge of legal innovation – justice out of courts |
| 28 May | 9:00 – 12:30 (Eastern U.S.) | Panel 3: Rethinking and redesigning civil justice systems – what works and why? |

Civil justice globally is in a state of transition, reform and even crisis. This state of crisis, and a search for mechanisms to settle disputes, ‘right the wrongs’ and enforce the law efficiently, effectively and equitably, pre-dated the global pandemic. Currently, across Europe, in the U.S. and beyond, the pandemic places additional, very significant pressures on civil justice systems. In response to these challenges, both pre- and during the pandemic, policymakers, scholars, legal practitioners and businesses have been designing and testing a variety of reforms of existing systems, as well as new procedures, mechanisms and bodies aimed at providing civil justice. Reforms and innovations proliferate both within the in-court civil justice (litigation including individual and collective/class actions) and out-of-court mechanisms. When we contrast Europe and the United States, these reforms seem to be headed in very different directions. Do these different directions merely reflect the different starting points for the respective civil justice systems, or are there other factors at play?

The ‘Filling the Gaps’ series of Zoom events gathers lawmakers, policymakers, scholars, business representatives and legal practitioners who, in the span of three panel discussions, will offer insights into the seismic shift the contemporary civil justice systems in Europe and the U.S. are experiencing. They will reflect on the search for just, efficient and effective civil justice mechanisms, trace the trajectories of reforms, assess the reasons for differences in trajectories, and attempt to answer the perennial question: can we learn from one another?

The first panel discussion will focus on reforms and transformations in civil litigation, while the second discussion will shift to the out-of-court civil justice mechanisms, including traditional ADR methods as well as recent innovations in the area of civil justice. The third panel discussion is a capstone to the series. It will address systemic design and re-design questions concerning the transforming civil justice systems.

**PANEL 1 – Friday March 26th**

**Current tendencies in civil litigation**

The recent trends in civil litigation in the U.S. have been the subject of some concern in academia and legal practice. The civil process and courthouses are affected by the growing pressures towards better case management and the omnipresent goal of efficiency. The pressures come from changes to Federal Rules of Civil Procedure, but even more so from judgements of the U.S. Supreme Court. The trial-centered process is diminishing, and adjudication without trial, front-loading of procedural steps and settlement culture have arrived. The key elements of the ‘American procedural exceptionalism’: relaxed pleading standards, extensive discovery and a passive judge, lost a great deal of their potency. Access to court-administered justice was further limited by changes in jurisdiction rules, and by the increasing propensity of mandatory arbitration clauses. The American class action is not what it used to be, challenged by a plethora of legislative and judicial changes to the process, and by the growing popularity of non-class aggregate litigation, multi-district litigation, as well as con-class contractual settlements.

European civil justice policy, on the other hand, while also under pressure from the efficiency advocates, continues to focus on encouraging more litigation. Reforms across Europe reflect movements towards some elements of the American-style (or common law-style) litigation: such as relaxed pleading, greater role for the parties and their lawyers and less ‘inquisitorial’ judges, or introduction of discovery. European lawmakers are looking into, or have already established, new mechanisms encouraging litigation, both on an individual and collective basis. Digitalization of justice has become one of the prime targets for civil justice reforms. Collective or group actions are gaining ground, although they were given a very specific, European-style flair. The European collective redress model is becoming increasingly institutionalized, meaning that more often than not collective, group, or representative proceedings can only be brought by authorized bodies, very often bodies of a public nature. This development is set to continue when the EU directive on representative actions for the protection of the collective interests of consumers (‘collective redress directive’) comes into force. The directive allows the representative bodies to bring compensation claims in the name of groups of consumers.

This panel discussion takes on the developments mentioned above and assesses their viability.

**Formal introduction:**

**Mary Anne Bobinski** (Dean of Emory Law School)

**Magdalena Tulibacka** (Emory Law), **Richard Freer** (Emory Law), **Christopher Hodges** (the University of Oxford)

**Moderator: Richard Freer** (Emory Law)

**Panelists:**

**Sean Farhang** (Berkeley Law, University of California)

**Xandra Kramer** (Erasmus School of Law, Rotterdam)

**Malgorzata Posnow-Wurm** (European Commission)

**John Sorabji** (UCL Faculty of Laws, Legal Adviser to the Lord Chief Justice of England and Wales)

**Stefaan Voet** (KU Leuven)

**PANEL 2 – April 30th**

**American and European civil justice on the cutting edge of legal innovation – justice out of courts**

What is civil justice and how it can be achieved has undergone major changes on both sides of the Atlantic. While the trajectories of change in civil litigation are quite different, both the U.S. and Europe are boosting out-of-court civil justice. Traditional ADR mechanisms and bodies are reformed, and an impressive array of innovative mechanisms, bodies and processes have been added. These include arbitration, mediation, as well as (non-public) ombudsmen schemes, compensation funds, business-operated e-justice mechanisms, and last but not least: public bodies (in some jurisdictions - for instance Denmark and the UK – they include ombudsmen) with powers to award or to request an award of compensatory damages (‘regulatory redress mechanisms’). Experience from Europe indicates that if one were to indeed take a path not involving litigation, new, more state-of-the-art, responsive mechanisms such as Ombudsmen, or, in some cases, regulators, may well be a better fit. Experience from the U.S. shows how popular and efficient some private e-justice schemes can be. The speakers at this Panel event – scholars, legal practitioners and ADR providers explore and assess these innovations.

**Moderator: Christopher Hodges** (the University of Oxford)

**Panelists:**

**Alexandre Biard** (Erasmus School of Law, Rotterdam)

**Thomas Main** (University of Nevada)

**Pietro Ortolani** (Radboud University)

**Rebecca Purdom** (Emory Law)

**Matthew Vickers** (Chief Executive and Chief Ombudsman – Ombudsman Services, UK)

**Representative of GA Attorney General’s Office** (TBC)

**PANEL 3 – May 28th**

**Rethinking and redesigning civil justice systems – what works and why?**

As civil justice systems are changing on both sides of the Atlantic, how do we address the systemic design questions? It is clear that what comes next for civil justice systems is not what many observers and commentators have long accepted as a given. To a significant degree the changes on both sides of the Atlantic resulted from conscious policy-making efforts. Where are these efforts headed?

While the aims of civil justice systems are being revisited, previously favored or dominant mechanisms for delivery of civil justice are losing their popularity or importance (as to some extent is the case with litigation in the U.S.), and it is not always clear what other mechanisms, better fitting the revised understanding of the aims of civil justice, are to replace them. The scope of the civil justice systems is opening up to new mechanisms and new interesting approaches offered by new technologies. Among the many questions to be addressed when redesigning civil justice systems, two are particularly pressing. They will be the main points of focus of the panel. The first one concerns the constitutional guarantees of access to justice and due process. How do we reconcile the reforms and innovations presented during our first and second panel with those fundamental requirements? With the scope of what we understand as ‘civil justice mechanisms’ extended well beyond the traditional understanding of justice, do we need to revise our understanding of what fair and accessible justice is? The second issue relates to recognition that among the plethora of available civil justice mechanisms, a thoughtful and reasoned choice needs to be made to address different types of cases. Here there is scope for extensive scholarly research into effectiveness of specific mechanisms and procedures.

**Moderator: Stefaan Voet** (KU Leuven)

**Panelists:**

**Mary Bartkus** (Hughes, Hubbard & Reed)

**Manuel Gomez** (FIU Law)

**Christopher Hodges** (the University of Oxford)

**Lorenz Kodderitzsch** (Johnson & Johnson)

**Alexandra Lahav** (UConn School of Law)

**Graham Russell** (Chief Executive of the Office of Product Safety and Standards, UK)

**Magdalena Tulibacka** (Emory Law)