

FROM INNOVATIONS TO PEOPLE-CENTRED JUSTICE ECOSYSTEM

Plenary session

28 March 2019

9.15 – 12.45

Establishing people-centred justice pathways in a sustainable and effective manner requires developing a people-centred justice ecosystem, which encompasses a holistic and comprehensive policy and service continuum, including legal empowerment and early resolution and dispute prevention strategies that support people's well-being. A people-centred justice ecosystem also calls for the shift from litigation to prevention and early intervention, coordination within and across sectors, prioritisation of basic and community justice services, targeting and the co-production of justice. It also requires specific attention to the needs of vulnerable groups.

This session explores innovative models to facilitate the creation of people-centred justice ecosystem, including in designing, purchasing and delivering legal and justice services, in line with the OECD criteria on people-centred legal and justice services. It also explores the potential of technology and data in facilitating seamless dispute resolution and people-centred pathways, including for specific groups and specific types of legal problems. The session will allow drawing lessons from the OECD work on digital services, public sector innovation people-centred healthcare services.

The session provides the foundation for the discussion of designing people-centred pathways for specific vulnerable groups (to be discussed during the breakout sessions on Day 2) and consists of two parts:

Part I: Towards a people-centred justice ecosystem: inspiring policy change

Part II: Using technology and data for closing justice gaps

Part I: Towards a people-centred justice ecosystem: inspiring policy change

Questions for discussion:

- *Can countries envisage creating a holistic and seamless justice ecosystem (integrating multiple channels for resolving disputes and obtaining legal assistance), which puts people at the centre? What are the barriers and enablers? Risks and opportunities?*
- *If yes, what principles must be respected and regulatory and institutional changes made? Which coordination mechanisms are needed? What examples – from both justice and other sectors – be considered?*
- *What is the role of courts in the holistic people-centred justice ecosystem (and the continuum of legal and justice services)? How can disputes be transferred from one dispute resolution service to another (e.g., from litigation to mediation)? Should there be rules for such transfers? Should there be principles on how one type of dispute resolution affects another in case of such transfers?*

Moderator: Geoff Mulherin, Director, New South Wales Law and Justice Foundation

Speakers:

- **Felix Steffek**, University Lecturer, Faculty of Law; Co-Director of the Centre for Corporate and Commercial Law; Director of Studies, Newnham College; University of Cambridge - remote
- **João Tiago Silveira**, former State Secretary of Justice, Portugal
- **Cris Coxon**, Principal Analyst, Access to Justice Analytical Services, Ministry of Justice, UK
- **Danielle Hirsch**, Principal Court Management Consultant, National Center for State Courts
- **Liberty Aldrich**, Managing Director, Center for Court Innovation

1. INNOVATING JUSTICE: STARTING WITH THE PEOPLE

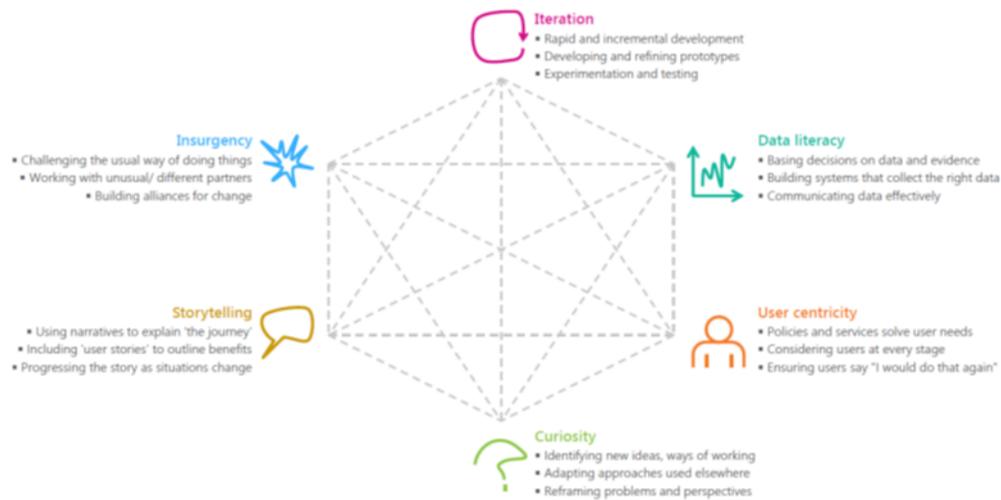
Recent advances in policymaking, institutional design and technology provide opportunities for a new era of people-driven justice. The surge of alternative dispute resolution (ADR) and the importance of leaving no one behind are prompting governments to rethink the role of the users of different justice services, the state and a wide range of conflict resolution institutions. Technology has not only changed the way in which courts and state services are organised and present themselves to the users. Beyond electronic court files and electronic one-stop-shop state services, emerging technologies – such as artificial intelligence, blockchain and smart contracts – can fundamentally challenge established ways of dispute resolution and provide avenues for new and innovative solutions.

To facilitate and manage transformational change, the OECD work on innovation suggests six core principles, among them people centricity:¹

1. **Iteration:** incrementally and experimentally developing policies, products and services;
2. **Data literacy:** ensuring decisions are data-driven and that data is not an afterthought;

3. **People centricity:** public services should be focussed on solving and servicing people's needs;
4. **Curiosity:** seeking out and trying new ideas or ways of working;
5. **Storytelling:** explaining change in a way that builds support;
6. **Insurgency:** challenging the status quo and working with unusual partners.

Figure 1. OECD six core skills for Public Sector Innovation



Source: OECD (2017), Core Skills for Public Sector Innovation.

One example for applying this approach to innovating law and dispute resolution is the United Kingdom's LawTech Delivery Panel.ⁱⁱ The Panel comprises a team of experts and leading figures representing various stakeholders, among them government, courts, industry, academics, businesses, consumers, innovators, start-ups and banks. The LawTech Delivery Panel aims at identifying barriers and catalysts for growth. In particular, it develops innovative suggestions to foster an environment in which new technology can thrive in the legal sectors.

Applying the people-centric approach

At the heart of a people-centric approach to justice is a people-driven understanding of dispute resolution. This means re-conceptualising mechanisms of dispute resolution through the eyes of the parties to a conflict. How can policymakers take into account their perspective? Against this background, mechanisms of dispute resolution could be analysed using the following lens:

- **Initiation control:** Is each party's consent needed to initiate the dispute resolution mechanism?
- **Procedure control:** Do the parties determine the procedure and the type of mechanism?
- **Result-content control:** Do the parties determine the content of the result of the dispute resolution? This determination corresponds to whether the mechanism is evaluative, that is, whether the law or a third person evaluates the conflict.
- **Result-effect control:** Is the parties' consent needed for the result to be binding?
- **Neutral choice control:** Do the parties choose the neutral?
- **Information control:** Do the parties control the disclosure of information? That is, is the procedure private?

Applying these lens to essential types of dispute resolution can be described by a taxonomy as shown in the following table 1.ⁱⁱⁱ These lens can also be applied to other dispute resolution channels.

Table 1. Dispute resolution mechanisms and their characteristics from the users' perspective

	Parties together have...					
	Initiation control	Procedure control	Result-content control	Result-effect control	Neutral choice control	Information control
Negotiation	yes	yes	yes	yes	N/A	yes
Mediation	yes	yes	yes	yes	yes	yes
Conciliation	yes	yes	no	yes	yes	yes
Arbitration	yes	yes	no	no	yes	yes
Adjudication	no	no	no	no	no	no

Note: n/a = not applicable.

Redesigning and regulating dispute resolution from the people's perspective can come with challenges. Established dispute resolution cultures considering institutions – such as courts – rather than the people first are difficult to change overnight. Innovation may change distribution of cases, workloads and fees and, as a result, may meet resistance among the various stakeholders.

A comprehensive policy in a service continuum

Taking people centrality seriously would also imply empowering the parties to take responsibility of their legal problems/conflicts and their solution. This calls for a differentiating, comprehensive, and, at the same time, consistent framework of dispute resolution. There are different institutional approaches and their suitability depends on the specific jurisdiction and the needs of those affected by conflict. Both centralised and decentralised approaches could be effective.

First, people should have a right of access to a differentiating framework of dispute resolution. Different groups of people have different needs, capabilities and interests in dispute resolution, which call for a set of mechanisms capable of dealing with variety. There is not one type of dispute resolution that is better than the others. Litigation, ombud schemes, conciliation, expert opinions, mediation, negotiation and many other ways to solve disputes all have an important role to play. The traditional choice between negotiated compromise and court litigation, at times enriched by arbitration, does not fully reflect the variety of interests that matter to people affected by conflict. In many countries, mediation and then conciliation/ombud schemes were added to the mix of available mechanisms more recently. In the European Union, for example, the 2008 Mediation Directive^{iv} was followed by the 2013 ADR Directive^v and the 2013 ODR Regulation^{vi}. The ADR Directive and the ODR Regulation, however, do not regulate a specific form of dispute resolution. They rather only focus on the quality of consumer ADR and online dispute resolution in general. Many other mechanisms of alternative dispute resolution have not found the attention of lawmakers. In the European Union, for example, there is no instrument similar to the Mediation Directive for alternative forms of dispute resolution such as in-house complaint procedure, conciliation, settlement conference, neutral evaluation, expert opinion, mini-trial, ombud scheme, adjudication, arbitration, judgement proposal and many more. A truly differentiating framework of dispute resolution/justice pathways, empowering citizens by offering different and well-established types of dispute resolution is still to be fully developed in many jurisdictions.

Second, while differentiating, good dispute resolution frameworks need to be comprehensive at the same time. People need to know the core features of the available mechanisms to solve disputes, the relationship between the mechanisms and their options in case a dispute has a cross-border

dimension. Historically, the features of court litigation and arbitration, usually also of mediation and consumer conciliation/ombud schemes are well established. The features of other forms of alternative dispute resolution, however, are often less clear. This puts people in a difficult position as regards choosing the right way to solve their disputes. Also less well established are the relationships between various forms of dispute resolution. This concerns the mechanics and consequences of switching procedures and the effect of the first procedure on the second procedure. Many jurisdictions, for example, lack clear rules on the effects of switching from conciliation to mediation, or from an expert opinion to a court proceeding. The lack of certainty as regards switching between procedures and the relevant effects on costs, limitation periods, confidentiality etc. makes such switches less likely. As a result, users face difficulties when recognising that the first choice of dispute resolution mechanism may have not been appropriate. Further, the knowledge that changing mechanisms is difficult can influence the parties' first choice. If for example, switching from a non-binding conciliation to court proceedings in case of failure is cumbersome, then some parties will opt for court litigation in the first place even though conciliation might be the better option. Finally, people may benefit from a comprehensive cross-border framework for dispute resolution. Here the Singapore Convention on Mediation^{vii} closes one of the existing gaps, but many more remain.

Third, people-centric frameworks of dispute resolution require consistency within mechanisms of dispute resolution and between mechanisms. If the costs of mechanisms, their effect on limitation periods, the relevant rules on confidentiality, the enforcement of resulting solutions etc. prove to be inconsistent, then the parties' choice could be distorted. Instead of choosing the form of dispute resolution that best suits the particular conflict, they will opt for a form that is, for example, most subsidised by the state. Inconsistent rules and principles may well often be a result of the historic piecemeal development of frameworks of dispute resolution. This often includes the amount and conditions for state support for certain dispute resolution mechanisms. At the same time, it is unlikely that different groups of users/parties which are in need of financial support would try to solve a dispute by way of mediation, if they can expect legal aid only for court litigation but not for mediation.

The specific role of the courts

Courts have a special role to play. They are the last resort in dispute resolution due to the power monopoly of the state and as the ultimate guarantors of the rule of law. This raises challenging questions. Should courts be accessible to all and for all types of disputes? How to avoid overwhelming demand for expensive court services while meeting different legal needs? Court services may be expensive in two ways, for both the parties and the state. How to enable litigant choice in procedures that is most appropriate for the case at hand and where to bring their cases? How to ensure the parties' understanding of the available options, the control they would have in each case, the resources available and legal expertise required? This would also require effective information systems that would provide information to different stakeholders (potential clients of justice services, lawyers and others) of the available options and associated resource implications.

Establishing effective triage systems can enable jurisdictions to make the best of legal resources, including the time of judges, by focusing judicial attention only on the cases that warrant their attention. If this is the right approach, what is the best way to enable people and businesses to make threshold decisions of whether or not and where to bring their cases? How to improve transparency and the understanding of court and other processes so that people can make better decisions on where to take their legal problems and disputes?

2. POTENTIAL AVENUES FOR NEXT STEPS

The ambition to implement the aspirations of the Sustainable Development Agenda to leave no one behind may present an opportunity to consider rethinking some procedural laws and principles. In view of the growing diversity of alternative forms of dispute resolution, there might be an opportunity to start reflecting on procedural laws from the perspective of the users and broader groups of people. Currently, there are uneven approaches to regulating court and other dispute resolution mechanisms. As highlighted during the 2018 OECD Roundtable on Access to Justice, could the SDG agenda present an opportunity to start moving towards a framework of dispute resolution covering a variety of dispute resolution mechanisms in a comprehensive and inclusive way?^{viii} Dispute prevention and early dispute resolution would be an essential feature of this framework.

In addition, countries may also consider one-stop shop solutions for dispute resolution, which are already an accepted reality for many other public services. One-stop shops are services that are bundled at one central access point, which can provide efficient and comprehensive entry points to public administration.^{ix} A one-stop shop for dispute resolution could potentially lower the entry barrier for the users. It would help users navigate the system (as the creation of various conciliation/ombud schemes in some countries in recent years, for example, has come along with users being increasingly confused where to go). A one-stop shop dispute resolution entry would also provide an opportunity for triage to guide users at an early stage towards the right dispute resolution mechanism. Creating such solutions would require reflecting on who should establish and manage this entry point. Courts?^x Developing pilot projects could be a possible way forward to test different possibilities.

Part II: Using technology and data for closing justice gaps

Questions for discussion:

- *How can technology help overcome barriers and facilitate the creation of a seamless people-centred justice ecosystem? Which new challenges do new technologies such as artificial intelligence and blockchain create for access to justice?*
- *How can we leverage big data to anticipate, prevent and resolve disputes? What are the opportunities and risks?*

Moderator: Georg Stawa, Head, Strategic Planning, Ministry of Justice, Austria

Speakers:

- **Hugo Nunes**, Advisor, State Secretary Cabinet, Ministry of Justice, Portugal
- **Luc Altmann**, Deputy Head, Insight and User Research Division, HM Courts and Tribunals Service, UK
- **Jennifer Marie**, Deputy Presiding Judge; Registrar, State Courts, Singapore
- **Anna Skrjabina**, Project Leader, Justice for Growth, Court Administration, Latvia
- **Daniela Piana**, Research Director and Chair Political Science, University of Bologna/ENS Paris Saclay/ LUISS Rome, Italy
- **Ludwig Bull**, CTO, [CourtQuant](#)

1. GENERAL DEVELOPMENTS

Technological innovation has been one of the main drivers of change of dispute resolution in the last decade and can serve as a powerful enabler of integrated, inclusive and people-centred justice ecosystems. In particular, courts along with public registries and other state services are on their way to embracing digitalisation. Given the efficiency advantages of electronic administration, such change is inevitable and requires considerable investment.

From the users' perspective, technology creates new avenues to conflict solution and help closing significant justice gaps. Online dispute resolution means that physical presence becomes less relevant. Access to justice can be remote. Technology also creates new opportunities, such as one-stop entry portals for dispute resolution. On a more fundamental level, technology has the potential to strengthen the participation of citizens in dispute resolution. Citizens engage and require to be engaged as co-producers of justice.

Technology has also added new types of dispute resolution mechanisms to the mix, such as online dispute resolution platforms. Such online platforms can offer a large variety of services. They can be directed at different types of disputes (e.g. family disputes) or different types of actors (e.g. B2C or B2B). The online EU Online Dispute Resolution Platform serves to direct consumers to the right institution of dispute resolution and to establish contact with the relevant trader.^{xi}

Box 1. About the ODR platform

The Online Dispute Resolution (ODR) platform is provided by the European Commission to allow consumers and traders in the EU or Norway, Iceland, and Liechtenstein to resolve disputes relating to online purchases of goods and services without going to court.

The ODR platform is not linked to any trader. You can use it to send your complaint to an approved dispute resolution body.

A dispute resolution body is an impartial organization or individual that helps consumers and traders settle a dispute. This process is known as alternative dispute resolution, and it usually tends to be quicker and cheaper than going to court.

The ODR platform only uses dispute resolution bodies approved by their national governments for quality standards relating to fairness, transparency, effectiveness and accessibility.

The ODR platform is easy to use and takes users through the dispute resolution process in a step-by-step fashion. It provides translations in all EU languages and has inbuilt time limits for resolving complaints.

Source: ec.europa.eu/consumers/odr/main/?event=main.home.howitworks#heading-1

In addition, technology can also contribute to the wider framework of good dispute resolution by improving choice and conflict management. Digitalisation can support users in making the right choice by improving triage. Technology-supported triage can be offered by both private and public service providers. Private providers help analyse the conflict, prepare submissions and then establish links to dispute resolution bodies.^{xii} Another approach is to integrate triage into the existing state institutions of dispute resolution to create a holistic system from a user perspective. One way might be to elevate the function of courts to an institution that is also responsible for screening disputes as to their suitability for different kinds of dispute resolution mechanisms.^{xiii} The same principles could be applied to checking whether there is the need to transfer a dispute from one type of dispute resolution mechanism to another since it has developed in a way that it needs a different forum.

Technology can also contribute to lowering the entry-barrier to justice services, such as making them accessible through mobile phones. As people communicate increasingly by way of mobile phones, this channel could be an effective enabler for access to justice. Such mobile and further internet services can also lower access barriers for those facing financial barriers to access. Technology also allows leveraging scale-effects thereby minimising the costs of individual users. In this way, access to justice can be provided for groups otherwise excluded from law and justice for monetary reasons.

More recently, data is used to anticipate and prevent legal problems and put early resolution mechanisms in place. For example, both private and public entities engaged in providing justice services have realised that patterns in consumer complaints can be used to predict and avoid bigger conflict issues. If consumer complaints against a company show a spike in complaints for refused or delayed refunds, for example, it is more likely that this company suffers cash flow problems and might find itself in financial distress soon. If such information is made available to regulators, there might be a chance to avoid a firm collapse with devastating results for both consumers and the wider business community. For ombud schemes, it has become good practice to summarise patterns in consumer complaints in annual reports and other documentation and make this information available. Again, regulators and lawmakers can react if the behaviour complained about signals a need for intervention. Such information can also be used by private actors, for example consumer

portals, to support consumers in making informed and better choice. In this way, patters discovered by data analysis can contribute to capacity building.

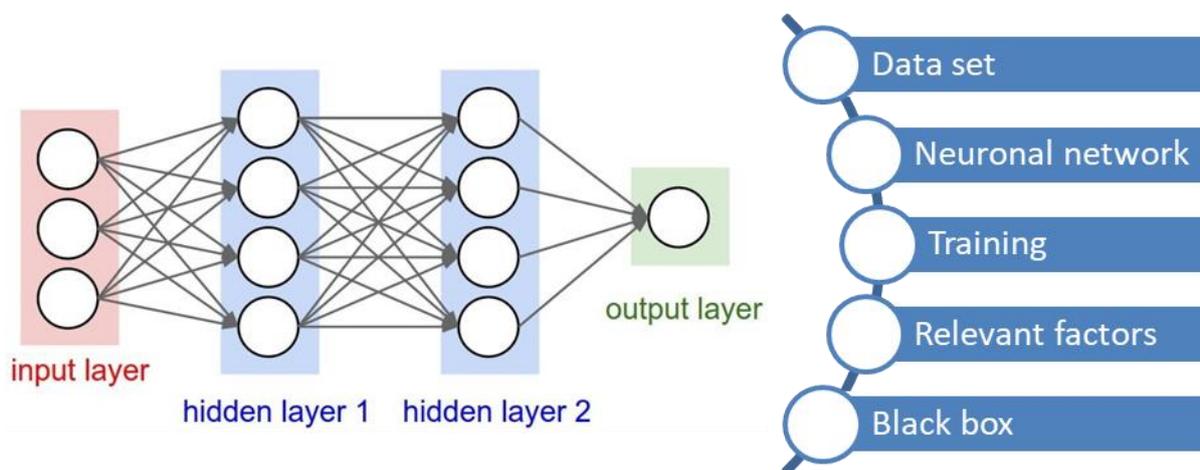
2. ARTIFICIAL INTELLIGENCE AND ACCESS TO JUSTICE

While the digitalisation of justice is still underway, artificial intelligence is knocking on its door and, in some areas of dispute resolution, is already a reality. How can artificial intelligence work as regards access to justice? In a nutshell, algorithms can be trained on facts and decision of the past. For example, the facts and the outcomes of past court decisions can be presented to an algorithm and the programme then trains itself through trial and error. In this training process, the artificial intelligence tries to establish which factors influence a dispute resolution outcome. At the end of the training, the artificial intelligence possesses information on the relevance of perceivable factors for the outcome of the case. Early evidence suggests that artificial intelligence could achieve prediction accuracies of 90% and higher and possibly consider all information it is provided with. The algorithm could identify factors to be relevant for the decision that human lawyers would often not look at, for example the identity of the decision makers or counsel, particular characteristics of the parties and so on. Importantly, the humans may often not know how the artificial intelligence later achieves its predictions ('black box').

Generally speaking, there could be a myriad of possible applications of artificial intelligence to justice:

- supporting effective legal advice to litigants by analysing law and jurisprudence;
- analysing documents and, for example, establishing risks in existing and future contracts;
- analysing justice frameworks and the contributions of the involved persons;
- identifying factors, which could drive the results of justice.

Figure 1. Artificial intelligence, neural network



Source: www.digitaltrends.com

Artificial intelligence, however, also creates new challenges and risks for justice:

- Is there a risk that some actors will use artificial intelligence to gain unfair competitive advantages over other actors in dispute resolution?
- Which role can artificial intelligence legitimately play in the administration of justice? Should certain decisions always be made by humans?

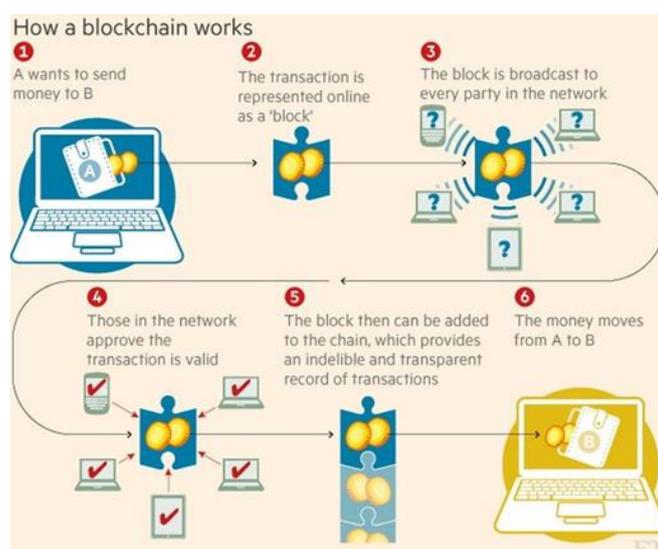
- How relevant is the fact that artificial intelligence learns from the past?
- What areas of justice is artificial intelligence well adapted to cover and where does it currently fail?
- Which actors should be involved in the application and regulation of artificial intelligence as regards justice?

As private actors begin to embrace artificial intelligence, it is increasingly imperative for governments and parliaments to engage in capacity building and reflecting on principles and approaches to regulating (or not) artificial intelligence.

3. BLOCK CHAIN, SMART CONTRACTS AND MAKING JUSTICE HAPPEN

As highlighted during the 2018 OECD Roundtable, further innovations for access to justice could involve blockchain and smart contracts. How do blockchain and smart contracts work as regards dispute resolution? Blockchain is based on a distributed database, also called a decentralised ledger. Everyone participating in the blockchain has access to its entire content, both present and past events. Blockchain is based on a decentralised structure. There is no single entity in control of the data; instead, every party can check whether a transaction corresponds to the data in the distributed ledger. All parties can communicate directly with each other – there are no intermediaries. Blockchain can offer an interesting framework for anonymity and identification. Parties participating in the blockchain can be both anonymous and identifiable. Each participant has a unique address that is used as the basis of identification. Transactions and events in the blockchain are recorded against these addresses. However, this is not the real name, hence parties can choose to be and remain anonymous. If a party prefers, it can also reveal its true identity to others.

Figure 2. Blockchains

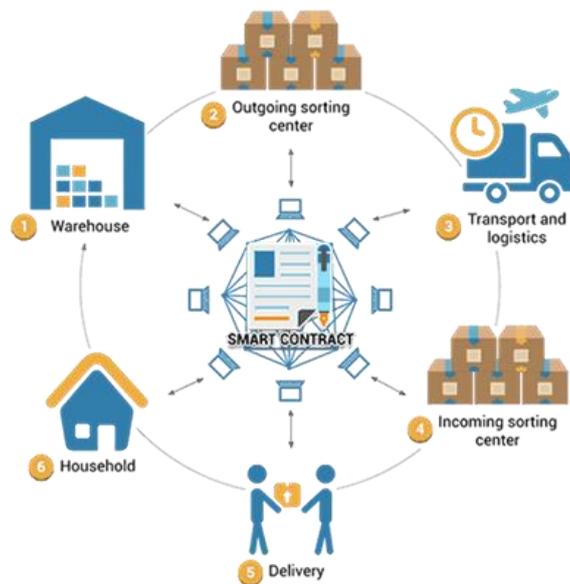


Source: coinsutra.com/draglet

Why is the blockchain called blockchain? This has to do with the permanent entries. Entries in the block chain cannot be reversed, they are permanent. Each transaction is linked in the entry to the transaction before – and this is why it is called a block chain. Algorithms are used to ensure that the blockchain entry is permanent and stays in the order in which the events happened. Finally, the blockchain offers an attractive interface for other technology. The fact that the blockchain is based on information technology means that digital applications can use and relate to information in the block chain.

This is where smart contracts could come in. A smart contract can be drafted, for example, in a way such that party A automatically transfers a certain sum of money to party B if a defined event, such as delivery, has or has not happened by a certain date. This is why the blockchain and smart contracts may be relevant to justice. They allow consequences and enforcement to be automated ex ante. The parties would not need to go to court any more to get a court decision and then go through the process of enforcing the court decision. Instead, the legal consequence and the transfer of a certain right can be automated by the smart contract relating to the blockchain.

Figure 3. Smart Contracts



Source: coinsutra.com/draglet

At the same time, as artificial intelligence, blockchain and smart contracts could have a strong potential to help close justice gaps, they also bring new challenges and risks to the area of dispute resolution. In line with the common trend y identified above, smart contracts and blockchain may accelerate the privatisation and co-production of justice. This could imply that governments would need to have the capacity to monitor and understand market developments and regulate where necessary. In addition, governments would have a role to play in facilitating block chain solutions and smart contracts. Some countries are considering whether automated damage payments (e.g. in cases of delayed flights) should be required by law; others consider moving their registers, e.g. land registers and commercial registers, towards blockchain solutions.^{xiv}

Note prepared in collaboration with Felix Steffek, University Lecturer, Faculty of Law; Co-Director of the Centre for Corporate and Commercial Law; Director of Studies, Newnham College; University of Cambridge.

ⁱ Adapted from: OECD (2017), Core skills for Public Sector Innovation, OECD Publishing, Paris, p. 8–9.

ⁱⁱ See <www.lawsociety.org.uk/policy-campaigns/articles/lawtech-delivery-panel>.

ⁱⁱⁱ See World Bank, Making Mediation Law, Washington D.C. 2016, p. 18–19; F Steffek in European Parliament (JURI Committee), Policy Department for Citizens' Rights and Constitutional Affairs, The Implementation of the Mediation Directive: Compilation of In-depth Analyses, 2016, p. 59; for further details see F Steffek and H Unberath in cooperation with H Genn, R Greger and C Menkel-Meadow (eds), Regulating Dispute Resolution: ADR and Access to Justice at the Crossroads, Oxford 2013, p. 36 et seqq.

^{iv} Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, OJ L 136, 24.5.2008, p. 3.

^v Directive 2013/11/EU on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, OJ L 165, 18.6.2013, p. 63.

^{vi} Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes, OJ L 165, 18.6.2013, p. 1.

^{vii} United Nations Convention on International Settlement Agreements Resulting from Mediation; see <www.uncitral.org/pdf/english/commissionsessions/51st-session/Annex_I.pdf>.

^{viii} Cf the suggestion in F Steffek in European Parliament (JURI Committee), Policy Department for Citizens' Rights and Constitutional Affairs, The Implementation of the Mediation Directive: Compilation of In-depth Analyses, 2016, p. 59

^{ix} See recently OECD (2018), Access to Justice for Business and Inclusive Growth in Latvia, OECD Publishing, Paris, p. 14.

^x See, for example, Flango V. and Clarke (2015), Reimagining Courts: A Design for the Twenty-First Century, Pennsylvania.

^{xi} See <ec.europa.eu/consumers/odr/main/?event=main.home2.show>.

^{xii} See, for example, <www.resolver.co.uk>.

^{xiii} See, for example, Flango V. and Clarke T. (2015), Reimagining Courts: A Design for the Twenty-First Century, Pennsylvania.

^{xiv} See, for example in Sweden <www.nasdaq.com/article/swedish-mapping-authority-pioneering-blockchain-based-real-estate-sales-cm935347> and in the UK <www.gov.uk/government/news/hm-land-registry-to-explore-the-benefits-of-blockchain>.