

ONLINE DISPUTE RESOLUTION: LESSONS FROM RESEARCH AND PRACTICE

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THREE COMMENTS ON ODR

1. ODR: from a blanket term to specific applications
2. Institutional considerations in court-connected ODR
3. Disputants' perceptions of procedural justice in ODR

1. ODR: BLANKET TERM → SPECIFIC APPLICATIONS

○ Umbrella term

- Structured information exchange, e-negotiation
- Blind bidding, interest-based optimization
- Expert systems
- Virtual mediation/arbitration/jury process (crowd-sourcing?)
- E-Courts

○ Dispute Types

- Originate online or offline
- e-Commerce, insurance, business, family, domain names, etc.

○ The role of technology - the 3rd or 4th Party?

- *Facilitated* – human operated (decision support)
- *Automated* – software operated (decision substitution)

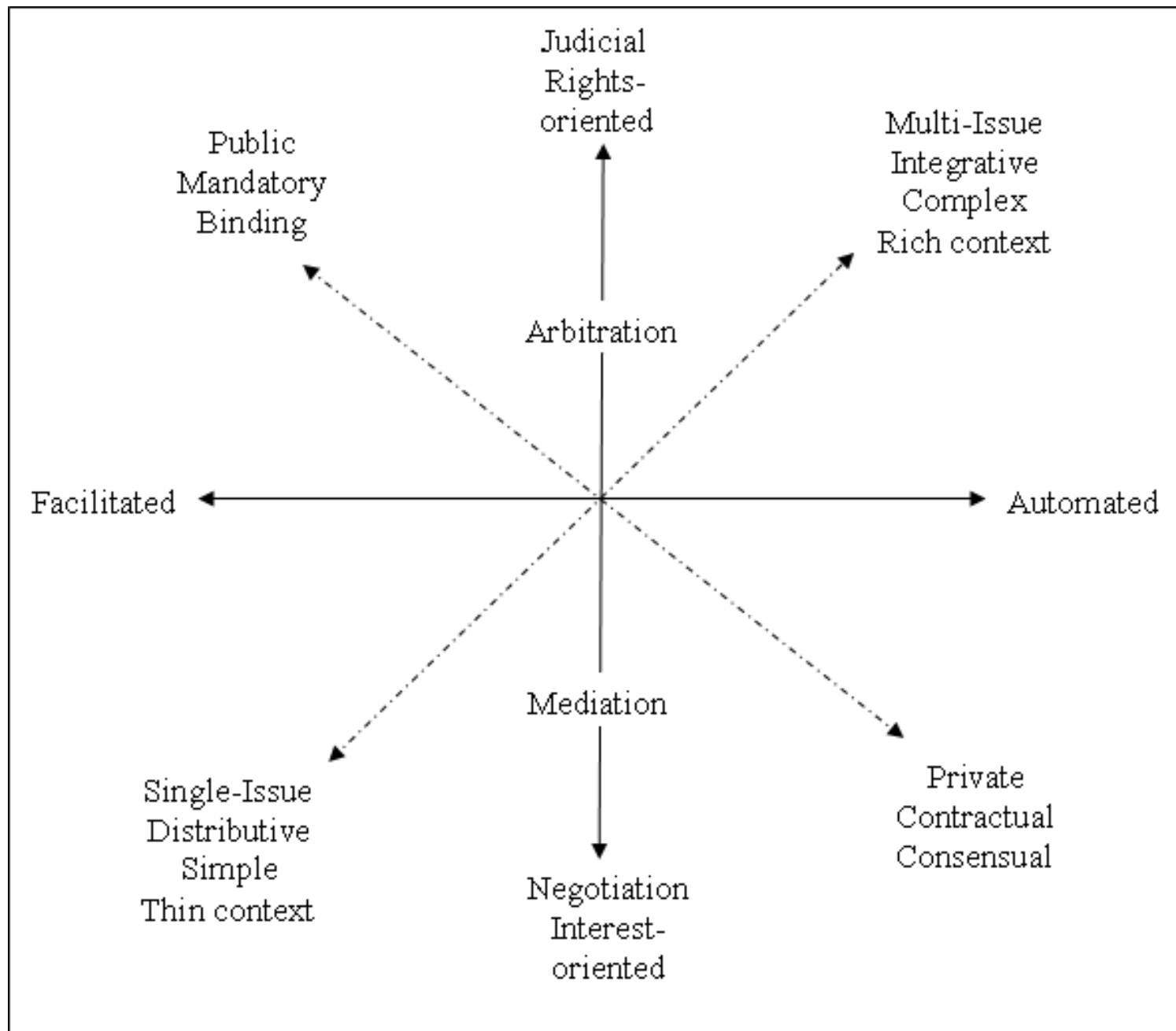
COMMONLY CITED CHALLENGES

- **Practical:**
 - Effective substitute for F2F?
 - Will stakeholders adopt?

- **Normative:**
 - Is it fair/appropriate? (considering tradeoffs)
 - Machine made justice? (“Code is law”)

- **Legal & Policy:**
 - Procedural safeguards?
 - Professional responsibility?

- **How to realize the potential of ODR?**



EFFECT OF ODR ON THE PRACTICE OF LAW?

- **What type of ODR?**
 - DR process
 - Technology
 - Process design
- **What type of dispute? Legal domain?**
- **What type of users (neutrals, disputants, lawyers, others)?**
- **What type of institutional setting?**
- **In lieu of what?**
 - Redress vs. Justice

2. COURT-CONNECTED ODR: OPPORTUNITIES AND CHALLENGES

- **Examples:**
 - Money Claim Online (U.K)
 - Civil Resolution Tribunal (BC, Canada)
 - Remote video-conferencing testimonies, e-filing (worldwide)
- **Pilot project with the San Mateo Superior Court
ADR Division**
 - Small claims & family mediation
 - Mediation platform licensed by Modria.com
 - But, in order to be implemented must meet institutional needs: elaborate administrative and legislatively mandated intake process.

CHALLENGES IMPLEMENTING COURT-CONNECTED ODR

- **Compliance with legal duties and court rules**
- **Institutional culture, large-scale implementation**
- **Who are the users? Who are the “gatekeepers”?**
 - Need finding with court staff, disputants, neutrals, lawyers
- **From paper forms to online forms**
 - Restructure design to streamline process
 - Information collection format
 - Who uses the information collected, and how?
- **From F2F to online (or hybrid) processes**

REASONS TO BE HOPEFUL

- Necessity is the mother of invention...
- A rolling prototype approach
- Dispute type selection: family & small claims
- Strong court-connected ADR culture & infrastructure + Institutional commitment to use ICT to improve access to justice and quality of service (asynchronous, educational)
- Combining proven online mediation technology (modria.com) with tailored ODR intake design
- Using technology to achieve procedural and functional simplification of court-connected mediation
- ODR process supported by institutionally embedded offline operations

3. EXPERIMENT: ARTIFICIAL INTELLIGENCE IN E-COMMERCE ODR

- **Q: How are disputants' experiences of procedural justice in ODR affected by:**
 1. **The technology of the neutral:**
 1. Automated (AI agent; technology = 3rd+4th party)
 2. Human (Person operating the platform; technology = 4th party)
 2. **The neutral's control over the outcome:**
 1. None: Mediation, assistive role, consensual decision
 2. Full: Arbitration, decisive role, binding decision

PERCEIVED PROCEDURAL JUSTICE

○ What:

- The perceived fairness of the process by which decisions are made (as opposed to the distribution of outcomes)
 - Fairness, Trust, Voice (participation), Consistency & Expectancy, Effectiveness, Clarity & Accuracy, Interpersonal Communication, Self-Efficacy, Satisfaction, Affect

○ Why:

- Focus on USERS
- Major influence on satisfaction with, and evaluation of, dispute resolution processes
- Strong predictor of procedural preference
- Affects perceived legitimacy of institution and neutral
- Affects decision acceptance and compliance over time

FINDINGS (1)

- Overall preference for **software mediator**:

Measure	Human mediator	Computer Mediator	Stat. sign.
Fairness	4.16	5.15	p<0.00
Overall satisfaction	3.61	4.6	p<0.00
Participation (voice)	4.44	5.75	p<0.00
Certainty	3.32	4.23	p<0.03
Hopefulness	3.66	4.85	p<0.00
Med. Effectiveness	4.51	5.22	p=0.05
Med. attentiveness	4.66	5.25	p=0.05

FINDINGS (2)

- Preference for **human arbitrator**:
 - Clearer ($p < 0.03$)
 - More respectful ($p < 0.05$)
 - Explained process better ($p < 0.07$)
 - Statistically insignificant trend, was more:
 - Fair
 - Attentive
 - Effective
- Preference for **“consistent technology”**
 - Influence on the mediation process ($p = 0.05$)
 - Arbitrator’s fairness ($p < 0.06$)
 - Marginal significance:
 - Mediation fairness
 - Participation (voice) in mediation

SIGNIFICANCE AND QUESTIONS

- **Support for using automation in ODR (e-Commerce)**
- **Practical significance**
 - Dispute resolution system design
 - System legitimacy
 - Repeat users (1-point difference can mean a lot)
- **Beyond efficiency:** substantive support for using non-binding automated ODR
- **BUT:**
 - Less tech savvy disputants?
 - Other dispute types/settings?

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QUESTIONS & FEEDBACK

Thank you!