

FROM TRANSPLANT TO DISINTEGRATION? A COMPARATIVE STUDY OF THE JUDICIAL ROLE

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Abstract

The study uncovers how judges implement transplanted constructs related to settlement reform in three legal systems—Italy, Israel, and England and Wales. It does so with a view towards the U.S. legal system, from which many of the transplants originated.

Observing judges in action in the Florence, Tel-Aviv, and London first-instance courts, it finds that settlement-related transplants (including ADR transplants) that could be interpreted as broadening the judicial role and providing meaningful modes of dispute resolution for disputants, in fact, often constrict the judicial role, causing both the courtroom and court-related alternative dispute resolution (“ADR”) processes to become forums for efficiency-based negotiation. In England, the disintegration of the judicial role is most apparent as the promotion of settlement has led to obligatory measures preceding the filing of a claim, leaving judges only a marginal percentage of disputes to deal with.

Analyzing the historical context and formants underlying settlement-promoting reforms, the study shows how each legal culture molded them, and demonstrates that the impetus for accepting a transplant may have a central effect on its eventual trajectory. It shows that the three observed legal systems may be viewed in general terms as presenting three sequential stages of the judicial role, with a possible trend toward disintegration. In addition, the legal systems may offer three transitional views of the tension between efficiency and justice and the way it unfolds.