A Comparative Examination of Multi-Party Actions

The Case of Environmental Mass Harm

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FOREWORD

The perennial question of how to deliver collective redress is complex and multifarious. It is one that continues to vex policymakers and lawyers. The reality of the way in which modern life operates has led to an increase in 'massification' on many levels, such as mass production and mass consumption. Unfortunately the occurrence of mass harm is also increasingly evident in our time.

We are familiar with the broad spectrum of types of harm that may occur, ranging from mass injuries caused by defective products or environmental exposure to toxic chemicals, to mass financial losses resulting, inter alia, from violations of consumer law or competition law. In almost every part of the world, unfortunately, such harm may occur and the need for redress becomes a key question. Where do the solutions to providing collective redress to mass harm lie? The answer may be found in an array of approaches such as through regulation or dispute resolution. The appropriate response varies and it is clear that there is no 'one size fits all' answer to the phenomenon of mass harm. The issue of access to justice for those who suffer mass harm is a concomitant question. In appropriate circumstances, where legal proceedings result, groups of victims may wish to aggregate their legal proceedings in order to try to surmount some of the obstacles that they may face in pursuing a legal action individually. One of the procedural mechanisms that has evolved as a response is that of the multi-party action (MPA).

The author, Dr Blennerhassett, as an expert in tort law and dispute resolution, examines the issues surrounding mass harm, collective redress and MPAs in a broad and practical way to address these questions. She has scrutinised the experience of a selection of common law jurisdictions and analyses how they have dealt with MPAs and alternative tools in the pursuit of collective redress. The US, as a forerunner in multi-party actions, teaches broad lessons and evidences many of the positives and perceived ills of mass litigation. England and Wales have adopted a much more conservative approach to such litigation. Dr Blennerhassett's expertise in EU law helps the reader to engage with EU policy and EU Member State experience in addressing the challenges of mass harm, as many Member States have faced similar difficulties in responding to such harm. She appraises whether and to what extent MPAs may improve access to justice and empower those harmed with a route to collective redress. Dr Blennerhassett has created an excellent analytical framework of MPA objectives and uses these as benchmarks to assess how and whether MPAs may assist in the pursuit of collective redress. This is a unique and valuable contribution to scholarship in the field of dispute resolution. As an environmental law specialist, Dr Blennerhassett invokes the phenomenon of environmental mass harm as a case study to illustrate some of the challenges and complexities that mass harm litigation can present.

Having a background and training as a practitioner, Dr Blennerhassett recognises the need to explore the very real challenges facing those dealing with mass harm and she was strongly motivated by the practical law reform aspect of this research. The results of this

work are both informative and compelling. It is clear from her research that jurisdictions without some form of procedural mechanism are impeding access to justice for those who have suffered mass harm.

Dr Blennerhassett concludes that MPAs are not the panacea to mass harm litigation. Instead, they only form part of a suite of solutions that may enable access to justice and collective redress. She advocates a holisitic approach to such redress, highlighting the use of regulatory solutions and alternative dispute resolution techniques as complementary tools in this range of solutions. It is clear that MPAs have a crucial role as management mechanisms for dealing with cases of mass harm. While MPA methods may vary from jurisdiction to jurisdiction, their objective does not. The methods invoked reflect the realities of the different legal systems. The question of which MPA mechanism may best suit each jurisdiction is a policy decision based on these realities. All of the jurisdictions examined are endeavouring to achieve the same output of managing collective redress, the overriding need being that of procedural justice. This conclusion is supported by the author's analytical framework which clarifies that the fundamental reason for the need for MPAs is to enable the efficient management of mass harm litigation so as to maximise just outcomes; that they are an invaluable procedural tool to assist in 'managing the unmanageable'.

Ireland is an example of a jurisdiction that has clearly experienced many large instances of mass harm, often resulting in costly, unmanageable, inefficient litigation or compensation tribunals. A few examples include: the army deafness cases against the State; the blood contamination caused by Hepatitis C; the pyrite construction damage that resulted in the longest-running case in the history of the High Court. Despite a clear procedural need for managing mass harm redress, Ireland still does not have an effective MPA procedure. Moreover, MPAs appear to be actively discouraged. Instead, the courts invoke a confusing array of alternative methods where MPAs might have played a more obvious role. In 2005, the Irish Law Reform Commission (LRC) recommended the introduction of an MPA procedure as an additional procedural mechanism to assist with mass harm litigation for use in cases where there is a clear need. Despite this recommendation, more than 10 years later there has still been no change. Dr Blennerhassett raises a number of critical questions in this work that need to be urgently addressed and resolved. These questions include: why a jurisdiction such as Ireland, despite having experienced many cases of mass harm and litigation, remains reluctant to introduce MPAs? Why has it not yet taken steps to adopt a procedural mechanism that will enhance access to justice for those who need it? More than 10 years after the Law Reform Commission recommendations, why have these questions not been resolved?

One may speculate that there are policy reasons behind this stagnation as there seems to be an almost de facto prohibition on such a mechanism. Perhaps it is because the State is likely to be a regular defendant in cases of mass tort and personal injury litigation. It is also likely that a fear exists of opening the cliched floodgates of litigation if such a procedure were to be introduced without adequate controls. The LRC, however, recommended the introduction of a procedure designed to minimize such risk. Due the lack of appropriate mechanism, those with cases that would be suited to MPA must pursue them in another way. It is evident that great injustices and inefficiencies would result from these improvisations. Claims that the introduction of an MPA procedure would encourage a 'compensation culture' are erroneous, because, in suitable cases, MPAs can assist the efficient management of such cases. While MPAs are not a metaphorical silver bullet that will resolve all the

challenges of delivering effective collective redress, they are a necessary procedural mechanism that ought to be in the legal armoury of any jurisdiction in order to assist in providing access to procedural justice. Dr Blennerhassett offers a keen insight into the nature and necessity of MPAs as a response to the modern phenomenon of mass harm. She explores why Ireland, in particular, not only requires but also deserves this legal mechanism in order to protect its people from those who have caused mass harm. This book will provide invaluable guidance to judges, lawyers, academics and policymakers who inevitably face the modern challenge of managing mass harm litigation.

Peter Sutherland SC

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1

Introduction

1. Background

The origins of this research project can be traced to a 2007 conference in Dublin where a question raised by a guest speaker in relation to collective redress mechanisms ignited my curiosity. This led me to explore further the theme of collective redress and underlying questions about the role of Multi-Party Actions (MPAs) and how these may help to deliver the outcome of collective redress for those injured by widespread harm.

Ireland is an example of a common law jurisdiction that, at present, has no formal statutory or judge-made rules for MPAs, save for restricted representative actions. These representative actions are rarely invoked because they are of very limited use. Collective action, a common form of MPA, is not yet permitted. This sets Ireland apart from common law jurisdictions that have such MPA mechanisms and is a gap in the Irish legal framework. Under the existing statutory framework, MPAs seem to be actively discouraged. This is despite the fact that the Irish Law Reform Commission (LRC), Ireland's principal public body for the investigation of law reform, has recognised the procedural gap that results from the absence of MPAs. In a major study in 2005 and subsequent LRC report, it explored the prospects for MPAs in Ireland and recommended their introduction.[1] While Ireland does not yet have a mechanism for MPAs as such, occasionally, the courts use a confusing array of alternative methods in cases where MPAs would have played an obvious role. In recent years there have been a number of cases of mass harm, including contaminated blood products, army deafness and asbestos-related ill health. Such cases usually draw widespread public interest owing to the nature of the claims involved, the scale of the potential class or the prospect of State liability. Normally, however, owing to the lack of an appropriate mechanism, those with cases potentially suited to an MPA must pursue them in another way. Great injustices and inefficiencies have resulted from these improvisations, yet, despite the LRC recommendations, there have not yet been any proposals for change in Ireland. This raises the question of why Ireland appears to be reluctant to adopt such an MPA procedure when it is has clearly experienced many cases of mass harm.

This suggests the need for an examination of the issues surrounding mass harm, collective redress and MPAs in a broad way and to undertake a comparative analysis of how other jurisdictions, in particular a selection of common law jurisdictions, use MPAs to try to achieve collective redress. One of the key themes arising in this research is the need for procedural justice and of managerial mechanisms to help deal with mass harm. It appears that MPAs play an important role in response to this need.

[1] Irish Law Reform Commission, *Consultation Paper on Multi-Party Litigation* (LRC CP 25-2003) 14.

2. Aims, Original Contribution, Anticipatory Findings

Surprisingly few commentators have attempted to evaluate whether or to what extent MPAs have, in fact, improved access to justice.[2] This research examines the use of MPAs as a remedy for mass harm and addresses how they might empower those harmed and provide them with a route to collective redress. It examines what roles MPAs may play in enhancing access to justice. In order to do so, this work creates an analytical framework that establishes a series of MPA objectives in order to evaluate the extent to which MPAs may deliver collective redress. This framework highlights the fundamental aims of MPA procedures, comprising the following: (1) access to justice; (2) judicial and procedural economy; (3) fairness (including proportionality, balancing individual rights and personal autonomy, and non-abuse); (4) predictability; (5) deterrence; (6) compensation. This framework is then used to provide benchmarks against which to assess the use of MPAs and the extent to which MPAs may assist in the achievement of effective collective redress. This framework provides touchstones against which to examine the use of MPAs as redress mechanisms for mass harm generally and environmental mass harm in particular.

The area of environmental mass harm illustrates how challenging mass harm can be. It demonstrates the complexities and difficulties that can be involved this type of litigation, particularly for its victims. For this reason it is used as a case study of mass harm. It is used as an example to illustrate the findings in relation to MPAs and collective redress generally. It is touched upon within the examination of the jurisdictions in this research, where appropriate.

The areas of tort law, mass harm, environmental mass harm and collective redress are specific fields in which there is considerable scholarship and literature. It appears, however, that there has not been much research on their interaction. It seems that there has been little research in the area of collective redress for environmental mass harm to date and, therefore, a great need for further studies in this increasingly important area. Much of the environmental mass harm literature focuses on toxic torts, particularly in the United States (US).[3] Despite the lack of literature on the area of environmental mass harm, it provides a good case study against which to test the findings of this study.[4] This work is informed by the experience of a selection of common law jurisdictions in dealing with mass harm through MPAs. It also examines the emerging European Union (EU) solutions to collective redress to assess what role MPAs may play in the future pursuit of collective redress. This work also explores, as a corollary, alternative tools to litigation that appear to be growing in popularity, particularly in EU Member States.

MPA procedures form part of a range of remedies required to achieve collective redress for mass harm. It appears that MPAs are needed in order to surmount some of the challenges and difficulties presented by mass harm litigation. For example, it is clear that the collective nature of MPAs may assist plaintiffs to overcome some of the difficulties that may

[2] J Kalajdzic, 'Accessing Justice' ('Class Actions' Conference, University of Windsor, Canada, 2011).

[3] See eg G Boston and S Madden, *Law of Environmental and Toxic Tort Cases: Cases, Materials and Problems* (West Academic Publishing, Boston 2005).

[4] This is because it illustrates the difficulties that can be involved in mass harm litigation, eg those involving evidential complexity and proving causation.

be encountered in taking legal action because their greater combined resources may enable them to 'pool their resources' and deal with these challenges collectively. In an apparent paradox, it is possible that mass treatment, whether by judges or other bodies involved in collective redress, can sometimes achieve a more effective remedy for individuals either through the courts or by using other procedures that are evolving for the resolution of mass torts, such as ADR and ombudsmen. MPAs can also aid enforcement.

When each of the MPA objectives is explored against the practical experience of the various modes of collective redress in the selected common law jurisdictions, the common theme of management emerges. The findings of this work will demonstrate that MPAs make an important contribution to the effective management of mass harm litigation. It appears that the idea of MPAs as managerial mechanisms is the overarching value informing each of the MPA objectives. This suggests that the essence of each of the criteria reflects the need for effective management of mass harm litigation. When these MPA objectives are achieved, they are indicative of procedural justice. The *Oxford English Dictionary* defines 'management' as: 'the process of dealing with or controlling things or people'. For the purposes of this research, management in this context alludes to the ways in which MPAs, to the extent that they help to achieve the MPA objectives, can assist those involved in the process of mass harm litigation. Logistics and case management are elements of this but it comprises other issues, congruent with the MPA objectives. These encompass the ideas that are omnipresent around issues such as access to justice, judicial and procedural economy, and fairness, while ensuring that individual needs are met. This work does not focus on management techniques within MPAs as these relate to the procedural and technical managerial aspects of mass harm litigation.[5] Instead, this study examines the objectives of MPAs and how these are indicators of the effectiveness of MPAs as managerial mechanisms that can help achieve procedural justice in mass harm litigation.

The administration of civil litigation is in crisis almost worldwide, due to the workload of courts. Therefore the challenges experienced in managing this crisis are common to many jurisdictions. With typical judicial clarity, Lord Woolf, in his *Access to Justice* report, highlights the need for MPA mechanisms as one of the solutions to help manage this crisis. He recognised that there are inherent difficulties with multi-party procedures and that his report was not a panacea to this.

> In this area of litigation more than any other, my examination of the problems does not pretend to present the final answer but merely to try to be the next step forward in a lively debate within which the parties and judges are hammering out better ways of managing the unmanageable.[6]

Lord Woolf acknowledged that MPAs are not without their flaws and are not the end solution in order to ensure collective redress. He highlights, however, that they can act as mechanisms to assist with the managerial difficulties by surmounting some of multiple logistical challenges that mass harm presents. This suggests that he recognises that the key question around collective redress is of efficient management of scarce judicial and other legal resources so as to maximise the delivery of just outcomes to the victims of mass harm. This

[5] For detail on management techniques, see further C Hodges, *Multi-Party Actions* (Oxford University Press, 2001) 15. eg pt I of this book examines 2 competing managerial models for multi-party litigation, that of the 'generic model' and that of the 'individual case model'.

[6] Lord Woolf, *Access to Justice: Final Report* (1996) ch 17 [6].

supports the notion that MPAs play an important role as managerial mechanisms to assist with the litigation of mass harm.

The LRC Report advocated that principles for reform in MPA litigation should ensure procedural fairness and practicality, procedural efficiency and access to justice.[7] It suggested that, ideally, a multi-party procedure should render the system as efficient for the collective group as the demands for individual fairness will allow. The LRC acknowledged that the need for procedural fairness is the core element in any multi-party litigation. The LRC supported the objectives for multi-party litigation procedure advocated by Hodges in his discussion of Group Litigation Orders (GLOs) in England and Wales and cited his opinion that:

> The claims, which are managed in a co-ordinated fashion under a GLO, remain no more than a collection of individual claims, each of which must ultimately be resolved. The objective is to dispose of all the claims as effectively and swiftly as possible. In deciding on a managerial mechanism to move forward resolution of all the individual claims, the paramount consideration is that the court must be satisfied that the selected approach will be *dispositive* of as many cases or issues as possible in as efficient and proportionate a manner as possible.[8]

In this statement, Hodges has crucially captured the essence of the role of MPAs, which is that of 'managerial mechanisms' that can enable procedural justice. This theme is visible throughout the MPA mechanisms evaluated in each of the common law jurisdictions in this research.

3. Approach

The identification of the analytical framework of MPA objectives in this work provides a functional analysis of MPAs. As one point of this entire study is to question the basis for the use of MPAs, the objectives that the framework identifies help to assess what MPAs are intended to do. Also, this research has a practical law reform perspective and may help to inform jurisdictions such as Ireland about the use of MPAs as a route to collective redress. This work also refers to the alternatives to MPAs that will help decide future directions for mass harm and collective redress developments. This study explores a range of different solutions employed in several jurisdictions. The only way to engage meaningfully in comparative analysis of these is to use such a functional analytical framework. This helps to demonstrate how the law is responding to the challenges presented by mass harm. Throughout this work, it is important to return to these objectives and to use them as benchmarks against which to assess MPA mechanisms. In identifying these considerations, it becomes clear that the need to address issues of mass justice in collective redress presents particular practical problems and challenges to legal systems, lawmakers and lawyers. Such challenges include interpreting new demands in civil claims and making policy choices rise to the challenges of these demands, for example the question of how to resolve issues of mass environmental harm.

[7] Irish Law Reform Commission, *Report on Multi-party Litigation* (LRC 76-2005) 18.
[8] Ibid 19 [1.53] citing Hodges, *Multi-Party Actions* (n 5) 68, ch 5 [11].

Following the examination of the concept of mass harm in general, the MPA as one of the various means of collective redress for such mass harm, and its treatment in a selection of common law jurisdictions, is then evaluated. In order to produce sound and meaningful research results, it is essential to adopt a logical and consistent method in any comparative study. A comparative study of MPAs in different jurisdictions is complex. First, while the aim is to identify similarities and differences in the design of procedures, there must be some fundamental common denominators to ensure that the comparison is relevant. Subject jurisdictions are studied to identify similarities and differences in the civil procedure mechanisms whose function is to enable management of mass claims. The definitions and purposes of MPAs, as well as the safeguards that the underlying norms require, vary by necessity. Furthermore, depending on the constitutional context, laws are interpreted and applied in different ways. For this reason, some division of jurisdictions into comparator groups is necessary and this study focuses on common law jurisdictions. There are important differences in civil procedure within these groups. For example, England and Wales is a common law jurisdiction that does not have a written constitution. It is also subject to EU laws in many areas. For these reasons it is not easy to compare it to the US, which has a written constitution and a federal system of laws. These factors limit some aspects of the comparative study, but such a study is still informative.

The comparative research focus in this study examines the resolution of mass torts in five selected common law jurisdictions in particular, as well as the EU approach to collective redress. There are also some references to various civil law jurisdictions' regimes for the purposes of illustration and comparison. This work is illustrated by examples of environmental mass harm and its remediation through collective redress and MPAs in each jurisdiction. It will not focus in extensive detail on procedural rules and safeguards. This study particularly examines three common law jurisdictions that have established collective action statutory regimes: the US (the federal class action rule), Australia (the representative proceedings regime) and Canada (the class action regime). Outside of the US, Australia and Canada are the two most notable jurisdictions that have adopted legislative changes to facilitate mass harm through collective action procedures for cases of mass torts. It is beyond the scope of this research to look at the class action regime throughout all of these jurisdictions in detail. In Canada, therefore, it examines procedures at federal level and also in two provinces in particular, Ontario and British Columbia. This is because these are legally important common law jurisdictions for reasons of population and the volume of litigation. It also examines one province that is heavily influenced by the civil code tradition, Quebec. As for the Australian examination, owing to the scope and scale of this research, discussion will focus on the federal system and that of the states of Victoria and New South Wales. This is because these states have the most highly developed legislative and judicial systems for MPAs, so they will be taken as the best examples for discussion. The comparative study of England and Wales provides an example of a jurisdiction where other forms of MPA have evolved, such as the group action, and also where alternatives to litigation are being embraced as viable routes to collective redress. The English and Welsh examination includes a detailed combined case study of two landmark cases of environmental mass harm and demonstrates two contrasting management approaches that may be used in such cases, that of the GLO and also that of case management. The cases are *The Corby Group Litigation*, which was resolved using a GLO, and the *Buncefield Oil Disaster*, which was resolved through case management. England and Wales is the closest comparator jurisdiction to Ireland and so its

MPA experience can practically inform the debate about what procedures may be adopted in Ireland. The EU approach to collective redress is examined, both at Member State and at EU level, in order to assess what methods of collective redress are being used in practice and what direction EU policy advocates that collective redress should proceed in the future. Finally, Ireland will be discussed as an example of a common law jurisdiction that does not have an effective MPA mechanism. There are lessons that a jurisdiction such as Ireland may learn from the experience of other regimes in this field. The MPA experience of other, non-common law jurisdictions is also referred to, where appropriate, for the purposes of illustration. For example, Sweden[9] and Brazil[10] have developed an official doctrine of collective actions within their civil law systems. This is notwithstanding the view that some consider the collective action as 'a procedural mechanism whose peculiarities elude the formally defined structure of traditional civil litigation'.[11] In addition to an evaluation of the MPA mechanisms in each jurisdiction, there is an examination of the background legal context, for example the constitutional structure and legal system.

It was necessary to carry out a comparative study of these jurisdictions' experience of MPAs. This is because comparative studies are informative where similar problems are being faced in many jurisdictions. This research evaluates the experience of these jurisdictions in redressing mass harm through the mechanism of MPAs in an effort to ensure justice. As Markesinis propounds, the complete advantage of legal systems arises where a comparison of 'like with like' is possible.[12] Numerous jurisdictions' law reform agencies have analysed comparative multi-party reform with the aim of 'comparing approaches in different countries in the hope that all might learn from experience elsewhere'.[13] The experience that has originated from the much longer-established class action regime in the US is of helpful guidance and a source of cross-fertilisation of ideas by judges in charge of the adoption of class action systems in Australia and Canada. While jurisdictions will vary in areas such as drafting, the procedures will be broadly similar. This comparative study of existing MPA regimes will also be helpful to jurisdictions that do not, as yet, have such mechanisms. For example, when Lord Woolf was making his litigation reform recommendations in England, he referred to a study of overseas regimes with particular reference to the US. Since the growth of the jurisprudence in these countries has now reached a sizeable scale it

[9] Sweden introduced a class action that may be brought in a general court by a member of a group, or by an organisation, or an administrative agency (eg the Consumer Ombudsman) allowing claims for both injunctive relief and individual damages for group members. This mechanism was introduced by the Group Proceedings Act, which entered into force on 1 January 2003. For further detail on class actions in Sweden, see generally H Lindblom in D Hensler, C Hodges and M Tulibacka (eds), *The Globalization of Class Actions* (2009) 622 The Annals of the American Academy of Political and Social Science 231.

[10] Brazil has led the development of collective rights in Ibero-American States and this has grown from consumer origins through a general procedure on 'public civil actions' largely brought by the Attorney General. These have a 2-stage process involving a declaration on general liability, followed by individuals bringing personal compensation claims. For further details, see generally A Gidi, 'Class Actions in Brazil—A Model for Civil Law Countries' (2003) 51 *Am J Comp L* 311; and A Pellegrini Grinover, 'Brazil' in Hensler and others, *The Globalization of Class Actions* (n 9) 63.

[11] R Dreyfuss, 'Class Action Judgment Enforcement in Italy: Procedural "Due Process" Requirements' (2002) 19 *Tulane J Int'l and Comp L* 5. For similar reservations, see also T Rowe, 'Debates over Group Litigation in a Comparative Perspective: What Can We Learn From Each Other?' (2001) 11 *Duke J Comp Group Litigation and Int'l L* 160.

[12] B Markesinis, *Always on the Same Path* (Hart Publishing, 2001) 306. See also by same author, *Foreign Law and Comparative Methodology* (Hart Publishing, 1997).

[13] Rowe, 'Debates over Group Litigation in Comparative Perspective' (n 11) 160.

has become invaluable for comparative use. While there is a body of scholarship around the concept of transplant in comparative law, it is beyond the scope of this research to examine this idea.[14] In summary, comparative analysis aids MPA introduction, implementation and reform in legal systems, with inspiration from the valuable experience of the US federal approach and selected other common law MPA regimes. However, as Gidi has opined:

> Importing class action law does not necessarily mean importing American-style litigation. The transplant can be 'surgically controlled'. There is no reason to believe that the whole 'Yankee package' would invade a foreign system through the window opened by class action device. Contrary to the traditional myth, class actions can succeed in the absence of discovery, contingency fees, the American cost rule, an entrepreneurial bar, and powerful and active judges, at least as effectively as can traditional individual litigation.[15]

4. Structure

This work is set out in two parts. Part I comprises chapters two to four and examines collective redress, mass harm and environmental mass harm. Part II sets out the comparative study, in chapters five to ten.

A. Part I

Chapter two explores the phenomenon of mass harm and the challenges that it presents. It begins with an explanation of the commonly used terminology in this study. The use of collective redress mechanisms as a remedy for such harm is then discussed, in particular that of the MPA and the sectors in which it may be invoked. The history and background of mass torts are explained together with the legal responses to mass harm, ranging from private law (tort law) to public law and regulation. This chapter sets out the context in which collective redress arises. It then gives an introductory overview of the MPA procedures used in each of the jurisdictions examined in this study in order to give readers an explanation of how these procedures operate before they are discussed in more detail. Chapter three sets out the MPA analytical framework of the MPA objectives that is used throughout this research to evaluate the MPA mechanisms. The background to and elements of this framework are examined in detail. It becomes apparent that each of these objectives has an overarching theme, which is that of facilitating the management of mass harm litigation. The role of MPAs as 'management mechanisms' is therefore explored. Chapter four discusses environmental mass harm as a case study, as this area is an example of the difficulties that mass harm can present. It is a practical area in which to test the use of MPAs as mechanisms for collective redress. There is an explanation of how the enforcement of environmental mass harm through tort law can play a regulatory role. The distinctive features

[14] Examples of prominent scholars and their work in this field include: A Watson, *Legal Transplants: An Approach to Comparative Law* (University of Georgia Press, 1974); A Watson, 'Legal Transplants and Law Reform' (1976) 92 *LQR* 79; O Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37 *MLR* 1–27; W Ewald, 'Comparative Jurisprudence II: The Logic of Legal Transplants' (1995) 43 *Am J Comp L* 489–510.

[15] Gidi, 'Class Actions in Brazil' (n 10) 322.

of environmental mass harm litigation and responses to these are then explored in detail, including issues such as toxic torts, causation and evidential complexity, latency and environmental justice issues. There is also an evaluation of novel remedies for mass harm. This chapter illustrates how MPAs, by collectively dealing with mass harm litigation, particularly through the use as management mechanisms, can help to overcome the difficulties encountered in mass harm litigation.

B. Part II

Chapters five, six, seven, eight, nine and ten comprise the comparative element of this research and these chapters evaluate the experience of selected other common law jurisdictions and their varying collective redress MPA mechanisms as well as the EU approach to collective redress. Chapter five examines the US experience of mass harm litigation. As it is the forerunner in this area, the US MPA experience teaches broad lessons about such litigation. Chapter six examines the Canadian class action regime and chapter seven examines the MPA experience of Australia. Chapter eight examines MPAs and collective redress in England and Wales. It examines two contrasting case studies of landmark English mass environmental harm cases, through a combined case study: the *Corby Group Litigation,* which was resolved using a GLO, and the *Buncefield Oil Disaster*. These cases illustrate the importance of management mechanisms in delivering collective redress. Chapter nine examines the EU approach to collective redress. It traces the evolution of EU collective redress both at Member State and at EU level. It considers the European Commission's 2013 collective redress proposals in order to assess how EU collective redress may proceed in the future. Chapter ten discusses collective redress for mass harm in Ireland, with a particular focus in parts on mass environmental harm. Ireland is an example of a common law jurisdiction without an effective MPA procedure and this sets it apart from the other common law jurisdictions examined in this research. There may be lessons for Ireland to learn from the MPA experience of these jurisdictions. These lessons may help to inform the metaphysical question of whether Ireland ought to adopt such a MPA procedure.

In conclusion, chapter eleven considers the findings of this study, particularly the theme that has been identified regarding the management mechanism role that MPAs may play and the need for such mechanisms where litigation is necessary as a last resort in order to deliver collective redress. Even though the MPA methods of collective redress may vary, the objective does not. The different methods of collective redress adopted simply reflect the realities of the legal structures and systems in each national jurisdiction. The question of which MPA mechanism to adopt is a policy decision based on these realities. All of these methods are trying to achieve the same output of managing collective redress and they are informed by the overriding need for procedural justice. The analytical framework of MPA objectives supports this argument. This work argues that the efficient management of mass harm litigation so as to maximise just outcomes is one of the fundamental reasons for the need for MPAs. The conclusions also reflect on whether the findings for environmental mass harm seem to be (or are) very different from other mass harms and how these findings relate to the monograph as a whole.