

## The costs of class actions: allocation and collective redress in the US experience

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**Abstract** Once a preserve of the American legal landscape, the class action device today transcends geographic boundaries. In the past decade, efforts have intensified to establish collective litigation instruments in diverse legal terrains outside the United States—including Europe—often with the common goal of allowing some form of collective legal redress while avoiding perceived disadvantages of class actions in the American experience. Today more than ever, from legislators to litigants to scholars, European reformers face the challenge—and the opportunity—of making fundamental choices about the scope and shape of the collective legal remedies they wish to make available. Choices about the shape of the class action device reflect foundational judgments about the proper allocation of costs, and there is much from the US experience that can inform Europe’s prospective reformers. This article describes the history and current status of class action rules in the US, and then compares class actions and another form of extra-compensatory damages—one type of punitive damages—as means of doing the same thing. Although neither punitive damages of this sort nor class actions generally have traditionally existed in civil law systems, they both—and especially this particular form of punitive damages—can, from an economic view, be made to vindicate the same kind of social cost accounting goals. By considering these legal devices together, we hope to shed light on crucial choices facing Europe as it grapples with how best to provide collective legal redress in light of the lessons of the US experience with class actions.

**Keywords** Class actions – Collective legal redress – Punitive damages – Extra-compensatory damages – Allocations of costs – Deterrence

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