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Loïc Cadiet/Burkhard Hess/Marta Requejo Isidro (eds.)

Approaches to Procedural Law

The Pluralism of Methods

Nomos

Max Planck Institute LUXEMBOURG for Procedural Law

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edited by
Prof. Dr. Dres. h.c. Burkhard Hess
Prof. Dr. Hélène Ruiz Fabri

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Foreword

The first IAPL-MPI Summer School was held at the premises of the MPI in Luxembourg in July 2014. The success of the experience, crowned by the publication of the collective book *Procedural Science at the Crossroads of Different Generations* (B. Hess, M. Requejo Isidro, L. Cadiet eds, Nomos 2015), has encouraged the organization of a second edition. Two years after the first one, the second Post-doctoral Summer School in procedural law took place at the Max Planck Institute Luxembourg in July 2016. Organized by the International Association of Procedural Law and the Max Planck Institute for Procedural Law, the school offered to young researchers specializing in procedural law an opportunity to discuss their current research topics with fellow colleagues and law professors coming from different jurisdictions. In this way, the school implements the wish and the policy of the IAPL to diversify its activities towards young proceduralists.

The idea to organize the summer school was inspired by two complementary reflections that we explained in the aforementioned *Procedural Science at the Crossroads of Different Generations*. On the one hand, modern procedural law is characterized by its openness to comparative and international perspectives. On the other hand, the aperture of procedural science requires a new approach of research, which has to be based on a comparative methodology. Against this backdrop, the IAPL and the Max Planck Institute for Procedural Law decided to support contemporary research in procedural law by organizing the school, since immediate discussion with scholars coming from different jurisdictions is the best way to practice legal comparative research.

The general topic of this second summer school was: *Approaches to Procedural Law. The Pluralism of Methods.* "Pluralism" and "methods" are the key words.

Procedural law is no longer a purely domestic topic. The recent tendencies characterizing the field, such as Europeanization and harmonization, mark the evolution towards a new, cross-border dimension of this area of law. In addition, the growing importance of transnational legal relations in all spheres of civil and commercial dealings makes it unavoidable to face the new challenges of procedural law across national borders. The tradi-

tional approaches of national dogmatics, which have for a long time guided the reflections of scholars operating in the field of civil procedure, can no longer capture the increased complexity of the so-called postmodernity. Furthermore, the techniques and skills of comparative law are equally evolving due to the availability of statistical and empirical data which enable the assessment of the law in action, as opposed to the law in the books. Besides, it is still an open issue whether the methodological approach of traditional comparative law (i.e., distinguishing different legal families) corresponds to the evolution of procedural law, and whether and to what extent it can be applied to comparative procedural law. In light of this, it is particularly important for young researchers to reflect on the methods to be adopted in order to guarantee that research in the field of procedural law maintains its comprehensive explanatory power. Looking at the current landscape of research in the field of procedural law, a wide array of methods can potentially be used: comparison, inter-disciplinary approaches and quantitative and qualitative empirical analysis are only some of the lenses through which young scholars can scrutinize the reality of the process. The 2016 MPI-IAPL Summer School aimed at providing its participants with an enhanced awareness as to the methods to be chosen and applied when undertaking a research project in the field of procedural law. It is crucial to have a clear vision not only of the "what", but also and above all, of the "how" of legal research.

After the announcement of the school, forty four applications were filed to the Max Planck Institute; only fifteen of them could be admitted. The participants of the school came from different legal and academic backgrounds like Argentina, Belarus, Brazil, Germany, France, Greece, Italy, Lithuania, Norway, Spain, Switzerland and the United States of America. This book collects most of the papers which were presented at the conference. Reviewed and reworked in the light of the discussions of last summer, they address many different areas of procedural law; domestic, European, international and comparative. Its content ranges from the role of State systems challenged by the tendency of privatization of justice and process, to the impact of EU financial crisis on national procedural law, passing by the regionalization of courts, the various forms and norms of access to justice and especially, in this regard, the issues of collective redress and of the status of precedents in the development of the law.

Using again a proven method, the second edition of this summer school brought together different generations of researchers, allowing a fruitful dialogue between professors in the best age of their research careers and

many young proceduralists. This dialogue was framed by two key speeches provided by Margaret Woo and Fernando Gascon Inchausti. Different continents, different perspectives, different experiences and approaches form the ingredients of this successful second post-doctoral summer school in procedural law.

To conclude, we wish to express our utmost gratitude to the collaborators of the MPI whose help was crucial in the success of the meeting. Never two without three. The challenge is now to prepare a third IAPL/MPI Summer School in Procedural Law which shall take place in summer 2018. A call for applications will be launched in fall of this year.

Luxembourg and Paris May 2017

Loic Cadiet / Burkhard Hess / Marta Requejo Isidro

II. Procedural Law and Global Governance: Exploring and Mapping a New Research Field

Remo Caponi[*]

(I) "Sentry"

The final part of "Sentry", a short story by Fredric Brown, a classic of science fiction published in the United States in 1954, reads as follows:

> "He stayed alert, gun ready. Fifty thousand light-years from home, fighting on a strange world and wondering if he'd ever live to see home again. And then he saw one of them crawling toward him. He drew a bead and fired. The alien made that strange horrible sound they all make, then lay still. He shuddered at the sound and sight of the alien lying there. One ought to be able to get used to them after a while, but he'd never been able to. Such repulsive creatures they were, with only two arms and two legs, ghastly white skins and no scales."

The main character of this story is a soldier at war against aliens on a remote planet. The plot urges the reader to identify herself with the soldier, but in the last passage there is a *coup de théâtre*: as the soldier describes the appearance of the enemy, the reader realizes she has identified herself with an alien who has just killed a human.

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* Professor of Civil Procedure, School of Law, University of Florence, Fellow of the Alexander von Humboldt Foundation, Senior Hauser Global Research Fellow at the New York University (2014-2015). The studies leading to this contribution have received funding in the framework of the research project of national interest (PRIN) 2012 (2012SAM3KM) on Codification of EU Administrative Procedures, financed by the Italian Ministry of Universities. The reserch project on "Procedural Law and Global Governance" was triggered by the exciting atmosphere at NYU School of Law, where I stayed as a senior Global Hauser research fellow in the academic year 2014-2015. I am very grateful to Oscar Chase, Gráinne de Búrca, Kevin Davis, Franco Ferrari, Samuel Issacharoff, Benedict Kinsbury, Linda Silberman for the great opportunity of intellectual exchange.

(II) With the Eyes of a Stranger

Drawing a moral from this tale, we should perhaps look at our daily reality a bit through the eyes of a stranger, discover oddities in things that look normal, consider with surprise aspects of our country and culture that seem obvious to us, build on changes occurring in our way of seeing the world and ourselves, experience our own otherness.[1]

These attitudes are essential now, since the conquest of territories almost at the borders of Europe by an enemy power is causing a dramatic increase in the stream of refugees, and terrorist attacks in the heart of Europe are considerably challenging European security policies. In addition, the victory of the Brexit campaign is a warning to the liberal international order.[2]

But in situations that typically urge us to focus on the exceptional, immediate event, we should instead take a long-term perspective.[3] In 2001, there were already more (domestic and international) migrants than ever before,[4] so that the twenty-first century could be labelled as the "century of the migrant".[5] To look at immigration requirements in liberal democracies is a prominent way of dealing with our identity and value choices.

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1 Timely enough, the overarching theme of the third annual meeting of the International Society of Public Law (Berlin, Germany, on 17-19 June 2016) is "Borders, Otherness and Public Law", while underlining that "Today, more than ever before, questions of movement, displacement and belonging, equality and inequality, borders and otherness have become hot-button issues, passionately debated worldwide, and are likely to remain at the forefront of public discourse and scholarly research for the foreseeable future. Line-drawing, practices of inclusion and exclusion, borders and boundaries of many kinds raise persistent questions within contemporary domestic, transnational and international public law" (s. https://icon-society.org/previous-conferences/2016-conference/call_2016, last visited 1 July 2016). However, one could advocate the same for private law, as it "inevitably affects the structure of a society (its "system building", public side) as well as the private relations of people living in that society": cf. G. Calabresi, "The Italian Law Journal: Challenges and Opportunities", 1 *Italian Law Journal* 1 (2015). Finally, one could advocate exactly the same for procedural law, as it is at the crossroads between private and public law.

2 "The Politics of Anger", *The Economist*, July 2, 2016.

3 Cf. for this approach, K. Loevy, *Emergencies in Public Law. The Legal Politics of Containment* (Cambridge University Press, 2016).

4 Cf. the data of the International Organisation for Migration (IOM), available at *www.iom.int.*

5 So T. Nail, *The Figure of The Migrant* (Stanford University Press, 2015), at 1.

The problem is how we should cope with the current emergency. It is awkward that the usual reaction is to introduce immigration and citizenship policies aimed at protecting the majority culture.[6] We should instead seek to promote sustainable diversity among the cultural traditions of the world,[7] which are now converging through the remarkable migration movements.

There are plenty of ways to pursue this aim. The changes that are occurring day by day in the capillary fabric of our lives are more and more frequently triggered by the transnational circulation of ideas. This phenomenon is one of the key features of the contemporary world. As Saskia Sassen put it:

> "*The epochal transformation we call globalization is taking place inside the national to a far larger extent than is usually recognized. It is here that the most complex meanings of the global are being constituted, and the national is also often one of the key enablers and enactors of the emergent global scale. A good part of globalization consists of an enormous variety of micro-processes that begin to denationalize what had been constructed as national — whether policies, capital, political subjectivities, urban spaces, temporal frames, or any other of a variety of dynamics and domains. Sometimes these processes of denationalization allow, enable, or push the construction of new types of global scalings of dynamics and institutions; other times they continue to inhabit the realm of what is still largely national.*"[8]

Such phenomena trace out fragmented or reticular lines and develop rather independently of the political process. National governments have to put up with, more than being promoter of, them. The drivers are primarily the cultural attitudes and open-mindedness of the people, then economy, finance, science and technology.

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6 Cf. L. Orgad, *The Cultural Defense of Nations. A Liberal Theory of Majority Rights* (Oxford University Press, 2015), arguing that a narrow defence of the majority culture may often be justified.

7 As regards law, cf. H. P. Glenn, *Legal Traditions of the World. Sustainable Diversity in Law* (5th ed., Oxford University Press, 2014).

8 S. Sassen, *Territory, Authority, Rights. From Medieval to Global Assemblages* (Princeton University Press, 2008), at 1.

(III) A View from Procedural Law

One may wonder what procedural law has to do with all that. Quite a lot, actually. First, some key features of procedural law that build the civil procedure scholars' cast of mind and way of thinking – the purpose of protecting rights effectively, the right to be heard, the duty to give reasons, the review of decisions (in other words: the fair trial guarantee) as well as, in recent decades, the advancement of mediation and other "alternative" dispute resolution methods – prove critical to understanding other people's reasons, and aim at finding out the sustainable diversities among different cultural traditions and attitudes.

(IV) Procedural Law and Global Governance: Towards a Workable Research Agenda

This is not the only reason why scholars in procedural law ought to get even more involved in dealing with some key issues arising from the globalization. The objective of this paper is to assess to what extent procedural law (in particular: civil procedure) scholarship may contribute to the framing of issues concerning transnational regulatory regimes in the European and global arenas, with a view to setting up a workable research agenda.

The expected outcome is to create the conditions for increased dialogue and exchange between scholars in procedural law and other legal scholars (and social scientists at large) dealing with transnational governance, as well as to contribute to a better understanding of the procedural components of transnational law and the regulatory functions of dispute resolution in this context.

This research project is closely linked to some topics procedural law scholars normally deal with: transnational litigation and the elements of fair trial; the shift to alternative dispute resolution methods in transnational transactions; judicial cooperation and the dialogue between judges; the pros, cons, feasibility and limits of harmonization of civil procedure in Europe; the use of indicators as a tool to evaluate and compare judicial systems. The research idea is to link at least some of these topics to each other with a view to identifying some elements of an overarching scheme that could help in discovering a common framework for scholarly reflection and the advancement of knowledge in these fields.

I have chosen this approach for it is particularly challenging in terms of the methodology of academics dealing with procedural law: it requires an advanced awareness of the functional connections among different societal sectors touched upon by procedural law, and suggests multi- and interdisciplinary perspectives to be adopted. This topic seems to me to be appropriate for a summer school focusing on the pluralism of methods in procedural law. It might indeed be tricky to be confronted with methodological issues in abstract terms: as you know, "the proof of the pudding is in the eating". One is better advised to link methodological issues to an inquiry into the merits. That might well be the first rule of methodology.

(V) The Silence of Procedural Law Literature

To take a first glance at transnational regulatory regimes, a simple observation can serve as a starting point. Recent decades have witnessed a growth of global administrative law in response to the need for accountability in global regulatory governance through increased transparency, participation, reason-giving, and review. As Richard B. Stewart put it:

> "*A wide variety of global regulatory authorities, including international and transnational organizations, private regulators, and hybrid public-private bodies [...] generate and apply a flood of regulatory norms and decisions in such diverse fields as banking, financial services, monetary policy, telecommunications, intellectual property, competition law, international trade, international investment, environment, labor, intellectual property, development assistance, international security, and human rights [...]. Many of the cases now brought before international and domestic courts and tribunals concern these bodies and their decisions. This expansion of global regulation responds to functional necessities created by economic integration and other forms of interdependency associated with globalization. States can no longer deal adequately with these interdependences and secure the welfare of their citizens through uncoordinated domestic regulatory measures*".[9]

Against this backdrop, one might have expected that scholars focusing on judicial process (particularly civil procedure), which possibly represents in any legal system the most sophisticated body of legal knowledge on the legitimacy of the exercise of public power, as well as the interplay be-

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9 R. B. Stewart, "Part I Courts, Institutions and Access to Justice: Legitimacy and Accountability in Global Regulatory Governance: Global Administrative Law and Developing Countries", 1 *Jindal Global L. Rev.* 41 (2009).

tween public (judicial) power and private powers of the parties to a proceedings, would powerfully contribute to frame legal issues related to transnational governance. Quite the opposite holds true. Academics whose primary field of expertise is civil procedure currently examine, besides their own national judicial systems, issues either relating to transnational litigation or comparative civil procedure, but they seldom address the 'big picture' concerning the theoretical dimensions of the interplay between national law (especially judicial systems) and transnational regulatory regimes. Conversely, scholars dealing with transnational law seldom take into consideration procedural law scholarship.

A similar issue has been raised as regards private international law. As H. Muir Watt and D. P. Fernández Arroyo put it: "*Despite the contemporary juridification of international politics, private international law has contributed very little to the global governance debate, remaining remarkably silent before the increasingly unequal distribution of wealth and authority in the world*."[10]

This holds even truer for procedural law. The increase of wealth and power imbalances caused by the globalization of economy and finance does not stop at national borders. Systems, like civil procedure, aimed at ensuring "justice", simply because they are about achieving justice through the means of law enforcement, are affected by these phenomena in a very incisive way.

(VI) Misleading Perceptions

In the first place, one has to consider the reasons for the lack of communication and dialogue between scholars in civil procedure and scholars in transnational legal theory. They are primarily found in the way civil procedure scholarship and practice are normally perceived. First, the widespread conception of mainstream research in the field of civil procedure today still mirrors the frightening assessment of Friedrich Stein: "civil procedure is technical law par excellence".[11] Second, particularly from the perspective of civil law systems, the distinction between substantive law and procedural law has fostered the view that procedural law is 'neu-

10 Cf. H. Muir Watt, D. P. Fernández Arroyo, *Private International Law and Global Governance* (Oxford University Press, 2014), "Introduction".

11 F. Stein, *Grundriß des Zivilprozeßrechts* (2nd, Mohr, Tübingen,1924), XIV.

tral' as regards substantive law, i.e. any particular procedural law could implement any substantive law. Third, consequently, civil procedure is perceived as a rather technical and professional field of law. Finally, procedural law is regarded as more closely linked to State authority than other branches of the law: justice being administered primarily in courthouses and not just through written words in legal provisions, it depends on considerable financial resources invested by governments. Therefore, procedural law can be studied as a purely national product. Nineteenth- and twentieth-century nationalism contributed to an entirely national approach to law possibly nowhere more than in the field of civil procedure. It is no huge surprise, then, that the report of the German Council of Science and Humanities "Prospects of Legal Scholarship in Germany" (2013), reflecting on how to adapt legal education and legal scholarship to the challenges of increasing internationalization of the law, seems to neglect the role of procedural law.[12]

(VII) Janus-Faced Civil Procedure

This perception is misleading.

Civil procedure has suffered, probably more than other fields of law, from the fixing of boundaries among branches of law, in particular from the great divide between private and public law, historically peculiar to European continental law. In this context, civil procedure was Janus-faced or acted as an interface: one face looked to public law, as civil proceedings are mainly set up by the State; the other looked to private law, as civil proceedings aim to protect individual rights. The divide between private and public law caused (and still causes) the theory and practice of judicial protection of rights to be affected by a sort of 'magnetic field' and to oscillate between these two opposite conceptual poles. Although firmly grounded on the terrain of public law, civil procedure bears traces, in its basic structures (from standing to sue to adjudication), of its historical foundations in natural-law theory which aimed at protecting the 'new bourgeois individual' and his economic freedom in a fragmented and individualistic view of social relationships.

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12 Available at http://www.wissenschaftsrat.de/download/archiv/2558-12_engl.pdf, at 63 (last visited 1 July 2016).

This longstanding tension meant procedural law could not be fully absorbed into either private law or public law. However, this in-built opposition between different conceptual poles can be beneficial for procedural law scholarship, because it gives procedural law the flexibility to address certain key issues concerning transnational governance.

(VIII) The Case for Procedural Law

The case for increasing the involvement of procedural law scholarship in the discussion concerning European and global governance is indeed compelling.

First, a key feature of the juridification of the global arena is the development of judicial dispute settlement,[13] and, in particular, the broadening of the exercise of individuals' right to sue in national or international courts, pursuing matters relating to transnational regulatory regimes. Thus, procedural devices and principles play a major role in the European and global arena. Consider, for example, the procedure for preliminary reference to the Court of Justice of the European Union, the weight of the right to be heard in the *Kadi* ruling (ECLI:EU:C:2008:461), the epistemic community currently working on European Principles of Civil Procedure in the framework of a ELI-UNIDROIT joint project, and the discussion on the regulation of investment dispute resolution during the negotiations about the transatlantic trade and investment partnership.

Second, procedural principles and safeguards are called on to play a major role in the activity of global regulatory authorities. As already mentioned, in the last two decades principles pertaining to (procedural) due process, like the right to a hearing, the duty to provide a reasoned decision, and the duty to disclose all relevant information have developed and have been enforced in the area of global regulation.[14]

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13 Cf. K. Alter, *The New Terrain of International Law. Courts, Politics, Rights* (Princeton University Press, 2014); A. von Bogdandy, I. Venzke, *In Whose Name? A Public Law Theory of International Adjudication* (Oxford University Press, 2014); C. Romano, K. Alter, Y. Shany (eds.), *The Oxford Handbook of International Adjudication* (Oxford University Press, 2014).

14 Cf. S. Cassese, *The Global Polity. Global Dimension of Democracy and the Rule of Law* (Global Press, 2012), 48; G. Della Cananea, "Procedural Due Process of Law Beyond the State", in A. von Bogdandy, *The Exercise of Public Authority by International Institutions* (Dordrecht, Springer, 2010), 965.

Thus, some key features of procedural law heavily affect transnational governance.

There is however the other side of the coin: tools of European and global governance influence the domestic regulation of judicial proceedings more widely than is often acknowledged. Consider, for example, the far-reaching reforms of the national procedural laws and court systems of the Member States of the European Union that have been ensured in the context of the troika process, e.g. in Ireland, Portugal and Greece, and the remarkable impact of the World Bank's Doing Business Reports on the reforms of national judicial systems.

The issues common to both sides of the coin are precisely those at the core of the necessity of enhancing global regulation, i.e. standing, legitimacy and accountability of the actors concerned (private actors, national and international courts, public agencies, etc.).

(IX) Roadmap of the Research Project

The roadmap of the research is divided into two sections, mirroring the relationship of mutual influence between procedural law and global governance:

a) Aspects of procedural law affecting transnational governance;
b) Tools of transnational governance affecting the regulation of civil proceedings.

Both sections will deal with problems that are well known in transnational legal theory, but which are normally addressed in different research fields. It is the purpose of this research proposal to explore this research area and to map the topics belonging to it, including:

(a) Domestic and international courts and transnational governance. The working hypothesis aims to establish whether there are symptoms of an 'over-judicialization'.

A key feature of the juridification of the global arena is the development of judicial dispute settlement and, in particular, the broadening of the exercise of individual rights to sue in national or international courts, for matters relating to transnational regulatory regimes.

To put this phenomenon into perspective, one needs to recall the developments of the right of judicial action in national settings. It is, indeed, a time-honoured achievement of procedural law scholarship to have been able to establish a link in public law between violations of rights and a right-holder's power to resort to judicial protection. However, the traditional structure of judicial systems leaves unchanged in civil proceedings the imbalances of wealth and power occurring in the daily life of people. Thus, the primary function of a right of action is to guarantee the right to sue in court in the context of a liberal concept of equal protection under the law (formal equality). In the global arena, the different positions of individuals, regarding wealth and power, might be even more pronounced than in a purely national setting. Individual access to the courts might amplify distributional differences.

Consider the *Kadi* case. The right of judicial action, the right to be heard, and the right to an effective remedy had possibly their most remarkable impact on the international legal order through the judgment of the European Court of Justice in this case (ECJ, 3 September 2008, joined cases C-402 & 415/05P). One can hardly conceive of an individual other than a multi-millionaire from Jeddah or an individual with equivalent resources, capable of the huge financial effort needed to obtain judicial protection of his assets from U.N. Security Council resolutions. His lawsuits might have induced the U.N. bodies to adopt changes - such as the establishment of an ombudsman, which can be beneficial to other individuals affected by U.N. targeted sanctions. However, one cannot rely only on initiatives of Kadi-like litigants as systemic incentives for introducing changes in the architecture of global governance.

Further reasons to avoid over-emphasizing access to the courts as a tool of governance come from recent developments concerning the relationship between civil adjudication and out-of-court dispute resolution methods. These developments may reveal the link between diplomatic and political negotiation and judicial dispute settlement in the global arena. Consider the tension between international customary law on State immunity and the constitutional principle of access to the courts arising from lawsuits filed against Germany by Italian citizens seeking compensation for international law crimes committed by Nazi military forces in Italy during World War II. The working hypothesis aims to advance the case for coordinating inter-State diplomatic negotiations on the one hand, and access to the courts by the victims, on the other.

(b) Use of indicators (and big data) as a tool to evaluate and compare judicial systems.

Using indicators for the evaluation of legal systems is for the jurist a 'risky business', as there is often no control over the criteria for collection, selection and presentation of data. However, the jurist cannot remain silent because the use of indicators for evaluating and comparing the performance of national legal systems has been spreading at a remarkable pace since the beginning of the twenty-first century. Indicators have attracted the attention of policy makers and government officials, and thus are having a powerful impact as a tool of European and global governance.

Most influential are data about the performance of judicial systems produced within the context of wider comparisons including rankings regarding the attractiveness of different legal systems for doing business: the Doing Business project (World Bank Group). In light of the ongoing success of the Doing Business annual reports, it is easy to explain why the European Commission for the Efficiency of Justice (CEPEJ) report, a detailed report published bi-annually since 2006, has come to prominence. The report aims at measuring and comparing the efficiency and effectiveness of European countries' judicial systems and has been used since 2013 as a data base to create a simplified and more appealing information tool. The EU Justice Scoreboard published by the EU Commission, intends to shed light on the quality, independence and efficiency of justice systems as co-determinants of economic growth in the Member States of the European Union.

The working hypothesis is that the EU Justice Scoreboard might overcome the fragmentation of the legal framework concerning the harmonization of civil procedure in Europe (cf. mainly Art. 81 and 114 TFEU, but also Art. 118 TFEU as well as Art. 102 TFEU), by way of supervising the national judicial systems and comparing their performances, with the aim of harmonization *de facto*, under a functional perspective.

Although the complexity and distinctive features of each national judicial system cannot be entirely captured by quantitative indicators, they can be beneficial for fostering comparative knowledge of judicial systems and for promoting reforms. Dealing with them can be fascinating and rewarding for the lawyer, particularly the scholar in civil procedure, as it helps in dispelling the sense of distinctiveness of civil procedure from other fields of the law, to say nothing of the sense of remoteness of civil procedure from the society.

Indicators are also tremendously successful in attracting the attention of policy makers and government officials, thus prompting critical amounts of benchmarking, dialogue and reform.[15] Indicators can be beneficial to fostering comparative knowledge of legal systems and promoting reforms. Information gathered through the creation and use of indicators needs, however, to be integrated and corrected, both on the descriptive and the prescriptive side, far more than currently happens, through the knowledge of lawyers and social scientists living and working in the targeted countries.[16]

(X) Aim of the Research Project

It is the aim of this research project to address issues common to both aspects of procedural law impacting on transnational governance and tools of transnational governance impacting on the regulation of civil proceedings strands, such as the problems of standing, legitimacy and accountability of the actors involved (individual plaintiffs in 'international public interest litigation', national courts dealing with issues related to transnational governance, international courts, agencies producing and implementing indicators, etc.), through a parallel analysis, that might be mutually beneficial.

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15 K. Davis, B. Kingsbury, S.E. Merry, "Indicators as a Technology of Global Governance", 46 *Law & Society Review* 71, 92 (2012).

16 This approach also reflects a certain methodological focus, which is best expressed by Clifford Geertz' words: "*Like sailing, gardening, politics and poetry, law and ethnography are crafts of place: they work by the light of local knowledge*". Cf. C. Geertz, "Local Knowledge: Fact and Law in Comparative Perspective", in *Local Knowledge: Further Essays in Interpretive Anthropology* (Basic Books, New York, 1983), at 167.