
TRIBUTE

GEOFFREY C. HAZARD, JR.: A CURIOUS AMERICAN

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After I first met Geoff at Yale in the eighties, I had several opportunities to see him at Yale, at Penn, in Pavia, and in many other places in Italy and around the world. Meanwhile, what had started as an academic relationship very quickly became a close friendship. Every time we met, we spent a few minutes in greetings and news and a lot of time discussing justice, judges, procedure, evidence, and so forth. It was during such talks that I discovered Geoff as a “curious American.” Actually, Geoff was not—and is not—a true comparativist in the procedural domain: he is “truly American,” which probably is a precondition for being, as he is and has been for decades, one of the most prominent scholars of American procedural law. But—and this is the peculiar feature that makes him different from most American lawyers—he is not U.S. centered. In a word, Geoff is curious. He is interested in learning what happens elsewhere, mainly in civil law systems, including Italy, France, and Germany but not excluding China or Japan. He continues collecting information, asking for explanations, and comparing problems and solutions.

While this long and friendly connection continued, two occasions led us to work together for several years. The first opportunity came about when I asked Geoff to write a presentation of the American civil procedure system for foreign readers. At that time, I was a scientific adviser to the Italian publisher *Il Mulino*, and I was planning a series of books about the most important foreign procedural systems. Geoff accepted immediately but asked me to be his coauthor, and, of course, I agreed. Writing that book was a great experience. We did

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not split the book into parts but rather worked out the whole text, discussing and revising several drafts. One of my best memories is the final revision of the book we made in Geoff's office at Yale Law School; Geoff was at the computer, I beside him suggesting adjustments, and Geoff's secretary providing us with coffee and cakes. This last speedy and intense revision led us to publish *American Civil Procedure: An Introduction* with the Yale University Press in 1993.¹ I translated it into Italian and had it published the same year in Italy. The book was a remarkable success: it was reprinted several times in the United States and was also published in Japan, in China, and, a couple of years ago, in Spain. There is a reason for such success outside of the United States: we were writing mainly for foreign readers, and Geoff continuously took care to avoid useless technicalities and to check with me to see if a non-American could fully understand the text. Consequently, Geoff made a wonderful contribution to the knowledge of the American procedural system all around the world.

But, as it happens, the story of our collaborations goes on. One very pleasant evening, we were dining in a small restaurant in Pavia, celebrating the publication of our book with a chilled Pinot Grigio from the Oltrepo Hills. Writing the book had been a very interesting and amusing experience, and we were looking for another reason to continue working together. Not another book—for we just had finished one—but something else was needed. Then (with the second bottle of Pinot), it occurred to us that something new could be done in the domain of transnational litigation. The traditional conflict of laws rule that led each national court to apply its own domestic procedural rules as the *lex fori*, even when the dispute had a transnational character, was causing problems. These problems were not apparent, or at least not serious, so long as transnational disputes occurred within Western developed systems, but economic globalization and the growth of transnational commercial transactions had multiplied the number of disputes, even in areas of the world that in the past had not been involved in commercial litigation. The rules about the choice of jurisdiction had—and now increasingly have—the effect that litigation may be commenced in virtually any corner of the globe. Such a phenomenon expands the application of the “procedural *lex fori*” all around the world, including in procedural systems that are difficult to manage and even to know. Moreover, the variety of such systems was—

¹ GEOFFREY C. HAZARD, JR. & MICHELE TARUFFO, *AMERICAN CIVIL PROCEDURE: AN INTRODUCTION* (1993).

and still is—excessive, and many procedures are inefficient or lack the fundamental procedural guarantees of fairness to the parties.

Thus, our idea was to figure out a set of rules—a sort of common model of procedure—to be applied by any national court dealing with transnational disputes; we believed that a necessary degree of harmonization could be achieved and that many differences among systems could be overcome. Prima facie, such an idea might have appeared to be a sort of foolish dream, but this did not prevent us from pursuing it. We started to exchange proposals, suggestions, and objections in a dialogue that went on for a while (with exchanges of papers and occasional meetings) and that resembled those chess games that are played at a distance, move by move. But a moment came in which we perceived that our fantasy was almost exhausted, and we needed something more in order to continue our effort. Our private dialogue produced a project that was—surprisingly—approved by the American Law Institute (ALI), notwithstanding the fact that the project did not deal with American civil procedure (or with any existing procedural system).

With the support of the ALI, and under the scrutiny of Mary Kay Kane and Ed Cooper, we were able to develop the project in two main directions: first, regular meetings at the ALI for discussions with the advisors; and second, meetings with foreign lawyers (academics, judges, practitioners, and arbitrators) in various places around the world, including Russia, China, Japan, Brazil, Spain, France, Germany, and Italy. In those years, we had the opportunity to examine various drafts of the project with the participation of people belonging to different legal systems and different cultures. Giving due consideration to their remarks, we continuously revised and developed a set of rules aimed at providing a common regulation for transnational litigation.

After a while, UNIDROIT joined the ALI project with an international committee of lawyers, and the two institutions worked together under Geoff's lead. In this phase, the focus of the project shifted to "principles" because of the perspective adopted by UNIDROIT. The final outcome of the whole work is *Principles of Transnational Civil Procedure*,² published in 2006 by Cambridge University Press under the joint sponsorship of ALI and UNIDROIT. It includes both a set of general principles, conceived as a common procedural model that national systems could adopt for transnational disputes, and a set of rules, presented as a possible interpretation and application of those principles.

² PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE (2006).

In the course of this rather long and very complex project, the attitude of Geoff, “the curious American,” developed into a personal style based on an open-mindedness that scholars and lawyers from several countries deeply appreciated and that made him an authoritative leader of our research. He was able to receive useful suggestions from a Russian, Japanese, or German lawyer (one of his favorite reactions was “‘yes’ is an answer”), but he was also able to reject “parochial” remarks coming from American lawyers (“‘no’ is an answer” was also frequent). Moreover, Geoff was able to understand what non-American lawyers were saying without trying to translate or force everything into American concepts and without setting aside what did not correspond to American stereotypes. This approach was immensely useful and basically ensured the successful outcome of the whole project.

As anybody knows, these aspects of Geoff’s work are only a part of his intellectual and academic life. Yet, they deserve to be taken into account because, together with his long activity as a reporter for international conferences and as a lecturer all around the world, they represent a significant part of the portrait of Geoff as a prominent figure—among just a few—in the worldwide landscape of procedural law.