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FABIEN GÉLINAS ET AL, *FOUNDATIONS OF CIVIL JUSTICE: TOWARD A VALUE-BASED FRAMEWORK FOR REFORM*, CHAM, SPRINGER, 2015

Alexandra Pasca[*]

The recent reform of the *Quebec Code of Civil Procedure* (CCP) prompts us to re-examine the foundations of civil justice. *Foundations of Civil Justice: Toward a Value-Based Framework for Reform*[1] is a wonderful starting point to do so. The co-authors—Fabien Gélinas, Clément Camion, Katrine Bates, Siena Antis, Catherine Piché, Mariko Khan, and Emily Grant—are part of a working group on new procedural models at the Montreal Cyberjustice Laboratory.[2] This multidisciplinary research project involves researchers from several countries and various disciplines (anthropology, history, information sciences, law, philosophy, psychology, sociology).[3] As such, an interdisciplinary methodology was used for this book in order to examine the complexity of contemporary issues of access to justice. This first international study of civil justice reforms offers a critical analysis of existing literature, which has focused primarily on courts' efficiency (i.e., delays, costs). It also highlights areas that need further research, particularly areas lacking empirical data on civil justice reform. Moreover, it identifies the core values that underpin every legal system that must be prioritized for any justice system reform. By using feminist and critical race theories as well as a legal pluralist approach, the authors propose a new research framework—namely a *value-based framework*.

The thesis of the authors is that, in order to ensure the legitimacy and the success of civil justice reforms, we must take into account a complex set of values that are sometimes overlapping and even contradictory. Said values are divided in two main categories: 1) those relating to the satisfaction of the parties; and 2) those relating to the integrity of the judicial system.[4] The first category includes participation (active or passive), trust (due process, fairness), procedural dignity (respect, care), and neutrality of third-party decision makers (impartial, independent).[5] The second category includes accessibility (intellectual, procedural, and economic), truthfulness (in judicial or other contexts), and legitimacy (formalism and ritualism).[6] While recognizing that improving efficiency is an important element in civil justice reform, efficiency is not included in the above-mentioned categories since it should not be "construed as a goal in and of itself."[7] Therefore, the new research framework aims to shift the focus from efficiency goals to the values in which civil justice

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1 Fabien Gélinas et al, *Foundations of Civil Justice: Toward a Value-Based Framework for Reform* (Cham: Springer, 2015) [Gélinas et al].

2 *Ibid* at v. See « Le laboratoire », online: Cyberjustice Laboratory <www.cyberjustice.ca>.

3 *Ibid* at v.

4 *Ibid* at 112–14.

5 *Ibid*.

6 *Ibid*.

7 *Ibid* at 115.

systems should be grounded.

The book is divided into five chapters, with the last chapter explaining this new research framework, based on the values identified in the four prior chapters. The reader's attention is captured from the very beginning by the use of images, and maintained throughout the whole book. The use of short sections in each chapter facilitates comprehension and transitions between principal arguments and applications. The first chapter argues that civil justice systems' legitimacy is reinforced by two competing factors: parties' autonomy (participation) on the one hand, and judicial rituals and architecture, on the other. For instance, courthouse design provides symbolism for judicial systems' central values, such as monumentality (authority, independence, impartiality), transparency, representing its theatrical and pedagogical functions, and even greater access to justice for subjects of the law.[8] In other words, the first chapter reveals the relationship between the state, the law, legal actors, and legal subjects (e.g., rationalization, secularization, and democratization of justice).[9] Further empirical research is thus required regarding the impact of "deritualized" dispute resolution (i.e., private justice) on the legitimacy of civil justice systems.[10]

In the second chapter, the authors show the lack of systemic methodology in empirical studies on access to justice reforms. They use sources not only from Canada, but also from the United States and United Kingdom.[11] Several factors may serve as impediments to access to justice. These include overly complex legal jargon, commercialization of the legal profession, and unrepresentativeness of the judicial system due to gender and racial institutional discrimination.[12] We are therefore urged to "open up the judicial space to new voices and perspectives",[13] including marginalized communities and alternative forms of lawyering based on the ethics of care.[14] This openness implies a change not only within the legal profession but also in legal education; it also implies a change stemming from other institutional players.[15] It involves a new culture of law that is anchored in diversity and built from elements borrowed from different disciplines and legal traditions. The third chapter demonstrates that, despite the differences between adversarial and inquisitorial legal systems, both share common values. In an adversarial trial, as in an inquisitorial trial, we are in search of truth, believe in the independence and impartiality of the judge, and follow similar procedural rules.[16] By focusing more on the similarities, rather than the distinctions between legal traditions, we may be able to identify guiding principles for civil justice reform. For instance, the *UNIDROIT/ALI Principles of*

8 *Ibid* at 2–5, 7–9, 23–31.
9 *Ibid* at 11–12.
10 *Ibid* at 22, 34.
11 *Ibid* at 44–47.
12 *Ibid* at 48–58.
13 *Ibid* at 60.
14 *Ibid* at 58–60.
15 *Ibid*.
16 *Ibid* at 75–76.

Transnational Civil Procedure[17] illustrate a tendency toward the harmonization of legal traditions.[18] Nevertheless, is harmonization better than diversification? The authors recommend further research in that regard in order to compare positivism to pluralism and cosmopolitanism approaches.

In the fourth chapter, the movement toward "participatory justice", another value common to adversarial and inquisitorial legal systems, is discussed. Although there seems to be a correlation between the "vanishing trial" phenomenon and the increasing use of alternative dispute resolution (ADR), the authors point to the need for a "categorization of dispute resolution methods for a better understanding of policy choices."[19] The typology proposed in a recent article on proximity justice models could have been helpful since it is a comparative analysis of the characteristics, organization, functions, implementation and gradual institutionalization of ADR.[20] Other important questions are raised in this chapter regarding the shifting roles of judges toward managerial judging and lawyers toward conflict resolution lawyering.[21] More extensive empirical research is needed on the causes and consequences of these changes.[22] The authors also highlight the inadequacy of existing ethical standards as well as the gap between legal training and the reality of legal practice, and thus the need for law school curricular reform.[23]

The final chapter provides an exhaustive list of values present in the civil justice system, and explains the potential tensions between such values, given the subjective perception of judicial legitimacy and each person's sense of justice.[24] A summary of the unanswered research questions identified in prior chapters is also reproduced,[25] the goal of this book being not to provide definitive answers but rather to serve as a "launching point" for future research.[26] Although it uses classical dichotomies for the organization of the value-based research framework (e.g., private versus public, adversarial versus inquisitorial, substantive versus formal, justice versus appearance of justice, short-term versus long-term interests, individual and case-specific versus institutional and systemic interests),[27] the book challenges us to put into question such categories.

A main critique of this book, however, is that the exhaustive list of values proposed by the authors should be an open one. Other values may need to be identified and explored. For instance, the value-based research framework should

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17 American Law Institute & UNIDROIT, *ALI/UNIDROIT Principles of Transnational Civil Procedure* (New York: Cambridge University Press, 2006).
18 Gélinas et al, *supra* note 1 at 72–74.
19 *Ibid* at 81–91.
20 Pierre Noreau & Alexandra Pasca, "Les grands modèles de justice de proximité : bilan d'une nouvelle pratique juridique" (2014) 44:2 RGD 305.
21 Gélinas et al, *supra* note 1 at 92–101.
22 *Ibid* at 83–84, 102.
23 *Ibid* at 98–101.
24 *Ibid* at 106–14.
25 *Ibid* at 114–20.
26 *Ibid* at 121.
27 *Ibid* at 111.

include not only the satisfaction of the parties but also the satisfaction of the legal actors. A study of judges' and lawyers' own perceptions of their new roles in society is important in order to understand the reasons for, and the effects of, the changing legal profession. Furthermore, in addition to judicial architecture and rituals, we should also consider the impact of popular culture on the legitimacy of civil justice systems. Popular culture refers to the representation of legal actors and judicial institutions within public opinion, including the media, literature, and cinema. Further research on law and popular culture, as mutually constitutive legal discourses,[28] could provide helpful insight into the larger social context. Legal reforms are not sufficient in and of themselves; they must be accompanied by a change of mentality. Such a change does not only imply new laws and institutional reforms, but rather a social change. Changing popular and legal cultures is a process in constant interaction, construction, and reconstruction. Reform of justice systems must therefore first begin within and through a social change.

To conclude, the above-mentioned critique confirms that the goal of the book is nevertheless achieved. This book contributes significantly to the debate on civil justice reform by taking a balanced approach to the issues that it presents and pushing the reflection beyond the pragmatic concern of efficiency. The authors cover considerably well the existing literature on civil justice reform. Although the focus is primarily on Anglo-Saxon literature, other sources are also used, including anthropologist and historian studies, such as Robert Jacob's work in the late 1990s. It would have been interesting to also refer to the latter's more recent publication, entitled *La grâce des juges: l'institution judiciaire et le sacré en Occident*, which is a synthesis of his researches on rituals and representations of judicial institutions.[29]

While Robert Jacob underlines fundamental differences between legal traditions,[30] Fabien Gélinas et al's book highlights similar foundations of adversarial and inquisitorial legal systems. Most importantly, it emphasizes the core values of civil justice that should be taken into account in civil justice reform. It also identifies questions that need further research, while providing us with guidelines for addressing these issues through a more holistic, systemic, data-driven, and value-based framework. Therefore, it is a unique and useful guide not only for legal scholars and researchers, but also for legal actors and policy makers. This book is a must-read for anyone who is interested in the reform of justice systems.

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28 Cassandra Sharp & Marett Leiboff, eds, *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (New York: Routledge, 2016).

29 Robert Jacob, *La grâce des juges: l'institution judiciaire et le sacré en Occident* (Paris: Presses universitaires de France, 2014).

30 *Ibid* at 454–520.