Não se pode deixar de destacar que a Revista da PGM é financiada pelo Fundo de Aperfeiçoamento. Isto porque este investimento é uma das metas inarredáveis do compromisso da Prefeitura de Fortaleza com a capacitação e qualificação profissional do seu quadro de servidores, pois do compasso entre as incessantes inovações doutrinárias e jurisprudenciais, consubstanciadas nos escritos publicados, e a atividade laboral jurídica é que resulta o alcance de maiores índices de adequação e eficiência administrativa nas demandas que se apresentam à Procuradoria.

Por fim, não poderia esquecer de agradecer àqueles que empreendem os esforços dos mais diversos para concretizar esta publicação de natureza singular, em especial os que integram o Centro de Estudos e Treinamento – CETREI. Seus préstimos, em grande parte, são frutos das atividades acadêmicas que desenvolvem nas mais variadas instituições de ensino superior do Estado do Ceará e no país afora. Longe de se restringirem ao âmbito intelectual das Universidades e Faculdades, eles têm consciência da importância e necessidade da aliança entre a produção do conhecimento e a práxis jurídica, por isso as mais sinceras estimas ao Dr. Henrique Araújo Marques Mendes, ao Procurador Juraci Mourão Lopes Filho e aos revisores, a professora Roberta Laena Costa Jucá e o professor Rodrigo Vieira Costa. O aprimoramento da Procuradoria da do Município também é tributário ao apoio dado pela Prefeita de Fortaleza às ações que priorizam a capacitação permanente e contínua de seus quadros, razão pela qual não posso deixar de render os meus agradecimentos.

Fortaleza, dezembro de 2009.

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FUNDAMENTAL PRINCIPLES OF CIVIL PROCEDURE: ORDER OUT OF CHAOS

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CONTENTS: 1 INTRODUCTION; 2 UNIDROIT/ AMERICAN LAW INSTITUTE'S; 3 'WOOLF CHANGES' OF PRINCIPLE: CPR (1998); 4 ARTICLE 6(1), EUROPEAN CONVENTION ON HUMAN RIGHTS; 5 AUTHOR'S 2003 LIST OF PRINCIPLES; 6 ORDER OUT OF CHAOS: THE FOUR CORNER-STONES OF CIVIL JUSTICE; 7 CONCLUDING REMARKS.

1 INTRODUCTION

1. The tendency of many national procedural systems is towards a proliferation of rules, sub-rules, and sub-sub-rules. This can produce over-detailed and unsystematic procedural regulation. This is clearly true in England, barely ten years after an injection of fundamental procedural aims and principles within the CPR system (1998). We are truly in search of order out of chaos: major principle rather than minutiae.

2. This tendency can be counter-balanced, even in due course corrected, by reference to generally recognised principles of civil procedure. Without a firm grasp of central and fundamental principles, we are in danger of becoming lost.

3. Another advantage of attention to general principle is that it can help legal systems move closer together, by reference to 'best

practice'. There is so much national baggage, so much domestic clutter. Local detail can have a paralysing effect.

4. In Europe, harmonisation can be perceived at two levels: adjustment of national systems to ensure compliance with the procedural guarantees contained in, or implied by, Article 6(1) of the European Convention on Human Rights; secondly, Regulations introduced to ensure pan-European Union adoption of rather more specific procedural institutions or practices.

5. Because of the welter of fundamental principles of civil justice that now jostle for recognition, and as the science of procedural law becomes ever more sophisticated, we need pointers, and groupings. My main suggestion will be that the leading principles of civil justice might usefully be arranged under four headings, which I have called the four foundations of civil justice. These are:

I Access to Legal Advice and Dispute-Resolution Systems

II Equality and Fairness between the Parties

III A Focused and Speedy Process

IV Adjudicators of Integrity

I will return to this suggestion.

2 UNIDROIT/AMERICAN LAW INSTITUTE'S

'Principles of Transnational Civil Procedure'

6. The ALI (American Law Institute) and UNIDROIT's ('the International Institute for the Unification of Private Law') joint project, 'Principles and Rules of Transnational Civil Procedure' (2004)[1], aims to combine common law and civil law approaches to

1 The official text is ALI/UNIDROIT--Principles and Rules of Transnational Civil Procedure' (Cambridge University Press, 2006) (at 157 ff containing a full bibliography of works associated with this project); for large collection of papers (2001–4) 6 Uniform Law Review, a special issue under the title 'Harmonising Transnational Civil Procedure: the ALI/UNIDROIT Principles and Rules'; see also M Andenas, N Andrews, R Nazzini, (eds), The Future of Transnational Commercial Litigation: English Responses to the ALI-UNIDROIT Draft Principles and Rules of Transnational Civil Procedure (2003; re-printed 2006) (essays

civil litigation.

7. The general aim of composing a 'soft law' fusion of common law and civilian procedure was preceded ten years before, in 1994, by Marcel Storme's innovative project in Europe, a visionary search for shared civil procedural principles, combining civil and common law learning and experience[2].

8. The ALI/UNIDROIT Principles offer a balanced distillation of best practice, especially in the sphere of transnational commercial litigation. They are not restricted to the largely uncontroversial 'high terrain' of constitutional guarantees of due process. Instead the project was skilfully pitched at the difficult mid-point between uncontroversial procedural axiom and the fine texture of national codes.

9. The Principles are accompanied by Rules. The latter have not been formally adopted by the ALI and UNIDROIT. The Rules are more detailed, fleshing out the more general Principles. And so the Rules offer greater guidance to national lawmakers who wish to use the Principles as a framework for revision of their procedural rules. As Geoffrey Hazard Jr explained, the Rules are 'merely one among many possible ways of implementing the Principles'[3].

10. It was apparent throughout the drafting group's discussion in Rome 2000-3 that there were radical differences between the USA and English systems, and between the various civil law jurisdictions represented around the table. These differences make a nonsense of both the glib phrase 'Anglo-American procedure' and the crude expression 'civilian procedure'. A refrain at these intense drafting sessions in Rome was, 'we do not have that institution in

and comments by many senior British judges and leading practitioners and commentators on the draft UNIDROIT/ALI project); see also P Fouchard (ed), Vers un Procès Civil Universel? Les Règles Transnationales de Procédure Civile de L'American Law Institute (Paris, 2001); G Hazard Jr et al, 'Principles and Rules of Transnational Civil Procedure' 33 NYU J Int L and Pol 769, 785, 793; R Stürner, 'Some European Remarks on a new Joint Project of the American Law Institute and UNIDROIT' (2000) 34 Int L 1071; R Stürner, `The Principles of Transnational Civil Procedure...' (2005) Rabels Zeitschrift, 201-254 (a powerful analytical study by the co-General Reporter).

2 M Storme (ed), Approximation of Judiciary Law in the European Union (Gent, 1994) (Professor Marcel Storme is the long-serving President of the International Association of Procedural Law; he retired from that office in 2007; his successors are Professor Federico Carpi, Bologna, and Professor Peter Gottwald, Regensburg).

3 ALI/UNIDROIT--Principles and Rules of Transnational Civil Procedure' (Cambridge University Press, 2006), 99.

our own jurisdiction, but we would be interested in considering it'; or, 'the tradition in my jurisdiction is to regard that practice as wholly inconsistent with one of our fundamental starting-points; however, perhaps we have exaggerated the value of that starting-point'. Rolf Stürner, appointed to be the General Reporter of the UNIDROIT side of this collaborative project, has chronicled the working group's elaboration of these principles.[4]

11. As I suggested in 2003[5] the UNIDROIT Principles operate at three levels of importance: fundamental procedural guarantees[6], other leading principles[7] and 'framework or incidental principles'[8].

12. The drafters of the Principles acknowledged that there is scope for radical differences of approach on aspects of practice. Such agnosticism pervades discussion of the following topics: sanctions for procedural default, receipt of expert evidence, examination of witnesses, and the system of appeal. Should the drafting party have been more decisive, and less agnostic, on these points? The better view is that these were intellectually honest decisions. They reveal the radical split between different traditions based on principled contrasting approaches. This is more likely to be helpful to future advisors than a confusing statement of an illusory compromise or a mistaken statement of 'universal common ground'. In short, vive la

4 R Stürner, 'The Principles of Transnational Civil Procedure...' (2005) Rabels Zeitschrift, 201-254

5 Neil Andrews 'Embracing the Noble Quest for Transnational Procedural Principles' in M Andenas, N Andrews, R Nazzini, (eds), The Future of Transnational Commercial Litigation: English Responses to the ALI-UNIDROIT Draft Principles and Rules of Transnational Civil Procedure (2003; re-printed 2006) (a collection of essays and comments by British judges and commentators on the draft UNIDROIT/American Law Institute's project)

6 Andrews, in M Andenas, N Andrews, R Nazzini, (eds) (2003: 2006), ibid, at 23, listing:
judicial independence, judicial competence, judicial impartiality, procedural equality, right to assistance of counsel, professional independence of counsel, attorney-client privilege (`legal professional privilege'), due notice or the right to be heard, prompt and accelerated justice, the privilege against self-incrimination, publicity, and reasoned decisions.

7 ibid, at 23-4,listing: parties' duty to co-operate; party initiation of proceedings; party's definition of scope of proceedings; parties' right to amend pleadings; parties' right to discontinue or settle proceedings; judicial management of proceedings; sanctions against default and non-compliance; need for proportionality in use of sanctions; parties' duty to act fairly and to promote efficient and speedy proceedings; parties' duty to avoid false pleading and abuse of process; rights of access to information; right to oral stage of procedure; final hearing before ultimate adjudicators; judicial responsibility for correct application of the law; judicial initiative in evidential matters; judicial encouragement of settlement, basic costs shifting rule; finality of decisions; appeal mechanisms; effective enforcement; recognition by foreign courts; international judicial co-operation.

8 ibid, at 25, listing: the purpose and scope of the project; jurisdiction over parties; protection of parties lacking capacity; security for costs; venue rules; expedited forms of communication; pleadings; implied admissions; joinder rules; non-party submissions; allocation of burden and nature of standard of proof; making of judicial 'suggestions'; experts.

différence: provided the procedural difference between one nation's system (or family of nations) and another's is real and fundamental, and no international preference or accepted compromise can be discerned.

13. Although the ALI/UNIDROIT project is relatively young (completed in 2004, published in 2006), it seems likely that it will assist greatly in the intellectual mapping of civil justice and that it will influence policy-makers. If the project is re-opened at some point, fundamental change of the existing Principles is unlikely. Change is more likely to take the form of addenda rather than delenda or corrigenda. But some new or emerging topics might be considered at a revision council:

(i) pre-action co-ordination of exchanges between the potential litigants[9]

(ii) multi-party litigation (this is of course a 'hot' and controversial topic within the USA, Europe,[10] including England,[11] and in Canada, Australia, and Brazil);

(iii) and greater attention might be given to:

(a) the interplay of mediation and litigation;[12]

(b) costs and funding (in England, the expense of litigation is the greatest impediment to effective civil justice);

(c) evidential privileges and immunities (notably, attorney-client privilege, protection of negotiation and mediation discussions,

9 See Neil Andrews, 'general report' (examining nearly 20 jurisdictions) on this topic for the world congress on procedural law in Brazil, in A Pellegrini Grinover and R Calmon (eds), Direito Processual Comparado: XIII World Congress of Procedural Law (Editora Forense, Rio de Janeiro, 2007), 201-42.

10 C Hodges, The Reform of Class and Representative Actions in European Legal Systems (Hart, Oxford, 2008).

11 Neil Andrews, 'Multi-party Litigation in England: Current Arrangements and Proposals for Change' (2008) Lis International 92-7 (Italy).

12 Neil Andrews, The Modern Civil Process (Mohr & Siebeck, Tübingen, Germany, 2008) [in Brazil O Moderno Processo Civil, 2009]; passim; Neil Andrews, 'Alternative Dispute Resolution in England' (2005) 10 ZZP Int (Zeitschrift für Zivilprozess International: Germany), 1-34; Neil Andrews, 'Mediation: a Pillar of Civil Justice in Modern English Practice' (2007) 12 ZZP Int 1-9; Neil Andrews, (in Italian) 'I Metodi Alternativi di Risoluzione delle Controversie in Inghliterra', in V Varano (ed), L'Altra Giustizia (Giuffre Editore, Milano, 2007), 1-43.

and the privilege against self-incrimination); [13] and

(d) transnational 'provisional and protective relief'[14] (notably, asset preservation).

3 'WOOLF CHANGES' OF PRINCIPLE: CPR (1998)

14. On 28 March 1994 Lord Mackay LC of Clashfern (Lord Chancellor 1987-97) appointed Lord Woolf to make recommendations concerning civil procedure. Lord Woolf's interim and final reports appeared in 1995[15] and 1996[16]. The CPR was enacted in 1998 and took effect on 26 April 1999. From the perspective of overarching principle, the main features[17] of this exciting fresh start involved recognition of nine leading principles, values, or aims:

(1) proportionality in the conduct of proceedings

(2) procedural equality

(3) introducing general judicial case-management responsibilities;

(4) accelerated access to justice by improved summary procedures

13 In England this is a fast-moving and delicate topic, Neil Andrews, The Modern Civil Process (Mohr & Siebeck, Tübingen, Germany, 2008), 6.26 to 6.40 [in Brazil O Moderno Processo Civil, 2009]; leading works include: Neil Andrews, English Civil Procedure (Oxford University Press, 2003) chs 25, 27 to 30; Cross and Tapper on Evidence (11th edn, 2007), chs IX, X; C Hollander, Documentary Evidence (9th edn, 2006), chs 11 to 20; P Matthews and H Malek, Disclosure (3rd edn, 2007); Phipson on Evidence (16th edn, 2005), chs 23 to 26; C Passmore, Privilege (2nd edn, 2006); B Thanki (ed), The Law of Privilege (Oxford University Press, 2006); Zuckerman on Civil Procedure (2nd edn, 2006), chs 15 to 18; see also, J Auburn, Legal Professional Privilege: Law and Theory (Hart, Oxford, 2000).

14 Neil Andrews, 'Towards an European Protective Order in Civil Matters' in, Procedural Laws in Europe: Towards Harmonisation (Maklu, Antwerp, 2003), (ed M Storme); published also in 'Provisional and Protective Measures: Towards an Uniform Protective Order in Civil Matters' (2002) VI Uniform Law Review 931-49 (Rome); see also Stephen Goldstein, 'Revisiting Preliminary Relief in Light of the ALI/UNIDROIT Principles and the New Israeli Rules' in Studia in honorem: Pelayia Yessiou-Faltsi (Athens, 2007) 273-96; N Trocker, 'Provisional Remedies in Transational Litigation: The Issue of Jurisdiction: A Comparative Outline' (2009) Lis Int'l 48-56 (Italy).

15 Ibid: it and its successor are available on-line at: http://www.dca.gov.uk/civil/reportfr.htm

16 Access to Justice: Final Report (1996).

17 The author's most recent examinations of the CPR system are: Neil Andrews, The Modern Civil Process (Mohr & Siebeck, Tübingen, Germany, 2008) [in Brazil: O Moderno Processo Civil, 2009] (also considering the rise of ADR); and Neil Andrews, Contracts and English Dispute Resolution (Tokyo, 2010).

(5) increasing focus and reducing cost by curbing excessive documentary disclosure

(6) greater resort to the disciplinary use of costs orders

(7) curbing appeals by requiring permission

(8) stimulating settlement through costs incentives to induce parties to accept settlement offers, and

(9) judicial encouragement of resort to ADR, notably mediation.

4 ARTICLE 6 (1), EUROPEAN CONVENTION ON HUMAN RIGHTS

15. The (British) Human Rights Act 1998, which took effect in October 2000, rendered the European Convention on Human Rights directly applicable in English courts. Article 6(1) of the Convention is a codification of fundamental principle. It embraces the following elements:

1. the right to be present at an adversarial hearing;

2. the right to equality of arms;

3. the right to fair presentation of the evidence;

4. the right to a reasoned judgment[18].

5. 'a public hearing': including the right to a public pronouncement of judgment;[19]

6. 'a hearing within a reasonable time'; and

7. 'a hearing before an independent[20] ; and

18 Neil Andrews, English Civil Procedure (Oxford University Press, 2003), 5.39–5.68.
19 ibid, 4.59–end of chapter; Strasbourg authorities cited, ibid, 7.21–7.79.
20 Starrs v Ruxton 2000 JC 208, 243; 17 November 1999 The Times (High Court of Justiciary) per Lord Reed; Millar v Dickson [2002] 1 WLR 1615, PC; s 3, Constitutional Reform Act 2005 (UK) states: 'The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.'

8. impartial[21] tribunal established by law'

9. the implicit fundamental right of 'access to court'

5 AUTHOR'S 2003 LIST OF PRINCIPLES

16. Having participated in the UNIDROIT/American Law Institute project, and stimulated by the first years of the brave new CPR world, in English Civil Procedure (2003) I decided to look again at the kaleidoscope of procedural principle because it was obvious that new patterns had emerged. In chapters 4 to 6 of my 2003 work I identified no fewer than twenty-four major principles. I will not set out each of them now.

6 ORDER OUT OF CHAOS: THE FOUR CORNER-STONES OF CIVIL JUSTICE[22]

17. MI would now propose that principles of civil justice might be usefully arranged under four headings, which I call the four corner-stones of civil justice:

(i) Access to Legal Advice and Dispute-Resolution Systems

(ii) Equality and Fairness between the Parties

(iii) A Focused and Speedy Process

(iv) Adjudicators of Integrity

18. This is how the various leading and fundamental principles of civil justice can be arranged using this four-fold classification.

I ACCESS TO LEGAL ADVICE AND DISPUTE-RESOLUTION

'The Lord Chancellor and other Ministers of the Crown must not seek to influence particular judicial decisions through any special access to the judiciary.' `The Lord Chancellor must have regard to (a) the need to defend that independence; (b) the need for the judiciary to have the support necessary to enable them to exercise their functions; (c) the need for the public in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.'

21 Porter v Magill [2002] 2 AC 357, HL.

22 The author's decision to seek to re-order his 2003 long list of 24 principles (N Andrews, English Civil Procedure (Oxford University Press, 2003) ch's 4-6) was prompted by Shimon Shetreet during conversation in Cambridge in March 2010, and at a Colloquium in Clare College, May 21, 2010, in honour of Professor Kurt Lipstein. But Shimon Shetreet and I differ on how best to arrange these principles.

SYSTEMS this category embraces five principles

(1) Access to Justice

(2) The Right to Choose a Lawyer

(3) Protection of Confidential Legal Consultation

(4) Protection against Bad or Spurious Claims and Defences

(5) Promoting Settlement and Facilitating Resort to Alternative Forms of Dispute-Resolution, notably Mediation and Arbitration.

II EQUALITY AND FAIRNESS BETWEEN THE PARTIES this category embraces five principles

(1) Procedural Equality

(2) Disclosure of information by each party to the other

(3) Accuracy of decision-making

(4) Fair Play Between Litigants—avoidance of cheating and unfair gamesmanship

(5) Procedural Equity—avoidance of the zero-tolerance mentality which can cause procedure to become a source of tyranny rather than the handmaiden of justice

III A FOCUSED AND SPEEDY PROCESS this rubric embraces five principles

(1) Judicial Control of the Civil Process to Ensure Focus

(2) Proportionality in the conduct of proceedings

(3) Avoidance of Undue Delay

(4) Effectiveness, especially to ensure compliance with judgments and other procedural obligations

(5) Finality

V ADJUDICATORS OF INTEGRITY—here there are five constitutional principles

(1) Judicial Independence

(2) Judicial Impartiality

(3) Publicity or Open Justice

(4) Judicial Duty to Avoid Surprise: the Principle of Due Notice: Audi Alteram Partem

(5) The Judicial Duty to Give Reasons

7 CONCLUDING REMARKS

19. There is a wide array of fundamental and important principles of civil justice. The lists can almost overwhelm us. And so we need pointers, and groupings. My main suggestion has been that the leading principles of civil justice might usefully be arranged under four headings, which I have called the four corner-stones of civil justice. These are:

(i) Access to Legal Advice and Dispute-Resolution Systems

(ii) Equality and Fairness between the Parties

(iii) A Focused and Speedy Process

(iv) Adjudicators of Integrity

20. Of course, jurists and scholars of procedure will acknowledge readily the need to identify the basic or fundamental norms of their field of study and practice. But outside the hallowed halls of international colloquia or outside the court system, general principle is not widely respected. Indeed it is regarded with suspicion, especially by politicians and officials who might feel threatened and fettered by such generalities. Ever more aggressive, controlling,

manipulative, and cynical Government systems have taught us not to take anything for granted. And of course the European Convention on Human Rights was a post-second world war response to the horrific collapse of all civilised values.

21. Therefore, custodians of true civil justice should not become complacent. As our democratic systems become more and more hollow, procedural rights can provide some concrete protection for ordinary people. If judges continue to display high ethical standards governed by this demanding set of procedural principles, other forms of public life might shape up.

22. Another value of emphasising general principles is that they are an antidote to the numbing and bewildering complexity, detail, and technicality which sadly characterise many national procedural rule books. Certainly this has become a problem in England which, since 1998, has witnessed an oppressive proliferation of pre-action protocols, procedural rules, supplemented by Practice Directions, transmuted by Guides to different branches of the High Court (the 2009 edition of the Commercial Court Guide is 222 pages long). This deluge of micro-detail has rendered the search for overarching and underpinning norms even more important.

23. Finally, International scholarly discussion thrives on fundamental principle[23]. It is the life-blood. As we continue to

23 In the English language, these include: JA Jolowicz, On Civil Procedure (Cambridge University Press, 2000) (thereafter in chronological order): M Cappelletti and J Perillo, Civil Procedure in Italy (The Hague, 1995); M Cappelletti (ed), International Encyclopaedia of Comparative Law (The Hague, and Tübingen, 1976), volume XVI 'Civil Procedure'; J Langbein, 'The German Advantage in Civil Procedure' (1985) 52 Univ of Chi LR 823-66; M Damaska, The Faces of Justice and State Authority: A Comparative Approach to the Legal Process (New Haven, 1986); M Cappelletti, The Judicial Process in Comparative Perspective (Oxford University Press, 1989); M Storme (ed), Approximation of Judiciary Law in the EU (Dordrecht, 1994); AAS Zuckerman (ed), Civil Justice in Crisis: Comparative Perspectives of Civil Procedure (Oxford University Press, 1999); W Rechberger and Klicka (eds), Procedural Law on the Threshold of a New Millenium, XI. World Congress of Procedural Law (Center for Legal Competence, Vienna, 2002); D Asser et al, 'A summary of the interim report on Fundamental Review of the Dutch Law of Civil Procedure' (2003) 8 ZZPInt 329-87; M Storme (ed), Procedural Laws in Europe - Towards Harmonization, (Maklu, Antwerpen/ Apeldoorn, 2003); M Storme and B Hess (eds), Discretionary Power of the Judge: Limits and Control (Kluwer, Dordrecht, 2003); PL Murray and R Stürner, German Civil Justice (Durham, USA, 2004); CH van Rhee (ed), The Law's Delays: Essays on Undue Delay in Civil Litigation (Antwerp and Oxford, 2007); CH van Rhee, European Traditions in Civil Procedure (Intersentia and Hart, Oxford, 2005); CH van Rhee and A Uzelac (eds), Enforcement and Enforceability (Intersentia and Hart, Oxford, 2010); N Trocker and V Varano (eds), The Reforms of Civil Procedure in Comparative Perspective (Torino, 2005); Oscar Chase, Helen Hershkoff, Linda Silberman, Vincenzo Varano, Yasuhei Taniguchi, Adrian Zuckerman, Civil Procedure in Comparative Context (Thomson West, 2007); A Pellegrini Grinover and R Calmon (eds), Direito Processual Comparado: XIII World Congress of Procedural Law (Editora Forense, Rio de Janeiro, 2007), 201-42; A Uzelac and CH van Rhee (eds), Public and Private Justice (Antwerp and Oxford, 2007); M De-

debate the membership of the canon of central procedural principles, students of civil justice will be standing on the shoulders of those celebrated jurists who have already contributed to this unending task by examining matters of first principle[24]. For these have become the heroes of procedural scholarship, and I congratulate them on the stimulating work which has already been achieved.

guchi and M Storme (eds), The Reception and Transmission of Civil Procedural Law in the Global Society (Maklu, Antwerp, 2008). And on 'transnational principles', M Storme (ed), Approximation of Judiciary Law in the European Union (Gent, 1994) and ALI/UNIDROIT's Principles of Transnational Civil Procedure (Cambridge University Press, 2006); on this project, H Kronke (ed), special issue of the Uniform Law Review (2002) Vol VI; M Andenas, N Andrews, R Nazzini (eds), The Future of Transnational Commercial Litigation: English Responses to the ALI/UNIDROIT Draft Principles and Rules of Transnational Civil Procedure (British Institute of Comparative and International Law, London, 2006); R Stürner, 'The Principles of Transnational Civil Procedure...' (2005) Rabels Zeitschrift, 201-254; J Walker and Oscar G Chase (eds), Common Law Civil Law and the Future of Categories (Lexis Nexis, Ontario, 2010).

24 Besides the authors listed in the preceding note, consider the following transnational or comparative works and projects (presented here in chronological order):

(1) M Storme (ed), Approximation of Judiciary Law in the European Union (Gent, 1994); see also M Storme (ed), Procedural Laws in Europe - Towards Harmonization, (Maklu, Antwerpen/Apeldoorn, 2003); M Storme and B Hess (eds), Discretionary Power of the Judge: Limits and Control (Kluwer, Dordrecht, 2003);

(2) JA Jolowicz, On Civil Procedure (Cambridge University Press, 2000);

(3) the contributors to ALI/UNIDROIT's Principles of Transnational Civil Procedure (Cambridge University Press, 2006);

(4) Shimon Shetreet, Mount Scopus International Standards of Judicial Independence (a continuing project);

(5) The Nagoya/Freiburg project on 'A New Framework for Transnational Business Litigation', a project led by Professor Masanori Kawano; the published works in this series (so far) are: Rolf Stürner and Masanori Kawano (eds), Current Topics of International Litigation (Mohr Siebeck, Tübingen, 2009); national studies: Neil Andrews, English Civil Justice and Remedies: Progress and Challenges: Nagoya Lectures (Shinzan Sha Publishers, Tokyo, 2007); Laura Ervo (ed), Civil Justice in Finland (Jigakusha Publishing, Tokyo, 2009); Carlos Eslugues-Mota and Silvia Barona-Vilar (eds), Civil Justice in Spain (Jigakusha Publishing, Tokyo, 2009); Miklos Kengyel and Viktoria Harsagi, Civil Justice in Hungary (Jigakusha Publishing, Tokyo, 2010); Neil Andrews, Contracts and English Dispute Resolution (Jigakusha Publishing, Tokyo, 2010); Dimitris Maniotis and Spyros Tsantinis, Civil Justice in Greece (Jigakusha Publishing, Tokyo, 2010); Stephanie Schmidt, Civil Justice in France (Jigakusha Publishing, Tokyo, 2010); Marco de Cristofaro and Nicolo Trocker (eds), Civil Justice in Italy (Jigakusha Publishing, Tokyo);

UMA APRESENTAÇÃO

Conheci o Professor Neil Andrews em Vitória, Espírito Santo, durante as VIII Jornadas Brasileiras de Direito Processual Civil, em junho de 2010, ocasião em que fui um dos palestrantes do evento; graças à oportunidade que me foi concedida pela jurista Teresa Arruda Alvim Wambier, ao me apresentar o professor da Universidade de Cambridge, Inglaterra, com ele pude manter agradável diálogo. A partir dali, nos intervalos das palestras, conversávamos a respeito do direito processual, realizando uma espécie de paralelo entre os dois sistemas de tão distantes mundos – o Brasil, com a nítida influência do civil law, e a Inglaterra onde se edificara o common law –, e ficou a solicitação de minha parte de receber material por ele escrito para divulgação em nosso meio jurídico. O Professor Neil Andrews prontamente atendeu ao que ficara acordado, e me remeteu o artigo intitulado "Fundamental principles of civil procedure : order out of chaos", que tenho o prazer de ofertá-lo aos interessados no estudo do sistema processual da Inglaterra, notadamente a partir da vigência do método codificado que ali se instaurou em 1998, com o Civil Procedural Rules - CPR.

Solicitei ao Professor Martônio Mont'Alverne que me desse a honra da publicação do texto na Revista da Procuradoria do Município de Fortaleza, e o fiz basicamente por duas razões; a primeira, em face de minha alegria por constatar, ao longo do período em que exerço a magistratura no âmbito da jurisdição da Fazenda Pública, a excelência profissional dos procuradores que atuam nesse segmento da advocacia pública, e a segunda razão reside no profundo respeito intelectual que devoto ao Professor Martônio Mont'Alverne e sua incansável luta pelo refinamento dos meios de divulgação do pensamento jurídico, a fim de se estabelecer o viés dialético inerente ao talhe hermenêutico da ciência jurídica.

Fica aqui o agradecimento ao Professor Neil Andrews pela confiança na remessa do material, e também à Revista da Procuradoria do Município de Fortaleza, por materializar o amplo