

What if you woke up one day in a place where there was no Courts Law?: The Impact of Teaching Procedure on the Legal Academy

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Elizabeth G. Thornburg, Erik S. Knutsen, Carla Crifò, Camille Cameron, & David Bamford, [A Community of Procedure Scholars: Teaching Procedure and the Legal Academy](#), 51 Osgoode Hall L.J. 93 (2013), available at [SSRN](#).

In identifying legal scholarship worth celebrating (*i.e.*, scholarship we like lots and that matters), few articles would seem to qualify better than one that traces the mutually supportive relationship between the teaching of civil procedure and the strength of the academic community and the scholarship in the field.

One such article is *A Community of Procedure Scholars*, a piece by multiple authors from four different legal systems—United States, Canada, Australia, and England and Wales. The authors compare and contrast the treatment of Civil Procedure in the law school curriculum and in the scholarly literature of their respective systems.

For most JOTWELL Courts Law readers, asking about the relationship between the teaching of procedure and scholarship in procedure would be like asking a fish what it is like to live in water. In many legal systems, civil procedure is so well established as a part of the law school curriculum and as an area of academic inquiry, and teaching and scholarship in the field are so prevalent that it would be odd to wonder about the connection between the two.

Surprisingly, though, this is not the reaction in all legal cultures. In particular, questioning the relationship might not seem so strange in England and Wales. It takes only a brief visit to a law faculty there for a specialist in Courts Law to feel like, well, a fish out of water. For in England and Wales, by and large, civil procedure is not an academic subject at all.

This is not an exaggeration or a misconception. If the existence of an academic subject can be determined by its inclusion in the curriculum of the typical law faculty, then the subject of civil procedure does not exist in England and Wales. It is not that it is taught under a different name, as might be the case with Restitution and Unjust Enrichment, or Conflict of Laws and Private International Law, or even Courts Law and Procedure. It is not that it is included in some other subject, for example, the way the *Erie* Doctrine is taught as part of Civil Procedure in the United States but might be understood as a question of the conflict of laws elsewhere. Civil Procedure simply is not present in the curriculum.

Alternatively, if the existence of an academic subject can be determined by a body of scholarship or a community of scholars, a similar absence is evident. England's lone journal in this area, *Civil Justice Quarterly*, though highly respected, regularly relies on the contributions of foreign scholars. And the annual meeting in England of the Society of Legal Scholars has no session for the discussion of procedural law among the more than two dozen sessions covering the range of legal subjects studied.

This surprising absence raises intriguing questions about how a legal subject that is so well established in one legal system could fail to exist in another. What would it take to introduce a subject such as civil procedure into the academic curriculum in a country where it did not previously exist? What does it take to keep an academic subject alive and thriving in a country where it is well established?

When these questions are examined comparatively, the observations above—that one looks both to the inclusion of the subject in the standard law school curriculum and to a body of literature and a community of scholars—further demonstrate the connection between teaching and scholarship. As the authors explain:

This article asks whether the way in which procedure is taught has an impact on the extent and accomplishments of a scholarly community of proceduralists. Not surprisingly, we find a strong correlation between the placement of procedure as a required course in an academic context and the resulting body of scholars and scholarship. Those countries in which more civil procedure is taught as part of a university degree—and in which procedure is recognized as a legitimate academic subject—have larger scholarly communities, a larger and broader corpus of works analyzing procedural issues, and a richer web of institutional support systems that inspire, fund, and shape the study of public justice.

By comparing the scholarly communities in their countries and the nature and extent of the teaching of procedure in their countries' law schools, the authors identify a strong symbiosis between the two. They link the positioning of civil procedure—as a required first year course taught by full time faculty, as opposed to an upper-year elective taught by adjuncts, as opposed to an element of a professional licensing course—to the prevalence of full time academics specializing in the subject. At one end of the spectrum, in 200 US law schools, more than 300 full time academics teach and write broadly in the area of civil procedure. At the other end of the spectrum, in some 83 British university law departments, fewer than a dozen full-time academics engage in any scholarship in the field.

The authors identify further correlations concerning the extent to which academic lawyers have established for themselves networks in the field, as well as comparing publication rates in the field. While the authors' methods for measuring these metrics comparatively are ingenious, the picture that emerges is a compelling one: the spectrum from a first year compulsory subject taught by full time academics to a topic merely required on a practice training course tracks the varying strength and vitality of the community of scholars in the field in each country.

The article forms part of a larger project of comparative analysis that considered the impact of teaching civil procedure across common law systems as part of a special issue of the *Osgoode Hall Law Journal* on Teaching Civil Procedure. It included a detailed comparison of the extent and focus of the teaching of civil procedure across the four common law systems; an examination of the impact of the inclusion of civil procedure on the law school curriculum as a whole; and the possible implications of teaching procedure for the evolution of the legal profession and civil justice reform.

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