Defenders in Venetian Courts of justice



MOBILITY & HUMANITIES
Centre for Advanced Studies

UNIVERSITÀ DI PADOVA - SEMINARI DI STORIA DEL DIRITTO E DEL PENSIERO GIURIDICO // 2021

Communication given at:

IUS COMMUNE AT BORDERS: BORDERS OF IUS COMMUNE _

04 MARCH 03.00 PM (Italian time)

SUI GENERIS?
HOW DIFFERENT
WERE THE EARLY
MODERN LAWS
OF VENICE,
SCANDINAVIA AND
ENGLAND

SPEAKERS:
Michele Bosso (Università di Padova), Heikki Pihlajamäki (University of Heisipki);
Dolores Freda (Università di Napoli Federico II); Alfredo Viggiano (Università di Padova)

18 MARCH 03:00 PM (Italian time)

CIRCULATION OF LEGAL CULTURE:

DPCD DIPARTIMENTO DI DIRITTO PRIVATO E CRITICA DEL DIRITTO

PROFESSORS AND STUDENTS

SPEAKERS: Donato Gallo (Università di Padova); Marianne Vasara-Aaltonen (University of Helsinki); David (bbetson (University of Cambridge)

15 APRIL 03.00 PM (Italian time)

JUDICIAL PLURALISM IN VENICE, SCANDINAVIA AND ENGLAND

SPEAKERS: Richard Helmholz (University of Chicago); Mio Korpiola (University of Turku); Claudia Passarella (Università di Padova) 29 APRIL 03.00 PM (Italian time)

LEGAL SCHOLARSHIPS AT THE BORDERS: IUS COMMUNE AND LOCAL LAWS

SPEAKERS: John Baker (University of Cambridge) and Jørn Øyrehagen Sunde (University of Osla)

06 MAY 03.00 PM (Italian time)

ADMINISTERING THE LAW: LAWYERS AND LAYMEN

SPEAKERS: Per Andersen (University of Arhus); Niamh Howlin (University College Dublin); Silvia Gasparini (Università di Padova)

20 MAY 03.00 PM (Italian time) MERCHANTS AND

COURTS

SPEAKERS: Stefania Gialdroni (Università degli studi Roma Tre); Maria Fusaro (University of Exeter); Sören Koch (University of Bergen)

27 MAY 03.00 PM (Italian time)

THE ANGLO-VENETIAN MOMENT: FROM THE DIVINE RIGHT OF KING TO THE

DIVINE RIGHT OF REPUBLIC

SPEAKERS: Mario Piccinini (Università di Padova); Corrado Pin (Istituto Italiano per gli Studi Filosofici); Chiara Petrolini (Universität Wien)

ALL SEMINARS ARE ON ZOOM PLATFORM. ACCESS LINKS ARE AVAILABLE AT: https://bit.ly/3rFMFOA

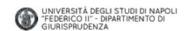
SCIENTIFIC COMMITTEE:

Michele Basso, Dolores Freda, Donato Gallo, Heikki Pihlajamäki, Claudia Passarella, Mario Piccinini, Chiara Valsecchi, Raffaele Volante

CONTACTS:

michele.basso@unipd.it, claudia.passarella@unipd.it









VII-XII century

In the beginning... there was the placitum

- -- assembly of all male citizens in arms
- -- presided by the doge
- -- discussion of laws administrative acts -- judicial cases
- -- deliberations by vote of majority
- -- the parties in a trial defend themselves
- -- full capacity of women to speak for themselves in trials

No defense by third parties (unless incapacitated or absent)

--> nothing to say





since the XIII century

Venetian judges vs. judges in the Venetian State

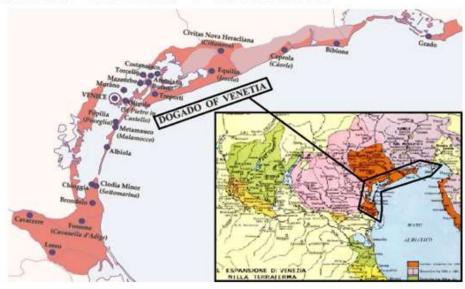
Note: all councils and magistrates have full powers of government: division of labour, not of powers!

In Venice and Dogado (topic of the present paper)

judges = councils or magistrates elected for short terms

rules of law: Venetian laws + judicial custom + arbitrium

In the Venetian
Dominions (XV-XVIII c.):
judges + rules of law =
same as before the acquisition,
overseen by Venetian rectors
(covered by Claudia Passarella
in the last meeting)



Judges in Venice

oral, accusatorial trials-- civil + criminal:

inquisitorial criminal trials (after 1310):

Council of Ten -- oral self-defense only

Who defends the parties in court?

XIII-XV centuries

only magistrates given ex officio:

- *Avogadori di Comun --> represent+defend the State in court
- *Avvocati per le Corti = ordinari
- --> given ex officio to each of the parties in civil trials
- *Avvocati dei prigioni
- --> given *ex officio* to defendants in criminal trials (no charge for the poorer defendants)

XV-XVIII centuries

also professionals chosen by the client:

- *Avvocati extraordinari --> oral pleading in front of the judges *Sollecitadori
- --> collection and presentation of admissible relevant evidence
- --> oral pleading in front of minor magistrates

Why does the State take care that the parties have legal counsel?

Because of the Venetian idea of justice.

Justice is not a clear cut between right and wrong: Justice is a balancing act in the interests of the community

1. Both parties have reasons

- --> new controversies may arise if all the details of the respective legal situations are not considered once and for all
- 2. No active participant in the life of the State be wasted
- --> the best solution is that which protects the rights of the better party but at the least possible damage for the loser
- 3. Self-defense by the parties, as was the custom in earlier centuries, may be lacking the necessary details and scope; self-defense by foreigners may be ineffective because of language gaps
- **4.** Full appraisal of the relevant elements is needed for judging **per sententiam**, **laudum et arbitrium** when a rule of law is lacking

Chronology, 1: magistrates only for defense

XII century -- Avogadori di Comun represent + defend the interests of the Comune against private parties (e.g. usurpi = encroachments on public land)

Later functions:

- -- public accusers (also against magistrates)
- they monitor the acts of the State for their legality (not by private action, but first step toward legal State)
- -- they filter appeals to the Quarantia in criminal cases
- -- Libro d'Oro = register of the members of age of the families belonging to the Major Council after the Serrata (1297)

after 1250 -- Avvocati ordinari

aka (in different contexts and times): Advocati parvi, Advocati ad Curias Palatii, Advocatores per omnes Curias

- -- magistrates **elected** yearly (1263)
- -- minimum age **20 years** (1272)
- -- assigned **ex officio**
- -- duty of presence in court
- -- must **read the Statute** thrice a month (1286)
- -- **salary** by the Comune + small **fees** by the party
- -- substitutes provided in case of conflict of interests
- -- also provided for magistrates in **Rialto** (Consoli dei mercanti, Sopraconsoli: 1463)

no professionals admitted!

only close relatives in case of absence or inability (1274, 1296)

1443 -- Avvocati dei prigioni

Proposal by the Quarantia Criminal -->

- -- magistrates **elected** every two years
- -- assigned ex officio
- -- defense of **prisoners** awaiting trial
- -- suggested revision of convictions to carceration
- -- same salary and fees as the Avvocati ordinari
- -- but the **poor are exempted** from the fees

no professionals admitted! only close relatives in case of absence or inability



Why no professionals so far?

- 1. They **exploit the clients** for gain, while the fees of magistrate defenders are fixed and affordable
- 2. They slow down the course of justice with cavillations
- 3. They do not take into consideration the whole situation and the public benefit, but only the interests of the client: they do not share the Venetian concept of justice
- 4. They are often **ignorant** of the Venetian rules of law
- 5. They may bring into Venetian jurisdiction foreign elements taken from the **Roman law culture** spread in the mainland

Roman law comes from a foreign legislator: it does not and must not have validity in Venice, nor does it limit or direct in any way the Venetian legislators and judges!

Chronology, 2: the professionals

XIV-XV century: special dispensations occasionally given to private defenders to speak in court 1466, MaggC: abolished because of their "enormities" 1474, MaggC: the avvocati extraordinari are banned from court (first use of the term)
--> failed attempts to make the avvocati ordinari more

effective

change of policy! the professionals cannot be excluded
--> they must be disciplined

1489, Senate: all AvvExtra extraordinari must be listed and swear to abide by the fees for the AvvOrd 1497: AvvExtra must be approved by deliberation of a committee of judges and Avogadori di Comun

1537: Correzion Gritti (doge Andrea Gritti)

- = addition to the Statutes deliberated by the MaggC
- = general reform of judicial defense
- 1. Requalification of the avvocati ordinari
- In the six courts of the Palace, each party must choose one AvvOrd and can choose one or two AvvExtra (or self-defend)
- 3. In front of **other magistrate judges**, each party can choose either an AvvOrd or an AvvExtra
- 4. In **criminal courts** and in **appeals to Quarantia**, AvvExtra are freely admitted
- 5. Fees and taxes defined
- 6. **Defense of the poor in civil trials** for free by AvvOrd or AvvExtra chosen by the judges
- 7. No foreign AvvExtra!
- 8. Public register of AvvExtra

1553: Conservatori ed Esecutori alle leggi for implementation and control:

- 1. Vote for admission of each new AvvExtra
- 2. Judge violations of Correzion Gritti
- 3. Deliberate **laws** about the **requisites**

1600: preliminary **examination** about the courts and their procedures

1608: two years of **practice** under an AvvExtra before the examination

1626: examination also about the Statutes

1700: one year of law studies in Padua university

1723, Senate: doctoral title required (also for physicians)

Roman law has not become valid in Venice but its theory is useful for effective construction of a defense

1751: examinations more severe on Venetian law

The other profession: sollecitadori

-- **Avvocati** (AvvOrd-AvvExtra) defend their clients on matters of merit, based on evidence

VS.

- -- **Sollecitadori** = intervenienti = causidici
- * gather evidence
- * check its **relevance** to the trial
- * check that it can/must be **admitted** by the judge (cfr. Esaminador!)
- * present it within the **terms** and in the due **forms**

The sollecitadori remain **unofficial** and invisible to the law until the XVI century

1564, Quarantia Criminal:

- -- all sollecitadori must be listed
- -- they must be proven free from criminal **convictions**
- -- they are overseen by Sindici e Giudici extraordinari

1582, Sindici+Quarantia (retroactive application!):

- 1. certification of **requisites**
- 2. **examination** on procedures and compilation of acts
- 3. **surety** approved by the Sindici (in case of violations!)
- 4. maximum **fees** (by case or by month)
- 5. admission valid for **three years** --> then repeat

1586, Correzion Cicogna (doge Pasquale Cicogna) restatement by the MaggC with more severe requisites 1589, MaggC: sollecitadori are not allowed to act and defend as AvvExtra

XVII century: failed plans for general reformation



Silvia Gasparini
May 6, 2021
silvia.gasparini@unipd.it
www.arielcaliban.org/paxtibimarce.htm