

Defenders in Venetian Courts of justice



Communication
given at:

MOHU

MOBILITY & HUMANITIES
Centre for Advanced Studies

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

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 Basso (Università di
Padova); Heikki Pihlajamäki
(University of Helsinki);
Dolores Freda (Università di
Napoli Federico II); Alfredo
Viggiano (Università di
Padova)

18 MARCH
03.00 PM (Italian time)

CIRCULATION OF LEGAL CULTURE:

PROFESSORS AND STUDENTS

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

15 APRIL
03.00 PM (Italian time)

JUDICIAL PLURALISM IN VENICE, SCANDINAVIA AND ENGLAND

SPEAKERS:
Richard Helmholz
(University of Chicago);
Mia 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 Oslo)

06 MAY
03.00 PM (Italian time)

ADMINISTERING THE LAW: LAWYERS AND LAYMEN

SPEAKERS:
Per Andersen (University
of Århus); 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

DPCD DIPARTIMENTO
DI DIRITTO PRIVATO
E CRITICA DEL DIRITTO

GA DIPARTIMENTO DI SCIENZE
STORICHE, GEOGRAFICHE
E DELL'ANTICHITÀ

UNIVERSITÀ DEGLI STUDI DI NAPOLI
"FEDERICO II" - DIPARTIMENTO DI
GIURISPRUDENZA

UNIVERSITY OF HELSINKI
FACULTY OF LAW

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:

Curiae Palatii:

del Proprio / del Forestier /
dell'Esaminador / del Procurator
del Mobile / di Petizion

| (**Auditori Vecchi** --> **Quarantà Civil**

-----> **filter:** (

| (**Avogadori di C.** --> **Quarantà Criminal**

Other magistrates

es. Signori di Notte

Provveditori di Comun...

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 prigionieri***

--> given *ex officio* to defendants in criminal trials
(no charge for the poorer defendants)

XV-XVIII centuries

also professionals chosen by the client:

****Avvocati straordinari*** --> 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 Quarantìa 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 prigionieri

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**
2. 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, Quarantà Criminal:

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

1582, Sindici+Quarantà (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