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Judicial defence in the Republic of Venice: rise of a magistrate and two professions

The role of jurisdiction in the institutional order

An in-depth analysis of legal assistance and legal professions in Modern age Venice must take into account the relationship between the actual unfolding of the judicial process and the wider structure of government whose aims it serves. After a brief survey of the bodies ruling the Republic since the XIV century (the five Councils and a host of magistrates) and of the bureaucratical, auxiliary structure of *ministero*, I will focus on some peculiar characters in the Republic's ruling praxis, which make it different from other medieval and modern organizations of government.

To begin with, Venice is ruled by magistrates: they are elected by vote of a Council, serve a short term of charge, wield limited powers, and are held responsible for their actions. Moreover, the power of government is devoid of patrimonial characters: it cannot and must not be used in order to accrue the magistrates' personal wealth or status, cannot be sold or leased and cannot be bequeathed to heirs. These characters sharply and explicitly contrast with the feudal concept of a lifelong personal power, linked to privilege of birth and being part of the family patrimony, a concept arising in the early Middle ages and later absorbed inside the modern idea of the monarchical State.

Again, in Venice the job of ruling is a concern of the many. The Councils as well as the magistrates function as assemblies: all acts of government --the laws, as well as judicial decisions or administrative provisions-- are the result of collective discussion and a majority vote.

These combined elements make the Republic a rare, early instance of government assuming for itself a generality of scope, as do contemporary States. In pursuing such aims, the magistrates are entitled by their charge to solve any arising questions by issuing new rules of law, if needed. Whenever compromise is required between a former rule of law and the specifics of a particular question, the judges are entitled to solve the question *per sententiam, laudum et arbitrium,* that is "by whatever solution of the case will gather the majority of votes".

A global view of all these characters reveals that along its history, the Republic pursued a concept of order all of its own. It was not an order found in theoretical, hierarchically structured classification, like those typical of late-modern and contemporary States, but rather the dynamic order of an ecosystem, made up of a complex group of interacting elements, prudently but innovatively exploiting, according to current opportunities, the resources of the environment.

Jurisdiction appears central to the self-image of the Republic as well as the image presented to its modern-age Dominions and its international peers. Jurusdictional conflict-solving was perceived as a pivotal political function, on which both legitimacy of government and balance between public and private issues depended.

Judicial procedures

The rules of legal process were different between and within civil and criminal courts. Civil litigation arising in Venice and the territory of the Dogado was deferred in the first degree, according to its subject matter, to one of the Courts of the Palace or one of the auxiliary magistrates. The beginning and conclusion of the process were oral and public, while the evidence- and argumentation-gathering may be accompanied by documents presented by the parties or their legal counsel. Sentence was issued in

chamber of council in the same form as any magistrate's deliberation, whatever its contents: the members voted on one (or more, dissenting or concurring) proposals. A second degree of judgement, or rather a revision, was provided by the Council of Forty, but the request was subject to the evaluation of an appointed magistrate, the Auditori delle sentenze.
Criminal process could take three different forms. In the ordinary process, performed by Senato and the Council of Forty, the public prosecutor and the accused were on an equal footing; the process developed orally and in public; the sentence was issued by vote. The Council of Ten instead, and a few magistrates dependent from or delegated by it, adopted a Venetian version of the inquisitorial legal process, not dissimilar to the Roman-canon process employed throughout Europe in the late middle and modern ages. It proceeded secretly and in writing; the person subjected to inquiry was not informed of the accuses and had no right to legal assistance, although it was customary to allow for some legal caunsel to be delivered after the evidence-gathering phase was concluded; finally, the sentence did not allow for a second degree of judgement. A third form of summary, oral process was performed by other magistrates, prosecuting minor offences falling within their attributions and punished by moderate monetary fines.
In all three forms of criminal legal process, the sentence was the result of two separate votes. The judging Bench deliberated in the first instance whether to condemn, absolve or release the defendant *pro nunc,* i.e. under the reserve of re-opening the process in case new evidence should turn up later; this made *pro nunc* different from today's absolution for lack of sufficient evidence.

Legal assistance by magistrates vs. the contrasted rise of the professionals
The strict control the Republic held on socio-economical dynamics and on the public peace through the careful wielding of jurisdiction brought about an early absorption of peace-keeping activities within the orbit of public intervention. To this end, the Republic provided for legal assistance to litigants and defendants through appointed magistrates, *Avvocati ordinari* in civilian litigation and *Avvocati dei prigioni* in criminal trials; moreover, further steps were taken in order to insure that the private professionals offering legal assistance instead of, or in addition to, those provided by the magistrates, were up to the task with regard to their technical proficiency, their honesty and their loyalty to the Venetian legal system.
The professionals fell in two categories, according to the import of their legal services as touching on the question of jurisdiction (which Court is entitled to issue judgement on the matter?), of fact (which relevant elements of evidence support the client's position? which among them are fit to be used in Court?) and of law (which typical situation does the current case fall into, and which rules of law apply?). While *avvocati extraordinari* were qualified to assist their clients with regard to all three questions, *sollecitadori* mostly concerned themselves with the procedural details of gathering and presenting evidence (question of fact) with an eye to the Court's practice. The client could engage a *sollecitadore* and defend himself in point of law, or he could engage both an *avvocato* and a *sollecitadore,* or an *avvocato* who would defer to a *sollecitadore* the minutiae of the proceeding.
The development in time of such a treble line of legal assistance (magistrates' advocacy, *avvocati extraordinari, sollecitadori*) proceeded by steps from the late middle to the late modern ages.
In the second half of the XIII century, the magistrates called *Avvocati alle Corti* were already operational, assisting the litigants in the civil processes unless they wished to defend themselves. During the next two centuries, a number of regulations intervened to better define their duties. A corresponding magistrate of *Avvocato dei prigioni* was instituted in 1443 to assist the defendants in criminal trials.

Regulating the professionals: *avvocati extraordinari*

Between the end of the XIII century and the middle of the XV, the activity of legal assistance offered by the magistrates suffered heavy competition by private professionals in the role of *avvocati*, taking advantage of the short duration of the magistrates' appointments in order to wield their own, finer legal know-how. Early attempts at prohibition were repeatedly foiled; finally in 1489 the policy was reversed, and professionals were expressly allowed in Court, provided they made themselves acknowledged as such in a census kept by the chancellor of the Senate.

From then on, the aim of the Republic shifted to keeping under control the number, identities and proficiency of the professionals. The main reform on the matter came in 1537 through the *Correzion Gritti,* a statutory law which strenghtened the role of the magistrates' legal assistance *(Avvocati ordinari* and *dei prigioni)* at the same time as it enforced stricter rules for the certification and admission of the professionals *(avvocati extraordinari),* requiring an examination on points of law in addition to certificates of birth, honesty and residence. One of the issues touched upon by the reform was protection of the clients, pursued through limits to the honoraries due to both private professionals and magistrates and through special forms prescribed for the agreements between a professional and his client. Free legal assistance was also provided for the poor both in civil and criminal trials by *Avvocati ordinari* and *dei prigioni*. In 1553 a special new magistrate, *Conservatori alle leggi,* was instituted in order to update the census of the *avvocati extraordinari* and implement the controls and formalities prescribed in the *Correzion Gritti*.

Once the Conservatori become operational, the reform seemed to effectively abate the lamented disorders: later laws on the matter refined the system, but did not alter it substantially. The most notable issue along the XVII and XVIII centuries was a slow decadence of the magistrates' legal assistance: once the professionals were acknowledged and carefully controlled, the magistrates could compete anymore with their technical abilities, and the engagement of *Avvocati ordinari* shrank to a mere formality, although *Avvocati dei prigioni* maintained a significant role as legal assistants to the poor in criminal trials.

The requisite of proficiency was the focus of the laws issued in the later modern age. In 1608 a period of two years of legal practice under the tutelage of an *avvocato extraordinario* was required of those who asked for admission to the profession; in 1626 and 1656 the subject matter of the examination wss better detailed, with explicit reference to both the Venetian Statutes and laws and the Roman law system, applied in the Dominions although still foreign to the law system of the Republic; since 1723, the doctorate in Law at the University of Padova was required. The procedure for the examination and admission to the profession was again redefined and made more strict in 1751.

The other profession: *sollecitadori*

With regard to the *sollecitadori,* a discipline by rules of law only came as late as 1564, when practice in the Courts was stated to be allowed only to those who were inscribed in a census kept by *Sindici e Giudici extraordinari.* A more in-depth reform came in 1582, when a series of differential requisites was prescribed, according to the residence of the professional asking for inscription in the census. An examination was also provided, as well as a personal guarantee *(piezarìa)* in case of subsequent condemnation of the *sollecitadore* for malpractice; proofs of all requisites, including the guarantee and the examination, must be renewed every three years.

The reform, although similar in structure and aim, did not develop the same good effects on the *sollecitadori* as on the *avvocati extraordinari;* the lower-rung professionals seemed bent on twisting the law, although the Republic issued rule after

rule in the attempt to control them. The *Correzion Cicogna* in 1586, the *Correzion Contarini* in 1655-56, and a number of laws in-between, prescribed revisions of the requisites and stricter criteria of admission, but repetition itself is proof of the ineffectiveness of such remedies.
A last attempt to a global reform came in 1772, through the works of a Commission appointed to formulate a plan of amodernation, but the actual proposals (involving, among the rest, the creation of two Colleges for *avvocati extraordinari* and *sollecitadori* respectively) were much too conservative to be effective. In 1781 a *Collegio dei sollecitadori* was finally instituted, with revised requisites for admission, the members to be evaluated by a panel chosen by the *Collegio* itself. The number of members should be limited in the future; however, for the time being, the surplus professionals already in practice were allowed to continue as additional members, provided they filled the new requisites.

Final considerations
On the whole, this survey allows for some provisional conclusions with regard to the legal professionals in Venice:
-- Within a structure aimed at pursuing the collective interests of the whole of the people, jurisdiction performed a pivotal role in maintaining balance among the components of society and in defining the Republic as giver of justice.
-- In view of insuring an efficient unfolding of the legal process in its various forms, the Republic also uniquely provided for legal assistance to litigants and defendants by means of appointed magistrates.
-- Professional legal assistance by both *avvocati extraordinari* and *sollecitatori* was regulated with increasing strictness from the middle to the late modern age, so as to prevent and punish malpractice, insure technical proficiency and avoid the establishment of a professional lobby pursuing its own cetual interests rather than those of the Republic.

GIAMBATTISTA-TIEPOLO, *Avvocato-veneziano*
(ca. 1760)