Behind the Judges' Desk: An Ethnographic Study On The Italian Courts Of Justice

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Abstract:
Interpretation of the written law, far from being a cognitive activity, it's a concrete and material practice, which is created, recreated and reinforced through experience and through continuous individual and collective learning occasions. This process isn't based on perennial and immutable axioms, but is an activity built in practice, through subsequent "translations" of formal and abstract rules into "concrete" lawsuits. Being a magistrate doesn't mean acquiring a body of abstract knowledge on how to interpret the written laws; rather it signifies an ability to practice as a judge in a court of justice. In order to study the logics that characterize the "*fabrique du droit*", it is necessary to go "*behind the judges' desk*" so as to investigate the "real doings" of the practitioners.

In light of these reflections, this article tries to reflect on the activities of the Italian judges. The data presented were drawn from several periods of ethnographic research conducted over two years in four Italian courts specialized in legal arguments at first instance related to Labor relationships, Assistance and Welfare. Tribunals were chosen on the basis of two criteria: dimension and geographical location. The research has considered 16 judges (novices, experienced and presidents of section).

The conclusion of this paper is that interpretation of the written law, while remaining a prerogative of the single Italian magistrate, is linked to the organizational context in which each judge operates and to the occasions for comparison with the colleagues of section. Some Italian tribunals look like "*condominiums*", where magistrates appear as "monads" and other, instead, can be described as "*communities of practitioners*", in which judges discuss common "translations" of the written law and put the results of this dialogue into practice.

Introduction
A court of justice often appears, to the eyes of the layman, as something mysterious and abstract. Courts are "*black boxes*", "*opaque institutions*" impenetrable from the outside[2]. These "*temples of law*", basing their activities upon complex procedures and a highly specialized vernacular, are often perceived as closed institutions, characterized as being far removed from the society in which they operate[3].

Since the interpretation of the law is not only a cognitive process, but a practical and situated activity, in order to study the logics that characterize the "*fabrique du droit*"[4], it is necessary to pass beyond the "institutional facade" of the tribunals so as to investigate the "real" goings-on of practitioners.

In particular, considering the judge, a figure who is the crucial subject in the continuing and repeated translation of law into practice, it is necessary to go beyond the norms and procedures and to analyze the activities of magistrates and the continuous processes of learning located in the courts of justice.

This conviction is summed up effectively with the idea of "*going behind the judges' desk*". The expression, directly referring to the famous motto "*follow the actors*"[5], prefiguring something yet to be discovered and emphasizes an ambition to explore the mysterious world of the law from a specific viewpoint.

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[2] See New-Institutionalist authors, such as: Meyer W.J., Rowan B. (1977) "Institutionalized Organizations: Formal Structure as Myth and Ceremony", *American Journal of Sociology*, 83 (2): 340-363; DiMaggio P.J., Powell W.W. (1983) "The iron cage revisited: institutional isomorphism and collective rationality in organizational fields", *American Sociological Review*, 48 (2): 147-160; Powell W.W., DiMaggio P.J. (eds.) (1991) *The New Institutionalism in Organizational Analysis*, Chicago University Press, Chicago; Selznick P. (1996) "Institutionalism Old and New", *Administrative Science Quarterly*, 41 (2): 270-277.

[3] See Barshack L. (2000) "The Totemic Authority of the Court", *Law and Critique*, 11 (3): 301-328. Barshack suggests that: "*The court is a sacred place, the temple of civil religion*" (2000: 306).

[4] See Latour B. (2002) *La fabrique du droit*. *Une ethnographie du Conseil d'Etat*, La Découverte, Paris.

[5] The expression was used for the first time by Hughes E.C. (1971) *The Sociological Eye*, Aldine, Chicago and later by Callon M. (1986) "Some elements of a Sociology of Translation", in Law J. (ed.) *Power, Action and Belief. A new sociology of knowledge?*, Routledge and Kegan Paul, London.

1. Interpretation of written laws as a "practice"

In general terms, written laws are linguistic propositions that require interpretation. A judge, especially in the Civil Law system, is continually called upon to "translate" the text of these rules in decisions, which require expression of the law through the judge's interpretation. Interpretation is a complex and dialectical system based on reconstruction of facts, evaluation of arguments and recognition of fallacies[6].

Written law, being general and abstract, is unable to regulate every possible empirical situation. The distance between written laws and "practice" does not allude to the presence of a dysfunction, but expresses exactly the "space" of interpretation open to a magistrate: in the Civil Law systems, judge is always obliged to make a decision, even in cases of obscurity, ambiguity, vagueness, imprecision, incompleteness and antinomy of the rules[7]. For this reason, each legal operator performs, by necessity, an interpretative activity.

Every judge, far from being a "*mere mouth of law*"[8], through her/his interpretation of the formal norms, contributes to the continuing realization of the "*living law*". Law is not a static entity; on the contrary, it continuously evolves over time, concomitantly to the transformations of society. Each legal system is built on a dialectical relationship between "*positive law*" and "*living law*"[9].

The "translation" of the written law in practice characterizes the activity of each judge. The legal world is founded on a continuous and repeated transposition of formal norms enmeshed in legal proceedings. A judge, during his/her daily activities in a court of law, contextually works on two levels: "merit" and "method"[10].

Every magistrate operates on the level of "merit" when constructing the legal resolution of a lawsuit on the basis of her/his interpretation of the law. Decisions on "merit" are built during the various stages of the proceedings and are expressed through motivated sentencing and other forms of verdict that are produced by the magistrate – as 'operative parts of the judgment'[11], 'statements of reasons'[12], 'contextual decisions'[13], ordinances or decrees[14]. This dimension is strictly related to the substance of legal issues. The job of a magistrate is largely based on his/her technical skill of judging the "merit" of the lawsuits presented to the court by the lawyers.

Besides "merit", there is the dimension of "method": the two variables are intrinsically linked. The "method" represents the set of activities that allow the judge to reach a moment of decision on a lawsuit. The sphere of "method" is related to the procedural dimension, which includes all issues inextricably connected to the legal route that defines a proceeding. The word "method" derives etymologically from Latin (*mèthodus*) and Greek (*methòdos*) and refers to a way, or manner, to conduct an investigation. Sentencing and other forms for concluding a lawsuit are only the final acts of an elongated and complex process, constituted by a sequence of procedural steps, tasks and deadlines. A judgment is directly connected to the "method" in which it is constructed. Each judge determines the temporal development of the proceedings. The sphere of "method" is strictly tied to the organization of work of the single magistrate and of the court.

This article assumes that interpretation of the law, expressed in the "merit" and "method" derived decisions of the judges, far from being a mere cognitive activity, is something socially constructed, concrete and material, which is created, recreated and reinforced through experience and continuous individual and collective learning. The role of the magistrate

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[6] As defined by Tarello G. (1974) *Diritto, enunciati, usi. Studi di teoria e metateoria del diritto*, Il Mulino, Bologna. The literature on interpretive process of judges is immense. See also, for example: Bruncken E. (1915) "Interpretation of the Written Law", *Yale Law Journal*, 25: 129-140; Friedman L.M. (1964) "Law, Rules, and the Interpretation of Written Documents", *Northwestern University Law Review*, 59: 751-780; Dworkin R. (1982) "Law as interpretation", *Critical Inquiry*, 9 (1): 179-200; Stein P.G (1985) "Judge and Jurist in the Civil Law: A Historical Interpretation", *Louisiana Law Review*, 46: 241-257; Fiss O.M. (1982) "Objectivity and interpretation", *Stanford Law Review*, 34 (4): 739-763.

[7] As explained very well in Marinelli V. (2008) *Studi sul diritto vivente*, Jovene, Napoli. See also: Calamandrei P. (1935) *Elogio dei giudici scritto da un avvocato*, Le Monnier, Firenze.

[8] See Kelsen H. (1934) *Reine Rechtslehre. Einleitung in die rechtswissenschaftliche Problematik*, Deuticke Verlag, Wien; Bobbio N. (1979) *Il positivismo giuridico*, Giappichelli, Torino; Cappelletti M. (1984) *Giudici legislatori?*, Giuffrè, Milano.

[9] See Ehlich E. (1913) *Grundlegung der Soziologie des Rechts*, Verlag von Duncker and Humblot, Leipzig.

[10] This distinction is very often used by same practitioners. See Verzelloni L. (2009) *Dietro alla cattedra del giudice. Pratiche, prassi e occasioni di apprendimento*, Pendragon, Bologna.

[11] In Italian "*dispositivi*": the operative parts of the sentences.

[12] In Italian "*motivazioni*": the decisions of fact and law of the judges.

[13] In Italian "*decisioni contestuali*". Art. 281 *sexies* c.c.p. and the new version of art. 429 c.c.p.

[14] For an introduction to the Italian system, see: Merryman J.H., Cappelletti M., Perillo J.M. (1967) *The Italian Legal System: An Introduction*, Stanford University Press, Stanford; Di Federico G., Guarnieri C. (1988) *The Courts in Italy*, in Waltman J.L, Holland M. (eds.) *The Political Role of Law Courts in Modern Democracies*, Macmillan Press, London; Di Federico G., Pederzoli P. (2000), *The Italian Judicial System*, in Storme M., Hertecant L. (eds.) *De Magistratenschool*, Antwerpen, Kluwer.

is not restricted to the passive acquisition of a body of abstract knowledge on interpretation; rather, the magistrate signifies the dual nature of a dialectical relationship that exists between written law and interpreter practicing in a court of justice. "*Knowing-in-practice*", every magistrate builds her/his own peculiar "*competence-to-act*" in context[15].

2. Aims and methodology of the research

In light of the debate on *Practice-Based Studies* (PBS)[16], derived from data collected during ethnographic research conducted over two years, this article aspires to paint a vivid picture on the activities of Italian judges.

The data presented in this article was drawn from several different periods of ethnographic research in four Italian courts, respectively identified with the pseudonyms of *Alpha*, *Beta*, *Gamma* and *Delta*. Courts were chosen on the basis of two criteria: dimension and geographical location. Furthermore, all courts utilized as sites of research for this study are specialized in the treatment of legal arguments at first instance related to Labor relationships, Assistance and Welfare[17].
This study includes analysis of 16 judges: 6 in the Alpha court, 2 in Beta, 3 in Gamma and 5 in Delta. These judges, all identified by color derived pseudonyms, were chosen on the basis of their experience in Labor procedure. The analysis has contextually considered judges with less than 2 years of experience (here defined as 'novices'), experienced and Presidents of section[18].

Research methodology can be broken into three parts: participant observation, in-depth interviews and document analysis. During the period of participant observation, this research focused on judges and their activities and considered every formal and informal meeting between magistrates. Analysis of the data refers mainly to the dimension of "method", that is, to the texture of practices used by judges to temporally manage judicial proceedings[19].

3. Practicing in the Alpha Court[20]

Context. Alpha court is located in a city in central Italy; this city is the capital of the province and region. The tribunal can be considered as medium-large. Six judges operate within the Labor section, including the President (known from here on in as 'Black'). Judges are predominantly male: there is only one female ('Green'). Most of the judges have several years of experience, only two magistrates have less than two years experience dealing with Labor cases ('Yellow and' 'Black'[21]). This research examined the activities of all the magistrates of the section: 'Blue'[22], 'Red', 'Green', 'Yellow', 'Black' and 'Cyan'[23].

Length of proceedings and adjournments. Although written law has established a Labour process founded on orality, concentration of hearings and the immediate decisions of judges[24], magistrates of Alpha Court very often adjourn the hearings. This choice affects the duration of proceedings. No judge directly proposes to make the 'final discussion'[25] between the parties. Each magistrate prefers to adjourn their decision until a subsequent hearing, in order to prepare and ponder his/her judgment. Green delays her procedural duties over time. These adjournments are the expression of a precise choice of the magistrate: this does not tend to change the activities of the hearing a great deal. Usually, Green adjourns the hearings for 7-8 months. Yellow and Black usually adjourn 'final discussions' for 6-8 months. Both Yellow

[15] Gherardi has defined the concept of "*practice*" as: "*a mode, relatively stable in time and socially recognized, of ordering heterogeneous items into a coherent set*" (2006: 34). This "label" is a particularly effective "narrative expedient" to symbolize materiality, fabrication, manual skill, movement, competence. See Gherardi S. (2000) "Practice-based theorizing on learning and knowing in organizations: an introduction", *Organization*, 7 (2): 211-223; Orlikowski W.J. (2002) "Knowing in practice: enacting a collective capability in distributed organizing", *Organization Science*, 13 (3): 249-273; Gherardi S. (2006) *Organizational knowledge: the texture of workplace learning*, Blackwell, Oxford.

[16] For a review on the *Practice-Based Studies*, see: Nicolini D., Gherardi S., Yanow D. (eds.) (2003) *Knowing in Organizations: a Practice-based approach*, Sharpe, Armonk; Corradi G., Gherardi S., Verzelloni L. (2010) "Through the practice lens: where is the bandwagon of practice-based studies heading?", *Management Learning*, 41 (3): 265-283.

[17] In these trials judges work alone, not in a collegial board. Rules of Code of Civil Procedure (henceforth c.c.p.) that define the functioning of the rite of Labour have changed with the introduction of Law 533/1973. This particular procedure is defined by 39 articles (409-447): 30 reserved to first instance and 9 to appeal.

[18] Competencies of Presidents of section are defined by art. 47 *quarter* of the Italian Judicial Order, Royal Decree 12/1941. However, there aren't specific training programs dedicated to the Presidents of Sections.

[19] This choice was made to focus on the organization of work of the single magistrate and of the court.

[20] Research experience in Alpha court lasted 8 months.

[21] President Black has no experience in the Labour procedure.

[22] Blue was studied with the methodology of *shadowing*. For an overview on this technique, see: McDonald S. (2005) "Studying actions in context. A qualitative shadowing method for organizational research", *Qualitative Research*, 5 (4): 455-473; Czarniawska B. (2007) *Shadowing and other techniques for doing fieldwork in modern societies*, Copenhagen Business School Press, Copenhagen.

[23] Cyan refused to be studied during his hearings.

[24] Art. 420 c.c.p.

[25] The last hearing, when parties discuss the conclusion of the lawsuit.

and Black judges, when deciding on adjournments, do not take into account the total duration of proceedings (due to lack of experience). Blue and Red, on the other hand, allow a limited time for their hearings. A 'final discussion' is usually adjourned for a minimum of 2 to a maximum of 6 months. Judges of Alpha section are generally averse to providing adjournments at the request of parties. Only Black is far less rigid in these concessions. Unlike other courts, all judges in Alpha court often admit the assistance of technical advisers (c.t.u.), especially on medical-related legal questions[26].

Timing of hearings. Judges of the sections organize their hearings in different ways. Some judges, such as Red and Black, group all cases that require the same task into one day: 'first hearings', then evidence or 'final discussions'. Conversely, other judges will mix the different proceedings. Red always calls for 2-3 days of hearing and, wanting to concentrate all the 'first hearings' in a single day, is often unable to devote much time to reconciliation attempts[27]. Black dedicates 3 days to the hearings. The President divides the 'first hearings' into blocks of 15-30 minutes, depending on the complexity of the case. Green organizes 2-4 days of hearings a week. As with her colleagues, Green does not have fixed days for hearings. Usually the magistrate sets her hearings on subsequent days. Yellow allocates only 1-2 days a week to the hearings. The mornings of a judge are therefore very busy in terms of the procedural tasks that need to be completed. On many occasions, the hearings overlap and space for oral exposition is limited. Blue, as with Yellow and Green, mixes the different procedural tasks. Blue organizes 3 days of hearing, and articulates his working day on the basis of time required to analyse the evidence.

Organizing hearings. During the 'first hearings', all judges of Alpha section attempt a reconciliatory solution[28]. These procedures are, however, very hasty and rarely lead to effective results[29]. As with the reconciliation, even the free interrogation of parties often appears as a mere procedural formality. In most cases, the judges simply ask the parties if they have read and if they confirm the acts of proceedings. Evidence is handled in different ways. Red and Yellow, compared to their colleagues, dedicate less time to the investigative hearings. The two judges, during the investigative procedures, always follow the requests made into processual acts by the lawyers. Space for oral expression is generally limited. Alpha's judges provide relatively little time for 'final discussions'. In the hearings of Yellow in particular, oral expression is practically nonexistent. The writing of judgments is an activity that differs significantly between the judges of each section. In general terms, Red and Blue pronounce their decisions in public during the hearings. The others, in contrast, despite the Code of Civil Procedure (c.c.p.) demanding the contrary[30], deposit the 'operative parts of judgments' directly in chancellery. Green and Black, in particular, write their decisions in the afternoons of the days of hearing. It is rare that any of the judges respect the deadline for the deposit of 'statements of reasons'[31].

Occasions of comparison among judges. Within the Alpha section, "formal" opportunities of comparison between the judges are entirely absent. Although a written law requires it, the President of the section (Black) doesn't encourage "*the exchange of information within the section*"[32]. Black operates only as a "simple" judge and does not promote occasions for discussion between magistrates. The rare occasions of comparison among judges are mostly informal. Sometimes the magistrates encounter each other in front of the court coffee machine. However, judges never speak about merit or method's issues, instead focusing discussions on the facts of the lawsuits[33]. Alpha's judges are not aware of the operating procedures of their colleagues. No magistrate is aware, for example, of the length of adjournments dictated by the other judges, or of their methods for managing the 'first hearings'. Even if they work close to each other on a regular basis, the magistrates ignore the way their colleagues interpret the same normative dispositions and think that they are working in the same manner.

4. Practicing in the Beta Court[34]

Context. Beta court is also in a central city of Italy. The tribunal could be defined as medium-small. The Labour section is composed of only two judges: a male ('White') and a female ('Violet'), both of whom have several years experience. Due to its limited size, this section does not have a President. This research has analyzed both the magistrates.

Length of proceedings and adjournments. Judge White subdivides his hearings over an extended period of time and adjourns the 'final discussions' to 15 months away. These delays are an expression of a specific choice: this judge, in fact,

[26] Art. 424 c.c.p.
[27] Reconciliation attempts represent one of the "fulcrums" of Labour procedure, as defined by art. 420 of Italian Code of Civil Procedure.
[28] Art. 420 c.c.p.
[29] Italian judges aren't required to attend a training on reconciliation techniques.
[30] Art. 429 c.c.p.
[31] 60 days: Law 133/2008.
[32] Art. 47 *quarter* of the Italian Judicial Order, Royal Decree 12/1941.
[33] For example, curious stories and affairs of the parties.
[34] Research experience in Beta court lasted 1 month.

always makes a distinction between urgent[35] and non-urgent lawsuits. Unlike White, Violet's hearing adjournments are less extensive. This magistrate fixes her 'final discussions' for 2-4 months in the future. Violet, in contrast to White and the judges of Alpha section, as defined by art. 420 c.c.p., often invites the lawyers to enter into an immediate debate, without setting a new hearing. Judges of Beta section generally grant only a few adjournments if requested by the parties, and evaluate the real effectiveness of these delays. Both judges White and Violet give priority to urgent procedures, at the cost of having to deal with them in the late afternoon of hearing days.

Timing of hearings. Magistrates of Beta section adopt different criteria to manage their procedural tasks. Every week, White plans 2-3 days of hearings and divides up the different types of duties required for each area: 'first hearings', presentation of evidence and 'final discussions'. Adjournments during the days of hearing are very tightly scheduled and sometimes the legal processes overlap each other. Violet, unlike her colleague, schedules for only 1-2 days of hearings and mixes the different types of litigations.

Organizing hearings. In contradistinction to the judges of Alpha court, magistrates in Beta court dedicate a great deal of time to reconciliations. Both judges try to produce a genuine encounter between the processual parties and study the files in detail. Besides reconciliations, judges always allow for the free interrogation of parties. Furthermore, unlike colleagues of the Alpha court, magistrates take time to thoroughly interrogate the parties. In general terms, judges of Beta section devote ample space to oral debate. Neither judge fix time limits to the lawyers' speeches, which can often last for a long time. White, in particular, considers orality as the real basis of his work. Judges always pronounce their decisions during the hearings. White writes his 'operative parts of judgments' after each debate. Violet, on the other hand composes her judgments at the end of the morning of hearing days. Neither judge is inclined to respect the deadline for filing sentences. Violet and White produce their 'statements of reasons' within 65-70 days. Judges justify their non-compliance with the term emphasizing the attention devoted to orality. The two judges often use the tool of 'contextual decisions', especially when deciding on simple cases or lawsuits on Assistance and Welfare.

Occasions of comparison among judges. Judges of Beta court, despite the limited size of the office, regularly discuss together the possible interpretations of "merit" and "method". The climate between judges is based on collaboration and dialectics. Although "formal" occasions of comparison do not exist, in the absence of a section President, judges meet each other informally in the breaks between hearings and in the weekly meetings. Empirical evidence shows that White and Violet, despite not operating in exactly the same way, translate into practice on a daily basis and in a similar manner, a plurality of written rules.

5. Practicing in the Gamma Court[36]

Context. Gamma is a court in a southern city of Italy, located in the capital of the province. The size of the judicial office is medium-large. Six judges operate in the Labour section, including a President. At the time of research, the office had four vacant positions. These vacancies had a direct impact on the duration of judicial proceedings. This research investigated three judges of Gamma section, all females: 'Magenta', 'Coral' and 'Purple'. Coral and Magenta have several years of experience, Purple is a novice.

Length of proceedings and adjournments. Procedural timings in Gamma appear somewhat chaotic. Judges, under pressure to complete a huge number of files, extend the time required for such procedural tasks for as long as possible. In this section, adjournments, far from being "residual" mechanisms, appear as "tools" for delaying the decisions. Judicial trials by Coral last on average 5 years. Usually the magistrate defers her 'first hearings' for 24 months. 'Final discussions' are adjourned for 34 months. As with her colleague, the scheduling of the proceedings of Magenta is greatly extended: typically Magenta adjourns her hearings to 23-24 months away. Furthermore, when required, urgent cases are delayed for at least 8-9 months. In contrast, the timing of Purple, a judge relatively new to the section, is influenced by adjournments decided on by her predecessor. Purple is not yet able to define her delays, and are adjourns all hearings for at least 15-17 months. In this court, magistrates readily grant adjournments requested by the parties. These continuous delays inevitably expand exponentially the length of proceedings. All judges, despite expressly forbidden by the Code of Civil Procedure[37], very often concede adjournments for reconciliation attempts or for the lack of documents and postal notifications.

Timing of hearings. In the Gamma tribunal each day of hearing consists of a variety of proceedings. On average, each day, the magistrates of the section deal with 40-50 cases. Hearings are often very chaotic. Coral, Magenta and Purple fix their hearings only in the morning and never after 13:30-14:00. The three magistrates always make two days of hearings

[35] As, for example, cases of dismissal or accident at work.
[36] Research experience in Gamma court lasted 2 weeks.
[37] Art. 420 c.c.p.

a week and mix the different procedural tasks. Coral and Magenta, early in the morning, officiate 'first hearings' and 'final discussions' and, from 10:30, the evidence. Purple has not yet developed her time organization.

Organizing hearings. In Gamma section, attempts of reconciliation are rarely officiated. Although the Code requires participation at the hearings[38], the parties rarely attend. Spaces for orality are almost nonexistent. In practice, every trial ends with the deposit of the written notes produced by lawyers. Sometimes the hearings seem like mere formalities which have to be completed quickly. In comparison to other judges included in this research, magistrates of the Gamma section study the files for less time. Frequently during the hearings, Coral, Magenta and Purple clearly demonstrate that they had not read the processual acts. For these judges, analysis of documents often occurred concurrently during the hearings. Coral, Magenta and Purple do not read their judgments in public. Usually magistrates write their decisions in the afternoon and directly deposit the 'operative parts of judgments' in the chancellery the next morning. Purple and Coral, on average, write their 'statements of reasons' in 18-20 days. Magenta, instead, deposits them within 60 days. The first two judges, upon quickly reaching a decision, usually conclude with fewer proceedings. Purple and Coral, in fact, do not wish to accumulate delays in the deposit of judgments. Purple, Coral and Magenta always produce extensive 'statements of reasons'. None of the three judges produce 'contextual decisions'. Coral and Purple go as far as to ignore the existence of this processual instrument altogether.

Occasions of comparison among judges. In the Gamma section occasions of comparison between the judges are totally absent both formally and informally. The President of the section is essentially a "normal" judge and does not support the exchange of knowledge. Magistrates work entirely alone, often on different days of the week, and do not know effectively how their colleagues operate. In most cases, relations between the judges of Gamma are limited to simple and brief greetings in the corridors of the tribunal. Gamma section, far from being an integrated organization, is a place where each judge works entirely independently.

6. Practicing in the Delta Court[39]

Context. Delta is the tribunal of a large city in northern Italy. The court of justice is one of the largest in the country. 13 judges operate in the Labor section, including a President. This research has analyzed 5 magistrates: 'Turquoise' (male, expert), 'Grey' (male, expert), 'Pink' (female, novice), 'Orange' (female, expert) and 'Brown' (male, expert, President of section).

Length of proceedings and adjournments. All judges of the section confine their procedural tasks to a limited window of time. 'First hearings' are generally fixed within 2 months which decreases with urgent procedures. Evidence, including times when many witnesses are utilized, is always officiated within 1-2 months. 'Final discussions' are never adjourned beyond 30 days from the conclusion of the preparatory phase. These timings seem remarkable when compared to those practiced in the other courts analyzed in this research. While in Gamma section some trials are adjourned up to 34 months, in Delta section the judicial lawsuits are usually terminated in a few, concentrated hearings. Very often judges do not adjourn the final debates. All judges, in fact, after evidence, invite the parties to directly discuss the case. Unlike other magistrates, the judges of Delta are always ready to make a decision at any moment[40]. This ability is based on a very deep knowledge of the processual files.

Timing of hearings. Judges of the Delta court undertake many hearings. Orange and Turquoise attend to anywhere between 4-5 days of hearings, Pink usually limits her hearings to 3. The younger magistrate stretches out her hearings so as to ensure she will have more time to study the processual files. The President of the section (Brown) stands out among the judges for his ability to work at a pace absolutely out of the ordinary: Brown organizes 5-6 days of hearing a week; the President conducts his hearings on a case by case basis, tailoring proceedings to the needs of parties and lawyers. Several judges dedicate days of hearing to specific types of proceedings: 'first hearings', evidence, 'final discussions'. All magistrates separate the lawsuits of Assistance and Welfare.

Organizing hearings. Conciliations are one of the pillars of the Delta section. Often these procedures go on for several hours. A large number of lawsuits are resolved during the 'first hearings'. Judges always ensure time is set aside for free interrogations. All magistrates devote a portion of their work to this procedural task. Grey, in particular, considers this tool a cornerstone of his activities. The interrogations of Grey have been known to last for 2-3 hours. Oral debate is given particular importance in the hearings. Judges always grant an adequate amount of time to allow lawyers to explain their thesis. Often the 'final discussion' of a complex case can continue for up to 3 hours. No judge, despite the potential delays of subsequent hearings, ever interrupts the speeches. During hearings, magistrates frequently demonstrate an intimate

[38] Art. 415 c.c.p.
[39] Research experience in Delta court lasted 1 week.
[40] Only Violet (Beta), on occasion, does the same.

knowledge of the files: all judges are always prepared to make their decisions. Every judge of the section reads in public his/her 'operative parts of judgments'. Only Pink, being as yet inexperienced, will on occasion, adjourns her decisions on the afternoons of the days of hearing. Magistrates organize their time in different ways in regards to writing their 'statements of reasons'. Pink and Grey usually deposit their sentences within 60 days. Turquoise, Orange and Brown always complete their 'decisions of fact and law' within 15-20 days. Judges of the section frequently make use 'contextual decisions'. In particular, this mechanism is used to define simple cases or consolidating matters related to interpretation.

Occasions of comparison among judges. On a daily basis, magistrates of Delta court meet with each other and discuss interpretative issues. Thanks largely to the President of the section (Brown), who is especially careful to promote dialogue between judges, there are a number of formal and informal opportunities for exchange between judges in the Delta section. Judges meet in corridors, have lunch together and communicate by phone several times a day. More experienced magistrates (such as Brown and Grey) are a constant source of reference for novices (such as Pink). Delta section is not merely a bureaucratic division, but appears as an integrated organizational unit, in which every magistrate, although independent in his/her decisions, is always connected to their colleagues operating in the same context.

Discussion

As the arbiters of a unique procedural written law, certain and equal for all, the sixteen judges analyzed in this research put into practice the thirty articles of the Code of Civil Procedure (c.c.p.) governing the Italian Labor procedures at first instance[41] in often profoundly different ways. These behavioral differences, besides calling into question the principle that "*law is equal for all*" and representing an implicit criticism of Legal Positivism, highlight the eminently practical character of the interpretation of written law.

Interpretation of the law, far from being a cognitive activity, it is a concrete and material practice, which is created, recreated and reinforced through experience and through continuous individual and collective learning occasions. The interpretation of law is not based on perennial and immutable axioms, but is an activity built through practice, through subsequent "translations" of formal and abstract rules into "concrete" lawsuits. Being a magistrate does not mean acquiring a body of abstract knowledge on how to interpret the written laws; rather it signifies an ability to practice as a judge in a court of justice.

Every Italian judge, through decisions of "method", builds his/her personal organization of work on a daily basis. Applying her/his own specific, and often idiosyncratic, interpretation of the written law to the lawsuits, organizing hearings, delays and procedural tasks, each magistrate also defines her/his work activities and the development of proceedings. These decisions, as the examples below how, directly affect on the lawsuits: how much time to devote to oral debate[42], to organize 1 or 6 days of hearings a week[43], to deposit the 'statements of reasons' in 15 or 70 days[44], to try or not the reconciliation attempts[45], to fix 'final discussions' to 30 days or to 2, 7 or 34 months[46]. These examples radically change the duration and development of the judicial proceedings.

Interpretation of the written law, while remaining clearly a prerogative of the single Italian magistrate, is linked to the organizational context in which each judge operates and to the occasions for comparison with the colleagues of section.
In some courts, such as Alpha and Gamma, judges appear as "monads", working in total independence, to the extent that they are not aware of how their colleagues are operating. These courts resemble "*condominiums*"[47], physical spaces, formally defined, where magistrates practice according to their own wishes and with little influence from other colleague. Judges of these courts are "*craftsmen*", who independently produce, experiment and translate into practice their interpretation of the law.

Judges in Beta and in particular Delta courts, on the other hand, interact with each other and give rise to occasions of individual and collective learning. In this context, knowledge that is derived from the interpretative activities of magistrates does not remain confined to the "flats" of the "condominium". It is not the personal heritage of individual judges, rather, knowledge is shared and potentially institutionalized among the various practitioners. Beyond differences of behaviour,

[41] See note 17.
[42] For example: Delta's judges vs. Alpha's judges.
[43] For example: Yellow (Alpha) vs. Brown (Delta).
[44] For example: Orange, Brown and Turquoise (Delta) vs. White (Beta).
[45] For example: Delta's judges vs. Gamma's judges.
[46] For example: Delta's judges vs. Red and Blue (Alpha) vs. Green (Alpha) vs. Coral (Gamma).
[47] See Zan S. (2003) *Fascicoli e tribunali*, Il Mulino, Bologna and also Zan S. (2011) *Le organizzazioni complesse. Logiche d'azione dei sistemi a legame debole*, Carocci, Roma.

judges of Beta and Gamma, far from appearing as "*monads*", can be described as "*communities of practitioners*"[48], who regularly discuss the possible "translations" of the written law and put the results of this dialogue into practice.

In conclusion, in light of these reflections, it is clear that in order to glean detailed and in-depth understanding of the functioning of the justice system, it is imperative to go beyond the dimension of written laws and to move "*behind the judges' desk*" and investigate the organizational dynamics and the empirical practices located at the heart of a court of justice.

[48] The concept of "*community of practitioners*" derives from the repeatedly criticized notion of "*community of practice*". See: Lave J., Wenger E. (1991) *Situated Learning: Legitimate Peripheral Participation*, Cambridge University Press, Cambridge; Brown J.S., Duguid P. (1991) "Organizational learning and communities of practice: toward a unified view of working, learning and bureaucratization", *Organization Science*, 2 (1): 40-57; Wenger E. (1998) *Communities of Practice: Learning, Meaning and Identity*, Cambridge University Press, New York; Gherardi S., Nicolini D., Odella F. (1998) "Toward a social understanding of how people learn in organizations: the notion of situated curriculum", *Management Learning*, 29 (3): 273-298; Amin A., Roberts J. (2008) "Knowing in Action: Beyond Communities of Practice", *Research Policy*, 37 (2): 353-369.