Giustizia consensuale (Consensual Justice): Report on the Journal's Inaugural Conference

This report was kindly prepared by Federica Simonelli, a research fellow funded by the P.O.N. UNI4Justice project at the University of Trento, Italy, and a member of the editorial staff of Giustizia consensuale *(Consensual Justice).*

On 10 June 2022, the University of Trento, Faculty of Law celebrated the first anniversary of the launch of ***Giustizia consensuale***, founded and edited by Professor Silvana Dalla Bontà and Professor Paola Lucarelli.

In recent years, the debate surrounding consensual justice and party autonomy has received increasing attention in the national and international arenas and has raised a broad array of questions. What is the very meaning of consensual justice? Is the idea of consensual justice feasible? What is its role in a globalized world increasingly characterized by cross-border disputes? The rationale behind *Giustizia consensuale* lies in the pressing need to observe this phenomenon from different perspectives.

For those who did not have the opportunity to attend this informative event, this report offers a succinct overview of the topics and ideas exchanged during this well-attended, hybrid conference.

First session

Opening the symposium with an incisive preamble, Professor **Silvana Dalla Bontà** (University of Trento, Italy), editor-in-chief of *Giustizia consensuale* and chair of the first session, provided a context for the reasoning behind this new editorial project and some of the research areas it intends to focus on. Notably, with the aim of meeting the needs of an increasingly complicated and multi-faceted society, *Giustizia consensuale* endeavours to investigate the meaning of consensual justice, its relationship with judicial justice, and the potential for integrating, rather than contrasting, these two forms of justice.

Professor Dalla Bontà's introductory remarks were followed by Professor **Paola**

Lucarelli (University of Florence, Italy), co-editor of the *Giustizia consensuale*, on the topic of *Mediating conflict: a generous push towards change,* strongly reaffirming the importance of promoting and strengthening consensual justice instruments, not only to reduce the judicial backlog but also to empower the parties to self-tailor the solution of their conflict, by fostering responsibility, self-determination, awareness, and trust.

Professor **Francesco Paolo Luiso** (University of Pisa, Italy – Academician of the *Order of Lincei*) then proceeded to effectively illustrate the essential role played by lawyers in changing the traditional paradigm of dispute resolution which sees court adjudication as the main (if not, the sole) way of settling disputes. Conversely, the judicial function is a precious resource, and its use must be limited to instances where the exercise of the judge's adjudicatory powers is strictly necessary, thus directing all other disputes toward amicable, out-of-court dispute resolution mechanisms. Hence, lawyers are in the privileged position of presenting clients with a broad array of avenues to resolve disputes and guiding them to the choice of the most appropriate dispute resolution instrument.

Professor **Antonio Briguglio** (University of Rome Tor Vergata, Italy) then continued with an interesting focus on the relationship between conciliation and arbitration within the overall ADR system. After examining when and how conciliation is attempted during the course of the arbitral proceedings, he shed light on the interesting, and often unknown to the public, 'conciliatory' dynamics which often occur amongst members of arbitral tribunals in issuing the arbitration award. In an attempt to find common ground between different viewpoints, conciliatory and communicative skills of arbitrators play a decisive role, in particular in international commercial arbitrations on transnational litigation.

Procedure, Party agreement, and Contract was the focus of a very thorough presentation by Professor **Neil Andrews** (University of Cambridge, UK) who underlined that consensual justice is a highly stimulating and significant meeting point between substance and procedure, as well as being an important perspective within technical procedural law. He stated that there are three points of interaction between agreement and procedure. Firstly, the parties are free to agree to self-impose preliminary 'negotiation agreements' and/or mediation agreements. Secondly, the parties can take a further step to specify or modify the elements of the relevant formal process, albeit court proceedings or arbitration.

Thirdly, parties can dispose of or narrow the dispute through a settlement.

The first session concluded with an insightful presentation from Professor **Domenico Dalfino** (University of Bari Aldo Moro, Italy) who explored the long-debated issue of which party bears the burden of initiating the mandatory mediation in proceedings opposing a payment order. While expressing his criticism towards mandatory mediation, he maintained that voluntariness is the very essence of mediation and the promise of its success.

Second session

The event continued with a second session chaired by Professor **Paola Lucarelli**. From the perspective of the Brazilian legal system, Professor **Teresa Arruda Alvim** (Pontifical Catholic University of São Paulo, Brazil) began the session by illustrating that in the last few decades, ADR has afforded parties the possibility to self-tailor a solution to their conflict while significantly diminishing the case overload of the judiciary. Nevertheless, the obstacles to the growth of ADR are multiple, ranging from the lack of preparation of mediators to the traditional adversarial approach of attorneys. She concluded by stating that legal systems must invest, on the one hand, in training highly qualified mediators while on the other, providing new educational paths for attorneys to acquire new negotiation and mediation skills.

The session proceeded to address Online Dispute Resolution (ODR), examining the strengths and weaknesses of using new technologies to solve disputes. Professor **Silvia Barona Vilar** (University of Valencia, Spain) highlighted the positive and negative aspects of the increasing use of ODR in our digital and algorithmic society. While ODR devices are considered as ensuring access to justice and favouring social peace and citizens' satisfaction, there are also complex issues around the use of Artificial Intelligence and algorithms such as their accountability, accurate assessment, and transparency.

The relationship between the use of technology and access to justice was explored in depth by Professor **Amy J. Schmitz** (The Ohio State University, USA), who based her presentation on a thorough empirical study of ODR as a means to advance access to justice for poor or vulnerable individuals who would otherwise be unable to have their 'day in court.'

Potential applications of new technologies used in resolving disputes were then

examined by Professor **Colin Rule** (Stanford Law School, USA), who highlighted that ODR, originally created to help e-commerce companies build trust with their users, is now being integrated into the courts to expand access to justice and reduce costs. While admitting there are many questions that still need to be answered, Rule predicted that ODR will play a major role in the justice systems of the future through the expansion of Artificial Intelligence and machine learning.

Showing a more critical approach Professor **Maria Rosaria Ferrarese** (National School of Administration, Italy) shed light on the threat posed by the use of digital technologies in resolving disputes, after having edited the Italian version of a book by Antoine Garapon and Jean Lassègue – *Justice digital. Révolution graphique et rupture anthropologique* (Digital Justice. Graphic Revolution and Anthropologic Disruption). While acknowledging that Artificial Intelligence and algorithms can deliver a fast and cheap justice, she underlines that justice is not only about settling a case in a rapid and inexpensive way but also about reinforcing values of a given society and ensuring a creative application of the law.