

# **Lawyers in Italy. Challenge the change.**

**Edited by**

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with the collaboration of Dr. Marco Rizzuti**

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## INTRODUCTION

*Martin Henssler & Sara Landini*

Legal professionals and particularly lawyers are facing important changes and challenges.

First, the practice of Law has a new shape related to the so-called “vanishing trial”. With this expression<sup>1</sup> scholars refer to a situation of increasing the use of negotiation, also thanks to interventions of the Law, and a view of legal reasoning not only in terms of “rights-based dispute resolution”. This perspective regards not only civil law matters but also areas characterized as strictly legal, with impact on general interests like criminal law and family law. With regard to criminal law, we must remember the importance of victimology and of the studies demonstrating the relevance of relationships between victims and offenders in the perspective of reconstruction of public order violated by the criminal action. With regard to family law, the importance of voluntary participation of litigants in mediation in order to deflate the conflict is often underlined, particularly in cases involving the interest of minors.

Such conditions imply new challenges for lawyers:

- the potential solution will be based not only on legal issues<sup>2</sup>;
- the decision-making process implies a more collaborative approach with the counter party, with active participation of the client;
- a new approach to information sharing, with a significant expansion of the important information taking into account all the interests of clients. With regards to this point lawyers need to acquire new skills for diagnosing not only the legally relevant interests of the client, but also economic, social and moral interests;
- new tools for conflicts analysis are needed in order to understand in advance how the dispute may develop and evolve over time. It is important to work with the client in order to “strategize the conflict”. It means that it is important to anticipate and analyze important issues, and negotiate potential conflicts.

This new landscape does not mean that lawyers have to abandon the usual rights-based advocacy. Traditional skills (legal research, oral and written argumentation, law interpretation, etc.) are still important but they need to be applied in order to achieve the main goal of reaching an acceptable and durable settlement that is most compliant with the interests of the client. The traditional skills need to be combined with negotiation skills.

1 Mark Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 *J. of Empirical Legal Studies* 459 (2004); Julie Macfarlane, *Evolution of the New Lawyer: How Lawyers are Reshaping the Practice of Law*, *The J. Disp. Resol.* (2008).

2 With regard to this aspect game theory could be important also for lawyers. Game theory is the study of mathematical models of strategic interaction between rational decision-makers. Originally, it addressed zero-sum games, in which each participant's gains or losses are exactly balanced by those of the other participants. Today, game theory applies to a wide range of behavioral relations.

Second, the law has been transformed also by technology. With regard to this aspect, there are two main emerging changes: the commoditization of legal services and the widespread uptake of IT in legal services<sup>3</sup>.

The commoditization of legal services involves standardizing legal tasks that are easily replicable, permitting a quick, efficient, and low-cost delivery to consumers. It means that simpler and less expensive legal issues can be handled without the assistance of a lawyer. The lawyer's services are required only for the most complex and sophisticated issues. Lawyers need to acquire skills and tools for those sophisticated issues. With reference to the second aspect, lawyers must have the ability to interact with other professionals in order to resolve cases that the IT society poses. Consider in particular the problems of cyber-security. Only with an evolution in professional skills and knowledge lawyers can survive.

Third, legal reasoning is facing the changes of the "Risk Society". A risk society is "a society increasingly preoccupied with the future (and also with safety), which generates the notion of risk"<sup>4</sup>. This means that it is important to map the risk and to organize a response to risks. The lawyers can manage legal occurrences or occurrences that are not legal, which have an impact on possible litigations or produce legal effects. Risk management is the identification, evaluation, and prioritization of risks, which can be defined as the effect of uncertainty on clients' objectives. After mapping the risks, it is important to find strategies to minimize, monitor, and control the probability or impact of unfortunate events, or to maximize the realization of opportunities arising from such occurrences. Risks can come from various sources including uncertainty in legal liabilities, credit risk, accidents, natural causes and disasters, deliberate attack from an adversary, or events of an uncertain or unpredictable root-cause. For this reason, it is important for law firms to establish a risk management department in order to identify potential legal and regulatory issues as soon as possible. Lawyers have to quickly and efficiently assess those issues to develop a profile of potential legal risks; avoid and mitigate legal risks through proactive initiatives such as compliance programs and dialogue with government officials responsible for promulgation and/or enforcement of laws and regulations; and management of legal risks as they materialize and begin to impact the clients<sup>5</sup>.

All the above-mentioned threats and challenges have been considered in the present volume collecting papers on different topics related to those issues in the perspective to put in evidence the new shape of legal services while giving challenging perspectives to lawyers.

At the same time, the contributions of this anthology give the reader an overview of the current developments in Italian law of the legal profession. The Italian market of legal services has long been one of the most regulated markets in Europe. From a comparative law perspective, it also has various peculiarities that are often unknown

3 R. Susskind, *Transforming the Law: Essays on Technology, Justice and the Legal Marketplace*, Oxford University Press, Inc. New York, NY, USA (2000); EAD., *The end of lawyers*, Oxford University Press, Inc. New York, NY, USA (2008).

4 A. Giddens, *Consequences of Modernity*, Polity Press, Cambridge, 1990.

5 William H. Fortune & Dulaney O'Rourke, *Risk Management for Lawyers*, 45 S. C. L. Rev. 617, 1994.

in other European countries. Just recently there have been various openings, in particular in the area of legal structures for law firms and multidisciplinary cooperation with other professions. For the first time, these developments are presented in English in our book. We therefore hope that our book will contribute to a better understanding of the Italian market of legal services.

Florence, September 2019