A PATCHWORK OF DOORS: ACCELERATED PROCEEDINGS IN CONTINENTAL CRIMINAL JUSTICE SYSTEMS

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Our paper surveys the development of criminal hybrid models in two continental jurisdictions, Italy and France, following the 1987 Recommendation of the Committee of Ministers of the Council of Europe to accelerate criminal proceedings through the introduction of guilty pleas, out-of-court settlements and simplified proceedings. We describe various frameworks for criminal justice as a multi-door arena, of which the plea bargaining is but one of several possibilities. In our review, we emphasize consensual elements, the place of the search of truth, and the role of the judges and other stakeholders. We outline the different paths that France and Italy have taken as incorporating adversarial and inquisitorial elements to increase efficiency. The French system made gradual modifications and remained inquisitorial by nature. Aside from the more recent integration of proceedings without trial inspired by plea bargaining, it has developed doors of abbreviated trials where the investigation stage is minimized. This has resulted in a different version of the vanishing trial—the vanishing investigation. The Italian system, on the other hand, has announced a drastic transformation to an adversarial framework of trial, while adopting mainly proceedings without trial. This shift has not resulted in a vanishing trial phenomenon, and currently, the full adversarial-type trial remains the main

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door in Italy. We describe the sequence of transformations of these systems and emphasize the significance of this contemporary patchwork of doors in terms of the role of the judges and the possibility of implementing a conflict resolution criminal justice perspective.

The more immediately after the commission of a crime a punishment is inflicted, the more just and useful it will be. It will be more just, because it spares the criminal the cruel and superfluous torment of uncertainty, which increases in proportion to the strength of his imagination and the sense of his weakness.

Cesare Bonesana di Beccaria

INTRODUCTION

The phenomenon of the “vanishing trial,” as described by Marc Galanter, has extended the frontiers of the civil court and has had a similar impact on criminal proceedings. Over the last few decades, the use of the “traditional” model for civil and criminal trials has decreased, with relatively few cases reaching the stage of trial and written verdict. In criminal proceedings in the United States and in Israel, this phenomenon is manifested through the rise in the use of plea bargains.

1. Cesare Bonesana di Beccaria, Of the Advantage of Immediate Punishment, in An Essay On Crimes and Punishments, Ch. XIX (Printed by E. Hodson for H.D. Symonds, 1804) (1764).

2. “Federal criminal jury trials are dying. Surely, but not slowly.” Robert J. Conrad & Katy L. Clements, The Vanishing Criminal Jury Trials: From Trial Judges to Sentencing Judges, 86(2) GEO WASH L. REV 99 (2018).

3. Marc Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts, 1 J. EMPIRICAL LEGAL STUD. 459 (2004).

4. In the United States, the most recent data on the topic indicates that the plea bargain has become the most dominant form of conviction, with more than 95% of convicted defendants pleading guilty; in Israel, more than 76% of all criminal cases filed in 2016 were resolved through plea-bargain agreements. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, FEDERAL JUSTICE STATISTICS 2014, COMPENDIUM OF FEDERAL JUSTICE STATISTICS (Mar. 2017), https://www.bjs.gov/content/pub/pdf/fjs14st.pdf (last viewed Feb. 3, 2019). ANNUAL REPORT OF THE STATE ATTORNEY’S OFFICE, ISRAEL DEP’T OF JUSTICE, 30, 2017 (Isr.), https://www.justice.gov.il/Units/StateAttorney/Documents/data-report-2017.pdf
Initially, it was assumed that the plea bargain was a mechanism restricted to the adversarial tradition of criminal justice and incorporated over time into judicial practice. Plea bargaining is based on consensus between two parties, the defendant and the prosecutor, and not on procedural truth. It seemed unacceptable in inquisitorial-type countries in which the search for the truth is based on an investigation, that the truth could be based on a negotiation between the parties.

Yet the common and constant imperative for reducing delays in criminal proceedings was equally prominent in both adversarial and inquisitorial criminal justice systems. As noted by many scholars: “There are simply too many offenses, too many offenders, and too few resources to deal with them all. One result of this overload has been a steady movement towards a convergence of legal systems—towards borrowing from others those institutions and practices that offer some hope of relief.”

This “steady movement” began at the end of the 1980s, at the initiative of the European Council. European countries have seen “the increase in the number of criminal cases referred to the courts” particularly in the case of minor offenses. Following this situation, in a recommendation, the Committee of Ministers of the Council of Europe stated that delay in dealing with crimes affects the proper administration of justice and infringes the principle of the fair trial. The causes for the failure of each criminal justice system to effectively deal with legal cases can vary and depend on many factors such as rising population, trends in specific crimes, changing of criminal behaviors,

5. Stephen Thaman, A typology of consensual criminal procedure: An historical and comparative perspective on the theory and practice of avoiding the full trial, in WORLD PLEA-BARGAINING, CONSENSUAL PROCEDURES AND THE AVOIDANCE OF THE FULL CRIMINAL TRIAL 347 (Stephen Thaman ed., 2010).

6. Laurene Soubise, Guilty Pleas in an Inquisitorial Setting: An Empirical Study in France, 45(3) J.L. & SOC’Y 398, 399 (“It seemed unacceptable in an inquisitorial system in which the research of the truth is based on an investigation, that the truth could be based on a negotiation between parties.”).

7. Abraham S. Goldstein, Converging Criminal Justice Systems: Guilty Pleas and the Public Interest, 49 SMU L. REV. 567, 567 (1996).

8. Council of Europe, Committee of Ministers, Recommendation No. R (87) 18 Member States concerning the Simplification of Criminal Justice (Sept. 17, 1987), https://www.barobirlik.org.tr/dosyalar-duyurular/hsykkankanunteklifi/recR(87)18e.pdf

9. Id. According Article 6 of the European Convention of Human Rights: “Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”
institutional changes, and so forth. In our analysis we choose to put aside this possible complexity and will address the reforms in legal proceedings while accepting the straightforward correlation which the Recommendation assumes between increasing numbers of criminal cases and the effectiveness of court proceedings.

The Committee called on both the inquisitorial and adversarial models of criminal justice—and member countries—to simplify and accelerate their criminal justice proceedings through the introduction of guilty pleas, summary procedures, out-of-court settlements by competent authorities, and simplified procedures.

Consequently, the introduction of this “multi-door courthouse” model in European member states did not evolve around the realization of plea bargain agreements as in United States, but around a diversity of proceedings, of which plea-bargain-type proceedings are but one.

In our paper, we choose to focus on France and Italy, since both countries experienced a lengthy and vivid legal history based on inquisitorial tradition dating from the Napoleon regime. The sinuous roads they had taken to fulfill the objective of the Recommendation of the Committee of Ministers of the Council of Europe while reconsidering their enduring roots, require close attention and mapping and invoke new insights on contemporary criminal justice.

In the first part of the article, we will present an overview of this evolution, following the Recommendation of the Committee of Ministers of the Council of Europe in 1987.

France has gradually introduced legislation changes while respecting the roots of its inquisitorial tradition. Various reforms have weakened the investigation stage, the symbol of the French inquisitorial tradition, and

10. Malcolm Feeley, *Plea-bargaining and the structure of the criminal process*, 7 J. JUST. SYS. J. 338 (1982). For a historical view regarding the growth of criminal cases that have led to the Recommendation, see ÉDEL FRÉDÉRIC, *The Length of Civil and Criminal Proceedings in the Case-Law of the European Court of Human Rights* (2d ed. 2007). The extensive delays in bringing cases to court have been repeatedly condemned by the European Court of Human Rights (COUNCIL OF EUROPE, *The right to a fair trial: A guide to the implementation of Article 6 of the European Convention on Human Rights* 73 (Human rights handbooks, n.3, Aug. 2006).

11. Francoise Tulkens, *Negotiated Justice*, in *EUROPEAN CRIMINAL PROCEDURES* 663 (Mireille Delmas-Marty & J.R. Spencer eds., 2006); Fedica Iovene, *Plea Bargaining Special Issue: Plea Bargaining and Abbreviated Trial in Italy*, Warwick School of Law Research Paper No. 2013/11, 3 (D.S. Trento, ed., Jackie Hodgson ed., 2013).
the investigation judge (*le juge d’instruction*), and reinforced the role of the public prosecutor (*le procureur*).12

In Italy, the movement was much more drastic than in France. At the end of 1988, the legislation was completely reformed, and the inquisitorial criminal justice system converts to an adversarial one.13 But ongoing criticism pushed for the reestablishment of inquisitorial elements into the criminal justice system. Consequently, inquisitorial rules were reintegrated into the criminal justice process. In both France and Italy, these reforms and the search for a trial avoidance mechanism had led to the integration of a patchwork of proceedings.

In the second part of our paper, we present an overview of the development of a few of these various and unique frameworks for criminal justice proceedings. We argue that whereas in the United States, the “multi-door” courthouse has evolved around the realization of plea bargain agreements, in France and Italy this phenomenon is developing around a diversity of proceedings.

Whereas in the United States the adversarial trial is vanishing through consent-based plea bargaining, in France and Italy, the full inquisitorial trial is vanishing through two distinctive paths. The first path, inspired by U.S plea bargaining, is based on consent and consists of a proceeding in which the trial is waived: the Composition Pénale and the Comparution sur Reconnaissance Préalable de Culpabilité (CRPC) in France and the Patteggiamento and the Giudizio Abbreviato in Italy. The second path consists of fast-track proceedings in which the investigation is waived or restrained: the Comparution Immediate and the Citation Directe in France and the Giudizio Immediato and the Giudizio Direttissimo in Italy.

Within this review, we will describe the difference between these diverse doors and will focus on the preservation of three inquisitorial-type features: the authority of judges, the preservation of the research of a procedural truth, and the active roles of defendants and victims in some of these proceedings.

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12. Findings indicate that less than 2% of criminal cases are treated by the investigation judge. Les chiffres-clés de la justice 2018, French Ministry of Justice, http://www.justice.gouv.fr/statistiques-10054/chiffres-cles-de-la-justice-10303/.

13. Decreto Legge, 22 Settembre 1988, n. 447 (It.) (Feb. 3, 2019), https://www.unodc.org/res/cld/document/ita/1930/codice_di_procedura_penale_-_parte_prima_libro_terzo_prove_html/Criminal_Procedure_Code_of_Italy_as_of_2014_Italian.pdf.
Finally, in the third part, we will discuss the response to this patchwork of doors in both countries. In France, the integration of a wide range of abbreviated doors has been reinforced over time. By comparison, in Italy, the integration of these doors did not completely convince the Italian stakeholders to abandon the ordinary full (reformed adversarial) trial, which has remained the prevalent door for processing criminal disputes. This may be partly explained by the utilization of statute of limitation that allows for a case to be canceled in the term of prescription. This tool offers defendants the possibility of controlling the length of the criminal process, hoping that their case will be canceled before a final sentence is pronounced.

We will emphasize the fact that besides the law in books, it is the law in action everyday that is followed by players of the criminal justice system—prosecutor, defense lawyers, accused policeman, judges, but also victims—who negotiate and define the impact of this institutional change.

In the conclusion, we will explore the significance of these contemporary forms of justice in terms of the role of the judges and the possibility of transcending the strive for efficiency in conflict resolution and more participation of the people affected by the new reforms.

I. HYBRIDITY OF CRIMINAL JUSTICE SYSTEMS IN ITALY AND IN FRANCE

No criminal procedure system is—in practice, at least—wholly inquisitorial or wholly adversarial. Criminal procedure is a mix of different traditions, the product of a continuing process of evolution. As suggested by Field, “we need to see legal traditions [adversarial and inquisitorial] as being invented and reinvented through the debate and dialogue that feeds social change rather than as entities with objective, stable and fixed characteristics.”

Both France and Italy have “invented” and “reinvented” their criminal justice systems while remaining faithful to the central aspects of their traditional systems. This section will focus on the integration and convergence of the inquisitorial and adversarial models into both systems,
explaining how this mix resulted in the incorporation of fast-track proceedings into criminal proceedings. 16

A. The Italian Hybrid Model: An Inquisitorial Heart Inside an Adversarial Body

1. The Integration of the Adversarial Model into the Italian Criminal Justice System

For more than a century, successive Italian legal codes 17 were developed in line with the inquisitorial tradition of the Napoleonic Code d’Instruction Criminelle of 1808. 18 As in France, criminal proceedings were split into two stages. The main stage was the investigation. The second stage, the trial, served as a confirmation of the first stage. 19

The principal actor was the investigation judge (Giudice istruttore). Proceedings were mainly written in format and based on evidence gathered unilaterally and in secret during the investigation. Assessments of truth were based on the work of the Giudice istruttore and the police during the investigation stage. 20

Following the Recommendation of the Committee of Ministers of the Council of Europe in 1987, 21 Italy abolished, in 1988, its inquisitorial code on criminal procedure and established the Codice Vassalli, 22 based on an adversarial model.

This new code has completely transformed Italy’s criminal justice system. Inspired by the European Convention of Human Rights and the

16. Morgane Daury-Fauveau, *L’oralité dans la procédure pénale française. Le droit au silence*, in *LES PROCÉDURES ACCUSATOIRE* 13 (Mikaël Benillouche ed., 2012).
17. For instance, Codice di procedura penale del 1913 (Gazzetta Ufficiale 14 Ottobre 1913 n.239), and Codice ROCCO di procedura penale, 1930 (Gazzetta Ufficiale 26 ottobre 1930, n. 251).
18. Rachel A. Van Cleave, *An Offer You Can’t Refuse? Punishment Without Trial in Italy and the United States: The Search for Truth and an Efficient Criminal Justice System*, 11 *EMORY INT’L L. REV.* 419 (1997).
19. Giulio Illuminati, *The Frustrated Turn to Adversarial Procedure in Italy (Italian Criminal Procedure Code of 1988)*, 4 *WASH. U. GLOBAL STUD. L. REV.* 567 (2005).
20. Id. at 567–69.
21. Recommendation R (87) 18, *supra* note 9. Michael Vitiello, *Bargained-for-Justice: Lessons from the Italians?* 48 *U. PAC. L. REV.* 247 (2017).
22. *Codice Vassalli*, Codice di procedura penale [hereinafter I. Cod.proc. Pen.] (D.P.R. 22 settembre 1988, n.477); the code went into effect on Oct. 24, 1989.
U.S. adversarial model, its principal goal was to simplify the procedure\textsuperscript{23} and to bring the criminal justice system in line with “liberal democratic political structures.”\textsuperscript{24} Fundamental rights, such as the right of the defense to a fair trial, were integrated into the new code, together with adversarial-type features.\textsuperscript{25}

The role of the inquisitorial-style investigation judge was abolished. The investigation stage is now directed by the police officer (Polizia giudiziaria) and the Public prosecutor (Pubblico ministro) under the juridical control of the judge for the preliminary investigation,\textsuperscript{26} the Giudice indagini preliminari (GIP). At the end of this investigation, the file is transferred to the judge for the preliminary hearing, the Giudice dell’udienza preliminare (GUP), who decides whether to close the case, send it to trial, or use one of the simplified proceedings that will be outlined below.

As in other adversarial systems, the trial became the main stage of the process. Both parties, the prosecutor and the defense attorney, are supposed to be on an equal footing\textsuperscript{27} and control the presentation of the evidence by means of examination and cross-examination.\textsuperscript{28} The trial judge decides on the basis of the confrontation of both parties whether the accused is guilty or not. However, this ambitious attempt to transplant a foreign model into a deeply rooted inquisitorial culture was not as successful as expected.\textsuperscript{29}

\textsuperscript{23} Cristina Mauro, de quelques lieux communs à propos du système italien, in Benillouche, supra note 16, at 85 (Fr.).

\textsuperscript{24} Van Cleave, supra note 18, at 421.

\textsuperscript{25} Arts. 37–44, I. Cod.proc. Pen.

\textsuperscript{26} The GIP does not have the power of investigation. His main functions are to ensure judicial control and to decide on measures restricting fundamental rights on the request of the public prosecutor. The GIP is in charge of the preliminary hearing. Antoinette Perrodet, The Italian System in Delmas-Marty & Spencer, supra note 11; Riccardo Montana, Procedural tradition in the Italian Criminal Justice System: The Semi-adversarial Reform in 1989 and the inquisitorial cultural resistance to adversarial principles, 20(4) INT’L J. EVIDENCE & PROOF 289, 295–96 (2016).

\textsuperscript{27} Ennio Amodio, The Accusatorial System Lost and Regained: Reforming Criminal Procedure in Italy, 52 AM. J. COMP. L. 489 (2004): “The professional proximity between the judges and the prosecutors may infringe the principle of separations that is necessary in the adversarial justice”; Riccardo Montana, Paradigms of Judicial Supervision and Co-Ordination between Police and Prosecutors: The Italian Case in a Comparative Perspective, 17 EUR. J. CRIME, CRIM. L. & CRIM. JUST. 309 (2009); Perrodet, supra note 26, at 361.

\textsuperscript{28} Perrodet, supra note 26, at 357.

\textsuperscript{29} Montana, supra note 26, at 289.
2. The Gradual Re-integration of Inquisitorial Rules

The broad reforms of the end of 1988 were described as “traumatic” for the Italian judiciary. The judiciary found itself unprepared for such drastic modifications, and a strong cultural resistance to the adversarial process occurred.\(^{30}\) The Italian Constitutional Court claimed that the power of the judge has been infringed and that the judge’s authority should not be subject to restrictions or limitations.\(^{31}\) One of the judge’s main functions should remain the research of a procedural truth. In the wake of these criticisms, the utilization of inquisitorial elements was reaffirmed:

- The authority of the judges was reinforced with the authority of \(GIP\) and the \(GUP\) over the investigation stage of the process reinforced.\(^{32}\) Both prosecutors and judges’ functions are aimed to find the truth.\(^{33}\) Moreover, the inquisitorial tradition, according to which prosecutors belong to the same corps of civil servants as the judges, has been preserved.\(^{34}\)

- Although the adversarial system is grounded in the confrontation between two parties, victim’s participation has been reaffirmed. The \textit{Codice Vassalli} expanded the range of prerogatives granted to the victim. As in France, victims enjoy the rights of participation and audience during the investigation stage and the trial.\(^{35}\)

For the drafter of the new criminal procedural code, the simplification and the flexibility of the criminal process were essential. For instance, Art.
of the Italian criminal procedural code focuses on three principles: speed, economy, and effectiveness. According to this perspective, the Patteggiamento proceeding, inspired by plea bargaining and based on consent, was introduced. However, findings indicate that the introduction of a plea-bargaining type procedure was not overwhelming as in adversarial-type countries, such as the United States, United Kingdom, or Israel. Instead, this alternative proceeding is proposed as one of various other proceedings that we will describe later as constituting the Italian multi-door arena.

The Italian justice system has adopted an adversarial criminal justice model while preserving the traditional status and authority of stakeholders such as judges and victims. The blend of the inquisitorial and adversarial features, coupled with the imperative to resolve an extensive backlog of criminal cases, paved the way for the further integration of various alternative proceedings of which plea bargaining is only one.

B. The French Hybrid Model: A Controlled Integration of Adversarial Features

1. A Strong Inquisitorial Culture

The French criminal justice system is described as a mixed system, with its origins in the inquisitorial tradition and the Napoleonic criminal procedure code. As in Italy, the requirement to demonstrate conformity with the Recommendation of the Committee of Ministers of the Council of Europe in 1987 prompted a series of reforms. These reforms included the introduction of a range of alternative proceedings designed to speed up criminal proceedings. Unlike in Italy, the main components of the inquisitorial tradition had remained the core of the French criminal

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36. Stefano Maffei, Negotiations “on evidence” and Negotiations on sentence: adversarial experiments in Italian criminal procedure, 2 J. INT’L CRIM. JUST. 1050, 1069, (2004). Art. 371 I.C. P.P: “Gli uffici diversi del pubblico ministero che procedono a indagini collegate, si coordinano tra loro per la speditatezza, economia ed efficacia delle indagini medesime.”

37. Amounting to 1.3% of the total sentences in criminal courts (in 2016): Produzione editoriale Annuario Statistico italiano 2018, 35 (It.) (Feb. 3, 2019), https://www.istat.it/it/files/2018/12/Co6.pdf.

38. Traité d’instruction criminelle et de procédure pénale (Paris 1907, T.I, at 89 et seq, n° 58 et 59).

39. Mireille Delmas-Marty, La Mise En état Des Affaires Pénales: Rapport de la Commission Justice Pénale et Droits de L’homme (Paris: La Documentation française, 1991) (Fr.).
justice system, yet in practice, the role of the stakeholders has taken on more of an adversarial nature.

2. Softened Inquisitorial Features

In 1989, as the Italian criminal justice system announced the introduction of new criminal proceedings based on the adversarial model, a reform commission was appointed in France, tasked with exploring the introduction of adversarial features into the French criminal justice system. This was the first of many committees, headed by judges and academics, that have proposed a long list of reforms to the criminal justice system over the last twenty years.

Despite these transformations, the functions of the stakeholders were preserved according to the inquisitorial model (yet the core of the inquisitorial model, the juge d’instruction, has been infringed). The main role of the judges has remained the search for a procedural truth through investigation, and the victim has remained an active participant in the criminal process.

a. The authority of the judges. Three judges stand at the heart of the criminal justice process: the investigation judge, the prosecutor, and the trial judge. As in Italy, they all belong to the judiciary (Magistrature).

(1) The investigation judge: “There is no human authority who can encroach upon the power of an investigating judge; nothing can stop him;

40. Id.
41. Delmas-Marty, supra note 39. Pierre Truche, Rapport de la commission de réflexion sur la Justice (Paris: La documentation Française, 1997) (Fr.), https://www.ladocumentationfrancaise.fr/var/storage/rappports-publics/974072100.pdf; Phillipe Leger, Rapport du comité de réflexion sur la justice pénale (Paris: La Documentation Française, 2009).
42. Loi n° 93-2 du 4.01.1993 portant réforme de la procédure pénale, J.O n° 3 du 5.01.1993; Loi n° 2000-516 du 15.6.2000 renforçant la protection de la présomption d’innocence et les droits des victimes, J.O n° 138 du 16.6.2000; Loi n° 2004-204 du 9.03.2004 portant adaptation de la justice aux évolutions de la criminalité, J.O n° 59 du 9.03.2004; Loi n° 2007-291 du 5.03.2007 tendant à renforcer l’équilibre de la procédure pénale, au J.O n° 55 du 6.03.2007; Loi n° 2011-392 du 14.4.2011 relative à la garde à vue, J.O n° 89 du 15.4 2011.
43. They are trained in the same academic institution, l’Ecole National de la Magistrature (the French national school for judiciary). Jacqueline S. Hodgson, The French Prosecutor in Question, 67 WASH. & LEE L. REV. 1361, 1366 (2010).
no one can control him.” These words of Honore de Balzac describe the wide-ranging judicial powers of this symbol of the inquisitorial trial actor created by Napoleon in 1810. The juge d’instruction is a judge, an investigator, a defender of rights, and a pursuer of wrongdoing rolled into one, and is assigned the responsibility for assessing evidence from both the prosecution and the defense, in order to establish or disprove the charge (Instruire à charge et à décharge). At the end of the investigation, she may either refer the accused to the court for trial or discharge the matter.

As in Italy, the French legislation has decided to put an end to this function and transferred investigatory powers to the prosecutor. Although no legislation has been passed on this matter, in practice one observes, de facto, that the juge d’instruction tends to be marginalized. Two centuries after these words of Honore de Balzac, the functions of the juge d’instruction has diminished “as a skin of sorrow.”

(2) The standing judge: The investigative responsibility has been shifted away from the juge d’instruction to the public prosecutor (le procureur de la République). The various reforms have reinforced the power of the

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44. Honore de Balzac, Splendeur et Miseres des Courtisanes (1847), “aucune puissance humaine... ne peuvent empiéter sur le pouvoir du juge d’instruction, rien ne l’arrete, rien ne lui commande”.

45. Article 81 of the French Criminal Procedure Code [hereinafter F. C. pr. Pén.] states: “The investigating judge undertakes in accordance with the law any investigative step he deems useful for the discovery of the truth. He seeks out evidence of innocence as well as guilt.” J. R. Spencer QC, Translation of French Code of Criminal Procedure (Feb. 3, 2019), https://www.legifrance.gouv.fr/content/location/1741. Robert Badinter, La mort programmée du juge d’instruction, Le Monde, Mar. 21, 2009; Denis Salas, Le Courage de Juger 160 (2014).

46. For instance, in Germany in 1975; see Thaman, supra note 5.

47. Jacqueline Hodgson, French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France 249 (2005); Denis Salas, Du Progès Penal 331 (2010); Salas, Le Courage, supra note 45, at 158.

48. See Les chiffres clés de la justice 2018, http://www.justice.gouv.fr/art_pix/justice-chiffres-cles-2018.pdf, La Peau de Chagrín [The Skin of Sorrow]. In this book, Balzac tells the story of a talisman with the power to grant its owner’s wishes, but which has the peculiar feature of shrinking when each wish is fulfilled. This French expression is used today to describe something that gradually diminishes until there is nothing left of it.

49. Art. 706-73 CPP. Soubise, supra note 6, at 404. Regarding the public prosecutor, in a number of decisions, the ECHR has held that the status of the prosecutor as a judge compromises the guarantees of independence required from a “judicial officer” (Art. 5, para. 1 of the European Convention on Human Rights).
prosecutor, giving her the authority to control the police investigation of serious offenses. The public prosecutor is considered today as the center of criminal proceedings. The public prosecutor represents both the interests of the office of the prosecutor (le parquet) and the public at large. She has two main roles: she supervises the criminal investigation and represents the State during the trial. The prosecutor determines the charges and the directions to be given at the trial, and may decide to engage alternatives to prosecution.

(3) **The sitting (trial) judge:** As an inquisitorial-type model, and in contrast to the Italian system, there is no role of examination-in-chief or process of cross-examination in French criminal proceedings. The trial judge asks the questions, leads and steers the hearing, and determines the value of the evidence submitted in each case.

**b. The victim as a Partie civile.** In the criminal justice process, both during the investigation and at trial, the victim may be represented as a civil party to the proceedings and claim compensation. In common with the defendant, the victim may request that the investigation judge follow a particular line of investigation; in addition, she has access to the file. French victims may initiate a proceeding as well, through the Citation Directe directly before the criminal court, as we will describe below.

3. Integration of Adversarial Features into the Criminal Justice System

In 1991, the Commission for Criminal Justice and Human Rights claimed that the French criminal justice system should not constrain “oneself into the choice between an adversarial system and an inquisitorial system. We

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50. Soubise, *supra* note 6, at 403.
51. Art. 31, F. C. pr. Pén.
52. As opposed to the Italian judicial system, the French system is a discretionary prosecution system, in which the public prosecutor determines whether to close a case or to prosecute (*opportunité des poursuites*); Art. 40, F. C. pr. Pén. Soubise, *supra* note 6, at 404. Hodgson, *supra* note 43, at 2.
53. Hodgson, *supra* note 43, at 5. As opposed to the public prosecutor, who falls under the authority of the Minister of justice, sitting judges are completely independent when they judge cases.
54. See below, Part II, The Diversification of Criminal Responses, Section B.3, The French Citation Directe.
should rather draw lessons from the experiences and insufficiencies of one and the other” in order to develop an original system, a mixture of both methods which take efficiency and the respect of the equality between the parties into account.55

Even though France was not as audacious as Italy in its reforms, the judiciary did integrate small adversarial “pulsions,” 56 which have modified the system hitherto strongly influenced by a long-standing inquisitorial tradition. The main adversarial “pulsion” was the integration in 1999 and 2004 of two proceedings directly inspired by plea bargaining: the Composition Pénale and the CRPC, as we will describe below.

C. Summary: The Hybrid Model in Italy and France

The combination of both inquisitorial and adversarial models has facilitated the integration of various contemporary doors into the criminal justice system. These innovative doors combine adversarial components, such as the participation of both parties in the process or the reinforcing of the power of the prosecutor—with inquisitorial components such as the active involvement of the judge to search for the truth and the victim’s right of participation as a civil party to the proceedings. The next section will outline some of these new developments and will emphasize the changing roles of judges within them.

II. THE DIVERSIFICATION OF CRIMINAL RESPONSES: A DIFFERENT UNDERSTANDING OF THE MULTI-DOOR THEORY

The phenomenon of the vanishing trial has prompted new theories regarding the utilization of various tracks for resolving judicial disputes. One of such theories, the “multi-door courthouse” was proposed by Frank Sander in 1976, who suggested that the “one door” of adjudication be transformed

55. Delmas-Marty, supra note 39, at 107: “Il ne s’agit plus aujourd’hui de s’enfermer dans le choix entre un système dit accusatoire et un système dit inquisitoire, mais de tirer les leçons de l’expérience qui a fait apparaître les insuffisances de l’un et de autres relevées d’ailleurs par les instances européennes de protection des droits de l’homme. Il s’agit donc de proposer un système original à la fois soucieux d’efficacité que le système accusatoire et plus respectueux de l’équilibre entre les parties que le système inquisitoire.”

56. Philip Bilger, L’état de la procédure pénale française, in Benillouche, supra note 16, at 6.
into a judicial system based on a variety of different “doors.” Each door, he suggested, would lead to a process that will “fit the forum to the fuss”—matching a specific case to a specific track. In this section, we will argue that today, following the reforms in criminal justice as discussed above, Sander’s theory has become the reality in the context of adversarial and inquisitorial criminal justice systems as well.

In an era of vanishing trials and the expansion of plea-bargain agreements, the application of the multi-door justice theory is directed toward securing effective, speedy agreements and reducing court caseloads. Additionally, it allows for the integration of alternative justice models, such as restorative justice and problem-solving courts, into criminal justice procedures. Confronting similar difficulties with court caseloads, and within the context of the specificity described above, both French and Italian legislation has shaped what may be considered as a different perspective on the multi-door theory through the introduction of fast-track proceedings. The list of the different proceedings is very extensive—too long to detail each one within the scope of this paper. We will thus outline here two different types of proceedings that are used in France and Italy, as a means of capturing the nature of the emerging multi-door reconfiguration of court proceedings.

57. FRANK E.A. SANDER, VARIETIES OF DISPUTE PROCESSING (1976).
58. Id. Franck E.A. Sanders & Stephen B. Goldberg, Fitting the forum to the fuss: A user-friendly guide to selecting an ADR procedure, 10(1) NEGOTIATION J. 49 (1994). Michal Alberstein, Experimenting with Conflicts Constructively: In Search of Identity for the Field of Conflict Resolution, 1 INT’L J. CONFLICT ENGAGEMENT AND RESOLUTION 135 (2013).
59. Our paper is based on a conference presented in the Multi-door Criminal Justice Symposium, Examining Hybrids of Non-adversarial Justice (Bar-Ilan Faculty of Law and Haifa Faculty of Law, May 2019).
60. Hadar Dancig-Rosenberg & Tali Gal, Restorative Criminal Justice, 34 CARDOZO L. REV. 2313 (2013).
61. Tulkens, supra note 11, at 672.
62. Some of the “doors” that have been developed in Italy and in France are the Procedimento per decreto (Arts. 459–64, I. Cod.proc. Pen.) and the Ordonnance Pénale (Arts. 495 & 524, F. C. pr. Pén.). These proceedings require a request by the prosecutor to the court to impose a pecuniary sanction. If the defendant disagrees with the pecuniary sanction imposed, he or she may appeal to the same court for a full trial.

The Giudice di Pace (legge 21 Novembre 1991, Justice of Peace): The Magistrate Court Judge (Giudice di Pace) has the competence to mediate between the offender and the victim (according to the legislative decree of Aug. 28, 2000), and promote the reconciliation of the parties. One of the goals of this procedure is to encourage the victim drop the complaint, and thus avoid overloading the court (e.g., minor violence cases, small robberies).
The first type, proceedings without trial, takes inspiration from the practice of plea bargaining based on consent between the defendant and the prosecutor. This practice avoids the main stage of adversarial proceedings, the trial.

The second type, the trial with no or minimal investigation, is underpinned by the imperative to speed up the criminal justice process. This practice bypasses the main stage of the inquisitorial model, the investigation stage.

A. Multi-door Proceedings without Trial in France and Italy

Both France and Italy had transplanted specific components of the plea bargaining into four different doors: the Patteggiamento and the Giudizio Abbreviato in Italy, and the CRPC and the Composition Pénale in France.

According to the inquisitorial model, truth should not be subject to bargaining or compromise. Therefore, both countries have preserved the inquisitorial features regarding judge’s authority in the search of the truth, making the multi-door proceedings an integrative component of their respective systems, rather than merely the transplantation of an adversarial model onto their inquisitorial systems (see Table 1).

1. Plea Bargaining à la française: The Composition Pénale and the Comparution sur Reconnaissance Préalable de Culpabilité (CRPC)

a. The Composition Pénale: A guilty plea in exchange for dismissal of the case. The Composition Pénale has been described as the first iteration of the plea bargain within the French criminal justice system, principally because the defendant must acknowledge guilt as a part of the agreement reached with the prosecutor. However, aside from a common acknowledgement of guilt, the Composition Pénale has different goals and different characteristics. One of the

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63. Soubise, supra note 6.
64. Loi 99-515 du 23 juin 1999 renforçant l’efficacité de la procédure pénale, J.O n°144 du 24 juin 1999, p. 9247.
65. Vanessa Perrocheau, La Composition Pénale et la Comparution sur Reconnaissance de Culpabilité: Quelles limites à l’Omnipotence du Parquet? 74(1) DROIT ET SOCIÉTÉ 55–71, 61 (2010).
66. Thaman, supra note 5, at 49, Maximo Langer, From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure, 45(1) HARV. INT’L L.J. 61 (2004).
| Criminal Proceedings | Initiator | Consent focus | Reduction of sentence | Research of Truth focus | Limitation |
|-----------------------|-----------|---------------|-----------------------|-------------------------|------------|
| **FRANCE**            |           |               |                       |                         |            |
| **CRPC**              | Prosecutor | Consent of the defendant to plead guilty. Plea and sentence bargaining | Sentence: limited to 1 year, or ½ the maximum penalty. | Consensual + Material truth | Offenses that carry a prison sentence of less than 10 years. |
| **Composition Pénale**| Prosecutor | Consent of the defendant to plead guilty in exchange for the charge to be dropped. | No criminal charges (but criminal record) | Consensual + Material truth | Limited to minor offenses, such as simple assault, threat, simple robbery. |
| **ITALY**             |           |               |                       |                         |            |
| **Patteggiamento**    | Prosecutor or defendant | Consent to a specific sentence. No guilty plea. | 1/3 | Material truth | Cases where the sentence does not exceed 5 years in prison (excluding organized crime, sex-related offenses, and repeat offenders). |
| **Giudizio Abbreviato**| Defendant | Consent to bypass the trial in order to receive a reduced sentence. | 1/3 | Material truth | All cases except those punishable by a life sentence. |
main objectives of this proceeding is the de-penalization of minor offenses, while maintaining the symbolic presence of judicial institutions. Whereas the U.S. plea bargain model requires that the defendant be found guilty and then punished, the endpoint of the Composition Pénales is not a guilty verdict, but rather the agreement by the defendant to fulfill specified conditions, such as paying a fine, surrendering his driving license for a set period of time, or undertaking community service work. The defendant is given ten days to accept or reject the offer of the prosecutor. If he accepts it, then it must be presented to the judge for validation. The prosecutor will then inform the victim. If he rejects it or fails to fulfill the conditions set out in the agreement, then the prosecutor may initiate formal criminal proceedings. In all cases, both the defendant and the victim may request that the case be heard by the judge. Unlike U.S plea bargaining, the application of the Composition Pénales is limited to offenses punishable by a fine or imprisonment of up to five years and for all contraventions. The authority of the judge in this proceeding has been preserved since the judge must validate the case. Moreover, this procedure has strengthened the role of the prosecutor, who can deal rapidly with offenses.

67. SENAT, Juger vite juger mieux, Rapport d’information n° 17 (2005–2006).
68. Id. (“The Penal Composition truly improves the quality of justice by providing a systematic and dissuasive response to small and medium-sized delinquency.”).
69. The law of 1999 includes a list of more than 17 types of conditions. Akila Taleb, Les procédures de guilty plea: Plaidoyer pour le développement des formes de justice “négociée” au sein des procédures pénales modernes. Étude de droit comparé des systèmes pénals français et anglais, 83(1) RIDP 89 (2012).
70. The victim has 10 days to appear before a judge; 15-33-45, F. C. pr. Pén.
71. Langer, supra note 66, at 59.
72. Art. 41-2 of the F. C. pr. Pén., excluding press offenses, political offenses, the offense of manslaughter, and crimes committed by minors under 13 years, the scope of the proceedings was enlarged over time.
73. Sebastian Roche, Criminal Justice Policy in France: Illusions of Severity. 36 Crime & Just. 471 (2007).
74. Hodgson, supra note 47, at 60. Besides the Composition Pénales, the prosecutor may take various pre-trial diversions measures out of the court (alternatives à la poursuite) (Art. 41-1, F. C. pr. Pén.). For instance: the Reminder of the Law (rappel à la loi) is a measure directed to reminding the offender that he/she has committed an offense of his/her obligation resulting from the law. The reminder to the law is not recorded in the defendant’s criminal record, as it is not a conviction. However, the victim may ask for compensation. The Criminal mediation (la Mediation Pénales) is directed at repairing the damage suffered
b. The CRPC: An appearance, with acknowledgement of guilt. The CRPC\textsuperscript{75} is a form of sentence bargaining, inspired by U.S plea bargaining, introduced into the legislation in 2004.\textsuperscript{76} The CRPC involves two phases. In the first phase, the “sentence proposal,” a brief discussion takes place among the defendant, her lawyer, and the prosecutor to confirm the facts of the case. At this point, the prosecutor may ask the defendant to acknowledge that she committed an offense and propose a sentence. The defendant is given ten days to accept or reject the offer. If the defendant refuses to plead guilty or rejects the sentence, she will then be informed that the case will be sent to full trial, conducted as a traditional criminal justice proceeding.

If she accepts the proposed sentence, the second phase, the approval hearing, \textit{l’homologation}, begins, often on the same day. During this public hearing, in which the presence of the prosecutor is not required, the judge must justify “the reality of the acts, their legal qualification and the appropriateness of the punishment.”\textsuperscript{77}

Unlike U.S plea bargaining, the CRPC includes several limitations: It concerns only offenses punishable by a prison sentence of 10 years or less.\textsuperscript{78} The sentence proposed by the prosecutor is limited to one year or half of the maximum sentence for the charge. The CRPC also excludes certain offenses (e.g., involuntary manslaughter) and very serious offenses such as murder and rape.

The French constitutional court has reaffirmed and reinforced the power of the judge respecting the inquisitorial tradition.\textsuperscript{79} The Court

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by a victim or to resolve a dispute. It consists of an agreement between the offender and the victim in front of a mediator designated by the prosecutor (for minor offenses only).

The Composition Pénale could be considered as an alternative measure to prosecution aimed at avoiding criminal proceedings. But, since a judge is involved, it is not considered comparable to other alternative measures such as out-of-court proceedings. Gwladys Gil-liéron, \textit{Public Prosecutors in the United States and Europe: A comparative analysis with Special Focus on Switzerland, France and Germany} 299 (2013).

75. Art. 27 Loi n° 2011-1862 du 13 décembre 2011 relative à la répartition des contentieux, et à l’allègement de certaines procédures juridictionnelles, J.O n. 289 du 14 décembre 2011.

76. Loi n° 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité.

77. Arts. 495-9 and 495-11, F. C. pr. Pén.

78. Art. 495-7, F. C. pr. Pén. was modified in 2011; previously, these proceedings only concerned offenses carrying a prison sentence of 5 years or less.

79. Sylvie Grunvald, \textit{La diversification de la réponse pénale: Approche du point de vue des victimes} 88(3) Droit Et Société 649 (2014).
\end{flushright}
underlines that the power of the judge to review and to search for a procedural truth should be preserved. His role is not “simply to rubber-stamp these negotiated agreements, but to continue to enquire fully into the facts as is the duty of the trial judge.”80 If the judge has doubts regarding the conduct of the case or deems that the sentence proposed does not match the circumstances of the case, he can reject the use of the procedure and send the case to be tried in an ordinary trial.

c. Summary: The CRPC and the Composition Pénale in practice. Both the CRPC and the Composition Pénale are innovative proceedings, which have succeeded in blending the adversarial concept of reinforcing the power of the prosecutor to choose a consent base proceeding with the truth-seeking role of the inquisitorial judge.81 Contrary to plea bargaining, the CRPC and the Composition Pénale have less of an impact than in traditional adversarial countries such as the United States and Israel. Findings indicate that in 2016, less than 15 percent of criminal cases in France are resolved by the CRPC.82

2. Plea Bargaining in Italy: The Patteggiamento and the Giudizio Abbreviato

As in France, the integration of doors without trial found its roots in legislation and not in the practice of the courts. The Codice Vassalli83 introduced two new procedures, both anchored by consent on the part of the defendant and of the prosecutor.84 As opposed to France, which has derogated from its inquisitorial roots by introducing the concept of recognition of guilt as an element of consent, Italian proceedings without trial are based on the agreement of the defendant to a specific sentence (the

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80. Cons. const., déc. n° 2004-492 DC du 2 mars 2004; in Hodgson, supra note 47, at 60.
81. Sarah-Marie Cabon, La Négociation en Matière Pénale (2016).
82. 13% of the sentences in the magistrates’ courts (in 2016) (for minor and intermediate offenses); Maël Löwenbrück, L’évolution des peines d’emprisonnement de 2004 à 2016, 156 Info-Stat Justice (Dec. 2017), http://www.justice.gouv.fr/art_pix/stat_InfoStat_156.pdf.
83. Codice Vassalli, supra note 22.
84. The Art. 111 (I, Cost.) of the Italian Constitution states that a defendant may renounce his/her right to have evidence challenged at trial at the cross-examination rule and agree that the case is assessed on the basis of the investigative file records. It may be considered as constitutional legitimation of the principles of consensual justice. Golan, supra note 32.
Patteggiamento) or to be judged in an inquisitorial-type proceeding on the basis of the file only (the Giudizio Abbreviato).\textsuperscript{85}

\textbf{a. The Patteggiamento: Application of the penalty at the request of the parties.} As with plea-bargain agreements in the United States, the Patteggiamento\textsuperscript{86} is a party-controlled proceeding based on agreement and is designed to eliminate the necessity of a full trial. These commonalities aside, the two proceedings are significantly different in three respects:

The Patteggiamento is neither a guilty plea nor charge-bargaining. It does not involve any admission of guilt since the Italian legislature felt that this would violate the presumption of innocence.\textsuperscript{87} It is a request, made during the preliminary investigation or the trial, that a particular sentence be applied and that the penalty be reduced by up to one-third. The request can be submitted to the judge by the prosecutor and defendant jointly or separately, but must be have the consent of both parties.

Unlike U.S. plea bargaining, the Patteggiamento includes several limitations. First of all, the agreed penalty cannot exceed five years’ imprisonment. This implies that crimes with a penalty that cannot be reduced to less than five years are excluded from the procedure.\textsuperscript{88} Moreover, not all of the cases can be processed through the Patteggiamento. This simplified proceeding without trial excludes serious offenses, such as organized crime and sex-related offenses. Moreover, habitual and repeat offenders are excluded from this procedure.\textsuperscript{89}

\begin{itemize}
  \item \textsuperscript{85} Simone Farina, \textit{Sintesi di procedura penale, riti alternative, capitol}, 8 DIKE GIURIDICA EDITRICE 3, https://www.dikegiuridica.it/file_download.php?path=admin/libri/333/ & file=Estratto.pdf.
  \item \textsuperscript{86} Art. 444, I. Cod.proc. Pen. A form of the Patteggiamento has been in use since 1981.
  \item \textsuperscript{87} Thaman, \textit{supra} note 5, at 345n.265.
  \item \textsuperscript{88} Legge 2 giugno 2003, n° 134, Gazzetta Ufficiale n°136 del 14 Giugno 2003, Modifiche al codice di procedura penale in materia di applicazione della pena su richiesta delle parti. Ann Jacobs, \textit{Le droit belge dans le concert européen de la justice négociée}, 83(1) \textit{REVUE INTERNATIONALE DE DROIT PENAL} 49 (2012). However, other forms of the Patteggiamento were established in 2003. The first relates to more serious offenses (with a penalty of up to 7.5 years’ imprisonment) (\textit{Patteggiamento allargato}). Here, the penalty request must either be for a fine, or for a period of imprisonment with a reduction of one-third the usual sentence.
  \item \textsuperscript{89} Art. 444, para. 1, 445, I. Cod.proc. Pen. Sexual offences such as child prostitution, child pornography, and virtual child pornography, and other sexual abuses cannot be judged under the Patteggiamento (see the list of offenses, from Art. 600 et seq, I. Cod. proc. Pen.).
\end{itemize}
As in France, the power of the judges has been reaffirmed by the Italian Constitutional Court. In a 1990 decision, the Constitutional Court declared that the judge has the authority to control the legal characterization of the facts as set by the Patteggiamento. The judge is not bound to the parties’ agreement and may accept or reject it. In case of rejection by the judge, the file is sent back to the ordinary proceeding. Furthermore, the judge must make sure that the negotiated sentence is appropriate to the offense committed. Finally, he also verifies the willingness of the defendant’s request or consent. Once consent is approved, the judge is bound by the penalty as agreed by the parties.

b. Giudizio Abbreviato: A different form of consent. As plea bargaining, the Giudizio Abbreviato is based on an agreement between the defendant and the prosecutor. Aside from this common point, this proceeding is “classic inquisitorial style proceedings” that gives the defendant the option to select the “old-fashioned written trial” and choose for the case to be assessed on the basis of the investigative file record, renouncing his right to an adversarial-type trial.

In return for sparing the State the expense of a full trial, the defendant is given a one-third reduction of sentence. The judge, who will fulfill both review and investigation roles, will review the evidence, including the written record of the case, and hear oral arguments from the defense and prosecution.

Unlike the Patteggiamento, there are almost no limitations regarding the cases that can be determined under the Abbreviato process.

90. Corte Const., n. 313, 2 luglio [1990] II CP 221.
91. Montana, supra note 26.
92. Perrodet, supra note 26, at 372.
93. Art. 438, L. Cod.proc. Pen.
94. The choice of this proceeding belongs exclusively to the accused. The consent of the public prosecutor is no longer necessary, following the reform made by the “Carotti” law no. 479 of 1999. Farina, supra note 85.
95. Thaman, supra note 5, at 38. Since 1999, consent of the public prosecutor is no longer necessary. Iovene, supra note 11, at 10–12.
96. Art. 438(l), L. Cod.proc. Pen. Under these proceedings, the defendant may submit either of two possible requests: (a) a simple request (La richiesta semplice), in which the defendant includes a demand for the case to be assessed on the basis of the investigative file record; or (b) a complex request (La richiesta condizionata), in which the defendant includes a request that the judge carry out further investigation.
97. According to recent legislation (April 2019), the proceedings of the Giudizio Abbreviato cannot be applied to life imprisonment sentences, http://www.giurisprudenzapenale.com/2019/04/03/senato-approvato-via-definitiva-la-riforma-del-rito-abbreviato/.
c. Summary: A Blend of adversarial and inquisitorial tools. Both the Patteggiamento and the Giudizio Abbreviato are innovative doors that blend adversarial and inquisitorial features. They are adversarial in the sense that they all require the initial agreement of the defendant to waive the trial stage, and they are also inquisitorial since the judge plays a fundamental role in the search for the truth.  

B. Multi-door Proceedings without Investigation in Italy and France

The Italian system was the first to cancel the investigation judge in 1989 when moving to the adversarial model, which is supposed to be party-dominated and strictly separated from the pre-trial process. In France, the investigation conducted by the *juge d'instruction* has been gradually replaced by a shorter examination conducted by the police and controlled by the prosecutor.

This gradual decline of the investigation phase is particularly flagrant in fast-track proceedings, in which the investigation is waived or severely restricted (see Table 2).

Unlike the proceedings without trial, these proceedings are not based on consent. These doors are aimed at finding a procedural truth while shortening the length of the criminal process and treatment of the case, according to the French expression, *temps réel*, real-time proceedings.

1. A Proceeding *en temps réel*: The French Comparution Immediate

The Comparution Immediate is not based on receiving consent but on saving time. This proceeding supposes that if someone is caught in the act of committing the offense (*in flagranza*) and arrested, the procedural truth is established. In this situation, investigation can be waived. As noted by the Judge Serge Portelli, the main actors in this proceeding are the prosecutor and the police: “if the public prosecutor conducts the dance, the rhythm is set by the police.”

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98. Montana, *supra* note 26, at 297. *Cabon, supra* note 81.

99. Brunet Bernard. *Le traitement en temps réel: La Justice confrontée à l’urgence comme moyen habituel de résolution de la crise sociale*, 38 *Droit et Société* 91 (1998).

100. SERGE PORTELLI, *Juger* (Edition broché 2011), at 140; “Si le procureur de la république mène la danse, le tempo est réglé par la police”.
Table 2. Proceedings without investigation in Italy and France.

| Alternative Criminal Process | Initiator | Consent focus | Focus on the research of the truth | Sentence Reduction | Limitation |
|-----------------------------|-----------|---------------|-----------------------------------|--------------------|------------|
| FRANCE                      |           |               |                                    |                    |            |
| Comparution Immediate       | Prosecutor| Not a consent issue. Only the prosecutor has the authority to choose this proceeding. The defendant and the victim may postpone the trial up to 10 days to gather evidence. | Material truth     | No reduction     | For flagrant offenses and cases subject to prison terms of 6 months to 10 years. (Offenses committed by minors are excluded.) |
| Citation Directe            | Victims; rarely defendants or prosecutor | The victims may turn to the criminal justice, even when the prosecution has closed the case. The defendant cannot choose another door. | Material truth     | No reduction     | Minor and intermediate offenses. |
| ITALYy                      |           |               |                                    |                    |            |
| Giudizio Immediato          | Defendant or prosecutor | Consent to bypass the preliminary hearing before the trial. The defendant can choose another door. | Material truth     | No reduction     | Cases with overwhelming evidence. |
| Giudizio Direttissimo       | Prosecutor| Decision of the prosecution to bypass the preliminary stage. The defendant can choose another door. | Material truth     | No reduction     | Cases of flagrant delicto, or where a full confession is tendered. |
The Comparution Immediate was introduced in 1983.101 After the reforms following Recommendation of the Committee of Ministers of the Council of Europe in 1987, a number of reforms have expanded its scope.102 Today the Comparution Immediate is also applied to offenses with a maximum sentence of between two and ten years’ imprisonment.103

The possibility to choose this door104 is solely in the hand of the prosecutor. The prosecutor may send a suspect to trial immediately without investigation just after he has been arrested or after a short period of police detention, if the prosecutor considers that the case is ready to be tried.105 The defendant cannot refuse to be tried by the Comparution Immediate. He may only ask for the trial to be postponed for time to prepare defense with his lawyer.

During the trial, the judge will ask the accused a few questions and summarize the charge against him. He may ask a few more questions to complete the investigation on the facts and may summon witnesses. Immediately after the hearing or within a very short time the judge will deliver the verdict. Despite criticisms, the number of the Comparution Immediate proceedings are constantly increasing.106

101. La loi, n° 83-466 du 10.6.1983 portant abrogation et révision de certaines dispositions de la loi n. 81-82 du 2.2.1981, modified by the law n° 2002-1138 of 9.9. 2002.

102. La loi n° 83-466 du 10 juin 1983 portant abrogation et révision de certaines dispositions de la loi n. 81-82 du 2 février 1981. This has been modified several times, notably by the law n° 2002-1138 of Sept. 9, 2002 of orientation and programming for justice. However, a similar process, the flagrant delit, had existed since as early as 1863. La loi du 20 mai 1863 sur l’instruction des flagrants délits, another reform that will extend the scope of the Comparution Immediate, is on the parliament table, http://www.senat.fr/rap/l18-011-1/l18-011-15.html.

103. HODGSON, supra note 47, at 130.

104. The prosecutor may use also another door: the convocation par procès verbal (Art. 394, F. C. pr. Pén.), by which the prosecutor sends a written summons to the defendant to notify him of the date of the hearing. The defendant appears of his own free will. Contrary to the Comparution Immediate, this proceeding gives the prosecutor and the police time to investigate the case.

105. Arts. 394 and 395, F. C. pr. Pén.; HODGSON, supra note 47, at 10. If the defendant is not sent the same day to court, the prosecutor may turn to the juge des libertés et de la détention (liberty and custody judge), who will decide to keep the defendant in detention until the trial, or to release with specific conditions.

106. See the next section, The French Citation Directe. More than 3.5% in 2018, Les chiffres-clés de la justice 2018, French Ministry of Justice, http://www.justice.gouv.fr/statistiques-10054/chiffres-cles-de-la-justice-10303/.
2. The Guidizio Immediato and Guidizio Direttissimo

The Giudizio Immediato and the Giudizio Direttissimo do not cancel the trial, but rather the preliminary hearing.

The Giudizio Immediato is intended for a situation in which the defendant is so sure of his innocence that he is ready to give up his right for a preliminary hearing and may ask for his case to be judged immediately. This proceeding may also be used by the prosecutor for situations in which she considers the evidence compelling. In such cases, the prosecutor may unilaterally, within ninety days of the commencement of the investigation of the crime and after the defendant has been questioned or invited to provide a statement, apply to the GIP to set the matter for trial without a preliminary hearing.

The Giudizio Direttissimo is initiated by the prosecutor in cases where the defendant is caught and arrested in the act of committing the offense (in flagranza), and the evidence is conclusive. In such circumstances, the truth does not have to be found through investigation, and the prosecutor may bring the defendant before the trial judge (Giudice del dibattimento) within 48 hours, for the arrest to be ratified and the matter set for immediate trial, with no preliminary phase. If the judge does not validate the arrest, the file is returned to the public prosecutor; if the judge does validate the arrest, the case is usually tried immediately. Another situation that allows for immediate trial under the Giudizio Direttissimo involves defendants who have made a full confession to the public prosecutor. In this case, the public prosecutor may, within two weeks, directly transfer the defendant to the judge. The Giudizio Direttissimo shows that, unlike the adversarial perspective, the acknowledgment of guilt does not necessarily imply a guilty plea. In such circumstances, the investigation may be waived, and the case promptly transfers to the Court. Moreover, similarly to the Comparution Immédiate in France, only prosecutors may initiate this proceeding.

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107. Art. 453, I. Cod.proc. Pen.
108. In another similar proceeding, the Citazione diretta a Giudizio (art. 550, I. Cod. proc. Pen.): the defendant may be directly committed to trial by the public prosecutor for minor offenses (and not by the victim, as in France).
109. Art. 449, I. Cod.proc. Pen.
110. William T. Pizzi & Luca Marafioti, The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation, 17 YALE J. INT’L L. (1992).
Both of these proceedings represent a visible manifestation of the blend between adversarial and inquisitorial features. Moreover, the consent feature is not limited to a bargain on the issues of the case. It may also concern the process itself. In fact, in both of these doors, the defendant may choose to move the case to the Giudizio Abbreviato or to the Patteggiamento. 111

3. The French Citation Directe: A Special Door for Victims

Like the Comparution Immediate, the Citation Directe is a proceeding without investigation. Yet contrary to the other proceedings, its utilization is not based on a research of efficiency or on saving time. This door is used by victims when other criminal doors are closed, and notably when the prosecutor declines to prosecute a case. In this situation, victims may directly request the defendant, by means of a summons, to appear before a criminal court to answer for the damage caused in small and medium offenses.112

In most of the cases, judges use this process to order the payment of fines to victims, but in a case rendered on January 2019, the judge did not hesitate to order a prison sentence.113

C. Summary: Multi-door Proceedings in Italy and France

After years of reforms and the integration of various criminal doors, the landscape of the French criminal justice system has completely changed. The Citation Directe and the various criminal doors in both France and Italy suggest that these proceedings are flexible and may be adapted to allow access to justice and offer original responses to the concerns of victims or defendants.

111. Perrodet, supra note 26, at 373–74.
112. According to Art. 552, F. C. pr. Pén., the time between the date when the summons is served and the date fixed for the appearance before the correctional court or police court must be at least ten days.
113. Le Procès du cardinal Barbarin, le procès des parties civiles et pas celui du parquet, Dalloz Actualité, 10 janvier 2019. In this mediated affair, nine victims of sexual abuses have turned directly to the criminal court after their complaint against Phillipe Barbarin, France’s most senior Roman Catholic cleric, was closed by the investigation judges. Barbarin was judged by the Citation Directe for covering up the sexual abuse of the victims who were all minors committed by Bernard Prelat, a French priest. In a format of a short trial, in which the victims presented to the court their testimonies, the archbishop was sentenced to a six-month suspended prison sentence for his role in this case. During the trial, the victims had presented to the court their testimonies and expressed the suffering they had to go through.
III. A PATCHWORK IN CONSTRUCTION: BETWEEN IMPLEMENTATION AND DISAPPROVAL, AND PROSPECTS FOR THE FUTURE

Despite a genuine interest of both the Italian and French systems to promote efficiency through the introduction of these different doors and their becoming the main proceedings of criminal justice, various obstacles have to be considered.

In Italy, the utilization of this patchwork of doors is not as high as the number envisioned by the drafter of the Italian code of 1988. One of the reasons has been attributed to the inertia of the stakeholders\textsuperscript{114} and the statute of limitation in Italy, which provides the stakeholders the possibility to avoid the trial altogether when the time limit has passed.\textsuperscript{115}

In France, the evolution toward a diversification of “doors” has reshaped the landscape of the criminal justice system. Nevertheless, despite the development of these pathways, the stakeholders of the criminal justice system have prompted both disapproval and the apprehension of potential negative consequences of the acceleration of criminal processes on fair trial and on the participation of both defenders and victims in the procedure.

A. The Italian Statute of Limitation as a Barrier for Transition

According to the Italian bar association, proceedings that end without trial are a bad but necessary remedy to fight the congestion of Italian criminal courts: “The Italian system has to face the unacceptable length of criminal proceedings, with regard to which the statute of limitations seems to be the only effective remedy for the safeguarding of the defendant.”\textsuperscript{116}

The limitation law, while aiming to increase justice, is nevertheless often used in a manipulative way. Some defendants supported by the advice of their lawyers seem to prefer to rely on “running out the clock

\textsuperscript{114} Thaman, supra note 5, at 378.

\textsuperscript{115} Michele Panzavolta, \textit{Reforms and counter-reforms in the Italian struggle for an accusatorial criminal law system}, \textit{30 N.C. J. INT’L L. & COM. REG.} 557 (2004). Enrico Di Fiorino, \textit{Recent developments in national Jurisdictions: Italy}, Address at the European Criminal Bar Association, \textit{20 Years ECBA 1997–2017} (6–7 October 2017, Palma de Mallorca), http://www.ecba.org/extdocserv/conferences/palma2017/RecDev_diFiorino.pdf.

\textsuperscript{116} Di Fiorino, supra note 115.
to avoid jail”\textsuperscript{117} and stalling the proceedings, including using the right of appeal so the case will be dropped during the regular trial when the term stipulated by the limitation law has passed. They prefer the main door of litigation rather than pursuing a fast proceeding that will lead to a sentence.\textsuperscript{118} Since 2005, 10–13 percent of all criminal court proceedings have been closed due to the statute of limitation. However, the statute of limitation track will soon cease to be an option. After more than two years of fierce political debate,\textsuperscript{119} the Italian legislature has decided to put an end to this snail-paced criminal justice system.\textsuperscript{120}

In an article honoring the thirtieth anniversary of the \textit{Codice Vassali}, Massimo Terzi, the President of the tribunale of Turin explains that the integration of abbreviated proceedings as a part of the ordinary criminal justice system may represent the keystone to confront the actual failure of the Italian criminal justice system.\textsuperscript{121}

\textsuperscript{117} \textit{Italy passes law to stop criminals profiting from slow-paced justice system}, \textit{The Local}, June 15, 2017, https://www.thelocal.it/20170615/italy-has-approved-a-law-criminal-justice-system-convictions-limitations.

\textsuperscript{118} These findings are based on interviews of Italian criminal lawyers in the framework of the JCR-ERC project on judicial conflict resolution directed by Prof. Michal Alberstein. According to the statute of limitation, we start counting the time from the moment an alleged offense is committed (not at the point that the offense is discovered). Furthermore, the time limit is not suspended during all the criminal process against an alleged offender. Finally, a judgment does not become final until all three degrees of the jurisdiction (ordinary courts, the court of appeal, and supreme court) have been exhausted. Suspects are allowed two appeals with hearings that can stretch over months, and until the final court ruling is delivered, the accused is not deemed guilty. Paolo Paracchini, \textit{Statute of Limitations according to Italy’s Government for Change}, \textit{The Unedited} (n.d.), http://www.theunedited.com/reflections/The-Italian-Judicial-System-an-anomaly-unto-itsel.html.

\textsuperscript{119} \textit{Italy passes a law}, \textit{supra} note 117.

\textsuperscript{120} The Orlando reform (from the name of the Minister of Justice, Mr. Andrea Orlando, who has been the promoter of this law) (n. 103/2017) will come into force in 2020. Arts. 158–162 of the Italian criminal code established new rules regarding prescription terms. The first 18 months after an initial conviction will not be part of the limitations period, nor will the 18 months after a conviction is upheld if the defense conducts the case to the final court of appeal. The new law also starts the limitations counter for violent and sexual crimes against minors from the victim’s 18th birthday. For terrorism and mafia cases, a longer period of 15 months will be allowed. Laura Delbono, \textit{La ragionevole durata della prescrizione}, \textit{di. Giurisprudenza Penale Web}, 2018, 12.

\textsuperscript{121} Massimo Terzi, \textit{Trent’anni dall’entrata in vigor del codice di procedura penale di. Lo stato della fase dibattimentale di primo grado dei Tribunali ordinari: analisi e proposte}, \textit{Giurisprudenza Penale Web}, 2019, 2, at 9.
B. The French Fast-track Dominance as Debatable

The evolution toward a diversification of criminal proceedings and the introduction of abbreviated procedures are now integrative part of the French criminal justice system. Yet the countless protests, strikes, and debates of the stakeholders show that this fast-track tendency is far from being agreed upon. The Comparution Immédiate has been severely criticized as sacrificing the search for truth and infringing the rights of the defendant: “we can see the recidivists quickly sentenced to one year prison for a theft of a bottle or a perfume,” “sometimes the same day of the commission of the offense, without investigation, and with inadequate representation.”

The Comparution Immédiate is considered “slaughter-house justice (justice d’abattage)” reserved for petty crime where the defense is reduced to almost nothing. Most of the time, the fourth world parades there, in very poor condition after stressful police custody (garde à vue). Others claim that the proceedings after a guilty plea infringe upon the principle of fair trial: “A guilty plea introduces the principle of a sentence without trial, without due process and without defense.”

122. Art. 390-1, F. C. pr. Pén. Moreover, according to a law passed in February 2019, serious criminal offenses punishable by between 15 and 20 years prison will be soon tried by shorter procedure and not in a full trial. In these cases, the file will be sent to a lower level criminal court, La Cour Criminelle, and not to the Court of Assize (French high criminal court). The main consequence of this reform is that the accused will be judge by judges and not by a jury, therefore the trial will be shorter. Le Goaziou Véronique, La correctionnalisation des viols, QUE FAIT LA JUSTICE, Ch.3, at 75 (2019).

123. PORTELLI, supra note 100, at 140: “on peut voir des récidivistes condamnés très vite à un an de prison pour un vol de flacon de parfum.”

124. Les députés entérinent la loi sur la grande criminalité, LE MONDE, Feb. 11, 2004.

125. This expression was introduced by lawyers during the judicial scandal of Outreau. Antoine Vauchez, Le juge, l’homme et la « cage d’acier », la Rationalisation de l’activité judiciaire à l’épreuve du moment Outreau, in LA JUSTICE AU RISQUE DES PROFANES 28, (H. Michel & L. Willemez eds., 2007). See also PORTELLI, supra note 100, at 140: “this slaughter-house justice which forces the judicial system to botch procedures, to fulfill the pressure of performance expectation, had produce more perverse effect that real solutions.”

126. PORTELLI, supra note 100 at 40: “Les comparutions immédiate sont aujourd’hui une justice d’abattage réservé à la petite délinquance où la défense est réduite à la portion congrue. Le quart-monde y défile le plus souvent, dans un état pitoyable au sortir d’une garde à vue éprouvante.”

127. Marie Dose, Le plaider-coupable répond à un objectif de rentabilité au détriment d’un procès équitable, LE MONDE, May 26, 2004: “Le plaider-coupable introduit le principe d’une peine sans jugement, sans procès équitable et sans défense.”
The website of the French Senate claims that a fundamental debate should be organized regarding this issue and claims: “There is some confusion between the legitimate objective of simplifying the criminal procedure... and the reduction of guarantees of rights, with no certainty that these measures are reflected in real efficiencies for investigations.”

C. Summary: The Patchwork in Italy and France

The aspirations of both the Italian and French jurisdictions to create an effective and prompt justice system, and the aspirations of the public for fair and accessible justice, have yet to find common ground. On the other hand, some claim the purpose of reducing the congestion of court cases has not succeeded, and that the significant number of doors induce prosecutors to pursue cases that would have normally been closed. Thus, the net is widened, and efficiency is not necessarily achieved.

IV. CONCLUSION: MULTI-DOOR CRIMINAL JUSTICE ACROSS LEGAL CULTURES: FROM EFFICIENCY TO PARTICIPATION

A. An Evolution toward Simplified Doors

In assessing the various hybrid doors of criminal justice that have developed in continental Europe over the last few decades, specifically those of Italy and France, it seems obvious that the inquisitorial criminal justice system has become a patchwork of doors, offering a range of accelerated justice procedures as alternatives to the full trial process. These accelerated justice models differ from the full adjudicative model, which captures the idealized form of the quest for justice. Currently, this full trial based on a lengthy phase of hearing in the adversarial method and a long investigation in the inquisitorial system is considered the option of last resort in France. In Italy, the situation is more complex, yet the full trial is adversarial in nature due to the 1988 system transition, and the inclination of

128. Projet de loi de programmation 2018–2022 et de réforme pour la justice: Rapport, http://www.senat.fr/rap/l18-011-1/l18-011-15.html: “Une certaine confusion existe entre l’objectif légitime de simplification de la procédure pénale, dans le souci souvent d’alléger les tâches des services d’enquête, et la réduction des garanties pour les libertés, sans certitude sur le fait que ces mesures se traduisent par de réels gains d’efficacité pour les enquêtes.”
the Italian legislature may lead to a wider implementation of simplified proceedings.129

The establishment of this patchwork of proceedings has changed the criminal justice landscape. While the role of the investigation judges has been removed, the role of the prosecutor and of the trial judge has been reinforced. Adversarial tools as proceedings involving consent have been introduced, while the authority of the inquisitorial type judge has been preserved by both the Italian and French constitutional courts.

This variety of doors in continental jurisdictions, in which judges are involved in different stages of the process, and not only the full trial, corresponds in some ways with a contemporary call for adversarial judges to become more active and to exercise greater supervisory oversight over the power of the prosecutor.130 Judges today are more involved in plea hearings; new research findings suggest that this level of involvement should be studied and regulated accordingly.131

B. A New Justice Landscape

On the road to fast and efficient justice, France and Italy have turned to different patchworks of alternative doors, which blend adversarial and inquisitorial tools.

The flexibility of these different doors, the fact that each of them proposes a variety of goals, may present an opportunity for strengthening the rehabilitative, restorative, and therapeutic aspects of the law, and for allowing the public, the defendants, and the victims to be more involved in these promising proceedings. As Stephanos Bibas asserts regarding adversarial systems: “That means giving outsiders more information, more voice, and more influence, reintroducing key aspects of the redemptive morality play. Instead of remaining outsiders, victims, defendants, and ordinary citizens

129. Terzi, supra note 121.
130. Michal Alberstein & Nourit Zimerman, Constructive Plea Bargaining: Towards Judicial Conflict Resolution, 32 OHIO ST. J. ON DISP. RESOL. 279 (2017); Michal Alberstein & Nourit Zimerman, Regulating Settlement: Mapping the Framework of Judicial Conflict Resolution Activities in Italy, Israel and the U.K., in THE HANDBOOK OF COMPARATIVE DISPUTE RESOLUTION (M. Moscati, M. Roberts, & M. Palmer eds., forthcoming).
131. Sari Luz-Kanner, Dana Rosen, Yosef Zohar, and Michal Alberstein, Judicial Criminal Conflict Resolution, Plea Bargain Facilitations and New Roles of Judges, in THE HANDBOOK OF COMPARATIVE DISPUTE RESOLUTION (M. Moscati, M. Roberts, & M. Palmer eds., forthcoming).
should actively participate as stakeholders alongside insiders”. The flexibility of the new processes and their constant change allows more room for the insertion of new values that go beyond efficiency and case management. In this sense, further research should address each new criminal justice procedure presented in this paper separately and develop guidelines for maximizing the therapeutic potential of each model. These forms are today the mainstream channels of criminal justice: addressing them is crucial for rethinking the goals of the system, and for inserting restorative and therapeutic elements into the routine operation of the system.

The inquisitorial system, according to the framework suggested in this paper, possesses unique characteristics that should be developed and expanded on the basis of the potential that it suggests. This system, at a fundamental level, is inclined toward promoting the search for the truth—including victims in the criminal justice process, encouraging their active participation, and conducting direct and sincere conversations with all parties to legal proceedings. When supplementing this foundation, on the basis of efficiency concerns and through the development of accelerated modes of justice, it is crucial that attention be given to the core fundamental values of the system, while reframing them and their status as necessary. Giving judges the tools necessary to develop this conversation, and to promote responsibility-taking by offenders and healing for all of the participants, may be the next stage in the development of the current institutional complexity of the continental multi-door criminal justice system.

132. Stephanos Bibas, The Machinery of Justice 18 (2012).