LUISS Guido Carli
Dipartimento di Scienze politiche

ICEDD
International Center on Democracy
and Democratization

Actors, Networking and the Rule of Law: A New Puzzle

Daniela Piana

Working Paper
1/2015

LUISS
Academy

LUISS Guido Carli / Dipartimento di Scienze politiche
ICEDD International Center on Democracy and Democratization
Working paper n. 1/2015
Publication date: December 2015
Actors, Networking and the Rule of Law: A New Puzzle

ISBN 978-88-6856-048-5

LUISS Academy is an imprint of
LUISS University Press – Pola s.r.l. a socio unico
Viale Pola 12, 00198 Roma
Tel. 06 85225485
e-mail lup@luiss.it
www.luissuniversitypress.it

Actors, Networking, and Rule of Law: A New Puzzle

Daniela Piana

A Brand New Day in the Transnational Rule of Law

This volume is founded upon a compelling question: to what extent does promotion of the rule of law entail uneven and non-homogeneous legal and judicial orders? This promotion continues in its support of the judicial policies enacted in developing countries as well as by supporting the diffusion of best practices of justice administration in advanced democracies. This second stream aims to foster the modernization of the judicial sector by promoting the diffuse adoption of IT-based systems of case filing and case management, injecting into the court management tools inspired by a user-oriented approach, and more generally enhancing the managerial capacities of the judicial offices (Pauliat, 2007; Frydman, 2012). This comprehensive process of policy change stands as the most evident outcome of a new way of conceiving the rule of law, which one can word as an output-oriented approach as opposed to a rule-oriented one meant as a multi dimension "institutional ideal" combining output-oriented dimensions with rule-driven dimension. Otherwise said, the rule of law does not refer only to the rule-based behavior as opposed to the rule of men, it encompasses also behaviors and strategies aiming at ensuring the efficiency, the effectiveness, and the output legitimacy of those institutions that embody the rule of law principle.[1] Despite the wide consensus this approach raises, this book tries to dig into the deeper consequences of the spectacular wave of international and transnational policies that this conception of the rule of law triggers. Moreover, as this process goes hand in hand with the rise of judicial networks, a key point of the research presented here is the following: actors have become involved in a comprehensive and cross-borders process of rule of law promotion and implementation. To what extent has this "method" turned out to be capable of provoking perverse or, at least, non-intentional negative effects? Authors are in fact asking a somehow key question, both for citizens and for institutions: *is it possible that the promotion of the rule of law jeopardizes the homogeneous enforcement of the fundamental rights of citizens and stakeholders, i.e. the right to an equal treatment before the judiciary*?

This question is answered starting from a deep and multi-level analysis, whose conceptual and theoretical center is represented by agency. The core thesis of this book can be summed up as follows: actors are prominent and critical factors in the adoption as well as in the implementation of

[1] This is the reason with the expansion of the rule of law promotion in the EU that the rule of law is combined to the "quality of justice" (Piana, 2010, ch. 2).

the rules promoted in the large variety of strategies and actions undertaken by international and transnational organizations to promote the rule of law and the quality of justice. The empirical validity of this statement increases in those organizational and institutional contexts where the mechanisms of hierarchical control—both political and professional—are weaker and where the judicial systems display a loose pattern of internal ties and intra- organizational links.

To state it differently, we put forth the hypothesis according to which *actors play a bigger role where institutions are weaker and the mechanisms of intra- organizational control are looser* (Weick, 1976; Sarat and Scheingold, 2005).

Moving from this general assumption, the authors approach a salient issue in contemporary politics: the role played by judicial networks in the overall process of rule of law implementation within the European area. This notwithstanding, this volume is not about networks *per se*. It focuses rather on the strategies, the instruments, and the resources that actors draw on, build, exchange, and expand through networks. This means that the subject of the volume is more accurately *networking*, i.e. the activities carried out through judicial networks. It is first and foremost for this reason that this volume firmly distances itself from the current analysis of judicial networks whereby networks are conceived as mere tools of socialization, whose significance in the transnational processes of policy making can be appreciated by observing the cultural change of judges and prosecutors that become members of these networks (Checkel, 2005). Some scholars hold that socialization triggers processes of change, which have an impact via culture on judicial behavior. We do not deny that, among other factors, to some extent socialization also takes place as a spill-over effect of networking activities. But we do not assume "socialization" to be the key mechanism by means of which transnational norms—hard and soft —impinge upon the behavior of judicial actors. This point is developed in depth in this chapter and the next. This book also steps back from a purely descriptive approach to judicial networks. Rather, the following pages trace a path toward an *explanatory framework*, which aims to disentangle those factors that, at different institutional levels, play as concomitant causes. These factors, combined, result in institutional changes, both formal and informal in their own nature. By this means, the combination of actors and new arenas—such as those represented by transnational institutions where networking activities are promoted and consolidated—facilitates the production and distribution of cognitive and political resources that can be used in the domestic context to promote changes. None of these causes are here conceived as *deterministic mechanisms* pushing or pulling judicial behavior. We always consider the context—comprising legacy, political and cognitive resources, organizational boundaries and opportunities—as an intermediating factor bridging macro and micro variables, namely, between structure and agency, norms and actors.

As already stated, the fundamental question this work wants to address is something of a paradox, i.e. the large number of non-intentional consequences originated by the bulk of activities carried out by IOs and NGOs to promote the rule of law and the quality of justice undermining the traditional pattern of rule of law.

Why does this create a paradox? There is a simple reason: the promotion of the rule of law, which is embodied in the multiple, differential, and polyhedral activities of the rule of law promoters, seems to create an extremely uneven, in some cases patchy, pattern of judicial governance. Rules, procedures, routines, practices, and policies are run differently, not only from country to country, but also from one sub-national area to the other and eventually from one court to the other or from court *y*, headed by the chief justice *x*, and the same court *y* headed, only few years later, by the chief justice.

Therefore, both the promotion and the enhancement of the rule of law seem to be capable of triggering institutional changes without necessarily entailing the change of the formal rules that govern the judiciary. We might well observe a judicial system where the formal mechanisms of judicial appointment, promotion, and evaluation of judges and prosecutors remain untouched whereas, in the meantime, the practices of court management, of case filing, of users' communication, are so deeply and widely transformed to change from the "within" the judicial governance as it is put into motion (Piana, 2010, 2012).

This aspect is not the only critical point. A further point is worth recalling. Actors involved in the promotion and diffusion of norms and principles related to the rule of law seem to be protagonists on the forefront of an extremely variegated pattern of rule of law implementation. From t0 to t1, from one country to the other, from one institution to the other, the rise of agency as opposed to the rise of norms and structures seems to mark as a dominant feature the European area. With regard to this, a supplementary difficulty arises. We no longer live in a world where the same territorial and functional boundaries hold for the creation, the implementation, and the monitoring of laws (Priban, 2007, 2012). The strict link that once tied up a governed territory, a ruled society, and their legal authority has been thoroughly broken and from that breakthrough a multitude of plural and non-pre-ordered ensemble of norms has emerged, as if blasted from within the traditional modern order.

These considerations impact also on the manner in which *judicial governance* needs to be conceived.[2] In a state-centered order, where the judicial function is legitimated to the extent that it complies with the legal norms, the judicial governance can be designed to ensure the capability of the courts to enforce the rights of all members—but only those resident in the State—of society. The key point of such a system of governance is the impartiality of the judiciary. Legal certainty and predictability are pivotal. Judicial decision making, despite the differences that exist between the cases brought before courts, were required to comply with a uniform, homogeneous normative order (MacCormick, 2007; Palombella, 2009). Any point in the national territory, and, consequently, any individual living there, fell under the same rule and expected to be ruled in the same way as anywhere else, and therefore any other individual, living in the same State.

Judicial governance and the rule of law therefore are tied up in a strict and compelling relationship. It is because of the judicial governance that the rule of law is made possible. It is because of the rule of law that the authoritative allocation of values that any court is in the position to make is legitimized.

Two macro-scale phenomena have challenged this system (which has been established with the Enlightenment and has deeply marked modernity). The first is the fragmentation and the expansion of normative pluralism (Walker, 2003) featured in our contemporary world. Comparative political, and socio-legal scholars engaged in scientific research activities have already highlighted the multiplicity of possible institutional settings suitable from the point of view of the rule of law principle. The historical development of European States, to narrow our reasoning to a fairly homogeneous area, brought about a number of different models of judicial governance, spanning from a self-governed judiciary to a judiciary headed by the Ministry of Justice. Governance, in this

[2] All institutional arrangements set up to ensure judicial and prosecutorial independence, for instance, belong to the broad empirical field referred to as the concept of "judicial governance": they include judicial appointment, career promotion schemes, judicial evaluation and mechanisms of disciplinary control, judicial ethics, and judicial training. On top of this, one should recall all rules incorporated into the civil and penal procedural codes, which draw the borders of the legitimate actions judges and prosecutors can undertake under certain conditions. See Voigt, 2005; Russell, 2001; Ginsburg, 2003; Kosar, 2010).

context, takes on a broad meaning, covering several institutional and procedural dimensions, all of them connected with the rules, values, and normative inputs which provide a common framework whereby adjudication and prosecution are carried out.

The second phenomenon which is worth considering here as a macro-scale factor challenging the modern system is the outbreak of an international discourse appointing court administration and court management as pillars of the rule of law. Some scholars have labeled this process as the expansion of the performative approach into the law (Garapon, 2010; Priban, 2012; Piana, 2012). The thesis shared by these scholars is the shift from a procedure-oriented legitimacy featured by the judiciary (judicial decisions are legitimate to the extent they comply with the norms and result from the pure application of legal procedural codes) to a performance-oriented legitimacy (judicial decisions are legitimate to the extent they comply with standards of efficiency and effectiveness).

Without an efficient, transparent, and accountable management the rule of law would not be considered fully and properly implemented. Therefore the focus of policy makers has moved from the macro level—i.e. the national judicial system—to the level of the judicial offices, where the practices of court and prosecutor administration come under the spotlight. In other and more synthetic terms, judicial governance today means a multi-level concept, ranging over the governance of the judicial system and the governance of the judicial offices.

Promotion of the rule of law incorporates this new facet by promoting highly developed blueprints designed to improve the organization of the judicial offices and drafting multiple checklists to guide judicial policy makers in their reform. Observation of this variety of court management schemes, IT tools, initiatives aiming to ensure that a good service is offered to citizens, human resources management, in-service training, etc. finally arrives at the following question: does the "networked rule of law" correspond to the primacy of the law as it is traditionally conceived? Does it correspond to an order ensuring the equality of citizens before the law regardless of their location within the European space? is the networked rule of law an institutional order in the classical, traditional sense of the word? Or rather are we facing a new order which looks like a compound, and not necessarily even, order? it should be noticed at this point that the equality that is somehow entailed by a multi-dimensional rule of law, which encompasses both rule driven and output oriented approaches is itself compounded. It is not simply a matter of ensuring the equality of citizens before the rules – i.e. the laws – the equality should be also ensured in terms of equal response offered to citizens by those institutions that are vested with the task of making the rule of law into an institutional practice (among them, specially the judiciary).

Networking the Rule of Law

This volume engages in this debate by singling out the different components of this theoretical puzzle, and then tying them together again in the final chapter. We are going to focus on three components: the law; the rule; the network.

Our common sense is strongly influenced by the historically embedded idea according to which the rule of law, being related to the law, should be handled by legally binding mechanisms and institutions which have the legitimacy and the authority to make the law and enforce it in a stringent and compulsory manner. Therefore it is hard to see how the rule of law can be a suitable object for networking.

For this reason, "networking the rule of law" might well sound like an oxymoron to the reader.

In fact, the rule of law is commonly meant as both an institutional ideal—therefore no need to make it work through a "net"—and a distinctive feature of constitutional democracies. Consequently, in order to refer properly to the process of "networking the rule of law" one needs to portray three faces of a complex and interdependent conundrum. The first face appears in the definition of the rule of law. Which kind of rule of law is networked, i.e. is conveyed by means of a non-hierarchical—or not necessarily hierarchical—structure of procedures, mechanisms of rule making and rule enforcement? in those territorial contexts where the law originates from a range of legal and pre-legal (i.e. cultural) sources, the definition of the rule of law as an object which can be carried across borders—for instance across national and institutional borders—is already in itself a political goal. The second face shows that the word networking is somehow misleading. When one thinks about the activity of networking one might have in mind the very fact of transmitting inputs in a system of governance where the relationships between the hubs of a vast net are located at different levels and are represented by individual (micro units) as well as by collective actors among whom no hierarchical order is pre-set. Third and last, but by no means least, is a new dimension of the rule of law, which consists of non-binding norms, mostly made of soft laws and standards.

These three points pose the puzzling questions raised by contemporary reality to the attentive view of a curious citizen. Are citizens who move across domestic borders equally protected under the rule of law of the European Member States (MSs)? What is the rule of law as minimum standard shared by all MSs? is there any rule of law privileged promoter or are we in front of a multiplicity of rule of law promoters? And eventually if this is the case do mechanisms of mutual learning and policy transfer exist which ultimately ensure that future EU citizens will enjoy the benefits of a commonly built rule of law?

The claim we make in this introductory note is that in the European Union the rule of law is an umbrella under which a variety of policies coexists. There, policies are run according to a top-down as well as to a bottom-up pattern of rule making and rule enforcement. actors involved at different stages and levels in this complex pattern of rule of law promotion within the European Union are predominantly acting through judicial networks. These, as the reader will be told in the second chapter, are transnational networks (TR-NTK). This differs from international settings since they do not necessarily originate from the inter- governmental agreements of States whose institutions are represented within the networks. What are judicial networks? European judicial networks did not exist when the Council of Europe and, slightly later, the European economic Community were created. otherwise judicial cooperation was not sought other than to create stable conditions for inter-governmental cooperation and thereby ensure peace and economic floridity. Since then the entire world picture has changed dramatically. The quest for fully fledged cooperation within the judicial field has become one of the pillars of the political agenda endorsed by European countries at the edge of the new millennium. Several events have marked this turning point: the enlargement of the European Union toward post- communist countries, these latter entering into a process of democratization and Europeanization; the end of the Cold war which was the drive behind creating completely new conditions for the EU to work and function, both inside and outside; the rise of new challenges for the international order, such as terrorism and the waves of migrations and crimes which were to take on an increasingly cross-national dimension. Inside the countries a process of de-structuring and re- structuring society pushed for a new quest for justice: cultural and social conflicts, which were to be settled by means of extra-judicial mechanisms—included social control—were now lodged, in the form of a case, at the courthouses. The overloading of judicial

institutions started to be a topic debated not only by experts by also by the public, in the media, in politics.

Today, if a European citizen enters one of the rooms located in Strasbourg, on the other side of the road cutting across the European quarter between the European Court of Human Rights and the Council of Europe, she will observe a number of national representatives sitting around a large, semi-circular table discussing issues related to the rule of law, the quality of justice, presenting experiences or listening to experts and scholars in public administration, comparative law, sociology, and political science. National flags waving outside remind citizens and visitors that one day decisions made here need to be brought home and made into institutional and organizational practices.

All these empirical reasons contribute to the creation of a common understanding in the EU: justice is key to the well-being and the quality of life of EU citizens. Consequently the promotion of a reliable, homogeneous, and predictable legal environment where the primacy of the law is ensured gains a "top priority" position in the political agenda of the institutions. To be sure, Europe is not experience this phenomenon in a vacuum. For decades, the rule of law promoters have seemed to live in a fairly promising era. The echo of their policies expands across domestic borders and the legitimacy of their commitment to set up proper institutions pivoting on the constitutional principles in nascent democracies looks somehow undisputable. More realistically—and presumably less enthusiastically—the large spectrum of policies aiming to promote the rule of law worldwide—a heritage left over from the importance gained by international actors in anchoring new democratic regimes or in preventing potentially authoritarian regimes to take the road of the authoritarianism—brought new emphasis to the inquiry carried on ever since by political and legal theorists on the meaning of the rule of law. To radically simplify a much more complex story, the promotion of the rule of law might be conceived as an institutional experiment, which tests the empirical adequacy of our theories on institutional building and thereby helps understand better the deep nature of the concepts we use to grasp the core qualities of the institutions we want to describe when we refer to constitutional principles.

Who are rule of law promoters? And moreover which organizations, which configuration of the political and social power should we have in order to fit the core qualities of the rule of law?

In this book the focus of the analysis is put on actors and, more specifically, on "change agents." Change agents are those actors which are strongly committed to provoke and to steer processes of change. We draw inspiration from the use made of this concept in Morlino and Magen (2008), where the concept of the change agent (which comes from a earlier definition of Finnemore and Sikkink, 1998) features a highly intensive preference for change. From the point of view of the concept of operationalization, a change agent might be driven by a myriad of motivations (reasons) ranging from her expectations of professional upgrading to her idealistic engagement in a policy approach, comprising also office seeking and rent seeking motivations as well. Whether an agent fits one of these motivations is a question which should be answered on the basis of empirical research. The concept is abstract enough to cover different options of motivations and preferences. What is important in our analysis is the levels of governance and the institutions through which change agents act. In order to support her motivation to promote change and to steer the process of change accordingly a change agent needs resources, which can be of any kind: material (financial resources, for instance), cognitive resources (an experienced agent can be better situated than a non-experienced one), communicative resources (if a policy needs the support, the broad public communicative resources may play a crucial role in promoting it), and political resources (which

stem from the position the agent has in connection with the political elite or any other type of elite).

Resources are not given—at least not necessarily. Change agents can gain resources via participation in different institutional actions and programs. This results in their empowerment. A footnote is worth adding here: empowerment is relevant to individuals and is considered as a transformation process that affects individual capacities to act. A hidden premise stands at the base of this way of reasoning. Change processes are costly; they need time, legitimacy, capacity, ideas, connections. And once they are launched, they demand again time, legitimacy, capacity, ideas, and connections to make sure that they will reach the promised goals. Finally, this never actually happens. Change processes are open processes by their very nature. Therefore, the expected goals are always different from the goals actually reached. This is a strong point in favor of a number of accountability mechanisms which force change agents to be responsive and responsible for what they do, in particular when they need to adapt their strategies or to redefine their goals. This aspect will be highlighted in the concluding chapter.

To go back to the levels of governance and the institutions which represent different context where change agents can play, we need to depict this reflection in more detail.

As we will explain in the first chapter, in a traditional institutional setting, such as the one featured in a modern State, change agents are located at the apex of the public institutions, at the interface between politics and administration. They play as brokers of new ideas and solutions which, once agreed by the political elite, are consequently applied with hierarchical mechanisms of rule enforcement. The lowest level of the bureaucracy is not allowed to play as change agent. In this model inputs for change come from the highest level of the pyramid, which is politically—electorally, in a democratic State—accountable.

Contemporary politics performs in a radically different way. Inputs to change organizational practices adopted in the public sector come from a variety of sources, located at different levels of the systems of governance and displaying different rationalities (public or private ones).

In the judicial sector things are made even more complex by the coexistence of two different types of input: legal and non-legal ones. Legal norms descend from the legal system, which nowadays features a highly marked transnational dimension. In the case of the European Union, the primacy of EU law within the Member States triggers an unpredictable, revolutionary, and still under-explored process of change in the national jurisdictions. The flow of legal arguments, norms, jurisprudential interpretations across the national borders of European countries in strict relationship with the activity of judicial networks is not the core subject of this volume (but see Bobek, 2013; Claes, 2006; Groppi and Ponthoreau, 2013 for a critical approach to this phenomenon). A slightly different, but related phenomenon will be better addressed and developed in the third chapter of this volume, where we debate the case of the transnational evaluation of the judicial review mechanisms adopted in EU Member States (especially in new members).

However, what should be mentioned here is the intertwining of national and supranational jurisdictions as one of the drives for legal and judicial change. This entails that rather than the legislative being the unique source of legal changes, in a post modern setting the judiciary eventually becomes the crucial source of legal and judicial changes, first of all by means of the jurisprudential developments.

Changes observed and explained in this volume do not exclusively concern the legal norms. It also entails a shift from a purely domestic law-centered approach in the judicial training, and in some cases in the career promotion scheme, to a more Europeanized approach. Such a shift varies in intensity and in durability from one domestic system to the other. However, overall one can

safely argue that judges and prosecutors are nowadays referring to a legal system which covers transnational norms as well as foreign (from other domestic jurisdictions) norms: "the supremacy principle which establishes the primacy of EU law throughout the whole of the EU, even overruling domestic law, has represented for more than three decades a formidable power pushing through the integration of radically different legal systems (Piana and Guarnieri, 2012, p. 139; see for a broader analysis Arnull, 1994; Dehousse, 1998).

Not only does the process of transnationalization of the law entail an increasing transnationalization of the processes of law-making and a profound transformation of the process of law enforcement (Garapon, 2010). It also triggers processes of change due to the high salience of domestic systems to external inputs and, consequently, to the capacity of domestic judicial offices to enter into a communication with other similar organizational units (courts and public prosecutor offices situated in different, but still European jurisdictions). Among the many aspects of these phenomena of radical change experienced by judicial institutions, dialogue among courts has proved to be one of the most effective mechanisms of institutional change put into motion (Alter, 2000; Goodwin-Gill and Lambert, 2010).

Horizontal interactions among which the dialogue among courts (Slaughter, Stone and weiler, 1998), the transfer of legal practices and reasoning (Scott and Trubek, 2002), and the networking activities bridging domestic institutions once upon a time enclosed in their domestic borders seem to trigger further processes of change. Nowadays more than twenty judicial networks are active within the European area, either because they relate to the political action of them involves the participation of at least 28 national representatives[3]—if not 47 when we consider the Council of Europe's judicial networks.

A spectacular growth of networking activities has been left almost completely unexplored. Why? Because judicial networks are a slippery terrain to move on, with empirical research design in mind. They do not enjoy in most cases any legally binding power, their positions and policy statements are most of the time differentiated if not divergent in some—not fully insignificant —cases. They do not have any body awarded with enforcing competences.

Therefore, judicial networks need to rely on the enforcing will and capacity of States. And finally, what is the product of these networking activities? Recommendation, blueprint, checklists, policy guidelines—are we simply referring to these? Or is it the case that judicial networks enter into the complex and multiple causal chain connecting transnational levels to sub-national levels of the judicial governance in a significant way? And if this is so, which mechanisms of change are at work?

In short, here, we will summarize what this volume is going to present in precise detail; judicial networks are instruments, institutional tools, created to respond to a functional need shared by some—not all—domestic judicial institutions and more likely some representatives of them: there is a need to create new arenas where fresh sources of legitimacy are available to judiciaries. Such a legitimacy can be instantiated in several ways, such as: 1) gaining the approval of a transnational—i.e. apolitical from the domestic point of view—epistemic community in cases of contested judicial reforms; 2) referring to transnational standards to strengthen the domestic representation of the judiciary; 3) referring to a transnational source of norms when the European Commission is in need of asking an EU Member State to reshape its judicial reforms or to respect the European directives

[3] Most of them have been created during the enlargement toward the CEECs. They will be composed of 28 members (in the case of EU networks) because of the entrance of Croatia to the EU on July 1, 2013.

in the field of civil and penal judicial cooperation (Leaf and Alegre, 2004; Jimeno-Bulnes, 2010; Guild and Geyer, 2008).

Hence, the rise of judicial networks connects directly with the reshape of the balance of power between the EU and domestic judicial systems as well as with the rebalancing of the power and competences within the national judicial governance. More precisely we will disclose how and why change processes can take place within some judicial offices and, in doing so, they can more or less intentionally reshape the capacity of the center—either the High Judicial Council or the Ministry of Justice—to set down the standards of quality of justice within the domestic legal space of the EU members.

The pages that follow show the reader that judicial networks perform as multi- functional bodies:

- they create an arena to discuss domestic judicial policies;
- they develop a transnational policy discourse on judicial policies;
- they set up standards of quality of justice;
- they award recognition of highly performing country or badly performing country and accordingly allocate moral costs; and
- they empower national representatives that participate in the meetings and seminars organized by judicial networks.

The reader can conclude from this list that this book, which considers the judicial networks and investigates the process of networking the rule of law as a complex, multi-layered process whereby actors have the opportunity to adopt, promote, diffuse and learn rules related to justice administration, is about judicial politics and, at a fundamental level, a book about power.

Research Design: Hypotheses, Cases, Data

The research question addressed in this work can be phrased as follows: "Have the policies of rule of law and quality of justice promotion ended up with a convergent pattern of justice administration? which forces are driving the processes of change triggered by these policies?"

We deem the European Union as a profitable and promising terrain for answering these questions. Several reasons explain this choice. First of all, the European Member States share a common framework of fundamental rights and are all subject to the jurisdiction of the transnational courts, especially the European Court of Human Rights. Second, in the last two decades, the European Union has made an unprecedented effort to promote the rule of law in incoming members—in the Central and eastern part of the continent and in the Balkans—and to support the quality of justice in all members, included the old Member States. Of all the different examples of regionally integrated systems we can observe today in the world, none can witness such a highly intensive and massive commitment in the justice sector. Third, and most importantly, the European Member States display different national legal cultures and feature different models of judicial governance. This means, in a nutshell, that they have followed different paths in bridging the institutional ideal of the rule of law and what we can call "rule of law in action." Therefore, the institutional and organizational differences that do exist among the States are variables that should be taken into account by a comparative design aiming to test if the rule of law and quality of justice promotion leads to a pattern of convergence.

Therefore, the *explanandum* considered here is the rule of law in action. By saying this, we refer to the well-known distinction made between law in books and law in action. The latter can also be

defined as the assemblage of all organizational and institutional norms, practices and routines, aiming, altogether, to ensure an impersonal and an impartial application of the law for EU citizens. This is what happens in practice. If a European citizen travels across the EU and, for the sake of our argument, interacts with at least one judicial office in each EU Member State, she will sense several differences which depend not only on the differences displayed by civil and penal procedures, but also on the different strategies of division of labor, human resources management, training, communication with the public, etc. that have been adopted punctually in European judicial offices. A myriad of local practices, partially institutionalized and partially at the early stage of experimental attempt, mostly aiming to improve the administration of justice with a user-oriented approach, are now vibrant and living organizational material existing all across the EU without any homogeneous shape if observed at the systemic, i.e. macro, level. At the same time, the policies promoted in the incoming members, designed on the basis of a "European conception" of rule of law, have been implemented with a context-sensitive approach. Not only can a citizen easily detect the differences in the capacity of the courts to enforce her fundamental rights dependent on where the court is located but also the same citizen can sense the difference between the judicial governance adopted before the country joined the EU and after membership has been obtained.

Therefore, the *rule of law in action* does not refer to the formal setting of legal systems nor does it refer to the formal definition of competences, as it comes from the constitutional and the legislative texts adopted in the EU Member States. We are here speaking of the rule of law in action as it comes out of the judicial governance put into motion in the daily activity of the courts and the public prosecutors across the domestic borders of the EU. Of course, this would refer to a broad and multiple phenomenon, which covers almost all policy sectors as long as each of them impinges upon the enforcement of fundamental rights. In order to narrow down our empirical field and analyze it in more depth the choice made joins a flourishing research agenda, i.e. the study of the judicial policies and the transformations undergone by the judicial institutions in the contemporary age. The rule of law in action is therefore what results from the rule of law as an institutional idea once it is put into motion through the vast range of institutions among which the judiciary play a key and crucial role. Observing the rule of law in action means observing the output of the long and complex process by means of which the rule of law is put into motion. For if the rule of law is nowadays deemed multi-dimensional, scholars and policy makers cannot any longer consider only the rule-driven rule of law, but need to observe also the output oriented rule of law. Accordingly this volume is concerned specifically by the rule of law to the extent and in the way it refers strictly to the judicial sector and the justice administration.

The process we are going to reconstruct is the "rule of law networking." This phenomenon started in the EU in the late nineties, triggered by two distinct, but progressively interrelated vectors. The first consisted in the promotion of legal and judicial guarantees of judicial independence as the most viable solution to entrench the rule of law in action into incoming Member States. A whole range of policies, ranging from the design and implementation of the constitutional courts to the rewriting or the replacement of civil and penal procedural codes, has been adopted under the auspices of the European institutions. With the passing of time, once the institutional guarantees of judicial independence were considered to be in place and the fundamental rights to a fair trial ensured by proper rules included within the legal codes were deemed to be sufficiently protected, the concern of the rule of law promoters—namely of the EU and the Council of Europe—moved away from the *grand politique* and started to incorporate into the policy focus the court administration and all the conditions that will have made the judiciary

work efficiently. In most cases, the support provided by international and transnational actors was instantiated by the creation of a wide range of financial incentives which made the option of the judicial reforms profitable for the domestic elites. The financial programs and the so-called financial conditionality thus joined the membership conditionality and created a set of incentives for all domestic actors who wanted to seize the opportunity offered by an external actor to reform and to change the court system. Surely the system itself—by supporting financially the transfer of best practices from old Member States to incoming members as well as by supporting the learning by imitation and the circulation of ideas—the EU and the Council of Europe set up favorable conditions for the socialization—or rather the -socialization—of the domestic judicial actors and the legal experts. However, as we are going to show, this socialization did not happen homogeneously. Rather it took effect later when the transfer of ideas and the internationalization of new frames and ways of doing things in the judiciary fit with the domestic context. None of the judicial actors picked up new ideas from the external environment—which is to say also through the judicial networks—if these ideas did not help them to gain reputational benefits or professional advantages at home.

The dynamic of the process as a comprehensive phenomenon arising from the combination of strategies adopted by actors at different levels of governance is fairly complex. Several consequences have been originated thereby. What is "networking"? "Networking" is considered to be a complex process whose components can be measured and analyzed once they are singled out and broken down into problem framing, rule making, policy diffusion, and monitoring. Problem framing, rule making, policy diffusion, and monitoring are four sub-processes connected with a not-homogeneous, uneven, complex, and somehow patchy change of the pattern of rule of law (as the rule of law is implemented) across the EU.

Here it is promising to introduce a further distinction. The strategies adopted by actors did not aim to intervene in the judicial system with the same goal in mind. Policy objectives appear to be differential and consequently to entail a different logic of action.

In most cases, actors tried to adopt new rules, including the concept of both hard and soft law. The rule adoption is a strategy governed by a logic of action where external pressure plays a key role. Despite the differential reaction of incoming Member States to the conditionality exercised by the EU and the Council of Europe, one can say that under the effect of external pressure the acceding countries adopted new rules fitting with the general principles and standards supported internationally and transnationally. However, rule adoption alone does not cover the entire spectrum of the process of networking the rule of law. A further step should be considered, which is rule implementation. Here the role played by domestic judicial actors emerges as critical and in most cases almost dominant. Without the will of domestic judicial actors to put into motion the rules adopted, none of these rules has become a permanent part of the judicial governance. Finally the rules implemented in only a few cases have been transformed into part of the frames accepted and endorsed by judicial actors to regulate their own behaviors. The transformation of explicit rules into implicit regulative behavioral principles needs the intervention of processes of training and cultural reinforcement that in similar cases took place across borders, between domestic arenas and transnational ones.

Networks enter into this broad phenomenon as *arenas* to begin with, even though in those cases where judicial networks are recognized by external institutions—such as the European Commission—they act as if they were unitary actors. This "as if" is of the utmost importance. It means that once the recognition of an external actor ends, the judicial network will not necessarily

act as a unitary actor. The nature of a unitary actor is, consequently, not intrinsically of the network. It can emerge under certain conditions.

To develop a comprehensive framework and to single out the explanatory factors we need to refer to two different, and still related, strands of research. The first, which dates back to comparative political studies of the seventies and eighties carried out on Latin American and Southern European democratization processes, tries to disentangle the relative weight of domestic and international factors in shaping the patterns of change featured in democratizing countries. Here the main point concerns the way domestic and international factors intervene and trigger the process of change: what causal role do they play? Are they concomitant factors or rather is the domestic dimension dominant whereas the international influence comes in only to the extent it makes sense for national players? Some scholars have argued the opposite, that international pressure, also created by means of comprehensive processes of institutional imitation and isomorphism, drove national institutional changes and somehow created opportunities for these latter to converge. Some others have rather been inclined to support a different view where national policy makers and elites managed to exploit and take benefit from international resources, such as financial programs, legitimate norms and values, and ended up by being influenced by international conditionality only to the extent that this latter impacted upon the expected pay-off of the different options and strategies they had at hand to undertake the national reforms.

Here comes a very important point in our analysis. What is a change agent? Change agents or "norm entrepreneurs" (Finnemore and Sikkink, 1998) could be defined as "domestic actors that mobilize to pressure decision-makers to adopt (…) rules; they also engage domestic decision-makers in processes of persuasion and social-learning to redefine their interests and identities" (Magen and Morlino, 2009). This broad definition should be narrowed in order to fit with the empirical field analyzed herein. This can be done by referring to the following empirical observation: transnational non-legally binding norms are often transferred into the organizational unit by individuals (Piana, 2007; Radaelli, 2005) who play the role of normative entrepreneurs, i.e. catalysts of organizational and cultural changes (Kelley, 2004; Finnemore and Sikkink, 1998). They often bridge between exogenously originated norms and their own working place, their own organization (Piana, 2009). These actors are located at the micro level, i.e. within the judicial offices, either the courts or public prosecutor offices. Most of the time they are the chief justice or the chief public prosecutor, but this is not necessarily always the case.

From this point of view judicial networks work first of all by mean of participative actions carried on in transnational arenas with which change agents can be connected. exchange of expertise and knowledge is also part of the activities carried out by judicial network members. Therefore judicial networks are instrumental to communication, which is a key mechanism in getting national public officials involved in a common activity, to help them share common views, ideas, and frames. Moreover, judicial network actors can undertake other types of activities in which norms and values are spread out, shared and transmitted: most are training activities. Training may take place in transnational arenas, such as ERA (Legal Academy of Trier) or EIPA (European institute Public Administration) or may be offered at the national level by means of programs that incorporate transnational standards and policy guidelines. Also deontological codes, which are nowadays widely adopted and taught to young public officials through initial and in-service training, may reflect norms set down by actors through judicial networks.

Previous research has showed that change agents are not necessarily members of judicial networks. They may be inspired by the frames, the norms, the policies, and the routines shared by

representatives of judicial institutions through the communicative activities running through the judicial networks. This inspiration can come in direct or indirect ways. Direct, because in order to legitimate an initiative entailing organizational changes a change actor should refer to a not contended and not contestable source of norms. Indirect, because in some cases external sources of norms etc. are used as sources of legitimacy by experts appointed as leaders in projects aiming at promoting organizational innovations—fitting with transnational inputs—or appointed by external agencies which run projects of organizational innovations under the financial programs set up by the European Union.

This debate, which is now enriched by scholarship developed around the European Union and the EU conditionality, is helpful for our purpose since it offers an insight into phrasing the first few competitive hypotheses:

HP1: Domestic changes are determined by external factors; if external factors change, domestic policy frames, norms, policies, and routines change accordingly. Alongside this view, we should expect a fairly homogeneous change in the judicial governance at the national level once transnational frame, norms, policies, and routines of rule of law are changed as well.

HP2: Domestic changes are determined endogenously; if external factors change, domestic policy frames, norms, policies, and routines change only if change agents are in the position to take benefit from a compliant strategy of reform. Alongside this view, we should expect that in different countries and in different times, but within the same country, a differential pressure from the external environment does not produce a change. To check this hypothesis we need to see whether in cases of equal expected pay-off and equal external inputs, domestic players behave differently.

The second debate which provides a sort of reference point for our analytical reasoning is the debate comparing the empirical adequacy of culture-based versus agency-based explanation. Here we touch upon a classic puzzle in social research. Is the social actor determined by culture? Or is she ultimately free to act and therefore the reasons to act are causal factors explaining social processes?

In the context of our empirical research, this very abstract puzzle can be phrased as follows. We have two competing hypotheses:

HP3: Changes are due to the degree of fitness in terms of legal and judicial culture between the transnational discourse and the domestic one. Therefore, in cases of highly fitting countries we should expect more intensive and diffuse changes following the guidelines produced by means of the communicative, cognitive, and deliberative activities run within the judicial networks (as arenas).

HP4: Changes are due to the capacity of change agents regardless of the degree of fitness featured by the cultural environment where they are located. A high misfit can create a barrier, a reason to resist, but it is not, on its own, a sufficient reason to explain changes undertaken within the judicial governance. Therefore if this hypothesis holds true we should expect that the existence of powerful and capable change agents triggers a process of change which might be eventually similar in its pattern across different countries.

A third scholarly debate we consider here is the one that stems from an epistemological dichotomy agency versus structure. What is the driving force of change? To what extent does agency become pivotal in highly institutionalized contexts, as the judicial contexts are?

In order to frame our research in this debate we have considered a two-level research design, taking first into consideration a system where the center is weak, i.e. Italy. We then took into consideration two big organizations which have two similar cases and to assess whether agency becomes a leading drive of change regardless of the territorial location, the function of the organization (one is a court, the other is a public prosecutor office). The second step of our analysis is to compare a weakly regulated system – Italy before 2012 – and France to assess the relative impact of the variable "governmental capacity of the centre" in the implementation process of the policies stemming from quality of justice standards.

To test these explaining and interpretative hypotheses, we designed a three comparative project, which check the above mentioned hypotheses in three different contexts.

External Conditionality Contest

Here we are going to test by comparative analysis the process of networking the rule of law in the context of the Venice Commission's screening of the constitutional reforms adopted and implemented in Hungary and in Romania at two different moments. In Table 1 we offer a synthetic view of the comparative design. As is shown, we consider two countries, both concerned by the pre-accession strategy and afterwards by the institutional adaptation which is specifically asked of new incoming Member States.

Table 1 **External conditionality in Hungary and in Romania: the impact of the Venice Commission**

Country / Timing	Before accession	After accession
Hungary	High fitness with EU standards	Rule of law reversal
Romania	Low fitness with EU standards	Rule of law reversal

However, the two countries differ from the point of view of their legacies and their relationship with the external actors. In fact Hungary has been considered, during the pre-accession period, as a leader country. The constitutional law-making process which took place there was observed as a positive example, a successful story, mostly because of the path-breaking role played by the constitutional court. Romania, on the opposite side, has been always seen as a country lagging behind, featuring not only a less prominent constitutional culture—less than Hungary, Poland, and Czech Republic for instance—but also with a higher degree of misfit with EU standards. The interest in a Hungary/Romania comparison lies in the apparently similarly institutional behavior adopted after accession. In both countries we observe a rule of law reversal without any formal prerogative of the European Union to prevent or to stop such a process.

Judicial Training Contest

Since the late nineties, judicial training has gained a central position in European rule of law promotion. Better trained judges and prosecutors are deemed to be more inclined to properly apply

EU laws and eventually enforce the fundamental rights of EU citizens. Better training meant, for the first time, better informed, and richer, in terms of offer, courses and programs on legal matters. With the passing of time the European approach to judicial training experienced a shift. Whereas during the pre-accession strategy the judicial training promoted in candidate countries was mostly concerned with EU law training programs and the need to accustom judges and prosecutors to the rule of law in order to strengthen their independence, after accession and during the first decade of the twenty-first century the quality of judicial training started to be measured in terms of its capacity to enhance not only the legal competence, but also the communicative and managerial skills of the judicial staff as well as of the administrative staff appointed by judicial institutions. This is mirrored in the guidelines and in the standards set up in the field of judicial training. Here our analysis will aim to disclose to what extent legal and judicial culture can explain the changes undergone within different countries through programs of judicial training. We have selected countries with a similar culture (Italy and France; Poland and Czech Republic) and put them into two pairs which share a relationship with the external factor. Therefore for both sets of countries (Italy and France; Poland and Czech Republic) we can argue that the external factor is a parameter. Then we have selected a third pair of countries featuring a differential relationship with the external factor and a differential culture (Table 2).

Table 2 **Comparative design for the analysis of judicial training programs' changes**

Country / Target	Judicial school created because of external pressure	Adaptation of training programs to EU standards
Italy	No	Partial
France	No	Agenda in progress
Poland	Yes (coming later)	Partial
Czech Republic	Yes	Partial
Macedonia	Yes	Complete
Turkey	Yes	Partial

Sources: https://www.academic-projects.eu/menuforjustice/default.aspx

Organizational Innovation Contest

This third facet of our analysis tries to address the following questions: to what extent do common transnational standards, searched persistently by policy makers and international experts, fall short in accounting for the actual path followed by judicial organizations—courts and public prosecutor offices—in improving the quality of justice? Ultimately, are the standards good and acceptable proxies of what can be considered as an objectively described practice of quality of justice? To what extent can we rather observe the localization of standards and best practices? Again, here we deal with the key question whether actors and norms, judges and prosecutors, together with standards, are parts of a matrix whose variables are always determined according to the same logic of action. Can we use standards as a predictor of judicial behaviors (Miller, 1990)? To try a new avenue in answering those critical questions this article covers three case studies, both

marked by the introduction of innovations in terms of division of labor, organizational practices, and management. We consider two countries, with a similar formal setting of judicial appointment, promotion, and evaluation, as well as having a similar legal culture: Italy and France. They differ though in two different ways. First, they do not display the same level of territorialization of the public sector (Italy is less homogeneous than France, for historical reasons). Second, Italy has the benefit of European structural funds allocated on a sub-topic related to the justice administration, something that France has not experienced at all. However, both countries needed to comply with the overall European discourse on quality of justice, of justice de proximité, for users and citizens.

The three cases are analyzed with a qualitative approach, which provides a comprehensive narrative of middle range variables (organizational culture, patterns of human interaction) and individual variables (such as the professional profile of the leader, which in these cases is represented by the chief and the deputy chief prosecutor). Our focus is oriented toward two courts of first instance, located in Milan, and one public prosecutor's office, located in Naples (in the south of Italy). The data and the evidence used to support the arguments come from two in-depth field studies, both conducted by the author between 2009 and 2013. Therefore, we are offering here very new and fresh data. To check the relative weight of the domestic context, we added one more case which shares with Italy the same system of judicial governance (notably with the High Judicial Council competent to appoint and promote judges and prosecutors), that of France. We want, in this way, to check if the national variables, such as the degree of centralization of the decision-making processes, explain the different pattern of change undergone by the judicial policy making (Table 3).

Table I.3 **Comparative design for the analysis of organizational changes introduced within the judicial offices**

Country	Level of change	Territorial location	Units of analysis
Italy	Judicial office	Northern Italy	Milan court of first instance
		Southern Italy	Naples public prosecutor's office
France	Court system	N/A	Judiciary

The purpose of the analysis is hopefully meaningful for both judicial and organizational studies. Despite being under the influence of homogeneously worded inputs—such as the "European" conception of the rule of law—these offices exhibit a pattern of organizational change that, despite being strongly inspired by that conception, differs considerably in the process of innovation and in the output of the reform process. our point will be then to spot how change agents worked out a successful/ not successful process of organizational innovation. If our argument holds and delivers a truthful message, organizational innovation is rarely successful when approached on the sole basis of transnational standards and quantitative indicators. The role played by actors is highlighted by the italian cases. This seems to support empirically our initial assumption, according to which the process of rule of law networking is led by actors in more prominent ways, the weaker the domestic institutions or the less capable they are of leading a process of policy change. As we will stress, however, this cannot be easily labeled as a bottom-up method of judicial policy making. Actors promoting a quality of justice approach anchor their actions and their strategies to a European

discourse—which provides them with legitimacy. On the other hand, once the European material resources are supplied, the role of agency comes out as triggering mechanisms of change to the extent that actors can decide not to take the opportunity offered them to improve the judicial office. This room for maneuver might turn out to be a factor jeopardizing the homogeneity of the services offered to citizens and parties in trials.

The analysis unfolded in this volume relies on a large data set, covering both quantitative and qualitative data. These have been drawn from official sources—such as constitutional and legislative texts, European laws and case laws, and all documents formally adopted by the judicial networks considered in the three levels of analysis: the Venice Commission, the European Network of Judicial Training, and the European Commission for the Evaluation of the Efficiency of the Judiciary—and from primary sources—semi-structured and in-depth interviews with qualified actors at the three levels of governance considered: transnational, national, and sub-national. The analysis covers a time span which runs from 1997 to 2013. The sources used to treat these cases range from semi-structured interviews, to international court reports drafted by the judicial networks (such as CEPEJ), to official documents adopted by the judicial offices analyzed.

Why Should we Care about Networks?

Being confronted with the issue of how and to what extent European court systems have been changing over the last two decades leads the researcher to deal with a complex phenomenon which on the surface looks as follows: the raising of normative frameworks at the supranational level singling out the multiple dimensions of the rule of law and the quality of justice; a constant effort to apply this framework at the domestic level by means of a relentless process of (re)adaptation; the reshaping thereby of the supranational frameworks by means of a process of monitoring and updating the domestic court systems. Rules are made up, then authoritatively affirmed and stated, and transferred to domestic systems. Afterwards, from the domestic court systems inputs and inspirations come to be uploaded onto the agenda of transnational judicial arenas.

The transnational judicial networks analyzed in depth in the pages to come are numerous and for the most part date back to the late nineties and to the first decade of the twenty-first century. They have been created either by the spontaneous initiative of national judicial institutions (such as the European network of judicial councils) or by the authoritative impulse of the European Union (such as the European civil network), or by the authoritative impulse of the Council of Europe (such as the Consultative Committee of European Judges, among many others).

The nature of the phenomenon investigated by this work is fairly new in two senses: institutionally, as long as the networks seem to have a way to exercise some influence upon one of the most traditional and reluctantly changing institutions, i.e. the judiciary; scientifically, as far as the networks act as a whole and as a range of bridges built between single actors located in single judicial offices. Judicial networks are composed of representatives of domestic judicial institutions: individuals who serve both as judges or prosecutors in their own countries, and as members of a judicial network at the transnational level, in Brussels or in Strasbourg. The macro–micro combination that comes from this double-faced professional profile of judicial network membership is what makes the phenomenon analyzed in this book challenging and compelling.

To what extent is it a salient phenomenon? A glimpse at newspapers and official documents issued in all European countries would easily convince a non- European reader that something

dramatically important is going on within the justice sector in the EU. To provide just a taste of this: over the last decade more than the half of the European States adopted reforms whose aim was to target the court system. A comparative analysis of the policy discourse developed at the national level, when policy makers and practitioners come to talk about the justice system, reveals the absolute priority given to making courts more efficient and more transparent, namely more accessible for citizens and users. If a researcher then steps into a courthouse anywhere in an EU State she will find an on-going process of innovation, either impinging upon human resource management, or communications policies with the public, or the intense implementation of IT-based systems of knowledge management and e-filing: these could include participative practices of quality of justice assessment in Finland, financial claim systems in England in petty cases, the creation of front desks for e-filing and document delivering in Spain and Italy, not to mention the relentless process of reform and readjustment that has been taking place in new European Member States since their accession.

Therefore, one may safely argue that this is a very prominent phenomenon that represents a compelling reason to go further into the scientific investigation of its engines. Of course, these changes take place at different paces and with different outcomes in different countries. But it is beyond any reasonable doubt that European court systems are now on the way to experiencing a comprehensive process of (re)adaptation. But, (re)adaptation to what?

By observing the entire process, both at the domestic level and within each judicial office, one may disentangle at least two factors that seem to pull the court systems into a process of institutional and organizational adaptation. To be sure, here we are not referring to legal reform, which introduces procedural or substantial innovations to the civil and criminal procedural codes or to the civil and penal code. One can detect at least the following forces exercising an influence on domestic judiciaries. The first comes from inside the national political system. Judicial functions have been experiencing a deep transformation within most EU countries. From being a function whose main aim was ensuring the equal application of the laws to the national territory, it has become a function whose performance needs to encompass a much bigger number of tasks, among which the legal ones are just one part, albeit an important part. Judges (and also prosecutors in countries such as France, Italy, and Spain, where judges and prosecutors share the same career path) are asked to perform efficiently from a managerial point of view; they are supposed to cope with media exposition; they are in the position of acting as bridges between the supranational level of legal and judicial cultures and the domestic systems.

The second factor is exogenous—if we consider the court system as a national structure. The exogenous nature comes from the fact that nowadays the judicial function is a matter monitored, assessed, and debated within institutionalized judicial networks. State actors and supranational institutions reached such a large scale that it would be myopic to analyze today a system of judicial governance without considering as co-participating forces both state and non-state actors, and both domestic and supranational authorities (Charnovitz, 2006). Courts are not an exception to this claim. Despite being a locus traditionally devoted to the enforcement of domestic legal rules, courts are nowadays involved in multi-level and multi-layered systems of collective action where they perform their function amidst a multi-voiced set of norms and values much more complex than the one they were confronted with in the past (Kappen-Risse, 1995; Benda-Beckmann, 2002). Most important of all, supranational institutions, which in principle are not entrusted with any competence in the field of judicial governance, in the early nineties of the twentieth century started to set up a wide and comprehensive process of reflective policy making (Rogowski, 2007),

targeting the models of judicial governance, the practices of judicial administration, and the mechanisms by means of which courts interact with the external environment—such as media and citizens (Voermans, 2007). Standards of rule of law and quality of justice have been set down by networks whose membership ensures a systematic link between supranational and domestic policy arenas, since these judicial networks are composed by judges and prosecutors, representatives of domestic judicial institutions (Piana, 2010).

Despite being set within the formal jurisdiction of sovereign States, courts have turned out to be a promising and fertile terrain on which, under specific conditions, standards set abroad have been implemented at home. In other words, non-legally binding norms (standards), shaped by representatives of domestic judicial institutions throughout a regular process of reflexive policy making enacted at the supranational level, influenced—to a different extent, depending on the context the standards encountered within each country—the ways courts are organized and work. The simplest example is represented by the introduction of the court manager in those countries that did not yet have such a role. Finally, but not less importantly, all courts have been facing an increasing demand of justice featuring increasing complexity and fragmentation. In a way, the judicial function has been asked to perform much more heavy tasks in a highly demanding context, where prompt, transparent, homogenous, and fair responses are expected.

To sum up, as we will argue in the concluding chapter, this book has a two-fold goal. On the one hand, it is going to check the empirical adequacy of competing hypotheses concerning the role of external/internal factors and the role of culture/ agency in triggering processes of change affecting the judicial governance of EU Member States and thereby influencing the implementation of the rule of law principle. On the other hand, it is going to engage in a critical discussion of three aspects featured by the EU rule of law promotion: 1) the quantitative measurement of judicial governance and of the rule of law; 2) the gap between expected outcomes and actual results reached by the EU rule of law promotion; 3) the lack of proper and effective mechanisms of accountability which are necessary if our thesis is confirmed, namely if change agents are the real drivers of the changes which take place within judicial governance.

Bibliography

Alter, K.J. (2000), 'The European Union's Legal System and Domestic Policy: Spillover or Backlash,' *International Organization* 54 (3), 489-518.

Arnull, A. (1994), 'Refurbishing the Judicial Architecture of the European Community,' *International and Comparative Law Quarterly* 43 (2) 296-316.

Benda-Beckmann, F. von (2002), 'Who's Afraid of Legal Pluralism?,' *The Journal of Legal Pluralism and Unofficial Law* 34 (47), 37-82.

Charnovitz, S. (2006), 'Nongovernmental Organizations and International Law,' *The American Journal of International Law* 100 (2), 348-72.

Checkel, J. (2005), International Institutions and Socialization in Europe: Introduction and Framework,' *International Organization* 59 (4), 801-26.

Claes, M. and de Visser, M. (2012), 'Are you networked yet ? On dialogues in European Judicial Networks,' *Utrecht Law Review* 8 (2).

Dehousse, R. (1998), *La Cour de justice des Communautés européennes*. Paris: Montchrestien.

Finnemore, M. and Sikkink, K. (1998), 'International Norm Dynamics and Political Change,' *International Organization* 52 (4), 887-917.

Frydman, B. (2012), 'L'évolution des critères et des modes de contrôle de la qualité des décisions de justice,' *Série des Working Papers du Centre Perelman de philosophie du droit* (4).

Garapon, A. (2010), *La raison du moindre état. Le néolibéralisme et la justice*. Paris: Odile Jacob.

Ginsburg, T. (2003), *Judicial Review in New Democracies: Constitutional Courtsin Asian Cases*. Cambridge: Cambridge University Press.

Goodwin-Gill, G.S. and Lambert, H. (2010), *The Limits of Transnational Law: Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union*. Cambridge: CUP.

Groppi, T. and Ponthoreau, M.-C. (eds) (2013), *The Use of Foreign Precedents by Constitutional Judges*. Oxford; Portland (OR): Hart Publishing.

Guild E, and Geyer, F. (2008), *Security versus Justice? Police and Judicial Cooperation in the European Union*. Farnham: Ashgate Publishing.

Jimeno-Bulnes, M. (2010), 'Towards common standards on rights of suspected and accused persons in criminal proceedings in the EU?', Center for European Policy Studies (CEPS) Policy Brief, February 2010.

Kappen-Risse, T. (1995), *Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures and International Institution*s. Cambridge: CUP.

Kelley, J. (2004), 'International Actors on the Domestic Scene,' *International Organization* 58 (3), 425-57.

Kosar, D. (2010), 'Judicial Accountability and Democratic Transition: Visegrad Story,' Paper Presented at The 8th World Congress of Constitutional Law December, Mexico City. Available at: http://www.juridicas.unam.mx/wccl/ponencias/16/288.pdf

Leaf, M. and Alegre, S. (2004), 'Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study–the European Arrest Warrant,' *European Law Journal* 10 (2), 200-217.

MacCormick, N. (2007), *Institutions of Law*. Oxford: Oxford University Press.

Magen, A. and Morlino, L. (2009) (eds), *International Actors, Democratization and the Rule of Law: Anchoring Democracy?* Contemporary European Studies Series. London, New York: Routledge.

Miller, P. and O'Leavy, T. (1987), 'Accounting and the Construction of the Governable Person,' *Accounting, Organizations and Society* 12, 23565.

Morlino, L. and Magen, A. (eds.) (2008), *International Actors, Democratization and the Rule of Law. Anchoring Democracy*. London: Routledge.

Palombella, G. (2009), 'The Rule of Law beyond the State: Failures, Promises, and Theory,' *International Journal of Constitutional Law* 7 (3), 442–67.

Pauliat, H. (2007), 'Le modèle française d'administration de la justice,' *Revue française d'administration publique* 125, 111-20.

Piana, D. (2007), 'Judges and Legal Experts in the European Policy of Rule of Law Promotion,' in J.-M. De Waele and R. Coman (eds), *Judicial Reforms in Central and Eastern European Countries*, pp. 23-78.

——— (2009), 'The Power Knocks at the Courts' Back Door. Two Waves of Postcommunist Judicial Reforms,' *Comparative Political Studies* 42 (6), 816-40.

——— (2010), *Judicial Accountabilities in New Europe: From Rule of Law to Quality of Justice*. Farnham, UK: Ashgate.

——— (2012), 'New Legal Instruments in a Changing World: Legal, Political and Cultural Developments in EU Judicial Cooperation,' *International Spectator* 47 (1), 49-66.

Piana, D. and Guarnieri, C. (2012), 'Bringing the Outside Inside. Macro and Micro Factors to Put the Dialogue among Highest Courts into its Right Context,' *Utrecht Law Review* 8 (2).

Priban, J. (2007), *Legal Symbolism: On Law, Time and European Identity. Applied Legal Philosophy*. Farnham: Ashgate Publishing.

——— (2012), 'Constitutionalism as Fear of the Political? A comparative analysis of Teubner's Constitutional Fragments and Thornhill's A Sociology of Constitutions,' *Journal of Law and Society* 39 (3), 441-71.

Radaelli, C.M. (2005), 'Diffusion without Convergence: How Political Context Shapes the Adoption of Regulatory Impact Assessment,' *Journal of European Public Policy* 12 (5), 924-43.

Rogowski, R. (2007) 'Flexicurity and Reflexive Coordination of European Social and Employment Policies,' in H. Jørgensen and P.K. Madsen (eds.), *Flexicurity and Beyond. Finding a new agenda for the European Social Model*. Copenhagen: DJØF Publishing, 132–53

Russell, P. (2001), 'Toward a General Theory of Judicial Independence,' in Peter Russell and David O'Brien (eds.), *Judicial Independence in the Age of Democracy*. London: University Press of Virginia, 1-24.

Sarat, A. and Scheingold, S. (2005), *Something to Believe In: Politics, Professionalism, and Cause Lawyering*. Stanford, Ca.: Stanford University Press.

Scott, J. and Trubek, D. (2002), 'Mind the Gap: Law and New Approaches to Governance in the European Union,' *European Law Journal* 8 (1), 1-18.

Slaughter, A.M., Stone Sweet, A. and Weiler, J.H.H. (eds.) (1998), *The European Courts and National Courts: Doctrine and Jurisprudence*. Oxford: Hart Publishing.

Voermans, W. (2007), 'Judicial Transparency Furthering Public Accountability for New Judiciary,' *Utrecht Law Review* 3 (1), 148-59.

Voigt, S. (2005), 'The Economic Effects of Judicial Accountability. Some Preliminary Insights.' ICER Working Papers Series, No.19, Turin: ICER.

Walker, N. (2003), *Sovereignty in Transition*. Oxford: Hart Publishing.

Weick, K. (1976), 'Educational Organizations as Loosely Coupled Systems,' *Administrative Science Quarterly*, 21 (1), 1-19.