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Rodolfo Sacco's Theoretical Contribution to Comparative Law: A Personal Account

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Abstract
This article highlights certain aspects of Rodolfo Sacco's theoretical work on comparative law. Rather than offering an exhaustive discussion, it outlines key points in his intellectual journey to help the reader understand how certain themes gained prominence in his work. An outstanding figure in the comparative law community since the 1970s, he remained active until the end of his life, well into the twenty-first century. Through his many contributions to the field, Sacco took comparative law research in new directions. He developed a more nuanced and complex analysis of the tasks of the comparative lawyer, elaborating an approach to comparison that does justice to the multiple components of all legal systems ("legal formants") and their dynamics. We owe him a fine study of the silent, implicit dimensions of law that have a major impact on its application ("cryptotypes"), and a reflection on the relationship between law and language that shows how comparative law is deeply implicated in the process of translation.

Keywords Legal formants · Cryptotypes · Legal transplants · Legal anthropology · Legal translation · Mute law · Comparative law

1 Introduction

This article highlights certain aspects of Rodolfo Sacco's theoretical work on comparative law. Rather than offering an exhaustive discussion, it outlines key points in his intellectual journey to help the reader understand how certain themes gained importance in his work. An outstanding figure in the comparative law community since the 1970's, he remained active until the end of his life, well into the twenty-first century, passing away in 2021 at the age of 98.

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Rodolfo Sacco belonged to a small group of Italian scholars who, during their lifetimes, enjoyed worldwide renown for their contribution to the study of comparative law. To this day, his reputation rests primarily n his substantial theoretical contributions to the discipline, and yet one would search in vain in his writings for a substantial treatment of the methodology of comparative law labelled as such. Having attended his courses as a student for many years, I never heard him announce a lecture on the methodology of comparative law. This deliberate choice in his approach appears to reflect a distinctive perspective.

To convince oneself of this, one can read the interview that he gave to Pierre Legrand in 1995 for the *Revue internationale de droit comparé* [1]. Pressed by Legrand with a question that was clearly focused on the importance of method as a guide to comparative law studies ("Mais vous ne voulez certes pas affirmer que la méthode ne compte pas?") the interviewee acknowledged that some colleagues thought that his work had strong theoretical components, and yet his reply to the question was rather ironic: "Oh non! Malheureusement, la mauvaise méthode produit avec efficacité tous les dégâts dont elle est bien capable." [9:964].

Here we have an apparent paradox to explain: how could Sacco approach with irony a topic that many consider to be of defining value for comparative law, and yet prove himself a pioneering thinker who steered research in novel directions?

A first answer to this question can be found in the following observation. Rodolfo Sacco's theoretical perspective on law did not seek to turn comparative law inwards. His vision was much broader. He clearly wanted to escape the strictures of the twentieth-century debates on the methodology of comparative legal studies [2]. Rather, his theoretical investigations aimed to clarify the contribution that comparative law could make to the understanding of law and, consequently, to legal knowledge more generally. He thus set himself a broad and ambitious intellectual programme.

His *Introduzione al diritto comparato*, [3, 4] a work that has been translated in whole or in part into several languages, [5–9] is conceived along the same lines. The volume contains a chapter on the subject of comparative law, but does not have a chapter on the methods or methodology of comparative law. The same approach underlies the introductory part of *Sistemi giuridici comparati*, which Sacco co-authored with Antonio Gambaro [10]. In the following pages, therefore, I will highlight those aspects of his scholarly contribution that were particularly innovative and insightful from a theoretical point of view, and that in one way or another marked his distance from many of his contemporaries.

2 Sacco's Work on Interpretation: A Portrait of the Young Jurist

Rodolfo Sacco belonged to the generation of lawyers who began to work immediately after the Second World War, when the search for new horizons began to push legal research in new directions, both in Italy and elsewhere. The desire to explore new avenues in the field was in keeping with the character of a man who loved new and daring challenges. His first publication after graduating in law from the University of Torino bears witness to this vocation. *Il concetto di interpretazione del diritto*, published in 1947, [11, 12] was Sacco's graduation thesis. In it, Sacco

attacked with relish the then current theories of legal interpretation, from voluntarism to conceptualism, to sociological and teleological oriented approaches to this subject. Interpreting the text of a statute, he argued, is interpreting a declaration that has no meaning in itself: "the only meaning it has is the one (concretely) attributed to it by the interpreter". [11:59] The legislative declaration is therefore "nothing more than paper stained with ink". [11: 59] It is an interpreter's vast amount of "knowledge, prejudices, aspirations, subjective and acquired feelings" [11:70] that constitutes the universe of hermeneutic means on which the attribution of meaning to that declaration depends. This lad him to a radically pluralistic conclusion: "every interpretation of the law is without exception correct, provided that it is not contradictory in itself", "every interpreter can create (…) the law in his own way" [11:164]. Sceptical attitudes that confuse the lack of objective value of those means with the negation of their value are nonetheless rejected from this standpoint.

This analysis strips legal interpretation of any deontological dimension. Through the lens of the young Sacco the process of interpretation is seen as a historical fact. For this reason, the divergence in the interpretation of a legal text, with different interpreters putting forward their own interpretations of a text, is not a scandal to be overcome by postulating that there must be a single correct answer to the question concerning the meaning of a legal text. As Antonio Gambaro remarked, this first work presents in a striking way a thesis that today is not too difficult to share today: "the fact of interpretation is not conditioned by norms: rather, it reveals itself, ultimately, as a cultural fact and, as such, cannot be separated from the personality of the interpreter - who, however, must equip himself with the cultural tools necessary to produce an interpretation that is not fictive" [7]. In one of his last writings, published posthumously, Sacco vigorously defended the arguments originally put forward in his first monograph, claiming, for example, that legislators believe they are enacting norms when in fact they are creating texts [13]. The fate of these texts, he wrote, lies in the hands of the interpreters who, in the process of interpreting, may reach absolute certainties or arrive at conclusions shrouded in serious doubts. Interpretation, therefore, doesn't necessarily lead to closure. This simple truth is resisted and dismissed as absurd by those who believe that texts inherently have an objective meaning that can be reconstructed in different ways.

Looking back on his debut essay, more than half a century later, Sacco described it as a rather a predictable, trite work, which showed little knowledge of some of the great currents of thought of the time. [34:427] He thus emphasised how much the theses that caused a stir when the book was first published are by now an integral part of the latest developments in various fields of learning. The ideas presented in *Il concetto di interpretazione del diritto* in the late 1940's were disruptive and were not applauded by his contemporaries, although one can find affinities with works a such as Josef Esser's *Grundsatz und Norm in der richterlichen Rechtsfortbildung* [14] and Duncan Kennedy's *A Critique of Adjudication.* [15] Even today, they are not common currency in all academic circles.

3 New Means for a New Legal Theory: on Legal Formants

The core ideas presented in this early work in a rather compressed form were seminal, and would be further explored in Sacco's later works, which brought him wider recognition.

Underlying these works was a fundamental conception concerning the relationship between law and the state. Early on, Sacco rejected statalism, that kind of legal theology that assumes the existence of an inextricable link between the state and the law, and that subordinates the latter to the former. Statalism as an ideology was dominant during fascism, but it left its mark on the theory of law prevailing under other political regimes too. Sacco maintained that statalism and its attendant formalism were indefensible, primarily, on epistemological grounds, because: "…the jurist who defines himself as a statualist and legalist (…) formulates an abstract profession of faith that actually leaves him free to interpret it as he pleases, and to resort to the indications that suit him" [16:420]. Having lived a long life, he could thus testify to the demise of the legal philosophy exalting the role of the state, which was at the forefront of every legal debate at the beginning of his academic activity (and against which his youthful work reacted, provoking the perplexity, if not the coldness, of many of his readers). I have little doubt that this epistemological posture responded to the moral imperative shared by the generation of Italians who took fought against a dictatorial regime that pretended to impose an official truth.

In Sacco's more mature works, therefore, the law is conceived as a contestable object, thrown into an arena with many players, or, to use another metaphor, is considered as a canvas woven on many looms. The state has no absolute authority or control over it. Instead, Sacco presents the law as a dynamic and multifaceted cultural artifact, shaped by a variety of influences and subject to constant change and contestation.

Similar ideas were discussed by the North American realists, and in Joseph Ehrlich's sociology of law (with whom Roscoe Pound sympathized), but these currents of thought and their intellectual legacies were little known in Italy and seldom appreciated in Europe when Sacco's theoretical outlook on the law began to take shape. On the other hand, he found little appeal in the varieties of functionalism that influenced the realists and dominated in comparative law circles in the period after the Second World War until the 1980s. Asked to comment on functionalism, with reference to the work of Zweigert and Kötz, Sacco expressed a reservation. "Heureux celui qui connaît la fonction qu'occupent les divers éléments d'une culture juridique au sein de cette culture!"[9: 964]. The same point is underlined by a historical example: "the Roman *rei vindicatio* offered its services to societies based on slavery, to feudalism, to liberalism, and to socialism. On the contrary, it was never part of English law." [21:366]. The refusal to consider law as a mere by-product of the normative capacity of the state paved the way to Sacco's inquiry into the law of stateless societies, and to his study of legal anthropology, which was nourished by his knowledge of anthropology in general, and in particular by an attentive study of Lévi–Strauss's works and of political anthropology.

As mentioned above, a second key insight is that law is not a static entity, but rather the product of a dynamic process of acculturation. Acculturation refers to the

cultural exchange and blending that occurs when different cultural elements come into contact with each other. In the context of law, this means that legal systems evolve and take shape through the interaction of diverse elements that do not necessarily share common characteristics. This is why, as a first but crucial step, Sacco vigorously denied that legal comparison could have as its object 'the legal norm', a fetish that he treated as such.

Along the way that leads to the study of law in different jurisdictions, the comparativist encounters several objects. The research carried out over them leads to the discovery of the heterogeneity of the elements that make up the law. With the curiosity and classificatory passion of a naturalist Sacco worked towards elaborating an extensive repertory of them.

This marks the inception of the theory of formants, vividly illustrated in some of his most cited works [24; see also: 17, 18]. The term, borrowed from linguistics—one of Sacco's many collateral interests —was employed in his writings to signify any component or element that empirically constitutes a part of the legal order. These elements are not investigated to be neatly encapsulated in the form of a list of official or unofficial sources of law. The nuance goes beyond this. The emphasis lies on the multiple dissociations of formants inherent in the domain of law. The invitation is to abandon the idea that there are 'right' and 'wrong' interpretations of the law when making comparisons is pregnant with meaning: the comparatist cannot afford the luxury of subscribing to this distinction when investigating a foreign legal system, because comparisons must embrace the whole of reality, even if reality confronts us with dissonant elements, with tensions and unresolved contradictions.

In particular, Sacco points to the dissociation between the way a given rule is practised and the ability to represent the knowledge one has of it. He highlights the role that implicit knowledge plays in the working, operative dimension of law. For example, he shows how some legal definitions do not really capture the relevant operative rules, or how the same rule is supported by very different reasons in different legal systems. It also reminds us that the *ratio decidendi* of a case may not be obvious to the Court deciding it. The point is that comparisons reveal, bring to light and thus describe the hidden elements of a legal system. For this reason, all knowledge gained through comparisons leads to a deeper understanding than any knowledge gained from the study of a single legal system. This diagnosis points to the existence of cryptotypes that reflect unexpressed cognitive styles, assumptions, expectations, and knowledge (see further below, Sect. 6).

A critical analysis of law conducted along these lines also shows that the concept of 'law' dominant in the West is not universal and is ill-suited to understanding other forms of normativity, whether based on religious law, or emerging in Asia, or in the African world, or among the autochthonous populations of other continents.

For example, the official ideology of a system, or the religious nature of the source of the rule, or the fact that the belief in magic goes so far as to profoundly influence the solution imposed in a given context, cannot be ignored in the process of comparison. In a similar critical vein, the fictitious assumptions and arbitrary equations that in modern legal systems uphold the rationality of the law in the eyes of those who practice it are a proper subject of investigation. They are the key to understanding what ideas underpin the law and make it viable in the eyes of those who are required

to abide by it. This approach does not express a value judgement about legislation as a means of positing the law. For example, Sacco responded to the suggestion that codification is a thing of the past; legislating through the provision of new codes still has a future [19].

The validation criterion used in comparative analysis essentially mirrors that of the historical sciences, following the principle of 'verum ipsum factum' or 'truth is in the fact itself.' [20: 246] This commitment entails understanding and interpreting reality on the basis of the available evidence, without unduly reducing the complex nature of. This recognises that historical, societal, and institutional phenomena are inherently complex and multi-faceted. A notable contribution of the research developed by Sacco is its inclination towards the study of what historians often call "mentalities." This involves the study of fundamental aspects of thought and practice that characterise cultural processes firmly embedded in the intellectual life of a society or of a part of it. Comparative research on these issues and on the cognitive processes involved in the formulation and the application of the law must also be open to the contribution of the natural sciences, which investigate reality in its various dimensions (see below, Sect. 6).

I do not intend to review in this context the analysis of the wide variety of experiences that Sacco examined, from Somali customary law, to Chinese li and fa, from Japanese giri, to the law of the Khoi and San. However, we can at least recall the general conclusion that follows: the Western jurists' concept of law – albeit internally differentiated - is not really adequate to approach every form of normativity. To exemplify, it is ill-suited to capture the normativity that prevails in Islamic countries, where divine law, legislated law (kanun) and custom are considered to be radically different elements, that cannot be subsumed under a general notion of law such as that elaborated in the Western legal tradition. In the mirror of these and other experiences – this is the methodological message - we learn to distinguish all the different elements that enter into our own concept of law.

4 A Dynamic Approach to Comparative Law

The research on the circulation of legal models is part of the same intellectual enterprise [21]. By studying the dynamics of this process, Sacco introduced a new theme into the field of comparative law, thus departing from the static analysis of different legal systems conducted through their classification into various legal families, as exemplified by René David's classic textbook on *Les grands systèmes de droit contemporains.* [22] This is one of the principal testing grounds of the theory of legal formants, since the diffusion of legal models throughout the world regularly leads to the coexistence of different legal models within the same legal system. Sacco first approached this subject in his article on *Modèles français et modèles allemands dans le droit civil italien*, published in 1976 in the *Revue internationale de droit comparé* [23]. He then developed it in other contributions, such as the entry on *Circolazione e mutazione dei modelli giuridici* [21] for the *Digesto*, the multi-volume legal encyclopedia that he directed, and then with the general report on the circulation of the French legal model presented at the international conference of the Association

Capitant in 1993. An early exploration of the same theme was his article of 1969 published in Italian on *Il subtrato romanistico del diritto dei paesi socialisti*, [24] which was translated into English in 1988 for the Review of Socialist Law [25]. This article showed how socialist law made use of elements of the civil law that had their origins in completely different socio-economic and cultural contexts. The fact that the reference to ideologies in conflict may still lead to shared civil law rules through the circulation of legal models is further explored in some of his subsequent contributions. Sacco's analysis of legal transfers is helpful in understanding what happens when elements of Western law are transferred outside the West. He highlighted what Ichiro Kitamura brilliantly summed up in one line, namely the result of the reception of Western law in Japan is not a system of Western law, but a Westernised law [26: 14], which means that certain institutions of Western law and certain aspects of the Western legal conscience do not fit easily with the notions of law and justice rooted in the country's history.[2]

The transfer of law from one area of the world to another, from one epoch to another, equally fascinated Alan Watson, the Roman law scholar who authored a famous book on legal transplants [27]. The views of the two authors are similar in many respects, [28] and yet Sacco' insistence on the epistemological gap that exists between the practice of a rule and the knowledge of how to describe it is conspicuously absent from Watson's seminal work on legal transplants.

By focusing on the gap that exists between a rule as it is practised and as it is conceptualised in different contexts the quest for harmonisation or uniformity of laws can be approached from a new perspective. In the pursuit of these objectives, the greatest gains are to be made by eliminating the conceptual differences that conceal the real convergence of operative rules. Often the same operative rule is dressed in different conceptual garments. It is the task of comparative law to bring to light what legal systems already have in common, beyond the purely conceptual differences. Sacco's general report on the inter vivos transfer of movable property, presented at the World Congress of the International Academy of Comparative Law (Budapest, 1978), published in the *Rivista di diritto civile* in 1979 [29], is exemplary in this respect. The operative rules of each jurisdiction on the transfer of property are presented, showing the limits of those analyses which simply contrast consensual and non-consensual systems of transfer of property. This approach has inspired a major research project, 'The Common Core of European Private Law', initiated by Ugo Mattei and Mauro Bussani at the University of Trento, in which Sacco served as honorary editor alongside with Rudolf B. Schlesinger. The discussions on the future of European law were also an opportunity for Sacco to highlight the possibility of achieving a degree of uniformity in Europe through the efforts of legal scholarship to build a common law for Europe based on similar premises [30, 31].

5 Beyond the Western Canon

Meanwhile, Sacco turned his attention to the study of African law, both north and south of the Sahara, with missions to Somalia beginning in 1969, while his knowledge of Morocco dates back to an earlier period of his life. He was appointed Dean of

the newly established Faculty of Law at the University of Mogadishu, as part of the Italian Ministry of Foreign Affairs' technical assistance project for Somalia. In 1973 he published an *Introduzione al diritto privato somalo*, [32]. and a little over ten years later *Le grandi linee del sistema giuridico somalo*, [33] a landmark study of Somali law. Further studies and fieldwork in other African countries followed. As part of this activity, he cultivated exchanges with other Africanists such as Jacques Vanderlinden and Etienne Le Roy.

In 1995, Sacco, together with collaborators, published *Il diritto africano* [34], a text that represents the synthesis of his studies dedicated to Africa. The volume opens with a chapter entitled "The Great Epochs of Law". In this book Sacco reconstructs the epochs that mark the most profound changes in the law in the history of mankind. The theoretical premise is that comparative law has broken new ground by dealing with very different systems, "that is, by becoming legal ethnology and legal anthropology" [26: 3]. The study of systems that are far removed from the Euro-American and Asian models: "has highlighted the great importance of rules that are not expressed in words, i.e. not verbalised"[ibidem]. In the sections devoted to legal systems without a legislator, without jurists, lawyers or legal specialists, and to societies with diffuse power, he traces the emergence of centralised systems of power and reflects on the relationship between power and religion. A wide range of analyses and reflections are thus brought together to discuss how human societies give themselves rules and legitimacy in the most different contexts.

Commenting on his experience, he noted that the study of African law could teach any European lawyer more than the study of any other family of laws: "Suffice it to say that there are many legal systems in which the law is not fully expressed in words, legal systems that are not taught at university, areas of law that are not supported by a legal language, all phenomena that we believe have disappeared in Europe, so much so that our minds find it difficult to conceive of them… There are so many phenomena in European law that we do not perceive because we have an idealised and therefore distorted view of our institutions"[35:9]. If a jurist trained in Europe is trained to recognise these phenomena where they are evident, as in Africa, he cannot but recognise them when he returns to European law. Sacco stressed that anthropology is an indispensable companion in understanding African legal systems. Consequently, it is a crucial tool for the European jurist to gain a more comprehensive understanding of legal phenomena, ultimately enriching the study law of European and Western law too.

This insight paved the way to his book on *Antropologia giuridica. Contributo ad una macrostoria del diritto*, published in 2007 [36]. This work provides a comparative approach to modern and traditional legal systems as seen through the lenses of macro legal historical and anthropological research.

The stated aim of the book was twofold: to push comparative law into areas that comparative law scholars avoid, because the study of legal phenomena becomes more complex where the authority of the state is absent and there are no specialised figures to deal with the law. Furthermore, Sacco intended to prepare the ground for a knowledge of law that could truly encompass the whole of the development of mankind, thus overcoming the diachronic limits imposed on the historian, and the synchronic limits that comparatists generally suffer. Anthropology is a vital ally in

this enterprise and the natural sciences also play their part in this respect. In particular, they show that species close to us exhibit behaviour that, in the eyes of a jurist, reveal the implementation of norms, and that can therefore be aptly be described as 'nomic' [37].

6 Of Cryptotypes, Law, Language, and Translation

This brings us to Sacco's other theoretical contributions to the study of the law, which can be seen as a response to some significant shifts in the intellectual landscape of the twentieth century.

One of the great discoveries of the twentieth century is the dimension of the unconscious, a dimension often overlooked or minimally considered by the law, but of immense importance in our lives. At the same time, the twentieth century witnessed a profound change in the analysis of language. In the second half of the twentieth century the study of language emancipated itself from the great metaphysical questions that had long dominated the world of philosophy in previous centuries. One of the key contributors to this shift in the field of language studies was the rise of linguistic philosophy, led by thinkers such as Ludwig Wittgenstein. In his later works, Wittgenstein emphasised the pragmatic and contextual nature of language, focusing on its use in everyday situations. This approach redirected attention from lofty philosophical questions about the elaboration of concepts to the practical analysis of language as a tool for communication. A similar turn occurred in linguistics, reflecting a growing awareness that language is not merely a set of abstract symbols divorced from real-world contexts. Linguists and other scholars in a variety of fields, ranging from anthropology to sociology and philosophy began to explore how language is shaped by and, in turn, shapes social interactions, cultural nuances, and pragmatic functions by investing in pragmatic and sociolinguistic research.

What does legal theory have to say when confronted with these developments?

The conception of law as a spontaneous, unplanned, unintended order was at the heart of von Hayek's thought. Sacco openly acknowledged his debt to this thinker, while focusing on the nature of laws that are created by an express act of volition and are nonetheless actuated. Customary law is of this nature, of course, but custom is usually presented as a marginal phenomenon in modern legal systems, Similarly, in reflecting on the relationship between language and law, Sacco declared his debt to Benjamin Lee Whorf's contribution to the field of linguistics. The term 'cryptotype', introduced by Sacco to designate those formants of the law to which we do not have access through explicit, verbalised knowledge, was borrowed from him. Whorf used it to describe semantic or syntactic features that do not have a morphological expression, but are nonetheless crucial for the construction and understanding of a phrase. Sacco repurposed the term to convey a similar idea in the field of law.

Sacco thus unveiled the presence of implicit patterns in the law, consisting of implemented but not verbally formulated rules, that are nonetheless binding as unexpressed law.

What philosophers, psychologists and linguists have observed is no less true of law: it is possible to have a certain competence, a knowledge of a rule, without the

understanding that illuminates it through linguistic expression. It is possible to transmit this form of knowledge without resorting to verbal means.

The supreme example of this phenomenon – a competence that is not guided by a verbal description of its working - is language. Each of us employs language effortlessly, yet unless one is a linguist, describing the regularly observed phonetic, syntactic, and other norms governing linguistic expressions remains an elusive task.

By paying constant attention to the emergence of norms that are neither conceptualised or fully conceptualised, nor expressed through language - in other words, norms that are mute - Sacco overturned the idealistic foundations of the law that is still shared by large parts of twentieth-century legal thought. Reconstructing a genealogy of law through the ages, he posited that the conceptual frameworks currently used to think about the rules often materialise long after the realities they seek to encapsulate, with their linguistic articulation potentially following even later. Language, a powerful tool for programming the future and articulating rules, is a means by which certain obligations, particularly those requiring future fulfillment, are expressed. However, Sacco challenged the notion that language is the exclusive conduit for rules. Mankind has not always spoken, and yet, even before evolving language, human groups lived together by following certain basic rules. For most of its development, humanity was governed by rules that were shared and transmitted without words, rules that were no less effective.

Sacco's latest volume, *Il diritto muto* (2015), [38] further illustrates how contemporary legal theory lacks an analysis of those elements of law that are not verbalised. It is a rich and stimulating work that draws upon recent discoveries in the fields of genetics and neuroscience to reconstruct the basis of this kind of normativity. This contribution locates a fundamental change in the life of human groups at the dawn of humanity: "[in the last phase of the stone age] there is the fundamental raw material by means of which the unexpressed *ius* is built: a norm thought of as obvious, which translates a correspondingly evident social reality […]. It is mute law. A faith is born – secular, or enriched by reference to the supernatural - that is, the faith in the norm." [43:124].

The legacy of mute law is an enduring one, and its analysis casts light on our legal landscape. It is a law that has 'survived all adventures. […] The silent law has not been suppressed. Mute law cannot be suppressed. It can be denied, yes. It can be called by new names: hermeneutic means; pre-understanding; cryptotype; living law; nature of things; *law in action*; realist view of law; effectiveness. Changing its name does not mean it is no longer there.". [43:87] The conclusion of this intellectual journey is compelling. Many theories that hinge on consent to explain the operation of certain legal rules are nothing more than ex post rationalisations of rules that stem from duties of reciprocity, rather than from the exercise of free will [39, 40]. An ideology is quietly at work, when a conceptual reframing of the law in these terms occurs [41]. To free legal doctrine from its shackles, we must inscribe law, like any other cultural phenomenon, in the dynamics of the evolution of living species on earth.

Reflecting on the relationship between law and language also involves recognising the linguistic dimensions of law. This may seem a trivial point, but it is not. Many comparative law works give the impression that language is a transparent means

of communication. A comparative lawyer working under this misapprehension may believe that it is possible to have direct access to the foreign law by studying it, without having to dwell long on its linguistic framework, which can simply be ignored as if it were a mere distraction. But is it possible to express the same law in different languages, and if so, how? How does legal translation work? What are the problems involved in drafting and interpreting multilingual legislation, or multilingual law, and how should they be solved?

To tackle similar questions, one has to abandon the idea that the expression of a specific legal rule is once and for all inextricably bound with a specific linguistic expression of it. The transition from Latin to the vernacular languages in Europe helped to abandon such an idea. Nevertheless, at least in continental Europe, the trend was slowed down by the continued possibility of having access to a common conceptual reference point constituted by Roman law and the concepts of natural law, even after the law had been established in the form of national codifications enacted in the vernacular languages.

Sacco was convinced that pluralisms also meant the possibility to express the law in a plurality of languages, and actually insisted that monolingualism was an exceptional condition for most human groups [42]. Surely, the fact that EU law is framed in several official languages –now twenty-four official languages – is a formidable fact in itself. Indeed, uniform laws are regularly enacted in two or more languages, and many States enact legislation in multiple languages. It is quite surprising, therefore, that up until the end of the twentieth century comparative law paid scant attention to the above-mentioned translation problems.

Rodolfo Sacco has made significant contributions to the field of legal translation, and to an understanding of the problems raised by multilingual law [43, 44]. His first merit was to draw attention to how the specialised nature of legal language plays out in legal translation. Legal language does not refer to a material reality, and therefore does not denote a uniform set of referents across the world's legal systems. Words that appear to convey the same meaning do not actually do so, because they refer to different legal concepts. The French word '*contrat'* when used with relation to French law does not have the same meaning as the English word 'contract' under English law. A donation is not a contract to an English lawyer, whereas it is a contract to a French lawyer. The legal systems underlying the two terms are different, therefore there are translation problems when the French term must be translated into English and vice versa. Conversely, it is not necessarily difficult to find a correspondence between the legal terminology used in different languages, even when there is a great linguistic diversity to bridge, if, as may happen, there is a perfect correspondence between the law in force in two jurisdictions. For example, although English and Chinese are radically different languages, since Hong Kong's legislation on the sale of goods enacted during the period when Hong Kong was under British rule was intended to be a faithful reproduction of the English legislation on the same subject, the two systems of concepts and rules underlying the Chinese and English texts on this subject correspond. Similarly, the term 'fiducie' is an accurate translation of 'trust' (and vice versa) in the Quebec Civil Code, whereas the same would certainly not be true elsewhere.

Reflecting on similar problems, it appears that comparative law can make an essential contribution to solving translation problems by providing the means that are be employed to homologate concepts belonging to different legal systems, by identifying their differences and similarities. Sacco's ability to focus on the multiple dimensions of the law paid off with respect to translation problems too. For example, he discussed how multiple meanings for the same terms are hosted within those legal systems that have been open to multiple legal influences, and what problems this poses for legal translators. Legal translation is also challenged by the fact that the relationship between linguistic expressions and legal concepts is not uniform across different languages, some languages are more precise than other in carving out legal concepts, preferring synthesis over precision in the exposition of the law. Translators should be alert to these differences as they may conceal substantial convergence across legal systems.

Multilingual legislation drafted to unify the law of several jurisdictions poses a different challenge [45]. By definition uniform legislation must convey the same meaning in several languages. There is a risk that, in the process of interpretation, different communities of interpreters may undermine the uniformity of the law intended by its drafters by drawing on local legal culture to interpret it. This error can be avoided if the drafters of uniform legislation have knowledge of the legal culture of their audience, and are therefore able to avoid terminology that might allow such a distorting influence by resorting to system-neutral language. Once again, comparative law can be a valuable tool for working in this direction.

Writing in 2000 Sacco predicted that "in the next twenty years, translation problems will become the most promising chapter in legal comparative law and will open up important avenues for legal epistemology and legal language reform." [32: 715] He was right, and his vision has been vindicated by the huge number of contributions that are now exploring legal translation in very different settings, recognising the vital, productive relationship that exists between comparative law and translation.

7 Conclusion

Rodolfo Sacco left an impressive intellectual legacy, built with methodical patience, by a profoundly original mind. His reputation as a profoundly original theorist is therefore well deserved.

Among the many tributes paid to him, I was struck by a line written by James Gordley: "Perhaps the best tribute to his work is to reflect not only on how much we have learned from him, but on how much we can still learn" [46].

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