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Shedding Light on the Dark Corners of the Law, by Walking Hand in Hand with Professor Sacco, Master of Italian Comparative Law

Elisabetta Grande[1]

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Abstract
Making use as a guideline of a self-authored manuscript—dated February 2000—where the "*Maestro*" reveals himself, this essay explores the academic life and the scholarly achievements of Rodolfo Sacco, the Italian master of comparative law, who just recently passed away. His intellectual endeavor is described throughout the lenses of a common thread that underlies his entire scholarly output: it his ability to illuminate the dark places of law, finding it where no one had sought it before. This is the essence of his original contribution to the understanding of the legal landscape's dynamics and it is the core of his cultural legacy, not only to comparative lawyers, but also to the community of the jurists at large.

Keywords Rodolfo Sacco · Italian comparative law · Legal formants · Mute law · Crypto type

1 Rodolfo Sacco, Comparative Law in Italy and a Precious Self-Portrait

This is an essay in memory of Rodolfo Sacco (1923–2022). It is to Sacco that the institution of comparative law teaching is owed, not only in Trento but also throughout Italy. His method, his approach to comparative law, was entirely original and swiftly became global. Thus, it is in remembrance of the great master of comparative law—who unfortunately departed from us recently—that I would like to dedicate the following few words. I find assistance in a precious document, coincidentally discovered among my papers shortly after his passing. It is a manuscript authored by Rodolfo Sacco in February 2000, where the "*Maestro*" reveals himself.

✉ Elisabetta Grande
elisabetta.grande@uniupo.it

[1] Università del Piemonte Orientale Amedeo Avogadro, Alessandria, Italy

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I had the impression it mysteriously appeared on my desk precisely for me to share it with the scholarly community.

Drawing upon his words inscribed in the aforementioned manuscript, and figuratively proceeding hand in hand with him, I endeavor to indicate what, in my view, was the essence of Rodolfo Sacco's work, the great insight that characterized his entire scholarly output in law. I will refer to a tale from the Sufi tradition, famously brought to attention by Jean Paul Fitoussi in his 2013 book, "The Theorem of the Streetlight." It is one of many stories featuring Mulla Nasruddin (or Mullah Nasreddin), a satirical figure from the thirteenth century who has traversed centuries and major cities of the East, reaching us unchanged.

Here is the story:

> Some friends one night come across Nasruddin crawling under a streetlight. 'What are you looking for?' they ask him. 'I've lost the key to my house,' he replies. They all bend down to help. After a fruitless search, one of them thinks to ask where he lost the key. 'At home,' Nasruddin responds. 'But then, why are you looking for it under this lamppost?' they inquire. 'Because there is more light here!' Nasruddin retorts.

Often—or perhaps always—when we study phenomena, even legal ones, we seek the key to the house—the object of our study—where there is light for us; in other words, in the places guided by our past knowledge. Yet, it is often in the absence of light that it hides. Changing perspective, freeing ourselves from the unconscious cultural constraints that compel us to look only under the street light and instead seeking in the dark places is often essential to find what we seek. To me, this seems to be the lesson of the story: a lesson that Rodolfo Sacco followed throughout his illustrious career as a scholar. From the outset, he knew how to illuminate the dark places of law, finding it where no one had sought it before, blinded by the lamppost's light.

2 Rodolfo Sacco, Municipal Jurist

Let us then follow him by extracting some parts from the account that Rodolfo Sacco offers about himself in the manuscript mentioned at the outset.

> "Memories of Rodolfo Sacco (Feb. 2000).
>
> Proficient in mathematics, I loved history. Circumstances conflicting with my desires led me to study law (1941–1945). Initially, I contemplated dedicating myself to the history of medieval law, but my encounter with Mario Allara steered me toward civil law. To elucidate who Mario Allara was, we must imagine a proponent of the conceptual method (as proposed by Puchta at the start of the nineteenth century), committed to rigorous classifications akin to those advocated, in the English setting, by John Austin and Hohfeld. Allara intrigued me because, with his devotion to conceptual and terminological precision, he posed epistemological problems, attempting to develop critically evaluated knowledge; he was a man of science.

> However, even in my thesis, I embarked on an autonomous path, the destination of which was distinctly outlined in the early courses held for the Institut d'études européennes in the early '50 s. During that time, I already had vividly before my eyes the fact that within each legal system, the legal rule, the judicial decision, and the conceptual category employed in academia (and even incorporated into legislation and judgments) are relatively autonomous; their disharmony is highlighted by comparison.

Through his own words, we can spot a very young Rodolfo Sacco—still a municipal legal scholar—who, albeit fascinated by Mario Allara's dogmatic-conceptual method, in his thesis is already challenging a dogma that seemed impregnable at the time. I'm referring to the principle of the unity of the legal rule, according to which the legislative formulation would correspond to one and only one correct doctrinal interpretation, which, in turn, when adopted by the Courts, would deliver to society the rule democratically established by the parliament. In such a perspective, jurisprudential and doctrinal conflicts would represent a pathology of the system, which eventually would return to its physiology, with the interpretative alignment of all the 'legal formants', as Rodolfo Sacco termed them.

The exploration of the dark corners of the legal realm, previously uncharted, leads Sacco to see what will take others a long time to perceive. The legal rule, Rodolfo asserts, is not unitary but plural: the individual formants, therefore, follow autonomous, not necessarily coinciding paths, which, according to Rodolfo, is entirely physiological. This constitutes an initial, so to speak 'weak', formulation of what would later become his theory of 'legal formants', presenting comparative scholars with a new study method, the structural one, to accompany the classic functional method.

Moreover, affirming and accepting the legal rule as plural means assigning a creative, or at least a cooperative, role to the judge in shaping the law, something that could have appeared surely blasphemous at the time of Rodolfo Sacco's graduation. This was especially true in criminal law, a domain where even common law systems—much more inclined to attribute a creative role to the Courts—have been very wary to acknowledge it openly. In the event of an adverse jurisprudential change for the defendant, indeed, to safeguard him against the substantial retroactivity of the norm, they did not resort to the prospective overruling—as was the case in civil law. To conceal the creative role of the judge, they rather employed few technicalities, such as for instance the stratagem of the mistake of law (the defendant's error of law due to their knowledge of a prior jurisprudential interpretation in their favor, no matter if it actually occurred or not) [5, 6].

Illuminating the dark places of the law with his vigilant and irreverent gaze, therefore, Rodolfo Sacco sees what others could not or feared to see. He anticipates what—for the criminal law—would be acknowledged by the European Court of Human Rights decades later, in judgments like Del Rio Prada v. Spain in 2013, finally being—albeit reluctantly—recognized even in Italy [16].

3 Rodolfo Sacco, Comparativist

It is when engaging in comparison, though, that—through a research far from the lamppost's light—Rodolfo Sacco thoroughly explores the pathways to discovering some legal dynamics that were invisible until then. He does so by formulating a "thick" theory of the dissociation of formants, his most extraordinary legacy to the comparativists.

Let us keep in following Rodolfo Sacco in his scholarly journey:

> At that time, the Institut d'études européennes offered post-university teaching in comparative law. René David held a prominent position there, and I was assigned as his assistant. After a year, I was entrusted with a course, preparing myself to give comparative law teachings. This first opportunity was precious to me. I soon felt like a comparativist and was proud to practice a discipline that, in my view, provided the key to ensuring an appropriate epistemological tool for legal science, in contrast to the dogmatic method. My background as a historian and my mastery of languages (at 24, I held conferences in German in Vienna and taught in French; at 26, I translated Venediktov's great work on socialist state property from Russian) aided me in practicing comparative techniques. Soon, my connection with my mentor became less visible. However, something of his approach remained in my method. He used to distinguish legal data ('pure law') from its social, environmental, political correlates, and so forth. I, too, always kept distinct the data belonging to different planes. This later allowed me to clearly isolate the legal rules of socialist countries conditioned by socialist choices and those for which a socialist justification was merely proclaimed. In short, at a very young age, I had the opportunity to interact with scholars from various countries (including René David and Esser) and analyze the differences in their ways of reasoning in legal matters. I had studied some topics comparatively and acquired the certainty that comparison holds a privileged place among the tools that allow for a critical understanding of law. In 1955, I won a professorship competition and was appointed as a professor in Trieste (for some years, I had already been a lecturer in comparative law in Turin). Around that time, Gorla's book on contracts was published. I sought out Gorla, got in touch with him, and considered him my new mentor. Gorla's work clarified what is necessary for a promise to be binding in English and French law. Reading his work confirmed my thesis on the dissociation of formants: operational rules in France and England are similar, but their definitions are antithetical. I spent decades trying to convince Gorla that the results he achieved were important precisely because they showed the false construction of a system based solely on the law, definitions, or case law. In the summer of 1960, I began teaching at the Faculté internationale de droit comparé in Luxembourg. I taught contracts. It was an opportunity to base comparison on the opposition of formants and the discovery of implicit (latent) rules in various systems. At the Faculty, I met many interesting people. Right after, I began teaching in Pavia. There, my colleagues highly respected my ideas, and when I became dean, I was able to design a curriculum that gave consider-

able prominence to comparative law (six courses). To disseminate knowledge of the discipline, I oversaw the Italian translation of R. David's classic work. In 1965, I presented to the public two carefully written articles in which some results and the framework of my method were prominently displayed (cf. especially Définitions savantes et droit appliqué, in the R.I.D.C. of that year). In 1970, I met R. Schlesinger during the VIII Congress of the Comparative Law Academy in Italy. Gorla introduced me to him. At that time, I had not yet read 'Formation of Contracts'. Upon reading it, I observed that R. Schlesinger had grappled with those misleading circumstances often overlooked by superficial comparatists (differing mentalities, tacit assumptions of jurists from non-communicating areas) and had found the correct method to neutralize them. I also noticed that all the work guided by R. Schlesinger confirmed how legal knowledge drawn from a single formant (be it the statute law, the case law headnotes [9, p. 103] or the statements of knowledge by jurists from a given country) is one-sided and truncated. I shared my impressions in a review (published in R.D.C., 1972, II, 172), which was well received by R. Schlesinger.

Rodolfo Sacco's keen eye as a comparatist enables him to bring to light legal rules that would be difficult for non-comparatists to identify, as they operate at a cryptotypic level. His structural method, realized through a complex dissociation of formants, involves what Rudolf Schlesinger would have termed "integrative comparison" (Schlesinger, 1995), demanding that the observers adopt the perspective of the other to reconsider their viewpoint in light of newfound insights. Through his method, Sacco becomes equipped to notice potential discrepancies between proclaimed rules and operational rules at various levels of formants in the different systems he analyzes. This discovery is revolutionary for comparative law and scientific knowledge in general, capable of altering the conclusions reached by those who remain at the superficial level of mere proclamations.

What Sacco applied is a thick and in-depth comparison, where the experienced eye of the comparatist illuminates operational rules that remain hidden to the internal jurist, thus unveiling surprising, unknown, and otherwise invisible convergences among systems.

4 Sacco's Theory of 'Legal Formants' in Context

To understand the revolutionary achievements of Rodolfo Sacco's work in comparative law, which made the Italian discipline to "go abroad", it may be useful to give some context and explain how Sacco's theory of legal formants fits in the development of the comparative law field and how much his theory affected it.

Oddly how it can be, the mainstream tradition of Italian comparative law has its birthplace, at least in a sense, in a small college town in the Eastern United States, that is, in Ithaca, New York. Ithaca was the place where, since the 1950s, Rudolf B. Schlesinger, the German emigrant, was conducting the preparation of his most ambitious project, his study of the Common Core of the rules governing contract

formation [10, 26]. This project involved several key figures in the development of Italian comparative law: the young Mauro Cappelletti (1927–2004), for a long time the only Italian legal scholar with a worldwide reputation; Giovanni Pugliese (1914–1995), a distinguished Roman law scholar; and, perhaps most importantly, Gino Gorla (1906–1992), later recognized as the true founding father of modern comparative law in Italy.

In 1955, Gorla, a somewhat heretical civil law professor at the University of Rome, published his highly original comparative book on contract law, *Il Contratto*. In this work, he pioneered the use of the case method and of a factual approach, introducing both into an area of law hitherto largely dominated by formalistic dogmatism [4]. Thus, the publication of this masterpiece shook the profession. Tullio Ascarelli called it "the first Italian wide-ranging comparative work". Gorla's *Il Contratto* was the result of years of searching for alternatives to the "dogmatic-conceptual" approach (as he defined it) prevailing in the Italian legal culture. Gorla had looked for such alternatives mainly in the United States. Between 1948 and 1949, he visited many American law schools and established particularly close ties with the Cornell Law School where he met Rudolf Schlesinger (1909–1996) with whom Gorla began a seminal scholarly dialogue. He found that American casuistic and inductive approach freed jurists from the intellectual straitjacket of the broad and abstract concepts that Italian jurisprudence had borrowed from the German *Allgemeine Rechtslehre*. To Gorla, the American approach was like a breath of fresh air. *Il Contratto* was the product of this encounter with the American legal culture. Here, for the first time, not only in Italy but also in all of continental Europe, key questions of contract law were addressed from an historical and comparative perspective, discussed in a case method fashion and with reference to four major legal systems—the Italian, French, English, and American.

The impact of Gino Gorla's work on comparative law was simply enormous. It opened completely new vistas for legal research. It also attracted the particular interest of Rodolfo Sacco, then teaching at the University of Trieste. Sacco was not directly involved in the Common Core project at Cornell and had never studied the common law in a systematic fashion, but he was greatly inspired by Schlesinger's approach as well as by Gorla's foundational work. Once interviewed about his own contribution to comparative law, Sacco declared with excessive modesty, "I have been a notary who put into writing, using some neologism when necessary, the new things discovered by R. David, R. Schlesinger and G. Gorla" [21, p. 284].

Sacco's remark is certainly a serious understatement but it remains true that the most influential version of Italian comparative law today—Sacco's theory of "legal formants"—has its roots in the post-World War II tradition founded by René David in France, Konrad Zweigert in Germany, and Gino Gorla in Italy. The hallmark of this tradition is the idea of functionalism-structuralism, which is now part of the mainstream of professional Western comparative law [7, 10].

As he recalls in his manuscript, after having tested it in his teaching at Trieste as early as 1958–59, Sacco first formulated his theory of "legal formants" under the label of "legal components" in an article exploring some aspects of the law of the Romanist tradition [17]. He fully developed his theory in a report for the International Academy of Comparative Law meeting in Teheran in 1974 [18]. It became

widely known through Sacco's treatise *Introduzione al diritto comparato* [19] and finally became available in English through a translation by James Gordley in 1991 [20, 25]. As described in the leading American comparative law casebook, the methodology of legal formants looks deceptively simple:

> Professor Sacco has shown that there often is not, in a given legal system, a single unvarying rule on a particular point, but rather a series of different (sometimes conflicting) formulations of the applicable rule, depending on the kind of source consulted. The code may say one thing, the courts another; scholars may state the rule differently; the tacit rule actually followed may again be different from what anyone says it is. These different possible formulations are 'formants' (the term being borrowed from phonetics, the science that studies sounds) of the rule as it obtains in that particular jurisdiction. Understanding a legal system requires attention to the different incidences of its rules at various levels of practice and layers of discourse. An important reason for such differences may be that the 'formants' of a rule derive from different sources: for instance, the legislature's rules may derive from a particular foreign system, while scholars have systematized them, using concepts and principles borrowed from another. This phenomenon is particularly noticeable in the many civil law systems, which, like Italy, initially adopted codes based on the French prototype but later fell under the spell of German legal scholarship [28, p. 288].

Sacco's idea of 'legal formants', that is, of a legal landscape consisting of components not necessarily coherent with each other, provided a theory for the demise of the paradigmatic Kelsenian idea of law as a pyramid of orders from the sovereign at the top to the subject at the bottom. From now on, the comparatist could no longer be content with such a rigid order. Instead, he or she needed to discover, analyse, and contrast with each other, a variety of "formants" in order to capture the complexity of a legal system and of its "rules". This represented a significant step forward in our understanding of the nature and life of the law.

5 Sacco in Trento: The 'Trento Theses'

In 1979, the biannual meeting of the Associazione Italiana di Diritto Comparato[1] was dedicated to Gino Gorla. It became the venue of the last truly intense methodological discussion in comparative law in Italy. This discussion occurred mainly between two camps. One group of scholars, lead by Mauro Cappelletti and Vittorio Denti (1919–2001), insisted that comparative law had a mission to improve the law and to participate in policy-making. The other group, headed by Rodolfo Sacco, advocated a 'purely scientific' approach and saw the purpose of comparative legal studies as the pursuit of pure knowledge. The latter group ultimately won the day. Ever since, it is paid homage, more or less routinely, in most

[1] Italian Association of Comparative Law: https://www.dirittocomparato.org/.

comparative law books and law review articles and it has never seriously been challenged in its leadership role. Ultimately, it became closely associated with a newly founded university in the North of Italy and formulated its programme in the so-called "Theses of Trento".

In 1982, Rodolfo Sacco was elected chairperson of the special committee that established the law school at the University of Trento. At the time of its opening, the teaching staff was very young—most law faculty members were full-time scholars in their mid-twenties. When the law faculty began operations in 1984, observers noted that the curriculum looked very peculiar: all courses taught by full professors were labelled "comparative". In contrast, junior faculty members taught courses on purely domestic law. This pattern was the exact opposite of the traditional set-up where senior professors had given the domestic (compulsory) lectures while comparative law, if taught at all, was offered by junior or adjunct faculty. While the traditional pattern was quickly restored, the experiment still linked the name of Trento with the rise of comparative law in general, and with Sacco's program in particular.

Interestingly, the pattern established in the founding phase of Trento's new law faculty, that is, ranking the comparative aspects of a field as equal to, or even higher than, its purely domestic side, characterized another major project launched in the mid-1980s: the new edition of the *Digesto*, that is, the leading Italian legal encyclopedia. The whole work is organized so that legal subjects are analyzed not only from a domestic perspective, as in previous editions, but also in their comparative dimension. In fact, entries on domestic law are put side by side with entries on comparative, foreign, and international law. This structure expressed the fundamental idea that (Italian) law must be studied, and can perhaps only be understood, in a broader comparative context.

Both moves, the path-breaking initial organization of the Trento law curriculum and the innovative structure of the *Digesto* in its fourth edition, were revolutionary. They can be interpreted as frontal attacks by Sacco and his school on the traditional patterns of prestige in Italian Academia.

In 1987, Sacco's program was formalized in five theses. They are worth reproducing here in translation because they represent the founding principles of Sacco's legal formants method:

> *First thesis.*"Comparative law, understood as a science, necessarily aims at the better understanding of legal data. Ulterior tasks, such as the improvement of law or its interpretation, are worthy of the greatest consideration but nevertheless are only secondary goals of comparative research."
> *Second thesis.*"There is no comparative science without measuring the differences and similarities among different legal systems. Mere cultural excursion into, or parallel exposition of, certain fields is not comparative science."
> *Third thesis.*"Comparison turns its attention to various phenomena of legal life operating in the past or the present; it considers legal propositions as historical facts including those formulated by legislators, judges, and scholars, and so verifies what genuinely occurred. In this sense, comparison is an historical science".
> *Fourth thesis.*"Comparative knowledge of legal systems has the specific merit of testing the coherence of the various elements present in each system after identi-

> fying and understanding these elements. In particular, it checks whether the unrationalized rules present in each system are compatible with the theoretical propositions proffered to make the operational rules intelligible".
> *Fifth thesis.*"Understanding a legal system is not a monopoly of the jurists who belong to that system. On the contrary, the jurist belonging to a given system, while enjoying the advantage of an abundance of information on the one hand, is, on the other hand, suffering from the disadvantage that he, more than any other jurist, is under the assumption that the theoretical formulations present in his system are completely coherent with its operational rules" [3, p. 52; 20, footnotes 6, 27, 28, 29].

Despite the general open-mindedness of Sacco as their author, the theses of Trento could be understood as a form of dogmatism. Thus, they have encountered considerable resistance from scholars who regard such a canon as an intellectual strait-jacket. It is true, indeed, that the theses contain an element of scientific positivism that is troublesome in an age of methodological anxiety. For example, they express great faith in the distinction between 'is' and 'ought'. Today, however, such a distinction is widely regarded as epistemologically obsolete. Perhaps more importantly, it may well be in outright conflict with the 'legal formants' approach which postulates, after all, that the interpretation of a rule is part of the rule itself [10, p 253].

Thus, one should not overrate the influence of the Trento canon on comparative law in Italy. Its influence is overshadowed by the impact of the much more open-minded 'legal formants' approach. The approach is the most influential formulation of the current structuralist methodology and so far is probably the most important and lasting contribution of Italian scholarship to the discipline of comparative law. Its impact is particularly noticeable in the ongoing search for a common private law of Europe. In the recent past, comparative law has been boosted in Europe by the practical needs of legal integration, and Italian comparatists have actively participated in this search in a variety of contexts and capacities. This is particularly true with regard to one of the most visible undertakings in this area, that is, the search for a *Common Core of European Private Law* first organized at the University of Trento. This undertaking builds on Schlesinger's Cornell project but then takes a step forward by using Sacco's "legal formants" approach to distinguish the various elements of law in a given system. In one of the earlier books emerging from the Trento project, its editors, Mauro Bussani and Vernon Palmer, aptly described the resulting methodological credo:

> A full understanding of what the legal formants are and how they relate to each other allows us to ascertain the factors that affect solutions, making it clear what weight interpretative practices (grounded on scholarly writings, on legal debate aroused by previous judicial decision, etc.) have in molding the actual outcomes. Hence the notion of legal formant is more than an esoteric neologism for the traditional distinction between 'Loi', 'Jurisprudence' and 'Doctrine', i.e., between enacted law, case law and scholarly writings. Within a given legal system, the legal rule is not uniform, not only because one rule

> may be given by case law, one by scholars and one by statutes. Within each of these sources there are also formants competing with each other. For example, the rule described in the headnotes of a case can be inconsistent with the actual rationale of the decision, or the definition in a code can be inconsistent with the detailed rules contained in the code itself. This complex dynamic may change considerably from one legal system to another as well as from one area of the law to another. In particular, in each legal system certain legal formants are clearly leading in a different way—differences in formants' leadership are particularly clear in the (traditional) distinction between common law and civil law [1, p. 168].

Albeit ascribed by Rodolfo Sacco—as already mentioned—to his mentors, René David, Gino Gorla and Rudolph Schlesinger, the theory of legal formants is in reality an entirely new method entrusting comparative law with the crucial task of illuminating the shadowy areas of law everywhere. As highlighted by George Fletcher [2] and Horatia Muir-Watt [11] this gives to the discipline a "subversive" flavor, paradoxically conceived by someone—like Rodolfo Sacco—who in everyday life has always been extremely mindful of respecting social conventions, but who seemed to embody the spirit of a partisan fighter in times of peace in the academic realm.

Yet, Sacco's theory of legal formants—in its "Trento Theses" construction, as mentioned—does not accomplish complete liberation from positivistic notions of law. As a tool of inquiry, the theory was still remarkably narrow in its complete lack of interdisciplinarity: a flaw that Rodolfo Sacco, in his new vest of anthropologist, was able to fix.

6 Sacco Anthropologist

Driven by the desire to illuminate the obscure corners of the law to reveal its entirety and complexity, Rodolfo Sacco certainly did not limit his analysis to the Western legal tradition. Here is how, in his narrative, he expands the boundaries of his research:

> Meanwhile, circumstances dictated a consistent involvement in several socialist countries (Czechoslovakia, Bulgaria, Poland, from 1964 to 1975) and African nations (Somalia, Morocco, from 1970 to 1988). […] In recent years, I have been emphasizing how the law has been revolutionized by immensely significant innovations—starting with the most recent: the omnipotent legislator, the jurist, the State and centralized power, the supernatural, articulated language—. Contrasting various formants has led me to realize that even in a system of legislative and hence written law, not everything is confined to written law. Other elements (unwritten) also contribute to the law. Hence, a portion of the law remains latent (I refer to these as crypto types). In the past decade, I have extensively developed this conclusion. The legal technique without language has survived in contemporary times, operating when our ancestors lacked articulated language (custom, precisely, is a source that does not utilize language and has a scope much broader than perceived). Interpretation, on its

> part, engages a series of unwritten factors, activating them in the application of the statute or of other sources using words (case law precedents and academic teachings).

His encounter, specifically with Africa, leads Rodolfo Sacco to don the mantle of the legal anthropologist, anticipating a period where, among Italian jurists, Bronislaw Malinowski was still relatively unknown. Becoming a "participating observer", Sacco discovers the existence of a law without the legislator, without jurists, without the State, and with no centralized power [22]. The law practiced in Africa is not solely the law taught at universities, codified, or applied by formal courts of justice; it is also—and above all—a law invisible to the eyes of the Western jurists, unwilling to encompass within the legal realm what does not align with their idea of legality. Always capable of finding the "key to the house" in poorly illuminated spaces, Rodolfo Sacco immerses himself in a world yet unknown to jurists in his own domain and brings to light unwritten and sometimes unexpressed legal rules. Consequently, he uncovers the existence of a layered law, where multiple legal registers apply within the same space–time context, some visible and others invisible to those who confine legal boundaries to formal aspects. He also understands that a law, elusive and unconscious, exists beyond language: it is the law "whose compliance is ensured by a play of glands and hormones". A law that Sacco defines as mute because it consists of rules not verbalized but directly enacted in response to certain stimuli [24].

Thus, while exploring the law in its macro-history[23], reexamining himself and his own system through newly acquired theoretical lenses, Rodolfo Sacco makes us aware that the legal dynamics of others are also our own: informal law and mute law are still part of our legal reality. Following an analytical approach distant from the positional superiority condemned by Edward Said—consistent instead with the comparative consciousness described by Laura Nader [12] or with the practice of "dialogical dialogue" with the other recommended by Raimon Panikkar [14]—Sacco places all systems on an equal footing and explores the legal panorama from every angle, fulfilling the aspiration of American legal realists like Herman Oliphant to move out of libraries and study a law that is fundamentally "as broad as life itself", as Karl Llewellyn would have said [30, p. 571].

Sacco's interdisciplinary work broadens, therefore, the focus of the legal formants approach. In its original version, this approach challenged the traditional hierarchical view of legal sources, showing, for instance, that an article in the civil code competes with a court decision in producing the governing rule. Yet, as noticed earlier, this challenge had remained within the boundaries of legal positivism, so to speak. Through his analysis of non-western legal systems, Rodolfo Sacco widens his legal formants theory and by taking into consideration other, non-positive, factors, he paves the way to a broad understanding of the law and its internal dynamics. In his wake today, Italian comparatists thus also consider "meta-legal formants" among the components that constitute a legal rule, such as political backgrounds, economic environments, ideas currently in vogue, and the need for social cohesion. This has enabled them fully to appreciate the context in which a legal rule arises, operates, and has effects. Such an enriched, broader, version of the legal formants approach

goes beyond officialdom and professionalism. It shows that legal formants are not independent of social, economic, and cultural factors and that dimensions of power, and especially of power disparity, play an important role in shaping the law [8, 13, 15, 29].

7 Conclusion

In the end, Sacco largely represents both the past and present of comparison. However, he also imparts a significant lesson for the future. In present high conflicting times, where—for the first time in a long while—major global powers are dangerously engaged, his seems to be a message of potential convergence among diverse elements. The multipolar world, which we may one day witness, can be peacefully sustained if, as the 'Sacchian' theory of formant dissociation has taught us, we can look beyond the lamppost, where there is no light, to find numerous points of convergence hidden beneath the surface of the highly visible reasons for conflict.

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