International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique
https://doi.org/10.1007/s11196-024-10139-x

Lurking Glares. A Comparative Critique of Latency and Cryptotypes

Cristina Costantini[1]

Accepted: 8 March 2024

Abstract
Based on Rodolfo Sacco's passionate research on cryptotypes and mute law, the essay aims to propose an onto-aesthetic understanding of latency in law. Inspired by a transdisciplinary way of thinking, the Author elevates comparative law to the privileged site where a critique of the unexpressed can be performed; the degree of figurality of the law can be uncovered and measured; an economy of surplus can be disclosed as the proper segnatorial trait of the material appearances of the law. In this direction, comparative law combines a phenomenology of latency with a hermeneutics of the implicit/implied and becomes the place where it is possible to uncover the communality among plural symbolic universes (literature, arts, music) against the tyranny of disciplinary strategy.

Keywords Latency · Cryptotypes · Mute law · Excess · Signature · Unexpressed · Legal ontology · Law and · Comparative law

> […] between Ninnarieddu and Ida, who still had her back turned to him, there was an unspoken, final dialogue, perhaps unformulated even in their thoughts, but expressed by their persons with eloquent clarity [Morante 16: 92][1]

[1] Dedicated to the histories that become immortal.

✉ Cristina Costantini
cristina.costantini@unipg.it

[1] Department of Law, University of Perugia, Perugia, Italy

Published online: 17 April 2024

1 Against the Tyranny of the Façade. From Non-Sensuous Similarities to the Content of Truth

"To read what was never written". Such reading is the most ancient: reading prior to all languages, from entrails, the stars, or dances. Later the mediating link of a new kind of reading, of runes and hieroglyphs, came into use. It seems fair to suppose that these were the stages by which the mimetic gift, formerly the foundation of occult practices, gained admittance to writing and language. In this way, language may be seen as the highest level of mimetic behavior and the most complete archive of non-sensuous similarity: a medium into which the earlier powers of mimetic production and comprehension have passed without residue, to the point where they have liquidated those of magic" [4: 722].

In his essay *On the Mimetic Faculty*, Walter Benjamin gives the idea of imitation a redeeming chance by exorcising it from all negative Platonic connotations. Essential to life, mimesis[2] becomes the hallmark of human behavioral and cognitive capacities, and it remains inexhaustible to guide their development and progression. Freed from the metaphysical contempt of an impure shadow, it enters history and begins to have its own history, a linear and directional transformative evolution, properly – as Benjamin would have liked to define it – a *phylogenetic* process that affects and shapes the unfolding of human culture.[3] In this reparatory perspective, it is not interesting to know and recognize the originary point of insurgence, but the residuary source of mimetic materiality, the embedded remnants, the invisible ruins that continue to inhabit our time. Language is one of the most powerful repositories of the aesthetic connections and correspondences between the human and the world. It is an archive of immaterial or non-sensory similarities,[4] that are the present vestige of its ontological onomatopoeic capacity. Around this mimetic excess, a signature[5] of a hidden but unresolved magical force, all the tensions and bonds between what is said and what is meant, what is written and what is meant, what is spoken and what is written arise

[2] Unfold in its double nature, receptive (as the capacity to recognize a set of non-sensuous similarities) and productive (as the capacity to create novel similarities, especially to assimilate oneself to these similarities).

[3] Mimetic faculty marks the human experience both phylogenetically and ontogenetically. With regard to the latter aspect, Benjamin refers to the imitative tension that characterizes the children's play: "Children's play is everywhere permeated by mimetic modes of behavior, and its realm is by no means limited to what one person can imitate in another. The child plays at being not only a shopkeeper or a teacher, but also a windmill and a train. Of what use to him is this schooling of his mimetic faculty?" [4: 720]. In the act of playing, the child does not simply reproduce a model, but develops the ability to bring out correspondences and similarities in her body: she makes visible in figures the material qualities of things. This synthetic and powerful form of expression is used by Silvana Borutti in a captivating and fascinating study on the theme of figurality, which is treated in three major steps: the image as apparition, the image as immaterial similarity, the image between appearance and disappearance [5].

[4] Benjamin talks about an "unsinnliche Ähnlichkeit". The term was first used by Lévy-Bruhl in his work *L'âme primitive* (1927), although this fact has not been investigated in a proper way by critics. It has been suggested that Benjamin was influenced by the word Athikte (literally meaning intangible, immaterial) which Paul Valéry chose to name the young dancer who engages in dialogue with three Greek philosophers (Socrates, Eryximachus, Phaedrus) in his Platonic confrontation *L'âme et la danse* (1923); on this point see [13: 24–54].

[5] As Giorgio Agamben shows in his study on signature [1: 71 ff.].

and articulate themselves. Letters, graphemes and words rest as figurative indices of a pre-linguistic sensory commonality: they are the historical precipitates of a pristine productive convergence, crystals of affinity, flashing signs through which immateriality reorganizes the meaning of materiality to a new extent and in a different manner. The express is a memorial cave for the resurgence of the muted. Accordingly, latency is a meaningful reserve that does not need to be solved but must be rediscovered continuously from the surface.

The formative force embedded in the obscure (that which is not explicated, or which is immaterially contained in the graphic and phonic consistencies of each word) moves and extends from language to text.

In another dense and challenging essay, *Goethe's Elective Affinities* [3: 297–360], Benjamin returns to the double dialectics that constitute literary works, linking what appears on the pages and what lies in depth below; an exposed, upper layer and a deeper, hidden foundation. This intellectual vision sheds new light not only on the aesthetic resolution of artistic creations, but also on the complex and not-univocal methods necessary to fully grasp their meaning and implications. The two aspects are structurally connected. In the opening lines of his study, in fact, Benjamin outlines the distinction between *critique* and *commentary*, as the two main expressions of the interpretative gesture, in order to make clear the internal dichotomy that shapes the artwork processually. Critique seeks its *truth content* (*Wahrheitsgehalt*), its social unconscious; commentary explores its *material content* (*Sachgehalt)*, its subject matter. For every text (emphasized here as a paradigmatic example with regard to what is said about the law, but the arguments discussed apply equally to every form of human achievement) there is a profound abyss, reaching an invisible bottom that lives on as the silent and undisclosed counterpart to the worldly surface. To critically scrutinize a work is therefore an *act of deepening*, literally (not just metaphorically) a vertical sinking into the occult sediments that persist as its founding instance. The expressed – namely the visible, the legible and the commentable –, marks the recognizable appearance of an intense negotiation between the subjective, authorial choices and the uncontrollable, historical objectivity: the supposed *autonomy* of the creator must be measured and relationally qualified in the light of the *heteronomy* of its perduring sources and conditions of possibility. After demonstrating the polemical nature and the tensional forces that justify the process of artistic creation, Benjamin reflects on the specific relationship between the two types of content (truth and material). In the course of their duration, texts and works change the dynamics of their formative elements: the invisibility of the truth becomes denser by darkening further, while the visibility of the material becomes brighter by increasing its transparency. In the central passage, put at the beginning of the essay due to its intellectual relevance, Benjamin clearly denounces: "the relation between the two is determined by that basic law of literature according to which the more significant the work, the more inconspicuously and intimately its truth content is bound up with its material content. If, therefore, the works that prove enduring are precisely those whose truth is most deeply sunken in their material content, then, in the course of this duration, the concrete realities rise up before the eyes of the beholder all the more distinctly the more they die out in the world" [3: 297]. The critic is required to act on the text like "a paleographer in front of a parchment whose faded text is covered by the lineaments of a more powerful

script which refers to that text" [3: 298]. With an even more evocative image, based on a simile, if the growing work can be depicted as a burning funeral pyre, "then the commentator stands before it like a chemist, the critic like an alchemist: […] for the former, wood and ash remain the sole objects of his analysis, for the latter only the flame itself preserves an enigma: that of what is alive" [3: 298].

The illuminating connection between the two essays mentioned here, a kind of ominous glimmer that ultimately permeates all of Benjamin's thought, proclaims that both natural language and texts as works of human creation are not closed, resolved, or finally perfect: they present themselves as the *outward site* of an *inward beyond*, *that lurks in depth as the index of the unexpressed* and at the same time offers the enduring and necessary condition of definiteness.

These are the intellectual premises under which Rodolfo Sacco's thought on *cryptotypes*, *mute law* and *comparative law aims* will be honored and taken to new horizons.

2 Structuralism from the Underground. Rodolfo Sacco's Descent Towards the Mute Law

One could say that a writer's greatest affection for a particular topic or idea – among those treated or formulated – is evidenced by its constant recurrence, its irrepressible reappearance in thought and work. If one finds this assumption acceptable, one can only agree that the *interrogation of latency in law* represents one of the most urgent and overwhelming compulsions that have iteratively permeated Rodolfo Sacco's intellectual life. Almost as if tracing a perfect circle, the latest publications also return to the insights of the beginnings, revitalizing them with the constructive glaze of the age of wisdom and with the confident curiosity of the one who has visited different fields of knowledge and dissimilar cultural habits.

Rodolfo Sacco has been a partisan of plurality and complexity. He fought against positivist reductionism through the fierce and stubborn dissemination of comparative law in the Italian scientific landscape. The new discipline, conceived as a counter-hegemonic project, required a new lexicon, a bulk of words to convey the reversal of past certainties. For this reason, terms such as *formants*, *cryptotypes*, *operational rule*, *dissociation* appeared for the first time on the stage of legal history.

Once again, it was the work of Sacco's histrionic mind.

Recomposing the genealogical roots of Sacco's mindset, for what could be of interest in these pages, it could be noted that two preliminary observations have oriented the path towards the construction of a subversive paradigm of legal structuralism.

Firstly, Sacco has noted the internal contradiction that affects the usual explanations of national jurists (including those who profess legal positivism). On the one hand, they portray the common and irenic picture of a complete, coherent and orderly system, constructed around the authoritative primacy of legislation and defined on the basis of the proclaimed marriage between law and legislation. On the other hand, they violate the purity and unity of this composition when they reflect over the interpretation of the rules and the relationship between the spirit of the law and social reality. It is precisely in this respect that other expressions come to contaminate the

immaculate scene: 'living law', 'spontaneous law', 'law in action', 'the nature of things' speak of additional truths and mark the existence of an applied law that does not coincide with the written law [24: 182–183; 20: 344]. Divorce follows marriage.

Secondly, by shifting the focus from the internal to the external perspective, Sacco collected data that made it possible to confirm and reveal the unuttered (albeit existing) schism between declared and applied rules that could already be observed within the boundaries of a secluded legal system. The revelatory turn from a synchronic view to a comparative perception allowed to demystify the optical illusion cultured by a domestic and solipsistic egotism. Beyond and before prejudicial misconceptions, it appears that, in different spatialities, identical statutes or scholarly formulas give rise to different applications, as well as, conversely, identical applications are produced by different statutes or different scholarly formulas spread out in different contexts. The gap between the enunciated and the practiced rule led Sacco to postulate the existence of a silent source defined as '*cryptotype*'. The hiatus now was speaking with the tacit voice of what had remained unverbalized.

The 'cryptotype' represented the first step in the intellectual journey that Sacco followed to reach the final destination, the magnetic horizon of the *mute law*. The term cryptotype (like its relative, '*formant*', the former of which would denote a particular gemination), sounded like a surprising legal neologism. Actually, it was borrowed from linguistics (like the word 'formant' from phonetics), where it was introduced by Benjamin Lee Whorf to denote "a submerged, subtle, and elusive meaning, corresponding to no actual word, yet shown by linguistic analysis to be functionally important in the grammar" [30: 70].[6] Sacco recognized his burden [19: 39; 21: 376, ft. 62; 26: 7] and presented it as an act of fruitful illumination brought by the convergence of separate fields of research.[7] When a scientific hypothesis is formulated and validated by different disciplines and scholars, this shows that the topic is relevant and that the arguments put forward to resolve the issue are justified. By arguing in this way, Sacco prepared a constructive framework in which he could integrate and synthesize the achievements made by B.L. Whorf in linguistics and the theories developed by F.A. von Hayek at the intersection of law, economics and politics. The composite lesson he learned and shared with his fellows was that: (a) there are rules that govern our behavior, even if we are not aware of them (Whorf's admonition); (b) there is a crucial difference between following a rule and knowing about it (von Hayek's advice). On this basis, as a logical consequence, it is not ontologically necessary that the entire law be expressed and conscious. Our habitual mode of repre-

[6] Cryptotypes, or covert categories, are covert morphological or lexical class "having no mark other than distinctive "reactances" with overtly marked forms" [30: 70]. Their main trait is that "easily escape notice and may be hard to define, and yet may have profound influence on linguistic behavior" [30: 92], that is to say, native speakers are generally unaware of the class and are unable to explain the rules for its application. Synthetically, a cryptotype is something that escapes the notice of the speakers of the language. Among cryptotypes in English language, Whorf cites gender, the inherence of the adjective, the transitivity of the verb, categories of verbs that may be phrasalized with 'un'. For example, words like 'uncover', 'undress', 'unroll', 'untie', but not 'unwaste', 'unhit', 'uncut', and so forth, suggest that there is a semantic principle, precisely a cryptotype, which determines if a verb belongs to the un-class or not.

[7] As it is clear from the first lines of *Il diritto muto*, when Sacco declares "Linguistics can teach something to any comparative science and every scholar can benefit from some good reading on the topic" (translation is mine) [26: 37].

senting it as a rational construct depends solely on our arbitrary anthropocentric view which transforms the law into an object planned by the human mind.

If we look back from the present and review all of Sacco's exuberant production, the centrality of the cryptotype seams tantalizing. It appears again and again, both explicitly, as a direct object of enquiry, and implicitly, where it can be inferred from the conclusions about the concrete application of specific institutions. It is the underwater current that ripples the surface, the dynamic that moves the mundane plates of the entire legal world producing connections, fractures, fault lines.

Sacco played with its discovery with a sort of intellectual amusement, sometimes making it clear, sometimes simply letting it work.

Cryptotypes have been used in a variety of ways.

In a first direction, their 'presential imperium' has been invoked to unmask and neutralize the synecdochic formulation used to draft statutory provisions, as in France, where the norm which speaks of a will without a declaration is frustrated by the unspoken rule which practically condemns the unmanifested will to ineffectiveness, or the statement that requires pure consent for the formation of a contract is overridden by the undisclosed principle that excludes the effectiveness of consent if it is not supported or justified by a cause. In this sense, the discovery of a latent layer of any legal system, beyond the letter of its formulations, clarifies its internal functioning and increases the awareness of those who operate within it [18].

In a second and related perspective, cryptotypes have been considered a privileged topic of comparative law due to their trans-systemic nature: homogeneous cryptotypes in different systems can easily be uncovered when they assume different forms within the contexts under consideration. In particular, the verbalization or the disclosure of a cryptotype in one system enables the discovery of its twin in another system where it remains silent and obscure.

Moreover, lurking in their living abyss, cryptotypes outlast generations, eras and times, and thus become the centerpiece of a legal tradition: they are transmitted unquestioned and unchallenged, as part of an obvious and irrefutable heritage, turning into the intangible mark of the legal mentality that affects lawyers and scholars wherever they are and wherever they work.

Sacco has proclaimed their undisputed lordship. As he has pointed out immediately, from the first steps of his reflection, "a jurist belonging to a given system finds it more difficult to get rid of the set of cryptotypes that exist within that system than to abandon the rules of which he is fully aware" [19: 40].

From this standpoint, which undermines the tangible mood that nourished all structuralism *à la* Saussure, Sacco began to reflect on the possible relationships between the verbal and the verbalized, the tacit and the thought, the conscious and the unconscious, the patent and the hidden, feeding the idea of latency in his own way, and reassessing the same purposes of comparative law.

In addition to the specific phenomenon of the cryptotype, there is also the *mute law*. The search for something more and something else, that could give a reason out of the dark to our comprehensive legal behavior, occupied Sacco from the Eighties until the end of his life [21–26]. It was a sane and irresistible obsession. In his last book, not by chance integrally devoted to exploring this topic, he systematizes all his previous reflections and gives his definitive answer to those colleagues who

expressed some concerns about his doctrine (both terminologically and in terms of content) or who, although they praised the results he had achieved, clearly failed to grasp the rationale, the subject matter and the intents of his proposal. The preamble to *Il diritto muto* [26] contains an orderly, at times humorous critique, reflecting Sacco's proper style that displayed a gleam of irony beneath every veneer of professional composure. The taxonomic objections (a distinction should be made between 'non-speaking' and 'non-spoken') and the terminological comments on the definitional choice that led Sacco to speak of a 'mute law' (moving from the debate about the icastic or steretical nature of the adjective 'mute', which actually declares what the law is not and not what the law is) are abandoned and dropped, notwithstanding the explicit gratitude for their formulation, which in fact indicates the interest in the topic that Sacco himself has aroused.[8] Similarly, or perhaps with a touch of bitter sarcasm, Sacco claims that 'his' mute law in no way corresponds to the latent law of those who recognize in it a certain degree of linguisticity, a proper code,[9] or who resolve the rich potentialities inherent in the term 'mute' by identifying the 'mute' (only) with 'the gestural'.[10]

On the contrary, the kingdom of the mute law is as ancient as it is vast and wide. It encompasses not only non-verbalized acts and elements, but also what rules regardless of any form of language and without recourse to a semiotic code or process. The focus is not on the distinction between written and unwritten law, nor on the juxtaposition of the spoken and the unspoken, the verbalized and the non-verbalized, but rather on the law that functions without words, sounds, or conventional signs of communication. Sacco goes far beyond the line already traced by Emilio Betti, who overcame the omnipotent and preeminent force of the declaration, giving relevance to the ordinary and material conducts. This is because, according to Sacco, even acts and behaviors that are not socially recognizable can be normative, can be 'law'. Moreover, 'tacit' is not synonymous with 'mute', because one could think in silence, while the 'mute' goes back to the sphere of the unconscious. It refers to the law (rules and acts) born with the primitive man, who lacks a form of articulate language, to spontaneously satisfy and fulfill his various needs. In the beginning was not the word.

Sacco's journey is a kind of veritative regression to expose the fallacy of temporary dogmas. Macro-history defends itself against history and triumphs over its fleeting pretenses and designs. Following Sacco's warning, in order to understand the origin of the law, we must return to the origin of the human, to that time and space where metaphysics and biology can go hand in hand [27]. There we will recover what we have lost in our collective life, because it has been submerged by what we have been given to believe or learn.

This is perhaps also the reason why, in the last years of his earthly life, Sacco felt the need to return to the origins, both of his vision and of the meta-vision of the law, to find in them his own fulfillment as a person and as a scholar.

[8] The reference is to Amedeo Conte's critical remarks and especially to his suggestion to replace the expression 'mute law' with the name 'Erlebnisrecht', that can be translated with 'lived law' [8].

[9] The reference is to Patrick Nerhot's understanding of Sacco's notion of mute law [17].

[10] The reference is to Jacques Vanderlinden's reduction [29].

3 Comparative Law as a Critique of the (Legal) Unexpressed

The rediscovery of latency, in all its possible declensions, can lead to various and not overlapping results. It can support a new epistemological perspective, that profoundly reveals the moods, forms and grounds of the legal knowledge; it can provoke a serious reconsideration of the process of legal creation, in order to unmask the polemical struggle between different centers of production and legitimation (institutional or not; communitarian or not; located at the bottom or at the top within a given society); it can expose the inadequacy of law as a discipline (with its internal methods, with its proper language, with its intimate consciousness) to explain the law as a functioning entity.[11]

Sacco took this latter path to look at law from an anthropological point of view. The certainty that law cannot be explained auto-referentially, as it contains more due to its human facet, led him to devote his passionate research and study to the development of a personal understanding of what is known as 'legal anthropology'.

This path claims to be followed and crossed beyond, up to reach the actual ontology of the Law.

Reconsidering Sacco's thought on the cryptic and the mute in the light of Benjamin's icastic and captivating reflection, one must consider as partial and misleading every *representation* (or better *pres-entification*)[12] of the law based on the totalization of the exterior, of the outer, of the legal epidermis. An image dominated by the sovereignty of the word (both written and spoken) to the detriment of the mute and the unspoken, of the invisible and the untouchable is the ultimate expression of a work of neutralization, that dissolves the submerged forces of the currents in the calm plane of the surface and imposes the hegemony of the immediacy to depoliticize the urgency of the unconscious.

The texture of the law in its aesthetic and phenomenological perceptibility – much like Benjaminian text or work of art – corresponds to the establishment of a *non autonomous reality*; it is a worded space of ideological composition that emerges in its own way and produces *residues* and *remnants*. The essential characteristic of the formative movement is the survival of a *surplus* that does not sediment into the appearing patterns, but abstracts itself from the contingent determinations and endures in latency[13]. A spectral heritage constitutes the immaterial genotype that determines the phenotypic appearance of the Law. The material forms sink in attraction towards their content of truth and become dynamic, unstable, mutable, hostages of that silenced mystery that does not dissolve, but molecularly persists and continuously returns. The cryptotype, as the covert dimension of normativity, lives in the secluded space of a Derridian *crypt* [10], as a mute device of embodiment, a place

[11] For an expression of the different perspectives from which mute law can be viewed, see [6]. In particular, for the arguments discussed in these pages see [12].

[12] The ways in which the law is made perceptible and communicated. For the meanings of the concept see [7], [14: 61–62].

[13] For a brilliant investigation on the idea of a legal surplus, moving from a transposition of Derrida's thought, see [15]. For a different, but relevant perspective on the excess of the law based on the so called jurisgenetic process (devoted to creating legal meanings), Robert Cover's thought remains central [9]. For the iconic surplus of the law, see [28].

of an impossible mourning and a topography of inside-outside, where what is held within in it becomes the *exception internal to the external morphology of the law*.[14] The cryptotype is the mark that inscribes the *uncanny* in the legal sphere, converting the sense of the absence into the powerful meaning of a '*presence elsewhere'*.

Therefore, comparative law can be reconsidered as a *critique* (in the sense proposed by Benjamin, as explained above) *of the unexpressed* (thought and unconsciously unthought, as the totality of the implicit, implied, inarticulate, tacit, unspoken, unuttered, mute). The aim is to to unearth and measure the *degree of figurality* of the law, by revealing – diachronically and synchronically – how the various languages and texts that convey the law are the final result of a processual conflict between exhibition and concealment, disclosure and obscuration. It offers a privileged intellectual perspective from which to consider the tension between an informal universe and the aesthetic order provided for it; the dialectic nexus between totality and its limited partitions; the relationship between the verticality of the singular choices and the horizontality of the historical flux.[15] Comparative legal scholars are paleographers or alchemists[16] before the crepuscular face of the law: they bring to light what remains under the signs of the text and let the flame continue to burn "over the heavy logs of what is past and the light ashes of what has been experienced" [3: 298]. In this direction, a *phenomenology of latency* comes together with a *hermeneutics of the implicit or implied*. The ontological requalification (here suggested) of the conceptual devices, terminologically introduced by Rodolfo Sacco, inscribes them into an *economy of surplus* and into a *signatorial strategy*. The real and material appearances of the law (forms, contents, determinations, decisions) are marked by a *constitutive signature* [1], a *visible trace of an invisible analogy*: they tell us of the ontological and hermeneutic fracture between an inextinguishable surplus and the morphologies that neither definitively nor exhaustively capture it. At the same time, by introducing this new consciousness, *comparative law* can heal from the illusion of completeness offered by the closed gaze of a limited vision, becoming the *steam of this foundational onto-aesthetic scar*.

Two further aspects can be considered.

On the one hand, based on Benjamin's approach to language, it is possible to reevaluate the non-sensory similarities as intrinsic constituents, in order to recover the memory of the original mimetic faculty as the condition of the mimetic possibility of knowledge. On this basis, the act of comparing can be transformed into the revitalization of the dialogue and the mutual correspondences among plural symbolic universes that share their *meaningful poietic force*. Law, Literature, Arts, Poetry and Music can be grasped together around the immateriality of their *figurative gesture* and the surplus that exceeds their formative capacity. It is time to unmute the latency

[14] An anthropological reflection on the concept of crypt, aiming at link it to the idea of cultural memory has been developed by Jan Assmann [2: 39]. The relationship between cryptotype and memory emerged even by Sacco's words, when he invites the legal scholar "to train in the art of identifying those criteria that are currently curled up in the repertoires of still mute and unimplemented law, potential models of our future, verbalized law" (translation is mine) [26: 151].

[15] Recalling to the mind the concept of *depositum historiae* with which Franco Fortini vividly illustrated the historical and material value of the unspoken [11: 16–38].

[16] In the proper sense revealed by Walter Benjamin.

of the pristine connection between all these domains, and to lead us (as human beings and scholars) to the fullness of the origins against the stifled and fragmented vision produced by the tyranny of the disciplines. Comparative law should say that it is ready to implement the idea of communality enshrined in the adjectival form that qualifies properly its essential trait.

On the other hand, the katabasis to the underworld, to the reign of the impalpable undisclosed (which is subversively metaphysical and supernatural), can tear the veil placed over the universality of the unsaid. Maybe in the depth of that profound abyss lies the residuary source of a common, trans-cultural understanding.

Funding Open access funding provided by Università degli Studi di Perugia within the CRUI-CARE Agreement.

References

1. Agamben, Giorgio. 2009. *The Signature of all Things. On Method*. New York: Zone Books.
2. Assmann, Jan. 1997. *Moses the Egyptian. The Memory of Egypt in Western Monotheism*. Cambridge: Harvard University Press.
3. Benjamin, Walter. 1996. Goethe's Elective Affinities. In *Walter Benjamin Selected Writings*, eds. Marcus Bullock, and Michael W. Jennings. vol. 1 1913–1926. 297–360. Cambridge: The Belknap Press of Harvard University.
4. Benjamin, Walter. 2005. On the Mimetic Faculty. In *Walter Benjamin Selected Writings*, Vol. 2, part 2, 1931–1934, ed. Michael W. Jennings, Howard Eiland, Gary Smith, 720–722. Cambridge: The Belknap Press of Harvard University Press.
5. Borutti, Silvana. 2016. Somiglianze immateriali. Società Italiana d'Estetica. https://www.siestetica.it/documenti/testi/Borutti.pdf.
6. Caterina, Raffaele (ed.). 2009. *La dimensione tacita del diritto*. Napoli: Edizioni Scientifiche Italiane.
7. Costantini, Cristina. 2017. *Nomos e Rappresentazione. Ripensare metodi e funzioni del diritto comparato*. Milano: Mimesis.
8. Conte, Amedeo. 2008. Erlebnisrecht. Diritto vissuto/esperienziale nell'antropologia filosofica di Rodolfo Sacco. *Rivista internazionale di filosofia del diritto* 85: 405–424.
9. Cover, Robert. 1983. The Supreme Court, 1982 Term – Foreword: Nomos and Narrative. *Harvard Law Review* 97: 4–68.
10. Derrida, Jacques. 1976. Fors. In *Cryptonimie. Le Verbier de l'Homme aux Loups*, eds. N. Abraham, and M. Torok. 9–73. Paris: Flammarion.
11. Fortini, Franco. 2015. Dei confini della poesia. In *I confini della poesia*, ed. L. Lenzini. 16–38. Roma: Castelvecchi.
12. Domenico Francavilla. Diritto e conoscenza non linguistica. Osservazioni su origine, trasmissione e diffusione delle regole. In *La Dimensione tacita del diritto*, ed. R. Caterina. 65–76. Napoli: Edizioni Scientifiche Italiane.
13. Gabrielli, Paolo. 2014. Sulla facoltà mimetica. Benjamin, Wittgenstein e il balenare dell'aspetto. *Pólemos. Materiali di filosofia e critica sociale* 7: 24–54.

14. Goodrich, Peter. 1990. *Languages of Law. From Logics of Memory to Nomadic Masks*. London: Weidenfeld and Nicolson.
15. Legrand, Pierre. 2014. *Pour la relevance des droits étrangers*. Paris: Irjs Editions.
16. Morante, Elsa. 1984. *History. A Novel*. New York: Aventura.
17. Nerhot, Patrick. 2012. *La Coutume. Le Droit Muet*. Torino: Giappichelli.
18. Sacco, Rodolfo. 1980. *Introduzione al diritto comparato*. Torino: Giappichelli.
19. Sacco, Rodolfo. 1989. Crittotipo. In *Digesto delle discipline privatistiche. Sezione Civile*, 39–40. Torino: Utet.
20. Sacco, Rodolfo. 1991. Legal formants: A Dynamic Approach to Comparative Law (installment II of II). *The American Journal of Comparative Law* 39: 343–401.
21. Sacco, Rodolfo. 1993. Il diritto muto. *Rivista di diritto civile* 40: 343–358.
22. Sacco, Rodolfo. 1999. Il diritto non scritto. In *Le fonti del diritto italiano. 2. Le fonti non scritte e l'interpretazione.* eds. Guido Alpa. Attilio Guarneri, Pier Giuseppe Monateri, Giovanni Pascuzzi, 3–78. Torino: Utet.
23. Sacco, Rodolfo. 2000. Lingua e diritto. *Ars Interpretandi* 5: 117–134.
24. Sacco, Rodolfo. 2007. *Antropologia giuridica*. Bologna: Il Mulino.
25. Sacco, Rodolfo. 2010. Azione, pensiero, parola nella creazione del diritto. In *Lingua e diritto. Livelli di analisi*, ed. Jacqueline Visconti. 21–42. Milano: Led.
26. Sacco, Rodolfo. 2015. *Il diritto muto. Neuroscienze, conoscenza tacita, valori condivisi*. Bologna: Il Mulino.
27. Sacco, Rodolfo. 2016. Questo nostro diritto (tra la metafisica e la biologia). In *Osservatorio del diritto civile e commerciale* 1: 3–8.
28. Sherwin, Richard. 2011. *Visualizing Law in the Age of the Digital Baroque*. London: Routledge.
29. Vanderlinden, Jacques. 1996. *Anthropologie Juridique*. Paris: Dalloz.
30. Whorf, Benjamin Lee. 1956. *Language, Thought and Reality*. Cambridge: The MIT.