

Of ducklings and deans: Comparative law at the Faculty of Law of Trento and the deanship of Roberto Toniatti

Luisa Antonioli*

1. Of ugly duckling and swans: the evolution of the University of Trento

The University of Trento was established as a free university in 1972 (Libera Università degli Studi di Trento),¹ and experienced an eventful and lively evolution. One of its most significant milestones was its transformation from a local independent into a State University in 1982, which implied not only a different structure and regulatory framework, but also its enlargement to several new faculties, established in 1984, among which also a brand new Faculty of Law, which will be the focus of this contribution.²

The University of Trento was a sort of ugly duckling back then: small compared to other important Italian universities; peripheral in its fairly isolated alpine position; young and inexperienced, compared to the established centuries-old historical Universities. Yet, as a true ugly duckling, it had a potential to grow into a beautiful and harmonious swan.

The recipe in order to foster this transformation was turning its potential weaknesses into actual strengths: its limited size required specialization in the fields of research and teaching, so as to allow the small community of scholars and students to reach a critical mass, and develop a distinctive University brand in their activities. Its

* Professoressa ordinaria di Diritto privato comparato presso la Facoltà di Giurisprudenza, Università degli studi di Trento.

¹ The forerunner of the University was the Istituto Superiore di Scienze Sociali (ISSS), established in 1962 by the Istituto Trentino di Cultura (ITC), a research institute funded by the Province of Trento (PAT), which opened the first Italian academic programme in sociology, a choice that had lasting consequences in the life of the University of Trento, of the town and also of the academic and political life in Italy. The ISSS was transformed in a free-standing local University (Libera Università degli Studi) in 1972, adding to the Faculty of Sociology two more Faculties, namely the Faculty of economics and the Faculty of Mathematics and Physics. The political engine of this process was Bruno Kessler, an experienced politician who at the time was President of the Provincial Executive Council (Giunta provinciale). The story is vividly recalled by the second Chancellor of the University (1978-1990), Fabio Ferrari, a physicist who had previously been a member of the establishing committee of the Faculty of Mathematics and Physics: F. Ferrari, "L'ateneo trentino nel contesto universitario italiano", in F. Cambi, D. Quaglioni, M. Egidi (eds), *L'Università a Trento. 1962-2002*, Trento, Università degli Studi di Trento, 2004, pp. 83-103, where he stresses the link between the University and the idea of fostering the cultural, social and economic development of Trentino: "Le grandi riforme dell'Università (...) sono sempre nate da una idea piuttosto che dall'esigenza di risolvere problemi contingenti" (p. 101).

² The other newly established faculties were Engineering and Humanities. The University of Trento managed to keep, in spite of its nationalization, a number of independent features in its teaching and management.

geographical position was peripheral in reference to Italy, but at the same time it could be considered as a gate towards Europe, through the border with Austria, which implied rich cultural, linguistic and cultural bridges, and a precious repository of links and interaction.³ The lack of a long history allowed a bold search for innovation and new paths both in research and teaching, focusing on new activities, instead of having to follow many established areas and overcome entrenched resistance.

I do not intend to be foolishly self-praising and claim that the University of Trento is now a breathtakingly beautiful academic swan, but I do think that it can be confidently stated that the University of Trento has managed to take advantage of the opportunities that its history and context have provided, becoming a solid and relevant player in the Italian academic landscape (as proven by its regular positioning among the top-performing universities in Italian rankings), with many links with the international academic context.

2. The spin of the Faculty of Law: comparative law as the core of legal studies

The strategy for the University of Trento that I have briefly described was developed in the legal field by focusing the newly established Faculty of Law on the study and teaching of comparative law, a promising area which at the time was still quite marginal in the national and European context (it must be remembered that law was, and partly still is, very much focused on national legal systems), and had consequently a minor role in law schools' curricula.

This innovative approach was due to a significant extent to the fact that one of the pioneers of comparative law in Italy, Rodolfo Sacco, was appointed President of the committee in charge of setting up the new Faculty and devising its curriculum⁴. His long-lasting imprint stems from having used all available leverage in order to overcome the strong national focus and positivistic approach of the law curriculum that was mandated at the time by Italian legislation, which was enacted during the fascist regime, in 1938.⁵ This choice was motivated both by practical needs, due to the increasingly dense web of international and transnational links that was rapidly unfolding at the time, and which boomed in the subsequent decades; but also from

³ The first Chancellor of the University, prof. Paolo Prodi, proposed in 1973 the establishment of a multi-lingual (Italian and German) regional University linking the Provinces of Trento and Bolzano/Bozen, with strong ties to the German-speaking world. See P. Prodi, "Ipotesi per un sistema universitario regionale", in *L'Università a Trento*, cit., pp. 71-81. The project failed due to political conflict, and an independent free University (trilingual: Italian, German and English) was finally established in Bolzano in 1997.

⁴ This committee was called the Comitato ordinatore, and was composed by three members, two elected by Italian law schools (Rodolfo Sacco from the University of Turin and Fabio Roversi Monaco of the University of Bologna), and one appointed by the Ministry of Education and University (prof. Giorgio Gregori of the University of Trieste).

⁵ See R. Sacco, "Come è nata giurisprudenza a Trento", in *L'Università a Trento*, cit., pp. 199-202.

a theoretical and scientific point of view, this was a move that went beyond the traditional dogmatic and theoretical approach to law and opened up a new wide area of research, linking law to a broader context of social (and also natural) sciences.

In this perspective, law is a historical and social phenomenon that must be studied in its context, focusing not only on legislation, but rather on all its components and their dynamic interplay, and which can be better understood by comparing it with other legal systems and by analysing the way in which legal elements evolve and circulate in different systems. This is the core of the so-called Tesi di Trento,⁶ a set of guidelines concerning the object and methodology of comparative law, drafted in 1991 by a group of comparative law scholars connected to the Faculty of Law of Trento, which stimulated a wide-reaching national and international debate.

With this project in mind, Rodolfo Sacco called to Trento a group of young scholars that were strongly interested and committed to comparative law (and which would later pursue important careers elsewhere in Italy and abroad: Gianmaria Ajani, Elisabetta Grande, Michele Graziadei, Ugo Mattei, Piergiuseppe Monateri, together with others), and which taught to students a new way of looking at legal phenomena. Within a few years, in the words of Sacco, "Trento fu ben presto la capitale (per l'Italia) del diritto comparato".⁷

After this pioneer phase, Sacco returned to his regular academic job at the University of Turin, and many of the young scholars that he brought to Trento later moved to other destinations, but they left behind a long-lasting legacy, namely the hallmark of legal comparison as the key to legal studies, which still characterizes the Faculty of Law of Trento today, and which has influenced many other Faculties of Law around Italy.

3. The development of the Faculty of Law of Trento and the role of Roberto Toniatti as a Dean

This brief description of the development of the University of Trento and of its Faculty of Law sets the context of the story that I want to recall about Roberto Toniatti, who has been a key player in this process.

Roberto Toniatti was elected Dean of the Faculty for the first time in 1994 and served for four terms until 2009 (with a break between the first two and the last two terms). He has played a significant role in shaping its structure and features, thanks both to the strength of his personal ideas about the role of comparative law in our Faculty (and in Italian law faculties in general), and the length of his steering role. His approach was in full continuity with the original imprint, as he considered that the initial fundamental choices made by the scholars who set up the Faculty were solid and right: "E' come se le prime scelte del Comitato ordinatore della Facoltà di

⁶ The text of the Tesi di Trento can be found on-line: http://www.jus.unitn.it/dsg/convegni/tesi_tn/le_tesi.htm.

⁷ R. Sacco, "Come è nata Giurisprudenza a Trento", in *L'Università a Trento*, cit., p. 201.

Giurisprudenza abbiano generato successive "prime scelte", ogniqualvolta si sia trattato di determinare nuove occasioni di crescita degli studi giuridici a Trento". This virtuous circle, according to him, has been key to the success of the Faculty: "Da un buon seme è cresciuta una pianta sana e robusta, con tanti rami che hanno contribuito e contribuiscono a garantirne la vitalità, generando altri rami e foglie e frutti, ossia una pluralità di voci, di esperienze, di sensibilità (...)."8

At the same time, his work did not consist in merely following the existing path. Rather, he has actively worked on his vision for an international and open Faculty, building a wide and strong network of connections stretching across the world, and fostering a truly transnational education, particularly by enhancing students' mobility.

Among the most important achievements of the Faculty that Roberto himself lists is the increase of the offer of comparative law courses in a variety of areas, both geographically, stretching well beyond the Western world (Anglo-American, African, Asian), and substantially, through the coverage of all main areas of private and public law. He underlines that this is a strategic and fundamental choice: "non è frutto di mera curiosità informativa su ciò che avviene al di fuori dei confini, ma di configurazione sistematica del sapere giuridico che viene trasmesso agli studenti".9

The study of national and comparative law has been consequently offered to all students in a comprehensive and integrated manner, and when national regulations interfered with this approach by requiring the setting up of a comprehensive national curriculum, the catalogue of comparative law courses was fully kept, by offering two tracks (national and comparative) in parallel. This choice has proven extremely successful and has been one of the key elements of attraction for students coming to study law at the University of Trento.

Moreover, the Faculty has timely and actively worked on new legal phenomena pushing the direction of legal developments beyond the nation States: the first and most relevant was European Community/Union law, but many other aspects of transnational law and legal globalization have been analysed, both in reference to research¹⁰ and teaching.

As a Dean, Roberto has worked relentlessly to foster students' international mobility. First of all, he has strengthened the teaching of languages, not only of English, but also of a variety of European and non-European languages (among which Chinese and Arabic). Moreover, he has greatly enhanced the selection of courses offered by international visiting professors (which have increased over time, reaching a yearly number between 20 and 30 in the last decade), building a large and lasting scholarly

⁸ R. Toniatti, "Come è cresciuta Giurisprudenza a Trento", in *L'Università a Trento*, cit., p. 203.

⁹ R. Toniatti, "Come è cresciuta Giurisprudenza a Trento", in *L'Università a Trento*, cit., p. 203.

¹⁰ Among many comparative law projects that were developed in this context, I would like to mention "The common core of European private law", a project bringing together a large international network of scholars under the leadership of Prof. Ugo Mattei and Prof. Mauro Bussani, which in 2019 celebrated its 25th meeting in Trento: see <http://www.common-core.org/>.

network. As part of this strategy, he successfully worked for the establishment of a Trento Fulbright Chair at the Faculty of law in 1995, which has brought to Trento many distinguished American scholars. The education of students was also enhanced by introducing legal translation and soft skills training, as well as internships for students, both locally and abroad.

Among the international students' mobility programmes, the European Erasmus programme is definitely the most important and successful one. The Trento Faculty of Law has taken part to it from the very beginning, in 1987, and over time it has significantly enlarged the network of partners and the number of both outgoing (now close to two hundred each year) and incoming students. Many other bilateral and multilateral exchange programmes were set up, also in the framework of the University mobility programmes. The impact of this component of legal education has been remarkable, and has shaped generations of students, whose attitude has become truly transnational. This is clearly one of the elements that has contributed to make Trento as an attractive destination for students coming from all over Italy, and partly also from abroad.

As a Dean, Roberto has worked in team with his corresponding Heads of Department in order to foster the development of new cutting-edge areas of legal research,¹¹ particularly those crossing law with other sciences, such as of law and technology, (particularly informatics, and now also artificial intelligence and biolaw), and linking law to other social sciences (sociology, economics, political science), building new research teams and setting up new research projects, as well as offering teaching activities in these areas.

A strong interest and orientation of the faculty for interdisciplinarity is shown also in the participation to research and teaching in other departments (in social sciences, humanities, natural sciences and technology), and the presence of several of its members in the School of International Studies, a post-graduate school established in 2001 bringing together specialists of several fields (economists, sociologists, political scientists, historians, philosophers, lawyers) in the area of European and international studies.

This vision of law and legal studies, introduced by Rodolfo Sacco in the 1980s, and continued in the 1990s and the start of the 2000s by Roberto Toniatti, has continued in the following decade under the leadership of the Deans that have followed him¹², and remains the hallmark of the Faculty of Law also today. In 2018 Trento has been the first Italian Faculty of Law to establish a three-year bachelor's programme in

¹¹ Before 2010, when a comprehensive reform of the national university system took place (the so-called Legge Gelmini, Law 240/2010), teaching and research were handled separately: teaching was organized by Faculties (Facoltà), while research was developed by Departments (Dipartimenti). Therefore, comparative law in Trento was developed in parallel by the Dean and by the Head of the Department of Legal Sciences. During Roberto Toniatti's terms as Dean the correspondent colleagues directing research have been Prof. Ajani, Quaglioni, Nogler and Santucci.

¹² After Roberto Toniatti, the Faculty of Law has elected Prof. Luca Nogler (2009), Prof. Giuseppe Nesi (2012), and Prof. Fulvio Cortese (2018) as Deans.

Comparative, European and International Legal Studies (CEILS), fully taught in English, attended by students coming from Italy, Europe and beyond, and offers an innovative transnational legal education, opening up many possibilities for further education not only in law but also in other connected disciplines. The programme, which has a highly selective admission process, is very successful, proving that the original imprint is apt to foster new developments that take up new challenges.

Today the student population of our Faculty is predominantly formed by students coming from outside the Province of Trento (those coming from the local area have ranged over the last decade between one fourth and one fifth), a very significant achievement in the Italian context, where students mainly choose the University that is closest to their residence. Moreover, the total number of applications has significantly increased over time: in the last years applications have steadily been more than twice the available positions in the five-years master's programme (laurea magistrale a ciclo unico), i.e. over 1.200 for 500 positions, and over six applications for every position available in the three-years bachelor's programme (CEILS), i.e. over 300 for 50 positions.¹³

4. New directions in legal education and the legacy of Roberto Toniatti

This brief summary of the institutional evolution of the Faculty of Law of Trento and the personal academic events highlights Roberto Toniatti's work as a Dean as focused on building an all-encompassing education for contemporary jurists, providing them with a solid background of national law, but also training them to think about law as a complex, dynamic and transnational phenomenon, with a strong interdisciplinary sensitivity, particularly in the European context¹⁴. At the same time, he has constantly striven to build and strengthen a large, dynamic and open scholarly and research community.

This community element is crucial; in Roberto's words, "i singoli, che si riconoscono nelle scelte collegiali, sono pur sempre il motore intellettuale di ogni processo di crescita e sono sempre, anche se anonimi, il cuore vitale delle strutture"¹⁵. This is an important statement, which shows one of the defining characteristics, and virtues, of Roberto: the strong belief in and commitment to the need of building a strong academic community, formed by scholars, students and staff, recognizing that only a shared project can have the drive, dynamism and resilience that is needed to continue the study and teaching of a discipline, such as law, that is undergoing rapid and sometimes chaotic changes. Roberto Toniatti's remarkable achievement as Dean

¹³ I wish to thank Matteo Rossaro and Loredana Giacomelli, of the administrative staff of the Faculty of Law, and Viviana Bertolini of the central University administration, for their kind help in providing useful statistical data about the Faculty.

¹⁴ See R. Toniatti, "The European lawyer: phantom or reality?", in 9 *International Journal of the Legal Profession*, 2002, pp. 95-98.

¹⁵ R. Toniatti, "Come è cresciuta Giurisprudenza a Trento", in *L'Università a Trento*, cit., p. 207.

of the Faculty of Law is a story of a success built "on the shoulder of giants", made possible by the continuous work and dedicated commitment of a whole community.

A short post-scriptum

I would like to conclude my short contribution on a personal note: Roberto Toniatti was the Dean of the Faculty of Law when I was appointed as lecturer of Private comparative law in 1994, and also when I became associate professor in 2000 and finally full professor in 2005. I owe him a lot professionally, because many of my scholarly activities have involved him in some form, and I have always greatly profited from the discussion and exchange of views, even when we did not agree, something that did not happen frequently, but when it did happen, it was a real challenge. But, more than this, I would like also to pay tribute to him from a personal point of view, because our non-academic activities have been a great source of inspiration and amusement: travels, ideas and food have been tested both, as comparative lawyers would say, in the books and in action, proving that Roberto is a true bon vivant, as well as a most likable companion. I look forward to many more serendipitous conversations and nice coffees together in the coming years.