Introduction to Apologies in Law: breaking the barriers through comparative thinking.

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1. Apology research: is there an added value for comparative law and interdisciplinarity?

This book is the result of ongoing studies by international scholars working for many years in synergy. In particular, "Apologies in the legal arena: a comparative perspective" is the title of a symposium hosted by the University of Padua the 27th of September 2019 made possible through the efforts of many including Prue Vines and Robyn Carroll and INLAR (International Network on Law and Apology Research).[1]

All these sources of inspiration led Prue and Robyn and me to develop an interesting comparative dialogue that took place at the symposium and collect the various writings presented here.

In this introduction I would like first to sketch some general issues about comparative law and apologies and then move on to the book's contents. In the final part I share my thoughts based on my experience of conducting a survey and interviews at the Tribunal of Padua about "Italian legal system feedback on apologies".

The idea of dealing with apologies in a comparative perspective may be strictly connected to the fundamental question: Why study comparative law? Can it be crucial to grasp the essence of the law or it's simply something superfluous, or at least not absolutely necessary?

1 The symposium was divided into two sessions and the papers presented were as follows. First Session ("Apologies and settlement of legal disputes"): The role of apologies in judicial decision-making (Lianne Wijntjens- Tilburg University Gijs van Dijck -Maastricht University); Apology-Protecting legislation (Prue Vines, University of New South Wales); Apologies and Settlement Processes (Jennifer Robbennolt -University of Illinois, College of Law); Apologies through Law and Cinema (Nicola Brutti- University of Padua); Using apologies in doctor-patient relationship (Jennifer Moore- University of New South Wales). Second session ("Apologies as remedies in court proceedings"): Ordered Apologies: A closer look at some legal developments (Robyn Carroll, University of Western Australia); Introducing Apology Legislation in Civil Law Systems (Wannes Vandenbussche-Institute for Civil Procedure KU Leuven); A Gordian Knot or not?' On the relation between apologies, liability and compensation. (Arno Akkermans- Vrije Universiteit Amsterdam); Apologies on the web and effectivity of remedies (Vincenzo Zeno-Zencovich - University of Rome III); Apologies and hate speech: comparative remarks on remedies (Filippo Viglione- University of Padua); Compulsory versus voluntary apologies: Empirical evidence (Alfred and Maria Allan- Edith Cowan University, Australia).

During my first lesson in comparative law, I usually tell my students one clever metaphor by the Austrian Jurist Hans Kelsen. He explained the relationship between the natural world perspective and a positivistic legal perspective as follows: "Just as everything King Midas touched turned into gold, everything to which law refers becomes law … ".[2]

With such a perspective, everything seems to be always clear cut: black or white. We would obviously find a broad consensus on some points. But what if not everything is one or the other?

For example, there is no doubt that murder is a matter of criminal law. But there are some other issues which are less clear, not necessarily uncommon, and rather variable in their legal value. And such debated and challenging issues may be significant in order to highlight notable differences and similarities between legal systems. More importantly, in doing so they outline new legal trends. We could call them "systemic markers", because they greatly help to point back to a common pattern.

Apologies, as we shall see, match this standard.

I recall an interesting Opinion by the Italian Financial Ombudsman (ABF) which dealt with the legal meaning of apologies[3]. The ABF stated that there was incompatibility between law and apologies: such a remedy should not be admitted because "apology falls within the rules of courtesy and is ontologically incompatible with the law"[4].

But saying that something is ontologically incompatible with the law implies an understanding of what the ontological dimension of law really is. That is the debatable- and for a long time debated- question. Does it end in a single legal system?

Coming back to the issue at hand, I think that the clear cut idea of the ontological incompatibility of apologies with the law should therefore be questioned and may not be as trustworthy as it looks. In fact, by expanding research to other legal systems, we may suddenly realize that it is not always so. In particular, some jurisdictions consider apologies as legally relevant and so worthy of closer investigation by researchers. With significant differences due to the specificity of the single legal system considered, such

2 Hans Kelsen, *Pure Theory of Law* (Max Knight tr, University of California Press 1967), 161.

3 ABF, *Collegio di Milano, 23 settembre 2010, n. 959, Presidente* Antonio Gambaro (http://www.dirittobancario.it/node/2279/pdf.). Access 12/10/2017. The Banking and Financial Ombudsman (ABF) is an alternative dispute resolution system for customer complaints about banks and other financial intermediaries. The President, Antonio Gambaro, is a very influential comparative law scholar.

4 Ibidem.

a relevance may cover many areas: international conflicts between individuals or States as well as civil disputes or criminal charges[5]. This became clear in our symposium.

With such an iridescent and unstable landscape in mind, we may discover how self-referential, relative and partial would be an exclusively domestic approach to the study of law. If we want to achieve a comprehensive and deep knowledge of law, the example of apologies shows how important is to go beyond the political boundaries of a single State. Probably if we dig deep enough I predict we will find very different results regarding what is properly considered a legal issue in such a perspective. Another implication we may assume is helping to shape the international public policy boundary.

Some time ago, I was researching environmental damages by large corporations, when I first came across the issue of the apology's legal value. In the case *Maria Aguinda v. Texaco* (2011), the Provincial Court of Justice of Sucumbíos (Ecuador) found Chevron-Texaco liable for approximately $8.6 billion in damages primarily for compensation for contaminated soils.[6]

The Court awarded ten percent of that amount to the entity representing the Plaintiffs (by operation of law) to execute community rebuilding and ethnic reaffirmation programs within the affected communities of "rainforest indians".[7] The Court granted an additional, punitive award amounting to 100% of the base judgment unless Chevron issued a public apology in Ecuador or in the US within 15 days of the judgment , as "a symbolic measure of moral redress".

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5 See C Jenkins, Taking Apology Seriously, in M du Plessis, S Pete (eds), Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses, (2007) Antwerpen: Intersentia, 54-55.

6 Tribunal Superior de Nueva Loja, Lago Agrio Class v. Chevron Corp, Lago Agrio Judgment, No: 2003-0002, 14/2/2011, available at ; see S Romero, C Krauss, 'Ecuador Judge Orders Chevron to Pay $9 Billion', NY Times, 14 Feb. 2011, available at ; LJ Dhooge, Aguinda v. Chevrontexaco: A Pyrrhic Victory for The Environment? 41 Academy of Legal Studies in Business National Proceedings 1–29 (2010). See also J Kimberling, Indigenous People and the Oil Frontier in Amazonia: The Case of Ecuador, ChevronTexaco, and Aguinda v. Texaco 38 N.Y.U. J. Intern'l Law and Politics 413 (2006).

7 J Kimberling (on p 416) observes: "Their worlds changed forever, Amazonian peoples have borne the costs of oil development without sharing in its benefits and without participating in a meaningful way in political and environmental decisions that affect them."

Chevron appealed the case in March 2011. The judgment was confirmed by the Appellate Panel in Ecuador on 3 January 2012.[8] In particular the Court affirmed:

> 'Nonetheless, considering that the defendant has already been ordered to redress the harm, and insofar as it serves the same exemplary and dissuasive purposes, this civil penalty may be replaced, at the defendant's option, by a public apology in name of Chevron Corp., offered to those affected by Texpet's operations in Ecuador.[9] This public recognition of the harm caused must be published at the latest within 15 days, in the leading print media in Ecuador and in the country of the defendant's domicile, on three different days, which, if done, shall be considered a symbolic measure of moral redress and of recognition of the effects of their misconduct, as well as a guarantee that it shall not repeat, which has been recognized by the Inter-American Court of Human Rights with the aim of "Court, [and...] transmission of a message of official reproof of the human rights violations involved, as well as avoiding repetition of violations such as those in the instant case."[10]

Instinctively, the possibility of providing for this sort of use of public apologies seemed to me completely awkward. Checking the Italian, German and French legal norms, I didn't find anything similar. I had never heard anything like it in my academic background, nor in Italian civil code commentaries. Absent any consistent reference to a statutory law concerning apologies, the judgment sounded quite illogical for a civil law country like Ecuador.

Maybe influenced by a sort of unconscious Eurocentric cultural bias, one could dismiss that opinion as a Pindaric flight of a somehow naïve tropical judge. Or, on the contrary, we could try to understand its specificity and whether it was part of a broader and very complex phenomenology - which is what this book is about.

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8 Available at https://chevroninecuador.org/news-and-multimedia/2011/0406-key-documents-and-court-filings-from-aguinda-legal-team (last access: 9 July 2020) .

9 Literally: "esta penalidad civil podrà ser reemplazada, a leccìon del demandado, por una disculpa pùblica".

10 See case of Hermanos Gómez Paquiyauri vs. Peru. Merits, Reparations and Costs. Ruling of July 8, 2004. Series C No. 110, Paragraph 223.

The main focus of research into apologies is commonly devoted to those statutory laws dealing with the relationship between apologies and evidence, as well as with apologies as judicial remedies.

From a global perspective, we must take into account also the inevitable complexity of the sources of law in a globalized world. For example, we might look at apology provisions contained in some codes of conduct, having a redress and reconciliation function. Such codes of conduct are usually adopted by commercial or professional entities or by public administration involved in relations with the public (healthcare public services, financial intermediaries). Unlike statutory law they are not directly binding, although they might integrate with law, especially the tort of negligence, and be deemed mandatory on a voluntary basis This does serve a regulatory function.

This gradual method of analysis posits the hypothesis that different effects can be attached to apologies according to the specific context in which they take place. In particular, apologies issued as a means for preventing or composing a legal dispute might be notably different from apologies operating as a mere social habit or ritual, or, to put in another way, they may be daily occurrences that are not reasonably expected to flow into litigation.

A significant task in the prevention and reduction of litigation rates is pursued by interpersonal apologies in ADR systems and pretrial proceedings. But I would like to stress that apologies can also serve collective interests. Think of public apologies that typically use the broadest dissemination of statements to fulfill functions like public awareness, vindicatory effects etc.

Whatever the answer to the previous question is ("are apologies relevant to…") the law, and mainly comparative law, we should not ignore the many implications of apologies. For all these reasons we can say that research into apologies not only represents something quite original in comparative law, it also sheds a different light on the whole discipline.

2. Book overview

The peculiarities of the book's contributions lead me to favour individual comments for each one.

To start with there are some notable questions about apologies in the legal arena: are they relevant to repair any damage? If yes, how does law deal with such a remedial function? Should they be protected and incentivized on a voluntary or legislative basis? Should they be judicially imposed?

The basic idea is that a wrongdoer's heartfelt apology might help to reduce certain non-material damage. Both victim and wrongdoer may benefit from the opportunity to mitigate hard feelings and avoid further costs. A large literature attests to this.[11]

I make my comments in the following order of chapters which reproduces the structure we created for the symposium. The first four concern apologies and settlement of legal disputes.[12] The next four consider apologies as remedies in court proceedings and the significance of coercion.[13]

As often happens criticisms are very important and necessary to push forward our researches towards new fields. In dealing with apology issues, the common lawyers are increasingly borrowing the lens of other disciplines as sociology, psychology, political science etc. And the enhancement of such an experimental and multidisciplinary approach is Prue Vines' "trademark". As she noticed in Chapter 1, 'Legislation Protecting Apologies: assessing success and failure': "…the considerations taken into account for the development of the Hong Kong Apology Ordinance were rich and varied and ranged over a huge literature of psychology and law." Prue Vines addresses the objections raised by some American theorists that protective legislations are a sham, designed by tort reformers. She poses insightful, but very difficult, apology issues.

Firstly, there is a problem of practicability due to the resistance and skepticism existing in many legal bodies and institutions. Think about the effectiveness of the legislation in reducing the 'chill' factor which apologies have been subject to in lawyers' minds especially. Another point in question is the public awareness of this legislation and the trust in it. A further

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11 For a comparative law study, Sica *Responsabilità civile e* duty to mitigate damages, P.G. MONATERI- A. SOMMA (Eds.), *Patrimonio, persona e nuove tecniche di "governo del diritto". Incentivi, premi, sanzioni (XIX Colloquio biennale, Associazione Italiana di Diritto Comparato, Ferrara, 10-12 maggio 2007),* Napoli, 2009, 1067.

12 They are namely: Prue Vines, 'Legislation Protecting Apologies: assessing success and failure'; Wannes Vandenbussche, 'Introducing Apology Legislation in Civil Law Systems. A New Way to Encourage Out-of-Court Dispute Resolution'; Colleen Murphy, Jennifer K. Robbennolt and Lesley Wexler, 'Transitional Justice Challenges: Managing the Emotions of Lawful but Awful Harm-Doing'; Jennifer Schultz Moore, 'The Role of Apologies in Healing the Health Provider-Patient Relationship After Medical Injury'.

13 They are namely: Robyn Carroll, 'Addressing concerns about ordered apologies: some recent developments'; Filippo Viglione, 'Speak No Evil: Hate Speech and the Role of Apologies'; Sébastien De Rey, 'Court-Ordered Apologies under the Law of Torts? Non-Monetary Relief for Emotional Harm – A Comparative Outlook from a West European Perspective'; Alfred and Maria Allan, 'Prompted versus Voluntary Apologies: What does psychological research tell us?'; Nicola Brutti, 'Apology's Research meets Law and Cinema'.

important issue is "the difference in compensation levels where there is settlement after a full apology compared with full litigation", not to mention how that is affected by the costs of litigation and the damage that time spent in litigation creates.

Notwithstanding the different treatment of the evidential issues between common law and civil law countries, she is quite optimistic about the chance to adapt apology protecting legislation to civil law context. In fact, talking about the Hong Kong's recent Apology Ordinance, she points out that: "this apology protecting law also contains the seeds of what would be protective apology law for civil law systems as well. This seed lies in the form of provisions which prevent the court from treating the apology itself as proof of liability."

In Chapter 2, 'Introducing Apology Legislation in Civil Law Systems. A New Way to Encourage Out-of-Court Dispute Resolution', Wannes Vandenbussche deals with a topic very dear to me: apologies in the light of civil law tradition. The author points out that, in spite of their positive role in resolving disputes or mitigating non-material damages, apologies can create adverse legal consequences for the apologizer since they may be considered admissions against his or her own interest. This is the reason why many jurisdictions in the world have provided specific rules protecting apologies from adverse effects.

But why, unlike the common law world, do civil law systems lack any apology protective legislation?

The author's sharp and technical answer is that, on a substantive level, in civil law traditions there is "less emphasis on tort law and private claiming" than in many common law jurisdictions. Secondly, he argues that, on a procedural level, civil law systems are less familiar with legal rules prohibiting the use of specific items of evidence, whereas common law systems have a comprehensive set of exclusionary rules.

This is true and I would also add that in civil law countries we have a quite strong separation between mere facts, completely inconsistent with litigation issues, juridical facts and juridical acts. Since for the most part apologies may not fit into any of the last two patterns mentioned, they would still lack any legal relevance. But it is not always so and as such it might depend on the very thin borders between these patterns and the concrete feature of the specific apology statement.[14]

14 For a more in-depth analysis about these aspects, allow me to recall: N Brutti, 'An Incentive-based Approach to Apologies and Compensation', P Vines, A Akkermans (Eds.), 'Unexpected Consequences of Compensation Law', Hart Publishing, 2020, 170-171.

Finally, the author supports the idea of introducing apology protecting legislation throughout continental Europe, since it represents "a cost-effective tool that might serve the policy priority of resolving conflicts through alternative methods of dispute resolution rather than trial". In this respect, one might observe that not all civil law jurisdictions are at the same stage of development in terms of ADR and pretrial proceedings. The same may be argued about the room left by continental civil codes to remedies aimed at repairing damages as an alternative to monetary damages (*id est* compensation *strictu sensu*).

In Chapter 3, 'Transitional Justice Challenges: Managing the Emotions of Lawful but Awful Harm-Doing', Colleen Murphy, Jennifer K. Robbennolt and Lesley Wexler, look at a tragic legal dilemma. Could Harm-Doing, normally considered unlawful and impermissible, turn into a "lawful but awful act" in certain cases? Consider collateral harms to civilians during an act of war or in extended periods of repression or conflict in democracy. Here, violent behaviours, normally considered a crime, could be deemed legitimate, invoking a "reason of state". Notwithstanding this, our conscience cannot justify the negative consequences flowing from such behaviours. This is a particularly sensitive issue for the authors, especially since the US administration is familiar with war scenarios and has been recently plagued by mass violence cases.

According to previous research, restoring emotional injuries through apologies or symbolic damages, can have positive and mitigating effects on victims. So when a transitional justice process is at stake, we need, among other things, alternative remedies aimed at mitigating emotional sufferings and the sense of anger of the victims. Confirming such findings, the authors stress the great importance of the way in which amends and apologies will specifically take place. So if considered only "blood money or empty words, they may further exacerbate the negative emotions among victims, increasing anger and resentment rather than mitigating them". [15]

As the authors insightfully observe, the main characteristic of transitional justice processes is not only to deal with the emotional needs of victims and harm-doers, but also to rebuild a sense of political community and societal trust. By highlighting the aim of apologies to achieve both private-interpersonal and public-collective goals, this research discusses in an original way the composite functions of apologies as remedies.

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15 'Transitional Justice Challenges: Managing the Emotions of Lawful but Awful Harm-Doing', 18.

Jennifer Schultz Moore in Chapter 4, 'The Role of Apologies in Healing the Health Provider-Patient Relationship After Medical Injury', explores the ways in which institutions and practitioners could meet patients' (and their families') needs and expectations after medical injuries. I find this topic very sensitive because it requires an interdisciplinary dialogue between law and medicine. Despite its important role in resolving medical disputes, this research area is quite underestimated in the current legal literature. As properly underlined by Jennifer Schultz Moore, one way to prevent harms from how the medical injury was handled ("secondary harms") is to make proper apologies and explanations about adverse events and medical errors. As pointed out by Schultz Moore, there are many practical barriers and limitations to apologies in medical malpractice litigation. For example, healthcare providers can be deterred from apologising because they fear that saying "I'm sorry" may constitute acceptance of legal responsibility for the injury. Instead of focusing on patients' experiences in medical malpractice, they specifically deal with non-litigation resolution alternatives that little is known about. By analyzing empirical data about New Zealand and American patients' and family members' experiences, the role of apologies is marked by its healing properties for the provider-patient relationships after medical injury.

Robyn Carroll's Chapter 5 looks at recent developments that address some of the concerns that have been expressed about ordered apologies. These developments show that the law usually prefers to grant remedies that achieve some of the purposes of an apology rather than to coerce an apology. The hard question is: can an apology be compelled notwithstanding the lack of the voluntariness and sincerity of such an apology? She argues that ordering an apology as a remedy may be justified when it achieves remedial purposes other than compensation. Firstly, it might serve as an acknowledgement of wrongdoing that provides greater scope to meet a plaintiff's psychological needs than an award of damages alone.

The author also highlights a 'vindicatory function', as a symbolic support by social group to victims, in order to educate society about the norms that are being violated and the harmful effect of the unlawful conduct on the plaintiff. Consider racial discrimination, hate speech, cyber bullying etc.

But in enabling court ordered apologies, the main criticism, as thoroughly observed by Robyn Carroll, could be the little empirical data to verify what remedial purposes are served by legal remedies generally, and even less into the value attributed to an ordered apology by litigants, courts and lawyers. This is the incommensurability dilemma of apology as rem-

edy. According to empirical-psychological evidence an apology ordered in a tribunal setting may perform a reparative task for the single victim.[16] So the author points out that the absence of voluntariness and sincerity will not necessarily mean that an ordered apology has no value to a plaintiff.

In Chapter 6, 'Speak No Evil: Hate Speech and the Role of Apologies', Filippo Viglione explores how the treatment of hate speech may offer us a lesson about the remedial function of apologies. Nowadays, we are rediscovering the power of an empathetic justice, capable of digging into human feelings, in order to deal with personal disputes and emotional wounds, like those caused by hate speech. Notwithstanding some concerns about the risks of an educative function of judicial decisions, the author acknowledges that 'apologies represent a form of corrective justice, operating as redress that tends to equalise the relationship between the wrongdoer and the victim of hate speech'. From an interdisciplinary historical perspective, he also recalls a law existing in the Republic of Venice until the late 18th century according to which compelled public apologies were in force. Historically, European law had a larger role in dealing with religious issues. The Canon Law used to extend its jurisdiction to the human soul in the late middle ages, when the law was also designed to operate in the spiritual field. So the goal of legal remedies was notably to investigate into the human soul in order to repair some defective intangible elements like honour, faith in God, religious orthodoxy etc. The story of the amende honorable can be read *mutatis mutandis* just as the prodrome of the modern apologies.

In Chapter 7, 'Court-Ordered Apologies under the Law of Torts? Non-Monetary Relief for Emotional Harm – A Comparative Outlook from a West European Perspective' by Sébastien De Rey, we can look at the issue of court ordered apologies- once more- from a civil law scholar perspective. He outlines that in Belgium - but the same is true for many other countries across Europe, including Italy - the provisions on tortious liability are substantially founded on the Còde Napoleon of 1804 (art. 1382) and remained virtually unchanged over the last two centuries. Under such a model the enforcement of apologies is not provided for as the rules currently stand and it might actually sound somewhat exotic. Notwithstanding this, he points out how so-called "reparation in kind"

16 Carroll refers to Debra Slocum, Alfred Allan and Maria Allan, 'An Emerging Theory of Apology' (2011) 63 *Australian Journal of Psychology* 83; see also Alfred Allan and Robyn Carroll, 'Apologies in a Legal Setting: Insights from Research into Injured Parties' Experiences of Apologies' (2016) 24 *Psychiatry, Psychology and the Law* 1, 6-7. Such research supports the conclusion that the value people attribute to each apology is highly individual.

(non-monetary relief) has evolved over time. This may bring us to critically check the original approach. In this regard the author notably underlines the potential of Article 6:103 of the Dutch Civil Code[17] and § 249, para 1 of the German Civil Code[18] as well as on the availability of non-monetary relief under Belgian case law.

The author further notes that "Non-monetary relief is not to be confused with 'injunctions' or 'specific performance'. Whereas the latter are mainly aimed at providing discontinuation of the violation of a right to the extent that this violation is ongoing (eg elimination for the future of an actual and present interference with the claimant's right by an order to do something or to refrain from doing something), non-monetary relief, by contrast, is considered as a form of compensation for loss – ie a form of alternative redress in lieu of monetary damages - and therefore presupposes civil liability on part of the wrongdoer."

This is a very topical point and one might object: given that the 'ongoing violation' has already caused unlawful damages, "specific performance" and "injunction" may presuppose civil liability too (and might also right the past wrong). So the difference between "reparation in kind" and "specific performance" is not so clear especially for the wrongdoer's side. However there will be a chance for this issue to be addressed in future work.

Alfred and Maria Allan, in Chapter 8, 'Prompted versus Voluntary Apologies: What does psychological research tell us?' bring forward a review of six published empirical psychological studies that examined victims' perceptions of prompted apologies. They stress that the views of perpetrators and victims are as important, if not more, than that of observers, whether they are lawyers, mediators, or judges as observers and as scholars. After having critically reviewed the relevant literature, the authors determine what conclusions can be drawn from them and what further research might be required. A crucial conclusion is that researchers normally use their own format and, given that the format of apologies tends to influence victims' perceptions of them, this makes it difficult to compare studies. Notwithstanding the need for deeper research in this field, the findings provide empirical evidence that actual and hypothetical victims value both voluntary and prompted apologies in legal settings but give preference to voluntary apologies.

17 See page 221.

18 Ibidem.

In Chapter 9, 'Apology's Research meets Law and Cinema', I focus on the broad and multifaceted relationship between law and cinema. It is particularly interesting to me that so called "legal movies" can help to understand aspects frequently overlooked in classical legal reasoning. By focusing on different points of view on historical and cultural backgrounds the movie's eye can help to develop a critical and realistic look over the dynamics of legal proceedings. It is often pointed out how bad it is to rely only on adversarial systems and litigation formalism without considering the importance of pro-empathetic and pragmatic behaviours and mediation goals.

For example, some films show vividly the need to take apologies seriously in addressing legal disputes, underlining the concrete role of apologies in rebuilding broken relationships. I have highlighted some recurring themes such as the remedial function of apologies, their ability to mitigate the feelings of revenge felt by the victim, and, as a consequence, their capacity to repair harms to dignity and to address emotional damage. The hardest parts for the wrongdoer may be the acknowledgement of his errors as well as the resistance of lawyers in considering not only the negative hazardous aspects of apologies, but also the positive ones.

3. Feedback from the Tribunal of Padua: breaking the barriers through comparative thinking

On September 2019, I attended the Tribunal of Padua[19] with Prue Vines to observe some Italian Legal System Feedback on Apologies. We left questionnaires for the Offices of the Judges and did the same for the Ordine degli Avvocati (Lawyer's Office).

The questions were intended for us to find out how much Italian legal practitioners and judges are accustomed to apologies in the course of their work. They were as follows:

1. Did you ever work on a case in which someone asked or released formal apologies?
2. If yes, what kind of case? (e.g. defamation, offences to a public official etc.);

19 In Italy, the Tribunal is the general jurisdiction of first instance in both civil and criminal matters.

3. Do you believe a court is definitely allowed to order someone to apologize as a form of remedy?
4. Do you think it preferable to adopt formal apologies before the trial begins, in the course of a trial, or to facilitate a mediation proceeding?

The judicial office appeared more interested and willing to be involved than the lawyers. A number of requests for further information were made. The lawyers office distributed the questionnaire quickly and 10 responses were received by me and then the judges asked to go more deeply into the topic in a specific meeting.

The initial 10 lawyer's responses were generally that they were aware of the practice of apologizing and that they resorted to it in some types of cases. The circumstances in which apologies were used were in cases linked to: defamation (5), offences to public officials (3), minor injuries (2), resisting the police (2), stalking (2), private violence (1).

Only 50% answered that they believe a court might order someone to apologize as a form of remedy and I found this quite strange because in Italy courts are definitely not allowed to issue such a remedy at the moment. Probably they meant that a judge is entitled to promote a settlement at a pretrial stage including an apology statement. This is a probable explanation in the light of the next answer. In fact the great majority of those interviewed acknowledged that is preferable to adopt formal apologies before the trial begins (7), or to facilitate a mediation proceeding (5). Only two responses mentioned the possibility of adopting apologies in the course of a trial.

Notwithstanding the lack of representativeness and smallness of the sample, I found it an unusual and stimulating experience. As said, this kind of survey is quite uncommon for Italian law scholars that are not very familiar with the experimental method mainly adopted by sociologists. This is a shame because these experiments can teach a lot to academics especially about the 'law in action' in a specific jurisdiction.

Generally, judges and legal practitioners are not accustomed to exchange their opinions with academics. Most of them seem somehow shy and secretive about their work. Moreover, I have noted a certain reluctance by judges to get involved in the survey, probably because they are public officials and they suffer some limitations in speaking publicly about their work.

The survey confirmed that Italy is a system that does not recognize apologies as juridical items. At most we can refer to limited cases resolved through pretrial settlements based on apologies in criminal courts. According to such an experience, the judge rather than ordering apologies as a form of sanction, might probe the offender's propension for offering an apology to the victim. The most part of his efforts are on defamation and private violence cases.

Generally, there is no awareness about common law apology protecting legislation and nobody thinks about the priority of developing such legislation in Italy. From this point of view, apology issues in Italy can be properly managed according to the existing evidence law as administered by judges with a certain degree of discretion, as suggested by Vandenbussche in Chapter 2.

Due to its characteristics, this survey might contribute to strengthen a still weak dialogue between different professional fields and cultures. All the legal systems throughout the world show many differences in dealing with apology and the situation seems so complex and patch-worked as to deserve a deeper scrutiny.

By that reasoning we should also highlight several legal meanings of apologies and systematize them step by step. According to Jhering's approach of *die durchbruchspunkte*[20], by which 'legislators make laws for situations as they present themselves at the time, without, however, necessarily excluding other situations which have yet to arise'[21] we could focus on the gradual emergence of apologies in the legal field. That would allow us to find that it may not always be possible to exclude any legal meaning of apologies.

We may thus put 'at the base of the pyramid' an apology that conforms only to a social habit and without any legal significance. Conversely, we can place the same behavior 'on top of the pyramid' when it involves directly legal concerns. A particular case consists of those experiences in which the two areas (social norms of courtesy and norms of law) tend to overlap today. But over and above that, a strong influence of customary law in considering apologies as a legal tool might stand out in some experienc-

20 The method was introduced by von Jhering R (1858), *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung*, Teil 2, Bd. 2. Leipzig, 359.

21 See Storme M (2012), *Closing Comments: Harmonisation or Globalisation of Civil Procedure?*. In: Kramer X E, Van Rhee C H (eds.), *Civil Litigation in a Globalising World*, The Hague (2012), 383.

es, as we see in China, Japan and South Africa, as shown by Del Rey in Chapter 7.

Some jurisdictions (Italy, France, Germany) substantially ignore apologies because, traditionally, they have been considered nothing more than a mere act of courtesy between gentlemen. At most they attach a small role to apologies as a mitigating factor in criminal procedure

On the contrary, others attach to it a wider role. Most of the Common law world has devoted an increased attention to this topic since the 1980s, generally acknowledging apologies on a statutory basis, rather than on an exclusive case law basis, as set out by Vines in Chapter 1 and Carroll in Chapter 5.

We may assume that this is due to the factual-realistic approach of these systems (law in action vs. law in the books). Generally common law tradition pays more attention to the specificities of the case rather than being focused on abstract concepts And as such it is not as self-referential as civil law tradition but instead somewhat more aware of the role played by feelings and personal relationships in resolving legal disputes. And in fact another dividing factor is the importance historically devoted by common law jurisdictions to pretrial settlements and alternative dispute resolution systems where apologies have often played a prominent role. I think also of the growing use of judicial case management as a nudge factor to speed up trials.

In the light of the above, I think it is no coincidence that common law scholars currently demonstrate a higher rate of interdisciplinarity than their civil law colleagues. For instance, sample surveys has become an established method to derive useful information for legal researches in common law world. Many US and Australian scholars, to name but a few, often support their studies through other disciplines like economics, psychology, statistics etc. As we will see below, this is also reflected in this book which contains many interdisciplinary references and indeed, is contributed to by both law scholars and psychology scholars.

One of the most noteworthy achievements of Apologies Legal Research is the ability to engage in interdisciplinary studies and consequently to cross the fence between the specific legal fields. Another important lesson a comparativist would learn is that disciplinary sectors (criminal law, private law, procedural law) are often differently shaped depending on the single legal system, and, last but not least, the differences can be negotiated by looking for a specific goal or function. The feedback from the Tribunal

of Padua suggests that comparative thinking may help to break down the barrier of civil law culture against apologies in law.