

## Mario Sarfatti

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*A lawyer and lecturer in comparative law at the University of Turin, he was a 'travelling' jurist, in geographical terms as well as in his research topics. Passionate about English law, he went to libraries in Britain, took part in international conferences and taught, as a visiting professor, also abroad. In middle age, his travels took on the different hue of expatriation: he left Italy not because he was a Jew expelled under the racial laws, but as early as 1935 when he left in opposition to fascism. And with his wife Lisa Scopoli he found refuge in England.*

### A travelling jurist

He was born in Florence on 15 August 1876, to Giorgio Giuseppe Sarfatti (Venice, 4 March 1829 - Naples, 26 December 1891) and Giulia Philipson (Florence, 25 June 1844 - 26 March 1920); his father was of Venetian origin, the mother of a wealthy Anglo-Jewish family that settled in Florence in the mid-nineteenth century<sup>1</sup>. Mario went to university in Turin, graduating in law from the subalpine university on 9 July 1898<sup>2</sup>.

Later, also in Turin, he became a lawyer and undertook scientific work alongside one of the most accredited exponents of Italian legal doctrine of the time, Gian Pietro Chironi, professor of civil law, original innovator of the legal method<sup>3</sup>.

Thus, in the early twentieth century, Sarfatti was an assistant at the Institute of Legal and Political Sciences of the Turin Faculty of Law and, with the support of Chironi himself, at the time rector of the university, and civil law professor Giovanni Pacchioni,<sup>4</sup> in 1905 he was promoted as a lecturer in civil law at that university. For the

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<sup>1</sup> Liana Elda Funaro, *Ebrei di Firenze: dal ghetto alla Capitale*, "Annali di storia di Firenze", X-XI, 2015-16, pp. 169-199 <<https://oajournals.fupress.net>> (accessed 17 October 2023).

<sup>2</sup> Archivio Storico dell'Università di Torino (ASUTo), *Personal dossiers*, f. "Mario Sarfatti": Sarfatti enrolled in 1895 and graduated with a mark of 95/110.

<sup>3</sup> Refer to Giovanni Cazzetta, *Gian Pietro Chironi*, in *Il contributo italiano alla storia del pensiero, Diritto, Enciclopedia italiana, Appendix 8*, Rome, Istituto della Enciclopedia italiana, 2012, pp. 401-404 <<https://www.treccani.it>> (accessed 17 October 2023).

<sup>4</sup> Francesco Astone, *Pacchioni, Giovanni*, in Italo Birocchi, Ennio Cortese, Antonello Mattone, Marco N.

next 30 years, he taught optional and complementary courses in comparative English private law for law students<sup>5</sup>.

Armed with a sound knowledge of the English language, at the time uncommon among lawyers, until he graduated he conducted his research in England, publishing his first exploratory works on English private law. Moreover, at the time, his name figured among the contributors to the major Italian legal journals, for which he edited reviews of foreign law, going abroad to collect and peruse material of interest.

In the ensuing decades, the reputation of his research had spread above all abroad, in France, and also in England and even in the United States of America. Despite the talents he acquired in teaching and science, Mario Sarfatti was unable to find a role in Italy, not least because of the kind of comparative legal studies he engaged in, for which there were no dedicated professorships at the time<sup>6</sup>.

### **"A voyage of discovery into the domain of English Law"**

English private law had an immediate appeal to jurist Mario Sarfatti, so much so that he made a name for himself in the field on the Italian and European scene in the early twentieth century.

Contributions to the journals in the field, restricted to brilliant graduates, launched bright academic and professional careers. Sarfatti's work was in special demand, because it involved perusing British and American sources little known in Italy, yet of great interest to a country that was just then grappling with industrialisation and the related legal, economic and social issues.

And so his name appeared on valuable contributions on English commercial case law

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Miletti (eds.), *Dizionario biografico dei juristi italiani (XII-XX secolo)*, vol. II, Bologna, Il Mulino, 2013, pp. 1475-1476.

<sup>5</sup>See ASUTo, *Personal dossiers*, f. "Mario Sarfatti", for the Ministerial Decree of 8 January 1906, authorising Mario Sarfatti to practise as a lecturer in civil law at the University of Turin, and for the Ministerial Decree of 10 April 1929 definitively confirming his authorisation to lecture in civil law.

<sup>6</sup> Annamaria Monti, *Le comparatisme dans les facultés de droit italiennes à la veille de la Grande Guerre*, "Clio@Themis", 13, 2017 <<http://journals.openedition.org>> (accessed 17 October 2023).

in the dossiers entitled "Il diritto commerciale. Rivista periodica e critica di giurisprudenza e legislazione", a sound and reputed periodical founded and directed by two professors of the University of Pisa, Filippo Serafini and David Supino<sup>7</sup>, and in the columns of the ancient generalist journal, still published today, "Giurisprudenza Italiana"<sup>8</sup>.

His regular contributions, articles published in the "Rivista del diritto commerciale, industriale e marittimo", founded and directed by two leading lights of Italian commercial law, Angelo Sraffa and Cesare Vivante, attracted attention. The first issue of the "Commerciale" – as it became known – appeared in 1903<sup>9</sup>. From 1905 until the Great War, Mario Sarfatti edited reviews of English commercial doctrine and case law,<sup>10</sup> also dealing with the US legal system<sup>11</sup>.

Meanwhile, in 1903, his work on *La nozione del torto nella dottrina e nella giurisprudenza inglese* was published, in the wake of studies on the subject by the well-known English comparative lawyer Sir Frederick Pollock<sup>12</sup>. The fine preface was signed

<sup>7</sup> Mario Sarfatti, *Note minime di giurisprudenza inglese in materia commerciale*, "Il diritto commerciale. Rivista periodica e critica di giurisprudenza e legislazione", XX, 1902, coll. 817-828.

<sup>8</sup> Id., *Utili insegnamenti del diritto inglese in materia di rivendicazione di beni mobili in genere e di titoli al portatore rubati o smarriti*, excerpt from "Giurisprudenza italiana", 1908; Id., *Il processo civile inglese*, excerpt from "Giurisprudenza italiana", 1914.

<sup>9</sup> Antonio Gambaro, *I primi anni della Rivista di diritto commerciale: comparazione e cosmopolitismo giuridico*, in *La comparazione giuridica tra Otto e Novecento*, Milan, Istituto lombardo Accademia di scienze e lettere, 2001, specifically pp. 45-46; Annamaria Monti, *Angelo Sraffa. Una 'antiteorico' del diritto*, Milan, Egea, 2011, pp. 220-231.

<sup>10</sup> Mario Sarfatti, *The new law on the "prior examination" in the issuance of certificates of industrial property in England*, "Rivista di diritto commerciale" ("RDC"), 1, 1904, pp. 77-78; Id., *Riviste inglesi*, "RDC", 1, 1905, pp. 539-544; Id., *Sull'uso negli Stati Uniti di oggetti fabbricati e venduti all'estero ma protetti da attestati di privativa nell'Unione Americana*, "RDC", 1, 1909, pp. 192-194; Id., *Legislation and foreign commercial jurisprudence. Inghilterra e Legislazione inglese in materia di diritto privato*, "RDC", 1, 1909, pp. 197-221 and pp. 317-318; Id., *Origine e svolgimento del diritto d'autore in Inghilterra*, "RDC", 1, 1909, pp. 325-327.

<sup>11</sup> Mario Sarfatti, *I trusts americani di fronte alla legislazione federale*, "RDC", 1, 1905, pp. 53-64; Id., *Lotte giudiziarie contro un trust americano*, "RDC", 1, 1907, pp. 178-180; Id., *Rivista di giurisprudenza commerciale straniera. Stati Uniti d'America 1904-1906*, "RDC", 1, 1907, pp. 354-373; Id., *La sconfitta del più grande trust americano nella sua lotta giudiziaria col governo federale*, "RDC", 1, 1908, pp. 87-89; Id., *Il fallimento delle società in nome collettivo nella legge degli Stati Uniti d'America*, "RDC", 1, 1909, pp. 194-196; Id., *Efficacia della legislazione nord-americana contro i trusts*, "RDC", 1, 1909, pp. 327-329.

<sup>12</sup> Lionel Neville Brown, *L'évolution du droit comparé en Angleterre depuis 1869: un aperçu personnel*, in *Livre du centenaire de la société de législation comparée*, t. II, *Evolution internationale et problèmes actuels du droit comparé*, Paris, Librairie générale de droit et de jurisprudence, 1971, spec. pp. 357-358.

by Chironi, who also took an interest in the legislative process and the role of the jurist in the field of common law, which Sarfatti had helped to describe. The volume immediately received rave reviews in the "Journal of Comparative Legislation" by the eclectic magistrate and professor Maurice Sheldon Amos,<sup>13</sup> who regarded Sarfatti as a 'pioneer', among continental jurists, for his dedication to the exploration of the British legal system, from a comparative perspective<sup>14</sup>.

So these early writings earned Sarfatti a certain reputation: by the dissemination of his studies through publication, he came into contact with foreign jurists, British ones in particular, who appreciated his predisposition for studying and explaining English law, barely known to most of his colleagues on the continent.

### **Vocation for comparing and teaching law**

In the nineteenth and twentieth centuries, comparative law received renewed attention from continental jurists, engaged in a methodological shift in their respective fields of study – from public law to private and commercial law – following the radical economic and social changes that, since the mid-nineteenth century, had transformed European societies. Comparison had offered ideas, at national level, to address the legal problems associated with the advent of industry and mass production<sup>15</sup>.

In Italian universities, and in faculties of law in particular – which were reformed and made 'uniform' following the unification of Italy – compulsory courses in private and public law were often preceded by historical and comparative introductions. In addition, optional or complementary courses in comparative law were established. For example, at the Faculty of Law of the University of Turin, comparative legal

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<sup>13</sup> Marie-Louise Legg, Thomas S. Legg, *Amos, Sir (Percy) Maurice Maclardie Sheldon*, in *Oxford Dictionary of National Biography*, Oxford, OUP, 2006 <<https://doi.org>> (accessed 18 October 2023).

<sup>14</sup> Maurice Sheldon Amos, *An Italian view of the Law of Torts*, "Journal of Comparative Legislation", 1903,

<sup>15</sup> See Christophe Jamin, *Le vieux rêve de Saleilles et Lambert*. Regarding the centenary of the International Congress on Comparative Law in Paris, "Revue internationale de droit comparé", 52, 2000, pp. 733-751.

education had been offered since the late nineteenth century and, in the first decade of the twentieth, there was a plethora of options<sup>16</sup>.

Against this favourable background, in 1906 Mario Sarfatti inaugurated his course in comparative private law which, in various forms, as an optional course, he taught for the next thirty years, making good use of his familiarity with English law and its centuries-old features<sup>17</sup>.

In his lectures, which were widely acclaimed, Sarfatti drew on the most mature debate from beyond the Alps, regarding the method and purposes of comparison. In particular, he framed his discourse on the ideas put forward by the French jurists Raymond Saleilles<sup>18</sup> and, above all, Edouard Lambert<sup>19</sup>.

For him, the purpose of comparison, therefore, was the constant approximation of the different legal systems, with a view to achieving the unification of all legislation, and this conviction was to remain with him until the end of the Second World War,<sup>20</sup> even when comparative law followed other paths<sup>21</sup>.

Mario Sarfatti's teachings in Turin, in fact, were immediately regarded as avant-garde, despite being generally little-known in Italy. Immediately after the war, his courses

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<sup>16</sup> Annamaria Monti, *Alla scoperta del diritto anglosassone: il contributo di Mario Sarfatti (1876-1962) alla comparazione giuridica*, in Maria Gigliola by Renzo Villata (ed.), *Lavorando al cantiere del "Dizionario biografico dei giuristi italiani (XII-XX sec.)"*, Milan, Giuffrè, 2013, pp. 589-623, specifically pp. 609-612.

<sup>17</sup> ASUTo, *Minutes of the Faculty of Law from 27 October 1902 to 30 March 1909*, meeting of 19 March 1906; *Minutes of the meetings of the Faculty Council from 28 December 1927 to 13 November 1937*, meeting of 31 May 1935; *Minutes of the Faculty of Law from 17 April 1909*, meetings of 1 May 1911, 18 March 1911, 15 March 1912, 3 April 1913, 25 March 1914 and 27 March 1915; *Minutes of the meetings of the Faculty Council from 24 January 1917 to 23 December 1927*, meeting of 15 February 1917.

<sup>18</sup> Marco Sabbioneti, *Democrazia sociale e diritto privato. La Terza Repubblica* by Raymond Saleilles (1855-1912), Milan, Giuffrè, 2010, pp. 227-293; Alfons Aragoneses, *Un jurista del Modernismo. Raymond Saleilles y los orígenes del derecho comparado*, Madrid, Editorial Dykinson, 2009 <<http://hdl.handle.net>> (accessed 18 October 2023).

<sup>19</sup> Refer to Carlos Petit, *Una fotografía de 1924, o el radio variable de la comparación jurídica*, "Quaderni fiorentini", 50, 1, 2021, pp. 307-364.

<sup>20</sup> Mario Sarfatti, *Le droit comparé dans son essence et dans son application*, in *Introduction à l'étude du droit comparé, Recueil d'Etudes en l'honneur d'Edouard Lambert*, Première Partie, *Les aspects, les fonctions et les sources du droit comparé*, Paris, Librairie de la Société anonyme du recueil Sirey - Librairie générale de droit et de jurisprudence, 1938, pp. 61-65.

<sup>21</sup> Tommaso Amico di Meane, *Sulle spalle dei giganti? La questione metodologica del diritto comparato e il suo racconto*, Naples, Editoriale scientifica, 2022, pp. 231 ff.

earned international acclaim. In particular, his admirers included the English comparative lawyer Harold Cook Gutteridge,<sup>22</sup> professor of industrial and commercial law at the London School of Economics from 1919 to 1930, and later in Cambridge, until 1941<sup>23</sup>.

### **The 1920s: research institutes and centres**

In addition to teaching, throughout the first two decades of the twentieth century Mario Sarfatti continued his energetic research work at Turin university, where he had built close ties with and received praise from the professors of the Faculty of Law. During the twenties, although he failed to secure any tenured position, his scientific and educational cooperation with the subalpine university continued with renewed impetus<sup>24</sup>.

On the other hand, throughout the 1920s, albeit in a different political context than in the past, comparative law acquired a consensus and was institutionalised internationally: in 1924, the Academy of Comparative Law was founded in Geneva (transferred, in 1925, to The Hague), while in Rome, in 1926, at the behest of the Italian government, the International Institute for the Unification of Private Law, *Unidroit*, was established as an auxiliary body of the League of Nations. At the initiative of individual scholars, at European universities, from Paris to Berlin, via Pavia, Milan and Lyon, institutions of comparative law and dedicated research centres began work<sup>25</sup>.

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<sup>22</sup> In the words of Harold Cook Gutteridge, *The Study of Comparative Law in France and England*, "Journal of Comparative Legislation and International Law", 1922, p. 86: "In Italy Professor Sarfatti, single-handed and undaunted by opposition, has succeeded, in the face of apathy and discouragement, in obtaining the recognition of the study of Comparative Law at the University of Turin".

<sup>23</sup> Arnold Duncan McNair (revised), *Gutteridge, Harold Cook*, in *Oxford Dictionary of National Biography*, Oxford, OUP, 2004 <<https://doi.org>> (accessed 18 October 2023).

<sup>24</sup> ASUTo, *Registro verbali delle sedute del consiglio di facoltà dal 24 gennaio 1917 al 23 dicembre 1927*, meeting of 27 May 1919, in part. pp. 61-63.

<sup>25</sup> Jean-Louis Halpérin, *Associations, réseaux et ambitions nationales des comparatistes de la fin du XIXe siècle à la Seconde Guerre mondiale*, "Clio@Themis", 13, 2017, specifically pp. 11-14 <<https://journals.openedition.org>> (accessed 18 October 2023); C. Petit, *Una fotografia de 1924*, cit.,

In that connection, in 1925, English comparative lawyer Harold Cook Gutteridge, praising the French contributions to comparative law, primarily through the scientific and organisational contribution of Edouard Lambert, once again expressed admiration for Sarfatti's perseverance and, more particularly, his desire to set up an institute for the study of comparative law in Italy<sup>26</sup>.

Indeed, in a number of contributions to the "Monitore dei tribunali" of those years, Sarfatti, after the foundation, in Rome, of the "Istituto di Studi legislativi" and Unidroit, took the opportunity to present the ambitious project of creating a network of cross-collaborations between European research centres dedicated to the study of comparative law. For Turin, he imagined a collaboration with Lyon,<sup>27</sup> where Lambert was working hard on a study of the Anglo-American legal system and where he himself regularly went, to give seminars on the relationships between English common law and continental private law<sup>28</sup>.

### Scientific relations with British (and US) jurists

Since the late nineteenth century, comparative law had aroused some interest even among British jurists, for the needs of administration and good governance of the British Empire: the comparative law and rights of the subject populations were therefore studied, though they showed little interest in law on the European continent.<sup>29</sup>

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specifically pp. 354 ff. See also Annamaria Monti, *Un giurista "internazionale". Mario Rotondi (1900-1984) via his papers*, "Le Carte e la storia", 2, 2017, specifically pp. 24-26.

<sup>26</sup> Harold Cook Gutteridge, *The Institutes of Comparative Law in France and Italy*, "Journal of Comparative Legislation and International Law", 1925, pp. 212-216.

<sup>27</sup> Mario Sarfatti, *L'Istitut de droit comparé di Lione e la sua attività scientifica*, "Monitore dei tribunali", 1923, pp. 33-34; Id., *Gli studi legislativi in Francia e in Italia* and *Verso un diritto privato unificato*, "Monitore dei tribunali", 1927, pp. 161-162 e pp. 361-363.

<sup>28</sup> ASUTo, *Fascicoli personali*, f. "Mario Sarfatti", contains his correspondence of December 1927 with the Rector and Quaestor of Turin, for the issue of his passport, together with the official letter of invitation, signed by Edouard Lambert. Apparently, in April 1928, Sarfatti first went to Lyon, as planned, and then travelled on to Cambridge and Oxford, for conferences.

<sup>29</sup> John Anthony Jolowicz, *Comparative Law in Twentieth-century England*, in Jack Beatson and Reinhard Zimmermann (eds.), *Jurists Uprooted: German-Speaking Emigré Lawyers in Twentieth Century Britain*,

There was no lack of exceptions, however, so that the same English world that Sarfatti had approached did in turn become interested in continental European law, especially through authors such as the aforementioned Maurice Sheldon Amos and Harold Cook Gutteridge who, whether for personal or professional reasons, cultivated a knowledge of foreign languages and a curiosity for law in continental Europe<sup>30</sup>.

The earliest studies by Mario Sarfatti, therefore, were placed mid-way between Italy, a recently unified country in search of full legitimacy on the international stage, and Britain, a colonial power, armed with an ancient legal tradition closely bound to land and common law.

Alongside his interest in English law, Sarfatti published reviews of Italian law in British journals – notably, in the years 1920-26, in the "Journal of Comparative Legislation and International Law" – and thus became, in turn, an intermediary for British jurists, eager to broaden their field of study to Roman law.

Moreover, in the years between the wars, reviews of his essays, which appeared in English in prestigious international journals, called further attention to his contributions in English-speaking environments, raising his profile on a lively international scientific circuit.

Indeed, it was British (and American) jurists – rather than his Italian colleagues – who were the most enthusiastic about his contributions over those years, as had happened with his comparative study on obligations in English and Italian law, published in 1924 and aimed principally at facilitating transnational trade relations<sup>31</sup>.

In the United States, John H. Wigmore<sup>32</sup> praised its prophetic nature in relation to

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Oxford, OUP, 2004, pp. 345-366 <<https://doi.org>> (accessed 19 October 2023).

<sup>30</sup> John W. Cairns, *Development of Comparative Law in Great Britain*, in Mathias Reimann, Reinhard Zimmermann (eds.), *The Oxford Handbook of Comparative Law*2, Oxford, Oxford University Press, 2019, pp. 111-147.

<sup>31</sup> Mario Sarfatti, *Le obbligazioni nel diritto inglese in rapporto al diritto italiano*, Milan, Francesco Vallardi, 1924.

<sup>32</sup> Carlos Petit, *John H. Wigmore and European Culture in the Progressive Era*, "Clio@Themis", 16, 2019 <<http://journals.openedition.org>> (accessed 19 October 2023).



subsequent developments in comparative law,<sup>33</sup> while Ernest Gustav Lorenzen, in the pages of the "Yale Law Journal",<sup>34</sup> went so far as to compare Sarfatti's work with that of the French jurist Henry Lévy-Ullmann (1870-1947) who, at the University of Paris, successfully fostered comparative studies of Anglo-American law<sup>35</sup>.

### **The Handbook of Comparative Law**

In 1933, two years before leaving Italy, Mario Sarfatti published his handbook of comparative law in Turin, something of a milestone in comparative studies and in the teaching of comparative law<sup>36</sup>.

Manuals generally play a significant role in the emergence of specialisms and new academic knowledge: the publication of a manual actually delimits and orientates the subject area<sup>37</sup>. Sarfatti's text, in particular, entitled "Introduzione allo studio del diritto comparato", was the first of its kind in Italy and a rare example on the international scene<sup>38</sup>. The scientific approach was that hypothesised in the late nineteenth and early twentieth centuries by Saleilles and Lambert, aimed at a historical reconstruction of the development of the two great systems of common law, namely Roman law on the European continent and English common law. The ultimate goal was a continuous rapprochement of the two worlds, with a view to the adoption of uniform legislation<sup>39</sup>.

In Italy, there was no response to the publication of the manual, except insofar as it

<sup>33</sup> John H. Wigmore, *Le obbligazioni nel diritto inglese in rapporto al diritto italiano*, By Mario Sarfatti. Milan, Vallardi, 1924, pp. XII, 352, "Illinois Law Review", 1927-28, pp. 903-905.

<sup>34</sup> Ernest Gustav Lorenzen, *Le obbligazioni nel diritto inglese in rapporto al diritto italiano*, by Mario Sarfatti, Casa Editrice Dottor Francesco Vallardi, Milan, 1924, pp. 352, "Yale Law Journal", 1924-25, pp. 919- 920.

<sup>35</sup> Jean-Louis Halpérin, *Henri Lévy-Ullmann (1870-1947). Classicisme et singularité*, in Nader Hakim, Fabrice Melleray (dir.), *Le renouveau de la doctrine française. Les grands auteurs de la pensée juridique au tournant du XXe siècle*, Paris, Dalloz, 2009, pp. 95-122.

<sup>36</sup> Mario Sarfatti, *Introduzione allo studio del diritto comparato*, Turin, Giappichelli, 1933.

<sup>37</sup> Frédéric Audren, *Les juristes en travailleurs manuels*, in Anne-Sophie Chambost (dir.), *Histoire des manuels de droit. Une histoire de la littérature juridique comme forme du discours universitaire*, Paris, LGDJ, 2014, pp. 336-345.

<sup>38</sup> Gabriele Crespi Reghizzi, *Introduzione: diritto privato comparato in Italia ieri e oggi*, "Annuario di diritto comparato e di studi legislativi", 2010, in part. p. 12 and p. 15.

<sup>39</sup> M. Sarfatti, *Introduction*, cit., specifically pp. 27-30 and pp. 121 ff.

inspired later works, while, on the other side of the Atlantic, the aforementioned John H. Wigmore immediately published an enthusiastic review of it in the "Illinois Law Review"<sup>40</sup>.

A few years later, Sarfatti's well-curated and balanced didactic text was even translated into English by Frederick Parker Walton, a Scottish lawyer trained in Oxford and destined for a brilliant academic career in the universities of the British Empire, in Montreal (McGill University) and in Egypt<sup>41</sup>.

Later, during the war, the manual was actually translated into Spanish, at the initiative of Agustín García López, director of the Instituto de derecho comparado of the Escuela Nacional de Jurisprudencia of the Universidad Nacional Autónoma de México<sup>42</sup>. The Mexican version, with a prologue by Sarfatti himself (dated London, 3 September 1940), in the hope of a return to peace between the European states, was published in 1945, with a biographical profile and a bibliography of the author, edited by Edouard Lambert<sup>43</sup>.

### **The move to England**

In 1935, after attending an international conference in the Hague, Mario Sarfatti went directly to England. The Ethiopian war had broken out and the Italian political climate had become unsustainable for him.

So, at the age of 59, three years before the enactment of the racial laws in Italy, Sarfatti chose the path of expatriation in the country that had already welcomed him

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<sup>40</sup> John H. Wigmore, *Introduzione allo studio del diritto comparato*, by Mario Sarfatti, Libreria Scientifica Giappichelli, Turin, 1933, pp. IV, 133, "Illinois Law Review", 1933-1934, pp. 582-583.

<sup>41</sup> Frederick Parker Walton, *Comparative Law and Professor Sarfatti's Introduction*, *Introduzione allo studio del diritto comparato*, 1933, by Mario Sarfatti, "Journal of Comparative Legislation and International Law", 1937, pp. 141-144.

<sup>42</sup> Mario Sarfatti reported this to Gaetano Salvemini, in a letter dated 4 May 1941, conserved in AISRT, *Fondo Gaetano Salvemini*, f. "Mario Sarfatti".

<sup>43</sup> Edouard Lambert, *La obra de Mario Sarfatti*, in Mario Sarfatti, *Introducción al estudio del derecho comparado*, Mexico, Imprenta universitaria, 1945, pp. IX-XVII <<http://ru.juridicas.unam.mx>> (accessed 27 October 2023).

several times in the past, as a scholar, and where he hoped to rely on the support of distant relatives, friends and colleagues.

And so it happened. Acquaintances of his own and of his wife, Lisa Scopoli, who left with him, the very British jurists with whom he had cultivated fruitful relationships, came to their aid, renewing earlier scientific ties and putting them to a very different use.

In particular, Sir Maurice Sheldon Amos and Sir Frederick Pollock provided the necessary references in support of his asylum application to the Home Office. References were also provided by Violet Hoffnung, Baroness de Goldsmid e da Palmeira, an influential lady in London high society, related to Sarfatti on his mother's side (they were the children of two Philipson cousins)<sup>44</sup>.

Initially, until 1939, the couple lived around Cambridge and London, in the central area of Bloomsbury, on Bedford Avenue, and then in Kensington on Holland Street and later on Church Walk; Sarfatti continued to work on his research, taking part in associations for the study of comparative and international law.

In 1936 he lectured at the British Grotius Society and joined it in 1937<sup>45</sup>. In the same year, within the Society of Public Teachers of Law, which brought together a small, informal group of English lawyers, he discussed the subject of comparative law teaching with its president, Robert Warden Lee, who formerly practised before the Privy Council and, after beginning his career in the British administration in Ceylon, had taught at Oxford, London and McGill University in Montreal<sup>46</sup>.

Again, in 1937, Sarfatti wrote an introduction to comparative law for the *Recueil*

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<sup>44</sup> Albert M. Hyamson, *An Anglo-Jewish Family*, "Transactions, Jewish Historical Society of England", 17, 1951-52, pp. 1-10: see specifically the family tree that accompanies the essay.

<sup>45</sup> Mario Sarfatti, *Comparative Law and Its Relations to International Law*, "Transactions of the Grotius Society", vol. 22, *Problems of Peace and War, Papers Read before the Society in the Year 1936*, 1936, pp. 83-97. See also *Report of the Executive Committee for 1937*, in *Transactions of the Grotius Society*, Vol. 23, *Problems of Peace and War, Papers Read before the Society in the Year 1937*, 1937, p. XXIV.

<sup>46</sup> Robert Warden Lee, *Comparative law and comparative lawyers*, "The Journal of the Society of Public Teachers of Law," 1936, pp. 1-9.

*Lambert*<sup>47</sup> and was preparing to take part in the international congress of the Academy of Comparative law in The Hague<sup>48</sup>.

From 1939, however, he also began to look for opportunities for paid work outside academia. In particular, he contacted the Central Council for Jewish Refugees in London, and Norman de Mattos Bentwich suggested that he apply to the Ministry of Information, highlighting his specific knowledge of Italian affairs, and to the Intelligence Department of the War Office, giving details of his career<sup>49</sup>. Sarfatti finally managed to find a job at the Overseas Department of the British Broadcasting Corporation (BBC), where he worked for a couple of months, between April and June 1940, until Italy entered the war.

### **The war years in Britain**

In July 1940, Mario Sarfatti, as an enemy alien, was interned on the Isle of Man, along with other Italians, with no distinction between fascists and anti-fascists, present on British soil at the time of the declaration of war by Mussolini's Italy on Great Britain<sup>50</sup>. His internment lasted for the short time, about a month, required for his name to be added, with due support, to the list of anti-fascists to be released as a matter of priority, and Scotsman William Gillies, Secretary of the international section of the Labour Party<sup>51</sup>, was made his guarantor.

On the Isle of Man, Sarfatti forged a friendship that was to endure over the following decades with Leone Vivante, a philosopher and writer, who had taken refuge on British soil to escape the Racial Laws. Leone was the son of the master of Italian

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<sup>47</sup> M. Sarfatti, *Le droit comparé dans son essence*, cit.

<sup>48</sup> Id., "Influenza reciproca del Diritto Romano e del Diritto Anglosassone", Report of the International Congress of Comparative Law in The Hague - August 1937"; acknowledgements to Walter Sarfatti for the copy of the typescript with handwritten notes.

<sup>49</sup> Personal papers of Mario Sarfatti, Norman de Mattos Bentwich to Mario Sarfatti, 21 December 1939.

<sup>50</sup> Andrea Ricciardi, *Paolo Treves. Biografia di un socialista diffidente*, Milan, FrancoAngeli, 2018, specifically pp. 172 ff.

<sup>51</sup> Alfio Bernabei, *Esuli e emigrati italiani nel Regno Unito 1920-1940*, Milan, Mursia, 1997, pp. 210-211.

commercial law Cesare Vivante,<sup>52</sup> mentioned above as co-editor of the "Rivista del diritto commerciale", which had published *Sarfatti's* contributions before the Great War.

After his release from the camp, Mario Sarfatti once again knocked on the doors of the BBC<sup>53</sup>.

Parish, a British diplomat, former Consul in Turin and, in January 1941, British Consul in Barcelona, vouched for his view of the conflict and his political, anti-fascist and Anglophile background. Regarding his specific skills, he offered Professors Robert Warden Lee (All Souls College, Oxford) and Harold Cook Gutteridge (Trinity Hall, Cambridge) as references. The latter, in particular, had been a great admirer of his since the early 1920s and, at that time, offered to sponsor the Italian comparativist<sup>54</sup>.

In 1941, therefore, Sarfatti resumed working for the BBC, this time at the Italian Radio London Service, on radio propaganda with the anti-fascist announcers of the European Service<sup>55</sup>. In the same period, he approached the anti-fascist movement of Free Italy,<sup>56</sup> presenting himself as a progressive liberal, with no particular political affiliation<sup>57</sup>. And he never lost his passion for his legal studies<sup>58</sup>.

### **Among the Italian refugees and anti-fascists in the United Kingdom**

In the early years of their lives in England, Mario Sarfatti and Lisa Scopoli had built a

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<sup>52</sup> On this impressive jurist, most recently, Ferdinando Mazzeola, *Vivante, Cesare*, in *Dizionario biografico degli italiani*, vol. 100, Rome, Istituto della Enciclopedia italiana, 2020 <<https://www.treccani.it>> (accessed 10 November 2023).

<sup>53</sup> AISRT, *Fondo Gaetano Salvemini*, f. "Mario Sarfatti", Mario Sarfatti to Gaetano Salvemini, 4 May 1941.

<sup>54</sup> See Private papers of Mario Sarfatti, draft of a letter from Mario Sarfatti of 21 January 1941, answering a job offer published in the previous day's "Times", for a position as an Italian language supervisor.

<sup>55</sup> On the BBC Italian service, see Ester Lo Biundo, *London calling Italy. The propaganda of Radio Londra in 1943*, Milan, Unicopli, 2014, specifically pp. 26-47.

<sup>56</sup> See Private Papers of Mario Sarfatti, letter of invitation to Mario Sarfatti from the Free Italy Committee, April 1941.

<sup>57</sup> Ibid, draft handwritten letter by Mario Sarfatti, with no addressee, dated 10 August 1941.

<sup>58</sup> Among other things, he explained to the British public the recent Italian codification of private law: Mario Sarfatti, *The New Italian Civil Code*, "Journal of Comparative Legislation and International Law", 1941, pp.18-26.

solid network of friendships, colleagues and family connections among leading members of British society of the time.

As his stay in Britain continued, and the international situation deteriorated, Sarfatti was widowed. While he was still involved in various intellectual circles and social, literary and artistic contexts, he also had significant political connections. In particular, he made contact (with representatives) of Italian anti-fascism in Britain.

His personal journey, throughout the 1930s and 1940s, was woven into the fabric of Italian emigration to the United Kingdom, and he played a part in enriching its texture. His scattered papers tell the story of the social environment of the evacuees and anti-fascists, the world of university professors, the institutions involved in official propaganda and Anglo-Italian cultural and diplomatic relations<sup>59</sup>.

During his time as an expatriate, Sarfatti found his nephew **Giacomino Sarfatti**<sup>60</sup> and met protagonists of Italian intellectual and political life abroad. First **Gaetano Salvemini**,<sup>61</sup> who had actually left England for the United States before the Sarfattis arrived there and, albeit at a distance, was always a steadfast guide for both of them, as was **Paolo Treves**,<sup>62</sup> an esteemed colleague, together with his brother Piero, at the BBC, in the war years<sup>63</sup>.

Lisa Scopoli was the contact with Salvemini,<sup>64</sup> and she, from an early age, had

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<sup>59</sup> For an updated contextualisation of research on the subject, see Tamara Colacicco, *Introduction*, in Ead. (ed.), *Fascism and Anti-Fascism in Great Britain*, Pisa, Pacini, 2020, pp. 5-13. See also Alessandro La Monica, *Unpublished papers of Giuseppe A. Borgese - Piero Sraffa e i concorsi per italianista a Cambridge (1933-1934)*, "Storiografia", 27, 2023, pp. 93-116. See also Nigel Copsey, Andrzej Olechnowicz (eds.), *Varieties of Anti-Fascism. Britain in the Inter-War Period*, London, Palgrave Macmillan, 2013.

<sup>60</sup> Michele Sarfatti, *Giacomino Sarfatti, agente inglese clandestino in Italia 1942-1944*, "Documenti e commenti", 5, 2 March 2017 (updated 21 April 2022) <<https://www.michelesarfatti.it>> (accessed 2 November 2023).

<sup>61</sup> Recently, Alice Gussoni, *Gaetano Salvemini a Londra Un antifascista in esilio (1925-1934)*, Rome, Donzelli, 2020.

<sup>62</sup> Elisa Signori, *Preface*, in Francesca Fiorani (ed.), *"In un paese schiavo con sensi liberi"*. *Antologia degli scritti di Paolo Treves*, Milan, Biblion, 2017, pp. 5-9; A. Ricciardi, *Paolo Treves*, cit., pp. 185 ff.; Francesca Fiorani, *Paolo Treves. Tra esilio e impegno repubblicano (1908-1958)*, Rome, Donzelli, 2020.

<sup>63</sup> Lotte Dann Treves asserts this in a letter to Walter Sarfatti dated 11 March 1993.

<sup>64</sup> See Private papers of Mario Sarfatti, handwritten letter, in English, on Harvard University letterhead, which Gaetano Salvemini sent to Mario Sarfatti, on 18 July 1941. A copy of the letter is kept in AISRT,

cultivated an interest in literature, working as a translator<sup>65</sup>. It was her intellectual acquaintances, in Italy in the early 20th century, that led her to maintain a correspondence and a certain familiarity with Salvemini. Her letters in the period 1914-16, preserved among the Salvemini papers,<sup>66</sup> also reveal an affectionate familiarity with the French intellectual Fernande Dauriac, his second wife, whom Lisa Scopoli called Madame Luchaire<sup>67</sup>.

Countess Scopoli's missives<sup>68</sup> were packed with references to the issues of the debate on interventionism, quoting articles that appeared in the Italian and foreign press – the Economist and the Observer – on socio-economic matters and, not least, indicated a knowledge of the English literary world, portraying a cultured, informed and intellectually lively personality<sup>69</sup>.

This was in Italy. Then, in January 1941, Lisa Scopoli died of a serious illness<sup>70</sup>. From the United States, Salvemini offered to introduce Sarfatti to Henry Noel Brailsford, an influential freelance journalist of the Labour Party, also advising him to make direct contact with William Gillies, the Labour Party secretary, and with the Italian leaders of the Free Italy Committee in London.

Salvemini was not very hopeful about the real capabilities of the Italian anti-fascist

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*Fondo Gaetano Salvemini*, f. "Mario Sarfatti".

<sup>65</sup> Lisa Scopoli, throughout the early decades of the twentieth century, worked as a translator of texts in English on a variety of subjects, from anthropology to the history of art and architecture, from philosophy to parapsychology, ethnology and travel diaries. In 1913 she took part in *the Décades de Pontigny*. See François Chaubet, *Paul Desjardins et les Décades de Pontigny*, Villeneuve d'Ascq, Presses Universitaires du Septentrion, 2000, <<https://books.openedition.org>> (accessed 5 November 2023).

<sup>66</sup> Lisa Scopoli's letters are all sent from Verona or Torri del Benaco, on Lake Garda: AISRT, *Fondo Gaetano Salvemini*, f. "Lisa Scopoli".

<sup>67</sup> In 1916, Françoise Dauriac became Salvemini's second wife: Filomena Fantarella, *Un figlio per nemico. Gli affetti di Gaetano Salvemini alla prova dei fascismi*, Rome, Donzelli, 2018.

<sup>68</sup> Giovanni Scopoli, an ancestor of Lisa's originally from Trentino, was made a count by Napoleon, in 1810: see University of Urbino Carlo Bo, *Literary and personal archives, Fondo Lorenzo Bedeschi*, f. 381, "Scopoli, Lisa" <<http://hdl.handle.net>> (accessed 5 November 2023).

<sup>69</sup> Lisa Scopoli's letters to Salvemini also revealed the acquaintance between the countess and the marquises Antonio De Viti De Marco and his consort, as well as with Luigi Luzzatti.

<sup>70</sup> Lisa Scopoli Sarfatti died on 12 January 1941 in Barley (Hertfordshire), at the home of friends of the couple, and was buried there, in the cemetery of the small village: so wrote the heartbroken Mario Sarfatti to Gaetano Salvemini, on 2 February 1941 (AISRT, *Fondo Gaetano Salvemini*, f. "Mario Sarfatti").

forces on English soil, but did have clear ideas about the structure of relations between that group and Italian anti-fascism in the United States, which he felt held more promise<sup>71</sup>. And Sarfatti agreed, on the subject of the Free Italy movement, that he could rely, for a time, on the commitment of the Treves brothers.<sup>72</sup> He had the opportunity to talk about it, among other things, with Salvemini's trusted collaborators in England, Isabella Massey and Marion Rawson,<sup>73</sup> as well as with Lucille Frost<sup>74</sup>. The representatives of the Free Italy Committee and its then president, Alessandro Magri, whom Salvemini appreciated for their loyalty and commitment, were actually given short shrift by the British authorities<sup>75</sup>. In any case, Salvemini persisted in the hope that Sarfatti's expertise in Italian affairs would land him an unspecified role as a serious advisor<sup>76</sup>.

Meanwhile, through his friend **Leone Vivante**,<sup>77</sup> he met Englishwoman Helen Francesca Garman, who became his second wife and by whom he had a son, in 1948.

### **The return to Italy and the doctrinal legacy.**

In 1952, with Helen and baby Walter, Mario Sarfatti returned to Italy and settled with the family in Torri del Benaco, on the shore of Lake Garda near Verona.

In April 1949, he had applied to the dean of the Faculty of Law of the University of Florence, to obtain a post teaching comparative law for the academic year 1949-50, but it was not to be. To overcome the difficulty of his age – he was three years younger than Salvemini who had just resumed teaching at the same university in 1949 – he also invoked the extension granted to teachers who were victims of the anti-

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<sup>71</sup> Private papers of Mario Sarfatti, Gaetano Salvemini to Mario Sarfatti, 18 July 1941.

<sup>72</sup> A. Ricciardi, *Paolo Treves*, cit., pp. 199 ff.

<sup>73</sup> A. Gussoni, *Gaetano Salvemini a Londra*, cit., specifically pp. 65-70.

<sup>74</sup> AISRT, *Fondo Gaetano Salvemini*, f. "Mario Sarfatti", Mario Sarfatti to Gaetano Salvemini, 4 May 1941.

<sup>75</sup> A. Ricciardi, *Paolo Treves*, cit., pp. 195 ff.

<sup>76</sup> Private papers of Mario Sarfatti, Gaetano Salvemini to Mario Sarfatti, 18 July 1941.

<sup>77</sup> Sarfatti maintained the ties with his friend even after returning to Italy, visiting his residence near Siena, Villa Solaia, where Leone's father, Cesare Vivante, had died in 1944. Villa Solaia was enlivened by the presence of Leone's wife, the painter **Elena De Bosis**.



Semitic campaign<sup>78</sup>.

After 1935, in fact, his name hardly ever came up on the Italian scene<sup>79</sup>. The international arena was undoubtedly the one that best suited him. Forced into a non-teaching job while in the UK, he had nonetheless continued his research work.

From his rigorous descriptions of English legal history, property, tort and contract law, he intended to draw inspiration for the renewal of Italian and continental law. In his last contributions in the mid-twentieth century, after his return home, he hoped for a gradual rapprochement between the different legal systems, with a view to the adoption of common general principles, "a common substratum of institutions and concepts"<sup>80</sup>.

On the pages of the prestigious "Tulane Law Review" he dreamt, once again, of "an ultimate unification of law in the form of a consciously desired common law of all mankind"<sup>81</sup>. In the report presented in 1954, at the International Congress of Comparative Law in Paris, he reiterated his wish<sup>82</sup>: an ideal of legal universalism that was not to be.

He died in Torri del Benaco on 15 January 1962 and his ashes were buried in England, next to the tomb of his first wife, Lisa Scopoli.

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<sup>78</sup> Private papers of Mario Sarfatti, copy of Sarfatti's typewritten letter to the Dean of the Faculty of Law of the University of Florence, dated April 1949.

<sup>79</sup> This is actually reported by Mario Rotondi, *Le droit comparé en Italie au cours du dernier siècle*, in *Livre du centenaire de la Société de législation comparée*, t. II, cit., p. 395, in the Italian version Id., *Il diritto comparato in Italia nel último secolo*, in Id., *Scritti giuridici*, vol. II, *Studi di diritto comparato e teoria generale*, Padua, Cedam, 1972, pp. 729-730.

<sup>80</sup> On this point, Sarfatti is mentioned by Rudolf B. Schlesinger, *Research on the General Principles of Law Recognized by Civilized Nations*, "American Journal of International Law", 1957, pp. 734-753: 741.

<sup>81</sup> M. Sarfatti, *Comparative Law and the Unification of Law*, "Tulane Law Review", 1951-52, pp. 317-323.

<sup>82</sup> Id., *L'idea di una scienza di diritto comparato universale*, "Archivio giuridico 'Filippo Serafini'", 1954, pp. 136-143.

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