

Literature Review on Comparative Law and Legal Language

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In a world more and more globalised comparative law is achieving a central role under different aspects, such as: methods, legal language, EU law and legal education. It is well known that comparative law has relations with many disciplines, several scholars addressed the issue of interdisciplinarity and new perspectives for comparative law.

In comparative legal studies, language and translation play a critical role that has long been acknowledged by the scientific community. Consequently, the study of legal translation in all its forms and the essential significance of language in comparative legal studies are now well-established disciplines of study.

This contribution is a review of comparative law and legal language literature and publications. Due to the increasing interest to the subject of law and language it is possible to find many contributions, the following are only some suggestions on, this review makes no claim to be comprehensive, but rather to recommend some useful and interesting readings.

1. A first encounter with comparative law and language

This first section is devoted to a few general comparative works, which cover subjects like the origins and development of comparative law, the methods of legal comparison, and the issues addressed in comparative law. The sections of these volumes that discuss language and law or legal translation will receive extra attention.

One of the first articles that reflect on the connection between comparative law and language—with a special eye to legal translation—is the one by R. Sacco “Legal Formants: A Dynamic Approach to Comparative Law (Installment I of II)”.

A collection of essays in the book “The Cambridge Companion to Comparative Law”, edited by M. Bussani and U. Mattei, aims to give the reader a basic understanding of the dynamic relationship between the law and its cultural, political, and socioeconomic context. The chapter “Comparative Law and Language” by B. Pozzo is particularly noteworthy in this edition.

An overview of general aspects of comparative law (in particular the relation with other disciplines, such as legal translation, and the aims comparative law) and its methods is given by U. Kischel in “Comparative Law”. Especially chapter 3 is dedicated to “the comparative method” and analyses the different approaches (functional method and the alternatives) aiming at developing a contextual comparison approach. In the second part of the book the Author analyses the different legal families and their contexts. The article by O. Moreteau “The Words of Comparative Law” starts with a reflection on the words of the law, then analyses the corpus of comparative law and the words of comparativists from a pluralistic perspective and the process as a basic element of cognition.

“The Oxford Handbook of Comparative Law”, edited by M. Reimann and R. Zimmermann, offers some essays that are devoted to the different approaches to comparative law and the increase of interdisciplinary research in this area, such as the one by M. Siems “New Directions in Comparative Law”. In this contribution the author suggests that comparative law has broadened not only its methodological toolbox but also its substantive perspective since it turns its attention to new topics and to interdisciplinarity, due to many new interactions not only between governments but also, for instance, between courts or other public bodies. On the relation between comparative law and language see the chapter by Vivian Grosswald-Curran “Comparative Law and Language”.

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In his article “Comparative Law and Method and the Method of Comparative Law” J. Hage focuses on comparative law and its justificatory function within legal research and on the method of comparative law.

The recently released book “Comparative methods in law, humanities, and social sciences”, edited by M. Adams and M. Van Hoecke, presents reflections from numerous academics on comparative research, the connection between comparative legal research and the humanities and social sciences, and how it can be enriched through those other disciplines, such as legal history (see the chapter by G. Samuel), comparative sociology (see the chapter by J.-P. Dalloz), and comparative literature (see A. Nicholls’ chapter). Language-related concerns are covered in the 12th chapter by M. Van Hoecke “Comparing across societies and disciplines”.

To have an idea of the attractiveness of comparative law and of the many fields of research of scholars we recall the “General Reports of the XXth General Congress of the International Academy of Comparative Law/Rapports Généraux du XXème Congrès Général de l’Académie Internationale de Droit Comparé”. The book offers 26 general reports from which diversity is unquestionably the essential ingredient for the Academy's smooth operation and, ultimately, good work.

2. *Comparative law and legal language: legal translation, legal drafting and legal interpretation*

The second paragraph proposes some readings on the relationship between comparative law and the usage of legal terminology and the sophistication of the legal language.

This section focuses on books and articles on subjects related to legal translation, multilingualism as a distinctive feature of the European legal order, with a particular focus on publications on the Court of Justice, and as a factor influencing EU legal concepts.

Regarding language and law, it is worth mentioning the series of books edited by Barbara Pozzo, which since 2005 has offered insights into the subject and the research conducted by the Interuniversity Centre for Research in Comparative Law. Among others, we would like to mention the book published in English “Ordinary Language and Legal Language”, on legal language and its increasingly central role.

Focused on the functions of legal language and on the origin and progress of national legal languages see Heikki E. S. Mattila, “Comparative Legal Linguistics: Language of Law, Latin and Modern Lingua Francas”.

“Law and Language. Current legal Issues. Volume 15” by M. Freeman and F. Smith on behalf of the Faculty of Laws, University College London presents several literary works and considers the relationship between language and the law in different contexts, such as criminal law, contract law, family law, and human rights. The book covers a wide range of subjects, including interpreting issues, difficulties with legal translation, and nonverbal communication.

On the complexity of legal languages and on the problems of understanding we recommend reading the work by J. Husa “Understanding Legal Languages—Linguistic Concerns of the Comparative Lawyer”, originally published in “The Role of Legal Translation in Legal Harmonization”. By the same author we also recall “Translating Legal Language and Comparative Law” where Husa emphasises how legal translation and legal interpretation inextricably linked, despite differences. Through the example of the development of contract law the author suggests an interactive cooperation between jurists and translators.

The book edited by S. Šarčević “Language and Culture: in EU Law. Multidisciplinary perspectives” brings together contributions and expertise by jurists and linguists who offer different perspectives on the role of language and culture in the dynamic development of the law of the European Union. The book by S. Šarčević “New Approaches to Legal Translation”, which is less recent but of considerable interest, is one of the first attempts to give a thorough analysis of legal translation through an interdisciplinary study of law and translation theory. The theoretical and practical sides of the topic are

covered in the book, and legal translation is examined as a form of communication within the legal system.

In “The Oxford Handbook of language and Law”, edited by P. M. Tiersma and L. M. Solan, linguists and lawyers collaborate to address linguistic challenges that arise in various legal systems and the multilingual world. Part III, “Multilingualism and Translation”, which includes contributions by J. Engberg on “Word Meaning and the Problem of a Globalized Legal Order”, K. McAuliffe on “Language and Law in the European Union: The Multilingual Jurisprudence of the ECJ”, and C. J. W. Baaij on “Fifty Year of Multilingual Interpretation in the European Union”, is of particular interest in the context of this literature review.

Published very recently “Comparative Perspectives on Law and Language” edited by A. Parise and O. Moréteau inviting readers to gain a deeper understanding of the complex relationships between law and language, this volume presents a wide range of comparative viewpoints that will be useful to both linguists and jurists. It encourages interdisciplinary cooperation while concentrating on the importance of language in creating laws, resolving legal disputes, and understanding the law. This collection of essays on law and language illustrates a range of doctrinal perspectives, from the conventional to the newly developed, and includes case studies and empirical exercises.

It is noteworthy that M. Derlén's chapter “Multilingualism and Legal Integration in Europe” in the book *“Dynamics and Terminology: an Interdisciplinary Perspective on Monolingual and Multilingual Culture-Bound Communication”* provides an analysis of the meaning of integration through multilingualism on both the horizontal and vertical dimensions.

A broader analysis focusing on languages regulation and an interdisciplinary approach could be read in two operas: “Eu Language and Law” by S. Van der Jeught and “Multilingual law. A Framework of Understanding” by C.D. Robertson. The volume by Robertson is divided into eight parts each analysing a specific aspect of the connection between law and language giving an overview of what is multilingual law.

On the role of comparative analysis in legal translation “Developing an Integrative Approach for Accessing Comparative Legal Knowledge for Translation”, by J. Engberg, on a multi-faceted approach to comparative law significant to translation.

K. Hasegawa's chapter “The Fabric of Normative Translation in Law” in “A Cosmopolitan Jurisprudence. Essays in Memory of H. Patrick Glenn” is focused on the role of normative translation in the mixing of different legal resources to establish legal practice. Recognizing the complexity and globalisation of law, K. Hasegawa proposes that normative translation, both “external and internal”, as he defines it, could be a driving force and a framework for legal transformation.

On the role of language in the comparison and interpretation of concepts, but also in the development and harmonization of the law an interesting contribution is “Multilingualism and the Harmonization of European Private Law: Problems and Perspectives” by B. Pozzo; “Same Words, Different Meanings” by S. Ferreri.

An examination of the hybridity of translator-mediated EU legal culture is available in the chapter “EU Legal Culture and Translation in the Era of Globalisation: the Hybridisation of Eu Terminology on the Example of Competition Law”. The terminology of EU competition law is presented as an example of EU hybridity because it demonstrates that concepts and ideas travel throughout Europe and that EU terminology is the result of Europeanisation of law achieved through the convergence and the harmonisation of national laws, but it is also heavily influenced by socio-political and historical factors. The article also emphasises the repercussions of this terminological and conceptual hybridity.

A recent essay published by E. Ioriatti “Comparative Law and EU Legal Language: Towards a European Restatement?” gives a brief description of the state of art of the study on EU legal language and suggests an interdisciplinary perspective combining comparative law and semiotics. The article suggests an interdisciplinary approach to EU law and to European autonomous concepts, using comparative law and semiotics. The contribution underlines that the interrelation between EU

legislation and the normative forces grounding the practices of law in Europe are giving rise to common contexts of meanings in the European legal setting.

A point of reference on EU legislative drafting, legislative multilingualism and the adoption of the methodological tools of modern comparative law is the article by A. Gambaro “Legislative Multilingualism and Comparative Law: a European Perspective”. The book by C. Baaij “Legal Integration and Language Diversity. Rethinking Translation in EU Law Making” examines the difficulties of interpreting EU law uniformly from the perspective of translation in order to achieve proposals.

“The Ashgate Handbook of Legal Translation”, edited by L. Cheng, K. K. Sin and A. Wagner provides several studies in legal translation divided into two parts: a theoretical and a practical one. Our attention focused on a number of contributions, in particular in the first part “Lost in Translation? Linguistic Diversity and Elusive Quest for Plain Meaning in the Law” by J. Ainsworth. Of the second one we recall two contributions: “EU Legislative Text and Translation” by C. Robertson and “Phraseology in Legal Translation: A Corpus-Based Analysis of Textual Mapping in EU Law” by Ł. Biel. The volume by edited L. Biel and H. J. Kockaert, “Benjamins Handbook of Legal Terminology” is being published soon.

The book “Language and Law: The Role of Language and Translation in EU Competition Law” edited by S. Marino, Ł. Biel, M.a Bajčić, and V. Sosoni gives a broad overview of EU competition legislation, with a focus on important developments in Italy, Spain, Greece, Poland, and Croatia, as well as a detailed examination of the role of language, translation, and multilingualism in its application and interpretation. We draw our attention in particular to the chapters “Legal Languages in Contact: EU Legislative Drafting and Its Consequences for Judicial Interpretation” by A. Doczekalska and “A Mutual Learning Exercise in Terminology and Multilingual Law”, by M. Bajčić and A. Martinović.

“Legal Certainty in Multilingual EU law. Language, Discourse and Reasoning at the European Court of Justice” by E. Paunio is focused on the effect of multilingualism on the judicial reasoning of the Court of Justice of the European Union. The chapter by E. Paunio “Legal Certainty in the Context of Multilingualism”, in “The Shifting of Legal Certainty in Comparative and Transnational Law” edited by M. Fenwick, M. Siems and S. Wrška, designs the use of linguistic comparison by the European courts, in particular the Court of Justice of the European Union, in the developing of the principle of legal certainty and on the importance of the legal reasoning. In the chapter “Multilingualism and the European Court of Justice: Challenges, Reforms and the Position of English after Brexit” M. Derlén discusses some challenges: the necessity of a reform of the multilingual system and the new future role of English.

The monograph “Shallow Equality and Symbolic Jurisprudence in Multilingual Legal Orders” by J. H. C. Leung (New York: Oxford University Press, 2019) describes the various forms of modern multilingualism and serves as a guide to contemporary practise of the methods by which states carry out language policy.

A unique approach is at the basis of the book by P. Phoa “EU Law as a Creative Process: A Hermeneutic Approach for the EU Internal Market and Fundamental Rights Protection”. This book presents the judicial work of the Court as an intellectual, cultural, and literary endeavour, encouraging the reader to view the field of EU law as a creative process.

By combining the work of French philosopher Paul Ricoeur with that of American “*law and literature*” scholar James Boyd White, the author creates an original hermeneutic methodology to analyse the Court's textual performance that strikes a good balance between theoretical reflections and real-world judicial examples.

In the article “Towards Peace in Europe: on Legal Linguistics, Prosperity and European Identity—the European Reference Language System for the European Union”, by C. Luttermann and K. Luttermann, the authors through the analysis of three main critical areas propose a new language regime, the so-called “European Reference Language System” (Das Europäische Referenzsprachensystem). In the same journal issue and on the same subject see also the review by J. Engberg of the book “Claus

Luttermann/Karin Luttermann (2020): *Sprachenrecht für die Europäische Union. Wohlstand, Referenzsprachensystem und Rechtslinguistik*”.

It is worth mentioning the paper by V. Jacometti “The Challenges of Legal Translation in Multilingual Contexts” focused on the features of multilingual legal drafting, such as legal basis, criteria and methods, within national legal systems, international and supranational organisations.

The issue of linguistic comparison by the Court of Justice and of the principle of equal authenticity, also in connection with the extension of the official languages over the years, are specifically addressed in the article by M. Bajčić “Linguistic Comparison within CJEU’s Decision-Making: A Debunking Exercise”.

3. *Comparative law and language in legal education*

This last short section gives an insight of the role of comparative law and language in legal education.

In his article “Comparative Law in Legal Education—Building a Legal Mind for a Transnational World” J. Husa underlines the connection and the pedagogical importance of the study of comparative law and language, even if not delving into the subject. Another interesting book is “The Internationalisation of Legal Education”, C. Jamin, W. van Caenegem (eds.), *Ius Comparatum—Global Studies in Comparative Law*.

It is worth mentioning “Comparative Law and Multicultural Legal Classes: Challenge or Opportunity?” edited by C. Varga provides a wide investigation on legal education in multicultural classes, especially nine countries on three continents, combining academic perspectives and educational insights from several scholars in the field of comparative law. Devoted to the Italian experience we find the chapter by S. Ferreri “Comparative Law and Multicultural Legal Classes in Italy: Challenge or Opportunity?”, which is focused on the growing challenges of law teaching in increasingly culturally different classes and on how to address the problems that may arise.

Finally, we also recall the recent volume edited by N. Etcheverry Estrázulas, “Bilingual Study and Research—The Need and the Challenges”, *Ius comparatum* series, General report to the 20th General Congress of the International Academy of Comparative Law (Fukuoka, 2018), (ChamSpringer, 2022). Keeping the focus on Italy, of this volume it is worth of interest the conference paper by E. Ioriatti “Bilingual Legal Education in Italy: Translating Languages into Teaching Methods”. The contribution describes the situation of legal education in Italy from the point of view of the language of instruction. The acquisition of legal terminology expressed in the national language is still an essential part of legal education, predominantly theoretical. For this reason, law in Italy is still mainly taught in Italian, even in the bilingual or multilingual territories of Italy. The text highlights, however, how the role of foreign languages—especially English—is rapidly increasing and how the use of languages other than Italian in legal education is being transformed into new teaching methodologies.