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Editorial

This issue of *CLL – Comparative Law and Language* brings together five contributions exploring the relationship between law, language, and comparison across time, disciplines, and legal cultures. Together, the articles show how legal meaning is constructed, negotiated, and transmitted through language, reflecting broader cultural, ideological, and institutional contexts.

The opening article entitled “*Normative and ideological coding in the legal register – the case of the 19th-century legal language*” by Jelena Pavlović Jovanović and Milan Todorović adopts an original semiotic and communicative perspective on nineteenth-century Serbian legal texts. Drawing on Nikola Visković’s theoretical framework, the authors examine the double coding of legal language, distinguishing between normative and ideological elements. Their historical analysis highlights how legal norms are linguistically realized and how ideological residues emerge in legal discourse, particularly in preambles and motivational passages.

A broader, explicitly interdisciplinary perspective is offered by Elina Moustaira in her contribution, entitled “*The dialogues of [comparative] law*”. It emphasizes law’s constant interaction with other disciplines, such as politics, economics, religion, and anthropology, and addresses key issues of legal pluralism, coexistence, and *convivencia*. The article invites readers to reconsider comparison not merely as a technical exercise, but as a means of understanding diversity, power relations, and the possibilities of harmony within and across legal systems.

The historical and methodological dimensions of comparison are further developed in Laura Maria Franciosi’s contribution “*Dante and the methods of comparative law*”. It explores early forms of comparative reasoning in the *Divine Comedy (Divina Commedia)*, highlighting key pillars of comparative law, including legal translation, methodology, and the influence of cultural factors on legal reasoning.

Questions of comprehension and accessibility are central to Margarete Flöter-Durr’s “*L’intelligibilité des textes de spécialité à l’exemple du rapport d’expertise français*”, which examines the intelligibility of French court expert reports. The study shows that understanding such texts depends not only on linguistic form, but also on relevance, background knowledge, and the diversity of recipients, emphasizing the importance of clear legal communication.

Finally, Francesca Bullo’s “*Traduzione giuridica e terminologia: strumenti a confronto*” examines legal translation and terminology through a comparison of tools and practices in multilingual contexts. By analyzing national and EU approaches and drawing on professional experience, the article highlights a growing comparative awareness in terminological work, balancing linguistic uniformity with legal diversity.

The issue concludes with Jan Engberg’s report on the conference held at the University of Milan on November 19, 2025, “*Dire la Giustizia: lingue, culture e traduzioni del diritto*”, which brought together scholars exploring how law is expressed and debated across linguistic and cultural contexts.

A warm thank you to everyone who made this issue possible, in particular the authors and reviewers.

Caterina Bergomi

On behalf of the Editorial Board



Normative and ideological coding in the legal register – The case of the 19th-century legal language

*Jelena Pavlović Jovanović, Milan Todorović**

Abstract: This paper proposes a methodological approach to the study of legal language, grounded in the framework developed by the Croatian and Yugoslav legal scholar Nikola Visković in his book *Jezik prava* (The Language of the Law), published in Zagreb in 1989. Visković approaches legal language from semiotic and communicative perspectives. We adapt his framework to examine nineteenth-century Serbian legal texts dating from 1835 to 1898. Our starting assumption is that legal language is double-coded: it operates simultaneously with a natural-language code (in this case, the nineteenth-century Serbian literary idiom) and with a distinct legal code. A second assumption distinguishes the legal norm as a deep, universal structure from the legal provision, which is its surface representation. This distinction enables us to identify various surface realizations of the basic if–then legal norm. The third assumption differentiates normative from ideological coding in legal texts: we contend that the basic if–then form can be reconstructed in every legal text, while what remains constitutes the ideological residue. This does not imply that ideological coding is absent from the underlying form of the legal norm, but rather that the basic legal norm exhibits a degree of universality across different legal language corpora. Nineteenth-century Serbian legal texts provide a particularly clear illustration of these claims, especially those produced during the era of the *Ustavobranitelji* (literally, the Defenders of the Constitution). In that period, preambles were often lengthy and comprised both obligatory normative elements and motivational passages that were not required by the legal norm but encoded ideological, political, and cultural contextual information.

Keywords: Legal language, Normative coding, Legal coding, Nikola Visković, 19th century Serbian law.

Summary: 1. Introduction; 2. The characteristic of Serbo-Croatian legal language theory by Nikola Visković; 3. Our approach; 3.1. Double coding in Serbian legal texts; 3.2. The difference between a legal norm and a legal provision; 3.3. Normative and ideological coding in non-restrictive relative clauses; 3.4. Ideological coding in the dependent sentences; 4. Conclusion.

1. Introduction

The aim of this paper is to present a methodological approach to the study of legal language, with special emphasis on the Serbian legal language of the nineteenth century. Our approach is grounded in the semiotic and communicative perspective on legal language set out in *Jezik prava* (The Language of the Law) by Croatian and Yugoslav legal scholar Nikola Visković (1989). Because of the historical circumstances affecting the last decade of the twentieth century in the former Yugoslavia, this approach has not been explored in detail on Serbian-language texts. Visković's basic assumption is that legal language is double-coded: by the rules of natural language and by the rules of the normative (legal) code. He distinguishes between the deep structure of the legal norm, which is assumed to be universally expressed in an if–then form, and the surface structure of the concrete norm, which may be realized in various forms. The notions of deep and surface structure originate in early studies of generative-transformational grammar by Noam Chomsky. In the legal context, it is assumed that the normative code supplies all elements necessary for the legal norm, and that the remainder belongs to ideological coding. Ideological coding comprises the political, sociological, and cultural contexts that reveal important

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details about the period in question. In this paper, we assume that normative and ideological codes can be distinguished at the level of the dependent clause. Our corpus comprises Serbian legal texts from the nineteenth century, when the modern Serbian legal language was formed (Luković 1994). The nineteenth century is the period in which Serbia gained independence from the Ottoman Empire and began to develop its own legal system based on continental, primarily German and French, legislation. Our aim is to propose a methodology suitable for studying Serbian legal texts at the level of the dependent clause. We have used Serbian legal texts from 1835 to 1898. First, we introduce the theoretical framework based on Visković's work; then we proceed to the analysis of the corpus. In this paper, we confine ourselves to a review of Nikola Visković's theory and examples drawn from Serbian legal language; in the second part of the paper, we shall demonstrate its integration into the broader theory of legal language and its applicability to English.

2. *The characteristic of Serbo-Croatian legal language theory by Nikola Visković*

More than thirty years have passed since the publication of the book *Jezik prava* by the Croatian and Yugoslav jurist Nikola Visković (Zagreb, 1989), and it appears that the methodology proposed there has not found full reception in the region. In this book Nikola Visković approaches law from a semiotic perspective and from the standpoint of an integral theory of law¹. The book *Jezik prava* is conceived as an introduction to an approach to the language of law that integrates the achievements of linguistics and those of legal science. In Serbia, despite the appearance of one edited volume and several papers dealing with law from the perspectives of legal science and linguistics, with the exception of Marko Janićijević's study *Discourse of legislative acts in English and Serbian: a developmental-comparative approach* (2015)², there are no more systematic approaches to legal language.

Throughout the book and especially in the introductory chapters, the author emphasizes that, despite jurists' awareness of how important language is for legal activity, up to the time the book was written, there were no systematic studies of legal language³, which remains true for the territory of Serbia even after thirty years. Language in law has a special status; it is "a linguistic activity and one that is markedly different from the linguistic activity of morality and custom — and this, among other things, because of the law's essential governability as an order of social control directed at the external manifestations of human behaviour and because of its pronounced formalization."⁴ Furthermore, Visković elaborates on the nature of language of law and defines it as: "a linguistic subsystem employed by persons competent to pronounce legal norms, both general and individual, by jurists in their practical and scholarly work, and by all those who perform linguistic acts by reproducing the modes of expression of norm-creators and jurists."⁵ Thus, the definition is given not according to the internal properties of legal language, but according to who uses it.

Nikola Visković emphasizes that the phenomenon of law can generally be approached from different aspects and from the standpoint of different methods: (a) from the standpoint of social relations (the sources and aims of legal norms), on which the relational conception of law rests; (b) from the standpoint of social values (whereby social relations and legal norms are justified), on which the value-based conception of law rests; (c) from the standpoint of legal norms (through which relations and values are expressed and normed)⁶, on which the normative conception of law rests. Visković advocates an integral theory of law⁷. At the core of this approach is the study of law in its entirety, from all its aspects, because

¹ M. MATULOVIĆ, *Viskovićeva integralna teorija prava*, in: J. GUČ, H. JURIĆ (eds), *Nikola Visković : pravo - politika - bioetika : simpozij povodom osamdesetog rođendana Nikole Viskovića*, Split, 23.-24. veljače 2018, Zagreb, 2018, pp. 28–29.

² M. ЈАНИЋИЈЕВИЋ, *Дискурс законских аката на српском и енглеском језику: развојно-упоредни приступ*, Београд, 2015.

³ N. VISKOVIĆ, *Jezik prava*, Zagreb, 1989, pp. 7–9.

⁴ N. VISKOVIĆ, *op. cit.*, p. 8.

⁵ N. VISKOVIĆ, *op. cit.*, p. 16.

⁶ N. VISKOVIĆ, *op. cit.*, p. 18.

⁷ N. VISKOVIĆ, *op. cit.*, p. 18.



“an inquiry that begins from any dimension of law presupposes an understanding of, and simultaneously leads to an understanding of, all its other dimensions.”⁸

Visković also notes that a communicative approach to law is possible. The communicative approach implies an integral approach to the phenomenon of linguistic expression in law⁹. Communication in law consists of: (a) the subjects of communication—senders and recipients of legal messages; (b) the legal message—which is a linguistic sign message or a sign message of another type, consisting of the signifier and the signified¹⁰; (c) legal objects (legal acts, natural objects and human artefacts); (d) legal codes—the linguistic system, the logical system, the value-ideological system and the system of general legal norms, which represent “collections of signs and rules historically constituted, entrenched, and ‘stored’ in people’s consciousness governing the use of signs that are, to a greater or lesser extent, coercive in the course of legal communication.”¹¹, and serve to encode and decode legal messages; (e) the media of legal communication (legal acts, official publications, etc.); (f) subject situations (situations in which the subjects of legal communication act)¹².

Visković distinguishes the following modalities of legal communication: (a) normative and non-normative communication (whether the messages are norms or other prescriptive and descriptive attitudes); (b) unequal and equal communication; (c) intergroup, individual-group and interindividual communication; (d) more or less formalized communication; (e) direct and indirect communication; (f) public, non-public and secret communication¹³.

According to its linguistic characteristics, the language of law belongs to the general, natural language; that is, it is a subsystem of the general language, retaining for the most part its features at the level of expression and content¹⁴. In addition, the language of law is a special and technical sociolect, which differs in its characteristics from other linguistic subsystems¹⁵. The language of law differs from the general language at all linguistic levels except the phonetic. It is emphasized that it is a misconception that the language of law does not differ from the general language at the syntactic level¹⁶.

We distinguish four layers of expression and meaning: (a) Unchanged elements of the general language—all morphological categories and many lexical-semantic categories. These are used selectively, and the choice of linguistic means in law is poorer than in the general language. Differences in the frequency of linguistic means are caused by differences in the specificities of the social relations that are being normed; (b) Modified elements of the general language—expressions from the general language that have narrowed or expanded meanings adapted to the needs of the language of law; (c) Professional legal expressions and meanings—specialist legal terms. This layer also includes terms of foreign origin; (d) The fourth layer belongs to the terminological systems of other linguistic disciplines¹⁷.

The historical and sociolinguistic legal language contains several structural and functional varieties. These are also different historical types of law. Moreover, within national systems there is variation between different branches of law¹⁸.

Another important aspect of Visković’s research that is relevant for our own is the nature of definitions in law¹⁹. The determination of terms from the general language is achieved by lexical definitions. Such a definition has a descriptive function and is, to a greater or lesser extent, true or false.

⁸ N. VISKOVIĆ, *op. cit.*, p. 19.

⁹ N. VISKOVIĆ, *op. cit.*, p. 19.

¹⁰ N. VISKOVIĆ, *op. cit.*, p. 21.

¹¹ N. VISKOVIĆ, *op. cit.*, p. 22.

¹² N. VISKOVIĆ, *op. cit.*, p. 23.

¹³ N. VISKOVIĆ, *op. cit.*, pp. 23–24.

¹⁴ N. VISKOVIĆ, *op. cit.*, pp. 25–26.

¹⁵ N. VISKOVIĆ, *op. cit.*, p. 26.

¹⁶ N. VISKOVIĆ, *op. cit.*, p. 26.

¹⁷ N. VISKOVIĆ, *op. cit.*, pp. 26–28.

¹⁸ N. VISKOVIĆ, *op. cit.*, p. 31.

¹⁹ N. VISKOVIĆ, *op. cit.*, pp. 32–40.



This is how words from the general language are defined whose meaning is accepted as unchanged in the legal language²⁰. Professional legal terms are not recognized but are created by the definitions themselves. These definitions are called stipulative definitions. They can declare or add new meanings. These meanings do not exist in the general language. This is achieved through: (a) stipulative redefinition or reconstruction of meaning—meanings of words from the general language are modified; (b) stipulative construction of meaning—new meanings are created. In both cases, the meaning obtained by a stipulative definition has a prescriptive role, and thus these definitions are discussed in terms of purposiveness/non-purposiveness²¹.

There have long been debates in law about so-called legal or normative definitions (legal meanings in laws and other legal acts)²². Legal definitions are part of the legal code and they “coercively determine the legal concepts employed in normative and other legal acts.”²³. Different use of legal definitions is sanctioned either by failure to achieve the desired effect or by the legal invalidity of the legal norm²⁴. Legal definitions are a kind of rule of interpretation in law. They are created both by norm-makers and by jurists in legal science. These definitions can be used to achieve the qualification of concepts²⁵.

Furthermore, both the micro and macro structures of legal language are very hierarchical. In legal register “strictly formalized procedural rules prevail, establishing a hierarchized flow of linguistic self-regulation.”²⁶. Given the rigidity of this system, one part of the language in legal communication consists of the unchanged elements of the general linguistic code (its lexical-semantic, syntactic and pragmatic subcodes). The other part consists of the reconstructed general linguistic code filtered through the prism of general legal norms and the constructed legal language with specific lexicon, semantics, syntax and pragmatics. The reconstructed general language and the constructed legal language constitute the normative-legal code²⁷.

The central concept that our study is researching is the logical-semantic structure of legal norms²⁸. The majority of expressions and meanings of legal norms, both legal and general, belong to the normative-legal code. A legal norm is a kind of prescriptive attitude and a subtype of social norms. The object of a legal norm is the pre-normative legal relation, and its meaning consists in motivating human behaviour. In this way they participate in the formation of normative legal relations between legal subjects. For a legal norm to exist, it must belong to an effective and formalized system; that is, there must exist a class with economic and political power that can produce valid legal norms²⁹.

One of the most important questions of legal theory is the question of the logical-semantic structure of legal norms³⁰. There is agreement that the general deep structure of a legal norm is in the form “if H then Y”, or that if there is a fact-condition, then a legal consequence follows. From this it follows that the deep legal norm is a hypothetical judgment, and semantically it is a relation of inclusion, that is, “a message that, by means of the functor ‘treba’ (‘ought’), connects the assertion of a fact with specific legal meanings as its consequences.”. In criminal provisions it can be reduced to the form “if Delict then

²⁰ N. VISKOVIĆ, *op. cit.*, p. 33.

²¹ N. VISKOVIĆ, *op. cit.*, p. 33.

²² N. VISKOVIĆ, *op. cit.*, pp. 34–35.

²³ N. VISKOVIĆ, *op. cit.*, p. 35.

²⁴ N. VISKOVIĆ, *op. cit.*, p. 35.

²⁵ N. VISKOVIĆ, *op. cit.*, pp. 35–36.

²⁶ N. VISKOVIĆ, *op. cit.*, pp. 45.

²⁷ N. VISKOVIĆ, *op. cit.*, pp. 45–46.

²⁸ N. VISKOVIĆ, *op. cit.*, pp. 51–59.

²⁹ N. VISKOVIĆ, *op. cit.*, pp. 51–52.

³⁰ N. VISKOVIĆ, *op. cit.*, p. 51.



Sanction”³¹. Nikola Visković proposes the following structure of a legal norm as a disjunctive judgment composed of two hypothetical judgments: if H then T, or if D (not-T) then S^{32,33}.

This is a schema that represents the deep structure of general legal norms that “qualify entire classes of legal relations abstractly and a priori.”³⁴ (Висковић 1989: 54). The advantages of this model are: (a) it represents the unified thought carried by normative attitudes as motivational factors; (b) it shows the ontological freedom to which each norm refers (the freedom of behaviour to perform or not perform the demanded act); (c) it points to the importance of distinguishing legal norms from legal provisions; (d) by concretizing and deformalizing this schema, normative legal concepts can be obtained³⁵.

To fully understand the given corpus, it is necessary to understand the distinction between a legal norm and a legal provision³⁶, relying on the deep and surface structure from Noam Chomsky’s generative grammar. Visković stresses that one of the main problems for researchers of legal language is that they do not distinguish the categories of legal norm and legal provision. A legal norm is a deep structure, while a legal provision is its surface structure or the expression of the normative language of law³⁷. A legal norm is “a complete thought, logically a double hypothetical judgment and semantically a prescriptive attitude”³⁸. A legal provision is “a statement, composed of one or more sentences, which expresses a complete norm or individual parts of a norm and constitutes a relatively autonomous semantic unit of some normative linguistic act or legal instrument”³⁹.

The relationship between legal norms and legal provisions is as follows: **(A)** Rarely does a single provision carry a single legal norm. As a rule, one norm is expressed in several provisions from the same or different legal acts. **(B)** For reasons of economy and systematic connection, different elements of legal liability for criminal and misdemeanor delicts and sanctions are gathered in separate criminal and misdemeanor laws. **(C)** Legal provisions typically do not list all essential components of legal norms⁴⁰; rather, these components are implied and the recipient supplies them, relying on the “firm logical-semantic structure of the norm” and on “contextual understanding”⁴¹. Sometimes the initial hypothesis is not stated in full. **(D)** A single provision may set out elements for several or many legal norms⁴². **(E)** One thought can be expressed through several variations of expression. Different choices of expression indicate stylistic variations but also the pragmatic intention of the norm-maker⁴³. This distinction between legal provision and legal norm opens the possibility for their analytical investigation and symbolic representation⁴⁴.

Lastly we will give a brief overview of the ideological function of legal language⁴⁵. Like religion and politics, law is an order of power and of the powerful⁴⁶. Like religion and politics, it is based on: methods of authoritarian control of social behaviour, on control with threats against violators, on limited competence within the ruling circle, on secret linguistic communication within the ruling circle, on the

³¹ N. VISKOVIĆ, *op. cit.*, pp. 52–53.

³² N. VISKOVIĆ, *op. cit.*, p. 53.

³³ N, D—two hypotheses (initial condition and condition-delict); T, S—two consequences (the claim of legal obligation and legal authority, sanction) (N. VISKOVIĆ, *op. cit.*, p. 53).

³⁴ N. VISKOVIĆ, *op. cit.*, p. 54.

³⁵ N. VISKOVIĆ, *op. cit.*, p. 54.

³⁶ N. VISKOVIĆ, *op. cit.*, pp. 71–77.

³⁷ N. VISKOVIĆ, *op. cit.*, p. 71.

³⁸ N. VISKOVIĆ, *op. cit.*, p. 71.

³⁹ N. VISKOVIĆ, *op. cit.*, 1989, p. 72.

⁴⁰ N. VISKOVIĆ, *op. cit.*, pp. 72–73.

⁴¹ N. VISKOVIĆ, *op. cit.*, p. 73.

⁴² N. VISKOVIĆ, *op. cit.*, p. 74–75.

⁴³ N. VISKOVIĆ, *op. cit.*, p. 75.

⁴⁴ N. VISKOVIĆ, *op. cit.*, p. 76.

⁴⁵ N. VISKOVIĆ, *op. cit.*, pp. 124–132.

⁴⁶ N. VISKOVIĆ, *op. cit.*, p. 124.



obedience and silence of the masses, and on a mechanism of dogmatic inference regarding meanings produced by higher levels of power⁴⁷.

In technical register, as in any other type of language, different parts of reality are revealed and concealed, and the criterion for this is what is necessary for legitimizing and carrying out the interests of the ruling social groups⁴⁸. One must also not forget the particular interest of the legal estate, i.e., the modern bureaucracy. In older language the law openly expresses privileges and discriminates against certain groups of people—for example, it explicitly expresses relations between free and unfree persons, men and women, older and younger, gentry and peasants, etc. In such systems this is enabled by physical coercion. Still, such norms appeal to God's will and to higher justice and to the common good⁴⁹. Only in more recent times does ideology cease to be an external factor that supplements legal norms and serves as justification for inequality and authority by divine or estate justice, and instead “enters into the linguistic expression of legal institutions in order to hide their deep meanings”⁵⁰. This is achieved by emphasizing ideas of equality and freedom at the foundation of an increasing number of legal institutions. While an increasing number of citizens are recognized as normative free citizens with equal rights, in reality relations of inequality and unfreedom still prevail⁵¹. However, as long as what is left unsaid is not examined and social relations are not investigated as contexts of legal discourse, “the deep meanings of legal language—i.e., the possibilities and impossibilities of realizing normative freedoms and equality—remain invisible”⁵². In the modern era, it is precisely by appealing to legal statements that normative mystifications are proven to be real⁵³.

In the paper *Non-restrictive relative clauses in the administrative legal style of 19th century Serbian (preliminary research)*⁵⁴ we examined the status of non-restrictive relative clauses on a corpus of legislative legal texts from the pre standard and early stabilization periods of modern Serbian. It was established that the corpus is dominated by restrictive relative clauses, which is conditioned by the non referential nature of the administrative style. Non-restrictive relative clauses of the continuative type are encountered more frequently; these provide additional explanation of the duties of certain officials or state organs. Continuative non-restrictive clauses carry important information from the standpoint of the legal norm and can theoretically be omitted, but doing so would harm the completeness of legal information. Non-restrictive clauses most often occur with unique referents, typically state institutions, the king, ministers, or persons with a unique external reference. The basic semantic division of relative clauses follows the criterion of the scope of the referent of the noun, according to which relative clauses are divided into: (a) restrictive (attributive), which narrow the scope of the referent of the noun; and (b) non-restrictive (appositive), which do not affect the semantic scope of the referent⁵⁵. In a non-restrictive clause the relative clause does not affect referentiality or definiteness but only introduces additional information about the nominal. A non-restrictive clause can be elided without semantic consequences⁵⁶. Following Lehmann's typology, non-restrictive relative clauses are divided into continuative and parenthetical types. Continuative clauses have the same informative value as their superordinate clause and are important for discourse construction. Parenthetical clauses carry less essential information and can be omitted without significantly reducing the informativeness of the text⁵⁷.

⁴⁷ N. VISKOVIĆ, *op. cit.*, p. 124.

⁴⁸ N. VISKOVIĆ, *op. cit.*, p. 128.

⁴⁹ N. VISKOVIĆ, *op. cit.*, p. 129.

⁵⁰ Ibidem.

⁵¹ Ibidem.

⁵² Ibidem.

⁵³ Ibidem.

⁵⁴ J. ПАВЛОВИЋ ЈОВАНОВИЋ, *Нерестриktivне релативне реченице у административно-правном стилу српског језика 19. Века (прелиминарна истраживања)*, *Verba iuvenium*, vol. 2, Пловдив, pp. 33–47.

⁵⁵ Т. РУСИМОВИЋ, *Релативне реченице са форицим супстантивним антецедентом у савременом српском језику*, unpublished doctoral thesis, Faculty of Philology and Arts, Kragujevac, p. 45.

⁵⁶ S. KORDIĆ, *Relativna rečenica*, Zagreb, 1995, p. 29.

⁵⁷ S. KORDIĆ, *Relativna rečenica*, Zagreb, p. 100; Т. РУСИМОВИЋ, *op. cit.*, pp. 67–68.



3. Our approach

3.1. Double coding in Serbian legal texts

In our approach we start from the premise that legal language is doubly coded—by the rules of the natural-language code and by the rules of the normative-legal code. Such a sentence is encoded doubly. First, according to the rules of the natural-language code, where the structure is realized as⁵⁸:

subject + administrative verb + complement clause in the form of an object complement

The linear structure is further fragmented according to the rules of the normative-legal code:

NP + VP + CP⁵⁹ (→ fragment the structure)

Ми, Александар Први Обреновић, решили смо и решавамо да донесемо закон [We, Alexander I Obrenović, have resolved and will resolve to enact the law.]

At the end a graphically highlighted hierarchical structure is obtained, which by its visual appearance resembles a Panopticon⁶⁰. This is achieved by graphostylistic means, i.e., by the choice and position of letter size:

NP → *Ми, Александар Обреновић* [We, Alexander I Obrenović]

VP → *решили смо и решавамо* [have resolved and will resolve]

CP → *да донесемо закон* [to enact the law]

In *Ustrojenije Soveta* the name and title of the ruler are clearly visible. The predicative part of the administrative sentence is printed in smaller letters and placed in a visually less prominent position:

МИЛОШ ОБРЕНОВИЋ [MILOŠ OBRENOVIĆ]

КНЯЗЪ СРБСКІЙ [THE PRINCE OF SERBIA]

са согласіємъ Совѣта опредѣлилисмо и опредѣлюємо [with the permission of the Council, we have determined and hereby determine] (*Устројеније/Regulation 1839/40: 16*).

The deep structure of the preamble remains the same within the normative-legal code across the period. Surface realizations vary depending on the dominant ideological coding. During the

⁵⁸ The schema is, with certain adjustments, adopted from J. ПАВЛОВИЋ, *Методолошки аспекти анализе зависнослужених реченица у правним текстовима на српском језику (предстандардни период)*, у: К. ЧЪКАРОВА (ур.), *Словото – идеи, идеали, утопији, Сборник с доклади от Деветнаесетата национална конференција за студенти и докторанти*, Пловдив, 2018, р. 202.

⁵⁹ NP — nominal phrase; VP — verbal phrase; CP — complement phrase (subordinate clause). In this paper, we use these labels in the sense of the normative legal, not the natural language, code.

⁶⁰ Bentham's Panopticon looks like this: "On the circumference there is a ring-shaped building; in the centre there is a tower; on the tower are large windows that look onto the interior of the ring-shaped edifice, divided into many cells; each of those cells extends across the full width of the building and each has two windows, one facing the interior opposite the windows of the tower, while the other on the opposite wall allows the light coming from outside to pass through the cell along its entire length. Thus, a single overseer in the central tower is sufficient, and in each cell is confined one madman, patient, convict, worker or pupil." (М. ФУКО (FOUCAULT), *Надзирати и казњавати: настанак затвора*, Сремски Карловци – Нови Сад. 1997).



*Ustavobranitelj*i period, shorter decrees begin with a direct address to the addressee (e.g., *Popečiteljstvu Finansija* [Ministry of Finances], *Popečiteljstvu Unutrašnjih dela* [Ministry of Internal Affairs], etc.). Laws from this period are characterized by preambles that explicitly state the motivation. In the *Ustavobranitelj*i period the verb *odrediti* (to determine) predominates, accompanied by a sociative adverbial expression in collocation with the Council, which shows that although the prince is legally superior, the Council also plays an important role.

The presence or absence of explicit motivation is the main difference between decrees from the *Ustavobranitelj*i period and decrees from the time of Prince Mihailo. We will cite several examples of these preambles, where the superior sentence directly connects to the graphically highlighted articles of the law. It can be seen that codification at the level of natural language was followed by codification based on the normative-legal code, according to which subsequent provisions were fragmented into articles. The sentence complex is split into an introductory part, hierarchically set off in the preamble, and into articles:

Example 1:

Александеръ Караџорђевићъ, [Alexander Karađorđević]

князь сръбскій, [the prince of Serbia]

са согласіємъ Совѣта [with the consent of the Council]

Како се почувствовала потреба за правило, по комъ бы Архіереи нашегъ Отечества знали, колико су они и на какавъ начинъ властни своимъ иманѣмъ на случай смрти последњомъ вољомъили тестаментомъ располагати, и у комъ бы надлежне власти прописъ нашле, како ће масе оны Архіерея, кои бы се безъ тестаamenta преставили, расправити и средити: тако смо на учинѣно [As the need arose for a rule by which the Archbishops of our Fatherland would know to what extent and in what manner they are authorized to dispose of their property, in the event of death, by last will or testament; and by which the competent authorities would find prescribed how the estates of those Archbishops who should depart this life without a testament are to be adjudicated and settled: thus we have, in accordance with this need, enacted]

намъ о овомъ предмету представленъ одъ стране выше духовневласти и одъ Попечительства Просвѣщенія слѣдуюће опредѣли: (...) [and, upon the submission presented to us on this matter by the higher ecclesiastical authorities and by the Ministry of Education, we have determined the following: (...)]

(1) Да се све покретне ствари, које су од покойника набављѣне, приберу и попишу, а од одъ исты да се само оне за Епископію задрже, коима ће се попунити моћи оне такове ствари, које е онъ затекао у Епископіи, па које су се за живота нѣговогъ сасвимъ изкварили или кои е нестало, а остало све покретно иманѣ покойниково да се разпрода. [That all movable property acquired by the deceased be gathered and inventoried, and that only those items be retained for the Episcopate which may serve to replace such articles as he found in the Episcopate, but which during his lifetime became entirely ruined or have gone missing; and that all the remaining movable property of the deceased be sold.] (Зборник/Collection of Laws 1847: 22)

Example 2:

Александеръ Караџорђевићъ, [Alexander Karađorđević]

князь сръбскій, [the Prince of Serbia]



са согласіємъ Совѣта опредѣлили смо и опредѣлюемо: [with the consent of the Council we have determined and hereby determine]

КАЗНИТЕЛНЫЙ ЗАКОНЪ ЗА ПОАРЕ И КРАБѢ. [PENAL LAW ON ARSON AND THEFT]

Како се потреба показала, да се они, кои безбѣдность иманя а поред ове и личну жителя у нашей земљи нарушаваю, чрезвычайнымъ строгимъ казнима подвргаваю; то смо, на особито о томе

учинѣно представленѣ Попечительства Внутренни Дѣла, слѣдуюће за такове преступнике опредѣлили; [As the need became evident that those who violate the security of property, as well as the personal safety of inhabitants in our land, should be subjected to exceptionally severe punishment, we have, upon a special submission on this matter from the Ministry of Internal Affairs, determined the following for such offenders;]

1.) Свакій, кои кућу, дућанъ, стасину, или другу какву зграду, обіе или отвори и поару, макаръ какву и ма' одъ какве вредности, учини, као и онај, кои кога на путу или буди гди нападне и поара га или му што отме, да се казни смрћу. [Whoever breaks into or opens a house, shop, warehouse, or any other building and commits arson, regardless of the type or value of the property, as well as anyone who attacks another on the road or elsewhere and commits arson against him or seizes anything from him, shall be punished by death.]

2.) Свакій, кои коня или вола или другу домаћу живу стоку, или буди какву стваръ у вредности одъ 10. талира већой, украде, да се казни мртвомъ шибомъ, т. е. таковомъ крозь триста момака дванаестъ пута на мѣсто. [Whoever steals a horse, an ox, or any other domestic livestock, or any item of a value exceeding 10 thalers, shall be punished with the deathly rod, that is, by being struck twelve times on the spot through a crowd of three hundred men.]

3.) За крађе манѣ, одъ вредности до 10. талира, да се преступници казне по досадашнѣму, боемъ сирѣчь штаповима, и затворомъ или робіомъ, но све строже, соразмѣрно овимъ, у 1^{ој} и 2^{ој} точки одређенимъ казнима. [For thefts of property valued up to 10 thalers, offenders shall be punished according to the existing practice, that is, by rods, and by imprisonment or servitude; yet all punishments shall be made more severe, in proportion to those prescribed in points 1 and 2 above.]

4.) Јтацы да се казне као они, кои су поару или крађу учинили. [Accomplices shall be punished in the same manner as those who have committed arson or theft.] (Зборник 1847: 28).

In the first example the main clause is followed directly by the first clause of the object clause, which constitutes the first provision. The second example is more interesting because it shows that the introductory sentence simultaneously applies to four provisions. This is possible thanks to the fragmentation and linearization of legal language⁶¹. These features allow a law to be read both linearly as a whole and fragmentarily in parts. If the law is read as a whole, we obtain a multi-clausal complex with a superordinate clause and several coordinated object clauses connected by the conjunction *and*, which on the surface are represented by numerical enumerative connectors (1, 2, 3, 4). This is important from the perspective of the normative-legal code as a whole: related norms need to be grouped into a single legal provision, thereby achieving economy of legal text (it is not necessary to repeat the superordinate clause each time). Thanks to recursivity, which is particularly realized at the level of

⁶¹ N. VISKOVIĆ, *Jezik prava*, Zagreb, 1989, pp. 85–86; J. ПАВЛОВИЋ, К. ЧЪКАРОВА (ур.), *Словото – идеи, идеали, утопии*, Сборник с доклади от Деветнадесетата национална конференция за студенти и докторанти, Пловдив: Университетскоиздателство „Паисий Хилендарски“, 2018, pp. 203–204.



object clauses and coordination, such clauses can be listed without limit; in other words, a legal text can contain an arbitrarily large number of articles.

Reading 1 (linear/global): a single multi-clausal complex with coordinated relations among clause members: the legislator (subject) + determinative verb (superordinate clause) + object clause 1 + (and) object clause 2 + (and) object clause 3 + (and) object clause 4.

Reading 2 (fragmentary): the text is parsed into separate superordinate + object clause pairs so that the reader can access only the articles relevant to their case. At the deep level we encounter multiple double (binary) clause complexes that share the same superordinate clause but have different object clauses encoding concrete offences:

- Clause 1: *In agreement with the Council we have determined that anyone who pillages a house shall be punished.*
- Clause 2: *In agreement with the Council we have determined that anyone who steals livestock shall be punished with the death-rod.*
- Clause 3: *In agreement with the Council we have determined that minor offences shall be punished by imprisonment.*
- Clause 4: *In agreement with the Council we have determined that accomplices shall be punished as those who committed the pillage or theft.*

At an abstract level the schema is:

- **Linear/global reading:**

Legislator (subject) + determinative verb (superordinate clause) + object clause 1 + (and) object clause 2 + (and) object clause 3 + ... (unlimited, constrained only by perception and, in printed form, by reproduction limits).

- **Fragmentary reading:**

Legislator (subject) + determinative verb (superordinate clause) + object clause 1.
 Legislator (subject) + determinative verb (superordinate clause) + object clause 2.
 Legislator (subject) + determinative verb (superordinate clause) + object clause 3.
 Legislator (subject) + determinative verb (superordinate clause) + object clause 4.

Both readings remain available at any moment.

A similar possibility for linear (global) and fragmentary reading is realized at the level of articles. Below is an example of fragmentation of a legal provision in which the superordinate sentence is set off and the object clauses are fragmented and graphically highlighted by numerical enumerative connectors:

Попечителству Правосудія и Просвѣщенія относит' ѣе се Началничество Окружно по свима дѣлима кругу нѣговомъ принадлежеѣима, и то: [The District Authority shall report to the Ministry of Justice and the Ministry of Education in all matters pertaining to its district, namely:]

А) По части Правосудія вообщте у свима онима, коя у союзу са Судомъ Апеллаціоннымъ, Судовима Окружнымъ и Примириitelnымъ стое, коима у случаю потребе притицати мора, или



на нѣово зактеванѣ, или по собственной дужности своіой, као: [In matters of Justice in general, in all cases connected with the Appellate Court, the District Courts, and the Conciliation Courts, to which recourse must be had in case of necessity, or upon their request, or by virtue of their own duty, as follows:]

а) Да свакогъ оногъ, кои бы каково злочинство учиніо, быо онъ одъ Судейске власти позвать или не, самъ или посредствомъ Срезскогъ Началника увати и надлежномъ Суду преда. [That anyone who commits any crime, whether summoned by judicial authority or not, be apprehended by himself or through the County Chief and delivered to the competent Court.]

б) Да на зактеванѣ Суда свакога, кой бы, макаръ и парничне пресуде, сведочанства и суроченя ради нужданъ быо, позове и пошлѣ, а упорнога премора. [That, upon the request of the Court, anyone who is required, even for the purpose of civil judgments, testimony, or other necessary proceedings, be summoned and sent, under penalty for noncompliance.]

в) Да на поискаванѣ Суда, а и самъ извѣщава Судъ о станю пупила, и да ову одъ свакогъ неправедногъ прикосновенія и вредачува. [That, upon the request of the Court, he shall also inform the Court of the condition of the pupils, and shall protect them from any unlawful interference or harm.]

г) Да Пресуде Судейске самъ, или посредствомъ Срезки Началника, у извршенѣ приводи мотреѣи, да у томе не поступи противу Чл; 44. Устава. (Законик 1845: 80–81). [That Judicial Decisions, whether executed personally or through the County Chief, shall be carried out with oversight, so as not to act contrary to Article 44 of the Constitution.] (Zakonik/The Collection of Laws 1845: 80–81).

This is a description of duties. Hierarchy can be realized on multiple levels, which is achieved by using two types of amplifying connectors (capital and small letters). In the first case, binding the noun duty opens the possibility for a global reading (e.g., *The duty of the District and Conciliation Courts is to hand over anyone to the higher court, to issue summonses and compel those who refuse, to report on the state of wards, and to bring judgments into execution*). A fragmentary reading of individual sentences is also possible, so that within a single legal provision there are several legal norms that share a common superordinate clause:

- It is the duty of the District and Conciliation Court to hand over the offender.
- It is the duty of the District and Conciliation Court to summon litigants and to compel the obstinate.
- It is the duty of the District and Conciliation Court to report on the state of wards.
- It is the duty of the District and Conciliation Court to supervise the execution of judgments.

This construction remains stable until the end of the century and characterizes the administrative-legal style throughout the period. By compressing the administrative sentence, fragmentation and redundancy are achieved, and the text can be read either linearly (as a single duty) or fragmentarily (as a list of duties). Below is a longer example from the end of the period translated into English:

The school administrator (headmaster) has the duty:



- To exercise direct supervision over teaching, upbringing and order in the schools entrusted to his administration.
- To attend teachers' lectures and ensure the faithful execution of the curriculum and prescribed orders.
- In cases of urgent need, to grant teachers leave of up to three days, of which he must always subsequently inform the district inspector.
- To personally perform or order substitutions for teachers in cases of short-term illness or absence.
- To induct teachers and trainees into duty and to give them necessary instructions and guidance.
- To keep and properly maintain the school library and archive, for which he is responsible.
- To appoint and dismiss school servants.
- To conduct correspondence with all authorities.
- To communicate to teachers all orders of school and other authorities and to ensure their execution.
- To care for the maintenance of the school building and timely propose necessary repairs.
- To submit at the end of each month an accurate and detailed report on the overall state of the schools entrusted to him to the school inspector. (Stenographic notes 1899, Draft Law on Elementary Schools, 240),

Decrees from the time of Prince Mihailo are characteristic because they reduce the motivational preamble that is present in *Ustavobranitelji* decrees. Short regulations are reduced to the necessary normative-legal elements. In this period decrees often contain only a fragmented complement clause. This is interpreted as a manifestation of Mihailo Obrenović's absolutism and a tendency to automatize and template the legislative process. A few examples enacted during Mihailo's reign illustrate three possibilities in short decrees:

Example 1:

Михаилъ М. Обреновићъ III. [Michael M. Obrenović III.]

по милости божіойи вољи народа князь сръбскій, [By the grace of God and the will of the people, Prince of Serbia]

По договору са државним Советомъ решили смо и решавамо: [By agreement with the State Council, we have resolved and hereby resolve:]

1. Да се при министерству финансиє княжескимъ указомъ изъ правослова установи, сталный православный одборъ, у брою одъ деветъ чланова, но тако да онъ не може радити безъ найманъ петъ чланова. (Указ бр. 1863/63: 4). [That, by a princely decree, a permanent Judicial Council shall



be established at the Ministry of Finance, consisting of nine members, provided that it cannot act without at least five members.] (Decree no. 1863/63: 4).

Example 2:

Михаилъ М. Обреновићъ III. [Michael M. Obrenović]

по милости божіойи вољи народа князь србскій, [By the grace of God and the will of the people, Prince of Serbia]

На предлог Нашега министра унутрашњи дела, и сагласно са државнимъ Советом одъ данашнѣгъ № 388. решили смо и решавамо: [Upon the proposal of Our Minister of Internal Affairs, and in accordance with the State Council of today, no. 388, we have resolved and hereby resolve:]

„Да Топчидеръ са своимъ просторомъ подпадне у полицайноме погледу подъ надлежностъ управительства вароши Београда.“ [That Topčider, together with its territory, shall fall under police supervision within the jurisdiction of the City Administration of Belgrade.]

Наш министеръ унутрашњи дела има да изврши ово решенѣ. [Our Minister of Internal Affairs shall execute this resolution.]

1. Юнія 1863. [the 1st of June 1863]

У Београду. [In Belgrade]

М.М. Обреновићъ, с.р. [M. M. Obrenović, manually signed]

Example 3:

Михаилъ М. Обреновићъ III. [Michael M. Obrenović III.]

по милости божіойи вољи народа князь србскій, [By the grace of God and the will of the people, Prince of Serbia]

ПО ДОГОВОРУ СЪ ДРЖАВНИМЪ СОВЕТОМЪ РЕШИЛИ СМО И РЕШАВАМО [After the consultations with the State Council we have decided and hereby decide]

Да се §. 8 бюджетскогъ закона одъ 1858. год. (збор. XI стр. 98) измени овако: (...) (Измене закона 1864/64: 5). [That § 8 of the Budget Law of 1858 (Collection XI, p. 98) be amended as follows: (...) (Amendments to the Law 1864/64: 5)]

The three examples illustrate three possibilities in short decrees. The first illustrates an initial and introductory sentence in a longer regulation; the sentence is fragmented at the level of the normative-legal code and the administrative sentence is hierarchically (visually and graphically) set off. The lower part of the regulation is introduced by numerative connectors. In the second example the entire regulation is enacted: the superordinate sentence is graphically and visually highlighted so that it explicitly reads as a superstructure. The provision itself is given in the form of an object clause, which is graphically emphasized by quotation marks and set off to facilitate perception. In the last example amendments to a law are presented in the form of an object clause; the amendments, referred to cataphorically by the demonstrative *ovako* (thus), are located in the central part of the regulation. The



verb in the introductory part appears in the non-mobile present tense⁶². Use of the present tense is characteristic of the administrative-legal style from the Middle Ages to the modern language and aligns with the tendency of legal language to make enacted provisions appear universal.

3.2. The difference between a legal norm and a legal provision

The basic distinction we adopt is the difference between a legal norm and a legal provision. A legal norm is realized in the form *if H, then Y*, i.e., *if delict, then sanction*. The ideal surface representation of a legal norm is the conditional sentence introduced by the conjunction *if* and related conjunctions (*provided that, in case*), a form that proved stable throughout the history of Serbian legal language from the Middle Ages to modern Serbian. In 19th-century Serbian legal codes the basic form for expressing a legal norm via normative-legal coding is the clause structure introduced by the conjunction *if*⁶³.

Examples of equivalence between legal norm and legal provision:

Ако се дѣломъ освѣдочи и предъ Државнымъ Совѣтомъ и предъ Народномъ Скупштиномъ, да є найстаріи сынъ Княза малоуман, или збогъ тѣлесны каквы недостатака неспособанъ къ княжескому достоинству, или ако се истый самъ одрекне права свога на достоинство княжеско, у томъ случаю слѣдоваће за нѣмъ найстаріи нѣговъ сынъ, ако ли не има своій синова ни потомака одъ истый синова, а оно слѣдоваће найстаріи брат (Устав 1835: 5–6). [If it is established both before the State Council and before the National Assembly that the eldest son of the Prince is of unsound mind, or physically incapacitated to assume the princely dignity, or if he himself renounces his right to the princely dignity, in that case his eldest son shall succeed him; if he has no sons or descendants of his sons, then the eldest brother shall succeed.] (Constitution 1835: 5–6).

However, the deep *if-then* hypothesis can also be expressed by other types of subordinate clauses in 19th-century Serbian legal language:

- Free relative clause introduced by the relative conjunction *koi* (who/which): **Кои годъ што нибудъ у вредности одъ 100 талира фонду приложи** [If someone donates something worth 100 talirs to the fund], добыће писменну благодарностъ одъ стране Попечителства Просвѣštenія (Уредба (18) 1841/45: 20); **Кои бы противъ овогъ поступао**, већ є самъ по себи злочинацъ, кога треба судити и казнити по законима (Устав 1835: 8) [If (any) member of the State Council acted against this procedure, he is already by himself a criminal who must be tried and punished under the laws].
- Conditional clauses introduced by *kad* (when/if): **Кад би Краљ, по потреби, отишао на неко време из земље**, заступа га по праву вршења уставне Краљевске власти Наследник престола, ако је пунолетан. (Устав 1888: 13) [If the King, when necessary, were to leave the country for some time, he is represented in the exercise of constitutional royal authority by the heir to the throne, if he is of age]. (When transformation into a conditional clause the verbal form changes to the future in the first-person singular in some contexts.)
- Local/contingent clauses: Четврта или пета ослобођена глава, ако главнимъ Кметомъ постане, ондаза Кметовство ослобођава се јошть една глава у кући тако, да гди су четири главе, само ће се две, а гди су петъ глава, само три у рубрику данакъ плаћајући глава уписивати (Правила (66) 1843/45: 222) [If the head of household becomes the main head, then for the household the tax register is adjusted so that where there are

⁶² М. ИВИЋ, *О употреби глаголских времена у зависној реченици: презент у реченици с везником ДА*, *Зборник за филологију и лингвистику*, vol. 13/1, pp. 43–54.

⁶³ Ј. ПАВЛОВИЋ ЈОВАНОВИЋ, *Условне реченице уведене везником ако у административно-правном језику 19. века*, *Српски језик*, vol. XXIX, 2024, p. 425.



four heads only two are entered for tax purposes, and where there are five heads only three are entered].

3.3. Normative and ideological coding in non-restrictive relative clauses

From the perspective of the normative-legal code, restrictive relative clauses play a key role in organizing legal text because they single out, from the set of all available entities, those that fall under legal norms. In other words, when they are part of stipulative definitions they determine the characteristics, an entity must possess to fall within the class defined by law. Sometimes a new entity becomes such precisely by virtue of the law (for example, all state institutions obtain their legal definition through statutes). For this reason, certain lexemes from the general language are determined in laws by **restrictive relative clauses**, because their legal meaning and their general meaning do not coincide in some segments; that is, the legal meaning is necessarily more restrictive than the general one: *Public are those schools that are opened and maintained at their expense by municipalities, districts, counties or the state. Private are those schools that are opened and maintained by private persons, individual endowments (funds) or certain associations* (Stenographic notes, Draft Law on Elementary Schools, 229); *A municipality in which there are at least 40 children for a school is obliged to open a primary school* (Stenographic notes, Draft Law on Elementary Schools, 230); *Children are admitted to primary school who on 1 September of that year are not younger than 6 nor older than 10 years* (Stenographic notes, Draft Law on Elementary Schools, 230); *For a senior teacher a teacher may be appointed who has passed the higher teacher's exam or a trainee professor who has passed the professor's exam or the higher teacher's exam* (Stenographic notes 1899, Draft Law on Elementary Schools, 235).

If the referent is unique, the relative clause is **non-restrictive**⁶⁴. This is most often the case in administrative-legal decisions and documents. The clause is a continuative non-restrictive relative clause because it supplies information about the document in question. This is highly important from the standpoint of normative-legal coding: *Указъ отъ 20. Ноемврія 1842. В. № 154. коимъ се уничтожава купленъ жита у Общинске кошеве* (Зборник 1845: contents); *Рѣшеніе одъ 18. Марта 1843. В. № 383. коимъ се 20. Членъ Устроєнія пограничны Састанака преиначава* (Зборник 1845: contents). [Decree of 20 November 1842, V. No. 154, by which the purchased grain in the Municipal Granaries is abolished (Zbornik 1845: contents); Resolution of 18 March 1843, V. No. 383, by which Article 20 of the Regulation on the Border Meetings is amended (Zbornik 1845: contents)].

If a document is cited only by its generic title, it is unclear whether the relative clause is restrictive or non-restrictive, because resolving this requires context that is not available to us: *Где бы пакъ последний Князь одъ садашнѣ княжеске фамиліе ОБРЕНОВИЋА изоставіо то учинити, а оно државный Совѣтъ и Скупштина народна бираю найспособніега и найдостойніега мужа између себе и моле общенародно Султана, да призна и потврди нѣга у наслѣдственномъ достоинству Князя Српскога сходно берату, кои є дарованъ Князу МИЛОШУ ТЕОДОРОВИЋУ ОБРЕНОВИЋУ 7га Ребюль-Евеля 1246. године по турскомъ календару.* [(...) *they petition the Sultan, on behalf of the nation, to recognize and confirm him in the hereditary dignity of the Prince of Serbia in accordance with the berat*]. The transformation shows that the sentence is fully grammatical if the relative clause is omitted. This opens the possibility of a dual interpretation: **(a)** the clause is non-restrictive, and the addressees know from context which *berat* is meant, so the relative clause serves to make the normative-legal coding explicit; **(b)** the clause is restrictive, distinguishing one particular

⁶⁴ S. KORDIĆ, *Relativna rečenica*, Zagreb, pp. 64–66.



berat from several *berats* granted to Prince Miloš Obrenović (in the period 1829–1830 the Ottoman Sultan issued three *hâtî-şerîfs*).

Uniqueness of the referent is also characteristic of institutions that are unique of their kind in the state or region (county, municipality, or district). A clause introduced with such referents is of the continuative type because it refers to information important from the standpoint of the normative-legal code, usually duties of a given institution: *Законъ о располаганю данка на народъ за сваку годину не може се издати безъ одобрения народне Скупштине, коя ће се тога ради сваке године сазивати, и коя ће састављена бити изъ сто најодобраніи, најразумнии, и народно повѣреніе највећма заслужуюћи Депутата* (Устав 1835: 4) [“The Law on the levy of taxes on the people for each year cannot be enacted without the approval of the National Assembly, which shall be convened for this purpose every year, and which shall be comprised of one hundred Deputies selected for being the most distinguished, the most capable, and the most deserving of the people’s trust. (Constitution 1835: 4)].

The adjective *isti* (the same), which has a cataphoric function—both cataphoric reference to the relative clause and anaphoric intratextual reference to the previously mentioned abstract entity—contributes to interpreting the clause as non-restrictive and specifically as a **parenthetical non-restrictive clause**: *Лице Князя Србскогъ свето є и неприкосновено; Князь не одговара ни за какво дѣло владѣніи правлѣнія, за коя одговараю остале власти Србске, свака по свомъ одѣлѣнію; зато не може нико ни тужити ни судити Князя Србскога за иста дѣла, коима є свакой одређено своє дѣло* (Устав 1835: 4) [The person of the Prince of Serbia is sacred and inviolable; the Prince is not responsible for any act of governance, for which the other Serbian authorities are accountable, each within its own jurisdiction; therefore, no one may sue or try the Prince of Serbia for acts for which each authority has been assigned its own responsibility. (Constitution 1835: 4).] The non-restrictive clause is parenthetical in type, as evidenced by the fact that it can be omitted without any consequences for the meaning of the superordinate clause (*therefore no one can sue or judge the Prince of Serbia for the same acts*).

One example illustrates how ideologemes are encoded within the administrative-legal style of the nineteenth century: *Но никад не може бити изабран за Књаза србског нико од фамилије и потомства Карађорђевићева, на које је бачено проклетство народно*. (Устав 1869: 6) [However, no member of the Karađorđević family or their descendants shall ever be elected Prince of Serbia]⁶⁵. The example concerning the Karađorđević family is more complex and allows two readings: **(a)** restrictive, where only those members of the family on whom a popular curse has been pronounced are excluded from election as prince; **(b)** non-restrictive, where all members and descendants of the Karađorđević family are excluded because a curse has been pronounced on the entire family. Since the example comes from a constitution enacted during the Obrenović period, the second reading is the relevant one and illustrates the ideological relation of one dynasty to another.

3.4. Ideological coding in the dependent sentences

Ideological coding concerns information that is not necessary from the standpoint of the legal code but appears in legal text as data about the dominant political, religious or cultural ideology of the epoch. Such material reveals the motivation for enacting a statute and is usually found in preambles⁶⁶. Below we give several examples of ideological coding.

The subordinating conjunction *ukoliko* (if, provided that) can appear in an interposition with a potential mood. The potential indicates a lower probability that the action will occur. In the example from the Turkish constitution the interposition is further emphasized by the use of a comma: *И као што є сходно преимуцствама и свободама, дарованыма издревле Християнима, жителяма

⁶⁵ J. ПАВЛОВИЋ ЈОВАНОВИЋ, *Нерестриktivне релативне реченице у административно-правном стилу српскога језика 19. Века (прелиминарна истраживања)*, Verba iuvenium, vol. 2, Пловдив, pp. 39–40.

⁶⁶ М. ЈАНИЋИЈЕВИЋ, *Дискурс законских аката на српском и енглеском језику: развојно-упоредни приступ*, Београд, 2015, p. page number.



Царства Отоманскогъ одъ завладѣнія, да Началници Священства совершенымъ образомъ управляю дѣлама Закона и Церкви, (у колико то не бы дирало у дѣла политическа/ ако то не би дирало у дела политическа /у којој мери би то дирало у дела политическа), равно као што су опредѣлена награждения одъ стране народа нынымъ Митрополитима, нынымъ Игуменима и нынымъ Священицыма (Устав 1838: 6–7) [And just as, in accordance with the privileges and freedoms granted from time immemorial to Christians residing in the Ottoman Empire, the heads of the Clergy shall govern in a complete manner the affairs of the Law and the Church (insofar as this does not interfere with political matters), so too shall the rewards be determined by the people for their Metropolitans, their Igumens, and their Clergy. (Constitution 1838: 6–7)] In this example from the Turkish constitution we encounter ideological coding because clergy are allowed to manage church affairs without interference in politics. In this context the degree-measure is entirely lost, since only two alternatives are possible—either there will be interference in political affairs or there will not be. This also shows the path by which the conjunction *u koliko* evolved from an ambiguous connector to a purely conditional one.

Spatial adverbial meanings in the corpus also show local-causal interference⁶⁷. Here ideological coding is signaled, i.e., the reasons for enacting a law. In the following example the local clause is in interposition and contains a weak modal verb of ability⁶⁸: *И они войницы, кои бы у већемъ числу на подозрителнымъ мѣстима састанке чинили, и ту противу Правительства и законногъ порядка неприличне речи просипали, одъ куда се незадовольство: и самый бунтъ породити може, да се као бунтовницы сматраю и строго казнѣни да буду.* (Закон XXI 1839/40: 147–148) [And those soldiers who, in greater numbers, gather in suspicious places and there utter improper words against the Government and the lawful order, from which dissatisfaction—and even rebellion—may arise, shall be considered as rebels and be strictly punished. (Law XXI 1839/40: 147–148).] This sentence is an excellent example of ideological coding because the legislator sought to anticipate all situations that might provoke dissatisfaction among subjects.

In the next example ideological coding is not present in the law itself but is read from the broader cultural layer of the epoch, which presupposed decent and expected behaviour of women in the nineteenth century: *Но такове безчадне удовице, о коима ће надлежный Судъ по прописанымъ документима пензіоной Депутаціи доставити, да су доиста у станъ пензіе ступиле, свагда ће саме свою пензію примати, и, наблюдавајући, као што имъ пристои, правила честнога владаня, по своимъ потребама уживати.* (Уредба (73) 1843/45: 267) [But such indigent widows, concerning whom the competent Court, pursuant to the prescribed documents, shall certify to the Pension Department that they have indeed entered into the state of receiving a pension, shall always receive their pension themselves, and, observing, as befits them, the rules of honest conduct, shall enjoy it according to their needs. (Regulation (73) 1843/45: 267)].

In the following example ideological coding is expressed by a causal clause: *Тако исто да се ни еданъ Оффицеръ неусуди одъ плате, раане, или какве амуниціе своій войника штогодъ за себе задржати и тимъ поступкомъ подчинѣнима то укидати; ерѣ є таковый раванъ државномъ крадливцу, и зато лишитъ ће се чина и моратъ ће задржано вратити, и јошѣ толико, као глобу на шпиталь платити* (Закон XXI 1839/40: 140) [Likewise, no Officer shall dare to withhold for himself any part of the pay, rations, or any ammunition of his soldier, and by such action deprive the subordinates thereof; for such a person is equivalent to a state thief, and shall therefore be deprived of his rank, required to return what was withheld, and additionally pay a fine to the hospital. (Law XXI 1839/40: 140)].

The following examples come from preambles of laws and from short decrees (the shorter legal form in the nineteenth century that enacts only a single provision). They motivate the enactment of certain laws and are not necessary within the law itself. Examples introduced by the conjunction *budući da* (given that / since) include: *Будући да є трговина у Србији свободна: то свакиј Србинъ може ю упражнявати свободно (...) * (Устав 1838: 5); *Но будући да више людій изъ оне стране кушаю, у*

⁶⁷ М. КОВАЧЕВИЋ, *Узрочно семантичко поље*, Београд, 2012, pp. 173–175.

⁶⁸ М. ЈАНИЋИЉЕВИЋ, *op. cit.*, pp. 131–139.



ову наш прелазити, то е нужно, да кордонске страже удвоеномъ пажньомъчуваю, да се нико одъ оностранца крадомъ овамо преко границене увуче, или какве ствари оданде нашима да не претури или преда. (Правила (30) 1841/45: 124). Будући се пакъ овомъ Уредбомъ укида пазаръ у свету Неделю, то да бы свакий Србинъ своје кућевне потребе, које е дояко съ пияце набавляю, или на пияцы продавао, и одяко съ пияце набавлятишли на пияцы продати могао: то се овомъ Уредбомъ за сваку варошъ и мѣсто, гдѣ е обычай дояко быо, пияцу у Неделю држати, опредѣлюе шестый данъ сваке Недель т. е. Субота, а за варошъ Бѣоградъ поредъ Суботе опредѣлюе се и Вторникъ, у коя ће се ова два дана пияца и пазаръ држати (Уредба XV 1839/40: 114–115) [*Since trade in Serbia is free, every Serb may exercise it freely... (Constitution 1838: 5); But since more people from beyond the border attempt to cross into our territory, it is necessary that the border guards maintain double vigilance, so that no foreigner secretly enters, or transfers or delivers any goods from there to our people. (Regulations (30) 1841/45: 124). And since, by this Regulation, the market on Sunday is abolished, every Serb may obtain his household necessities, whether purchased at the market or sold there, and may continue to do so; therefore, by this Regulation, in every town and place where custom has hitherto existed, the market on Sunday shall be held on the sixth day of each week, that is, Saturday, and for the town of Belgrade, in addition to Saturday, Tuesday is also designated, on which these two days the market shall be held. (Regulation XV 1839/40: 114–115)].

The last example is interesting because it carries a **cultural code**: the market day is abolished on Sunday, which, according to Christian belief, is a holy day and was highly respected in the traditional community.

4. Conclusion

In this paper, we examine the role of normative and ideological coding in legal texts, using as an example Serbian-language documents from the 19th century. Our approach is grounded in the theory of legal language presented in *Jezik prava* (The Language of the Law) by Nikola Visković, a prominent Croatian and Yugoslav legal scholar. We build on the concept of double coding in legal language: first, through natural language (its phonetics, morphology, and syntax) and second, through normative form. This duality enables the fragmentation and linearization of sentences into appropriate legal structures.

Within the analyzed texts, the structural pattern NP + VP + complement clause can be observed. The complement clause appears as an implicit component of every legal norm. In addition, we adopt the distinction between a legal norm and a legal provision. The basic form of a legal norm has an if–then structure and is typically expressed through conditional sentences. At the level of deep structure, all legal norms conform to this model; however, at the level of surface structure, a variety of subordinate (dependent) clauses emerge, such as relative and spatial clauses.

The distinction between legal and ideological coding becomes particularly evident in the domain of restrictive and non-restrictive relative clauses. Normative coding constitutes an essential part of continuative (non-restrictive) relative clauses, whereas ideological coding is characteristic of the parenthetical type. Ideological coding also appears in various types of dependent clauses, revealing important information about the dominant political, sociocultural, and ideological context of 19th-century Serbia.

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The dialogues of [comparative] law*

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Abstract: Law is forbidding, correcting, punishing, helping, restoring, rewarding. Law needs tools, of other disciplines too. Language [of law too] is a means of communication and of isolation (wanted or imposed). Expressing law, interpreting law, implementing law, exploiting law needs all sorts of language. Law and economics discover and uncover rational (though still often irrational) choices. Judicial decisions are political decisions, Critical legal studies point out. Law is always influenced by politics. Politics can be benefactor and destructor. Rituals as expressions of living law may have double (or multiple) meaning. Law is always influenced by religion – either explicitly or implicitly. Convivencia in the same country of people of different religions and, accordingly, application of different laws of civil status (for example in Liban, in Greece, etc) is a fact. First nations (in Latin America, USA, Canada, Australia, New Zealand, Caribbean, etc.) live together (not really, not always in an idoneous way) with former colonizers and immigrants. Is there a real Convivencia of laws, there (as most countries in Africa have almost managed to achieve), or primacy of one (central) law and exclusion of the others? In many countries, there are different rules for the same issues, according to the particular problems of the persons to whom they apply – hypothetically aiming at the same protection(?). Is it an opposite discrimination or just a means of organizing the way to live together? Co-existence, Com-petition, Com-paring, Con-vivencia: Harmony is feasible, is possible, is not alchemy, it respects and requires the different, in order to be a rich image of life.

Keywords: Pluridisciplinary study, legal pluralism, colonization, different cultures, decolonization, neo-colonial rule, law's memory

Summary: 1. By way of introduction; 2. Law is; 3. Comparison – Comparativism; 4. Dialogue-Monologue; 5. Different laws, different cultures; 6. The importance of language for the dialogues of [comparative] law; 7. Continuing dialogue[s].

1. By way of introduction

Dialogue of law with other disciplines, either in the same legal culture or across the legal cultures – Dialogue of state law with other forms of law (informal, unrecognized) – Dialogue of the various sources of law, between them – Dialogues between verbal and non-verbal (mute) law – Permanent dialogue of comparative law with history (and with history of law) – Dialogues before, during and after legal transplanting.

Why not also dialogue between the various methods/approaches of Comparative Law.

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2. Law is

Are the various accounts of law's role in societies so different? Could they not be considered (all of them) as parts of a whole, as complementary, instead of different? Is the question "Is it [the law] a basis for social order, an instrument of power, or an aspect of culture?" really a question?² Could each one of the above (and many more other descriptions and definitions of law) be considered as a sufficient word/phrase/meaning of the law?

To my opinion, the answer to the last question is "no". The dialogue of the various expressions of law(s), either between each other, or between them and other disciplines is perhaps the only way that could lead us to an in depth understanding of the way the human communities live.

As it is splendidly said by Giorgio Resta: "Law, as a university discipline, should overcome the narcissistic disorder developed in the last two centuries. It should stop looking only at itself, at its organization, made up of a complex web of rules, principles and procedures. Rather, it should turn its eyes more decidedly to the social reality, or ... the "vital forces" behind it."³

The dialogues of [each] law may give us the means to compare it with another law or with other laws. The dialogues of each law are a prerequisite for the dialogues of comparative law.

A "child" of the West, comparative law, when it first appeared as a discipline; western remained its mentality, for many years, many decades. "Inevitably Western" was (and often remains) the language of the comparative law. If, however, we consider comparative law as a cognitive discipline – tool of research and study of all the laws of the world -, interdisciplinarity is a *condicio sine qua non* for it. The comparativist who will follow such an approach, must study the various problems-issues not only with an "internal perspective", but also with an "external perspective", meaning that he/she must be familiarized with techniques, examples and conclusions of other disciplines. A "pluridisciplinary study" often is the first step for an effective communication between disciplines, which in turn gives precious elements for an as secure as possible comparative study of laws.

Thus, comparative law, "in dialogue with non-legal disciplines, it gains control of the "deep connection" of the law with its cultural and environmental contexts", as it is very clearly pointed out by Nicolini.⁴

3. Comparison - Comparativism

"We compare to get to know ourselves better". Comparison is the practical tool in the quest for human understanding, it is argued. Is there a dialogue between that comparison and "comparativism as a theoretical framework, ..., an autonomous field of research"⁵?

Before that field of research was recognized as such, people and their leaders were (perhaps? certainly? from time to time? consciously? unconsciously?) comparing, either just to understand or to understand and use the conclusions of that procedure in order to achieve something for their own aims. Somehow, that was a preview of what Sacco much later said about the discipline of comparative law:

² F. PIRIE, *Law as ritual. Evoking and ideal order*, in *HAU: Journal of Ethnographic Theory*, 4, 2024, 403.

³ G. RESTA, "So Lonely": *Comparative Law and the Quest for Interdisciplinary Legal Education*, in *International Journal for the Semiotics of Law*, 37, 2024, pp. 1569, 1581, 1582-1583.

⁴ M. NICOLINI, "Writing the Earth and Representing the World": *The Cartographical Ambitions of Comparative Law*, *The Journal of Comparative Law*, 19, 79, 2024, p. 83.

⁵ G. RESTA, *The 'Comparative Method' at the Roots of Comparative Law*, in H. DEDEK (ed.), *A Cosmopolitan Jurisprudence. Essays in Memory of H. Patrick Glenn*, Cambridge, 2022, pp. 44, 47.



Its principal aim is the knowledge about its object of research. Other aims that might be set, such as improvement of another law, unification of laws, etc., belong to the sphere of *subcomparatismo*.

It is rather (or certainly) right that the philosophy of comparativism is in constant development, is pluralist, and is difficult to systematize.⁶

It is often argued – and not without a reason – that comparative law keeps on being mainly interested in whether western laws are influencing all the other laws of the world⁷. In that case, the phrase “We compare to get to know ourselves better” would/should be rephrased as: “Western scholars compare to get to know themselves and their laws better”. In that case, the dialogue would become a monologue.

4. Dialogue-Monologue

As Rodolfo Sacco had pointed out (and Salvatore Mancuso has reminded us), “law was born before the state and lived for a long time without needing a legislator or legal professionals, which are typical of the Western legal development.” In legal pluralism, especially as it has been defined during the last decades, state law may not be a necessary element of the law ruling a human community (see examples of African countries).⁸ On the other hand, it can be used to give an identity to the so-called mixed jurisdictions, mixed legal systems.⁹

Colonization meant – among other things – a huge reversal of what had been considered as law. So did the end(?) of the colonization, out of the colonizers’ fear of loosing their spheres of influence. Thus, the dialogue – monologue would be somehow as follows:

“What happened, happened, no change is possible (or permitted ...). We influenced your way of living, we set your laws (for you ...), with many similarities to our own, so researchers should not search for differences, they do not really exist. And if they exist, we can (convince you to) transplant laws similar to our own. And because we are open-minded and generous, we can let you also be ruled (partly) by your own laws (that we did not consider as such in the past), but only on the condition that they are not somehow opposite to our own beliefs about law. Generosity has its limits.”

So, according to that mentality, the standard to which every single law should be measured and perhaps allowed to be, is a Western law. So, all the world can be considered as belonging to the families of common law and civil law.

5. Different laws, different cultures

As it has been very clearly presented¹⁰, during the 18th century European intellectuals were considering law as ecumenical – obviously, their own law. During the 19th century, when there was explosion of many new disciplines, the anthropologists of law started field studies (but in reality, “armchair work”, back then), in order to point out differences between western and non-western laws.

⁶ O. KRESIN, *World Picture of Comparative Law: “The Courage of Your Convictions”*, in *The Journal of Comparative Law* 19-3, 2024, p. 16.

⁷ See L. SALAYMEH, R. MICHAELS, *Decolonial Comparative Law: A Conceptual Beginning*, in *RablesZ* 86/66, 2022, p.169: “Mainstream comparative law is arguably intertwined with colonialism, from the modern beginnings of the discipline to its latest involvement in projects on law and development”.

⁸ S. MANCUSO, *Lawscares*, in *International Journal for the Semiotics of Law*, 37/2024, pp. 1643, 1645, 1646.

⁹ See E. ZITZKE, *Decolonial Comparative Law: Thoughts from South Africa*, in *RablesZ* 86/189, 2022, p. 193: “But beyond the classical comparatist definition of mixed legal systems lies a much more far-reaching pluralist conception of mixing”.

¹⁰ L. NADER, *The Life of the Law. Anthropological Projects*, University of California Press, 2002, p. 9.



But the real field studies started in the 20th century. In both centuries, but especially during the 19th century, those “field studies” were taking place while the European colonization was reaching its peak – everything happened so fast... They gave ideas about the control of societies via the laws. They showed that the law often was and is a way to “invent culture”. There was no real dialogue, back then.

Those ideas still exist in some legal scholars’ minds. But fortunately – in several fields and especially in the field of comparative legal studies – new ideas have been born; new approaches have been proposed.

Todorov had pointed out that, by juxtaposing (by comparing, we would say) various cultures/civilizations and various laws, we may stress more either the equality of their rights and of their dignity or the differences that divide them. He had argued that the first attitude/stance is moral and legal, it describes what must be; the second stance is anthropological and historical, it refers to what really happens. However, he had argued, none of those positions is simple.

The principle of equality is accompanied, slyly, by an anthropological hypothesis, that of similarity, which in turn is often translated in assimilation politics. As he reminds us, this is, in essence, the history of the French colonization, which took place in the name of the Enlightenment ideals. Condorcet was saying: all people have the same rights, including the right to be civilized. Since, then, The French and the English are the most civilized people on the earth, they have the right, but also the obligation, to bring their civilization to the wild people. That means, they have “a duty of interference” (*un devoir d’ingérence*). According to that mentality, if the “wild” people resist and remain ignorant, they must be civilized by force. He (Condorcet) was writing: “*Les populations européennes doivent civiliser ou faire disparaître les nations sauvages*”.¹¹

But the second case too, that of the stressed differences between people, between cultures, has certain hurdles: the scientific interest for the description of the differences entails the risk of making us forget that we all belong to the same species, the human one. Thus, each human community considers herself as the basis, the paradigm of social behaviour. Often an evaluative opinion creeps into the research/study, and the differences ends up being translated on terms of hierarchy, superiority and inferiority. This is also the danger that threatens all [political] ideologies (either left or right) that put forth as flag the differences between people. If the differences are not defined on an equal basis, apartheid and xenophobia lurk into all discussions/analysis.

6. The importance of language for the dialogues of [comparative] law

It is pointed out that comparative legal studies constitute a priori a place of privileged thought, concerning the possibilities and the limits of legal translation. Each law is expressed via the language¹², in oral or written form¹³, therefore the comparativist has the duty to make eligible a law articulated in a different from his/her own language¹⁴.

¹¹ T. TODOROV, *Devoirs et Délices. Une vie de passeur. Entretiens avec Catherine Portevin*, Paris, 2002, pp. 190-191.

¹² See H.E.S. MATTILA, *Comparative Jurilinguistics: A Discipline in Statu Nascendi*, in B. POZZO, V. JACOMETTI (eds.), *Multilingualism and the Harmonisation of European Law*, Alphen aan den Rijn, 2006, pp. 21: “Law is necessarily bound to human language. Hence, the language of law is as old as law itself and has drawn people’s attention from different viewpoints since ancient times”.

¹³ H.E.S. MATTILA, *Legal Language: History*, in K. BROWN (ed.), *The Elsevier Encyclopedia of Language and Linguistics*, 2006, p. 8, declares that the language is power, authority, and that the language of law, that the state administration and the courts use, is a power instrument *par excellence*.

¹⁴ S. GLANERT, *De la traductibilité du droit*, Paris, 2011, p. 10.



Translation must be considered as a mediated form of communication, a further step that surpasses the basic communicating procedure and thus alters its character. Translation adds one more dimension in the communicating procedure, because the act of trans-fer that is enclosed in the translation demands the active and creative act of a subject, the translator¹⁵. That means that the translation aims at the recreation of an already existing identity, in an unavoidably modified form¹⁶.

The legal discourse in every culture has its own structure and expresses ways of syllogism. It is pointed out that the language gives form in what the user of language knows. The importance of that formation of knowledge becomes even more obvious when it is about the knowledge of a foreign law¹⁷.

James Boyd White, in his book “Justice as Translation”, rejects the idea of the language as a neutral sum of combined and combinable signs that function as vehicles that would transfer the thoughts of a person to another, because that would presuppose that things exist independently of language, that the language would just have the mission to represent the things in a way that could be transferred, translated, without the fear of ambiguity¹⁸. However, White does not believe that. On the contrary, he believes that translation is the art “of confronting unbridgeable discontinuities between texts, between languages and between people”¹⁹.

Some languages as also some laws are in a steady movement. This may happen for various reasons: historical, political, or economical. According to an opinion which seems influenced by the theory of evolutionism, this movement, as generally any movement in law or in language, may be considered as either evolutionary or degenerative²⁰.

Rodolfo Sacco was pointing out: “The laws and the languages differ. Do we have an explanation for that datum?”²¹.

The explanation, he argued, is in the nature of the things. Everything real is dominated by the diversity. And this, he believed, is true both for the material reality as for the cultural reality. Diversity has its provenance in the variation, in the movement (*la diversità proviene dalla variazione, dal mutamento*).

Where would we be without diversity, he was asking. Without diversity, the *homo habilis* would have never succeeded the Australopithecus. If the language had not wanted to “explode”, in order to give birth to thousands different languages, it would have remained as it were at the moment of its first appearance; in essence, a total of five or six vowels. If the law had not wanted to “explode”, in order to give a place to thousands different systems, it would have remained as it were at the moment of the humanization of the *homo habilis*²².

¹⁵ J.B. WHITE, *What Can a Lawyer Learn from Literature?*, in *Harv.L.Rev.* 201, 1989, p. 2011, declares that the essence of a legal scholar’s work is in the procedure of identification and construction of valid texts, in the procedure of translation from discourse into law. According to his opinion, the legal scholar’s work is the translation of the imagination into reality via the language’s power.

¹⁶ J. GAAKER, ‘*Judex translator*’: *the reign of finitude*, in P.G. MONATERI (ed.), *Methods of Comparative Law* (Research Handbooks in Comparative Law), Cheltenham, UK + Northampton, MA, USA, 2012, pp. 252, 258.

¹⁷ B. POZZO, *Comparative law and language*, in M. BUSSANI, U. MATTEI (eds), *The Cambridge Companion to Comparative Law*, Cambridge, 2012, pp. 88, 102.

¹⁸ Thus, J.B. WHITE, *Legal Knowledge*, *Harv.L.Rev.* 115, 2002, p. 1396 asks, or asks himself, “what do we know when we know the law?”

¹⁹ J.B. WHITE, *Justice as Translation: an Essay in Cultural and Legal Criticism*, Chicago, 1990, p. 257.

²⁰ N.J. JAMIESON, *Legal Transplants: Word-Building and Word-Borrowing in Slavic and South Pacific Legal Discourse*, in *Victoria University of Wellington Law Review* 42/417, 2012, p. 419.

²¹ R. SACCO, *Il diritto tra uniformazione e particolarismi*, *Università degli Studi Suor Orsola Benincasa. Facoltà di Giurisprudenza*, Napoli, 2011, p. 10.

²² E.N. MOUSTAIRA, *Juridical influences in the frame of Comparative Law*, Athens – Thessaloniki, 2013, pp. 60-61.



Language makes us “persons”, creates our identity²³. Language is an element of the society, depends somehow on the society and the communication in its frame, can create an important structural element of people’s identity²⁴. Every person “lives inside a language”²⁵, is able to acquire the experience of the world via a linguistic form²⁶. Language is much more than a collection of translatable representations of an immovable reality, it contains a specific vision of the world, it constitutes a testimony of the human intellectual power. Legal language too creates somehow our identity inside a legal culture/a legal system. As it is very clearly said: “Each individual legal language is the result of its immemorable development and of that of a specific legal system, of its history and culture”²⁷.

Language is the instrument of dialogue – for comparative law too.

7. Continuing dialogue[s]

Comparative law in the past (and often now, unfortunately) has been used to give a solid basis to the “neo-colonial rule after formal decolonization”²⁸. However, it is well known that disciplines may be used in various ways, by various scholars, either to defend and support their own (mostly political) ideas, or to discover and uncover (and possibly accuse) dark, darkened situations. The method of legal families is not innocent. It was perhaps useful as a scientific tool, according to the ideas of former times, but it is almost unacceptable now. The rise of the legal families was followed by its fall. We should not refuse to see that that method was perpetuating the [legal] colonization, by including former colonies’ laws in the “families” of Western laws. But not even Western laws may be considered as members of a family – there are so many differences between them.

The new approaches of comparative law, approaches that could be named methods but not necessarily, do not close their eyes to the differences (or the similarities) between the various laws. They are discerned from the initial methods (especially from that of the legal families) by their “generosity” (a real one, this time), their open-mindedness, the will to take into account all the details that contributed and contribute to the forming of each law. And those details are only via the dialogues of law(s) uncovered.

Even if “some rules remain law on the books forever”²⁹, even when there is resistance to the efforts of those legal scholars who believe that law is much more than that, the dialogue between the legal formants of each law never stops. And in order to be able to comprehend those “national” dialogues, we, comparati[vi]sts, need to study those dialogues, as well the dialogues between the various legal systems, before reaching our conclusions.

Can we ignore the past and its events? Obviously, not. Law and especially comparative law, in order to get to know itself and its object(s) of study (the first and most important aim of comparative law), must take into account everything that had some sort of influence on laws’ trajectories. This does not mean any “forgiveness” of the past (and the present) dark spots of those trajectories. If laws must

²³ See also the theatrical play of B. FRIEL, *Translations* London-Boston, 1981, (speaking about the Irish-Gaelic language): “a rich language... full of the mythologies of fantasy and hope and self-deception – a syntax opulent with tomorrows”

²⁴ S. SKYTITI, *Comparative law and language* [in Greek], Athens – Thessaloniki, 2022, pp. 12.

²⁵ H.-G. GADAMER, *Wahrheit und Methode. Grundzüge einer philosophischen Hermeneutik*, 6. Aufl. (durchges.) Tübing, 1990, p. 392.

²⁶ E.N. MOUSTAIRA, *Milestones in the Course of Comparative Law. Thesis and Antithesis* [in Greek], Athens – Thessaloniki, 2003, pp. 163-171.

²⁷ A. DE LUCA, E. IORIATTI, *Comparative Legal Systems. An Introduction*, Torino, 2023, p. 27.

²⁸ L. SALAYMEH, R. MICHAELS, op. cit., (fn 6), p. 169.

²⁹ C. ENGEL, *Challenges in the Interdisciplinary Use of Comparative Law*, in *American Journal of Comparative Law* 69/777, 2021, p. 787.



change, again the dialogues of law and of comparative law (being that procedure a “*subcomparatismo*”) can give the keys for that change.

Certain scholars argued that references to the past must be banished from the political speeches and references to history must be banished from the legal discussions.³⁰ However, they did not achieve that, at least not as far as law is concerned. Because law has memory. And people, however globalization wants to present them as similar, “ask who they are”. And the answers may only come from the past³¹ – both for them and for their laws. And thus, history remains present in many appearances of the law – and of the positive law too, for example in the preambles and introductory reports of the laws and in judicial decisions.³²

It more and more appears that the contribution of other disciplines and especially of the history of law³³ to the achievement of its principal aim, is more than necessary³⁴; it is functionally helpful.³⁵ Thus, it is argued that the comparative law is a historical discipline par excellence; that the study of the past is somehow tantamount to the approach and study of foreign legal systems.³⁶

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³⁰ BA. KAI RANDALL LESAFFER, *Law and History. Law between Past and Present*, in B. VAN KLINK, S. TAEKEMA (eds.), *Law and Method*, Tubing, 2011, pp. 133, 134-137, for the three forms that the relation of history and law may have. First, there is the study of “history in law”. Legal scholars often consider necessary to refer to the past, in order to support the existence or the interpretation of a specific rule. The history of the rule constitutes an innate part of the rule itself. Second, there is the “law in history”. This refers to the study of the law inside its social, economic, cultural and political frame. The object of study is the mutual interaction between law and society in a historically specific time and place. Third, there is the “history of law”. This relation is in the middle of the other two. It refers to the research that considers law as an autonomous historical fact. Its aim is to understand what exactly was the “law” in certain historically specific time and place.

³¹ H. P. GLENN, *Legal Traditions of the World: Sustainable Diversity in Law* (5th ed.), Oxford, 2014, pp. 56: «In all the sameness, people ask who they are, and the answer can only come from the past».

³² A. ARAGONESES, *La memoria del derecho. La construcción del pasado en los discursos jurídicos*, in M. BRUTTI, A. SOMMA (eds.), *Diritto: storia e comparazione*, Max Planck Institute for European Legal History, 2018, pp. 5, 6.

³³ The dialogue between history of law and of comparative law, as T. DUVE, *Legal Traditions: A dialogue between comparative law and comparative legal history*, in *Comparative Legal History* 6/15, 2018, p. 16 and footnote 2, has a long history.

³⁴ C. VARGA, *Legal Images and Understandings of Law: Juristic Assumptions and Results, Students Evaluations and Choices*, in *The Journal of Comparative Law* 19, 2024, p. 421: “... **historical investigation** is also a comparison, built up by comparing successive chronological sections of the past up to the present”

³⁵ G. PAVANI, ‘El papel de la historia del derecho en la formación del “criptotipo centralista” en América latina’, in M. BRUTTI, A. SOMMA (eds.), *Diritto: storia e comparazione*, Max Planck Institute for European Legal History, 2018, pp. 389, 391.

³⁶ M. GRAZIADEI, *Comparative law, Legal History, and the Holistic Approach to Legal Cultures*, in *Zeitschrift für Europäisches Privatrecht* 7, 1999, pp. 531ff.



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Dante and the methods of comparative law

Laura Maria Franciosi*

Abstract: The origin of comparative law as a science is generally attributed to 1900, when Lambert and Saleilles organized the first International Conference of Comparative Law during the Paris World Expo. However, it is interesting to note that Dante, within his works, appears as a comparatist, albeit ante litteram. This emerges, in particular, in light of the use of comparative methods and techniques, with a particular reference to the text and the framework of the Divine Comedy, as well as the way he navigates his journey. In doing so, Dante highlights some key pillars of comparative law and its most topical issues, such as legal translation, the methods and purposes of comparative law, the relevance of law, and its applications of the conscious and/or unconscious influences of different cultural factors.

Keywords: Dante, Comparative law, Comparative methodology, Legal translation, Law and language

Summary: 1. Introduction; 2. Dante and the pillars of Comparative Law: legal translation; 3. “...dentro a le segrete cose” – Legal formants and *cryptotypes*; 4. Dante and the Trento Theses.

1. Introduction

The birth of comparative law as a science is dated to 1900, the year in which, on the occasion of the Universal Exhibition, the First World Congress of Comparative Law was held in Paris. This had been preceded by the establishment in France, in 1869, of the *Société de législation comparée*¹. It is a shared opinion that, before then, it was not possible to find examples of comparison in the technical sense: if it is true that in some works references to different legal experiences could be found, it is believed that, however, they were limited to cultural exchanges or mere juxtapositions of distinct legal solutions, but did not integrate a comparison in the proper sense². Without prejudice to the above consideration, one author seems to constitute an exception: Dante.

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¹ R. SACCO, *Introduzione al diritto comparato*, in *Trattato di diritto comparato* directed by R. SACCO, Torino, 1992, reprint 2003, p. 7.

² Comparative scholars have identified only a few limited exceptions: Theophrastus's *On the Laws*, which attempts to identify principles common to the various Greek legal systems, describing in a special section the rules that diverge from the common scheme; in the post-classical era, the *Collatio legum Mosaicarum et Romanum*, which compares some writings of classical Roman jurists with the laws of Moses (in order to demonstrate the conformity of Roman law to that of biblical origin, probably with the aim of strengthening the Christian faith). In the era following Dante's time (1265-1321), two works by Sir John Fortescue, *De Laudibus legum Angliae* and *The Governance of England*, are remembered in England. They make a comparison—admittedly non-objective, as it is aimed at demonstrating their superiority—between English and French law. In a much later period, a significant impulse to comparison was given by Bacon and Leibniz, although the latter were not comparatists: Bacon is remembered, in particular, for his *De dignitate et argumentis scientiarum* (1623), which contains an invitation to the jurist to free himself from the limits imposed by national law. K. ZWIEGERT, H. KÖTZ, *Introduzione al diritto comparato*, vol. I, Milano, 1992, pp. 57-59.



2. Dante and the pillars of Comparative Law: legal translation

Indeed, if we consider Dante's works, primarily the Divine Comedy, we can see how some of the cornerstones and central themes of comparative science were already present in them, though not necessarily as incidental considerations, but often in a delineated manner.

Starting from a specific theme, and before analyzing the issue from a more general perspective, it is worth noting that legal translation constitutes one of the primary problems on the comparatist's agenda³. It is, in fact, known that "language" and "law" constitute an inseparable pair, and that legal norms are conveyed through a language that is neither common nor literary, but a scientific language⁴, which implies and expresses technical concepts, an expression of cultural heritage and legal traditions⁵.

For the Italian comparatist, and more generally for the municipal jurist who intends to approach a foreign model⁶, the first obstacle to overcome, unless one wishes to limit the investigation to the laws of the Republic of San Marino or those of the Canton of Ticino, is precisely linguistic diversity, with the related translation problems⁷.

In this context, as noted by the most attentive comparative scholars, literal translation is often impractical and not even the best option because, to apply it correctly, one must be certain of the actual legal correspondence between a term in the foreign model and one in the target language⁸. Indeed, if one were to uncritically pursue the literal translation route, the risk would be to produce incorrect and, in some cases, paradoxical or even comical results. A notorious error is the risk of attempting to convey the function and role of the civil law "notary" with the admittedly false friend⁹ term *public notary*, typical of the common law model. It is evident, however, that, with all due respect to the American public notary, this latter professional figure is far from being comparable to that of the civil law notary¹⁰.

Let us then imagine the perplexity, in the best of cases, of a common lawyer who is presented with the English version of an international contract in which reference is made to the Italian category of "*diritti reali*", having translated this legal concept with the expression "true rights"¹¹. To be generous, a

³ R. SACCO, *Traduzione giuridica*, in *Digesto discipline privatistiche- sezione civile*, Torino, Aggiornamento, I, 2000, 722 ss., in particular §5 e 7. Regarding legal translation, as well as the other central themes of comparative law mentioned below, a vast and authoritative body of literature exists, both in Italian and foreign languages. Given the impossibility of including all the works, this text will primarily focus on those generally considered paradigmatic for the training of comparative law scholars.

⁴ "In legal language, as in scientific language in general, categories should be defined by all their constituent features, and words should correspond to categories": R. SACCO, *Legal Formants: A Dynamic Approach to Comparative Law (Installment I of II)*, in *American Journal of Comparative Law*, 1991, Vol. 39, No. 1, pp. 1 ss., 15.

⁵ The International Academy of Comparative Law, on an Italian proposal, discussed the topic in Sydney in 1986: hence the collective volume with introduction by R.M. BEAUPRÉ, *La traduction juridique*, in *Les cahiers du droit*, Montréal, 1987, vol. XXVIII, n. 4 (the volume also includes an essay of R. Sacco, *Un point de vue italien*, *ibidem*, 845-859). On this topic, in particular, the editorial series "Le lingue del diritto," edited by B. Pozzo, published by Giuffrè, Milan. See also, V. JACOMETTI, B. POZZO *Traduttologia e linguaggio giuridico*, Padova, 2018; E. IORIATTI FERRARI (ed.), *La traduzione del diritto comunitario ed europeo: riflessioni metodologiche*, Trento, 2007; O. MORÉTEAU, *L'anglais pourra-t-il devenir la langue juridique commune en Europe?*, in R. SACCO, L. CASTELLANI (eds.), *Les multiples langues du droit européen uniforme*, Torino, 1999, pp. 143 ss.; G SNOW, J. VANDERLINDEN, *Francais juridique et science du droit*, Bruxelles, 1995. See also C. BERGOMI, *Comparative Law and Autonomous Concepts*, Torino, 2025.

⁶ At this regard: D. CORAPI, *Lo studio e l'insegnamento del diritto privato comparato nelle università italiane*, in *Rassegna di diritto civile*, 1986, n. 2, 435; A. GUARNERI, *Nova et vetera nell'insegnamento del diritto comparato*, in *Nuova Giurisprudenza Civile Commentata*, 2012, II, p. 6.

⁷ R. SACCO, *Traduzione giuridica*, *op.loc.cit.*

⁸ *Ibidem*.

⁹ In relation to this issue, in general: S. FERRERI, *Falsi amici nelle corti*, Torino, 2019.

¹⁰ K. ZWEIGERT, H. KÖTZ, *Introduzione*, *cit.*, vol. II, 1995, pp. 60-61.

¹¹ On property law from a comparative perspective, see in particular: A. GAMBARO, A. CANDIAN, B. POZZO, *Property, propriété, eigentum*, Padova, 1992.

common law reader might be led to believe that the Italian counterpart is behaving strangely, given that it wastes time discussing “real” rights and rights that, evidently, are not!

For this reason, comparative science has highlighted further translation options, in particular: (i) creating a neologism¹²; (ii) rendering the foreign term with a periphrasis or explanatory phrase of its salient features, and (iii) giving up translating¹³. Indeed, there are legal concepts (think, for example, of *Soviet*, *Sharia*, and *trust*) that circulate globally while maintaining their original terminology unchanged and bringing with them the entire conceptual apparatus that characterizes them¹⁴.

Attention to these considerations is very present in Dante: namely, in the Epistle that he wrote to Can Grande della Scala, lord of Verona, to whom the Paradise was dedicated, Dante warns his illustrious reader, as well as all of us, to pay particular attention to the fact that the Comedy is a multiple-meaning (*polisemos*) work, and that the literal option, the most immediate and simple, can actually prove misleading and limited.

Alongside this, the Author urges, we must take into account—and therefore reveal—the symbolic meaning of the text, both moral and anagogical, that is, spiritual and transcendent:

“Per chiarire quello che si dirà bisogna premettere che il significato di codesta opera non è uno solo, anzi può definirsi un significato polisemos, cioè di più significati. Infatti il primo significato è quello che si ha dalla lettera del testo, l'altro è quello che si ha da quel che si volle significare con la lettera del testo. Il primo si dice letterale, il secondo invece significato allegorico o morale o anagogico.

Questi diversi modi di trattare un argomento si possono esemplificare, per maggior chiarezza, con i versetti: "Allorché dall'Egitto uscì Israele, e la casa di Giacobbe (si partì) da un popolo barbaro; la nazione giudea venne consacrata a Dio; e dominio di Lui venne ad essere Israele". Infatti se guardiamo alla sola lettera del testo, il significato è che i figli di Israele uscirono d'Egitto, al tempo di Mosè; se guardiamo all'allegoria, il significato è che noi siamo stati redenti da Cristo; se guardiamo al significato morale, il senso è che l'anima passa dalle tenebre e dalla infelicità del peccato allo stato di grazia; se guardiamo al significato anagogico, il senso è che l'anima santificata esce dalla schiavitù della presente corruzione terrena alla libertà dell'eterna gloria”¹⁵.

This recalls what Dante has already developed, in a well-defined manner, in the Convivio¹⁶:

“Le scritture si possono intendere e deonsi esponere massimamente per quattro sensi. L'uno si chiama letterale, e questo è quello che non si stende più oltre la lettera delle parole fittizie, sì come le favole dei poeti. L'altro si chiama allegorico, e questo è quello che si nasconde sotto 'l manto di queste favole, ed è una veritate ascosa sotto bella menzogna ... Lo terzo senso si chiama morale, e questo è quello che li lettori deono intentamente andare appostando per le scritture ad utilitate di loro e di loro discenti: sì come appostare si può nello Evangelio, quando Cristo salio lo monte per transfigurarsi, che de li dodici Apostoli menò seco li tre: in che moralmente si può intendere che alle secretissime cose noi dovemo avere poca compagnia. Lo quarto senso si chiama anagogico, cioè sovrasenso; e questo è quando spiritualmente si spona una scrittura, la quale ancora che sia vera eziandio nel senso letterale, per le cose significate, significa delle superne cose dell'eternal gloria: sì come vedere si può in quello canto del Profeta che dice che nell'uscita del popolo d'Israel d'Egitto Giudea è fatta santa e libera. Che avegna

¹² Technique which presents itself as an expression of a form of creativity of the jurist: in this regard, from a broader perspective, see G. PASCUZZI, *La creatività del giurista – tecniche e strategie dell'innovazione giuridica*, II ed., Bologna, 2018.

¹³ R. SACCO, *Traduzione giuridica*, op. cit., in particular §§12-13.

¹⁴ R. SACCO, *Traduzione giuridica*, op. loc. cit.. Very interesting in this regard are the remarks of: A. GAMBARO, *Trust*, in *Digesto discipline privatistiche – sezione civile*, Torino, 1999, p. 449 e M. LUPOI, *Trusts*, Milano, 2001.

¹⁵ DANTE, *Epistola a Cangrande della Scala*, [7].

¹⁶ DANTE, *Convivio*, II, I, pp. 3-7.



essere vero secondo la lettera sia manifesto, non meno è vero quello che spiritualmente s'intende, cioè che nell'uscita dell'anima dal peccato, essa sia fatta santa e libera in sua potestate".

Interestingly, these four meanings have also been considered to correspond to the four functions of the psyche developed by Jung: (i) the literal meaning, which corresponds to the function of sensation; (ii) the allegorical meaning, corresponding to thought; (iii) the moral meaning, which corresponds to feeling and (iv) the anagogical meaning, which corresponds in part to intuition and which is also called symbolic (from the Greek *symbolon*, union) because, in a higher synthesis that transcends them, it also includes the other meanings¹⁷.

3. "...dentro a le segrete cose" – Legal formants and cryptotypes

A fundamental postulate of Comparative Law is the criticism of the principles of unity and self-sufficiency of the legal system, as well as the non-contradiction within it¹⁸. Additionally, attention is paid to the various components that contribute precisely to the formation of its legal rules¹⁹. These components, depending on the model considered, can assume different importance.

Thus, for example, some models have been identified in which, at least traditionally, the judicial component has been considered prevalent; others in which the legislative component has been; and others, finally, characterized by a primary role of the doctrinal component. Alongside these three "classic" formants, however, other factors that contribute to characterising a given system must be considered: for example, formants that are little considered but certainly important are the declarations of science²⁰; the education and training of the jurist; the practice (particularly in the field of international contracts, where the *new Lex Mercatoria* is discussed and where the rules that arose within the so-called business community play a leading role)²¹.

¹⁷ A. MAZZARELLA, *Alla ricerca di Beatrice*, II ed., Milano, 2002, p. 49.

¹⁸ See in particular R. SACCO, *Legal formants*, cit., 24: "Comparison recognizes that the 'legal formants' within a system are not always uniform and therefore contradiction is possible. The principle of non-contradiction, the fetish of municipal lawyers, loses all value in a historical perspective, and the comparative perspective is historical par excellence".

¹⁹ "Comparazione e storia accettano l'universo dei modelli giuridici come universo di modelli autonomi (anche se astrattamente collegati), dotati di contenuti non sempre uniformi, sì che tra essi è ammessa contraddizione. Il principio di non contraddizione, che è il feticcio dei giuristi finché si muovono all'interno di un sistema determinato, cessa completamente di valere in una qualsiasi prospettiva che sia di tipo storicistico. In questa prospettiva qualunque modello è vero se concretamente è esistito, e qualunque modello che di fatto è vero ha tanta legittimità quanta ne ha qualsiasi altro modello che di fatto è parimenti vero" R. SACCO, *Formante*, in *Digesto discipline privatistiche – sezione civile*, Torino, 1992, p. 438, in particular § 2.

²⁰ "Formanti poco studiati sono le varie forme di dichiarazioni di scienza. Talora queste dichiarazioni di scienza si presentano come (apparenti) qualificazioni della fattispecie; e sono (in realtà) medii logici superflui fra le fattispecie e gli effetti. ... Non si dica che queste dichiarazioni di scienza, superflue come medii logici, difettano di carattere giuridico, e sono perciò estranee all'ordinamento. Quale che sia la loro origine - dottrinale, o legale, o giudiziale - esse costituiscono proposizioni capaci di incidere sul modo di intendere la regola operativa cui vengono sovrapposte, e in questo senso sono mezzi d'interpretazione (quindi, fonti secondarie di diritto). Poiché il legislatore ha il compito di dettare regole, e non quello di argomentare, non toccherebbe a lui, a prima vista, inserire nei testi legali medii logici. Tuttavia il legislatore qualifica e classifica, e con ciò finisce per adottare definizioni e proposizioni teoretiche che possono anche a) mettersi in contraddizione con le regole operative, ovvero b) essere superflue perché alla pratica è sufficiente la regola operativa. La provenienza dal legislatore della definizione assegna a quest'ultima un carattere ufficiale. La mancanza di un collegamento diretto fra la pratica e la definizione assegna a quest'ultima un carattere declamatorio. Le proposizioni di tipo declamatorio esplicitano spesso una ideologia (l'ideologia che ispira quel dato ordinamento, o l'ideologia cui quel dato potere crede di ispirarsi, o vuol far credere che intende ispirarsi)". *Ibidem*, §3.

²¹ About the *new Lex Mercatoria* and the role of the international business community, see, for example, R. GOODE, H. KRONKE, E. MC KENDRICK, *Transnational Commercial Law – Text, Cases and Materials*, II Ed., Oxford, 2015, 34-47. The literature on international contracts is extensive. Among the main works are: F. GALGANO, F.



The dissociation between formants can lead, with the same legislative rule, to different results, just as opposing theoretical statements can instead give rise to convergent operational rules:

“Una legge uniforme, se non viene messo in funzione un meccanismo giurisdizionale che ne assicuri un’applicazione omogenea, sarà applicata in modi diversi nei vari paesi. È ciò che è avvenuto, ad es., con la legge cambiaria. Leggi formulate diversamente vengono invece interpretate in modi convergenti, o si dimostrano compatibili con formulazioni teoretiche, classificatorie, parallele”²².

In addition to formants, to better understand a given legal system, it is also necessary to consider the elements present within it and operating at an unconscious and/or subconscious level. These elements, which operate non-verbally and influence the mentality and actions of the municipal jurist, are what comparative science defines as “*cryptotypes*”²³.

Typically, a jurist belonging to a given system finds it more difficult to free himself from the set of *cryptotypes* present in his system than to abandon the rules of which he is fully aware. This subjection to *cryptotypes* constitutes the “mentality” of the jurist of a given country. The difference in “mentality” represents the main obstacle to understanding between jurists of different territorial origins; it can only be overcome through the exercise of comparison at the systemic and institutional levels.

These aspects are present in Dante's works, particularly in the Divine Comedy.

In the more unclear passages of his work, Dante addresses the reader directly. It is the poet himself who pushes the reader - an external subject, not a direct participant in the work, just as the comparativist is with respect to a different system - to delve deeper into the “secret things”, that is, into those unknown parts, which we are unaware of and by which we are drawn, conditioned. This investigation must be conducted without prejudice, with a primary cognitive purpose in mind. See in particular, *ex multis*, Canto III of *Inferno*, verses 19-21:

MARRELLA, *Diritto del commercio internazionale*, Padova, 2007; F. BORTOLOTTI, *Diritto dei contratti internazionali*, III ed., Padova, 2009; A. FRIGNANI, M. TORSSELLO, *Il contratto internazionale. Diritto comparato e prassi commerciale*, in F. GALGANO (ed. by), *Trattato di diritto commerciale e di diritto pubblico dell’economia*, volume XII, Padova, 2010; F. MARRELLA, *Manuale di diritto del commercio internazionale*, Padova, 2020.

²² R. SACCO, *Formante*, cit., §2. This is a particularly sensitive issue also with reference to the 1980 Vienna Convention on the International Sale of Goods (“CISG”), with respect to which the need to ensure its uniform interpretation and application (i.e. Art. 7 CISG), especially in the absence of a unitary jurisdictional apparatus, is particularly felt and has led to the development of forms of doctrinal control, also supported by the creation of specific databases, particularly attentive: among these, for example, the activity of the CISG Advisory Council, a private body that aims at promoting the uniform application of the Convention through the publication of “Opinions” on various aspects of interest to it. For further information: <https://www.cisgac.com/>

²³ R. SACCO, *Crittotipo*, in *Digesto discipline privatistiche – sezione civile*, Torino, 1989, p. 39: “Tutto il cammino della scienza procede rendendo noti dati (operanti ma) non conosciuti. Il crittotipo di oggi può essere la regola nota di domani. In particolare, anche il diritto consta, per una parte, di proposizioni note e verbalizzate, e per un'altra parte, di crittotipi”.



*“E poi che la sua mano a la mia puose
con lieto volto, ond'io mi confortai,
mi mise dentro a le segrete cose”.*

Similarly, the Canto IX of *Inferno*, verses 61-63:

*O voi ch'avete li 'ntelletti sani,
mirate la dottrina che s'asconde
sotto 'l velame de li versi strani.*

4. Dante and the Trento Theses

From a more general comparative perspective, Dante's work highlights the pillars of comparative law, as set forth and summarized in the so-called “Trento Theses”. As is well known, the five Trento Theses, originally developed by a group of Italian comparatists, represent the manifesto of comparatists, summarizing the constituent features of this science²⁴.

The first Thesis focuses on the object of legal comparison, specifying that the true, immediate, and direct purpose - the indispensable and essential element of any comparative activity - is knowledge. Comparison, therefore, leads to knowledge. Further goals, such as the harmonization or unification of law, are certainly worthy, but may also be lacking, presenting themselves as additional and possible objectives²⁵.

The second Thesis identifies the object of comparison and describes it in the facts, present or past, that actually occurred. In this sense, it is worth noting that comparative law and historical sciences share the same validation criteria²⁶.

The third, fourth, and fifth Theses focus on comparative methods. The third Thesis, in particular, excludes the definition of comparison as an analysis aimed at cultural exchange or juxtaposition of solutions, since the comparison must measure similarities and differences between the models under investigation²⁷. The fourth and fifth Theses²⁸ draw attention to the need to bring to light the dissociations between theoretical statements and operational rules, taking into account all the elements that contribute

²⁴ See in particular: R. SACCO, P.G. MONATERI, A. GAMBARO, *Comparazione giuridica*, in *Digesto discipline privatistiche – sezione civile*, Torino, 1988, pp. 52 ff; R. SACCO, *Introduzione*, cit., 16, pp. 48-51.

²⁵ First Thesis: “*Il compito della comparazione giuridica, senza il quale essa non sarebbe scienza, è l'acquisizione di una migliore conoscenza del diritto, così come in generale il compito di tutte le scienze comparatistiche è l'acquisizione di una migliore conoscenza dei dati appartenenti all'area a cui essa si applica. L'ulteriore ricerca e promozione del modello legale o interpretativo migliore sono risultati considerevolissimi della comparazione, ma quest'ultima rimane scienza anche se questi risultati fanno difetto*”.

²⁶ Second Thesis: “*La comparazione rivolge la sua attenzione ai vari fenomeni giuridici concretamente realizzati nel passato o nel presente, secondo un criterio per cui si considera reale ciò che è concretamente accaduto. In questo senso, la comparazione ha lo stesso criterio di validazione delle scienze storiche*”.

²⁷ Third Thesis: “*La comparazione non produce risultati utili finché non si misurano le differenze che intercorrono fra i sistemi giuridici considerati. Non si fa comparazione finché ci si limita agli scambi culturali o all'esposizione parallela delle soluzioni esplicitate nelle diverse aree*”.

²⁸ Fourth Thesis: “*La conoscenza dei sistemi giuridici in forma comparativa ha il merito specifico di controllare la coerenza dei vari elementi presenti in ogni sistema, dopo aver identificato e ricostruito questi stessi elementi. In specie, essa controlla se le regole operazionali presenti nel sistema siano compatibili con le proposizioni teoretiche elaborate per rendere conoscibili le regole operazionali*”.

Fifth Thesis: “*La conoscenza di un sistema giuridico non è monopolio del giurista appartenente al sistema dato; se da una parte è favorito dall'abbondanza delle informazioni, sarà però impacciato più di ogni altro dal presupposto che gli enunciati teoretici presenti nel sistema siano pienamente coerenti con le regole operazionali del sistema considerato*”.



to forming a given legal system and, in particular, also those factors that influence, often unconsciously and unknowingly, the birth, interpretation, and application of a legal rule, not necessarily verbalized²⁹. At this regard, Dante specifically recommends proceeding from the known to the unknown, according to the following stages: the subject, the form, the purpose, and the way of listening³⁰.

The subject is certainly a man. Man is at the center of all the Author's work, to whom he often addresses himself directly: the man of the past (that is, the historical figures he encounters from time to time, chosen for their symbolic and evocative value); the man of the present, contemporary with the Author and sharing in the events that determined his life and exile; and the man of the future, the posterity to whom Dante feels connected also by virtue of the task and investiture entrusted to him by his ancestor Cacciaguida³¹.

To describe the form, Dante employs paradoxical, contradictory language, which is, in some ways, alchemical, and refrains from offering judgments, instead providing examples³². He begins with a specific historical and environmental situation, or with a certain character, but he recreates them as a symbol to express an inner experience or convey an indication, just as emerges from the encounter with his ancestor:

*“Ma nondimen, rimossa ogne menzogna,
tutta tua vision fa manifesta;
e lascia pur grattar dov'è la rognà.
Ché se la voce tua sarà molesta
nel primo gusto, vital nodrimento
lascerà poi, quando sarà digesta.
Questo tuo grido farà come vento,
che le più alte cime più percuote;
e ciò non fa d'onor poco argomento.
Però ti son mostrate in queste rote,
nel monte e ne la valle dolorosa
pur l'anime che son di fama note,
che l'animo di quel ch'ode, non posa
né ferma fede per essempro ch'aia
la sua radice incognita e ascosa,
né per altro argomento che non paia”*³³.

What Dante saw and knew, for better or for worse, he must sing for the benefit of posterity: this is his task, the truest one, entrusted to him by his ancestor, Cacciaguida. At the same time, the Poet clearly reiterates that his characters serve as examples of paradigmatic situations, used to illustrate the points he is discussing, and are functional to greater knowledge and understanding.

Regarding purpose, Dante urges us not to limit ourselves to the literal and allegorical meanings, but to penetrate the third meaning, that of the moral order. We must bring our research to bear on ourselves

²⁹ A. WATSON, *From Legal Transplants to Legal Formants*, in *American Journal of Comparative Law*, 1995, vol. 43, 469, emphasizes how culture determines the parameters of a judge's decision-making reasoning; the legal systems that will influence the municipal jurist, and the extent of that influence. Furthermore, the Author highlights how the nature of cultural data varies from one society to another, reiterating that, ultimately, without an awareness of the importance of being rooted in a particular legal culture, one is unable to understand the parameters of legal discourse.

³⁰ DANTE, *Epistola*, cit., pp. 8-9, 16-18.

³¹ Cfr. *infra*, in the text.

³² “La forma, ovvero il modo di trattare, è poetico, fittivo, descrittivo, digressivo, transuntivo, e oltre a questo definitivo, divisivo, probativo, improbativo e positivo d'esempi”: DANTE, *Epistola*, cit., p. 9.

³³ DANTE, *Paradiso*, Canto XVII, pp. 127-142.

and on humanity in general, and seek to experience it in practical life, not for abstract philosophical speculation or personal gain, given that the purpose for which Dante wrote the Divine Comedy is a practical³⁴ and ethical one³⁵.

In relation to the “listening method”, the reader is called to use their own intellectual abilities, without being influenced by external elements, given that for knowledge, understanding is not enough, but also objectification is required:

*Apri la mente a quel ch'io ti paleso
e fermalvi entro; ché non fa scienza,
sanza lo ritenere, avere inteso*³⁶.

Within the evolutionary-educational function of encounters with historical figures, whether of greater or lesser fame, contemporary with the Author or living centuries earlier, two encounters in particular are relevant for the purposes of this paper: the first is that with Carlo Martello, the second that with Justinian. In the dialogue with Carlo Martello, Dante introduces one of the cornerstones of the Comedy: the importance of the individual in society, based on the inclinations conferred upon him by celestial determinations, thus taking up the argument already expressed by Marco Lombardo³⁷ on the influence that celestial bodies have in attributing the imprinting (*imprenta*) on each individual. Carlo Martello goes even deeper: beyond the perpetuation of the qualities of the ancestors³⁸, what is necessary for living in a society is that the various individuals have different qualities and that this pluralism is valued. Hence, the importance of the celestial *imprenta*³⁹, which, combined with the qualities inherited from the seed, structures the natural tendencies that man must recognize in himself and develop:

*Indi si fece l'un più presso a noi
e solo incominciò: “Tutti sem presti
al tuo piacer, perché di noi ti gioi.
Noi ci volgiam coi principi celesti
d'un giro e d'un girare e d'una sete,
ai quali tu del mondo già dicesti:
'Voi che 'ntendendo il terzo ciel movete';
e sem sì pien d'amor, che, per piaceri,*

³⁴ Perspective shared with legal economic analyses, *ex multis*: G. CALABRESI, *The Future of Law and Economics*, Yale, 2016; P. PARDOLESI, *Profili comparatistici di analisi economica del diritto privato*, Bari, 2015; R. PARDOLESI, *Analisi economica del diritto*, in *Digesto discipline privatistiche – sezione civile*, Torino, 1987, p. 309; G. ALPA, F. PULITINI, S. RODOTÀ, F. ROMANI, *Interpretazione giuridica e analisi economica*, with a preface by G. CALABRESI, Milano, 1982; R. A. POSNER, A. T. KRONMAN, *The Economics of Contract Law*, Boston-Toronto, 1979; P. TRIMARCHI, *Rischio e responsabilità oggettiva*, Milano, 1961.

³⁵ DANTE, *Epistola*, cit., 16: “La branca della filosofia, sotto la quale procedono l'opera e questa parte, è quella della morale, ossia l'etica; infatti l'opera tutta, e questa parte, non è finalizzata alla speculazione del pensiero, bensì a un risultato concreto. Infatti se in qualche brano o in qualche passaggio il linguaggio si fa simile a quello della filosofia speculativa, questo avviene non in virtù di un fine speculativo, ma per necessità intrinseche all'opera stessa. Infatti, come dice il Filosofo nel secondo libro della Metafisica, “su qualcosa e su momenti particolari talvolta i pensatori pragmatici speculano”.

³⁶ DANTE, *Paradiso*, Canto V, pp. 40-42.

³⁷ DANTE, *Purgatorio*, Canto XVI.

³⁸ According to Dante, the mere perpetuation of the qualities and characteristics of our ancestors, by itself, would be pernicious because it would lead to an immobility in conflict with the dynamic and evolutionary nature of society: *mutatis mutandis*, the concept brings to mind the views of Friedrich Carl Von Savigny regarding law as an expression of the *Volksgeist*. K. ZWIGERT, H. KÖTZ, *Introduzione*, cit., Vol. I, pp. 171-173.

³⁹ According to the Jungian reconstruction, it would be a question of “archetypical influences”: A. MAZZARELLA, *op. cit.*, p. 399.

non fia men dolce un poco di quiete”⁴⁰.

In a similar perspective, Rodolfo Sacco:

“I diritti e le lingue differiscono. Il dato è reale, non può non essere coerente con tutto il reale che lo circonda, e perciò ne deve esistere una spiegazione.

La spiegazione si trova nella natura delle cose. Tutto ciò che è reale è dominato dalla diversità.

Ciò vale per il reale materiale e vale per il reale culturale.

Il cavallo è diverso dall'asino, il grano è diverso dal tiglio. L'aria è diversa dall'acqua. Il carbonio è diverso dall'idrogeno.

La diversità è la proprietà del reale.

La diversità proviene dalla variazione, dal mutamento”⁴¹.

Equally relevant is the encounter with Justinian, also considering the essential importance of the Corpus Juris Civilis for the so-called “legal renaissance” of the civil law tradition in the 11th century, whose fulcrum was the universities, *in primis* Bologna⁴²:

Cesare fui e son Iustiniano,

che, per voler del primo amor ch'i' sento,

*d'entro le leggi trassi il troppo e 'l vano*⁴³.

Even more significant if one considers that, centuries later, Napoleon, during his days of confinement on St. Helena, uttered the following words:

“La mia vera gloria non è di avere vinto 40 battaglie. Waterloo cancellerà il ricordo di tante vittorie. Mentre ciò che non sarà mai cancellato, che vivrà eternamente, è il mio codice civile”⁴⁴.

In this, too, Dante proved himself, once again, *ante litteram*.

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⁴⁰ Encounter with Carlo Martello: DANTE, *Paradiso*, Canto VIII, 32-39.

⁴¹ R. SACCO, *Uniformità, diversità dei diritti*, in *Digesto discipline privatistiche – sezione civile*, Torino, 2009, 590.

⁴² “Non ha bisogno di legittimazione la regola consuetudinaria, che opera in ragione dei nudi fatti. Giustiniano presentò il Digesto come una regola consuetudinaria, non altrimenti legittimata. Nel medio evo il Digesto era un'opera di dottrina senza una base nei fatti, ed è ovvio, a questo punto, che la si sia assistita con una legittimazione, proveniente, è superfluo dirlo, dal soprannaturale. Dante Alighieri è ben al corrente del mandato conferito da Dio a Giustiniano perché legiferi”. R. SACCO, *Soprannaturale e diritto*, in *Digesto discipline privatistiche – sezione civile*, Aggiornamento, Torino, 2012, *ad vocem*, § 2.

⁴³ Encounter with Giustiniano: DANTE, *Paradiso*, Canto VI, pp. 10-12.

⁴⁴ See, for example, V. VARANO, V. BARSOTTI, *La tradizione giuridica occidentale*, Torino, 2021, p. 123.

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L'intelligibilité des textes de spécialité à l'exemple du rapport d'expertise français

Margarete Flöter-Durr¹

*„Les mots diversement rangés font un divers sens.
Et les sens diversement rangés font différents effets“.
Pascal, Pensées mêlées, fragment 645*

Abstract : Le rapport d'expertise constitue l'aboutissement de la mission d'expert. Il s'agit d'un texte spécialisé destiné à être exploité, c'est-à-dire contextualisé et interprété, par ses différents destinataires. Pour réaliser cette interprétation, les destinataires du rapport disposent de connaissances et d'un horizon culturel hétérogènes, d'une part, et d'autre part, d'un intérêt pratique à comprendre un rapport d'expertise. C'est à ce titre que se pose la question de son intelligibilité. Si l'intelligibilité d'un texte est largement tributaire de la maîtrise des formes linguistiques par l'expert, elle demeure une notion difficile à appréhender en raison, notamment, de ses liens avec les notions de compréhension et de pertinence. Dans la partie théorique du présent article, il s'agira d'appréhender la notion d'intelligibilité dans son articulation avec la compréhension et la pertinence. La seconde partie réserve une large place aux exemples pratiques extraits des textes de rapport d'expertise authentiques. Elle vise à illustrer l'importance de la qualité de l'expression linguistique au regard de la qualité de l'avis d'expert, d'une part, et d'autre part, à souligner la difficulté que représente la diversité de destinataires d'un rapport d'expertise.

Mots clés : texte spécialisé, compréhension, expertise, intelligibilité, pertinence, rapport d'expert.

Sommaire : 1. Introduction ; 2. Méthodologie et corpus ; 3. Rapport d'expertise : texte spécialisé et avis d'expert ; 4. Définition et nature de la notion d'intelligibilité ; 5. Difficultés posées par l'intelligibilité et exemples typiques ; 6. Conclusion.

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The intelligibility of specialised texts, using the example of French expert reports

Abstract: Court expert's report is the final product of a subject matter analysis of cases under court proceedings. It is a specialized text intended to be used under specific context and by a range recipients involved in the relevant court proceedings. In order to interpret such reports its recipients need to have extensive knowledge, not only in the domain of culture, field-specific circumstances or practical expertise. Such composition of the competences necessary to adequately process a court expert's report raises the question of its intelligibility that is considered to be conditioned by factors exceeding linguistic form alone. Specifically, the concept in question is to be discussed with reference to notions of comprehension and relevance.

The theoretical part of this paper seeks to set relevant theoretical background that legitimizes the thesis under verification. The second part focuses on practical examples taken from authentic court expert's reports. The discussion unveils the importance of the quality of linguistic expression when drawing up the court expert's reports, bearing in mind the diversity of the agents involved in court proceedings, their diverse educational background and varied involvement in the procedural issues.

Keywords: *specialized text, comprehension, expertise, intelligibility, relevance, court expert's report.*

Summary: 1. Introduction; 2. Methodology and corpus; 3. Court expert's report as specialized text and expert's opinion; 4. Definition and nature of intelligibility; 5. Difficulties of intelligibility and typical examples; 6. Conclusion.

1. Introduction : hypercomplexité et omniprésence de l'exigence de l'intelligibilité

L'époque actuelle se caractérise par une hypercomplexité qui se manifeste non seulement dans les progrès scientifiques, la place centrale des dispositifs techniques dans la société, mais dans l'imbrication des crises de nature diverse. Il en résulte une dynamique difficile à comprendre, à prévoir et à contrôler². Cette difficulté de comprendre rappelle avec acuité l'exigence d'intelligibilité dans tous les domaines d'activité humaine. Si la demande d'intelligibilité semble plus vive à l'heure actuelle, elle n'est pas nouvelle. Ce qui est nouveau c'est le recours aux médias et outils numériques pour parvenir à une compréhension des phénomènes en temps réel, quasi immédiate.

De manière générale, on observera que l'exigence de l'intelligibilité est omniprésente dans tous les domaines de la communication spécialisée, qu'il s'agisse du droit, de la médecine ou du domaine de la technique au sens large. Pour le technicien, l'intelligibilité joue un rôle crucial pour communiquer son avis technique en des termes compréhensibles par des destinataires nombreux et divers par leur horizon culturel et leur niveau de connaissances. Il en va de même du législateur et du magistrat auxquels l'obligation est faite de rendre la législation et les décisions de justice accessibles à tout un chacun. Cette exigence d'intelligibilité a été confirmée par la décision du Conseil constitutionnel n°2003-473 DC du 26 juin 2003 « d'accessibilité et d'intelligibilité de la loi » qui vise à réduire une complexité inutile des règles de droit, dans la mesure où elle fait obstacle à l'effectivité de « la garantie des droits » énoncée par l'article 16 de la Déclaration des droits de l'Homme³. Il est intéressant de relever que l'intelligibilité est qualifiée par le Conseil constitutionnel d'objectif, c'est-à-dire d'un idéal à atteindre. A contrario, cela implique que l'intelligibilité n'est pas une propriété intrinsèque des textes, mais qu'elle se construit.

Le présent article aborde la problématique de l'intelligibilité sous l'angle des textes spécialisés et l'illustre à l'exemple du rapport d'expertise judiciaire français. Un rapport d'expertise judiciaire peut, en effet, être appréhendé comme un texte spécialisé destiné à être exploité, c'est-à-dire contextualisé et interprété, par ses différents destinataires. Pour réaliser cette interprétation, les destinataires du rapport disposent de connaissances et d'un horizon culturel hétérogènes, d'une part, et d'autre part, d'un intérêt pratique à comprendre un rapport d'expertise. La question de l'intelligibilité des textes spécialisés se pose systématiquement, dans la mesure où elle est tributaire de nombreux paramètres épistémiques et linguistiques, car pour parler de manière sensée, l'on ne saurait utiliser les mots comme bon nous semble⁴. Toute contravention aux règles de l'usage correct et adéquat du langage tant à l'oral qu'à l'écrit et toute violation des conventions régissant cet usage remettent en cause l'intelligibilité d'un texte. Il est donc patent que l'intelligibilité est tributaire de la maîtrise de ces conventions et des règles d'usage des formes linguistiques. Toutefois, si cette maîtrise est une condition nécessaire, elle n'est pas suffisante. En effet, la notion d'intelligibilité demeure difficile à appréhender en raison de sa nature et de son architecture complexe, et notamment, de l'intrication de la dimension épistémique et linguistique d'une part, et d'autre part, de ses liens avec l'action intentionnelle, la compréhension et la pertinence. La problématique de l'intelligibilité d'un texte spécialisé tel que le rapport d'expertise judiciaire est d'autant plus complexe qu'elle doit être appréhendée non seulement du point de vue de l'expert rédacteur (perspective auctoriale), mais aussi du point de vue des destinataires du rapport (perspective lectoriale). En d'autres termes, l'intelligibilité d'un rapport d'expertise dépend non seulement de la compétence de l'expert en termes de maîtrise de genres textuels, des fonctions de l'écrit et de formes linguistiques (littératie), mais elle dépend aussi de la compétence épistémique et linguistique des destinataires du rapport et de l'intérêt qu'ils ont à le comprendre ou, le cas échéant, à le mécomprendre. Le caractère pluriadressé du rapport d'expertise judiciaire emporte des conséquences majeures sur son intelligibilité et constitue même un véritable défi à cet égard. Notre approche de la question de l'intelligibilité reste centrée sur sa dimension épistémique et linguistique qui s'articulent et se conditionnent réciproquement selon le principe de reliance pascalien de manière à créer ce texte complexe qu'est un rapport d'expertise où l'intelligence de comprendre de l'expert se relie à l'intelligence de faire un écrit compréhensible pour ses destinataires. Notre postulat consiste à dire que

² M. GABRIEL, *Sätze über Sätze: ABC des wachen Denkens*, Zürich, Berlin, 2023, pp. 9–10.

³ Cette décision est accessible à l'adresse suivante : <https://www.conseil-constitutionnel.fr/decision/2003/2003473DC.htm>. Accès le 24/12/2023.

⁴ V. AUCOUTURIER, *L'intention en action*, Paris, 2018, p. 47.



la maîtrise de l'écrit, de ses formes et de ses fonctions participe de la compétence technique de l'expert, et par voie de conséquence, de la qualité de son rapport destiné à être exploité par les différents destinataires à toutes les étapes de la procédure civile ou pénale.

Le présent article comporte une partie théorique et une partie plus pratique. La partie théorique a pour objectif de caractériser le rapport d'expertise judiciaire en tant que texte spécialisé d'une part, et d'autre part de préciser la nature de la notion d'intelligibilité, son architecture complexe et les difficultés de l'appréhender. Dans une approche pragmatique⁵, la seconde partie est consacrée à l'analyse des exemples extraits de notre corpus de rapport d'expertise authentiques pour illustrer ces difficultés.

2. Méthodologie et corpus

Méthodologiquement, notre analyse se développe dans une démarche interdisciplinaire. Elle permet de mobiliser les instruments théoriques de la linguistique de textes⁶, de l'analyse du discours⁷ et de l'analyse stylistique⁸ à ceux de la sociologie compréhensive, notamment la théorie de la pertinence⁹ et ceux de la philosophie, et plus particulièrement le travail séminal d'Elisabeth Anscombe sur la notion d'intelligibilité¹⁰, complété par les développements plus récents¹¹. Ces instruments permettent de mieux rendre compte de la complexité de la notion d'intelligibilité due notamment aux liens qu'elle entretient avec les notions de compréhension et de pertinence. Cette approche interdisciplinaire présente un intérêt particulier pour notre analyse, car elle permet d'appréhender les structures textuelles, les formes linguistiques et les modes d'expression en situation et en contexte tout en faisant abstraction du contenu. Notre corpus d'étude se compose de treize rapports d'expertise authentiques dans les domaines de la construction, de la thermique, de la médecine légale, de la balistique et de la balistique lésionnelle. La difficulté pratique de se procurer des rapports d'expertise authentiques¹² explique le volume restreint de ce corpus. Il s'agit donc d'un corpus à caractère exploratoire dont l'intérêt consiste à fournir des exemples d'une certaine typicité permettant de mettre en évidence la notion d'intelligibilité.

En ce qui concerne les textes composant ce corpus, il s'agit de rapports d'expertise produits dans le cadre d'une procédure judiciaire, soit civile soit pénale. Les expertises en matière civile ont été ordonnées en référé, c'est-à-dire dans le cadre d'une procédure d'urgence. S'agissant des expertises en matière pénale, elles ont été ordonnées par le magistrat instructeur sur commission rogatoire. Les rapports d'expertises ainsi que l'ensemble d'éléments de fait dont ils font état sont couverts par le secret expertal. En effet, tout expert qui concourt à l'exercice de la justice est astreint au respect de l'obligation de confidentialité des informations dont il a connaissance dans le cadre de sa mission. En matière civile, cette obligation résulte des dispositions des articles 244 et 247 du Code de procédure civile et en matière

⁵ L'approche pragmatique se justifie d'autant plus que l'expertise se définit comme une pratique discursive J. SPITZMÜLLER, *His Master's Voice*, dans T. HOFFMEISTER, M. HUNDT et S. SCHRÖDER (éd.), *Laien, Wissen, Sprache: Theoretische, methodische und domänenspezifische Perspektiven*, Berlin, 2021, p. 11, déterminée historiquement et culturellement. En outre, cette pratique se caractérise par sa performativité, dans la mesure où il s'agit de « quelque chose que l'on fait et non de quelque chose que l'on détient » E. S. CARR, *Enactments of Expertise*, dans *Annual Review of Anthropology*, 39, 2010, p. 18.

⁶ J.-M. ADAM, *Micro-level, meso-level and macro-level of textual structuring and complexity*, dans D. ABLALI et G. ACHARD-BAYLE (éd.), *French theories on text and discourse*, Boston, 2023.

⁷ A. KRIEG-PLANQUE, *Analyser les discours institutionnels*, Malakoff, 2017.

⁸ C. FROMILHAGUE, A. SANCIER-CHATEAU, *Introduction à l'analyse stylistique*, Malakoff, 2023.

⁹ A. SCHÜTZ, *Relevanz und Handeln 1: Zur Phänomenologie des Alltagswissens*, Konstanz, 2004. J. STRASSHEIM, *Relevance as the Moving Ground of Semiosis*, dans *Philosophies*, 7, 2022.

¹⁰ G. E. M. ANSCOMBE, *L'intention*, Paris, 2002.

¹¹ R. WISEMAN, *Routledge philosophy guidebook to Anscombe's Intention*, New York, 2016. V. AUCOUTURIER, *L'intention en action*, Paris, 2018.

¹² Les experts de justice auxquels nous avons demandé de nous communiquer de manière anonyme un ou plusieurs rapports d'expertise de leur plume ont été très réticents. Pour motiver leur réticence, différents types de motifs, tels que la confidentialité ou la difficulté technique des textes, ont été invoqués. Il nous semble toutefois que le principal obstacle réside dans le fait que la rédaction, c'est-à-dire la manière de formuler, de choisir les termes, d'adopter un style, participe de la construction de l'*ethos* de l'expert et, à ce titre, relève d'un aspect très personnel que l'on ne souhaite pas nécessairement soumettre à une appréciation extérieure.

pénale, le secret est prévu et réprimé par l'article 226-13 du Code pénal. Pour notre propos, il importe de souligner que l'obligation de secret expertal fait obstacle à une contextualisation plus développée des exemples analysés dans le présent article.

3. *Rapport d'expertise judiciaire : texte spécialisé et avis d'expert*

3.1 *Cadre procédural de l'expertise judiciaire*

De manière générale, on observera qu'en raison de l'hypercomplexité de l'époque moderne due aux progrès scientifiques et au rôle majeur des dispositifs techniques dans la société, les magistrats se trouvent fréquemment dans l'obligation de recourir aux avis de techniciens spécialisés dans les différentes disciplines des sciences et de la technique. L'expertise judiciaire est un moyen de preuve faisant partie des mesures d'instruction que le juge est libre d'ordonner. En pratique, l'expertise judiciaire constitue le moyen de preuve le plus usité tant en matière civile, pénale qu'administrative. Quel que soit le type de procédure dans laquelle s'inscrit une expertise, elle est régie par des règles de procédure qui relèvent de deux ordres distincts : les règles supranationales et les règles nationales. Sur le plan supranational, l'expertise obéit aux principes du procès équitable édictés par l'article 6 de la Convention européenne des droits de l'homme (CEDH), et notamment le principe du débat contradictoire et d'égalité des armes. Sur le plan national, elle obéit aux règles spécifiques de procédure qui la régissent.

Ainsi, en matière civile, l'expertise en tant que mesure d'instruction est prévue au titre septième du livre premier du Code de procédure civile. Plus spécifiquement, elle est régie par l'article 232 du Code de procédure civile qui dispose :

« Le juge peut commettre toute personne de son choix pour l'éclairer par des constatations, par une consultation ou par une expertise sur une question de fait qui requiert les lumières du technicien ».

Ainsi le champ de l'expertise est délimité par la mission confiée à l'expert par le magistrat. La visée de l'expertise consiste à éclairer le juge de manière à lui permettre de comprendre la situation et pouvoir ainsi trancher la question de droit qu'elle pose. Toutefois, le juge n'est pas lié par les conclusions de l'expert. S'agissant de la désignation de l'expert, elle fait l'objet d'une décision ordonnant l'expertise (art. 265 du Code de procédure civile). En règle générale, l'expert est choisi sur une liste de cour d'appel ou sur la liste nationale de la Cour de cassation (Article 2 de la loi n°71-498 du 29 juin 1971, modifiée par les lois n° 2010-1609 du 22 décembre 2010, n° 2012-403 du 27 mars 2012 et n° 2016-1547 du 18 novembre 2016).

En matière pénale, l'expertise est ordonnée par une juridiction au stade de l'instruction ou du jugement, lorsqu'une question se pose dans un dossier correctionnel ou criminel. L'expertise pénale est soumise au secret de l'instruction. Comme le prévoit l'article 158 du Code de procédure pénale, l'expertise pénale relève du domaine du fait et sa visée consiste à examiner les questions d'ordre technique. L'expertise en matière pénale se distingue radicalement de l'expertise en matière civile. En effet, les règles d'exécution des expertises pénales sont définies par le code de procédure pénale (section 9, articles 156 à 169-1). La différence la plus importante réside dans le fait qu'en matière pénale, le principe de contradiction est inopérant.

En matière administrative, l'expertise est régie par les dispositions du code de justice administrative, qui diffèrent sur plusieurs points des dispositions applicables aux expertises ordonnées par les tribunaux judiciaires. Néanmoins, les principes directeurs du procès équitable, les règles de procédure en matière de désignation, de mission et de rapport d'expertise sont sensiblement similaires.

Le rapport d'expertise constitue l'avis d'expert, régi en matière civile par les articles 282 à 284-1 du Code de procédure civile et, en matière pénale, par l'article 166, al.3 du Code de procédure pénale. Ce rapport se distingue par une double nature : c'est un texte spécialisé doté de toutes les caractéristiques idoines de ce type de textes d'une part, et d'autre part, c'est un texte spécialisé qui constitue un avis technique émis par un expert de justice.

3.2 Rapport d'expertise en tant que texte spécialisé

Le rapport d'expertise judiciaire est d'abord un texte, c'est-à-dire une suite d'énoncés formant une unité de sens et de communication. Tout texte ainsi défini se caractérise par¹³ :

- a) Une complexité qui s'articule à un triple niveau : micro-, méso- et macrotextuel. Si le microniveau correspond à la proposition et groupe de propositions, le méso niveau correspond aux paragraphes et séquences et le macroniveau correspond aux périodes, groupes de paragraphes, aux parties et plans de textes. Dans notre analyse, nous nous intéresserons plus spécialement au microniveau d'analyse.
- b) L'appartenance à un genre textuel défini comme une forme de mises en texte typiques. Adam distingue les genres narratifs, argumentatifs, explicatifs, descriptifs, etc.¹⁴.

Si le rapport d'expertise présente les principales caractéristiques d'un texte, il s'en distingue par sa singularité sur le plan de la modalité de l'énonciation ainsi que sur le plan textuel, syntaxique et sémantique qui produit des effets spécifiques sur le texte.

S'agissant de la modalité de l'énonciation, la principale caractéristique du rapport d'expertise réside dans la modalité assertive¹⁵, dans la mesure où la mission d'expert consiste à constater et à décrire un état de fait. Dans la dimension linguistique, le rapport d'expertise réalise simultanément la modalité aléthique et la modalité épistémique de l'énoncé¹⁶. En effet, asserter consiste à assigner valeur de vérité sur un double plan. Sur le plan de l'énoncé, la modalité aléthique correspond à la vérité logique, c'est-à-dire à ce qui est logiquement possible, impossible ou nécessaire d'énoncer. Sur le plan épistémique, il s'agit d'assigner valeur de vérité à un constat de fait. Dans le rapport d'expertise, la modalité aléthique se réalise par rapport à un objet situé dans le texte (endophore ou référence textuelle) d'une part, et d'autre part par rapport à un objet localisé dans l'espace non discursif (exophore ou référence situationnelle)¹⁷.

Sur le plan textuel, la spécificité du rapport d'expertise réside en premier lieu dans son appartenance quasi exclusive au genre descriptif et explicatif. En effet, l'expert ayant vocation à constater des faits et à les expliquer, son rapport prend la forme d'une description des faits et d'une explication des causes à l'origine des faits constatés. Mais le rapport d'expertise présente aussi une spécificité structurelle en ce sens qu'il est contraint par la mission et les questions posées par le magistrat d'une part, et d'autre part, par la diversité des domaines de spécialité dont il relève et des thématiques qu'il aborde. Les effets du genre textuel auquel appartient le rapport d'expertise s'observent dans les régularités de l'organisation du texte (type de plan, découpage en paragraphes, organisation en séquence etc.). Sur le plan syntaxique, ils s'observent dans les régularités des structures syntaxiques utilisées (conjonctions de coordination, types de propositions utilisées, utilisation des participes etc.). Enfin, la singularité du rapport d'expertise qui en fait un genre textuel *sui generis* réside dans l'usage d'une terminologie hautement spécialisée. Il va sans dire que la terminologie spécialisée est extrêmement hétérogène, puisqu'elle dépend du domaine technique abordé dans le rapport d'expertise. Toutefois, quel que soit le domaine, un rapport d'expertise

¹³ J.-M. ADAM, *Micro-level, meso-level and macro-level of textual structuring and complexity*, cit., p. 21.

¹⁴ J.-M. ADAM, *Discursivité, généricité et textualité : Distinguer pour penser la complexité des faits de discours*, dans *Recherches*, 1, 2012, p. 16.

¹⁵ C. FROMILHAGUE et A. SANCER-CHATEAU, *Introduction à l'analyse stylistique*, cit., p. 79.

¹⁶ Ibid., cit., p. 80.

¹⁷ M. SOBIESZEWSKA, *Clarté et précision du discours juridique : procédés référentiels dans les arrêts de la Cour de Cassation*, Lublin, 2019, p. 17.

ne peut se concevoir sans terminologie spécialisée qui est le produit d'un milieu professionnel¹⁸. Le mot étant une unité la plus immédiatement perceptible, il est l'outil qui permet de saisir le sens d'un discours¹⁹. L'utilisation de la terminologie spécialisée est liée à un triple enjeu qui consiste à nommer les choses, à les catégoriser et à les cadrer, c'est-à-dire à les contextualiser dans un cadre de références précis. Ce point sera abordé plus en détail dans la partie consacrée à l'analyse des exemples pratiques.

Au vu de ce qui précède, on aura compris qu'un texte, et *a fortiori* un texte aussi spécialisé qu'un rapport d'expertise judiciaire, est toujours une unité de sens dotée d'une architecture complexe et dynamique. Son intelligibilité se déploie sur des plans de nature différente, à savoir :

- a) Dans la triple dimension du texte, à la fois sémantique, syntaxique et stylistique,
- b) Au niveau micro- méso- et macrotextuel,
- c) Dans la perspective auctoriale et lectorale, c'est-à-dire dans l'approche du texte adoptée par son auteur dans la rédaction du texte et dans celle, distincte, adoptée par le lecteur dans la réception du texte. Ce point, qui sera traité plus loin, renvoie au caractère pluriadressé du rapport d'expertise judiciaire qui constitue une difficulté majeure en ce qui concerne son intelligibilité.

3.3 Rapport d'expertise en tant qu'avis d'expert

En droit, la doctrine conçoit l'expertise comme « une intervention d'ordre strictement technique »²⁰ permettant de s'informer sur des questions techniques posées dans le cadre d'un litige qu'il est appelé à trancher. Ainsi,

*« De même que l'on se sert d'instruments d'optique pour suppléer à l'imperfection de l'organe de la vue, le magistrat supplée aussi à l'insuffisance de ses perceptions à l'aide d'instruments, d'auxiliaires scientifiques (...) »*²¹.

Cette conception de l'expertise se trouve consacrée par le Code de procédure civile qui définit l'expert judiciaire en son article 232 comme « un technicien susceptible d'éclairer le juge par des constatations, par une consultation ou par une expertise sur une question ».

Sur le plan de la procédure, le rapport d'expertise déposé par l'expert-technicien met un terme à la mission d'expert et constitue la manifestation langagière de l'activité expertale.

S'agissant du fond, le rapport d'expertise judiciaire est un texte spécifique en ce qu'il constitue un avis d'expert. La spécificité du rapport d'expertise en tant qu'avis d'expert résulte de plusieurs éléments différents qui ont trait à la nature du rapport d'expertise et aux conditions de sa production. La nature du rapport d'expertise est spécifique en ce qu'il n'est pas l'expression d'une simple opinion, mais un texte « produit sur la base d'éléments concrets permettant de le motiver »²². En outre, ce texte acquiert valeur juridique par sa forme écrite et la signature de l'expert qui engagent la compétence de l'expert. S'agissant des conditions de production, le rapport matérialise un avis d'expert qui est produit dans les conditions d'un tribunal par une personne dont le statut d'expert est certifié²³. L'articulation entre la dimension linguistique et épistémique dans un rapport d'expertise en tant que texte spécialisé et en tant qu'avis d'expert détermine son intelligibilité. Il importe donc de définir la notion d'intelligibilité et de caractériser sa nature.

¹⁸ Ibid., p. 21.

¹⁹ A. KRIEG-PLANQUE, *Analyser les discours institutionnels*, cit., p. 88.

²⁰ F. CHAUVAUD, L. DUMOULIN, *Experts et expertise judiciaire*, Rennes, 2003, p. 27.

²¹ A. DEHESDIN, *De l'expertise en matière criminelle*, Paris, 1901, p. 3.

²² N. HEINICH, *Des valeurs : Une approche sociologique*, Paris, 2017, p. 52.

²³ Ibid., p. 53.

4. Définition et nature de la notion d'intelligibilité

La notion d'intelligibilité est complexe, car elle articule la dimension linguistique et la dimension épistémique d'un texte. Cette articulation se déploie tant dans la dimension sémantique, syntaxique et lexicale qu'au niveau micro-, méso- et macrotextuel d'une part, et d'autre part, dans la dimension épistémique qui a trait à l'explication et à la nature des raisons invoquées à titre d'explication.

Ainsi, deux formes d'intelligibilité peuvent être distinguées et déterminées *ex negativo*²⁴. En premier lieu, une proposition est inintelligible lorsqu'une combinaison de mots est exclue du langage²⁵. En second lieu une chose ou une proposition est inintelligible lorsque les raisons invoquées à titre d'explication ne peuvent être comprises, car elles ne correspondent pas à ce qui est attendu dans une situation donnée. À partir de cette définition, il est possible de considérer *a contrario* qu'une proposition est intelligible à la double condition d'être linguistiquement correcte et de fournir à titre d'explication des raisons qui ont un sens dans une situation concrète²⁶. Ces deux formes d'intelligibilité renvoient à la nature à la fois linguistique et épistémique de l'intelligibilité. Cette double dimension de l'intelligibilité permet de l'appréhender sous un aspect quantitatif et qualitatif.

4.1 Aspect quantitatif de l'intelligibilité : la lisibilité

L'aspect quantitatif renvoie à la dimension linguistique de l'intelligibilité et, donc, à sa première forme définie en termes de conformité au système linguistique. Cet aspect de l'intelligibilité est appréhendé en règle générale à travers la notion de lisibilité dont l'importance a été soulignée notamment dans le cadre du développement du langage clair (*plain language*), censé améliorer l'accessibilité des textes complexes. La lisibilité étant considérée dans ce contexte comme un critère quantitatif, elle est mesurable avec des outils informatiques sur la base de divers indices de lisibilité comme, p. ex. le concept d'intelligibilité connu sous le nom de *Hamburger Verständlichkeitskonzept*²⁷ ou l'indice d'intelligibilité tel que le *Hohenheimer Verständlichkeitsindex*²⁸. Dans le premier concept, l'intelligibilité s'apprécie sur la base de quatre critères : simplicité, organisation claire et logique du texte, la brièveté pour éviter le verbiage et la redondance, style vivant suscitant la curiosité. Dans le second concept, l'intelligibilité d'un texte s'apprécie sur la base des critères tels que l'utilisation du lexique courant, des propositions courtes et structurellement simples (sujet + verbe + complément), d'une syntaxe privilégiant les conjonctions de coordination au détriment des conjonctions de subordination. Toutefois, cette approche de l'intelligibilité est réductrice, dans la mesure où elle efface la diversité des registres utilisés dans le discours par les différents partenaires de communication et les relations qui s'articulent dans un texte à travers la syntaxe. Pour s'en convaincre, il suffit de lire les textes rédigés en langage dit clair, publiés p. ex. par les différentes institutions sur leurs sites Internet.

Parfois, la lisibilité est rapprochée de la clarté. Ce rapprochement est possible, car la lisibilité et la clarté se fondent sur la norme aristotélicienne de l'univocité de la signification²⁹, et donc, d'un sens déterminé, inhérent aux mots³⁰. Toutefois, l'approche de la clarté en termes de lisibilité semble réductrice. En effet, si la clarté se définit comme « ce qui est clair, facile à comprendre », elle possède également un lien avec la compréhension et une dimension épistémique, car elle renvoie à « la connaissance qui permet de parvenir à un jugement certain »³¹. Dans la dimension épistémique s'articulent donc la clarté et l'intelligibilité de sorte qu'il n'y a pas de clarté sans intelligibilité. La clarté entendue simplement comme lisibilité ne suffit pas à rendre un texte compréhensible à un large public. C'est donc à juste titre que le Conseil constitutionnel français dans sa décision du 26 juin 2003 relative à l'accessibilité et

²⁴ G. E. M. ANSCOMBE, *L'intention*, Paris, 2002, p. 68.

²⁵ L. WITTGENSTEIN, *Recherches philosophiques*, Paris, 2014, p. 199.

²⁶ V. AUCOUTURIER, *Elizabeth Anscombe : L'esprit en pratique*, Paris, 2012, pp. 144–145.

²⁷ I. LANGER, F. SCHULZ VON THUN, R. TAUSCH, *Sich verständlich ausdrücken*, München, 2019.

²⁸ Concernant cet indice, voir https://komm.uni-hohenheim.de/politmonitor_methode.

²⁹ B. CASSIN, *L'effet sophistique*, Paris, 1995, p. 344.

³⁰ ARISTOTE, « (...) le nom a une signification et une seule. », *Œuvres complètes*, Paris, 2022, p. 1787.

³¹ R. DESCARTES, *Œuvres*, Paris, 2024, p. 275.

l'intelligibilité de la loi a considéré que l'exigence de la clarté ne s'apprécie pas à l'aune de la lisibilité, mais à celle de l'intelligibilité et que celle-ci consiste à proposer des explications susceptibles d'être comprises. En revanche, ce que la juridiction constitutionnelle retient de la clarté c'est son caractère d'idéal. Telle la pureté cristalline de la logique³², la clarté reste impossible à atteindre, mais elle trace un horizon et pose les jalons d'une expression linguistique permettant de s'en rapprocher.

4.2 Aspect qualitatif : la compréhension et la pertinence

L'aspect qualitatif de l'intelligibilité renvoie à sa dimension épistémique appréhendable en termes d'explication et de raisonnement. Elle articule le lien intrinsèque entre intelligibilité et compréhension, puisqu'une chose est intelligible lorsqu'on peut la comprendre. C'est ce qui nous amène à nous intéresser à la notion de compréhension et à ses implications. Sans en faire une analyse exhaustive, il s'agit de souligner quelques traits caractéristiques de la compréhension qui expliquent son importance au regard de l'intelligibilité. Le rôle majeur de la compréhension s'explique par le fait que la visée de tout acte de communication consiste à comprendre son interlocuteur et à se faire soi-même comprendre. Or la compréhension ne résulte pas du traitement d'informations, mais de la construction du sens d'un texte au moyen de l'interprétation³³. L'interprétation, définie comme « l'art de comprendre et d'interpréter »,³⁴ est l'opération fondamentale de la constitution du sens, car celui-ci n'est ni prédonné ni inhérent aux mots, ni antérieur à l'interprétation. Sur ce postulat herméneutique repose aussi la théorie de la pertinence de Schütz³⁵. Malgré le rôle crucial dévolu à la notion de pertinence, il n'en existe pas de définition simple et Schütz l'a définie de plusieurs manières. L'intérêt particulier de l'approche schütziennne au regard de l'intelligibilité réside dans la relation triadique établie entre la compréhension, la pertinence et le sens. Pour Schütz, la compréhension se définit comme l'opération permettant d'établir la relation de pertinence³⁶. La pertinence, quant à elle, s'entend comme « le fait d'avoir du sens »³⁷ et, plus spécifiquement, comme le corrélat du sens, car « seul ce qui est pertinent constitue un contexte de sens »³⁸. Le mécanisme de la pertinence réside dans la sélection permettant de déterminer les éléments signifiants ou importants dans un contexte donné³⁹ et d'identifier les schèmes d'interprétation idoines par rapport à un cadre de référence donné. En ce sens, la pertinence désigne la fonction sélective de l'attention qui détermine l'objet où le thème important par rapport à un objectif pratique⁴⁰. Cette fonction de sélection opère en amont et préside à toute interprétation⁴¹. Enfin, la pertinence désigne également le principe d'organisation qui précise la manière dont des thèmes spécifiques sont reliés à leurs contextes d'interprétation spécifiques⁴². La pertinence possède également une dimension épistémique et une dimension pragmatique. Analytiquement, on distingue donc plusieurs types de pertinence, à savoir la pertinence thématique, interprétative et motivationnelle. Si les pertinences thématique et interprétative s'inscrivent dans la dimension épistémique, la pertinence motivationnelle relève de la dimension pragmatique. En effet, la pertinence thématique renvoie à un thème, c'est-à-dire à un domaine de connaissances donné qui constitue le cadre de référence de l'interprétation alors que la pertinence interprétative renvoie aux schèmes d'interprétation idoines dans ce cadre de référence. En revanche, la pertinence motivationnelle renvoie à l'intérêt pratique de choisir telle ou telle interprétation par rapport

³² L. WITTGENSTEIN, *Recherches philosophiques*, cit., p. 80.

³³ M. DURR, *La notion de pertinence en traduction juridique bidirectionnelle français allemand*, Strasbourg, 2017, p. 144.

³⁴ C. BERNER, *Au détour du sens : Perspectives d'une philosophie herméneutique*, Paris, 2007, p. 35.

³⁵ A. SCHÜTZ, *Der sinnhafte Aufbau der sozialen Welt: Eine Einleitung in die verstehende Soziologie*, Konstanz, 2004; A. SCHÜTZ, *Theorie der Lebenswelt: Die pragmatische Schichtung der Lebenswelt*, Konstanz, 2003, p. 184.

³⁶ A. SCHÜTZ, *Relevanz und Handeln 1: Zur Phänomenologie des Alltagswissen*, Konstanz, 2004, p. 47.

³⁷ Ibid., p. 51.

³⁸ Ibid., p. 49.

³⁹ Ibid., p. 51.

⁴⁰ B. PULA, *Alfred Schutz, phenomenology, and the renewal of interpretive social science*, New York, 2024, 1 vol., p. 53.

⁴¹ A. SCHÜTZ, *Relevanz und Handeln 2. Gesellschaftliches Wissen und politisches Handeln*, Konstanz, 2011, p. 11.

⁴² B. PULA, *Alfred Schutz, phenomenology, and the renewal of interpretive social science*, cit., p. 53.

au cadre de référence donné et au conflit d'interprétation. La distinction analytique entre les différents types de pertinence ne doit cependant pas occulter le fait qu'ils opèrent dans une intrication étroite et non de manière isolée. La complexité de la notion de compréhension, et donc aussi de celle d'intelligibilité procède notamment de cette intrication des différents types de pertinence. Au vu de ces développements, il apparaît que la pertinence constitue la clé de voûte de la relation entre la compréhension et l'intelligibilité consistant à fournir des explications compréhensibles.

En outre, l'intelligibilité partage deux caractéristiques majeures avec la pertinence : la nature relationnelle et le mode de révélation. La nature relationnelle de l'intelligibilité résulte de ses liens étroits avec la compréhension et la constitution du sens dans l'interprétation. La question de l'intelligibilité se pose systématiquement *in concreto* par rapport à un texte précis, ayant pour objet un problème donné, ce texte étant destiné à être interprété par des personnes en chair et en os qui sont appelées à appliquer des schèmes d'interprétation idoines par rapport à un domaine concret, à un intérêt pratique donné et à une situation concrète. S'agissant de mode de révélation, tant l'intelligibilité que la pertinence se révèlent *in absentia* et *a posteriori*⁴³. En effet, un texte frappe par l'absence d'intelligibilité et de pertinence et non l'inverse. L'absence d'intelligibilité interroge toujours par rapport au cadre de référence pris pour évident dans lequel se déploie l'interprétation d'un texte. Le caractère inintelligible ou non pertinent d'un texte est toujours le signe d'un échec de la communication. Le sens d'un texte étant le résultat de son interprétation, sa pertinence et son intelligibilité ne sont pas antérieures à l'interprétation. C'est pourquoi elles ne peuvent se révéler qu'*a posteriori* lorsque les destinataires d'un texte ont établi son sens et peuvent l'apprécier dans une vision globale.

4.3 Architecture complexe de l'intelligibilité et les difficultés de l'appréhender

Au vu des développements ci-dessus, il apparaît que l'intelligibilité possède une architecture complexe qui se dépie à des niveaux multiples dans des imbrications et des articulations de nature diverse, à savoir :

- a) Imbrication de la dimension linguistique et épistémique,
- b) Intrication complexe avec la compréhension et la pertinence,
- c) Articulation dans la triple dimension du texte : sémantique, syntaxique et stylistique,
- d) Articulation sur le plan de l'organisation du texte au niveau micro-, méso- et macrotextuel,
- e) Imbrication de la perspective auctoriale et lectoriale qui matérialisent les points de vue adoptés par l'auteur et le destinataire sur l'objet « texte spécialisé ».

Une « boucle d'intelligibilité » se déploie dans l'intrication de la dimension linguistique et épistémique sur le plan de la pertinence thématique, interprétative et motivationnelle conjuguée à la double perspective auctoriale et lectoriale. Ce dernier élément est important, car la différenciation des perspectives sur un même objet implique la différenciation du sens et comporte toujours la possibilité de clivage en termes d'interprétation, et donc, la possibilité de dissension. En d'autres termes, la compréhension d'un rapport d'expertise par ses différents destinataires peut diverger non seulement en fonction de l'interprétation du rapport et de ses enjeux, mais aussi en fonction de leurs intérêts respectifs dans le cadre d'un procès.

L'architecture complexe de l'intelligibilité décrite ci-dessus est la source des principales difficultés de l'appréhender. Elles ont trait à la terminologie spécialisée, la syntaxe et le style spécifique et à l'organisation textuelle d'un rapport d'expertise judiciaire. Elles sont amplifiées par le caractère pluriadressé du rapport, l'imbrication de la perspective auctoriale et lectoriale et l'asymétrie des connaissances entre l'expert et les destinataires non spécialistes du rapport. Les différents types de difficultés d'appréhender l'intelligibilité d'un texte spécialisé font l'objet de l'analyse proposée dans la section suivante et illustrée par les exemples concrets tirés du corpus d'étude.

⁴³ M. DURR, *La notion de pertinence en traduction juridique bidirectionnelle français allemand*, cit., p. 380.

5. Difficultés posées par l'intelligibilité et exemples typiques

Les différentes difficultés évoquées dans la section précédente, seront illustrées ci-après à l'aide d'exemples types extraits de notre corpus.

Nous l'avons dit dès l'introduction, l'exigence d'intelligibilité concerne tous les textes spécialisés quel que soit le domaine de spécialité abordé. A titre d'exemple, on peut citer le domaine juridique où l'intelligibilité au sens de la lisibilité est tributaire de la cohésion grammaticale réalisée par des pronoms, l'article défini ou encore par l'adjectif démonstratif⁴⁴. En l'absence de cette cohésion, un énoncé grammaticalement correct devient inintelligible. L'exemple suivant, tiré d'un contrat de mariage notarié illustre cet aspect (exemple n°1) :

« Mademoiselle W. déclare ne pas avoir la maîtrise courante de la langue française tant écrite que parlée ; en conséquence, compte tenu de la spécificité du présent acte, elle en a soumis le projet à un expert traducteur de son choix dans sa langue d'origine, à savoir Madame B. Elle déclare comprendre parfaitement le contenu du présent acte, que toutes explications relatives au présent acte lui ont été fournies, et que le présent acte est conforme à sa volonté ».

Malgré sa brièveté et la simplicité de sa syntaxe, ce passage pose néanmoins problème au regard de l'intelligibilité. La difficulté réside, en effet, dans l'emploi de l'anaphorique pronominal, d'une part, et d'autre part dans l'anaphorique possessif dont la référence est ambiguë. Ainsi, la reprise anaphorique pronominale ambiguë, car le pronom personnel « elle » peut renvoyer à Mme W. ou à Mme B. La référence de cette reprise anaphorique pronominale ne peut être identifiée que par rapport à l'ensemble du texte et à la situation. Il en va de même en ce qui concerne l'anaphorique possessif « sa volonté », car on ne sait pas s'il s'agit de la volonté de Mme W. ou de Mme B. En l'espèce, la répétition, qui permet de contrôler l'ambiguïté, aurait permis de rendre cet énoncé clair.

Néanmoins, les textes spécialisés ne sont pas nécessairement synonymes d'un discours abstrus, comme le montre l'exemple extrait d'un rapport d'expertise en matière de construction ci-après (exemple n°2) :

« La synthèse a pour objet, pour l'ensemble de l'ouvrage, d'assurer la cohérence spatiale des éléments d'ouvrage de tous les corps d'état, dans le respect des dispositions architecturales, techniques, d'exploitation et de maintenance du projet. Elle se traduit par des plans de synthèse qui représentent, au niveau du détail d'exécution et sur un même support, l'implantation des éléments d'ouvrage, des équipements et des installations. Ces plans doivent prendre en compte toutes les informations nécessaires à la coordination spatiale et technique de chaque élément avec l'ensemble des contraintes techniques. C'est dans le cadre des dispositions décrites ci-dessous que seront réalisées la coordination des études et l'élaboration des plans d'atelier et de tous les documents nécessaires à l'exécution des travaux (l'ensemble étant désigné par la suite par le terme général de 'plans d'atelier') ».

Bien structuré et grammaticalement correct, ce passage ne pose pas de problème de compréhension, car il permet au lecteur d'identifier facilement les principales informations, à savoir :

- a) Le fait qu'une synthèse est établie,
- b) L'objet de la synthèse est clairement indiqué (*la cohérence spatiale des éléments d'ouvrage*),
- c) Les moyens de réaliser cette synthèse sont précisés (*les plans de synthèse*),
- d) Le contenu nécessaire des plans de synthèse est précisé par la relative restrictive introduite par le pronom relatif *qui* sans virgule (*représentation de l'implantation des éléments d'ouvrage, des équipements et des installations*),

⁴⁴ M. SOBIESZEWSKA, *Clarté et précision du discours juridique : procédés référentiels dans les arrêts de la Cour de Cassation*, p. 17.

- e) Le syntagme nominal "*plans de synthèse*" par l'anaphore résomptive (*ces plans*) en début de l'énoncé suivant permet d'identifier clairement la référence et d'éviter toute confusion ;
- f) Le contenu du nouvel élément introduit dans le dernier paragraphe, à savoir le *plan d'atelier* est immédiatement défini (*l'ensemble étant désigné par le terme général de plan d'atelier*).

En pratique toutefois, le problème de l'intelligibilité des rapports d'expertise se pose à de nombreuses reprises et il se déploie dans toutes les dimensions de la triade classique : la sémantique, la syntaxe et la pragmatique. Autrement dit, les difficultés observées concernent à la fois le lexique, la grammaire et le style, et plus spécifiquement la phraséologie, c'est-à-dire les régularités formelles⁴⁵ caractéristiques d'une langue de spécialité donnée.

5.1 Difficultés liées à la terminologie spécialisée

S'agissant du lexique, l'usage d'une terminologie spécialisée constitue la principale caractéristique d'un texte technique. Les termes sont le résultat d'une spécialisation croissante des connaissances. Un terme est défini comme une « désignation verbale d'un concept » et comme une « unité de connaissance »⁴⁶. Cette définition met en exergue la double dimension de la terminologie : linguistique et épistémique. Les termes ont un champ d'application beaucoup plus restreint que les mots de la langue courante. Les langues de spécialité, et donc aussi la terminologie spécialisée, sont à la fois « les créations et les outils » des groupes d'individus spécialisés dans un domaine de spécialité⁴⁷. Autrement dit, un technicien qui formule son avis dans le cadre d'un rapport d'expertise ne peut s'en passer. La connaissance et la capacité d'utiliser la terminologie idoine sont un élément déterminant de la compétence expertale et de l'aptitude d'un expert en matière de communication. Si la terminologie spécialisée est un composant majeur d'une langue de spécialité, celle-ci ne s'y réduit pas. Elle comprend, en effet, aussi les règles de formation des termes, la syntaxe, les styles spécifiques, les normes d'organisation des textes et le choix des genres textuels⁴⁸. Le rôle de la langue et d'un appareil terminologique spécialisé réside dans la réduction de l'ambiguïté⁴⁹ et dans le cadrage et la catégorisation des informations. Au regard de l'intelligibilité, la terminologie spécialisée constitue une difficulté majeure, en particulier en raison de son caractère hermétique qui rend difficile l'accès au texte spécialisé. Cette difficulté se pose plus spécialement au plan de la réception du texte par son destinataire, qui peut être un non-spécialiste, et qui de ce fait, ne possède ni les connaissances ni le cadre de références idoine pour contextualiser un terme spécialisé. Pour illustrer cet aspect, prenons la proposition suivante, extraite d'une expertise médicale (exemple n°3) :

« Le patient souffre d'une variabilité tensionnelle à substrat adrénérgique. »

La difficulté de compréhension se révèle d'emblée en ce qui concerne les éléments soulignés. Si le syntagme *variabilité tensionnelle* peut éventuellement être compris par un non-spécialiste à condition de disposer des connaissances et d'un certain horizon épistémique permettant de le contextualiser en reliant l'adjectif *tensionnel* à la notion de *tension artérielle*, le sens du syntagme *à substrat adrénérgique* n'est accessible que pour un spécialiste. Dans un rapport d'expertise, l'instrument le plus efficace pour lever cette difficulté consiste à expliciter les termes de spécialité par des mots plus courants, l'explicitation étant introduite par des tournures comme *c'est-à-dire*, *en d'autres termes* ou *autrement dit*.

⁴⁵ A. KRIEG-PLANQUE, *Analyser les discours institutionnels*, cit., p. 101.

⁴⁶ C. ROCHE, *La définition des termes : une approche conceptuelle*, 2022, disponible sur <<https://hal.science/hal-03916622/document>> (consulté le 29/12/23).

⁴⁷ J. OSIEJEWICZ, *Międzynarodowa komunikacja prawnicza w ujęciu paradygmatycznym*, Warszawa, 2023, p. 34.

⁴⁸ N. KLUCK, *Der Wert der Vagheit*, Berlin, 2014, p. 136.

⁴⁹ Ibid., p. 138.

5.2 Difficultés liées à la syntaxe

S'agissant de la syntaxe, il est utile d'observer qu'elle joue un rôle majeur au regard de l'intelligibilité, car elle reflète l'articulation des informations et l'organisation des relations internes dans un texte. Selon que l'on privilégie les conjonctions de coordination ou de subordination, les informations exposées dans un rapport d'expertise peuvent être organisées de manière linéaire ou hiérarchisée en fonction de leur importance au regard de la question posée par le magistrat. Sur ce plan, l'exemple n°1 peut être contrasté avec l'exemple ci-après, extrait d'une expertise en matière de construction, dont le sens reste hermétique (exemple n°4).

« Il n'est pas communiqué de pièce attestant de la connaissance du maître d'ouvrage de cette exécution différant du plan en date du 15/02/2018, conséquemment de ses conséquences sur l'exploitation du splashpad. »

Dans cette proposition, deux points posent problème au regard de l'intelligibilité : l'usage du verbe *attester* et l'expression *conséquemment de ses conséquences*.

L'importance du verbe s'explique par la double fonction qu'il joue dans un énoncé. Elle consiste à mettre en relation des éléments de sens entre eux pour décrire le réel ou verbaliser nos pensées, d'une part et d'autre part, elle consiste à distribuer les rôles dans un énoncé et à modaliser l'énonciation. Dans l'exemple ci-dessus, il s'agit d'une modalisation assertive au moyen du verbe *attester* qui signifie *affirmer, assurer, déclarer*. Dans cette acception, il s'agit d'un verbe transitif direct, c'est-à-dire d'un verbe qui ne nécessite aucune préposition et est suivi d'un complément d'objet direct. Dans l'usage courant en français, on atteste quelque chose, p. ex. *attester la réalité d'un fait*. Dans l'énoncé cité, le verbe *attester* est utilisé avec la préposition *de*, alors même que l'on s'attendrait à lire *attestant la connaissance*. L'usage de la préposition *de* avec le verbe *attester* en change l'acception. En effet, *attester de quelque chose* est d'usage rare et signifie *porter un témoignage sur quelque chose*.⁵⁰ Par voie de conséquence, la nature de l'énoncé s'en trouve modifiée, car la modalité aléthique n'opère plus tant et si bien qu'il ne s'agit plus d'un constat, mais d'un témoignage. Un expert n'ayant pas vocation à témoigner, mais à constater les faits et préciser leur importance dans un contexte donné, la formulation linguistiquement adéquate est donc *attester la connaissance*. Précisons qu'une difficulté similaire s'observe en ce qui concerne l'usage du verbe *avérer*. Elle peut être illustrée par l'exemple suivant, extrait d'un rapport d'expertise en matière d'ingénierie des fluides (exemple n°5) :

« La date de modification n'est pas connue, il n'est pas communiqué de plan, de compte rendu explicite ou avenant pouvant avérer de l'information de l'entreprise exécutante vers la maîtrise d'œuvre. »

En français, *avérer* signifie *reconnaître pour vrai* ou *donner pour certain*. Dans cette acception, son régime est direct, c'est-à-dire qu'il se construit sans préposition *de*. La construction *avérer de* constitue, donc, une faute de grammaire et de style. Par ailleurs, il est peut-être opportun de préciser que le verbe *avérer* fait fréquemment l'objet d'un usage par catachrèse, c'est-à-dire détourné de son sens propre, dans les expressions *s'avérer vrai* / *s'avérer faux*. Si *avérer* veut dire *reconnaître pour vrai*, la première expression est un pléonisme alors que la seconde constitue en tout état de cause une faute de style, dans la mesure où *s'avérer faux* juxtapose des termes contradictoires par nature.

S'agissant de la formulation *conséquemment de ses conséquences* dans l'exemple n°4 ci-dessus, elle est problématique sur le plan grammatical et stylistique. Sur le plan de la grammaire, les règles d'usage des adverbes et des pronoms possessifs ne sont pas respectées. En effet, l'on voit mal à quel verbe dans la proposition l'adverbe *conséquemment* est censé se référer. Il en va de même du pronom possessif à la 3^{ème} personne du pluriel *ses* dont la référence reste obscure. En ce qui concerne le style, il s'agit d'une expression redondante constitutive de pléonisme. En outre, l'adverbe utilisé appartient au registre littéraire ce qui détonne dans un texte technique. Enfin, la cascade des compléments introduits par la

⁵⁰ <https://grandrobert.lerobert.com/robert.asp>. Consulté le 28/12/2023.

préposition *de* (9 occurrences dans une proposition contenant 31 mots) constitue un facteur non négligeable du caractère inintelligible de ce passage.

Une rupture dans la syntaxe peut également être à l'origine d'un problème d'intelligibilité.

Prenons la proposition suivante, extraite d'une expertise en matière d'ingénierie de fluides, (exemple n°6) :

« *L'absence de déversement dans la bache tampon pouvant être un autre élément de vérification, alors que plusieurs siphons collectent les effluents des jeux d'eau intérieurs et extérieurs* ».

Dans cette proposition, l'usage de la conjonction *alors que* pose problème. En effet, cette conjonction à valeur adversative permet d'opposer deux entités de même nature, soit concrète soit abstraite.

Or ici, deux entités de nature distincte sont opposées, à savoir une entité abstraite *élément de vérification* et une entité concrète *plusieurs siphons*. Il en résulte une difficulté de compréhension, source d'inintelligibilité.

En ce qui concerne la syntaxe, les effets discursifs peuvent être réalisés par l'usage de la ponctuation. On peut l'illustrer à l'exemple des propositions relatives dont il existe deux types, à savoir une relative appositive ou explicative et une relative restrictive ou déterminative. Elles se distinguent par leur fonction. Si la relative appositive ajoute une propriété contingente au syntagme nominal auquel elle se rapporte, la relative restrictive précise le syntagme nominal par l'ajout d'une propriété nécessaire. À l'écrit, ces deux types de relatives se distinguent par l'usage de la virgule : la relative appositive est placée entre virgules tandis que la relative restrictive est sans virgule. Ce qui complexifie les choses sur le plan de l'intelligibilité, c'est que les interprétations d'une relative comme étant appositive ou restrictive peuvent se superposer⁵¹. Le rôle et l'importance de la syntaxe dans les textes spécialisés peuvent être aussi illustrés à l'exemple des structures concessives.

La concession sert à exprimer une relation d'opposition ou de restriction, introduite à l'aide des compléments circonstanciels tels que *malgré*, *en dépit de*, *bien que*, ou par les connecteurs tels que *mais*, *pourtant*, *cependant*. Ce type de propositions concessives permet d'orienter l'interprétation vers une certaine conclusion⁵². Il existe encore d'autres types de propositions concessives comme, p. ex. les concessives réduites au gérondif (structures de type *en* + *participe présent* ou *tout en* + *participe présent*) ou les concessives introduites par *sans* + *infinitif* ou *sans pour autant* + *infinitif*. Sur le plan du discours, ces concessives produisent des effets de positivité et d'effacement des divergences. Elles peuvent donc servir d'instrument d'élaboration d'un accord entre les parties en présence et faciliter la conciliation. Le rapport d'expertise n'étant pas le lieu de conciliation, il est permis de supposer que le recours à ce type de concessives y soit moins fréquent⁵³.

5.3 Difficultés liées au style

S'agissant du style, il renvoie au sens large aux modalités de la mise en œuvre des moyens d'expression par un locuteur spécifique, dans une situation d'énonciation concrète. Dans cette acception large, le style a trait à la phraséologie définie comme un système d'expression comprenant à la fois la terminologie et les particularités syntaxiques sans oublier les normes de présentation spécifiques. Le rapport d'expertise en tant que texte spécialisé implique un style spécifique propre au domaine de spécialité dont relève le rapport. Ainsi, p. ex. le terme de *commémoratifs* appartient à la terminologie spécialisée de la médecine, et plus particulièrement de la médecine légale. Par conséquent, il s'observe régulièrement dans les rapports d'expertise médico-légale. Toutefois, et comme nous l'avons montré

⁵¹ A. KRIEG-PLANQUE, *Analyser les discours institutionnels*, cit., p. 163.

⁵² Ibid., p. 171.

⁵³ Ibid., p. 174.

dans l'analyse concernant les verbes *attester* et *avérer*, le style tient à la qualité de la formulation qui se manifeste dans le respect des règles régissant l'usage du lexique et de la syntaxe de la langue courante. Pour reprendre la formule de Robert Musil, « (...) le style consiste pour moi en une expression précise d'une pensée. Je veux dire la pensée, comprise sous la forme la plus belle qui soit à ma portée »⁵⁴.

Mais, en matière technique, il arrive que la notion de style soit mal comprise ce qui conduit à une formulation ampoulée comme le montre le passage suivant, issu d'un rapport d'expertise en matière de construction (exemple n°7) :

« La renonciation du maître d'ouvrage à faire réaliser les essais sur les prestations de la société XY est à nuancer, et n'emporte pas en l'espèce à renoncer à un recours dans la suite d'un constat avérant du défaut d'exécution ».

La discussion exhaustive des exemples proposée ci-dessus a permis, nous l'espérons, de mettre en exergue l'intrication étroite entre la terminologie spécialisée, la syntaxe et le style et de souligner l'importance de la qualité de l'expression linguistique dans la communication à caractère technique, et plus particulièrement dans le rapport d'expertise. En outre, elle a permis de mettre en évidence le rôle de l'intelligibilité du rapport d'expertise pour ses destinataires qui consiste à conférer une légitimité à l'avis d'expert et à garantir son efficacité en tant qu'acte de communication.

5.4 Difficultés résultant du caractère pluriadressé du rapport d'expertise

Un rapport d'expertise s'adresse systématiquement à plusieurs destinataires : le magistrat, la partie au procès ayant demandé l'expertise, l'avocat de chaque partie et, parfois, un autre expert. Cette diversité de destinataires constitue une difficulté majeure au regard de l'intelligibilité. En effet, la pluralité de destinataires implique la diversité des perspectives qui peuvent être adoptées à l'égard d'un texte, ce qui ouvre la voie à la différenciation des interprétations. Comme nous l'avons observé précédemment, un texte peut s'appréhender dans une double perspective : auctoriale et lectoriale. Dans la phase de rédaction, l'expert en tant qu'auteur précise l'objet de son expertise et en donne une interprétation par rapport à son domaine de spécialité et les schèmes d'interprétation idoines, le tout dans les limites définies par la mission qui lui a été confiée. Dans la phase de réception du rapport d'expertise, c'est-à-dire dans sa recontextualisation par les destinataires⁵⁵, la différenciation de la perspective lectoriale s'accroît proportionnellement au nombre de destinataires auxquels s'adresse l'auteur et dont il attend une réaction, qu'ils soient absents ou virtuellement présents⁵⁶. La pluralité de destinataires implique la diversité des cadres sociocognitifs, du niveau des connaissances et de schèmes d'interprétation utilisés pour recontextualiser le rapport d'expertise. S'y ajoute, en outre, la diversité des pertinences motivationnelles, c'est-à-dire des intérêts pratiques qui déterminent ce qui est important dans un rapport d'expertise pour ses destinataires et qui les incitent à le comprendre ou d'ailleurs aussi à le mécomprendre en fonction de leurs objectifs concrets en termes de procédure⁵⁷. Dans cette phase,

⁵⁴ Notre traduction du passage original : « Stil ist für mich exakte Herausarbeitung eines Gedankens. Ich meine den Gedanken, auch in der schönsten Form, die mir erreichbar ist ». Source : « Was arbeiten Sie ? » Oskar Maurus Fontana im Gespräch mit Robert Musil. Publié dans *Literarische Welt* n°18, 1926, p. 1. Disponible sur le site Internet du « Projekt Gutenberg DE » à l'adresse <https://www.projekt-gutenberg.org/musil/essays/chap006.html>. Accédé le 29/12/2023.

⁵⁵ J.-M. ADAM, *Micro-level, meso-level and macro-level of textual structuring and complexity*, cit., p. 17.

⁵⁶ La rédaction d'un texte n'étant pas l'opération d'un esprit solipsiste, mais une manière de s'entretenir avec d'autres, un texte a toujours des destinataires différents dont l'auteur imagine les réactions possibles. Ici, il est fait plus spécialement référence à la notion de Hans Blumenberg de « destinataires absents » auxquels s'adresse l'auteur d'un texte et dont il existe deux types : a) les destinataires absents dits « existentiels » dont on n'attend pas de réaction et b) les destinataires dits « situationnellement absents » qui sont « virtuellement présents » et dont on attend justement une réaction. R. ZILL, *Der absolute Leser: Hans Blumenberg - eine intellektuelle Biographie*. Berlin, Suhrkamp Verlag, 2020 1816 p., pp. 231–232.

⁵⁷ A. SCHÜTZ, *Relevanz und Handeln 2. Gesellschaftliches Wissen und politisches Handeln*, cit., p. 122.

l'enjeu en termes d'intelligibilité du texte échappe à l'auteur qui n'a pas une autorité exclusive et inconditionnelle sur la manière dont son texte sera compris. Cette diversité des perspectives lectoriales individuelles est à l'origine de la différenciation du sens susceptible d'être attribué à un rapport d'expertise, ce qui conduit potentiellement à un conflit d'interprétation. Ce risque peut être circonscrit à condition de postuler une réciprocité de perspectives entre les différents destinataires d'un rapport permettant de créer une base commune de communication⁵⁸.

Le tableau ci-après, schématise la différenciation des perspectives due au fait que la compréhension d'un texte se déploie à trois niveaux différents : au niveau de la production, de la rédaction du texte et de la réception par ses destinataires.

Production	Texte	Réception
Espace de production des conditions de l'échange communicatif Pratique sociale de communication Situation de communication concrète Statut et rôles des partenaires engagés dans la communication Objectifs / enjeux de la communication	Espace de construction du texte Texte = acte de langage, oral ou écrit Organisation du texte au service d'un certain propos sur le monde Perspective auctoriale Qualité de l'expression linguistique	Espace de recontextualisation du texte Interprétation par le destinataire Perspective lectoriale Diversité de destinataires Diversité des perspectives, Des connaissances, des schémas d'interprétation Diversité des pertinences motivationnelles
Effets visés par l'auteur-locuteur	Effets possibles du texte	Effets produits sur le destinataire
Co-construction du sens		

Tableau 1 : Déploiement de la compréhension sur 3 niveaux (adapté et simplifié d'après)⁵⁹

Le niveau de production décrit l'espace dans lequel s'inscrit un acte de communication et dans lequel sont déterminées les conditions-cadre de la communication, à savoir : le type de la pratique sociale (l'expertise judiciaire), la situation de communication concrète (la mission d'expertise concrète), le statut social et le rôle des partenaires de communication ainsi que les enjeux et les objectifs de la communication. Le niveau de la construction du texte, c'est-à-dire de sa rédaction par l'auteur correspond à l'espace dans lequel est définie la perspective adoptée par l'auteur sur une problématique donnée et l'organisation du texte jugée idoine pour exposer cette problématique en vue des objectifs que le texte doit permettre de réaliser. C'est dans cet espace que la qualité de l'expression linguistique joue un rôle majeur en termes d'intelligibilité et de production d'effets discursifs visés. Enfin, le niveau de la réception décrit l'espace dans lequel le texte du rapport d'expertise est interprété par son ou ses destinataire(s) non spécialiste(s). Dans cet espace, plusieurs éléments distincts interagissent : l'asymétrie

⁵⁸ A. SCHÜTZ, *Zur Methodologie der Sozialwissenschaften*. Konstanz, 2010, pp. 340–341.

⁵⁹ P. CHARAUDEAU, *A socio-communicationnal model of discourse (between communication situation and individuation strategies)*, dans D. ABLALI, G. ACHARD-BAYLE (éd.), *French theories on text and discourse*, Boston, 2023 p. 218.

des connaissances entre l'expert et le non-spécialiste, les schémas d'interprétation mis en œuvre par les destinataires, différents de ceux appliqués par l'expert et les intérêts propres du destinataire, ses enjeux et ses objectifs. L'espace de réception du texte est le plus marqué par la différenciation du sens du rapport d'expertise qui résulte de la diversité des perspectives.

À chacun de ces niveaux, le texte vise à produire des effets : les effets visés par l'auteur et les effets produits par le destinataire dans l'interprétation du texte. Les effets visés et les effets produits forment ensemble les effets possibles d'un texte. Il s'agit des effets de faire faire, de faire savoir ou de faire croire. Le sens d'un texte résulte de sa co-construction réalisée par les partenaires de communication, l'auteur-locuteur et le ou les destinataire(s). Toutefois, il n'existe aucune garantie que les effets visés d'un rapport d'expertise se réalisent, car la diversité de destinataires implique la possibilité d'une divergence significative en termes d'interprétation, et donc, une divergence entre les effets visés et les effets réellement produits. Les textes peuvent être classés dans deux catégories : textes fermés et ouverts. Les textes fermés font l'objet d'interprétation par un type d'interprétants alors que les textes ouverts donnent lieu à des interprétations diverses pouvant être effectuées par divers types d'interprétants. Il va sans dire que sur ce plan, le rapport d'expertise appartient à la catégorie de textes ouverts, puisqu'il est susceptible d'être interprété par des destinataires aussi différents que les magistrats, les avocats, les parties ou encore les autres experts et faire l'objet d'interprétations qui peuvent être différentes. Dans ces conditions, la probabilité que les effets visés et les effets produits par le rapport d'expertise coïncident est relativement faible en raison de la diversité des enjeux et des intérêts que les différents interprétants attachent au texte du rapport d'expertise.

6. Conclusion

Pour conclure, nous espérons que notre discussion du problème d'intelligibilité d'un rapport d'expertise judiciaire a permis de mettre en évidence les caractéristiques, l'architecture complexe et la dynamique de cette notion. Cette dynamique résulte la relation intrinsèque entre l'intelligibilité et les notions dynamiques telles que la compréhension, la pertinence et le sens. Sur un plan plus général de l'analyse, l'intelligibilité se construit dans l'interaction entre l'auteur, le texte et le lecteur-destinataire dans une situation concrète de communication qui en détermine les conditions, à savoir les contraintes en termes de genre textuel, de statut et de rôle des différents interlocuteurs, des objectifs visés par la communication. En outre, on retiendra que l'intelligibilité est une propriété émergente du texte. Autrement dit, il s'agit d'une propriété nouvelle qui ne se résume pas à la somme de toutes les propriétés du texte. Elle résulte de la configuration globale du texte et de l'interaction entre ses différents éléments (mots, phrases, paragraphes, etc.) d'une part, et d'autre part de l'interaction entre l'auteur, le texte et ses destinataires. Ainsi se crée une architecture complexe de l'intelligibilité. Elle se déploie sur le plan linguistique dans la triple dimension sémantique, syntaxique et stylistique, sur le plan de l'organisation du texte au micro- méso- et macroniveau du texte et sur le plan de l'interprétation du texte par son destinataire. L'interprétation d'un rapport d'expertise a vocation à se diversifier à mesure qu'augmente le nombre de destinataires du texte. Quel que soit l'aspect sous lequel l'on appréhende l'intelligibilité d'un texte spécialisé, elle ne peut se construire que dans la langue et dans l'articulation de la double dimension linguistique et épistémique. C'est pourquoi elle implique un effort soutenu de raisonnement et de formulation, qui seul permet de clarifier la pensée et lui confère la meilleure forme possible dans un contexte donné.

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Traduzione giuridica e terminologia: strumenti a confronto

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Abstract: La traduzione giuridica costituisce un ambito in cui emergono con particolare evidenza le implicazioni del multilinguismo istituzionale e della diversità dei sistemi normativi. Il contributo analizza l'evoluzione dei modelli traduttivi nei contesti nazionali plurilingui e nell'Unione europea, tradizionalmente caratterizzati rispettivamente da un approccio *bottom-up* e da uno *top-down*. L'esame degli strumenti terminologici e delle pratiche operative mostra come in ambito UE si stia sviluppando una crescente sensibilità comparativa, che affianca senza sostituirlo il modello tradizionale orientato all'uniformità linguistica. Attraverso esempi tratti dall'esperienza nel contesto bilingue della Provincia autonoma di Bolzano/Bozen e nelle istituzioni europee, il contributo mette in luce convergenze e divergenze nelle modalità di affrontare i problemi terminologici, da cui emerge un quadro dinamico.

Parole chiave: traduzione giuridica; terminologia giuridica; comparazione giuridica; strumenti terminologici; metodologie traduttive

Sommario: 1. Introduzione; 2. La terminologia giuridica tra comparazione e innovazione tecnologica; 3. Dizionari, strumenti tradizionali; 4. Traduzione giuridica in contesti nazionali plurilingue: metodologie bottom-up e strumenti; 5. Traduzione giuridica sovranazionale: approccio top-down e strumenti; 6. L'integrazione tra i modelli; 7. Riflessioni conclusive.

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Legal translation and terminology: a comparison of tools

Abstract: Legal translation is an area in which the implications of institutional multilingualism and the diversity of legal systems emerge with particular clarity. This contribution examines the evolution of translation models in multilingual national contexts and within the European Union, traditionally characterised by a *bottom-up* approach in the former and a *top-down* approach in the latter. The analysis of terminological tools and operational practices shows that, within the EU, a growing comparative sensitivity is developing, complementing—without replacing—the traditional model oriented towards linguistic uniformity. Drawing on examples from professional experience in the bilingual context of the Autonomous Province of Bolzano/Bozen and within EU institutions, the contribution highlights convergences and divergences in the ways terminological issues are addressed, revealing a dynamic and evolving landscape.

Keywords: Legal translation; legal terminology; legal comparison; terminological tools; translation methodologies

Summary: 1. Introduction; 2. Legal Terminology between Comparison and Technological Innovation; 3. Dictionaries and Traditional Tools; 4. Legal Translation in Multilingual National Contexts: Bottom-Up Methodologies and Tools; 5. Supranational Legal Translation: Top-Down Approach and Tools; 6. Integration between models; 7. Concluding remarks.



1. Introduzione

La traduzione giuridica rappresenta oggi uno dei campi nei quali più chiaramente emergono le implicazioni del multilinguismo istituzionale e della diversità dei sistemi giuridici. Nel contesto europeo, la necessità di garantire l'equivalenza tra testi prodotti in molteplici lingue e culture giuridiche ha reso centrale la riflessione sull'uso della terminologia, sull'analisi concettuale e sui metodi comparativi applicati alla prassi traduttiva. A quasi vent'anni dai contributi che hanno messo in luce la dicotomia tra l'approccio *bottom-up*, tipico dei contesti nazionali plurilingui, e l'approccio *top-down*, proprio dell'Unione europea, la letteratura più recente mostra come tali modelli si siano progressivamente avvicinati, grazie sia all'evoluzione tecnologica sia alla maturazione del quadro metodologico della disciplina.

Allo stesso tempo, la digitalizzazione degli strumenti linguistici e l'affinamento dei processi di redazione normativa multilingue — ad esempio sostenuti dall'espansione e dal consolidamento del database terminologico IATE (Interactive Terminology for Europe – Terminologia interattiva per l'Europa)² — hanno contribuito a delineare un ambiente traduttivo nel quale gli aspetti terminologici, giuridici e comparativi risultano sempre più interconnessi. L'analisi delle trasformazioni intervenute negli ultimi anni permette di osservare le interazioni tra livelli diversi di produzione normativa, dai sistemi giuridici nazionali alle istituzioni dell'Unione, in un quadro caratterizzato da crescente complessità concettuale e terminologica.

Il presente contributo intende proporre alcune riflessioni in merito a tali sviluppi mettendo a confronto prassi, strumenti e metodologie appartenenti a tradizioni traduttive differenti, ed evidenziare i punti di divergenza e convergenza che oggi emergono tra i modelli storicamente distinti della traduzione giuridica nazionale e di quella europea. L'analisi prende le mosse da una serie di riflessioni³ maturate nel corso di personali esperienze professionali nel campo della traduzione e della terminologia in due contesti diversi: da un lato quello nazionale bilingue della Provincia autonoma di Bolzano/Bozen⁴, dall'altro quello delle istituzioni dell'Unione europea – già comunitarie. Attraverso alcuni esempi relativi alla traduzione di termini giuridici, si cercherà di mostrare come le specificità dei contesti e i diversi approcci richiesti nella risoluzione dei problemi terminologici diano origine a metodologie e risultati complessi e talvolta divergenti, che né il linguista né il giurista possono ignorare.

In particolare, si metterà in evidenza come nella prassi le modalità di affrontare i problemi terminologici in ambito giuridico possano variare tra il contesto nazionale plurilingue e quello dell'Unione europea, cercando di individuarne le ragioni e di illustrare le difficoltà che ne derivano. Dopo alcune brevi considerazioni preliminari relative al lavoro terminologico in ambito giuridico, in particolare i metodi *bottom-up* e *top-down*⁵ (2), l'attenzione si soffermerà sugli strumenti di supporto terminologico a disposizione del traduttore giuridico (3) nei diversi contesti operativi: quello nazionale plurilingue (4) e quello dell'Unione europea (5). Se ne evidenzieranno le specifiche caratteristiche, collegandole alla concezione del lavoro terminologico e alle sue finalità nei rispettivi ambiti, spesso più divergenti di quanto non appaia a prima vista (6). Si cercherà infine di mostrare come, almeno sulla base dell'analisi degli strumenti impiegati nella prassi quotidiana, emerga una concezione del metodo e della

² <https://iate.europa.eu/home>

³ Gli esempi del presente contributo sebbene non recenti sono significativi in quanto frutto delle esperienze da cui sono nate le riflessioni.

⁴ Si precisa che nel caso dell'Italia l'ordinamento è monolingue a livello nazionale e multilingue a livello locale, come nel caso della Provincia autonoma di Bolzano, si veda sul punto ad esempio: F. DE CAMILLIS, *La traduzione non professionale nelle istituzioni pubbliche dei territori di lingua minoritaria: il caso di studio dell'amministrazione della Provincia autonoma di Bolzano*, [Dissertation thesis], Alma Mater Studiorum Università di Bologna, 2021. Dottorato di ricerca in [Traduzione, interpretazione e interculturalità](#), 33 Ciclo. DOI 10.48676/unibo/amsdottorato/9695.

⁵ Cfr. tra gli altri: E. CHIOCCETTI, *Effects of social evolution on terminology policy in South Tyrol*, in *Terminology*, 27(1), 2021, pp. 110–139; E. CHIOCCETTI; N. RALLI, *Legal comparison for terminology development: The case of German in South Tyrol*, in R. RESI, F. STEURS, *Handbook of terminology*. Vol. 4, Amsterdam, 2025, pp. 580–600; ISO 29383(2020). *Terminology Policies – Development and Implementation*. Geneva: International Organization for Standardization; R. B. KAPLAN, R. B. BALDAUF, *Language Planning from Practice to Theory*. Clevedon: Multilingual Matters, 1997.

funzione del traduttore/terminologo inizialmente sensibilmente diversa tra l'ambito nazionale (plurilingue) e quello dell'Unione europea (diversamente plurilingue), ma anche come tali concezioni abbiano conosciuto, e stiano conoscendo, nel tempo, una graduale e significativa convergenza.

2. La terminologia giuridica tra comparazione e innovazione tecnologica

Una prima e fondamentale considerazione intorno all'attività terminologica – intesa come l'insieme delle procedure e delle metodologie per la raccolta, la descrizione e la presentazione dei termini in una o più lingue – riguarda un aspetto metodologico di ordine generale: anche oggi si registra una proliferazione di dizionari specialistici (oggi soprattutto in formato digitale)⁶, banche dati terminologiche, CAT tool (computer-assisted translation), ad esempio Trados Studio (in precedenza chiamato SDL), e applicazioni di intelligenza artificiale, il lavoro terminologico si fonda su principi e fasi metodologiche consolidate⁷; nondimeno, tali fasi non si applicano in modo strettamente lineare o invariabile, ma richiedono, in funzione del dominio e degli obiettivi, iterazioni successive e decisioni contestualizzate.

Ciò è dovuto in parte al fatto che la terminologia è per sua natura intrinsecamente interdisciplinare, come evidenziato negli studi più recenti sulla traduzione giuridica e *multilingual legal interoperability*⁸. Pur fondandosi su un metodo terminologico condiviso, le raccolte terminologiche si configurano in modo diverso in funzione dei contesti e delle finalità cui sono di volta in volta preordinate; nell'ambito giuridico, ciò si traduce in specifiche esigenze di micro-comparazione e in scelte peculiari quanto alla selezione e alla rappresentazione delle informazioni terminologiche⁹. Così, ad esempio, la raccolta e la compilazione della terminologia medica o automobilistica non possono certo avvenire secondo i medesimi criteri utilizzati per la terminologia giuridica. In quest'ultimo caso, le difficoltà sono inoltre aggravate, com'è noto, dalla c.d. *Systemgebundenheit*¹⁰ del linguaggio giuridico, ovvero dallo stretto legame esistente tra il diritto e il contesto storico-culturale, e quindi linguistico, in cui l'ordinamento giuridico si colloca: accomunare concetti giuridici facenti capo a costruzioni teoriche (sociali, politiche, ecc.) e a sistemi linguistici diversi è unanimemente considerata non solo un'impresa di difficoltà insormontabile, ma anche epistemologicamente rischiosa. Qualsiasi analisi comparativa tra diversi sistemi giuridici porta, infatti, a risultati complessi perché i casi di equivalenza perfetta sono

⁶ Si segnala la pagina della Commissione europea sulle risorse terminologiche esterne che offre una *selezione* delle stesse, scelte in base ad alcuni criteri (multilinguismo; carattere intuitivo; affidabilità). Si veda: [External terminology resources | Knowledge Centre on Translation and Interpretation](https://ec.europa.eu/translation/terminology/resources/index_en).

⁷ Il lavoro terminologico e le fasi di cui si compone sono ampiamente descritti in letteratura ed anche dalla norma ISO 704:2022. Terminology work — Principles and methods. International Organization for Standardization. <https://www.iso.org/standard/79077.html> Cfr. anche la pagina del comitato ISO/TC 37 (<https://www.iso.org/committee/48104.html>).

⁸ A titolo di esempio, si ricorda il progetto LISE (Legal Language Interoperability Services) del centro di ricerca Eurac Research, il cui scopo principale è quello di supportare le organizzazioni pubbliche e private nello scambio, nell'ampliamento e nella pulizia della loro terminologia specialistica monolingue o multilingue, migliorando così la qualità delle loro risorse terminologiche, <https://www.eurac.edu/en/projects/institute-for-applied-linguistics/lise>.

⁹ Cfr. il repository DatCatInfo, che documenta le categorie di dati terminologici e le modalità di rappresentazione delle informazioni terminologiche (<https://datcatinfo.net/>). Per le specificità dei workflow terminologici e delle modalità di rappresentazione in ambito giuridico si vedano, tra gli altri, P. SANDRINI, *Terminologearbeit im Recht. Deskriptiver begriffsorientierter Ansatz vom Standpunkt des Übersetzers*, Wien, 1996; E. CHIOCCHETTI, V. LUŠICKÝ, T. WISSIK, *Multilingual legal terminology databases: Workflows and roles*, in L. BIEL, H. J. KOCKAERT (eds.), *Handbook of Terminology: Volume 3. Legal Terminology*, Amsterdam, 2023, pp. 458-484, <https://doi.org/10.1075/hot.3.mull>; per una sintesi operativa del lavoro terminologico, K. KRANEBITTER, N. RALLI, *Piccola guida per sviluppare strumenti terminologici*, in C. GRIMALDI & M. T. ZANOLA (eds.), *Terminologie e vocabolari. Lessici specialistici e tesauro, glossari e dizionari*, Firenze, 2021, pp. 113-123), <https://library.oapen.org/bitstream/id/d97dac1d-18b9-4029-aecb-be18fbb8f042/20500.pdf>.

¹⁰ Per il concetto cfr. G.-R. DE GROOT, *Zweisprachige juristische Wörterbücher*, in P. SANDRINI (Hrsg.), *Übersetzen von Rechtstexten. Fachkommunikation im Spannungsfeld zwischen Rechtsordnung und Sprache*, Tübingen, 1999, 223 ss.

rarissimi, anche negli ordinamenti aventi la medesima matrice¹¹. Oggi, questa complessità è ulteriormente accentuata dalla necessità di garantire interoperabilità legale tra ordinamenti diversi¹². Il massimo grado di equivalenza cui si può aspirare è considerato quello di *near equivalence-equivalenza parziale*¹³, che corrisponde al caso di due termini giuridici che abbiano in comune tutte le caratteristiche semantiche essenziali e gran parte di quelle accessorie – although legal language aims to be as clear as possible and in its complexity lies the necessity to be unequivocal, it is defined as a *fuzzy language*¹⁴.

Il lavoro terminologico in ambito giuridico si configura quindi non già come mera giustapposizione di concetti e termini, quanto piuttosto come sistematizzazione concettuale degli ambiti semantici (in terminologia chiamati settori o domini) sottesi dai termini da tradurre - in terminologia ricerca degli equivalenti - nel quadro degli ordinamenti giuridici posti a confronto, nella ricerca della soluzione traduttiva più prossima tra lingua di partenza e lingua di arrivo, con attenzione alle implicazioni transnazionali ed europee. Il terminologo in ambito giuridico può quindi definirsi primariamente un comparatista¹⁵, o, più specificamente, un operatore quotidiano della comparazione giuridica, svolta con gli strumenti e le finalità propri della scienza della traduzione e con il supporto dei moderni database digitali, come IATE. In questo senso, da tempo il rapporto metodologico tra terminologia giuridica e diritto comparato è posto all'attenzione degli studiosi (dei giuristi come dei linguisti-traduttori)¹⁶ anche nella letteratura più recente sulla terminologia giuridica europea, non riscontrandosi ancora l'elaborazione di criteri comunemente condivisi nella letteratura delle due discipline¹⁷, che tende a rivolgersi essenzialmente all'interno dei rispettivi circuiti disciplinari e

¹¹ La rarità di equivalenze perfette è legata alla *Systemgebundenheit* dei concetti giuridici e comporta scelte specifiche nella modellizzazione delle risorse terminologiche, soprattutto nel trattamento di lingue pluricentriche, si veda ad esempio: <https://ceur-ws.org/Vol-3990/short11.pdf>.

¹² Il riferimento all'interoperabilità nel contesto terminologico si inserisce nel quadro più ampio delineato dall'European Interoperability Framework (EIF), adottato con la Comunicazione COM(2017)134 del 23 marzo 2017. L'EIF fornisce indicazioni operative per la realizzazione di servizi pubblici digitali interoperabili e formula 47 raccomandazioni volte a migliorare la governance dell'interoperabilità, rafforzare le relazioni interorganizzative, razionalizzare i processi end-to-end e garantire che la normativa — esistente e futura — non comprometta l'interoperabilità. Nel settore linguistico e terminologico, tali principi risultano particolarmente rilevanti poiché evidenziano la necessità di strumenti capaci di assicurare coerenza concettuale e allineamento terminologico tra le diverse lingue ufficiali dell'UE, condizione essenziale per l'effettiva interoperabilità giuridico-amministrativa. Cfr. EUROPEAN COMMISSION, *New European Interoperability Framework Promoting seamless services and data flows for European public administrations*, Luxembourg, 2017, https://ec.europa.eu/isa2/eif_en/.

¹³ Diffusamente su questo concetto, le sue implicazioni e applicazioni, cfr. S. ŠARČEVIĆ, *New Approach to Legal Translation*, The Hague et al., 1997. La stessa Šarčević menziona anche l'equivalenza funzionale che è un tipo di equivalenza molto diffusa in ambito giuridico-terminologico.

¹⁴ D.N. MACCORMICK, R. S. SUMMERS, *Interpreting Precedents: A Comparative Study (Applied Legal Philosophy)*, London/New York, 2016, p. 260. Come è stato osservato da Janny Leung, given a fuzzy boundary between law and fact, as well as another fuzzy boundary between ordinary and legal meanings of words, the translation equivalence stipulation stands somewhere between Baker's category of 'linguistic fiction' and his category of 'factual fiction'. J. LEUNG, *Translation Equivalence as Legal Fiction*, in SIN, KK, WAGNER, A., AND CHENG, L. (eds.) *The Ashgate Handbook of Legal Translation*, pp. 57-69, 2016.

¹⁵ «Die Übersetzung juristischer Terminologie ist daher im wesentlichen Rechtsvergleichung»: così G.-R. DE GROOT, *Rechtsvergleichung als Kerntätigkeit bei der Übersetzung juristischer Terminologie*, in U. HASS-ZUMKEHR (Hrsg.), *Sprache und Recht. Institut für Deutsche Sprache. Jahrbuch 2001*, Berlin, New York, 2002, p. 222.

¹⁶ Cfr. tra i primi, tra i tanti, già U. SCARPELLI, *Contributo alla semantica del linguaggio normativo*, Torino, 1959; U. SCARPELLI, P. DI LUCIA (cur.), *Il linguaggio del diritto*, Milano, 1994; R. SACCO, *Introduzione al diritto comparato*, Torino, 1992, 27 ss. Tra gli scienziati della traduzione si vedano i già richiamati fondamentali testi di G.-R. DE GROOT, *op. cit.*, e S. ŠARČEVIĆ, *op. cit.*, e, tra i molti, anche in lingua italiana, R. ARNTZ (cur.), *La traduzione. Nuovi approcci tra teoria e pratica*, Napoli, 1995.

¹⁷ Per approfondite considerazioni di metodo cfr. E. IORIATTI FERRARI, *Lingua e diritto in Europa: multilinguismo, pluralismo linguistico e terminologia giuridica uniforme nel diritto europeo dei contratti*, in *Dir. Pubbl. Comp. Eur.*, 2005-IV, 1549 ss; E. IORIATTI, *Comparative Law and EU Legal Language: Towards a European Restatement?*, in *Global Jurist* 2021; 21(2): 305-340, 2021; E. IORIATTI, *A Twenty-First Century Approach to Law and Language in Europe*, in O. MORÉTEAU, A. PARISE (eds.), *Comparative Perspectives on Law and Language*, Maastricht, 2022.

metodologici senza essere sinora riuscita ad iniziare un dialogo permanente sulla base di risultati ed obiettivi metodologici comuni.

Se questi elementi sono ormai acquisiti nell'elaborazione teorica dei complessi intrecci tra traduzione e comparazione in ambito giuridico, appare opportuno sottoporli ad una prima, parziale verifica empirica sulla scorta del lavoro terminologico-giuridico (e degli strumenti sinora elaborati a suo sostegno), basata su strumenti nazionali plurilingui e dell'Unione europea, al fine di comprendere se e quali differenze vi siano tra il modo di operare – e quindi di concepire la propria funzione – del traduttore giuridico nei diversi contesti. L'indagine non ha l'ambizione di condurre a conclusioni di carattere generale, ma si pone quale mero spunto di riflessione derivato dall'analisi pratica del funzionamento degli strumenti di supporto traduttivo generalmente utilizzati nei diversi ambiti. Non può infatti trascurarsi l'importanza che tali strumenti assumono nel lavoro quotidiano del traduttore giuridico, né la profonda connessione tra la loro configurazione e struttura e la concezione del lavoro terminologico che li ispira. Riflettere sulla struttura del lavoro a partire dagli strumenti pensati per agevolarlo può forse aiutare a meglio comprendere funzioni, finalità e limiti del lavoro terminologico in ambito giuridico, un ambito la cui importanza e delicatezza sono destinate ad accrescersi in proporzione all'aumento della complessità e dell'integrazione tra le società (e gli ordinamenti giuridici) contemporanei.

3. Dizionari, strumenti tradizionali

Se gli studiosi della lingua e quelli del diritto convengono dunque sul fatto che l'attività terminologica sia un'attività eminentemente comparativa, meno unanimi sono invece in merito al metodo da utilizzare per il lavoro pratico e molti degli strumenti (soprattutto informatici, ma talvolta anche cartacei¹⁸) sviluppati mostrano evidenti limiti in tal senso, riflettendo altresì le diverse concezioni del lavoro che ne ispirano i contenuti.

Il risultato di una siffatta frammentazione metodologica nei supporti per la traduzione in ambito giuridico è che nella prassi i dizionari, anche se specialistici, e le raccolte terminologiche tendono ad essere consultati essenzialmente come “riferimenti negativi”, che aiutano, nella migliore delle ipotesi, non già nell'individuazione della soluzione traduttiva migliore, ma semplicemente a scartare quelle meno confacenti al contesto di riferimento. Ciò pare dovuto a molteplici fattori, tra cui, oltre alle evidenti ragioni economiche e di tempo collegate alla realizzazione di questi strumenti, merita ricordare:

a) l'oggettiva difficoltà di costringere in uno spazio piuttosto ridotto una serie di informazioni imprescindibili ai fini della comprensione del termine in questione. Il rapporto tra spazio utilizzato e informazioni essenziali è con tutta evidenza un problema non trascurabile nella realizzazione di dizionari, tanto più se specialistici e dunque richiedenti spiegazioni semplici – accessibili al traduttore non necessariamente esperto in materia – di concetti talvolta assai complessi. Vero è che buona parte dei problemi dati dal rapporto spazio-informazione può trovare soluzione con l'informatizzazione dei dizionari e l'utilizzo dell'ipertesto, e tuttavia ciò non risolve ed anzi aggrava i problemi legati alla limitatezza delle risorse temporali a disposizione del traduttore: assai spesso, infatti, a fronte della mole di informazioni rinvenibili in un sistema ipertestuale, manca il tempo di usufruirne appieno;

b) la scelta del target a cui rivolgersi. Ogni dizionario specialistico nasce con l'ambizione di essere fruibile sia ai traduttori che agli specialisti della materia in questione (nel nostro caso i giuristi)¹⁹, ma il tipo di informazioni che vi si ritrovano, la diversità degli obiettivi nella consultazione e il diverso retroterra di conoscenze e competenze specifiche (anche in relazione all'utilizzo dei dizionari) tra i soggetti in questione rendono difficilmente conseguibile questo obiettivo. Ogni dizionario risulta pertanto più adatto ad un target piuttosto che ad un altro e, in mancanza di percorsi formativi comuni tra

¹⁸ Tra gli altri si veda: P. SANDRINI, *Multinational Legal Terminology in a Paper Dictionary*, in *Legal Lexicography. A Comparative Perspective*, M. MAC AODHA (ed.), London, 2014; M. CHROMÁ, 'Translation and the Law Dictionary', in *Legal Lexicography. A Comparative Perspective*, M. MAC AODHA (ed.), London, 2014.

¹⁹ Cfr. in tal senso ad es. F. MAYER, *Terminographie im Recht: Probleme und Grenzen der Bozner Methode*, in D. VERONESI (cur.), *Linguistica giuridica italiana e tedesca*, Padova, 2000, p. 295 ss.

giuristi e linguisti, ciò comporta quasi inevitabilmente la maggiore soddisfazione dell'uno o dell'altro gruppo nell'utilizzo dello specifico dizionario;

c) la possibilità di avvalersi della consulenza di esperti. Questo profilo risulta particolarmente importante in relazione a quanto appena affermato. Poiché, di regola, il dizionario e più in generale il supporto traduttivo – anche in ambito specialistico – è prodotto da esperti di traduzione, la sua vocazione a fungere da strumento utilizzabile per i (diversi) fini dei due gruppi di utenti (traduttori in materia giuridica o giuristi che si confrontano con un altro linguaggio giuridico) dipende molto dall'apporto che alla sua realizzazione possono fornire i consulenti esperti della materia. La questione si intreccia, com'è evidente, anche con ragioni di carattere economico e funzionale: gli esperti costano e in ogni caso, non esistendo probabilmente più il “giurista universale”, occorre selezionare esperti diversi (con gradi di esperienza e conoscenza diversi) per i diversi settori o sub-settori dell'ordinamento giuridico, di quello di partenza come di quello di arrivo. Non sempre ciò è possibile né può realizzarsi col medesimo grado di approfondimento, e pertanto risulta elevato il rischio di opere che presentano standard qualitativi diversi a seconda degli ambiti trattati.

A integrazione dei metodi tradizionali, come si vedrà anche nei prossimi paragrafi, negli ultimi anni si sono affermati strumenti digitali avanzati che supportano il lavoro terminologico e comparativo del traduttore giuridico. Tra questi, i CAT tool consentono di gestire memorie di traduzione, garantendo coerenza terminologica e riutilizzo di soluzioni validate. Le banche dati terminologiche centralizzate, come IATE per l'Unione europea, offrono accesso immediato a termini aggiornati e contestualizzati in tutte le lingue ufficiali, integrando informazioni concettuali e funzionalità digitali avanzate. L'uso combinato di dizionari tradizionali e strumenti digitali permette di coniugare la solidità dei metodi classici con la rapidità e la flessibilità necessarie nei contesti multilingue contemporanei.

Accanto a tali strumenti, risorse come EuroVoc, il thesaurus multilingue e multidisciplinare dell'UE, facilitano l'armonizzazione semantica attraverso una classificazione gerarchica di concetti articolata in settori e sottosettori. L'utilizzo di EuroVoc permette di orientarsi nella documentazione eurounitaria (EUR-Lex, preparatory acts, accordi internazionali, giurisprudenza), fornendo un ulteriore livello di coerenza concettuale utile sia al traduttore sia al giurista²⁰. Nel loro insieme, questi strumenti digitali ampliano e completano le potenzialità dei dizionari tradizionali, consentendo di coniugare la solidità dei metodi classici con la rapidità, la tracciabilità e la flessibilità richieste nei contesti multilingue contemporanei.

L'evoluzione degli strumenti, dai dizionari tradizionali ai sistemi digitali e alle banche dati terminologiche, offre lo spunto per osservare una progressiva convergenza tra approcci *bottom-up* e *top-down*, mostrando come metodologie storicamente distinte possano oggi integrarsi per supportare in modo più efficace il lavoro del traduttore giuridico nei diversi contesti nazionali e sovranazionali. I paragrafi successivi svilupperanno questa riflessione, analizzando le applicazioni pratiche di tali approcci nei contesti nazionale e sovranazionale.

4. Traduzione giuridica in contesti nazionali plurilingue: metodologie *bottom-up* e strumenti

Sulla base delle esperienze finora maturate in questo campo è possibile affermare che la realizzazione di validi strumenti terminologici, soprattutto in ambito giuridico, richiede che siano soddisfatti almeno alcuni criteri fondamentali che potremmo così riassumere²¹:

- 1) il lavoro dovrebbe essere svolto congiuntamente da linguisti e da giuristi;
- 2) le finalità e gli utenti andrebbero definiti fin da subito;

²⁰ <https://eur-lex.europa.eu/browse/eurovoc.html?locale=it> ; <https://op.europa.eu/it/web/eu-vocabularies>.

²¹ Cfr. E. CHIOCCETTI, N. RALLI, T. WISSIK, *The role of the domain expert in legal/administrative terminology work*, in G. TESSUTO, R. SALVI (eds.), *Language and Law in Social Practice Research*, Universitas Studiorum, 2015, pp. 249–267; N. RALLI, N. ANDREATTA, *Bistro – ein Tool für mehrsprachige Rechtsterminologie*, in *trans-kom*, 11(1), 2018, pp. 7–44, http://www.trans-kom.eu/bd11nr01/trans-kom_11_01_02_Ralli_Andreata_Bistro.20180712.pdf; K. PERUZZO, *Risorse terminologiche su misura: indagine e riflessione sulle necessità e le preferenze degli studenti di Giurisprudenza*, in M. Magris (ed.), *La banca dati TERMitLEX: un nuovo modello interdisciplinare per la terminografia giuridica*, Trieste, 2018, pp. 87–106.

3) i termini dovrebbero essere corredati di informazioni che ne caratterizzino i tratti concettuali essenziali e le loro (inter)relazioni, inserendo possibilmente una breve introduzione di carattere generale sulle caratteristiche degli ordinamenti esaminati;

4) andrebbe indicato il grado di equivalenza tra i termini appartenenti all'ordinamento della lingua di partenza ed i loro tradurenti nella lingua di arrivo, nonché i casi in cui il traduttore sia una mera proposta di traduzione perché nell'ordinamento della lingua di arrivo il concetto equivalente non esiste o si tratta di un neologismo.

Il soddisfacimento di questi criteri rende la predisposizione di strumenti di supporto alla traduzione giuridica un lavoro intimamente comparativo e – dunque – preferibilmente procedente dal basso verso l'alto: dal confronto terminologico si passa a quello concettuale, da questo al sistema (o sottosistema) giuridico di riferimento, e solo al termine di questa operazione di edificazione comparativa del confronto terminologico si giunge a identificare il traduttore o a formulare la proposta di traduzione.

Questo genere di operazione, che potrebbe definirsi di comparazione giuridica a fini traduttivi di tipo *bottom-up*, è svolto con gradi, intensità e finalità profondamente diverse. A titolo esemplificativo pare opportuno segnalare tre diverse manifestazioni del percorso comparativo *bottom-up* a fini terminologici, corrispondenti a tre diversi gradi di “intensità comparativa” nell'approccio alla ricerca del traduttore del termine giuridico italiano “appalto”.

Il primo esempio (fig. 1) mostra la prevalenza del sistema che abbiamo definito del “riferimento negativo”. Si tratta di un sistema agile e di rapida consultazione, spesso prediletto dal giurista per l'economicità della ricerca, ma più carente quanto alle informazioni di carattere comparativo che la voce fornisce al fruitore.

appalto m Werkvertrag m; – -con-
corso (opere pubbliche) öffentliche
Ausschreibung f (bei der Vergabe
öffentlicher Arbeiten); – di opere
pubbliche, – pubblico öffentli-
cher Auftrag, Werkvertrag über
die Ausführung öffentlicher Ar-
beiten.

Fig. 1 – G. CONTE, H. BOSS, *Dizionario giuridico ed economico IT-DE*, Milano-Muenchen, 1983, vol. 1, 20.

Un secondo esempio, di maggiore complessità sulla “scala comparativa”, è rappresentato dalla fig. 2, e mostra un tentativo di compromesso tra l'approccio del mero riferimento negativo e quello compiutamente comparatistico. In questo caso si forniscono all'utente alcune importanti informazioni di carattere generale sulla comparazione tra gli istituti, al fine di suggerire proposte di traduzione e sottolineare la mancanza di totale equivalenza tra il termine da tradurre e il suo traduttore. Tali informazioni cercano di fornire un bilanciamento nel gruppo dei destinatari, in quanto da un lato illustrano gli elementi essenziali dell'istituto nell'ordinamento (e non solo nella lingua) di arrivo, dall'altro omettono riferimenti all'istituto nell'ordinamento di partenza. L'attenzione sembra insomma prevalentemente accordata alle esigenze del fruitore giurista, in grado di trovare riferimenti esplicativi per comprendere le difficoltà della traduzione. Ridotta risulta invece l'attenzione ai contesti d'uso del termine nella coppia di lingue considerata, limitata al richiamo di alcune voci concettualmente collegate.

Fig. 2 – F. DE FRANCHIS, *Dizionario giuridico italiano-inglese*, Milano, 1996, 381.

Apologia di reato. Grosso modo, instigation to commit a crime (ISTIGAZIONE A COMMITTERE UN REATO).

Appaltatore in genere. Grosso modo, independent contractor o, più spesso, contractor; può essere o meno un *agent* (APPALTO; AUSILIARI DELL'APPALTATORE; CAUZIONE DELL'APPALTATORE; COMMITTENTE; COSTRUTTORE; COTTIMISTA; FORNITORE; PREPOSTO; SUBAPPALTATORE). [vol. I: CONTRACTOR; RENEGOTIATION ACT; UNDERTAKER]

– **diretto.** General contractor, prime contractor (SUBAPPALTATORE).

– **edile in genere.** Building contractor (*supra*, APPALTATORE IN GENERE).

Appalto. Non esiste nei sistemi di *common law* una categoria generale equivalente all'appalto nostrano. Anche qui il requisito della *consideration* pone spesso problemi ignoti alla nostra tradizione giuridica. La prassi ha elaborato delle forme particolari di appalto come, ad es., i *building contracts* e gli *shipbuilding contracts*. Sembra opportuno rilevare che anche in questa materia riappare l'ombra della grande dicotomia dei sistemi di *civil law*, ossia quella tra diritto pubblico e diritto privato, per molti versi priva di equivalenza nei sistemi di *common law*. Da questo punto di vista, alla più o meno netta distinzione di regime del sistema italiano dell'appalto retto dal diritto privato o dal diritto pubblico-amministrativo, nella *common law* corrisponde sostanzialmente un regime tendenzialmente comune, anche in presenza di una normativa specifica che si riscontra invariabilmente in tema di appalti pubblici. Sono detti *procurement contracts* i contratti di fornitura per appalto pubblico. Negli S.U. i contratti di appalto federali sono disciplinati dalle *Federal Acquisition Regulations*, e i contratti di appalto pubblico sono detti *federal government contracts*. Ma si parla, più genericamente, di *procurement law* per indicare la materia relativa all'acquisizione pubblica di beni e servizi, che occupa ormai decine di volumi. L'appalto pubblico internazionale è detto *international procurement*. Il termine *independent contract*, proposto spesso per indicare l'appalto, non è privo di ambiguità (AGGIUDICATARIO DI UN APPALTO; AGGIUDICAZIONE; APPROVVIGIONAMENTO; ASTA; ATTO AMMINISTRATIVO; CAPITOLATO D'APPALTO; CATERING; CAUZIONE DELL'APPALTATORE; COLLAUDO; DIRITTO (I) AMMINISTRATIVO; FIDEISSIONE; FORNITURA IN APPALTO; GARIA DI APPALTO; HARDSHIP CLAUSE; INCANTO; LAVORI

PUBBLICI; LICITAZIONE; MIGLIORE OFFERENTE; OFFERENTE IN UNA GARA D'APPALTO; OFFERTA PUBBLICA DI APPALTO; POLITICA DEGLI APPALTI PUBBLICI; PROCEDURA DI APPALTO; PROFITTI STRAORDINARI; RAPPRESENTANZA; RINEGOZIAZIONE OBBLIGATORIA DEI CONTRATTI DI FORNITURA AGLI ENTI PUBBLICI NEGLI S.U.; SOMMINISTRAZIONE; STAZIONE APPALTANTE; SUBAPPALTO). [vol. I: GOVERNMENT CONTRACTS; FRANCHISE; PROCUREMENT; PUBLIC UTILITY; RENEGOTIATION ACT; TENDER]

– **chiavi in mano in genere.** Turn key contract. [vol. I: *ad vocem*; ENGINEERING]

– **di costruzione.** Building contract (costruzione).

– **di costruzione a trattativa privata.** Building contract by private treaty. [vol. I: PRIVATE TREATY]

– **pubblico in genere.** Public procurement, government procurement, government contract for the procurement of goods and services (ATTO UNICO EUROPEO; IMPOSTA SUI PROFITTI STRAORDINARI; OFFERTA; PROFITTI STRAORDINARI). [vol. I: CONTRACT; GOVERNMENT CONTRACTS; PROCUREMENT; TENDER]

Appannaggio reale. (LISTA CIVILE)

Apparente. Apparent, ostensible, nominal, fictitious (APPARENZA; EREDE APPARENTE; FINZIONE GIURIDICA; LATENTE; NOMINALE; OSTENTATO; PALESE; POTERE APPARENTE; RAPPRESENTANZA APPARENTE; REALE; VIZIO APPARENTE).

Apparenza. Appearance, colour (FINZIONE GIURIDICA).

– **del diritto.** Colour (o color) of law, colour of right; ma questa figura non ha subito l'elaborazione dogmatica conosciuta in Italia. Peraltro, se si bada alla sostanza, sembra potersi dire che la antica e robusta figura dell'*estoppel* copre, tra l'altro, numerosi casi nei quali si verificano ipotesi di apparenza del diritto quali sono concepite nel diritto nostrano. Presentano analogie con l'apparenza i seguenti casi: a) la *reputed ownership*, tipica del diritto fallimentare inglese, ispirata alla tutela dei creditori del fallito; b) l'*apparent* o *ostensible agency*, grosso modo, rappresentanza apparente, nei casi limitatissimi in cui tale figura è ammessa. Infine, il termine *prima facie* allude anch'esso, in qualche modo, a una forma di apparenza; ma funzione giuridica e presunzione si intrecciano spesso al concetto di apparenza del diritto. Un atto o procedimento *fair on its face* è quello che, sulla base degli

Il terzo esempio (fig. 3) mostra infine un approccio di tipo comparativo totale. Qui la ricerca del traduttore o della proposta traduttiva avviene al termine di un complesso percorso di confronto concettuale e linguistico tra la lingua di partenza e la lingua di arrivo (le lingue, trattandosi del tedesco, usato ufficialmente in più Paesi con diverse sfumature nel linguaggio specialistico). Se questo tipo di lavoro contiene gli elementi di interesse per entrambe le categorie dei fruitori (specie le definizioni e i contesti d'uso), esso tuttavia non solo richiede molto tempo e molto lavoro (dunque molti soldi) ma presenta anche alcuni limiti nella prospettiva del fruitore giurista (eccessiva attenzione ai contesti d'uso) e di quello linguista (selezione delle fonti). Un lavoro di questo tipo è spesso riscontrabile (in presenza di mezzi anche economici adeguati, stante quanto appena affermato in relazione ai costi) in contesti nazionali plurilingui, in cui vi sia l'esigenza di determinare il traduttore più corretto (spesso destinato alla normazione, come nel caso di specie)²² di un concetto riferito ad un ordinamento giuridico unitario (quello nazionale), da rendere però in lingue diverse, generalmente riconducibili ad ordinamenti giuridici diversi²³. Nell'esempio il termine “*appalto*” viene illustrato nella lingua di partenza (italiano) e riproposto nelle diverse sfaccettature che può assumere nella lingua di arrivo (tedesco).

²² Sull'attività di normazione della terminologia giuridica, con particolare riferimento al caso dell'Alto Adige/Südtirol, cfr. F. PALERMO, E. PFÖSTL, *Normazione linguistica e tutela minoritaria*, in *Revista de Llengua i Dret*, n. 27 (1997), 99 ss. Inoltre, dall'insediamento della Commissione di terminologia (1994) ad oggi, varie pubblicazioni sull'attività della Commissione ne descrivono i traguardi raggiunti e le criticità emerse, tra gli altri si veda: E. CHIOCCHETTI, *Effects of social evolution on terminology policy in South Tyrol*, in *Terminology*, 27(1), 2021, pp. 110–139; N. RALLI, I. STANIZZI, *Ansätze zur Vereinheitlichung der Rechts- und Verwaltungsterminologie: Ein Beispiel aus Südtirol*, in I. SIMONNÆS, Ø. ANDERSEN, K. SCHUBERT (eds.), *New Challenges for Research on Language for Special Purposes*, Berlin, 2018, pp. 159–172.

²³ È il caso, ad es., della Provincia di Bolzano in Italia, del Quebec in Canada, della Svizzera, ecc. Si tratta di contesti in cui, a fronte di un ordinamento giuridico nazionale sorge l'esigenza di rendere i concetti giuridici riferiti a quell'ordinamento anche in altre lingue che generalmente si riferiscono ad altri ordinamenti giuridici (Germania, Austria e Svizzera per il tedesco, Francia e Belgio per il francese, molti ordinamenti diversi per l'inglese, ecc.).

Fig. 3 – F. BULLO et al., *Dizionario terminologico del diritto dei contratti italiano-tedesco*, München et al., 2003, 91.

<i>appalto n.m.</i> DEFINIZIONE: Contratto col quale una parte assume, con organizzazione dei mezzi necessari e con gestione a proprio rischio, il compimento di un'opera o di un servizio verso un corrispettivo in danaro. CONTESTO: Tanto nel contratto d'opera quanto nell'appalto, la prestazione di un bene o di un servizio si intende sempre come risultato, e non come attività lavorativa subordinata (la quale invece forma la sostanza del contratto di lavoro). <i>TRAB 01:803</i> <i>contratto di appalto n.m.</i> CONTESTO: Per stabilire il criterio differenziale tra il contratto di appalto e quello di vendita, occorre far riferimento alla volontà delle parti, onde accertare se esse abbiano avuto di mira il conseguimento di un dato risultato di lavoro, compiuto dall'appaltatore con propri mezzi ed a proprio rischio, ovvero il trasferimento della proprietà di una cosa. <i>Cass. 07.12.1976, n. 4754</i>	<i>Unternehmerwerkvertrag n.m.</i> <i>(Südtirol genormt)</i> KONTEXT IT: Der Unternehmerwerkvertrag ist der Vertrag, mit dem eine Partei die Ausführung eines Werkes oder die Leistung eines Dienstes unter organisiertem Einsatz der notwendigen Mittel und auf eigene Verantwortung um eine Gegenleistung in-Geld übernimmt. <i>CC BL 97, Art. 1655, c. 1</i> <i>Werkvertrag n.m.</i> AT, DE, CH DEFINITION AT: Vertrag, mit dem sich eine Person verpflichtet, gegen Entgelt ein Werk herzustellen oder einen Erfolg herbeizuführen. KONTEXT AT: Ein besonders typischer Werkvertrag ist der Bau(werk)vertrag; er verpflichtet den Bauunternehmer zur Errichtung eines Bauwerkes idR auf dem Grund des Bestellers [...]. <i>RUMM 190 §§ 1165, 1166, Rz. 22</i> DEFINITION DE: Vertrag, bei dem der Unternehmer zur Herstellung des versprochenen Werks, der Besteller zur Entrichtung der vereinbarten Vergütung verpflichtet wird. KONTEXT DE: Die Parteien des Werkvertrags werden vom Gesetz als "Besteller" und "Unternehmer" bezeichnet. <i>LARE II 1 86:342</i> DEFINITION CH: Vertrag, durch welchen sich der Unternehmer zur Herstellung eines Werkes und der Besteller zur Leistung einer Vergütung verpflichtet. Dienstvertrag n.m. DE DEFINITION DE: Vertrag, durch den sich der eine Teil zur Leistung der versprochenen Dienste, der andere zur Leistung der vereinbarten Vergütung verpflichtet wird. KONTEXT DE: Besondere Schwierigkeiten bereitet die Abgrenzung von Dienst- und Werkvertrag. Theoretisch läßt sie sich zwar leicht durchführen: Beim Dienstvertrag wird die Dienstleistung als solche, beim Werkvertrag hingegen ein bestimmter Arbeitserfolg, ein Arbeitsergebnis, versprochen. Im Einzelfall ist es aber oft schwer festzustellen, ob nur ein Arbeitseinsatz oder aber ein Arbeitserfolg geschuldet wird. <i>BROX BT 99:164</i> Werkvertrag mit einem kaufmännischen Unternehmen n.m. DE <i>Rösch</i> Dienstvertrag mit einem kaufmännischen Unternehmen n.m. DE <i>Rösch</i>
Nel diritto italiano l'istituto del contratto d'appalto è molto vicino a quello del contratto d'opera; <i>comunque</i> alle due figure sono intatti l'oggetto, vale a dire il compimento di un'opera od un servizio dietro corrispettivo, e la mancanza di subordinazione verso il committente. L'elemento differenziale deve cogliersi nel lavoro "prevalentemente proprio" del prestatore d'opera e nel premiente ricorso al lavoro altrui che caratterizza, invece l'organizzazione dell'appaltatore. A differenza dell'ordinamento italiano, in quello tedesco la distinzione tra i due tipi di contratto avviene sul tipo di obbligazione assunta dal debitore. Così se l'obbligazione è di risultato (compimento di un'opera materiale), si tratta di un <i>Werkvertrag</i>, se invece è di mezzi, di <i>Dienstvertrag</i>.	Im italienischen Recht steht der <i>contratto d'appalto</i> dem <i>contratto d'opera</i> sehr nahe; beide haben eine Leistung (Dienstleistung oder Werk) auf eigenes Risiko gegen Entgelt zum Inhalt, und der Auftragnehmer ist dem Auftraggeber nicht untergeordnet. Die Begriffe unterscheiden sich insofern, als der <i>prestatore d'opera</i> (einfacher Werkunternehmer) vorwiegend eigene Arbeit leistet, wohingegen der <i>appaltatore</i> (Unternehmer) vorwiegend auf fremde Arbeitsleistung zurückgreift. Im Gegensatz zum italienischen Recht erfolgt die Abgrenzung hier nach dem Inhalt des Schuldverhältnisses: Ist ein Erfolg geschuldet (z.B. die Herstellung eines körperlichen Werks), so ist es ein Werkvertrag; ist ein Tätigwerden geschuldet, handelt es sich um einen Dienstvertrag.

Come risulta evidente dagli esempi appena riportati, anche nel quadro dell'approccio *bottom-up* varia di molto l'intensità comparatistica del lavoro svolto, a seconda dei criteri sopra evidenziati (cooperazione interdisciplinare, destinatari dell'opera, peso delle singole informazioni concettuali e traduttologiche) e dal peso che si dà loro nel definire l'impostazione del lavoro analitico-terminologico.

5. Traduzione giuridica sovranazionale: approccio top-down e strumenti

Nell'ambito dell'Unione europea, quanto appena visto in relazione a ciò che abbiamo definito “scala di intensità comparativa” nel lavoro terminologico in ambito giuridico assume una dimensione e connotati assai diversi. Le problematiche e le caratteristiche della traduzione giuridica a livello sovranazionale non coincidono sempre e necessariamente con quelle della traduzione giuridica in senso lato, poiché cambiano i presupposti. Nel corso degli anni l'UE si è affermata come soggetto giuridico autonomo elaborando un ordinamento giuridico proprio, diverso da quelli dei singoli Stati membri; ciò ha determinato la necessità di ricorrere ad un lessico specifico in grado di esprimere nuovi concetti e un nuovo universo giuridico²⁴. A differenza di quanto (comunemente) avvenuto in passato nella formazione degli Stati nazionali, tuttavia, la lingua non è stata né avrebbe potuto essere per l'UE un fattore identitario, quanto piuttosto un *elemento di possibile frammentazione*. Non esistendo una “lingua europea”, la questione linguistica è (stata) potenzialmente un fattore di incremento della differenziazione piuttosto che di coesione.²⁵

Così, dalla unicità ed autonomia dell'ordinamento europeo (criteri nei confronti dei quali il pluralismo linguistico avrebbe potuto potenzialmente rappresentare un pericolo), deriva quasi naturalmente, nel quadro del processo di edificazione dell'identità europea, che siano (e debbano essere) i codici linguistici delle varie lingue nazionali a doversi adattare a un concetto europeo che, in molti casi, è determinato da concezioni e tradizioni diverse da quelle dell'ordinamento verso il quale si traduce²⁶. Si pensi, tra i tanti possibili esempi, al caso del diritto amministrativo europeo, di chiara derivazione francese e sicuramente di difficile trasposizione nel sistema anglosassone²⁷.

Per rispondere alle esigenze poste dal regime di multilinguismo dell'UE, i testi europei devono così essere necessariamente caratterizzati da uno stile ed una terminologia più “neutri” possibili in modo da garantire la coerenza ed il parallelismo delle varie versioni.

Non si può inoltre dimenticare che, stante quanto appena ricordato, il linguaggio e la terminologia europea (specie in ambito giuridico) non derivano da un'elaborazione teorico-linguistica effettuata da parlanti di una lingua, ma sono piuttosto il risultato di un'operazione di traduzione o di adattamento compiuta all'interno delle istituzioni.²⁸ Il “gergo” specialistico europeo nasce dunque nelle istituzioni (e nei loro servizi di traduzione) come accompagnamento linguistico del processo di integrazione (anche culturale) europea, e dunque, coerentemente, si sviluppa al centro per garantire l'uniformità del significato del concetto giuridico (e dunque dell'interpretazione) e si irradia verso la periferia assumendo le forme dei diversi linguaggi (specialistici) nazionali, secondo un percorso di cui pare difficile dire quanto esso sia stato casuale e quanto sia invece ascrivibile ad un preciso disegno di politica dell'integrazione.

²⁴ A. GAMBARO, *Jura et Leges nel processo di edificazione di un diritto privato europeo*, in *Europae Diritto Privato*, 1998, pp. 993-1018; A. GAMBARO, *A proposito del plurilinguismo legislativo*, in *Rivista Trimestrale di Diritto e Procedura Civile*, 2004, p. 287.

²⁵ Cfr. tra i tanti, con ampi riferimenti, M. NIEDOBITEK, *The Cultural Dimension in EC Law*, London et al., 1997.

²⁶ Si pensi, ad esempio, al caso della lingua croata nel processo di adesione all'UE: la necessità di adattare il lessico giuridico nazionale ai concetti del diritto dell'Unione ha richiesto un approfondito lavoro terminologico e comparativo. Si veda tra gli altri: M. BAJČIĆ, *New insights into the semantics of legal concepts and the legal dictionary*, Amsterdam, Philadelphia, 2017.

²⁷ Sul ruolo della lingua francese, si veda tra i molti: E. GRASSO, *Multilinguismo e funzione pubblica: dal prestigio del modello francese alla costruzione dell'identità europea*, Torino, 2020; L. CLÉMENT-WILZ, *Les Français, la France et la francophonie: réflexions sur la fabrique du droit européen*, in *Il diritto dell'Unione europea*, 2020, 4, pp. 701-727.

²⁸ Cfr. E. IORIATTI, *Comparative Law and EU Legal Language: Towards a European Restatement?*, cit.

La prima e principale conseguenza di questo tipo di approccio, che possiamo pertanto definire di tipo *top-down*, è che il concetto di equivalenza passa in secondo piano rispetto al principio cardine dell'architettura europea basato sulla concordanza e la coerenza delle versioni linguistiche.²⁹ Di conseguenza, la terminologia europea, compresa quella giuridica, tende a svilupparsi e ad imporsi secondo modalità assai più congegnali alla terminologia di matrice tecnico-scientifica (dove prevale l'uniformità dei concetti) che a quella caratteristica della terminologia giuridica (in cui risulta determinante, come si è visto, la dimensione comparata).

Ogni tecnicismo europeo è infatti perfettamente equivalente (o, perlomeno intende esserlo) al suo eteronimo nelle altre 24 lingue³⁰. Si pensi per un facile esempio alla denominazione degli atti normativi dell'UE, dove i termini "regolamento" o "direttiva" acquistano un significato giuridico proprio e profondamente diverso da quello che i medesimi termini hanno nelle lingue giuridiche nazionali. La terminologia europea tende, insomma, più ad uniformare che a raffrontare o a differenziare.

Per questo, a differenza delle numerose banche dati terminologiche finora sviluppate in paesi o regioni plurilingue (Alto Adige, Svizzera, Belgio, Canada, ecc.), quella dell'UE appaiono sicuramente più ricche in termini di combinazioni linguistiche, ma mancano spesso di informazioni circostanziate sul termine ricercato (talvolta, oltre al contesto d'uso, manca anche la definizione). L'approccio tradizionale del lavoro terminologico *top-down* dell'UE si ripercuote infatti con tutta evidenza negli strumenti di sostegno al lavoro di traduzione predisposti a livello europeo, che rispecchiano l'esigenza di certezza e si caratterizzano per un approccio più congeniale alla terminologia tecnico-scientifica che a quella giuridica.

In altri termini, come risulta anche dalla fig. 4 (che riproduce una pagina della banca dati *Eurodicautom*, utilizzata fino ai primi anni Duemila come principale riferimento terminologico delle istituzioni e oggi sostituita da *IATE*)³¹, all'utente si offre la certezza di un corrispondente e non il dubbio collegato ai contesti d'uso. Ciò pare perfettamente coerente con l'impostazione dell'ordinamento europeo che si vede come ordinamento autonomo, in cui conseguentemente il multilinguismo non è frutto di una attività comparativa, ma piuttosto si connota come semplice declinazione in 24 lingue del medesimo concetto, che essendo di origine europea (anche se mutuato dai sistemi nazionali) è per definizione unico. Il concetto di "*appalto*" riportato nella scheda terminologica è quindi quello europeo, e non rileva la possibile diversa lettura che se ne possa fornire nei diversi contesti nazionali.

Qualche apertura comparativa è tuttavia riscontrabile nella citazione di termini (nell'accezione proveniente) da ordinamenti nazionali diversi (e non europei, come la Svizzera) e nell'attenzione al richiamo alle fonti. Tuttavia, risulta evidente come questo approccio tenda a prediligere le esigenze della traduzione dell'UE, trattandosi di una banca dati enorme quanto a riferimenti e voci, e l'unica ad operare in 24 diverse lingue.

²⁹ Cfr. anche le osservazioni di R. SACCO, voce *Traduzione giuridica* (aggiornamento), in *Dig. Civ.*, Torino, 2000, 722 ss.

³⁰ "Una corrispondenza totale, senza riserva, permanente, fra due espressioni appartenenti a due lingue diverse può essere creata solo da un elemento artificiale. [...] il significato di una parola è artificiale se un'autorità superiore alla lingua si è pronunciata sul valore del termine o sulla corrispondenza fra due vocaboli. Così avviene se un legislatore è bilingue, e con ciò impone che i due testi abbiano di necessità lo stesso significato. Possiamo pensare anche ad un'autorità puramente morale: la dottrina di un paese può prescegliere la tale espressione per rendere la tale altra espressione". R. SACCO, *Introduzione al diritto comparato*, V edizione, Torino, 1992, p. 38.

³¹ *Eurodicautom*, storica banca dati terminologica della Commissione europea, è stata progressivamente dismessa a partire dagli anni 2000 e sostituita da *IATE*, oggi la banca dati interistituzionale dell'UE. La sua recente ristrutturazione tecnologica mira a migliorarne interoperabilità, modularità e scalabilità, consentendo inoltre l'integrazione dei dati terminologici con strumenti esterni – in particolare ambienti di traduzione assistita (CAT) – secondo quanto illustrato, tra gli altri, da Zorrilla-Agut e Fontenelle. Si veda, tra gli altri: J. GOETHSCHALCKX, *EURODICAUTOM*, in BARBARA M. SNELL (eds.), *Translating and the Computer: Proceedings of a Seminar, London, 14th November, 1978*, London, 1978; P. ZORRILLA-AGUT, T. FONTENELLE, *IATE 2: Modernising the EU's IATE terminological database to respond to the challenges of today's translation world and beyond*, in *Terminology International Journal of Theoretical and Applied Issues in Specialized Communication*, 25(2):146-174, 2019, 10.1075/term.00034.zor.

L'analisi degli strumenti e delle metodologie fin qui illustrate evidenzia come, nonostante le differenze di approccio tra contesti nazionali plurilingui e contesti europei, emergano punti di contatto e possibilità di complementarità: il paragrafo successivo esplorerà le prospettive di integrazione tra modelli *bottom-up* e *top-down*, mostrando come le metodologie storicamente distinte possano oggi convergere per supportare più efficacemente il lavoro del traduttore giuridico.

HitList		ACH - ORV92 - 2150002	
1.	contratto d'appalto(1)		

Document 1		Export New Entry Feedback	
Subject	Law - Legislation - Jurisprudence (JU)		
IT Definition	Contratto per cui l'appaltatore si obbliga a compiere un'opera e il committente a pagare una mercede.		
Reference	(VE)Codice delle obbligazioni,art.363(RS 220)		
(1) TERM	contratto d'appalto		
Reference	Codice delle obbligazioni,art.363(RS 220);secondo fonte		
Note	{REG} CH		
DE Definition	Vertrag,durch den sich der Unternehmer zur Herstellung eines Werkes und der Besteller zur Leistung einer Vergütung für die Herstellung verpflichtet.		
Reference	(VE)Obligationenrecht,Art 363(SR 220)		
(1) TERM	Werkvertrag		
Reference	Obligationenrecht,Art 363(SR 220);nach Quelle		
Note	{REG} CH		

Fig. 4 – Eurodicautom – <http://europa.eu.int/eurodicautom/>

6. *L'integrazione tra i modelli*

Di fronte a questa diversità di approccio è inevitabile chiedersi (almeno sotto il profilo terminologico) se questo metodo possa essere applicato indiscriminatamente a tutti gli ambiti dell'Unione europea o, se, viceversa, si debba in qualche modo operare una distinzione basata, se non proprio sulle singole discipline, almeno su gruppi di discipline. I limiti di un siffatto approccio, pur nel mantenimento dei suoi prevalenti pregi, sembrano essere stati ampiamente colti dagli operatori dell'UE.

Vari studi dimostrano infatti come un approccio del tipo che abbiamo definito *top-down*, necessariamente teso alla semplificazione, sollevi in numerosi casi problemi di incertezza giuridica e di ambiguità semantica, anche e soprattutto nel momento in cui la legislazione dell'UE deve essere "tradotta" in legislazione nazionale.³²

Un caso interessante in cui questo approccio ha mostrato i suoi limiti, già a livello dell'UE³³, è rappresentato dalla direttiva 98/5/CE, volta a facilitare l'esercizio permanente della professione di avvocato in uno Stato membro diverso da quello in cui è stata acquistata la qualifica³⁴. Perché non ci fossero dubbi sulla figura professionale a cui si applicava la direttiva, il legislatore ha ritenuto indispensabile integrare l'articolato con una tabella dei titoli di cui si fregia ciascuna figura professionale in ciascuno degli Stati membri (art. 1 c. 2 – fig. 5). In altre parole, in casi particolari e molto "visibili" di necessità comparatistica, come la diversa concezione della funzione di avvocato nei diversi Stati membri e la relativa diversità di disciplina, il legislatore dell'UE acquista una forte consapevolezza del ruolo comparativo del plurilinguismo dell'UE riferito ad ambiti che presentano forti differenze nazionali.

³² Cfr. D. COSMAI, *Tradurre per l'Unione europea*, Milano, 2001, 123 ss.

³³ Esempio tratto da D. COSMAI, *Tradurre per l'Unione europea*, cit., 52 ss.

³⁴ Direttiva 98/5/CE del Parlamento europeo e del Consiglio del 16 febbraio 1998 volta a facilitare l'esercizio permanente della professione di avvocato in uno Stato membro diverso da quello in cui è stata acquistata la qualifica, GUCE L 77 del 14/03/1998, 36.



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dell'autorità competente di tale Stato di non concedere il titolo professionale di quest'ultimo, secondo le modalità di agevolazione connesse con tali condizioni, deve essere motivata ed è soggetta a ricorso giurisdizionale di diritto interno;

(15) considerando che l'evoluzione economica e professionale nella Comunità dimostra che la facoltà di esercitare in comune la professione di avvocato, ivi compreso in forma di associazione, sta diventando una realtà; che occorre evitare che il fatto di esercitare la professione in comune nello Stato membro di origine costituisca un pretesto per opporre ostacoli o intalci allo stabilimento nello Stato membro ospitante degli avvocati che vi partecipano; che occorre tuttavia consentire agli Stati membri di adottare provvedimenti adeguati per conseguire lo scopo legittimo di garantire l'indipendenza della professione; che si devono prevedere in ogni Stato membro delle garanzie che consentano l'esercizio in comune della professione,

HANNO ADOTTATO LA PRESENTE DIRETTIVA:

Articolo 1

Scopo, campo di applicazione e definizioni

1. Scopo della presente direttiva è di facilitare l'esercizio permanente della professione di avvocato, come libero professionista o come lavoratore subordinato, in uno Stato membro diverso da quello nel quale è stata acquisita la qualifica professionale.
2. Ai fini della presente direttiva, si intende per

a) *avvocato*, ogni persona, avente la cittadinanza di uno Stato membro, che sia abilitata ad esercitare le proprie attività professionali facendo uso di uno dei seguenti titoli professionali:

in Belgio:	Avocat/Advocaat/ Rechtsanwalt
in Danimarca:	Advokat
in Germania:	Rechtsanwalt
in Grecia:	Δικηγόρος
in Spagna:	Abogado/Advocat/Abogado/ Abokatu
in Francia:	Avocat
in Irlanda:	Barrister/Solicitor
in Italia:	Avvocato
in Lussemburgo:	Avocat
nei Paesi Bassi:	Advocaat
in Austria:	Rechtsanwalt
in Portogallo:	Advogado

in Finlandia: Asianajaja/Advokat

in Svezia: Advokat

nel Regno Unito: Advocate/Barrister/Solicitor

- b) *Stato membro di origine*, lo Stato membro nel quale l'avvocato ha acquisito il diritto di utilizzare uno dei titoli professionali di cui alla lettera a) prima di esercitare la professione di avvocato in un altro Stato membro;
- c) *Stato membro ospitante*, lo Stato membro nel quale l'avvocato esercita secondo le disposizioni della presente direttiva;
- d) *titolo professionale di origine*, il titolo professionale dello Stato membro nel quale l'avvocato ha acquistato il diritto di utilizzare tale titolo prima di esercitare la professione di avvocato nello Stato membro ospitante;
- e) *studio collettivo*, qualsiasi entità, con o senza personalità giuridica e costituita secondo la legislazione di uno Stato membro, nell'ambito della quale alcuni avvocati esercitano la loro attività professionale in comune e sotto una denominazione comune.
- f) *titolo professionale corrispondente o professione corrispondente*, il titolo professionale o la professione facente capo all'autorità competente presso la quale l'avvocato si è iscritto a norma dell'articolo 3; e per *autorità competente*, tale autorità.

3. La presente direttiva si applica agli avvocati che esercitano la professione sia come liberi professionisti che come lavoratori subordinati nello Stato membro di origine e, fatto salvo l'articolo 8, nello Stato membro ospitante.
4. L'esercizio della professione di avvocato, a norma della presente direttiva, non riguarda le prestazioni di servizi disciplinate dalla direttiva 77/249/CEE.

Articolo 2

Diritto di esercitare la professione con il proprio titolo professionale di origine

Gli avvocati hanno il diritto di esercitare stabilmente le attività di avvocato precisate all'articolo 5 in tutti gli altri Stati membri con il proprio titolo professionale di origine.

L'integrazione nella professione di avvocato dello Stato membro ospitante è soggetta alle disposizioni dell'articolo 10.

Articolo 3

Iscrizione presso l'autorità competente

1. L'avvocato che intende esercitare in uno Stato membro diverso da quello nel quale ha acquisito la sua qualifica professionale deve iscriversi presso l'autorità competente di detto Stato membro.

Fig. 5 – Direttiva 98/5/CE, art. 1 c. 2

Tale tentativo di chiarificazione ha suscitato suo malgrado nuovi interrogativi, per esempio se si possa parlare di parità, ai fini dell'applicazione della direttiva, fra figure come barrister e solicitor in Irlanda o advocate/barrister e solicitor nel Regno Unito. Per tale motivo, il testo ha dovuto essere ulteriormente integrato con precisazioni più approfondite, questa volta di natura intralinguistica (art. 3, c. 3 – fig. 6).

3. Ai fini dell'applicazione del paragrafo 1:

- nel Regno Unito e in Irlanda, gli avvocati, che esercitano con un titolo professionale diverso da quelli del Regno Unito e dell'Irlanda si iscrivono presso l'autorità competente per la professione di "barrister" o di "advocate", oppure presso l'autorità competente per la professione di "solicitor".
- nel Regno Unito, l'autorità competente per un "barrister" irlandese è quella competente per la professione di "barrister" o di "advocate" e per un "solicitor" irlandese è quella competente per la professione di "solicitor".
- in Irlanda, l'autorità competente per un "barrister" o un "advocate" del Regno Unito è quella competente per la professione di "barrister" e per un "solicitor" del Regno Unito quella competente per la professione di "solicitor".

Fig. 6 – Direttiva 98/5/CE, art. 3 c. 3.

In definitiva sembra che nella legislazione e – soprattutto – nell'attività di traduzione e redazione multilingue dell'UE, al tradizionale approccio *top-down* vada progressivamente affiancandosi, integrandolo pur non volendolo né potendolo sostituire, una attenzione sempre maggiore a soluzioni traduttive di natura comparativa. L'auspicio di un'ulteriore accelerazione in tale direzione si rinviene anche nella dottrina più attenta a questi problemi³⁵.

Un ulteriore elemento conferma la progressiva convergenza fra approcci *bottom-up* e *top-down* nella terminologia giuridica dell'Unione europea. Da un lato, la pratica del co-drafting, oggi sempre più diffusa, riduce la distanza tra creazione normativa e traduzione, mirando a una costruzione concettuale realmente multilivello³⁶. Dall'altro, la Corte di giustizia dedica crescente attenzione alle divergenze terminologiche e alle differenti versioni linguistiche, valorizzando la comparazione implicita fra ordinamenti come criterio interpretativo. Parallelamente, anche gli studi sull'interpretazione multilingue hanno sviluppato sempre più consapevolezza della dimensione comparativa, rafforzando l'idea che la coerenza terminologica dell'UE non possa prescindere da una comparazione sistematica tra concetti e istituti giuridici e alimentando l'idea che vi sia un piano di incontro tra nazionale e sovranazionale a livello linguistico e concettuale.³⁷

Questi elementi – istituzionali, giurisprudenziali e teorici – contribuiscono a delineare un modello terminologico europeo caratterizzato da una integrazione crescente tra le esigenze di armonizzazione linguistica (*top-down*) e l'analisi concettuale comparativa (*bottom-up*).

7. Riflessioni conclusive

Dagli esempi e dalle riflessioni precedenti emerge come il lavoro terminologico in ambito giuridico sia stato storicamente caratterizzato da approcci profondamente divergenti tra contesti nazionali plurilingui e contesto dell'Unione europea. Tale diversità si riconduce principalmente alla differente natura e finalità del lavoro terminologico nei due settori, come risulta dall'analisi degli strumenti di supporto alla traduzione specialistica elaborati nei rispettivi contesti.

Tuttavia, negli ultimi anni si osserva un progressivo cambiamento di tendenza in ambito UE: pur nella maggiore ristrettezza delle risorse dedicate alla traduzione nelle istituzioni, la traduzione giuridica riceve un'attenzione crescente rispetto ad altri ambiti specialistici. Si va affermando, infatti, una più marcata sensibilità alla natura comparativa del lavoro terminologico, come dimostrano gli

³⁵ Cfr. in particolare ancora D. COSMAI, *Tradurre per l'Unione europea*, cit., 151, il quale invoca in ambito dell'Unione europeo la necessità di un approfondimento teorico, anche sotto forma di indagine terminologica comparata, parallelo e complementare al momento operativo della traduzione.

³⁶ V. DULLION, *When was co-drafting 'invented'? On history and concepts in Legal Translation Studies*, in *Perspectives*, 31:6, 1127-1141, 2023. DOI: 10.1080/0907676X.2022.2105156; R. SACCO, (ed.), *L'interprétation juridique des textes rédigés dans plus d'une langue*, Torino, 2002.

³⁷ Tra gli altri si veda: C. BERGOMI, *Comparative law and autonomous concepts. The making of common European legal meanings*, Torino, 2025.

strumenti legislativi e di supporto alla traduzione recentemente adottati, e la progressiva evoluzione di IATE, che integra elementi comparativi e multilingue.

Sulla scorta dell'analisi empirica condotta sugli strumenti a disposizione del traduttore giuridico, sembra evidente che i metodi comparativi dell'approccio *bottom-up* stiano progressivamente affiancando l'approccio tradizionale *top-down*. Data la struttura dell'ordinamento UE e le finalità specifiche del lavoro terminologico, appare improbabile che l'impostazione *top-down* possa essere sostituita, ma è chiaro che essa convive oggi con un crescente lavoro comparativo, almeno per quanto riguarda la terminologia giuridica.

La terminologia giuridica dell'UE tende a caratterizzarsi come un'attività sempre più comparativa e, in parte, più vicina ai metodi adottati nei contesti nazionali plurilingui. Ciò richiede un impegno maggiore in termini di organizzazione, risorse e coordinamento, considerata la complessità derivante dalla necessità di coprire un numero sempre più ampio di lingue e settori giuridici. La continua evoluzione degli strumenti di supporto potrà essere collocata lungo la scala di "sensibilità comparatistica" illustrata nei paragrafi precedenti, che mostra le diverse intensità dell'approccio comparativo nella pratica terminologica.

In sintesi, l'ordinamento dell'UE, almeno dal punto di vista della traduzione e dei relativi strumenti di supporto, sta assumendo un atteggiamento più aperto verso la metodologia comparativa, pur senza abbandonare i principi di coerenza e uniformità linguistica propri dell'approccio *top-down*. La sfida futura consisterà nella ricerca di strumenti e procedure che sappiano conciliare omogeneità concettuale e coerenza linguistica, riducendo al minimo le ambiguità presenti nei testi, sia a livello nazionale plurilingue sia sovranazionale.

Il passaggio concettuale fondamentale, consistente nella distinzione tra metodi e tecniche della terminologia tecnico-scientifica e di quella giuridica, appare ormai in via di progressivo consolidamento anche in ambito UE. Di conseguenza, l'esigenza di uniformazione del linguaggio giuridico è oggi sempre più bilanciata dalla necessità di chiarezza terminologica, che richiede un approccio comparativo e interdisciplinare. Per il futuro, è lecito prospettare ulteriore crescente integrazione tra strumenti di supporto e metodologie adottate nei contesti nazionali e in quelli sovranazionali, con un sempre più marcato dialogo tra approcci *bottom-up* e *top-down*.

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Dire la Giustizia: lingue, culture e traduzioni del diritto

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The University of Milan has a long tradition of linguistic studies investigating the use of foreign languages in professional communication, particularly in fields such as business, medicine and law. These studies often adopt a contrastive linguistic perspective. This tradition is particularly associated with researchers such as Giuliana Garzone and Paola Catenaccio, who have extensive experience in this area. However, a new generation of researchers is emerging, particularly in the field of contrastive work on how language is expressed in different languages, cultures, and jurisdictions. Since 2024, Naiara Posenato has led a project titled '*Linguaggio giuridico e diritti fondamentali nei contesti multilinguistici e comparati*' (*Legal language and basic rights in multilingual and comparative contexts*) at the University of Milan. The project aims to bring together local stakeholders and establish a framework for collaboration within and beyond the university, focusing on the comparative analysis of legal language. This conference was part of the project, with Naiara Posenato acting as the main organiser alongside Chiara Preite and Jekaterina Nikitina.

The title of the conference, *Dire la Giustizia: lingue, culture e tradizioni del diritto*, which translates as '*Expressing the Law: languages, cultures and traditions in law*', indicates that the scope of the conference's studies was intended to be fairly broad. The presentations were given partly by invited speakers from other universities and partly by local researchers. Both invited speakers and local researchers specialise in the study of legal communication across a variety of languages, which is why the plural 'languages' in the conference title was appropriate. Participants had a background in both law and linguistics, as well as basic education. First, I will present the contributions by the invited speakers, and then I will proceed to the contributions by the local researchers.

All contributions address topics at the intersection of language and law. The underlying idea is that law exists among the citizens of a jurisdiction because it has been expressed in language, allowing it to be communicated and debated. However, the different contributions emphasise one of the three perspectives mentioned in the title (language, culture or tradition) more than the others. Below, I will present the conference contributions grouped according to their focus and point of departure.

Traditions as constitutive of a (national) culture was specifically central for the contributions by Lorenza Acquarone (*Modernità e retorica postcoloniale nella riforma della giustizia penale Indiana*) and by Maria del Carmelo Angelillo (*Innovazioni linguistiche nella riforma della giustizia penale Indiana e retaggi filosofici e religiosi nel diritto degli animali*), where specificities in the Indian society and culture and their influence upon the law and its formulations were presented. Another work focusing on cultural traditions, albeit with a more comparative approach, was the presentation by Naiara Posenato (*Sentenze, cultura e linguaggio giuridico fra competizione degli ordinamenti e legittimazioni del discorso*). The focus of her study was court decisions as expressions of specific legal traditions in the form of textual conventions. Such conventions typically go beyond the minimally necessary in order to signal the role of the institution issuing the decision. She summarised her deliberations on court decisions in four statements: 1) they are sites of complexity; 2) they participate in the discussion and development of different legal models; 3) they are sites of legal construction; and 4) they legitimise the institution that made the decision. Based on stylistic investigations, she sees the traditional French approach (complex structure, impersonal, court as a collective, hermetic argumentation) and the traditional English approach (discussing style, inclusion of many different factors, court as consisting of individuals) to writing decisions and building argumentation as to ends of a scale. A competition between the two is visible in international courts. Furthermore, this competition is evident in technological developments in different jurisdictions, such as the ability to conduct asynchronous deliberations among court

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members on shared platforms. This allows for greater transparency in deliberations, even in jurisdictions that traditionally adhere to a more closed argumentation style.

Another group of contributions departed from the cultural perspective, addressing more language-oriented questions of cultural influence. Barbara Pozzo of Insubria gave a talk entitled '*The myth of equivalence in legal translation*', discussing the general problem that legal meaning is traditionally rooted in the national legal system to which it belongs. This makes it difficult to fulfil the purpose of legal translation, which is to find equivalents for legal terms in the source language in the target language system that render the deep meaning of the source language terms. This is despite the fact that there are typically differences in categorisation and conceptualisation between the source and target languages. She presented a number of issues arising from these differences but concluded that the absence of single terms with identical deep meanings does not preclude valuable translations. This is because concepts may exist in both languages, albeit in different statutes and positions within their respective systems. Comparative law studies are therefore central to assisting translators in their quest for suitable equivalents. A second area of translational challenges discussed in the talk was translation in the multilingual legal system of the EU, where an independent legal system is being developed alongside the languages of the member states, each of which has its own existing legal terms and concepts. Once again, conceptual work based on comparative law studies was presented as an important tool, for example through establishing common frames of reference. Finally, she highlighted a specific issue in this context: concepts introduced into national legal systems based on a common framework may diverge if not supervised externally. The emergence of an actual EU legal culture that lawyers would feel part of would probably help here.

Departing from a similar context than the last part of Pozzo's talk Jekaterina Nikitina (*Multilingualism and translation in international human rights courts*) focused upon the characteristics of the international and multilingual field of human rights as treated in different human rights courts (European Court of Human Rights, Inter-American Court of Human Rights, African Court of Human and People's Rights). Although they all work with the general concept of human rights, her research has shown that they must be considered as three distinct discourses on the topic, emerging from different contextual conditions. While there are examples of conceptual convergence across regional contexts (e.g., the importance of the concept of 'reasonable time'), there are also examples of divergence (e.g., the concept of 'just satisfaction', which only appears in the European context). Interestingly, from a cultural framework perspective, she found clear examples of conceptual dynamics resulting from trans-regional dialogue, i.e., drawing inspiration from the other discourses to develop the regional fields. Thus, a kind of overarching human rights culture appears to exist.

Two papers also departed from culture but in a different sense than the previous two. One was the project presented by Margaret Rose with the title "*Linguistic and Cultural aspects of a Shakespeare Theatre Workshop at Milan's Cesare Beccaria Young Offenders Institute*". In this project, the power of Shakespeare's plays is used as a pivot to bring together students of law as well as literature and languages with young offenders serving time or out on probation. Following discussions about justice and law they rewrote a court scene from the play and positioned it in a modern context well-known especially to the young offenders. Here, Shakespeare's cultural product enabled the participants to learn a lot about each other's worlds and views. The second presentation in this group was by the author of this report, Jan Engberg, Aarhus, who was another of the invited speakers. The talk had the title "*Legal cultures as knowledge communities - How dire la giustizia helps constructing communities of different scope*". The idea was to investigate how the cultural elements characterising law are mediated to the general public in a specific true crime show. The basis of the talk was a distinction between different communities related to law in a society suggested by Anesa (2024), reaching from the community of legal experts sharing knowledge and expertise in law to the citizens of a society that are involved in the law because they are potentially affected by it, although they have neither knowledge nor expertise about it.

Two papers also departed from the theme of culture, albeit in a different sense to the previous two. One was the project presented by Margaret Rose, titled '*Linguistic and Cultural Aspects of a Shakespeare*



Theatre Workshop at Milan's Cesare Beccaria Young Offenders Institute'. This project used the power of Shakespeare's plays to bring together students of law, literature, and languages with young offenders serving time or on probation. After discussing justice and the law, the participants rewrote a court scene from a Shakespeare play and set it in a modern context familiar to the young offenders. Here, Shakespeare's work enabled the participants to learn a great deal about each other's worlds and perspectives. The second presentation belonging to this category was given by Jan Engberg from Aarhus, who was one of the invited speakers. His talk was titled "*Legal cultures as knowledge communities: How dire la giustizia helps construct communities of different scope*". The idea was to investigate how cultural elements characterising law are mediated to the general public in a specific true crime show. The talk was based on a distinction between different legal communities in society, as suggested by Anesa (2024). These range from communities of legal experts who share knowledge and expertise in law, to citizens who are involved in the law because they are potentially affected by it, despite having no knowledge or expertise in the field. Mediating legal knowledge through true crime shows is seen as an attempt to influence the views of citizens involved in the law by making selected characteristics of legal expert culture available to them. In analysing an episode of the true crime show '*Auf den Spuren der KuDamm-Raser*', the focus was on how the professionals from the police and courts were described as highly competent individuals with a human side, performing the role of experienced and objective specialists in their field. The episode was characterised by an attempt to present the authorities as trustworthy by showing their professionalism and the everyday nature of their work, while simultaneously creating an emotional bond with the professionals based on their individual personalities. Therefore, the investigated crime show can be viewed as an attempt to make legal principles, such as objectivity and neutrality, accessible to the general public by presenting them in a relatable and entertaining format and thus supporting the building of communities.

The rest of the presentations at the conference may be seen as belonging to the same category, i.e., a category of works departing primarily from linguistic factors in a wide sense in order to investigate elements of legal culture and tradition. We find here first the presentation by the third invited speaker, Łucja Biel, Warsaw. Her talk with the title "*An anatomy of legal terms: The complexity of EU terminology*" was a description of the different elements of the complex structure underlying terms in EU law. It thus was well connected to the presentation by the other invited speaker, Barbara Pozzo. Focus was upon different elements of complexity that characterize the anatomy of EU terminology and as a tendency make them difficult to process and work with. Examples here are multilingualism, length, grammatical characteristics, breadth of topics, and polysemy between the meanings of national and EU terms, to name but a few. The presentation by Mario Matarrita (*La pragmática lingüística de los tribunales constitucionales: el caso de Costa Rica*) departed from an investigation of pragmatic strategies and speech acts in order to better understand the culturally rooted practice of the constitutional tribunal of Costa Rica. Bettina Mottura (*Il linguaggio giuridico-istituzionale cinese*) investigated language and discourse in the Chinese constitution of 2018 in order to understand the amendments introduced in this version. Other than often the case in such studies she took an institutional rather than purely legal approach in order to grasp the special characteristics of laws and constitutions in a jurisdiction in which there is no distinction between the state and the ruling party. Hence, through studying a major investigation of different genres she found that the Chinese constitution is used as an instrument to achieve the political goals of the ruling party and also to legitimate the claim of the party to govern the country. Maria Cristina Paganoni (*Naming gender-based violence: news discourse and the law in Italy and the UK*) presented a study of links between the development of the concept of femicide in legal contexts since 1976 especially in UK and in Italy, on the one hand, and the general media coverage of the concepts, on the other. The concept is highly discussed in an Italian context since some years, leading to it being an independent concept in the Italian criminal code since November 2025, whereas it is subsumed under the concept of murder in a UK context. Her study focused upon a comparison of naming and framing of the concept in news articles in the UK during the first year of the COVID period, where there was a focus on the repercussions of families being forced to be together within a limited space. Media coverage seems to conceptualise the problem as mainly a consequence of the virus, whereas discourse studies indicate that femicide is more related to systemic aspects of coercive control. Finally, Chiara Preite e Silvia Cacchiani (*La cortesia linguistica nel discorso giudiziario: analisi*



contrastiva di sentenze della Cour de Cassation e della Supreme Court of the United Kingdom) departed from the linguistic and pragmatic concept of positive and negative face in order to establish links to differences between the French and the UK-English legal cultures like the ones also presented in the presentation by Naiara Posenato. The categories of the pragmatic concept of face, especially face-threatening and face-flattering acts can be used to describe the linguistic aspects of such characteristics as the more discursive style and ways of deciding in the UK legal culture as opposed to the more impersonal and authoritative way of argumentation and deciding. Thus, they presented an innovative way of understanding and conceptualising the differences between legal philosophies.

I was very happy to participate in this interesting and thought-provoking event. And I can only recommend that you keep an eye on future developments in the cooperation of the colleagues at the university of Milan – interesting things are about to emerge from that context, I am sure!

References

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