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Editorial

We are pleased to present the first issue of *Comparative Law and Language* for 2026, which continues the journal's commitment to exploring the dynamic relationships between comparative law, language, and cultural contexts.

The contributions collected in this issue demonstrate the growing importance of language as both an object and an instrument of juridical inquiry. They examine how juridical meaning is formulated, interpreted and translated across different jurisdictions, traditions, and communicative environments. From reflections on legal narrativity and institutional authority to the challenges posed by emojis in contemporary legal communication, from the linguistic and conceptual foundations of Chinese legal thought to the multilingual interpretation of European Union law, and from legal translation to the impact of artificial intelligence on the rendering of culture-bound legal concepts, the articles gathered here reveal the richness and diversity of current research at the intersection of law and language.

Victor Hugo Agapito opens the issue with a thought-provoking reflection on the relationship between legal authority, narrative structures, and public legibility. His contribution, published in Italian, invites readers to reconsider judicial decision-making as a process of constructing social reality through the selection, organization, and interpretation of texts, evidence, and temporal frameworks.

Anne-Sophie Milard addresses one of the most innovative challenges facing contemporary legal systems: the interpretation of emojis in digital communication. By analysing recent developments in Canadian and American case law, she shows how courts are adapting traditional interpretative criteria to new forms of expression that increasingly shape the formation and interpretation of contracts and interpersonal relations.

Gianmatteo Sabatino offers a linguistic and conceptual exploration of the Chinese character *dé* (德) and its role in the notion of the "rule of virtue." His analysis traces the historical evolution of the concept and highlights its renewed significance in contemporary Chinese legal and political discourse, where morality and governance remain deeply interconnected.

Stefaan Van der Jeught examines the multilingual nature of European Union law and the practical implications of linguistic divergences among equally authentic language versions. Through a careful analysis of the case law of the Court of Justice of the European Union, he raises important questions concerning legal certainty, legitimate expectations, and the role of national courts.

Alexandra Vinci concludes the issue of CLL review with an essay of legal culture-specific terminology in Crown Court criminal judgments and the challenges posed by its translation. Her contribution also explores the growing role of machine translation and artificial intelligence in legal practice, offering valuable insights into the opportunities and limitations of technological tools in juridical communication.

The issue concludes with a review by Jan Engberg of *The Language of Comparative Constitutional Law: Questioning Hegemonies* (2025), a significant contribution to the fields of comparative law and, in particular, comparative constitutional law. The volume raises questions that resonate closely with the interests of our readership and offers valuable insights into the role of language in constitutional comparison.

Despite their different methodologies and thematic perspectives, all contributions share a common core: understanding how language shapes legal knowledge and how law, in turn, adapts to evolving forms of expression and communication. In an increasingly interconnected and multilingual world, such questions are more relevant than ever.

We thank our authors, reviewers, and editorial team for their valuable work and dedication. We hope that this issue will stimulate further comparative law and interdisciplinary dialogue and contribute to advancing scholarship in the field of comparative law and language.

Elena Ioriatti on behalf of CLL Editorial Board

Leggibilità, tempo narrativo e autorità istituzionale

Un saggio sulla composizione giuridica del mondo

Victor Hugo Agapito[*]

ABSTRACT: Il saggio esamina l'autorità giurisdizionale nel punto d'intersezione tra filosofia del diritto, teoria narrativa e sociologia del campo giuridico. La sua ipotesi centrale è che il diritto non si limiti ad applicare norme a fatti già disponibili, ma operi come forma istituzionale di composizione del mondo sociale. Esso produce regimi di lettura, ordina temporalità, seleziona voci, attribuisce credibilità e stabilizza versioni concorrenti della realtà. La decisione giudiziaria appare, in questa prospettiva, come il risultato di operazioni di selezione, gerarchizzazione, montaggio e riscrittura che investono documenti, prove, enunciati e ritmi processuali. In tal senso, il processo diventa una tecnologia simbolica di ordinamento del visibile, più che una semplice sequenza procedurale. La conclusione sostiene che la leggibilità pubblica costituisce un indice decisivo di maturità giurisdizionale quando rende visibili e discutibili tali operazioni. Essa non coincide con una trasparenza ingenua del potere, ma con l'esposizione criticabile dei passaggi interpretativi, temporali e documentali attraverso cui l'autorità trasforma il conflitto in decisione riconoscibile e controllabile.

PAROLE CHIAVE: diritto e letteratura; narratività giuridica; teoria processuale; prova; leggibilità pubblica.

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Readability, narrative time, and institutional authority

An essay on the juridical composition of the world

ABSTRACT: This essay examines jurisdictional authority at the intersection of legal philosophy, narrative theory, and the sociology of the legal field. Its central hypothesis is that law does not merely apply norms to facts available, but operates as an institutional form for composing the social world. It produces regimes of reading, orders temporalities, selects voices, attributes credibility, and stabilizes competing versions of reality. Judicial decision-making appears, from this perspective, as the result of operations of selection, hierarchy, montage, and rewriting that act upon documents, evidence, statements, and procedural rhythms. In this sense, procedure becomes a symbolic technology for ordering the visible, rather than a sequence of procedural acts. The conclusion argues that public legibility constitutes a decisive index of jurisdictional maturity when it makes such operations visible and contestable. It does not coincide with a naïve transparency of power, but with the criticizable exposure of the interpretive, temporal, and documentary passages through which authority transforms conflict into recognizable and reviewable decision.

KEYWORDS: law and literature; legal narrativity; procedural theory; evidence; public legibility.

1. Considerazioni introduttive

La tradizione giuridica descrive il processo come una catena di atti, poteri, oneri e garanzie. Tale descrizione conserva un'indubbia utilità dogmatica, soprattutto per l'organizzazione del procedimento e la disciplina della decisione. La sua sufficienza teorica, tuttavia, si riduce non appena l'analisi si sposta sul modo in cui il conflitto diventa intelligibile entro l'istituzione. Ciò che entra nel foro non vi compare mai allo stato bruto: i fatti giungono come fatti già qualificati, le voci come voci differenzialmente credibili, i documenti come supporti investiti di densità diverse, le temporalità come sequenze ricomposte secondo una certa plausibilità. In questo punto, la questione decisiva cessa di coincidere con la sola validità dell'atto e investe la forma stessa della sua intelligibilità pubblica.

La riflessione di Calvo González[1] sulla scrittura costitutiva del diritto permette di comprendere che il giuridico acquista efficacia mediante una pratica complessa di riscrittura dell'esperienza vissuta. Il conflitto smette di circolare come evento diffuso e assume la forma di caso. Con Robert Cover[2], il problema si approfondisce ulteriormente, poiché il diritto appare situato entro universi narrativi capaci di sostenere appartenenze, autorizzare aspettative e organizzare la violenza legittima. Tra scrittura e nomos, il fenomeno giuridico si presenta, allora, come una forma istituzionale di composizione del mondo, nella quale l'esperienza viene trasformata in archivio, il dissenso in intreccio intelligibile e la decisione in enunciazione dotata di forza pubblica.

Questa prospettiva conduce all'ipotesi centrale di questo saggio. L'autorità giudiziaria raggiunge un elevato livello di qualità democratica quando il processo di formazione della convinzione viene offerto al pubblico con chiarezza concettuale, densità argomentativa ed effettiva contestabilità. La forma giuridica si configura quindi come una tecnologia di lettura, poiché individua i destinatari, distribuisce i tempi di attenzione, definisce i criteri di rilevanza e struttura il campo in cui fatti, voci e documenti acquisiscono coerenza istituzionale. La leggibilità pubblica designa precisamente questa condizione in base alla quale l'autorità si espone all'esame, consentendo di ricostruire la decisione nella sua genesi e di valutarla nella sua economia interna. Più che un attributo stilistico di una buona scrittura, essa costituisce un requisito di maturità giudiziaria.[3]

Questa riflessione sviluppa tale argomentazione attraverso un'articolazione che non si lascia ridurre a un semplice accordo tra autori. Eco[4] offre la chiave della cooperazione interpretativa e della produzione testuale del lettore modello; Iser[5] pensa la lettura come attualizzazione guidata da lacune e strutture di attesa; Bakhtin[6] consente di concepire i generi come forme socialmente stabilizzate di enunciazione; Booth[7] indaga l'autorità retorica della voce; Bourdieu[8] restituisce il campo giuridico come spazio di distribuzione diseguale del capitale simbolico; Ricoeur[9] e Genette[10] forniscono la grammatica della temporalizzazione narrativa. La loro convergenza non è pacifica: essa rende visibile, al contrario, l'attrito tra stabilizzazione istituzionale del senso, diseguaglianza sociale della competenza e pretesa universalizzante della decisione.

L'obiettivo del testo è mostrare che le decisioni giudiziarie non si limitano ad applicare una norma a fatti preesistenti. Esse emergono da un processo di configurazione nel quale linguaggio, tempo, prova

[1] Cfr. J. CALVO GONZÁLEZ, *Nada no direito é extraficcional*, in A. K. TRINDADE, H. KARAM (a cura di), *Por dentro da lei: direito, narrativa e ficção*, Florianópolis, 2018, pp. 13-32.
[2] Cfr. R. M. COVER, *Nomos and narrative*, in *Harvard Law Review*, 1983, 97/1, pp. 4-68.
[3] In questa riflessione, la leggibilità pubblica non coincide con la semplice chiarezza espositiva né con una retorica della trasparenza. Essa designa la condizione per cui il processo decisionale rimane ricostruibile e criticabile rispetto alle scelte che hanno organizzato interpretazione, rilevanza, prova e temporalità. Il suo nucleo normativo consiste, dunque, nell'esposizione tracciabile delle operazioni che rendono possibile la decisione, inclusi i loro costi selettivi.
[4] Cfr. U. ECO, *Lector in fabula: la cooperación interpretativa en el texto narrativo*, Barcelona, 1993.
[5] Cfr. W. ISER, *The act of reading: a theory of aesthetic response*, Baltimore, 1978.
[6] Cfr. M. BAKHTIN, *Speech genres and other late essays*, Austin, 1986.
[7] Cfr. W. C. BOOTH, *The rhetoric of fiction*, Chicago, 1961.
[8] Cfr. P. BOURDIEU, *La force du droit: éléments pour une sociologie du champ juridique*, in *Actes de la Recherche en Sciences Sociales*, Paris, 1986.
[9] Cfr. P. RICOEUR, *Temps et récit*. Tome I, Paris, 1983.
[10] Cfr. G. GENETTE, *Discours du récit*, in G. GENETTE, *Figures III*, Paris, 1972.

e autorità sono reciprocamente implicati. Leggere il processo come forma di composizione non equivale, però, a celebrare ingenuamente la sua intelligibilità. Significa, piuttosto, esporre i meccanismi mediante i quali la pluralità dell'esperienza viene resa sequenza leggibile, documento disponibile e parola autorizzata, così da poter interrogare anche le perdite, le esclusioni e le naturalizzazioni che tale operazione produce.

Il testo si struttura in quattro sezioni. La prima ricostruisce la forma giuridica come regime di lettura, seguendo la trasformazione delle narrazioni sociali in versioni istituzionalmente circolabili. La seconda esamina la voce istituzionale e l'economia della credibilità, mettendo in luce la produzione discorsiva dell'autorità. La terza affronta il tempo processuale come montaggio e ne esplora ordine, durata, frequenza e memoria giurisprudenziale. La quarta indaga la prova come circolazione documentale e come politica dell'archivio. Nel loro insieme, queste sezioni mirano a mostrare che il diritto si rafforza non quando occulta la propria forma testuale, ma quando la espone a una lettura pubblica esigente.

2. La forma giuridica come regime di lettura

Il processo gestisce il conflitto attraverso forme di enunciazione relativamente stabili, e la comprensione di tale gestione costituisce uno dei nodi centrali degli studi di Diritto e Letteratura, nei quali questa indagine si inscrive. Quella tradizione ha dimostrato con crescente precisione che il fenomeno giuridico non si esaurisce nella struttura logica delle norme né nella sequenza formale degli atti procedurali: esso si produce e si riproduce mediante pratiche testuali che selezionano, ordinano e legittimano versioni dell'esperienza, trasformando il conflitto vissuto in caso istituzionalmente leggibile.[11] Assumere questa prospettiva significa spostare il fuoco dell'analisi dalla validità dell'atto alla forma della sua intelligibilità pubblica, ovvero interrogare il modo in cui il diritto compone il mondo sociale che dichiara di regolare.

L'osservazione acquista ulteriore peso se vista alla luce di Bakhtin[12]. Invece di trattare petizioni, obiezioni, opinioni e decisioni come contenitori neutri di contenuto, la teoria dei generi discorsivi consente di riconoscerle come forme socialmente sedimentate che preordinano posizioni di discorso, modalità di connessione e aspettative di risposta. Il genere organizza la possibilità stessa di ciò che può essere detto e di come quel detto debba essere interpretato. Quando una controversia entra nello spazio procedurale, la sua trasformazione decisiva è già in atto: l'esperienza è soggetta a una grammatica che seleziona la rilevanza, linearizza gli episodi e assegna un peso differenziato alle varie forme di enunciazione.

Questa dimensione generica del processo trova un complemento decisivo in Eco[13]. Se Bakhtin illumina la relativa stabilità sociale delle forme di espressione, Eco ci permette di comprendere che ogni testo costruisce internamente un orizzonte di lettura e crea un destinatario capace di cooperare con la sua economia semantica. La petizione iniziale richiede un lettore che riconosca un ordine strategico tra narrazione fattuale, qualificazione normativa e richiesta. La difesa richiede un lettore esperto nell'individuare fratture, resistenze, cambiamenti di prospettiva e ridefinizioni di rilevanza. La decisione, a sua volta, esige un lettore capace di seguire la ricomposizione dell'archivio in una narrazione unitaria. Il testo giuridico cessa così di essere un mero deposito di proposizioni e inizia a

[11] Per una ricognizione del movimento Diritto e Letteratura nella tradizione italiana, cfr. M. P. MITTICA, *Diritto e letteratura. Introduzione allo studio*, Milano, 2012, e G. CERBO, *Giustizia narrativa e decisione giudiziaria*, in *Rivista di Filosofia del Diritto*, III, n. 1, p. 45-68, 2014. Entrambi sviluppano, con accenti distinti, una teoria della scrittura giuridica come luogo costitutivo dell'autorità, convergente con le premesse di questo saggio.

[12] In Bakhtin, il genere offre una forma socialmente stabilizzata all'enunciato, articolando la costruzione compositiva, il contenuto tematico e lo stile. Questa triade aiuta a comprendere perché il processo converte esperienze eterogenee in enunciati leggibili secondo le specifiche aspettative del contesto. Cfr. M. BAKHTIN, *Speech genres and other late essays*, Austin, 1986.

[13] Cfr. U. ECO, *Lector in fabula*, cit.

funzionare come una macchina interpretativa[14]. Programma inferenze, distribuisce silenzi, gerarchizza i passaggi e offre istruzioni su ciò che dovrebbe apparire centrale o secondario.[15]

La teoria della lettura di Iser[16] rafforza ulteriormente questa diagnosi. L'intelligibilità di un caso dipende sempre da un processo di aggiornamento operato da lettori inseriti in specifiche tradizioni interpretative. Lacune, significati impliciti, spostamenti di prospettiva e anticipazioni strutturano la ricezione del testo. Nel contesto procedurale, ciò significa che la comprensione di un caso non deriva mai esclusivamente da ciò che è esplicitamente dichiarato. Dipende dall'attivazione di un'enciclopedia tecnica, di una memoria istituzionale e di un senso pratico della gerarchia dei materiali disponibili. Ciò che viene considerato un fatto sufficientemente descritto, un documento abbastanza solido o un argomento realmente rilevante presuppone un lettore già socializzato dalla forma giuridica. La lettura procedurale è sempre una pratica istituzionalmente appresa.

Questa osservazione ha immediate implicazioni politiche. Il lettore giuridicamente competente non è né una figura naturale né un attributo distribuito in modo omogeneo. In Bourdieu[17], ad esempio, il campo giuridico è organizzato come uno spazio di circolazione ineguale del capitale simbolico, in cui competenza tecnica e autorità sociale si rafforzano reciprocamente. La forma giuridica, intesa come regime di lettura, partecipa attivamente a questa distribuzione, favorendo i soggetti la cui esperienza si avvicina già al linguaggio riconosciuto dal foro e imponendo costi aggiuntivi a coloro che si avvicinano al processo con repertori distanti dallo stile consolidato. La leggibilità della legge, quindi, riguarda la possibilità di una lettura pubblica del caso e anche la possibilità sociale di essere percepiti come chi parla di diritto in modo pertinente.

La correlazione tra Bakhtin, Eco, Iser e Bourdieu permette qui un importante arricchimento concettuale. Bakhtin dimostra che il genere organizza socialmente la forma di espressione; Eco dimostra che il testo produce internamente un modello di lettore; Iser indica che la lettura attualizza il testo attraverso operazioni guidate; Bourdieu chiarisce che la distribuzione della competenza necessaria per tale attualizzazione dipende dalla struttura ineguale del campo. Il processo si configura quindi come un regime di lettura in duplice senso, poiché fornisce istruzioni testuali per l'interpretazione del caso e, al contempo, si inserisce in uno spazio sociale che distribuisce ineguale la possibilità di rispondere adeguatamente a tali istruzioni. La forma giuridica veicola pertanto una teoria implicita della comprensione e una politica esplicita della competenza.

Questa dimensione si manifesta con particolare forza nel processo contraddittorio: nella sua formulazione più esigente, il processo contraddittorio non si riduce al diritto bilaterale di essere ascoltati né al semplice diritto di reagire. Implica l'effettiva capacità di intervenire nel modo in cui la causa verrà letta e organizzata. Il divieto di decisioni a sorpresa, sancito da diversi ordinamenti processuali contemporanei, esprime proprio questo: l'autorità del giudice matura quando il processo interpretativo si apre alla partecipazione dei soggetti processuali. In questo quadro, la cooperazione interpretativa di Eco acquista profondità istituzionale. Il lavoro del lettore, all'interno del processo, diventa il lavoro giuridicamente protetto delle parti sulla configurazione dell'oggetto della decisione.[18]

In questo contesto, la giustificazione acquisisce una nuova importanza. Infatti, il requisito della motivazione cessa di essere un mero obbligo formale dell'atto e inizia a designare l'obbligo di rendere tracciabile il percorso attraverso il quale il testo giuridico ha trasformato la massa eterogenea del

[14] Cfr. R. SACCO, *Il diritto muto*, Bologna, 2015, per la dimensione non verbalizzata della norma giuridica; e P. HERITIER, *Estetica giuridica*, Torino, 2012, vol. I, per una teoria della forma giuridica come forma estetica in cui si elaborano le condizioni percettive del riconoscimento dell'autorità. Questi contributi ampliano il problema del regime di lettura verso i livelli sub-testuali e formali-sensibili dell'intelligibilità giuridica.

[15] L'orizzonte di aspettative del lettore giuridico è formato dalla combinazione delle istruzioni interne al testo e della memoria istituzionale del genere. Il documento indica, dalla sua forma, cosa il lettore deve cercare: la formulazione della controversia, la resistenza argomentata, l'organizzazione del procedimento o una sintesi della decisione.

[16] Cfr. W. ISER, *The act of reading: a theory of aesthetic response*, Baltimore, 1978.

[17] P. BOURDIEU, *La force du droit*, cit., pp. 3-19.

[18] Nell'opera di Eco la cooperazione interpretativa descrive il compito richiesto al lettore di aggiornare i significati programmati dal testo. In questo processo, tale idea acquisisce peso istituzionale quando la contraddizione tutela la possibilità di interferire con la struttura stessa della lettura del caso. Cfr. U. ECO, *Lector in fabula*, cit.

fascicolo in una narrazione giuridicamente persuasiva. Booth[19] aiuta a comprendere questo punto, dimostrando che la forza di una voce dipende dalla sua capacità di costruire fiducia attraverso coerenza, posizione e cadenza. Il testo decisionale acquisisce densità istituzionale quando rivela il suo processo di lettura, anziché limitarsi a mostrare il risultato finale. Una decisione ben giustificata non si limita a fornire una conclusione corretta secondo i criteri interni del Sistema, ma offre al lettore le condizioni per ricostruire come la correzione è stata elaborata.

A un livello ancora più profondo, la forma giuridica produce anche una pedagogia dell'osservazione. Insegna cosa dovrebbe essere percepito come rilevante, cosa può essere riassunto, cosa richiede sviluppo e cosa appare naturalmente superfluo.[20]Attraverso la ripetizione di stili, formule, tecniche espositive e schemi argomentativi, il processo abitua i partecipanti a riconoscere determinate figure di plausibilità. Alcuni fatti acquisiscono facilmente uno status centrale, alcuni documenti si avvolgono in un'aura di centralità, alcune voci giungono circondate da un alone di tecnicismo. La forma giuridica finisce per educare la sensibilità istituzionale che la riconoscerà. A questo punto, la leggibilità pubblica si configura come un requisito sofisticato della giustizia: si tratta di organizzare la lettura in modo tale che la pedagogia dello sguardo rimanga esposta all'esame critico e non diventi un tacito meccanismo di naturalizzazione.

In quest'ottica, il processo cessa di essere un mero strumento esterno per la risoluzione delle controversie e si configura come una forma specifica di intelligibilità del conflitto. La sua maturità, tuttavia, non coincide con la semplice chiarezza espositiva. Una leggibilità pubblica priva di riflessività potrebbe facilmente degenerare in semplificazione autoritativa, vale a dire in un'esposizione lineare che rende invisibili i costi interpretativi della composizione giuridica. Per questo la qualità della forma processuale dipende dalla capacità di rendere leggibile non solo il risultato, ma anche le esclusioni, le gerarchie e i passaggi che lo hanno reso possibile.

3. La voce istituzionale e l'economia della credibilità

La teoria giuridica tradizionale descrive l'autorità sulla base della competenza formale dell'organismo, della validità della norma e dell'investitura dell'agente. Questi elementi rimangono decisivi, sebbene la struttura effettiva dell'autorità si produca su un altro piano: quello dell'enunciazione. Booth[21], indagando la credibilità delle voci narrative, dimostra che la fiducia riposta in un discorso dipende direttamente dal modo in cui il testo organizza il punto di vista, la coerenza e la distanza[22]. Trasposta al diritto, questa percezione ci permette di comprendere che la decisione non si limita a esprimere una volontà sovrana legalmente autorizzata, ma, attraverso procedure specifiche, costruisce una voce istituzionale capace di ordinare l'archivio, gerarchizzare le versioni e presentare una sintesi che circolerà come una descrizione pubblicamente attendibile di quanto accaduto.

A questo proposito, la riflessione di Calvo González torna a essere pertinente. La scrittura giuridica costituisce il mezzo stesso attraverso il quale il diritto acquisisce un'esistenza socialmente efficace. Decidere implica riscrivere il conflitto in un linguaggio istituzionale, in modo che ciò che era una dispersione di episodi, uno scontro di interessi, una molteplicità di registri e un'asimmetria di voci si trasformi in una narrazione unitaria, dotata di sufficiente coerenza per sostenere effetti pubblici. Infine, l'autorità emerge proprio in questa capacità di raccontare il caso in una forma che coniuga intelligibilità, chiusura e forza di validità.

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[19] Cfr. W. C. BOOTH, *The rhetoric of fiction*, Chicago, 1961.

[20] La pedagogia dell'osservazione consiste nell'apprendimento istituzionale di ciò che merita attenzione, di ciò che suona plausibile e di ciò che può essere relegato ai dettagli. Attraverso la ripetizione di stili, formule e criteri di rilevanza, il processo educa i partecipanti del settore a riconoscere certi modi di narrare come naturalmente superiori.

[21] Cfr. W. C. BOOTH, *The rhetoric of fiction*, Chicago, 1961.

[22] Cfr. C. FARALLI, *Retorica giuridica e argomentazione*, in *Rivista di Filosofia del Diritto*, II, n. 2, p. 313-328, 2013; e F. MODUGNO, *Interpretazione giuridica*, Padova, 2012, cap. IV. Entrambi convergono con Booth nel trattare la credibilità della voce giudiziaria come effetto costruito dalla struttura del testo, e non come attributo del soggetto giudicante.

Questa voce istituzionale, tuttavia, opera su una materia inevitabilmente polifonica. Il contributo di Bakhtin[23] ci permette di comprendere il processo come un luogo di incontro e di attrito tra discorsi eterogenei: il discorso delle parti, il linguaggio degli esperti, la razionalità amministrativa, la tecnica giuridica, la retorica giudiziaria, la grammatica normativa. Il problema dell'autorità consiste precisamente nel trasformare questa polifonia in un'economia gerarchica della credibilità. Alcune voci entrano circondate da precedenti segni di affidabilità, mentre altre appaiono sotto il sospetto di parzialità, imprecisione, interesse o eccessiva contestualizzazione. La decisione organizza questo campo di ascolto ineguale e produce un ordine finale tra le voci che hanno attraversato il caso, consolidando regimi di verità legittimati a livello istituzionale.

Rifacendosi ancora una volta agli studi di Pierre Bourdieu[24], si può affermare che il campo giuridico funziona come uno spazio specializzato di produzione simbolica in cui la capacità di esprimere il mondo in un linguaggio valido dipende da specifiche forme di capitale. Stile, titoli, padronanza del lessico tecnico, familiarità con i rituali e prossimità all'habitus forense agiscono come indicatori di credibilità. La conseguenza è chiara: la forza persuasiva di una narrazione procedurale non si riduce mai alla sua coesione interna. Dipende dalla posizione sociale della voce, dalle modalità di presentazione, dall'affinità della sua sintassi con il linguaggio istituzionale e dalla rete di riconoscimenti che la sostiene. Il processo distribuisce credibilità ancor prima della decisione finale.

In questo senso, è possibile intendere l'autorità giudiziaria anche come un'economia di enunciazione. La voce istituzionale acquista forza perché riesce a presentare le proprie interpretazioni come espressione naturale di ciò che è ragionevole e tecnicamente appropriato. In questo gesto, il testo giuridico trasforma la selezione in prova, la gerarchia in neutralità e la chiusura in necessità.

È proprio qui che la teoria critica della forma giuridica offre la sua punta di diamante. La forma giuridica opera attraverso astrazioni che equiparano situazioni storicamente eterogenee. La sua efficacia si fonda sulla capacità di universalizzare determinate relazioni sotto le spoglie della neutralità. Nel contesto di questa riflessione, tale analisi assume una dimensione discorsiva più sfumata: l'astrazione universalizzante del giuridico acquisisce piena efficacia solo perché il campo riconosce certe modalità di enunciazione come legittime portatrici dell'universale. La neutralità del testo decisionale si presenta quindi come il risultato di un duplice movimento. Da un lato, la forma giuridica astrae e generalizza; dall'altro, l'economia della credibilità all'interno del campo offre al parlante istituzionale il capitale simbolico necessario affinché tale generalizzazione appaia come ragione pubblica.[25]

L'articolazione tra Pachukanis e Bourdieu consente di precisare con maggior rigore analitico la struttura di questo duplice movimento. Pachukanis ha mostrato che la forma giuridica opera mediante astrazioni che equiparano soggetti e situazioni storicamente eterogenei, presentando relazioni storicamente determinate come espressione di categorie universali: il soggetto di diritto, l'equivalenza formale, la libertà contrattuale[26]. La sua efficacia simbolica si fonda sulla capacità di far circolare tali categorie come se fossero espressione di una razionalità trascendente alle particolarità storiche, anziché come prodotti di processi sociali concreti. Bourdieu aggiunge a questa diagnosi la dimensione del campo: la circolazione dell'astrazione giuridica come ragione universale richiede agenti socialmente riconosciuti come portatori legittimi di tale universalità, e tale riconoscimento dipende dalla struttura ineguale del capitale simbolico accumulato nel campo[27]. La voce istituzionale che produce la sintesi decisionale beneficia perciò di una doppia operazione di legittimazione: da un lato, la logica astrattiva della forma giuridica equipara i casi e li sottrae alla contingenza; dall'altro, l'economia della credibilità nel campo offre all'enunciante istituzionale l'autorità simbolica necessaria affinché tale equiparazione appaia come ragione pubblica piuttosto che come selezione. Svelare questa congiunzione tra astrazione formale e distribuzione diseguale della competenza enunciativa è uno dei compiti più esigenti di una

[23] Cfr. M. BAKHTIN, *Speech genres and other late essays*, Austin, 1986.
[24] P. BOURDIEU, *La force du droit*, cit., pp. 3-19.
[25] La neutralità del discorso giuridico appare qui come il risultato di una correlazione tra astrazione formale e capitale simbolico. Pachukanis illumina la logica astrattiva della forma giuridica; Bourdieu, le condizioni sociali che permettono al campo di far circolare questa astrazione come ragione universale. Cfr. Cfr. E. B. PACHUKANIS. *Obshchaia teoriia prava i marksizm: Opyt kritiki osnovnykh iuridicheskikh poniatii*, Moskva, 1924; P. BOURDIEU, *La force du droit*, cit.
[26] Cfr. E. B. PACHUKANIS, *op. cit.*
[27] Cfr. P. BOURDIEU, *La force du droit*, cit.

critica della decisione che aspiri a superare la semplice denuncia dell'arbitrio individuale del giudice e a interrogare le condizioni strutturali della sua autorità.

Questa osservazione sposta il focus dell'analisi dal profilo personale del giudice all'enunciazione del testo. La questione centrale cessa di essere chi decide, in termini biografici, e diventa come la decisione costruisce la propria voce. L'autorevolezza del testo dipende da come riassume le testimonianze, incorpora i documenti, dà priorità agli argomenti, modula la distanza dalle dichiarazioni delle parti e presenta la propria sintesi come una ricostruzione attendibile del caso. La monologizzazione decisionale designa precisamente il momento in cui la pluralità del processo si trasforma in una voce finale autorizzata. Il punto cruciale è riconoscere che questa chiusura non è mai una mera tecnica espositiva: opera come un atto politico di distribuzione della fiducia.

L'economia della credibilità si manifesta anche attraverso lo stile. La capacità persuasiva di una voce dipende dalla sua cadenza, dalla sua coerenza e dal modo in cui gestisce il punto di vista. In ambito giuridico, ciò significa che l'autorità è rafforzata dalla forma espositiva. Alcune decisioni persuadono attraverso una sobria sintesi; altre, attraverso una meticolosità controllata; altre ancora, attraverso la capacità di organizzare il fascicolo in blocchi chiaramente gerarchici. In tutti i casi, il punto cruciale rimane lo stesso: la voce istituzionale acquisisce elevata legittimità quando il suo modo di esprimersi rende visibile il suo lavoro di composizione. Lo stile si configura quindi come una dimensione costitutiva dell'autorità, e non come un ornamento successivo.

Cover[28] introduce in questo scenario un importante elemento etico: per lui, il diritto abita sempre universi normativi composti da narrazioni di appartenenza e aspettative sul mondo. Le decisioni giudiziarie non si limitano a risolvere una controversia isolata; esse reinseriscono i soggetti in un ordine di significato e distribuiscono dignità narrativa. L'economia della credibilità, pertanto, ha implicazioni che vanno oltre la tecnica procedurale. Essa definisce chi verrà ascoltato come portatore di un'esperienza rilevante, chi troverà mediazioni istituzionali adeguate per tradurre la propria posizione in un linguaggio persuasivo e chi rimarrà soggetto al costo di una traduzione sempre incompleta.

Da qui nasce la sfida democratica più impegnativa: autorità e contestabilità devono procedere insieme, ma non coincidono mai spontaneamente. La forza del testo giuridico cresce quando la sua economia della credibilità si lascia leggere criticamente, rendendo percepibili i criteri con cui certe voci acquistano centralità e altre vengono marginalizzate. Se la leggibilità pubblica si riducesse a una retorica della trasparenza, essa finirebbe per duplicare l'autorità che pretende di controllare. La maturità della decisione si misura, invece, dalla capacità della voce istituzionale di conservare vigore senza occultare le proprie scelte enunciative.

4. Temporalità processuale, montaggio e densità dei fatti

L La temporalità è tra le operazioni più decisive nella composizione giuridica di un caso. Ricoeur ha dimostrato che la narrazione organizza l'esperienza configurando una trama, ovvero attraverso un'operazione che raccoglie ciò che è disperso e lo rende intelligibile in una sequenza significativa[29]. Genette, a sua volta, ha fornito la grammatica formale in grado di descrivere tale operazione in termini di ordine, durata e frequenza[30]. Quando questi contributi si avvicinano alla riflessione procedurale, il tempo cessa di apparire come un mero supporto neutro del procedimento e inizia a essere letto come una forma attiva di produzione di significato giuridico. Il caso esiste in tribunale perché è temporalizzato in un certo modo.

La prima conseguenza di questo cambiamento è la consapevolezza che la cronologia istituzionale e l'esperienza vissuta sono solo parzialmente correlate. L'esperienza sociale del conflitto è solitamente caratterizzata da simultaneità, ritorni, esitazioni, ripetizioni e opacità. Il processo, d'altro canto, ha bisogno di organizzare questa massa temporale in una sequenza leggibile. Spengler ha dimostrato che la processualità trasforma il tempo del conflitto in un tempo istituzionale dotato di senso proprio, nel quale la sequenza delle fasi, la distribuzione delle urgenze, la scadenza delle scadenze e la modulazione

[28] Cfr. R. M. COVER, *Nomos and narrative*, cit., pp. 4-68.
[29] Cfr. P. RICOEUR, *Temps et récit. Tome I*, cit.
[30] Cfr. G. GENETTE, *Discours du récit*, cit.

dei periodi di attesa costituiscono già, in sé, una forma di ordinamento del significato. La specificità di questo contributo rispetto all'apporto di Ricoeur e Genette risiede nel piano sociologico-istituzionale: mentre Ricoeur descrive la configurazione narrativa del tempo come operazione che raccoglie il disperso in trama intelligibile, e Genette fornisce la grammatica formale dell'ordine, della durata e della frequenza, Spengler situa tali operazioni entro pressioni di sistema che le precedono e le condizionano.

L'efficienza come imperativo organizzativo, la razionalizzazione del carico processuale, la gestione amministrativa delle risorse giurisdizionali: questi fattori introducono distorsioni temporali che discendono da logiche istituzionali irriducibili a scelte retoriche individuali. La comprensione piena del tempo processuale richiede pertanto l'articolazione tra la grammatica narrativa, che descrive le operazioni di configurazione del senso, e la sociologia delle urgenze, che illumina le condizioni strutturali entro cui tali operazioni si esercitano[31]. Ricoeur aggiunge che questa trasformazione non è mai esterna al significato: il modo in cui i fatti sono ordinati partecipa direttamente all'intelligibilità che ne verrà ricavata.

La struttura temporale inizia fin dalla prima presentazione del caso. Ogni introduzione sceglie un punto di partenza, decide quale antecedente fungerà da origine narrativa, determina il contesto che accompagnerà gli episodi centrali e definisce la sequenza entro cui la richiesta apparirà plausibile. La risposta procedurale opera un corrispondente spostamento. Ridefinisce le tappe fondamentali, altera il peso degli antecedenti, relega alcuni eventi al ruolo di dettagli e offre un altro elemento di interesse dominante. La disputa procedurale diventa così una disputa sull'ordine temporale. Ogni narrazione mira a stabilire la sequenza che guiderà l'interpretazione delle prove e l'applicazione della norma.

Genette contribuisce a descrivere formalmente questo fenomeno. L'ordine narrativo non coincide mai automaticamente con l'ordine degli eventi. Ritorni, anticipazioni, riassunti e spostamenti organizzano l'attenzione del lettore e ne modulano le aspettative. Eco offre un complemento decisivo su questo punto: il testo guida la lettura attraverso percorsi programmati, generando impazienza, sospensioni e preparativi interpretativi. La decisione giudiziaria si serve costantemente di questi meccanismi. Quando annuncia, fin dall'inizio, la questione che considera centrale, stabilisce già una gerarchia tra gli elementi del caso. Quando rivisita ripetutamente lo stesso episodio in momenti successivi del ragionamento, ne intensifica il peso istituzionale. Quando riassume anni di complesse relazioni in poche affermazioni preparatorie, svuota la profondità esplicativa del contesto.

L'accelerazione temporale rappresenta una delle forme più espressive di questo potere di assemblaggio. In nome dell'efficienza, della razionalizzazione o della concisione, il discorso giuridico comprime frequentemente i contesti, raggruppa fatti eterogenei in blocchi sintetici e approssima eccessivamente prove e conclusioni. La conseguenza diventa chiara se letta attraverso la lente di Genette ed Eco. La compressione riduce le mediazioni a disposizione del lettore; il testo preserva la fluidità argomentativa e trasferisce al lettore il compito di colmare le lacune sulla base di aspettative già orientate a livello istituzionale.[32] La brevità dell'esposizione rafforza quindi l'apparente inevitabilità della conclusione.

Il movimento inverso rivela un potere altrettanto decisivo. Ricoeur dimostra che l'intelligibilità della trama dipende da come certi eventi vengono riscritti e rivisitati nel corso della narrazione. Genette traduce questa intuizione in termini di frequenza e durata. Ciò che ritorna più volte, sotto supporti diversi e con estensione crescente, acquisisce centralità narrativa. A livello procedurale, la ripetizione dello stesso episodio negli atti processuali, nelle relazioni, nei pareri, nei documenti e nella sentenza finale produce gravità istituzionale. Il fatto reiterato diventa il nucleo del caso non tanto per la sua natura intrinseca, quanto per lo spessore temporale che la narrazione gli attribuisce. La rilevanza, a questo punto, emerge come effetto di montaggio.

La categoria dell'ellissi chiarisce ulteriormente il problema. In Umberto Eco, l'ellissi designa la soppressione di una parte del percorso narrativo, e la cooperazione interpretativa spiega il modo in cui il lettore ricostruisce i collegamenti mancanti. Il ragionamento giuridico ricorre frequentemente a questo

[31] Cfr. F. M. SPENGLER, *Tempo, direito e narrativa: outra abordagem do processo jurisdicional e do conflito social*, in *Novos Estudos Jurídicos*, 2008, 13/1, pp. 55-68.

[32] La compressione narrativa riduce le mediazioni causali, contestuali ed evidenziali. Minore è lo spazio concesso a queste mediazioni, maggiore è la probabilità che la conclusione appaia come una conseguenza immediata dell'episodio già riassunto, e non come l'effetto di successive scelte interpretative.

espediente[33]. I passaggi intermedi tra un comportamento e la sua qualificazione normativa, tra un documento e il peso che gli verrà attribuito, tra un indizio e l'inferenza che se ne ricava, possono scomparire dal focus espositivo ed essere sostituiti da una continuità meramente apparente.[34] L'ellissi preserva l'economia del linguaggio riducendo al contempo la visibilità degli atti interpretativi che sono alla base della conclusione. Il potere del tempo giuridico si esercita qui attraverso il modo in cui gestisce la presenza e l'assenza.

Questa diagnosi ha ripercussioni sull'idea stessa di una durata ragionevole di un processo. La ragionevolezza temporale cessa di essere un mero criterio quantitativo e giunge a designare la qualità della distribuzione dell'attenzione istituzionale. Un procedimento temporalmente maturo non si misura unicamente dalla sua brevità, ma dalla sua capacità di offrire spazio sufficiente per la sedimentazione degli argomenti decisivi, per il dibattito sui documenti centrali e per l'esposizione intelligibile delle deduzioni rilevanti. Pertanto, il tempo del processo acquisisce densità normativa quando è organizzato in modo da consentire una rigorosa lettura pubblica della decisione.

Il rapporto tra temporalità e precedenti introduce un ulteriore livello di complessità. Ogni caso viene letto simultaneamente su due scale: la temporalità intrinseca ai fatti dibattuti e la temporalità accumulata dell'archivio giurisprudenziale che lo contiene. La memoria dei precedenti funziona come una riserva condensata di forme narrative, categorie di inquadramento e schemi di rilevanza. Essa rafforza la coerenza istituzionale perché evita dispersioni arbitrarie; tuttavia, al tempo stesso, può ridurre la singolarità del caso quando la matrice dei precedenti assorbe differenze rilevanti sotto categorie eccessivamente rigide.[35] Il tempo legale, quindi, unisce ripetizione, memoria e aggiornamento.

La temporalità procedurale implica in ultima analisi una politica di anticipazione. Misure urgenti, tecniche di conservazione delle prove, decisioni provvisorie e meccanismi per l'organizzazione iniziale del procedimento anticipano questioni che, in una struttura diversa, verrebbero trattate in un secondo momento. Tale anticipazione può accrescere l'efficacia della tutela giuridica e salvaguardare gli elementi probatori più fragili. D'altro canto, può anche prematuramente stabilire interpretazioni chiave che guideranno il resto del processo. Pertanto, il problema decisivo non risiede nell'utilizzo dell'anticipazione, bensì nella visibilità dei suoi effetti sulla costruzione del caso.

Il processo si configura dunque come un'arte istituzionale di temporalizzazione. Decide l'ordine in cui il mondo verrà narrato, quanto spazio spetterà a ciascun evento, quante volte un determinato episodio verrà riproposto e quale memoria il sistema mobiliterà per inquadrare il caso. La leggibilità pubblica della giurisdizione dipende, in larga misura, dalla possibilità di rendere questo montaggio rintracciabile e criticabile.

5. Prova, circolazione documentale e stabilità narrative

L'approccio dogmatico alla prova descrive la dimostrazione come un mezzo per dimostrare o ricostruire fatti rilevanti. Questa descrizione assume una portata diversa se vista alla luce della scrittura giuridica e della teoria narrativa. Calvo González[36] ci permette di comprendere che il documento non appare come un mero contenitore di informazioni, ma come un atto di iscrizione che trasforma l'esperienza in materiale istituzionalmente disponibile. Cover[37], a sua volta, mostra che il diritto sostiene i mondi normativi attraverso le narrazioni. Insieme, queste due chiavi ci permettono di comprendere la prova come un regime di circolazione documentale responsabile della stabilizzazione delle versioni, del rafforzamento delle catene di eventi e del consolidamento dei livelli di credibilità. Il caso esiste perché entra in un circuito di registrazioni in grado di conferirgli una forma pubblica.

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[33] Cfr. U. ECO, *Lector in fabula*, cit.

[34] Uno scenario comune si verifica quando la decisione passa direttamente dal comportamento contrattuale controverso alla sua classificazione giuridica, senza ricostruire le negoziazioni intermedie, i cambiamenti contestuali nel rapporto o le fluttuazioni documentali che potrebbero ridistribuire il peso dell'evento.

[35] I precedenti fungono da memoria di sistema condensata. Migliorano la coerenza e offrono matrici di lettura; allo stesso tempo, possono assorbire singolarità rilevanti quando il nuovo caso viene inquadrato in categorie già consolidate prima che la sua complessità sia sufficientemente tematizzata.

[36] Cfr. J. CALVO GONZÁLEZ, *Nada no direito é extraficcional*, cit., pp. 13-32.

[37] Cfr. R. M. COVER, *Nomos and narrative*, cit., pp. 4-68.

La prima conseguenza di questo cambiamento è la modifica dell'idea stessa di fatto. Il fatto giuridicamente rilevante appare già mediato da supporti. Rapporti, comunicazioni, verbali, registrazioni digitali, documenti tecnici, immagini, messaggi, metadati, fogli di calcolo, pareri e dichiarazioni trascritte funzionano come modalità distinte di rendere visibile l'evento. Ogni supporto fissa una scena, seleziona descrizioni, delimita gli agenti e distribuisce la temporalità. La prova si configura quindi come uno spazio di convergenza tra tecniche di iscrizione e pratiche di lettura. Il valore di un documento non deriva unicamente dal contenuto che veicola, ma anche dal modo in cui entra in circolazione, dal posto che occupa nell'archivio e dalle relazioni di rinforzo che instaura con altri materiali.

Questa osservazione ci permette di andare oltre un'epistemologia isolata delle prove per approdare a una politica delle prove e degli archivi, dove la circolazione documentaria produce effetti di coerenza. Un'informazione inizialmente periferica può acquisire centralità quando riappare in formati diversi, quando viene ripresa da documenti successivi o quando trova risonanza in documenti percepiti come particolarmente solidi. La ripetizione documentaria crea convergenza, rafforzando la plausibilità, che a sua volta supporta la narrazione dominante del caso. Il processo trasforma la circolazione in stabilità.

L'analisi acquista maggiore profondità quando Calvo González e Cover vengono letti congiuntamente. Il fascicolo processuale cessa allora di essere un semplice archivio e viene inteso come una macchina di composizione[38]. Organizza una memoria provvisoria del caso, definisce ciò che rimarrà disponibile alla lettura, struttura le relazioni di prossimità tra i documenti e offre la base materiale da cui la decisione può esprimersi, quasi come se si limitasse a esplicitare ciò che era già dato. In realtà, i dati sono già presenti, prodotti dalla logica del fascicolo.

Tuttavia, questo punto richiede una riconsiderazione della logica sottostante. Una decisione di alta qualità non si limita a menzionare documenti o a elencare passaggi del fascicolo, ma espone come l'archivio sia stato letto, quali supporti siano stati considerati centrali, quali relazioni di rinforzo siano state individuate e quali tensioni abbiano richiesto scioglimento. La politica dell'archivio deve diventare intelligibile affinché l'autorità possa essere criticata con precisione. Quando il lavoro di lettura resta opaco, la leggibilità pubblica si converte facilmente in teatro dell'evidenza: la conclusione appare come effetto immediato dei documenti, mentre dipende da selezioni, gerarchie e montaggi interpretativi.

La documentazione contemporanea aggrava ulteriormente questo problema attraverso la moltiplicazione dei media. La crescente presenza di prove digitali ha reso ancora più evidente che il valore persuasivo di un documento deriva da una combinazione di forma tecnica, contesto di produzione, catena di integrità e intelligibilità istituzionale. Metadati, tracce elettroniche, immagini, comunicazioni istantanee e grandi database entrano nel processo investiti di un'aura di precisione. Ciononostante, il loro potere narrativo dipende dalla cornice in cui vengono inseriti. Una traccia digitale può rafforzare un'ipotesi solo se è stata letta all'interno di una specifica catena documentaria e in correlazione con determinate aspettative di rilevanza. Anche il documento apparentemente più oggettivo continua a richiedere una mediazione ermeneutica.

La visualizzazione dell'archivio introduce un nuovo livello di complessità. Cronologie, matrici analitiche, tabelle comparative, sistemi di indicizzazione e pannelli sintetici ampliano la capacità di gestire la mole di documenti. Esercitano inoltre una forte influenza sulla strutturazione. Ciò che appare evidenziato in queste forme di condensazione tende a occupare il centro dell'attenzione istituzionale; ciò che ne rimane escluso perde di densità argomentativa. Le prove, quindi, non sono organizzate unicamente in base al contenuto dei documenti, ma anche in base alle tecniche di presentazione archivistica. La scrittura giuridica contemporanea partecipa sempre più a questa economia visiva delle prove, e la critica della decisione deve necessariamente includere anche le modalità con cui la documentazione viene condensata e ridistribuita al lettore.

Booth offre qui un contributo indiretto ma decisivo. Se la credibilità della voce dipende dalla coerenza, dalla distanza e dal punto di vista, l'autorevolezza del lavoro probatorio dipende dalla capacità di presentare il fascicolo in modo intellettualmente onesto e metodologicamente trasparente. Una

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[38] Cfr. M. VOGLIOTTI, *Tra fatto e diritto: oltre la modernità giuridica*, Torino, 2007, cap. III; e A. GENTILI, *Il diritto come discorso*, in *Rivista di Diritto Civile*, XLIX, n. 1, p. 1-42, 2003. Entrambi tematizzano la produzione narrativa del fatto giuridico come artefatto testuale, rafforzando la premessa che la critica della prova implichi necessariamente una critica delle forme di iscrizione e circolazione documentale.

decisione solida non tratta il documento come un feticcio della verità. Mostra la posizione occupata da ciascun elemento di supporto all'interno del tutto e si assume la responsabilità dei collegamenti stabiliti tra i diversi documenti. Invece di celare il lavoro interpretativo sotto l'apparenza di una prova immediata, lo espone come parte costitutiva della razionalità giurisdizionale.

In questo scenario, la prova viene intesa come circolazione documentaria organizzata secondo criteri di selezione, ripetizione, gerarchia e rafforzamento. La sua rilevanza filosofico-giuridica va oltre il problema della dimostrazione dei fatti. Essa comprende il modo in cui il diritto compone la memoria pubblica del conflitto e prepara l'immagine istituzionale stessa della verità che in seguito enuncerà. La critica della prova diventa quindi una critica delle forme di iscrizione, circolazione e condensazione dell'archivio.

La leggibilità pubblica trova qui una delle sue espressioni più impegnative. Un regime probatorio maturo consente al lettore di ricostruire il percorso attraverso cui documenti, registri e supporti si sono trasformati in base dell'autorità. La solidità narrativa del caso dipende, dunque, dalla visibilità dei suoi mezzi di formazione. L'archivio cessa di essere un semplice sfondo tecnico e diviene il luogo in cui il potere giurisdizionale espone il proprio lavoro di selezione. Proprio per questo, la leggibilità non può essere scambiata con una mera facilità di accesso ai materiali: essa implica la criticabilità del modo in cui quei materiali sono stati fatti parlare.

6. Conclusione

La riflessione sviluppata in questo saggio ha cercato di ricostruire l'autorità giurisdizionale a partire da una teoria narrativa della forma giuridica. Il processo è apparso come regime di lettura, la decisione come economia di enunciazione, il tempo come montaggio e la prova come circolazione documentale organizzata secondo criteri di selezione e rafforzamento. Questi piani convergono su una tesi comune: la maturità della giurisdizione si misura dalla qualità con cui il diritto rende leggibile il percorso di formazione della convinzione e, insieme, dalla capacità di esporre criticamente la composizione stessa della propria autorità.

Il primo guadagno teorico di questo approccio risiede nella reinterpretazione della forma giuridica. La convergenza di Bakhtin, Eco, Iser e Bourdieu consente di comprendere il processo come pratica istituzionale che organizza simultaneamente istruzioni testuali di lettura e condizioni sociali di competenza per rispondere a tali istruzioni. La forma processuale cessa, così, di apparire come involucro neutro del merito e si configura come grammatica dell'intelligibilità pubblica del caso. Proprio in questo punto, tuttavia, si impone un'avvertenza: la leggibilità non ha valore normativo per il solo fatto di rendere il caso più chiaro, poiché anche un ordine perfettamente leggibile può riprodurre esclusioni e asimmetrie se occulta la propria economia di selezione.

Il secondo guadagno consiste nella ricostruzione dell'autorità come problema di enunciazione. Booth, Calvo González, Bourdieu, Cover e Pachukanis mostrano che una decisione acquista vigore istituzionale quando produce una voce capace di convertire polifonia in sintesi affidabile, astrazione in apparenza di universalità e selezione in evidenza. La critica della neutralità giuridica trova qui un terreno più preciso: non si tratta soltanto di denunciare il carattere storico della forma, ma di mostrare come la scrittura decisionale produca fiducia, gerarchizzi voci e distribuisca dignità narrativa sotto il segno del ragionevole.

Il terzo guadagno deriva dalla tematizzazione del tempo processuale. Ricoeur, Genette, Eco e Spengler consentono di comprendere che la temporalità del caso non coincide mai spontaneamente con quella dell'esperienza. Il processo ordina il mondo mediante sequenza, ellissi, ripetizione, memoria dei precedenti e anticipazione. La cronologia istituzionale si rivela, dunque, come un'arte di montaggio. Di qui deriva una nozione più sofisticata di durata ragionevole: essa non designa soltanto la rapidità della risposta, ma la qualità della distribuzione temporale dell'attenzione giuridica.

Il quarto guadagno emerge dalla reinterpretazione della prova come politica dell'archivio. L'articolazione tra Calvo González e Cover mostra che il documento si situa nel punto d'incontro tra iscrizione e mondo normativo. La prova smette di essere intesa semplicemente come mezzo di dimostrazione e appare come regime di circolazione documentale che stabilizza versioni, rafforza plausibilità e prepara l'enunciazione pubblica della verità giuridica. In questo quadro, la motivazione esige un'esposizione intelligibile del lavoro di lettura dell'archivio, e non il solo richiamo deferente ai materiali del fascicolo.

Da questo insieme emerge la leggibilità pubblica come criterio unificante, ma anche come concetto da maneggiare con rigore critico. Essa designa la condizione in cui l'autorità giurisdizionale si espone a una ricostruzione argomentativa delle proprie scelte di interpretazione, temporalizzazione, credibilità e archiviazione. Il suo valore filosofico-giuridico dipende proprio da questo limite interno: se viene ridotta a ideologia della trasparenza o a mera facilità espositiva, la leggibilità smette di disciplinare il potere e passa a ornamentarlo.

Da qui si apre un vasto programma di ricerca. Studi sugli stili decisionali, sui regimi di visualizzazione dei documenti, sull'architettura narrativa dei sistemi procedurali digitalizzati, sulla circolazione transnazionale dei precedenti, sulle grammatiche della credibilità in giurisdizioni plurilingui e sulle pedagogie istituzionali della lettura possono approfondire la comprensione del modo in cui il diritto compone il mondo che giudica. In tutte queste linee, la domanda cruciale resta la stessa: in che modo la forma giuridica organizza esperienza, credibilità e autorità pubblica?

L'approccio metodologico e politico di questo lavoro può essere così formulato con precisione. Una filosofia del diritto attenta alla narratività del fenomeno giuridico amplia la critica della decisione e raffina la pratica forense perché sposta l'attenzione sul processo di composizione del caso. Il diritto accresce la propria legittimità quando riconosce la centralità della sua forma testuale e coltiva, in ogni decisione, una rigorosa esperienza di leggibilità pubblica. La giustizia trova in questo punto una delle sue espressioni più dense: non quando l'autorità si sottrae all'interpretazione, ma quando accetta di convivere con essa nello stesso spazio di responsabilità

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 Comparative Law and Language

Emojis in law: consent, context and interpretative reasoning

When law adapts to and embraces new forms of language

Anne-Sophie Milard[*]

ABSTRACT: The rapid development of digital technologies is reshaping the ways in which people communicate, requiring legal systems to adapt accordingly. Among the most notable developments is the increasing use of emojis as a means of conveying meaning, intention, and emotion in digital interactions. Although the idea that courts may need to interpret emojis can appear surprising, it is ultimately a logical consequence of changing forms of communication. Law has never been static; throughout history, it has continuously adapted to technological and social transformations. The emergence of emojis therefore represents not a departure from established legal practice, but a new manifestation of an enduring challenge: ensuring that legal interpretation remains responsive to contemporary modes of expression. However, such adaptation is not without difficulties. The interpretation of emojis is often context-dependent and may vary across cultures, platforms, and individuals, creating uncertainty for legal analysis. Moreover, the absence of a uniform approach to emoji interpretation among courts and jurisdictions worldwide further complicates their legal treatment. This paper examines the growing legal significance of emojis and argues that, despite these challenges, their consideration within legal analysis reflects the broader capacity of law to evolve alongside technological innovation and societal change. Particular attention is given to such developments in Canada and the United States, whose case law provides valuable insight into the emerging legal treatment of emojis in contemporary communication.

KEYWORDS: emoji; thumb-up; 👍; contract; acceptance; signature.

1. Introduction

Mastery of a language necessarily involves knowledge of its conjugation and grammar, but also —just as fundamentally and obviously—of its writing system, which makes it possible to externalise[1] speech. Writing may thus be understood as a "system of symbols", leaving behind a material trace in which the information of oral language lies "encoded", awaiting to be "decoded"[2]. This material trace requires the use of a set of signs arranged sequentially, forming either ideograms—such as the hieroglyphs of ancient Egypt or the sinograms of the Chinese language—or letters, as in the Latin alphabet on which the English language is based.

Languages, however, evolve. Some words disappear while others emerge; rules of conjugation and grammar adapt to societal change. Modes of written expression have similarly undergone profound

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[1] M. VITALI-ROSATI, *Qu'est-ce que l'écriture numérique?*, in *Corela* [En ligne], HS-33, 2020. URL: https://journals.openedition.org/corela/11759; DOI: https://doi.org/10.4000/corela.11759, p. 2, § 8.

[2] R. PERRON, M. AUZIAS, *L'évolution de l'écriture et de la motricité graphique*, in *Bulletin de psychologie*, tome 19 n°247, numéro thématique : Aspects du langage, 1966, pp. 516-524., p. 516. DOI: https://doi.org/10.3406/bupsy.1966.7636; www.persee.fr/doc/bupsy_0007-4403_1966_num_19_247_7636.

transformations: from cave paintings to printed characters on paper, they are now increasingly dematerialised through electronic writing. Electronic writing refers to all forms of written communication produced and disseminated *via* the Internet, word-processing software, emails, instant messaging services or social media platforms[3].

More recently still, single-character ideograms—generally colourful and representing a wide range of expressions—have begun to appear, primarily used in short written messages such as SMS, WhatsApp or Instagram communications. Referred to variously as smileys, emojis[4] or emoticons[5], this new element of written language—seemingly simple to understand—has become virtually unavoidable. Emojis now have their own World Emoji Day (17 July)[6], their own repositories[7], statistics[8] and awards[9]. With approximately five billion emojis used daily on social media[10], it is highly likely that readers are familiar with some of the most commonly used ones: those expressing laughter 🤣, affection 🥰, emotion 🥺, celebration 🎉, encouragement 💪, or approval—the well-known "thumbs-up" 👍.

While emojis may be seen as facilitating written communication, serving marketing purposes or making written exchanges more convivial, they were not traditionally perceived as a form of acceptance or signature within the meaning of contract law. Lord Denning or Earl Warren would no doubt have been surprised to see that these now commonplace "signs of intention" [11] require legal scrutiny to determine their binding force, despite their unconventional nature. A Canadian decision recognising genuine legal effect in an emoji has generated extensive doctrinal commentary. Far from being an isolated case, this development more broadly raises the question of how law and justice adapt to transformations brought about by digital technologies. Although law is often perceived as a stable institution, its history reveals a continuous process of adaptation to social and technological developments. As Roger Brownsword observes, lawyers must increasingly "re-imagine law as a part of a much broader regulatory environment"[12], one that encompasses not only traditional legal rules but also technological forms of regulation. The growing use of emojis in digital communication should be understood within this broader context. Although the legal significance of pictographic symbols may initially appear unconventional, it reflects a familiar challenge for legal systems: ensuring that legal interpretation remains capable of capturing meaning as forms of communication evolve alongside technological progress. However, such adaptation is not without difficulties. Emojis do not convey a fixed or universally accepted meaning; their interpretation may vary depending on the surrounding context, the cultural environment, the platform used, and the individual receiving the message. As courts and jurisdictions around the world have yet to adopt a uniform interpretative framework, the legal treatment of emojis remains particularly complex.

This brief overview of several emblematic judicial decisions—primarily North American—illustrates how the law approaches contemporary technological change, particularly in contract law, between pragmatic adaptation (2) and unresolved challenges (3).

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[3] S. WACHS, *Écriture numérique spontanée et variabilité : un écrit/oral à exploiter en Français Langue Étrangère (sensibiliser aux styles et à la prononciation). Henry Tyne, Mireille Bilger, Paul Cappeau, Emmanuelle Guerin. La variation en question(s) - Hommages à Françoise Gadet*, 36, Bristol, pp.237-254, 2017, Gramm-R, 978-2-8076-0296-0. ⟨halshs-02960042⟩, p.1.

[4] Officially, the terms are not interchangeable. Created in 1996 by Shigetaka Kurita, smileys and emojis are pictograms: ☺ ☹ etc.

[5] While emoticons, attributed to Professor Scott Fahlman of Carnegie Mellon University in the United States (1982), are typographic in nature: **:)** = happy - **:(** = sad, etc.

[6] https://worldemojiday.com/.

[7] https://www.unicode.org/emoji/charts-13.1/emoji-list.html.

[8] https://worldemojiday.com/statistics.

[9] https://worldemojiawards.com/2020.

[10] M. KEJRIWAL, Q. WANG, H. LI, L. WANG, *An empirical Study of emoji usage on Twitter in Linguistic and national contexts*, in *Online Social Networks and Media*, vol. 24, 202 (DOI 10.1016/j.osnem.2021.100149).

[11] E. Dresner et S. C. Herring, "Functions of the Nonverbal in CMC: Emoticons and Illocutionary Force", 2010, 20 *Communication Theory* 249.

[12] R. BROWNSWORD, *Law, technology, and society: Re-imagining the Regulatory Environment*, London, 2020, p. 199.

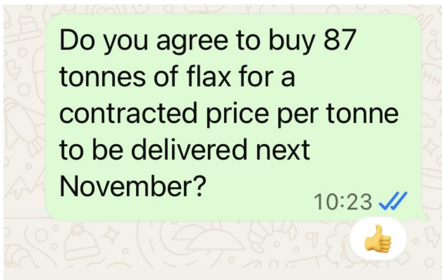
2. Law confronted with digital language: a pragmatic adaptation

The rise of digital communications disrupts traditional modes of contract formation by introducing novel forms of expressing consent, such as emojis or instant messaging exchanges. These new media call into question how the law apprehends manifestations of intent that may be extremely concise, yet nonetheless meaningful. The originality of such situations does not, however, justify calling into question the foundational principles of contract law.

Actually, judges have adopted a pragmatic approach, undertaking a concrete and contextual assessment of these new digital elements (2.1) in order to determine their true legal significance. At the same time, courts remain anchored in traditional solutions, relying on well-established legal categories (2.2), thereby ensuring the stability and coherence of contract law in the face of technological change.

2.1. Concrete and contextual assessment of new digital elements

Although emojis have been present in everyday digital written exchanges since 1996—initially sporadically and later more extensively—they only began to attract sustained legal and judicial attention in the 2010s. Two decisions in particular, one American and one Canadian, have addressed the interpretation of a 🌝 emoji and a 👍 emoji appended to written messages, one posted on Twitter, the other *via* WhatsApp.



In the first case[13], Ryan Cohen, CEO of GameStop, acquired approximately 10% of the shares of Bed Bath & Beyond (BBY) in March 2022. This investment generated considerable enthusiasm among retail investors, which did not go unnoticed by the American media outlet CNBC. The channel commented that "BBY's stock price is disconnected from its fundamental value" and accompanied its analysis with a photograph depicting a woman pushing a shopping cart filled with BBY products[14]. Cohen retweeted the article, adding the comment: "At least her cart is full 🌝".

This tweet was interpreted by investors as "a rallying cry to buy BBY stock" [15], the use of the emoji suggesting that the stock would soar—what investors colloquially refer to as "going to the moon". On the same day, BBY's share price surged, reaching USD 16[16] three days later. Cohen subsequently

[13] *Bratya SPRL v. Bed Bath & Beyond Corporation*, No. 1:22-cv-02541 (TNM) (2024).

[14] K. MONEKE, *The New Language: Contractual Interpretation in the Age of Emojis*, in *Bates College Undergraduate Law Review*, vol. 2: Iss. 1, Article 8, 2025, p. 76. Available at: https://scarab.bates.edu/bulr/vol2/iss1/8.

[15] *Ibid.*

[16] *Ibid.*

sold his entire stake in the company, generating a substantial profit, while the share price collapsed shortly thereafter[17], ultimately leading to the liquidation of BBY in March of the following year.

Brought before the United States District Court for the District of Columbia, the case raised complex issues, including the question of "market efficiency for stocks subjected to extreme and temporary periods of volatility" [18] and, *inter alia*, how reasonable individuals react to a tweet considered in its entirety. Although the issue was novel and the court did not dwell on it at length, it nevertheless took care to state that "fraudsters may not escape liability simply because they used an emoji. Just like with words, liability will turn on the emoji's particular meaning in context." [19]

A few months later, the issue reappeared before the courts, this time focusing squarely on the legal significance of an emoji. In the Canadian decision *South West Terminal Ltd. v. Achter Land & Cattle Ltd.* [20], dated 8 June 2023, the claimant (the alleged buyer) argued that a contract had been concluded with the defendant (the alleged seller) for the purchase of 87 metric tonnes of flax at an agreed price per tonne, with delivery scheduled for November. When the defendant failed to deliver the goods, the claimant brought an action for breach of contract and sought damages.

The negotiations had been conducted entirely in writing, *via* text messages exchanged on the parties' respective mobile phones. The claimant inferred from the "thumbs-up" emoji sent by the defendant in response to its own message that this emoji constituted acceptance of the offer. The judge of the King's Bench Court of the province of Saskatchewan therefore had to rule on the unprecedented question of whether a "thumbs-up" emoji sent by SMS in response to a written and signed contract transmitted by text message could constitute a valid contract.

Not only did the court answer this question in the affirmative, but its decision was upheld on appeal. The Court of Appeal found that the lower court had not erred in its analysis of the parties' intention to enter into a contract[21] or in its assessment of their agreement on the essential terms of the contract[22].

2.2. Legal characterisation based on established categories

An emoji may therefore be interpreted as expressing consent to the conclusion of a contract. As novel as this may appear, is the situation truly so innovative from the perspective of contract law? In the Canadian decision of particular relevance here, *South West Terminal Ltd. v. Achter Land & Cattle Ltd*[23]., although the judge of the King's Bench Court of the province of Saskatchewan answered in the affirmative the unprecedented question of whether a "thumbs-up" emoji sent by SMS in response to a signed contract transmitted by text message could constitute a valid contract, the reasoning relied on legal principles that were, in reality, entirely classical.

In the first place, and in a traditional manner, the Common Law judge examined the criteria required for a contract to be validly formed, namely capacity[24], intention to create legal relations[25], consideration[26], and, most crucially in the present context, consent. On the one hand, an offeror makes an offer to an offeree, who in turn communicates acceptance. This involves expressing "a manifestation of willingness to enter into a contract on specified terms, made with the intention that it is to be binding upon acceptance by the person to whom it is addressed"[27]. The offer must therefore be brought to the attention of the offeree, which in Common Law requires not only that it be addressed to a particular

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[17] *Ibid.*, p. 11.
[18] *Ibid.*, § 21 p. 25.
[19] K. MONEKE, *op. cit.*, p. 78: "*fraudsters may not escape liability simply because he used an emoji. Just like with words, liability will turn on the emoji's particular meaning in context*".
[20] *South West Terminal Ltd. v Achter Land & Cattle Ltd.*, 2023 SKKB 116 (CanLII), <https://canlii.ca/t/jxq15>.
[21] *Achter Land & Cattle Ltd. v South West Terminal Ltd.*, 2024 SKCA 115, § 67.
[22] *Ibid.,* § 82.
[23] *Op. cit. South West Terminal Ltd. v Achter Land & Cattle Ltd*, 2023.
[24] *Pitt v Smith* (1811) 3 Camp 33.
[25] *Balfour v Balfour* (1919) 2 KB 571.
[26] *Currie v Misa* (1874) LR 10 Ex 153.
[27] *Stover v Manchester City Council* (1974) 1 WLR 1403.

person, a group of persons, or even the world at large, but also that the existence of the offer be effectively communicated so that the offeree is aware of it. In return, the offeree must demonstrate an intention to accept the offer by expressing acceptance, defined as "the final and unequivocal expression of assent to the terms of the offer" [28]. Such acceptance may be expressed orally, in writing, or even through conduct—for instance, by shaking the offeror's hand. Once these elements are established, a contract may be declared binding upon the parties. [29]

To ensure that all these criteria had indeed been satisfied, the Canadian court relied on the existence of a *consensus ad idem*—a meeting of the minds—and on the certainty of terms, making use of the *officious bystander test*. This test is commonly applied "to determine whether an unstated condition was originally implied at the time the contract was drafted" [30]. The court concluded that an objective and impartial observer would have inferred that the parties had reached an agreement, as had occurred on numerous previous occasions.

To that end, the court examined the parties' prior course of business[31] and found that it was common practice for the claimant to transmit contracts by email or SMS. Prior to the disputed transaction, four contracts[32] had been concluded between the parties through text messaging. Each time the claimant appended to the contractual offer the statement "Please confirm terms of the durum wheat contract", the defendant replied with brief messages such as "looks good", "ok", or "yup" [33]. The court observed that, in each instance, the parties clearly understood these succinct responses to constitute confirmation of the contract rather than a mere acknowledgment of receipt from the defendant[34].

Accordingly, the court considered that these exchanges reflected a well-established commercial practice known to and accepted by both parties as constituting a valid and binding forward purchase contract. This practice provided indisputable evidence of their business habits. On the balance of probabilities, the judge therefore concluded that the defendant had accepted or approved the contract in the same manner as before, except that on this occasion he used a "thumbs-up" emoji[35]. Taking all the circumstances into account, the emoji was found to signify acceptance, rather than merely indicating receipt of the contract or an intention to consider it at a later stage. In these circumstances, the "thumbs-up" emoji constituted an "action in electronic form" capable of expressing acceptance within the meaning of section 18 of the 2000 *Electronic Information and Documents Act*[36].

The court also addressed the issue of electronic signature. Referring to section 6 of the *Sale of Goods Act*[37] of the province of Saskatchewan (*SGA*), it recalled existing case law allowing the use of

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[28] H.G. BEALE, J. CHITTY, *on Contracts*, London, 2025, chap. 2, § 027.

[29] *Scotsburn Co-Op. Services v. W. T. Goodwin Ltd.*, [1985] 1 S.C.R. 54.; *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga*, 2021 SCC 22 35, 459 DLR (4th) 425.

[30] The Law Dictionary, *Featuring Black's Law Dictionary, 2nd Ed.* https://thelawdictionary.org/officious-bystander-test/ : "A test used to determine if an unstated condition was originally implied at the time of writing the contract." – as well as *op. cit. Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga* § 37.

[31] *Op. Cit. South West Terminal Ltd. v Achter Land & Cattle Ltd,* §19.

[32] *Ibid.*

[33] *Ibid.,* § 21.

[34] *Ibid.:* "The parties clearly understood these curt words were meant to be confirmation of the contract and not a mere acknowledgement of the receipt of the contract by Chris".

[35] *Ibid.,* § 36: "on the balance of probabilities that Chris okayed or approved the contract just like he had done before except this time he used a 👍 emoji".

[36] *Ibid.,* § 37: "Under these circumstances a 👍 emoji is "an action in electronic form" that can be used to allow to express acceptance as contemplated under The Electronic Information and Documents Act, 2000, SS 2000, c E-7.22 [EIDA] as per s. 18: 18(1) Unless the parties agree otherwise, an offer or the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed: (a) by means of information or a document in an electronic form; or (b) by an action in an electronic form, including touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter. (2) A contract shall not be denied legal effect or enforceability solely by reason that information or a document in an electronic form was used in its formation".

[37] *Sale of Goods Act,* RSS 1978, c S-1, *S.6* : "When contract enforceable by action 6(1) A contract for the sale of goods of the value of $50 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the contract or in part payment or

electronic communications and non-handwritten electronic signatures to identify the signatory and establish approval of the document's contents[38]. The question, therefore, was whether the "thumbs-up" emoji was sufficient to meet the statutory requirements of the *Sale of Goods Act* in the specific circumstances of the case[39]. The court held that the contract was "in writing" and had been "signed" by both parties for the purposes of the Act[40]. It further concluded that the defendant's use of the "thumbs-up" emoji constituted a valid signature in those circumstances, as the defendant could be identified through his unique mobile phone number[41].

A 👍 emoji may thus constitute not only a response by an offeree to a contractual proposal, but also a legally valid—albeit unconventional—means of signing a document. While the case may appear unprecedented, it was nonetheless resolved by applying long-established principles of contract law to a contemporary factual situation. As the court observed, one cannot—and should not—"attempt to stem the tide of technological and common usage; this appears to be the new reality in Canadian society, and courts will have to be ready to meet the new challenges that may arise from the use of emojis and the like" [42].

The Supreme Court of Canada declined in 2025 to grant leave to appeal[43], thereby allowing the Saskatchewan Court of Appeal to uphold the first-instance judgment[44] by a majority (two judges to one[45]). The appellate court confirmed that there had been a meeting of minds and a sufficiently valid "signature" on the disputed contract for the purposes of the *Sale of Goods Act*[46].

With respect to the meaning of the "thumbs-up" emoji used by the seller, the majority on appeal rejected the argument that an emoji could have only one fixed meaning, thereby reaffirming the importance of factual context in determining contractual intent[47]. More specifically, the court emphasised that while it may be difficult to ascertain contractual intent solely by reference to words—since words do not possess an immutable or absolute meaning[48]—the fact that a symbol has no universal meaning does not imply that it is incapable of being assigned a specific meaning in a particular set of circumstances[49].

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unless some note or 2023 SKKB 116 (CanLII) − 26 − memorandum in writing of the contract is made and signed by the party to be charged or his agent in that behalf. (2) This section applies to every such contract notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of the contract be actually made, procured or provided or fit or ready for delivery or that some act may be requisite for the making or completing thereof or rendering the same fit for delivery. (3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale whether there be an acceptance in performance of the contract or not".

[38] *Op. Cit. South West Terminal Ltd. v Achter Land & Cattle Ltd,* § 59.

[39] *Ibid.,* § 60 "*is a* 👍 *emoji good enough to meet the requirements of the SGA in the unique circumstances of this case?*".

[40] *Ibid.,* § 61 "I find that the flax contract was "in writing" and was "signed" by both parties for the purposes of the SGA. There is no dispute that Kent electronically signed on behalf of SWT".

[41] *Ibid.,* § 62. "In my opinion the signature requirement was met by the 👍 emoji originating from Chris and his unique cell phone (agreed upon statement of facts para. 2; cross-examination of Chris T6.7-T6.10; T28.6-T28.20) which was used to receive the flax contract sent by Kent. There is no issue with the authenticity of the text message 2023 SKKB 116 (CanLII) − 29 − which is the underlying purpose of the written and signed requirement of s. 6 of the SGA. Again, based on the facts in this case – the texting of a contract and then the seeking and receipt of approval was consistent with the previous process between SWT and Achter to enter into grain contracts."

[42] *Ibid.,* § 40.

[43] Supreme Court of Canada File No. 41671, 25 juillet 2025: https://www.scc-csc.ca/cases-dossiers/search-recherche/41671/.

[44] *Achter Land & Cattle Ltd. v South West Terminal Ltd.*, 2024 SKCA 115 (CanLII), <https://canlii.ca/t/k8d5k>.

[45] *Achter Land & Cattle Ltd. v South West Terminal Ltd.*, 2024 SKCA 115 (CanLII), <https://canlii.ca/t/k8d5k>.

[46] *Ibid.,* § 94, 139.

[47] *Ibid.,* § 62.

[48] *Ibid.,* citing *Sattva Capital Corp v. Creston Moly Corp*, 2014 SCC 53: "Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning".

[49] *Ibid.,* § 49: "However, there is some distance between, on the one hand, saying that a communication – whether it be by word, gesture or symbol – does not bear a universal meaning and, on the other hand, asserting that it is

3. Our challenges raised by the legal translation of digital communication

Notwithstanding this pragmatic approach to digital elements, a number of challenges remain. These difficulties stem, on the one hand, from the inherent uncertainty surrounding the interpretation of emojis (3.1), and, on the other hand, from the current normative framework, which is characterised not by fundamental divergences from one country to another, but rather by differentiated applications of a shared legal standard, as illustrated by the North American approaches on the one hand and the Israeli approach on the other (3.2).

3.1. The difficulty of interpreting emojis

One of the primary challenges, even prior to judicial intervention, lies in determining the meaning to be attributed to emojis. Without delving into the technical details of Unicode[50]—short for *Universal Character Encoding*, "a universal computer standard allowing text to be exchanged across different languages, alphabets, devices, platforms and software" [51]—it should be noted that this standard has now been adopted by web browsers and operating systems as a uniform format[52].

The latest version, Unicode 17.0, comprised as of 9 September 2025 approximately 159,801 characters, while "leaving the visual rendering to each platform" [53]. These renderings may be proprietary (as with Apple or Samsung) or open-source (as with Twitter or Emojidex) [54]. The consequence is that although each emoji is assigned a distinct numerical code by Unicode—for instance, the emoji 😍 "smiling face with heart-shaped eyes" corresponds to code U + 1F60D[55]—the visual representation of that emoji is left entirely to the discretion of platform designers such as Apple, Samsung, Google or Microsoft. This virtually incoherent digital environment[56] can generate ambiguity, making it difficult at this stage to regard emojis as the digital age *lingua franca*[57].

The example of the "grinning face with smiling eyes" emoji (U + 1F601)[58] is particularly instructive:

incapable of having a particular meaning ascribed to it in a specific circumstance".

[50] L. BICH-CARRIÈRE, 🗨,📖,⚖: *que pensent les tribunaux des émojis, émoticônes et autres pictogrammes*, in *McGill Law Journal / Revue de droit de McGill*, 2018, 64(1), 43–108, § 19 et ss. https://doi.org/10.7202/1067517ar.

[51] *Ibid.,* § 20.

[52] https://www.ionos.fr/digitalguide/sites-internet/creation-de-sites-internet/unicode/

[53] L. BICH-CARRIÈRE*, op. cit.*, § 25.

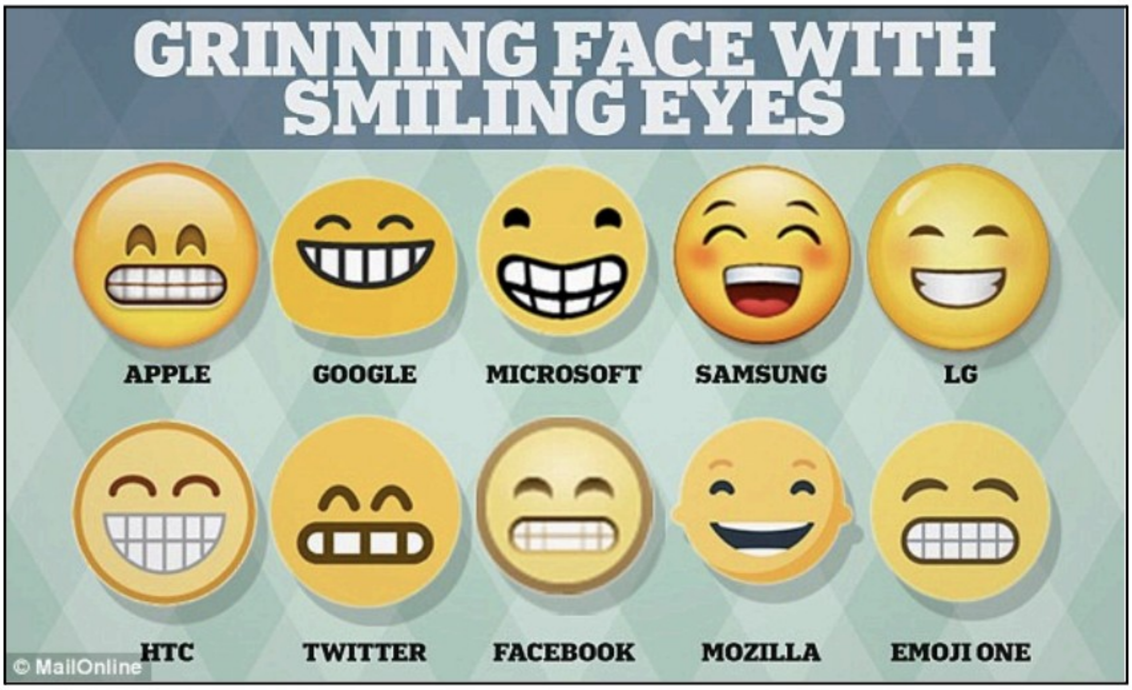
[54] *Ibid.*

[55] K. MONEKE, *op. cit.*, p. 92.

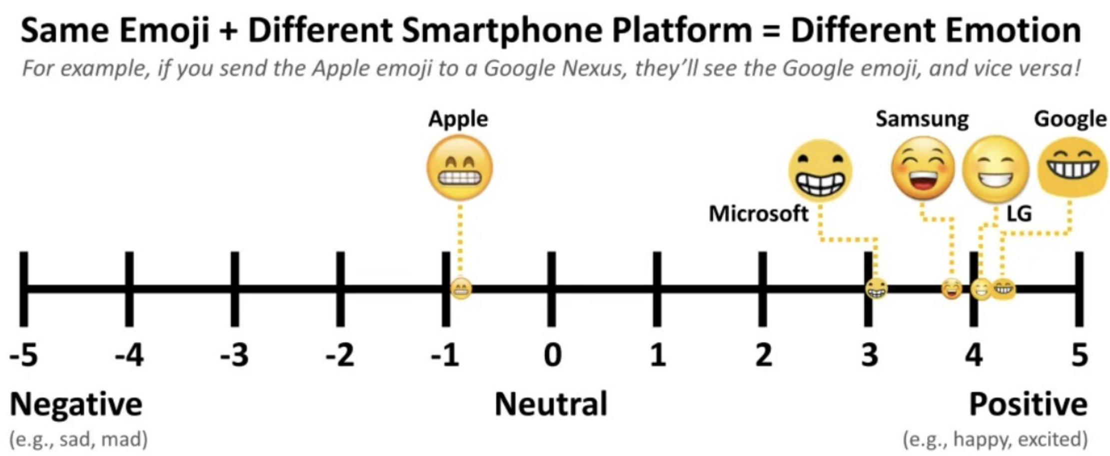
[56] *Ibid.*

[57] K. MENSCHER, *Thank you, I Emoji Your Offer: Emojis Translating Acceptance in Contracts*, in *Law School Student Scholarship, Steon Hall Law*, 2021, pp. 1 à 31 – p. 21.

[58] S. GRIFFITHS, *Are YOU Using Emojis All Wrong? The Icons That Look So Different on iPhones and Android Handsets That Your Friends May Not Know What You Are Talking About*, in *DAILYMAIL* (Apr. 12, 2016), https://www.dailymail.co.uk/sciencetech/article-3535858/Are-using-emoji-wrong-Grinning-face-icon-looks different-iPhones-Android-handsets-people-don-t-know-actually-means.html.

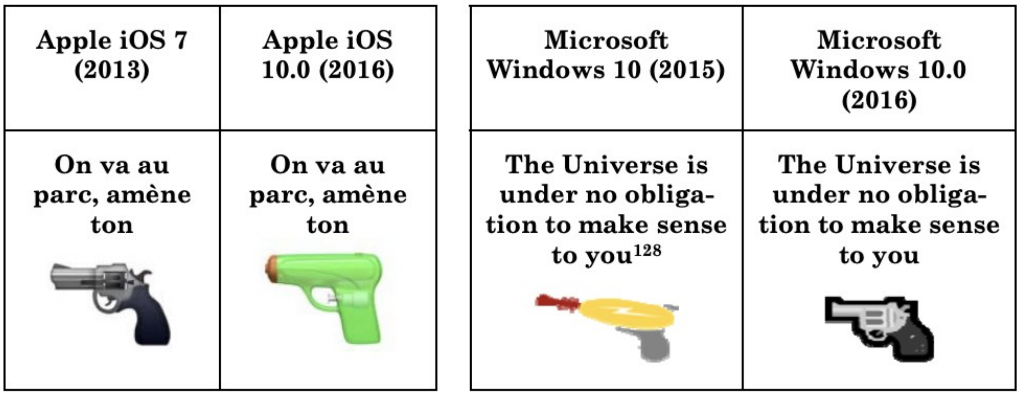


Although the code remains the same, the graphical design varies considerably depending on the platform. More importantly, interpretation itself is far from uniform. A study conducted in 2016[59] showed that users did not experience the same emotional response when viewing visually different versions of the same emoji. Samsung users tended to interpret the "grinning face with smiling eyes" as conveying a sense of "blissful happiness"[60], whereas Apple users perceived it as expressing a more aggressive attitude, described as "ready to fight"[61].



[59] E. PERALTA, *Lost in Translation: Study Finds Interpretation of Emojis Can Vary Widely,* in *The Two-Way, NPR* (Apr. 12, 2016) https://www.npr.org/sections/thetwo-way/2016/04/12/473965971/lost-in-translation-study-finds-interpretation-ofemojis-can-vary-widely.
[60] K. MONEKE, *op. cit.*, p. 31.
[61] *Ibid.*
[62] E. PERALTA, *op. cit.*

Perhaps the most striking illustration is that of the "pistol" emoji, whose design varied dramatically across platforms for several years, oscillating between a playful water gun and a realistic revolver with aggressive connotations. While this issue was resolved in 2018 through the universal replacement of firearm designs with a water gun, the example clearly demonstrates how the lack of graphic harmonisation can generate significant divergences in communication.



[63]

[64]

Beyond visual representation, certain emojis are inherently ambiguous. Should the symbol 🙏 - U + 1F64F, "person with folded hands" - be interpreted as expressing gratitude, a prayer, a request, a gesture of victory, hope, respect, or even clear consent?

The difficulty of interpretation is further compounded in a globalised world by intercultural variation. The above mentioned "thumbs□up" emoji 👍, widely used in Western countries as a sign of approval, may be perceived as vulgar or offensive in other regions[65]. Similarly, the angel emoji 👼 is associated in Western contexts with innocence or purity of intent, whereas in China it may carry threatening connotations[66]. Applause 👏, commonly understood in Western cultures as conveying praise or

[63] L. BICH-CARRIÈRE, *op. citi* § 84: "We're going to the park, bring your …".
[64] *Ibid.*, § 85: "You're in for a rough time, you rascal".
[65] M. DANESI, *The Semiotics of Emoji: The Rise of Visual Language in the Age of the Internet* (2017): cited by K. Moneke, *op. cit.*, p.91.
[66] *Ibid.*

congratulations, is perceived in China as bearing sexual connotations[67], much like the peach 🍑 or the aubergine 🍆 emojis[68].

Technological variability, interpretative ambiguity and intercultural differences thus render emojis particularly resistant to uniform interpretation. Judicial engagement with these symbols is therefore both delicate and necessary, especially within normative environments that vary from one jurisdiction to another, as illustrated by the differing North American and Israeli approaches.

3.2. A gradation of normative intensity: contract law in Canada, the United States and Israel

In resolving issues relating to contract formation and the validity of signatures in the Canadian dispute between *South West Terminal Ltd.* and *Achter Land*, both the Canadian Court of first instance[69] and the Court of Appeal[70] applied traditional contract law principles while adapting them to modern technologies. Their position was facilitated by the ability of courts to recognise diverse forms of digital communication, grounded in the principles of technological neutrality and functional equivalence.

The principle of technological neutrality requires regulation to remain "impartial, refraining from privileging any particular medium—whether paper-based or digital—for the storage or transmission of information"[71]. First articulated in the UNCITRAL Model Law on Electronic Commerce[72], this principle has since been adopted in many other jurisdictions, including the European Union[73], as part of a broader transnational effort to adapt established legal principles to evolving modes of communication. In Canada, the principle of technological neutrality has not been implemented at the federal level; it is therefore the various provinces of Canada that have done so[74]. In Saskatchewan, it was incorporated through the *Electronic Information and Documents Act* (EIDA) of 2000[75]. Section 18 of that Act provides that, "Unless the parties agree otherwise, an offer or the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed: (a) by means of information or a document in an electronic form; or (b) by an action in an electronic form, including touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter"[76].

This principle is complemented by that of functional equivalence, also originating in the UNCITRAL Model Law. Functional equivalence involves identifying the fundamental objectives of a legal requirement and determining whether new technological instruments can fulfil the same function[77]. Where they do, those technologies may be accorded equivalent legal value[78].

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[67] *Ibid.*

[68] *Ibid.,* p. 92: Although visually innocuous and initially widely perceived as literal depictions of fruit and vegetables, they have come to carry sexual connotations in popular culture.

[69] *South West Terminal Ltd. v Achter Land.*

[70] *Achter Land & Cattle Ltd. v South West Terminal Ltd.*

[71] C. RICHTER, P.-A. VIAU, *Les règles de preuve s'appliquant à la documentation électronique et aux technologies de l'information*, in *Service de la formation continue, Barreau du Québec*, Congrès annuel du Barreau du Québec, Montréal, 2007, p. 45, § 49.

[72] UNCITRAL Model Law on Electronic Commerce adopted on June 12 1996. https://uncitral.un.org/fr/texts/ecommerce/modellaw/electronic_commerce.

[73] See especially the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast): https://eur-lex.europa.eu/eli/dir/2018/1972/oj/eng.

[74] Quebec: *Loi concernant le cadre juridique des technologies de l'information* (2001) – Ontario: *Electronic Commerce Act* (2000) – British Colombia: *Electronic Transactions Act* (2001) - Alberta: *Electronic Transactions Act* (2001) - Manitoba: *Electronic Commerce and Information Ac*t (2000) – New Scotia: Electronic Commerce Act (2000).

[75] https://www.canlii.org/en/sk/laws/stat/ss-2000-c-e-7.22/latest/ss-2000-c-e-7.22.html.

[76] S. 18 EIDA.

[77] A.-A. TREMBLAY, *La décision* South West Terminal Ltd. v Achter Land *et le droit du commerce électronique*, in *Les Cahiers de propriété intellectuelle*, vol. 36, n° 1 & 2, pp. 103-126, p. 112.

On the basis of these two principles, the Canadian courts were able to recognise the validity of the contract between SWT and Achter not only as regards consent but also signature. They concluded that the use of the 👍 emoji satisfied the requirements of contract law under section 18 of the EIDA.

The United States has also embraced technological neutrality in contract law, notably through the *Uniform Electronic Transactions Act* (UETA), adopted in 1999[79]. Section 7 of UETA provides that a record or signature may not be denied legal effect solely because it is in electronic form, nor may a contract be denied enforceability solely because an electronic record was used in its formation[80]. Many states have enacted analogous legislation at state level, including New York, which adopted the *New York Electronic Signatures and Records Act* - commonly referred to as the *NYS Technology Law* - in 1999[81].

The Supreme Court of the State of New York was thus called upon to address the validity of an emoji-based signature in *Lightstone RE LLC v. Zinntex LLC*[82]. In that case, two parties entered into contracts in April 2020 for the purchase of protective equipment, with the claimant paying over USD 2 million. After the defendant failed to deliver the goods, a subsequent agreement reached *via* text messages provided for partial reimbursement over several instalments. When only part of the amount was refunded, the claimant sought judicial recognition of the validity of this agreement.

The Court recalled that a binding agreement must be established in writing and signed by the party to be charged[83], and that "an electronic signature has the same validity and effect as a handwritten signature"[84]. An electronic signature was defined as "an electronic sound, symbol or process, attached to or logically associated with an electronic record and executed or adopted with intent to sign" [85]. Like its Canadian counterpart, the New York Court acknowledged that an emoji-based electronic signature could, in principle, give rise to a valid contract. However, unlike the Canadian case, the NY Court found that the facts did not establish a meeting of the minds or a clear intention to be bound[86]. Given that the defendant had categorically stated only minutes earlier that no document would be signed, the American Court emphasised that intent could not be inferred from the emoji alone[87], underscoring once again the centrality of contextual analysis.

Context also lay at the heart of the Israeli decision in *Dahan v. Shacharoff*[88], but here the Court went significantly further than its North American counterparts, consequently raising numerous questions on a global scale, particularly with regard to international law.

Following the posting of an online advertisement, a couple of prospective tenants visited a flat twice before sending the landlord a text message containing multiple emojis expressing enthusiasm and interest, while indicating that details remained to be discussed : "Good morning 😊 We are interested in the home 💃👯‍♀️✌️🐿️🍾…We just need to settle on the details…When does it work for you ? "[89]. Upon sending this text message, the couple visited the flat again and discussed a number of repairs that needed to be made; after reaching an agreement, the landlord sent a copy of the lease, and the two parties spoke

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[78] S. Hel, *Le formalisme du contrat électronique dans l'ASEAN : définition et interprétation des notions d'écrit et de signature*, thèse de doctorat, Montréal, Université de Montréal, Faculté de droit, 2013, p. 61.

[79] *Uniform Electronic Transactions* Act, 1999: https://www.uaipit.com/uploads/legislacion/files/0000004550_UNIFORM%20ELECTRONIC%20TRANSACTIONS%20ACT.pdf.

[80] *Ibid.,* § 7: "*(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form. (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation*".

[81] https://its.ny.gov/nys-technology-law.

[82] *Lightstone RE LLC v. Zinntex LLC*, 2022 NY Slip Op 32931(U).

[83] *Frank Felix Associates Ltd., v. Austin Drugs Inc.*, 111 F3d 284 [2d Cir. 1997].

[84] *NYS Technology Law Statute*, §304 (2): "'Electronic signature' shall mean an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record".

[85] *Ibid.*

[86] *Lightstone RE LLC v. Zinntex LLC*, p. 5: "*there still must be a meeting of the minds and an intent to be so bound*".

[87] A.-A. Tremblay, op. cit., p. 119.

[88] *Dahan v. Shacharof* [2017] File No 30823-08-16. https://digitalcommons.law.scu.edu/historical/1515/

[89] *Ibid.*, p. 11.

on the phone several times. Then, the landlord removed the apartment listing from the website: to her, it was clear that the couple intended to go through with the transaction[90]. When the couple abruptly ceased communication, the landlord brought an action for damages.

The Israeli Court held that the relationship had not matured into a contractual relationship[91] and that the parties remained free to withdraw from negotiations. Nevertheless, it found the couple liable for the harm suffered by the landlord due to their bad faith during negotiations[92]. In reaching this conclusion, the court relied heavily on the sequence of emojis – "a dancing woman, a dancing couple, a 'V- sign with fingers,' a shooting star, a squirrel, and a bottle of champagne" - which conveyed "great optimism"[93] and induced legitimate reliance. Although the message did not itself constitute a binding contract, it nevertheless led the claimant to place significant trust in the defendants' intention to rent the apartment[94].

The Israeli Court thus concluded that the combination of the solemn conduct displayed at the outset of negotiations and the optimistic emojis sent at the end sufficed to establish bad faith[95]. Damages were awarded under Israeli contract law for pre-contractual liability[96], the amount of damages suffered by the owner being awarded at 7,250 NIS, or approximately €2,000/$2,400.

The *Dahan* decision is often regarded as a step beyond North American approaches, insofar as it does not merely treat emojis as contextual indicators of intent but attributes to them autonomous legal effects capable of grounding pre-contractual liability, reflecting a broader concern for the protection of legitimate reliance. Whereas North American courts confine emojis to an evidentiary role in assessing intent, the Israeli judge adopts a more substantive approach, recognising their capacity to produce legal effects independently, in line with the principle of legitimate expectations.

4. Conclusion

In the same way that courts have adapted over time to telegrams, facsimiles, voicemail messages, emails and SMS communications, they will have no choice but to accommodate emojis and other emoticons, whose use is now firmly established and set to expand further, despite the fact that they are not words in the strict sense of the term[97]. While judicial decisions involving emojis are multiplying—not only in contract law but across other fields, including criminal law and labour law—they continue, for the most part, to rely on traditional legal categories. Two major difficulties nevertheless emerge. The first relates to the absence of a uniform understanding of the meaning of emojis, stemming from their technological variability, interpretative ambiguity and intercultural dimensions. The second lies in the heterogeneity of judicial responses, not so much because of fundamentally different legal standards from one jurisdiction to another, but rather due to divergent applications of shared principles. In a legal world that is inherently wary of uncertainty, it is possible that a more homogeneous and therefore more effective normative framework may eventually prove necessary.

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[90] *Ibid.*, p. 12 et 13.
[91] *Ibid.*, p. 14: "Should the relationship between the parties be seen as having matured into contractual relations? After examining all the evidence before me, my opinion is that at the end of the day the answer to this is negative".
[92] *Ibid.*, p. 15: "In the circumstances of the case, the conduct of the defendants is sufficient to indicate that they did not act in good faith towards the plaintiff".
[93] *Ibid.*, p. 16: "These figurines convey great optimism".
[94] *Ibid.*: "Although this message did not constitute a binding contract between the parties, this message naturally led to the plaintiff's great reliance on the defendants' desire to rent his apartment".
[95] *Ibid.* : "The combination of these - the solemn figurines at the beginning of the negotiations that created much reliance on the prosecutor, and those Smileys at the end of the negotiations that deceived the Plaintiff to think the Defendants were still interested in his apartment - support the conclusion that the Defendants acted in bad faith in the negotiations".
[96] Under S. 12(B) Contract Law.
[97] M. BERLINER, *When a picture is not worth a thousand words: why emojis should not satisfy the statute of fraud writing requirement*, in *Cardozo Law Review*, vol. 41, pp. 2161-2201, p. 2193.

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Genealogies of the "rule of virtue" in Chinese law

Some linguistic remarks on the character 德 (*dé*)

Gianmatteo Sabatino [*]

ABSTRACT: This article examines the historical and contemporary meanings of the character 德 (*dé*) in Chinese legal and political thought, focusing on its role in the idea of 德治 (*dézhì*), or "rule of virtue." Through linguistic, palaeographic, and conceptual analysis, it reconstructs the genealogy of 德 from its early appearances in Western Zhou bronze inscriptions to its development in classical Chinese philosophy and modern Chinese law. The article argues that 德 originally combined public, political, ritual, and moral dimensions, functioning as both a source of sovereign legitimacy and a practical standard of governance. In Confucian thought, 德 became a comprehensive ethical and pedagogical paradigm, closely linked to ritual order and social harmony. The article then explores how contemporary Chinese law, especially under Xi Jinping, has revived and transformed the rule of virtue by integrating moral standards into legal governance, Party supervision, civil law, company law, and oversight mechanisms. It suggests that this revival reflects both continuity with Chinese legal tradition and a politically oriented attempt to place morality under the interpretive authority of the Communist Party. Ultimately, the article shows how contemporary Chinese law challenges Western assumptions about the autonomy of law from morality and politics.

KEYWORDS: 德 (*dé*); rule of virtue; Chinese law; Confucianism; morality and governance.

SUMMARY: 1. Introduction; 2. Palaeography and etymology of 德；3. 德 and classical Chinese political thought; 4. The revival of the rule by virtue and the mentions of 德 in contemporary Chinese law; 5. Conclusion.

1. Introduction

Since the rise to power of current CPC General Secretary Xi Jinping, Chinese law has been undergoing a profound moral turn[1]. This trend is exemplified by the decisive emphasis placed by the Chinese political leadership on the combination of the "rule of law" (法治 – *fǎzhì*) with another concept seemingly derived from the earliest history of Chinese political thought: the concept of 德治 (*dézhì*), generally translated as the "rule of virtue"[2]. The connection, when not the conflict, between law and virtue is certainly one of the most fascinating and unresolved issues in the history of Western legal thought.

As law emerged as an allegedly independent field of human knowledge – with the Roman *ius*[3] – its link with virtue has always been at once desirable and connoted by an inevitable separateness. Such ambivalence is well portrayed by the famous definition of Celsus: *ius est ars boni et aequi*. Therefore, the "good" may very well be the object or the purpose of the "*ars*" of law[4]; however, it cannot be its functional equivalent.

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[1] ZHAO CHUANHAI, 习近平法治思想的道德底蕴 (*The moral connotation of Xi Jinping's thought on the rule of law*), in *Henan caijing zhengfa daxue xuebao*, 6, 2021, 1 ff.; DU YANLIN, HU XI, 现代法律德性转向及其中国启示 (*The moral turn of modern law and its revelation in China*), in *faxue*, 10, 2018, 65 ff.

[2] WU GUOPING, ZHANG SHUTONG, 习近平以德治国与依法治国思想相结合之实施路径研究 (*Research on the implementation path of Xi Jinping's thought about the integration of governing the country through law and through virtue*), in *Haixia faxue*, 2020, 27 ff.

[3] A. SCHIAVONE, *Ius. L'invenzione del diritto in occidente*, Turin, 2017.

[4] L.B. SOLUM, *Virtue as the End of Law: An Aretaic Theory of Legislation*, in *Jurisprudence*, 9, 2018, 6 ff.

Moral evaluations about law then deal essentially with the way the latter pursues virtuous aims. The idea that virtue itself can function as an autonomous (albeit complementary) standard of governance, in principle capable of enabling governance even in absence of the law, eschews, for the most part, the Western idea of legal science.

Eastern legal traditions developed different approaches, which reflect upon current narratives. Indeed, the simultaneous application of law and virtue as instruments of governance has been at the core of Chinese legal-ideological discourse both in its embryonal stage and in recent years. Multiple perspectives may be fruitfully employed to assess this phenomenon.

Undoubtedly, the incorporation of the "rule of virtue" into the official narrative of the CPC implies an appropriation, by the Party leadership, of ethical paradigms belonging to traditional Chinese culture, in order to shape their contemporary application by filtering them through the values and norms upheld by the Party itself[5]. It is, indeed, no surprise that one of the earliest uses of the character 德 in modern Chinese legislation appears in Article 11 of the Oversight Law, which empowers oversight commissions to evaluate the conduct of public officials on the basis of standards of moral integrity (道德操守 – *dàodé cāoshǒu*), in addition to standards related to compliance with laws and regulations.

On the other hand, "virtue" and the "rule of virtue" are also concepts traditionally associated with flexible approaches to governance, thus partially contradicting the appeal to certainty inherent in the strengthening of legalisation and codification trends in modern China[6]. The combination of *fǎzhì* and *dézhì* therefore constitutes an operation which, while ideologically appealing, displays several potential contradictions.

In light of the plurality of interpretative dimensions associated with this notion, one research perspective appears particularly suitable for attempting a comprehensive reconstruction of the overall meaning of 德 in the historical trajectory of Chinese law, namely that of linguistic analysis.

Indeed, 德 (*dé*) as a character has been associated with vastly different meanings belonging to distinct semantic fields, ranging from that of political legitimacy to that of individual self-cultivation and social governance. While analyses of historical sources, as well as reconstructions by Western scholars, have over the decades consolidated a conceptual image of traditional Chinese law as revolving around the opposition between "law" (*fǎ*, 法) and "rite" (*lǐ*, 礼), the dichotomy between *fǎ* and *dé* may be even more salient, especially given that rituality essentially functioned as the form through which virtue was expressed, thereby ensuring cosmic order.

Nowadays, the attempt to adapt the "rule of virtue" to the ideology of the CPC constitutes a powerful operation which, however, is deeply rooted in the cultural significance of the concept—and of its corresponding character—for the formation of the Chinese legal tradition. The purpose of this brief paper is to provide some general remarks on the role of *dézhì* in Chinese law by taking the analysis of the character 德 as a starting point, thereby reconnecting modern and ancient conceptions of rule through virtue.

2. Palaeography and etymology of 德

In modern Chinese, the character 德 is composed of three elements. The first is the radical 彳 (*chì*), indicating movement, specifically a step with the left foot. The second element, located at the top right of the character, is 直 (*zhí*), meaning "upright" or "straight", thus conveying an idea of rectitude. The third element, at the bottom right, is the character 心 (*xīn*), representing the heart[7].

Notably, some authors, including the Han dynasty philologist Xu Shen (58–148 CE), identified a slightly more ancient equivalent of 德 in the character 悳 (with the same pronunciation and meaning), the latter lacking the radical 彳. However, this thesis has been disputed by scholars who emphasise that while 悳 appears in several sources from the Warring States period (c. 475–221 BCE), 德 (with the

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[5] R. CREEMERS, S. TREVASKES (eds), *Law and the Party in China*, Cambridge, 2020.

[6] On the notion of rule of law in China and its evolution see I. CASTELLUCCI, *Rule of Law and Legal Complexity in the People's Republic of China*, Trento, 2012.

[7] S.A. BARNWELL, *The Evolution of the Concept of De 德 in Early China*, in *Sino-Platonic Papers*, 235, 2013.

radical 彳) has been attested in earlier sources from the Western Zhou dynasty (c. 1046–771 BCE). Therefore, 悳 cannot be regarded as a primordial form of 德[8].

The meaning of 德 is consistently associated with moral goodness, indicating virtue, kindness, or morality. It appears in a relatively limited number of compound words, most of which belong to the same semantic field, such as 德育 (*déyù*, moral education), 德行 (*déxíng*, moral conduct), 道德 (*dàodé*, morality or ethics), 品德 (*pǐndé*, moral character), and 美德 (*měidé*, virtue or fine quality).

A notable exception is the word 德国 (*Déguó*, Germany), in which 德 is employed for purely phonetic reasons; it also forms part of a broader set of words containing 德 and relating to Germany or the German language.

From a historical perspective, and focusing on the alternative form 悳, it appears that the original meaning of *dé* derived from a combination of a proactive notion expressed by 直 ("being straight" or "setting things straight") and a psychological motus represented by 心, which conveys the "inner" quality of such straightness. On this basis, Boodberg proposed the neologism "arrective" (and the corresponding nouns "arrectivity" and "arrectitude") to convey the meaning of 直 within the notion of 德/悳, while the neologism "enrective" would express the combination of 直 and 心, with the sense of "possessing the inner capacity or quality to be straight"[9].

As the same author further notes, an additional layer of complexity is introduced by the internal structure of 直, which consists of a cross — 十 (shí, indicating the number ten, but also connoting "perfection" or "completeness") — and the character 目 (mù), meaning "eye"[10]. The earliest forms of 直, in fact, consisted of an eye surmounted by a straight line. Accordingly, 直 could also convey the meaning of "seeing straight". From this perspective, the etymological background of 德/悳 may include references to acts of "direct inspection", in the sense of "looking straight" at something[11].

This observation opens the way to interpretations that connect the earliest notions of "virtue" not only—or not primarily—with ethical or moral dispositions, but rather with a capacity for incisive discernment. Some scholars have attempted to trace a conceptual link between 德 and certain oracle-bone inscriptions from the Shang dynasty (c. 1200 BCE) depicting the pictograph of the eye. The proposed common semantic field is thus that of "seeing" or "observing", as these primitive characters may have referred to military activities of reconnaissance or inspection[12]. On the other hand, similar characters have also been associated with different semantic domains, including religious practices such as sacrifice[13].

Furthermore, the character 直, which—through its association with the pictograph of the eye—would establish the link between 德 and the semantic field of "seeing", is relatively uncommon in early sources such as oracle bones and bronze inscriptions. Where it does appear, it tends to refer more to straightness and moral rectitude than to the act of discernment.

The difficulties encountered by scholars in reconstructing ancient patterns of pictographic evolution are partly due to the fact that Shang dynasty materials—especially oracle-bone inscriptions—do not appear to contain the character 德. The earliest attestations of the character date to the Western Zhou dynasty (c. 1046–771 BCE) and are found in inscriptions on bronze ritual vessels[14].

Scholars have emphasised that these inscriptions demonstrate the relevance of a notion of 德 in pre-Confucian times[15]. However, determining the precise meaning of this notion remains a particularly challenging task. The proximity of 德 to other characters associated with "seeing" or "brightness" has

[8] *Ibid.*
[9] P.A. BOODBERG, *The Semasiology of Some Primary Confucian Concepts*, in *Philosophy East and West*, 2, 1953, 317-332.
[10] *Ibid.*
[11] *Ibid.*
[12] S.A. BARNWELL, *op. cit.*
[13] *Ibid.*
[14] A.K. LEUNG CHAN, *Interpretations of virtue (de) in early China*, in *Journal of Chinese Philosophy*, 38, 2011, 134-150.
[15] *Ibid.*

led some scholars to hypothesise a connection with the supervision of people's conduct, as well as with a sense of "enlightenment" enabling rulers to enforce virtue effectively within society[16].

It has also been suggested that a primordial form of the character may have consisted solely of the "eye" signific, combined with two crossing lines above it, together with a movement signific (which later developed into the radical 彳). During the Western Zhou dynasty, the "heart" signific (心) may have been added, although it is also possible that different forms of the character 德 coexisted[17].

Interestingly enough, in Indo-European languages we do not seem to find, in terms indicating virtue, an etymology associated with the act of "seeing" or "discerning". The Greek word ἀρετή (*arete*), frequently employed in a wide array of literary sources and commonly translated as "virtue", originally indicated only a specific quality of things, that is the capability of fulfilling one thing's function or one's duties[18].

The semantic field of the word was later expanded to include moral attitudes which we commonly associate with virtue, and it was through its association with ἀρετή that the Latin word *virtus* (deriving from *vir* – man) acquired its most common meaning.

Regardless of its specific etymology, the Chinese character displays a prominent relational significance, addressing both the inner disposition of men and their relation with the outer world.

The presence of both the "heart" and "movement" significs, even in early sources, appears to indicate that 德 already conveyed both a proactive dimension and an inner, psychological aspect.

Notwithstanding the extreme scarcity of information concerning these primordial uses of 德, the analysis of the inscriptions seems to highlight two relevant conceptual points: in the first place, 德 is a notion which has to do, first and foremost, with the public sphere. It is an attribute of sovereigns; an outstanding ability connected with the exercise of power[19].

Secondly, 德 displays an exemplary meaning: it is not something theoretical, it is always functional to the enforcement of certain standards of conduct[20]. "Virtue" therefore comes to represent both a concept and its application in the concrete reality.

3. 德 and classical Chinese political thought

According to Chinese leading scholar of political thought Liu Zehua, 德 originally expressed a religious concept which very soon, already during the Shang dynasty, also came to exert influence upon human affairs[21]. It thus turned into a mixed, hybrid concept combining instances of religious, political and social governance[22].

Indeed, the materials we have at our disposal are solely ritual and religious ones. Both oracle bones and bronze vessels were employed in ritual ceremonies reserved to nobility. The ancient Chinese language that scholars study is therefore inherently connected with both a religious dimension and an aristocratic one. We are not able to know whether 德 possessed spiritual or secular meanings depending on the context in which it was employed.

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[16] *Ibid.*

[17] S.A. BARNWELL, *op. cit.*

[18] M. FINKELBERG, *Virtue and Circumstances: On the City-State Concept of Arete*, in *The American Journal of Philology*, 123, 2002, 35-49.

[19] LIU ZEHUA, 中国政治思想史 (*History of Chinese Political Thought*), Hangzhou, 2020, 12 ff.

[20] A.K. LEUNG CHAN, *op. cit.*

[21] LIU ZEHUA, *op. cit.*, 12.

[22] *Id.*, 12 ff. and 22 ff.

On the other hand, it is widely known that rituality was a constitutive component of political governance in ancient China[23]. The concept of "rite" (礼 – *lǐ*) has been regarded by some as a "constitutional" structure of Chinese polities, especially starting with the Zhou dynasty[24].

德 is deeply connected with a ritual dimension already in the Shang Dynasty[25]. It is a quality of a proper rite (e.g. towards the ancestors); on the other hand, it is also a quality of those who properly perform rites[26]. 德 seems to function, to a certain extent, as a criterion to affirm the nobility of a member of the society, as an indicator of a social status. From this perspective, 德 can be intended as a moral but also civic "virtue".

The crystallisation of the equivalence between 德 and a comprehensive notion of virtue occurs with the Zhou Dynasty, when "virtue" is ingrained in the mechanism of legitimisation of royal power and becomes part of the doctrine of the Heavenly Mandate (天命 – *Tiānmìng*). That who is virtuous can be king; those who lack virtue are lost to the heaven. Subjects can lawfully revolt against a non-virtuous ruler.

As virtue becomes a key component in the process of legitimisation of rulers, 德 comes to signify not only a moral attitude, but also an approach to administration, which is reflected in the concepts of 保民 (*bǎo mín* – protecting the people) and 慎罚 (*shèn fá* – being cautious with penalties)[27]. Both concepts are considered to be epiphanies of 德: the first one expresses the necessity of taking into account people's sentiments when governing them, implying the capability of the ruler to restrain himself from taking actions which could hinder welfare and stability. The concept of 慎罚 mirrors a similar attitude, but focusing on the rationality in the governance of punishments (刑 – *xíng*): indeed, virtue demands that punishments are adjusted not merely according to the severity of the crime committed but also to the psychological attitude of the author: severe crimes committed without intention and without persevering can be punished more leniently than small crimes committed with intention and perseverance[28].

Overall, both these manifestations of virtue in the technique of administration represent, according to authors, a decisive change in the passage from the Shang to the Zhou dynasty. While it is recognized that 德 played a political function already under the Shang, it is also acknowledged that a notion of unrestrained royal power led Shang rulers to impose unfair and impious punishments, thus provoking instability and resentment among the people[29].

Virtue, in the Zhou dynasty, becomes a complex and comprehensive paradigm of governance: it keeps its ideal connection with light as far as it becomes 明德 (*míngdé* – "bright virtue")[30] but at the same time and probably more interestingly, acquires a decisive psychological dimension which establishes a logical connection between public governance and individual moral and ethical stances.

This is the "virtue" that Confucian thought looks upon and takes as main criterion of social order.

In Confucianism, the notion of 德, while not wholly losing its original semantic roots, makes a leap forward toward the establishment of a comprehensive moral framework to give order to the society. "Virtue" and "rituality" become conceptually inseparable. In the Confucian texts, as well as in their commentaries and then in modern books and papers, the notion of 德治 (rule by virtue) is overshadowed, from a historical perspective, by the concept of 礼[31].

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[23] MA XIAOHONG, 中国古代法文明的模式 (*The Model of Ancient Chinese Legal Civilization*), Beijing, 2023, 89 ff. and 137 ff. On the same topic, and on the relation between rituality and law in ancient China see, among many, W. MENSKI, *Comparative Law in a Global Context*, Cambridge, 2006, 505 ff.; U. KISCHEL, *Comparative Law*, Oxford, 2019, 678 ff.; P. GLENN, *Legal Traditions of the World*, Oxford, 2014, 320 ff.
[24] MA XIAOHONG, *op. cit.* 142.
[25] LIU ZEHUA, *op. cit.*, 12.
[26] LI LANFEN, 当代中国德治研究 (*Research on the Rule of Virtue in Contemporary China*), Beijing, 2008, 28-29.
[27] LIU ZEHUA, *op. cit.*, 23 ff.
[28] *Id.*, 25.
[29] *Id.*, 24.
[30] *Ibid.*
[31] YU RONGGEN, 儒家法思想通论 (*Introduction to Confucian Legal Thought*), Beijing, 2018.

On the other hand, with Confucius, 德 also undergoes a partial "democratisation", in the sense that it becomes an ethical paradigm applicable not only and not necessarily to nobles, but potentially to everyone. The extensive and comprehensive nature of Confucian social designs – proceeding from the individuals to small social units like families to bigger ones up to the kingdom – makes 德 more universal than it had previously been. At the same time, its exemplary and pedagogical function is strengthened[32]. Acting according to virtue equals to carrying out acts of governance: this holds value for familial communities as well as for big polities.

In Confucianism, 德 reaches the apex of its theoretical and philosophical development. It brings together secularization and moralization of human conduct. 德 is generated by the supernatural force of heaven (天 – *tian*), the same force which confers the mandate to rule the world. On the other hand, however, 德, when embedded in humans, is a force to be developed, fostered through learning, practice, exemplary behaviour. Different degrees of 德 can apply to different groups of people, thus reflecting a moral dimension of social stratification[33].

Confucian 德, thus, becomes a doctrine of governance, filtered through rites as formal paradigms of social order, but also possessing a distinctive inward and pedagogical projection. The "rule of virtue" is what ultimately gives men the conceptual tools to "rectify the names" (正名 – *zhèngmíng*)[34], i.e. to recognize everyone's place in society and to act accordingly, thus ensuring harmony and prosperity for the whole world.

It is clear how, from such perspective, the role of 德 in Confucianism is much more akin to a legal paradigm than it occurs with other cornerstones of traditional Chinese thought, such as with Taoism. In the Daodejing (道德经), i.e. one of the fundamental texts of Taoism, the use of 德, and the pursuit of virtue, are related with a psychological abstention from secular affairs.

Indeed, one of the most famous passages of the Daodejing (i.e. the beginning of Chapter 38) states that «[the person of] superior virtue does not act virtuously, therefore he/she/it is virtuous; [the person of] inferior virtue acts or tries not to lose virtue, therefore he/she/it has no virtue»[35]. As it has been noted, the structure of such sentence expresses an apparent paradox which serves the function of putting into question the Confucian uses of 德. Here, the conscious pursuit of virtue ("acts of tries not to lose virtue") may lead to a lack of virtue, whereas the apparent indifference to virtue is a manifestation of virtue itself.

Ultimately, after the establishment of the Imperial rule in 221 BCE and a brief stint with hardline legalism during the Qin dynasty (i.e. the dynasty that established the empire), Confucianism and the notion of ruling "by virtue" ascended to the status of official doctrine, already with the Han dynasty (206 BCE – 220 CE)[36].

However, with such development also came a decisive functionalization of 德 to necessity of consolidating imperial power. Virtue became part of official narratives which often cherry-picked selected concepts and paradigms of the Confucian tradition in order to uphold despotic rule[37].

"Virtue" was thus combined with "Law" (法 – *fă*) in the meaning developed by the Legalist school[38]. Indeed, it is now acquired knowledge that the Chinese imperial legal system was far from the picturesque ritual-based Confucian landscape imagined by Western scholars in the 19th and early 20th century. Imperial law was often connoted by a process of codification and "juridification" of rituals.

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32 YANG CHEN, 古典德治的依宪治国功能——有关"德法合治"论的补充性说明 (*The Constitutional Function of Classical Virtue-Based Governance—A Supplementary Explanation about the Theory of "Combined Rule of Virtue and Law"*), in *Zhongwai faxue*, 1, 2023, 106 ff.

33 XINZHONG YAO, *De and Virtue in Early Confucian Texts: Introduction*, in *Journal of Chinese Philosophy*, 48, 2021, 5-12.

34 CONFUCIUS, *Analects*, Book XIII Ch. 3.

35 The translation used is that of H.K.T. YAN in *A Paradox of Virtue: The Daodejing on Virtue and Moral Philosophy*, in *Philosophy East and West*, 59, 2009, 173-187. The original passage written in simplified Chinese is as follows: 上德不德， 是以有德；下德不失德， 是以无德.

36 LI RUOHUI, 久旷大仪——汉代儒学政制研究 (*Long-Abandoned Ceremonies – Research on the Confucian Political System in the Han Era*), Beijing, 2018.

37 *Id.*, 214-218.

38 YANG CHEN, *op. cit.*

Imperial bureaucracy – increasingly selected through exams based on Confucian classics – often acted without being bound by the will of the monarch, directly drawing its legitimacy from its selection processes[39]; nevertheless, it was still part of the Imperial machine, and its virtue-based governance was balanced by the presence of Imperial codes which local magistrates, when adjudicating disputed, constantly applied.

Furthermore, it should be argued, ritual-based social institutions and orders were inevitably, anthropologically speaking, self-preserving, therefore using references to virtue and to rites to ensure their perpetuation throughout history and their power *vis-à-vis* the other components of the complex imperial society.

From such perspective, therefore, "virtue" in Chinese imperial law was not fully meritocratic, nor did it represent an absolutely coherent governance system[40].

The 德治 (rule by virtue) eventually underwent, in the last centuries of the Chinese empire, the same process of "crystallization" which led imperial institutions to be perceived, outside China, as backward, inherently conservative, inefficient and slow. Chinese legal reforms, for more than a century, were thought, attempted and construed on the basis of an implicit rejection of 德 as a formal criterion of social ordering. It surely survived, in both Nationalist and then Communist China, as a silent legal formant, a peculiar cryptotype too ingrained in the Chinese thought to be discarded. Its external manifestations, however, were often *contra legem*: for instance, "virtue" was assumed to govern relational networks able to operate decision-making processes and business on the basis of personal and moral hierarchies competing with the authority of the ruling party or at the very least forcing it to decentralize or "sub-contract" governance powers[41].

4. The revival of the rule by virtue and the mentions of 德 in contemporary Chinese law

The ethics of government have become a key topic in the ideological discourse of Xi Jinping[42]. If, especially during his first term as general secretary of the Party, moral attitudes to law were mostly meant to support the anti-corruption campaign, starting from the constitutional reform of 2018 (when Oversight Commissions were established) the scope of moral governance has rapidly expanded.

The combination between rule of law and rule of virtue signifies the existence of an ideological scheme which, in principle, interprets Socialism with Chinese Characteristics not only (or not mainly) through a purely Marxist and "materialist" perspective, but rather through an ethics-driven one[43]. Such ethics, fit for the "new era" stem from a mixture of nationalism and historical revisionism aiming at presenting moral paradigms of governance as typical of the Chinese tradition, and, at the same time, entrusting the Communist Party with the power of interpreting them[44].

The old trend of "legalization" of virtue thus enters into a new stage, supported by the theoretical tools of Leninism – i.e. the Party as the vanguard of the people – and by the operative instruments derived from the adjustments of foreign legal models.

So, references to morality (道德 – *dàodé*), direct and indirect, are found scattered in the civil code. In the general principles, morality underlies the construction of some general principles such as

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39 ZHANG XINGJIU, 儒家'无为'思想的政治内涵与生产机制——兼论'儒家自由主义'问题 (*The political connotation and production mechanism of Confucian "non-action" thought – also reflecting on the problem of "Confucian liberalism"*), in *Zhengzhixue yanjiu*, 2, 2002, 74 ff.

40 YANG CHEN, *op. cit.*

41 LI-AN ZHOU, *Incentives and Governance: China's Local Governments*, Singapore, 2010; XUEGUANG ZHOU, HONG LIAN, *Modes of Governance in the Chinese Bureaucracy: A "Control Rights" Theory*, in *The China Journal*, 84, 2020, 51-75.

42 CHUANHAI ZHAO, *op. cit.*

43 See, for instance, the Resolution of the CPC Central Committee on the Major Achievements and Historical Experience of the Party over the Past Century of 2021, on which see G. SABATINO, *Comparare (con) la Cina. Prospettive e spunti a partire dalla nuova Risoluzione storica del Partito Comunista Cinese*, in *Nomos*, 2, 2022.

44 GUO ZHONG, 道德势能与德治秩序的生成机制 (*Moral potential and the generation mechanism of order through rule by virtue*), in *Ha'erbin gongye daxue xuebao*, 5, 2024, 24 ff.

that of good faith (诚信 – *chéngxìn*) and honesty (诚实 – *chéngshí*) in Article 7, where the use of 诚 can be, from a diachronic perspective, put in connection with the idea of unity among thought, word and action emphasized by Confucianism as the realization of the moral potential of men[45].

Furthermore, Article 9 of the Civil Code, outlining the so-called "green principle" (绿色原则 – *lǜsè yuánzé*) established a conceptual link between the saving of resources, the protection of the ecology and a pedagogical and moral attitude of the law[46].

Another notable example is Article 1131 of the code, which allows, in case of intestate succession, for the assignment of a part of the inheritance to a non-heir who has supported or has been supported by the deceased. When judges have applied this rule, they have sometimes qualified the behaviour of the non-heir supporting the deceased as morally sound and compliant with the "Socialist Core Values", mentioned in Article 1 of the Civil Code[47].

The examples of ethical interferences in positive law are not limited to the civil code. Article 19 of the Company Law, after the last revision in 2023, provides that companies abide by social morality (社会公德 – *shèhuì gōngdé*) and business morality (工业道德 – *gōngyè dàodé*). The use of 德in the text of this provision is political rather than cultural: the virtuous morality the law is referring to is the ensemble of values and principles that the political leadership selects and deems suitable to act as governance tools. Indeed, the same Article 19, after outlining the aforementioned clauses, states that companies are also required to accept supervision from the government and the public.

This legislative innovation is perfectly in line with recent developments of Chinese company and enterprise law, now deeply affected by the effort of the Chinese Communist Party to ensure coordination mechanisms with private economic operators, not limited to the presence of Party branches in companies (as mandated by Article 18 of the Company Law) but also including the establishment of a pedagogical environment seeking to reward entrepreneurs and businessmen that align with the priorities of the Party in terms of development[48].

The morality of the Chinese company law, ultimately, perfectly aligns with the "moral integrity" (道德操守) mentioned in Article 11 of the Oversight Law, where 德 also plays an essentially political role. The "rule of virtue" is still, culturally speaking, a connoting trait of traditional Chinese legal culture; yet, at the same time, it is now a politically-oriented paradigm of governance.

Indeed, the legitimacy of the Party itself partially rests upon its capability of developing its own inner legal system on the basis of both Party regulations and moral standards, which correspond to socially accepted values[49]. However, the mechanism linking Party's inner laws with the political use of virtue seems to be circular. The socially accepted values to which the Party submits itself, in absence of an external review, are those which the very same Party decides to uphold as acceptable standards.

What is significant, indeed, is the fact that oversight and supervisory functions have been devised, with the Oversight Law, as state functions separated both from the government and the judicial apparatus. Some Chinese scholars have tried to trace some historical connections between the

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[45] *Id.*

[46] G. SABATINO, *Environmental sustainability and civil law in the "new era" of Chinese legal culture. The "green clauses" of the Chinese Civil Code*, in S. LANNI (ed), *Sostenibilità globale e culture giuridiche comparate. Atti del Convegno SIRD – Milano, 22 aprile 2022*, Torino, 2022, 157-170.

[47] See, for instance, People's Court of the Zhen'An District, Dandong (Liaoning Province), decision no. 504 of 31 May 2021.

[48] See, for instance, the Opinions on Strengthening the United Front Work in the Private Economy in the New Era (关于加强新时代民营经济统战工作意见), issued in 2020. See also G. SABATINO, *The Legal Dimension of the Relation Between the Chinese Communist Party and the Private Economy. A Perspective of the Article 19 of the Company Law*, in *Global Jurist*, 22, 2021, 351-373. Before the last revision in 2023, Article 19 of the Company Law corresponded to the current version of Article 18, thus regulating the presence of Party branches within companies. The current Article 19 is an addition of the latest revision of the law.

[49] WU XIAOCHUAN, 再论作为政党自治规范的党内法规——以自治、法治、德治关系为视角 (*Further Discussion on Party Regulations as Norms of Political Party Autonomy—From the Perspective of the Relationship between Autonomy, Rule of Law, and Rule of Virtue*), in *Dangnei fagui yanjiu*, 2, 2023, 47 ff.

supervisory function in contemporary China and past experiences and theories of "moral power", including the *censura* in ancient Roman law and the *poder moral* in Bolivarian constitutional thought[50].

However, what ensures the logic coherence of oversight work within the framework of the Chinese constitutional system is, once again, the submission to the guiding role of the Party and of its ideology. Therefore, the "moral supervision" of the oversight commission inevitably reflects the narrative of governance upheld by the party leadership. Its operative effect is thus that of at least attempting to limit the procedural and bureaucratic autonomy of the other state structures and functions by setting up a distinct mechanism of control. Virtue, in this context, becomes a tool for the legalisation and codification of political supervision[51].

5. Conclusion

The uses of 德 in contemporary Chinese law have apparently sought a balance between the "public/royal" and "private/human" epiphanies of such concept. Notwithstanding this, the public dimension of the "rule of virtue" has inevitably taken hold, as the moralization of private conduct has become part of an ideological manifesto.

Two different kinds of 德 may therefore coexist and clash with each other: on the one hand, the public 德, the rule of virtue which is functional to the legitimization of the ruling power; on the other hand, a private or quasi-private 德, embedded in relational networks and intermediate social bodies typical of the Chinese tradition, which today exist within the official bureaucratic and party structures, as well as in enterprises (both state-owned and private), in rural villages, in different social groups. This private 德 is not necessarily aligned with its public counterpart and, as such, becomes a liability for the official law. It is, in other words, an expression of bundles of relations (关系 – *guanxi*) capable of existing and operating in the shadow of official law, expressing autonomous poles of "morality", which, from the perspective of positive law, are necessarily perceived as either corruption of faithlessness.

For centuries, if not millennia, Chinese legal tradition has hosted both elements, both lines of morality. The early development of the concept of 德 was maybe nothing more than a decisive attempt to make the public "rule of virtue" prevail. Today, once again, we are able to witness a historical phase where positive law, deploying all the technical instruments of modernity, explicitly seeks to incorporate 德, so to place it under its control and influence.

By reshaping and rejuvenating the connection between law and virtue the contemporary Chinese legal tradition essentially develops a fully original notion of "rule" in advanced and complex societal settings. The Western paradigm of the rule of law is challenged. At the same time, the logical autonomy of law from morality, politics and, in a broader sense, culture is decisively denied.

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The duty to compare language versions of EU law

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ABSTRACT: In this article, I examine case law from the European Court of Justice (ECJ) to determine the extent to which natural and legal persons must consult different linguistic versions of EU law in order to ascertain their rights and obligations. Although EU law has equal legal force in all its versions, there are instances in which a linguistic comparison seems necessary. This occurs when a given language version differs from the others. This implies that absolute trust in a single language version read in isolation is not possible, and that a de facto duty to compare linguistic versions exists. This follows implicitly from landmark ECJ judgements, such as CILFIT (1982) and Consorzio (2021). However, in other scenarios relating to linguistic discrepancies, this duty does not seem to exist. When a specific language version is not officially published in the Official Journal of the EU, natural and legal persons are under no obligation to consult other language versions (Skoma-Lux judgment, 2007). Notably, in a recent judgment (On Air Media, 2025), the ECJ ruled on another such scenario. It confirmed that EU legal acts correcting a version of EU law in a specific language have retroactive effect; however, the principles of legal certainty and the protection of legitimate expectations must be respected. Regarding this, the ECJ explicitly ruled out a duty to compare language versions of EU law when the version in question appears clear. This article assesses the various scenarios. It argues that, for the sake of coherence and fairness, there should be no obligation for natural and legal persons to compare language versions. It also suggests that the role of national judges should be enhanced in this regard.

KEYWORDS: European Union; multilingualism; equal binding force; discrepancies; corrigenda; duty to compare.

1. Introduction

The article's analysis is anchored in the recent Judgment of the European Court of Justice (ECJ) in Joined Cases C-416/24 and C-417/24 On Air Media (2025).[1] This Judgment calls for a reexamination of the theme of discrepancies between language versions of EU law, all of which are recognised as equally binding. The Judgment is particularly relevant with regard to the duty to compare one's own language version with other versions.

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[1] ECJ Judgment of 9 October 2025, On Air Media Professionals (C-416/24) v Agenţia pentru Întreprinderi Mici şi Mijlocii Iaşi, and Different Media SRL (C-417/24) v Ministerul Antreprenoriatului şi Turismului – Agenţia pentru Întreprinderi Mici şi Mijlocii, Atragere de Investiţii şi Promovare a Exportului Iaşi, Joined Cases C-416/24 and C-417/24, ECLI:EU:C:2025:765.

This aspect has indeed always remained rather obscure in ECJ case law. In fact, the duty to compare is an implicit consequence of the seminal Judgment in CILFIT (1982), as confirmed later in Consorzio (2021).[2]

The recent ECJ's On Air Media Judgment (2025) offers a new perspective on the matter. It concerns an official act correcting a specific language version of EU law, and assesses the legal consequences that follow for legal persons who had trusted the incorrect language version and had obtained undue benefits.

This article begins with a comprehensive examination of that 2025 Judgment (section 2). The subsequent analysis will compare the solution established by the ECJ in that Judgment with its existing case law on linguistic discrepancies (section 3) as well as with the ECJ case law concerning the absence of a language version (Skoma Lux, 2005) (section 4). In Section 5, an analysis will be conducted of the various scenarios in order to ascertain their coherence and fairness in defining (or not) the duty that rests on natural and legal persons to compare language versions of EU law. The conclusions will be presented in Section 6.

2. The On Air Media judgment (2025) and its impact

2.1. Facts and legal issue

In this ruling, the ECJ has for the first time explicitly addressed the legal implications of correcting an inaccurate language version of an EU Regulation. The Court has determined that such a correction has retroactive effect *ab initio*, applicable as of the date of entry into force of the original Regulation. However, the ECJ has emphasised the importance of respecting the principles of legal certainty and legitimate expectations. In this particular case, the Court ruled that State aid granted on the basis of the incorrect Romanian version of the Regulation in question, which was subsequently corrected with retroactive effect, did not require repayment.

The facts of the case are as follows. On 20 August 2020, the Romanian authorities notified the European Commission of an aid scheme for SMEs and certain large companies. The aid was intended to mitigate the economic impact of the COVID-19 pandemic. The Commission approved the Romanian aid scheme on 27 August 2020.[3]

However, the Commission decision included a clear and explicit reservation: no State aid could be granted to companies that were already in difficulty on 31 December 2019, as defined in the General Block Exemption Regulation.[4]

Later in 2020, the Romanian authorities implemented the approved aid scheme and granted micro-subsidies of RON 9,679 (approximately EUR 1,945) to each of the companies at issue in this case (On Air Media and Different Media). However, in 2022, the Romanian authorities initiated a recovery of the aid granted. The reason for this was that it appeared that the companies concerned should never have received aid because, on 31 December 2019, they were 'undertakings in difficulty' within the meaning of the General Block Exemption Regulation. However, this had only become apparent in 2021 after the rectification of the Romanian language version of that General Block Exemption Regulation.[5] Indeed, according to the original (incorrect) Romanian version, SMEs that had been in existence for at least

[2] ECJ Judgment of 6 October 1982, Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health, Case 283/81, ECLI:EU:C:1982:335; ECJ Judgment of 6 October 2021, Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA, Case C-561/19, ECLI:EU:C:2021:799.

[3] Commission Decision C(2020) 5949 final of 27 August 2020 – State Aid SA.58166 (2020/N) – Romania – COVID-19: Support for SMEs and certain related large enterprises to overcome the economic crisis caused by the COVID-19 pandemic (OJ 2020 C 302, p. 1).

[4] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2014 L 187, p. 1).

[5] Commission Regulation (EU) 2021/452 of 15 March 2021 correcting the Romanian language version of Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2021 L 89, p. 1).

three years were not considered to be 'in difficulty', whereas the intention of the corrected version was precisely the opposite: the General Block Exemption Regulation was intended to exclude long-standing companies in difficulty, while being lenient towards recently established ones.

In fact, the issue was a single error with substantial implications in the Romanian version, where the word "at least" was used instead of "less." The full text of the provision in question (Article 2(18)(b) of the General Block Exemption Regulation) read as follows in the original (incorrect) Romanian language version (emphasis added):

8. "undertaking in difficulty" means an undertaking in respect of which at least one of the following circumstances occurs:

(a) In the case of a limited liability company (other than [a small or medium-sized enterprise (SME)] that has been in existence for ***at least*** *three years or, (...)."*

Whereas the corrected text, aligned with the other language versions after Commission Regulation (EU) 2021/452 of 15 March 2021 correcting the Romanian language version of Regulation (EU) No 651/2014 reads as follows:

8. "undertaking in difficulty" means an undertaking in respect of which at least one of the following circumstances occurs:

(a) In the case of a limited liability company (other than an SME that has been in existence for ***less*** *than three years or, (...)."*

At the time of the financing, the companies concerned had been in existence for thirteen and eighteen years respectively. According to the incorrect version, they were therefore perfectly eligible for the aid in question. However, following the correcting act, which brought the Romanian version into line with the other language versions, it became clear that the exception applied only to SMEs that had been in existence for *less* than three years.

The Romanian authorities had therefore based their decision to grant aid to the two companies in difficulty on an inaccurate Romanian language version. Following the correction, the authorities demanded repayment of the aid that had been wrongly granted. The companies challenged the repayment order before the Romanian courts. They argued that they had met all the conditions for obtaining micro-subsidies on the basis of what was stipulated in the Romanian language version of the General Block Exemption Regulation at the time the subsidies were granted.

However, the Romanian court of first instance (Tribunalul Neamț - Regional Court, Neamț) ruled that the correcting Regulation had not amended the General Block Exemption Regulation, but had merely corrected the Romanian language version thereof. Interestingly, the Romanian judge referred to the original version, which was drafted in English and was correct in terms of content. He therefore applied the correcting act retroactively and found that the companies concerned did not meet all the criteria for the aid in question on the date of their subsidy applications. Hence, the order for repayment was valid.

On appeal, the companies contested the retroactive effect of the rectification Regulation. They also argued that the term 'original version of the Regulation' in English, which was used in the grounds for the judgment at first instance, had no legal basis, since Romanian is one of the 24 official languages of the EU.[6] They also pointed out that, at the time of signing of the financing agreements in question, the Romanian language version of the General Block Exemption Regulation had been in force unchanged for more than six years. In those circumstances, they claimed that they had applied for and obtained the subsidies in good faith.

The Court of Appeal (Bacău) decided to refer the matter to the Court of Justice for a preliminary ruling. In short, it wanted to know whether the amending Regulation had retroactive effect from the date of entry into force of the original Regulation. If so, it asked whether the principles of legal certainty and

[6] This is, of course, a correct assessment. As a general rule, the ECJ does not refer to the 'original' language version of an act of EU law (English or French). Furthermore, it would sometimes be rather complicated to do so, as the original legal act may have been in French and later amended in English. In any case, amendments in other languages may also be relevant, which would make things very complex. We may then have to contend with a 'vanishing original' (a term coined by Dollerup, C., 'The Vanishing Original', *Hermes, Journal of Linguistics*, no. 32, 2004, pp. 185-199).

legitimate expectations precluded the recovery of State aid granted in accordance with the conditions set out in the originally incorrect Romanian language version of the General Block Exemption Regulation.

2.2. The ECJ judgment

In its judgment, the Court of Justice first reiterates, *in abstracto*, its established case law on linguistic discrepancies in EU legislation. It recalls in that regard that "*the need for a uniform interpretation of provisions of EU law makes it impossible for the text of a provision to be considered, in case of doubt, in isolation but requires that it be interpreted and applied in the light of the versions existing in the other official languages*".[7]

It further states that "*all the language versions of a provision of EU law must, in principle, be recognised as having the same weight*".[8]

Furthermore, where "*there is divergence between the various language versions of an EU text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part*".[9] Lastly, "*such an interpretation of a provision of EU law cannot have the result of depriving the clear and precise wording of that provision of all effectiveness*."[10]

The Court then assesses the situation *in concreto*. It first establishes that there was indeed a discrepancy between the Romanian language version and the other language versions. However, it also finds that the wording of the incorrect Romanian language version was "*clear and unambiguous*".[11]

Nonetheless, the Court holds that the rectification Regulation has retroactive effect. The Court's reasoning is as follows: the purpose of the rectification is to restore uniformity of interpretation in all language versions of the provision concerned. This is achieved by correcting, *ab initio* and with retroactive effect, the translation error in the Romanian language version of the General Block Exemption Regulation.

The Court further reasons that if the correcting Regulation had only corrected the Romanian language version for the future, it would have allowed two incompatible versions of this Regulation to coexist in the period between the entry into force of the General Block Exemption Regulation and the entry into force of the correcting Regulation, both with clear and precise wording. According to the Court, such an interpretation would be contrary to the requirement of uniform interpretation and application of EU law.

What then of the legal consequences for the undertakings concerned? Do they have to repay the aid they had wrongfully obtained?

The Court answers this question in the negative. It points out that, when implementing EU law, national authorities must respect the fundamental principles of legal certainty and legitimate expectations. In the present case, these principles preclude the recovery of the State aid in question.

Regarding the principle of legal certainty, the Court refers to its previous case law. According to this case law, although the principle generally precludes the retroactive effect of a Union act,[12] a derogation is possible if it is necessary for a reason of public interest and if the legitimate expectations of those concerned are duly taken into account. Furthermore, the wording, objectives, or scheme of the rules in question must indicate that such consequences should be attributed to them.[13] In this case, however, it was not possible to derogate from the principle of legal certainty.

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[7] Para. 37 of the Judgment.
[8] Para. 38 of the Judgment.
[9] Para. 39 of the Judgment.
[10] Para. 40 of the Judgment.
[11] Para. 41 of the Judgment.
[12] The principle of legal certainty means that rules must enable those concerned to know precisely the extent of the obligations which they impose on them (ECJ Judgments of 1 October 1998, United Kingdom v Commission, C-209/96, EU:C:1998:448, para. 35, and of 22 February 2022, Stichting Rookpreventie Jeugd and Others, Case C-160/20, EU:C:2022:101, para. 41).
[13] ECJ Judgments of 25 January 1979, Racke, Case 98/78, EU:C:1979:14, para. 20, and of 12 November 1981, Meridionale Industria Salumi and Others, Cases 212/80 to 217/80, EU:C:1981:270, para. 10; Judgments of 24

The Court then examines the legitimate expectations of the undertakings, which were based on three elements.

First, the conduct of the Romanian authorities is taken into account, particularly the national aid scheme and the decisions to grant aid adopted under that scheme.

Second, the text of the Romanian version of the General Block Exemption Regulation, published in the Official Journal of the EU, was incorrect yet clear. The aid scheme referred to this text. In a crucial recital (65), the Court also states that the undertakings concerned could

"not be criticised, in the circumstances of the cases in the main proceedings, for failing to check the other language versions (…), since nothing in the wording of the initial Romanian language version (…) gave rise to any difficulty of interpretation."[14]

Third, the Court states that the national aid scheme in question, which had been duly notified to the Commission, was approved by the latter by decision of 27 August 2020. This approval could also give rise to a legitimate expectation that the aid had been lawfully granted.

2.3. The impact of the judgment

It may be argued that with this ruling, the Court of Justice has set an important precedent. First, it has made it explicitly clear that rectifications of EU law have retroactive effect. This is a significant development as rectifications are a necessary evil and a common phenomenon in EU law.[15] It is often posited that the multilingual nature of EU law is the reason for this.[16] As is widely known, EU Regulations and Directives are in most cases drafted in English and only translated, under considerable time pressure, with a view to their publication in all 24 official EU languages. In the event that errors are identified in one or more language versions subsequent to publication, these will be rectified in accordance with a rectification. The present case demonstrates that it can easily take years before an error is discovered and corrected. The situation may actually be worse for Regulations than for Directives, as the latter have to be transposed into national law. In doing so, national legislators may spot translation errors.

A formal rectification procedure is established for substantive changes.[17] This is a new legal act that rectifies the old one. However, until this judgment, it was unclear whether a rectification procedure

September 2002, Falck and Acciaierie di Bolzano v Commission, Case C-74/00 P and C-75/00 P, EU:C:2002:524, para. 119, and of 30 April 2019, Italy v Council (Fishing quota for Mediterranean swordfish), Case C-611/17, EU:C:2019:332, para. 106 and the case-law cited.

[14] Par 65 of the Judgment. The ECJ explicitly refers in that regard to para. 73 of the Opinion of the Advocate general, who had come to the same conclusion.

[15] I am not aware of any scientific research providing general statistical data on the number of cases in which Regulations or Directives have been rectified. Research into consolidated versions (which include both regulatory correcting acts and non-substantive corrigenda) is relevant in this context. It shows that 40% of consolidated versions of Directives concern corrections (for Regulations and Decisions, the figures are 36% and 24% respectively). In almost all cases, one or more specific language versions are corrected (between 94% and 97% of cases) (T. PALOTAI-TORSZAS, R. PALOTAI, *Studying the Need to Optimise Search for Corrigenda and Amendments in EU Institutional Translation*, 2023; see https://asling.org/tc45/wp-content/uploads/2023/02/TC45-luxembourg2023.pdf).

[16] M. BARYN, P. KOWALSKI, *Correction of errors in legal acts of the European Union*, in *Studia Juridica* 103, 2024 (https://studiaiuridica.pl/article/547982/en), 46. However, Ellen Heinemann doubts whether this is actually true (*Corrigenda of EU legislative acts: a necessary evil? A look at procedures, facts and figures* (draft working paper, University of Cologne, 2026).

[17] A rectification can be done in two ways: informally or formally. For purely typographical (non-substantive) corrections, the technique of informal corrigenda is generally used (M. BARYN, P. KOWALSKI, *op. cit.*, pp. 26-27). These corrigenda are not based on an explicit procedure or legal basis in primary or secondary EU law but have rather developed from practice. Bobek refers to corrigenda as a 'grey area of EC institutional practice' (M. BOBEK, *Corrigenda in the Official Journal of the European Union: Community law at quicksand*, in *European Law Review*, 2009, p. 950). The retroactive effect of such non-substantive corrigenda has been assumed in practice to date (M. BARYN, P. KOWALSKI, *op. cit.*, p. 46). The reasoning is as follows: these are not new Regulations; the original Regulations are simply corrected *ex tunc* and the corrigendum derives its force and effect in time from the original

had retroactive effect. According to certain legal scholarship, substantive rectifications through new Regulations should only apply prospectively.[18]

The absence of clarity with regard to the temporal aspect of correcting acts was also highlighted by the observation made by the referring Romanian court in the present case, which noted that national case law in this area is “not uniform” (para. 33). Moreover, the wording of the rectification Regulation certainly did not help. After all, it stipulates that the Regulation enters into force "on the twentieth day following that of its publication in the Official Journal of the European Union." The Regulation therefore does not make explicit mention of any retroactive effect. On the contrary, the wording suggests the opposite. Besides, why wait 20 days if the provisions of a rectification Regulation ultimately have retroactive effect to the date of entry into force of the original act (in this case more than six years earlier)? It is understood, of course, that this is a new Regulation to which the general rules of law apply: Article 297(2) of the Treaty on the Functioning of the EU (TFEU) indeed stipulates that

“Regulations and Directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication”

Yet, does this provision, combined with the interpretation of the Court of Justice in the present case, not allow for a retroactive date of entry into force, so as to make its consequences clear to all concerned?

In any event, this point has now at least been clarified by the Court: a corrective Regulation has retroactive effect *ab initio*. This is certainly a pragmatic and clear solution, especially since it concerns a single language version that was corrected. The arguments put forward by the Court in this regard are fully in line with the views expressed by Advocate General Szpunar in his Opinion. The retroactive effect of the correcting act “clearly follows from its objective”, according to the Court (para. 47), as it aims to correct errors in the Romanian version (para. 48). Otherwise, there would be no uniformity between the language versions in the period prior to the correction (paras. 49-51). Nonetheless, it can be argued that there was no uniformity in this case, and that this had been going on for a period of more than six years. The solution therefore remains suboptimal, yet there does not appear to be a viable alternative approach.

The second issue of relevance concerns the duty (or not) to compare language versions of EU law. This will be explored in Section 3.

3. Standing case law as to linguistic discrepancies

The solution reached by the Court in the On Air Media case, as explained in section 2, does seem to show a certain degree of inconsistency with other established case law of the Court regarding linguistic discrepancies in EU law. This concerns the prevailing doctrine that private individuals may not rely solely on their own language version and have a certain obligation to compare different language versions of EU law. It is noteworthy that the On Air Media Judgment does not refer to the traditional landmark Judgments in this regard, namely CILFIT and Consorzio, in which that language comparison obligation was implicitly established.[19]

In contrast, it is useful to recall the explicit statement made by the Court in the On Air Media Judgment, which asserts that the undertakings in question could

“not be criticised, in the circumstances of the cases in the main proceedings, for failing to check the other language versions (…), since nothing in the wording of the initial Romanian language version (…) gave rise to any difficulty of interpretation.” (para. 65)

Regulations. However, the boundary between a substantive and a non-substantive correction is not always entirely clear. For this reason, legal scholarship advocates treating substantive corrigenda as genuine new amending acts and limiting their effect in time to the future (M. BOBEK, *op. cit.*, p. 962).

[18] M. BARYN, P. KOWALSKI, *op. cit.*, p. 46; M. BOBEK, *op. cit.*, p. 962.

[19] Nor does Advocate General Szpunar in his Opinion. While he does refer to the Skoma-Lux Judgment, that case concerned a less relevant scenario: a complete absence of a certain language version (Czech; see section 4 below).

The rationale behind this different approach appears to be that the original Romanian language version of the provision in question did not give rise to any issues of interpretation. However, this prompts the question of whether this constitutes a clear benchmark in all circumstances (see below, section 5).

A comparison of the On Air Media case with a 'classic' case involving language discrepancies, such as the Heuschen & Schrouff case (C-357/07), reveals a marked difference in approach.[20] The latter case concerned a customs declaration relating to the import of rice paper from Vietnam. A Dutch company, Heuschen & Schrouff, an importer of foodstuffs and food ingredients, had made an error in its customs declaration. However, that error was due to the fact that the Dutch language version of the applicable EU Regulation differed from the other language versions. Nevertheless, three years after the alleged infringement, the Dutch authorities imposed a fine on Heuschen & Schrouff. The case was then brought before the Amsterdam Court of Appeal (Gerechtshof Amsterdam).[21] This Court compared various other language versions (English, French, German and Finnish) with each other and found that they did not correspond to the wording of the Dutch version. However, it was not the case that the Dutch version was *clearly* incorrect: the mistake in the translation of the Dutch language version did not seem to be obvious. Indeed, in actual fact, the Dutch authorities themselves had applied the incorrect Dutch version for a long time without realising the error.

The Court of Appeal therefore ruled that a Dutch taxpayer could not reasonably be expected to consult customs Regulations in other languages. Furthermore, there was no indication that Heuschen & Schrouff had not acted in good faith. The Court of Appeal therefore annulled the fine imposed on Heuschen & Schrouff by the tax authorities. However, in cassation, the Dutch Hoge Raad (Supreme Court) referred the case to the Court of Justice for a preliminary ruling. The ECJ reiterated its established case law and compared the Dutch version with other language versions, in which the obligations were clearly and correctly stated (in contrast with the inaccurate Dutch version). It gave an interpretation to the provision in question in accordance with the other language versions, from which it followed that Heuschen & Schrouff had indeed violated that provision of EU law.[22] The Court furthermore confirmed the existence of manifest negligence, referring in particular to the importer's professional experience and its obligation to make enquiries and obtain all possible clarifications in order to avoid infringing EU law. Consequently, the Dutch Hoge Raad had no choice but to uphold the fine imposed on Heuschen & Schrouff.

Another case in point in this regard is the one regarding the Dutch cattle farmer Endendijk (2008).[23]

In 2005, Dirk Endendijk was prosecuted in the Netherlands for tethering calves in contravention of Dutch legislation based on an EU Directive. In his defence, Endendijk argued that the Dutch language version of the annex to the Directive referred several times to a *metal* tether, which effectively excluded the use of *chains* (*kettingen*), whereas he had used a rope for tethering (a situation which therefore seemed to fall out of the scope of the provision). The Dutch judge who was seized of the case on the criminal prosecution of Endendijk by the Dutch authorities referred a preliminary question on this matter to the ECJ. In line with its established case law on linguistic discrepancies, the ECJ rejected the linguistic argument: it cited its doctrine, as explained above, according to which the scope of the obligation in

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[20] ECJ Judgment of 20 November 2008, Staatssecretaris van Financiën v. Heuschen & Schrouff Oriëntal Foods Trading BV, Case C-375/07, ECLI:EU:C:2008:645.

[21] Gerechtshof Amsterdam, Case 01/90096 DK X. B.V., NL:GHAMS:2004:AR7276.

[22] An additional complication in this case was the involvement of the European Commission. The Dutch customs authorities had requested the Commission's opinion, whereupon the Commission had ruled that the fine imposed on Heuschen & Schrouff should be upheld, as the company had acted "negligently". In separate proceedings, the company appealed against this decision before the General Court of the EU and subsequently before the Court of Justice, but without success (see Judgment of the Court of First Instance of 30 November 2006, Heuschen & Schrouff Oriental Foods Trading BV v Commission of the European Communities, Case T-382/04, ECLI:EU:T:2006:369 and ECJ Judgment of 20 November 2008, Heuschen & Schrouff Oriental Foods Trading BV v Commission of the European Communities, Case C-38/07 P, ECLI:EU:C:2008:641).

[23] See S. VAN DER JEUGHT, *The Multilingualism Paradox in EU Law - In our own Language Version we Trust?*, in *International Journal of Language and Law*, 14 (2025), pp. 81-98 (https://www.languageandlaw.eu/jll/article/view/212); S. VAN DER JEUGHT, *EU Language Law*, Groningen, 2025, p. 133-139.

question could not be examined solely on the basis of the Dutch version.[24] It pointed out that other language versions, such as the German (*Anbindevorrichtung*), the English (*tether*), the French (*attache*) and the Italian (*attacco*), all referred to a more general term (own emphasis added):

DE *Werden die Kälber angebunden, so darf die verwendete* ***Vorrichtung*** *die Tiere nicht verletzen und muß regelmäßig überprüft und gegebenenfalls reguliert werden, um einen beschwerdefreien Sitz zu gewährleisten. Die* ***Anbindevorrichtung*** *muß lang genug sein, um dem Tier die unter Nummer 7 vorgesehene Bewegungsfreiheit zu bieten. Sie muß so beschaffen sein, daß sich die Tiere möglichst nicht strangulieren oder verletzen können.*

EN *Where* ***tethers*** *are used, they must not cause injury to the calves and must be inspected regularly and adjusted as necessary to ensure a comfortable fit. Each* ***tether*** *must be of sufficient length to allow the calves to move as stipulated in paragraph 7. The design must be such as to avoid, as far as possible, any risk of strangulation or injury.*

FR *Lorsque les veaux sont attachés, leur* ***attache*** *ne doit pas les blesser et doit être inspectée régulièrement et ajustée si nécessaire pour qu'ils se entent bien. Chaque* ***attache*** *doit être suffisamment longue pour permettre à l'animal de se déplacer conformément au paragraphe 7. Elle doit être conçue de manière à éviter, dans la mesure du possible, tout risque de strangulation et de blessure.*

NL *Wanneer de kalveren worden aangebonden, mogen de daarbij gebruikte* ***kettingen*** *geen verwondingen veroorzaken en moeten deze kettingen regelmatig worden /geïnspecteerd en eventueel bijgesteld zodat zij gemakkelijk zitten. Elke* ***ketting*** *moet lang genoeg zijn om het kalf de gelegenheid te geven zich te bewegen zoals aangegeven in punt 7. De ketting moet zo zijn ontworpen dat de kans op wurging en verwonding voor zover mogelijk wordt vermeden.*

The ECJ therefore concluded that the word *chains* used in the Dutch version was contrary to the objective pursued by the EU legislator: a calf is tethered where it is tied by any means. The ECJ referred the case back to the Dutch judge. From the interpretation provided by the ECJ it clearly followed that Endendijk had indeed committed a criminal offence.[25]

4. Standing case law as to the absence of an official language version

In his Opinion in the On Air Media case, Advocate General Szpunar refers to the seminal Skoma-Lux case (2007).[26]

This case concerns yet another scenario, namely the one in which one or more language versions have not been officially published in the Official Journal of the EU.

In its Judgment in this case, the Court of Justice explicitly established that a Regulation cannot be enforced against individuals in an EU Member State in a language in which it was not published, even if those individuals were able to familiarise themselves with the provisions of the Regulation.

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[24] The Court also dismissed the action on the grounds that the exception in question only applied to calves that were housed in groups at the time of being fed milk. This was not the case with the Endendijk calves, which were kept in individual pens.

[25] See other examples of such cases: ECJ Judgment of 27 February 1986, Criminal proceedings against Hans Röser, Case 238/84, EU:C:1986:88; ECJ Judgment of 27 October 1981, Anklagemyndigheden v Hans Ulrich Schumacher, Peter Hans Gerth, Johannes Heinrich Gothmann and Alfred, Case 250/80, ECLI:EU:C:1981:246. The latter case is, admittedly rather atypical, in that the Danish company did not raise the language issue in its defence.

[26] ECJ Judgment of 11 December 2007, Skoma-Lux sro v Celní ředitelství Olomouc, Case C-161/06, ECLI:EU:C:2007:773. See other examples: ECJ Judgment of 25 January 1979, A. Racke v Hauptzollamt Mainz, Case 98/78, ECLI:EU:C:1979:14; ECJ Judgment of 26 November 1998, Covita AVE v Elliniko Dimosio (Greek State), Case C-370/96, ECLI:EU:C:1998:567; ECJ Judgment of 8 November 2001, Silos e Mangimi Martini SpA v Ministero delle Finanze, Case C-228/99, ECLI:EU:C:2001:599; see also ECJ Judgment of 15 May 1986, Oryzomyli Kavallas OEE and others v Commission, Case 160/84, ECLI:EU:C:1986:205. In the latter case the Court seemed to imply that the fact the company had been able to acquaint itself with the provisions, was relevant. In later case law the Court was, however, very clear on this issue: if the language version is not available, there can be no enforceability against nationals of that language.

This Judgment must be read against the backdrop of the accession of ten new Member States in 2004. At the time of accession, i.e. 1 May 2004, the *acquis communautaire* had not yet been fully published in the Official Journal in the languages of the acceding EU Member States. However, unofficial translations in these languages were made available by the national authorities and through the Eurlex database.[27] This led to a rather problematic legal situation, with national judges in the new Member States ruling differently on the enforceability of EU legislation that had not been officially published in the national language. In Poland, for example, judges ruled that EU acts that had not been published in the Official Journal in Polish were not enforceable against individuals, while in Estonia the Supreme Court ruled that the lack of publication in Estonian was irrelevant because professionals, such as customs officers, should be familiar with EU law.[28]

In this context, a case was brought before the Court of Justice. Skoma-Lux, a Czech wine importer and wine trader, was fined by the Czech customs authorities for repeated infringements of customs legislation. In its defence, Skoma-Lux argued that the customs authorities could not enforce EU legislation which had not yet been published in the Official Journal of the EU in the Czech language. The customs authorities, on the other hand, argued that the Czech Ministry of Finance had published the Czech version of the relevant customs provisions in electronic form, that Skoma-Lux had been able to familiarise itself with these provisions at customs offices and that Skoma-Lux, which had been active in international trade for a long time, was aware of the relevant EU provisions.

The ECJ adopted, however, a strict and formal approach, holding that EU Regulations are not enforceable against individuals in an EU Member State if that Regulation has not been officially published in the language of that Member State. This applies even if the individuals concerned were able to acquaint themselves by other means with the provisions of the Regulation at issue.[29] The ECJ held that such an interpretation was the only one consistent with the principles of legal certainty and non-discrimination.

5. Three scenarios: coherence and fairness?

5.1. Three scenarios

In summary, three distinct scenarios concerning linguistic discrepancies seem to emerge from the ECJ case law discussed above.

In the first scenario, as previously discussed in Section 2, an incorrect language version is corrected by a subsequent correcting act that has retroactive effect. This is exemplified by On Air Media. This company could rely on legal certainty and legitimate expectations. The company was under no obligation to compare the Romanian language version with other linguistic versions.

The second scenario pertains to a discrepancy that evades detection until it reaches the courts. As discussed in Section 3, Heuschen & Schrouff or Endendijk were adhering to their respective language versions, which were revealed to be incorrect subsequent to a ruling by the ECJ on a reference for a preliminary ruling. In this scenario, there appears to be an implicit mandate for a comparison of linguistic versions. The prevailing ECJ doctrine implicitly suggests that other language versions should have been consulted, which would have clarified the obligations in question.

The third scenario pertains to the absence of one or more official language versions. Skoma-Lux could establish its defence on the basis that the Czech language version had not yet been published in the Official Journal of the EU. It was not necessary to consult provisional or other available language versions. The fact that Skoma-Lux was most probably familiar with its obligations under EU law was irrelevant.

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[27] K. LASINSKI-SULECKI, W. MORAWSKI, *Late publication of EC law in languages of new Member States and its effects: obligations on individuals following the Court's Judgment in Skoma-Lux*, in *Common market law review*, 2008/3, pp. 706-707.

[28] *Ibid*., pp. 708-709.

[29] See, in the same sense, ECJ Judgment of 12 July 2012, AS Pimix v Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus and Põllumajandusministeerium, Case C-146/11. ECLI:EU:C:2012:450.

5.2. Incoherences

It should be noted that the particular circumstances may vary in each instance. In the case of On Air Media, for instance, a national decision was held to give rise to legitimate expectations. Nevertheless, fundamental inconsistencies do appear to emerge between the three scenarios. The seemingly valid emphasis placed on legal certainty and legitimate expectations in the Romanian case of On Air Media does not appear to carry any weight in classic language discrepancy cases, as demonstrated in the cases of Heuschen & Schrouff and Endendijk. Admittedly, the primary function of the ECJ is to provide a consistent interpretation of EU law across all official language versions. However, it must be acknowledged that the result may appear to be unjust for individuals or companies facing the consequences. It can be argued that, in terms of legal certainty and legitimate expectations, the situation was even more disadvantageous for Heuschen & Schrouff, which was fined, whereas On Air Media merely had to pay back a subsidy to which it was, in actual fact, not entitled.

5.3. The duty to compare

The question of the extent to which a *duty to compare language versions* applies in the second scenario (that of Heuschen & Schrouff and Endendijk) remains unresolved.

In this regard, the question arises as to whether a *criterion of doubt* could be considered relevant. More particularly, it remains unclear as to whether individuals or companies should only be required to consult other language versions when they are or should be aware of issues with their own language version.

The ECJ appears to imply the existence of such a criterion of doubt; however, it has not elaborated on this point. In the On Air Media Judgment, the ECJ employs the argument that the provision at issue appeared to be *clear* (albeit incorrect) in the Romanian language version. This suggests that the companies in question had no reason to doubt the accuracy of their own language version, and therefore did not have a duty to consult other language versions. Yet, it may be argued that in the cases of Endendijk and Heuschen & Schrouff, the obligations also appeared to be unambiguous in the Dutch language version

In the seminal cases of CILFIT and Consorzio, the ECJ did not provide a clear definition of this criterion of doubt. Admittedly, in these Judgments, the matter is not investigated from the point of view of the legal or natural person concerned, but rather from the vantage point of a national judge. An analysis of the pertinent passages in Consorzio reveals the following (own emphasis added):

"According to the Court's settled case-law, one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union. (para. 43)

While a national court or tribunal of last instance cannot be required to examine, in that regard, each of the language versions of the provision in question, the fact remains that **it must bear in mind those divergences between the various language versions of that provision of which it is aware, in particular when those divergences are set out by the parties and are verified**." (para. 44)

Once more, the ECJ appears to allude to a criterion of doubt, yet it does not provide a clear benchmark. Furthermore, this pertains exclusively to the evaluation of a national judge regarding the referral of a matter to the ECJ.

The criterion of doubt is also discussed in legal doctrine. In the context of correcting acts and their temporal effect, Bobek suggests that the retroactive effect of substantial correcting acts should be limited to cases where it is evident to a reasonably prudent person that there is an issue with their own language version.

"(…) one could try to conjure a compromise solution, which could try to balance the two interests and the two extreme approaches – the equal authenticity dogma on the one hand and the protection of legitimate expectations on the other. One could try to conjure, for instance, a middle yardstick of a 'reasonable and/or circumspect interpreter'. This interpreter would be a normally diligent reader of

Community legislation. If s/he would be able to detect that there is something wrong with a national language version of a Community measure, then so should the relevant national authority". [30]

However, Bobek immediately identifies the obvious arbitrariness of such an approach:

"Such a volatile standard, however, which anyone can set at a different level, would perhaps not be entirely helpful. An omitted comma in a sentence, which one reader could consider to be a tragedy, might not be noticed at all by the next reader."[31]

This assertion is indeed valid. As was the case with On Air Media, it could be contended that even less diligent companies might find it peculiar that enterprises that had been experiencing difficulties for a period exceeding three years could benefit from the aid scheme, while 'nascent' companies (which had existed for less than three years) in difficulty could not. In its ruling, the ECJ did not address this particular aspect of the case. The provision in question was determined to be "clear" in the Romanian language. Clear in its incorrectness, as it were…

It is possible that further complications may arise in relation to the prevailing Court doctrine. Indeed, what would have been the implications of a subsequent correction of the incorrect language version (in the case of Heuschen & Schrouff) through a correcting Regulation with retroactive effect? It is submitted that, in accordance with the principles set out in the On Air Media Judgment, the imposition of a fine on Heuschen & Schrouff would then also have to be cancelled retroactively (provided national procedural law allows for this).

As a point of relevance, it is important to reiterate the case of farmer Endendijk from Ermelo, wherein this very scenario nearly materialised. As was explained in section 3, Endendijk risked being convicted on the basis of an incorrect Dutch-language version of an EU Directive. The Directive under scrutiny was Council Directive 91/629/EC of 19 November 1991, which established minimum standards for the protection of calves.[32] The Court delivered its judgment on 3 April 2008 and found that the Dutch language version was incorrect.[33] The Directive was later codified.[34] However, it was not until 2015 that the discrepancy in the Dutch language version was corrected.[35] In the event of Endendijk's conviction by the Dutch court, could it be hypothesised that, subsequent to a rectifying legal act, he would be entitled to initiate a new case before the Dutch court on the grounds of violations of legal security and legitimate expectations?

Luckily for him, Endendijk was only found guilty by the Dutch court, yet not sentenced to a financial sanction or emprisonment. It was evident that following the ruling by the ECJ that a chain could also be considered a rope, in the sense that it was a generic term for a tether, in accordance with other language versions, the Dutch court was obliged to conclude that Endendijk had indeed committed a criminal offence. However, as an attenuating circumstance, it was acknowledged that Endendijk's contribution had clarified the scope of EU rules. Consequently, the court refrained from imposing a financial penalty or a custodial sentence.

Arguably, this is a remarkably sound approach, which has the potential to serve as the foundation for resolving the issue under discussion.[36] The reasoning of the Dutch judge deserves a further and detailed analysis. The Dutch judge first provided the following comments on the ECJ's judgment, which he had requested (own translation):

"Point 8 of the annex to Directive 91/629, as amended in the Dutch language version, refers to a metal fastener, since it uses the word 'chains'. The Court may not examine the word in question solely in the light of the Dutch language version, since Community provisions must be interpreted and applied uniformly in the light of the text in all languages of the European Community.

Where there are differences between different language versions of a provision, the interpretation of that provision must take into account the general structure and purpose of the legislation of which it

[30] M. BOBEK, *op. cit.*, p. 960.

[31] *Ibidem*.

[32] OJ L 340/28 of 11.12.1991, as amended by Commission Decision 97/182/EC of 24 February 1997 (OJ L 76/30 of 18.3.1997).

[33] ECJ Judgment of 3 April 2008, Endendijk, Case C-187/07, ECLI:EU:C:2008:197.

[34] Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves, OJ L 10/7 of 15.1.2009.

[35] OJ L 10/46 of 16 January 2015.

[36] Rechtbank Zutphen, Judgment of 20 October 2008, NL:RBZUT:2008:BG0605.

forms part. The Court has established that language versions other than the Dutch version of point 8 of the annex to the amended Directive use a general term. The term 'chain' therefore appears to be contrary to the objective pursued by the Community legislature."

It is therefore established that a criminal offence has been committed by farmer Endendijk in light of the interpretation given by the ECJ.

"Based on the above interpretation of 'tethered', the court [of Zutphen] considers it legally and convincingly proven that the defendant [suspect] on or around 20 October 2005 in [place], at [address], deliberately kept 25 calves, while this was not done in accordance with point 8, first sentence of the annex to Directive 91/629/EEC, as those calves were tethered."

Consequently, Farmer Endendijk can be considered as having committed the act in question and is therefore subject to the corresponding penalties.

"The defendant is guilty, as no circumstances have been established or become plausible that would exclude the defendant's guilt."

As to the sentence, the prosecution has asked for the following sanctions:

"The public prosecutor has demanded that the defendant be sentenced to a fine of €250, or alternatively five days' imprisonment. In explanation of his sentence demand, the public prosecutor argued that the defendant was initially offered a settlement of €500. He took into account the time that had elapsed and the associated (additional) costs incurred by the defendant, and therefore moderated his demand to the amount claimed."

But then comes the most interesting part of the reasoning of the national judge:

"First and foremost, it has not been demonstrated that the defendant failed in his responsibility as a livestock farmer with regard to the care of the animals he kept. The defendant has shown himself to be a conscientious livestock farmer who cares deeply about the health and welfare of his livestock. In the method he uses to rear young cattle (in this case calves), he tries to take these interests into account as much as possible. He is appreciated by his peer group for his approach. However, it has now been established that the suspect did not keep the calves on his farm in accordance with the legal guidelines applicable within the European Community. In order to establish this, it was necessary to refer questions to the Court of Justice for a preliminary ruling, which the Court has answered. The fact that the Court was able to provide clarity on a method of keeping calves that ultimately appears to be unlawful is partly due to the contribution of the defendant. That is all there is to it. In this case, imposing a penalty would not serve any reasonable punitive purpose. Therefore, no penalty or measure will be imposed."

It is evident that the national judge does take into account the good faith of the defendant. The national judge also implies that the legal obligations contained in the provision at issue were not clear in Dutch, as demonstrated by the fact that a clarification by the ECJ had been necessary. Consequently, no penalty was imposed.

However, it is important to note that this solution may be at odds with the prevailing case law of the ECJ on the matter. The judgments in CILFIT (1982) and Consorzio (2021) indicate that there may be only relative trust in the own language version of EU law. This far-reaching doctrine effectively calls into question the notion of equal authenticity, since one or more language versions may be disregarded if they do not accurately reflect the legislative intent. The ECJ's primary duty is, of course, to provide a uniform interpretation of EU law, ensuring that all language versions are aligned both formally and substantively.[37] Consequently, it is clear that citizens, national administrations and courts cannot rely exclusively on their own language version of EU law. Instead, they should compare language versions.[38]

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[37] See C. BERGOMI, *Comparative law and autonomous concepts – The making of common European legal meanings*, Turin, 2025.

[38] See, in the same sense, F. STURM, *Lingua latina fundamentum et salus Europae*, in *The European legal forum*, 2002, p. 316; R. L. CREECH, *Law and language in the European Union: the paradox of a Babel "United in Diversity"*, Groningen, 2005, p. 29; L. IEVA, *Il latino come lingua dell'Europa unita: studio sul regime linguistico dell'U.E.*, Napoli, 2009, p. 40.

This case law appears to be at conflict with the other scenarios outlined above (Skoma-Lux and On Air Media). There does not seem to be an objective reason as to why legal certainty (and legitimate expectations) are less relevant in the case of discrepancies that are detected in the course of legal proceedings. As a matter of fact, the Court itself has hinted at the incompatibility with the principle of legal certainty. In the Kerry Milk case (1977),[39] which concerned the processing of skimmed milk, the linguistic discrepancy pertained to the concept of "due and payable" in English. In contrast, the other language versions did not make reference to the concept of "payment" at all, but rather to the notions of "right" or "obligation". The Court elected to pursue a solution without favouring any particular text. However, it acknowledged that the elimination of linguistic discrepancies through interpretation could, in certain instances, contravene the imperative for legal certainty. This is because one or more of the texts in question might necessitate an interpretation that departs from the natural and usual meaning of the words.[40]

In a case concerning the freezing of economic resources of persons suspected of supporting terrorist activities (The Queen, 2010), the Court emphasised the significance of an interpretation that ensures that provisions are aligned with the general principles of EU law and, more specifically, with the principle of legal certainty. This is to guarantee that those involved have a clear understanding of their rights and obligations.[41]

It thus appears that the Court is fully aware of the potential issues concerning legal certainty and that this is a factor it considers when interpreting the relevant provisions. Nevertheless, as it is a widely accepted premise that no legal texts in different languages will ever have an identical meaning, a certain degree of legal uncertainty is an inevitable consequence when acts are authentic in all EU official languages.[42] And especially in cases where an interpretation *contra legem*, against the explicit wording in one language has to be given, and there is no apparent case of bad faith as to the individuals concerned, it seems that their rights are insufficiently safeguarded by the prevailing doctrine.

6. Concluding remarks

The present analysis was initiated with a review of the recent judgment On Air Media (2025). In this judgment, the ECJ affirms the retroactive effect of a correcting act of EU law with regard to a specific language version. Moreover, the ECJ provides a novel perspective on the ramifications of linguistic discrepancies between equally authentic language versions of EU law. The emphasis placed by the ECJ on the principles of legal certainty and legitimate expectations in this Judgment is commendable. The fundamental principle appears to be, accurately, that both natural and legal persons are permitted to rely on their own language version and are under no obligation to compare it with other language versions.

The ECJ had previously emphasised the absolute necessity of formal legal certainty with regard to the absence of an official language version (Skoma-Lux, 2007). In that scenario, there is no obligation to compare one's own language with other language versions either.

Conversely, the scenario in which a linguistic discrepancy is detected in a case before the ECJ, notably in a preliminary ruling procedure, still poses significant concerns. Indeed, in such cases, the requirement for a uniform interpretation of EU law across all language versions may indeed result in

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[39] ECJ Judgment of 3 March 1977, North Kerry Milk Products Ltd. v Minister for Agriculture and Fisheries, Case 80-76, ECLI:EU:C:1977:39.
[40] ECJ Kerry Milk Judgment, para. 11.
[41] ECJ Judgment of 29 April 2010, The Queen, on the application of M and Others v Her Majesty's Treasury, Case C-340/08, ECLI:EU:C:2010:232, para. 64-65. See Tiberi, arguing that multilingualism may very well threaten the very principle of legality in criminal justice (G. TIBERI, *Multilingualism and Legal Translation of the Sources of Law of the European Union: The Implications for Criminal Law of the New Post-Lisbon Treaty Area of Freedom, Security and Justice*, in F. RUGGIERI (ed.), *Criminal proceedings, languages and the European Union: linguistic and legal issues*, Berlin, 2014, pp. 18-19).
[42] See Leung on the "certainty of uncertainty" when dealing with equally authentic legal texts (J. LEUNG, *Interpreting Multilingual Legislation: The Limits of Language and the Certainty of Uncertainty*, in J. LEUNG (ed.), *Shallow Equality and Symbolic Jurisprudence in Multilingual Legal Orders*, Oxford, 2019, pp.183-208).

negative consequences for natural or legal persons who have followed their own inaccurate language version. This suggests that, in practice, there is a necessity to make comparisons with other language versions. Nevertheless, the extent of that duty remains ambiguous.

It is submitted that a relatively straightforward solution to this conundrum exists. It is imperative that the ECJ maintains its role in providing a consistent interpretation of all language versions of EU law. It is not possible for it to formulate ad hoc solutions for a particular language or case. However, national judges could, in principle, take such adverse effects on an individual into account, thereby protecting legal certainty and legitimate expectations as to the language version concerned, as was illustrated in this article.

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 Comparative Law and Language

Bridging legal cultures

The translation of legal culture-specific words in Crown Court criminal judgements

*Alexandra Vinci**

ABSTRACT: The article focuses on the analysis of legal culture-specific words found in Crown Court criminal judgements as well as how the translation of such linguistic units may influence the outcome of a criminal trial. The main objective of the research is to demonstrate that the main linguistic problem posed by legal translations, particularly in criminal-related texts is the translation of legal culture-specific words, one of the few linguistic units in this field of which translations can fairly be considered subjective. In order to undergo the research, we have employed three main methods pertaining to qualitative research, amongst which an in-depth discourse analysis of a limited series of the most recent criminal judgements in English emitted by the Crown Court as far as the translation of legal culture-specific words in concerned and its indomitable impact on the decision-making process, but also content analysis and case study. The aim of this paper is to investigate whether automated translation is an adequate, acceptable and accurate choice in the legal translation of criminal law corpora, what are the main errors encountered and what advantages and the positive characteristics of this kind of translation in comparison with human translation. We shall also discuss the importance of acquiring comparative law knowledge in order to achieve an adequate and accurate translation and argue according to this view, the role of the translator in the 21st century beyond post-editing. In order to achieve this objective, we set out a corpus-based investigation that analyses various renditions and translations of criminal judgements that focus on legal culture-bound words.

KEYWORDS: legal translation; legal linguistics; criminal law judgements; legal culture-bound words; AI; machine legal translation.

1. Introduction

In recent years, the most pressing matter in translation studies and in the translation activity in the existence and development of machine translation. Amongst the most important recent research papers that have touched upon the subject is the one written by Fernando Prieto Ramos[1], in which the role of AI and MT in the translation process is undeniable, yet there are certain domains such as the legal field where the translation competence, the intrapersonal management skills and the responsibility of a human translator is still necessary[2]. In the same vein, in this study we may find several questions that aroused concerning this subject, regarding the extent to which a translator could be replaced by a MT program, the accuracy and adequacy of MT translations as well as the strategies and methods of translation employed by MT to produce effective and appropriate equivalents for problematic terms in specialized translations, such as legal culture-bound words. One of the authors who thoroughly defines the concept

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[1] F. PRIETO RAMOS, *Revisiting translator competence in the age of artificial intelligence: the case of legal and institutional translation*, in *The Interpreter and Translator Trainer* 18(1), pp. 148-173, 2024.
[2] Ibidem.

of culture-bound words or *culturemes* is Aixelá[3] who outlines a thorough definition of the concept, namely ‘‘elements whose function and connotations in source text involve a translation problem because they do not exist or have a different status in the target language’’[4].

Other authors that have commented upon this widely researched concept in applied linguistics are Hurtado Albir[5], who defines them as ‘‘*elementos culturales característicos de una cultura presentes en un texto y que, por su especificidad, pueden provocar problemas de traducción*’’[6] as well as Newmark[7], Nord[8] who introduces the specific concept of *cultureme* and who links it to its fundamental role in the process of communication[9] and especially Katan[10] whose definition and analysis of the culture-bound words is of the utmost importance the approach that we have undertaken, that is investigating legal *culturemes,* because Katan believes that culture-bound words are based on shared beliefs, values and theoretical frameworks[11].

The literature gap that we will be filling refer to the way in which machine translation tackled difficult translation problems in the translation process of a highly specialized text from the criminal law field. In order to conduct this study, we have divided our article into three parts: two theoretical chapters related with legal culture-bound words and the link between machine translation and legal translation as well as an illustrative case study filled with examples supporting our opinions. Previous studies, even recent ones, such as Bajčić and Golenko[12], who state that the main problems encountered in automated translation are terminological consistency and cultural adaptation, or in particular, Giampieri state that there are significantly few research papers discussing the use of MT in legal translation and how automated translation can be used by authorized translation or in legal firms[13].

2. Translation of legal culture: how to solve equivalence problems of legal culture-bound words

Translation is generally a very specific and thorough process that involves not only possessing very well-refined linguistic and translation skills, but also a predisposition to delve deeper into the context which influences and determines the field in question and implicitly the source text to be translated, according to both authors of recent studies on the matter such as Xu, D.[14], but also to traditionally recognized scholars in translation studies and applied linguistics such as Juliane House[15] or Anthony Pym[16]. In this case, when analysing legal texts, we must take into consideration both the specialized nature of the language involved as well as the particular grammatical, lexical and stylistic characteristics of the legal field. This criterion that we will be using in our case study is also supported by researchers such as Maurizio Gotti, who underlines the importance of analysing the linguistic characteristics of legal texts in the translation process due to cultural difficulties[17] and by a renowned

[3] J.F., AIXELÁ, *Culture-Specific Items in Translation*, in Álvarez & Vidal (eds.), *Translation, Power, Subversion,* Clevedon*,* 1996.
[4] J.F., AIXELÁ, *op. cit.,* p. 58.
[5] A. HURTADO ALBIR, *Traducción y traductología: Introducción a la traductología*, Madrid, 2001.
[6] A. HURTADO ALBIR, *Traducción,* cit., ‘‘cultural elements characteristic of a culture present in a text and which, due to their specialized character, can cause translation problems’’ (our translation).
[7] P. NEWMARK, *A Textbook of Translation*, London, 1988.
[8] C. NORD, *Translating as a Purposeful Activity,* London, 1997.
[9] Ibidem.
[10] D. KATAN, *Translating Cultures*, London, 2004.
[11] Ibidem.
[12] M. BAJČIĆ, D. GOLENKO, *Applying Large Language Models in Legal Translation: The State-of-the-Art*, in *International Journal of Language & Law, vol. 13*, pp. 171–196, 2024.
[13] P. GIAMPIERI, *Legal Machine Translation Explained: MT in Legal Contexts*, Newcastle upon Tyne, 2023.
[14] D. XU, *Self-regulation as a stronger predictor than motivation of translation competence*, in *Front. Psychol.* vol. 16, 2025.
[15] J. HOUSE, *Translation Quality Assessment: Past and Present,* London, 2015.
[16] A. PYM, *Redefining Translation Competence in an Electronic Age*, in *Meta*, 48(4), 2003, pp. 481–497.
[17] M. GOTTI, *Linguistic Features of Legal Texts: Translation Issues*, in *Statute Law Review*, 37(2), 144–155, 2016.

author in the field, Deborah Cao, who considers the role of specialized legal concepts, specialized terminology and legal style and linguistic structures[18].

Additionally, apart from the specific traits of this field, we must also discuss the implication of culture, more precisely the extent to which the legal culture of each legal system (civil or common law) influences the strategies employed in the translation of terms and expressions, the type of equivalence chosen as well as output efficiency and adequacy, as very well point out Piszcz and Sierocka, in an recent study, "the importance of cultural context of law and legal language noticeable – legal language depends on culture"[19]. If legal culture is indeed that important to legal language, can we pose the same question reversed: is language that important to legal culture? Moreover, Goddard provided a satisfactory answer, "language is the essence of law, since the law is substantially formulated through language"[20]. In other words, cultural context and legal culture determines the creation of certain terms to cover those concepts and at the same time, without language that concepts could not find a materialized form, and legal translation needs both.

In the specialized literature regarding the translation of legal texts and of legal culture-bound words, there is an extensive debate upon the difference and the reach of what legal culture and legal tradition mean and how each category influences the choice of terminology used as well as the translation process, idea supported by researchers such as Jaakko Husa[21]. In this sense, Friedman ~~(1969)~~ gives a very insightful definition if how legal culture can be understood, namely "the network of values and attitudes relating to law (…) when, why and where people turn to law"[22], in other words, arguing that legal culture can be understood as an element pertaining to the legal field, but strongly affected by outward sociological and psychological factors. In this vein, Husa gives a very strong argument upholding the idea that legal culture, unlike legal tradition, is closely linked to the field of sociology, nevertheless he states that apart from the sociological and psychological elements that determine a legal culture, there are also objective factors strictly regarding the legal and legislative field that encompass this very complex concept such as "legal norms, legal doctrines, judicial practices, the application of the law etc."[23]. We argue that legal culture is more intrinsically linked to sociology than legal tradition because unlike legal tradition that concerns itself more with inherited legal concepts, ideas, methods or institutions (e.g. Common Law, Civil Law, Islamic Law), legal culture primarily addresses questions such as what is the relationship that people have with the law, the courts, how law functions in practice etc.[24] This distinction between legal culture and legal tradition is particularly important in forensic linguistics and legal translation studies because understanding the legal tradition of the source legal system offers insights into what type of equivalents should be used (literal/functional) and analysing the legal culture permits the translator to comprehend the type of audience to which the target text will be addressed.

Legal culture, understood as a concept intrinsically linked to legal translation and legal linguistics, is made up of two core components, namely the exterior factors such as the sociological, religious and psychological elements of the macro culture of a society, factors which are even more visible when comparing two completely distinct cultures. For example, Far-Eastern cultures and American or European ones, or Middle Eastern ones and the legal and legislative component which can be at times similar, a very illustrative example being the link between civil legal systems around the world. Hence, we may deduct that there are similarities between major legal systems, despite the sociological or

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[18] D. CAO, *Translating Law*, in *The Journal of Specialised Translation*, vol. 9, 2007, pp. 135–136.

[19] A. PISZCZ, H. SIEROCKA, *The Role of Culture in Legal Languages, Legal Interpretation and Legal Translation*, in *Int J Semiot Law 33*, 2020, p. 534.

[20] C. GODDARD, *Where legal cultures meet: Translating confrontation into coexistenc*e, in *Investigationes Linguisticae*, vol. XVII. Institute of Linguistics – Adam Mickiewicz University, Pozna, 2009, p. 174.

[21] J. HUSA, *Legal Culture vs. Legal Tradition – Different Epistemologies?*, Maastricht European Private Law Institute Working Paper 2012/18.

[22] M. LUO, *Law, Culture and Language: Challenges in Legal Term Translation from the Perspective of Comparative Legal Culture*, in *English Language Teaching and Linguistics Studies* 6(6), 2024, p. 15.

[23] J. HUSA, *Legal Culture vs. Legal Tradition – Different Epistemologies?* in *SSRN Electronic Journal*, 2012, p. 10.

[24] D. NELKEN, *Using the concept of legal culture*, in *Australian Journal of Legal Philosophy,* vol. 29, 2004, pp. 1–26.

psychological factors involved, that link two different legal cultures if the legal and legislative component is more important that the sociological one. In support to this argument, we bring the example of the Romanian civil legal system and the Japanese civil legal system[25], very similar in many major points, in spite of the clear and visible distinctions at a sociological, psychological and historical level. Thus, the similarities between two different legal cultures spring from the central place that the legal and legislative component hold in the *polysystem* of that legal culture, in detriment to the sociological, religious or psychological elements. On the other hand, if focus is principally directed towards religious or social concept or values in a certain legal culture, that differences between two legal cultures become present and evident. A very illustrative example to this argument is the discrepancy between the Romanian legal culture and the Turkish legal culture, the latter being a mixed product of secular values and the influence of old Islamic values, derived from the Sharia law. Legal tradition, on the other hand, refers mostly to historically inherited legal concepts that rule the way a legal system is constructed[26].

As such, given the clear influence that specific traits, either legal, social or psychological on the concepts present in each legal system, which in turn determine the use of a certain terminology to cover those concepts, we can state that the field of comparative law is essential in the translation of legal texts from a source language and legal culture to a target one. Just as Gémar[27] states in Goddard, "the translator should combine the competences of a comparative jurist and the know-how of the linguist"[28]. Hence, comparative law is an inherent part of the translation of legal texts, without which it would be completely impossible to produce an efficient and correct translation. In accordance with this statement, I would ask three important questions, pertaining to this research: firstly, are MT translations of legal texts, more specifically of criminal law judgements from English into Romanian accurate enough? Secondly, do they respect the principles of acceptability, accuracy and adequacy and what are the main errors that we may encounter when we analyse MT translations of legal texts? Lastly, what is the difference between machine translation and human translation in specialized texts, more specifically in the legal texts, to what extent can we find differences when we analyse AI and MT translation quality in the translation process of different fields from English into other target languages and legal cultures?

In order to answer the first question, we must delve deeper into how legal culture is transposed into language, how this influences the translation process and especially its quality in the evaluation of quality process. In that sense, we must provide more complex insights into legal terminology and the most important and problematic part, especially when talking about legal translation as far as the source is concerned (human or machine translation), and that is legal culture-bound words. Generally, culture-bound words or *culturemes* represent a major difficulty in the translation process, even when the text is a general and non-specialized one. The difficulties become even more poignant when the text is a specialized one, and even a legal one. Just as general language covers concepts that are specific to a certain society, mentality and culture, legal language covers concepts that are specific to a certain legal culture and to express and render them into another legal language represents a fastidious endeavour, especially when the translator is not a jurist and has little knowledge of the concepts present in the text and their position in the legal *polysystem* as well as their relationship with other legal concepts from other legal systems. In order to achieve acceptability as well as adequacy, two major points when talking about equivalent and translation studies discussed by acknowledged researchers such as Gideon Toury (1995)[29] who introduced the distinction between adequacy and acceptability and defined them as

[25] *Note of the Author*: despite the very striking similarities between such different legal cultures, derived mainly from the importance that the two legal systems put on legislative concepts, codified laws and doctrine, there still are a few notable differences stemming from East Asian legal and moral tradition as well as the mix of civil and common law as far as certain legal practices and legal concepts are concerned due to evident historical reasons. However, these differences are not so apparent as those posed by Sharia-influenced legal cultures and systems.
[26] J. HUSA, *Legal Culture vs. Legal Tradition – Different Epistemologies?*, cit., p. 16.
[27] J.C. GEMAR, *La traduction juridique: Art ou technique d'interprétation?*, in *Meta: Translators' Journal*, vol. 33, no. 2, p. 310.
[28] C. GODDARD, *op. cit*., p. 170.
[29] G. TOURY, *Descriptive translation studies and beyond,* Amsterdam, 1995.

essential concepts in translation[30]. As far as these concepts can be linked specifically to legal translation, authors such as Prieto Ramos[31] or Šarčević[32] discuss these concepts in relation to how functional equivalence can be achieved in legal specialized translation and how the product can be assessed according to these standards and criteria.

Thus, we wish to research the solutions that can be provided in the exact rendering of legal culture-bound words, thus avoiding major errors in translation, such as loss or mistranslation. The concept of compensation in translation has been approached by Peter Newmark, defining it as the strategy that covers losses in translation and thus produces a relatively similar effect in the target language text, without making use specifically only to literal translation, but rather leaning towards strategies and methods such as dynamic equivalence and adaptation[33]. Cultural adaptation is a concept tackled by Vinay, Darbelnet[34], defined as a strategy used in the situation in which there is no direct equivalent for a concept from the source language in the target language, especially in culturally discrepancies[35]. Additionally, paraphrasing is another strategy to which Eugene Nida makes reference in relation to how it facilitates dynamic equivalence and a product that sounds natural and adequate in the target language[36].

Before analysing the problems inherent to the process of translation as well as the strategies and methods employed to tackle these problems, we shall define and expand to the existent knowledge regarding the central concept that will drive most of the literature review and the case study, namely culture-bound words, and more specifically in this case, legal culture-bound words or *culturemes*. According to Rotaru (2019), they are "terms or expressions present in the source legal system, but non-existent in the target legal system (…), (they) can be collectively called legal *realia*"[37]. However, the unique nature of legal culture-bound words is that they are in fact specialized legal terminology, part of a text that unlike general texts, cause serious legal consequences[38]. In this regard, due to the presence of culture-bound words, as Snell-Hornby mentions, "the translation is no longer linguistic substitution (…), but a cultural transfer"[39]. In the same vein, this idea that legal translation becomes a process so much more complex than simply finding the right literal equivalent, is supported by Peña (2007) "cultural equivalence focuses on how correspondences interpret a given item and draw the same cultural meaning"[40]. In this case, we must highlight the importance that the equivalents chosen by the legal translator must convey, in the most fortunate case the entire meaning or if not an as close as possible to the original meaning, in terms of accuracy, and in terms of adequacy, they transmit the same legal effect and produce the same legal consequences as the original text.

Regarding the translation of legal culture-bound words, there are three main problems that arise and are worth discussing, according to Rotaru: 1.) the conceptual problems (understanding the similarities and differences at a conceptual level between two different legal systems), 2.) the problems of equivalence (finding the right terminology to cover specific concepts, highly dependent on the legal

[30] In Gideon Toury's book, adequacy is viewed as the translator's effort to maintain the target text as close as possible to the source text, both in terms of style, content, terminology and effect, adhering to the source language and culture norms whereas acceptability is defined as the tendency to respect target language and culture norms. G. TOURY, *op. cit*.

[31] F. PRIETO RAMOS, *Revisiting translator competence in the age of artificial intelligence: the case of legal and institutional translation*, in *The Interpreter and Translator Trainer* 18(1), pp. 148-173, 2024.

[32] S. ŠARČEVIĆ, *New Approach to Legal Translation*, *London*, 1997.

[33] P. NEWMARK, *A Textbook of Translation*, cit*.*, p. 90.

[34] J.-P. VINAY, J. DARBELNET, *Comparative Stylistics of French and English*, Amsterdam,1995.

[35] J.-P. VINAY, J. DARBELNET, *op. cit.*

[36] E. NIDA, *Toward a Science of Translating: With Special Reference to Principles and Procedures Involved in Bible Translating*, Leiden, 1964.

[37] M.C. ROTARU, *Handling English culture-bound terms in Legal Translation: a compare-and-contrast approach*, in *Buletinul Științific al Universității Tehnice de Construcții București Seria: Limbi Străine și Comunicare* 12 (2), 2019, p. 63.

[38] P. KUSIK, *Comparative Law in the Eyes of Translation Scholars. Is Legal Translation Really an Exercise of Comparative Law?*, in *HERMES Journal Language and Communication in Business*, 2024, p. 115.

[39] M. SNELL HORNBY, *Translation studies: an integrated approach*, in S. BASSNETT, A. LEFEVERE (eds.), *Translation, History and Culture*, London, p. 319.

[40] E.D., PEÑA, *Lost in Translation: Methodological Considerations in Cross-Cultural Research*, in *Child Development*, 78 (4), 2007, p. 1256.

culture and using the correct translation strategies in order to achieve accuracy and adequacy) and lastly 3.) problems of ambiguity (which arise mostly due to major, insurmountable distinctions between two legal cultures and the inability to transpose each detail into the target language)[41], as De Groot (1996) expresses "when target language and the source language relate to two different legal systems, absolute equivalence is impossible"[42]. Hence, the solution proposed by the author is resorting to approximate equivalence[43], although it is so much more difficult and inappropriate to use such as an inexact strategy of translation when translating texts pertaining to the legal field. The reason for it is mainly the major objective and characteristic of legal texts, that of being precise, impersonal, informative and objective. Authors such as Carretero González discuss the technicity, inflexibility and precision of the legal language, considering it a *technolect*[44]. On the other hand, researchers such as Fiodorov offer a distinct view of legal language, comprehending it beyond its clear formal character, as rather something influenced by external factors and in continuous change and in a fluid dynamic, calling it a *sociolect*[45].

In order to tackle the above-mentioned translation problems as far as legal culture-bound words are concerned, one of the most evident strategies used by MT and AI apps in specialized translation, more specifically in legal translation is terminology consistency, which is also considered the most important advantage that this approach offers. Another strategy used my MT and AI apps is controlled language use which focuses on the employment of the strict terminology, syntax simplification and impersonal style, from which we can conclude that MT and AI apps would rather use literal translation than dynamic equivalence. In this regard, two are the methods or approaches that Wilson mentions: the functional method and the pragmatic approach[46]. The functional approach is based on the idea that there is a certain common ground between legal cultures and systems, which could bridge the probability to find adequate equivalents and ease the process of cultural adaptation and dynamic equivalence[47]. The pragmatic approach is closely linked with the functionalist movement, focusing more on the effect it has on the target audience and how the legal effect can be preserved in order to produce the same consequences; it is also known as "idiomatic translation"[48]. The functional method is also supported by Kusik (2024) which describes the main objective of legal translation as the rendering of the exact meaning and the producing of the same legal effects, "to produce a text which expresses the meaning and achieves the legal effects intended by the 'author'"[49]. What really offers the legal translator the means to provide the text with functional equivalents, according to Kusik[50], is the inherent knowledge of comparative law. This in turn can facilitate the choice between several possible translation strategies such as explanatory translation or lexical expansion, loan translation or borrowing, descriptive substitution and cultural adaptation.

3. The particularities of AI or machine translation of legal texts and legal culture-bound words

The subject of the fluency, accuracy and adequacy of machine translation of general and specialized texts is of great debate and interest in translation and terminological studies at the moment. Unlike adequacy, which is a concept coined by Gideon Toury, accuracy, in translation studies and in

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[41] M.C. ROTARU, *op. cit.*, p. 63.
[42] G. R. DE GROOT, *Het vertalen van juridische informati*, Deventer, 1996, p. 157.
[43] *Op. cit.,* p. 157.
[44] C. CARRETERO GONZÁLEZ, J. C. FUENTES GOMÉZ, *La claridad del lenguaje jurídico*. in *Revista del Ministerio Fiscal*, vol. 8, 2019.
[45] V. FIODOROV, *Statutul şi tipologia limbajului juridic*, in *Noi tendinţe în predarea limbajelor de specialitate în contextul racordării învăţământului superior la cerinţele pieţei muncii*, pp. 73–78, Chişinău, 2018.
[46] P. E. WILSON, *Comparative law outside the ivory tower: an interdisciplinary perspective*, in *Legal Studies 43 (4),* 2023, p. 646.
[47] The concept of dynamic equivalence has been introduced by Eugene Nida (1964) and refers to the strategy according to which the translator must strive to maintain as much as possible the original meaning of the source text even if he has to alter formal aspects (E. NIDA, *Toward a Science of Translating*, cit.)
[48] P. E. WILSON, *op. cit.*, p. 656.
[49] ŠARČEVIĆ, *New Approach to Legal Translation*, cit., pp. 72–73, in P. KUSIK, *op. cit.*, p. 115.
[50] P. KUSIK, *op. cit.*

applied linguistics is not a matter that is discussed in Toury's works, but rather in House[51] and in Williams[52]. Should we approach these concepts from a terminological point of view, Cabré, terminological accuracy can be assessed based on the degree to which the specialized, in this case, the legal meaning is being conveyed.[53]

Recent studies and researchers, such as Wiesmann[54] and Giampieri[55], focus and bright to light new arguments concerning the efficiency of machine translation and the probability of it replacing human translation, due to the high level of quality objectively evaluated. However, we would argue that machine translation, despite the wide range of specialized terminology possessed by it and the new improvement regarding style and fluency, it has still not acquired the capacity to resort to adaptation in a way human translation does and therefore, at least in the short run, it shall not completely replace human translation, but rather act as a very useful instrument that will enhance the quality of human translation as far as terminology quality and diversity and consistency is concerned.

Firstly, we must introduce a very important information as to the categories of machine translation used at the moment and their specificities. In this regard, we can mention the statistical machine translation (SMT) which is a better choice for the translator when seeking terminology consistency based on statistical researches, such as MATECAT. However, this type of machine translation, due to it being based on linguistic comparisons and parallels, can produce biased legal equivalents that do not portray accurately the meaning of a certain concept specific to the SL legal culture[56]. On the other hand, the most relevant and important machine translation used at present is the neural machine translation (NMT), amongst which we mention a very important translation instrument, used worldwide, namely DeepL. In this regard, scholars such as Nunes Vieira et al. state that NMT[57] has a lot of advantages and has improved consistently compered to how SMT works and as far as specialized equivalents are concerned, "NMT generated fluent and idiomatic translations, increased fluency, adequacy and accuracy of target texts"[58]. Killman[59] is one of the most relevant researchers who investigated the way in which machine translation and in particular, neural machine translation works and the quality of the translation produced by these two translation instruments. Alongside Killman, Heiss and Soffritti also discuss the advantages of using MT and NMT both stating that they noticed "promising results with regard to legal texts"[60].

Nevertheless, there still remain a few drawbacks that machine translation is not fully solved to this day, amongst which the inability to tackle long and ambiguous expressions and phrases, the production of excessive "repetitions, omissions, additions, words that make no sense (whatsoever) in the context"[61]. We can conclude thus that despite the incredible benefits which NMT can bring to the development of translation and terminology studies, to the specialized translation field and quality

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[51] J. HOUSE, *op. cit.*
[52] M. WILLIAMS, *Translation Quality Assessment*, in *Mutatis Mutandis*, vol. 2, no. 1, 2009, pp. 3–23.
[53] M.T. CABRÉ, *Terminology: Theory, Methods and Applications*. Amsterdam, 1999.
[54] E. WIESMANN, *op. cit.*
[55] P. GIAMPIERI, *op. cit*.
[56] P. GIAMPIERI, *op. cit.*, p. 3.
[57] Neural Machine Translation (NMT) is a machine translation strategy used by AI networks, encompassing state of the art technology and advanced learning systems to produce more a qualitative target output. J. MOORKENS, *What to Expect from Neural Machine Translation: A Practical In-Class Translation Evaluation Exercise*, in *The Interpreter and Translator Trainer*, vol. 12, no. 4, 2018, pp. 375–387.
[58] L.N. VIEIRA, M. O'HAGAN, C. O'SULLIVAN, *Understanding the societal impacts of machine translation: A critical review of the literature on medical and legal use cases*. *Information, Communication & Society, in Information, Communication & Society,* 24(11), 1515–1532.
[59] J. KILLMAN, *Vocabulary accuracy of statistical machine translation in the legal context*, in S. O'BRIEN, M. SIMARD, L. SPECIA (eds.), *Proceedings of the 11th Conference of the Association for Machine Translation in the Americas*, Vancouver, 2014, pp. 85–98.
[60] C. HEISS, M. SOFFRITTI, *DeepL Traduttore e didattica della traduzione dall'italiano in tedesco: Alcune valutazioni preliminari*. *inTRAlinea Online Translation Journal*, 2018; E. WIESMANN, *Machine Translation in the Field of Law: A Study of Italian–German Legal Texts*, in *Comparative Legilinguistics International Journal for Legal Communication, 37*, 2019, p. 125.
[61]E. WIESMANN, *Machine Translation in the Field of Law: A Study of Italian–German Legal Texts*, in *Comparative Legilinguistics International Journal for Legal Communication, 37*, p. 124, 2019.

assessment as well as to the integration of comparative legal knowledge used in legal translations, the presence of a human translator cannot be omitted at least as far as post-editing is concerned. Given the recent evolution of the profession, a legal translator's role resides not only in performing the translation act itself, but rather in assuring quality in terms of acceptability, accuracy and adequacy, both on a formal and on a content level[62]. In this sense, the role of post-editor emerges, focusing on how the human translators can improve the content generate by MT or NMT and especially, making the necessary changes in terms of cultural adaptation and legal appropriation[63].

Unfortunately, or not, it can be predicted that machine translation will be more and more present in the translation pursuits and will be even more improved in terms of terminology accuracy, adequacy and consistency over time, including as far as specialized highly difficult to translate and comprehend texts are concerned, such as legal and medical ones. Although, machine translation still presents several impediments due to its current inability to process legal information and adapt it to the context of the target language text and legal culture, it still remains a useful tool and is expected to develop in ways translation study researchers still do not predict. Hence, the revaluation of the role that a legal translator plays in the current state of the field is imperative and requires a transition or a continuum from the role of sole translator to the role of post-editor who ensures that the communicative and dynamic role of a translation, even in specialized fields, in particular in the translation of law and legal texts in accomplished by a machine translation program. Some other roles that could be undertaken and developed under the current situation is that of researcher in translation studies and of quality assurance evaluator of machine translation products.

Finally, in terms of errors that can be encountered when discussing MT or NMT translation, the main mistakes identified by Koehn & Knowles are omission, lexical and terminological ambiguity, mistranslation of very specialized legal terms, lack of cultural adaptation to the target legal system and lastly, a general lack of consistency[64]. We will be approaching and analysing whether these errors are present also in the MT translation of the judgements provided in the case study part.

4. Case study. A human and machine translation brief analysis of criminal law judgements from the Crown Court

4.1. Case description and methodology

Our research and in particular this case study means to analyse the differences between a human-produced translation of a criminal law judgement from the Crown Court[65] with a focus on the translation of legal culture-bound words and a machine translation-produced one, with a focus on the translation from English into Romanian. Recent studies concerning legal translation, comparative law and the impact of AI on translation studies investigate and offer new interesting insights into how calque and literal translation might severely affect the result of a legal translation with such a great impact, such as criminal judgements. One of the authors who discusses the matter

According to Graziaddei, criminal judgements, from a result and responsibility point of view are not so recurrent as the translation of laws and doctrine[66]. In this regard, the author mentions that

[62] J. LEIVA ROJO, *Aspects of human translation: the current situation and an emerging trend*, in *Hermēneus Revista de traducción e interpretación*, vol. 20, 2018, pp. 257-294.
[63] M. KOPONEN, *Is machine translation post-editing worth the effort? A survey of research into post-editing and effort*, in *The Journal of Specialised Translation*, vol. 25, pp. 131–148, 2016.
[64] P. KOEHN, R. KNOWLES, *Neural machine translation and the evaluation of its output*, in *Machine Translation,* vol. *31, no.* 1–2, 2017, pp. 3–13.
[65] The Crown Court is main criminal court that judges severe criminal offences, sentences offenders and tries appeals in England and Wales. It holds a superior position in the courts' system than the Magistrates' Court but an inferior one comparing to the Court of Appeal, Criminal Division. The principal offences heard in this court are serious ones such as murder, feminicide, rape or money laundering (Courts and Tribunals Judiciary, URL: https://www.judiciary.uk/).
[66] M. GRAZIADEI, *Legal Translation and the Quest for Authenticity*, in *Int J Semiot Law 38*, 2025, p. 2577.

strategies such as calque and literal translation, stemming from linguistic comparison and mainly employed by machine translation apps, and undoubtedly disadvantageous for legal translations because "similar sounding words may not convey the same legal notions"[67], a strategy suggest by Graziadei (2025) being the creation of new terms that would suit the legal cultural context, namely coining new words to express untranslatable legal concepts[68], mainly induced by the structural difference between legal cultures and systems.

As far as the corpora chosen to be analysed is concerned, we have selected a series of recent and relevant criminal law judgements from the Crown Court[69], the highest tribunal as far as criminal law cases are concerned, with a focus on legal culture-bound words. In this regard, the body of texts that we have selected, namely judgements, are part of a second group of legal texts according to Šarčević's (1997) taxonomy, also known as "prescriptive parts", including all types of legal instruments[70]. As to the level of difficulty of the texts chosen, all present the same degree of translation and comparative legal knowledge, pertaining also to the same category of legal texts and being produced by the same legal institution, only the length of each text being a matter of variation, ranging from a minimum of 20 pages to a maximum of 80 pages. The language pair chosen to be analysed is English-Romanian due to the distinctions found at a systemic and content level, in terms of legal culture-bound words, which in turn determines the difficulty in legal translation in the case of this pair[71].

4.2. Case analysis, discussion and findings

Given all the information discussed and analysed in the literature review part, we shall provide a thorough investigation of the differences between machine translation (the MT app used is DeepL) and human translation in relation to the criminal law judgements from the Crown Court. Additionally, I will explain the solutions offered by the MT app, the methods and strategies employed, and lastly to comment upon the product or the final target text, on errors and on innovative solutions and to give a final opinion on the role of the translator in the AI era in the specialized translation field, in the legal translation field and on the role of comparative law in translation studies.

Judgement 1: LORD STEPHENS AND SIR DECLAN MORGAN (with whom Lord lloydjones, Lord Burrows and Lady Simler agree[72]

Source Text	Target Text[73]
This appeal deals with the circumstances in which a **District Judge (Magistrates' Courts)** in Northern Ireland may reopen a case in which sentence has been passed in order to impose a **different outcome**. Section 142 of the **Magistrates' Courts Act** 1980 ("the 1980 Act") contains an identical provision so the outcome is also relevant to **Magistrates' Courts in England and Wales**.	Prezentul recurs vizează circumstanțele în care un **judecător de district (Tribunalele de primă instanță**) din Irlanda de Nord poate redeschide un dosar în care s-a pronunțat deja o sentință, în vederea pronunțării unei **hotărâri diferite**. Secțiunea 142 din **Legea privind instanțele de magistratură** din 1980 („Legea din 1980") conține o dispoziție identică, astfel

[67] M. GRAZIADEI, *op. cit.*, p. 2577.
[68] *Ibid*.
[69] The date of the criminal judgements range from 2022-2025, are relevant due to their recent issuing as well as to the fact that they contain very illustrative examples of criminal law culture-bound words, diverse in variety, which also offered various equivalents when translated with MT.
[70] S. ŠARČEVIĆ, *New Approach to Legal Translation*, cit., p. 11.
[71] D. UNGUREAN-MITROI, *Legal Translation Landscapes: The Unique Case of Romania(n) and English Pair of Languages*, in *Studii de Știință și Cultură*, vol. 1, no. 91, pp. 91-98, 2024.
[72] Source: The Supreme Court of the UK, URL: https://supremecourt.uk/cases.
[73] Source: text produced with DeepL.

Background 2. On 28 June 2021 the **respondent** pleaded guilty at Ballymena **Magistrates' Court** to possession of an offensive weapon in a public place, **common assault**, and **criminal damage**. The District Judge adjourned the case for the preparation of a **probation report**. The **criminal damage charge** related to damage to the home of a person who was unknown to the respondent and in her statement to police the homeowner undertook to forward the repairs estimate to police when received.	încât rezultatul este relevant și pentru **instanțele de magistratură din Anglia și Țara Galilor**. Context 2. La 28 iunie 2021, **pârâta** a pledat vinovată la **Instanța de Magistratură** din Ballymena pentru deținerea unei arme ofensive într-un loc public, **agresiune simplă și distrugere**. Judecătorul districtual a amânat cauza pentru întocmirea unui **raport de probațiune**. Acuzația de distrugere se referea la **pagubele** aduse locuinței unei persoane necunoscute pârâtului, iar în declarația sa dată poliției, proprietarul locuinței s-a angajat să transmită poliției devizul de reparații imediat ce îl va primi.

Judgement 2: Pwr (AP) (Appellant) v Director of Public Prosecutions (Respondent)[74]

Source Text	**Target Text**[75]
Counsel for the appellants, Joel Bennathan QC, submitted that, applying the strong **common law** presumption of **mens rea**, section 13(1) is not an **offence of strict liability**. (…) But there was no mention by the **Divisional Court** of Page 20 that decision by the **magistrate** so that this is a very slender basis on which to say that the need for a **mens rea** was always well-understood. (…) No such **offence** existed when the conduct for which Mr Hayes and Mr Palombo were **prosecuted** took place. In their cases, as in all **the prosecutions** brought by the SFO relating to attempts to influence LIBOR or EURIBOR, the offence **charged** was conspiracy to defraud. (…) Because **the burden of proof** was on the **prosecution** to prove that the **defendants** had made or conspired to make false or fraudulent statements, this meant that, to establish falsity, the prosecution had to show that the panel bank making the submission could not have borrowed funds at the rate submitted. The application was referred to a **full Court of Appeal by the Registrar**. The Court of Appeal refused leave to appeal.	**Avocatul recurenților**, Joel Bennathan QC, a susținut că, aplicând **prezumția puternică de mens rea** din **common law**, secțiunea 13(1) nu constituie o infracțiune de **răspundere strictă**. (…) Însă **Curtea Divizională** nu a făcut nicio referire la acea decizie a **magistratului** de la pagina 20, astfel încât acesta este un temei foarte fragil pe baza căruia să se afirme că necesitatea **existenței unei intenții criminale** a fost întotdeauna bine înțeleasă. O astfel de **infracțiune** nu exista la momentul la care a avut loc fapta pentru care au fost **urmăriți penal** domnul Hayes și domnul Palombo. În cazurile lor, ca și în toate **urmăririle penale** inițiate de SFO referitoare la încercările de a influența LIBOR sau EURIBOR, infracțiunea **imputată** a fost **conspirația în scopul fraudării**. (…) Deoarece **sarcina probei** revenea **acuzării**, care trebuia să demonstreze că **inculpații** au făcut sau au conspirat pentru a face declarații false sau frauduloase, aceasta însemna că, pentru a stabili falsitatea, acuzarea trebuia să demonstreze că banca din comisie care a făcut propunerea nu ar fi putut împrumuta fonduri la rata propusă. Cererea a fost trimisă **Curții de Apel în complet de către grefier**. Curtea de Apel a refuzat permisiunea de a face apel.

[74] Source: The Supreme Court of the UK, URL: https://supremecourt.uk/cases.
[75] Source: text produced with DeepL.

Judgement 3: R v Maughan (Northern Ireland)[76]

Source Text	Target Text[77]
The **appellant** pleaded guilty at **arraignment** on charges of **aggravated burglary** and stealing, **false imprisonment**, **burglary**, attempted burglary and allowing himself to be carried at Downpatrick **Crown Court** on 14 September 2017. The **abolition of committal** in England and Wales meant that cases were transferred to the **Crown Court** very quickly, in some instances within days. (…) Where a person is **charged** the accused is brought before a **Sheriff** as soon as possible, usually within a day, when **bail or remand** is considered. By section 76 of the Criminal Procedure (Scotland) Act 1995 where an accused person **intimates** in writing that he intends to plead guilty and desires to have his case disposed of at once he may be **served with an indictment** with a **notice** to appear at the appropriate court not less than four days after the date of the notice. (…) Proceedings for an offence are instituted at the earliest of the following times - when a **summons** or **warrant** is issued. **Admissions** at **interview** have been considered sufficient but correspondence from **solicitors** to the **Public Prosecution Service** or an indication at court during a remand would also be sufficient to trigger the obligation under article 33. Any reduction in discount where the **offender** has **been caught red handed** has long been recognised as a feature of sentencing practice throughout the United Kingdom.	**La prima înfățișare**, care a avut loc la **Curtea Coroanei** din Downpatrick la data de 14 septembrie 2017, **recurentul** și-a recunoscut vinovăția în ceea ce privește acuzațiile de **furt calificat** și furt, **sechestrare de persoană**, **spargere**, tentativă de spargere și acceptarea transportului. **Abolirea trimiterii în judecată** în Anglia și Țara Galilor a însemnat că dosarele erau transferate la **Crown Court** foarte rapid, în unele cazuri în câteva zile. (…) În cazul în care o persoană este **pusă sub acuzare**, aceasta este adusă în fața unui **șerif** cât mai curând posibil, de obicei în termen de o zi, moment în care se ia în considerare **eliberarea pe cauțiune** sau **arestarea preventivă**. În temeiul articolului 76 din Legea privind procedura penală (Scoția) din 1995, în cazul în care un acuzat **indică în scris** că intenționează să pledeze vinovat și dorește ca cauza sa să fie soluționată imediat, i se poate comunica un **act de acuzare** însoțit de o **citație** de a se prezenta la instanța competentă în termen de cel puțin patru zile de la data notificării. (…) Procedura penală se inițiază la prima dintre următoarele date: atunci când se emite o **citație** sau un **mandat**. **Mărturisirile** făcute în cadrul **interogatoriului** au fost considerate suficiente, dar corespondența dintre **avocați** și **Parchetul Public** sau o indicație dată în instanță în timpul unei audieri preliminare ar fi, de asemenea, suficiente pentru a declanșa obligația prevăzută la articolul 33. Orice reducere a pedepsei în cazul în care **infractorul** a fost **prins în flagrant** a fost recunoscută de mult timp ca o caracteristică a practicii de stabilire a pedepselor în întreg Regatul Unit.

The target text, produced with a very well-known machine translation application, poses a great deal of translation problems and questions that welcome the debate and explain and cover the information presented in the literature review part. Moreover, the translation into Romanian that presents interesting difficulties are the names of institutions or offices, in this case, the equivalents *judecător de district* is a literal translation into Romanian of the English term *District Judge* and is completely correct and adequate in the context, proving that sometimes literal translation is the only acceptable choice to make and the machine translation program did a satisfactory job. However, there are several equivalents into Romanian such as *instanțele de magistratură*, incorrectly translated by using a false friend (in Romanian a magistrat refers to both the judge and the prosecutor, yet in English the magistrate is only the judge who serves in lower courts) or *Curtea Coroanei* which can also be found in the same paragraph into the target text with the borrowed English term Crown Court. These examples show the lack of

[76] Source: The Supreme Court of the UK, URL: https://supremecourt.uk/cases.
[77] Source: text produced with DeepL.

consistency in relation to machine translation in legal translation, nevertheless it still does not represent a problem that cannot be solved with the revision of a specialized translator. However, *Magistrates' Courts* has not only been translated as *instanțe de magistratură*, but also as *tribunale de primă instanță*, showing that machine translation can at times use the comparative law knowledge[78] that it disposes of by offering complementary explanations or substituting the term with a correct paraphrase of the concept in the target language.

In the same vein, another illustrative example of how a public institution's name was inaccurately translated by machine translation is the term *Public Prosecution*, encountered in the target text as *Parchetul Public*, a term which does not exist in the Romanian language and can be entirely considered as a calque from English. The correct term utilised for this institution is *Ministerul Public*, a concept encountered also in other Romance languages (*pubblico ministerio* in Italian). In the Romanian judicial system, *Parchet* is the place where a prosecutor works and not the institution in itself. Another interesting example is the translation of the extremely debated term *solicitor* into Romanian as *avocat*. Given that in all civil legal systems, there is no distinction between types of attorneys, we cannot discuss about two major concepts that exist in common law, the barrister and the solicitor. In this sense, machine translation has chosen to use the umbrella term that encompasses all types of lawyers. In our opinion, the choice was wise and easily to explain if we touch upon the functionalist approach and the dynamic equivalence view because it offers the text adequacy to the target legal culture and it does not produce different legal consequences. The use of a borrowed word, as an alternative, would have been strange and would have made the text sound inappropriate.

There are a few legal concepts specific only to the common law system and legal culture that were borrowed completely by using the literal translation strategy. This is the case of the term *sheriff*, translated in the target text as șerif, a culturally appropriated term, the only term that could have transmitted the original message and kept the accuracy of the text, given that this concept does not exist in the Romanian civil legal culture and system. This strategy (also found in the specialized literature as foreignization in translation[79], that the machine translation program used is based on the opinion that it is acceptable to coin new words in the specialized language if there is no suitable alternative and if it is accompanied by an explanatory text. The only aspect in which machine translation completely lacks of competence is producing explanatory texts in footnotes or in brackets for certain concepts that were culturally appropriated or for words that were coined and are not widely known in the target legal culture and system.

As far as style is concerned or the choice of some equivalents, based on the source texts and their translation provided by a machine translation program, we can draw the conclusion that AI still has difficulties in transferring the style or the tone of the source text into the target text as well as choosing between various equivalents, based on context. This is the case of the term *offender* translated as *infractor*, a word that pertains in Romanian mostly to the casual register rather than the legal or the criminal law language, a better equivalent for it being *inculpat*. However, sometimes, machine translation can make very good and evidence-based translation choices, being the case of the translation of the term interview as *interogatoriu*. Normally, an underdeveloped AI program would have translated literally the term into Romanian as *interviu*, the first meaning of the term interview, yet it chose the

[78] Although MT applications/ NMT do not directly possess legal knowledge or the ability to distinguish between complex legal concepts in order to make accurate and consistent choices, yet due to the large legal source of documents that comprise the corpora found in MT/NMT apps, they distinguish and use some legal concepts which have a high occurrence, even if not consistently (D. GUZMÁN, F. PRIETO RAMOS, *Human and Machine Translation of Legal Terminology in International Institutional Settings,* in *Language and Law*, 2024). Additionally, the existence of terminology databases and MT memories available online favour this phenomenon (MD M. IBN ALAM, et al., *On the Evaluation of Machine Translation for Terminology Consistency*, in *Arxiv*, 2021, available at: https://arxiv.org/abs/2106.11891).

[79] *Foreignization* and *domestication* are two fundamental concepts in translation studies coined by Lawrence Venuti (1995) with regard to alternative strategies to find equivalents. In this sense, foreignization refers to borrowing words and concepts from the source language, text and culture in order to avoid cultural adaptation and to preserve clarity and accuracy. On the other hand, the strategy of domestication rather focuses on adapting foreign concepts to the reality presented by the target text, language and culture in order to make it adequate and acceptable to the target audience (L. VENUTI, *The Translator's Invisibility: A History of Translation*, London, 1995).

specialized meaning, proving that machine translation comprehends sometimes even if inconsistently the context and the legal culture behind it and makes the distinction between a general discourse text and a specialized one.

5. Conclusions

The results that we have come to by studying and thoroughly analysing the literature review available regarding machine translation, legal translation, legal culture-bound words and how to render them accurately and adequately in any target language filled a very large and important gap in this part of the scientific field of translation studies and comparative law. In this regard, the examples provided in the case study part were a welcomed contribution which supported the main ideas provided in the theoretical part and the opinion expressed by the author. The limitations of this research lie in the fact that we have not been able to provide a comparison of equivalents.

As a conclusion, the major ideas that can be drawn from this analysis are the following:

1.) Comparative law is essential when taking into consideration the translation of legal text. This opinion can be supported by the argument according to which culture-bound words cannot always be translated with the use of literal equivalents by rather by using a functional method, focused on the adequacy of the target text to the needs of the target audience, but also preserving the same legal effects, in the case of legal texts. In the case study part, we have brought illustrative examples that showed the necessity to use cultural adaptation in the case of legal culture-bound words such as names of offices (sheriff, magistrate, solicitor) or names of institutions etc.

2.) Style and tone are a very important aspect even in legal translations. Choosing the correct and appropriate equivalent is a matter of understanding the context and the idea that the source text wants to convey. Most languages offer alternative equivalents and synonyms, in legal translation we must be careful to choose between specialized legal terms and words that belong to the general register. An example to this end may be the general register term in English criminal and its counterpart offender, in Romanian the translation for criminal would be *criminal* and for offender would be *infractor*.

Machine translation and AI-produced translation is a viable solution only if it is accompanied by the post-editing and revision of a human trained and specialized translator. The main error encountered were the same mentioned by other authors that conducted research studies on the topic, namely: omission and repetitions, lack of consistency in terminology, using literal translation at times, failing to match the register with the original *skopos* of the target text.

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Erika Arban, Maartje De Visser, Jeong-In Yun (eds.), *The Language of Comparative Constitutional Law: Questioning Hegemonies*, Hart, Oxford 2025

Jan Engberg *

The book under review is of general importance for the field of comparative law and especially comparative constitutional law and for this reason highly interesting for readers of our journal. In the format of an edited volume with 19 invited contributions and an introduction, the book treats different aspects of language with relevance for the comparative study of constitutional law. The aim of the volume is the following:

"The premise of this collection, then, is that language deserves to be acknowledged as playing a formative role in shaping approaches to doing and consuming comparative constitutional law, with the role of English as the established *lingua franca* warranting critical examination to ensure awareness of, and ideally formulate ways to reckon with, any attendant hegemonic tendencies." (4)

A central aspect with importance for the formulation of the aim, also visible from the subtitle ("Questioning Hegemonies"), is that this field of legal study is specifically influenced by English for three reasons:

- In the field, scholarly writing is to a very high degree in English. As in many other disciplines, this means that researchers with good competences in writing in academic English have an advantage and that the Anglo-American writing style is prevalent.
- At least potentially, this dominance means that investigations may be dominated by researchers with a background in Anglo-American law. This bears the risk that comparisons will start in Anglo-American concepts of constitutional law with the consequence of "importation of concepts that are typical of the Anglophone common law legal tradition … into writings regarding other legal families." (4) Due to this importation researchers may miss some of the specificities of constitutions from such other legal traditions.
- *Furthermore*, the dominance of English in the scholarly work means that the empirical basis tends to consist of translations of constitutional documents into English, which potentially boosts the conceptual problem.

This is the description of a perfect storm generated from characteristics of language as consisting of signs generating knowledge in the minds of participants (language as the human capacity of expressing thoughts and ideas) and from characteristics of language as being national and thus connected to specific national legal systems (languages as historical systems). These characteristics function as potential barriers to the optimal development of comparative constitutional law studies as the truly global study that it aspires to be. The volume is created as a venue for presenting and discussing how to overcome those parts of this complex of problems that are connected to the dominance of the English language.

For most of the chapters, the characteristic of (national) languages being connected to specific (national) legal conceptual systems and the consequences of intending to have English as a *lingua franca* in this situation constitute the point of departure.

The book consists of three sections. The title of the first section is *Language Barriers and Epistemic Imbalances*. Focus here is upon the aspect that languages as historical sign systems may constitute barriers to knowledge generation about different constitutional systems. This is done by way of descriptions of specificities of constitutional law from Japan (Masaiko Kinoshita: *Causes, Consequences and Mitigation of Language Barriers in the Global Constitutional Dialogue: Insights from Japan*), Italy (Francesco Biagi: *Teaching Comparative Constitutional Law in English in a Non-English-Speaking Country: The Case of Italy*; Graziella Romeo / Elisa Bertolini *What is in a Name? The Case of the Impossible Translation of the Concept of "Forma di Stato"*), and Germany (Michael

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Goldhammer: *Blind Spots, Misunderstandings, and Enlightenment: German Experiences with English as Lingua Franca of Comparative Constitutional Law*). Focus is here, on the one hand, upon examples of the conceptual core-periphery structure of the epistemology of the field that arises from the prevalence of Anglo-American constitutional systems: non-anglophone constitutional systems are treated as more peripheral, because they deviate from the monolingually anglophone ones. On the other hand, emphasis is given to the more general characteristic of language that its signs generate knowledge based on the previous knowledge that communicators possess. This means that conceptual characteristics of non-anglophone constitutional systems may not be understood by researchers without competence in the language of the foreign constitutional system, unless an effort is made to make these characteristics visible through explanations, comments, etc. This state of affairs goes against the ideal of a *lingua franca* and shows that other sources than the mere translations of constitutional texts are necessary as sources for research. Hence, the *lingua franca* idea must be supplemented by an awareness of the epistemological limitations that follow if the researcher does not possess background knowledge from other sources in order to get the full relevant picture. Related to this are more general epistemological problems for the field of comparative constitutional law arising from overstretching the idea of the *lingua franca*. Joel I Colón-Ríos (*(Re)Inventing Constitutional Concepts*) shows how the lack of access to concepts developed in other languages than English has the consequence that the same concepts get invented more times, which affects the possibility of building upon previous thoughts, ideas and empirical studies. And Leonardo Pierdominici (*How European Integration became Constitutional: The Role of American Scholars and the Transplant of American Federal Concepts*) argues that the accessibility of US works on constitutions and the interest among US legal scholars in describing the process of European integration as a process of constitutionalisation (partly because that was in accordance with their thinking and linguistic habits rooted in history and structure of the US as a constitutional system). Hence, one important insight mentioned recurringly in these chapters is the insight that despite talking about a *lingua franca* in this field, no choice of language for description is truly neutral – as any language is tied to its historical and therefore also epistemological roots.

Going more towards the practical consequences for research and practice originating from the dominance of English, the chapters in section II (*Language Biases and Contextual Dilemmas*) present some attempts to solutions of the imbalances and dilemmas treated in section I. Two chapters (Odile Ammann: *English Language Bias in Comparative Constitutional Law Scholarship*; Ilker Gökhan Sen: *Untangling Buzzwords: Making Sense of the Vocabulary in the Anglosphere Literature of Constitutional Law*) focus upon the consequence of research in English being received more widely than research written in other languages, leading both to lack of attention towards non-anglosphere concepts and to the generation of ambiguous research concepts. Three chapters (Nomfundo Ramalekana: *The Uses of Ubuntu under the South African Constitution*; Vikram A Narayam / Uday Vir Garg: *Linguistic Colonial Continuity, Modernity and National Integration in India*; Aziz Ismatov: *Constitution-Building and Catch-Up Modernisation in Central Asia: From Semantic to Cognitive Dissonance*) are concerned with the consequences of choice of constitutional language for developments away from colonial concepts in post-colonial times (South Africa, India) and towards mixed constitutional concepts (Central Asia). In the last case, the problem is that the adoption of anglophone concepts to describe constitutional aspects prevent that regional semantic specifics that point in quite different directions than the Western concepts are discovered by research or practice. The last chapter from this section (Konrad Lachmann: *Towards a Cross-Linguistic Epistemology: Translanguaging as a Method of Comparative Constitutional Law*) could as well have been placed in the last section, which has more focus upon conceptual and methodological solutions. Departing from the fact that awareness about the local character of any conceptual system is central in order to generate relevant comparative knowledge and carry out good comparative studies, the author emphasizes that it is necessary to make differences clear by actually describing them or at least through the method of translanguaging (i.e., by applying words from the local language in anglophone research texts) to make readers aware that a regional concept is actually different from the (colonial) concepts indicated through the choice of anglophone words. Common to the chapters in this section is the call for awareness about the link between language and systems of conceptualization and ideas about how to react based on this awareness to achieve better and more non-hegemonic comparisons.

The third section (*Legal Translation, Multilingualism and the Discursive way*) is, as mentioned above, focused more than the other two sections upon attempts to proceed towards some kind of solution, once the characteristics presented above are taken into account. This section appears to me to be the least homogenous of the three. Three chapters (Claudia Marchese: *In Defence of Multilingualism: The Contribution of Legal Linguistics and Comparative Science to the Affirmation of Multilingualism*; CJW Baaij: *The Role of English in EU's Institutional Multilingualism*; Francesco Palermo: *Comparative Law in a Multilingual Constitutional Space, And its Limits: Language and Law in the EU*) discuss characteristics and risks in choosing a multilingual constitutional system. The three authors come to different conclusions concerning the feasibility of such a system. As in most scholarly writing on this topic, the perception of the relevant balance between legal certainty and accessibility to texts written in the language of citizens in multilingual states is decisive for whether multilingual constitutional systems are seen as sensible answers to the language problem. One chapter (Jaakko Husa: *Comparative Law, Comparative Constitutional Law and Linguistic Sensitivity*) discusses the different profiles of the two strands of comparative law. He sees modern comparative law as being more aware of the challenge from differences in the conceptualization by different national legal languages than modern comparative constitutional law. This has to do with the different roots: modern comparative law is rooted in an interest in creating an international private law through bottom-up processes (which favours awareness of the conceptual differences between national legal systems), whereas modern comparative constitutional law is rooted in an interest in exporting the Western ideas about democratic constitutions after World War II, which favoured a more top-down approach scrutinizing whether foreign systems used the Western concepts, primarily expressed in English. Finally, three chapters (Giovanna Tieghi: *The 'Language of the Law' and the 'Sentiment of the Language': A Cultural Challenge to Enrich Global English for Comparative Legal Studies with National Identities*; Lucja Biel / Hanem El-Farahaty / Francesca L Seracini: *Bridging Borders through Translation: Corpus Linguistics and Metaphor Analysis in Comparative Constitutional Law*; Ngoc Son Bui: *Discursive Comparative Constitutional Law*) depart from aspects of the idea that language may be conceptualised as the human capacity of expressing thoughts and ideas and the ensuing characteristics of language and texts. On this basis, different approaches may be used to find the meaning of texts and concepts by investigating constitutional texts from different perspectives. Two types of approaches are presented: on the one hand, the investigation of expression patterns in texts through corpus analysis and through metaphor analysis, to generate insights into content and underlying knowledge based on dominantly bottom-up linguistic methods, linked also to legal translation. The other type of methods consists of discourse analytical approaches whose focus is to describe the discursive context and law as a social practice with a specific focus upon power-oriented aspects of it. Hence, where the linguistic analytical approaches may help comparatists understand the meaning of texts and thus reveal conceptual differences, the discourse-analytical approaches may help study the hegemonic aspects mentioned in the subtitle of the volume.

By way of conclusion, this volume is a very interesting read that has good potential for sparking off some highly necessary discussion about the role of languages in comparative constitutional law. It especially highlights the problems that arise if the field aspires to have global reach and therefore works heavily towards using English as a *lingua franca*, but without accepting sufficiently the necessity of enabling the conceptualisation of non-anglophone constitutional systems. However, there is a certain heterogeneity over reading the book. I am not totally convinced about the differences between chapters in the first and second section, and I find differences to be quite clear between the chapters on multilingual constitutional systems and the methodological chapters in section three. Here, it would probably have been good to separate section three into two sections. However, this potential weakness of heterogeneity is balanced by a clear, consistent and concise presentation of the problems and potential solutions connected to the characteristics of language in the introduction. Hence, reading the introduction creates a clear framework for understanding the individual chapters and their connections. To achieve a fuller, although more heterogeneous picture reading the whole book is definitely recommendable.