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Translating Worlds of Law: A Theoretical and Practical Inquiry

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Abstract

If we were to use a substitute for the verb 'to translate' in order to avoid repetition, we would be faced with the challenge of choosing appropriately from an array of different words such as 'to transfer', 'to transform', 'to transcribe', 'to transplant' or 'to interpret'. Nonetheless, the issue at hand might not even consist of singling out a suitable replacement, but rather of finding a word that entails all meanings and nuances of sense hidden in the hypernym 'to translate'. What then does the expression 'to translate law' actually signify? Can we remain faithful both to language and to law? And to what degree can we rely on words to convey the complex world of law? The present article endeavours to answer these questions by dwelling on some issues related to the translation of law in the European Union. Thus, particular emphasis is placed on 'contested' or ambiguous concepts, i.e. concepts that lend themselves to different meanings and interpretations according to the legal system that either creates or borrows them. The purpose of this study is to draw attention to the issue of semantic indeterminacy in law on the one hand, and to the complex relation between language and legal order, on the other.

Key words: legal translation, supranational concepts, semantic indeterminacy, European Union.

The Language of Law – Word-for-World

Imagine for one moment the magnificence of one word only that would miraculously encapsulate and reveal the world in its entirety and still be devoid of any obscurity of sense or penumbra of meaning. Such a moment in time would surely be tantamount to gazing upon the holy Sangreal of semantic clarity, precision and accessibility craved for by legal practitioners, jurilinguists, lawyer-linguists, legal translators and theorists alike. Law is the creation of world, a carefully fabricated response to its needs, an ingenious, versatile tool of liberation, constraint and manipulation. The beast spouts out its creation only to allow the latter to reclaim its worldly host through language. The power of law undoubtedly lies in the words that it borrows and juridicizes – "[...] law does not the privilege of its own exhaustive language. We could state that the majority of concepts used in law are adopted from other fields of knowledge" (Dănișor, 2011: 52) – on the one hand, and shapes and readapts, on the other. Language is, essentially, a means of expression and communication. Ultimately, "*nur wo Sprache ist, da ist Welt*", i.e. "[o]nly where there is language, is there world" (Heidegger, 1936: 56 in Legrand, 2013: 806). There can be no talk about the world, or, for that matter, about any segment of reality or human activity in the absence of conceptualization, articulation and codification. "[…] world is articulable, and is indeed articulated through the mediation of language. World cannot be approached other than through language. Any attempt to enunciate a view of world can only manifest itself within language (as is the case with any attempt to enunciate a view of law)" (Legrand, 2013: 805).

Language, therefore, gives substance to the legal world. But what, then, is language? And how can an inherently fluid and evolving *system of signs* accurately render equally complex and ever-changing legal systems and cultures? Challenges lie in creating and adapting linguistic formulae that are sufficiently malleable but, at the same time, adequately unequivocal to the legal reality of the day. A cumbersome task, indeed, and even more so if two or more languages are involved. Semantic discrepancies or gaps, ambiguities,

vagueness, indeterminacy or conceptual lacunae coexist and may spur anomaly within the same legal system. Problems exacerbate when multilingualism and translation intervene. This is because "the language of law is bound to the inner grammar of legal systems, cultures, and mentalities, which in turn impede communication in words that are borrowed from another legal system, culture and mentality" (Grosswald Curran, 2008: 678). All legal systems, alongside their culture, customs, ideologies and mentalities, have developed languages that are uniquely equipped to fit their original environments and serve particular scopes. "Finally and crucially, the status and role of language are not the same in every society and legal order" (Grosswald Curran: 679). Even in those cases where concepts are translated, or rather, transplanted, from one legal linguistic frame to another, there can be no promise that they retain their original meaning and continue to serve similar scopes or fulfil identical functions. On the contrary, the more likely scenario is that the host legal culture tailors borrowings so as to fold onto the new system and be implemented efficiently within the new legal order. But, even under these circumstances "the process of translating those concepts which pertain to imported law into the language of the importing society [can often be] a source of failure. [This] is either due to the fact that [the imported concept] cannot capture the whole semantics and transport the entire cultural baggage of the exporting society into the importing one, or due to the fact that, quite the opposite, it carries along too much cultural baggage into the importing society" (Guțan, 2014: 296-297).

Meanings are deeply woven into legal fabric, they are intimately connected to the justice system of the state and, last but not least, they are the product of those individuals who represent and mould the legal system and who, in turn, adhere to particular beliefs, ideologies or philosophies. We should not forget that

> Law is a social phenomenon having multiple (or comprehensive) philosophical, theoretical and historical roots. Meanings in law have cultural nuances according to the systems of lifestyles, values, traditions and collective memory that are being

> examined. Law conveys testimony of the past but also an ongoing social process that could be adjusted within space and time […]. Likewise, law reflects human values, practices, and aspirations of changes as its boundaries are flexible and in constant evolution. As expressed by Cao […] 'law and legal language are system-bound, that is, they reflect the history, evolution and culture of a legal system' (Wagner & Gémar, 2013: 222).

Issues related to translation and indeterminacy in law will be closely analysed in the following chapter. Nonetheless, what is important to remember now is that one of the recurrent concerns raised by both legal theorists and practitioners refers to the act of "materializing legal knowledge from one language to another" (ibid: 216). One of the reasons that flare up such concerns is linked precisely to the above mentioned idea, namely that the language of law interweaves with all legal and non-legal peculiarities of a state and/ or community. Moreover, neither language and law, nor culture and society in general are fixed concepts. Thus, languages are dynamic, they are replete with borrowings, polysemy, jargons, neologisms, vague concepts and 'notions floues' (Stoichițoiu-Ichim, 2006: 151); law cannot be conceived in vacuum, in harm's way from cultural, ideological, socio-political and economic influences; cultures, including legal ones, (e)merge, die, are reborn and (re)interpreted from epoch to epoch; and societies will always be as fickle as the individuals who make them up. Consequently, "materializing legal knowledge from one language to another is not a static mechanism, but rather a living process deriving from the 'living monster', which is law [...]. Materializing notions, concepts and language into another linguistic framework implies 'an overlapping of segments of disciplines, a recombination of knowledge in new specialized fields' [...]. Besides, consciousness, motivation, and social perception play an important role in interpreting the truth of statements, in construing concepts, notions and language" (Stoichițoiu-Ichim, 2006: 151).

Legal language cannot claim the power to fully contain and control law into a clearly delineated framework, even less so if we speak about a multilingual legal setting, such as we encounter in the European Union. The dynamics of law intertwine with those of the

world. In multilingual law, "[t]ranslation is both de-coding and re-coding, identifying and constructing meaning. Translating between languages involves vast networks of associations of a word in one language that cannot all be transposed into the other, such that there must be loss of connotative significance in the process. At best, translation achieves an overlap of some meanings between two domains, as in an intersection of sets, but not total overlap, as in a union of sets" (Grosswald Curran, 2008: 679). To speak of absolute success in terms of the transfer of legal meaning from one language to another, and implicitly, from one culture to another, would be proof of naivity. A similar mistake would be to ascertain a *word-for-world* scheme, in which case a legal concept or notion would be capable of flawlessly conveying the whole array of subtleties that form the corpus of a specific legal system. A certain higher or lesser degree of vagueness or ambiguity, be it intentional or unintentional – we ought to constantly remember that "every rule, every law is the result of a political discussion and decision process" (Sandrini, 1996: 344) – exists within the same legal language. It is thus why meanings tend to fluctuate and become unstable even if used within the same legal system and all the more if they are used within a multilingual context.

Legal Translation and Indeterminacy in European Law – Supranational Concepts

The act of translation in language and law in a multilingual context is one of so much intricacy and complexity that one might not be too far-fetched if they were to label it as unfathomable. What then does the translation of law in the European Union actually mean? The answer is not easily sketchable. Thus, in handling multilingual legislation one faces the daunting task of transferring legal knowledge from one peculiar, inherently indeterminate and dynamic language to another on the basis of conscientious manipulation of polysemic, often untranslatable concepts, inextricably linked to particular, frequently hybrid legal cultures, families and traditions and carved deep into the history of nations and identities, "in respect

for the equality and sovereignty of individual State Members"(Solan, 2009: 279), and of assembling that legal knowledge into a clear, unequivocal form that would facilitate objective interpretation at national level and would lend itself to "convincing, acceptable and transparent legal reasoning" (Paunio, Lindroos-Hovinheimo, 2010: 395) whilst bearing in mind the many and various groups of people whom that particular legal knowledge will eventually reach to…

This seems to be a nightmarish endeavour, and it truly is a challenging one. In Comparative Law and Language, V. Grosswald Curran splendidly asserts that "translating the foreign into the familiar ends by clarifying the familiar that one discovers also to be foreign" (2008: 697). A ceaseless struggle with language, law, oneself and the others is what fundamentally characterises translators' work. This is due to the fact that, "[i]n their ungovernable and independent paths, languages resemble nothing more than law, whose history also is one of resistance to stasis in meaning. As the human who operate legal institutions change in beliefs and values over time, the subtextual meaning of law drifts with them" (Grosswald Curran, 2008: 696). By definition, a translator is not only one who simply "translates or renders from one language into another", but one who "transforms, changes or alters, […] who transfers or transports" – *Oxford English Dictionary*. In spite of manifold hindrances posed by the responsibility to translate in a multilingual legal setting, the translator must ensure the faithful transplantation of legal information from a source into a target language. Scepticism is, nevertheless at large here. Due to the 'open-endedness of language', i.e. "no means exists to definitely pin down the meaning of words"(Paunio & Lindroos-Hovinheimo, 2010: 395), legal concepts are brought down from the *Heaven* where they exist in "absolute purity, freed from all entangling alliances with human life"(allusion to Von Jhering, 1912: 245 in Cohen, 1935: 809) to an earthly struggle of the many actors of the European Union, be they drafters, translators, lawyer-linguists, interpreters or national judges, for legal common sense, each one of the above mentioned being equally entitled to accessing and reading EU documents in an official or working

language of their own choice. In this context, ambiguities occurring in the translation of legal language on the one hand, and its interpretation on the other hand, are bound to flourish and, most importantly to put at risk the "motto of the European Union – unity in diversity – [otherwise] founded on a contradiction that forms the conceptual backdrop of the EU's policy-making activities" (Studer, 2012: 115).

Indeterminacy lies at the forefront of concerns in European multilingual law [*Black's Law Dictionary* defines 'indeterminate' as "that which is uncertain, or not particularly designated." *Oxford Dictionary of Current English* refers to the same term as that which is "not fixed, vague or indefinite, with no fixed value; that cannot be determined, decided or settled, especially of a dispute, the impossibility of determining in advance" (in Otakpor, 1988: 112).] Languages are inherently indeterminate, and legal language makes no exception from the rule. So what precisely brings about the need to understand and resolve indeterminacy in legal language? The answer is simple. If in common language misunderstandings and indeterminacies, or ambiguities can be easily negotiated and superseded, in a legal system and all the more in an international legal system, language is bound to produce legal effects if misunderstood or ambiguously formulated. One should not belittle the fact that "linguistic guarantees are a precondition of full enjoyment of the right to a fair trial. Although the right to use one's preferred language is not recognised as a universal human right, it should be underscored that the right to a fair trial extents to linguistic guarantees with regard to proceedings" (Łachacz & Mańko, 2013: 77).

Supranational concepts, i.e. those concepts which belong to the jargon of the European Union foster indeterminacy and ambiguity, thus leading translators astray in their attempt to find correct equivalents used at national level. It is often so that legal concepts generated at European level do not have true corresponding equivalents, i.e. legal concepts that occupy identical positions and perform identical functions within the national legal system that has adopted them. And even in those cases where equivalents do exist,

"it may be misleading to translate the generic term by the 'correct' specific term used at national level […]. [U]sing a correct but nationally specific term could lead to confusion; a supranational term which has no immediate national 'meaning might be preferable. This is because the text is about a single supranational concept, not the national equivalent (or rather: [28] slightly different national equivalents, one for each of the [28] Member States)'"(Wagner, Bech & Martínez, 2002: 64). Two examples of such "genuinely 'European' concepts" can shed light in the matter. One refers to the highly controversial 'principle of subsidiarity', which can be etymologically traced back to the German '*Subsidiarität*' "(1809 or earlier in legal use; 1931 in the context of Catholic social doctrine, in §80 of *Rundschreiben über die gesellschaftliche Ordnung)" and which "has been the* executive principle of the European Union since the Maastricht Treaty of 1992" – *Oxford English Dictionary* [in *Fact Sheets on the European Union, The European Parliament*, 2016, subsidiarity is defined as: (1) *[t]he general aim of the principle of subsidiarity is to guarantee a degree of independence for a lower authority in relation to a higher body or for a local authority in relation to central government. It therefore involves the sharing of powers between several levels of authority, a principle which forms the institutional basis for federal States*; and (2) *[w]hen applied in the context of the European Union, the principle of subsidiarity serves to regulate the exercise of the Union's non-exclusive powers. It rules out Union intervention when an issue can be dealt with effectively by Member States at central, regional or local level and means that the Community is justified in exercising its powers when Member States are unable to achieve the objectives of a proposed action satisfactorily*].

As all European legal coinages the expression does not enjoy equivalents in the legal systems of the Member States, and if one does indeed come across terms that send to the same concept, one should carefully analyse contexts and preferably avoid too narrow, perhaps politically-sensitive phrases – compare, for instance 'subsidiarity' with the English language 'devolution', "which means the same, [but would not be preferable to use] because in the UK 'devolution' is conventionally used to refer to relations with Scotland, Wales and Northern Ireland" (Wagner, Bech & Martínez, 2002: 64). Furthermore,

the concept of 'subsidiarity' is somewhat of an intricacy in itself, its ambivalent meaning conveying obscured 'conflicts and contradictions'. Thus, as one author points out, "[o]n the one side it means bringing assistance to somebody, on the other side means preserving and even improving his autonomy"(Donati, 2009: 212). In the European context, the principle is a source of continuous tension due to its direct connection to the regulation of authority inside the Union. Thus, since its introduction in the Maastricht Treaty, though in theory "intended to quell fears of centralization", the concept of 'subsidiarity' has made nothing but leeway for anxieties "due to disagreement about formulations and possible institutional roles [and to the] strikingly different institutional implications regarding the objectives of the polity, the domain and role of subunits, and the allocation of authority to apply the principle of subsidiarity itself" (Donati, 2009: 213).

Attention can further be drawn to the intensely used, nonetheless airy expression 'acquis communautaire'– or 'Union acquis', as it is known after the entry into force of Lisbon Treaty [although, confusingly, nonetheless important to remember, "[t]here may be an exception to that rule if the use of the expression 'Community law/ acquis' is indispensable, in particular in order to stress the difference from a provision under the law of the European Union in its former sense, as a provision concerning the second or third pillars", *my emphasis*, *InterActive Terminology for Europe*. Web. 30 Apr. 2015] – that seems to be on everyone's lips nowadays, a type of smart formula that serves as substitute for other existing translated versions, namely EN 'Community acquis' or GE 'Gemeinschaftsrecht'/ 'gemeinschaftsrechtlicher Besitzstand' (labelled as too narrow and therefore not to be used (ibid.), although the official glossary presents 'gemeinschaftsrechtlicher Besitzstand' and 'acquis communautaire' as equivalents). Unfortunately, it is the type of smart formula that, as one author explains, "does not mean anything to outsiders [for instance, to] American readers, [can also] be puzzling in speeches (à qui? AKI? Aquî?) [and is] confusingly spreading into derived expressions, such as 'the Schengen *acquis*'"(Wagner et. al., 2002: 64).

Concluding Remarks

Neither law, nor the concepts that it makes use of, must be understood in utter isolation from wider socio-political, economic, cultural and human networks. Supranational concepts, much like all 'contested' concepts, become so due to the fact they are the construct of law, which in turn is a man-made creation. One anonymous interviewer at HU, Berlin correctly affirms that

> […] a concept becomes contested, but not because it is *ambiguous*. […] I wouldn't use the term ambiguous, but rather say that people have different interests. We do not refer to words as being *ambiguous* or *vague* but to people as having different interests. It's because a concept has enough elasticity to accommodate people with very different interests [that we name it *ambiguous*]. And that's how it is channeled up into the Courts, because finally these interests are so in contestation that it becomes a Court issue. What one has to know really is how these institutions work and how people can use institutions to promote their interests. And the language relates to the institutions to a large degree […].

Likewise, legal indeterminacy must be comprehended not in isolation from non-legal phenomena, but rather as strongly tied up in the complexity of the world. To grasp and resolve indeterminacy in law means to analyse it in relation to law, language, society and individuals. Thus, "the questions of legal indeterminacy could be posed and answered correctly only if we proceed from the premise that it could not develop or exist in a social vacuum, and that it is built on particular ideological and value oriented foundations. A foundation in which language can be both vague and ambiguous; in which our ordinary intentions and desires are not easily discernable, and above all a universe in which adjudication is eminently political" (Otakpor, 1988: 120).

In a multilingual European Union – even more so due to recent migration waves, which may already pose questions regarding possible linguistic and semantic mutations in the near future – problems such as the legal indeterminacy, vagueness or ambiguity of

language, concepts and notions can only be solved provided that both legal and non-legal phenomena are taken into account, and that new interdisciplinary approaches are brought to the forefront of analyses. It is obvious that legal language alone, due to its natural propensity for indeterminacy and to its linkages to particular legal cultures – we should not forget that "legal concepts are embedded in a specific working environment and in national legal systems" (Sandrini, 1996: 344), cannot account for the construction of meaning in law. Legal meanings will ultimately be the sum of all deliberations, be they language related, or otherwise connected to the wide spectrum of worldly influences.

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References

1. Dănișor, D. C. (2011). *Juridicizarea conceptelor* [*Juridicisation of Concepts*]. *Dreptul*, 3, 52-69.
2. Chauteau, Céline. "The Principle of Subsidiarity." *Fact Sheets on the European Union, European Parliament*. Web. 5 Feb. 2016.
3. Cohen, F. S. (1935). Transcendental Nonsense and the Functional Approach. *Columbia Law Review*. 6(XXXV), 809-849.
4. Donati, P. (2009). What Does "Subsidiarity" Mean? The Relational Perspective. *Journal of Markets & Morality*. 2(12), 211-243.

5. Grosswald Curran, V. (2008). Comparative Law and Language. In R. Zimmermann and M. Reimann (Eds.), *Oxford Handbook of Comparative Law* (pp. 675-707). Oxford: Oxford University Press.
6. Guțan, M. (2014). *Sisteme de drept comparate: introducere în teoria generală a dreptului comparat* [*Systems of Comparative Law: Introduction in the General Theory of Comparative Law*]. București: Hamangiu.
7. Łachacz, O. & Mańko R. (2013). Multilingualism at the Court of Justice of the European Union: Theoretical and Practical Aspects. *Studies in Logic, Grammar and Rhetoric*. 47(34), 75-92.
8. Legrand, P. (2013). 'What Can You Say, Words It Is, Nothing Else Going.' *Int J Semiot Law*. 4(26), 805-832.
9. Otakpor, N. (1988). On Indeterminacy in Law. *Journal of African Law*. 1(32), 112-121.
10. Paunio, E. & Lindroos-Hovinheimo, S. (2010). Taking Language Seriously: An Analysis of Linguistic Reasoning and Its Implications in EU Law. *European Law Journal*. 4(16), 395-416.
11. Sandrini, P. (1996). Comparative Analysis of Legal Terms: Equivalence Revisited. In Ch. Galinski and K.-D. Schmitz (Eds.), *Terminology and Knowledge Engineering* (pp. 342-351). Frankfurt am Main: Indeks Publishing House.
12. Solan, L. M. (2009). The Interpretation of Multilingual Statutes by the European Court of Justice. *BROOK. J. INT'L L.* 2(34), 277-588.
13. Stoichițoiu-Ichim, A. (2006). *Semiotica discursului juridic* [*Semiotics of Legal Discourse*]. Ediția a II-a. București: Editura Universității din București.
14. Studer, P. (2012). Conceptual Contradiction and Discourses on Multilingualism. In P. Studer and I. Werlen (Eds.), *Linguistic Diversity in Europe* (pp. 115-136). Berlin/ Boston: Walter de Gruyter GmbH & Co.
15. Wagner, A. & Gémar, J.-C. (2014). Materializing Notions, Concepts and Language into Another Linguistic Framework. *Int J Semiot Law*. 1(27), 215-229.
16. Wagner, E., Bech, S. & Martínez, M. (2002). *Translating for the European Union Institutions*. Oxon: Routledge.