Published in LSP & Professional Communication Volume 7, Number 2, Winter 2007 - ISSN 1601-1929

ARTICLES:

Contract Language in Spain and the United States. Reflections on Legal Interpretation, Culture and Thought

María Ángeles Orts Llopis
University of Murcia
Spain

1. Introduction: Spanish and American law as cultural, anthropological products

The aim of this paper is to describe the differences between the Spanish system of law as a civil system, and the American system of law as common law one, specifically in the area of contractual texts. The possibility of inter-legal communication across barriers in a global world has to take into account what Vogt has called the 'Anglo-internationalisation of business', with major impact over the last two decades and 'unlikely to change in the near future' (Vogt, 2004:13). The economic, social and political pre-eminence of countries like USA or UK has made the usage of public and private legislation instruments like world agreements universal (UNCTAD, ICC and UNCITRAL conventions), and this assertion can also be applied to international contracts in the form of INCOTERMS, for example. Therefore, teaching English with Legal Purposes to lawyers, translators and philologists has become a necessary practice, which involves the learners' understanding of differences and subtleties between the legal tradition of the English-speaking world and, in the Spanish context, the Continental law, which also constitutes the basis of legal practices in many countries of the EU.

This paper will try to prove that the awareness of not only different types of discourse, but mainly of different cultural patterns is of the essence when teaching English with Legal Purposes to Spanish students. These two means of communication –legal English, legal Spanish- pertain to different systems of law, and have to be explained as cultural products. Consequently, I will be

contemplating these two systems of law as cultural products, and, hence, will deem their sources and hermeneutics, or interpretive mechanisms, as influenced by the patterns of thinking of each civilization, their perception of the external and conceptual world. Geertz declares that (1983: 4): "the shapes of knowledge are always ineluctably local, indivisible from their instruments and their encasement". There are not one, but many models of cultural knowledge; a range of culturally-shared schematised systems that exist side by side with other cultural systems, encasing other subsystems in their turn, as encountered in the different scopes of human experience. These schematizations are reinforced and perpetuated through language, as the tool that orders the way in which we arrange our experience of the world. In Šarčević's words (1997: 13): "despite fundamental similarities among its constituent legal systems, a legal family does not correspond to a biological reality".

Indeed, legal models also change from culture to culture, as culturally-bound sets of tacit constructs. Accordingly, legal systems are not uniform and constant for each and every civilization, but different from one another and in tune with a whole array of conditions whereupon they evolve and which frame them as unique and peculiar to each legal tradition. Just as there is not one but numerous languages, legal models also change from culture to culture, through history, through political and economic changes; they are likely to be more static in some cultures, more pliable in others, depending on a whole array of conditions whereupon they evolve and that frame them as unique and peculiar to each legal tradition

Tönnies (1957 in Steward and Bennet, 1991: 7) distinguishes between and Gemeinschaft and Gesellschaft societies. In what he terms as a more primeval Gemeinschaft society, social ties are based on emotion and sentiment, and identity is bound up with belonging to the community. Its members belong to a world of relationships, more sensitive to social context as a whole, where functions in the groups are shared widely among members, than in groups composed of analytical persons. Gesellschaft societies are a later, more sophisticated development, where formal, contractual ties ─based on rational agreement and self-interest and regulated by law─ support impersonal social relations.

For Steward and Bennet (1991: 11), the American thinking is typical of a Gesellschaft society. Epistemology in the United States is analytical, procedural, and its inductive style is represented by the generation of models and hypotheses based upon empirical observation that disregards information by word of mouth or gossip. It is an operational, pragmatical style of thinking, leading to stress on consequences and results and concentrating in

decision-making and problem-solving techniques. It is the individual who has the power to affect her environment. In contrast, these researchers (1991: 9) talk of the European Continent as favouring "declarative" knowledge, the type of epistemology that describes the world, rather than acts on it. The pragmatic approach of the Americans is very different from the European style, which emphasises theory and organic concepts. Scientific work is considered as the elaboration and confirmation of previous theories, rather than on innovations, and concepts are living realities (Martinedale, 1960:91 in Steward and Bennet, 1991). Within this European context, Spain shares many of the characteristics of a declarative epistemology. In addition, it also seems to belong to a more developed kind of Gemeinschaft society that Steward and Bennet (1991: 7) define as a "relational", "interpersonal" one, with a high degree of sensitivity to context, relationships and status (Orts Llopis, 2006: 294).

2. Law and the search for knowledge: epistemological differences in legal traditions

As suggested above, the Spanish and the American legal traditions come from very different epistemological attitudes towards thought and science. From the beginning of the Modern Age, Bacon's Novum Organum (1620) - an heir to Aristotle's Organon- as well as Newton's work (1642-1727), constitute landmarks for the inception of English Empiricism, subsequently developed by Locke (1632-1704) and Hume (1711-1776) and preceded, in turn, by the nominalist William of Ockham (1290-1350). "Ockam's Razor" was a common, powerful principle in medieval philosophy. It denied the existence of universals, defining them as termini concepti, or final terms that signify individual things. Actually, in the empirical search for knowledge, raw data are primordial to the existence of a thing, and the validity of inferring the existence of universals from individuals is out of the question. Empiricism as a whole displaces the search for logic, adopting inductive, operational patterns of thinking instead, with little attention paid to the overall framework in which people's actions take place. The hunt for truth is based on objective realities, from which measurable results can be attained (Moya and Novella, 2003:117, 205).

A blatantly opposed attitude to sciences was developed in the European tradition of thought. Descartes's both Discourse on Method and Geometry (1637) endeavour to go beyond universal mathematics, in the attempt to discover the nature of intelligence. The Cartesian tradition of thought, taken up by Spinoza (1632-1677) and Leibniz (1646-1716), asserts that, in principle, all knowledge, including scientific knowledge, can be gained with reason alone. In fact, the Continental European deductive and more abstract style of thinking gives priority to the conceptual world and symbolic wisdom,

attaching primacy and reality to ideas and theories. Deductive thinkers are likely to have more confidence in their theories than in the raw data of empirical observation, so it suffices, for their epistemological purposes, to show one or two connections between their concepts and the empirical world (Moya and Novella, 2003:159-231).

Epistemological postures have also had an influence in legal traditions. Radbruch (1958 in Ghirardi, 2003: 20) points out that Oxford and Cambridge, embracing British Empiricism, endeavoured to study the quadrivium (arithmetic, geometry, music, astronomy), whereas the Sorbonne tacked the trivium (grammar, rhetoric, dialectic). Common law was thus influenced by Roman law in its most classic methodology and spirit, and Continental law subsequently pursued the Justinian code, the Corpus Juris, and its subsequent modifications. In the context of Continental law, it is easy to see how in the light of these statements and of our reasoning above, European Formalism developed into legal dogmatism in the second half of the 18th century. During this period, jurists started to develop ideal models of perfect, complete, universal legal systems. During the 19th century, the codification of civil law took off, with the paradigm of the 1804 French Civil Code, or Napoleon Code, which is the basis of Continental law today.

Nevertheless, to fully understand civil law one must realize that Continental Europe received civil law from ancient Rome, but did not retain it in the same way everywhere (Tetley, 1999:596). Scotland, for example, retained it without codification, and, outside Europe, other places of the world like Quebec or Louisiana developed their own codes. In Europe, codes like those of unified Italy (1865), Portugal (1867) and Spain (1889) were directly influenced by the French Civil Code, which was called the Code Napoléon because of the personal interest of the Emperor to reflect the achievements of the French Revolution. The philosophy underlying civil law during the drafting of the Code was to provide stable societies with comprehensive sets of codes adopted by legislature, set forth in a logical scheme, addressing all issues. Hence, Formalism, as an extreme end of civil-law philosophy views law as a coherent, economic and precise system of norms, from which all solutions can be drawn. The only valid source of law is legislation, by virtue of springing from a competent legal authority. Jurists, and not judges, are the sole drafters and interpreters of law, the only hermeneutical method is deduction, and the judge's only function is discerning between the inclusion or exclusion of the case under the norm.

In contrast, the Common law is the legal tradition that developed in England from the 11th century onwards. It is the basis of law, not only for England, Ireland and Wales, but also for forty-nine U.S, States, Canada and the

Commonwealth. This legal system corresponds to the reality of a dynamic world, where social changes take place continuously and where an unwritten, flowing, flexible system is preferable. In connection with British Empiricism, it gave rise to legal realism, a trend that denies general norms the character of a paradigm pre-existent to judicial decision (Gómez and Bruera, 1995: 96). According to these authors, the legal Realism of Ross, Pound and Cardozo reveals a sceptical attitude towards the value of norms. It is a behavioural trend that defends the legal system is made up of a group of specific court decisions, the only source of law being precedent. Judges are the creators of law and have the widest freedom to interpret the case.

As Gomez and Bruera state (íbid), the extreme positions described above – Formalism and Realism- have a very strong ideological flavour and constitute opposed overstatements of the juridical reality. On the one hand, the civil law tradition arises from the articulation of rules by an absolute monarch. In the countries where Formalism develops, juridical dogmatism has been originated and developed in the context of a strong legislative power, in opposition to a weaker judiciary. According to Tetley (1999: 591), civil law judges follow Rousseau's theories that the State is the source of all rights under the social contract. The Common Law tradition itself evolves from the sheer constraint of the monarch's powers, in opposition to which the people takes initiative and elects a strong judiciary power. Tetley (íbid) points out that English judges favour Hobbes' theory that the individual agrees to convey the State a certain amount of limited rights. Realism, as an extreme version of these postulates, defends the position of judges as the creators of law and recognises precedents as the only valid legal source.

3. Different philosophies, different systems, different features in the interpretation of legal language in America and Spain

The epistemology of each culture is, indeed, the origin of different attitudes about the nature of law, the role of law in society, the organization of the legal system in each legal tradition (Merryman, 1985: 1). Ostensibly, the Continental and Common Law both belong to the ample family of Western law, as opposed to Moslem law, Hindu law, Jewish law, the laws of the Far East, the African tradition and the Scandinavian one (Merryman, 1985:5). As Tetley himself points out (2003: 7), mixed legal systems exist where the law in force is derived from more than one legal tradition, with different legal jurisdictions, different court systems, and different languages. Quebec or the Egyptian legal systems would be examples of this phenomenon, and the European Union –a central system with a polyphony of singular States- is becoming a peculiar one as well, where Common and Continental law are forced to coexist (Tetley, 2003:24-26).

Even if functionally they are relatively similar, the Common and Continental law traditions are very different in nature. In tune with the epistemological context in which they evolve, the Common law tradition is based upon fact, the Continental one on legal principles. Accordingly, Common law judgements extensively expose the facts, the judge and jury actively participating in seeking evidence and examining witnesses. Contrarily, in the inquisitorial arrangement of the Continental process the proceeding culminates in a trial dominated by lawyers with the judge as a referee, and decisions first identify the legal principles that might be relevant, verifying their application if prominent. In addition, in the descriptive nature of Continental law, the judge uses her deductive reasoning to determine the applicable sections of the Code, and remedies not contemplated within the written text are inadmissible. In the empirical context of the Common law, though, the judge uses her inductive reasoning about facts, applicable prior cases and the relevant law to reach a decision, with the freedom to decide an equitable, fair remedy, even if not contemplated before.

Traditionally, legal language has always been considered difficult, prolix and far-fetched, being sometimes rejected by users and institutions alike as an unreadable and even decadent register. These complaints are widespread and could be applied to the language of any legal system in the EU, both in the Continental and Common law areas.

However, and even if law is a profession of words in any system, the truth is that the Common law one possesses some features that make it easy for language per se to be a real issue of discussion. Regarding interpretation, law is based on legislation and codes in the Continental systems –scrutinised in a very general way and wide scope – when applying law to life. In contrast, the Common law system is one based upon empirical postulates: cases are applied, rather than legislation. This implies that the judicature is awarded a very special position in the scheme of things, as the figure of the judge is supposed, not only to interpret law, but to make law when adjudicating. In doing so, the judicial figure has to separate the ratio decidendi, or main arguments of the previous case at hand –which are legally binding to him– from the obiter dicta, or additional comments made by the previous judge, which are not to be followed compulsorily by him/her when deciding the case. This way of ruling brings along a very complex hermeneutic process that is very often one of construction (Alcaraz, 1994), that is, a process of granting legal meaning where there was previously none. This construction stage very often amounts to be a veritable linguistic analysis (Solan, 1993: 28), since lexical, syntactic as well as pragmatic exercises are required on the judicial part in order to extract that meaning and its right implementation to

real life. In this kind of interpretive process of adjudication every word counts, and it is precisely the tension between precision –to be as accurate as possible– and flexibility –to be able to capture every possible contingency in life affairs– which, ironically, makes legal language so difficult to understand.

Under the Continental codified legal system, and in tune with the organic, theoretical tradition of knowledge, legislation constitutes the primary source of law. Civil law codes and statutes are concise, stating principles in wide, general phrases. These principles need not be explained, as they are supposed to be succinct declarations of the spirit of the law and not to be read restrictively. Hence, as Solan establishes (2005:77), legal systems based upon Roman law are more laid back when having to apply contextual interpretation to legal texts, and language, even if playing a relevant role, is less central in the hermeneutical process. This allows courts to resort to the purpose of the text without the same suspicious attitude that prevails in the hardest Anglosaxon Textualism. Nevertheless, even if such reasoning about the interpretive processes of these systems and their epistemological origins remains true, it is also a fact that no pure, extreme positions exist within a legal tradition, untangling thus the paradox that in an empiricist, realist context like that of Common Law, formalist streaks also exist that prevent the interpretation according to context. On the other hand, it may also result somewhat contradictory that in an organic, theoretical, indeed formalist Continental Law context, some empiricism is also allowed when the application of the law is susceptible to be completed by extra-linguistic matters when the text is not sufficiently clear.

In addition, looking at the anthropological analysis of both traditions, my study assumes that Spain is a case of high contextuality, indirect style, whereas the GB and USA are the opposite case. Indeed, the way in which these different cultural approaches are envisioned has very much to do with the way in which the legal traditions in each of these countries articulate their law and its interpretation. Reed & Hall (1990) and Schuster & Copeland (1995) talk about low-context, direct-style cultures and about high-context, indirect style ones. In the first group, the final outcome of a negotiation is usually specific and concrete, as the ultimate aim is for the contract to contemplate every possible contingency that may take place in the course of its performance. In contrast, in high-context cultures, the approach is much wider in scope, as drafting clauses in a very detailed way would prove to be a hindrance for the flexibility of agreements developing in the ever-changing circumstances of real life. Specifically, Edward Hall (1976, 2000), stated that all cultures can be situated in relation to one another through the styles in which they communicate. Essentially, high-context communication involves

implying a message through that which is not uttered. This includes the situation, behaviour, and para-verbal cues as integral parts of the communicated message. High-context cultures have a greater amount of shared knowledge. As a result different assumptions are made as to the amount of information a verbal or written message carries. They are characterized by extensive information networks among family, friends, associates, and even clients. Their relationships are close and personal. They keep well informed about the people who are important in their lives. This extensive background knowledge is automatically brought to bear in giving meaning s to events and communications. Nothing that happens to them can be described as an isolated event; everything is connected to meaningful context.

People in low-context cultures, on the other hand, tend to compartmentalize their lives and relationships. They permit little "interference" of "extraneous" information. Thus, in order to give detailed meaning to an event, they require detailed information in a communication. The "context" must be explicit in the message. According to Reed Hall and Hall (1989) context is probably the most important cultural dimension and the most difficult to define. It refers to the entire array of stimuli surrounding every communication event - the context - and how much of those stimuli are meaningful. One might expect, therefore, that low-context communications are unavoidably wordier, or more prolix, than high-context messages, since they have to carry more information. In fact, the opposite is sometimes true: low-context cultures use language with great precision and economy, as every word is meaningful. Contrarily, in high-context cultures, language is licentious: since words have relatively less value, they are overspent.

High-and low-context cultures have radically different views of reality. And the further apart they are on the context scale, the more difficult it is to communicate between them. This applies not only to different primary cultures, but also between different professional and functional cultures within a single primary culture. Indeed, context differences between work functions can lead to dire misunderstandings. These differences in communication styles across cultures are expected to pose challenges to the ways in which people in business communicate their messages most optimally.

4. The interpretation of contractual language in Spain and the United States

Spain has a compact body of rules for contract, but legislators and drafters try to make their assertions as general as possible, and the attempt to cover every contingence and detail of reality and its multiple complexities is out of the

question. In contrast, in the ontological interpretive technique of the Common Law of GB and USA every word counts, and it is the aim of the contract to be able to capture every possible eventuality that may arise in the course of the deal. In the high-context, rationalistic tradition of Spanish law, legislators and drafters try to make their assertions as general as possible, and the attempt to cover every contingence and detail of reality and its multiple complexities is out of the question. Indeed, due to the tradition that features it, the Spanish contract is, like its Continental fellows, intentionally open-ended and generalist. As Bender points out, legal texts in the Spanish scope have to be interpreted in their ordinary meaning, "but also in relation to the context, the historical and legislative background, and the social reality of the time at which they are to be applied, with particular attention to their spirit and aim" (Bender, 2003:2). This heavy intentional, indeed contextual, accent implies that texts are construed as a whole, analysed in the light of the bulk of their overall meaning and drafted so as to adapt flexibly to the desired results in each case. In this panorama, overgeneralisation is a bonus, not a liability, of the system. To achieve the elasticity required, texts have to be composed in a way that allow for some vagueness to occur. This is not to say that hermeneutics are loose as far as the Spanish legal text is concerned. In fact, vagueness and ambiguity problems provoke the concern of some scholars (Iturralde, 1989: 35). In this sense, the norms to interpret statute law within the Continental system (Wroblewski, 1988 in Iturralde, 1989:30) , admit that every word is potentially vague and, even when it is not, it may become a source of doubt in its future applications. Thus, a system of legal definition has been developed to gauge meaning in those cases where clarity is at stake, even if the formalist tradition of civil law imposes that legal texts have to be clear enough, that definitions have to be provided by legislators, and that the extralinguistic context will play a helping role in case of natural fuzziness.

Contrarily, in the inductive legal tradition within which Common Law exists, legal interpretation is mainly literal and based upon a word-by-word construction, as the literal and golden rules of interpretation command. The ontological interpretive technique of the Common Law of GB and USA grants that every word counts and it is the aim of the contract to be able to capture every possible eventuality that may arise in the course of the deal. In this legal tradition every word has its own specific weight, and, consequently, to construe law and subsequently apply it, words have to be dismembered, pulled apart, so as to disambiguate the text. Only then, is the relationship between context and cotext to be regarded. Hence, English legal texts have to resort, ideally, to autonomy of interpretation. This fact implies that the text itself is supposed to supply all the data for its own clarification and subsequent application. Literal, or textual interpretation does not have to pose problems of interpretation necessarily.

Nevertheless, things seldom take place ideally in this world and meaning in the Anglo-Saxon legal text is, more often than not, uncertain, as paronyms and legal homonyms are usual characteristics of the lexicon within these systems. Ambiguity can also be seen as a resource of the system in order to achieve pliability and such is the case with famous and recurrent adjectives like reasonable, constructive, due, actual or fair, which act as wild cards to grant latitude of judgment to judges. According to Tiersma (1999:80) this kind of terms permit legislation not to "articulate in advance exactly what is included within it (…). It permits the law to adapt to differing circumstances and communities within a jurisdiction (…) to deal with novel situations which are likely to arise in the future".

The rules that regulate contractual relationships in the legal framework in the United States on the one hand, and those in Spain, on the other, are very different in nature. Indeed, the Civil Code of Spain allows for a contract to be construed according to the intent of the parties entering the agreement, whereas, according to Solan (2005:78) in the United States the parol rule forbids courts to make use of evidence other than the language of the contract itself when the terms are unclear. Solan himself advocates for contextualizing hermeneutics to be implemented in order to avoid vagueness, stating that some states in the country are more lenient than others in this matter. Still, and with the blessings of New Textualists like Justice Antonin Scalia (Solan, 2005: 85), who regard the language in the text sufficient to reach fair decisions, the parol evidence rule still applies in most cases.

5. Some final words. The relevance of our study for the understanding and application of legal English

The prominence of this analysis lies in the recent debate and interest that has arisen with the upcoming of "mixed jurisdictions" as a result, firstly, of the European Union bringing together many legal systems under the same single legislature (Tetley, 2003:25,26). But most importantly, "mixed jurisdictions" also occur because of what has been termed as the "Americanization of law" (Audit, 2001:1). The Western Bloc promotes and supports globalization and a restrictive theory of sovereignty, being the US itself the proponent of the development of multilateral institutions like the United Nations, the World Bank, or the International Monetary Fund. In addition, what is labelled as the Anglo-internationalisation of business has had a strong impact over the last two decades and seems to be here to stay (Vogt, 2004:13). Consequently, international transactions are carried out in English as the main communication tool, thus, litigation and legal practice worldwide are being conducted in English.

In the context of legal matter that involve mercantile transactions between individuals, it is important to note that civil law divides the areas of private and public law, focusing on rights and obligations of individuals in each area. In contrast, Common law has no wholly unitary system for prerogatives and obligations, but depends on courts (of Common law, the law itself, or Equity, fairness as applied by courts) to grant the necessary remedy, and it is only through previous cases that rights and obligations can be found. Despite these differences, never wholly understood in the multinational application of law, it is also fair to remark that when focusing on the area of contract, the universality of Merchant law has to be considered. "The phenomenon of commercial exchange spreads worldwide and goes beyond cultures and frontiers, being shaped by progress and evolution" (Duro, 1997:13, my translation). This international leaning makes commercial law different from any other aspect of juridical systems at large, and brings corporate culture and law closer, as globalization advances.

The presence of businesses in Spain and the countries with an Anglo-Saxon legal culture, specifically Great Britain and America, is a fact, as globalization has opened up these markets to international business opportunities. Accordingly, "in the light of their unique characteristics, each country must develop their cross-cultural communication skills to define their expectations and ensure that their goals are met" (Del Pozo, 2003: 117). It is a fact that these markets -which share sets of cultural and educational values- must understand each other in order to work together. In this context, the need to understand the unique quality of each legal tradition −indeed, that of Spain, in the scope of this article− and its value in the context of new transnational agreements would become more imperative than ever in order to achieve harmony, understanding and respect towards national hermeneutical tools.

References:

Audit, B. (2001) : «L'américanisation du droit : introduction», Archives de philosophie du droit, Paris, v.45 p.7-11

Bender, M. (ed) (2003): Doing Business in Spain, Lexis Nexis.

Gómez, A.; O. M. Bruera (1995): Análisis del lenguaje jurídico, Buenos Aires, Belgrano.

Del Pozo, M. (2003): «Management within Two Cultures: Bridging International Business Between American and Spanish Managers», in Hall, G. C. (ed) Doing Business in Spain, Madrid, The Commercial Embassy Publications.

Duro, M. (1997): «La sociedad anónima en Estados Unidos o la angustia del traductor en España», Trans, 2, pp. 9-19.

Geertz, C. (1983): Local Knowledge. Further Essays in Interpretative Anthropology. New York, Basic Books.

Ghirardi, O. (2003): Introducción al Razonamiento Forense. Buenos Aires: Dunken

Iturralde Sesma, M. V. (1989): Lenguaje legal y sistema jurídico: Cuestiones relativas a la aplicación de la ley, Madrid, Tecnos

Hall, E. T. (1959): The Silent Language, New York, Doubleday.

Hall, E. T. (1966): The Hidden Dimension, New York, Doubleday

Martindale, D. (1960): The Nature and Types of Sociological Theory, Boston, Houghton Mifflin.

Merryman, J. H. (1985): The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America, Stanford, Standford University Press.

Moya, E.; J. Novella (2003): Historia de la Filosofía, Murcia, Diego Marín Librero.

Orts Llopis, MA (2006): "The hidden dimension of the language of corporations in America and Spain: perspectives for inter-legal communication" RAEI Revista Alicantina de Estudios Ingleses. Francisco Yus and José Mateo (eds), pp 285-298.

Radbruch, G. (1958): El espíritu del derecho inglés, Madrid, Revista de Occidente.

Reed Hall, M.; E. T. Hall (1990): Understanding Cultural Differences, Germans, French and Americans. Yarmouth, Intercultural Press.

Šarčević, S. (1997): Approaches to Legal Translation, Kluwer Law International.

Schuster, C.; M. Copeland (1995): Global Business - Planning for Sales and Negotiations, New York, Thomson Learning

Solan, L. M. (1993): The Language of Judges, Chicago, The University of Chicago Press.

Solan, L. M. (2005): «Vagueness and Ambiguity in Legal Interpretation», in Bahtia, V. K.;J. Engberg; M. Gotti; Heller Dorothee (eds), Bern: Peter Lang.

Steward, E. C.; M.J. Bennet (1991): American Cultural Patterns, Yarmouth, Maine, Intercultural Press, Inc.

Tetley, W. (1999). «Mixed jurisdictions: common law vs civil law (codified and uncodified) ». Uniform Law Review 4. 591-620.

Tetley, W. (2003): « Mixed Jurisdictions, Languages, Legislations and Courts», 78 Tul. L. Rev. 176-218

Tönnies, F. (1957): Community and Society, East Lansing, Michigan State University Press.

Tiersma, P.M. (1999) Legal Language. Chicago:UCP

Vogt, N. P.(2004): «Anglo-Internationalisation of Law and Language: English as the Language of the Law? », International Legal Practitioner, 29, 1.

Wróblewski, J. (1988): Constitución y teoría general de la interpretación jurídica, Madrid, Ángel.

****

Published in LSP & Professional Communication Volume 7, Number 2, Winter 2007 - ISSN 1601-1929

ABSTRACT

Contract Language in Spain and the United States. Reflections on Legal Interpretation, Culture and Thought

María Ángeles Orts Llopis
University of Murcia
Spain

Keywords:
legal language, legal interpretation, legal culture, contract language, contract interpretation.

The purpose of the present article is to deal with the cultural differences rooted in the drafting and interpretation of legal contractual texts, in both Spanish and American English. To illustrate the way in which lawyers interpret language in the Spanish and the American contexts further and in more depth**,** I will start considering the different traditions of thought, which the legal cultures belong to and where their language is rooted. I will argue that Spain is part of the Franco-rationalistic approach based on deduction, abstract idealism, and spiritualism, while America is part of the inductive Anglo-Empiricist approach from naturalistic pragmatism and materialism. In doing so, the aim will ultimately be to discuss how the different cultural approaches of these two countries have very much to do with the way in which their legal traditions articulate contract law and its interpretation. This discussion, I hope, will shed some light on the terrain of English for Legal Purposes in Spain, its teaching and learning.

***