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## Chapter 2

### Law, Language and Multilingualism in Europe: The Call for a New Legal Culture\*

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#### Introduction

The unique linguistic regime in which European law operates constitutes part of the complex system of lawmaking established by the European Treaties. Until recent years, the problems and opportunities arising within the framework of the EU linguistic regime were not high on the agenda of mainstream scholarly research. Brilliant forward-looking efforts, such as those to map the development of a new European legal culture, still ignored the challenges and consequences of the choice to frame the law in a plurality of languages across the European space.<sup>1</sup> This situation is changing. The Court of Justice of the European Union (CJEU) is regularly confronted with the problem of how to deal with discrepancies among the various language versions of EU legislation. Abundant specialist literature exists on the drafting, interpretation and application of multilingual EU law in the 24 official languages of the European Union, as well as on the challenging translation issues connected to this dynamic. This chapter therefore does not intend to discuss that linguistic regime and the institutional arrangements making it

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<sup>1</sup> Scholars who disagree in other respects share at least this observation; see, for example, Kjær (2008: 150) and Glanaert (2012: 137).

possible, nor does it comment on the state of the art in the related field of translation studies concerning EU law.<sup>2</sup>

The purpose of this chapter is rather to address a point not fully elucidated so far, that is, how the culture of the community of lawyers involved in the application of European law in the Member States is changing as a result of efforts to cope with the multilingual dimension of EU law.

My argument is that there is still a tendency in Europe to succumb to general ideas about the relationship between language and the law that obscure the complex nature of the process leading to the application of legal rules. Multilingual legislation displaces theories about the relationship between law and language which rely on those ideas by pushing both lawyers and linguists to understand how (and under which conditions) normative texts drafted in different languages can result in convergent interpretative practices. Multilingual legislation thus opens the way to an understanding of law that invites less unthinking reliance on the normative virtues of texts as such, placing more attention on the normative forces and communicative practices underlying the development of the law across Europe.

### **Many Languages for a Single Voice**

EU citizens can expect to be bound by European legislation available in at least one of their languages. This expectation is based on, if not protected<sup>3</sup> by the current EU linguistic regime establishing that the EU has 24 official languages. According to this regime, EU regulations and other documents of general application must be drafted in all official languages of the EU

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<sup>2</sup> Three contributions in this volume are enlightening in this respect: Chapters 3, 6 and 9 by Robertson, Kjær and Strandvik, respectively. One may also profit from several recent publications by the DG for Translation (DGT) in the series *Studies on Translation and Multilingualism*, in particular: Document quality control in public administrations and international organisations (2013), Study on language and translation in international law and EU law (2012), Study on lawmaking in the EU multilingual environment (2010).

<sup>3</sup> The linguistic regime of EU legislation was probably designed having in mind that the Treaty is binding on the Member States, but the expectation mentioned above in the text is defensible in light of developments of the law under the Treaty. See Case C-161/06, *Skoma-Lux sro v Celní ředitelství Olomouc*, ECR 2007, I-10841.

institutions.<sup>4</sup> Granted, there are EU citizens who do not know any of the official languages in which EU law is enacted, just like there are Italian citizens who are unable to express themselves in Italian or who cannot understand legislation written in Italian. To a certain extent, therefore, the linguistic regime of the law is based on a normative presumption which does not necessarily match the facts.<sup>5</sup> When the tension between norm and facts becomes incompatible with basic human rights standards, the law must accommodate more stringent linguistic regimes tailored to the needs of the individual. In this case, it cannot resort to a fiction which presumes that the EU official languages are understood by EU citizens or non-EU citizens residing in or travelling in the EU. For this reason, Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings provides suspects or accused persons with certain basic information rights that must be guaranteed in criminal proceedings. Those rights include, among others, the right to an interpreter or a translator – free of charge – to get access to essential information concerning the proceedings in a language that he/she understands, and to enable him/her to communicate with a defence lawyer (see Chapter 13 by Bajčić in this volume). Leaving this possibility aside, by opting for 24 official languages, the European Union intends to make its law accessible on equal terms, at least in principle, in all official languages of the Union, as mentioned above.

Nonetheless, by now it is clear that, in cases where the various language versions of the Treaty or secondary legislation diverge, EU citizens have no right to rely on the provision in the language they are consulting, which is usually the language (or one of the languages) of the

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<sup>4</sup> According to Article 55(1) TEU, all language versions of the Treaty are authentic. The linguistic regime of EU legislation is set out in Regulation No. 1 determining the languages to be used by the EEC (OJ L 17, 6.10.1958, at 385), as amended (see Art. 342 TFEU). Note, however, that not all the national official languages of the Member States are EU official languages: Luxembourgish, an official language of Luxembourg since 1984, and Turkish, an official language of Cyprus, are not official languages of the EU.

<sup>5</sup> This tension has multiple dimensions which will not be discussed here, such as the claim that the EU commitment to multilingualism is undermined by a tendency to resort to one or more vehicular languages in the production of its norms.

country of their nationality or residence. The CJEU has repeatedly denied such right in several well-known cases (for details see Baaij 2012: 217–31). Given the initial premise, that is, the equal authenticity of all language versions of instruments of EU law, this outcome is bound to be controversial and difficult to reconcile with the principle of legal certainty (see Graziadei 2014; also Šarčević 2013: 4–11).

Confronted with such case law (and the problems caused by the necessity to draft EU legislation in a growing number of official languages), commentators have addressed these sensitive issues and proposed reforms with a view to providing pragmatic solutions to the problems confronting national courts and litigants under the current linguistic regime of European law.<sup>6</sup> While these proposals are being considered, the cultural presumptions about the relationship between law and language undermined by the case law of the Court, and indeed by the entire linguistic regime of EU law, should not go unnoticed. These presumptions are widely shared across Europe, either consciously or unconsciously, by academics and the legal professions (as well as by members of the public). I will briefly address them in the following paragraphs, challenging conventional wisdom by presenting each in the form of a question.

**(Legal) Language: A Badge of Cultural Identity?**

Today it would be foolish to argue that language is not a badge of cultural identity. The wealth of evidence elevating this point almost to a self-evident truth is impressive. Since antiquity, philosophers maintain that a distinctive trait of mankind is the ability to speak, thus establishing our identity as human beings by the innate ability to communicate through speech. Linguists

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<sup>6</sup> See, for example, Derlén (2011: 157), who argues in favour of establishing French and English as mandatory consultation languages, while preserving the rule of the equal authenticity of all the language versions of EU legislation. A more radical solution is proposed by Schilling (2010: 64), who suggests that there be only one authentic version of every EU enactment. This, however, would turn the clock back to the time in which a single language (Latin) dominated the communicative aspects of the law. For an evaluation of these two proposals (and a third one), see Šarčević (2013: 17–25), who proposes concrete measures for improving the quality of EU multilingual legislation in an attempt to preserve the current linguistic regime. Other scholars acknowledge the need for reform but believe no changes are imminent in the foreseeable future, for example, Bengoetxea (2011: 98–105).

show that an individual reveals essential information about his/her culture and socio-economic condition as soon as he/she begins to talk. Linguists and psychologists have debated whether and how cultural and cognitive categories are encoded by languages affect the way people think, suggesting that they think and behave differently depending on their language (Everett 2013: 255–72). Political scientists remind us that language policies adopted by States contribute to the formation of a certain collective cultural identity. Lawyers as well may regard language as a hallmark of cultural identity by drawing on a number of poignant observations from the field of law.<sup>7</sup>

Granted, language is now considered a badge of cultural identity, but culture and cultural identity are products of a number of different layers or components, pointing in different directions. Culture is not a cage; cultural differentiation and cross-cultural interactions have been the rule ever since the beginning of mankind. Culture changes over time under the influence of projects for the future and evolving notions of community. *Mutatis mutandis*, the language of the law, a language developed for special purposes, is also a cultural expression characterized by similar features.

For centuries the language of the law of the State in many continental countries was mostly Latin, a language that was understood and used by lawyers, but not necessarily by their clients. Along with Latin, Law French was one of the languages of the law in England, and remained so long after Anglo-Norman French ceased to be spoken by the ruling class of England.

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<sup>7</sup> Unfortunately, lawyers may also accept this view when making language policy and deciding legal issues. Mertz (1982) shows how the US Supreme Court and other US courts endorsed a crude ‘folk’ version of the Whorfian theory (by assuming that languages shape the range of conceptualization of their speakers) in the period between the last quarter of the nineteenth century and the first half of the twentieth century. According to Mertz, these courts held that ‘U.S. political concepts were thought to be inextricably entwined with the English language; the concepts could not be understood unless one spoke English’. The same author further notes: ‘[T]he appearance of a “Whorfian” premise in this folk theory also lends support to the suggestion by cognitive anthropologists that scientific theories are typically systematized adaptations of folk theories.’

Even today, where different languages are spoken by the population, a vehicular language is sometimes used to frame legislation or decide cases, although the language in question may be spoken or written only by a segment of the population. This may occur despite constitutional provisions providing for the equal status of several official languages.<sup>8</sup> As a vehicular language, that language may have distinctive features which distance it from the language spoken by native speakers.<sup>9</sup>

Multilateral treaties and conventions are written in a limited number of languages. Access to the authentic texts of international norms created by agreement is the privilege of those who know those languages in the jurisdictions where such norms are in force. Furthermore, even when the law is drafted in a language known by the people to whom it is addressed, relevant texts of the law may refer to a foreign system of concepts and rules, or even to a plurality of foreign systems of concepts and rules, without fully incorporating the system of values and philosophical notions underlying them. Countries which at first changed their laws by adopting local versions of foreign legal texts, such as Japan, are a telling testimony to this possibility, although such reception results in a high degree of hybridization and complexity of the language of the national law (Kitamura 1993). To a lesser extent, this is also true of the law of several European jurisdictions. Over the centuries, the language of the law in these jurisdictions has been enriched by a variety of loanwords and adaptations across a large number of legal fields, from commercial law to ecclesiastical law and constitutional law. In all contexts, much give and take has occurred across the European space because the peoples of Europe have shared broad socio-economic and cultural elements.<sup>10</sup>

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<sup>8</sup> On the South African situation, see Harms (2012).

<sup>9</sup> See Chapter 8 by Felici in this volume; on the peculiar features of the CJEU's 'Court French', see McAuliffe (2011: 97–115).

<sup>10</sup> In this sense one can speak of a common legal *discourse* without a common *legal language*; see Kjær (2004: 397). Kjær develops her ideas in Chapter 6 of this volume where she recognizes the increasing use of EU legal English as a *lingua franca* but views the development of a common legal discourse at EU level as the dominant factor making it possible for EU concepts to be perceived as autonomous.

When the CJEU rules against the language version of a provision consulted by one of the litigants in favour of other language versions, which in its opinion spell out the applicable rule, it reiterates the fundamental message that European law is enacted in different languages. The fact that the Court upholds this approach reminds us that the relationship between cultural identity, language and the law is more flexible than it is often considered to be, as I have argued. Actually it is flexible to the point that, under certain circumstances, a citizen may not be able to rely on the provision in question in the language he/she regularly consults. Furthermore, there are also cases where litigants before the Court invoke the rule in a language version *other than* their own.<sup>11</sup> Flexible to what point, one may ask? The CJEU has held that an act adopted by an EU institution cannot be enforced against natural and legal persons in a Member State before they have the possibility to access the authentic text of the act in their own language in the Official Journal.<sup>12</sup> In operational terms, this is where the boundary is drawn.

### **The Message is in the Text: is it Really?**

Learning to read, write and master a specialized language takes a great effort, and such abilities are essential to survive as a lawyer in all modern jurisdictions. Law students spend most of their time reading a variety of legal materials and learning to write legal texts for various purposes. They learn the power of the spoken and written word as a tool to make the law. Sometimes they have the opportunity to reflect on the failure of both as an effective means of changing the law.

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<sup>11</sup> See, for example, *Bayerische Hypotheken- und Wechselbank AG v Edgar Dietzinger Environment and consumers*, Case C-45/96 [1998] ECR I-1199. In this case, the Belgian, Finnish, French and German Governments, relying on the English text of the relevant directive, argued that the guarantee obtained by the bank from a consumer was not a contract for the purpose of Directive 85/577 'because the guarantee is not a synallagmatic contract – namely a bilateral agreement involving mutual and reciprocal obligations or duties – but a unilateral undertaking from the point of view of the guarantor' (Opinion of Advocate General Jacobs delivered on 20 March 1997, Case C-45/96 [1998] ECR I-1199, para.14, summarizing the submissions of the above-mentioned Governments). The UK Government, on the other hand, did not argue that the guarantee was outside the scope of the Doorstep Selling Directive.

<sup>12</sup> C-161/06 *Skoma-Lux sro v Celní ředitelství Olomouc* [2007] ECR I-10841; see also Case C-345/06 *Gottfried Heinrich* [2009] I-01659 (part of a regulation that has not been published cannot be enforced against an individual who cannot, by the very nature of things, know what the regulation in question lays down).

And yet, the way students are socialized as lawyers leads to very different ways of understanding texts as sources of law, as does the practice of law itself.

One way to reflect on texts as sources of law is to look at them through the lens of the conduit pipe metaphor, which represents language as a sort of universal conduit pipe, conveying messages encoded in a particular language from speaker A to speaker B (see the seminal paper by Reddy (1979)). Unfortunately, languages are a poor means of communication for the purpose of establishing certain practices. Some messages would indeed be extremely difficult to grasp if they were expressed only in words. In his short comic novel *Portuguese Irregular Verbs* (2003: 9), Alexander McCall Smith makes fun of two German professors of philology who are on a tennis court for the first time and decide to play a game, using a tennis rule-book as their only guide to learn the sport. The hilarious results show how language may completely fail to convey a message explaining the organization of complex activities. It is arguable that the organization of such complex tasks as those governed by a variety of normative texts – tasks much more complex than playing tennis – cannot rely entirely on a message entrusted to verbal expression. Indeed, language is often the second best option to provide information even with respect to relatively simple matters such as getting directions. ‘Take the third turn on the right, and then the fourth on the left’ is less clear than looking at a map!<sup>13</sup> Nonetheless, ‘as soon as speech, and the use of signs are introduced into any action, the action becomes transformed and organised along entirely new lines’ (Vygotsky 1978: 24).<sup>14</sup>

On the other hand, lawyers know (although they may be reluctant to admit it!) that verbal propositions framing normative texts provide at best a linguistic cue to understanding the law as a form of practice. Read the text of any constitution and you will still not be a constitutional lawyer. Normative texts generally regulate only some aspects of a rule-bound

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<sup>13</sup> Citing this example to illustrate the difficulty of using abstract terms of a language to give directions, Aitchison (1997: 23) concludes that the conduit pipe metaphor of language is misleading.

<sup>14</sup> Sacco’s work (1991) on cryptotypes and formants shows how similar insights are fundamental to understanding the relationship between law, language and action; see also Sacco (1995).



practice. They focus on what is salient or patently needs to be settled and can ignore the rest. What remains implicit, nonetheless, may be just as relevant. Comparative lawyers have noticed this, and speak of cryptotypes to refer to tacit knowledge that influences how the law is applied (Sacco 1991: 343, 385; cf. Grossfeld and Eberle 2003). Lawyers are also confronted with misleading normative texts either because they reflect obsolete norms or provide dysfunctional legal regimes which gain little to no support in practice. In medieval England, claimants suing for trespass had to allege that they had been the victim of an injury caused by the defendant *vi et armis*. But quite often this was a fiction: no violence or weapons were necessary for realization of the tort.<sup>15</sup> Legal texts are recorded in linguistic signs standing for concepts and expressing rules that evolve and change over time through usage by professionals and lay persons. Unstructured concepts such as *good faith* are just the tip of the iceberg of a whole world of indeterminate linguistic signs.

The CJEU has rejected the literal approach to interpretation in a wide range of cases, holding that the wording alone often provides little guidance for ascertaining the meaning of the law. In light of the Court's preference for the teleological method of interpretation, it is fair to ask whether it is really worth making the effort to compare the various language versions of EU legislation, given that a functional approach to ascribing meaning to EU texts often prevails (cf. Derlén 2011: 156).

A step in the right direction is to openly acknowledge that EU legislation often contains linguistic signs with no established meaning. Their meaning is created and exists thanks to the activity of lawyers, scholars and judges who compare the different language versions of EU legislation, reflect on the purpose of the enactment, draw from their knowledge of the law, and

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<sup>15</sup> This is not a recent development in the law: Anon. (1304) Y.B. 32 & 33 Edw I, Roll Series, 259, reproduced in Baker and Milsom (1986: 297) . It is not by chance because, as Milsom (1981: xi) noted, 'The life of the common law has been in the unceasing abuse of its elementary ideas.' Of course, the same observation holds for other legal systems as well.

collectively take a decision on which norms must be enforced, thus making European law evolve in a more or less uniform direction.

Considered from this perspective, the texts of European provisions are nothing but a focal point for the practice of creating norms, a support prompting individuals to work out meaning which was not there from the very beginning.<sup>16</sup> The structure of these practices determines the meaning eventually ascribed to the text.

This last point helps to clarify how it can happen that a certain provision produces the same regulatory effect, although the provision in question is drafted without using harmonized terminology and defining key concepts. A good example in this respect is provided by Directive 2002/47/EC of 6 June 2002 on financial collateral arrangements. The title and the text of this Directive in English studiously avoid reference to the notion of ‘contract’, with the exception of a single sentence in the entire text. On the other hand, the French and Italian versions of the Directive speak respectively of *contrats de garantie financière* and *contratti di garanzia finanziaria* to convey what the English version of the Directive calls *collateral arrangements*. The German version of the same Directive uses the term *Finanzsicherheiten*, while other versions of the same provisions, such as the Spanish, favour agreements (*acuerdos*) over financial guarantees. One could hardly think of more variations to designate the same concept. And yet, when consulting the various language versions of the Directive on this point, we find rules on the same type of transactions.<sup>17</sup> The subject is the same because the transactions covered by the Directive correspond to the same set of financial transactions structured by model master agreements drafted by major global market players.<sup>18</sup> On the other hand, other aspects of that instrument, such as reference to the notion of ‘reasonableness’, are not

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<sup>16</sup> For a fundamental contribution on this aspect from the perspective of legal theory, see Kennedy (1998).

<sup>17</sup> One would be tempted to add that, despite all its variations, the facts to which the story refers are still the same, as in Raymond Queneau’s *Exercices de style*.

<sup>18</sup> See Riles (2011) for a closer look at the practice generated by these agreements in different places.

harmonized and will thus be interpreted in accordance with the national laws of the Member States (Graziadei 2012).

### **A Change in Language is a Change in the Law?**

Lawyers have many preconceptions about the nature of the relationship between law and language. Among them is the idea that law is inextricably linked to the language in which it is expressed. Of course, natural languages *are* different. Even a modest exercise in legal drafting such as consolidating the consumer *acquis* in English for a European-wide audience poses problems as to what kind of language should be used for this purpose (Dannemann et al. 2007). And yet, the idea that different languages cannot express the same law is not warranted by the general observation that languages are different and that they possess different phonological, graphological, morphological, syntactic, semantic, pragmatic and stylistic structures, as well as socio-cultural backgrounds.<sup>19</sup> As has been rightly noted, this is just the beginning of the story (see Sin 2013: 929–51).

Multilingual uniform legislation could be adduced as *prima facie* evidence against the idea that it is impossible to express the same law in a plurality of languages, were it not for the circumstance that, contrary to the purpose of such legislation to unify the law across national boundaries, there is a good chance that it will lead to divergent decisions by the national courts of the States where it is in force. It is therefore tempting to analyse the failures of multilingual uniform legislation as compelling evidence of the fact that different language versions of the same rule produce conflicting meanings of the (uniform) enactment. Divergent interpretations of uniform texts would thus prove that each language is bound to communicate different meanings, even though the purpose and will is to adopt a common set of rules. As the argument goes, each language ultimately carves up the world in its own way.

Without taking issue with this last general assumption, which was the subject of lively debate among linguists and psychologists in the twentieth century, this is an unsatisfactory way

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<sup>19</sup> I share the observations by Pozzo, in Chapter 5 of this volume, on the relationship between language, culture and the law.

to conceptualize the relationship between the law and its linguistic formulation(s). Uniform legislation produces divergent interpretations when the languages in which it enters into force do not denote the same concepts and express the same rules across national boundaries. Hence, divergent interpretations of uniform legislation do not occur simply because languages have a particular genius of their own, but because of the lack of uniformity at the conceptual level. In other words, the linguistic signs in the different authentic language versions do not always have the same referential meaning. Like legal translations lacking such basis, uniform legislation without a uniform referential system is also bound to fail.<sup>20</sup>

Accordingly, the problematic record of uniform multilingual legislation is not due to the nature of the tool employed to achieve the intended result, that is, sets of linguistic signs belonging to certain natural languages, but to the failure to use that tool to achieve the same referential meaning, for semantic<sup>21</sup> and syntactic reasons.<sup>22</sup>

A change in the language used to frame the law does not *per se* entail a change in the law; it does only when it involves a change in the referential system. For example, when France abandoned Latin in favour of French to draft its civil code, the change in the linguistic signs used to express the law did not change their referents at first. To take a vivid example of this dynamic and its limited consequences, the term *faute* mentioned in Art. 1382 Code civil has the peculiar meaning(s) highlighted in numerous comparative works,<sup>23</sup> not because it is somehow very French, but because it mirrors the (complex) meaning of the Latin term *culpa* in the *ius*

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<sup>20</sup> In her fundamental contribution Šarčević (1997) shows that the lack of harmonization in multilingual EU terminology can be identified as a problem of conceptual discrepancy and must be tackled as such. In the field of computer science and jurisprudence, Sartor et al. (2011) address this problem from the perspective of the different legal ontologies underlying each legal system.

<sup>21</sup> Think of the possibility of ending up with a translation which does not recognize a foreign term as a false friend: Ferreri (2010); Honnold (1988: 208) warns in general terms against the 'natural tendency to read the international text through the lenses of domestic law'.

<sup>22</sup> On this point see Chapter 7 by Baaij in this volume; see also **Visconti (2010: 29 ff.)**

<sup>23</sup> See, for example, Markesinis and Lawson (1982:185 ff.).

*commune*, which was eventually rendered in French by the term *faute* (see Graziadei 2010: 126). The law did not change at first simply because a new linguistic sign was introduced; the sign was attributed the same semantic value as *culpa*.

German legal scholars followed a different strategy when they began to draft the law in German. Their commentaries introduced not only a new set of linguistic signs to express the law, but also new referents to sharpen the conceptual system of the law. This was a reaction to what they perceived as an overly unstructured approach to delictual liability. Confronted with the old notion of *culpa*, nineteenth-century German scholars systematically distinguished its various meanings, linking each of them to a different German linguistic sign. Placing greater emphasis on differentiating negligent and intentional wrongdoing, they distinguished these two elements from the objective element of wrongfulness. Eventually § 823 of the German BGB codified all these distinctions, thereby setting new boundaries to delictual liability. The languages of the law in Germany and France could begin to converge once more if both countries would opt for a new common terminology, or if the French would accommodate their language to make room to express more consistently the distinctions of delictual liability known in Germany.<sup>24</sup>

The failure to distinguish between the different layers of language and law when framing the same law in different languages may lead to major errors of perspective.

One of these is the belief that the more distant two languages are from the linguistic point of view, the more difficult it is to render the concepts and the rules of one legal system in the language of the other system. This is not necessarily true if the two languages in question share the same referential system.

For example, when the Hong Kong ordinances were first translated into Chinese in preparation for the return of Hong Kong to the People's Republic of China in 1997, a whole new vocabulary had to be created to express the common law concepts in Chinese. Since the

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<sup>24</sup> On the possibility of moving in this direction, see Borghetti (2008). On the development of French and German as languages of the law, see Šarčević (1997: 29–53).

new terms were assigned a common law meaning, the Chinese texts derive their meaning from the English source texts, not from Chinese law. As a result, the Chinese expression for *merchantable quality* derives its meaning from the common law concept in the Hong Kong Sale of Goods Act, which, in turn, is modelled on the English Sale of Goods Act (on this point Sin 2013: 939–40; see also Šarčević 1997: 274–5).

The process of creating terms (signs) to designate uniform concepts in different languages requires considerable skill and expertise (however, the same applies to other aspects of the language as well).<sup>25</sup> When choosing terms to designate new concepts or objects (referents) one can either create a new term (neologism) or assign a new meaning to an existing word or phrase. A general feature of word formation is the tendency to use an existing sign to denote a new referent.<sup>26</sup> Different languages, however, may choose different words to denote the same object or referent, depending on how the new association between the sign and referent or object is established. For example, when glasses<sup>27</sup> were invented in Europe, they were called *occhiali* in Italian, *lunettes* in French, *gafas* in Spanish and *Brille* in German. Each of these words evokes a different association linked to the same object. The German word is derived from the name of the crystal that was originally used to make lenses. The French word refers to the shape of glasses, *lunette* being a diminutive of the word *lune* (moon). In Spanish the name is taken from the curved stem that bends behind the ear to hold the lenses in place in front of the eyes. The Italian name for glasses is derived from *occhi*, the word for eyes. The English word was initially associated with the idea of glasses for the eyes (eye-glasses).

When using a term, the associations or connotations it evokes in a particular language should always be taken into account. In the field of law it is particularly important to avoid choosing terms which could evoke connotations having unwanted or negative implications for

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<sup>25</sup> On this point see Chapter 11 by Šarčević and Chapter 12 by Bratanić and Lončar in this volume.

<sup>26</sup> See, for example, the example provided by Case 533/07, *Falco Privatstiftung and Thomas Rabitsch v Gisela Weller-Lindhorst* [2009] ECR I-03327, discussed by Ioriatti Ferrari (2010: 320, note 28).

<sup>27</sup> This example is cited in Alinei (2009: 77-78).

the development of the law. A lawyer, for example, should not translate *soviet* with *council* because of the political connotations of the first word.<sup>28</sup>

Drafters of multilingual legal instruments, interpreters and translators are constantly confronted with the problem of finding words which are sufficiently neutral so as to avoid unwanted meanings or connotational baggage (see Dannemann 2012: 96–9). EU legislation cannot have uniform effects nor can harmonization of national laws be achieved, unless EU multilingual lawmaking is accompanied by the development of a common set of concepts shared by all those involved in its application.

The CJEU is one of the principal agents advancing the quest for a common set of concepts. The Court's decisions disavowing the authority of one or more language versions of a EU normative text are motivated by the necessity to uphold the unity of European law. Such unity cannot be secured if the different language versions of EU legislation are interpreted and applied differently in the Member States. However, the CJEU's insistence on developing autonomous EU legal concepts also shows that determining which concepts constitute the essential building blocks of European law is a problem that can also surface within the semantic field of a single language (see Chapters 6 and 10 in this volume by Kjær and Engberg). For this reason linguistic evidence does not *per se* determine the meaning to be assigned to a particular EU legal provision.

## **Conclusions**

Recent scholarly research in law has repeatedly addressed the theme of the birth of a new European legal culture which is gradually developing in a variety of ways at multiple sites. All too often the missing piece in the story is how to build this new legal culture on the multilingual foundations provided by the present linguistic regime of the European Union.

This chapter makes the point that any contribution on law and culture which ignores the multilingual foundations of European law fails to recognize a fundamental aspect of the law in

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<sup>28</sup> This example is from Sacco (1992)..

Europe today.<sup>29</sup> Every text enacted by the EU institutions raises the question of how it will be interpreted and applied across national boundaries. Multilingual legislation in Europe cannot produce uniform legal change or legal harmonization across Europe, unless all those responsible for achieving its uniform application share a common understanding of EU legislation. Lack of coherence in the application of European law is very often due to the fact that EU enactments cannot rely on a uniform set of concepts shared across the European space. The work towards building uniform concepts is ongoing. Furthermore, the framing of multilingual legislation requires a more general ability to explore the effects that linguistic signs will have in practice when used to express European law. This requires carrying out linguistic and legal comparisons which are essential for the development of legal translation studies and for intercultural communication in multilingual Europe.

I began this chapter by insisting on the necessity to focus less on the normative virtues of texts as such, and more on the normative forces grounding the practice of law in Europe. I maintain my premise, however, my conclusion ends on a different note. The birth of a new legal culture in multilingual Europe will be the product of a new awareness of the various ways and means available to a multilingual lawmaker, as well as of the sophisticated linguistic needs that must be satisfied to make the law a credible communicative act.

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<sup>29</sup> On the other hand, some scholars show a strong awareness of this dimension; see, for example, the contributions in Wilhelmsson, Paunio, Pohjolainen and Helsingin (2007); also Glanaert (2014). Moreover, this is the essential message elaborated by Pierre Legrand in his many challenging contributions on law, language and culture, in which he tends to show that there is no way out of the labyrinthine dimension of language (and of a specific culture). See also Kjær's and Engberg's comments in Chapters 6 and 10 of this volume.



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