

# LAW AND LANGUAGE: A PLEA FOR EXPERTS SANS FRONTIÈRES

*Agustín Parise\**

## 1 INTRODUCTION<sup>1</sup>

The International Association of Legal Science (IALS) held a symposium in Maastricht (The Netherlands) on 26-27 September 2019.<sup>2</sup> The event was organized jointly with the *Nederlandse Vereniging voor Rechtsvergelijking* (NvvR, Netherlands Comparative Law Association). Scholars from across the globe gathered in Maastricht University to share insights, to debate, and to discuss their views on the development and dynamics of Law and Language. A panel on the occasion of the golden jubilee of the NvvR was hosted during the second day of the symposium and offered a forum to reflect on the current status of comparative law. This chapter follows the order of the sessions and panel that took place during the two-day event, highlighting some main takeaways. Amongst the most prominent takeaways is that language should be considered a fundamental channel for the circulation of legal ideas and for the development of legal science. In addition, that comparative law plays a fundamental role in that circulation and development.

Law and Language is very topical in the agenda of law schools across different jurisdictions. It is likewise in the agenda of policy makers and legislators. In addition, it is of paramount importance for environments where multiculturalism exists or where it is threatened. Language is a fundamental means to convey messages, to know the law, to shape the law, and for access to justice. The debates that took place during the two-day event should be of benefit for, amongst others, jurists, linguists, policy makers, and legislators, from across the globe, hence extending the notion of collaboration to diverse and multidisciplinary approaches. The symposium aimed to give one-step forward towards more cooperation between jurists and other professionals. Indeed, jurists are expected to deal with multicultural problems and language could offer a valuable bridge towards

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\* Secretary General, International Association of Legal Science; Associate Professor, Maastricht University (the Netherlands).

1 This chapter reproduces the closing remarks offered by the author, at that time Director of Scientific Studies, on the occasion of the symposium of the International Association of Legal Science held in Maastricht (the Netherlands) on 26-27 September 2019.

2 See Symposium on Law and Language 2019.

solutions. A look into Law and Language may have offered another link in the chain towards the awareness of the multicultural competencies and skills that are needed in law. The discussions during the two-day event confirmed that there is a need for new perspectives, new solutions, and new paradigms.

## 2 A MOSAIC OF APPROACHES TO LAW AND LANGUAGE

The first session was entitled *Law, Language, and Context*. Elena Ioriatti (University of Trento) took a contemporary approach to Law and Language in Europe. She stressed from the start of the symposium that comparative law plays a fundamental role in this area of study. Ioriatti alerted that EU law is composed by linguistic signs that turn into consolidated concepts, only when they are interpreted and applied at the national level. That interaction at the local level triggers a unique consolidation of language. She was able to illustrate her argumentation with a look into possession in Austria, France, Italy, the Netherlands, and the UK. Ioriatti also pointed to a number of current efforts that are taking place in Europe, dealing with Law and Language, aiming to fill a gap, and ultimately, to pave the way for the development of the area of study. Vernon V. Palmer (Tulane University) offered a view from the mixed jurisdictions. Palmer engaged in a journey to different parts of the globe, from South Africa to his home state of Louisiana (USA). He showed that the legal system in the mixed jurisdictions can be challenged by a lack of language uniformity, and that multiple challenges emerged in the past, are currently being faced, and will continue emerging in the future. He also showed that translators gained a place of prominence in that habitat since they offered tools to bridge divides, tools to operate in a peculiar system. Translators were also undertaking creation, since many times they worked with terms they did not master. The work of translators could be considered as toolboxes,<sup>3</sup> since they offer the elements to fully understand the legal system in the mixed jurisdictions and beyond.

The symposium continued with a session dealing with *New Challenges in Jurilinguistics*. Łucja Biel (University of Warsaw, and former Secretary General of the European Society for Translation Studies) explained the development of legal translation studies. Biel traced the origins of these studies to the 1970s, to be followed by a catalytic stage that took pre-eminence in the mid-1990s. That second stage experienced the development of conceptual paradigms. Biel ultimately highlighted that during the last decade there has been a process of consolidation and expansion. This current scenario invites for applied research, she noted. Biel further described the disciplinary developments that took place, with, amongst others, the emergence of specific literature, forums, and new researchers approaching the field. The second contribution to the second session was by Jean-Claude

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3 See generally Parise 2016.

Gémar (universities of Montreal and Geneva), an advocate for the co-drafting of laws in multiple languages as a better solution in multilingual jurisdiction. Gémar helped contextualize the origins of jurilinguistics. This is a young discipline, and Canada can be deemed a pioneer. A move away from literal translation took place, attaining a freer form of expression, as a result of these efforts. The aim was mainly to attain readability and match the style and culture of the target reader. This would offer solutions, since, in words of Gémar, language is the envelope and law the message. The guiding stars in this journey should be clarity, simplicity, and conciseness. This movement towards readability has been the result of a gradual process, as clearly depicted by Gémar. He shared his Canadian findings: a set of facts that can be extended to other parts of the globe. Ultimately, Gémar stressed that legal translation is a permanent exercise of comparative law.

The third session was entitled *Law and Language in Legal Education*. Silvia Ferreri (University of Turin) looked at the common and civil law approaches, when teaching students how to ‘dissect’ judgments: to dissect in order to fully understand a decision. Ferreri shared ways to challenge students in their learnings, to move them away from their traditional comfort zones. Attention was devoted to several indicators (e.g., length of decisions, number of judges, style, attitude). Ferreri also referred to the use of literature by common law courts in their decisions, and to the use of irony, indeed a difficult skill to master. The presentation also attended some obstacles (e.g., *unfriendly* false friends) since these efforts can be challenging. Above all, the presentation by Ferreri was an exquisite exercise of comparative law. Nicolás Etcheverry Estrázulas (University of Montevideo) explored Latin America by focusing on recent developments in bilingual legal education in Argentina, Mexico, and Uruguay. Internationalization of legal education and knowledge of other systems are the goals behind the bilingual approach to teaching. When looking at Argentina and Uruguay, the efforts towards internationalization were present in an array of courses offered in English language. The Mexican experience offered another dimension. There the bilingual aspect also attended Native American languages. In this realm, it is possible to encounter intercultural universities, welcoming diversity in Mexico. Etcheverry shared some important challenges, yet he likewise presented opportunities for comparative law. All three experiences showed that universities in Latin America are welcoming the internationalization of legal education.

The fourth and final session was entitled *Legal Translation as a Means to Bridge Divides*. Olivier Moréteau (Louisiana State University) addressed a seminal divide for comparative law, since the state of Louisiana served as a laboratory to explore the civil and common law divide. Moréteau pointed to the valuable know-how in Louisiana civil-law scholars, and to the more than two hundred-year old tradition of civil law terminology in English language.<sup>4</sup> He traced the origins of that tradition to the nineteenth century, yet highlighting

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4 See also Parise 2014, p. 442.

the presence of civil law terminology throughout the journey. Many efforts are being devoted in Louisiana to disseminate and share that know-how. Moréteau moreover pointed to the existence of different civil law terminology in English. He therefore looked at recent English translations of French legislative drafts undertaken in the UK and the USA, noting important differences and inviting scholars to further explore the use of terminology. The second presentation on that final session was by Carmen Bestué (Autonomous University of Barcelona). Bestué likewise addressed a seminal divide, by focussing on cultural gaps. She explored how legal translation and court interpreting can be considered useful tools. First, she looked at consumer protection. Second, she explored the realm of court interpreting, by looking at criminal law. Her presentation aimed to raise awareness on the needs to create a framework, especially on the considered minority languages. Bestué there opened the door to the protection of minority languages, a fundamental topic that re-emerged later in the final keynote address. Bestué concluded by referring to the need for comparative approaches, returning to the need and value of these comparative exercises. Both presentations in this final session offered a reminder that messages have to arrive to recipients without interferences (or with as little interference as possible).

The interaction of law and language is central to comparative law. The golden jubilee of the NvvR<sup>5</sup> was commemorated during the second day of the symposium, and that festive occasion offered a forum to share insights on the development of comparative law. Lars van Vliet (Secretary and Treasurer of the NvvR) opened the jubilee celebrations with a historical overview. He addressed the origins, present, and future challenges of the NvvR. The celebration continued with a roundtable by former presidents of the NvvR, with Antonio Gambaro (President of IALS) acting as moderator. Ewoud Hondius (Utrecht University), Sjeff van Erp (Secretary General of IALS), and René de Groot (President of the NvvR), engaged in a lively discussion on the current status of comparative law studies in the Netherlands, while reflecting on the fifty years of the local association. The panel was closed with a keynote address by de Groot, in which he offered an *exposé* of the framework for the protection of regional and minority languages. The keynote address offered de Groot an opportunity to amalgamate the content of the previous sessions, since he was able to return to several recurring topics that had gained a place of pre-eminence during the two-day event. The keynote address offered a remarkable closing to the study of Law and Language in Maastricht.

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5 The NvvR was established in 1968 to “promote and stimulate the comparative analysis of the law in the Netherlands.” See NvvR s.d.

### 3 CLOSING REMARKS

Law and Language, as a theme, was beneficial since it gave ample freedom to speakers and participants to move under an overarching umbrella. The broad scope that it offered was anchored by the presentations that took place during the four sessions, by the NvvR panel, and by the keynote address. As in previous years, the IALS symposium resulted in a *Vademecum*, this time of the status of Law and Language, helping to sketch the paths followed, the current trends, and the challenges that lie ahead. Comparative law was a recurrent actor during the two-day event. Speakers again offered a journey from multiple perspectives and jurisdictions; yet they shared a similar narrative and approach, while touching upon a number of recurring aspects (e.g., value of readability; need to convey messages, to benefit from previous experiences, and to bridge divides). The discussions that took place during the two-day event helped generate awareness on three main points. First, that Law and Language has experienced significant changes in the past decades, changes that seem to pave the way for a prosperous future. Second, that the context calls for collaboration. All speakers pointed to the synergy that can result from collaborative efforts in the area of Law and Language. Third, that multicultural and international environments call for experts that can deal at ease with transnational relationships, and can adapt to the interplay of different legal systems and cultures: they need to acquire more interdisciplinary knowledge.<sup>6</sup> Experts will know the rules, yet they will need to adapt their interpretation to new situations to be shaped in a broader social context,<sup>7</sup> and will need to be aware of other ways that regulate human behaviour.<sup>8</sup> They will be experts *sans frontières*<sup>9</sup> and language will guide them in their endeavours.

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<sup>6</sup> Pérez Perdomo 2006, p. 22-23; Alterini 1988.

<sup>7</sup> Brusa 2003.

<sup>8</sup> Van Rossum, p. 113.

<sup>9</sup> Carnota 2011.