Comparative Law in Legal Education: An Interdisciplinary Perspective

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Abstract

This paper considers the role of comparative law in legal education from the interdisciplinary perspective of law and language. While legal education is traditionally monojural, modern law practice is globalised and demands a broader legal skillset and comparative perspectives in order to navigate legal systems and regulatory frameworks in an informed, effective manner. This is particularly salient where legal systems, structures or rules fundamentally differ between jurisdictions, resulting in conceptual incommensurability and thus impacting on legal communication and practice. Considering that this issue is not expressly addressed in legal education, an interdisciplinary approach to teaching legal methods and skills is proposed, aiming to develop the student's interjural competence and ability to understand and convey intended meaning across legal cultures. In doing so, the approach takes a holistic view of the operation of the law with the inextricable link between the law and language at its centre, drawing on comparative law, language teaching and translation methodologies. The paper concludes by suggesting that the law curriculum would be considerably enhanced by inclusion of comparative and linguistic perspectives developed through immersive learning experience, with a view to equipping graduates with interdisciplinary tools for effective legal communication and practice across jurisdictions.

Keywords: *comparative law; legal education; legal translation; immersive education; interdisciplinarity.*

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1. Introduction

Globalisation of the law and legal services, which reflects economic, business and regulatory tendencies towards internationalisation,[2] has had an impact on the range

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[2] Michael Coper, "Reflections on the Internationalisation of Legal Education: Essay in Honour of Professor Satoru Osanai's 70th Birthday," *The Chuo Law Review* 119 (2013): 27-60; William Twining, *Globalisation and Legal Scholarship* (Nijmegen: Wolf Legal Publishers, 2009), 21. For a practitioner's account of how globalisation has affected law practice, see e.g. Rowan Russell, "If only I knew then what I need to know now: Lessons from the future," in *The Internationalisation of legal education: the future practice of law*, ed. William van Caenegem and Mary Hiscock (Cheltenham: Edward Elgar, 2014).

and character of career opportunities available to law graduates.[3] Importantly, this impact is not limited to large law firms involved in multi-jurisdictional or trans-border practice but also extends to smaller firms operating within their domestic jurisdictions.[4] In light of these industry trends and consequential market requirements, every graduate intending to practise law should now be prepared to deal with transnational legal issues,[5] both in terms of law practice and communication across legal cultures.

Globalisation has also been considered in legal education and—despite lack of specific directions in that regard[6]—the necessity of developing comparative and international perspectives by law students has been acknowledged.[7] Indeed, the importance of comparative law in legal education has long been recognised,[8] although it has never been a priority to introduce it into the law curriculum, which in most jurisdictions remains domestic law-oriented.[9] While on the one hand some concerns have been voiced that the popularity of comparative law in legal education and practice may now be in decline,[10] on the other hand, it has been suggested that comparative and international perspectives in legal education in the UK are now particularly needed in light of recent sociopolitical events, such as Brexit.[11] Against this background, the paper considers how incorporating complementary elements of comparative law and its less recognised sister discipline, namely legal translation, in the law curriculum would benefit graduates who wish to embark on a legal career that is global in character, and

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[3] Carmel O'Sullivan and Judith McNamara, "Creating a Global Law Graduate: The Need, Benefits and Practical Approaches to Internationalise the Curriculum," *Journal of Learning Design* 8 (2015): 53-54.

[4] Carole Silver, "Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S.," *Stanford Law & Policy Review* 24 (2013): 467-68; Joan Squelch and Duncan Bentley, "Preparing law graduates for a globalised world," *The Law Teacher* 51 (2017): 4.

[5] Michael Bogdan, "Is There a Curricular Core for the Transnational Lawyer?," *Journal of Legal Education* 55 (2005): 484.

[6] Helena Whalen-Bridge, "We Don't Need Another IRAC: Identifying Global Legal Skills," *International Journal of Law in Context* 10 (2014): 315.

[7] See e.g. Walter Kamba, "Comparative law: a theoretical framework," *International & Comparative Law Quarterly* 23 (1974): 491; Basil S. Markesinis, *Comparative Law in the Courtroom and Classroom* (Oxford and Portland, Oregon: Hart Publishing, 2003), 66; Michael Coper, "Ten Elements of the Internationalisation of Legal Education," paper given at the Association of Pacific Rim Universities (APRU) 3rd Law Deans Meeting and International Conference: Doing Business in the Asia-Pacific: Is Legal Education Prepared?, Facultad De Derecho, Universidad De Chile, Santiago, Chile, November 2012, ANU College of Law Research Paper No. 13-18, https://ssrn.com/abstract=2269485; Jürgen Basedow, "Breeding lawyers for the global village: The internationalisation of law and legal education," in *The Internationalisation of Legal Education: The Future Practice of Law,* ed. William van Caenegem and Mary Hiscock (Cheltenham, UK and Northampton, MA, USA: Edward Elgar, 2014), 2. For an example of a jurisdiction-specific consideration of including comparative and international perspectives in the law curriculum, see e.g. Sally Kift, Mark Israel and Rachael Field, "Learning and teaching academic standards project: Bachelor of Laws learning and teaching academic standards statement," accessed June 11, 2024, https://cald.asn.au/wp-content/uploads/2017/11/KiftetalLTASStandardsStatement2010.pdf, 8, 10.

[8] Vera Bolgar, "Comparative Law in Legal Education," *New York Law Forum* 1 (1955): 391.

[9] Jaakko Husa, "Turning the Curriculum Upside Down: Comparative Law as an Educational Tool for Constructing the Pluralistic Legal Mind," *German Law Journal* 10 (2009): 918.

[10] Mathias M. Siems, "The End of Comparative Law," *Journal of Comparative Law* 2 (2007): 133-150; cf Jan M. Smits, "European Legal Education, or: How to Prepare Students for Global Citizenship," *Law Teacher* 45 (2011): 163.

[11] Carl F. Stychin, "Rethinking legal methods after Brexit," *The Law Teacher* 53 (2019): 212-20.

how that could be achieved through an immersive educational experience.[12]

2. Comparative law in legal education

One of the criticisms of legal education has been its parochialism due to its focus on domestic law.[13] It has been argued that, instead of creating a mono-epistemic perception of the law, with one's domestic legal system regarded as "normal" when compared to other legal systems,[14] an introduction to the multiplicity of legal traditions from the outset is preferred.[15] Exposure to a diverse range of laws—both in theory, i.e. as part of comparative law studies, and in practice—plays a crucial role in developing global legal skills and preparing the student for an international or trans-jurisdictional career in law. In particular, the value of incorporating comparative law in the law curriculum [16] lies not only in broadening the student's horizons by providing opportunities to search for universal features of legal systems and rules across jurisdictions [17] or learn about different solutions to similar legal issues in other jurisdictions,[18] but also in enhancing the student's understanding of their domestic legal system and developing their ability to think like a lawyer, practise law and communicate in a broader, global context.[19]

Having established the importance of comparative law in legal education and practice, the next question to address is how comparative law ought to be incorporated into the law curriculum. As the name suggests, comparative law involves conducting a comparative analysis of two or more legal systems (or parts thereof) from the perspective of variation[20] for the purposes of gaining knowledge and understanding of the laws and/or facilitating law practice at national or international level (or both).[21] Considering its utility, the process of making legal comparisons necessarily requires appropriate knowledge and skills that extend beyond the domestic legal context. Adopting a comparative approach in legal education should not, however, boil down to teaching students about foreign law, at least not in a comprehensive, in-depth manner. While students might have an opportunity to study foreign law on a dual qualification

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[12] For further discussion of this topic, see Paulina E. Wilson, "Comparative law outside the ivory tower: an interdisciplinary perspective," *Legal Studies* 43 (2023): 641-57.
[13] See e.g. Kamba, "Comparative law: a theoretical framework," 491-92; Twining, *Globalisation and Legal Scholarship,* 20.
[14] Husa, "Turning the Curriculum Upside Down," 914.
[15] Smits, "European Legal Education," 174.
[16] According to Zweigert and Kötz, incorporation of comparative law in the study of domestic law is imperative. See further in Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, trans. Tony Weir, 3rd ed. (Oxford: Oxford University Press, 2011), 23.
[17] Eric-Frederic Wilson, "Comparative law - A pragmatic method," *The Law Teacher* 1 (1967): 28.
[18] E.g. Smits, "European Legal Education," 167.
[19] Kamba, "Comparative law: a theoretical framework," 492; Mathias Reimann, "The End of Comparative Law as an Autonomous Subject," *Tulane European & Civil Law Forum* 11 (1996): 54; Jaakko Husa, "Comparative law in legal education – building a legal mind for a transnational world," *The Law Teacher* 52 (2018): 203.
[20] Mathias Siems, *Comparative Law* (3rd ed. Cambridge: Cambridge University Press, 2022), 23-26.
[21] Ibid, 2-6.

programme,[22] as an elective module or abroad, e.g. as part of an exchange programme, such education does not offer sufficient integration of domestic and foreign legal systems,[23] as separate study of different legal traditions is not equivalent to study of comparative law.[24] Similarly, the concept of "global legal skills" does not simply involve applying domestic analytical methods to foreign legal contexts[25]—rather, such skills must be grounded in practical insights into the relative variation between the characteristics and operation of the given legal systems. Thus, whether comparisons between legal systems are made in an accurate and meaningful manner will depend not only on the student's (or practitioner's) knowledge of the relationship between the systems from the viewpoint of comparative law, but also on their skills necessary to discern any differences and/or similarities between the concepts, rules or institutions compared and convey those differences and/or similarities in communication across the respective legal cultures.

With regards to the comparative and international perspectives that ought to be developed as part of legal education, the understanding of the breadth and depth thereof varies. Kift *et al* acknowledge that such contexts neither encompass all areas of law nor equate to studying comparative or international law. Instead, they suggest that students should develop a "threshold level awareness of these contexts at a general level", with options for attaining more in-depth knowledge as offered in their legal education. In contrast, Kamba emphasises the importance of familiarity with "the general theory of comparative law" as well as legal system classification and general characteristics as a pre-requisite to the comparative study of law based on macro- and/or micro-comparison.[26] A comparative approach to studying domestic law is also proposed by Zweigert and Götz: firstly, an overview should be provided of different approaches to a particular legal problem in the major legal systems; secondly, a critical appraisal of the solutions should be made with appropriate illustration and, as a result, it should be determined which approach offers "the best solution here and now" (i.e. in the domestic legal system).[27] Husa's recommendations to develop a "pluralistic legal mind" in law students echo similar sentiments, yet venture further into more independent and less self-contained learning process that is conducive to cognitive skills development. Husa proposes a constructivist approach whereby law students use multiple legal materials stemming from various sources to construct legal meaning, with active learning that "goes beyond the information given."[28] Regardless of which approach is taken,[29] the

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[22] Grete S. Bosch, "The 'internationalisation' of law degrees and enhancement of graduate employability: European dual qualification degrees in law," *The Law Teacher* 43 (2009): 284.

[23] James Gordley, "Comparative Law and Legal Education," *Tulane Law Review* 75 (2000): 1003-1004, referring to Axel Flessner, "Rechtsvereinheitlichung durch Rechtswissenschaft und Juristenausbildung," *Rabels Zeitschrift für Ausländisches und Internationales Privatrecht* 56 (1993): 252-53, and Hein Kötz, "Europäische Juristenausbildung," *Zeitschrift für Europäisches Privatrecht* 1 (1993): 272.

[24] Reimann, "The End of Comparative Law as an Autonomous Subject," 50.

[25] Whalen-Bridge, "We Don't Need Another IRAC," 317.

[26] Kamba, "Comparative law: a theoretical framework," 518-19.

[27] Zweigert and Kötz, *An Introduction to Comparative Law*, 23.

[28] Husa, "Turning the Curriculum Upside Down," 921-22.

[29] Of course, from a practitioner's viewpoint, the breadth and depth of the comparative element of legal

benefits of the internationalisation of the law curriculum[30] in this fashion are clear: a more insightful perception of domestic legal concepts when viewed from a global perspective of alternative constructs[31] allows the student to evaluate domestic solutions to legal problems, enhancing their critical thinking skills and broadening their horizons as a result.[32] Furthermore, a comparative context is conducive to developing a greater self-awareness of learning, thus leading to an increase in the student's confidence,[33] and well-rounded knowledge and understanding of law that is not limited to one's domestic jurisdiction.

3. Systemic differences and incommensurability in law

At this juncture, it is useful to consider the origins and scope of diversity in law, along with its implication for legal education and practice. Systemic differences between laws arise from the unique evolution of their respective cultures,[34] in which societal behaviours, beliefs, customs and values[35] may vary from those in other jurisdictions. Reflecting cultural peculiarities, variation in law is thus not limited to legal rules or procedures[36] but also pervades the construction of legal concepts,[37] interpretation of the law[38] as well as the choice of and rationale for legal solutions to particular problems. These differences may result in certain legal concepts being, arguably, incommensurable[39] and, as a result, incapable of being communicated across

study may depend on the student's aspirations to practise in a particular area of law and/or work for a particular law firm. See further in Russell, "If only I knew then what I need to know now," 242 ff.

[30] See further on this topic in e.g. Basedow,"Breeding lawyers for the global village;" Antonios E. Platsas and David Marrani, "On the Evolving and Dynamic Nature of UK Legal Education," in *The Internationalisation of Legal Education*, ed. Christophe Jamin and William van Caenegem (Cham: Springer International Publishing, 2016).

[31] Husa, "Comparative law in legal education," 209.

[32] Reimann, "The End of Comparative Law as an Autonomous Subject," 54.

[33] Bernard Rudden, "Comparative law as a remedial subject," *The Law Teacher* 16 (1982): 141.

[34] See e.g. Pierre Legrand, "European Legal Systems are not Converging," *International and Comparative Law Quarterly* 45 (1996): 60; Jaakko Husa, *A New Introduction to Comparative Law* (2nd ed. Oxford, New York and Dublin: Hart Publishing, 2023), 141-42.

[35] Smits, "European Legal Education," 168.

[36] See e.g. Thomas Weigend, "Criminal law and criminal procedure," in *Elgar Encyclopedia of Comparative Law*, ed. Jan M. Smits, Jaakko Husa, Catherine Valcke and Madalena Narciso (Cheltenham: Edward Elgar, 2012) or C.H. van Rhee and Remme Verkerk, "Civil procedure" in ibid.

[37] See e.g. Katerina P. Lewinbuk, "Can successful lawyers think in different languages?: Incorporating critical strategies that support learning lawyering skills for the practice of law in a global environment," *The Law Teacher* 41 (2007): 276-77.

[38] See further on this topic in Stefan Vogenauer, "Statutory interpretation," in *Elgar Encyclopedia of Comparative Law*, ed. Jan M. Smits (2nd ed. Cheltenham, UK and Northampton, MA, USA: Edward Elgar, 2012).

[39] Incommensurability is a term borrowed from mathematics, where it refers to the absence of a common unit of measurement. The term was later applied in the context of alternative scientific theories, its meaning extended to include alternative interpretations, and semantic and epistemological considerations. See further in Thomas Kuhn, *The Structure of Scientific Revolutions* (2nd ed. Chicago: University of Chicago Press, 1970); Paul Feyerabend, "Explanation, Reduction and Empiricism," in *Realism, Rationalism and Scientific Method: Philosophical Papers*, vol 1, ed. Paul Feyerabend (Cambridge: Cambridge University

legal cultures in an accurate manner [40] due to the resulting terminological incongruence.[41]

Incommensurability is not a concept that is normally encountered in the study of law, except when a comparative approach thereto is adopted. Arguably though, law students, and those with an ambition to practise law internationally in particular, ought to develop an awareness of the fact that legal concepts often do not lend themselves to accurate translation between different legal systems. Considering that law practice can be viewed as constituting, consisting of or involving acts of communication, [42] awareness of the linguistic and cultural aspects of the law is crucial in developing global legal skills. Essentially, such skills should foster a broader understanding of the law as a discipline that is built upon and includes legal language and culture,[43] thus providing a more comprehensive picture of interjurisdictional diversity in law practice and facilitating effective communication across jurisdictional boundaries.

4. Law and language

Despite constituting the foundations and fabric of a legal system, [44] legal language and culture typically do not feature in the law curriculum, which instead focuses on particular areas of law, such as constitutional, criminal or contract law. While the notion of legal culture may be expounded as part of a comparative law module, which is typically an elective module rather than a requirement for a qualifying law degree, the language of the law is rarely (if ever) a subject of instruction. That the value of language study is underestimated in legal education is astonishing, however, considering that law cannot exist without language:[45] bills are debated in Parliament,

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Press, 1981); Paul Hoyningen and Howard Sankey, ed., *Incommensurability and Related Matters*, vol. 216 (Dordrecht, Boston and London: Kluwer Academic Publishers, 2001), viii.

[40] For examples of exploration of incommensurability and translatability in criminal law, see Paulina E. Wilson, "Interjural Incommensurability in Criminal Law: Constructing a Framework for Micro-Comparisons for Translation Purposes," in *Language and Law in Social Practice Research*, ed. Girolamo Tessuto and Rita Salvi (Mantova: Universitas Studiorum, 2015). Cf Glenn's opinion that the incommensurability argument (and the associated untranslatability arguments) "… exaggerate … the difficulties in human communication …. [and] the importance of text" in Patrick H. Glenn, *Legal Traditions of the World* (5th ed. Oxford: Oxford University Press, 2014), 45-49.

[41] Susan Šarčević, "Challenges to the Legal Translator," in *The Oxford Handbook of Language and Law*, ed. Peter M. Tiersma and Lawrence M. Solan (Oxford: Oxford University Press, 2012), 194. Šarčević emphasises the fact that conceptual incongruity exists even in closely related legal systems, e.g. within the continental civil law family and between jurisdictions using the same language. It is not limited to system-bound terms but also affects basic legal concepts (194-95).

[42] For an exploration of this theme from a number of perspectives, see David Nelken, "Law as Communication: Constituting the Field," in *Law as Communication*, ed. David Nelken (Aldershot: Dartmouth Publishing Company Limited, 1996) and other chapters in this edited collection.

[43] See e.g. Russell, "If only I knew then what I need to know now," 240ff.

[44] Husa refers to (written) language as "an inherent constituent of law", describing the relationship between law and language as one "of fundamental character" (Husa, *A New Introduction to Comparative Law*, 51-2).

[45] According to Braekhus, "… law only exists in human language" (Sjur Braekhus, *Sprogstrid og lovsprog* (Oslo: Universitetsforlaget, 1956), 14).

legislation is drafted using the language of the law,[46] providing legal advice involves oral and written communication between practitioners and clients, evidence in legal proceedings can take the form of written witness statements or oral testimony, clients' cases are presented to the court by means of advocacy (or resolved through alternative dispute resolution) and, of course, law is taught through the medium of language. As a special purpose language or technolect (technical language),[47] the language of the law presupposes the existence of a legal system[48] and it is in the context of that system that particular terms in that language obtain specific meaning.[49] Law students typically master legal language through the course of their law degree, by discovering lexical, syntactic and stylistic features displayed and shared by the areas of law they are studying, yet the language of the law is not specifically taught as a module or part thereof, even though, as a technical language, it is in essence a foreign language to a lay person. Moreover, studying foreign law or its elements entails the additional challenges of cross-cultural communication and, quite often, instruction in a second or foreign language that students may not be fully proficient in.

To gain full understanding of the difficulties surrounding the understanding legal concepts, it is useful to avail of semiotic insights into meaning and deconstruct the notion thereof. In semiotics, meaning is depicted as a triangle of significations, with a sign, a concept and an object as its points.[50] Applied in the context of law, a sign is a legal term, e.g. a solicitor (a person), burglary (an act), the judiciary or marriage (legal institutions), which refers to a particular object (i.e. a material or physical representation thereof—also known as a reference or denotation). At the same time, the sign symbolises the corresponding legal concept (sense or connotation) or, in other words, the legal "definition" that refers to the particular object.[51] Due to the specialist nature of the language of the law, however, the conceptual aspect of meaning, which may be expounded in legislation or case law, will not be known to a layperson or, in the context of cross-border law practice, a lawyer with little or no knowledge of the given foreign legal system. If the legal term in question is also part of the vernacular (general language), there is a risk that it will be interpreted as having its literal, rather than specialist, meaning. A typical example of this is the term "consideration", the specific meaning of which in the context of English contract law (i.e. an act, promise or forbearance by a party to a contract, which constitutes an essential element thereof)[52] is unlikely to be understood by a non-lawyer. Similarly, the criminal offence of "battery"

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[46] For classic works on the characteristics of the language of the law, see David Mellinkoff, *The Language of the Law* (Boston: Little, Brown and Co, 1963) and Peter M. Tiersma, *Legal Language* (Chicago and London: The University of Chicago Press, 2000).
[47] Heikki E. S. Mattila, *Comparative Legal Linguistics: Language of Law, Latin and Modern Lingua Francas* (2nd ed. London and New York: Routledge, 2016), 1.
[48] Herbert L.A. Hart, "Definition and Theory of Jurisprudence," *Law Quarterly Review* 70 (1953): 42-43.
[49] Mary Jane Morrison, "Excursions into the Nature of Legal Language," *Cleveland State Law Review* 37 (1989): 295.
[50] Charles K. Ogden and Ivor A. Richards, *The Meaning of Meaning: A Study of the Influence of Language upon Thought and of the Science of Symbolism* (London: Routledge & Kegan Paul, 1923), 11.
[51] See further in Wilson, "Interjural Incommensurability in Criminal Law," 208-09.
[52] *Currie v Misa* (1875) LR 10 Ex 153.

is likely to be interpreted by a layman as an act of violence to another person, rather than an act meeting the low threshold of unwanted physical contact, as provided by English criminal law.[53] In sum, accurate understanding of, for instance, a legal act or institution does not only require familiarity with the corresponding legal terminology but also necessitates in-depth comprehension of the legal concept as construed by relevant sources of law and/or approaches to statutory interpretation in the legal system from which it originates.

In light of the above, studying foreign laws or communicating legal concepts or rules across different languages and cultures adds a further layer of linguistic difficulty, and may therefore result in their inaccurate or erroneous construction. The understanding of one legal system (domestic or otherwise), which has been gained in the course of mono-epistemic legal education, is likely to be superimposed on the understanding of legal concepts or rules derived from another legal system encountered in law study or practice. This may entail familiar legal terms being used as metalanguage to describe the other legal system and familiar legal concepts being used either as equivalents or comparators, with the familiar points of reference considered "the norm", rather than a variant. It is posited that in such circumstances some background in comparative law would be useful in that it would assist in finding the correct metalanguage to describe and compare the legal systems in question, as well as provide a general spectrum of legal systems on which the laws can be placed and compared with each other.

5. Foreign law study through immersion

Arguably, the knowledge and understanding of foreign legal systems, along with their respective languages and cultures, is best gained through their direct comprehensive experience or, to borrow a term from applied linguistics, "immersion" or, ideally, "total immersion"[54] therein. Perhaps not surprisingly, learning second or foreign languages through immersion results in academic development comparable to that achieved through instruction in the student's native language, however functional proficiency in that language thus gained has been found to be outstanding. By analogy, a hypothesis may be posed that functional proficiency in foreign law attained through an immersion programme with instruction in the corresponding foreign language would also far surpass that achieved through theoretical study of that law in one's native language. Indeed, in the spirit of post-modern comparative law, immersion is required

[53] *Collins v Willcock* [1984] 1 WLR 1172.

[54] In bilingual education, 'immersion' means learning a second or foreign language in a sheltered classroom environment where the majority of instruction is received in that language. For a detailed definition of this concept, see Roy Lyster and Fred Genesee, "Immersion Education," in *The Encyclopedia of Applied Linguistics*, ed. Carol A. Chapelle (Oxford: John Wiley & Sons Ltd, 2020). Where all instruction is provided in a second or foreign language, it is referred to as "total immersion" (Fred Genesee, "Second Language Learning in School Settings: Lessons from Immersion," in *Bilingualism, Multiculturalism, and Second Language Learning: The McGill Conference in Honour of Wallace E. Lambert*, ed. Allan G. Reynolds (New York: Psychology Press, 1991)).

for deep-level analysis of the law,[55] which forms the basis of the understanding of foreign legal concepts and operation of foreign legal rules.

As the language of instruction in a law school is typically the language native to the domestic jurisdiction, there tend to be few or no opportunities for immersion when studying foreign law, which may be taught as part of a comparative law or another stand-alone module (e.g. Islamic Law). In such a context, foreign law is taught from the perspective of an outsider rather than an insider, whereas being an insider may entail opportunities for not only passive observation of the law in operation, e.g. by observing court proceedings, but also active participation therein, e.g. by gaining work experience in a firm practising the foreign law in question. Total immersion will, in turn, occur when students participate in an exchange programme or study abroad, which includes international students studying English and Welsh, Northern Irish or Scots law in the UK. Similarly to language learners beginning to think in a foreign language as they become more advanced in its use, immersion in a foreign law enables students to adopt the foreign law perspective, rather than relying on domestic law terminology and concepts in its understanding.

The concept of immersion can also be applied in the context of studying domestic law. As the specialist language of the law is typically "foreign" to the layperson, "total immersion" is what happens when domestic students study law in their native jurisdiction, as their instruction is in the language of the law from the outset. Likewise, immersion occurs in the context of work experience or apprenticeship, where the language of the law and legal concepts are encountered and thus learnt in a practical context, i.e. through spontaneous learning "on the job".

At this point it seems pertinent to reflect on the opportunities for immersion that legal education and work experience or apprenticeship normally offer in the wake of the trends arising from the recent Covid-19 pandemic. The impact of the pandemic on study was twofold. Firstly, anecdotal and research[56] evidence shows that the changes to teaching delivery in the form of online or blended learning[57] resulted in learning being a more solitary experience, with students' participation in live classes, active participation therein and interaction with lecturers and peers being lower than pre-pandemic. Secondly, lockdowns and travel restrictions that formed part of governments' responses to the Covid-19 pandemic impacted on the students' mobility,[58] resulting in limited opportunities for gaining first-hand experience of legal practice[59] through work

[55] Siems, *Comparative Law*, 117-19.

[56] See e.g. the discussion of the impact of online mode of class delivery on the students' sense of connectedness with peers and teachers and development of specialist skills in Natalie Skead *et al.*, "If you record, they will not come – but does it really matter? Student attendance and lecture recording at an Australian law school," *The Law Teacher* 54 (2020): 364-67.

[57] Research shows that attendance at lectures has a positive and significant impact on student performance, and lecture recordings are useful as a complement to, rather than a substitute for, attending lectures (Andrew Williams, Elisa Birch and Phil Hancock, "The impact of online lecture recordings on student performance," *Australasian Journal of Educational Technology* 28 (2012): 210-11).

[58] Student mobility is a measure for the internationalisation of legal education, as is learning a foreign language—see further in Basedow, "Breeding lawyers for the global village," 12ff.

[59] Christian Sundquist, "The Future of Law Schools: Covid-19, Technology, and Social Justice,"

placements, clinical legal education or observations of court proceedings. With students' exposure to the language and practice of foreign laws being limited to virtual settings[60] due to Covid-19 restrictions, the pandemic limited the students' experiential learning opportunities and thus had a detrimental effect on the development of their cross-cultural and intercultural effectiveness,[61] which is essential to globalised legal practice.

While the pandemic is now over, some of its effects appear to remain, not least for those students who received their legal education during that period. In the context of legal apprenticeship, the post-pandemic rise in hybrid and remote working[62] arguably exacerbates the cognitive and practical distance between the apprentice and the legal system being the object of their experience. This is likely to be compounded in the context of foreign law study or practice. From a linguistic perspective, it could be argued that limited opportunities for immersion in the foreign legal culture, language and system—or lack thereof—are conductive to their study being conducted in one's native language and excessive reliance on translation between the language of the foreign law and one's language of instruction or practice. This may result in an incorrect perception of the foreign law, particularly where no feedback is received as to the correctness of such translation and thus the construction of foreign law concepts, which would normally be received through face-to-face engagement with peers, lecturers and employers.

6. Translation accuracy in legal comparisons

A person who is not proficient in a foreign language needs to resort to translation in order to understand it or communicate with speakers of that language.[63] Translation in the context of law is problematic, however, as full equivalence of legal terms occurs only in bi- or multilingual jurisdictions that are monojural, i.e. where the languages in question are used by the same legal system.[64] If there is a degree of

Connecticut Law Review 53 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3725017, 6.

[60] Also referred to as remote, online or e-experience, virtual work experience seems to be increasingly popular, and, on the plus side, is said to be more inclusive and accessible in comparison with traditional in-person work experience. See e.g. Jemma Smith, "Virtual work experience," September 2023, https://www.prospects.ac.uk/jobs-and-work-experience/work-experience-and-internships/virtual-work-experience.

[61] See further on this topic in Mary Lynch, "Importance of Experiential Learning for Development of Essential Skills in Cross-Cultural and Intercultural Effectiveness," *Journal of Experiential Learning* 1 (2014): 129-47.

[62] Natasha Mutebi and Abbi Hobbs, *The impact of remote and hybrid working on workers and organisations, POSTbrief 49* (UK Parliament, 17 October 2022), https://researchbriefings.files.parliament.uk/documents/POST-PB-0049/POST-PB-0049.pdf, 14-15.

[63] This seems to be corroborated by the evidence of a higher degree of reliance on lecture recordings by non-native students, particularly in their first year abroad, which, arguably, is likely related to their language proficiency (Emily Nordmann *et al.*, "Turn up, tune in, don't drop out: the relationship between lecture attendance, use of lecture recordings, and achievement at different levels of study," *Higher Education* 77 (2018): 1080-81.

[64] Gerard-René de Groot and Conrad J.P. van Laer, "Legal translation," in *Elgar Encyclopedia of Comparative Law*, ed. Jan M. Smits, Jaakko Husa, Catherine Valcke, and Madalena Narciso (Cheltenham:

unification between legal systems or legal concepts have been adopted from one legal system into another and remained unchanged, near full equivalence may exist.[65] Considering that globalisation brings together legal systems originating from different legal traditions, full or near full equivalence between legal concepts or institutions in those legal systems is likely to be lacking, i.e. the concepts symbolised by the legal terms in question and/or the objects for which the terms stand are not the same. Furthermore, the same terms may exist in the given legal systems, yet their meanings may be conceptually different.[66] This lack of terminological or conceptual equivalence between legal systems results in legal terms and concepts not being translatable, which may pose communicative and practical difficulties in the course of foreign law study or practice.

In translation of legal texts from a source language into a target language, it is recommended that functional terms are used, i.e. terms whose function in both languages is the same.[67] Functional equivalence of legal terms hinges on their comparative analysis conducted from the perspective of legal problem-solving, which comprises the terms' content, intent and—most importantly—legal effect.[68] However, the accuracy of such comparative analysis depends on one's knowledge of both legal systems and their respective languages, which a student of foreign law is, arguably, unlikely to have. This may result in a lack of appreciation of the degree of terminological equivalence, which ranges from near, through partial to non-equivalence. Notably, in order for a functional equivalent to be acceptable, at least partial equivalence of the concepts in the source and target languages (and thus legal systems) is required, with an overlap between most of their essential characteristics.[69] While natural equivalents that already exist in the target language are preferred, the student ought to be made aware of the so-called *faux ami* (literally: false friends), i.e. words sharing etymological origin, yet denoting different legal concepts.[70]

Where there is no overlap between their essential characteristics, terminological incongruence[71] may be compensated for in translation by modifying the sense of the

Edward Elgar Publishing Limited, 2023).

[65] Gerard-René de Groot, *Het vertalen van juridische informatie, Preadvies uitgebracht voor de Nederlandse Vereniging voor Rechtsvergelijking, no. 53* (Deventer: Kluwer, 1996), 14; Gerard-René de Groot, "Das Übersetzen juristicher Terminologie," *Recht und Übersetzen*, ed. Gerard-René de Groot and Reiner Schulze (Baden-Baden: Nomos, 1999), 21; de Groot, "Legal translation," 424.

[66] Karen McAuliffe, "Translation at the Court of Justice of the European Communities," in *Translation Issues in Language and Law*, ed. Frances Olsen, Alexander Lorz and Dieter Stein (Basingstoke: Palgrave Macmillan 2009), 106. See also Karen McAuliffe, "Law in Translation: the Production of a Multilingual Jurisprudence by the Court of Justice of the European Communities," unpublished PhD thesis (The Queen's University of Belfast, 2006).

[67] Susan Šarčević, "Terminological Incongruency in Legal Dictionaries for Translation," in *BudaLEX '88 Proceedings Third International EURALEX Congress*, ed. T. Magay and J. Zigány (Budapest: Akadémiai Kiadvó, 1988), 439.

[68] Susan Šarčević, *New Approach to Legal Translation* (The Hague: Kluwer Law International 1997), 268.

[69] Ibid, 241-47.

[70] E.g. In French the word "magistrat" typically denotes a judge, whereas in England and Wales a magistrate is a trained volunteer hearing cases in the Magistrates' Court. See further at https://www.gov.uk/become-magistrate.

[71] For a more in-depth discussion of this topic, see Šarčević, *New Approach to Legal Translation,* 233-36

functional equivalent. This can be achieved by literal/verbatim translation, using a lexical qualifier to expand or delimit the sense of a target term, paraphrasing or description. However, the difficulty with terminological incongruence encountered in foreign law study is that the substantive (or procedural) variation between the two legal systems tends not to be explicitly taught from a comparative perspective and thus the method of translating foreign law terminology is not informed by any specific instruction or guidance on systemic relativity of corresponding legal concepts. Moreover, modified equivalents are likely to be long phrases that may obstruct the flow of communication, particularly where their use if frequent.

As a last resort, where no acceptable functional equivalent exists, an alternative equivalent may be used that conveys the general meaning of the term in question, for instance a neutral (non-legal) term, the source term either in its original or naturalised form (the latter being adapted to the target language), or a newly coined term (a neologism). While using an alternative term for the purposes of one's own study may be acceptable, its use in law practice is likely to hinder communication with practitioners or clients speaking the target language but unfamiliar with the source legal system. Overall, while the various translation techniques are useful, they are certainly not perfect: the greater variation between two legal systems, the more difficult it is going to be to communicate legal meaning between the corresponding legal cultures and languages.

7. Implications for legal education

Considering the interdisciplinary facets of modern law practice and their apparent absence from law curricula, one might ask: does the linguistic aspect of the law really matter? The answer is a resounding yes—for two reasons. First of all, international trends in law practice necessitate communication across jurisdictions, and regardless of whether such communication is verbal or written, the practitioner ought to be able to discern nuances of legal meaning and their potential impact on clients' instructions, legal advice provided and court proceedings. Secondly, the post-pandemic popularity of virtual communication settings has resulted in more structured and formal ways of communication,[72] which carries the risk of foreign law concepts being taken at their face value rather than being clarified on request. Nevertheless, as expounded above, global legal education and practice require the ability to construe the meaning of foreign law concepts in their source (foreign) language with reference to the relevant source legal system, yet at the same time convey those concepts in the target (i.e. the learner's or practitioner's native) language. The question remains how these linguistic skills may be developed in the course of legal education.

As previously mentioned, to pre-empt a mono-epistemic perception of the law, it is important to commence with a broad, global introduction to law, to create a spectrum on which jurisdiction-specific substantive and/or procedural variants can be

and 250-65.

[72] Devyani Prabhat, "Online learning and work during the pandemic: update on the legal sector," *The Law Teacher* 56, no. 2 (2022): 290-93.

placed, without their unconscious labelling as "normal". Having developed an awareness of legal variation and thus having laid the foundations for making legal comparisons, macro-comparisons can be drawn between legal systems, followed by micro-comparisons of legal concepts, rules and institutions. It would be desirable to include opportunities for gaining such international and comparative insights in legal education through the process of immersion in foreign laws, due to immersive education being conducive to the development of functional proficiency.

While total immersion would only be possible in the form of study abroad or an exchange programme, partial immersive experience can be achieved and enhanced by utilising modern technologies, virtual settings and foreign law resources, particularly in light of the greater post-pandemic utilisation of remote study and communication methods, and proliferation of online materials. Ideally, the students' immersive experience should be a combination of active and passive learning activities. Passive learning activities include participation in virtual tours of foreign courts,[73] watching live or recorded court proceedings in the languages used by foreign legal systems,[74] use of comparative, international or foreign law-themed multimedia resources such as podcasts, films and documentaries,[75] and attending guest lectures by scholars and/or practitioners from foreign jurisdictions. Active learning experiences can take the form of workshops or role-playing games utilising languages of foreign laws,[76] moots or legal clinics conducted in the context of foreign legal systems and in their languages, comparative law projects that require use of foreign law resources in their original languages rather than their translations,[77] a comparative or foreign law approach to legal problem solving, or cross-cultural discussions and debates using languages of foreign jurisdictions. Nevertheless, it is important that learners and/or apprentices can benefit from contemporaneous and prompt instruction, guidance and feedback—particularly in the context of passive learning—to complement and enhance their immersive

[73] Such as those offered by the UK Supreme Court (https://www.supremecourt.uk/visiting/360-degree-virtual-tour.html) or the National Justice Museum (https://www.nationaljusticemuseum.org.uk/museum/learning).

[74] For instance, watching live proceedings and their recordings is now possible in the UK Supreme Court (https://www.supremecourt.uk/live/court-01.html), the England and Wales Court of Appeal (Civil Division) (https://www.judiciary.uk/the-court-of-appeal-civil-division-live-streaming-of-court-hearings/), the Court of Justice of the European Union (https://curia.europa.eu/jcms/jcms/p1_1477137/en/) and the International Criminal Court (https://www.icc-cpi.int/streaming-all-displays). The European Parliament also has a selection of digital resources (https://www.europarl.europa.eu/topics/en/article/20230515STO89901/digital-journey-take-a-virtual-tour-of-the-european-parliament#:~:text=Experience%20the%20European%20Parliament%20in,the%20heart%20of%20EU%20politics).

[75] See e.g. the foreign, comparative and international law videography at https://www.lib.uchicago.edu/about/news/foreign-and-international-law-on-dvd-and-on-the-web/ (2010) and https://opiniojuris.org/2016/02/10/international-law-movies/ (2016) or a mostly (but not exclusively) American law-related videography at http://www.legalresearchandwriting.ca/movies/movies.htm (2024), which may be of interest to international students.

[76] See e.g. the learning activities offered by the National Justice Museum (https://www.nationaljusticemuseum.org.uk/museum/learning), albeit they currently do not seem to include any online experiences for adults.

[77] See e.g. foreign law databases and multi-jurisdictional resources at the Institute of Advances Legal Studies (https://libguides.ials.sas.ac.uk/databases/foreign).

experience of foreign laws and ensure that their first-hand relative understanding of their application is accurate and sufficiently detailed.

Linguistic techniques should also be used during description and explanation of foreign laws to navigate their conceptual variation and achieve near-equivalence in translation for cognitive or communicative purposes. Ideally, there should be room for discussion to allow for exploring the breadth and depth of such variation, and evaluation, by trial and error, of the best ways of its communication between the source and target languages and cultures. In the context of substantive law study, such knowledge could then be applied to comparative problem-solving exercises, with a focus on the functions of the laws, and any similarities and differences in their practical application to factual scenarios and the remedies they offer. Maximising opportunities for immersion in foreign laws in this manner, complemented by active learning through practical application of legal knowledge thus gained in a comparative context, would help learners achieve inter-jurisdictional functional proficiency, and develop international and comparative perspectives that are essential in modern law practice.

8. Conclusion

As discussed, legal education should nowadays embrace the increasingly global nature of law practice. Domestic law study would benefit from an introduction to law from a broader perspective, which would be conductive to developing greater cultural awareness and relative understanding of the legal system(s) being studied. In light of the systemic variation of legal systems, and the underlying linguistic and cultural aspects thereof, it is suggested that law students develop interjural competence. Ideally, such competence would not be limited to the passive awareness of interjurisdictional variation of legal concepts and the potential incommensurability it entails, but also extend to the ability to research, comprehend and discern the nuances of legal meaning encountered in a global context, and convey them across cultural boundaries. Furthermore, inclusion of linguistic perspectives, such as the characteristics of the language of the law and translation issues in interjurisdictional communication, would not only develop the student's intercultural effectiveness if they chose to practise law but it would also increase their cognitive awareness in encounters with foreign legal concepts, rules or institutions. With law practice now spanning across jurisdictions more than ever before, the linguistic and cultural aspects of the law can no longer be ignored in the academia. It is time that legal education adopted a more comprehensive and interdisciplinary approach with a view to broadening the student's horizons, and thus developing their legal competence and independence. Ideally, this should be achieved through immersive experience of foreign laws that maximises active learning opportunities, and is enhanced by the use of modern technologies and online resources, particularly considering the current popularity of virtual settings used for communication, in which inter-jurisdictional differences between laws may be more difficult to discern.

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